

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 22nd December, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

WITHDRAWAL OF NCC FROM LAPTRUST PENSION SCHEME

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

- (a) Could the Minister explain why City Council of Nairobi has given notice to withdraw from LapTrust Pension Scheme and how much money does the Council owe Lap Trust?
- (b) Could the Minister confirm whether before Treasury releases LATF money, Local Authorities must get clearance certificates for their staff retirement benefits schemes to confirm they do not have any debt?
- (c) Could the Minister inform the House whether the Council has a mandate to interfere with the Workers Pension Fund without the consent of the workers and the Kenya Local Government workers union?

Mr. Speaker: The Deputy Prime Minister and Minister for Local Government is not here? Order, hon. Members! We will revisit that Question a little later.

Next Question, Member for Rongai!

VANDALISM OF RAILWAY LINE AT SOLAI

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

(a) Is the Minister aware of the ongoing vandalism of the railway line at Solai in Rongai under the supervision of the Railway Police and the Kenya Railways officials and, if so, what are the reasons for the action?

(b) Is it a new policy of the Kenya Railways Corporation to uproot some railway lines?

Mr. Speaker: The Minister for Transport is not here! Again, we will revisit that Question a little later.

ORAL ANSWERS TO QUESTIONS

Question No.666

TRAINING OF YOUTHS IN ISIOLO/COAST
TO ASSIST TFG OF SOMALIA

Mr. Speaker: The Member for Wajir South is not here? We will give that Member the benefit of a second chance.

Next Question, Dr. Munyaka!

Question No.663

PROGRESS ON DEVELOPMENT OF
MALILI TECHNOLIS ICT CITY

Dr. Munyaka asked the Minister for Information and Communications what the progress on the development of the proposed Malili Technopolis ICT City is, how much money the Government has set aside for the project and what the level of respective private investor or donor funding in the project is.

Mr. Speaker: Minister for Information and Communications is not here? Once again, we will revisit that Question a little later.

Next Question, Member for Kitui West!

Question No.670

COST OF ILIKA WATER PROJECT

Mr. Nyamai asked the Minister for Water and Irrigation-

(a) how much funds have been used in the Ilika Water Project since it was started to date and what works have been undertaken so far; and,

(b) how much funds have been set aside for the Ilika-Mutome Water Supply and Sanitation Project.

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

(a) In 1986, my Ministry used Kshs13 million in Ilika-Mutomo Water Project to put up a pump house in the chamber and to procure four galvanized steel pipes of 20 millimeter diameter which were laid in the raising main. However, due to financial constraints the project stalled for 24 years. In order to revive the project, my Ministry through TANATHI Water Services Board has procured the services of a consultant to review the designs.

(b) Many emerging factors including increased population and land use in the last 24 years have made the review of the design necessary. The review will be finalized this financial year. My Ministry will start implementing the project from the next financial year 2011/2012 with an allocation of Kshs60 million to kick start the project when the designs review will have been completed.

Mr. Nyamai: Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer. However, this is a project which has stalled for the last 24 years. It is a project

which is supposed to serve Lower Ikutha and Mutomo districts. Being a project of such a big magnitude and having stalled for 24 years, are you convinced that Kshs60 million is enough to make any impact on this project?

Mr. Waititu: Mr. Speaker, Sir, that is the proposal we have at the moment to kick start the project. The initial project was for Kshs40 million in 1986. We think that Kshs60 million can do some good work in the initial stages.

Mr. I. Muoki: Thank you, Mr. Speaker, Sir. This project covers a wide area as my colleague has said. It covers the lower Yatta, Ikutha and Mutomo districts. I am convinced this money is not enough for the project. Could the Assistant Minister undertake to provide enough funds during the next financial year so that the residents of these three districts can get enough water?

Mr. Waititu: Mr. Speaker, Sir, as you have heard, we are reviewing the designs and that is only when we can get an estimate of the amount of money that is supposed to be spent and I undertake to push the Ministry to increase that amount.

Mr. Nyamai: Thank you, Mr. Speaker, Sir. I just want to point out to the Assistant Minister the way this Ministry has treated the people of lower Yatta, Mutomo and Ikutha which are the driest parts of Kitui. Honestly, we do not see any seriousness on this matter. He is talking about initial designs, the first designs which were done last year, the estimate was Kshs800 million. The designs which are being reviewed now has come to Kshs2 billion. The information I have is that TANATHI does not even have the money to pay the consultant who has done the final reviews and the Assistant Minister is talking about the reviews being done. Honestly, what seriousness is there by the Ministry to complete this project because, initially, the estimates of the designs was Kshs800 million, later it rose to Kshs2 billion and now he is talking about Kshs60 million? Honestly, what seriousness is there for you to complete the project?

Mr. Waititu: Mr. Speaker, Sir, I appreciate the concerns of the Member but considering that this project has stalled for the last 24 years, all those people who were concerned by then are not with us even in the Ministry. So, what the Ministry is doing right now is to review the designs so that we can budget from the factors that exist now. If you take into account 24 years ago and now, there is a big difference in population and other factors of land---

Mr. Nyamai: On a point of order, Mr. Speaker, Sir. I have just informed the Assistant Minister which information he should be having. I appreciate he is new in the Ministry but, nevertheless, we came to Parliament in 2008. The designs were finished at a cost of Kshs800 million. What he is saying about the increased population is true. The scope was increased to cover Ikutha and Mutomo districts. That is the review that has just been done and it has raised the cost to Kshs2 billion. The Assistant Minister has not paid the consultants. Is the Assistant Minister in order to mislead the House about that project when we have all the information about what is happening?

Mr. Waititu: Mr. Speaker, Sir, I agree with the Member that he might be having more information than me, considering that he is the Member of the area. I am ready to go with the Member to the ground together with my Permanent Secretary so that we can review the facts on the ground.

Mr. Speaker: Order, Mr. Assistant Minister! Maybe, you will satisfy the Member this way. You have allocated Kshs60 million to the project to carry out a review so that you can then budget. How long will it take you to carry out that review?

Mr. Waititu: Mr. Speaker, Sir, I will complete everything in this financial year.

Mr. Speaker: Before June next year?

Mr. Waititu: Yes, before June next year, Mr. Speaker, Sir.

Mr. I. Muoki: On a point of order, Mr. Speaker, Sir. Will I be in order to request the Assistant Minister, because the water project is designed for two constituencies covering three districts, to involve the two Members of Parliament so that where the designs had initially been done, we can confirm that it was properly done?

Mr. Speaker: Mr. Assistant Minister, will you involve the two constituencies?

Mr. Waititu: Yah. I think it will even be better. We can consult with them in my office together with the officials.

Mr. Speaker: Order, Mr. Assistant Minister! In this House, we are a bit conservative! We prefer that you use Standard English! Say “yes” not “yah”!

Mr. Waititu: Yes, Mr. Speaker, Sir.

(Laughter)

Mr. Speaker: Very well. We will go back to Questions by Private Notice. Next Question by the Member for Yatta!

QUESTIONS BY PRIVATE NOTICE

WITHDRAWAL OF NCC FROM LAPTRUST PENSION SCHEME

Mr. C. Kilonzo: Mr. Speaker, Sir, for the second time I wish to ask the Deputy Prime Minister and Minister for Local Government the following Question by Private Notice.

(a) Could the Minister explain why the City Council of Nairobi has given notice to withdraw from LapTrust Pension Scheme and how much money does the Council owe LapTrust?

(b) Could the Minister confirm whether before Treasury releases LATF money, Local Authorities must get clearance certificates for their staff retirement benefits schemes to confirm they do not have any debt?

(c) Could the Minister inform the House whether the Council has a mandate to interfere with the Workers Pension Fund without the consent of the workers and the Kenya Local Government workers Union?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, first, let me apologize for not being present during the first round. I did not anticipate the small congestion that was at the roundabout at the entry to Parliament.

However, I beg to reply.

(a) The Council, by the minutes of the Special Full Council meeting held on 2nd December 2010, resolved to withdraw from LapTrust Pension Scheme because LapTrust had refused to issue clearance to the council for access to LATF funds. The Ministry realized that this was not in order and requested the two parties; the Council and LapTrust to meet for arbitration. The amount owed to LapTrust by the Council is Kshs8,671,582,161.92, and that is when we include the actuarial deficit.

(b) Yes, I would like to confirm to the hon. Member that before the Treasury releases LATF money, all local authorities must get clearance certificates from their staff retirement benefit schemes to confirm that they do not have any debts.

(c) The council has no mandate to interfere with the workers' pension fund without the consent of the workers and the Kenya Local Government Workers Union. In any case, whether or not the council is able to withdraw its workers from LapTrust, the debt has to be paid.

I would like to inform the House that the Ministry has formed a task force to work out the technical modalities on the resolution of the debt impasse and resolve the dispute amicably and that an agreement has been reached which is awaiting signatures.

Thank you.

Mr. C. Kilonzo: Mr. Speaker, Sir, I wish to thank the Assistant Minister for the very good answer. I would like to encourage him to ensure that it is effected. However, it appears the trend within the Nairobi City Council is that when it cannot pay its debts, it opts for other suppliers. In this particular case, it owes LapTrust a lot of money. Rather than pay LapTrust Kshs8.2 billion, it wants to start another scheme. We know very well that it is also supplied with materials and it is not able to pay, it sources the same materials from other sources. What are you doing as a Ministry to ensure that the Nairobi City Council pays its obligations, whether to the pension scheme or other suppliers?

Mr. Nguyai: Mr. Speaker, Sir, first and foremost, it is true that the City Council of Nairobi (CCN) is heavily laden with debts. I would like to assure this House that there now exists a Committee that scrutinizes the debts. I think over the last one year, the debt has reduced substantially. We keep on monitoring. Through the same circular, they are not allowed to get any clearance to receive LATF. We are monitoring and ensuring it is well looked into.

Dr. Eseli: Mr. Speaker, Sir, I wish to thank the Assistant Minister for the hard work he is doing to sort out the Nairobi City Council. Could the Assistant Minister give us an indication whether there are other councils that might be in a similar problem like Nairobi City Council; owing colossal sums to LapTrust?

Mr. Nguyai: Mr. Speaker, Sir, there are other councils that owe a substantial amount of money to retirement schemes; LapTrust or LAFRAFAD. There have been quite a number of meetings. Some councils, for example the Council of Nanyuki, have chosen to sell their assets. In Kisumu, there is a valuation being done to see what kind of trade-off can be done so that there can be an asset transfer. The Ministry is very keen to ensure that all the workers' pension funds are well protected and we are monitoring each of the 175 councils.

Mr. Speaker: Last question, Member for Yatta!

Mr. C. Kilonzo: Mr. Speaker, Sir, I have no further question.

Mr. Speaker: Very well! Next Question by the Member for Rongai!

VANDALISM OF RAILWAY LINE AT SOLAI

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

(a) Is the Minister aware of the ongoing vandalism of the railway line at Solai in Rongai under the supervision of the Railway Police and the Kenya Railways officials and, if so, what are the reasons for the action?

(b) Is it a new policy of the Kenya Railways Corporation to uproot some railway lines?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, before I answer this Question, my apologies for coming late. I am aware you had called for the Question when I was stuck in the traffic. Perhaps, it is the feel-good factor with Christmas that there is a lot of shopping all over.

Mr. Speaker: Order, Minister! You are the Minister for Transport, how can you be complaining about congestion?

(Laughter)

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I am not complaining. I am actually happy that Kenyans are coming out in their numbers with a feel-good factor in this festive season.

Mr. Speaker: Order, Minister! Please, resume your seat! You appear to be taking this matter very lightly. I do not think it is a joking manner for you to be late for business and fail to give a reason. You are saying you were just having fun. You were enjoying yourself because Kenyans are out. Please, give a reason as to why you were late!

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I said, I was delayed in traffic because Kenyans have come out in their numbers and all the roads are full. We know our roads have not developed at the same pace as the people's capacity to buy vehicles. We are tackling the congestion in Nairobi. I, however, said I am happy to see Kenyans are coming out during this festive season.

Mr. Speaker: Order, Mr. Minister! I will accept that because you, as the Minister, really, must give Kenyans hope. You cannot tell Kenyans that you have given up and roads will continue to be congested. Now that you have said you are doing something about it, I am satisfied and I am sure the rest of the Members are.

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

(a) The railway line at Solai in Rongai has not been operational and has been closed to traffic for over 30 years. In addition, there has not been demand for railway services on that line during that period. Over the years, about 25 per cent of the railway line has been vandalized. In the recent past, the line has been subjected to increased vandalism.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I wish to seek guidance from the Chair. I can see that hon. Karua is here and she was ordered to be away for the rest of the day. I do not know how many hours "the rest of the day" means. I need your guidance because I do not know whether it is the ordinary day or the morning session.

Mr. Speaker: Order, Member for Chepalungu! The position is simple and clear. The Standing Orders provide for two sitting days on Wednesday and the Member for Gichugu was ordered to withdraw for the rest of the day this morning. This is the second day on Wednesday, hon. Ruto.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I beg to continue with the reply.

In the recent past, the line has been subjected to increased vandalism. Indeed, there are several cases before the courts where suspected vandals have been charged. As a result of the vandalism, rails and other railway materials have been unfastened and are now prone to further vandalism. The Kenya Railways Corporation (KRC) is, therefore, making every effort to safeguard the cross lines such as the Solai line with limited resources. In a bid to safeguard the railway materials, the KRC is collecting materials prone to theft under the supervision of the railway police for safekeeping at the railway depots and the railway police stations. In addition, the KRC is currently arranging for a budget to deploy additional security on cross lines to stem vandalism.

(b) It is not the policy of the Kenya Railways to uproot any existing lines. However, in cases where lines are not operational, it is prudent to collect materials prone to vandalism for safekeeping or for use on the operational lines.

Mr. Kigen: Mr. Speaker, Sir, the railway line at Solai has been subjected to vandalism under the supervision of the railway police, which is exclusively assigned to guard and protect the property of the KRC. In uprooting the railway, they are using acidic gas to cut them into pieces. Is that method ensuring the safety of these materials? Are they not being cut into pieces to be carried away as scrap?

Mr. Kimunya: Mr. Speaker, Sir, I am not aware of the intention of cutting the materials as scrap. However, I am aware that this is part of an operation between the KRC, the Kenya Railway Police and the Solai Police Station to collect the materials that are prone to vandalism, store them at the police station and the railway yard, so that they are not vandalized further. In terms of whether that can be used as scrap metal or by the police, I am not sure how the police will be part of committing criminal offences when we have entrusted them with the responsibility of guarding the assets of the KRC, which are public properties.

Mr. Kabogo: Mr. Speaker, Sir, we have missed you. Welcome!

I am not sure whether the Minister is aware that railway materials are all over the country in *Jua Kali* sheds. Last week, the Kenya Railways Police officers were collecting railway materials from the *Jua Kali* artisans in Thika, arresting them and charging them with theft of railway materials, yet this is happening all over the country. It is the inability of the Ministry to safeguard the railway materials that results in the materials getting to the mwananchi and the *Jua Kali* artisans. What will the Ministry do to make sure that *Jua Kali* artisans are not harassed because of the inability and the inefficiency of his Ministry?

Mr. Kimunya: Mr. Speaker, Sir, I thank the Member for highlighting the actions that are already being taken to recover the railway materials that have been vandalized from the railway lines and have found their way into the *Jua Kali* sheds.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. You have heard the Minister say that they have found materials that have been vandalized. What proof does he have that the people of Thika have vandalized the railway line all the way from Rongai?

Mr. Kimunya: Mr. Speaker, Sir, the Member for Juja has told us that the materials are lying at the *Jua Kali* sheds. Railway materials cannot be lying in *Jua Kali* sheds unless they have been vandalized from the railway station and have found their way to there. How they got there, is another detail. The good thing is that we are tracing all those materials wherever they are and returning them where they should be. If the people who are currently holding them feel harassed for being told to return what should

not have been in their sheds, but at the railway stations, then the KRC and the railways police are only doing their job. They are collecting what belongs to the KRC from wherever it is, be it at the railway stations, the *Jua Kali* or the scrap metal dealers, where arrests have been made. We have given a directive to the KRC to collect everything that belongs to it, recover it and use it for the development of the railways.

It is unfortunate that in the past, things were allowed to go the direction they did and the tracks were abandoned and people started vandalizing them and using them for scrap metal. I would like to appeal to the Members of this House to help us correct that oversight, so that we can safeguard these public assets for the development of this country.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. The Minister did not answer my question. I started by saying these railway materials are all over the country in all the *Jua Kali* sheds. This is what they use to make sufurias. How can the Minister then conclude that all the materials are vandalized from the railway lines, yet he is not protecting the railway lines? They should stop harassing the *Jua Kali* artisans. The materials are being used in the whole Republic and I am sure even in Emuhaya, Rongai and Mombasa. The *Jua Kali* artisans are using these materials all over the country, yet he is telling the country that they are efficient and they are now collecting these materials. You are only charged when you do not pay a bribe, but when you pay a bribe, you are let free to go back to work. Could he confirm to the House that, that is the position?

Mr. Kimunya: Mr. Speaker, Sir, I am not aware of any bribes being paid or being asked for people to be released. Any material that belongs to the KRC or to any Government institution and it is found in private hands, the onus will be upon the person having it to prove that he has it legitimately. In the first place, it should be restored to the public place where it should have been. I believe that is what is happening with these materials. If the *Jua Kali* artisans had legitimate access to the materials in the first place, they will prove it. I do not believe that anyone had access to the railway line just because there were lapses in terms of safeguarding it. This does not entitle people to vandalize the railway materials and then claim that because they vandalized when there was nobody watching, they should be left alone to enjoy what they vandalized in the past. That is the wrong way of doing it and we do not condone it.

Mr. Mureithi: Thank you, Mr. Speaker, Sir. Once again, welcome back. I would like to bring to the attention of the Minister for Transport that we had a vibrant trade happening between Nyahururu and Nairobi in terms of livestock because the northern side is an area of pastoralists. The railway line between Gilgil and Nyahururu has stalled and a lot of materials like ballast and some metals have been taken. My concern is, since a country develops in terms of infrastructural development, what has the Minister done? Instead of now removing some parts, he should rehabilitate the railway lines so that we can rekindle the economic growth of this nation, including protecting the properties that are along the railway lines. What will the Minister do for the dormant railway lines that were working and were very vibrant but are now subject to vandalism?

Mr. Kimunya: Mr. Speaker, Sir, as I did indicate, there are two facets to it. First, there are lines that are dormant and yet they can be reactivated because they are economically viable. The Kenya Railways Corporation (KRC) is working on that, first of all, to revive those lines. There are lines that were there and have no economic viability because they have not been used and there is no projection in terms of them becoming

economically viable because the areas they served, the economics have since changed. On those lines, the natural thing to do is to use those materials to rehabilitate other areas and when the areas prove that they deserve a railway lines, perhaps, because of other modes, that decision can be taken.

On those lines that are to be preserved, there is now more enhanced security to protect the lines from vandalism and also coupled with the wider measures of the Government in terms of banning the export of scrap metal and more surveillance on scrap metal dealers to ensure that they are not dealing in public property or public materials, be they railway lines, telephone cables or electricity cables. There is vandalism because there is a market for these products.

Mr. Speaker, Sir, it is in this context that I appeal to the members of the public to appeal to the people within their areas to help in protecting and identify the vandals who mess up with all these public assets, because at the end of it all, they are our assets. If we cannot do it and provide the oversight, then we will not be protecting the assets for posterity, but rather allowing a few people to profiteer by selling them as scrap and then we pay more to rebuild new ones.

Mr. Mututho: Mr. Speaker, Sir, I am reminded by the hon. Member to say that the railway may have come from Kibera during the uprising. That notwithstanding, if this railway business took only four years to construct when we did not have technology and the Information and Communication Technology (ICT) capabilities that we have, when, to his estimate, are we likely to get a genuine railway line from this Government? Is it anywhere within the life of this Parliament or, may be, something like Vision 2030?

Mr. Kimunya: Mr. Speaker, Sir, we have a commitment to deliver the first railway construction by independent Kenya in the next couple of months, at least, on a line from the Railway Station to the Jomo Kenyatta International Airport. It is a project that is designed; there is a railway station that is already starting any time now. So, we will have a few kilometers done in Independent Kenya this time round and hon. Members may well be beneficiaries or travel on this line – which is expected to take two years – in the next couple of months.

Obviously, we are working on the bigger issue of developing a second line from Mombasa all the way to Malaba jointly with the Ugandan Government. Immediately we get the necessary Cabinet approvals, I will give more information to the House at least from an authoritative perspective. However, plans are underway to modernize our railway, especially the main line from Mombasa to Malaba. But, more importantly, is the commuter railway system linking the various roads from Ruiru, Thika, Limuru, Dagoretti and the airport by connecting them to the Railway Station as part of decongesting the city. I will be giving more information immediately the details have been approved by the Cabinet. I will have the authority of the Cabinet to discuss details of those matters with the House.

Dr. Eseli: Mr. Speaker, Sir, on Tuesday last week, the wananchi of Rongai arrested vandals who had vandalized the railway line and loaded it onto a lorry. They handed those people over to the police. However, to their shock, the railway police arrived from Nakuru and released this lorry with the materials. Could the Minister inform this House how far the investigation has gone and how far efforts to recover these materials has reached?

Mr. Kimunya: Mr. Speaker, Sir, I know that investigations are ongoing, not just on that particular incident, but on several others where people have been intercepted with railway materials. Some cases are in court while others are being investigated. Let me give a general undertaking that we will not tolerate anyone vandalizing materials that belong to the public, be they railway lines, power lines or telecommunication cables which people chop and sell as scrap. If hon. Members and their constituents, in their usual oversight and vigilance, help in this matter, we will solve this issue collectively as a nation rather than just as one – as the Government – versus the people. It is our collective duty to rid the nation of all these criminals who vandalize public goods together. I thank the hon. Member for Rongai for highlighting this issue and several others who have brought this issue to our attention individually through the Ministry.

Mr. Kigen: Mr. Speaker, Sir, on that Tuesday, I had the opportunity to speak to the Managing Director of the KRC. I did inquire from him whether he was aware of the vandalism that was going on and it was clear that he did not know at all. Indeed, the following day, he sent officers to go and investigate. The Minister has said that he has budgeted to increase security to protect the existing railway line. How come he is allowing the carting away of the materials that are already on site, including the unfastened ones? Why does he not repair and sustain it until such a time that the railway line becomes more vibrant and is in use?

Mr. Kimunya: Mr. Speaker, Sir, I did mention that the Solai Line has not been in use for 30 years, and all projections are that it will not be in use for the next so many years. Given that situation, it makes sense, first of all, to do away with the temptation of vandalism, to use those materials where they are needed most and as the economic realities in the region change and there is demand for another line, that decision can be taken at that point rather than keep materials waiting for circumstances to change. This could take many years. However, we need those materials now to help repair some of the areas that are in dire need of repair. The entire country is being mapped out to identify where railway line services, road services and airport services are required. Within that wider transport master planning, all the areas will be serviced with the most viable transport mode for that region.

Mr. Speaker: Let us move on to the Question by the Member for Wajir South!

ORAL ANSWERS TO QUESTIONS

Question No.666

TRAINING OF YOUTHS IN ISIOLO/COAST
TO ASSIST TFG OF SOMALIA

Mr. Speaker: Is the hon. Member for Wajir South not there?
That Question is dropped!

(Question dropped)

Let us move on to the Question by the Member for Machakos Town!

Question No.663

PROGRESS ON DEVELOPMENT OF MALILI
TECHNOPOLIS ICT CITY

Dr. Munyaka asked the Minister for Information and Communications what the progress on the development of the proposed Malili Technopolis ICT City is, how much money the Government has set aside for the project and what the level of respective private investor or donor funding in the project is.

The Minister for Information and Communications (Mr. Poghisio): Mr. Speaker, Sir, I would like to apologize for coming late.

Mr. Speaker, Sir, I beg to reply.

The plan by the Government to establish a multi media ICT park at Malili Ranch along Mombasa Road near Machakos Town is ongoing and is on schedule. The park will be built on a 5,000 acre piece of land that the Government procured at a cost of Kshs1 billion. The site, which is 60 kilometres away from Nairobi and 40 kilometres from JKIA, is adjacent to the Nairobi-Mombasa, A109 Road, and next to Konza Railway Station.

The Konza Multi Media ICT Park, that is the name we are proposing for it, will consist of a modern business processing outsourcing park, which is a flagship project within the Vision 2030, a science park convention centre, mega malls, world class hotels, international schools, world class hospitals, championship golf course, financial district, high speed mass transport systems, superior modern integrated infrastructure, roads, sewer, electricity and telecommunications network---

(Loud consultations)

Mr. Speaker: Order, hon. Members. Order Mrs. Shebesh, Mrs. Noor. Please have reasonable conversation.

Proceed, Mr. Minister.

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

I was actually still listing the facilities. Others are roads, sewers, electricity, telecommunication networks and a well integrated security system, among others.

Mr. Speaker, Sir, as concerns progress up to date, I would like to inform the House that the Government has made tremendous progress and has already achieved the following towards establishment of the park.

1. identified and purchased 5,000 acres of land;
2. hired the International Finance Company (IFC) as the lead transaction advisor;
3. demand assessment and feasibility study is already done; the master plan is ready; the virtual model is in place. We have also marketed Kenya and created awareness both locally and internationally.

Mr. Speaker, Sir, the Ministry is scheduled to initiate market testing from January, 2011. The Ministry is planning to start preliminary civil works on the sites and to conduct ground breaking early next year. The initial demand assessment report has established

that the key sectors to drive growth of ICT include Business Process Outsourcing (BPO), software development, data carriers, disaster recovery centres, call centres, light assembly manufacturing and so forth.

Dr. Munyaka: Mr. Speaker, Sir, I want to thank the Minister for that answer. However, he has failed to answer my specific question, which is: What is the amount of Government allocation for that project. He has not indicated that.

Mr. Poghiso: Mr. Speaker, Sir, as indicated earlier the Government has given us Kshs1 billion for the purchase of land, that we did in the last financial year. This year the amount is Kshs400 million which will be used for development of basic infrastructure, marketing of the country as a BPO hub and to meet the consultancy services on demand assessment and feasibility study, development of the master plan and the virtual model.

The Government is talking to development partners to provide funding to some of the Government activities towards the establishment of this park. The amount allocated for this year is Kshs400 million.

Dr. Eseli: Mr. Speaker, Sir, could the Minister clarify whether they are not putting the cart before the horse in the sense that they have got Kshs400 million for marketing a hub that does not actually exist? I do not know what they aim to achieve with the marketing at this stage. Could the Minister please explain what they aim to achieve?

Mr. Poghiso: Mr. Speaker, Sir, Kenya is already a hub of transport, ICT and everything. Kenya is actually positioned as a hub, but now we are trying to tell the world that apart from all that, Kenya is set to be an international hub and destination for ICT and the new technology of today.

One of the things that we have taken as a project is business process outsourcing. That is already happening in this country. In private hands, there are call centres and back offices which are working for international organizations as we speak. We are encouraging more to come in so that we do not have to wait for Malili to be ready. We already have facilities to encourage investors to come in. we have to tell them about us; that is why we have to do the marketing.

Mr. Kabogo: Mr. Speaker, Sir, I have listened to the Minister. If you google the ICT City in Kenya, you will find the good things that the Minister is talking about interpreted in the Vision 2030. You will find the last sentence on that website saying that; "however, the former Malili Ranch is marred with controversy and allegations of fraud". Could the Minister enlighten the House on this issue? This information is in the public domain.

Mr. Poghiso: Mr. Speaker, Sir, even Wikileaks is in the public domain, but that does not make it really our own information. That is information out there. There is no controversy on the Malili land. The Government has a title deed for it. It is ours to develop.

Mr. Wambugu: Mr. Speaker, Sir, could the Minister tell us exactly when he expects this project to be operational? He has just given us features of what infrastructure will be developed there. Could he also indicate how many Kenyans are expected to benefit from this project?

Mr. Poghiso: Could the hon. Member repeat the question?

Mr. Speaker: Mr. Minister, please give this House your undivided attention.

Mr. Wambugu: Mr. Speaker, Sir, I will repeat my question, although it is normal practice that most of us have not been very attentive.

The Minister has just given us a breakdown of the amount of funds that are being used, especially on infrastructure, development of roads in that area, but he has not indicated exactly when he expects this project to be operational. When it becomes operational, how many Kenyans will benefit from it?

