

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 14th December, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:

Financial Statement of the People's Party of Kenya for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education (Prof. Olweny)
on behalf of the Minister for Justice, National Cohesion
and Constitutional Affairs)*

Financial Statement of the Municipal Council of Kisumu for the two-year period ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

Financial Statement of the City Council of Nairobi for the year ended 30th June, 2008 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the City Council of Nairobi for the year ended 30th June, 2007 and the Certificate thereon by the Controller and Auditor-General.

Financial Statement of the City Council of Nairobi for the two-year period ended 30th June, 2006 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the City Council of Nairobi for the year ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

Financial Statement of the Town Council of Nandi Hills for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

Financial Statement of the County Council of Mandera for the two-year period ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

Special Audit Report of the Controller and Auditor-General on the Debtors, Creditors on the Local Authorities Transfer Fund (LATF) of the Municipal Council of Kisumu for the four- year period ended 30th June, 2007 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education (Prof. Olweny) on behalf
of the Deputy Prime Minister and Minister for Local Government)*

QUESTION BY PRIVATE NOTICE

DISAPPEARANCE OF JOSEPH KINYUA MARUI IN MT. KENYA FOREST

Ms. Karua: Mr. 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 Mr. Joseph Kinyua Marui disappeared in Mt. Kenya Forest where he had gone to graze cattle on 26th October, 2011 and has not been traced since?

(b) What efforts is the Government making to ensure that the said person is traced?

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

(a) I am aware that on 1st November, 2011 at around 1100 hours one Mrs. Lucia Wanjiru Marui of mobile number 0711698554 from Nyagithusi Village, Gachege Sub-Location, Kirima Location reported to Kianyaga Police Station that her son, Joseph Kinyua Marui aged 30 years had gone missing from 26th October, 2011. He had gone to graze cows at Karandi in Mt. Kenya Forest and since then he had never returned home or been seen anywhere. A report was recorded in the OB No.14/1/11/2011. However, three head of cattle which he had gone to graze returned home unattended. When the report was received, action was immediately taken and a signal was circulated to all police stations, posts and patrol bases in Kenya, and particularly around Mt. Kenya for the police to check if he might have been spotted anywhere within the areas bordering the forest. A search for the victim is still going on with the help of the police, the KWS officers, and members of the public.

(b) Finally, members of the public are asked not to go deep into the forest without informing the forest officers or the KWS personnel as there are wild animals in the forest which can as well harm them.

Ms. Karua: Mr. Speaker, Sir, while thanking the Assistant Minister for that answer, I am a bit disappointed that the only action taken was sending signals around the country. What is required in a case like this is a search party which should go into the forest where this man was. Is the Assistant Minister prepared to organize a search party, so that the family may be able to ascertain whether this man is alive or whether harm came upon him? Is he willing to immediately organize a search party of the KWS, the army, the police and the members of the public?

Mr. Ojode: Mr. Speaker, Sir, yes, I am willing to do exactly that. The only thing is that she has to give me two or three days, so that I can liaise with the other personnel from KWS and the army. However, I am going to do exactly that.

Mr. Baiya: Mr. Speaker, Sir, while acknowledging the Assistant Minister's commitment to organize that kind of a search party, it is obvious that citizens by themselves do not have the capacity, technical or otherwise, to conduct that kind of a search. Also, it does not make a lot of sense to blame wild animals when clothes were not found. Could he possibly say when he is going to conduct the search, so that the members of the family and the hon. Member can organize themselves?

Mr. Ojode: Mr. Speaker, Sir, it requires my commitment to liaise with other departments to come forward and do a search within the forest. I want to confirm to this House that once we break this evening I will contact my counterpart, hon. Maj-Gen. Nkaisserry, and hon. Dr. Wekesa so that we form a team which will then go and do a full search within the forest in order to ascertain whether the guy is alive or not.

Mr. Ruteere: Mr. Speaker, Sir, this involves the life of a person. Is it proper for the Assistant Minister to wait for a Member of Parliament to ask a Question, so that they can organize a search?

Mr. Ojode: Mr. Speaker, Sir, I mentioned here that when we got the report we took some measure. This is a serious thing. We will try our level best as Government to make sure that we do a search within the forest.

Ms. Karua: Mr. Speaker, Sir, I want to appreciate the Assistant Minister's commitment to conduct a search, but I would want his assurance that in future in cases of this nature, immediately a disappearance is reported a search will be mounted without any delay to aid the family of the person who will have disappeared. Otherwise we are devaluing the citizenship of our people. There must be some value in being a citizen.

Mr. Ojode: Mr. Speaker, Sir, I want to assure this House that we value our citizens very much. In the same vein, I want to encourage Kenyans to report cases of disappearance immediately in order for me to launch a search with immediate effect.

ORAL ANSWERS TO QUESTIONS

Question No.1036

NON-PAYMENT OF HONORARIA TO ADULT EDUCATION TEACHERS IN NANDI

Mr. Koech asked the Minister for Education:

(a) why the Government has not paid the Adult Education Teachers in Nandi North and Nandi Central Districts their *honoraria* since June 2010; and

(b) when they will be paid.

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, we handled this Question here and what was left was the proof of payment for the Adult Education Teachers. I beg to lay on the Table the payment schedule that is on Form FO79 for Nandi Central and Nandi North Districts Adult Education Teachers.

(Prof. Olweny laid the documents on the Table)

Mr. Koech: Mr. Speaker, Sir, I have not looked at the documents the Assistant Minister has tabled. However, I do not know whether the Assistant Minister is not aware or not serious in actually ensuring that these teachers are paid. This is because on 29th November, 2011 I received a call confirming the payment for five months up to November, 2010. To date, nothing else has been deposited there. The account is in KCB, Kapsabet and it is No.272970769. Could the Assistant Minister confirm that these teachers are actually going to be paid immediately?

Prof. Olweny: Mr. Speaker, Sir, why can he not look at what we have paid them and then from there---

Mr. Speaker: Order, Assistant Minister! You have been asked a straightforward question.

Prof. Olweny: But we have paid, Mr. Speaker, Sir.

Mr. Speaker: Yes. Just say that you have paid up to November. If there is any pending payment, he is asking if it will be paid immediately. That is all!

Prof. Olweny: Yes. Whatever is left will be paid, Mr. Speaker, Sir.

Mr. Koech: Mr. Speaker, Sir, the earlier payment by the Assistant Minister indicated that the payment covering July, 2010 to June, 2011 was made on 10th October, 2010. What the Assistant Minister has tabled here confirms my fears that this was payment for July, 2010 to November, 2010. So, from January, 2011 to date nothing has been paid. Could he confirm that he is actually going to pay?

Prof. Olweny: Mr. Speaker, Sir, whatever has not been paid will be sorted out.

Mr. Speaker: Last question, Member for Mosop.

Mr. Koech: Mr. Speaker, Sir, the Assistant Minister has misled the House in the past. He has tabled a document today claiming to have paid the teachers. The document states that payment was up to November, last year. He has not answered my question. When is he going to pay them their dues from January to date? These people are suffering!

Prof. Olweny: Mr. Speaker, Sir, we will do the rest of the payment by January, next year.

Mr. Lagat: On a point of order, Mr. Speaker, Sir. I think the Assistant Minister is misleading this House because one month ago he said that everything had been forwarded to the accounts of these teachers in Nandi Central and Nandi North, that is to Mosop and Emgwen constituencies. He said that the money had been wired to the respective accounts of these teachers. This is supposed to be money covering up to October, 2011. Now, if he can say here that everything will be sorted out by January, 2012, yet we are talking about last year's payment, then he is not being sincere.

Mr. Speaker: Member for Emgwen, that really amounts to an opinion, but because you do not ask too many times, Assistant Minister, can you respond?

Prof. Olweny: Mr. Speaker, Sir, whatever the balance of these payments is, we will pay in January, 2012.

Question No.1124

REMOVAL OF WATER HYACINTH FROM LAKE VICTORIA

Eng. Rege asked the Minister for Environment and Mineral Resources:

(a) if he is aware that the Mbita Causeway built for easy access to the Mfangano Island has been the major cause of continued environmental deterioration at the Winam Gulf, particularly due to the hyacinth weed;

(b) how much money the Government has used both from the Treasury and Development Partners, on the removal of the weed in Lake

Victoria, and whether he could explain why it cannot be removed successfully; and

(c) whether he could confirm the identity of NGOs that have been formed and are receiving funds from donors in the pretext of removing the weed and, whether the Government could conduct an audit of their activities.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I beg the indulgence of the Chair that this Question be revisited during the second round.

Mr. Speaker: Order, Mr. Ojode! You know that there is no such thing as “second round”; but, perhaps, because from the numbering this is a relatively old Question, we will give it another chance.

Question No.1419

LIST OF PROJECTS UNDERTAKEN BY ENNSDA IN ASALS

Mr. Duale asked the Minister for Regional Development Authorities:

(a) if he could provide a per-constituency list of all projects/programmes undertaken by Ewaso Nyiro North and South Development Authorities in all ASAL constituencies since 2008; and

(b) if he could also state how much money was spent on each of the projects and indicate the status of the respective projects.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Speaker, Sir, I beg to reply.

The projects/programmes undertaken by Ewaso Nyiro North and South Development Authorities in all ASAL constituencies since 2008 are listed in this big document which I beg to table.

(Mr. ole Metito laid the document on the Table)

Mr. Duale: Mr. Speaker, Sir, this is a 22-page document on projects done by Ewaso Nyiro North and South Development Authorities in all ASAL constituencies since 2008. It will take me and my colleagues from these constituencies some time to scrutinize and confirm whether these projects are on the ground. I seek your indulgence that I be given more time so that I can also give copies of this document to my colleagues, who are interested in this Question. I ask for three weeks from now.

Mr. Speaker: Mr. Assistant Minister, are you willing to accommodate the hon. Member?

Mr. ole Metito: Mr. Speaker, Sir, I have no objection.

Mr. Speaker: Very well! Under those circumstances, I will defer the Question to Wednesday, next week, to appear in the morning Sitting.

Yes, the Member for North Imenti!

Question No.1358

MEASURES TO STOP DESTRUCTION
OF ONTULILI FOREST

Mr. Ruteere asked the Minister for Forestry and Wildlife:-

(a) whether he is aware that a lorry, registration No. EX GK 994 K, was intercepted by the Chairperson of the Forest Association M/s Margaret Kanyua and seven youth members at Timau while ferrying logs of cypress trees from the Ontulili side of Mt. Kenya Forest on 31st October, 2011;

(b) why Mr. Kamau, a Forest Officer at Ontulili Station, caused the release of the vehicle together with the logs after it was impounded at Timau Police Station; and,

(c) what disciplinary action he will take against the officer and what measures the Minister has taken to stop the ongoing destruction of the Ontulili Forest as well as measures to empower the community to continue guarding the forest.

Mr. Ruteere: Mr. Speaker, Sir, this Question had been answered partly and we were to go with the Minister for Forestry and Wildlife to visit these areas. But due to do the Climate Change Conference which was held in Durban, both the Minister and I coincidentally were there and were not able to visit these areas.

