

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 14<sup>th</sup> June, 2011

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the shortage of seed maize in the country.

Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on its tour to the People's Republic of China.

*(By Mr. Mututho)*

Vote on Account Schedule – Development for the Financial Year 2011/2012.

Vote on Account Schedule – Recurrent for the Financial Year 2011/2012.

*(By the Assistant Minister, Office of the Deputy  
Prime Minister and Ministry of Finance (Dr. Oburu)  
on behalf of the Deputy Prime Minister and Minister for Finance)*

**Mr. Deputy Speaker:** Hon. Members, the Chair is cognizant of the fact that it had previously given an extension of time to the Constitutional Implementation Oversight Committee (CIOC) until Thursday, last week to lay the Papers on the appointments to Constitutional offices; that is, the Chief Justice, the Deputy Chief Justice and the Director of Public Prosecutions. The Chair will use its own discretion to allow the Committee to table the same as soon as they are ready. The Chair is informed that they will be ready in the next one hour.

### NOTICES OF MOTIONS

#### ADOPTION OF REPORT ON SHORTAGE OF SEED MAIZE

**Mr. Mututho:** Mr. Deputy Speaker, Sir, I beg to give Notices of the following Motions:-

THAT, this House adopts the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the shortage of seed maize in the country laid on the Table on Tuesday, 14<sup>th</sup> June, 2011.

#### ADOPTION OF REPORT ON TOUR TO CHINA

THAT, this House adopts the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on its Tour to the People's Republic of China laid on the Table today, Tuesday, 14<sup>th</sup> June, 2011.

#### AUTHORIZATION OF VOTE ON ACCOUNT SCHEDULES

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance** (Dr. Oburu): Mr. Deputy Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, in accordance with Section 222 of the Constitution of Kenya, the withdrawal of Kshs368,316,172,939 representing one half of the total net Estimates of Recurrent Expenditure and Development Expenditure made up in the manner set out in the Vote on Account Schedules laid in the House be authorized for purposes of meeting expenditure necessary to carry on the services of the Government of Kenya during the year ending 30<sup>th</sup> June, 2012 until such time as the Appropriation Act for the year comes into operation.

Mr. Deputy Speaker, Sir, His Excellency the President has given his consent to this Motion.

#### QUESTIONS BY PRIVATE NOTICE

##### DEPORTATION OF CLARA GUTTERIDGE

**(Mr. Imanyara)** to ask the Minister of State for Immigration and Registration of Persons:-

Could the Minister explain the circumstances under which Ms. Clara Gutteridge, a human rights investigator, was deported from Kenya?

**Mr. Deputy Speaker:** Hon. Members, I am made to understand that Mr. Imanyara indicated that he will be away today on official Parliamentary business. In the circumstances, I direct that this Question be placed on the Order Paper at a time when the hon. Member will be in the House.

##### INVASION OF MUCHIRI WA GITHAIGA FARM BY WARRIORS

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

(a) Is the Minister aware that some warriors have invaded Muchiri wa Githaiga Farm in Mau Narok Division of Njoro District and destroyed property worth over Kshs10 million and, if so, what action has the Government taken to arrest the situation?

(b) Could the Minister consider compensating the owner of the farm for the loss?

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): On a point of order, Mr. Deputy Speaker, Sir. This is a different Question altogether! It is not the Question the Member for Molo asked two weeks ago! The HANSARD will bear me out that when he asked his Question, which is totally different from the one he has asked now, there were allegations that there was a senior politician who incited the people of Mau Narok. There was the question of morans. I still insist that the Member for Molo should mention the politician who incited the people of Mau Narok.

**Mr. Deputy Speaker:** Mr. Minister, are you giving a categorical statement of facts as they transpired when this Question was asked that, indeed, the content and the wording of the Question is not the same as it was when the Question was deferred last time?

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, that is true! This is absolutely a different Question in wording, context and everything! What I said is here, and I still insist that the Member for Molo should mention in this House who the senior politician was.

**Mr. Deputy Speaker:** The Chair will briefly defer this Question as the Clerks-at-the-Table fish out the requisite records of the HANSARD.

**Mr. Kiuna:** On a point of order, Mr. Deputy Speaker, Sir. I remember asking this Question and I said that I am in a position to table evidence of what I said. Is the Minister in order to mislead the House that this is a different Question and yet it is the one I asked last time?

**Mr. Deputy Speaker:** Mr. ole Ntimama, are you contesting the debate and what transpired later on or are you saying that the wording of this Question is different from the previous one?

**Mr. ole Lankas:** On a point of information Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Who do you want to inform?

**Mr. ole Lankas:** Mr. Deputy Speaker, Sir, I want to inform the Minister!

**Mr. Deputy Speaker:** Mr. ole Ntimama, do you wish to be informed by Mr. ole Lankas?

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): Yes, Mr. Deputy Speaker, Sir.

**Mr. ole Lankas:** Mr. Deputy Speaker, Sir, the information I want to give the Minister is that the Question is as previously framed, but the issue was that the Questioner alleged that some senior politicians, who were in this House, were involved in the incitement around Molo area. The Chair ruled that it would verify the facts as given by the hon. Member and then it would give direction today. That was the position and it was a supplementary question.

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, it is not a question of the Member for Molo trying to say what he has said because the Question must be in the HANSARD. I think the HANSARD will bear me out on what the Question was.

**Mr. Deputy Speaker:** Fair enough, Mr. Minister! The HANSARD will be brought to the Chair. Once it is indicated in the HANSARD ---

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, including the original Question!

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

**Mr. Gitari:** On a point of order, Mr. Deputy Speaker, Sir. On Wednesday last week there was a Question directed to the Deputy Prime Minister and Minister for Local Government. The Speaker directed that the Question appears on today's Order Paper but it has not appeared. I want your guidance on this matter.

**Mr. Deputy Speaker:** Ms. Martha Karua, please, proceed while the Chair consults on the same.

**Ms. Karua:** Mr. Deputy Speaker, Sir, I have not received a copy of the written answer as of now but I am ready to hear one if there is.

## ORAL ANSWERS TO QUESTIONS

### *Question No.909*

#### POLICE VEHICLES FOR KIRINYAGA COUNTY

**Ms. Karua** asked the Minister of State for Provincial Administration and Internal Security:-

(a) how much money the Government has allocated to each of the four districts in Kirinyaga County for the construction of district headquarters and District Commissioner's residence;

(b) whether the Government has posted Officers Commanding Police Departments (OCPDs) and District Criminal Investigation Officers (DCIOs) to serve the said districts and, if so, when they were posted to each of the districts; and,

(c) whether the Government has supplied vehicles to the DCs, including administrative vehicles, in each of the districts.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): Mr. Deputy Speaker, Sir, I have an answer which should have come last week.

I beg to reply.

(a) The Government's allocation to each of the four districts is as follows:- Kirinyaga West - Kshs30 million; Kirinyaga South - Kshs4 million; Kirinyaga East – Kshs 1 million and Kirinyaga Central - Kshs1 million. This gives a total of Kshs35 million.

(b)The Government has posted OCPDs and DCIOs to serve Kirinyaga District as follows:-

The OCPD and DCIO based at Kirinyaga Central, that is, Kerugoya serves both Kirinyaga Central and Kirinyaga East and parts of Kirinyaga West. The OCPD and DCIO based at Kirinyaga South, that is, Wang'uru, serve Kirinyaga South, Kirinyaga North and parts of Kirinyaga West. The OCPD at Kirinyaga South was posted in March, 2010 while the DCIO was posted in May, 2011.

(c) The Government has supplied vehicles to the District Commissioners (DCs) including accessory vehicles as follows:-

- |                   |   |  |
|-------------------|---|--|
| Kirinyaga Central | - | Land Rover Defender, three<br>Land Rover pick-ups, Isuzu lorry,<br>Land Rover Caravan and Hyundai. |
| Kirinyaga South   | - | Two Land Rover Defenders.  |
| Kirinyaga East    | - | Land Rover Caravan and Land Cruiser.   |
| Kirinyaga West    | - | Land Rover Caravan and a pick-up.  |

**Ms. Karua:** Mr. Deputy Speaker, Sir, I would like to draw the Assistant Minister's attention to the Constitution which prohibits discrimination and it is quite evident from his answer that Kirinyaga East is being discriminated against. I do not know whether it is because I am an abhorred critic of the Government yet my people are taxpayers. From the answer given Kirinyaga West represented by the Minister for Nairobi Metropolitan Development has been given Kshs30 million. I do not know whether the criteria is about who is representing it. Kirinyaga South, which was named only the other day, was given Kshs4 million. This is very little considering that they do not have infrastructure. Kirinyaga East got nil. Kirinyaga Central, which has been the old district headquarters and, therefore, has facilities, got Kshs1 million.

Mr. Deputy Speaker, Sir, there is no need for a DC to be posted when he or she is not supported by way of infrastructure. Could the Assistant Minister tell us on what basis the decision to award monies to various districts and to fail to award any single cent to Kirinyaga was made and the reasons thereof and whether they are pursuing a deliberately discriminative policy even with the motor vehicles? I stand here to say that the motor vehicles for Kirinyaga East are as old as perhaps this House.

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, it is not true that the Government is discriminating against the constituents of the hon. Member in terms of resource allocation. First of all, let me say that the Kshs30 million that was given to Kirinyaga West Constituency was the amount that came out of the stimulus project. That amount came from Treasury to 105 districts. The allocation was based on districts that did not have basic infrastructure to begin with. The allocation was in two phases. So, it does not only relate to Kirinyaga alone. The whole country had 105 districts over a period of two years being allocated Kshs30 million each and they were simply targeting areas which did not have facilities or which had been neglected for some time.

With regard to nil allocation, yes, indeed, we did not have adequate resources but we have now factored it through the next Budget fund to cater for the renovations of the DO's office currently occupied by the DC and also to provide resources for the DC's house which is in a very bad state. An amount of Kshs700,000 has been requested for the DC's house but I can confirm that it has been approved in the current Budget. I do not have the figure in my books.

With regard to vehicles, the way information has been tabulated here, Kirinyaga Central, the original district, appears to have seven vehicles but I can admit that out of the seven, only two vehicles truly belong to Kirinyaga Central. That is, the Land Rover Defender, Land Rover Pick-up for the Administration Police, the Land Rover Defender for the DC and the lorry listed under Kirinyaga Central is used by the county for distribution of food when necessary. So, the lorry is shared by the four districts.

**Mr. Gitari:** Mr. Deputy Speaker, Sir, while appreciating the answer by the Assistant Minister, for the first time, I want to agree with Ms. Karua that there was discrimination. When I look at Kirinyaga Central, we did not have a Member of Parliament because of the petition and Kirinyaga East had issues, so I would like the Minister to come out and say whether this is the final figure or are we expecting anything for the district headquarters bearing in mind that Kirinyaga South is a very new district which does not have infrastructure? I cannot connect the reason why Kirinyaga South is given Kshs4 million and Kirinyaga Central is given Kshs1 million and the other one is given nothing.

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, I do not think I got the hon. Member clearly because in his constituency we are providing an additional Kshs1 million for the refurbishing of the DC's residence in Kirinyaga Central. Kirinyaga Central has been provided with resources. So, Kirinyaga South cannot be said to have been discriminated against because over a period of two financial years, they have received Kshs3 million for a project that they had initiated and Kshs4 million during the current financial year. So, there is no discrimination with regard to Kirinyaga South.

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, could the Assistant Minister be kind enough to tell the House what policy the Government has on funding districts? If you look at the old Thika District, it was split into three districts; Thika West, Thika East and Ruiru District, but there is no funding at all in any of these districts. What is the policy?

**Mr. Lesrima:** I do not think I got his question right. Could he repeat it?

**Mr. Deputy Speaker:** Mr. Lesrima, you can address matters of policy but you are not obligated to address the issues of Juja or any other constituency for that matter except the constituency asked by Ms. Karua and the constituencies within the district.

Proceed.

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, obviously there has been tremendous growth of districts from 70 during the last Parliament to 386 districts. The policy is to provide facilities where they do not exist at all and to refurbish facilities that were previously occupied by District Officers like houses and offices. The policy is also to provide vehicles according to the rate of crime and the expansiveness of the districts in the country. Those are some of the policies that guide the allocation of resources but, obviously, we never at any one time have enough resources. A lot of these activities are factored in our strategic plan to ensure that we fulfill the mandate of making districts operational.