Mr. Poghisisio: Mr. Speaker, Sir, I need to revisit also the issue of google and say that if that story still exists, google needs to know that, that it is not true. The Malili land belongs to the Government. The Government of Kenya has no controversy whatsoever and the land belongs to the Government. The google can correct that, so that it does not misinform the world about something.

To get back to the last question, this will be a Public/Private Partnership (PPP) project. We will use the model of PPP, where the Government provides land on lease to investors and all manufacturers and vendors in industry--- Those who want to build hotels, recreational facilities, hospitals and schools will come in. so, it will be a model, but the Government will also have its own buildings.

The proposal is to have even the Ministry of Information and Communications and other Ministries out there, so that it is a model city. If you look at the model that we have produced, there is capacity to create more than 500,000 jobs, and an opportunity for Kenyans to commute back and forth, using a high-speed transport system.

Regarding when it will happen, we are hoping that funding will come for us to put in place the basic infrastructure. We are already marketing the country in the sense that investors from the international community have shown interest.

Let me inform the House that some of those investors want to start doing their business before we go to Malili. So, the Government is also looking for a facility to provide opportunities for these investors to begin employing Kenyans now and not to wait until Malili is ready. The model is one of “build and operate” in partnership with the Government. This is likely to be one of the biggest sources of employment for our country.

Dr. Munyaka: Thank you, Mr. Speaker, Sir. I am interested actually to know the total proposed project value for the whole project and also the impact of the proposed Tatu City along Thika Road on the commencement of this Malili Project.

Mr. Poghisisio: Mr. Speaker, Sir, although Tatu City is a different project from this one, the Malili Project is going to be a technology city with infrastructure and amenities for all. It is going to be a specialized economic zone. So, the other one will be a city of residence and businesses. But it is going to encourage businesses that will influence both cities, because the people who will be working in Malili could be also having activities in the other city. But this is just an encouragement to Kenyans that this country is gearing itself for great things and joining the league of nations that are looked at as leading. We are going to be trailblazing in this area. So, we must be prepared as it were to accept that we have the manpower and capacity to move. How much it is going to cost is going to be determined by how many of the partners are going to come on board and how much impact is going to be seen as we go along. Allow us to move to the first stage of putting the infrastructure down; just making it a reality and making sure that people believe that it can happen. Kenya in this region will be the first one to do this. So, let us keep our fingers crossed and hope that we will cross that line and give more information along the way.

Mr. Speaker: Hon. Members, that brings us to the end of Questions. We will now move to the Prime Minister's Time.

PRIME MINISTER'S TIME

PRIME MINISTERIAL STATEMENT

THE NEW DIMENSIONS OF INTERNATIONAL TERRORISM

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, I rise to make a Statement on the new dimensions of international terrorism.

Mr. Speaker, Sir, our country suffered yet another act of terrorism last Monday. A Russian F1 hand grenade exploded while being carried by a passenger who was undergoing inspection while boarding a Kampala bound bus. The passenger in question is of Tanzanian nationality. He was killed by the explosion. The casualties included 22 Kenyans, five Ugandans, four Sudanese, six Burundians and one Tanzanian. Two victims remain unknown.

Mr. Speaker, Sir, the threat of terrorism has been alive in our country since the early 1970s. Many lives have been lost, property destroyed and our economic growth adversely affected due to various acts of terrorism. While the patterns of terrorist destruction have remained the same, the techniques, targets, perpetrators, motivation, cross border networks and weapons of choice have changed tremendously. Terrorism is no longer a weapon limited to political liberation struggles. It is now a weapon for economic competition, cultural conflicts, narcotics trafficking and to some, a trade.

Mr. Speaker, Sir, these new dimensions of terrorism pose a serious challenge to global peace and the internal stability of nations. The trans-boundary nature of terrorism requires concerted efforts of all nations in dealing with the problem. Terrorist networks cut across international borders. Terrorist attacks often involve the movement of weapons and perpetrators across various countries. The victims of terrorist attacks are often people of various nationalities. Many years ago, known acts of global terrorism involved bombing Western targets such as embassies, hotels, airlines, sporting events, military assets, *et cetera*. Today, the focus is on soft targets such as restaurants, music festivals, public transportation systems, schools, shopping malls and so on. The focus on soft targets exposes the most vulnerable members of the public to acts of terrorism. It directly affects the way of life of our people by curtailing their freedoms and limiting their choices. Perpetrators of terrorist acts are no longer trained soldiers, but now include male and female children below the legal age for criminal responsibility. The weapons used in acts of terrorism are no longer limited to conventional bombs, but now include improvised explosive devises, small enough to hide in small water bottles, shoes, vests and so on. Other weapons used in terrorist attacks include biological and chemical agents. Terrorist acts also include kidnapping and hostage taking. The terrorist groups operate global networks complete with intelligence, banking, training and mutual assistance systems. The theatre of terrorist attacks is no longer the battle fields where conventional conflicts of wars are fought. Terrorism is now part of global economic competition waged in boardrooms through several warfare and other forms of electronic attacks on economic assets.

Mr. Speaker, Sir, the experience that we have had as a nation in terrorism and the real threat of future attacks require that we strengthen our state of legal preparedness and operational tools necessary to respond effectively to these new dimensions of international terrorism. A first step is for the public at large to appreciate terrorism for what it is; that it is a threat to our peace and freedoms. The public must exercise utmost vigilance to help in the detection and prevention of acts of terrorism. The public must not provide safe refuge to terrorists. We must not glorify the perpetrators of acts of terrorism. We must not provide an environment suitable for the induction of our children into terrorist networks. We must not preach the ideology of religious or ethnic hate to our children. We must not use religion; whether Christianity, Islam or Hindu to radicalize our youths. The fight against terrorism must, therefore, start within our homes, mosques, churches, temples and schools. At the legal level, we need to improve our laws to facilitate judicial responses more aligned with the reality of the complexity of terrorist investigations and prosecutions.

Mr. Speaker, Sir, at the operational level, we need to intensify information sharing amongst internal and external security agencies through a national focal point. We also need to establish a mechanism for bilateral and multilateral mutual co-operation assistance among friendly states within the framework of counterterrorism conventions. It is with these factors in mind that the Government is finalizing the Prevention of Terrorism Bill. The Bill will be discussed by the Cabinet soon and published for debate in this House in the first quarter of next year. In pursuit of the enactment of this Bill, the Government aims to establish a legal framework that clearly defines terrorist acts, imposes punishment commensurate to the damage caused by terrorist acts, deprives terrorists of their property and penalizes the recruitment, indoctrination and training of terrorists. The new legal framework will strengthen the ability of the law enforcement agencies to effectively investigate offences of terrorism. The Bill will allow a tradition and mutual legal assistance for terrorist offences.

As we prepare for Christmas and New Year celebrations, may I extend to all Kenyans warm wishes for this festive season. May I also urge all Kenyans to be vigilant and alert at all times to their surroundings. I also want to assure the nation that there is no cause for panic and sufficient security measures have been put in place by the Government to deal with possible terrorist attacks during this festive season. I would like to conclude by wishing hon. Members a merry Christmas and a very prosperous new year, 2011.

Mr. Njuguna: Mr. Speaker, Sir, while commendably acknowledging the Statement given by the Prime Minister, could he shed some light on an incident where a Kampala bound bus was intercepted at the Uganda-Kenya Border carrying some grenades? Were any Kenyans arrested and, if so, could he indicate the identity of those Kenyans?

Mr. Kapondi: Mr. Speaker, Sir, while I appreciate the Statement by the Prime Minister, I would like him to clarify, given the fact that our security agencies are seriously underfunded, what the Government is doing? They could have information about security threats emanating from terrorists, but they may not be in a position to deploy. What is the Government doing to ensure that our local security agencies are properly funded?

Mr. M.H. Ali: Thank you, Mr. Speaker, Sir. While appreciating the Prime Minister's Statement, I would like him to clarify or confirm the presence of about 2,500 Somali military trained nationals in Isiolo, Coast Province and Archer's Post. He should also clarify whether those people, who were supposed to have been deployed about a year ago, have been trained for Somalia or for other purposes. What we know is that after those people were trained, they were supposed to have been sent immediately to Somalia. However, almost a year later, they are still in Kenya. We also have information that some of them have run away from the camp where they were being held. Those people could be contributing to the insecurity and terrorist acts that are taking place in East Africa. Could the Prime Minister confirm that, please?

Mr. Kiuna: Thank you, Mr. Speaker, Sir. While I thank the Prime Minister for addressing this important issue to the nation, I would like him to confirm whether there is any relationship between the pirates who were arrested and arraigned in Kenyan courts--- Could they be retaliating for being arrested and that is why there are attacks in the Kenyan territory?

Mr. Nyambati: Thank you, Mr. Speaker, Sir. While I thank the Prime Minister and the Government for the measures they are taking, I would like to know from the Prime Minister what has happened after past incidences of terrorism like the one that took place during the referendum period at Uhuru Park.

Mr. Speaker: Very well! That is five. We will allow the Prime Minister to respond and then we will deal with another five and allow the Prime Minister to respond. Then that will be it.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, the hon. Member for Lari wanted to know about a Kampala bound bus that was arrested at the Busia Border, whether any Kenyans were arrested and what has happened to them so far. That issue was responded to by the Minister of State for Provincial Administration and Internal Security in the House and he gave the full details. I am not in a position to give those details right now.

Hon. Kapondi wanted to know about funding of our security agencies to make them more effective in dealing with these issues. I want him to know that we are carrying out a very comprehensive reform programme of our security forces to make them more effective. One of the conditions include improving their working, living conditions and wages. That is an ongoing exercise to make our security forces better motivated and more effective in dealing with their work.

The MP for Mandera East asked a question which, of course, was a subject of another Question which had been dropped, about Kenyans being trained for deployment to Somalia. I want to say categorically here that we have never recruited Kenyans to be deployed in Somalia. We are helping the Transitional Federal Government (TFG) in Somalia to develop its capacity by training Somalis and not Kenyans. It was Somali Somalis. That exercise is not only being done by Kenya, but also by Ethiopia, Djibouti and Uganda. The initiative is being assisted by the Government of Italy, the Federal Republic of Germany and the United States. So, I want to categorically deny that we have recruited Kenyans for military action in Somalia.

Hon. Kiuna, MP for Molo, wanted to know whether prosecution of pirates arrested in Kenyan courts might be the cause of the attacks and, maybe, the pirates are retaliating on Kenya. That is because we have agreed to use our courts to prosecute the

pirates. One, the information we have is that Kenya is more of a transit route of terrorists to Uganda. It is easier to understand why Uganda is a target. As we know, Uganda has her troops fighting against Al Shabaab in Somalia. Kenya, being a front line State, is not allowed to deploy her own troops in Somalia. However, Uganda being a country in the region but not a frontline State is allowed. The retaliation would be against Uganda rather than against Kenya. We have a responsibility, as a country, because the activities of pirates affect our national security and trade.

So, because of the increased pirate activities in the Indian Ocean, most of the insurance companies have increased their premiums. Even the shipping rates have gone up because ships have to detour and it is a much longer circuitous route to reach our port here. Therefore, we have an obligation as a country to ensure that justice is done and that pirates who are arrested within the Indian Ocean waters can be tried in our courts. This includes around Seychelles. This is something we are doing because of our own national interest. We are not doing it to appease anybody else. We have an obligation to our people.

Mr. Kapondi: On a point of order, Mr. Speaker, Sir. The Prime Minister has not answered the question that was raised by Mr. Mahamud Ali. He asked about Somalis who were trained in Archers Post for deployment in Somalia and not about Kenyan Somalis. The Kenyan Government had agreed to train Somalis for deployment in their country for the purpose of restoring peace and order in Somalia. The Prime Minister has more or less skirted round the issue because he was talking about Kenyan Somalis and yet all of us agree that there are no Kenyan Somalis being trained there. Could he answer that question?

Mr. Speaker: Mr. Prime Minister, if you have not responded to that, can you please do so? I am talking about the issue raised by the Member for Mandera East.

Mr. M.H. Ali: On a point of order, Mr. Speaker, Sir. Could I add something to that? I wanted to know whether the Prime Minister could confirm the presence of the people from Somalia. They have been here for one year now after their training. We are aware that they are held there although some of them have run away from the camp. We are worried where these people could be going.

Mr. Speaker: Mr. Prime Minister, just address the original concern by the hon. Member for Mandera East seeking clarification. Just deal with that alone.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, you will remember that there was a story about some Kenyans being trained. There were some Kenyans who had posed as Somalia Somalis. They are the ones who were got rid of because Kenya does not want to use her own citizens in Somalia. However, the issue of deployment of those who have been trained is a security issue that will not be subject to debate in this House. So, I want to inform the hon. Member to hold his horses because the matter is being dealt with very effectively.

Mr. Speaker: We will take another five clarifications beginning with the Member for Ol Kalou.

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

Mr. Speaker: Order, the Member for Kitutu Masaba! You know I have already moved on and another Member has already caught my eye. I cannot go back to you. You know the Standing Orders very well.

Mr. Mureithi: Mr. Speaker, Sir, having been a victim of the 1998 bomb last by virtue of being in the Co-operative House, I would wish to tell the Prime Minister a few things. The measures the Prime Minister has said he will take are medium-term and long-term. All of us have offices at the Continental House. When the 1998 bomb blast happened, the Ufundi Building collapsed and we lost 100 people. Co-operative Bank lost 12 people. What plans does the Prime Minister have to distribute Members of Parliament to different locations so that we are not caught up in one unit? This is as a result of the experience I had at Co-operative House.

Secondly, we have a lot of documentation, including the HANSARD. What does he intend to do in terms of keeping some of these documentation off sight so that if a thing happens we are in a position to capture this information for posterity. I am speaking out of experience and it is not a good experience when you are personally involved in a situation like that.

Mr. Nyambati: On a point of order, Mr. Speaker, Sir. Could you direct the Prime Minister to answer my question because he did not answer it?

Mr. Speaker: Order, the Member for Kitutu Masaba. You cannot do it that way. I am afraid I will not direct the Prime Minister to do so. I have already given findings on that matter. You stood too late. A Member of this House is supposed to be vigilante all the time and timeous when they have concerns so that they raise them at the right time, which you did not do. Obviously, this does not help you. So, this persistence is not good for you.

Mr. Gabbow: Mr. Speaker, Sir, I kindly request the Prime Minister to give us the definition of “act of terrorism” as defined in the UN Charter and whether it is synonymous with what is happening in this country, where individuals of one faith are being targeted.

Mr. Wambugu: Mr. Speaker, Sir, could the Prime Minister clarify why the Government did not take the necessary action to stop the attack that happened in this City on Monday after receiving intelligence from Uganda? Which measures has the Prime Minister put in place so that Kenyans are not attacked again in the near future?

Mr. Chepkitony: Mr. Speaker, Sir, while thanking the Prime Minister for the Statement, I would like him to let us know what is causing the upsurge in terrorism in this region. What extra precautionary measures has the Government taken to protect civilians from unnecessary attack like providing metal detectors to all bus companies to screen the passengers and their luggage before boarding their buses?

Mr. Twaha: Mr. Speaker, Sir, mass murder, possessing and misusing explosives are all serious crimes which should be condemned. However, the word “terrorism” is a bit subjective. Nelson Mandela was jailed for 27 years for leading a terrorist organization known as the African National Congress (ANC). Mzee Jomo Kenyatta was jailed for seven years for allegedly leading a terrorist organization known as the *Mau Mau*. So, one man’s freedom fighter is another man’s terrorist. We condemn mass murder, misuse of explosives and guns. The other day, during the referendum, there was a rally at Uhuru Park and somebody exploded a device and people died. The word “terrorism” was not used until after four days. Two or three years ago, people were killed in Marsabit but the word “terrorism” was never used. Why is it that it is only used when the victims are certain groups of people or the perpetrators are a certain group of people; that is when the

word “terrorism” is used? Why is it that some victims are known as innocent by-standers and others are known as collateral damage?

Mr. Mbugua: Mr. Speaker, Sir, could the Prime Minister confirm or deny that we do not have an operational forensic laboratory and that is why we had to engage the FBI to investigate the grenade attacks at Eastleigh and Githurai? Could he also confirm that most of the crimes committed have not been resolved as a result of not having a forensic laboratory?

Mr. Speaker: Order, Member for Kamkunji. That is repetitive. But Right hon. Prime Minister, please, proceed to make your responses.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, hon. Nyambati wanted to know about the Uhuru Park attacks. Investigations are incomplete. So, we are not able at the moment to tell exactly who were behind the attacks at Uhuru Park.

Mr. Speaker, Sir, hon. Mureithi, of course, has informed us that he was a victim of the 1998 bomb attack and he asked two questions which could have been addressed to the Parliamentary Service Commission (PSC) or to you rather than me. One, he asked what steps I was taking to distribute Members of Parliament so that they are not collectively too exposed? Hon. Members of Parliament are also Kenyans. What about civil servants who are working in Jogoo House? What about other people who are working in the International Life House or Kenyans who are working in the Agriculture House? If you were to go this route, we would be giving each and every individual their own accommodation or offices. That is practically not possible.

He also asked what steps I was taking to protect the documents that we have in this House such as the HANSARD record and so on. I would like him to direct that Question to the Chair or the PSC, which is more competent to deal with that matter. If it is resources that they need, I would be willing to ensure that they get resources.

Hon. Gabbow and Twaha asked the same question. First they want to have a definition of terrorism. Terrorism is an act of violence intended to achieve political, ideological, religious or similar objectives. That is terrorism as defined internationally. This has no boundaries. It is not aimed at a particular community, religion or race. We are talking about an act.

Mr. Speaker, Sir, for example, the gentleman of the day before yesterday did not know who were the passengers in the bus he was taking the bomb into. Those passengers were innocent people. If he intended to attack the Ugandan Government, those were civilians and not Ugandan Government. The other day, during the final of the world cup in South Africa, they dropped a bomb in a night club where people were watching soccer and killed 76 innocent people. So, this kind of acts cannot be tolerated or defended by any sane person. This is why we are saying, if it is terrorism, it needs to be dealt with.

Those people who wanted to bomb the American Embassy ended up killing so many innocent Kenyans in that act of 1998, people who had nothing to do with what they were trying to solve. That is why I want to plead with this House that let us not refuse to face this danger called terrorism on the basis of religion in this country. This Bill has been brought before this House three times. It has failed because of the misconception that a particular community is being targeted. This Government has the responsibility to ensure that every Kenyan, irrespective of their religion, is protected. We are doing it as a matter of course. So, let our citizens not stop us from coming up with proper legislation that will make us more effective in fighting terrorism.

Mr. Speaker, Sir, hon. Wambugu and Chepkitony wanted to know what action we are taking. Our security forces have now signed agreements with security forces of Tanzania, Uganda, Rwanda and Burundi, to share information about movement of people who are suspected. People are going to be inspected at the borders. Internally, there will be detectors at our public transport offices. People will be screened before they board buses to ensure that people who carry dangerous weapons are not allowed on board to threaten the security of passengers.

Mr. Speaker, Sir, hon. Mbugua, Member for Kamkunji, was concerned about a forensic laboratory. I wanted to say, yes, we do not have one. But I can comfortably tell him that, yes, we are right now in the process of constructing a modern and fully equipped forensic laboratory.

Mr. Speaker: Very well. That now must rest that matter.

We will take the next statement from the Leader of Government Business.

MINISTERIAL STATEMENTS

CHANGES IN MEMBERSHIP OF HOUSE COMMITTEES

The Vice-president and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, pursuant to the provisions of the Standing Order No.176, I wish to communicate the following changes in the membership of the House Committees. The reason is that some old members have since become Assistant Ministers and, therefore, necessitating these changes. It is just house-keeping, so that as we prepare to break for Christmas holidays and the House adjourns *sine die*, these changes will have to be operationalized.

Mr. Speaker, Sir, both the Whips have agreed on this list. I want to read the list. With regard to the Departmental Committee on Agriculture, Livestock and Co-operatives, the replacement is hon. Mohamed Sirat replacing hon. Kambi Kazungu, who is now an Assistant Minister. The Departmental Committee on Education, Science and Technology, the hon. Mohamed Sirat replaces hon. Abdirahman Hassan who lost his seat in the by election. In the Committee on Implementation, we have the hon. Gideon Kioko Mbuvi. The Committees on Budget, Lands and Natural Resources, hon. Johnstone Muthama and Erastus Mureithi replace hon. George Thuo who again lost his seat in the by-election. The hon. Wilfred Ombui is now an Assistant Minister in my office and he was in the Committee on Energy, Communications, Information, as well as the Speaker's Committee and the Constituency Development Committee. The following hon. Members replace hon. Ombui in that regard: Hon. Adan Keynan, hon. Oyongo Nyamweya and hon. Oyongo Nyamweya again in the Constituency Development Committee.

Hon. Johnstone Muthama relinquished his membership to the Public Investments Committee (PIC) and is replaced by hon. William Kabogo, who has also become a Member of the House Broadcasting Committee.

Mr. Speaker, Sir, hon. Ferdinand Waititu is now an Assistant Minister. He was a member of the House Broadcasting Committee, and a Member of the Local Authorities and Funds Committee (LAFAC). He will be replaced by hon. Gideon Kioko Mbuvi and hon. Oyongo Nyamweya.

Hon. Stanley Githunguri has resigned his membership of the Departmental Committee Local on Authorities and is replaced by hon. Sirat. Hon. Joshua Kutuny has been a member of the Departmental Committee on Defence and Foreign Relations. He is replaced by hon. Mohammed Hussein Ali. Hon. Martin Ogindo has been a member of the Departmental Committee on Lands and Natural Resources. He gets replaced by hon. Kizito.

Mr. Speaker, Sir, with regard to the Committee on Labour and Social Services, hon. Magerer and hon. (Prof.) Margaret Kamar, both of whom are now Assistant Ministers, get replaced by hon. Kiptanui.

With regard to the Departmental Committee on Local Authorities, hon. Cheruiyot joins the Committee. Hon. Keter joins the Committee on House Broadcasting, and the Committee on Labour and Social Welfare, replacing hon. Jakoyo Midiwo. Hon. Pollyins Ochieng also becomes a member of the Labour and Social Welfare Committee.

Mr. Speaker, Sir, hon. Joshua Kutuny joins the Committee on Energy, Communication and Information, replacing hon. Mohammed Ali. Hon. Jakoyo Midiwo is now a member of the House Committee on Catering, replacing hon. Elijah Lagat. As hon. Members recognise, hon. Midiwo has a tremendous appetite.

(Laughter)

Hon. Lankas actually goes to the Pan African Parliament (PAP), because, regrettably, hon. Shabesh resigned. If I was consulted, I would have done everything to make sure that hon. Shabesh did not resign, but I am told that she resigned. Therefore, she gets replaced by hon. Lankas.

Mr. Deputy Speaker, Sir, hon. John Pesa has joined the Constituencies Development Fund (CDF) Committee, replacing hon. Kiprono Magerer. Hon. Martin Ogindo joins the Defence and Foreign Relations Committee, replacing hon. Ali Hassan Joho.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well!

(Dr. Khalwale stood up in his place)

Mr. Speaker: What is it, Member of Parliament for Ikolomani?

Dr. Khalwale: Mr. Speaker, Sir, before hon. George Thuo lost his seat as Member of Parliament for Juja, he was the Government Chief Whip. Could the Vice-President and Minister for Home Affairs also confirm whether hon. Muthama is now the Government Chief Whip as a replacement?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, hon. Muthama continues in an acting capacity, because that side of the Grand Coalition has not been able to sort out that matter. Indeed, I hope that one of these days it will be sorted out, but he continues as the acting Chip Whip.

Mr. Speaker: Leader of Government Business, I am reliably informed, and I believe that, that ought to be so, that the PAP Protocol dictates that you must have a lady Member of Parliament from every country's delegation. So, the replacement of hon.

Shabesh by a male Member of Parliament cannot be valid, because it is in breach of the PAP Protocol. So, you may have to go back to work.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, in all seriousness, indeed, it should be so. Therefore, we are going to quickly consult and report back to the House. Indications seem to point that her neighbour could take her place. But, apparently, we need to consult, so that we can come up with a lady of Member of Parliament to join the Kenyan PAP delegation. This is a critical Pan-African body.

Mr. Speaker: You will have to do that and take remedial action at the earliest opportunity.

Hon. Members, we will now take the next Ministerial Statement from the Minister of State for Provincial Administration and Internal Security. This is with respect to the matter pertaining to the Member of Parliament for Makadara. The Member of Parliament for Makadara made a Personal Statement yesterday, and the Chair then did intimate that he would make some communication on the matter, giving directions today. But before I give those directions, I will want to hear the Minister of State for Provincial Administration and Internal Security and, maybe, one or two other hon. Members who may have issues that will help me to make wholesome Communication on this matter.

FORCEFUL ACCESS TO HON.
MBUVI'S OFFICE BY POLICE

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, let me say that upon the delivery of a Personal Statement by hon. Gideon Mbuvi, the Member of Parliament for Makadara, I decided to get more information from the Commissioner of Police, who has also submitted that information to me.

To the extent that I do not want to take too much time of this House, I would like to confine myself to the salient points.

Mr. Speaker, Sir, as I said, I have received a statement from the Commissioner of Police, Mr. Matthew Iteere, stating that a team investigating allegations of drug trafficking in the country went to hon. Mbuvi's office in order to interrogate him. When they did not find him, they went to Parliament upon contacting him through his mobile telephone.

The Commissioner of Police has also stated that when the police officers were unable to get him, they were given his mobile telephone contact and they were able to reach him. According to the information given to me, he said that he was going to be in Parliament. He said that he would be able to meet them here. That is where they came.

Mr. Speaker, Sir, the Commissioner of Police also wants to confirm that, indeed, the police are carrying out investigation on hon. Mbuvi since he is one of the persons who have currently been mentioned in connection with drug trafficking.

The Commissioner of Police has also confirmed that at no time did he belittle the hon. Member by referring to him as "so junior to talk to him", although he actually talked to him on telephone when the hon. Member rang him; he asked him what he wanted to talk to the Commissioner of Police about. The Commissioner of Police said that at no time did he insult the hon. Member as he has alleged.

Mr. Speaker, Sir, the Commissioner of Police has also categorically stated that he did not order police investigators to go to hon. Mbuvi's office within Parliament Buildings, but actually came. It is, however, important to understand that when the particular team of police officers carrying out the investigations on drug trafficking were unable to find hon. Mbuvi in his constituency office, they contacted him through his mobile telephone and found that he was here.

The hon. Member had told them that he was going to meet them at Parliament Buildings. However, the Commissioner of Police says that he never authorised the police officers to track down the hon. Member within the precincts of Parliament.

Mr. Speaker, Sir, the Police Commissioner has expressed his regrets over the conduct of his officers within the precincts of Parliament. Every Member of Parliament within the precincts of Parliament enjoys privileges and immunity and that in itself has got to be safeguarded. Therefore, the Commissioner has actually asked me, which I duly have agreed, to tender its apology. We have got to go by the Standing Orders.

He is tendering apology and I which I am also doing so over the fact that his officers actually went to the office of hon. Mbuvi. Those are really two pillars here, the first pillar is investigation on the drugs. They are continuing on with that but on the other hand, within the precincts of the House, a Member of Parliament cannot actually be arrested or even for that matter, be investigated because of the privileges and powers. In short, that is the position.

Mr. Speaker: Order! Order! Hon. Members, I will take just three clarifications. I have intimation that obviously the Member for Makadara will want to seek a clarification. Please, restrict yourself to that.

Mr. Mbuvi: Mr. Speaker, Sir, the Statement by the Minister is untrue. The officers who came to the Continental Building refused to identify themselves and I never called them to the Continental Building. That is the clarification I want to make before this House.

Mr. Speaker: Very well! I will bear that in mind.

Ms. Karua: Mr. Speaker, Sir, whereas we support investigations of any criminal offence and more so for drug trafficking, why are the police using unorthodox means in the case of hon. Mbuvi which actually are contrary to the law? This is not the first time. The other time, he was held for a whole week even though the Constitution says 24 hours for offences that had been in the media for a long period. The Minister told us the other time that he could not name the suspects of drug trafficking because they were under investigation. Now that he has mentioned Mr. Mbuvi, who are the other Members of Parliament? We deserve to know to avoid looking like there is discrimination against the Member for Makadara.