Mr. Speaker: Very well! Could the Minister re-arrange the visit as necessary?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I will prevail upon the Minister to arrange the visit as has been ordered by the Chair.

Mr. Speaker: Very well! Hon. Ojode, please, inform the Minister that a deadline is imposed, that this be done within the next 14 days from today and that the Question will then appear on the Order Paper thereafter.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Much obliged, Mr. Speaker, Sir.

(Question deferred)

Question No.1042

MEASURES TO EMPOWER BOY CHILD

Mr. Kaino asked the Minister for Gender, Children and Social Development what steps the Ministry is putting in place to ensure that the boy child is protected and a campaign on the promotion of education of the boy child is rolled out.

The Assistant Minister for Gender, Children and Social Development (Mr. Keya): Mr. Speaker, Sir, I beg to reply.

My Ministry is charged with the overall responsibility of protecting all children below the age of 18 years from abuse, neglect and exploitation, irrespective of their

gender, race or nationality. Among the child protection measures or programmes in place are:-

- (i) Orphans and vulnerable children cash transfer programmes;
- (ii) capacity building of childcare protection officers;
- (iii) establishment of child protection centres;
- (iv) establishment of child helpline No.116;
- (v) increased number of children officers;
- (vi) establishment of children assemblies; and,
- (vii) childcare and rehabilitation institutions.

Mr. Speaker, Sir, however, so far there are no specific programmes to address the promotion of education of the boy child in the country.

Mr. Kaino: Mr. Speaker, Sir, I am wondering whether the Assistant Minister really understood the Question properly. The answer that he has given is actually theoretical, but in practice, as you walk all over, you will see that boys are being abused. The drugs that are being brought into this country are directed to the boy child. If we are not very careful, we will even find this House at one time with women alone.

(Applause)

The children who abuse drugs especially alcohol today even in the estates are boys. Even those who chew *miraa* are boys. It is too dangerous and the Ministry has not done anything to take care of the boy child. The answer the Assistant Minister has given in this House is theoretical. I would like to hear the Assistant Minister tell me that there are some plans; A,B,C and D, that have been put in place to cater for the boy child like in the case of the girl-child.

Mr. Speaker: Order! The Member for Marakwet West, that leaves the House with no question.

Yes, hon. Odhiambo-Mabona!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, could the Assistant Minister, please, clarify between the boy and girl child who is most vulnerable to abuse and who, between the boy and girl child, has problems accessing education because it is only in Central Kenya where there is parity but in the rest of the country the girl child suffers? Who, therefore, deserves more programme input?

Mr. Keya: Mr. Speaker, Sir, both sexes are vulnerable to abuse. The Ministry is also aware that the boy child faces a number of challenges such as---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. Is the hon. Assistant Minister in order to mislead the House? I did not know that he was going to answer that way because I would have actually brought a report from the same Ministry that says that the girl child is the most vulnerable and gives figures of the vulnerability of the girl child. Could the Assistant Minister, please, answer correctly instead of giving a political answer? Give us a programmatic answer.

Mr. Speaker: Order! Mr. Assistant Minister, before you respond, Mrs. Odhiambo-Mabona, I do not know whether you have looked at Standing Order No.41. If you did so, it will tell you that if you know the answer to your Question, you do not ask.

(Laughter)

Is there anybody else interested?

Yes, the Member for Lari!

Mr. Njuguna: Mr. Speaker, Sir, could the Assistant Minister inform the House the very specific plans the Ministry has set aside to establish boy protection centres in the counties? Could he also indicate the monies set aside for the same purpose?

Mr. Keya: Mr. Speaker, Sir, the boy child has faced a number of challenges such as drugs and substance abuse, child labour in agricultural farms, herding, soil harvesting and sexual abuse besides other forms of violence against children. So far, no study has been carried out to establish the magnitude of problems facing the boy child. The boys---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. I need your guidance and direction on this. I rose on a point of order that the Assistant Minister was misleading the House. Again on this one, he is misleading the House despite the fact that I know. If I know that he is misleading the House, because I have this information, should I not rise on a point of order and challenge him on that, despite Standing Order No.41? I need your direction on this because I did a study for the Ministry and it has actually done the direct opposite of what he is saying. Would I be in order to request that he gives the House the correct information?

Mr. Keya: Mr. Speaker, Sir, I would request that if the hon. Member has some information--- If she had an answer already why is she asking the question? If she has the information could she give it to us now?

Mr. Mureithi: Mr. Speaker, Sir, without the discrimination of the girl child, if you visit many schools right now, whether the boys have been given substances or subjected to other things, the boy child is very shy. They are not able to come up and present themselves. What has the Assistant Minister done to encourage the boy child so that they can have that confidence that they should have without necessarily discriminating the girl child?

Mr. Keya: Mr. Speaker, Sir, it is not true that the boy child has been discriminated against, as opposed to the girl child. Let us look at the figures. Under the boy-child education, campaigns on the promotion of the boy-child education can be linked to the National Census of 2009 which indicates that 1,150,890 boys were enrolled in pre-primary; 2,771,900 boys were enrolled in primary school and 962,887 boys were attending secondary school as at 2009. The figures for the girls were as follows:-

A total of 1,096,181 girls were enrolled in pre-primary; 4,629,300 girls were enrolled in primary school; 833,580 girls were enrolled in secondary schools. From the above figures, it is clear that more boys have access to education than girls, although there is need to promote child rights and protection of all children.

Mr. Kaino: Mr. Speaker, Sir, I would like the Assistant Minister to help us because he has said that there is no study that has ever been done to establish the problems affecting the boy-child. So, I would like him to do some study and bring the results to this House. When I talk like that, I am not discriminating against the girl-child. God has blessed us with children. Even me, I have girls and boys. We are only seeing a trend where the boys are being abused. The drugs that are brought into this country are targeting the boys. So, we are saying: Can we help one another so that our children can be protected? I want the Assistant Minister to come with a proper report because a study has never been done.

Mr. Speaker: Order, hon. Member for Marakwet West! After that discourse, what is your question?

Mr. Kaino: When will the Assistant Minister bring to this House a full study to show the status of the girl-child as compared to the boy-child?

Mr. Keya: Mr. Speaker, sir, I have taken note of the concern by the hon. Member. I plan to undertake a situation analysis that will enable the Government to formulate appropriate programmes.

Mr. Speaker: Very well. Hon. Member for Marakwet West, could you, please, find time to visit the Assistant Minister's office so that he shares that information with you?

Mr. Kaino: Much obliged, Mr. Speaker, Sir.

Mr. Speaker: Very well. Hon. Member for Emuhaya!

Question No.1105

NUMBER OF TOURISTS TO WESTERN KENYA TOURISM CIRCUIT

Dr. Otichilo asked the Minister for Tourism:-

(a) whether he could inform the House the number of tourists who have visited Western Kenya since the "*Western Kenya Tourism Circuit*" was established and operationalized;

(b) to also inform the House which tourism areas are most visited and what their main tourism attractions are; and,

(c) how much money has been used in the promotion of western Kenya as a tourist destination and what incentives the Ministry has provided to encourage local investors to venture into tourism-related activities.

Dr. Otichilo: Mr. Speaker, sir, I have not received a written answer.

Mr. Speaker: Is the Minister for Tourism not here?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, again, I would request the Chair to allow, during the second round, to come back to the Question. In the meantime, I am going to call the Minister to check his whereabouts.

Question No.1298

STATUS OF WAJIR AIRPORT

Mr. Affey asked the Minister for Transport:-

(a) whether he could state the current status of Wajir Airport; and,

(b) what plans the Ministry has to ensure optimal utilization of the facility.

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

(a) Wajir Airport is currently operational and caters for operations of military and civilian aircrafts.

(b) In order to meet the current and future demand of aircraft operating to and from Wajir, the Government intends to expand the airport to have separate apron and passenger terminal facility to cater for civilian aircraft. The required land has already been surveyed and the acquisition process is in place. This will allow for fencing in the current financial year. The other facilities will be put up once the fencing is completed and the necessary funding is secured.

Mr. Affey: Mr. Speaker, Sir, it is very clear from the Assistant Minister's answer that he has never been to Wajir. He has no idea of the description of Wajir International Airport. As we speak, that is the fourth largest facility in this country after Nairobi, Mombasa, Eldoret and Kisumu. That airport does not have lighting facilities and, therefore, aircrafts cannot land there at night. The runway is not up to international standards. It is about 2.8 kilometres. There are no terminals or cargo facilities. The people of that region---

Mr. Speaker: Order, Mr. Affey! I also want to refer you to Standing Order No.41. What you are engaged in does not fall within the ambit of Standing Order No.41. You are giving an opinion and you are debating. So, where are you taking us? Ask the question!

Mr. Affey: Mr. Speaker, Sir, I was just trying to educate the Assistant Minister about that airport. He has said that they are fencing that place. It is obvious that, that airport requires funding. Could he confirm whether Wajir International Airport currently falls under the Ministry of Transport or it is managed by the Kenya Airports Authority (KAA)? Which of the two manages it?

Mr. Ogari: Mr. Speaker, Sir, I would like to assure the hon. Member that I have been to Wajir Airport very many times. Unless something has happened over the last few months, I am quite aware of the situation of the airport.

It is very important to note that Wajir International Airport was designed initially as a security airport for security operations. So, we know very well that most of the facilities required for passenger business are not available. That is what we are trying to put in place now because we know that passenger business is coming up and definitely we are watching it. That airport belongs to the Ministry of Transport because the KAA is also under the Ministry of Transport.

Mr. M.H. Ali: Mr. Speaker, Sir, that airport has been a campaign tool in the past three elections. They say that the airport will be used for commercial purposes. It will be used to export beef. But 15 years down the line, there is no such activity taking place in that airport. What is the Ministry doing to make sure that, that airport is used for commercial purposes so that the animals, which are usually wiped out by drought, can be exported?

Mr. Ogari: Mr. Speaker, Sir, the main policy of the Ministry or the Government is to develop infrastructure, and that includes Wajir Airport and other facilities in the country. We are trying to encourage private partnership, especially the one to do with cargo transport. Since we have already indicated our intention and serious programme of rehabilitating that airport and making it convenient for passenger business and cargo, including beef, we are encouraging private investors to invest in the cargo business. As much as possible, we will try to do the pilot project, although it will not be enough. Just like any other business, we are now trying to encourage private partnership.

Mr. Duale: Mr. Speaker, Sir, I want the Assistant Minister to confirm whether Wajir International Airport was constructed using funds from the United States of America (USA) Government, and is basically a military base for USA in their war on terror in the Horn of Africa. Could he confirm that allegation?

Mr. Ogari: Mr. Speaker, Sir, Wajir Airport belongs to the Government of Kenya (GoK), and it was built by the GoK. That is what I know; and that is what the Ministry knows. It is the aircrafts of Kenya which are operating there plus---

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

Mr. Speaker: What is it, Mr. Duale?