**Mr. Deputy Speaker:** Ms. Karua, the last supplementary question on the same?

**Ms. Karua:** Mr. Deputy Speaker, Sir, I would like to begin by letting Kenyans know that these are not the KANU days when people were threatened with no development if they opposed the Government. I will continue opposing it and the people of Gichugu will get what is rightfully theirs. It is clear that it is a policy of discrimination the Government is pursuing. If it is the criteria the Assistant Minister is talking about then it is Kirinyaga South, which is new and there is no infrastructure that should have had the Kshs30 million allocated to. I want the Assistant Minister to tell the House how he intends to redress the imbalance. I also want to state here that the Budget Committee has the power to redress this and I am going to make sure I sit with them. We are not pleading. We will get what is rightfully ours.

**Mr. Deputy Speaker:** Next Question!

**Mr. Deputy Speaker:** That is a statement from the hon. Member.

**Ms. Karua:** I asked a question!

**Mr. Deputy Speaker:** Answer the question then, if it was asked!

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, I want to acknowledge Ms. Karua's contribution from the Constituencies Development Fund (CDF) to support the Provincial Administration infrastructure. I also want to deny that the Government is specifically discriminating against Kirinyaga County and Gichugu in particular. For example, I am aware that they got new police lines in her constituency and they also got a new hospital. So, the issue of discrimination by the Government does not arise.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to avoid the question by citing the stimulus projects which are in 210 constituencies in Kenya? Is he in order to avoid answering the discriminatory policy they are pursuing which is reminiscent of the KANU era?

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, I still insist that we are not discriminating against the County of Kirinyaga and every effort will be made to redress any injustices that may have taken place in the past.

**Mr. Deputy Speaker:** Next Question by Mr. Kiilu!

*Question No.932*

ELECTRIFICATION OF  
MATILIKU DISTRICT OFFICES

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

(a) whether he is aware that the offices of the Matiliku District Commissioner (DC) have no power supply connection; and,

(b) to state the measures the Government is taking to ensure that the offices are connected to power.

**Mr. Mbuvi:** On a point of order, Mr. Deputy Speaker, Sir. I can recall the last time I came in this House wearing dark glasses and studs I was thrown out of the House. I am surprised that today in the House there is an Assistant Minister for Labour, Mr. Ojaamong, who is in dark glasses and studs!

**The Assistant Minister for Labour** (Mr. Ojaamong): Mr. Deputy Speaker, Sir, I have some eyesight problems and the doctor told me to wear these dark glasses for a few days. I do not have studs!

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, hon. Members! Fair enough, the Chair wants to be satisfied that indeed Mr. Ojaamong is putting on glasses because of the doctor's prescription. I do not see any studs or earrings for that matter! The Chair wants to trust him that he is using those things not for any other purpose but because of the doctor's prescription.

Proceed, Mr. Minister!

**The Minister of State for Provincial Administration and Internal Security**

(Prof. Saitoti): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) The DC has now applied for electricity supply vide the application number E21112080200812 dated 29<sup>th</sup> February, 2008. The Kenya Power and Lighting Company (KPLC) responded in a letter dated 30<sup>th</sup> March, 2009, by giving design details and a quotation of Kshs2,386,411 for the power supply.

My Ministry is making available the sum required to facilitate the power reconnection in the next financial year which will be starting on 1<sup>st</sup> July.

**Mr. Kiilu:** Mr. Deputy Speaker, Sir, you heard the Minister say that the whole of DC's office has no power supply. The DC occupied these offices in 2007. Since that year, he has been operating without electricity. He does not enjoy Government services like typing and managing the Integrated Financial Management System (IFMS). He has to go to other districts to seek these services. Why has it taken him so long to see sense in allowing this DC to utilize ICT and other services that go hand in hand with the supply of electricity?

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, I would like to admit that I am not quite happy with the delay that it has taken so far to connect the electricity. There appears to have been an oversight. The moment this matter was brought to my attention, I directed the funding be factored in the next financial year.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, could the Minister tell us what is the general policy in his office on offices of the Provincial Administration in districts? It is not only Makueni where offices of the DC do not have electricity. In my own constituency, I had even to use CDF money to ensure that offices get electricity. What is he doing to ensure that Mwitika Divisional Headquarters in Mutito District also enjoys similar facilities?

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, our policy is that once a DC's office is in place, we provide it with the necessary services. As I said, there was an oversight here. I will carry out the necessary investigations to establish why this particular office has never been supplied electricity. Facilities must be provided to facilitate the DC's office to carry out its mandate.

**Mr. Mbuvi:** Mr. Deputy Speaker, Sir, what measure is the Minister putting in place to stop the frequent power disconnections and frequent power blackouts within police stations and police lines? As I speak now, there are over 400 families at the police quarters in South B within my constituency without electricity. They have been in this situation for the last six months.

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, I am not in any way trying to evade the question, but on the point of view of collective responsibility, that question will be answered very ably by my hon. colleague in the Ministry of Energy. It is not only the DC's office or even the police quarters where we have interruption of power, but it is a general problem. This problem is occasioned by many other factors, including at a time like now, when we have drought, the water levels are fairly low.

**Mr. Kiilu:** Mr. Deputy Speaker, Sir, while thanking the Minister for making this provision, could he tell me and other Members of Parliament who have a similar problem, why he should allow construction of a new DC's office without providing this important supply of power?



**Prof. Saitoti:** Mr. Deputy Speaker, Sir, as I said, there was an oversight here. There was no provision of the funds to connect power to this particular office. As I said, I do not want to defend a position that I morally believe was wrong.

*Question No.763*

LEVEL OF GIRL-CHILD ENROLMENT IN  
MARSABIT/ISIOLO COUNTIES

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

- (a) the level of the girl-child enrolment and transition rate at Marsabit and Isiolo counties at all levels; and,
- (b) the Government schemes that exist to encourage and promote girl-child education in the two counties.

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

(a) The average enrolment levels and transition rates of the girl-child in Marsabit and Isiolo counties are shown in the table which has been provided to the Member of Parliament.

(b) The Ministry has initiated the following programmes and initiatives to encourage the girl-child education in Marsabit and Isiolo counties:-

1. Developed the gender policy in education in July, 2007 to mainstream gender at all educational levels, institution policies, programmes and activities, learning, implementation and budget processes.

2. The Ministry has developed a policy framework for the nomadic education in Kenya to address the challenges of access, equity and quality education in ASAL regions, including Marsabit and Isiolo.

3. The Ministry has opened more educational institutions for equal access and opportunities for both girls and boys and additional boarding schools. For example, we have Kubi, Bagasa and St. Theresa's schools in Isiolo.

4. The Ministry is implementing affirmative action in granting bursary funds of five per cent more marks on meriting and poverty levels for the girls.

5. The Ministry has established and expanded low cost boarding schools for improved access, retention and completion. The Ministry has also established centres of academic excellence in the constituencies under the ESP programme.

6. We have introduced this education for conflict management and resolution to provide favourable learning, infrastructure development for the teachers and learners.

7. We have implemented the school infrastructure improvement programme by disbursing funds to the needy schools for infrastructure development.

8. We also have the option of taking legal action against the culture and abuse, especially with regard to early marriages and enforcement of Children Act and Sexual Offences Act.

9. We have also introduced mobile schools for improving nomadic education. A total of Kshs21,847,064 to support mobile schools has been disbursed between 2006 and 2010. The Ministry is also implementing the National Food Security and Nutrition Policy and School Help and Nutrition Policy to address the challenges of food insecurity and

malnutrition in schools. The School Feeding Programme has reduced hunger and malnutrition, increased school enrolment, stabilized attendance and attentiveness, improved performance and motivated parents.

10. Lastly, the Ministry is collaborating with other Ministries and Government agencies like the Ministry of State for Development of Northern Kenya and Other Arid Lands, the CDF and Local Authorities Transfer Fund (LATF) for the provision of infrastructure, resource mobilization and capacity building for improving the education standards.

**Mr. Bahari:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has said that the answer is as given in Tables 1, 2 and 3. He has said that the Questioner has the answer. This Question now belongs to the House, but he has brought only one copy of the answer. Is he in order to deny the entire House the opportunity to participate in interrogating this Question by giving us only one copy of the answer? He is referring to a table.

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. This Ministry has never taken seriously matters of education in the ASAL districts. I have had the opportunity to go through the table that the Assistant Minister purports to have provided to the Member and this is not a table that can even be provided as information to this honourable House because it has hundred blanks. I do not know what a blank table would mean as information that has been given to the Member. Even in mathematics - I know the Assistant Minister is a Professor - the averages that are given here are all irrelevant.

With your indulgence, I would ask that this Assistant Minister be requested to go back and provide an answer that will satisfy this House.

**Mr. Koech:** On a point of order, Mr. Deputy Speaker, Sir. This is a very important Question because we want to encourage Kenyans to go to school and we have challenges in ensuring that the girl-child, especially in the ASAL areas goes to school. We can only be able to interrogate this Question when we are given the correct figures, so that we can assess the impact of the interventions. I have access to this information, but I realize there is no single figure indicated for Marsabit Central. I also note that in Garbatulla, we are told that the average for the girl-child in ECD is 80 per cent and for the boy-child is 90 per cent and the average of 80 plus 90 comes to 97 per cent. Those are shocking figures. We do not want to have figures that are “cooked” by officers in the field. We want the reality and the truth on the ground, so that we can provide leadership.

Would I be in order to request that the Assistant Minister goes back and may be visits the area in person, so that he brings proper information to this House?

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. I agree with what my colleagues have stated. I happen to neighbour Isiolo South in this current sitting and geographically and apart from the missing gaps, in part “a”, the Assistant Minister has talked about the tables, which we have exposed as inadequate. However, he has refused to answer the Question. Secondly, the rest of part “b” is talking about policy when the Question is asking about specific schemes that he needs to demonstrate exist.

**Mr. Chachu:** On a point of order, Mr. Deputy Speaker, Sir. I have looked at the table and I hail from the Marsabit County. According to the table, there are no children in primary and secondary schools in the whole of North Horr District. The whole table is blank when I have enough primary schools and, at least, two secondary schools in North Horr District.

**Mr. Deputy Speaker:** Hon. Assistant Minister, are you sure these tables are making any sense to you? I must confess, they are not making a lot of sense to the Chair. Proceed!

**Prof. Olweny:** Mr. Deputy Speaker, Sir, the tables are making sense. We could not get information in Marsabit Central. That is why it is blank. We have a team on the ground that is collecting information, which we shall use to update the data that we have in the Ministry Headquarters. Otherwise, some of the arithmetical errors are easy to correct. For example, for primary schools in Garbatulla, we have an error in calculation of 97 per cent. It should be 85 per cent.

**Mr. Mwangi:** On a point of order, Mr. Deputy Speaker, Sir. You have heard the Assistant Minister admitting that some of the information that he has given is incorrect. Is he in order then to continue discussing the Question instead of admitting that he has incorrect information and he would be ready to provide the correct information to the House in future? Is he in order to give wrong information to the House?

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister cannot talk of errors here. Even if you go to the primary and secondary schools, he talks of an enrolment of 51 per cent for boys and 49 per cent for girls and an average of 97 per cent in primary school. He goes ahead to talk about 49 per cent for girls and 51 per cent for boys in secondary school and an average of 73. Besides that, he has averages of figures which do not exist. If you look at Table 3, he talks about North Horr as having a transition rate of 96 per cent when he does not even know how many boys or girls are in school. How can you talk of a transition rate when you do not even know how many boys or girls are in school?

*(Messrs. Orengo and Maina  
consulted the Clerk-at-the-Table)*

**Mr. Deputy Speaker:** Order, hon. Members! If the two hon. Members right next to the Clerk would either sit down or finish their business very fast, then the Chair would be in a position to see where the Assistant Minister is!

*(Messrs. Orengo and Maina  
resumed their seats)*

Hon. Assistant Minister, clearly, there are a lot of anomalies in the figures in Tables 1, 2 and 3. Why can you not go back and work out your figures?