Mr. K. Kilonzo: Thank you, Mr. Speaker, Sir. I would also want the Minister to clarify to this House that they received the report from the American Embassy through KACC. When the Prime Minister stood in this House, he told us that investigations were being done and we were to be told which Members of Parliament are involved. There is a blanket condemnation on all Members of Parliament. Now that the hon. Mbuvi has been identified as one of the six, could now the Minister tell us whether they have finished investigations on other Members of Parliament and whether that report has any substance? Could he also tell us who the others are, whose names have not been disclosed? Could they be named now?

Mr. Speaker: Order! Order, hon. Members! Sorry, Mr. Minister, the interest here appears to be greater than I initially anticipated. So I will allow two more.

Mr. Ruto: Mr. Speaker, Sir, Article 7 of the Powers and Privileges Act says that no stranger shall be entitled as of right to enter or to remain within the precincts of the Assembly. Could we be told also how these particular strangers accessed Parliament? How did they move in up to the office of a Member of Parliament and threaten him? We are aware that hon. Mbuvi does not live in Continental House. He does not sleep there. If he is not in his constituency office, maybe he is in his house or he could be anywhere. Is that the only place they could get the hon. Mbuvi?

Mr. Speaker, Sir, this is an ominous sign on the part of the Government, that they are still willing to continue with impunity and actually do that in the precincts of Parliament. When this happened before, some Members were whisked to detention. We do not know what other harm could befall Members of Parliament if we allow this to continue. I believe it is punishable. It is a punishable offence to do this and notwithstanding the gravity of whatever crime they are investigating, they cannot be allowed to break another law. Even as they continue to investigate the question of drug abuse or whatever it is, we now want to know whether the Minister is going to charge these officers in a court of law tomorrow for violating the precincts of Parliament and breaking another law, independent of whatever job they are doing.

Mr. Speaker: Order, Member for Chepalungu! You have made your point. The Member for Mount Elgon by reason of the fact that you chair the Committee on Administration and National Security---

Mr. Kapondi: Thank you, Mr. Speaker, Sir. We have a police station in Parliament. I speak like this because I have become a victim in the past, a situation whereby I was wanted because of hate speech and the CID officers waylaid me at Continental House until I was forced to sleep in Continental House. They had to wait up to the following morning to be pick me up from the gate and whisk me to CID Headquarters. The Minister should clarify why the Deputy Commissioner of Police (DCP) disregarded the police station in Parliament which is supposed to serve Members of Parliament. If there is any criminal offence to be investigated by the officers, why would they not report to the OCS and then the OCS could have summoned hon. Mbuvi to appear before them at the station instead of following him to continental House?

Mr. Speaker: Very well! Minister, you may now respond to those clarifications.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, the information that I have is that indeed after the hon. Member was contacted on his cell phone, by the team leader, he did the following, and I want to read it; "that the MP requested them to call him as soon as they were in town so that he could direct them where to meet. That is when they were at the constituency office. He also gave us his telephone number which is 0228866000." When the team---

(Mr. Mbuvi stood up in his place)

Mr. Mbuvi: That telephone number is not mine!

Mr. Speaker: Order, Member for Makadara! That is not the way we do business here.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, as they drove to Harambee House, they also got in touch with him and the hon. Member is alleged to have said that they could actually meet him outside Parliament Police Station. When they arrived at the Parliament Police Station, that is, outside, they called the hon. Member of Parliament and asked him to come to the station and then he did not come. The Member of Parliament told them to wait as he was coming down to the station. It is alleged that about 10.19 hours, the hon. Member sent his own personal assistant by the name Mr. Abel Ombaba to see them. The personal assistant to the Member told them that indeed the hon. Member had invited them there as their guests. That is the position.

Mr. Speaker, Sir, a question was asked: How did they come in? They said that they came in because they were invited and that, on his arrival at his office, they claimed he was not there and that he was at Mr. C. Kilonzo's office. That is the position. I have, however, stated categorically that on behalf of the Commissioner of Police who has actually tendered his own apology, that what the officers did was in total breach of the privileges and immunities given to every Member of Parliament. I have done that bit.

I have asked the Commissioner of Police---

(Mr. Ruto stood up in his place)

I thought I should be allowed to finish.

Mr. Speaker: Order, Member for Chepalungu! Let us hear the Minister!

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I have also asked the Commissioner of Police to take the necessary action against those officers. That is the position.

Now, the other question I was asked was to name the other Members of Parliament. It is not something I would have taken pleasure in doing so. However, to the extent that it has been demanded, I have been informed the following are the hon. Members suspected: Mr. Mbuvi himself, Mr. Joho, Mr. Mwau and Mr. Kabogo. Mr. Kabogo, himself, has actually written a very lengthy letter to me complaining of the fact that he has been named, and that he wanted us to do the investigations. Those are the hon. Members who are mentioned here. There is also another businessman. He is a fellow called Mr. Ali Punjani.

Mr. Speaker: Order, hon. Members! This matter must now rest there because I requested the Minister in charge of internal security to make that Statement so as to give me his input in the Communication that I anticipate I will be able to make as the Chair indicated yesterday. So, now, equipped with that information as well as the concerns that other hon. Members have raised, I will be able to make communication and give directions on this matter at the earliest opportunity after tomorrow.

That would be the position and I thank you.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. You have heard the Minister mention my name and say that I did actually write a lengthy letter to him, asking to be investigated thoroughly, and that those who have come up with that dossier should also be investigated for their source of information.

Mr. Speaker, Sir, I would like to request that you give me a minute. I would like to table here the dossier that contains all the names and the stuff that they have written. That is if you allow me.

Mr. Speaker: Order, Member for Juja! Order, Member for Chepalungu! Please, relax!

Hon. Members, if the Member for Juja has information that he believes should be useful in enabling the Minister to carry out investigations, then I direct that he hands that dossier over to the Minister in charge of Internal Security.

Mr. Kabogo: Mr. Speaker, Sir, I would like to help you. It is not a dossier to help. It is a dossier to show the stuff that the American Embassy forwarded to the Kenya Anti-Corruption Commission (KACC) and the Minister. It has names of hon. Members; even more Members that he has not mentioned. It details issues of where drugs have been trafficked and the people who were involved. It even talks about the wife of somebody who is very senior in this country. I would like to table those documents in the House.

(Applause)

Mr. Speaker: Order, Member for Juja!

Hon. Members: *Toboa! Toboa! Toboa!*

Mr. Speaker: Order, hon. Members! Minister, are you aware of such a dossier?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, the first thing is that, indeed, like I said, a detailed statement has been brought to me. It is, indeed, true that there is a dossier. But that contains names of Members of Parliament I have given. There is a lot of noise here and there but the key thing--- To be very careful with this job, I have asked the police to give me the full information on Members of Parliament who are being investigated. I have also asked the same about KACC. These are the only four who have been brought to my attention.

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! Indeed, we have to respect the law and practice, including even the process that our criminal system takes, before you take steps to divulge names or even arrest persons or charge them for that matter. I want to direct that, at this stage, the Member for Juja should pass that information to the Minister in charge of Provincial Administration and Internal Security.

Hon. Members: No! No! No!

Mr. Speaker: Order, hon. Members! I have informed myself with respect to the provisions of the Standing Orders and even the law on this matter. I believe that the opinion I have volunteered here is carefully considered and within the confines of the law. So, the Member for Juja should hand over that dossier to the Minister of State for Provincial Administration and Internal Security to enable investigations to proceed.

I am prepared to add a rider to that and I am afraid I will limit myself to that rider; that the Member for Juja may also hand over that dossier to me as the Speaker, so that I can acquaint myself with the contents of the dossier and check whether or not that dossier is admissible. This is a practice that we have carried out in this House constantly and I am

afraid that it follows that, that practice must continue to prevail. The Speaker must satisfy himself that the dossier is admissible. If it is not, I am afraid I cannot admit it. That is the way we do business here. We are not going to turn into a kangaroo court. It would be wrong to do so.

Hon. Members, you must relax. I will hear the Member for Yatta!

Mr. C. Kilonzo: Mr. Speaker, Sir, I am concerned about the issue of procedure. The Member for Juja has made a very serious allegation. The procedure is that when a Member makes an allegation, then he must prove he is right. My challenge is based on the rules of the House which are very clear. When you make an allegation, then be prepared to substantiate. All I am asking is whether the hon. Member could substantiate or apologize.

Mr. Speaker: Order, Member for Yatta! Order, Member for Ikolomani!

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

Mr. Speaker: Order, Dr. Nuh! I have asked you to keep order and not to address the House! Member for Yatta, are you challenging the Member for Juja to substantiate?

Mr. C. Kilonzo: Yes, Mr. Speaker, Sir, or apologize because he cannot make accusations---

Mr. Speaker: Order! What are you asking him to substantiate?

Mr. C. Kilonzo: Mr. Speaker, Sir, he mentioned some names of Members who were not in the list tabled by the Minister. You have warned Members not to mention others.

Mr. Speaker: Order, Member for Yatta! You know, all of us are seated in this House this afternoon and I did not hear the Member for Juja mention any particular Member of Parliament. What do you want the Member for Juja to substantiate?

Mr. C. Kilonzo: Mr. Speaker, Sir, he mentioned two categories of people. He said: "other Members of Parliament" and secondly, he mentioned a wife of somebody out there. I am very concerned about Members here. These allegations of drug trafficking are very serious and rather than the Government dealing with the issue of drug trafficking and arresting a Member who is dealing with it, it has now become a political weapon. We keep on saying "so and so are dealing with drugs" rather than arresting these people and locking them up. My case is very simple. He has said that there are other Members dealing with drugs and a wife of somebody else. If he has that evidence, he would rather table it here or he apologizes and withdraws.

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

Mr. Speaker: Order, Member for Juja! Relax! The Member for Yatta has asked that the Member for Juja substantiates the claim that there are other Members and that these other Members of Parliament have their names in a dossier which he wants to table. I direct that the Member for Juja may table that dossier, except that it will not immediately be available to Members until---

Hon. Members: No! No!

Mr. Speaker: Order, hon. Members!

Dr. Khalwale: No! No!

Mr. Speaker: Order, Member for Ikolomani! I will not allow that and I am afraid you will have to withdraw. I will not have a shouting match between you from where you are and me from where I sit. So, you will have to leave, I am afraid.

(Dr. Khalwale withdrew from the Chamber)

What I have directed is a practice that I have invoked in this House. Documents are normally not admitted until I ascertain their authenticity. It is a rule that we have continuously applied. By tomorrow afternoon, I will have made up my mind on whether or not these documents are authentic. So, table the documents, I will look at them and satisfy myself.

Proceed, Member for Juja!

Mr. Kabogo: Mr. Speaker, Sir, I would like to clarify the issue raised by hon. C. Kilonzo. I did not say that there are Members in this dossier who traffic drugs. That is not what I said. I said “who it is alleged that they traffic drugs”. I have the document here and it has stamp of the Kenya Anti-Corruption Commission (KACC) and is headed “Secret real/Kenya”. That is one of the documents. I also have a letter that the Minister has referred to. I took a copy of this dossier to him. I also have classified information from the United States, which shows that that document is from the United States Embassy in Nairobi. There are other two names of Members of Parliament that he omitted, which are in that dossier, namely, hon. Simon Mbugua and hon. Eugene Wamalwa. The two are named in that dossier.

(Mr. Kabogo laid the documents on the Table)

Mr. Speaker: Order, hon. Members! I would want to look at these documents.

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

Mr. Speaker: Order, hon. Members! Indeed, the Member for Juja has tabled a bundle of documents. On the face of it, I can see that some of them have headings, some have dates and some have no signatures. I would like to have time to look through these documents and determine whether or not they are admissible either in their entirety or in part and I shall do so by tomorrow afternoon.

The Prime Minister (Mr. Raila): On a point of order, Mr. Speaker, Sir. You will also remember that I addressed the House two weeks ago on this subject of drug trafficking. At that time, a lot of questions were asked by the hon. Members. I said that the police were investigating. I want to confess to the House that I received those documents formally from the Ambassador of the United States of America through a letter. On the day the Members were asking me to name names here, I asked one Member whether he knows that his name is not in that list. This is a very serious matter. That is why I resisted the temptation of Members to mention names that time. I said that the names had been given to competent authorities to carry out investigations. I have set up a taskforce to specifically deal with this matter. This investigation is ongoing as I speak right now, because I gave an undertaking that we must get to the root of this issue. So, the names now have been mentioned, but I wanted the House to know these investigations have already started and they are being dealt with by competent authorities.

Mr. Speaker: Order, hon. Members! Hon. Members, I will want to take two points on this matter and that will be it. Hon. Joho, you are mentioned, so maybe you have something to say.

Mr. Joho: Mr. Speaker, Sir, I am saddened that the Minister of State for Provincial Administration and Internal Security can take this very important issue that

really costs lives, so lightly and mention names when the nation is watching. I will reiterate what I had written to His Excellency and the Prime Minister that there have been smear campaigns going on to bring down some politicians. I would like to ask the State, and I want the Minister to be very categorical here today, to conduct thorough investigations. I do not need any favours or assistance, but I want the full force of the law to apply for those who have been mentioned. If it happens that this is being used to bring others down, those who came out to say “so and so is involved in drug trafficking”, then the full force of the law must equally be applied on them.

I have children who go to school. I have never dealt with drugs and I do not even know how they look like. The Prime Minister has undertaken before this House to conduct thorough investigations. Those investigations are not yet completed. I, therefore, demand that the Chair expunges those names from the HANSARD until the investigations are concluded, then he can table the list of the names and necessary action be taken against those involved. Justice must prevail either way, whether it is on our side or the other side. It is not only the American Ambassador who is saying this. In my constituency, for example, I have seen this happen.

Mr. Speaker, Sir, some politicians in this House have made insinuations against some of us. We are in a competitive democracy. Those who have no pertinent issues to raise use these very dirty politics. Today it is on record that the whole country is watching hon. Joho being mentioned. I demand that the Minister expunges my name unless and until it is proven. Let me be charged in any court. This is an international crime; it is not a crime that serves in Kenya only. I can be charged anywhere and if the Americans have any evidence against any of us, they have the right to pick us up wherever we are and take us even to The Hague.

Thank you, Mr. Speaker, Sir.

(Laughter)

(Loud consultations)

Mr. Speaker: Order, hon. Members! Prof. Saitoti, please, keep a note of what the hon. Member for Kisauni has said. I want to hear the hon. Member for Gichugu.

Ms. Karua: Mr. Speaker, Sir, I will begin by admitting that the drug problem is real. That is where we must begin, and we must all be ready to assist to unearth the culprits. I am just wondering that since it is more than a month since this dossier went to the Kenya Anti-Corruption Commission (KACC), is it possible for the Government to give a time frame for the conclusion of the investigations so that action is taken?

I would also like a clarification from the Prime Minister. When he says that he has formed a task force - remember we are removing investigations from the umbrella of political patronage - is this a task force within the police or within his office, because if it is within his office, then it cannot be seen to be free and fair?

Mr. Speaker: Order! Dr. Nuh, I am afraid that has to be the last one.

Dr. Nuh: Thank you, Mr. Speaker, Sir. I think my point has been addressed by Ms. Karua, but I just to reiterate that---

Mr. Speaker: Order!

Dr. Nuh: Mr. Speaker, Sir, with your indulgence---

Mr. Speaker: Order, Dr. Nuh! You have said that your point has been addressed. Our rules say that we avoid being repetitive. So, do not reiterate anything. We have heard whatever has been said!

Dr. Nuh: Mr. Speaker, Sir, I just want to add that we have had an Anti-Narcotics Police Unit in this Government that has been trying to unearth the criminality behind drug dealings, and that has not been done for years.

I also want a reassurance from the Prime Minister that it is not the same, same Anti-Narcotics Police Unit that has been unable to do anything, but just to drag time to purport that you are doing something. I want the reassurance again.

Mr. Speaker: Very well. If you want to add in future, just say so. Do not say that you want to reiterate!

Dr. Nuh: Mr. Speaker, Sir, I stand guided.

Mr. Speaker: We are very brilliant and we hear the first time.

What is it, Mr. Orengo?

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Speaker, Sir. My point of order is in relation to the House. Whenever any hon. Member is under investigation, it undermines the authority of the whole House. So, it is wrong for names to be mentioned and there ends the matter. We cannot have a country in which the names of more than six hon. Members are mentioned and we do not know when the investigations will be concluded. Since this relates to the authority of the House, and I am just being a friend of the House – forget that I am an hon. Member of the Government. In other jurisdictions, you take it upon yourself to make sure that the commitments that are made about investigations relating to hon. Members are done as quickly as possible, because if I am found now moving with, for example, Mr. Wamalwa, I am guilty by association. If I am found moving with Mr. Kabogo, I will be guilty by association. I think let us have some timelines and a time frame. I am just being a friend of the House because the matter is now with the Speaker rather than with the Executive.

Mr. Speaker: Very well.

(Several hon. Members stood up in their places)

Order! I said that I will rest that matter after Dr. Nuh. I accommodated Mr. Orengo because I thought he was giving information to his colleague---

Mr. Wamalwa: Mr. Speaker, Sir, I heard my name.

Mr. Speaker: You heard your name?

Mr. Wamalwa: Yes, Mr. Speaker, Sir. I am quite shocked.

Mr. Speaker: Very well. Let us then hear the hon. Member for Saboti.

Mr. Wamalwa: Mr. Speaker, Sir, I thought my ears were misleading me. I thought I heard my name mentioned and I have asked Mr. Kabogo and he has actually told me that I have been mentioned in that Report for helping to waive duty of Kshs2 million.

Mr. Speaker, Sir, I wish to peruse the document, consult with the Minister and make a substantive Personal Statement tomorrow. That is with your permission.

As you know, I am a presidential candidate---

(Laughter)

As you know there are powerful forces out there who could wish to tarnish my name, and I wish to make that---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Hon. Members, of course, I have heard the hon. Member for Saboti and with respect to the documents, I am afraid he will not have access to them until I determine whether or not they are admissible. Secondly, with respect to his being a presidential candidate, I am not aware that any elections have been called and so, it may be premature to declare candidature for elections which are not yet due. However, we will leave that for another day. Declaration of candidacy is not in this House, particularly before elections are called. So, we must live within the law as much as possible.

I want to hear the Minister in charge of Provincial Administration. Please, give us your responses.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, before mentioning those names, I did say that it was with very great reluctance. I was forced to mention those names. It was a demand by hon. Members of Parliament. I explained the circumstances under which Mr. Mbuvi had been wanted by the police to record a statement. Of course, reasons had to be given why. I did say that the Anti-Narcotics Squad is in place and is investigating this matter. Mr. Mbuvi was one of the people mentioned in connection with this matter. The hon. Members demanded that they should also know who the other Members of Parliament were and I did that. I heard that they may also have been contacted to make statements before the squad. I stated this one because there has been a persistent demand by hon. Members that they want to know who actually must have been mentioned wherever it was, and we have given you the truth which you wanted. I was reluctant to do so. It is a very grave matter.

At the same time, Mr. Kabogo has also mentioned the names of other people which, of course, was not within the list that I had. So, let us put it this way. As to Mr. Joho's demand that his name be removed from the list, I am sure that in the process of the investigations, his name will be removed if he is, indeed, innocent. Although these names have been mentioned, I think we must take the view that each one of them is innocent until proven guilty. That is the position.

Mr. Speaker: Order. Prof. Saitoti! Would you, please, indicate how long those investigations will take?

The Minister for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, let me put it this way. We will ensure, especially within my domain that--- My domain is the police, where the anti-narcotics unit is. I will push for speedy investigation of this matter and, hopefully, this will be concluded within a month.

As far as the KACC is concerned, we should appreciate the fact that this is an independent body, and I have no power regarding its working.

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

Mr. Speaker: Order, hon. Members. This matter must now rest there. The hon. Minister for Provincial Administration and Internal Security has assured the House that

these investigations will be completed within about one month. We have a timeline. He has also undertaken that there will be thorough investigations.

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

Mr. Kabogo: On a point of order, Mr. Speaker, Sir!

Mr. Joho: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order, hon. Members. I am aware that all the three of you have been mentioned in one way or another. So, I want to hear the Member for Kamukunji.

Mr. Mbugua: Mr. Speaker, Sir, I would like to know from the Minister, because he never mentioned my name. I would like to know if, indeed, my name is on the list that he has because my name was never mentioned by the Minister.

Mr. Joho: On a point of order, Mr. Speaker, Sir. I want the Minister to assure this House of thorough investigations; if found guilty, I should be charged and face the full force of the law. I equally demand that the Minister undertakes before this House, that if I am found to be innocent, of course he will find me innocent, what will happen to those people who peddle these rumors, that are so grave and scandalous in the name of killing others politically? I demand that the full force of law should equally apply to those who will have wasted the time of the police, resources and taxpayers money in these investigation, because it costs money.

I know police officers have been in my constituency and Mombasa. I am not worried. I know they are doing well and I know I shall be found to be clean. But I want the Minister to undertake before this House that those behind this, because I know names that have been mentioned, shall be brought to book for wasting our time and taxpayers money.

Mr. Speaker: Order. Your point is made.

The Member for Juja.

Mr. Kabogo: Mr. Speaker, Sir, I just want to clarify. The Minister said that he did mention four names and that I mentioned the other names. The dossier that I have dropped here is the dossier that the Right hon. Prime Minister confirmed was given to him by the Ambassador, and those names are in the list that was given to the Prime Minister of the Republic of Kenya by the Ambassador of the United States of America. It is the document that you will look at. So, as you look at it to accept or deny use of it in the House, bear in mind that the Right hon. Prime Minister has confirmed to the House that, indeed, that is the document that he was given by the American embassy.

Mr. Speaker: Member for Juja, I heard you clearly, that the names were contained in one of the documents which you have tabled. That I am clear on. With respect to confirmation by the Right hon. Prime Minister, the decision on whether or not those documents are admissible will not depend on the confirmation by the Prime Minister. It will depend on our rules here on whether or not they are admissible.

Hon. Prime Minister, you want to say something?

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, I appreciate the concerns by hon. Members of Parliament whose names have been mentioned in this matter. As I said, we want to get to the root cause of this issue. The Minister of State for Provincial Administration and Internal Security has given an undertaking about the police investigations. What he did not inform you is that we have formed a Serious Crimes Unit, which brings together the KACC, NACADA, NSIS and the police to work jointly on this

matter, because there are several aspects of this matter which one body cannot handle comprehensively.

The Minister will bring back the report of the findings on one aspect. But for comprehensive investigation, we need just a slightly longer period because there are some investigations which go beyond the borders of this country into other countries. So, maybe a two months period would be sufficient to have a more comprehensive picture. Once the Minister is ready with that other answer from the police, he will bring it here.

But this is not a political investigation. It is not a task force; it rests with the office of the Prime Minister. The Prime Minister co-ordinates all Ministries and branches of the Government and that is why we are dealing with this as a Government.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, what the Right hon. Prime Minister has said is true. There is a combined team that is actually undertaking this very serious investigation.

As I said, and you have heard from the Right hon. Prime Minister, the KACC is there. I do not have authority over KACC, but the Right hon. Prime Minister, by virtue of the duties of his office, has got much more authority than myself because he is the Prime Minister. We will do the best we can to ensure that this issue of the drugs is addressed accordingly and seriously, because it is a terrible problem. It is a problem which has damaged the reputation of this country.

Mr. Speaker, Sir, as far as Mr. Joho is concerned, as to whether I can give an undertaking that once he is cleared, those who have peddled lies and rumors will be dealt with, I believe that is already catered for in the law. Those who peddle lies can be dealt with. So, he can rest assured that if, indeed, he is cleared, the people who will have peddled lies against him for one reason or another, will have to be dealt with, because that will be misleading the police and compromising a serious investigations. I repeat that the matter will be investigated. It is being investigated. None of the persons mentioned is guilty. You should rest assured that you are innocent until you are properly investigated and there is evidence against you.

Mr. Mbugua: On a point of order, Mr. Speaker, Sir. I did ask the Minister to confirm if, indeed, my name is in his list. As he said, the documents have not been admitted; my name and that of hon. Wamalwa appear on a document which has not been treated by this Parliament as a proper document. I demand an apology for that.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, let me answer the hon. Member by saying that there is this document that has been tabled here by Mr. Kabogo, which was sent to me about two days ago. I have not gone through it very carefully. It is true. Let me put it this way---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Let us hear the Minister!

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I think it is understandable that by and large, there is a process through which certain sensitive information comes to me and I look at it very carefully. Therefore, there is no exception I will make as far as hon. Kabogo's dossier is concerned. I have to look at it carefully and, of course, make sure that reference is made to certain sources which will tell me, "yes" this is true. I will look into whether or not

hon. Mbugua is in. Hon. Mbugua is at liberty to come to my office sometime to find out whether it is, indeed, true that he is being investigated. I will not shift from telling the truth.

Mr. Speaker: The Member for Chepalungu, this matter must come to an end.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. It is very obvious that the Minister, who is a very experienced Minister and former Vice-President, is being economical with the truth. Is it conceivable that this document would be just left on the table of hon. Minister without a summary on what you had asked for?

Mr. Speaker: Order! Order, Member for Chepalungu! I do not think that, that takes us very far. The Minister says that he has not been able to peruse and consider whatever documents he has received. So, give him the benefit of the doubt.

Mr. Mbuvi: Mr. Speaker, Sir, I agree with the hon. Minister's earlier remarks that any suspect is presumed innocent until proven guilty by a court of law. Is the Minister aware that the report tabled before you is full of false allegations? On page 5---

Mr. Speaker: Order! Order, Member for Makadara! I think you are coming with that a bit late in the day. Please, resume your seat! Regarding these documents, I have given directions that I will determine whether or not they are admissible tomorrow afternoon. So, the House is not yet seized of these documents. As far as the presumption is concerned, that remains a fact. You will leave that to investigations.

Mr. Mbuvi: Mr. Speaker, Sir, there is an allegation on page 5 which I want the Minister---

Mr. Speaker: Page 5 of which document?

Mr. Mbuvi: Of the dossier before you, Mr. Speaker, Sir.

Mr. Speaker: Order, Member for Makadara! That document is not yet admitted. Let it rest where it is for the moment.

Mr. Musyimi: Mr. Speaker, Sir, I think we are all aware of how serious these matters are. The hon. Members of this House, as you are aware, have been associated with matters that are weighty, both nationally and internationally. Even as you look at the authenticity of this dossier, we have been told by the hon. Minister and also the Prime Minister that certain investigations are taking place. Could I kindly request that you give a ruling with regard to the timelines on these investigations that they are undertaking, so that we are clear by what time the reports from the Minister and the Prime Minister can be concluded?

Mr. Speaker: Order! Hon. Musyimi, that matter is already at rest. We have an undertaking made to the House by the Minister in charge of internal security, that his department will complete investigations within a month. So, I expect the Minister to report back to the House after that month is over or earlier. I do not have to make any other directions. That undertaking is already recorded.

Order, hon. Members! We must now move on to the next Order which entails the business of the House. What we have been doing, as hon. Members would be aware, is not business. So, we must move on to the next order. Note that from this point onwards, you will be governed by the Supplementary Order Paper which is procedurally correct before the House.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, further to the Statement that I made earlier on with regard to the composition of the various Committees of the House, I just want for the record – because

these matters are captured in the HANSARD – to make it clear that after consultations, the name of hon. Peris Simam Chepchumba replaces that of hon. Shebesh with regard to the membership of the Pan-African Parliament and hon. Benjamin Washiali replaces hon. Peris Simam in the Committee on Agriculture, Livestock and Cooperatives.

Mr. Speaker: Very well! That must let the matter rest there.

POINTS OF ORDER

ALARMING SMS MESSAGES SENT TO KENYANS

Dr. Nuh: Mr. Speaker, Sir, there is a Ministerial Statement that I had demanded, that has been pending for the last two months. If only I could have an undertaking as to when it will be answered by the Minister for Information and Communications.

Mr. Speaker: I appreciate that. Minister for Information and Communications, you have a pending Statement which I directed that you give and you have not delivered it. Leader of Government Business, when will your Minister deliver this Statement which has been pending for a long time?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, indeed, the Minister has been waiting for the last three days to give that Statement. The Assistant Minister who was here this morning had the Statement and he requested to give it. He had to travel and the Minister himself was looking for that Statement to give because he had given it to the Assistant Minister. Both of them are not here now but we will look for the Statement to give tomorrow.

Mr. Speaker: Can you give it tomorrow?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I did undertake that if it were not here, I would do it myself.

Mr. Speaker: It is so directed!

Dr. Nuh: Mr. Speaker, Sir, what about the one for the Ministry of Foreign Affairs?