Mr. Duale: Mr. Speaker, Sir, the US, among many other NATO countries, has military bases in many countries and uses the infrastructure availed by those countries. Yes, Wajir International Airport is within the northern part of Kenya; it is within the Kenyan territory, but there is a possibility--- Is he in order to say that it is owned by Kenya? I only want to see whether the Americans use that airport for their war against terror in the north and in the horn of Africa. Is he in order?

Mr. Speaker: Order! Order! Order! You are giving it a different connotation altogether; that was not your original Question. So, I rule that out of order.

Last question, Amb. Affey!

Mr. Affey: Thank you very much, Mr. Speaker, Sir. The Assistant Minister has alluded that they intend to have private-public partnership in this engagement, but they have not come out very clearly to the community on the ground or even to the County of Wajir to tell them about this possible investment. I want to find out, what time line and the funding do you have in order to establish the necessary infrastructure to make this airport more useful to the country? What is the timeline and what are the resources?

Mr. Ogari: Mr. Speaker, Sir, as I stated in my written answer, we are moving fast and by next year, we should be through with the fencing. Once we have secured the available space, then the standard designs will come up and then that is when we may start inviting applications for private investors. From next year, we should start sensitizing the local Kenyans and any other investors who will be interested in this investment.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: The hon. Member for North Horr!

Question No.1301

CONTRACTOR'S FAILURE TO REPAIR JIRIME BOREHOLE

Mr. Speaker: Where is the hon. Member for North Horr? Question dropped!

(Question dropped)

The hon. Member for Masinga!

Question No.1308

NON-PAYMENT OF SALARIES TO NURSES UNDER

ESP IN MASINGA CONSTITUENCY

Mr. Mbai asked the Minister for Public Health and Sanitation:-

(a) whether she is aware that nurses recruited under the Economic Stimulus Programme (ESP) in Masinga Constituency in May 2011 have not been paid their monthly salaries; and,

(b) when will they be paid.

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that nurses, community health workers and public health technicians recruited under the Economic Stimulus Programme (ESP) were not paid up to 31st October, 2011.

(b) My Ministry has already paid their salaries inclusive of arrears with effect from 1st November, 2011.

Thank you, Mr. Speaker, Sir.

Mr. Mbai: Mr. Speaker, Sir, I want to take this opportunity to thank the Assistant Minister for this positive answer he has given. But these nurses were paid after I filed this Question with the Ministry of Public Health and Sanitation. Why did the Assistant Minister take four months to pay these nurses when he knew that they were newly recruited and had nothing to support themselves with while they were working?

Dr. Gesami: Mr. Speaker, Sir, I beg to answer as follows. We have a lengthy process of allocation of new personal numbers by the Ministry of State for Public Service. Therefore, sometimes it takes a long time to put things together. The other issues that we have had a problem with were the bank details from the workers, letters of acceptance and the next of kin forms that have taken some time to be filled. We are, therefore, very sorry that, that had to take four months. Nevertheless, we have done it.

Dr. Khalwale: Mr. Speaker, Sir, when these nurses are being employed, some of them apply when they are registered nurses while others are enrolled community nurses. Could the Assistant Minister confirm whether in arriving at what to pay them, he is taking into consideration the different qualifications that these people come with when they join the service?

Dr. Gesami: Mr. Speaker, Sir, we have two categories of nurses: the Kenya Enrolled Registered Community Nurse (KERCN) who have done certificate courses. We also have the Kenya Registered Community Health Nurses (KRCHN), who are diploma holders. They, therefore, get into the service at different levels. Therefore, I would like to tell the hon. Member that the certificate holder earns much less than a diploma holder.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: The hon. Member for Limuru.

Mr. Mwathi: Thank you, Mr. Speaker, Sir. My question to the Assistant Minister is; there are arrears which pertain to the nurses employed in Masinga Constituency. Was this the scenario in all the other constituencies, and if so, has that been addressed to date?

Dr. Gesami: Mr. Speaker, Sir, this was not only for Masinga; this was basically the same throughout the country. I can table a voucher that we used to pay all the nurses in the country an amount of Kshs105 million. So, we have addressed the problem of actually all the ESP Nurses who were employed by our Ministry. Thank you, Mr. Speaker, Sir.

Mr. Speaker: The hon. Member for Masinga.

Mr. Mbai: Mr. Speaker, Sir, I am satisfied with the answer given by the Assistant Minister. Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well. The hon. Member for Karachuonyo!

Question No.1124

REMOVAL OF WATER HYACINTH FROM LAKE VICTORIA

Eng. Rege asked the Minister for Environment and Mineral Resources:-

(a) whether he is aware that the Mbita causeway built for easy access to the Mfangano Island has been the major cause of continued environmental deterioration at the Winam Gulf, particularly due to the hyacinth weed;

(b) how much money the Government has used both from the Treasury and development partners on the removal of the weed in Lake Victoria, and whether he could explain why it cannot be removed successfully; and,

(c) whether he could confirm the identity of NGOs that have been formed and are receiving funds from donors in the pretext of removing the weed, and whether the Government could conduct an audit of their activities.

Mr. Speaker: Minister for Environment and Mineral Resources?

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, may I take the responsibility to inform my colleague, whom I believe is still in Durban, that he has a Question to answer?

Mr. Speaker: Very well; I will defer this Question to Thursday, next week, and believe that the Minister will come with an explanation as to why he was not here to answer this Question. Otherwise, I will impose sanctions on him on that day.

(Question deferred)

The hon. Member for Emuhaya

Dr. Otichilo: Thank you, Mr. Speaker, Sir. I once again beg to ask Question No. 1105 on the Order Paper. I have no written answer.

Question No.1105

NUMBER OF TOURISTS TO WESTERN KENYA TOURISM CIRCUIT

Dr. Otichilo asked the Minister for Tourism:-

(a) how many tourists have visited Western Kenya since the “*Western Kenya Tourism Circuit*” was established and operationalized;

(b) which tourism areas are most visited and what are their main tourism attractions; and,

(c) how much money has been used in the promotion of western Kenya as a tourist destination, and what incentives the Ministry provides to encourage local investors to venture into tourism-related activities.

The Assistant Minister, Ministry of State Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I tried to reach out to the Minister, and I am informed that he is away in Mombasa. I do request the Chair to allow this Question to be answered next week. but I sincerely apologize on his behalf.

Mr. Speaker: Very well; I will defer this Question to Wednesday afternoon, next week. We will treat the Minister the same way as I will treat the Minister for Environment and Mineral Resources. If he does not have a reasonable explanation as to why he would choose to go for a holiday in Mombasa instead of coming to Parliament, then I will impose sanctions.

(Question deferred)

Hon. Members, that brings us to the end of Order No.6.
Next Order!

PERSONAL STATEMENT

INSECURITY IN DISPUTED BANITA SETTLEMENT SCHEME

Mr. Kigen: On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.76 to make a Personal Statement regarding the state of security in the disputed Banita Settlement Scheme, constant arrest of my supporters, harassment of my workers in the constituency office and trumped up charges on instigation of some officers in the Provincial Administration.

In the recent past, my constituency has witnessed a number of worrying events. On 29th November, 2011, an attempt was made to bury the body of one Ngari Mbugua on the disputed Banita Settlement Scheme land in my constituency. The deceased, Ngari Mbugua, was brought from outside the parcel of land in dispute for burial in the settlement scheme. The OCPD, Subukia, Mr. Wesonga, advised the DC, Rongai, that the burial of the deceased could not proceed on the disputed land owing to the existence of a court order barring such activities until a court case involving the land has been heard and determined. The OCPD, Subukia, consequently withdrew from the scene together with her officers. The DC, Rongai, however, defiantly proceeded despite the advice of the OCPD, Subukia, to authorize the burial of the late Mbugua on the disputed land amidst heightened tension between the feuding communities with the Administration Police officers from the DC's office presiding over the burial.

In less than two hours after the burial, the body of the late Mbugua was exhumed by unknown people, but was subsequently re-buried amidst tight security by APs and heightened tension in the area.

On 7th December, 2011, a contingent of police officers led by the DCIO from Nakuru stormed my office at Kambi Ya Moto District headquarters, arrested my Constituency Manager, Sylvester Ndotona and one Amos Konyayei and impounded the constituency motor vehicle, Registration No. GKA 610V. The impounded Land Rover

remains at the Nakuru CID Headquarters up to now ostensibly on the instructions of a senior officer in the Office of the President; that it remains there.

On the same day, 7th December, 2011, during a cattle auction held at the disputed settlement scheme, two of my close political supporters, namely, Kimunai Kemeiywa and Chemitei Kipchumba, were arrested and forced into a Land Rover for unexplained reasons, which led to a serious fight between the members of the Kalenjin and Kikuyu communities present. In fact, the two are constantly arrested and taken to court on trumped up charges whenever there is fracas or commotion in the settlement scheme. However, there has never been evidence to sustain a charge against any of the two.

Some members of the Provincial Administration based in Nakuru have identified a group of my political supporters, mainly the youth, whom they have labeled the “blue boys” and branded them as goons out to cause a breach of peace in the area. These young people who are otherwise known by the community to be law abiding Kenyans, have various trumped up charges pending against them at the instigation of a section of the Provincial Administration, who are using the security apparatus to achieve their selfish interests.

Some members of the Provincial Administration based in Nakuru have made unfounded allegations against me to some Government agencies that I am against a particular community being settled in Rongai Constituency. This is intended to depict me in bad light before my constituents. There has been a lot of interference in the running of my constituency by some members of the Provincial Administration through the harassment of people known to support my political stand on various issues. One case in point is the harassment of the Assistant Chief of the Kamsop Area who was recently terrorized in his home by a group of about 200 youths carrying pangas and other crude weapons, who were demanding the production of thugs who had attacked a *Boda Boda* operator the previous day. The people demanded that he produce the attackers lest they kill him. But the Assistant Chief managed to escape through the cover of darkness.

Subsequently, the local DO impounded all the livestock belonging to this Assistant Chief. No investigations have been carried out on the threat against the Assistant Chief nor has anyone been arrested or charged over the same issue. The Provincial Administration and the security apparatus have made no move towards the threat against the Assistant Chief. My constituency is, therefore, experiencing heightened tension and state of insecurity arising from the biased and at times tribal manner in which the Provincial Administration and the Land Adjudication Officers are addressing land disputes in my constituency.

If this trend is not quickly addressed, the situation may worsen and lead to loss of live and property. I, therefore, call upon the House to step in and do what it can to reverse this wayward trend.

Based on the chronology of events depicted in the foregoing, arrests and harassment of my constituency officers, intimidation, threats and arrests of my supporters, impounding of my CDF Land Rover and the insinuation that myself and the councillor for Makongeni are responsible for the problems bedeviling Banita Settlement Scheme, I feel that there is a clear calculated threat to my life, my family and my political career by senior elements in the Provincial Administration.

Consequently, I demand an undertaking from the Ministry of State for Provincial Administration and Internal Security for the following:-

(i) Enhancement and assurance of my personal security and that of my family members.

(ii) Protection of my political supporters from continuous harassment by the Provincial Administration and security apparatus, in particular, my known supporters, specifically Kimunai Kemeiywa and Chemitei Kipchumba together with a large number of young people who have been branded goons and given a tag of “blue boys” by these political detractors.