**Prof. Olweny:** Mr. Deputy Speaker, Sir, if you look at the Question, it is asking for the level of the girl-child enrolment and transition rates. The Members are not looking at those columns. Instead, they are looking at the averages for boys and girls, which is not the core of this Question. The transition and enrolment rates for girls are provided there. The Members' concern here is a simple average which we can ignore and look at what the Question is asking.

**Mr. Deputy Speaker:** Order, Assistant Minister! You have the enrolment rates for boys and girls. In Isiolo and Merti, you have 49 per cent for girls, 51 per cent for boys and an average of 50 per cent. Again, in Garbatulla, you have 49 per cent for girls and 51

per cent for boys. These are the same figures and then you have an average of 97 per cent. What mathematics are these?

**Prof. Olweny:** Mr. Deputy Speaker, Sir, I have said that, that was an arithmetical error which I have corrected in my answer. However, with regard to the Question asked for the enrolment and transition rate for girls, we just gave additional information here.

**Mr. Mututho:** On a point of order, Mr. Deputy Speaker, Sir. I seek your indulgence. In your Gallery, we have girl-child in schools. We cannot entertain an Assistant Minister who keeps on doing his mathematics wrong on such a sensitive subject. Am I in order to request that you either ask the Assistant Minister to go back and bring a satisfactory answer to the House or refer it to the relevant Committee, so that we can have a serious response to this very important matter that has been raised by the Member?

**Mr. Deputy Speaker:** Assistant Minister, the Chair fails to understand why you are adamant when you have information that is faulty all the way through. How do you have no information on Early Childhood Development (ECD) in Marsabit Central; no information on the boys and girls and then you have a transitional rate of 70 per cent to 80 per cent? Who are transiting? That goes for a number of places. You do not have any figures for primary and secondary and you claim that you are collecting the figures. Then you have figures for transition rates for secondary schools.

Assistant Minister, the answer is inadequate. The Chair directs that you come with the right answer. Get full information in a manner that can be understood by all Kenyans and Members of Parliament.

**Mr. Bahari:** On a point of order, Mr. Deputy Speaker, Sir. I want to thank you and hon. Members for scrutinizing this important Question. Since the Assistant Minister did not exercise due care on this matter and he has wasted the time of Parliament, is it in order for you to take serious disciplinary action against him so that it acts as a deterrent to others?

**Mr. Deputy Speaker:** Assistant Minister, you realize there is a lot of information that essentially cannot be easily understood. That goes for the enrolment, transition and the numbers of students on both sides. For example, the Chair fails to understand why you do not have any figures for the children in terms of transition for North Horr, but you have a transition of 96 per cent and 78 per cent. The Chair directs that you go back and come with an appropriate answer to this House.

The Chair directs that this Question be listed on the Order Paper on Thursday afternoon!

*(Question deferred)*

*Question No.926*

LIST OF TENDERS FOR CONSTRUCTION OF  
FRESH PRODUCE MARKETS

**Mr. Mwathi** asked the Deputy Prime Minister and Minister for Local Government:-

(a) whether he could provide a list of all the tenders signed to date, for the construction of fresh produce markets countrywide and indicate the construction status of each project.

(b) why the works on the project in Limuru have not commenced and when the works will commence.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I wish to table the list of all the signed construction papers for the fresh produce markets countrywide to date, indicating the status of completion for perusal by hon. Members.

*(Mr. Mudavadi laid the document on the Table)*

(b) I wish to state that works on the project in Limuru have not commenced. As you recall, the advertisement of the fresh produce market was initially done by the Treasury on 25<sup>th</sup> September 2009. Tender documents were done by the Ministry of Public Works and forwarded to the Constituencies Development Fund (CDF) office in Limuru. On 20<sup>th</sup> January 2010, the Ministry of Local Government received the evaluation report from the CDF office in Limuru through the CDF secretariat and using the Report the tender was awarded to Top Plus Contractors on 7<sup>th</sup> April 2010.

In spite of correspondences between both the CDF office and the contractor, I have not been able to furnish the Ministry of Local Government with the Bill of Quantities without which the contract cannot be executed and payments cannot be effected when due. However, in order to deal with this problem, the Ministry is reconstructing the Bills of Quantities to facilitate execution of the contract and work is expected to commence within the next two weeks.

**Mr. Mwathi:** Mr. Deputy Speaker, Sir, I want to thank the Deputy Prime Minister and Minister for Local Government for the answer and especially the last part that work will start in the next two weeks.

The truth of the matter is that your answer in part “b” is totally misleading. The documents that were forwarded by the CDF Limuru to the CDF Board were actually forwarded to your Ministry. In that forwarding letter, which I wish to table here, there are 26 projects, among them Limuru which had its documents in order; both the evaluation report and the tender documents.

The Bills of Quantities form part of the tender documents and they were forwarded to the Ministry vide this letter I want to table here.

*(Mr. Mwathi laid the document on the Table)*

Mr. Deputy Speaker, Sir, I beg your indulgence for me to read the forwarding letter from the CEO of the CDF Board. It says:-

“Please, find herewith the tender documents and tender evaluation report for 26 constituencies as per the attached schedule”.

Among them is Limuru. I have checked your list and most of the projects have commenced and are at the stage of 40 per cent to 50 per cent completion. Why is it that your Ministry has lost our document? What is it against Limuru that is happening?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I would like at this stage to really apologize to the hon. Member for Limuru. As I said, there was the misplacement of the Bills of Quantities specifically for Limuru. This was not intentional. It is the only incident that we have had. I have undertaken that the reconstruction of the Bills of Quantities is being undertaken so that the contract can be executed and work commenced in two weeks. I hope with that apology, this corrective action has been taken.

**Eng. Maina:** Mr. Deputy Speaker, Sir, I would like the Minister to tell this House whether this programme is in line because it seems to be done in a haphazard manner. In my own constituency, he is aware how many times I have been requesting the building of our market. It is all over the country and the case of Limuru is just one of them. Can the Minister tell this House what the problems have been? When is this programme of having a market for every constituency going to be achieved?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I have just tabled the list of the status of all the projects throughout the 210 constituencies. Indeed, there are some that are on schedule and others are behind schedule, if you look at the list.

One of the things that I wish to point out is that the initial formatting of this project did generate some issues in terms of identifying the contactors, having the processes moving from the Treasury to the CDF office and then back to the Local Government. This definitely resulted in some delays to some of these projects. I wish to state that if they can look at the list that I have tabled, I can be more specific on some of the specific markets.

**Mr. Abdikadir:** On a point of order, Mr. Deputy Speaker, Sir. We had earlier sought your indulgence to be allowed to table the Report of the Constitutional Implementation Oversight Committee (CIOC) concerning the nominations of the three officers. You had given the Committee one hour to do so.

**Mr. Deputy Speaker:** Indeed, yes. The Chair did give one hour and you have one minute to do that now! That one hour was from the resumption of the House. You can table the Report and give notice of Motion!

## **PAPER LAID**

The following Paper was laid on the Table:-

The Report of the Constitutional Implementation Oversight Committee (CIOC) on the approval of Dr. Willy Muniwoki Mutunga for appointment to the office of Chief Justice, Ms. Nancy Makokha Barasa for appointment as the Deputy Chief Justice and Mr. Keriako Tobiko for appointment as the Director of Public Prosecutions.

*(By Mr. Abdikadir)*

## **NOTICE OF MOTION**

### **ADOPTION OF CIOC REPORT ON JUDICIAL NOMINEES**

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

THAT, this House adopts the Report of the Constitutional Implementation Oversight Committee (CIOOC) laid on the Table of the House on Tuesday June 14<sup>th</sup> 2011 on the approval of the nominations of Dr. Willy Munywoki Mutunga as the Chief Justice, Ms. Nancy Makokha Barasa as the Deputy Chief Justice and Mr. Keriako Tobiko as the Director of Public Prosecutions pursuant to Articles 166(1)(a) and 157(2) of the Constitution read together with Section 24 of the Sixth Schedule of the Constitution.

**Mr. Deputy Speaker:** Fair enough! We now go back to the Question by hon. Mwathi!

#### RESUMPTION OF ORAL ANSWERS TO QUESTIONS

**Mr. Mbuvi:** Mr. Deputy Speaker, Sir, is the Minister aware that his senior procurement officers in Limuru and here at City Hall are being investigated by the Kenya Anti-Corruption Commission (KACC) because they normally receive 10 per cent of the contract sum as kickbacks before awarding those tenders to successful bidders? I wish to table a letter here from one of the contractors in my own constituency. Those officers are very brave and they know how to sweet-talk the contractors. That contractor was told to part with Kshs5 million. He was told that, out of that amount, Kshs2 million was to go to the Minister, Kshs1 million to the Permanent Secretary and Kshs2 million to senior officers at City Hall. What action is the Minister taking to stop that illegal and corrupt practice?

Mr. Deputy Speaker, Sir, I hereby table the complaint letter from the contractor.

*(Mr. Mbuvi laid the document on the Table)*

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I am not aware that the KACC is investigating anybody in Limuru or Nairobi at this particular point in time. Secondly, I think when the KACC is undertaking any investigations, it does not announce that it is moving in on any particular person, unless it wishes to do so. They could or could not be investigating, but as of now, I am not aware that they are investigating any particular person as indicated by the Member for Makadara.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, when you scan the document that has been tabled by the Minister, under Lurambi and Ikolomani in Kakamega, he is telling the House that in Lurambi, there is a market being constructed in Bukura which is 15 per cent on course. Another one is being constructed in Ikolomani, which is 25 per cent on course. The truth on the ground is as follows. When the Constituency Development Fund (CDF) Committee of Lurambi sat, they identified Sijirai as the place for their fresh produce market. The one of Ikolomani identified Litambitsa. When you go to both Sijirai and Litambitsa, there is nothing going on. The two projects that the Minister is talking about in his table are markets that are being constructed by the Kakamega County Council. Could he tell us what is going on with regard to the fresh produce markets at Litambitsa and Sijirai?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I think the information the hon. Member has presented to me is very important. It seems to be contradicting what has

been presented to me. I would wish to undertake to respond to that specific issue more categorically after further investigations. Be that as it may, let me state that in certain instances, we have had conflicts as to issues of the site. I may not address Ikolomani specifically but, in certain areas, we have had conflicts on the site; sometimes with the CDF committees and sometimes with the Ministry, when they are awarding specific sites to particular persons to construct. Those are some of the issues that have necessitated or caused delay and require reconciliation. But in the case of Ikolomani, I am prepared to honour the House with a very specific response.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Could the Minister indicate to the House when he is going to furnish that information because there is a serious issue here, where people might want to do double accounting? They can use the county council project to call it the fresh produce market project. When are you going to give us the answer for Lurambi and Ikolomani?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I am prepared to give the response by Thursday this week. I also want to state that we shall not allow any process of double accounting in the construction. That is because we know very specifically the votes for the special produce markets. We also know what is earmarked for other projects by the various local authorities.

**Mr. Kigen:** Mr. Deputy Speaker, Sir, one of the reasons why those fresh produce markets have stalled or there is delay in completion is the fact that the payment process is very long in the Ministry headquarters. What is the Minister doing to ensure that that money is actually released to the district treasuries, so that the process of payment can be faster? Secondly, what is the Minister doing to ensure that the councillors do not interfere? That is because they are interfering in the process of completing those projects. They are frustrating the contractors.

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, the Ministry is sending out regular inspection teams in clusters, so that they can keep a tab on what is happening in those fresh produce markets. No certificates can be paid - and should not be paid - until work has been verified and the necessary counter signatures by the relevant technical officers are on that paper to qualify for payment. So, we are monitoring to make sure that nobody is getting money for no work done.

**Mr. Kigen:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to avoid my question? I asked what he is doing to ensure that the councillors do not interfere with the construction of the fresh produce markets. What is he doing to ensure that the money is paid quickly? Could he consider sending the money to the district treasuries?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I have not avoided the question. First of all, the councillors are not supposed to be involved in that programme. There are technical officers who inspect and validate the certificates before they are paid. No payment will be made until the proper documentation accompanies that certificate. That is what I have said.