TRIP BY KENYAN MPs TO SOUTHERN SUDAN

Mr. Speaker: Minister for Foreign Affairs, where is the Statement on a trip by Kenyan Members of Parliament to Southern Sudan? This has been pending for sometime as well. Leader of Government Business, when will this Statement come?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, indeed, there was a Motion on the same, but we will get the Minister to clarify his Statement tomorrow.

Mr. Speaker: Very well!

CIRCUMSTANCES LEADING TO DEATH OF JOSHUA OPIYO

Mr. Outa: Mr. Speaker, Sir, I had sought a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the killing of Joshua Opiyo and I have not heard from him.

Mr. Speaker: Again, Deputy Leader of Government Business!

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, we will attempt to get that tomorrow.

Mr. Speaker: Very well!

Mr. Koech: On a point of order, Mr. Speaker, Sir. I have watched and listened to the proceedings this afternoon and I want to say that I really empathize with our colleagues who have been mentioned. I want to thank you for the direction you have given---

Mr. Speaker: Order! Member for Mosop, I am afraid you cannot revisit that matter. We have moved from that matter!

Mr. Koech: Mr. Speaker, Sir, I am not moving back. I wanted to thank you for giving the ruling that tomorrow you are going to deliver a position on what has been tabled.

Mr. Speaker: Member for Mosop, I like to be thanked but we have moved from that matter. So, please, just resume your seat and let us move on and take the next business.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

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

Mr. Speaker: Does that pertain to Order No.8?

Mr. Ruto: Mr. Speaker, Sir, it pertains to Order No.12.

Mr. Speaker: I thought that would come after Order No.8. You want to talk about Order No.12, but let us deal with Order No.8 and then we will take the ordering of business after that.

Mr. Koech: On a point of order, Mr. Speaker, Sir. I was on Order No.8.

Mr. Speaker: Is that so?

Mr. Koech: Yes. It is my humble request that you suspend Order No. 8 to tomorrow so that you can have a chance to deliver that important information.

Mr. Speaker: Order! Our Standing Orders permit me to deliver that ruling tomorrow as I have communicated. In Parliamentary terms, you must be able to understand what tomorrow entails. We cannot anticipate whether or not the House will be sitting tomorrow not unless we get there.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Yes, indeed, Mr. Speaker, Sir, tomorrow could be the next Sitting Day. That is parliamentary language.

I beg to move the following Motion:-

THAT, notwithstanding the provisions of Standing Order 20(2), this House resolves that the Sitting time of the House today, Wednesday, December 22, 2010, Afternoon Sitting be extended until the Business as set out in the Order Paper is concluded.

Mr. Speaker, Sir, it is now some minutes past five o'clock. Ordinarily, this House would be adjourning by 6.30 p.m. We have quite a heavy agenda before us. The country has been waiting, literally, with abated breath to hear this House come up with the nominees to the Constitutional Implementation Commission, the Revenue Allocation Commission and the Judicial Service Commission. Time is extremely of essence and I would hate the country to think that this House is putting roadblocks in the formation of

those important constitutional commissions. That is why it is important that I move this Motion so that we can deal with the business that is appearing before this House. We should sit for as long as it takes, to do justice to the business before the House and to this country.

Therefore, I beg to move and ask hon. Kimunya to second.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Speaker, Sir. I rise to second this Motion. As you recall, last week, we had created a special day to dispense all the business so that Members can not only finish the business, but also reconnect with their constituents during this festive season.

With those few remarks, I beg to second.

(Question proposed)

Mr. Ruto: Thank you, Mr. Speaker, Sir for this opportunity. Much as I agree with the Vice-President and Minister for Home Affairs that there is a lot of business to be dispensed, I am also worried by the fact that we will also be forced to hurry up the business and not give it enough thought. Past experience indicates that when we rush through business, we are bound to make mistakes. Aware that we have passed a new Constitution, this Parliament feels that it can work as hard as other Kenyans. In fact, we are willing to work through Christmas and ensure that we finish any business that is still pending.

I beg to oppose the extension so that we can sit tomorrow.

Mr. Linturi: Thank you, Mr. Speaker, Sir. I rise to oppose this Motion. As hon. Members of Parliament, we are paid by taxpayers to work. Since we are paid to work and this being Christmas time, it is the only time we can demonstrate to this country that important Motions before this House should be given enough time so that hon. Members can ventilate and do justice to them. Within the remaining few hours, bearing in mind the level of concentration for human beings, which at times is limited, I do not think we will have enough time to do justice to the five Motions before midnight.

I, therefore, oppose this Motion.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I rise to support this Motion. I know that we have a lot of work to do and that is why this Procedural Motion is seeking to extend Sitting time so that we can finish. I know that hon. Members want to ventilate. I know specifically whom they want to ventilate against. Hon. Members have very clearly indicated their feelings. Christmas is a few days away. I do not want to express my personal concerns, which I have expressed in the past, but some of us need to go for Christmas.

Therefore, I beg to support.

Mr. Midiwo: Mr. Speaker, Sir, I rise to support this Motion. I think hon. Members opposing this are well aware of the feelings of Kenyans. We represent them and normally, we have never been here beyond Jamhuri Day. We sat, as the House Business Committee, and decided that we wanted to address all the concerns of hon. Members and work as far as we can and as long as we can so that we do everything today and go home for Christmas.

I wish to support.

Mr. Koech: Mr. Speaker, Sir, I want, first of all, to appreciate the Motions before us. They are very important Motions. I have looked at the number of Motions and counted that we have to deal with up to four before the Adjournment Motion. Looking at the time, let us be very practical. For us to pass these Motions, it means that we have to sit here up to 4.00 am, if we have to do justice to the Motions.

I beg my colleagues to oppose this Motion and we give ourselves one more day to complete the business.

Mr. Speaker: Order! Member for Mosop, please, note that even if time is extended, it cannot go beyond today. Today ends at midnight. Tomorrow will be another day.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Speaker, Sir, I stand to oppose this Motion. The agenda before this House includes the Report of the Departmental Committee on Justice and Legal Affairs on the Approval of Nominees to the Judicial Service Commission and the issue of ---

Mr. Midiwo: On a point of order, Mr. Speaker, Sir. Is it right for a Member of the Cabinet to stand up and oppose a Motion moved by the Government? Is the Member in order?

Mr. Speaker: Order, hon. Members! Member for Dujis, that is a valid concern. Indeed, you must make clear what your position is. This is a Government Motion, the Government in which you serve. How can you oppose the Government's Motion?

(Applause)

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Speaker, Sir, I was opposing the extension of time.

Mr. Speaker: Notwithstanding that you are an Assistant Minister in the Government?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I think it is about time that the Government took responsibility. Members of the Cabinet should behave as members of the Cabinet or resign because this is a Government Motion. It is about time we cracked the whip on this side. I think this is---

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Speaker, Sir, I withdraw. I would like that to be expunged from the HANSARD.

Mr. Speaker: The Member for Dujis, I want to hear you clearly. Is your position that you withdraw and you want that expunged from the records of the House?

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Speaker, Sir, loudly, I want to withdraw and have that expunged from the HANSARD.

(Laughter)

Mr. Shakeel: Mr. Speaker, Sir, I stand to support the Motion. Kenyans want us to finish the business and we will finish even if we have to work up to midnight. The fact of the issue is that we are Members of Parliament and we should concentrate even up to midnight. I find the grounds of those opposing frivolous.

I wish to support the Procedural Motion.

Mr. C. Kilonzo: Mr. Speaker, Sir, if some Members of the Government are opposing, who are we as Backbenchers to support? I wish to oppose. We have been in this House since morning and looking at the four Motions remaining, we need close to eight hours. Naturally, it cannot work. However, I have a suggestion for the Executive. Maybe they should think about bringing this thing tomorrow morning and then we can break for Christmas with other Kenyans. Kenyans are breaking for Christmas tomorrow. So, let us not break for our convenience to go earlier for holidays. Let us go for holidays with other Kenyans tomorrow.

I oppose.

Ms. Karua: Mr. Speaker, Sir, I rise in support of the Motion. This is not the first time we have had a Procedural Motion to extend time. If we have other issues, it is better that we lay them on the Table. We are capable of sitting and working hard up to a minute before midnight and dispose of the business before the House. It would only be wrong if we wanted to go on recess leaving business that is prioritized on the Order Paper today.

I beg to strongly support.

Mr. Kutuny: Bw. Spika, ninasimama kupinga Hoja hii kuhusu kwenda likizo. Itakumbukwa kwamba Bunge hili hapo awali lilipitisha Hoja nyingine ambazo baadaye zilikuwa majuto. Majuto baadaye huwa mjukuu. Tunahitaji nafasi ya kutosha kutafakari na kuchambua Hoja muhimu kama hii inayohusu utekelezaji wa Katiba. Kwa hivyo, saa ambazo sisi Wabunge tutapewa kuichambua ni chache sana.

Itakumbukwa tena Wabunge wanapoketi kuzungumzia Hoja kwa zaidi ya masaa manne, wengi wao hupatwa na lepe la usingizi. Wengine wetu hapa umri umewapa kisogo na hawatashughulika na mambo muhimu.

Kwa hivyo, ninapinga Hoja hii.

(Question put and agreed to)

Mr. Speaker: Let us move on to the next Order!

POINT OF ORDER

RE-ARRANGEMENT OF BUSINESS ON THE ORDER PAPER

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I rise to seek the indulgence of the Chair and the Leader of Government Business to rearrange the order appearing on the Order Paper with a view to bringing forward Order No.12 in place of Order No.9 and we proceed as such.

Mr. Speaker: Order, hon. Members! The Member for Chepalungu, did I hear you say that you want some other Order to come before Order No.9?

Mr. Ruto: Mr. Speaker, Sir, I sought the indulgence of the Chair and that of the Leader of Government Business that we bring forth Order No.12 in place of Order No.9 and rearrange accordingly.

Mr. Speaker: The Leader of Government Business, what is your reaction to this?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, it is clear that because of the decision you have taken with regard to Order No.8, I have no doubt that since we are actually dealing with the approval of names, we

can very easily reach Order No.12 if we act expeditiously. Apart from that, I will be guided by the feelings of the House. I have no hard feelings about it. We discussed this matter substantially in the House Business Committee and even took a hard decision that although it is strictly a Private Member's Motion but because of the seriousness that faces this country at this particular time, we do not mind allocating it time. Some of us worked extra hard to make sure that it actually sees the light of day. However, we will be guided by the feelings of the House, but that Order now makes it very easy. We can reach this Motion expeditiously.

Mr. Speaker: Order, the Leader of Government Business! Normally, Wednesday afternoon is set aside for Government Business. So, I will be guided personally as the Speaker if you gave clear indication on whether or not the Government is prepared to give way. If you say that you have no "hard feelings", then what are you telling me?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, it was not my decision but the decision of the House Business Committee that this Motion be presented today. Strictly speaking, to that extent, it becomes Government business. Therefore, this is very clear in my mind. So, we have no problem. I said that with regard to re-ordering I would have no problem, but the decision of the House Business Committee was very firm that this Motion appears on the Order Paper today. Everybody knew that today afternoon is not a day for Private Members' Motions when this decision was taken. Therefore, it qualifies as Government business.

Mr. Speaker: Order! Order! Leader of Government Business, I am still not clear. I want to follow it before I give direction.

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

Order, hon. Members! Leader of Government Business, I am sorry that, perhaps, I am pushing too hard but I want you to be categorical. Are you saying that Order No.12, by reason of it having been allotted time by the House Business Committee, has become Government business?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I have had occasion to sit where you are sitting for five years. Please, if you look at the Supplementary Order Paper itself and I want to urge that we be cool headed about it, you will see there are asterisks against order No.12. In fact, from Order Nos.8,9,10,11 and 12. If you look at what that means, actually, the asterisks denote Government Orders of the Day. Therefore, from the point of the House Business Committee, this Motion is Government business.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): On a point of order, Mr. Speaker, Sir. I think the Vice-President who is the Leader of Government Business needs to take the leadership. By taking the leadership he has to be very clear on which business gets priority; Government business or business that is presented by a Backbencher? So, if we have to accommodate Private Members, do we accommodate them before Government business? The Vice-President and Minister for Home Affairs has to decide and make a clear decision. He should not leave it to us to decide.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, the decision of the House Business Committee was Order No.8 on Procedural Motion, Order No.9, Departmental Committee on Justice and Legal Affairs, Order No.10, Departmental Committee on Justice and Legal Affairs, Order No. 11, Departmental Committee on Finance, Planning and Trade and Order No.12, Ministry of State for Provincial Administration and Internal Security. That was the order. There is no ambiguity, whatsoever. Therefore, my good friend should stand guided.

However, what I understood was that there was an attempt to want to re-order and reorganize business appearing in today's Order Paper, so that Order No.12, comes in as Order No.9. That is what I was saying, if it is the wish of the House. We took a decision ourselves as the House Business Committee. The House Business Committee is not superior to this House.

Mr. Speaker: Order, hon. Members!

Hon. Members, as it is, the Standing Order by which I am governed is No.36(2). It says:-

“Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the House, direct”.

I may direct for the convenience of the House. As I said earlier on, Tuesdays afternoon are set aside for Government business. So, Government business takes priority over any other business. Obviously, this Standing Order does not give room to the House to determine which business will come first. The Vice-President and Minister for Home Affairs and Leader of Government business says he would be guided by the feelings of the House. Unfortunately, this Standing Order does not give room to the House to decide. So, really, the person who must decide is the Government. The Government should tell us whether or not it wants Order No.12 to stay as No.12 or to move it to No.9. As soon as I have clear direction, then I will be able to accommodate the convenience of the House because this matter cannot go to a vote as I have read out this Standing Order.

So, Leader of Government business it is important that you are categorical.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, the operative words are “for the convenience of the House”. I think that is what I was looking for.

Mr. Speaker, Sir, thank you for bringing that to my attention. What I was saying basically is that the House Business Committee is subject to this House. In the convenience of the House, if the Member thinks he can reorder the Order Paper, we have no problem.

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

The Minister for Energy (Mr. Murungi): On a point of order, Mr. Speaker, Sir. Standing Order No.36 is very clear that we follow the business as per the Order Paper. From the Motion we have passed, it reads that:-

“THAT, notwithstanding the provisions of Standing Order 20 (2), this House resolves that the Sitting time of the House today Wednesday, December 22, 2010,

Afternoon Sitting be extended until the Business as set out in the Order Paper is concluded”.

So, in my own understanding, we do not adjourn until the business in Order No.12 is concluded. I think it is for us Members to make sure that what is on Order No.8, 9,10, 11 and 12 is concluded before we adjourn today. So, I am appealing to my colleagues in the House, let us not waste a lot of time with these side shows. Let us go straight to business, move quickly and get to No.12. Mr. Speaker, Sir, so I am pleading that we move on with business No.9.

(Mr. Musyoka stood up in his place)

Mr. Speaker: Order, Leader of Government Business! Hon. Murungi, you have actually interpreted the Standing Order No.36(2) as it ought to be interpreted. You have spoken from your position on the Front Bench. Please, let me here from you, what is the Government position? Do you want this business to proceed in the manner---

(Mr. Musyoka stood up in his place)

Order, Leader of Government business! I want to hear from hon. Kiraitu Murungi---

(Mr. Musyoka stood up in his place)

Order, Leader of Government business! I asked you many times where the Government is.

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

Order! Order, hon. Members! The intimation I now have is that hon. Kiraitu Murungi would defer to the Leader of Government business.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, for the avoidance of doubt, the Government wishes to follow the Order Paper as it is.

(Laughter)

Mr. Speaker: Order! Order, hon. Members! Hon. Members, with that categorical indication from the Leader of Government business, my direction will be that we deal with business as is listed on the Order Paper. More so given that this is a day that is preserved to give priority to Government business. I so direct.

MOTIONS

ADOPTION OF REPORT ON JUDICIAL
SERVICE COMMISSION NOMINEES

Mr. Namwamba: Mr. Speaker, Sir, in the interest of time, I will take the least time possible to move this Motion.

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

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

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, this Report is a follow up of the Report of the Committee that was adopted by this august House on Tuesday, 26th October, 2010, through which---

(Loud consultations)

Mr. Temporary Deputy Speaker, Sir, could you bring some calm to this House?

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, hon. Members! Let us hear the Chairman of the Committee move his Motion.

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, on Tuesday, 26th October, 2010, this House adopted a Report from the Committee on Justice and Legal Affairs, proposing that Justice Isaac Lenaola and Miss Emily Ominde be confirmed as members of the Judicial Service Commission, representing the Association of Judges and Magistrates. The Report I now table before this House is to conclude the process of establishing the Judicial Service Commission by filling the rest of the slots on the Judicial Service Commission. This is in accordance with Article 179 of the Constitution, which at Article 171(2) provides the membership of the Judicial Service Commission as follows:-
“171(2) The Commission shall consist of-

- (a) the Chief Justice, who shall be the chairperson of the Commission;
- (b) one Supreme Court Judge elected by Judges of the Supreme Court;
- (c) one Court of Appeal Judge elected by Judges of the Court of Appeal;
- (d) one High Court Judge and one magistrate, one a woman and one a man, elected by members of the Association of Judges and Magistrates;
- (e) the Attorney-General;
- (f) two advocates, one a woman and one a man, each of whom has at least 15 years’ experience, elected by the members of the statutory body responsible for the professional regulation of advocates;
- (g) one person nominated by the Public Service Commission; and,
- (h) one woman and one man to represent the public, not being lawyers, appointed by the President with the approval of the National Assembly.”

Mr. Temporary Deputy Speaker, Sir, the House should also note the provisions of Clause 20(1) of the Sixth Schedule to the Constitution, which provides as follows:-

“The Judicial Service Commission shall be appointed within 60 days after the effective date, and the Commission shall be deemed to be properly constituted under this Constitution despite the fact that there may be a vacancy in its membership because of any of the bodies nominated or electing members have not done so”.

Therefore, pursuant to this provision of the Constitution, the Committee initiated the process of assisting the House in vetting members identified to serve on the Judicial Service Commission. The members that the Committee has considered for purposes of this Report are nominees of the Law Society of Kenya (LSK), nominees of the Public Service Commission, nominees of the public and a nominee of the Court of Appeal.

Mr. Temporary Deputy Speaker, Sir, I will now proceed to quickly share with the House profiles of the respective nominees and observations of the Committee in respect of the suitability of those nominees to serve in the Judicial Service Commission.

The LSK is mandated, under Article 171(2)(f) of the Constitution, to nominate two persons to serve on the Judicial Service Commission. Accordingly, the LSK conducted elections to elect two persons to represent the society on the Commission. Through a letter addressed to this House, the LSK submitted the names of Mr. Ahmednassir Abdullahi and Miss Florence Muoti Mwangangi as representatives of the society on the Judicial Service Commission.

Mr. Temporary Deputy Speaker, Sir, on 26th October, 2010, the Committee held a vetting session during which it looked at the suitability of these two persons, looking at the grounds of education, employment record, professional associations, political affiliation, potential conflict of interest, moral probity and ethics, among others.

It is important for this House to take note of the fact that at the very beginning of the vetting exercise of these two nominees, Mr. Ahmednassir, one of the nominees of the LSK, challenged the jurisdictional mandate of the National Assembly to vet his appointment to the Judicial Service Commission, his argument being that since he had been elected by a membership organisation, he should not be subject to any vetting or confirmation as the act of election had already confirmed him as a member of the Judicial Service Commission.

He raised this objection at the Committee meeting held on 26th October, 2010. While the LSK, as an institution, never stated its position on this matter, including at the same meeting, where the society’s chairperson and secretary attended, sentiments in the media attributed to the chairperson of the LSK seemed to support the position taken by Mr. Ahmednassir.

Mr. Temporary Deputy Speaker, Sir, it is, indeed, important for purposes of the House and for purposes of future vetting processes. The Committee considered Mr. Ahmednassir’s objection and disagreed with him on his interpretation of the Constitution. The Committee held the view that the Constitution, under the new dispensation, vested in Parliament specific and general powers to vet nominees to key public offices, including members to Commissions such as the Judicial Service Commission. This is part of the Legislature’s oversight mandate.

The Committee then gave the nominee and the LSK the option of withdrawing from the confirmation process. Mr. Ahmednassir and the LSK decided on their own volition to subject their nominee to the vetting process. For the record also, Mrs. Mwangangi, the other LSK nominee, did not raise any objection to her vetting. The

Committee subsequently proceeded to consider the two nominees after that initial objection was settled.

Mr. Temporary Deputy Speaker, Sir, in respect of Mrs. Florence Mwangangi, the Committee noted that she is a holder of a Degree in Law from the University of Nairobi. She has been in private legal practice since 1992, running a private law firm styled as M/s F.M. Mwangangi & Company Advocates. She has served on the Council of the Kenya Law Reporting between 2007 and 2009. She has also served as a member of the LSK Council between 2005 and 2007. The nominee has also attended educational seminars, both locally and internationally, in diverse fields, especially related to matters of human rights and the practice of law. Overall, based on the assessment of the Committee, this nominee was found to meet the basic requirement of academic and professional competence as well as apparent political non-partisanship.

Mr. Temporary Deputy Speaker, Sir, let me also draw the attention of the House to another important matter that came to the attention of the House while conducting this particular vetting. The Committee noted that the issue of a litigating advocate sitting on the Judicial Service Commission, while remaining in active legal practice would raise definite serious conflict of interest. The Committee noted that there was real potential of intimidation and undue influence should such a member appear before a judicial officer that is, by all interest and purposes, an employee of the Judicial Service Commission.

This issue was further well ventilated in submissions made to the Committee by at least two senior practitioners of law. It should be noted that, indeed, all candidates forwarded by the LSK are in active legal practice.

Mr. Temporary Deputy Speaker, Sir, allow me to put on record and to share with the House one of the opinions shared to the Committee by the law firm of Kaplan & Stratton. I quote one of the opinions they shared with the Committee as follows:-

“While Article 171(2)(f) of the Constitution includes the composition of the membership of the Judicial Service Commission *inter alia* two advocates, each of whom has at least 15 years’ of experience elected by the LSK, it does not state whether or not such advocates should be in active practice of the law. I respectfully submit that in the course of implementing this provision, it will be imprudent to allow onto the membership of the Judicial Service Commission any advocate who has any interest in a firm which is in active practice.

In my humble opinion, the reasons for such requirement are self evident. The functions and responsibilities of the Judicial Service Commission, under Article 172 of the Constitution, include recommending suitable candidates for appointment to judicial office, the review and recommendations on the conditions of service of judges and judicial officers, to appoint, receive complaints against, investigate and remove from office or otherwise, to discipline registrars, magistrates and other judicial officers and other staff of the Judiciary, and also the initiation either on its own motion or otherwise, of the process of the removal of a judge from judicial office.

Let me turn to the process of a removal of a judge from judicial office. This provision places any member of the Judicial Service Commission in an exceptionally powerful position vis-à-vis a judicial officer on matters relating to such officers’ career. In the circumstances, it is probably not difficult to see how a practising advocate, who is also a JSC member, could *ipso facto* represent undue influence or pressure upon a serving judicial officer before whom the advocate appears or a matter in which he or she has an

interest. It is immaterial whether or not such a JSC member in fact constitutes influence or pressure on the Tribunal. The near possibility or appearance of influence is sufficient cause for concern and will amount to a blot on the ostensible independence of the Tribunal in question. Accordingly, this is likely to subvert the core function of the Judicial Service Commission which is to promote and facilitate the independence and accountability of the Judiciary and the efficient and the effective transparent administration of justice.

I dare add that the law firm of Kaplan and Stratton that shared this opinion made it clear that this contribution does not arise from any objection to any candidate, current or future. It is however, based on and inspired by the principle that left unchecked this lacuna in the law could in time become the most regrettable corrosive element on the independence of the Judiciary ever. The Committee considered this matter at length and we reached a conclusion that the Constitution is not clear on this matter, even though the same Constitution points out the importance of ensuring that any holder of a public office is not encumbered by reason of conflict of interest. Therefore, the Committee wishes to put it on record that this House should consider that and among the recommendations we have made is that perhaps, we need legislation to address this particular matter of an advocate who is in active legal practice and actively mitigating before courts, and also sits in judgment as an employer of judicial officers.

Mr. Temporary Deputy Speaker, Sir, in respect of Mr. Ahmednassir Abdullahi, the Committee notes that he is an advocate of the High Court of Kenya since 1991. He holds a Master of Laws degree from Cornell University and has previously taught law at the University of Nairobi. He also has previously chaired the pioneer Kenya Anti-Corruption Advisory Board from which he resigned in controversial circumstances. The nominee was the Chairman of the Law Society of Kenya between 2003 and 2004. He is currently a director of the First Community Bank in addition to being a publisher and editor-in-chief of the *Nairobi Law Monthly Magazine*. The nominee is also a columnist with *Sunday Nation* Newspaper.

On the basic requirements of academic and professional competence and ability to be politically objective, the Committee found this candidate to be suitable. But the Committee also wishes to note that the issue of an active litigating advocate serving on the Judicial Service Commission and, therefore, raising the possibility of conflict of interest applies to Mr. Ahmednassir Abdullahi in the same manner as it does to Mrs. Mwangangi.

Secondly, the Committee received two formal complaints against Mr. Ahmednassir Abdullahi that touched on his integrity and moral probity. The first complaint came from the National Bank of Kenya accusing Mr. Ahmednassir Abdullahi of violating principles of professional confidentiality. The bank contended that Mr. Ahmednassir Abdullahi had acquired in suspicious circumstances its confidential records relating to a matter in court in which Mr. Ahmednassir Abdullahi also had an interest. The Committee considered this matter at length and even invited the nominee for further clarification after receiving oral representation from the bank's legal department. In doing this, the Committee inquired into whether this matter raised a question of integrity in terms of Chapter 6 of the Constitution that speaks to the subject of leadership and integrity. The Committee noted that this matter though indeterminate could not be ignored.

Thirdly, Mr. Temporary Deputy Speaker, Sir, the Committee further received an affidavit also raising questions on the integrity of Mr. Ahmednassir Abdullahi sworn by one Mrs. Emily Wangari Kamau of the State Law Office. The letter was based on a letter which was authored by one Mr. Dan Ameyo in his then capacity as the Postmaster General of Kenya Postal Corporation. The affidavit alleged that Mr. Ahmednassir Abdullahi had attempted to extort Kshs63 million from the corporation in inflated legal fees. The Committee recalled the nominee back as well as Mrs. Kamau and Mr. Ameyo to a meeting held on 24th November, 2010. The Committee interrogated the three persons on the allegations made and considered whether this matter contravened Chapter 6 of the Constitution on leadership and integrity.

Mr. Temporary Deputy Speaker, Sir, in view of these allegations, the Committee noted that while Mr. Ahmednassir would without doubt add value to the Judicial Service Commission, because of his passion and strong views, the matters raised, while they could not conclusively be determined in the limited time available, nonetheless raised grave concerns. They could not be ignored and should accordingly be brought to the attention of the House and the public. The Committee, therefore, invites the House to be aware of these allegations as it considers this nominee.

Mr. Temporary Deputy Speaker, Sir, before I move to the next nominee from the Court of Appeal, allow me to answer to fears and concerns expressed that because nominees from the Law Society of Kenya (LSK) raised questions as to the whole process of vetting, fears have been expressed as to whether the Committee and this House will be fair to these nominees. I want to assure the LSK and all the nominating organs that when considering these nominees, the Committee strictly adheres to the principles and mandate that it has to exercise and reconsiders each nominee on their merit without going into any extraneous factors. Any matter that touches on the integrity of a nominee is considered strictly on its merit. That is why the Committee takes the trouble to invite anybody who makes any allegation to substantiate those allegations as was done in this case.

Mr. Temporary Deputy Speaker, Sir, the next nominee who was considered by the Committee was a nominee of the Court of Appeal.

The Court of Appeal, through the Registrar of the High Court, forwarded the name of Justice Riaga Omollo as the Committee's representative on the Judicial Service Commission (JSC). Justice Omollo had been elected by the nine of the ten Judges of the Court of Appeal. Justice Omollo Riaga holds a Bachelor of Laws (LLB) Degree from the University of Nairobi (UoN) and boasts of over 35 years of experience in the legal profession.

Mr. Temporary Deputy Speaker, Sir, Mr. Justice Omollo currently serves as a Court of Appeal Judge and has represented the court on the JSC since 2003. The Committee considered this nominee at a meeting held on October 27th 2010 and found the nominee qualified on the required grounds of academic and professional competence, moral probity and political non-partisanship. The Committee finds him competent to represent the Court of Appeal as presently constituted in the JSC.