Mr. Speaker: Very well. That was a Personal Statement under Standing Order No.76.

(Dr. Khalwale stood up in his place)

Member for Ikolomani, you will not be speaking to that. It is not permitted. I want to let the Minister in charge of Security know that my attention has also formally been drawn to this matter. It has been indicated to my office that tensions are building up in Banita Settlement Scheme. So, it is necessary that you attend to this matter very urgently because it is possible that tribal clashes may very easily begin from there. So, please, be on top of the matter immediately and endeavour to also ensure that the Member has the requisite security. It is critical that you do so, Minister. We will then leave the matter there.

We will now take Statements from Ministers who are ready to deliver them, beginning with the Minister for Lands.

MINISTERIAL STATEMENT

VALIDITY OF DOCUMENTS TABLED BEFORE THE HOUSE ON DEMOLITION OF BUILDINGS ON GOVERNMENT LAND

The Minister for Lands (Mr. Orenge): Thank you very much, Mr. Speaker, Sir. In the course of the debate yesterday on the issue of demolitions, some documents were produced here. Having looked at those papers, I was given direction by the Chair to come back to the House and clear the air and determine whether or not, according to our records, these are valid and genuine records that are kept within the Lands Office.

The first clarification is related to the documents that were produced by hon. Wavinya Ndeti. There were two documents. Both of them were title deeds with supporting deed plans and maps. The position of hon. Wavinya Ndeti was that two title deeds had been issued in respect of the same piece of land. I just want to clear the air by saying that all the documents by hon. Ndeti were genuine documents. However, her interpretation of what the documents said was not accurate in the sense that the title deed in respect of grant No.90243, which was registered on 18th January, 2002, was as a result of an attempt to excise portions of the land belonging to the Kenya Airports Authority which was irregular. To that extent, that attempt was stopped in the sense that the KAA surrendered the second title deed.

So, the only valid title is the title that was produced before the House. There was also a surrender document that was registered on 5th December, 2005. In that surrender

document, the Kenya Airports Authority (KAA) says that it was never their intention at any time to surrender any of its land comprised in the first grant. Therefore, the second grant was issued in error. For those reasons, they were invalid. The original of the second title, which was produced by hon. Wavinya Ndeti, was actually surrendered by the KAA to the Ministry of Lands, and the surrender document is here. Therefore, the attempt to produce the second title was an attempt to illegally excise land from the KAA land.

Mr. Speaker, Sir, if you allow me, I will lay on the Table the second title, which was produced by hon. Ndeti. Indeed, there was a surrender of that title on 1st February, 2007. So, the surrender document is here. The title itself shows that the earlier title was surrendered.

(Mr. Orengo laid the documents on the Table)

Mr. Speaker, Sir, the second issue was in relation to the statements made by hon. Waititu as regards the informal settlements that were demolished. I have a map here, which has been certified by the Director of Survey. It speaks for itself. It shows the informal settlements in the area called "Chang'ombe". They are marked in green. The map shows very clearly that those settlements were on the flight path. It also shows other adjacent areas which compromise the security of the aviation industry in the area.

There is an area marked in colour orange, which is land that was originally claimed by the KPA, and that area is also within the flight path. The KAA never obtained title for it. So, the settlements that were demolished were right on the flight path or on areas that, according to The Civil Aviation Act, would have compromised aviation along the flight path or the funnel of the flight path.

Mr. Musyimi: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Minister, do you want information from the Chairman of the Departmental Committee on Lands and Natural Resources?

The Minister for Lands (Mr. Orengo): Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well.

Mr. Musyimi: Mr. Speaker, Sir, Mr. Rashid of the KAA confirmed to the Joint Committee that only 25 per cent of the area that the Minister was talking about was actually within the flight path, and not the entire area.

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, according to The Civil Aviation Act, there is the flight path but the adjacent buildings must be in accordance with the Act. You may have a valid title but any structures that are near or around the flight path must be consistent with the Act. So, the fact that it is outside the flight path does not take it out of the operation of The Civil Aviation Act.

For the benefit of the Chairman of the Joint Committee, we went through this with a Colonel from Moi Air Base, who showed very clearly that they recognise certain titles outside Moi Air Base. The only problem is that the structures that were there were not in accordance with The Civil Aviation Act, which requires that when you construct a building near and around an airport, or aviation area or a flight path, you have to seek authority from the Civil Aviation authorities.

Mr. Speaker, Sir, what I am saying is not an argument. I am just giving documentary evidence.

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Minister, do you want information from your colleague, the Assistant Minister Waititu?

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I will take the information, but let me just finish what I am saying.

What I am presenting here would, in view of what hon. Waititu was saying in respect of land that he alleged belonged to a company that is associated with the Prime Minister, confirm that there are many plots in that area belonging to many Kenyans. If we were to make revelation of who owns those plots, this would touch the high, the mighty and the low in Kenya. However, the point is not about ownership. The point is about compliance with The Civil Aviation Act. That was the basis upon which the demolitions were carried out.

Mr. Speaker, Sir, this matter was put before the Committee very well and that is why the Committee went in-camera, so that some of the presentations could be given to them.

Mr. Speaker: Hon. Waititu, you may now give your information.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Speaker, Sir, with all due respect, I have a map here, which represents the ground where settlements were demolished. The whole map was verified by the KAA in front of the Joint Committee as we went round. Only 10 per cent of the demolitions were carried out on the flight path. The remaining 90 per cent of the demolitions were carried out outside the flight path, and they were done selectively. There were some buildings that were left whereas the informal settlements were demolished. Our argument is why settlements that were outside the flight path were demolished. I have the map with me here.

Mr. Speaker: Order! Order! Hon. Waititu, you are an Assistant Minister. Therefore, you serve in the same Cabinet as hon. Orengo. Are you giving him information or lodging an argument? You have said “our argument is---“ You cannot argue with your colleague in the Cabinet! In fact, the right place for you to do so would be in the Cabinet.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Speaker, Sir, I might have used the wrong word but the information I wanted to give to my colleague is that there were houses that were outside the flight path, which were demolished. We were surprised that those houses were demolished since they were not on the flight path. So, we generally concluded that there was some influence. The Minister has actually concurred with me that there are “very big names” of people who have plots there.

Mr. Speaker: Very well. Minister for Lands, do you accept that information from your colleague, that you discriminated even as you took the demolition action?

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, there was no discrimination. In fact, if you look at the map I have produced, it shows where the actual demolitions were done. They area is marked in red. It is a wide area. The understanding should be that a flight path is like a funnel. It is wide when you approach it. It narrows as you go towards the landing area. So, we are not talking about a rectangular area. We are talking about a funnel. You will find that at the end of the day; the demolitions were done

in consonance with the security concerns. The most important thing was the security concern and compliance with the Civil Aviation Act.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order, Member for Ikolomani! Order, hon. Musyimi! The rest of you will have to wait and raise the points that you want clarified. I am going to permit that for a few minutes. Let us take information.

Minister, do you want information from the Member for Bondo?

The Minister for Lands (Mr. Orengo): Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Speaker, Sir, I rise just to give information to the Minister on the issue that was raised by hon. Waititu about the ownership of a plot he claims belongs to the Prime Minister. I have documents to show that the information given by the Assistant Minister yesterday is information which was obtained from records in the Registry of 2001. The Prime Minister resigned from that company in 2003.

An hon. Member: What about you?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry for Finance (Dr. Oburu): I have not resigned. That is my company and I have a right to own land---

Mr. Speaker: Order, Dr. Oburu! Could you, please, address the House lawfully?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry for Finance (Dr. Oburu): Mr. Speaker, Sir, this is the information I want to give that Mr. Raila had resigned from that company. I know he is the one being targeted; not even me. That is the only juicy thing you want to hear. We are more than 50 or 60 owners of plots there. I am not saying I do not own a plot there. However, the Prime Minister is not an owner of any land there. So, that is the only juicy thing you wanted and I have tabled proof.

Mr. Speaker: Mr. Minister, do you accept that information?

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, yes, I accept that information. It is largely to do with ownership but my concern was with the area and extent of that particular operation.

Mr. Speaker: Very well! Any hon. Members interested in clarifications? We want to begin with the Member for Ol Kalou. Please, keep it short.

Mr. Mureithi: Mr. Speaker, Sir, I have just looked at the map that the Minister has brought. However, there is something missing quite from that map because I visited that place. When you look at the flight path, it is a straight line. But just next to the tarmac road, one big building which is green, and if you google in the Google map, you will see it still remaining. Why was it not demolished when they demolished all the other houses which belonged to the common person?

Dr. Khalwale: Mr. Speaker, Sir, the Minister has told us that if one was to ask who owns what plot in that area, it reads like "who is who". Through the Chair, could he clarify? If he is not ready with "who is who", could he promise to table that information, so that Kenyans can know who are these public officers, especially Ministers and Assistant Ministers, who have been shortchanging the public in Syokimau?

Mr. Olago: Mr. Speaker, Sir, the issue of flight paths and building around flight paths is causing a bit of concern to Kenyans. As a Member of Kisumu Town West, the Kisumu Airport has now been completed. There is concern arising from Syokimau from residents of Bandani Kanyamega and Usoma that is there a possibility or the Minister can clarify to the House that what happened at Syokimau about the flight paths cannot happen in these areas in Kisumu.

(Mr. Musyimi stood up in his place)

Mr. Speaker: Member for Gachoka, do you want to do that as the Member for Gachoka or as the Chair of the Committee on Lands and Natural Resources?

Mr. Musyimi: As the Chair, Mr. Speaker, Sir,

Mr. Speaker: Proceed!

Mr. Musyimi: Mr. Speaker, Sir, the hon. Minister for Lands, did as I recall, indicate that we went into camera in respect of Jomo Kenyatta International Airport (JKIA). The real reason we went into camera was because of Moi Airbase and Eastleigh and not JKIA.

Mr. Lessonet: Mr. Speaker, Sir, I would like the Minister for Lands to tell us whether it is true that the demolitions were not because of the flight paths, but to create vacant positions for the “who is who” in this country in terms of those plots.

Mr. Mbadi: Mr. Speaker, Sir, I expected the Minister really to focus on the issues that were raised by Mr. Waititu. From yesterday’s HANSARD, it is clear to me that Mr. Waititu did allege that he had title deeds showing that and I want to quote:-

“The ones that the big people were the ones who instigated demolitions outside the flight path and majority of them in Embakasi were very surprised to see that some Members of Parliament were involved in the demolitions.”

Further down, the Assistant Minister alleged that there are people who own a plot there of almost 10 acres and cited the Prime Minister for owing almost 10 acres which was demolished. I am raising this because if you go further ahead, you will realize that Dr. Khalwale relied on that information to ask the Chair that surely Kenyans want to know whether their own Prime Minister is involved in the culture of impunity and corruption to the extent that poor Kenyans were conned by his company.

“Madam Temporary Deputy Speaker, make the determination and tell us whether it is authentic before we proceed.”