**Mr. Olago:** Mr. Deputy Speaker, Sir, I wish to draw the attention of the hon. Deputy Prime Minister and Minister for Local Government to page ten of the annex, No.82. While he confirms that each of the 210 constituencies have got fresh produce markets going on, and Kisumu Town West has Dago Market, could he kindly tell the



House what plans the Ministry has for constructing special retail markets for special areas like Kibuye Market, the largest open air market in Africa?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I was dealing with the fresh produce market projects. But I am prepared to also table--- In fact, I think I have done so before. But I am prepared to table again the list of the other markets that are being constructed, which are not part of the Economic Stimulus Projects. I will be willing on Thursday, to also shed some light on the Kibuye Market.

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. In view of the answer given by the hon. Deputy Prime Minister and Minister for Local Government, and looking at the question that was asked by hon. Khalwale about double accounting in the ministry, could we then have it properly on record that on Thursday, the hon. Deputy Prime Minister and Minister for Local Government will bring to the House details of the markets, including Kibuye market?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, that is exactly what I said. I am prepared to table here a list of all other markets that are not part of the Economic Stimulus Programme on Thursday.

**Dr. Kones:** Mr. Deputy Speaker, Sir, about four months ago, I made a similar request. In particular we had an issue with one of the contractors who is also doing work in my constituency. From the list tabled by the Minister, it is surprising to note that there is one contractor who has been awarded three contracts at the same time. That is M/s Rikori, Building and Civil Engineering Construction Company that is doing work in my constituency, Eldoret South and Mosop. Apart from that, we understand that the same contractor is doing the construction of the district headquarters in Trans-Nzoia East and in Kacheliba. What is of concern is that this contractor, in all the contracts that he has been awarded, the status of work to date is only five per cent and, yet it is the same Ministry that has given the rules that no one contractor will be given more than two contracts. Mr. Minister, what happens in this case? Are you confirming that, actually, there are cases of allegations of corruption in your Ministry?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, when I answered the Question that hon. Kones is referring to, I remember very well that I also indicated that the recommendation for these contractors were coming from the constituencies through the Constituencies Development Fund (CDF) committees. So, part of the dilemma that we got into in this particular case was that the initial---

**Mr. Koech:** On a point of order, Mr. Deputy Speaker, Sir. You have heard the Deputy Prime Minister and Minister for Local Government indicate that some of these proposals came from constituencies. In my own constituency, and he knows it, and I even wrote a letter to him, M/s Rikori did not win the tender for Mosoriot Market, but he was awarded the contract at the Ministry's headquarters. After my complaint the same Rikori came, started the foundation, brought blocks and then took them away. Even the report that he is giving us is not authentic at all because it does not reflect the actual status. Is he in order to claim that this person was awarded contracts by the constituencies?

**Dr. Kones:** On a point of order, Mr. Deputy Speaker, Sir. Further to that, the Ministry was duly informed in order to ensure that no one contractor was given more than one contract. That is the reason why our CDF committees forwarded our

recommendations to your Ministry. Unfortunately it is your Ministry that flouted the same rules. Are you in order?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I think I dealt with that particular Question sometime back, and I do not know why we are going back to it. If it means that I reintroduce, from the HANSARD, the responses I gave for that particular Question, I think that will be valuable to the House; I am being made to go back to memory, but I know I am on record in the HANSARD dealing specifically with that particular contractor.

**Mr. Jirongo:** Mr. Deputy Speaker, Sir, an issue of bribery has been raised by an hon. Member in this House. The Deputy Prime Minister and Minister for Local Government did not respond to it, meaning whether the matter is substantiated or not, it remains in the record of the HANSARD as the gospel truth because he has an opportunity to deny it. Do we then take it that the allegations are true?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, you will appreciate that there were so many questions that were being raised, and so this---

**Mr. Deputy Speaker:** Order, Mr. Deputy Prime Minister! Just before you answer that; indeed, hon. Mbuvi made a serious allegation which is carried in the HANSARD. He has also tabled a letter here from one France General Contractor, which is entitled: "Construction of Markets in Makadara Constituency". This is written to the Director of the Kenya Anti-Corruption Commission, Integrity Centre. This letter is signed by W. Ndirangu, and indicates that:

"I wish to bring to your attention the above subject, having interest for --- construction company. We are not satisfied with how the tendering process was carried out. This is due to the fact that even before the beginning of the tendering process, we were asked to give ten per cent of the total project cost, which we have been informed that it was requested by the Minister and the Permanent Secretary. We are therefore, calling upon your commission to consider investigating the above and ensure that the process is carried out in a transparent manner."

This is a serious allegation. For purposes of the practice of the House, the document that you tabled is admissible, because it is signed and has a name. It is now upon the hon. Member to seek a substantiation. When you ask the Deputy Prime Minister and Minister for Local Government to respond, he can do so but nobody asked for a substantiation. Unless somebody asks for a substantiation, the Chair can go ahead.

**Mr. Mudavadi:** Thank you, Mr. Deputy Speaker, Sir for reading out the letter and bringing it to my attention. I wish to state very categorically that I am not aware of the author of that letter, and the contents, therefore, are misleading and actually an insult to me in particular. I would really request that the matter be investigated thoroughly, so that whoever is the author of that particular letter, can be made to explain to the relevant body. I would be happy if the hon. Member can substantiate if, indeed, it is just that letter or there is anything else to it.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima):** On a point of information, Mr. Deputy Speaker, Sir. In view of the interest being shown in this Question, particularly in market stalls, and in view of the fact that a number of us cannot also interrogate the Minister openly because we are in Government, Would I be in order to inform the Minister to create an

opportunity to hold a *Kamukunji* for us to go through the whole project, constituency by constituency?

**Mr. Bahari:** On a point of order, Mr. Deputy Speaker, Sir. Is the Deputy Prime Minister and Minister for Local Government in order to say that the contents of the letter are misleading? How are they misleading? I do not understand why the letter is misleading! It is very clear in what it is saying, that is in the allegations it is making. Is he in order to misunderstand the letter?

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I have two things. The first one is that the Chair has found that the letter is admissible. The second point is that already it is on record in this House that the departmental committee took up a matter with this Minister and his Ministry, and on the strength of that matter, senior officers in his Ministry have been arraigned in court on matters of corruption. In view of this, would it not be in order that the House specifically recommends that this matter goes to the committee, with the express instructions that, after the committee is through with its work, its report must be brought to the House? Regarding the report in respect of cemetery land, there was an attempt for it to be brought here but it is still pending. Kenyans are in court. The Deputy Prime Minister and Minister for Local Government was mentioned in that issue. Because that report was never brought before the House, the House has never had an opportunity to hear from him about what part he played in that issue of the cemetery land. Could this be referred to the committee with those specific recommendations?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, first of all, I wish to state here that the issue relating to the cemetery was actually tabled here by the joint Committee. The matter was ruled as *sub judice*. It was not debated because it is alive in court. That is what happened on the Floor of this House. The Speaker made such a ruling. So, it is not that anybody has been keeping that particular report away.

Mr. Deputy Speaker, Sir, this other accusation here is completely unfounded, false and it has no substance. The issue of somebody purporting to collect money to bring to me or asking for money to bring to me over a market in Makadara is totally false. It is something that we cannot take on record as being substantive.

**Mr. Mwathi:** On a point of order, Mr. Deputy Speaker, Sir. We have heard one allegation, but I did not want to bring it up because I did not have my letter to substantiate it. However, this contractor alluded to the same thing happening in the Ministry. That is why he is being asked to take Bills of Quantities, which he had only purchased one copy. He had only one copy which he submitted to the Ministry. However, his officers in the Ministry want him to submit the same to them. That is why he has alleged that he underwent similar circumstances.

Mr. Deputy Speaker, Sir, in that situation, I am in order to also request that this matter, just like hon. Khalwale has said, be referred to the relevant Departmental Committee for investigation.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. I also want to encourage that this matter be referred to the relevant Departmental Committee to look into it.

Mr. Deputy Speaker, Sir, having said that, I will request this House that in future, if there is any letter from any Kenyan alleging corruption, that matter be referred to the relevant Committee of the House and concluded there, before it is brought here.

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. You have no doubt realized just how much interest this matter is generating. Indeed, most of the Members in this House have got individual experiences of corruption from officers in the Ministry, not the Minister. Under these circumstances, I kindly ask if it is in order that what hon. Khalwale is suggesting be graciously moved by the House, so that the matter can be dealt with, in detail?

**Mr. Deputy Speaker:** Under the circumstances, because of, indeed, the interest that is generated, the sensitivity of the matter itself, including the claims and the counter-claims, the Chair directs that the relevant Committee moves with speed to do its own investigations and scrutiny on the same matter and report back to the House in three weeks time.

*(Applause)*

Next Question!

*Question No.821*

HIGH POLLUTION LEVELS  
IN ATHI RIVER

**Mr. Nyamai** asked the Minister for Environment and Mineral Resources:-

(a) whether he is aware of the high levels of pollution of River Athi and what measures the Government will take to reverse the state; and,

(b) what interventions he has put in place to ensure residents of Kitui West, who live along the river, access uninterrupted clean water from the river.

**The Assistant Minister for Environment and Mineral Resources** (Prof. Kamar): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware of the high levels of pollution of Athi River. My Ministry is co-ordinating various lead agencies to ensure effectiveness of treatment ponds in the City of Nairobi, Thika and Athi River towns. My Ministry has also been exploring ways through which their respective sewerage systems can be expanded.

Mr. Deputy Speaker, Sir, in addition, my Ministry has been relocating settlement from the riparian areas, within Nairobi River Basin whose waters end up in River Athi.

Other measures being undertaken by the Ministry, includes a strict enforcement of the relevant provisions of the Environment Management Act (EMCA) of 1999 on illegal discharge into River Athi and relocation of the illegal dumpsites, which contribute to the pollution of the River.

(b) My Ministry has put in place various interventions to ensure that residents of Kitui West, who live along the River access uninterrupted clean water from the river. As mentioned earlier, the interventions include co-ordinating lead agencies with a view to expanding the sewerage system in the City of Nairobi, Thika and Athi River town.

The Ministry is also currently implementing the Nairobi River Basin Rehabilitation Programme with the aim of ensuring that the water in all rivers within the basin is clean. In addition to this, the Ministry through the area District Environmental Committee, is creating awareness amongst the residents of Kitui west on the importance of treating water from River Athi.

**Mr. Nyamai:** Thank you, Madam Assistant Minister for the answer to my Question.

I am just wondering about how serious your approach to this issue is, because in my part of the response you have given me, you are saying that you do not have any scientifically analyzed data to show you the extent of the pollution. If she does not know the extent of the problem, how can she be addressing herself to something that she does not know?

**Prof. Kamar:** Mr. Deputy Speaker, Sir, the analysis of water is meant to tell us how poisonous the water is. I will be touching on it when I will be giving a statement that has been asked earlier. The analysis is not to say there is no pollution. Pollution maybe pollution of soil running from the sites of cultivation near river banks, which according to us, as experts, means pollutions. It does not mean poisoning. The analysis is to see whether the kind of pollution we are receiving also has poisonous effects.

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, Athi River flows through, among other constituencies, Yatta. Barely two months ago, this matter was raised here; where we had cases of dead fish. In as late as February/March, there are some parts of the constituency along Athi River, where there was cholera outbreak because of the water here.

My question to the Assistant Minister is: If she goes to Thika town, she will realize that raw sewage flows into Athi River; what immediate measures are, you, as a Government, not even as Ministry, taking to ensure that there is no raw sewage flowing into Athi River, in the first place?

**Prof. Kamar:** Mr. Deputy Speaker, Sir, it is true that the river flows through Yatta. In fact, in a Statement that I will be issuing later on, I will be touching specifically on what the hon. Member asked about the pollution.

Mr. Deputy Speaker, Sir, we have already started looking at the river course and mapping it out to see whether there is any raw sewage that goes through. We will come up with remedial measures as far as that is concerned. So, we have taken the issue very seriously and we have people mapping out the whole river and it will cross over to the Yatta area. That is why I said that they will be able to get the details that I have when I issue the Statement.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Bahari:** Mr. Deputy Speaker, Sir, I do not think that this Ministry has taken this matter very seriously. The word "Athi" in my mother tongue means "white" and I am sure my people, the Boranas, were here through the migration process. It exactly explains that, that water was very clean at that point in time.