Next, the Committee considered the nominee of the Public Service Commission (PSC). The PSC followed tradition and nominated its Chairperson, Mr. Titus Gatere, as the Commission's representative on the JSC. This was communicated to the National Assembly through its letter dated October 27th and was done in pursuant to Article 24 of the Sixth Schedule to the Constitution that provides that the person nominated by the PSC

established under Section 106 of the former Constitution would continue to serve on the JSC until the new PSC is established. The Committee considered this nominee at a meeting held on November 24th 2010.

Mr. Temporary Deputy Speaker, Sir, Mr. Titus Gatere holds a Master of Science Degree in Management from Arthur Little Institute of Management Education in Boston, USA. He has served as the Chairman of PSC since 2005. He has represented the Commission on the JSC since then. Mr. Gatere has also been a member of the National Audit Commission as well as member of the African Association of Public Administration and Management. He previously worked in various capacities at the Kenya Institute of Administration (KIA) where he rose through the ranks to become the Director and Chief Executive between 1996 and 2005. Mr. Gatere is involved in a number of community activities including chairing the school Board of Governors in one of the secondary schools in his rural home.

Mr. Temporary Deputy Speaker, Sir, the Committee found Mr. Gatere duly qualified on the basic evaluation grounds of academic qualification, professional competence, moral probity and apparent political non-partisanship.

Finally, the Committee considered two nominees nominated by His Excellency the President to represent members of the public in the Commission. Through a letter dated November 16th 2010, the Office of the President did forward the names of Bishop Antony Muheria and Prof. Christine Kevin Abungu Mango to the National Assembly as nominees of His Excellency the President to represent the public in the JSC. In respect of Bishop Antony Muheria Ngugi, the Committee did know that he is a holder of a Bachelor of Science (Civil Engineering) from the UoN and currently serves as the bishop of the Catholic Diocese of Kitui. Bishop Muheria has also taken undergraduate studies in theology from Holycross University in Rome where he also has a Doctorate in Systematic Theology. He serves in various capacities within the Kenya Episcopal Conference.

In considering this nominee at its meeting held on November 24th, the Committee did note that Bishop Muheria was among the church leaders who had been strongly opposed to some provisions of the Constitution, including Kadhi's Courts and pro-choice fundamental rights and freedoms. The Committee engaged the bishop at length on the critical question as to whether his views would negatively influence his handling of judicial officers linked to such issues and was satisfied---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Chairman! You will remember the debate on the Procedural Motion given that the House has passed a resolution---

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, I am concluding. I am on the last nominees.

Mr. Temporary Deputy Speaker, Sir, the Committee was convinced that Bishop Muheria has the capacity to be objective, fair and just and that he was qualified on the basic grounds.

Finally, the Committee did consider Prof. Christine Mango who is a renowned academic and the immediate former Member of Parliament for Butula. In the interest of time, the one issue that the Committee was interested in was to know whether Prof. Mango's known political affiliation, having recently been an elected Member of Parliament, would cloud her judgment on the JSC. The Committee was satisfied that

Prof. Mango has the capacity, similarly, to be objective, fair and just and was accordingly found to be duly qualified on the basic evaluation grounds of academic qualifications, professional competence, moral probity and apparent political objectivity.

Mr. Temporary Deputy Speaker, Sir, based on that evaluation, the Committee makes the following recommendations:-

(i) In respect of Justice Omollo Riaga the Committee recommends that this House approves Justice Riaga Omollo to represent the Court of Appeal in the JSC. This decision was unanimous.

(ii) With respect to Mr. Titus Gatere, the Committee recommends that this House confirms him to represent the PSC in the JSC. This decision was similarly unanimous.

(iii) In respect of Bishop Antony Muheria the Committee recommends that this House approves Bishop Antony Muheria to represent the public on the JSC. This recommendation also had the unanimous stamp of approval from the Committee.

(iv) With respect to Prof. Christine Mango, the Committee recommends that this House confirms Prof. Mango to represent the public on the JSC. This was also unanimous in the Committee.

(v) With respect to Ms. Catherine Muoti Mwangangi, the Committee recommends that this House confirms Ms. Mwangangi to represent the Law Society of Kenya (LSK) on the JSC but that, if confirmed, she should be precluded from litigating before Kenyan courts for the duration of her term of service. This decision was also unanimous in the Committee.

(vi) With respect to Mr. Ahmednassir Abdulahi, in view of the allegations made against this nominee, his recommendation attracted a vote. This is the only nominee on which the Committee had to vote. The Committee voted four to three with four Member approving and three Members strongly dissenting. Based on that vote, the Committee resolved that Mr. Ahmednassir be recommended for confirmation with the dissent of the three Members on record to guide the House in making its determination. If confirmed to represent the LSK on the Commission, this member should also be precluded from litigating before Kenyan courts for the duration of his term of service to avoid potential conflict of interest.

Secondly, the Committee recommends that this House should urge the Attorney-General to propose legislation to provide for a solid platform to guide vetting by the National Assembly of all the appointments to all senior State offices.

Finally, the legislation should be considered under Article 75 and Article 80(d) of the Constitution to address the question of conflict of interest for practising advocates who serve in the JSC.

Mr. Temporary Deputy Speaker, Sir, I beg to move and the Vice-Chairman of the Committee, Mr. Njoroge Baiya, will second.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I rise to second this Motion.

First, I would want to commend the Chairman for ably moving the Motion. I would only wish to indicate that the process of vetting the candidates for the JSC went on smoothly. This is the first time we are vetting members of the JSC and there are new issues coming up.

Mr. Temporary Deputy Speaker, Sir, the most notable challenge is presented by the candidates we identified. The candidature of Ahmednassir as well as that of Ms. Catherine Mwangangi from the Law Society of Kenya presented the challenge of conflict

of interest as practising advocates. We feel that, that conflict can be resolved if a law is passed barring the JSC members from litigating before the judges or magistrates in this country. This should apply before the judges as well as magistrates. Other than that, the Members are quite aware of where the country is in terms of reforms and the judicial crisis within the Judiciary. The JSC will be the mechanism through which we will implement the various changes that are needed to make the Judiciary effective and fully compliant with the new Constitution. This will also help us to establish the Supreme Court as well as appoint the Chief Justice who should be appointed within six months from the date of the promulgation of the Constitution. Therefore, there is urgency in ensuring that the JSC is set up, so that these reforms can be accomplished as required.

The other issue that I wish to point out is that with regard to the disagreement about the candidature of Ahmednassir Abdullahi, he was elected by the Law Society of Kenya. When dealing with the issue on dissent, we noted that his candidature was eliciting a lot of public response. Perhaps, the electoral content is political, but he is also a strong candidate who appears to invite responses both good and bad. We investigated and called evidence from those who had complaints against him and the Committee did not find any merit in those allegations about his integrity. We are urging the House to approve this report, so that we can carry out the Judicial reforms that are so badly needed, in preparation of not only the reforms that we are carrying out, but also in ensuring that we have a smooth implementation of the new Constitution.

With those remarks, I beg to second.

(Question proposed)

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, I beg to support the Motion. The Mover of the Motion has gone through the names and the qualifications. All the names are approved rightly. I know some of the nominees as people who have practised in courts. I want to confirm that Justice Omollo is one of the great legal minds this country has. I also want to say that Ahmednassir is another great legal mind that this country has. I notice that there was controversy in the approval of Lawyer Ahmednassir, but the Committee has very ably, in its report, indicated all the allegations that had been leveled against him and the evidence. In their wisdom, they dismissed those allegations. On what basis would we, therefore, now stop the appointment of Ahmednassir?

I am at a loss why three Members of the Committee dissented because, once the Committee dismisses the allegations, then due process demands that we proceed with the appointment unless there is any other overwhelming hindrance. I have looked at the other nominees and none is controversial. However, it is a pity that we have not been able to start renewal of our institutions.

There are people who are there by virtue of their positions in the institutions, like the Chairman of the Public Service Commission. We need to move with speed so that we have people who are validated by the new Constitution moving to be members of the Judicial Service Commission (JSC).

I have worries, Mr. Temporary Deputy Speaker, Sir, that the Government is dilly-dallying over the appointment of the Attorney-General under the new Constitution. If we have the old heavyweights sitting in the JSC without any changes and without validation,

what is going to happen is that we are going to be robbed of the new dawn that we are expecting in the appointments of judicial nominees.

To conclude, Mr. Temporary Deputy Speaker, Sir, I want to say that when a candidate has raised controversy and has been able to overcome it by being approved, that is the greatest reason why such a candidate should be endorsed by this House.

(Applause)

If you have people who all think the same way, then they can very easily compromise. But if you have minds that think differently – because we are not supposed to think like identical twins – when you have people who will take others to task, then we are on the right track. I have looked at how the lawyers selected their nominees. Ahmednassir had 800 votes while his runners up had 400 votes – a very fine gentleman as well – and this shows the confidence of his peers in him.

Mr. Temporary Deputy Speaker, Sir, I want to urge the House to approve the nominees as tabled and to congratulate the Committee for setting out the entire process to enable us to make an informed decision.

Mr. Temporary Speaker, Sir, I beg to support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Mr. Temporary Deputy Speaker, Sir. I want, first of all, to salute this Committee for coming forth with this very good work. It is, in itself, a landmark because it is, in fact, a continuation of the process of Parliament approving the Executive and other appointments.

Mr. Temporary Deputy Speaker, Sir, I want to remind the country about the story of Anita Hill in the USA, when she went and challenged a judge making serious allegations and, in the process, the judge was confirmed. That judge has now stood out as, perhaps, one of the single most very important judges on the Conservative side of the American system of Government. Therefore, I would like to say that, subject to the representative of the Law Society of Kenya (LSK), I think Parliament should accept the work of the Committee although I join those who say that we need a very clear law as to how this vetting should be done.

Mr. Temporary Deputy Speaker, Sir, I want to express my concern that when these people were called in, the Committee proceeded to hold its hearings in camera. That is a violation of the Constitution. It is essential that Parliament bears in mind the provisions of Article 215 of the Constitution that state that when Parliament conducts any business, either in plenary or as Committees, then those proceedings be held in public.

Secondly, the Committees of the House now have got the power of a Judge of the High Court to commission oaths. Therefore, as long as my learned friend of the LSK is comfortable with the allegations and knows what to do with them, I think they should proceed.

The other is with regard to the issues that the Committee is bringing forth of the acting advocates. I think we are making a mistake. I think it would be unconstitutional to start putting roadblocks in front of Kenyans who want to practise or want to do anything here and there. I want to tell this House without fear that the Israeli Judiciary is, perhaps, the single strongest judiciary anywhere in the world. Israel has had a coalition government since 1948. Right now, it is a coalition government of seven political parties, and yet a Committee such as the one we are approving today is shared by the Minister for

Justice and it has three politicians from Parliament sitting in it. I do not think that the mere fact that you have practised politics or you are practising law in itself excludes you from being able to participate in a decision such as whether a person is qualified to be a judge or not.

Mr. Temporary Deputy Speaker, Sir, allow me to say how important this Judicial Service Commission is and request the House to pass this Motion tonight. We must have a new Chief Justice by 27th February next year.

Mr. Temporary Deputy Speaker, Sir, the applications and recommendation for a Chief Justice to His Excellency the President before his name comes here, must go through the Judicial Service Commission. Therefore, I want to plead with the House that we rise to the occasion and approve this Motion as quickly as possible, preferably before midnight, so that the President can appoint these people tomorrow; they can then have a quorum to start receiving applications for the office of Chief Justice.

With those few remarks, I support.

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, I want to join my colleagues, hon. Members, who talked before me in also commending the Committee for having done a good job. We are trying to reform our country. We are in a reform era. A reform era is essentially not supposed to be a role for the conformist kind of a person. We need minds that are so radical that most of us will feel uncomfortable with them.

I am impressed. I am happy that the team we have here will do that job. I am also very happy that somebody like Ahmednassir--- I am not standing here to defend AhmedNassir or to support him, because he comes from my community. As a matter of fact, I can tell you that we disagree more often than we agree. One thing is that precisely because of his ability to disagree with everybody, and only agree with the best logical analysis that one can advance, we need him here. He is also principled. There is no question about that.

This is a man who was appointed as the chairman of the anti- corruption body here and resigned because he felt there was derogation from the laws of this land. The kind of claims that were made against him, were by and large from interested parties. For example, the Committee, in its own wisdom, while it was evaluating the claims that were made against Mr. Ahmednassir did indicate that the affidavit by Emily Wangari was frivolous since no further action was taken on the same, and that the evidence to support the charges was never corroborated by anyone else other than the Attorney-General.

Mr. Ahmednassir is so independent and democratic that he will write about the Speaker, the Deputy Speaker, the President of this country and anybody. He has written about the Attorney-General and that we know very well. There is no love lost between the two of them. I respect the Attorney-General for his own way of doing things. The suit containing the affidavit was a case filed against other persons, and Mr. Ahmednassir was not legally enjoined. The alleged offences were never committed by the nominee and the nominee's name was tabled in the House for approval. The matter is concluded and no further issues should arise.

Hon. Members, I support this and say, let us pass the Motion as it is.

Mr. Oyongo Nyamweya: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Mover has given very good details on the people who have been nominated; would I be in order to move that the Mover be now called upon to reply.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Let us entertain one or two and then we can put the Question.

I had already given Mr. Orengo the Floor.

The Minister for Lands (Mr. Orengo): Thank you, Mr. Temporary Deputy Speaker, Sir. I will be very brief.

I think that the Committee has done a commendable job and they should be congratulated for the manner in which they went through the vetting process. They are giving us a template which the Attorney-General can use to draft the new process on how Parliament can vet people who have been appointed or nominated for other public positions.

I just wanted to say that the rain started beating us in this country when we did not have a proper Judiciary in place. This was the case even during the pre-colonial period. After Independence, the same kind of system continued in which we did not have judges or members of the Judicial Service Commission (JSC) who could stand up against the Executive or any other institutions.

Mr. Temporary Deputy Speaker, Sir, I am very happy with these recommendations. It shows quite clearly that the young people in this country can take leadership. Justice Lenaola is a young judge who could take very principled positions particularly when he was in the Constitutional Division and the judicial review. Judge Omolo, as you have been told, is a great mind. But my favourite nominee to this Committee is Mr. Ahmednassir. I have seen this man in the highest court in the land standing firm without intimidation and standing for the country, litigants and his clients. If for this alone, I would pass this list.

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

Mr. Nyambati: On a point of order, Mr. Temporary Deputy Speaker, Sir. Given that every hon. Member is supporting this Motion and given that these are wonderful people who have been selected to this Commission, would I be in order to ask that the Mover be now called upon to reply?

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

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, just allow me to thank the House for the very kind complements to the Committee. I would just urge that even as we pass these nominees to set up the Commission that has such urgent business to undertake, I want to draw the House's attention to consider the legislation that is critical. I am glad that the hon. Minister has taken note of the same, especially the legislation on vetting and to address all these issues of conflict of interest.

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

(Question put and agreed to)

ADOPTION OF REPORT ON APPOINTMENT
OF CHAIRPERSON/MEMBERS OF CIC

THAT, pursuant to the provisions of Section 8(6) of the Commission for the Implementation of the Constitution Act, 2010, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the appointment of the Chairperson and Members of the Commission for the Implementation of the Constitution, laid on the Table of the House on Thursday, November 25, 2010.

(Mr. Namwamba on 25.11.2010)

(Resumption of Debate interrupted on 25.11.2010)

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! The last speaker on this Motion was hon. Musila who had concluded. Hon. A. Abdalla, do you want to contribute?

Dr. Nuh: On a point of order, Mr. Speaker, Sir. I rise on a point of order with a very heavy heart to seek your guidance. I want to draw your attention to the Constitution of Kenya. The constitutional provision No.25 says that the Commission on the Implementation of the Constitution and the Commission on Revenue Allocation shall be constituted within 90 days after the effective date.

Mr. Temporary Deputy Speaker, Sir, everyone can be drawn to the attention of the zeal with which on the night of 25th when we were to pass the Motion to approve these two Commissions, I begged the House that we go ahead.

I also want to draw your attention to Section 2(3) of the Constitution that says that the validity or legality of this Constitution is not subject to challenge by or before any court or any other State organ. Part 4 says that any law, including the customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.

Why have I said that? We are enacting these Commissions beyond the time limit that was set by this Constitution. We have a solution. As earlier contemplated by some hon. Members, we thought that we could seek solace in Part 261(i), (ii) and (iii). However, those sections only apply to the Fifth Schedule. They do not apply to the Sixth Schedule under which we want to pass the Commissions. I think the only avenue open to us is to amend the Constitution to extend the time limit within which we can enforce the Commissions before we move forward.

The danger of moving forward to pass this Motion is that--- I want to draw your attention to Section 10. Every person has an obligation to respect, uphold and defend this Constitution. Kenyans will go to court after we pass this Motion. There are many judges out there. If a judge was to rule that we passed a Motion against the Constitution and he goes ahead to cite the unconstitutionality of passing the Motion; that would be a very grave oversight when we have very many legal minds in this country and House. I wish to seek your guidance as to whether it is in order for us and the House to discuss this Motion without amending the Constitution.

Ms. Karua: On a point of order, Mr. Temporary Deputy Speaker, Sir. The issue that the hon. Member has raised is pertinent, but it does not apply to the Motions that we are passing. You will note that the Constitution gives time for the formation of the Commission. It does not give time for the House to approve the names. We must go in

stages. We will first approve the names and if we find it necessary to extend time, which this Constitution provides in certain other instances, but not in this case, applying the *ejusdem generis* rule, we can later bring in a Motion before the formation of that Commission to extend time within which the Commission may be passed. I am, therefore, suggesting that the point of order is premature because all we are doing is approving names and the Constitution does not set time for the approval of names. It sets time for the formation of the Commission.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Namwamba! We will take two more then we conclude.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I rise to add to the---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Mr. M. Kilonzo, when did you acquire a new name?

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, I did not know that I had a clone in the House. I just wanted to share with the House that this is a matter that is already being considered by the Committee. We have even sought the opinion of our best legal institutions, including the Law Reform Commission, to help us grapple with the issue of how to deal with the time extension. One of the consideration that the Committee has already taken note of is that this is a matter provided for in the Schedule. It is a matter that provides a time frame without a sanction in the event that we fail to meet the deadline, unlike the scenario envisaged in the Fifth Schedule of the Constitution. When you look at Schedule Five to the Constitution, you will see that there are very clear sanctions as to what happens if this House fails to beat the deadlines set in that Schedule for purposes of enacting the respective pieces of legislation.

In this case, the wording of Section 25(1) of the Sixth Schedule of the Constitution merely provides that the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation shall be constituted within 90 days after the effective date. The point Ms. Karua has raised is valid that we are involving the process of approval and it will lead to the constituting stage. Further, this House will require to consider how to deal with the matter of extension of time in the absence of a sanction. I wish to bring to the attention of the House that the Committee will be bringing an opinion after it has considered the matter.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I want to merely add to what my two learned friends have said. If you look at Article 259 on page 157, I want to be persuaded that this Constitution has borrowed from judicial decisions from America to India to Europe by saying that this Constitution shall be interpreted in a manner that promotes the purposes, values, and principles. I think that it is very important that this country understands something. In constitutional interpretation, there are two schools of thought. There is the activist approach which is now provided here to promote the purposes, values and principles. There is also the other one which I do not even want to describe. It is the conservative approach. It says that you read into the words exactly what they say. Therefore, I am guided and I want you to urge that the point of order raised – it is legitimate – is one that you should overrule so that we comply with Article 259(1). This is because as we sit here, we do not have implementation mechanisms for the Constitution. We cannot even bring Bills. We have several outstanding Bills.

I want to remind the House because it seems to have been forgotten that this House passed the law for the appointment of this Commission on time. The House was seized of this Motion on time. Therefore, by passing this Motion tonight--- I can see the Chairman of the Oversight Committee on the Implementation of the Constitution standing up, *makofi kwake*. This is because he knows that I am right that we must interpret this Constitution in terms of Article 259 and pass the Motion.

Thank you.

Mr. Abdikadir: Mr. Temporary Deputy Speaker, Sir, the Minister certainly was a KANU person during the good old days and that is why you can hear him say *makofi kwake*. It is my opinion that this matter was started during that time and it is being concluded. We are not starting something afresh. That is very critical.

Secondly, as the Minister said, the interpretation must be in the spirit of the Constitution. The Constitution requires the Commission for the Implementation of the Constitution to be up and running. We will be in breach if we do not have that Commission up and running. What will the hon. Member have us do? Stop implementing the Constitution? This is because the Constitution says that if we do not do it within a certain time we can extend that time. However, if you extend that time the requirement is that you actually do the act. We are doing the act of concluding the setting up of this Commission. We are in the spirit of the Constitution.

Mr. Temporary Deputy Speaker, Sir, we should proceed.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, the point raised by my good friend Dr. Nuh is valid, but he is also quite alive to the considerations that other hon. Members have raised, including hon. Mutula Kilonzo, hon. Karua and the two chairs. It is, therefore, the considered opinion of the Chair that in the interest of taking this matter forward; in the interest of implementing the Constitution; and, given that this matter has already been active, we have now come to another stage where we can actually conclude it. The law is very clear.

You cannot bring interpretation of the Constitution to the Chair *per se*. You can seek recourse to the High Court. For now the Chair will facilitate the implementation of the Constitution. So, I rule that your point of order is out and we proceed.

Hon. A. Abdalla had the Floor!

Ms. A. Abdalla: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to support this Motion.

Mr. Temporary Deputy Speaker, Sir, it was very clear from the work that we have done that Parliament is more equipped to do vetting than interviews because in interviews you want to find out somebody's qualifications. However, in vetting, you want to assure yourself on those other doubts you may have apart from their qualification. As a person who has been in all the processes this House has undertaken of recruiting commissioners, this was the first time that I saw Parliament fitting into the job that we were doing.

Mr. Temporary Deputy Speaker, Sir, having said that, the importance of having a vetting law cannot be overstated. The Executive gave us a very short time to vet these nominees. We needed to be give ample time, so that members of the public with any issues could raise them. It is very important that the vetting law gives the shortest period that the Committee should be given to vet and also limit the length. In the issue of the Judicial Service Commission (JSC) we overextended. Indeed, it almost looked like a fishing mission.

Mr. Temporary Deputy Speaker, Sir, having said that, I want to raise why vetting is important in line with the roles of Parliament. There are two candidates in this list who have been interviewed by a Committee of this House before. A whisper campaign was used to eliminate them from the process. This vetting process gave us an opportunity to actually question those whisper campaigns. In the process, some of the things we found out were that some of these whisper campaigns are actually witch-hunts, where a person who is a victim becomes an accused. I want to give the example of Mr. Mwaisaka. The Public Service Commission (PSC) found this applicant so competent. However, there was a whisper campaign that he was in the Ndung'u Report. It was alleged that he was a land grabber and this was used to eliminate this gentleman. Our vetting process was able to show us that this gentleman was a victim of other land grabbers. He had three court cases to prove that he was a victim. So, I clearly want to mention in this House that if we have issues on a personal level, we must have the confidence of coming to the vetting Committee and present the matters, rather than using the Floor of this House to tarnish other people's names.

The same case was with Ms. Muma. She has the same scenario. Personally, because of the smear campaign I was of the opinion the lady "ate" public funds. However, when she came to the Committee the story was totally different. We must learn to avoid whisper campaigns that will tarnish people's names, when there are no facts to support that allegation.

With those many remarks, I beg to support.

Mr. Kapondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am rising on a point of order because I have an amendment to move.

The Temporary Deputy Speaker (Mr. Ethuro): You are completely out of order, hon. Kapondi. The Chair is aware that you have an amendment, you rise to contribute.

So, you do not rise on a point of order to bring an amendment.

Mr. Affey: Mr. Temporary Deputy Speaker, Sir, thank you for giving me an opportunity to contribute to this very important Motion. I support the report as submitted by the Committee. These are competent Kenyans whom we must give an opportunity to function.

Mr. Deputy Speaker, Sir, as I support all the nominees on this list, I want to appeal to this very important Commission to ensure that whatever they do, they must always reflect the spirit of the Constitution. The spirit of the Constitution demands that any particular constitutional commission established must reflect the needs of the country. We had a quarrel just yesterday about a Commission which was established under Agenda Four. If that Commission actually reflected the spirit of the Constitution, perhaps, we would not have quarreled yesterday. Therefore, the important thing is that when we establish these Commissions, their membership must understand that they are not going there to earn salaries, but are going to be there on behalf of the more than 40 million Kenyans.

Therefore, as I support this Motion fully, let us ask the membership of the Commission to respect the spirit and text of the Constitution.

Mr. Gunda: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to the Motion. I would like to start by saying that I support the Motion, but I beg that you allow me to move an amendment.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. The rules of this House are clear, that an hon. Member can only contribute to a matter once. If my recollection is correct, hon. Gunda has contributed to this Motion. We need clarification.

The Temporary Deputy Speaker (Mr. Ethuro): That is right. Let me just confirm from our list.

(The Chair referred to the running order)

Hon. Gunda, you had contributed to the Motion. So, you cannot make another contribution to the same Motion.

Yes, hon. Kapondi!

Mr. Kapondi: Mr. Temporary Deputy Speaker, Sir, I thank you very much for giving me the opportunity to contribute to this very important Motion. The country has been waiting for a long time with bated breath for this House to pass the Commission for the Implementation of the Constitution. At the outset, I want to state very clearly that I am in support of the Commission for the Implementation of the Constitution subject to some amendments. The reason as to why I am coming up with these amendments, considering---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, hon. Kapondi! You run the risk of contributing twice. Proceed with the amendment and then make your contribution.

Mr. Kapondi: Mr. Temporary Deputy Speaker, Sir, I beg to move that the Motion be amended to read as follows:-

THAT, pursuant to the provisions of Section 8(6) of the Commission for the Implementation of the Constitution Act, 2010, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the appointment of the Chairperson and Members of the Commission for the Implementation of the Constitution, laid on the Table of the House on Thursday, November 25, 2010, subject to the deletion of the name "Dr. Florence Omosa" appearing in Paragraph 1(a) of the Committee's Recommendations on page 12 of the Report.

Mr. Temporary Deputy Speaker, Sir, I want to make my reasons for moving this amendment very clear. Dr. Florence Omosa is very qualified but the simple reason is that Nyanza as a region is over-represented on the proposed Commission. The Constitution is very clear in Article 50 that the Commission shall reflect the regional and ethnic diversity of the people of the Republic of Kenya.

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

[Mr. Deputy Speaker took the Chair]

That being the case, I wish that the House can recommend Dr. Florence Omosa for appointment to another Commission, there being so many other Commissions to be formed, so that---

(Mr. Affey stood up in his place)

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

Mr. Kapondi: Mr. Deputy Speaker, Sir, let me conclude.

Mr. Deputy Speaker: Are you moving an amendment, Mr. Kapondi?

Mr. Kapondi: Mr. Deputy Speaker, Sir, I have moved and I am contributing.

Mr. Deputy Speaker: In that case, you can accept a point of order.

Mr. Kapondi: Not yet because it has not been seconded. During the Referendum, the Rift Valley region opposed the Constitution. We shall be passing a wrong image that the entire region is excluded from the Committee on the Implementation of the Constitution.

With those few remarks, I wish to request hon. Konchella to second the amendment.

Mr. Konchella: Thank you, Mr. Deputy Speaker, Sir. I stand to support this amendment. In so doing, I know very well that none of the Members who are here has any adverse report or problem in terms of their integrity or capability. Here, we are dealing with the issue of fairness. Before the new Constitution came into effect, the entire Rift Valley had 10 million people. When you have 10 million people who cannot be represented in the making of the constitution, I think it is unfair. We have no issue with Dr. Florence Omosa. No, she is a Kenyan, she can even get to any other committee but we want to balance because we need the issue of fairness. This is what this Constitution is all about. We also have a wonderful chairman from the same region. I support the candidacy of that chairman, because I think he is very capable and nobody has issues with him. But here, we are talking about over-representation so that Rift Valley can nominate one person. We are not saying who should be there---

Mr. Deputy Speaker: Order, hon. Konchella! You have not mentioned any names. What are you doing?

Mr. Konchella: Mr. Deputy Speaker, Sir, I am seconding Kapondi's Motion to delete the name of Dr. Florence Omosa. I support it because we want due representation of the Rift Valley. As I said, it is only fair so that 10 million Kenyans can also get representation in the Committee on Implementation of the Constitution.