I expected the Minister to clarify the size of land that is associated with the Prime Minister or his company or the company he resigned from and to tell this House when this land was acquired, if it was acquired in 1994 when the Prime Minister was in the Opposition and could not influence any allocation and whether it was actually bought from hon. Waruru Kanja who acquired this land in 1989. He should also clarify to us any connection between an individual in the name of the Prime Minister owning land and the demolitions taking place at Syokimau or if this was politics, this country needs to know. Clearly---

Mr. Speaker: Order, Member for Gwassi! You have made your point. Now what you are doing is overdoing it. You may want to stop there.

Proceed, Mr. Minister!

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, most of the issues that have been raised by the hon. Member for Gwassu, I am still on my feet and I will deal with them, if I may use the word, “perpendicularly” and make sure that every information in relation to what Mr. Waititu brought before the House is addressed comprehensively in my response. However, I cannot use this opportunity to merely lay down these documents and say what they say to bring points of argument that came in the course of the debate.

There is the clarification sought by the Member for Ol Kalou where he is saying that there is a building right in the flight path. I need to look at those documents because I have not seen what he is talking about. But according to the maps that we have, and I think I am making this point for the eighth time, the buildings are not necessarily of concern to the aviation authorities or to the Government because they are on the flight path. If they are adjacent or near the flight path and they do not conform with the Civil Aviation Act and can compromise air traffic and the safety of passengers and national security, there are provisions in the Civil Aviation Act on how to deal with those buildings.

There are also buildings within the airport that are owned by the Civil Aviation Authority. I do not know whether the building he is talking about is such a building, but I am merely speculating. But if that is brought to my attention, I can answer that question specifically.

As to the issue of “who is who”, every Kenyan is a “who is who”. There are no first class and second class citizens, but I am prepared, given about four or five days, to give a full list of those who own property. I want to go beyond just talking about this small area called Kyang’ombe. I think that this House needs to know where the rain started beating us. Anybody who owns land around some of these areas which are of security concern to this country, this House should know who were able to have land allocated to them in areas where in the first place those pieces of land were not available for alienation.

The example that I will show is the second title deed that was produced by hon. Wavinya Ndeti. You can see clearly in that title and the Deed Plan that, indeed, there was an attempt to excise part of Jomo Kenyatta International Airport (JKIA) and that is why--

The Assistant Minister for Sports and Youth Affairs (Ms. Ndeti): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Minister, do you want information from Ms. Wavinya Ndeti?

The Minister for Lands (Mr. Orengo): Yes, Mr. Speaker, Sir.

The Assistant Minister for Sports and Youth Affairs (Ms. Ndeti): Mr. Speaker, Sir, I would like to thank the Minister for, at least, accepting that something was going wrong somewhere. We, however, need to go back to the ground. A total of 225 hectares of land have been taken from the airport land. That is where you find all those godowns a long Mombasa. It is good for the Minister to go to the ground and see for himself instead of people just telling him from the office.

The Minister for Lands (Mr. Orengo): I think that information is available from the titles that I have produced. The Kenya Airports Authority (KAA), in appropriate circumstances, has leased part of their airport land to essential services like Nairobi Airport Services (NAS). It has been allocated land. The Kenya Police has land within the

KAA land. Those leases were all registered under the mother title. They are all there. In fact, they are so many. They include the World Duty Free. All those leases are contained in this title.

As relates to Bandani Estate in Kisumu, let me say this: I want to share this with my colleagues in the Cabinet. It is wrong for any reason to carry out evictions contrary to what is laid down in the Constitution. I am pleading with the Minister in charge of internal security that, from now on, we should coordinate these matters together, so that the kind of demolitions that have been carried out in the thick of the night--- There is a time when I used to say in this House that the Government at that time would work during the day and go to sleep at night. Those were those days. But it looks like in some instances, especially in carrying out evictions, the Government is actually very active at night. I think decency requires that no such evictions are carried out at unearthly hours. Soon, we will be putting before the Cabinet a Bill that we have drafted, which shows a clear protocol on how to carry out evictions in a manner consistent with the Constitution.

Mr. Speaker, Sir, the point made by the Chairman of the Joint Committee--- I want to thank Mr. Mutava Musyimi because largely, if you read the Report, I do not think I find anything objectionable in the Report. If you look at it in an objective manner, we should look at what kind of circumstances to come out with a clear framework of dealing with what has been called the rot in the Ministry of Lands. I accept that. What I am saying in regard to what he was saying--- He said: "We went into camera because of the Moi Airbase." It is true that we went into camera because of Moi Airbase. But we continued to be in camera for the entire sitting, including when evidence was being adduced on other matters which had nothing to do with the Moi Airbase. I think that is factual.

Mr. Speaker, Sir, Mr. Lessonet talked about the issue of demolitions and whether they are going to continue. I think I have made the point. The Attorney-General actually made this point before the Committee. If one may say lawyers think alike, I think this is such a case. I can assure the House that I am going to ask for the Attorney-General's support to pilot those eviction guidelines, although it is a law and order issue. It is not a land issue. I am going to ask him, together with the Minister for Justice, National Cohesion and Constitutional Affairs, that we should very quickly have this Bill before the House for discussion and enactment.

Thank you, Mr. Speaker, Sir.

Mr. Olago: On a point of order, Mr. Speaker, Sir. I sought clarification on the issue of Kanyamedia, Usoma and Bandani lands around Kisumu Airport. The Minister started to talk about it but did not conclude. But is it in order for him to start talking about it and then not conclude?

Mr. Speaker: I thought he concluded. He actually did. I do not think you followed, Member for Kisumu Town West. You may want to go to the HANSARD.

The Minister for Lands (Mr. Orengo): Lawyers, normally, do not hear properly unless they have a pen and a piece of paper and record what is being said. I can see Mr. Olago Aluoch was---

Mr. Speaker: Member for Ugenya, are you now making an exception to the statement you gave just a short while ago; that lawyers think alike? Now, the Member for Kisumu Town West does not think alike.

The Minister for Lands (Mr. Orengo): They think alike but their memories are not alike.

Mr. Speaker: Very well. We want to take a Statement from the Minister for Roads. Mr. Assistant Minister, please, make it short! We are desperately out of time.

CONSTRUCTION OF BRIDGES ON
SIGIRI/MULWANDA CROSSINGS

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, on 29th November, 2011, the hon. Member for Saboti, Mr. Eugene Wamalwa, sought a Ministerial Statement from my Ministry. In his request, he asked the Ministry to give a Statement on when a bridge will be built on Sigiri and Mulwanda crossings in Busia District to avoid further disasters and loss of lives in the area. Secondly, to confirm what urgent measures have been put in place to provide a ferry in the meantime and a motorboat at the said site to respond to emergencies before a permanent solution is sought. Lastly, he also sought to know what the Government has done to assist the affected families.

Mr. Speaker, Sir, as you realize, the Statement touches on three different Ministries. There is the Ministry of Roads because of the bridges. There is the Ministry of Transport. There is the Ministry of State for Special Programmes. I will try to answer as much on my Ministry. We have made consultations on the other.

The Mulwanda Crossing on the Sio River is located on Road E161. The river forms the boundary between Kenya and Uganda at that point. My Ministry has identified the need to construct a bridge on that crossing and plans to carry out the design of the bridge in the coming financial year, 2012/2013. This will enable the Ministry to come up with reliable cost estimates for purposes of resource allocation towards the construction of the bridge.

With regard to Sigiri Crossing on Road 43 linking Busia and Siaya counties, my Ministry financed the design for the bridge across the Nzoia River, whose documentation was completed in the year 2009. An engineer put the cost of the full construction of the bridge at approximately Kshs900 million. We estimate that, at the current rates, this will translate to about Kshs1.2 billion.

My Ministry is aware that the accidents at the two river crossings have been attributed to the use of canoes which have sometimes capsized causing serious fatalities. Construction of bridges will, therefore, address that problem. However, the cost of construction of a bridge is high and the Ministry has not been able to secure finance for the construction from its own resources. Therefore, we have been able to contact a few donors and development partners, among them, the Chinese, the French and Netherlands. We are hopeful that, in the next six months, we will be able to get proper funding for that particular bridge.

Mr. Speaker, Sir, I would like to assure the hon. Member that we are doing everything possible to source for funding for the various projects, including the two bridges. We shall embark on the implementation of those projects once the necessary funding becomes available to us. In the meantime, my Ministry has communicated the hon. Member's proposal of the possibility of installing a ferry to the relevant Ministry;

that is, the Ministry of Transport, for consideration. The Ministry has indicated that it will consider that and, at the soonest possible time, an indication will be given.

On the issue of compensation to the families of those who lost their lives, that is outside the mandate of my Ministry. However, I would like to suggest that those affected should pursue the matter through the existing disaster response and mitigation machineries.

In conclusion, Mr. Speaker, Sir, I would like to emphasize that most Kenyans are mindful of the challenges caused by the heavy rains. Some of the accidents reported in the media could have been avoided with extra caution and patience on the part of those concerned. I, therefore, want to appeal to our people to exercise caution at all times while on the roads, and particularly during the rainy weather to avoid serious accidents and prevent loss of lives.

Thank you.

Mr. Wamalwa: Thank you, Mr. Speaker, Sir. The issue related to two bridges; namely, Mulwanda Bridge in Samia District and Sigiri Bridge in Bunyala District. In respect to Mulwanda Bridge, the Assistant Minister, in his Statement, has said that the Ministry has identified the need to construct this bridge and, therefore, designs will be carried out next year. But is the Assistant Minister aware that His Excellency the President had visited this place sometimes in 2009 and had, in fact, given a public direction that this bridge be constructed in order to connect Uganda and Kenya and open trade in that area? If so, what has been done since 2009 or was the presidential directive disregarded by his Ministry?

On the issue of Sigiri Bridge, a boat capsized at this point and over 10 people died. The Assistant Minister has said that the design and documentation was concluded in 2009. How many people have died as a result of accidents at this particular bridge and how many will die before the bridge is finally constructed?

Dr. Khalwale: Mr. Speaker, Sir, I want to thank the Assistant Minister. However, could he tell us what support they will extend to the families whose members perished in the accident?

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, as I indicated in my response, my Ministry has undertaken to do these two major bridges alongside other critical bridges in the country that link critical market areas and where people live. However, our current budget does not allow that. As early as 26th October this year, we were requested to nominate five bridges to be funded by the Netherlands and this was one of the bridges that were given. We are very positive that we will get this funding for Sigiri Bridge. The other one is not among the top five that we gave but we are doing everything possible to ensure that we undertake that. As to how many people will die before that is done, I may not be able to give a clear indication. However, it would be important for us to focus on the safety of the canoes in the meantime because if the canoe is overloaded, we are bound to have more casualties. Therefore, we are asking that those who are using the canoes and other means of crossing the river to be safety conscious and to ensure that they do not overload their canoes as they cross. In the meantime, like I said, the Ministry of Transport will look into ways of ensuring that we look for short-term measures. At this stage, if the hon. Minister would wish to inform me, I would be glad.

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

Mr. Speaker: What is it, the Member for Saboti?