However, having said that and in order to show the seriousness of this matter - because Kenya is one of those countries where water is scarce- could this Ministry give us a copy of the programme to conclusion and what they expect it to cost to make sure that, that water can be used for human consumption?

**Prof. Kamar:** Mr. Deputy Speaker, Sir, it is possible to bring a programme that we are working on, but I just want to say that it is true that the Athi River was very clean.

However, this river has been a victim of very many things. It has been a victim of Nairobi growing very rapidly; it is a victim of Thika Municipality that has not expanded its sewerage systems; it is a victim of Athi River Town and we are addressing all of them.

We are addressing the sewerage systems; we are addressing the issue of expansion of sewerage systems and we are addressing the issue of pollution in the river and we are sure that we will come up with a very clean system. We are already in the Nairobi River Initiative where we ensure that the dumpsites are completely moved from the riparian area and we are sure that we will be back on course and we will have clean water in River Athi.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order, because we have been raising this matter on very many occasions, not to table the report by the Government Chemist on the results of this river? This report was requested more than three months ago. The last ruling was that when the Assistant Minister comes to answer this Question, she should table the Government Chemist's report on the pollution of this river. Is the Assistant Minister in order to mislead this House?

**Mr. Bahari:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has said that it is possible to table the programme and the cost involved to clean the river. Could she indicate when she will do that?

**Prof. Kamar:** Thank you, Mr. Deputy Speaker, Sir. For the costing, if the hon. Member gives us two weeks, we will be able to give him the cost because we already know the cost of the rehabilitation of Nairobi River and we are already working on the mapping of Athi River on the other side. So, give us two weeks and we will be able to do that.

The other question that came from Mr. C. Kilonzo is about a report being brought to this House. This Question was referred to the Ministry of Public Health and Sanitation at the beginning and the analysis was done by the Public Health Officer. As I said earlier on, we are interested in those results because of the dying of the fish that was given and we will bring those results. I want to tell hon. Members that the Government Chemist always has a backlog of samples for analysis, our analysis is still going on and we should bring it to this House.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Every time we come here to ask for a Government Chemist's report, the Government refuses to produce one. So, we bothered to get one ourselves and the report says as follows. The remarks and the conclusion say: "The water is grossly polluted with organic matter and not suitable for consumption."

Mr. Deputy Speaker, Sir, is the Government in order to continually refuse to accept that the water in Athi River is polluted? Is it also in order for the Government to continually refuse to table a report on the same? I now table one for the Assistant Minister's benefit.

*(Mr. C. Kilonzo laid the document on the Table)*

**Mr. Mwangi:** On a point of order, Mr. Deputy Speaker, Sir. If you listened very carefully to the Assistant Minister's answer, she said that the analysis will be given by the Government Chemist. Most of the rivers are polluted and it is true. The sewerage plant in

Murang'a Town under the municipality emits the whole lot into a stream. It is not only Athi River that has this problem. Could the Assistant Minister spell out the policy of her Ministry or the Ministry of Public Health and Sanitation with regard to pollution of drinking water in our rivers and streams?

**Prof. Kamar:** Thank you, Mr. Deputy Speaker, Sir. The first clarification was on the results. I will be very happy to have a look at those results but we will also look at our results. I will be very happy to come back to this House with the results. However, I am happy with the way the results read; that the river is polluted with organic matter because that is what I meant when I said that we are aware that it is polluted. What we are not aware is whether the analysis will tell us that it was poison or not poison that killed the fish. I will say this in the Statement that I will issue later on. This is because there is a difference between organic pollution and poisonous pollution that may be coming from effluents from factories. As I said, this river is a victim of very many sources of pollution and we are taking this very seriously. We are looking at the source points of the pollution; we are looking at what comes from the industries as well as what comes from cultivation and dump sites. So, we will look at that matter.

Our policy, as the hon. Member asked, is that we actually get our rivers clean. We have many projects that are going on right now in the Ministry that look at rehabilitation of various rivers. For example, we have Ngong River at Tassia, where we are doing a lot of rehabilitation; I have mentioned the rehabilitation of Nairobi River and riparian sections, especially around Kamukunji area. We are also spreading out all over the country and we are looking at various rivers. We are targeting River Thwake, which is a tributary of River Athi. However, in the long run, our policy is to make sure that our rivers, including the tributaries that feed the rivers are well protected and conserved.

One thing I must tell hon. Members is that, sometimes, we have conflict of interest. While the Ministry tries to relocate dump sites, and especially where we want to relocate illegal settlements near rivers, we do not get enough support from hon. Members from those areas. I would like to appeal that hon. Members should also take this very seriously because we need very clean water in this country and it is possible to get it. However, we need to work together so that when we relocate informal settlements, we get co-operation from hon. Members. I would like to only give them the last bit.

**Mr. Deputy Speaker:** Mr. Nyamai, ask the last supplementary question on this!

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

Order, Mr. C. Kilonzo!

**Mr. C. Kilonzo:** On a serious point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** You are out of order!

Proceed, Mr. Nyamai!

**Mr. Nyamai:** Mr. Deputy Speaker, Sir, I seek your indulgence as I ask my last question.

This Question was brought to this House by Mr. Kabogo because we share the same river. It was also brought to this House by Mr. C. Kalonzo because we share the same river. From Nairobi up to my constituency and beyond, this river serves about 26 constituencies. This is their only source of water which is polluted and not fit for human

consumption. This is the case and yet you have heard what the Assistant Minister. They do not have a programme and cost to clean that river.

Mr. Deputy Speaker, Sir, with your indulgence, we now going into the dry season in my area and there is famine. I lost 32 people in one location when we had famine in 2009. The whole country focused on Turkana when 32 people were killed by Ethiopians. However, when I lost 32 people in one location, nothing happened as much as we tried to raise the matter. In view of the fact that the Ministry does not have any concrete steps to sort out the water pollution in Athi River and given the gravity of this matter; and that we are likely to continue losing lives, right from Mr. Kabogo's place up to my place, would I be in order to request that this issue be referred to the relevant Departmental Committee so that it can deal with the Ministry and we avoid future loss of life in this country?

*(Applause)*

**Mr. Kabogo:** On a point of order, Mr. Deputy Speaker, Sir. You heard the Assistant Minister say that Members of Parliament are not assisting the Ministry. Two weeks ago, I brought this matter to the House. I said that a river, which is a tributary to Athi River, is flowing with crude oil. The water looks like crude oil. Is she in order to mislead the House that we are not assisting and yet, the Ministry is not doing anything? People continue to die. Would I be in order to ask the Assistant Minister to accompany Members of Parliament to visit the river, so that she can taste and drink the water herself?

**Prof. Kamar:** Mr. Deputy Speaker, Sir, I have no problem with accompanying Members of Parliament. With regard to tasting the water, I have already admitted that it is polluted. When hon. Kabogo asked the initial Question, it rightfully went to the Ministry of Public Health and Sanitation because of the poisonous issues involved. That is why I said that it is very important that we get the real facts and actual status of that water. That is why we want to take the samples to the Government Chemist. I will take what I have been given and compare with the results that will come out. The other one is programme of work. The hon. Member has asked why we are not serious and why we do not have a programme of work. Nobody has asked us to come up with a programme of work. If the Question had asked for a programme of work, we would have given that. That is because already, we have a programme that is going on; that is the cleaning of our rivers.

**Deputy Speaker:** Hon. Members, the Chair has said time and again that it does not have to direct the relevant committees to do their work or to execute their own mandate. Nonetheless, as a way of reaffirming further the need for the committees to do their work where the lives of Kenyans are involved, the Chair will also direct the relevant committee to move with speed, execute its mandate and report back to the House in three weeks. Pollution of rivers is one thing that, 50 years after Independence, we should not allow in our country. The Chair is conscious of the fact that the lives of Kenyans are involved in this issue. The industrial waste or the effluent that goes into our rivers is not good. It is bad.

Fair enough. I direct that Question No.966 by Mrs. Odhiambo-Mabona, Question No.798 by hon. William Kabogo and Question No.953 by Yusuf Chanzu appear on the Order Paper tomorrow afternoon. Those three Questions are deferred to tomorrow afternoon.



*Question No.966*

IMPACT OF SOCIAL NETWORKS ON CHILDREN

*(Question deferred)*

*Question No.798*

COMPENSATION OF LAND OWNERS IN JUJA/RUIRU

*(Question deferred)*

*Question No.953*

PERCENTAGE OF BUDGET EARMARKED  
FOR MAINTENANCE WORKS

*(Question deferred)*

We will go back to Question No.2 by Private Notice. It is by hon. Kiuna.

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama):  
On a point of order, Mr. Deputy Speaker, Sir. I maintain that this is a different Question from the one that was submitted by the hon. Member for Molo. It is not the real Question that he filed two weeks ago. If you look at the HANSARD properly, he said then--- To shorten the whole story, he said that there is a senior politician who is inciting the people of Mau Narok. The HANSARD will show you that I said: Mr. Kiuna should actually name the senior politician who is inciting the people in Mau Narok. That is the first one, as it were.

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, let me first begin by stating this Question is the same, same, Question that I had asked last time. I require your guidance and direction because the Minister is saying that I am misleading the House and yet, it is the Question that I had asked last time. He is much aware of what I said and it is in the HANSARD. I do not see any reason why the Minister is trying to stop the Question from being answered by the Minister in charge.

**Mr. Deputy Speaker:** Have you asked your question?

**Mr. Kiuna:** My question is---

**Mr. Deputy Speaker:** Could you ask the Question in the normal procedure that we ask questions?

**QUESTION BY PRIVATE NOTICE**

INVASION OF MUCHIRI WA GITHAIGA  
FARM BY WARRIORS

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

(a) Is the Minister aware that some warriors have invaded Muchiri wa Githaiga Farm in Mau-Narok Division of Njoro District and have destroyed property worth over Kshs10 million and, if so, what action has the Government taken to arrest the situation?

(b) Could the Minister consider compensating the owner of the farm for the loss?

**Mr. Deputy Speaker:** Fair enough. Minister ole Ntimama, the Chair has referred to the HANSARD. You might want to seek a further ruling or a further direction on the allegations made by the hon. Member at that time. The fact that the Speaker said he would consult the HANSARD--- Hon. ole Ntimama did indicate that the Question is different from the Question that was asked two weeks ago.

Hon. ole Ntimama, the Chair has referred to the institutional memory of the House, the HANSARD in this case, and is satisfied that the Question is the same Question that was asked. However, indeed, as you put it, there were claims that were made by hon. Kiuna in which the Speaker indicated that he would verify the same from the HANSARD. The Speaker said:

“The best way to deal with this matter is for me to have time to verify from the HANSARD what the Member for Molo said. So, I will defer this Question to Tuesday next week in order to acquaint myself.”

Hon. Kiuna, indeed, the Chair is satisfied that you imputed improper motive on the person of hon. ole Ntimama on the Floor of the House. As per the rules of the House, you must be in a position--- In the first place, you cannot do it without a Substantive Motion. Having done that, you have a responsibility now, to either substantiate the facts fully or withdraw. Having said that, if the fact that you are going to indicate on the Floor of the House will touch on the person of an hon. Member of this House, the rules again bars you from doing that without a Substantive Motion. It is a catch-22 situation. You must substantiate or withdraw. You cannot proceed to substantiate without a proper Motion of Censure on the character of a person of an hon. Member of this House. The Chair is clearly in a situation that it will give a further ruling on the same after brief consultations and chief institutional memory from the Clerk’s Department. It is not possible to deal with this matter without a further reference. The Chair directs that---

**Mr. Kabogo:** On a point of order, Mr. Deputy Speaker, Sir. I just want to seek the indulgence of the Chair because it has been said on the same Floor of this House that when hon. Minister Saitoti mentioned names of Members without substantiating, and when the matter was brought to the Chair on a subsequent day, the Chair ruled that it was water under the bridge. So, I am not sure whether the Chair wants to move from that position to ask the Member to substantiate while the day that it was mentioned has already passed and precedence has already been set.