(Question, that the words to be left out be left out, proposed)

Mr. Affey: Mr. Deputy Speaker, Sir, I rise to oppose this amendment. First of all, as the Chairman of the Parliamentary Committee on Equal Opportunities, I have a particular responsibility to speak for the women of this country. On this particular one, it is not easy for the House to discuss a certain nominee based on the name when there is no evidence that this nominee comes from a certain region. There are very many Kenyans who are born in every part of this country. If my son is born in Kisii, he has a national identity card that reflects the home district. There is no possibility for us to use the Floor of the House to do elimination. Dr. Florence Omosa is a qualified Kenyan and she was interviewed and nominated. She is a woman, so let us not use the Floor of the House to deny Kenyan women an opportunity to serve in this Commission.

I beg to oppose.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaissey): Mr. Deputy Speaker, Sir, I stand here to oppose the amendment.

I think it is high time this august House speaks for Kenyans. Every Kenyan has the opportunity to see to it that this Constitution is fully implemented. I do not see any quality a person will bring to the implementation of the Constitution by being from a particular region. Therefore, removing the lady so that somebody from the Rift Valley Province to which I belong--- Which part of the Rift Valley? Is it Kajiado County, Narok County or which county? We have no regions any more. Let us behave like Kenyans. Let us behave as leaders.

I beg to oppose.

Mr. Ruto: Mr. Deputy Speaker, Sir, I rise to support the amendment. It is, indeed, important that we reflect the spirit of the Constitution. The Constitution talks about regional representation. It says the Commission should reflect the ethnic balance of the Republic. We should seek to achieve that from the very beginning. It is my considered opinion that it is absolutely unfair to lock out an entire region like Rift Valley, with 25 per cent of the population of the Republic of Kenya, from being represented in this Commission. We are saying that it is important that this amendment be considered soberly by the House. We should not allow emotions to run high.

I beg to support.

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Deputy Speaker, Sir, I wish to strongly oppose this amendment. It is only on a few occasions that we have women being appointed to those seats. We do not want another woman. We want that woman. She is qualified and when I checked last, we did not have a region called Rift Valley. We have counties.

So, I beg to oppose the amendment.

The Minister for Public Works (Mr. Obure): Mr. Deputy Speaker, Sir, I stand here to oppose this amendment because I think it would be a disaster if it was passed. It would be conveying a very bad message to the country. I happen to know that lady. I have met her on several occasions. She is a very highly qualified person. She is a PhD holder. It is prejudicial and, indeed, very wrong to assume that she comes from Nyanza. I am aware that she comes from Nairobi. She is a resident of Nairobi. The mere fact that somebody thinks she comes from Nyanza is so unfortunate. I do not think we should bring this House to a level where we start thinking about ethnicity and all that. We are talking about merit and qualification in this particular case. This amendment should be opposed and I oppose it very strongly.

*(Question, that the words to be left out be left out,
put and negatived)*

(Debate on the original Motion resumed)

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Since this matter has been canvassed at great length, could the Mover be called upon to reply?

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

Mr. Namwamba: Mr. Deputy Speaker, Sir, in concluding this Motion, the only point I wish to point to the House is that the Committee has been working under intense pressure because of the lengthy time taken by the nominating bodies to forward nominees to this House. I want to plead that for the remaining organs involved in the implementation of the Constitution, may the nominating bodies exercise their mandate diligently, so that we can have sufficient time to undertake this mandate.

I beg to move.

(Question put and agreed to)

ADOPTION OF REPORT ON APPOINTMENT OF CHAIRPERSON/MEMBERS
OF COMMISSION ON REVENUE ALLOCATION

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the appointment of Chairperson and Members of the Commission on Revenue Allocation laid on the Table of the House on Thursday, 25th November 2010.

(Resumption of Debate interrupted on 25.11.2010)

(Mr. Namwamba on 25.11.2011)

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to the debate on this very important Motion. From the outset, I support the Motion.

The Commission on Revenue Allocation is a very important Commission for this country. It is one of the basic reasons why Kenyans agitated for a new Constitution based on the understanding that resource allocation has not been equitably done in the past. I believe that Kenyans who have been proposed to serve in this Commission have a very enormous task to ensure that resources in this country are equitably allocated.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! My presumption is that all the Members would want to participate in this debate and do not see themselves outside the House.

Proceed, hon. ole Metito!

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Thank you, Mr. Deputy Speaker, Sir. The Commission on Revenue Allocation forms one of the vital and basic reasons why Kenyans agitated for a new Constitution. It has been alleged that in the past, resources in this country have not been equitably allocated.

I am so happy with the membership of this Commission, more importantly, the proposed Chairman of this Commission, Mr. Micah Cheserem, who is one of the best accountants that we have in the East and Central Africa.

Mr. Deputy Speaker, Sir, if we look at the allocation of the mere 2.5 per cent that was allocated through the Constituencies Development Fund (CDF) in this country, we will find that it has done a great deal in the development of this country. Now that we are going to have counties, which will be the basic units for resource allocation, the 15 per cent proposed in the Constitution as the devolved funds, a proper criteria should be used by this Commission. Currently, we have problems even with the allocation. You can see that the CDF allocation for this year has been challenged in court and it is because there are some Kenyans who felt aggrieved that proper resource allocation method has not been used.

So, I appeal to the proposed Commission that they rise above board and come up with a very good structure, method or formula on resource allocation that will be acceptable by all Kenyans. What is critical is what has been called poverty index in this country. There has not been a very clear poverty index survey that has been done in this country that has been acceptable to all regions. So, maybe one of the first things that this Commission needs to take into account is to come up with a thorough, detailed and very inclusive poverty survey report for this country that can be used as a basis for resource allocation.

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

Ms. Karua: Mr. Deputy Speaker, Sir, I beg to support his Motion subject to an amendment which I seek to introduce.

Mr. Deputy Speaker, Sir, the Committee did go through the names, but the actual interviews were conducted by a panel of political parties. I seek to move an amendment to the Motion by inserting some words.

Mr. Deputy Speaker, Sir, I beg to move that the Motion be amended as follows:-

By deleting all the words appearing on page 11 of the Report and reinstating the name of Mrs. Amina Ahmed as a member of the Commission.

(Applause)

Mr. Deputy Speaker, Sir, the background to this is this. Members of the Commission on Revenue Allocation are appointed by political parties. NARC(K) did appoint Mrs. Amina Ahmed and we sat on a panel as political parties, we went through their resumes and we found them qualified. On Mrs. Amina Ahmed, she has been a regional manager of the Kenya Commercial Bank for the last 22 years; she is a holder of Bachelors Degree in Economics and French; she has extensive banking experience and currently, she is working as a consultant in an audit and management firm. If you look at the Constitution, you will find that the qualification is that you have a financial background. Clearly, this lady is qualified. If you go to the Committee Report, you will find that the Committee merely says that she did not appear to have the knowledge---

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

Mr. Deputy Speaker: Order, Mr. Shakeel!

Mr. Deputy Speaker: Order. Hon. Shakeel! Hon. Shakeel, when the Chair says order, you obey. You have been in this Parliament for three years now. She is moving an amendment. You will have your opportunity to contribute.

Proceed, Ms. Karua.

Ms. Karua: Thank you, Mr. Deputy Speaker, Sir. All that the Committee says is that it did not find her--- She lacks the level of knowledge and expertise required for the position of a member of the Commission. One wonders where expertise is required, because the Constitution requires knowledge in financial matters. I want to urge the House to support the amendment. This lady is eminently qualified and the Committee's work was not to interview. There is a difference between interview and vetting. Interview is where you check qualifications for the job. Vetting is a background check of the moral probity generally of the person you are vetting. The Committee is not saying that the lady is morally unfit. It is saying that she is not qualified, whereas her qualifications, as stipulated in the Constitution, clearly show she is qualified. This is a question of using a different and discriminatory standard on a lady who is eminently qualified.

I want to plead with the House that as we support the Report of this Committee, subject to this amendment, we agree to restore the name of Amina Ahmed to this Commission as a nominee of NARC(K).

I beg to move. I will be seconded by Mr. Affey.

Mr. Affey: Mr. Deputy Speaker, Sir, today is the day to protect the women of Kenya. As the Chairman of the Committee on Equal Opportunities of this House, this Report is talking about the nominating party. None other than the party leader of NARC(K) has just spoken. NARC(K) has full confidence in Amina Ahmed. Even if they were told to nominate somebody else, they would still nominate Amina Ahmed as NARC(K). Therefore, I would like to plead with the House to maintain the list as submitted to Parliament by the nominating parties. The list, as it is, does not exclude nominating parties from---

I support this amendment. Let the House support this amendment in the interests of the women of Kenya.

I support.

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

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, one of the criteria for including a member in a Committee of this magnitude is being very conversant with the financial management and matters. I take note that this lady was at the University of Nairobi at the same time as Eng. Mahamud and Ms. Karua. She is also a very competent financial manager, having risen to a high position in one of our major commercial banks in this country. Besides that she is a consultant. I think it would be unfair to deprive her of the opportunity to serve in this very important Commission. Besides, she hails from an area that I have a very soft spot for, because of past lost opportunities. Therefore, I strongly support the amendment for her inclusion in this body.

The Assistant Minister for East African Community (Mr. Munya): Mr. Deputy Speaker, Sir, I want to support that amendment. If you look at the Report, you will see a contradiction. The Committee says that she is qualified and she has worked for a number of years. At the end, they say she is not qualified. So, you are lost. Unless the Committee was motivated by other issues, which we do not know, this lady is more qualified than some of the people who are in the Report and, therefore, must be a member of the Commission.

The Committee is a delegate of this House; so, we are not obliged to accept everything that they give us. We are supposed to scrutinize what they submit to see whether they did their work the right way. Even though we are very happy with the Committee in most of the other reports it has submitted, in this particular instance, I think they were not right.

Therefore, I support the amendment.

Prof. Kaloki: On a point of order, Mr. Deputy Speaker, Sir. Is it really right and in order for hon. Munya to mislead this House that the Committee on Finance, Planning and Trade did conflict itself in the recommendations? We have been very clear and brought out the experience of all candidates. Hon. Munya is misleading the House.

Mr. Nyambati: Thank you so much for the opportunity, Mr. Deputy Speaker, Sir. This is the time when we must support the women of this country. This gracious lady was a regional manager for 22 years for God's sake. What else do you want? This lady speaks even French, the loving language.

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

Mr. Deputy Speaker: Yes, hon. Ali Hassan Joho!

Mr. Joho: Asante sana, Bw. Naibu Spika---

Mr. Ruteere: On a point of order, Mr. Deputy Speaker, Sir. Going by the mood of the House, could I request that you put the Question?

Hon. Members: Yes!

Mr. Deputy Speaker: Order! I will now put the Question.

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

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

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

(Question of the Motion as amended proposed)

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

Resolved accordingly:-

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the appointment of Chairperson and Members of the Commission on Revenue Allocation laid on the Table of the House on Thursday, 25th November, 2010 subject to the deletion of all the words appearing on page 11 of the Report and reinstating the name of Mrs. Amina Ahmed as a Member of the Commission.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Given the fact that this matter has already been canvassed---

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

Proceed, hon. Kimunya!

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, we are discussing a very important Commission that is going to determine how Kenya is developed in the future and our resources are going to be allocated. It would be unfortunate if Members took the seriousness out of that by joking about it.

Mr. Deputy Speaker, Sir, I wish to congratulate this House for that amendment that has just taken place to reinstate the Member who would have been excluded for reasons other than qualifications.

Mr. Deputy Speaker, Sir, as I support this Report by the Committee, subject to that amendment that has been made, I would like to just mention one thing: This is the third Commission that we are setting and approving in this House. An issue has arisen in this House about the geographical distribution of the Commissioners. I just want to alert the House as we move, especially to call the attention of the Oversight Committee that we have given the mandate of vetting these names as they come – that one thing that we need to be cautious of is that the Constitution wants the whole country to be represented within these Commissions.

I think that undertaking is provided for by all the Commissions. The only way to do that is by looking at the 47 counties that have been set up in the Constitution. I would like to ask the Committee, as we go on recess and as they look at the next issue; to prepare a matrix showing all the Commissions that need to be appointed; showing all the 47 counties and dividing that with the number of Commissioners so that, as much as possible, we can have equal representation of Commissioners spread across the 47 counties. We should not end up with a situation where we are only looking at the ethnic diversity. It would be very unfortunate for Kenya if, for example all the names from community “x” are from county “y”. That is not what we want to do. So, I would like to ask for social cohesion of this country.

Let us make sure we have that matrix to show that, at least, every county will have two Commissioners in each Commission spread out throughout the entire country for social cohesion and for the people of Kenya to feel that they are represented in every Commission. Therefore, we should not just look at ethnic diversity or broad region diversity. Every county must feel that it is part of decision-making in the new constitutional framework.

With those words, I beg to support.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. Looking at the mood of the House, it seems as if everybody is in agreement and we are now being repetitive. Would I be in order to ask you to call upon the Mover to reply?

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

Prof. Kaloki: Mr. Deputy Speaker, Sir, I take this opportunity to thank all hon. Members for contributing and supporting the appointment of the Chairman, Mr. Micah

Cheserem and Members, Prof. Raphael Munavu, Prof. Kimura, Prof. Masai, Mr. Meshack Onyango, Mrs. Rose Osoro, Mrs. Fatuma Abdi Kadir and Mrs. Amina Ahmed. I beg to move.

(Question put and agreed to)

REPEAL OF INTERNATIONAL CRIMES ACT

Mr. Ruto: Mr. Deputy Speaker, Sir, I beg to move 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 emphasized 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.

Mr. Deputy Speaker, Sir, the reasons I am moving this Motion are similar to the ones I gave while moving the previous Motion. I would not like to repeat myself other than to say that today, we have just passed the Judicial Service Commissioners. We believe that immediately thereafter, there will be a completely new Judiciary that is capable of handling most of the problems that all along we thought could not be handled. I believe that we have the capacity to handle these matters.

With regard to the International Crimes Act, it is possible to bring in another Bill to continue to criminalize the crimes that have been mentioned by that Act.

Mr. Deputy Speaker, Sir, I do not want to say much. However, I would like to ask Mr. Kioni to second.

Mr. Kioni: Mr. Deputy Speaker, Sir, I rise to second the Motion for the same reasons I had adduced when the previous Motion was on the Floor. If you look at Article 17(3) of the Rome Statute, you will find that there is an inference that in order to determine the inability in a particular case, the court shall consider whether due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony to or otherwise unable to carry out the proceedings. The ICC must satisfy itself that the State is unable to one, apprehend the accused; two, that the judicial system has completely failed; and, three it is unable to even allow a proper prosecution process.

Our country is not in that category. The fact that we have just passed a Motion on the need to form a Judicial Service Commission allows us to be able to claim that the reforms within the Judiciary are on course and we are in a position to carry out the necessary prosecution on the perpetrators of post-election violence.

It is important that we remove the notion that this Motion intends to deny those in the IDP camps fair justice or an opportunity for their case to be heard. The reforms we

are undertaking within the Judiciary are, first and foremost, meant to ensure that we have a Judiciary that is fair, accessible and will not carry on the culture of impunity.

Mr. Deputy Speaker, Sir, we also have reforms on the way in the Attorney-General's Office in line with the provisions of the Constitution so that prosecution of those involved in the post-election violence, is undertaken. It is important to note that this does not in any way also remove the need for compensation for those who suffered because of our behavior prior and after the elections of 2007.

In addition to that, this process is not quite devoid of politics. I want to read a paragraph from a document that was done by His Excellency the Ambassador, Mr. Michael Rannenberger. It was sent to Mr. Carson. It reads:

“Providing support for witness protection will significantly improve the odds that the ICC would be able to indict several key suspects of post-election violence.

Such indictments particularly, if they are public, would be a major blow to the culture of impunity and likely help alter the political dynamics in a positive way”.

Mr. Deputy Speaker, Sir, this is a letter done by His Excellency the Ambassador of the United States, who is saying that in the event these names are read in public--- So, even the reading of the names in public by Ocampo was a thing that has been agreed upon outside the ICC. On top of that, there was the intention of altering the political dynamics in this country.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members. Hon. Kioni has to be heard.

Mr. Kioni: Mr. Deputy Speaker, Sir, I was saying that the letter written by His Excellency the Ambassador of the US to Carson clearly indicates that they are funding the witnesses who are out there. I want to remind Members that the US itself withdrew from the ICC. However, they are spending money to fund witnesses to the ICC process. The way they are doing it is, one; they wanted this done in public just like Ocampo did. He read the names in public. Secondly, the intended outcome is to change the political dynamics in our country in a positive way. They know what is positive and what is negative. It is upon this House to decide whether we would want to continue surrendering our sovereignty to others out there. I know others may have referred to Mr. Ocampo as the third principal in this country. However, it a question of where it is, that we hold ourselves. Yes, we put in ourselves in problems. But it is important that we make sure that we get out of it with dignity. Today, we have made a bold step. We are capable of sorting out our own issues. Let us not hide under anything else. Let us not sell ourselves wholesale to the international community like people who have no dignity and people who cannot do their own things. We do not belong to the category of failed states.

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

(Question proposed)

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I rise to support this Motion.

Mr. Deputy Speaker, Sir, first I want to correct the impression created that those who are supporting this Motion, are, indeed, devising a way of trying to aid and abate the

Ocampo Six from evading justice. That is far from the truth. We are very much interested in justice being done for those six. We have no problem with the six being prosecuted through the international criminal justice system under the ICC. What we are against is what we have seen as blatant politicization of this process.

We have our own views, which it is our duty as Kenyans to express. The six persons on Ocampo's list are not even suspects as we speak. They are potential suspects. It is not until after the summons have been issued against them that they will officially become suspects. It is only at that moment that even some of the things that Mr. Ocampo is talking about can be talked about. Personally, I cannot imagine somebody like Amb. Muthaura raping any woman leave alone, committing mass rape.

Mr. Deputy Speaker, Sir, the International Crimes Act, which this Motion seeks to repeal, was passed when this country was going through very difficult circumstances. The date of its assent was December, 2008. You will recall that we were not party to the Rome Statute. The statute was not incorporated into the Laws of Kenya until eight months after the post-election violence. At that moment in time, the national judicial system was very weak. There were lots of investigations going on, but our Judiciary could not cope at that particular time.

From the time when this Act was passed, things have fundamentally changed in this country. There were people who could not greet each other, but they now have tea together. I was very pleased when we went to the Rift Valley and found a group of Kalenjin women who were contributing money to assist members of the Kikuyu community to build houses which had been burnt down.

Mr. Deputy Speaker, Sir, as a country, we should be encouraging those initiatives, because God is the one who put those neighbours together. Nobody decided: "This is the person who is going to be my neighbour". We should encourage them to continue to live in peace, security and we develop this country together.

As I was saying, there has been a fundamental change of circumstances. We have now passed the new Constitution and within the next two months or so, our Judiciary will have radically changed. There will be a new Chief Justice. A Director of Prosecutions will have been appointed. Maybe, there will be changes in the Office of the Attorney-General. The judges will have been vetted.

Mr. Deputy Speaker, Sir, the fears that we had when we were introducing the international criminal justice system to support our justice system here are no longer there. Our Constitution does even empower courts to try crimes against humanity. So, there is nothing we cannot handle.

We are not saying that this change is going to affect the trial of those six persons. What we are saying is that, as a sovereign country, there is no other Kenyan who is going to be tried at The Hague. Let those six go. We have learnt our lessons. From now on, all Kenyans will be tried on Kenyan soil. That is the position in the United States of America. I do not know why that is not the position here.

Mr. Deputy Speaker, Sir, the ICC is a court of last resort. With an empowered national judicial system, there will be no need for the ICC. I have read a lot on the ICC. It is not strictly an international court. The ICC is a colonial and imperialist court.

(Applause)

If you look at the signatories to the statute, you will see that only African and former colonies appear to be tried at the ICC; this is so for the other former colonies, which are now called “Eastern Europe”. There will be no American who will ever be tried at the ICC. No Briton will be tried at the ICC. No French will be tried at ICC. Why should we allow ourselves, as independent countries, to willingly go back into colonial and neo-colonial situations?

It is our duty to protect the fundamental interests of Kenyans; it is our duty not to return this country to colonialism. So, having learnt our lesson, time has come to repeal the International Crimes Act because our courts can cope. Following the mechanisms in the Treaty, a notice be given to the UN Secretary General--- It will take exactly one year from now but we shall know once that notice takes effect, there will be no Kenyan, my son will never go there, your daughter will never go there and Kenyans will be safe to be tried in our own courts.

With those few remarks, I beg to support.

Ms. Karua: Thank you, Mr. Deputy Speaker, Sir. I rise to oppose the Motion. I just want us to go down memory lane. On 16th December 2008, the two principals signed an agreement committing themselves to within sixty days, whip their troops to enable Parliament to pass a statute for a local tribunal. This Parliament failed and the principals failed, because they did not marshal their troops. I was the Minister then, I was begging to come in here and contribute; they did not. I was begging you, as Members, we failed. The ICC has not come for us. We actually beckoned it. The agreement signed by the principals stated that if a local tribunal is not formed within sixty days, then the ICC can come in. So the ICC is here, by virtual of invitation of none other than the two principals and by extension, Parliament, by failing to pass the local tribunal.

Mr. Deputy Speaker, Sir, I for one, advocated for a local tribunal because it can adequately deal with the issues of trying the masterminds as well as the other offenders. Even now when the Ocampo six are tried or prosecuted, it does not completely solve the matter. We still need to deal with the other pending cases. But I am wondering about this sudden change of heart. Is it sincere? Why did it not come before Ocampo disclosed his list? My mind is telling me this is not genuine and I am entitled to my view, however wrong. I am wondering; is all the hullabaloo because people are under investigations because rightly, they are not indicted? It is just a list of people under investigation. If you look at how we are behaving as Members of Parliament, we are saying we are untouchable, we cannot even be investigated. Anybody else can be investigated but not Parliament. Even where it involves murder, mass rape, looting and burning of property, we are saying we are untouchable. If Kenyans have been wondering about the definition of impunity, this is the base of impunity. If we were worried that the courts would not be fair---

(Mr. Ruto stood up in his place)

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to request her to declare her interest; whether she could easily prove it from spiriting away some of the Ocampo six?

Mr. Deputy Speaker: Order! Order!

Ms. Karua: I will ignore that, Mr. Deputy Speaker, Sir. I begged this Parliament to pass the local tribunal, I will keep on repeating. If indeed there is any misfortune by the ICC investigating this Parliament and the very Member now raising a point of order is the chief architect of that particular misfortune. He was one of those who vehemently opposed the local tribunal saying: "Do not be vague, ask for the Hague." You asked for the Hague, hon. Member, and other hon. Members.

Mr. Deputy Speaker, Sir, I want to say this. The full beneficiaries of trials at the Hague will be justice and the victims of the Post-Election Violence (PEV). I say due process has two sides of it. If there is no evidence, you are cleared and you get out of it. If there is evidence, you are condemned. Those are the two sides.

I am beginning to feel a little afraid that there may be manipulation of the renewal of the judicial process because it is clear that there is a belief that Members of Parliament or people in authority can evade justice. We have not seen any prosecutions that have succeeded, arising from the PEV. Very low level offenders--- We have not had convictions for murder and burning of property or looting. We have not had prosecutions for any serious crime. So, how are we going to believe that, that is going to be done now? We must think of the victims as we think about ourselves. We are called upon to represent people, not our individual interests in this House. I know that a majority of Kenyans want to see the trial of the masterminds at the Hague. They want our courts renewed for justice to be done here.

Mr. Deputy Speaker, Sir, I want to say this: The fact that the Government has failed so far to appoint a Director of Public Prosecutions as per the Constitution; the fact that there have been no police reforms so far; the fact that an Attorney-General has not been appointed is clear indication that it is business as usual, unless the Government is pushed. Hear you people of Kenya that unless we collectively push for change, it is clear that the leadership in this country is determined to cover up for their misdeeds and let Kenyans suffer injustice. It is time we stood up for the truth and justice. Nobody should ever be condemned for something they never did. I stand even for those I do not agree with; that nobody should ever be condemned for something they never did. Let the course of justice flow. Let the river of justice flow. Let whoever thinks is being accused wrongly stand up and put his or her defence.

I have seen partisanship in the way we are handling issues. I want to be on record that this is a sad day for Kenya. We should not withdraw from the ICC process merely because it is politicians and top people who have been named. What about the chicken thief? Do we abolish the courts today? What about the person who beat up the neighbour? Are we going to abolish the tribunal? This trend is dangerous. It is a setback for this country. The intolerance I see around does not bond well for Kenya. I want to beg hon. Members to reconsider and let the river of justice flow.

I beg to support.

(Laughter)

Mr. Deputy Speaker, Sir, I beg, in the strongest terms possible, to oppose this very unfortunate misguided Motion.

Mr. Koech: On a point of order, Mr. Deputy Speaker, Sir. All Motions appearing in the Order Paper are cleared by the House Business Committee (HBC). If you heard the

Member who has just spoken, she has referred to this Motion as a misguided Motion. Is she in order to refer to it that way?

Mr. Deputy Speaker: Maj. (Rtd). Sugow, please proceed! I think misguided is parliamentary language. The hon. Member has expressed her own opinion.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Deputy Speaker, Sir, I stand here to support this Motion.

I think we need to separate the two issues; the question of taking our sovereignty back and the issue of trying to exonerate the Ocampo Six. Those are two different matters. We may have made a mistake. What we are saying is that we need to correct the mistake we made in the past; the question of selling our sovereignty.

We need to go back to the drawing board. In the spirit of the new Constitution and the new foundation, we need to start respecting the institutions that we are putting in place and the ones that exist today in this country.

With that, I strongly support this Motion, so that we, as a nation, can take our dignity back and repeal this Act.

Mr. G. Nyamweya: Thank you, Mr. Deputy Speaker, Sir. I would like to remind some of those who are opposed to this Motion that at the very beginning, I was opposed to even taking Kenya to the ICC or even signing the Rome Treaty. So, let us not be told that we necessarily made a mistake. Even if we made a mistake, it is for us to correct it and not anybody else. We must ask ourselves what is in the interest of Kenya. I heard and we all heard that Kenya was going to be made an example of the rest of the countries in the world. Is it in our example to pamper to the rest of the world, so that we are playing a tune that does not serve our country? What was the problem in the country? That is what we should be asking ourselves. How can we resolve whatever caused those problems? It cannot be by asking others somewhere in Europe and elsewhere to come and solve our problems. It is us here, sitting very calmly and sobering and deciding to move this country forward. What do we need to do?

We have a new Constitution whose implementation we are grappling with. This will be very challenging. It cannot be implemented by allowing others from outside who do not know what challenges we face to come and help us. We are not saying that we do not respect our international commitments. I would like to commend my friend who said that we must separate the two issues. For those who will be pursued by a process which we entered into, that will take its logical conclusion. However, it does not mean that Kenya must be held to this statute forever. We must get to a point where we trust and respect each other. There is a Kenyan judge in the Hague, namely, Justice Joyce Aluoch. How can we trust her there, but not trust her here at home? Let us trust one another, build confidence in ourselves and start putting these institutions to work. That is what we need. We cannot forsake our solemn duty. We must stabilize this country and start looking at where we want to go.

We have been distracted too much by all these partisan issues. Before we go for Christmas, let us give a good message to Kenyans that whatever teething problems we had, as a country, with the new Constitution, we are overcoming them. We need to give hope to Kenyans and earn self respect and dignity. I would never wish to be tried by anyone other than a Kenyan, if I ever fell into problems. I would want to urge that those who think that they are doing a service to Kenya by urging that those people be dealt with elsewhere, they are not doing a service to us. You heard the emotions this morning about

our relationships with very powerful countries, but even if you have a powerful neighbour, that neighbour must respect you. Even if he helps you, it does not mean that he must lord it over you. Our final message to Kenyans tonight is that we are restoring our dignity and respect as a self respecting nation.

With those remarks, I strongly support the Motion.

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I rise to support the Motion.

(Applause)

I am supporting the Motion, conscious of the fact that we must deal with impunity in the country. I am supporting the Motion, conscious that we must put an end to what happened between 2007 and 2008. I am supporting the Motion, knowing that there are a few things that must be done. The Minister of State for Special Programs has promised that there will be no Internally Displaced Persons (IDPs) in December. We also have a Select Committee of this House that will deal with the IDP issue, which is our area of concern.