Mr. Wamalwa: Mr. Speaker, Sir, there was a second aspect touching on the Ministry of Transport. There used to be a ferry at Sigiri in the 1980s and the Minister for Transport was supposed to give an answer with regard to that as well as the Minister of State for Special Programme with regard to the families that were affected in the disaster. Can the remaining bit be directed to the relevant Ministries? Could the question be deferred for the two Ministers to respond?

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, I invite the Minister for Transport to inform me.

Mr. Speaker: That is not the way we do it. I am afraid I will not permit that.

The Minister for Transport, do you want that information?

The Assistant Minister for Transport (Mr. Ogari): Mr. Speaker, Sir, I wish to confirm to the hon. Member that the Minister for Roads has duly consulted us in the Ministry for Transport regarding the issue of crossing on that river. We are aware that there used to be some ferries some years back. In consultation with the Ministry of Transport and other relevant Government Departments, we intend to start doing some viability studies on the viability of having a ferry service on that a section of the bridge. That is what we can say for now.

Dr. Khalwale: Mr. Speaker, Sir, I had asked the Assistant Minister to tell us what humanitarian support they will extend to the families whose members perished but he has not responded.

The Assistant Minister for Transport (Mr. Kinyanjui): Mr. Speaker, Sir, I agree to the request by the hon. Member for Saboti that in as far as the bridges are concerned, I have been able to give a proper answer and I think it is satisfactory. However, as far as it relates to the Ministry of State for Special Programmes, I would be glad that the matter be referred to them because I cannot adequately respond on their behalf.

Mr. Speaker: And the concern by the Member for Ikolomani? What humanitarian assistance are you extending to those families?

The Assistant Minister for Transport (Mr. Kinyanjui): Mr. Speaker, Sir, the humanitarian response would fall under the Ministry of State for Special Programmes and it is for that reason that I am requesting that we forward it to that Ministry. My Ministry is---

Mr. Speaker: Very well! I direct that you do so and that the Minister of State for Special Programmes endeavours to communicate with both the Member for Saboti and the Member for Ikolomani within the next two weeks from today and thereafter to confirm to the House that the information has been supplied. That is the direction.

We want to take another statement. Mr. Attorney-General, I understand you have a Statement on demolitions sought by the Member for Kamukunji. Maybe the Member for Kamukunji, you want to enable the Attorney-General to recap.

Mr. Hassan: Thank you, Mr. Speaker, Sir. Some few weeks ago when the demolitions started, I requested the Government to make a statement on why it was carrying out the demolitions and to what extent it was likely to carry out the demolitions and to give the House an answer on that. After consultations, it was agreed that the Attorney-General would respond on behalf of the Government. However, he was out of the country. I wonder whether now that he is back in the country, he has an answer for me.

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, I am not yet ready with this Statement. I beg your indulgence until next week.

Mr. Speaker: Yes, we can permit a week for you so that this comes on Thursday at 2.30 p.m.

Very well! The Member for Kamukunji, please, note that.

Mr. Hassan: On a point of order, Mr. Speaker, Sir. I heard rumours that the House could not be sitting next week.

Mr. Speaker: Order, the Member for Kamukunji! This House is not guided by rumours neither are we allowed to anticipate. So, it will remain Thursday afternoon at 2.30 pm.

Yes, the Minister for Transport!

MEASURES TO AVERT STRIKE BY MATATU OPERATORS

The Assistant Minister for Transport (Mr. Ogari): Thank you Mr. Speaker, Sir. I wish to make the following short Ministerial Statement on the measures to avert the intended strike by Nairobi *matatu* operators.

This Statement was generated from a Question by Private Notice by Yusuf Hassan Abdi, MP, Kamukunji, who sought to know the following:

(a) Is the Minister aware that there is an imminent strike by *matatu* operators in the whole of Nairobi due to harassment by the police?

(b) What urgent measures is the Government taking to avert the strike which will paralyze transport and greatly inconvenience Nairobi residents?

Mr. Speaker, Sir, I am not aware of any imminent strike by *matatu* operators in the whole of Nairobi due to harassment by the police. I am also not aware of the harassment of *matatu* operators by the police and Nairobi City Council *askaris*. However, we have relayed the allegations to the relevant Ministries for investigation.

Mr. Speaker, Sir, the Ministry of Transport has not been alerted of any impending *matatu* strike in Nairobi. There is a well structured way of notification of impending strikes as outlined in the labour laws. The Ministry works closely with representatives of *matatu* operators in the country; that is, *Matatu* Owners Association and *Matatu* Welfare Association. Both are members of the National Road Safety Council which is headed by the Permanent Secretary in my Ministry.

Mr. Speaker, Sir, we have checked with both organizations, and they have confirmed that they are not intending to hold any strike in Nairobi. It is also worth noting that the operations of *matatus* have been restructured and current work through SACCOs, or companies, and the Government has not received notice from any public service vehicles SACCO or company, indicating intention to hold strikes in Nairobi.

Mr. Speaker, Sir, the task force comprising of representatives from Government and *Matatu* operators was formed to address complaints that had been raised by *matatu* operators. This resulted in recommendations which were agreed upon. Most of the recommendations have been addressed.

Based on the recommendations, my Ministry has drafted a Bill to form a National Transport and Safety Authority. The Authority's functions will include licensing and regulation of public transport.

Mr. Speaker, Sir, with regard to the condition of Muthurwa Bus stop, this information was sourced from the Nairobi City Council, which is seeking for additional land from the Railways Pension Scheme to enable the expansion of the bus stop. I would like to assure Members that the Government will continue to facilitate operators to ensure that they conduct their business in a conducive environment and make reasonable profit out of their business.

Mr. Speaker: Any Member interested in clarifications beginning with the Member for Kamkunji. Mr. Assistant Minister, please, take notes.

Mr. Hassan: Mr. Speaker, Sir, I am, indeed, surprised by the Assistant Minister's response. I wonder whether the hon. Assistant Minister resides on another planet given that the fact the threat of *matatu* strike has been reported widely in our national media and is a well known fact.

Secondly, I would like to inform him that, in fact, the Central Organization of Trade Unions (COTU) plus the *Matatu* Welfare Association wrote to the President of the Republic of Kenya on 23rd and 24th November, informing our President that if issues relating to the cost of living, particularly the high prices of fuel as well as other problems faced by the *matatu* owners, they put on notice that they will go on strike on 19th December. This has been reported in the media. So, is it in order for him to mislead us here by saying that he is not aware of any strike? I would like to present the two documents which have been written to the President by COTU, as well as the *Matatu* Welfare Association.

(Mr. Hassan laid document on the Table)

On the second element of his answer, I am surprised he says that they have fulfilled the agreement they have made with the *matatu* operators. I have met the *matatu* operators. They are consistently harassed by police and *askaris* who demand bribes from them. They are consistently detained for variously trivial misdemeanour and other matters. They have constantly reported this to the various Ministries that were involved in this agreement, including the Ministry of Transport, the Ministry in charge of police, as well as the City Council and the Local Government.

The third element is the question of Muthurwa Bus Stop. I wonder whether he has ever been there. This is one of the entry to the city. The Muthurwa commuter hub is where all the *matatus* from the Eastlands drop and pick their passengers. Thousands of people come into Nairobi everyday using that route. If you see the appalling condition in which it is, he would not have said this is a matter that we are thinking of something about. It is a matter of urgency. It is important to our city's economy, as well as the movement of population in and outside Nairobi. Therefore, I would like to get clarifications from him, especially what he means by he is not aware. Is this the Government of His Excellency Mwai Kibaki, or is it another Government?

Mr. C. Kilonzo: Mr. Speaker, Sir, the Assistant Minister said that they consulted both organizations and they were told that there is no strike coming. When the Ministerial Statement was sought, one of the issues, which was given for the strike was the issue of cost of fuel. The letter to His Excellency the President is very clear. They are calling this strike for eight days, effective from 19th to 27th December. So, I am just curious when he says he consulted. Who did he consult? These are letters written to his boss, or the

appointing authority. Is that he has no access, or perhaps, the office did not deem it necessary to inform the relevant authorities? What is exactly happening in the Government? Have they become so immune to strikes even if COTU and *matatus* threaten them with strikes, they no longer care because there is ongoing strike called by doctors? Have they become immune to strikes? What is happening to the Government?

Mr. Imanyara: Mr. Speaker, Sir, personally, I am not surprised that the Assistant Minister says that they are not aware because this Government never owns up to anything until it happens.

Is he waiting until the strike happens before he can take measures against these people, because the letter to the President, and the letter by COTU has been widely circulated? Is he waiting the strike happens before he acknowledges that there are problems facing this country?

Mrs. Shebesh: Mr. Speaker, Sir, the Assistant Minister has talked about a task force which is supposed to bring dialogue between the Ministry and *matatu* operators. In view of the fact that this task force has not done its work, because they do not even know a strike is looming, whether he will consider disbanding this task force because it is not doing its work.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, yesterday, unfortunately, we watched as a young girl died as consequence of the doctors strike and the Government has been aware all along that the doctors are on strike. Is he waiting for another crisis before he can act in the *matatu* industry?

Mr. Speaker: The last one, Member for Bura!

Dr. Nuh: Mr. Speaker, Sir, in the same line, I want to ask whether the Assistant Minister has arranged with some powerful people who have buses, so that they get a booming business on the day the *matatus* will go on strike. The fact that he says he is not aware surprises me most because even a child in this country is aware. Is he planning to enrich a few people on the days the *matatus* go on strike?

Mr. Speaker: Assistant Minister, your responses and, please, make them brief.

The Assistant Minister for Transport (Mr. Ogari): Mr. Speaker, Sir, I would take the first by hon. Abdi. First of all, I want to comment on the public awareness, or the notice by the *Matatus* to go on strike. I still want to state that as the Assistant Minister, I am not aware of any pending strike due to police harassment. However, I am aware from the Press that *matatu* might be going on strike due to the cost of fuel. As far as I know,, this information has come from the *matatu* Welfare Association, who I know do not own *matatus*. There is *Matatu* Welfare Association and *Matatu* Owners Association. These are the people who own the *matatus* and buy fuel.

So, the information we have even today before I came to this House, I have talked to the Chairman of the *Matatu* Owners Association and he has assured us that they are not going to take part in that strike, which is being called by *Matatu* Welfare Association who have nothing to do with the ownership of the vehicles, and who are not buying the vehicles.

Mr. Speaker, Sir, as to the letter of the President, I am sorry, it has not reached our attention. I believe maybe that is not the right channel of communicating about the strike. I think the labour relations laws are very clear on how to notify the Ministry or the Government about the pending strike.

Mr. Speaker, Sir, on the issue of harassment by the police which was raised by hon. Hassan, as much as possible, we might aware that there could be some harassment, but as I said, we had formed a taskforce which is looking into this matter. Maybe in line with what hon. Shebesh had asked, the recommendations of the taskforce are being implemented. We are trying to work on some of them at the moment.

On the issue of Muthurwa Bus Terminus which has been raised by hon. Hassan, I know of the very appalling conditions. That is why I said that the Nairobi City Council is doing something about it. Even if they try to do something now, the place is too congested. They are trying to get land from the Railway Pension Scheme, so that they can expand it, try and see how they can tidy the whole place.