In that event, it would also be good for the Minister of State for Provincial Administration and Internal Security to come here, apologize and withdraw the names of Members that he mentioned without a Substantive Motion.

**Mr. Kiuna:** On a point of order, Mr. Deputy Speaker, Sir. I feel that this Question should not be deferred, because I remember that when I asked it last time, the Speaker promised to refer to the HANSARD to find proof. He referred to the HANSARD and he was satisfied. I am very much ready to table evidence to prove what I said or substantiate.

So, I request you to guide me on what I should do because I am very much ready to go ahead and spill the beans.

**Deputy Speaker:** Hon. Members, the ruling was done by the Speaker of the Kenya National Assembly. The Deputy Speaker, who is the Chair for this session, did not have any advance information on the same to be able to prepare adequately for this matter. As I have said, there is a provision in the Standing Orders, which says that any hon. Member can be asked by the Chair to substantiate instantaneously any claims that are made on the Floor of the House. However, there is also a provision in the Standing Orders which says that you cannot say anything negative against a fellow Member of Parliament without moving a Motion of censure.

The Chair will definitely have to do its own research, refer to existing precedents, look at other jurisdictions and make a ruling on the same. Under the circumstances, I will make a ruling on the same on Tuesday, next week. After the ruling, it will be determined how the Question will be handled.

*(Question deferred)*

Next Order!

## **POINTS OF ORDER**

### **PROCUREMENT OF CONSULTANTS ON LAMU PORT PROJECT**

**Eng. Gumbo:** Mr. Deputy Speaker, Sir, on Thursday, I asked the Minister for Transport to bring a Ministerial Statement on Procurement of Consultants for Lamu Port, which he did. The clarification involved very bulky documents, which I could not study at that time, and I had asked to be given up to today to interrogate the Statement. Would I be in order to request the Chair to allow me to do so right now since the Minister for Transport is right here?

**Mr. Deputy Speaker:** Hon. Members, we will take only one Ministerial Statement, and that is the one by the Minister for Transport.

Proceed, Minister.

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I issued the Ministerial Statement and tabled documents. I believe that the hon. Member is asking for time to interrogate the Ministerial Statement. I am ready for the interrogation.

**Mr. Deputy Speaker:** Proceed, Eng. Gumbo.

**Eng. Gumbo:** Mr. Deputy Speaker, Sir, I thank the Minister for the answer that he gave but my opinion is that this process was total abuse of the tender process, and I want to demonstrate that. In tendering, there are only two ways to do it. One is time, cost and quality based, and the other is quality based. When you use the quality based method of procurement of consultancy, it means that you are going to refer to an agreed scale of fees.

In the Statement that the Minister gave, he stated very clearly that at the RFP stage, the pass mark was 80 per cent. That means those who scored 80 per cent and above would go to the financial proposal stage, yet only the financial proposal of Japan Port Consultants was opened.

Mr. Deputy Speaker, Sir, again, in his Statement, the Minister said that on 21<sup>st</sup> September, 2010, he wrote to Treasury, raising concerns over the pricing of the contract for Japan Port Consultants, yet I have with me here a letter that was done by the Ministry, which was the procuring entity, dated 1<sup>st</sup> April, 2010, awarding the contract to Japan Port Consultants. How is it possible that the Minister sought a clarification after the award of the contract?

More fundamentally, it is the rule of tendering the world over that when you tender for consultancy, all the people who are supposed to participate in the tender are listed and their positions indicated. I have just looked at the submissions by Japan Ports Consultants' list of staff and curriculum vitae (CV). They are almost ten people listed to be named. Some of them are drivers, whose rates are given as Kshs300,000 per week or Kshs1.2 million per month. The clarification I need from the Minister is this.

1. Why was the financial proposal of Royal Harkening not opened?
2. What necessitated the negotiations that were done almost five months after the tender had been awarded to Japan Port Consultants?

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Minister, you can now give the clarification he has sought.

**The Minister for Transport (Mr. Kimunya):** Mr. Speaker, Sir, I thank the hon. Member for raising this issue. In fact, it is a matter we had raised ourselves in the Ministry, as I clearly indicated in my Statement. Indeed, the hon. Member is right. There are only two methods of procurement – the quality based method and the quality, time and costs based method. A decision had been taken to use the quality based method. What happens under that method is that the firm that meets the technical criteria is the only one which goes to the next step, which is discussion or consideration of its financial status. The practice is that you ask the winner of the tender if they accept the terms of the negotiations. If they do so, you do not proceed to the next one. You return the second envelop un-opened. As of now, we have no idea as to what the second tenderer quoted, or would have quoted, because the rules say that once the first one accepts, you do not go to tenderer number two.

It is a very poor method of doing things. Ideally, this method should be used, as the hon. Member says, where the fees are the sole determinants, because then you do not expect any variations. The only competition is on the quality as in the hiring of lawyers, where there is a fee scale, *et cetera*. Unfortunately, in this case, that is the method that was used, and we have to live with the consequences of that decision and use that method. It was thought to have been the best method for this contract because of its complexity and nature. Unfortunately, we have no idea as to what happened.

Mr. Deputy Speaker, Sir, due to the issues that were raised about the cost of this consultancy, I took it upon myself, with my consultancy background, to look at all the concerns I was getting from different quarters. In reviewing the contract, I looked at some of those rates. Although they were not necessarily required, I picked out some inconsistencies. Based on that exercise, I would like to report to this House that we were able to negotiate a reduction of Kshs1 billion on the contract sum. I expected congratulations and accolades for that achievement. The reduction was not necessarily supposed to be given by the consultants but we managed to do it and agreed to make progress.

We manage to do it and agreed to make progress. This matter has been taken up at higher levels of Government and I believe lessons have been learnt. One of the things that we will obviously be coming up with, perhaps, even an amendment to the Procurement law to ensure that quality-based methods will never again be used in this country. Cost must always be factored and you actually get the weight of the two to avoid a situation where you are forced into accepting only one of the bidders without knowing whether you are going to get better value on the others.

**Eng. Gumbo:** On a point of order, Mr. Deputy Speaker, Sir. I do highly appreciate the Minister's action to reduce the cost, but is he in order to avoid answering the question? I stated very clearly that the letter from the Ministry which awarded the contract to Japan Port Consultants was written on 1<sup>st</sup> April, 2010. That means there was only one financial bid which was looked at. Before you awarded, one expected you to study the rates and award based on negotiations. That was not done. Yet on 21<sup>st</sup> September, 2010, exactly five months after the letter of award was done, he writes without giving reason stating that they negotiated again. They are the procuring entity. They negotiated with Japan Port Consultants and awarded them at Kshs3 billion. I ask him to clarify what necessitated these negotiations yet they are the ones who awarded Japan Port Consultants five months earlier based on their figure of Kshs3 billion. He has not clarified.

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, I thought I did. But just to repeat myself, the contract was awarded based on the technical negotiations that took place between the opening of the envelopes and negotiations with the contractor. I was not in the Ministry then.

Immediately I moved into the Ministry, people started calling telling me that this contract was very expensive and so forth. I took my time to call for the documents and to review what we had entered into as a Government with this particular contract. In reviewing these documents, using my own experience as a consultant, I picked up that, perhaps, the rates quoted looked excessive, much as they were not necessarily required for quality based. This is because we were not using the costing to actually make a decision. But the rates that were contained in the documents that was given, looked to me to be too high. Based on that, I said we could not operate on rates that purport to show a driver being paid Kshs300,000 per week. We need to bring those rates to realistic levels. It is on the basis of that that I forced a re-negotiation of the contract. The consultants agreed to the re-negotiation although the work was already ongoing because of the special circumstances. That is why I said I should have been receiving congratulations for saving rather than condemnation. Had I not picked it up, we would have paid the full amount. It was contracted based on the tendering method that was used. I only did it because I got concerned that, perhaps, we were not getting the best value. Looking deeper into the document behind the actual contract, I was able to find there was a potential overcharge and we had reductions done based on that. That is the genesis of the re-negotiations.

It was not required by any law. No auditor who picked it up, but it was my own initiative.

**Mr. Twaha:** Mr. Deputy Speaker, Sir, the biggest problem facing our country at the moment is the millions of unemployed people. This project has the potential of employing hundreds of thousands of people from Lamu up to the northern corridor to

Sudan and Ethiopia. Japan is a friendly government which has come to our aid many times. This year, they have had the misfortune of having the Tsunami and an earthquake. I do not know if it is in good taste after you have re-negotiated and the amount has been reduced from Kshs3 billion to Kshs2 billion for the PS, Treasury, to stop payments based on an inaccurate newspaper article by an Anglo-saxon leading journalist by the name of Jaiindi Kiseru. Could the Minister, please, tell us how many one million jobs are worth to this Government and try to speed this project along so that our people can be employed? They have already reduced it by Kshs1 billion and Japan is a friendly government. They have given us many free things. *Tumalize hii kazi.*

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, let me just clarify that Japan Port Consultants is an independent consulting company. It is not part of the Japanese Government. The consultancy is fully funded by the Kenyan Government. We are all concerned that this project should not suffer any delay. We want not just to create jobs in Kenya, but to open up Ethiopia, Southern Sudan and the entire northern Kenya, north of the existing rail line. We are committed to doing that. I will be seeking the support of the House as we move forward on this project with several issues that will come out of it. It is something that we need to open our country and to move forward. The rest of the country and neighbouring countries have moved with similar projects and they can see the benefits. We are determined to move on this. So, there is no hitch as of now. We will be communicating the progress as we disentangle the first item which we have done and the rest is the planning and whatever else we need in terms of voting for extra money to get this project moving.

**Mr. Deputy Speaker:** We will have two clarifications sought by Ms. S. Abdalla and Mr. Lekuton and then we move on.

**Ms. S. Abdalla:** Mr. Deputy Speaker, Sir, could the Minister tell us whether there was a budget for this project because it seems now they are dilly-dallying and they are coming up with excuses or saying there is no money or the tender is too high? Was there a budget in the first place? How would the Government commit themselves to a certain project and then in the middle of it, come out and say that there is no money?

**Mr. Lekuton:** Mr. Deputy Speaker, Sir, I thank the Minister for realizing there was a mistake and he corrected it. I am sure some officials in that Ministry were the ones who made that mistake. What action is he taking on these officials who obviously knew that they were doing this for their own benefit? Could he clarify to this House that we are getting value for our money on this project?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I will start with the first question. I want to confirm that the money for the study was budgeted in tranches. The first Kshs500 million was budgeted in last year Budget, Kshs500 million was budgeted within the supplementary estimates and the balance is to be included in the new financial estimates. That is for the study. For the construction, hon. Members may remember that His Excellency the President did direct that the proceeds of the sale of the Grand Regency Hotel, the US\$45 million, be reinvested and used for the development of this corridor. So, that money is still intact and being held for use as part of the Government investment. The project will begin. At least, we have the seed money and we are looking at other ways of leveraging that money and getting more players to come on board, so that we can start that project in partnership with other financiers.

Mr. Deputy Speaker, Sir, in terms of what action will be taken, first of all, the matter has been taken up, like I said, by the Prime Minister's Office as part of his coordination role. If there are any investigations as to whether the matter was deliberate or purely by error or whatever happened, that will be the subject of the outcome of the review that is taking place. At this point, I would not want to cast any aspersions on any of the members of staff, but the understanding is obviously that, if anyone was involved in any irregularity, then action will be taken as appropriate. The matter is receiving the necessary attention.

**Eng. Gumbo:** On a point of order, Mr. Deputy Speaker, Sir. I really want to thank the Minister for the intervention he took to get us a reduction of over Kshs1 billion on this, but he is a Kenyan and honestly, when we talk about our country and wanting to build our country, let us mean it. Is he in order to say that he is not sure if anything wrong was done when officials from the Ministry permitted a tender which purports that a driver should be paid Kshs1.2 million a month? Really, is this a matter that one can say that he does not know if anything wrong was done? Where do you pay drivers Kshs1.2 million a month? Is he in order?