Mr. Deputy Speaker, Sir, I am not guilty of us changing our minds. I am changing it for the third time. The first time, I was not for The Hague. The reason I was not for the International Criminal Court (ICC) was informed by my participation in the JBA of the African Caribbean Pacific (ACP) and the European Union (EU) Parliamentary Assembly in February, 2008, before the Accord was signed. When we went for that meeting, sent by you, with hon. Kabando wa Kabando, as leader of delegation, I was subjected four times to presentation for Kenya. When I went before them, the issue, they said, was that they had five motions to censure Kenya. At that time, they said that Kenya is a failed state and that it must be dealt with as such. I remember that I had to talk to the African group and we passed that stage. We convinced them. Out of great support from the delegation from Uganda--- Uganda had in January, when we could not attend any of the meetings, fought for Kenya and said: "Kenya is not a failed state. We must wait for Kenya to come and speak for itself."

During that meeting, I realized one thing; that a failed state is a state that does not have a Government, and they said that Kenya is going there. We should start dealing with Kenya now. I had to talk to two factions of the EU – the Liberals and the Socialists – because they had different views. We were able to convince them in the third round. But, better still, we were there on 28th of February when the Accord between the Principles was signed. The next day, I went gallantly and I said: "You know, what I told you has come to pass. Our two principles have agreed and we are going to have a shared Government. Parliament has been recalled." And we had a standing ovation.

The thing that happened at that time was the fact that those who believed that Kenya had failed wanted to completely delink anything to do with Kenya and deal with Kenya the ICC way. That was the first time I heard about the ICC. Having come from a university, I did not know about the ICC. At that point, the delegations that were friendly to Kenya warned us that if we go the way of a failed state, we are in for it. I do remember a head of delegation from one of the islands, St. Vincent, telling us that Kenya has failed and it must be dealt with properly. We stood there, Kabando wa Kabando standing by me

and we said that we had not failed. What we said was that; “we have had problems and it has been agreed that a joint Government will be formed.”

That is why when I came here, I was not for the ICC because I was terrified by what it means to have a failed state, and that it is those states that are dealt with by the ICC. However, over time, and even when the Ms. Karua was presenting and fighting, I was always feeling that she is right. But I did not know how to convince ourselves because as we continue to discuss, it came out apparently that we had enough mistrust between ourselves and we could not even trust our own courts. So, again, I said that for the sake of fairness to the victims and those who have been suspected of crime, let us go to the Hague.

Mr. Deputy Speaker, Sir, today, I am standing here to a back a local tribunal. Why am I here? The reason I am here is the fact that I am disappointed by the ICC approach. When the ICC went ahead to name our six suspects, that was done in a manner that they were not actually naming innocent people. It looked like they had concluded the case. The manner in which it was sensationalized was very sad. All of us have mothers and we saw mothers in our newspapers feeling sad.

All of us have families and do not want to deal with each other in a manner that our families will be affected by our politics. The manner in which it was handled is enough for me to say if that is the procedure--- If ICC will not come to Kenya to actually investigate--- If they were not going to investigate before naming the suspects, then I ask myself a very big question: Who gave them the evidence they are saying they have? Which evidence did they use?

Why did they not collect their own evidence? If they had collected their own evidence, they would have been able to say; yes, I can name you. Telling the whole world that they were about to announce the names, to me was not--- They did not announce names after investigations. It is like you have already passed the verdict. So, where is the fairness in this process?

Mr. Deputy Speaker, Sir, in one of the sessions of the ACP-EU joint Assembly when we were in Papua New Guinea, this very topic of ICC and Africa was discussed in the committee where Kenya was sitting. We have now changed; we have moved to climate change and social services. We were in the political committee. It was amazing because it was the EU members who brought the topic and discussed why the ICC was dealing with Africa only. Was it meant for Africa or what was it meant for?

I think it is time that we questioned some of those things. It is very important for us to go back and ask ourselves why we lost trust in ourselves, so that we correct what must be corrected and start dealing with our issues.

It is very important to note that while we are saying that our Judiciary has failed, the international community is requesting us to use the same system to deal with the pirates. We are being told to use the same system to deal with the pirates; so, how can we use a system that we believe has failed?

I do agree that we took ourselves to the Hague but we have a right to change our minds. I do like the fact that even international agreements have a way of allowing you to change your mind if you want to do so. So, it is my considered opinion that we need to talk to ourselves as Kenyans. We need to agree that we have a new constitutional dispensation. We have a new Constitution that can be used to address a lot of things. We even have the TJRC. I think it is very important that this House considers how we can

actually revive the TJRC in a proper way; these are institutions that must be used by ourselves.

Today, I want to support this Motion and with those remarks, I support.

Ms. S. Abdalla: Mr. Deputy Speaker, Sir, I personally voted for the Hague with my very clear conscience, thinking that the post election violence would get justice. Unfortunately, the Hague has turned out to be part of the impunity. How do you subject an old man who has diligently served this country throughout his life, Amb. Muthaura, and take him to Hague? We woke up to a new dawn by giving ourselves a new Constitution. That is why even during that time before the new Constitution people like Prof. Anyang-Nyong'o and hon. Orengo decided to reclaim their stolen votes and go to the streets instead of the courts. Hon. Karua is the one who told them to go to the court and they said that there was no justice and decided to go to the streets.

Mr. Deputy Speaker, Sir, with the new Constitution, we have the Truth, Justice and Reconciliation Commission and the National Cohesion and Integration Commission. Also, our security system is in place. So, why do we not articulate our issues internally instead of subjecting our people to the Hague?

Mr. Deputy Speaker, Sir, Ocampo himself is a sex molester. He is on record to raping a woman journalist from South Africa. How can our women who have been raped get justice from somebody who is a rapist himself?

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

Mr. Deputy Speaker: Order! Order! Because of the intense interest by many Members, the Chair directs that every hon. Member will have only five minute for contribution.

The Assistant Minister for East African Community (Mr. Munya): Mr. Deputy Speaker, Sir, I rise to support this extremely important Motion. The unfortunate situation we found ourselves in during the post election violence invited a lot of external meddling in the affairs of this country.

Mr. Deputy Speaker, Sir, if you look at the other countries where people have allowed outsiders to unruly meddle in their affairs, the stability of those countries is never guaranteed. Now that we have been able to recollect ourselves, we are reforming our institutions; why do we need a foreign institution to try citizens of this country? Also, after passing the new Constitution, if you look at the new Constitution, we are supposed to relook at all the laws that we have passed before to see whether they conform to the new Constitution. The new Constitution requires that any treaty we want to subject Kenya to should go through this House. So, in view of the changed environment, we need to withdraw ourselves from that process of the Hague so that we can give our reformed courts an opportunity to provide justice to the victims of the post election violence.

Mr. Deputy Speaker, Sir, if you argue then that our courts cannot provide justice even when you have reformed them--- Unless you are doubting the reform process, we are already passing the legislations that are supposed to reform the courts. We are also going to vet the Judges. Are you saying that even after going through that process these Judges cannot try the post election violence suspects and that you only need a court based in a foreign country run by foreigners to be able to give justice that cannot be given domestically? I do not buy that kind of argument. In any case, the Rome Statute is supposed to complement a domestic process if the country that is dealing with that matter is not able to deal with it. It is a complementary process and not the only process. Since

we are able to do it ourselves, I do not see, again, why we should be able to go to those foreign courts to try our own citizens, especially where it is very clear that this court is a political tool. It is not a court by any standards. It is a political tool that is being manipulated to settle political scores and deal with political opponents and remove them from the scene, so that the so-called political environment can change. We already have a letter from an Ambassador saying that the names are being given publicly so that the political environment in Kenya can change. What other evidence do you need? It is very clear that this is not a court but an instrument to influence changes within Kenya to benefit particular people. Therefore, this cannot be allowed.

If you look at Africa and other developing countries, you will see they have been fighting racism for very many years. Even colonization to civilize Africa and slavery were given a good name. The *mzungus* came here to colonize and it was given very good names. Therefore, even this process can be clothed in very good names. It is justice for post-election violence. We are doing this so that Kenya can be stable. However, clearly, this is a process of re-colonization with *wazungus* thinking that we cannot handle our own affairs and, therefore, they want to handle them for ourselves. They have a clear agenda of interfering with the internal affairs of Kenya and influencing Kenyan politics towards a certain direction. That is why this Sovereign House, this Parliament, where the sovereignty of the country resides, must do whatever we can to restore the sovereignty of this country. The stability of Kenya depends on our own institutions. We strengthen our institutions to give us stability.

The stability of our country cannot depend on the trial of six people in a foreign country. If our stability depends on Mr. Ocampo, then we must be a very unfortunate country. I think our stability depends on reforms and putting together institutions that can stabilize this country in the long run and not one funny trial that is intended for political purposes.

With those few remarks, I beg to support.

Mr. Kutuny: Thank you Mr. Deputy Speaker, Sir. This is a momentous occasion. I rise to support this Motion. It is timely. It is a Motion that is going to end impunity, if I have to say so. Some hon. Members who have contributed to this Motion, I am surprised, have forgotten that they were the cause of the problems. A few years ago, this country was moving in the right direction when we had the Inter-Party Parliamentary Group (IPPG). The leaders we had at that time were very committed and respected democracy. However, some leaders we had at that time rubbished everything and termed it as a “gentleman’s agreement”. That was the beginning of the crisis that this country found itself in 2008. Today, they cannot claim they are holier than thou. They cannot pretend to be ending impunity whereas they are the cause of all these things. I respect Mr. Ocampo as a prosecutor in an international court. However, today, I wonder, as a layman - because I do not understand the law very well--- Investigations have to be carried out for one to be named and to be arraigned in court. As we know, Mr. Ocampo did not do any investigations. Instead, he relied on a Commission that, today, is pursuing personal interests and yet, it is called a Human Rights Commission. Instead of pursuing the interests of the common people who are suffering in this country; it is clearing the way for some other people whose agenda is the grandiose road map to the State House. How can we trust Mr. Ocampo who came to this country, met the two Principals in the

morning while, in the evening, he was meeting some other people? They crafted an agenda to make sure that some people are eliminated politically.

If you go through the material at the ICC, you will see that many people raised their concern about the competence of Mr. Ocampo and how he was handling the case of Mr. Lubanga of Congo. Even the lawyers raised a lot of concern. We expected Mr. Ocampo to raise issues after some people masquerading as witnesses raised some concerns that they were bribed to fix a few individuals in this country. However, Mr. Ocampo did not raise any issue. How do you trust such a person? This is the right time. If you want to unite this country, you should not fix two or six people. It is about bringing people together. I do not respect the issue of going to court. I do not respect the issue of going to the ICC. Let us bring Kenyans together and we move forward.

The Minister for Trade (Mr. Mwakwere): Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion. When we write the history of our misadventure with the ICC, my name will be mentioned. It was in 2005 when I appended my signature for and on behalf of the Government and the people of Kenya, to ratify the Rome Statute.

The logic used at that time was one that was giving us a lot of hope that eventually, the ICC would be a credible organ that would help us move in the right direction to bring peace and tranquility as a nation. Unfortunately, the reverse has happened. I am totally disappointed and ashamed that my signature appears there. When we take action in a matter like this where many Kenyans died, people were maimed for life and property destroyed, we should use that experience to ensure that it never happens again. If it happens again; because we are human and there is a probability, however, remote that something could trigger fighting in the whole country, we should look back and say that our fighting stopped in 2008 because of this and that reason. Those reasons are extremely important. Therefore, the ICC should have asked itself before it went ahead to name people. How did our fight stop in 2008? Did it stop because hon. Kofi Annan was in Nairobi? Is it because Graca Machel was here and our distinguished legislators were meeting at the Serena Hotel? Did all this fighting stop because we thought the ICC was coming to try some people in Kenya? The answer is no. We should ask ourselves: "How did the fighting stop?" That is a very important starting point.

Again, we have got to ask ourselves; People fought in Mombasa, in fact, in Kisauni seven people died. Did that happen because Amb. Muthaura got together with Major General Ali, Mr. Uhuru Kenyatta, Mr. Kosgey, Mr. Ruto and Mr. Sang, the journalist? Did they get together to say that the people of Kisauni should fight? What about Kibera? Is it because those six got together – I do not know under whose chairmanship – and ordered the people of Kibera to uproot railway lines? Are they the ones who are responsible for the gangs that were moving towards the centre of Nairobi to destroy it? How was that stopped?

The ICC just goes ahead and names people without doing any investigations. That makes me feel ashamed that we put our country in the hands of the ICC or the Rome Statute. We can withdraw and that should be now. It should also be a lesson not only to Kenyans, but the whole of Africa and the oppressed part of the globe. It is time to withdraw because there is neither fairness nor consideration on the plight of the people who should be helped. This is the time to withdraw because if we do not, then we shall be leaving under the threats of being taken as people who will serve as an example to the rest of the world. Surely, an individual who wants to be fair and impartial and wants to

assist does not issue a threat like that one and diminish the importance of a country like Kenya as one that will be used as an example for the rest of the world. I urge not only us to withdraw from the Rome Statute, but the rest of Africa if not beyond.

It is important that we did the needful. We domesticated the Rome Statute. That showed total sincerity on our part, but then we have a responsibility as law makers and leaders in this country to correct even the wrongs that we made. Indeed, it is time to put things right. It cannot be left to tomorrow. It has got to be now. We should all support this Motion. There is no crime that cannot be addressed in the country. The Rome Statute deals with crimes against humanity. Yes, we can say something serious happened in Kenya and, maybe, by definition that fits in that framework. However, we have a window here that as a country, we can have our own local mechanism and once we put it in place with the new Constitution there will be no need whatsoever, for the ICC to come on board.

I urge the likes of Ocampo to be professional and not just to create a scenario where they want to continue with employment at the ICC. They should lead as an example globally.

I beg to support this Motion.

Mr. Nyambati: Mr. Deputy Speaker, Sir, I rise to support the Motion. While I do so, I want to appreciate what hon. Karua said earlier. However, I want to remind her that when we were doing all this, we did not have a new Constitution in place. Now, we have a new Constitution. I think we should regain our dignity and sovereignty in this country. It is sad that a country like USA does not subscribe to this kind of treaty and yet, they are imposing it on us. It is unfair that this should happen. It is important that, we, as a country, stand on our own two feet and declare our sovereignty.

Mr. Deputy Speaker, Sir, Mr. Ocampo is not playing justice. He is playing politics. How can he pick three people from ODM and three people from PNU? Surely, is that fairness? That is, indeed, politics. If you see what has been happening, he has been in the Press just showing himself off like Kenya is a small colony for that country. It is very unfortunate that we have subscribed to that kind of Treaty in this country.

Mr. Deputy Speaker, Sir, I want to say, here and now, that we need to rescue our country. I know the events of the post-election violence were very unfortunate. We really must condemn all that. However, we have now come of age. Those who were fighting, the Prime Minister and President are eating together. We have reconciled. We need to embrace that reconciliation, so that we can move forward. So, we must open a new chapter in this country. We must condemn all those. We must put in place machineries, which would ensure that this kind of violence does not come again. However, if we allow Mr. Ocampo to do what he is doing, we are degrading ourselves a country. This is something we must not accept. We must condemn this at all costs.

Mr. Deputy Speaker, Sir, the way this gentleman called Ocampo got his evidence is questionable. Did he conduct any investigation? How could he have relied on human rights activists who are paid to do wrong things in this country? We should not accept that. We must have a new beginning. We must ensure that this does not happen again.

With those few remarks, I beg to support.

The Minister for Livestock Development (Dr. Kuti): Mr. Deputy Speaker, Sir, I stand here to support the Motion.

When the post-election violence occurred, the circumstances were very different. The mood in the country then and the mood of the country now are very different. We have come a long way both in terms of reconciliation and even strengthening our institutions of justice. Therefore, that is one reason as to why I feel that we should do away with the Rome Statute and re-establish our sovereignty and deal with even cases of injustice against humanity in the country.

Mr. Deputy Speaker, Sir, the fact that we are handing over our people to be tried in foreign land is an indicator that we are a failed state. The situation now has changed, and we are an epitome of democracy in the region and in Africa. Therefore, that is what we should exercise. We are also in the process of vetting our public officers. The appointment of a new Attorney-General and a new Chief Justice is in the process. The fact that we are going to vet our judges is an indicator that we will establish institutions which can deliver justice to those in Internally Displaced Persons (IDP) camps, who are asking for justice. We cannot forget about them.

I stand here specifically because Mr. Ocampo's list was very shocking to me. Here is an old man who is about to retire after putting in 38 years of service without any blame. Just when Amb. Muthaura is about to proceed on retirement, he has been put on Mr. Ocampo's list. This has really affected all of us whom he has served for so long. Really, this is about politics. A civil servant is a worker. The post-election violence was about politics. Therefore, including civil servants in Mr. Ocampo's list was very shocking to me.

Mr. Deputy Speaker, Sir, another disturbing issue is the intimation that comes with the Mr. Ocampo's case. It is like a kid being told that a hyena is coming. We are told: "Mr. Ocampo is coming. He is in town". This is an intimidating political move. It is not about justice.

Secondly, if somebody is suspected of committing a crime, why should it take satellite and international advertisements to say: "These are the six prime suspects in Kenya?" It is just a case. These people should just be summoned. Why should it be turned into a political issue? Why was there live coverage of announcement of the six names?

Mr. Deputy Speaker, Sir, finally, this is imperialism we have to get away from. Secondly, why is the United States of America (USA) not a signatory to the Rome Statute? Why are they going round, telling other countries to exempt the USA from the Rome Statute? If the Americans have exempted themselves from the Rome Statute, why are we a signatory to it? We should actually form an African criminal court of justice and pull out of the Rome Statute because it is colonialism in nature.

With those remarks, I beg to support.

Mr. Deputy Speaker: Hon. Members, if you can take even fewer minutes, it will be very considerate on your part, so that as many hon. Members as possible can contribute to this Motion.

Yes, Mr. Jamlek Kamau!

Mr. Jamlek Kamau: Mr. Deputy Speaker, Sir, I rise to support this Motion. It is very clear as we speak right now that we have victims who need justice in this country. While in pursuit of justice, we must not politicise the process. We know that in 2007/2008, Kenyans killed one another. As we speak, Kenyans are killing themselves. I am saying this because I am a very sad person today. I am mourning. On Wednesday,

when Mr. Ocampo announced the names of his six suspects, one 14-year old Danson Mungai Nuthu in my own constituency, upon hearing the name of one Uhuru Muigai Kenyatta being mentioned, committed suicide. It is a very sad state of affairs.

Mr. Deputy Speaker, Sir, to me, Mr. Ocampo is guilty of taking away an innocent life. This person would not have died if Mr. Ocampo had not announced the names on that list. Besides, there is no way Mr. Ocampo would be announcing names of people as if he was a politician. Clearly, a prosecutor would take the list to the court and then the court would issue the summonses at the appropriate time. However, a person who calls a Press conference, so that he can announce names of suspects, to me, is playing politics.

This document, which has been tabled by hon. Kioni, is very clear. It is written by the Ambassador of the USA, and it reads:-

“Providing support for witness protection will significantly improve the odds under which the International Criminal Court will be able to indict several key suspects of post-election violence. Such indictments, particularly if they are made public – which was done – would be a major blow to the culture of impunity and likely to help alter political dynamics in a positive way”.

That is a clear case of politics. It is a clear agenda. I would have absolutely no reason why I would not support this motion. Hon. Karua talked clearly and said that Parliament failed to form a local tribunal in 2008. Yes, it is indeed true but if you fail today, it does not mean that tomorrow, we will not pass it. Even today, how many Members tried to come to Parliament? They failed to come, they will still try tomorrow. If you fail to marry today if you are not married, it does not mean that you will not get married tomorrow. You should go on and marry. So, to me, something that we did not do in 2008, we have an opportunity now to rectify the problem. There is no better time like now.

Finally, I am appealing to all those who have presidential ambitions in this country not to celebrate when they see their competitors facing problems. Somebody might think that things are going to be easy but at the end of the day, things might turn the other way round.

Thank you very much, I support.

Mr. Deputy Speaker: Hon. Kabando wa Kabando!

(Ms. Amina Abdalla stood up in her place)

Ms. A. Abdalla: On a point of order, Mr. Deputy Speaker, Sir. Apart from when Ms. Karua opposed the Motion, all the speakers have so far continued to support the Motion. Would I be in order to ask the Mover to reply?

(Applause)

Mr. Deputy Speaker: Order! Order! The Chair will still entertain two or so Members to say something. Proceed, hon. Kabando wa Kabando!

The Assistant Minister for Sports and Youth Affairs (Mr. Kabando wa Kabando): Thank you, Mr. Deputy Speaker, Sir, for this very good opportunity. Before proceeding, I would like to declare my interest on this matter. Members will remember very well that I was a recipient of a letter from the American Ambassador asking that I

prove my efforts in promotion of peace and ethnic reconciliation in the Republic of Kenya. I came out and declared my interest just outside here when Koffi Annan was in this very Chamber talking about a grand coalition Government.

I also want to declare that I was indeed the whip of the Central Kenya Parliamentary Group chaired by Eng. Ephraim Maina, with Lenny Kivuti as the Treasurer and Esther Murugi as the Secretary. Indeed, I participated very aggressively in mobilizing members from my home region to contribute even to have their salaries cut by an order through the Clerk of the National Assembly, to create a kitty so that we could help victims of the post election violence including those from other communities that were assembled in our centres.

Mr. Deputy Speaker, Sir, finally, I want to declare that indeed, Nyeri County was the first larger district to mobilize Members of Parliament, all Provincial Administrators led by the Central Provincial Commissioner, Mr. Rugut and all Members of Parliament and our councilors to assemble in our home town of Nyeri to mobilize resources which we then the same day, took in conjunction with Red Cross to members of other communities for fear of being attacked in our home town, assembling at the Central Police Station in Nyeri.

Mr. Deputy Speaker, Sir, Prof. Kamar has also disclosed that while we were passing the National Accord at night here, we were lodged in Ljubljana Slovenia (??) struggling for three consecutive days, to remove five very aggravating motions that would have placed Kenya as a pariah state through the forum of the European Union, Africa Caribbean and Pacific group of countries.

It is important for us to do that which we believe will bring change, reconciliation and affirm our positions. However, let the House hear very clearly that when we do so, we are not saying that those who perpetrated heinous crimes against innocent Kenyans must go scot free. I have shared with my colleagues here that any effort we are making to have petty trivial ethnic alliances over the weekends and making statements is not helping to make Kenya better and more sovereign.

Mr. Deputy Speaker, Sir, if I am permitted, I should also say that my name is in the Kenya National Human Rights Commission (KNHCR) Report as having mobilized resources to obtain weapons to go and fight members of other communities. Yet, a Member from ODM has already confided in me as a father – because he qualifies to be so - that an effort was made by a delegation from a party that I mentioned, without any prejudice, to Washington; even mobilizing members of staff of KNHRC so that there could be a second report which would remove some of the names that were included in the first report, so that the likes of Kabando wa Kabando could be on the list.

Mr. Deputy Speaker, Sir, given another opportunity for those hyenas who did oath and plan murder, I will mobilize even more seriously to ensure that victims get justice.

Finally, names are being mentioned. If the Deputy Prime Minister and Minister for Finance Mr. Uhuru Kenyatta will suffer because of mobilizing resources to help those who were being raped, murdered and torched and yet, some of us could not even have the courtesy to even attend a funeral in our constituencies or villages because those who were being buried were not from our ethnic group, then the price is not too high to pay.

I beg to support.

Mr. Kapondi: Mr. Deputy Speaker, Sir, thank you for giving me the opportunity to contribute to this very important Motion. I rise to support. I do not want to go into a lot

of repetitive details. I want to make one thing very clear on why I am supporting this Motion. That is the fact that Mr. Moreno-Ocampo cannot claim to have any evidence that he himself collected, apart from the evidence that was collected from the busy-bodies in this country. Those were busy-bodies who were out to make money and create fictitious stories.

Mr. Deputy Speaker, Sir, I will give you a very practical example. A few days ago in my constituency, a busy-body in the name of Western Kenya Human Rights Watch came up with a statement to the effect that they have water-tight evidence of a revival of a militia group. When the police told him to present the water-tight evidence, he went underground. Those are the people that Mr. Moreno-Ocampo is solely relying on for evidence to take to the ICC. Whenever Mr. Moreno-Ocampo used to come to this country, he ended up in Harambee House with the two Principals. He never went to any hotspot to carry out any investigations.

For us to give the kind of international celebrity status to a rogue prosecutor is very unfortunate. We must rise as a nation to say no to this culture of international impunity. As I speak today, many African countries have no respect for the ICC.

Mr. Deputy Speaker, Sir, if I may read from the Broklyne Institution, it reads:-
“However, the support for the ICC among African countries has waned considerably. An increasing segment of Africans no longer consider ICC a credible institution to adjudicate in cases of crimes against humanity. Its activities are viewed with suspicion if not outright disdain.”

President Kagame of Rwanda has referred to the ICC as an imperialist institution that was established to solely deal with African countries. The African Union (AU) President Jean Ping has criticized the ICC for purely judging Africans. Mr. Deputy Speaker, Sir, the same rogue prosecutor wanted to use Kenya as an example.

What is happening in Cote D’voire? We should not entertain a situation whereby we are disregarding our institutions. We have a reform process in this country. Let us respect that and say no to this rogue prosecutor. He should go to the ICC and find a different employment for himself or go back to his country of origin.

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. It is quite clear that we have ventilated enough. Would I be in order to ask that the Move be called upon to reply?

Mr. Deputy Speaker: Order! Clearly, the mood of the House is that they want to ventilate a little longer.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Deputy Speaker, Sir, for me, this is a bright day. It is the day that we have started a journey to withdraw from any international treaty, that we feel is not in the interest of the Kenyan people.

I want to indulge you and the Members who always feel that this House does not represent the people of Kenya. We represent the people of Kenya. We represent the churches and the mosques. I want to take this House through the ICC process, which I went through a couple of times this week. I will even look at the membership of the ICC in terms of the global population. Only 27 per cent of the people in the world are members of the ICC. The 73 per cent of the world population do not subscribe to the ICC. Today, we must make sure that Kenya moves away from the 27 per cent and join the 73 per cent.

The element of coached witnesses, like the Kenya National Human Rights Commission has been doing and being taken as gospel truth by Ocampo, has been done in other countries. For example, it has been done in Uganda with the LRA. I want to read it here. It reads: "From an informed source, the ICC has produced witnesses who recounted their testimonies while in the witness box admitting that they were coached by Non-Governmental Organizations". It happened here in Kenya. The witnesses he is using have been coached. We have documents and letters where Ocampo has said that: "Mr. So and So, we have received your statement". A day will come when we will present to this House.

Who are the financiers of the ICC? About 60 per cent of the funding comes from four European countries. That is why I want to challenge the Members of this House to read a book by David Hoiler entitled: "The ICC Europe Guantanamo Bay". The Guantanamo Bay and the Hague Tribunal have a lot of similarities. The Guantanamo Bay Europe is meant for Africa. I want to quote a very reformed diplomat and a Foreign Minister in the British Government, Mr. Robin Cook. He said that: "The ICC is not a court set up to bring to book Prime Ministers of the United Kingdom or Presidents of the United States; it is meant to bring people to book in the Third World countries". Finally, I want to go to the US position when President Obama and Rannerberger push Kenya to the ICC. After they withdrew from the ICC, the US Government enacted a law called the American Service Members Protection Act in 2002. This Protection Act – I do not want to go into it - is known by the proponents of the ICC. In the USA they call it "The Hague Invention."

Mr. Deputy Speaker, Sir, the US Government, in that Protection Act, has made the following legal provisions for their people. That the law threatens American lawyers. An American lawyer today cannot represent an American who has been indicted by the ICC! That if you are in the US and you are a lawyer, you cannot get a job in the ICC. The law is that explicit. But above all, Article 98 of that agreement exempts US possible citizen surrender. The moral question we are asking is this; Article 127 of the Rome Statute gives the provision that all international treaties have acceptance and withdrawal provisions. If the Rome Statute gives us a provision, why should we bother the process which we use? Today, 22nd December, 2010 Kenya will be remembered when we regained our independence from the rogue ambassador and rogue prosecutor.

Thank you, Mr. Deputy Speaker, Sir.

The Minister for Gender and Children Affairs (Dr. Shaban): Thank you, Mr. Deputy Speaker, Sir. I rise to support the Motion.

Mr. Deputy Speaker, Sir, as I was sitting here, I was just wondering when Africa will liberate itself. When will Africa stand on its own if we keep on running to people like Ocampo for help?