Mr. Speaker, Sir, hon. C. Kilonzo raised the same issue about the cost of fuel. We have been assured that the *Matatu* Owners Association will not take part in that strike because they realized that the issue of fuel prices will also hurt them if they go on strike now when they have a lot of business during this Christmas period.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Obviously, you would collude with the rich so that you can rob the poor.

Mr. Speaker, Sir, if you can allow me to read the relevant paragraph of the letter, it says:-

“COTU jointly with Matatu Welfare Association demands from you, Your Excellency, intervention in the matter with a view of effecting a 30 per cent reduction in petroleum products soonest, failure to this they will call on Kenyans to join in a one week nationwide strike.”

Mr. Speaker, Sir, it is not necessarily the matatus, but Kenyans and we will be included there. Obviously, you are immune to strikes.

The Assistant Minister for Transport (Mr. Ogari): Mr. Speaker, Sir, first of all, as I said earlier, I am not aware of that letter to the President. It has just been tabled in this House. Maybe, if there is anything I have to answer, I can answer after that.

Secondly, the Statement that I have made is about the pending strike due to harassment and other issues and not about price increases. This is because the Ministry of Transport does not fix the prices of petrol. In any case, when we talk about *wananchi* going on strike, then that is an issue because when prices of unga and any other products in the supermarkets go up, it is not the supermarkets which go on strike but *wananchi*. The hon. Member has just read a section of the letter about mobilizing *wananchi* to go on strike because of the rising fuel prices. I do not have an answer that I can give right now on that. This is because we are all feeling it and we sympathize with ourselves. I do not think that the issue of *matatus* applies here now. Through that, I have answered what hon. Imanyara asked. There is no way I can support the strike because I do not think that it has been notified to us that it is legal. If it were legalized, then I could think---

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Order! Hon. Members, the point at which we are, if you see the business which is still pending, we really must hurry through this bit.

The Assistant Minister for Transport (Mr. Ogari): Mr. Speaker, Sir, I can assure hon. Odhiambo-Mabona that we are not waiting for a crisis to happen, because we do not anticipate a crisis, especially if it is within the means that we can control or mitigate on it.

Lastly, regarding the question by Dr. Nuh, the question of making alternative arrangements during this Christmas period does not arise because we do not anticipate a strike from our public transport sector.

Mr. Speaker: Order, hon. Members! That actually brings us to the end of Order No.7.

Before we move to Order No.8, I will give a chance to the Vice-Chair of the Committee on Justice and Legal Affairs to lay some Papers.

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Departmental Committee on Justice and Legal Affairs on the nomination of the Chairperson and Members of the Ethics and Anti-Corruption Commission.

Report of the Departmental Committee on Justice and Legal Affairs on the approval of Justice F.M. Chomba from Zambia and Justice Albie Sachs from South Africa for appointment as Members of the Judges and Magistrates Vetting Board.

(By Mr. Baiya)

NOTICES OF MOTIONS

ADOPTION OF REPORT ON REJECTION OF CHAIRPERSON/MEMBERS OF ETHICS AND ANTI-CORRUPTION COMMISSION

Mr. Baiya: Mr. Speaker, Sir, I beg to give notices of the following Motions:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the rejection of the proposed nominees to the positions of Chairperson and Members of the Ethics and Anti-corruption Commission laid on the Table of the House on Wednesday 14th December, 2011.

ADOPTION OF REPORT ON APPROVAL OF JUSTICE CHOMBA AND JUSTICE SACHS TO JUDGES AND MAGISTRATES VETTING BOARD

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the approval of Justice F.M Chomba from Zambia and Justice Albie Sachs from South Africa for appointment as Members of the Judges and Magistrates Vetting Board laid in the Table of the House on Wednesday, 14th December, 2011.

Mr. Speaker: Hon. Members, I think it is in order for the House to commend the Committee on Justice and Legal Affairs for having got up at long last to discharge its mandate and encourage them to continue, so that the concerns of this nation with respect to the implementation of the Constitution are addressed expeditiously.

Next order!

[Mr. Speaker left the Chair]

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

PROCEDURAL MOTION

EXTENSION OF DURATION OF SELECT COMMITTEE ON THE DECLINE OF KENYA SHILLING

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

THAT, this House extends the period of the Select Committee on the decline of Kenya shilling by one (1) month in order to enable the Committee conclude its activities as per the terms of reference of its establishment.

Just two weeks ago, the House approved this Committee to deal with a number of issues. I do not want to anticipate debate, but because of the Christmas season and new year, it is a reality that by the time we come back from recess, almost three quarters of the time of this Committee will have lapsed. It is because of this that we are asking for a one month extension so that the Committee--- Indeed, we have already met close to 32 different organizations and individuals on the same. Because of the urgency of the issues that this Committee has been mandated to handle, we want to plead with the House that we get this extension, so we can function and complete this task as soon as possible.

Mr. Temporary Deputy Speaker, Sir, since the content of whatever this Committee intends to achieve has already been debated, I would like to call up on hon. Mureithi to second this Motion.

Mr. Mureithi: Mr. Temporary Deputy Speaker, Sir, I rise to second this procedural Motion that is seeking the extension of time for the Committee investigating the decline of the Kenya shilling. We have done a lot of work and we were feeling that, without anticipating debate, as the Chairman has said, we are likely to be caught up in between. Also, the staff are entitled to go on leave. We are requesting that this House allows us one month so that, beside the little that is remaining, we can also have the time to compile and then submit the report. We have received very useful information.

With those few remarks, I beg to second.

(Question proposed)

(Question put and agreed to)

Next order!

COMMITTEE OF THE WHOLE HOUSE

THE INDEMNITY (REPEAL) BILL

POINT OF ORDER

PRESIDENTIAL MEMORANDUM ON THE INDEMNITY (REPEAL) BILL

Mr. Affey: On a point of order, Mr. Temporary Deputy Speaker, Sir. Thank you very much for giving me this opportunity. The order that you have just called out, that is, Order No.9, regards a Motion. I want to refer you to Standing Order No.47(3) and I read-

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The Temporary Deputy Speaker (Mr. Imanyara): Order! Attorney-General, I am expecting that you will responding to those issues.

Mr. Affey: Standing Order No.47(3) reads:-

“If the Speaker is of the opinion that any proposed Motion-

(b) is contrary to the Constitution without expressly proposing appropriate amendment to the Constitution; or.

(c) is too long;

the Speaker may direct either that the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve.”

Mr. Temporary Deputy Speaker, Sir, our Constitution is very clear. The matter before us refers to Indemnity Act, Chapter 44 of the Laws of Kenya. In January, 2010, this House unanimously repealed this Act with no single dissenting voice, including the Official Responder of the Government. It went to the President and the President returned it with a Memorandum on 26th August, 2010. I can tell you that, that dilly-darling was an anxiety. Some retrogressive forces in the Government - and I want to appreciate that the new Attorney-General was not part of that force--- But he is under obligation to advice the President and the Government. I want to refer to Article 27(2) which speaks about the supremacy of our Constitution. The law that this Parliament has repealed goes contrary to the spirit and text of our Constitution. It was in the wisdom of this Parliament that this law be repealed. We now have a proposed Memorandum from the President which suggests that a law that is illegal can actually be amended. You cannot amend an illegality. This law is already illegal. We have decided that it is not supposed to be part of our laws. It was unconstitutional even under the previous Constitution. There has been a deliberate attempt by the Executive to frustrate the matter every time it appears before this House. When it finally came and the House made a decision, the sensible thing for the President to do was to sign it so that the law is completely repealed.

Mr. Temporary Deputy Speaker, Sir, I want to invite you to give an interpretation of how we can discuss a matter that is clearly, in the view of this House, lawyers, the Attorney-General and Kenyans, illegal. It is a law that found its way by default into the laws of this country. Therefore, I want to urge you to rule before the constitutionality of this matter can be discussed in the first place.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. Affey has quoted the Constitution extensively and I want to draw your attention to Standing Order No.55, which talks about amendments to be relevant to Motions. In this case, it also applies to Bills. Standing Order No.55(2) says:-

“No amendment shall be permitted if, in the opinion of the Speaker, it represents a direct negative of the Question Proposed.”

Mr. Temporary Deputy Speaker, Sir, when we passed this Bill, we had proposed a total repeal of this law. The present amendment here states the contrary. The Act that we are asking for its repeal should still be entrenched in the Constitution albeit being said that it has been amended. In my opinion - and I also request for your concurrence in this - it is a complete negative of what we had proposed and passed as a House - that this law be repealed. In that line, I would ask for your guidance on whether this Motion is before this House procedurally.

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am also rising on a point of order on the same matter. I was inviting your ruling to find that it is not available to the President at this point for him to propose amendment to the law because he is guilty of laxis. I am looking at the Sixth Schedule to the Kenya Constitution and Section 3 talks about the extension of applications of provisions of the former Constitution. The provisions that relate to the making of legislation, the Memorandum that the President can make to return a piece of legislation back to Parliament are all saved so that the former Constitution is still applicable. I have a copy of the former Constitution and, therefore, which is the relevant law. Section 46 of the old Constitution, which the Attorney-General is very well familiar with, in sub-section 4, it says:-

“Where the President refuses to assent to a Bill, he shall (therefore it is mandatory) within 14 days of the refusal, submit a memorandum to the Speaker indicating the specific provisions of the Bill which, in his opinion, should be reconsidered by the National Assembly, including his recommendations for amendments.”

Mr. Temporary Deputy Speaker, Sir, it is, therefore, only available to the President in mandatory terms for him to bring any amendment to law that has been passed in this House; that he makes those suggestions within a period of 14 days, that is, two weeks. Since the time this law was taken to the President for purposes of assent, it has spent well over eight months. It is obvious, therefore, in terms of constitutional application, that the Attorney-General cannot be heard to present this law before the House with a purported amendment. For that very simple reason, I would urge the Speaker to order that the Government, or the Attorney-General, advises the Office of the President that there is no other way; the opportunity for them to have amended this law is lost.

(Applause)

For him to try and bring any amendment--- What is available to him is for him to bring a constitutional amendment to allow him power to amend a law after eight months of its submission to him. Obviously, he cannot muster the required majority in this House. This Parliament has said that we want that law repealed for obvious reasons stated by the honorable Affey.

(Applause)

Therefore, Mr. Temporary Deputy Speaker, Sir, so that we do not complicate and convolute this matter, I rise on this point of order to request the Chair's ruling that this Order No.9 be referred back, and an order be made by the Chair that we do not go to the Committee of the Whole House, because we will be breaching our own Constitution, both the new and the old one. The Attorney-General be seized of this matter and advise the President to sign the Bill into law to avoid unnecessary confrontation with this Parliament.

(Applause)

This Parliament has made its decision. In fact, the Government side supported us when we moved this House. It is strange that the President suddenly has realized that there is a problem, and we wonder what the problem is. We have said we will not change. I urge that you do not allow the Committee of the Whole House to take place and you order the Attorney-General as I have prayed.