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, like I said before, the rates were included in the tender documents, but according to the method that was used, nobody was even expected to look at the documents because it is a very peculiar method of procurement. There is one thing that I will never support that says that whoever scores the highest technically, you can only negotiate the bottom line. People could well have said that the cost of this consultancy will be so much in one line and that would have been it. But, fortunately, for us, we had some background information that I was able to use to build a case for a reduction. At this point, I would not want to speculate as to whether there was any collusion or none. That will be the subject of a review that will bring out those issues.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. I am just concerned about the amount involved in this contract and the casual way in which the Minister is talking about the contract. He is even saying that it was not a requirement to look at the documents which were attached. Then, the question would be: Why are the documents there? This matter looks very weighty and it is important that it is referred to the relevant Committee for thorough investigation. It is a very serious matter given the amount involved, the kind of contract we are talking about and what it means to this country.

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, like I mentioned, the matter is already being looked into by the Prime Minister's Office. The Departmental Committee on Transport, Public Works and Housing has already asked us for the documentation. I believe we have already supplied them with those documents. We are happy to discuss with the Committee and clear this matter. Hon. Mbadi may find it casual, but it has given me headaches for the last one year and I am very happy that, at least, we have managed to get the reduction that we have got and we can make progress.

**Mr. Deputy Speaker:** The Chair notes that the Committee is already on this matter. Is that the Committee on Finance, Planning and Trade or the Committee on Transport, Public Works and Housing?

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, the Committee on Transport, Public Works and Housing.

**Mr. Deputy Speaker:** The Committee on Transport, Public Works and Housing, but it involves figures. So, is the Committee on Transport, Public Works and Housing competent enough on its own without the finance component or Joint Committee for that matter?

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, as you ruled before, the Committee is at liberty to look into the matter and we are available. In fact, I tabled all the documents here in the House. So, we do not even need to give the Committee any more than we have already given to this House.

**Mr. Deputy Speaker:** A 33 per cent reduction of a figure given or a colossal sum like that is clearly not a very simple matter. The question is: How was that arrived at in the first place? If it can be brought that low, why was that due diligence not done at the right time? That is the role of Parliament as a watchdog of the taxpayers' money. Unless there was a direction given by the Chair on the same at the previous time, in the absence of that, the Chair would again direct thus: Let there be a Joint Committee of the Committee on Finance, Planning and Trade and the Committee on Transport, Public Works and Housing to look into that and report back to the House in three weeks. If it has been there doing the work, it should not have any problem. Do we have, by any chance, a Member of any of those Committees here now? The Clerk's Department will convey the same to them.

The Chair also appreciates the fact that the Minister was able to do what he did to bring down this thing, otherwise, this would not have been done by anybody including Parliament itself. So, it is actually a commendable job.

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

**Mr. Deputy Speaker:** On the same?

**Mr. Mbadi:** No, Mr. Deputy Speaker, Sir. I believe that is the end of that issue, so that I can raise another issue.

**Mr. Deputy Speaker:** Yes, that is the end of that part. It is not quite the end of the matter, but the end of a certain phase of the matter itself until the matter is brought again to the Floor of the House by the Joint Committee.

#### STATUS OF TAX ACCOUNT AT THE TREASURY

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, you will remember there is an issue that I have raised in this House before. This is the issue of a Ministerial Statement that I had asked the Deputy Prime Minister and Minister for Finance to provide. I am concerned because right now, this House is considering and deliberating on the Budget for this year and there are doubts on the previous Statements that have been presented to this House. It is going to be a bit unfair if this matter is not sorted out before this House considers another set of Financial Statements.

**Mr. Deputy Speaker:** Hon. Mbadi, you are basically seeking a ruling or direction from the Chair?

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

**Mr. Deputy Speaker:** It is an issue that was brought also to my attention and we are looking at it. On notice, I am going to give a Communication on the same and it is going to be very soon.



## DAMMING OF RIVER OMO

**Mr. Lekuton:** On a point of order, Mr. Deputy Speaker, Sir. About three months ago, I asked a Ministerial Statement from the Ministry of Water and Irrigation on the Gilby Three Dam in Ethiopia that blocks River Omo from coming to Lake Turkana. The issue was that the Minister was not feeling well. I want you to give us direction and ask the Minister to give this issue serious consideration because time is running out for this Gilby Three Dam. I would like to know when this Statement will be issued.

**Mr. Deputy Speaker:** Hon. Deputy Leader of Government Business, indeed, this is a matter that has been coming up on the Floor of the House many times. It is only fair that the Government issues that Statement. Is it possible for the Deputy Leader of Government Business to give an undertaking on that, if this Statement can be issued on either Wednesday or Thursday afternoon this week? It is a matter that is very close to the hearts of most Kenyans.

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, I am aware that the matter has been outstanding and it is also close to the hearts of Kenyans especially the ones bordering the lake. But subsequent developments and negotiations have been taking place. Perhaps, we can give some time for the Ministry of Water and Irrigation, the Ministry of Energy and the Ministry of Environment and Natural Resources to get together, so that we can get a more comprehensive update on where we are on that matter following some negotiations that have been taking place between Kenya and Ethiopia. Could I ask for another one week, so that we can get a more up to date position other than get a Statement that will then be rendered irrelevant by those subsequent discussions?

**Mr. Lekuton:** Mr. Deputy Speaker, Sir, I thank the Minister for that, but this has been always the excuse of this Ministry that they will get together with the Ministry of Energy. Time is running out. This issue is very close to the hearts of many people who live along the borders. Could they give us, in the next one week, a comprehensive report of where they have reached so far in their negotiations with the Ethiopian Government?

**Mr. Deputy Speaker:** Indeed, the Chair recollects that the Chair did actually get a similar appeal from the relevant Minister. That is because it is multi-sectoral and it involves many Ministries let the Minister be given more time. More time was given. It is a pity that we are more or less at the same spot again where the Deputy Leader of Government Business wants more time because it is multi-sectoral. It is understandable that there is one component of the Report that is fairly recent in that there is a delegation that went to Ethiopia to discuss, amongst other things this factor too, can you give a date during this week? It can be tomorrow or the day after tomorrow.

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, like I said, following the delegation to Ethiopia, the Ministry of Water and Irrigation and the Ministry of Environment and Mineral Resources have been directed to visit the site and update the status even for the Government. I would rather after that visit we get that Report so that this House can get the most recent status on that matter. One week is not too long to wait. By Thursday next week, we could at least get something much more up to date.

**Mr. Lekuton:** That is okay, Mr. Deputy Speaker, Sir. Thank you.

**Mr. Deputy Speaker:** Fair enough! The Chair so directs that this matter be addressed next week on Thursday and the Ministerial Statement be issued on Thursday next week.

Next Order!

## **BILL**

### *Second Reading*

#### THE INSOLVENCY BILL

*(The Attorney-General on 7.6.2011)*

*(Resumption of Debate interrupted on 7.6.2011)*

**Mr. Deputy Speaker:** Mr. Ndiritu Muriithi was seconding the Bill. Please, proceed!

**The Assistant Minister for Industrialization (Mr. Muriithi):** Mr. Deputy Speaker, Sir, as I was seconding this Bill, I left at the point of explaining that if you look at the number of enterprises in Kenya, it is estimated that we have approximately five million to six million micro-enterprises. It is further estimated that we have over 500 million business names at the registry in the State Law Office and that we have 145,000 companies registered which are mainly private companies.

In moving the economy forward, we need to graduate small businesses to become large businesses and micro-enterprises to become more formalized enterprises that are able to grow and create jobs. As I explained, around the world, 75 per cent of businesses start up and fail. They fail because of issues of working capital. Therefore, we need to modernize our law so that we make the distinction between a company that is insolvent; meaning it has run into difficulties with its cashflow and is unable to immediately service debts and a company or enterprise that is headed for bankruptcy or is not viable. Therefore, the whole purpose of this law is to, first of all, create that very clear distinction so that within a legal framework, as the private sector is going about its business, we are able to distinguish those companies that are insolvent. That is why the Bill makes the provision to provide a stay for creditors so that instead of where we are now, an insolvent enterprise typically moves directly to liquidation where we are selling assets.

Once we have made that distinction, supposing then this enterprise must indeed be liquidated, this Bill makes a provision for independent administrators who take control of the process so that the liquidation maximizes the value that is able to be realized for creditors and other stakeholders. This is the purpose of the law; it is to help us do these things and give the liquidator time to be able to, in an orderly fashion, sell. If we do get to the point of liquidation of an enterprise, how do we ensure that things are done equitably between employees, sub-contractors and suppliers? Again, this is part of what the law is trying to accomplish.

Mr. Deputy Speaker, Sir, one of the key provisions of this proposed law is to identify and provide a mechanism to punish managers or directors whose illegal actions may contribute to insolvency of a firm. We have seen this in many enterprises. Last

week, I spoke to the point where Pan African Paper Mills has reached and the challenges we have had in the turnaround of that business because of certain actions of previous management. At the moment, there is no provision on how to adequately bring directors to account where they have taken illegal action that contributes to insolvency or an event of liquidation.

Finally, at the moment, what we have is cumbersome. As the Attorney-General explained, we do have a law that is fairly antiquated. So the process of making these decisions from an economic point of view is long, cumbersome and very costly. So the process outlined in this proposed law seeks to streamline this process to make it easier, clear and predictable. It shows what happens at what point so that it is less costly. Again, I want to go back to our challenges with Pan African Paper Mills and the cost to Government in the public interest to try and put this thing right. We will streamline the process; make it cheaper, clearer and more predictable.

Mr. Deputy Speaker, Sir, as I have explained, in trying to graduate enterprises; in trying to ensure that as an economy we are allocating resources or investible resources into enterprises that are viable and that we are providing incentives to the owners of these enterprises, we seek to provide incentives so that Kenyan investors can make those decisions. That is what we needed to do in order to modernize. As I explained, it is part of a set of laws; the Companies Bill that is already before us, the Accountants Act that we passed last year and so on. There are a set of Bills designed to modernize the business environment, move us into the future that is the Vision 2030 of our national projection.

I beg to second.

*(Question proposed)*

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, allow me to support this Bill. I think many times in this House, we have spoken about this country having laws that are not pro-investment. We have complained that the Government needs to review or make amendments to the various laws that we require to encourage investment in this country. We have been having problems with the Companies Act and I am happy that something is being done. We are soon going to have a company law in this House, courtesy of the Attorney-General, who is just about to leave office. Probably, that may make us think twice on whether to send you home or really retain you on that job.

*[Mr. Deputy Speaker left the Chair]*

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

Madam Temporary Deputy Speaker, we have been complaining about the Companies Act. We feel it is rigid and oppressive to business. We have spoken about the absence or lack of insolvency law. I know that there was the Bankruptcy Act, but it did not adequately address the issues and complaints that we have had. We have cases of bankruptcy, receivership, insolvency, voluntary winding up and liquidation. Those issues, to many Kenyans, have not been very clear. We have not undertaken a deliberate attempt to clarify to Kenyans what they mean. In Kenya, anytime you hear of a company going

into receivership, that is like a death sentence for that company. Instead of managers, liquidators and receiver managers trying to help the company come out of the financial distress, they have been profiting from the assets of the company. The fact that the company is not able to meet its obligations as and when they fall due does not necessarily mean that, that company has no capacity to rise again and stand on its feet. Therefore, we have looked for a set of laws that will help clarify and provide a systematic way in which a company that is in financial distress can get out of it. We should be looking for ways of helping companies stand on their feet. That is why I am happy that, at least, in this Insolvency Bill, when you look through it, it has provided mechanisms of identifying and prosecuting managers or directors whose illegal actions contribute to the insolvency of a firm. That, to me, is very important. It is important that if the directors and managers commit acts that drive a company into insolvency, we should not just wind up that company, but punish the responsible managers and directors. That is because they have what one would call agency-principal relationship. If the agent fails, the principal should crack the whip.

Madam Temporary Deputy Speaker, if you look at Part IV of this particular Bill, it dwells at length on bankruptcy. It defines it. It also defines the duties of trustees and receiver managers. It also clearly spells out how the debtor's property will be distributed in the event that the trustee is supposed to pay the creditors. It also outlines the commencement of bankruptcy, talks about the court processes, statement of affairs and what happens in the event that during the process, the bankrupt person dies. What happens in the processes of doing all that? What if the person who owed you money dies? It also talks about the rights of creditors. So, to me, this is a very deliberate attempt to address some of the issues that have remained outstanding over the years.