Out of the UN permanent members – that is the United States of America, China, Russia, Britain and France – only two are members of the ICC. The USA – I think everybody has alluded to that – pulled out after signing. China and Russia have not been members of the ICC. So, who is this court meant for? It is meant for African countries and the poor African people who cannot take care of their issues. We must learn how to take care of our issues internally.

Mr. Deputy Speaker, Sir, at the height of these problems, we thought that Kenya will not be able to survive, but we were able to pull together. We were able to sit

together; we were able to sort out our issues and, finally, we were able even to get a new Constitution in this country.

We cannot continue thinking that some foreigners will come and solve our issues. At this particular time, I thought the then Commissioner of Police should have been commended for the work that he did because most of the towns were kept safe because of his vigilance. At this particular time, I expected the Commandant of the Administration Police, who also did a very good job--- When people were pulling out the railway line in Kibera; when people were trying to walk to the city centre of Nairobi and they were told they cannot come to the city centre--- I remember some hon. Members who were urging the youths to demonstrate in our streets were kept out of this city and the city stayed safe. We know how much we lost, economically, at that particular time.

Mr. Deputy Speaker, Sir, is it the six who went to Nyanza, torched and destroyed properties in the city of Kisumu? Who else could have done that? The list of six is not the police! It is those rowdy youths; it is those rowdy leaders who were calling people for mass action who put us in these problems. However, today, we have six and we are trying to celebrate by saying that the six can go to hell. As a country, we need to get back on our feet; we need to get hold of our issues; we need to sort out our issues and not to celebrate because we think we are going to get rid of certain people who are going to block our way as we are trying to get to State House.

Mr. Deputy Speaker, Sir, it is high time we sorted out our issues and solved problems internally. We have a new Constitution in place, and I do not need to repeat this. We need to sort out our issues internally.

I beg to support.

Dr. Kones: On a point of order, Mr. Deputy Speaker, Sir. Listening to the contributions which are taking place, they are just repetitions of what other hon. Members have contributed. Would I be in order to move that the Mover be now called upon to reply?

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

Mr. Ruto: Mr. Deputy Speaker, Sir, I will not take much time because hon. Members have actually ventilated on this issue. The real question remaining to be asked is, who referred the Kenyan case to the Hague? Was it Justice Waki? Was it Dr. Kofi Annan? I thought Justice Waki was a chairman of a commission appointed by the President. He was supposed to report to the President, full stop. Was it Kofi Annan? I thought Kofi Annan was no longer the UN Secretary General, or does he still carry the seal and the rubberstamp of the UN?

Mr. Deputy Speaker, Sir, I do not want to say much. I want to thank hon. Members for their contributions.

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

(Question put and agreed to)

Mr. Deputy Speaker: Next Order.

The hon. Vice-President and Leader of Government Business can now move the Motion of Adjournment.

ADJOURNMENT OF THE HOUSE *SINE DIE*

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, this House do now adjourn *sine die*.

Mr. Deputy Speaker, Sir, in moving this Motion, allow me to congratulate Members of this House for---

(Loud consultations)

Mr. Deputy Speaker, Sir, I do not know whether to hold on for a minute for the sake of those who are leaving, since I have only got five minutes. It could be very good if hon. Members could walk out quietly. It would really help.

Mr. Deputy Speaker: Order. Hon. Members, if you wish to walk out, just walk out quietly.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Thank you, Mr. Deputy Speaker, Sir. Since the promulgation of our Constitution on 27th August, 2010, when we literally rewrote the history of this country and the second Republic was reborn, we have made tremendous achievement, albeit sometimes against great difficulty. I want to congratulate all of us for having today done what the country was expecting us to do, namely; to put in place the Commission on Implementation of the Constitution. We have literally now done the right thing because we expect that when the House next meets, the Commission on Implementation of the Constitution under the chairmanship of Mr. Charles Nyachae will have sat and tried to prioritize the business that must come in order to continue with the spirit of making operational the new Constitution.

Mr. Deputy Speaker, Sir, we have also similarly today put in place the Judicial Service Commission, making it possible now for the President in consultation with the Prime Minister to begin to look at the possibility of appointing a new Chief Justice and even the Director of Public Prosecutions. I know that the Constitution says that within one year from the date of promulgation, there shall be a new Attorney-General, but nothing prevents the President, again, in consultation with the Prime Minister from taking action. We do not have to live the full length so that this country's credibility will be enhanced. Therefore, today, I am very proud that we have even been able to put in place the Commission on Revenue Allocation.

Mr. Deputy Speaker, Sir, we have done well, but we do this against a background of great national anxiety. This anxiety is understandable. I want to remind this House that the position that the Cabinet took with regard to the ICC process was that we have to move expeditiously and put in place a local mechanism that will be able to take over this matter. In terms of the Rome Statute itself, I know that this House has made a recommendation today and I am sure the Government will be able to study it. But in terms of the Rome Statute itself, we can, as a country party to the Rome Statute, make an intervention. When that looks credible, we can always get our country back. Therefore, I think we are on the right track.

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Dr. Laboso) took the Chair]*

Madam Temporary Deputy Speaker, looking around today, hon. Members are a little fatigued but I think they have made history and they should actually even clap for themselves in the traditional way. I cannot remember for the time I have been in this House ever working up to the next day before Christmas. This is tremendous and I think the hon. Members have risen to the occasion. They have taken the challenge and I think we have taken hold of the destiny of our country.

(Applause)

Madam Temporary Deputy Speaker, allow me to very humbly submit that it is time we broke out. But even as we do so, we also, as a people have to show empathy and understanding. The people whose names were read and some of us had great exception because you cannot just read out people's names--- It does grave injustice, but since this has happened it behooves all of us as a nation to stand together with those amongst us who have been named. Where they require legal assistance, even Members of this House should take it upon themselves to stand with our citizens when they need that help. I will stand counted in that regard. I am sure my learned friend, hon. Orengo, who I will shortly be asking to second this Motion, agrees with me that as lawyers, we uphold that cardinal principle that nobody should be condemned unheard.

Madam Temporary Deputy Speaker, we have even heard other names being mentioned here today with regard to drug trafficking. Serious as that may be, I think we must avoid the temptation to go around naming each other in the streets because then we create gross distortion of the very principle of the rule of law; the basic necessity to make sure that everybody would have a fair hearing and nobody will be condemned.

I fear that if we get into that habit, as a country, of making sure that if you disagree with somebody, you go naming them negatively, we will be creating some dangerous precedent. I, therefore, feel concerned and although we have said that Mr. Speaker should make a finding with regard to the document that was laid before this House, I think it is good that we give Mr. Speaker a little bit more time. I want to plead that we do not oppose this Motion of Adjournment on the grounds that tomorrow, the Speaker has to make a ruling.

I think we all know that this document, somehow, has been addressed to various people. It is our business to stand for what is right, fair and just before the law. If I have said nothing today, I plead with my colleagues to hear my sentiments with regard to us believing in the rule of law. This is what is enshrined in the new Constitution. Let us stand and support hon. Members who need legal assistance because it is very expensive for one to defend themselves at the ICC.

I want to conclude by thanking His Excellency the President because today, he said that there will not be the usual end of year party. He wants that money to go to the support of internally displaced persons (IDPs). Please, join me tomorrow. I want to go to

Pipeline, Nakuru, if I get time. If I can make it, I will also go to Kuresoi. Let us give our IDPs happiness during this Christmas time, difficult as it may be. They are IDPs not because of actions that they believe in, but because of a conspiracy of circumstances that saw us all in a grieving situation.

Allow me, therefore, to wish all hon. Members of Parliament--- You have been a wonderful group to work with. We argue like we have never known before but, once we are out there, we take coffee together. I think that is what the practice should be. Merry Christmas and a prosperous 2011.

I beg to move.

The Minister for Lands (Mr. Orenge): Madam Temporary Deputy Speaker, I stand to second the Motion moved by His Excellency the Vice President. I think this Parliament will go into history as one of the hardest working Parliaments. We have had a very long Sessions and in those Sessions, we had very long sittings. This is an exemplification of the fact that we are prepared to be patriotic and work for Kenya together as a nation.

I just want to add one or two things, Madam Temporary Deputy Speaker, very briefly. This is the time to get the country of Kenya back. Even in the Order that we were discussing before we came to this Motion of Adjournment, I think the critical thing is that we are trying to get our country Kenya back. On the basis of the new Constitution Chapter 1 says that Kenya is a sovereign nation and sovereignty is with the people of Kenya. The sovereignty of the people is delegated to, basically, three institutions. As we debate all this, even about Ocampo, it is now in our hands to try and get our country back. I am one of the persons who truly believe that we must get our sovereignty back.

With regard to the ICC, although they have a role to play in the international arena, essentially, Kenya cannot get comprehensive justice without our local institutions being strong and being guarded by the principles that are spelt out in the Constitution. That is my position on that matter.

Secondly, I hope that during this recess that we are adjourning *sine die*, His Excellency the President and the Prime Minister order that the Treasury makes money available to the tune of Kshs3 billion for the resettlement of the Mau, Mt. Elgon and Embobut forests' evictees. I want to pursue this matter with the vigor that I can because I know under the Constitution, every citizen has a right to access to land. Therefore, the Mau evictees, whatever we may think, it is the responsibility of Government to make sure that they are resettled. I have agreed with hon. Isaac Ruto that I will be going to his constituency to begin to talk because we must talk to each other. We must learn and know each other. Even as we differ here, we must begin to talk to each other. This is because we have no other nation. It is only Kenya that we have. However terrible or drastic the differences, we have only one country. So, I pray to you that even if you go to different political parties, churches, mosques or callings, the most important thing is that we must be together as one country.

I grew up in Kericho and brought up there. I have interests in Kericho and I have lived there longer than I have lived in Ugenya when I was a young boy. That is part of my home. Anything touching people in Kericho concerns me even more than Isaac Ruto because I was born before he was born. I was sharing moments of grief and joy with people like the late hon. Salat the father of the Secretary-General of KANU, if he still occupies that position. So, I would plead with you in this Parliament because there is no

other Parliament that we will have that opportunity that we may fight. We are allowed to fight, but we must remain together. I must be your defender and you must be my defender. Even if you are being taken to the Hague, I must be your defender. Even if I am being taken to Kamiti Prison, before I am prosecuted and convicted, you are my defender. You are your brother's keeper. If you cannot be your brother's keeper under this new Constitution, then we should dissolve this nation called Kenya and divide it into entities with borders and walls so that we truly live by the spirit of what we are saying. However, so long as we remain one nation and one country, let us use this time of recess to visit each other.

I am very glad that "hon. Zipapa" is here. I campaigned against him during the last elections, but our friendship is stronger. I have agreed to go to his constituency *na ameniletea wale samaki waitwao zipapa kule* Ugenya.

With those few remarks, I beg to support.

(Question proposed)

Mr. Kioni: Thank you, Madam Temporary Deputy Speaker. I rise to support this Motion.

Mr. Midiwo: On a point of order, Madam Temporary Deputy Speaker. Given the fact that many of us want to contribute, would I be in order to request that we contribute for two minutes each?

The Temporary Deputy Speaker (Dr. Laboso): I think that is a proper proposal. So, everybody will contribute for two minutes so that everybody can get a chance.

Mr. Kioni: Madam Temporary Deputy Speaker, I want to agree with that ruling.

Madam Temporary Deputy Speaker, I want to say that I support this Motion. It is timely. I am sure hon. Members need time-off, so that we can go to our constituencies. I know that even the civil servants will be out of their offices, but I would want the Minister for Lands to use this opportunity to resolve my long standing issue of people who have been waiting for title deeds since 1993. I have done to you about seven letters. Do not allow me to do you another one in the New Year.

Madam Temporary Deputy Speaker, as the Minister was talking about Kshs3 billion for Mt. Elgon and others, remember that also in Ndaragwa, we have IDPs and they have been waiting for the resettlement. I want to concur with those who are saying that it is time for us to spend some of our time going out and reaching out to others; not just for the purposes of 2012, but for purposes of bringing the communities together. We have difficulties such as tribal issues. We have also had post-election violence. However, it is upon us, as leaders, to lead in the reconciliation process and make sure that the communities are together; and make sure that people are able to live with one another and allow for political space.

Madam Temporary Deputy Speaker, it is important that we remain respectful of each other during this time as even we go for Christmas and also get our communities to respect the views of others. We have passed a Constitution that allows us to have different views across this country. Our new Constitution allows space to exercise that which we desire. Let us now try to curtail it in any other way. Let us not try to double speak because we are now too good at it.

With those few remarks, I beg to support.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): Madam Temporary Deputy Speaker, I rise to support this Motion of Adjournment

From the outset, this Parliament will go down into annals of history as the most hardworking, versatile and efficient in Sub-Saharan Africa. So, we have achieved a lot within a very short span. I want to say that now that the law of diminishing returns is beginning to set in, I think it is time to rest. We, as Parliament, have done Kenyans proud. We have passed quite a number of Motions and Bills. For example, today we passed Bills on Commission of Revenue Allocation and Commission on the Implementation of Constitution. I think Kenyans will be very proud of us. Some of them were expecting this Parliament not to do whatever we have done. They thought it would have been dissolved and we go for snap elections. So, we have ashamed the doubting Thomas.

Madam Temporary Deputy Speaker, Sir, on the issue of ICC, we normally say that intelligent people change their minds. Fools do not. As we said, this country can take care of her own judicial issues because we have confidence in our new Constitution. This is not a pariah State. It is not a failed state like Somalia.

With those few remarks, I beg to support.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, I thank you for giving me this opportunity.

I would want to say that, indeed, we have worked very hard as Parliament.

As a nominated Member of Parliament, representing women and children, I can say that I am proud of the work I do here; I am proud that I sponsored the Counter Trafficking in Persons Act that was passed this year, and even if I leave Parliament now, I will be happy that I have fulfilled my mandate.

Madam Temporary Deputy Speaker, we have unlocked the constitutional process as we go for Christ Mass. I am happy. I was feeling very jittery that we would be going for Christmas without unlocking that process. I would want to say that I am very happy that we have put in the Commissions very able women, including Catherine Muma, Dr. Florence Omosa, Amina and Elizabeth Muli, amongst others.

I would want to say that, as a country, one of the things that we have not done is that we have not been kind to Internally Displaced Persons (IDPs). We need to prioritise the issue of IDPs and the victims of post-election violence. We must prioritise the issue of IDPs just as we prioritised the issue of the ICC.

Madam Temporary Deputy Speaker, as I conclude, I want to say that as a human rights lawyer, I was not supportive of the Motion brought here by hon. Ruto, but I would want to say---

(Several hon. Members stood up and remained standing)

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Members! She has not used her two minutes. Can you be seated?

(The hon. Members resumed their seats)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, I thank you for protecting me.

I want to encourage ourselves as leaders that even as we say that we want to heal the country, let us stop ethicizing and politicising the ICC list. I keep hearing people insinuating around an issue of a leader. I know that we have leaders who are powerful. I know that there are leaders whom people have almost turned into demi gods but, surely, they could not have gone into the head of Justice Waki and given him an envelope with six names.

With those few remarks, I beg to support.

Mr. Wambugu: Madam Temporary Deputy Speaker, I also stand to support the Motion.

Let me take this opportunity to thank all the hon. Members of this House for the tremendous work they have put in to pass the various Motions we have had throughout this Session. As we come to a close, there are two or three issues on which I would like to comment. I know that we are proceeding to a season where there will be a lot of activities.

We have had a lot of accidents in the last years because of driving when drunk. I would request Kenyans that when they go out for their festive activities, they preferably reduce their drinking. The law should be enforced, so that we reduce accidents this time round.

Madam Temporary Deputy Speaker, our youths are also being harassed a lot by the police, because when they go out to enjoy themselves sometimes, even during the early hours of the afternoon, the police harass them. We would like the police to also look into that issue. Instead of harassing them, we would like the police to provide the security that is needed.

With those few remarks, I beg to support.

Mr. Kigen: Madam Temporary Deputy Speaker, I thank you for giving me the opportunity to contribute to the Motion.

As we close to proceed to a christmass recess, we look back with a lot of pride, as a Parliament, to the good work that we have done for the people of this country. Indeed, as many other speakers have said, I think the country was beginning to be skeptical about the way we were transacting business here. However, looking at what we have done this evening and what we did before now, Kenyans can attest to the fact that we are moving forward.

Madam Temporary Deputy Speaker, as it has been said before, I think it is good time for us to also go back to our constituencies and relate closely with the people out there, and be able to share with them in the circumstances they are going through now, especially during this festive season. Those are actually victims of the post election violence. I heard the Minister for Lands talk about the various categories of IDPs and did not mention the people who were affected by floods at the beginning of this year in my constituency.

(Mr. Orenge consulted with other Members)

I wish the Minister for Lands was listening because when he mentioned that he was visiting to see those who were afflicted, who suffered because of the clashes during the post election violence, we also have victims who were affected by floods at the beginning of the year. It is our prayer that as you go out there, especially when you are

considering how to settle them, please, remember those people. They are about 200 families and they have been living in the cold all these months.

I beg to support.

Mr. Muthama: Thank you, Madam Temporary Deputy Speaker. I also stand to support this Motion.

I want to start by saying that this Parliament has achieved a lot this time. It has passed very important motions but as we go home, I would want to say that we have not completed some of the very contentious issues. That is what affects wananchi.

Madam Temporary Deputy Speaker, I want to say that with all the Motions that we have passed here, the IDPs are still concerned and worried about their case. They do not know what is going to happen tomorrow. They do not know whether they are going to be settled and we, as MPs, are still enjoying our privileges in this House, we are still working, we are still articulating our issues but they are still in the cold.

Madam Temporary Deputy Speaker, as we go back to the constituencies to serve those who elected us, we really want to emphasize that as soon as we come back here, it must be an issue of first priority that we deal with the issue of IDPs. If we want to be counted as leaders and as long as we have IDPs sleeping in the streets in this country and we have 210 elected Members of Parliament and we cannot solve that problem, I want to say there is something missing.

So I beg to support this Motion with all my strength.

The Assistant Minister for Education (Prof. Olweny): Thank you, Madam Temporary Deputy Speaker. I wish to support the Motion. As I do so, I wish to congratulate the Members of this Parliament. They have done a good job since the promulgation of the Constitution. They have put on track the implementation of the new Constitution though some Kenyans were having reservations. It is unfortunate that Kenyans are abusing the courts. A few Kenyans went to the court to block the gazettment of the report by Ligale. It is very unfortunate while it was said anybody with a complaint had 30 days after the gazettment. Also, a few days later, a few other Kenyans went to court to coarce Parliament to pass Motions in this Parliament. The Parliament is not going to be used as a rubberstamp. When Motions are brought here, we debate and interrogate those Motions before we pass them. Kenyans are not going to force us to pass Motions. Even if we have reservations about some issues that are brought to the Floor of the House, this is a democratic House and we are not going to be dictated upon by the Judiciary.

I wish to request the Minister for Agriculture to look into the issues affecting the sugar industry, particularly in my constituency. Last week, the employees of Chemelil Sugar Company went on strike for three days. Sugar cane was rotting and farmers lost a lot. The transporters and everybody else are concerned with the factory. I request and wish to put it to the Minister that she should address the issues of that factory immediately.

I beg to support.

Mr. Chepkitony: Thank you, Madam Temporary Deputy Speaker, for giving me an opportunity to also contribute in support of this Motion of adjournment.

I would like to say from the outset that this Parliament has done beyond expectations. Many Kenyans thought we were not going to pass the Bills which we have passed today. We have appointed the Members of three commissions; namely, the

Judicial Service Commission, the Commission for the Implementation of the Constitution and Commission on Revenue Allocation. Those are very important functions which we have fulfilled today. I would like to congratulate the Members for doing a good job.

It is only that one of the Commissions does not have regional representation. It was mentioned and this is something which should be taken very seriously. In future, when appointing members of other Commission, we need to look at areas which do not have representation. We need to ensure that all counties have a member in any of the Commissions. I support what Mr. Kimunya said. We should look at counties when making appointments so that we do not have some counties under-represented and others over-represented.

Madam Temporary Deputy Speaker, this recess is going to give us an opportunity to be with *wananchi*. We have been very busy here and I think it is good for us to go and assist *wananchi* in their development programmes.

I would like to appeal for the release of the Constituencies Development Fund (CDF) money. The release of the funds has been delayed. Although there is a court case, I would like 75 per cent of the money to be released immediately, so that we can go and take part in development.

I am very happy about the Mau Forest. The Minister has said there is money. I must congratulate him---

The Temporary Deputy Speaker (Dr. Laboso): Can you wind up, Mr. Chepkitony?

Mr. Chepkitony: I am winding up, Madam Temporary Deputy Speaker.

The Minister has promised that by the end of this month, all Internally Displaced Persons (IDPs) will have been settled. We stand to see that action being taken.

Thank you.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Madam Temporary Deputy Speaker, I support this Motion, first of all, because I am running late to go to my Constituency to campaign against Female Genital Mutilation (FGM) which is quite rampant.

It is a time to celebrate that Kenyans have forgiven each other. The journey that was started by our two Principals by working together has culminated today in us withdrawing ourselves from the ICC, so that we can live as one country.

Madam Temporary Deputy Speaker, in support of this Motion, I need to go and get ready to receive Mr. Orenge who will be visiting my constituency to look at the state of IDPs. He knows their number, which is 2,964. He is coming to confirm because they need to be resettled. I am so excited that very soon, there will be no IDPs in my Marakwet East Constituency.

With those few remarks, I support.

Mr. Ruteere: Madam Temporary Deputy Speaker, I stand to support the Motion of Adjournment.

I wish to thank the hon. Members for supporting the Censure Motion on Ranneberger which I moved this morning. Although it has not been concluded, it had overwhelming support. I am sure the American Government is going to do something before we come to conclude that Motion, so that we can meet other officials in that embassy who will be friendly to the Kenyan Government and the elected leaders of this country.

Madam Temporary Deputy Speaker, I agree with the hon. Member who has proposed that we should get the CDF funding. January is here and we are going to pay a lot of school fees. Many students are going to demand fees from the CDF. Without the release of CDF funds, some of the students may not find their way back to school. I, therefore, appeal to the CDF management board to make sure that we get that money on time.

I also wish to make the Minister of State for Special Programmes aware that we are going to have crop failure, especially in some parts of Meru. We may have famine and it may be very vital that they start doing preparations. Some people may wish to get relief food. If there is a crop failure, we are going to get into problems.

Otherwise, I want to wish my constituents a Merry Christmas and a prosperous new year.

Mr. Lagat: Madam Temporary Deputy Speaker, thank you for giving me this opportunity to support the Motion.

First of all, I want to congratulate my colleagues because of the achievements we have made. I know that this year, we have achieved a lot, starting from the new Constitution and even the Bills and Motions that we have passed. I want to make a request to the Government on fuel prices. We know that Kenyans are suffering a lot. Prices of fuel have gone so high and everything depends on fuel. That is the most important thing that Kenyans are always complaining about. I thank the Minister for Lands for planning to settle the IDPs. For people to be IDPs for three years is a big problem. Their lives have been affected. We wish to see that they live well as Kenyans.

Madam Temporary Deputy Speaker, this year, we have achieved a lot. It is my wish that next year, we will also make the same progress. I know that this is a rare opportunity but it is the first time that I am seeing the Members of Parliament working together in unity.

With those remarks, I support the Motion.

Mrs. Shebesh: Madam Temporary Deputy Speaker, I am very glad I am going home because I was about to be infected by a disease called poliarisis by the Ocampo Six.

Definitely, I am not in the good mood that everybody seems to be in. I want to tell my good friend and the man that I admire very much in this House, hon. Orenge, that when he wants to stand with his colleagues in solidarity, he should also remember to stand with the 405 young people who were killed by the police during the post-election violence. He should remember to stand with the people who continue to languish in IDPs camps to date and the 3,000 women who were raped during the post-election violence. He must stand with every Kenyan and not just the Kenyan he shares an office with.

I go home not happy and excited like others are saying, but saddened by the events that have happened in this House. I do not believe that Kenyans will get justice with the kind of arguments that we have been raising in this House. These issues are more ethnic, polarized on party lines and personalities. These issues will not give Kenyans the justice they deserve. So, as I go home, I want to see how we can set up a local tribunal that will ensure that Kenyans get the justice they deserve. I do not see them getting it through this House, the Executive or the Judiciary. I see it coming through another process, which I believe this country can still come up with for the sake of unity.

With those remarks, I support the Motion.

The Minister for Trade (Mr. Mwakwere): Madam Temporary Deputy Speaker, I stand to support the Motion. It is time for us to go back to our constituencies and then visit other constituencies. I intend to go to Samburu with my family on holiday. It is important that we know Kenya. I invite my colleagues to visit Kwale where we have wonderful tourist attraction sites and game parks like the Shimba Hill Game Reserve, Diana Beaches and all sorts of places of interest. You should visit Kenya, know Kenya and enjoy Kenya.

We have done a great job for the nation over the last few months of our sitting here. We promulgated the Constitution and set the ball rolling to ensure that we have an implementation process in place. In other words, we are ready to implement the Constitution fully come 2011. I do not have to repeat what others have said, but I would like to use my two minutes to humbly request you to invite the Mover of the Motion to reply.

Mrs. Odhiambo-Mabona: That is unprocedural!

The Minister for Trade (Mr. Mwakwere): Madam Temporary Deputy Speaker, this is procedural. If I was on a point or order, it would have been unprocedural. But this is part of my contribution.

The Temporary Deputy Speaker (Dr. Laboso): No, you cannot do it, hon. Minister! It cannot be you to do that.

Mr. Gaichuhie: Madam Temporary Deputy Speaker, I am not going to take a lot of time. First, I want to congratulate my colleagues for the hard work that we have done. I also want to put a caution that we were about to be derailed by something that was done by the Interim Independent Boundaries Review Commission (IIBRC) when it gave a report that was not gazette and Parliament split. I am just appealing that the commissions that we have formed should be independent and produce reports that will not split this Parliament.

Madam Temporary Deputy Speaker, the other point I want to put across is to ask the two principles that we have very many people who have been mentioned on corruption. I would like them to crack the whip so that we can move with speed and have a clean Parliament and a clean Government so that things can move. I hope that we will form an Independent Electoral and Boundaries Commission. We hope that we will have people of integrity; people who will move this country forward so that we can see a united country, because this country has been known to fail because of failed institutions.

Otherwise, with those few remarks, I want to wish the people of Subukia and the people of Kenya a merry Christmas and a happy new year.

Thank you, Madam Temporary Deputy Speaker.

Mr. Kiptanui: Thank you very much, Madam Temporary Deputy Speaker, for giving me this opportunity to contribute to this Motion. Indeed, we are approaching Christmas and this is a holiday season. It is high time we also joined our families and the people we represent in our constituencies over this period.

Madam Temporary Deputy Speaker, as you know, we have very many projects being funded by the Government. We also have very many projects which fall under the Economic Stimulus Programme. We are undertaking many projects which are funded by the CDF. I take this opportunity to urge the Office of the Deputy Prime Minister and Ministry of Finance to release this money towards these projects so that we can use this period to make sure that these projects are implemented.

In addition, you know that this is the dry season in most parts of our country and I want to urge the Ministry of Roads to release the funding for our roads so that we can maintain them during this time.

Indeed, as we go for this Christmas Holiday, I would like to wish my colleagues and our people in Keiyo South a merry Christmas and a happy new year.

Madam Temporary Deputy Speaker, with those few remarks, I beg to support.

Mr. Njuguna: Madam Temporary Deputy Speaker, I also take this opportunity to join my colleagues in supporting this very important Motion. Let me further thank the Vice-President and Minister for Home Affairs for his inspiring remarks.

Further, I would like to take this opportunity to thank His Excellency the President for uniting this country and, again, for creating the necessary environment for the economic growth of our country.

Madam Temporary Deputy Speaker, I will also remember to thank the Prime Minister for utilizing his time well in the House. Let me also urge the security agents in the country to maintain security during the Christmas festivities. I also urge the transporters not to hike fares because the commuting people will be out in large numbers and hiking the fares will impede the transport of these people.

Let me also take the opportunity to thank the Minister for Lands for revoking title deeds for grabbed land. On the same breath, let me also extend my appreciation to the Minister for Nairobi Metropolitan Development for his effort to put up street lights in our towns.

Finally, let me wish all Kenyans a happy Christmas and a prosperous new year.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, as there seems to be no more Members interest in this Motion I, therefore, put the Question that this House do now adjourn *sine die*.

(Question put and agreed to)

The House rose at 9.40 p.m.