Madam Temporary Deputy Speaker, more importantly is the provisions of Part VII. I am more concerned about the corporate rescue. That is because in this country, cases of companies which have gone under receivership, I only know of Uchumi Supermarkets which was revived. That is because there was a rescue plan for it. There was a corporate rescue process. Otherwise, all the others have collapsed because we do not have a clear procedure of how, if a company is in financial distress as I said, should be helped to come out of it. I want to just give an example of Kenya National Assurance (KNA). The company was very rich in terms of physical assets. But because it could not, at one time, meet its financial obligations - and that is purely a cashflow problem - it was put under receivership. Instead of coming out of it, the assets of that company were mismanaged and disposed of in an irregular manner. There was fraud. You could not even determine where some amounts were banked after the assets were sold. What we have now in the name of Kenya National Assurance (2001), to me, is just but an empty shell.

Madam Temporary Deputy Speaker, we need, as a country, to have laws in place which will help us, in case, companies go through financial distress. How do we get them out? That should be the bottom line. That is what we should be focusing our attention on. The objective should not be just to pay the creditors and wind up the company. The objective should be to fight and see how that company will be helped to get back on its feet again. I can see the Minister pointing at the Attorney-General. When I started, I said that I congratulate the Attorney-General for bringing this Bill. Actually, it looks voluminous. But, for me, in summary, this Bill is providing for a clear procedure and a

way of helping companies and even individuals. We have individuals who run bankrupt. Suppose hon. Mbadi became bankrupt today? We know the consequences of that. How do we help him come out of it? Do we just condemn him and let him lose his parliamentary seat and that is the end of it? We need to look for ways of helping Kenyans because somebody or a company can get into financial distress for a number of reasons.

Madam Temporary Deputy Speaker, I want to conclude my contribution by saying that, at times, there is no clear way of paying the creditors. Normally, you realize that when a company is liquidated, the receiver managers start by paying off politically-correct creditors. That is because we did not have a legal framework. Right now, with this Bill, it will be very clear. How do you settle the various creditors and liabilities? To me, this is a piece of legislation that I would entirely support.

Madam Temporary Deputy Speaker, with those many remarks, I beg to support.

**Mr. Muthama:** Thank you, Madam Temporary Deputy Speaker. Mine will be very short. I also stand to support this Bill. I want to speak from the experience I have as a businessman. The Attorney-General should note that many companies have been pushed out of business, because of collusion between businesspeople and more so, those who are not indigenous Kenyans and certain banks. It has happened before where a Kenyan has borrowed money from a bank and invested it. When the investments were over and above the money borrowed from the bank, a certain group of people gathered together and moved to the bank and encouraged it to force bankruptcy of that company, which was owned by indigenous Kenyans. In the process, the company was sold at a very low price, and the African was pushed out of business. Eventually, his business was taken over. That has happened several times and I can quote certain companies which are very good illustrations of what has happened before. The Attorney-General needs to protect Kenyans. He needs to take care of that.

Madam Temporary Deputy Speaker, another issue is also when money is borrowed and interest is charged at a level which is over and above even the principal amount borrowed. There is a law which was introduced in this House, and it is very clear that any borrowed money, its interest amount should not exceed the principal amount borrowed. That has now been put into practice. As a leader, I have seen people coming to my office who have borrowed Kshs100,000 and the amount demanded by the bank at that particular time is over and above the borrowed principal amount. They do not put into consideration even the amounts that have been paid for a certain period of time. That has made running business by Africans extremely difficult. It is only such a law that can be used to protect indigenous Kenyans.

Madam Temporary Deputy Speaker, thinking of removing another person from business is totally unacceptable kind of arrangement that cannot be accepted. The law must be used at any time when such issues arise. The Attorney-General should put that into practice. Kenyans or Africans should be protected from being removed from business unfairly.

With those very many words, I support the Bill.

**Ms. Karua:** Madam Temporary Deputy Speaker, I rise to support the Bill. This Bill is timely, or shall I say it has taken long to come? But it is better late than never. It is something we need and I want to again reiterate that receivership in this country has become a goldmine to unscrupulous receiver managers, where instead of gathering the assets so that the liabilities are paid, they accumulate wealth for themselves. This is a

non-regulated field where the fees charged by the receiver managers is not specified. I think now that the Bill is before the House, it is up to us, as the House, to make improvements on this Bill. One of the improvements I would like to see is an annual renewable licence for insolvency practitioners, where at the end of each year, an insolvency practitioner will list the matters under their care and give reports on those matters so as to convince the board that is granting the licenses that they are fit and proper to continue with the work of insolvency managers. This will enable the country to have a monitoring mechanism on how receiver managers are performing; if one has not competently handled the matters under their care, or they are overburdened by having too many incomplete matters, then such a receiver manager may have difficulties in having the licence renewed or in getting any additional brief.

I would also like to see fees such as the advocates' remuneration order because this is a contentious area. Let us have guidelines for the fees charged by the receiver managers, or the insolvency practitioners. Since we are coming from a background where the insolvency managers, otherwise known as receivers and liquidators--- I have also been part of the problem and part of the reason for insolvency--- It is good that we regulate the fees that they charge on that basis we will have a way of measuring the transparency and accountability of the receiver manages where the fees are unregulated, then the receiver manager, or the insolvency manager, can very well claim the bulk of the property as their fees.

Madam Temporary Deputy Speaker, the other area is aligning the offences because once we give the insolvency manager some privileges and powers, we must also give them responsibility and that responsibility would be to manage the property to the best of their ability. If they knowingly mismanage the property, the offences should be more than is being provided. That is more than the general offence. We should specify the types of offences and here I would say that we do not need to reinvent the wheel. At the Committee Stage, we should be able to look at the various jurisdictions notably the US, UK and many others, and find how we can specify the offences that are likely to be committed by a receiver manager and to give them standards by which they must live.

Madam Temppraory Deputy Speaker, on individuals, there are people who may opt to file for bankruptcy to avoid paying debts. We should also tighten that area, so that if, after going through bankruptcy proceedings, anyone found to not have been truthful about what they own, action is taken and those who would otherwise have benefitted should have recourse. We ought to critically look at the provisions. I have looked at the Memorandum of Objects and Reasons and the question we must answer at the Committee Stage is whether the Bill, in its current form, will help us to maximize the value of the liquidated assets. How shall we ascertain the value of the liquidated assets, so that we can maximize on that value? What sort of inventory should the insolvency manager fill, so that we can be measuring against that as they make their returns? Have we specified offences which will enable us to prosecute managers and directors, whose illegal actions contribute to the insolvency of a firm?

We know that we rarely go behind the veil and, therefore, there are individuals who have specialized in making sure that they flee with public money by donning the veil of corporate bodies. We need to look at whether the provisions in this particular Insolvency Bill, together with those in the Companies Bill that was recently debated here,

will complement each other to make sure that people do not deliberately commit actions that end up assisting them to disappear with public money.

Madam Temporary Deputy Speaker, as I said before, we need to ensure that the Insolvency Practitioners Board is able to regularly renew the licenses of insolvency practitioners and also is able to monitor their faithfulness to the profession they have chosen.

Madam Temporary Deputy Speaker, Sir, all in all, I would say we look at the Bill critically to see whether it answers what it sets out to do, to even go beyond that and provide for whatever we feel as House is not provided for. I have indicated that one of the areas to check is transparency and accountability of insolvency practitioners and, indeed, of receiver managers. We know that in many instances, where receiver managers take over estates, they literally become owners of those estates. There has been very little accountability in this area. It depends on the goodwill of each individual manager. We cannot leave public assets to the goodwill of those who manage. We need to have stringent laws that ensure that we protect the firms and individuals, who have filed for bankruptcy, as well as the public which they owe.

Madam Temporary Deputy Speaker, with those remarks, I beg to support. It is up to us, as the House, to improve on this Bill, and pass it without further delay.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, as there seems to be no one interested in making any further contribution, I now call upon the Mover to respond.

**The Attorney-General** (Mr. Wako): Madam Temporary Deputy Speaker, I beg to reply.

Madam Temporary Deputy Speaker, I want, first of all, to pay tribute to all those who have contributed very positively to this debate; Hon. Muriithi, who actually seconded me, hon. Mbadi, hon. Muthama and hon. Karua. They have clearly set out why this Bill is necessary. When I was moving the Bill, I stated that the laws that we have now as far as insolvency is concerned, if you look at that Act, if we enact this Bill, will be repealed. It actually came into force before all of us in this room were born. That was in September, 1930. I believe there is none in this Chamber who is older than that.

Madam Temporary Deputy Speaker, the ills which both hon. Mbadi and hon. Karua referred to are real in that when a person or a company is declared bankrupt, to use the word of Mr. Mbadi, that was a death sentence, and to use the words of hon. Karua, that was really a golden fleecing on the part of the official receivers. When we had this order against a company or against an individual, the effect was not even to assist the creditors to be paid. The effect was to pay the official receivers. It paid them to continue for as long as possible.

Madam Temporary Deputy Speaker, we have a long record of a number of companies which have been put in receivership and which have taken a very long time under receivership. The Kenya National Assurance Company was quoted. We have the Rural Urban Credit, which was quoted. It has taken years and years. The creditors have not been paid, but the official receivers have been milking the assets of that company for their own benefits, hence the necessity for this Bill.

Madam Temporary Deputy Speaker, as I stated earlier, this Bill took a long time in making. It was as a result of a taskforce I set up. It was composed of the stakeholders in the field who were feeling the pinch of the setting the companies in liquidation or

declaring persons bankrupt. They undertook trips even to the United States of America, Australia, New Zealand, United Kingdom, in addition to our own neighbouring countries. They have come up with an excellent law. It is an excellent legislation that actually ties in with the best practices internationally.

Madam Temporary Deputy Speaker, for example, in Clause 463, the United Nations Commission on International Trade Law, remodelled law cross border insolvency, we will have the force of law in this country, if we enact this Bill. So, this Bill takes into account the best practices in the world as of today. If we enact it today, it will be the best Bill in the world. I challenge anybody to say so.

Madam Temporary Deputy Speaker, on issues about the offences, there are many offences both for the official receivers and the persons who has been declared bankrupt. It is clearly set out in this Bill. There is just a whole chapter on nothing, but offences that can be committed on either side.

With regard to the directors in this country, we had a time when a family or somebody could form a company, get the money, channel that money like money laundering through that company and buy properties for the family and so, and leave the company to be declared bankrupt. The company will be declared bankrupt, but him as an individual has benefited. The institutions from which that individual borrowed also becomes very shaky financially, because they have not being repaid. Now, it is going to be an offence for such directors to do those acts. Even if you are a director of a company, maybe you have not done those acts, but you know very well that the company is bankrupt, but nevertheless, you are going on in incurring debts, trading and so on, really making the public suffer. By so doing, you will have committed an offence. In such a situation, you not only commit an offence, but you will not be a director of any other company and so on. So, the offences are all here and I welcome Members to look at them. If there is a way we can improve on this, the ultimate thing is for us to pass the best legislation that we can pass. So, I would really welcome amendments.

With those few remarks, I beg to reply.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the Whole House tomorrow)*

## MOTIONS

ADOPTION OF REPORT  
ON 123<sup>RD</sup> ASSEMBLY OF IPU

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, the Deputy Speaker is the Leader of this delegation and he is unable to continue with that business. So, next order.

*(Motion deferred)*



ADOPTION OF REPORT ON STUDY  
TOUR TO PARLIAMENTS OF ITALY/SPAIN

**The Temporary Deputy Speaker** (Dr. Laboso): Again the Chairman of that Committee is also unable to continue with that business.

*(Motion deferred)*

ADOPTION OF REPORT ON SOUND  
INTERFERENCE ON KNA HOUSE PROCEEDINGS

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, again that Order the Member is not able to continue with this business. Therefore that is also deferred.

*(Motion deferred)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, there being no other business, it now time for interruption of the business. The House, therefore, stands adjourned until tomorrow, 15<sup>th</sup> June, 2011 at 9.00 a.m.

The House rose at 5.30 p.m.