I thank you, Mr. Temporary Deputy Speaker, Sir.

(Applause)

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Duale.

Mr. Duale: Thank you, Mr. Temporary Deputy Speaker, Sir. This Bill came to this House in April, last year, and Parliament removed it from the laws of Kenya. What the President has now advised, or brought back, is that he wants that instead of the repeal, an amendment be moved. He wants this to exist as part of the laws of Kenya.

Mr. Temporary Deputy Speaker, Sir, this legislation of 1972 was meant to insulate public officials and security officials from law during the Shifta War. This law has very painful memories of massacres in a particular section of the people of this country. I think the new Attorney-General must not be like the old one. He must advise the Government as per the Constitution. Section 2 (4) under the subtitle "Supremacy of this Constitution", it is very clear. It says, and I quote:-

"Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid".

That section 2 (4) gives clear guidance that what the President is trying to do is not consistent with this Constitution. Today, as we stand here, we have our defence forces doing an operation in Somalia; that the people of northern Kenya might again suffer the same during this operation.

So, Mr. Temporary Deputy Speaker, Sir, we urge you to give a ruling that this order should not be allowed and the House should not go into the Committee Stage until you give further directions, because this order contravenes the Constitution that the Kenyans and the people of northern Kenya voted for 98 per cent.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Attorney-General.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, first, I want to appreciate the comments by hon. Mungatana that I was not in this House, and I was not in the Office of the Attorney-General when this Bill was passed by the House,

when it was presented to His Excellency the President, when it pleased him – the President – on the advice of the Attorney-General to refer it back to this House. But the Office of the Attorney-General is an institution. My own personal views on this matter would not be important at this stage. This referral has already been made and is pending before the House. I want to remind hon. Members that under our Constitution, the legislative power is both in this National Assembly and in His Excellency the President. It is when this House and the President act together that they are Parliament, and not otherwise.

It is, therefore, not unconstitutional, Mr. Temporary Deputy Speaker, Sir, that the President should express his opinion in respect of any law that is passed by Parliament. However – and this is the genius of our democracy – it is still the prerogative of this House to refuse to accept the proposals, the amendments and the suggestions that are made by the President. That, in my very humble view, is the course open to this Parliament today.

I would request you, Mr. Temporary Deputy Speaker, Sir, to allow that we should commence this debate, that I should move this amendment and this House, in its wisdom, if it chooses to amend, refuse or reject the amendments, that will be it. Then it will be for historians to debate in future years who of us was right, whether it was the House or the President.

But let me say this, Mr. Temporary Deputy Speaker, Sir, before I sit down. I understand the reasons my distinguished colleagues on the other side of the House raised the issues that they have raised. All of us care deeply about the welfare of the people of this country. I am sure that his Excellency the President and the hon. Members of this House would like to achieve the same goals, and that goal is to remove from our laws any legislation that offends the Constitution.

In my very humble view, though, this is what His Excellency the President has proposed, it is a compromise; it is to retain immunity for the Armed Forces of the Republic of Kenya that engaged in a legitimate war; that was duly declared under the Constitution and the law at the time and enacted by this Parliament.

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

The Temporary Deputy Speaker (Mr. Imanyara): What is your point of order, Mr. Mungatana?

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I have followed very carefully what the Attorney-General is trying to say. What he is avoiding to tell this House and the country is that in the exercise of that power--- Within the same Constitution, there is limitation and it was mandatory. The Constitution is mandatory. It states it in mandatory terms that the President shall, within 14 days – If he has any amendments to make at all – bring those amendments.

Mr. Temporary Deputy Speaker, Sir, if the President brings them after eight months, the simple point that I am making, and I have quoted it to the Professor here, is very simple – it is simply not available! He is a creature of the Constitution. He exercises those powers under the Constitution. He has offended the Constitution. All we are saying is that, therefore, those powers are not available to him and he should use the powers that are available. The only power which is there now is for him to sign because he is guilty of latches.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Mr. Imanyara): Order! Let the Attorney-General respond to that issue first.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, from the information available to me, this House on 14th April, 2010 passed the legislation in question. The legislation was presented to His Excellency the President on 13th August, 2010. His Excellency refused to consent to this legislation on 26th August, 2010. I am placing before you information that can also be useful to you in your making the ruling, so that we may all be reading from the same script.

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

The Temporary Deputy Speaker (Mr. Imanyara): Do not repeat your arguments. The Chair has got your arguments.

Mr. Affey: On a point of order, Mr. Temporary Deputy Speaker, Sir. I will not repeat my argument. The Attorney-General says the Armed Forces were in a legitimate struggle, which we agree. However, we are talking about ordinary civilians and not the criminals that the Armed Forces were fighting. This law indemnified officers of Government when they harass and kill ordinary citizens who are supporters of the Government of the day. He needs to get his facts right.

The Temporary Deputy Speaker (Mr. Imanyara): Order! That is not a valid point of order.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Mungatana has raised grievous concerns that the Attorney-General should have addressed. In addressing, he has given us the chronology of events when this Bill was passed by this House to the date when the President received it. It is not the business of this House to know when the President received the Bill because the Attorney-General, who is also a Member of this House, should have transmitted the Bill once it was passed by this House. That is why the Attorney-General is a Member of this House. As to when the Bill was received by the President is not within our calendar. What is seized of this House is the calendar of the day we passed the Bill as a House. So, let us count the two weeks from the day this Bill was passed and let the Attorney-General address himself to why it delayed.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Why are you not letting him make the point that he wants to make?

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, my attention has been drawn by hon. Mungatana to Section 46(4) of our old Constitution which says that:

“Where the President refuses to assent to a Bill, he shall, within fourteen days of the refusal, submit a memorandum to the Speaker---”

To my mind, the operative date must be the date that the President receives the Bill and is requested to assent to it.

The last comment that I would like to make on this relates to what hon. Duale said before he exited the Chamber. In fact, the old statute that we seek to repeal, specifically precluded from indemnity acts done in bad faith and acts that were outside the purview of the public interest. So that what he is concerned about was already catered for in the old Act.

Let me finish by saying that we welcome the opportunity for you to rule on this point. As far as the Government is concerned, we will abide with the ruling of the Chair on this point. However, the submissions that I have made constitutes our understanding of the correct legal position.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General has not responded to the fact that the amendments so proposed by the President is a complete negative of what was passed by this House which, again, contravenes the Standing Order No.55(3) which I cited.

The Temporary Deputy Speaker (Mr. Imanyara): Indeed, the Attorney-General, the issue of the Standing Order No.47(3) and 44 negating the intention of the House, those two issues you have not addressed. Perhaps, you may like to address the Chair on those two.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I submit with tremendous respect to my colleagues that we must read the Standing Orders as part of the enabling legislation under which they are made and then as part of the Constitution. It was never the intention of the Constitution that the prerogative of the President to consent or to refuse to consent to legislation should be in any way compromised by the Standing Orders. The President has not sought to reject the wish of Parliament. He has sought to modify the wish of Parliament as he is perfectly entitled to do.

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General is making a dangerous point. If he says that it was never the intention of the Standing Orders to abstruse the prerogative of the President, I want to remind the Chair that these Standing Orders are, in fact, grounded on the very Constitution that gives the power to the President to exercise his prerogative. So, the President must stand guided by the same Constitution that grounds our Standing Orders. Our Standing Orders are not statutory. They are based on the Constitution. So, their authority is as constitutional as the authority that the President purports to exercise wrongly in this case.

The Temporary Deputy Speaker (Mr. Imanyara): You have made your point, hon. Mungatana.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, this House is sovereign. This House is popularly elected by the people of Kenya, so is the President of the Republic of Kenya. The powers of the President and the powers of Parliament are not in conflict. They are in harmony to be exercised together for the just governance of the people of Kenya. This House has within its powers to listen to the amendment that I propose and to reject it. There is no other constitutional recourse. Then it will become law whether the President signs it or not. That is our Constitution.

The Temporary Deputy Speaker (Mr. Imanyara): Except, Professor, the point that is being raised is admissibility of the Motion under the Standing Order 47.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, we have surrendered that to your jurisdiction.

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, I am thoroughly shocked. What the repeal of this law intends to achieve is to eliminate impunity. For somebody to insist that we maintain in our books; our statutes, a law that contravenes, not only our Constitution, but every other shred or vein of Constitution in any civilized environment. We are in a situation right now in the world in which the prison warders in the Auswich

and who worked in Germany at the time of the Nazi Holocaust, those of them who are living are brought to book today. There is no statute of limitation on criminal liability. What we are looking for are not genuine Kenyans who are fighting the force who are from the other side who are also armed. We are looking for the criminals who perpetuated Wagalla, Malkamali, Walkatasi, all those genocides and massacres and some of them enjoying high profile positions in the Government today as I speak.

When we are trying to deal with impunity, seeking to reform this country and to leave behind a legacy and our President, His Excellency, hon. Mwai Kibaki, wants to leave a legacy behind, I would plead with my good friend, the Professor of law, who was one of those people whom we thought were going to uphold the fact that impunity should always be punished regardless of how long it takes, even posthumously, to advise the President that this cannot work in this day and era. It is a different dawn in this country and it is not constitutional.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! It is not the Attorney-General's President. It is our President.

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, I agree with you but as the Attorney-General, he is the legal advisor to the Executive and the Executive is demonstrated, exemplified and overseen by the President. It is because of that, that I am telling him to not only accept what he has been told but to also advise the President and tell him what is constitutional and what is unconstitutional. We cannot keep this law in our books. It has to be repealed. You can even be taken to the International Criminal Court on the same, because there are no statutes of limitation in criminal liability. So, this is unconstitutional and, therefore, the matter should proceed. The Act is unconstitutional and it has been repealed as far as this House is concerned.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, let me make one thing very clear because I may have been quoted out of context, and I want this to go on record. My own understanding of the instructions from the His Excellency the President is that His Excellency the President, in person and his entire Government, are committed to the rule of law. We are committed to the enforcement of the Constitution that we waited for so long to get. His Excellency the President recognises that Parliament enacted this legislation on 14th April, 2010.

The President understands perfectly well the reasons for which this particular statute was enacted. What His Excellency the President has sought to do, and what I think unhappily now we are not able to do in the context in which we are debating this, is that the substance of the amendment is not now available to the House from me. We are discussing the procedural issue of whether it should or it should not be laid on the Table of the House; but in the same debate, hon. Members are contributing on the substance without an opportunity, on my part, to lay the ground; this I was going to do substantively, as to why, in the opinion of the President, as advised by our then Attorney-General, my worthy predecessor, the hon. Amos Wako, on 26th August; he sought to persuade Parliament that there should be an amendment.

The decision as to whether that amendment is a good or not is a matter of debate, and if this House determines that it has rejected the proposed amendment by the President, both the President and the Government will comply with the law as made by this House.

Mr. Temporary Deputy Speaker, Sir, hon. Farah Maalim, who is one of my oldest friends and a very distinguished Member of this House, has alluded to a comparison to international criminal offences, to Nazi offences and so on. I want to say with respect that that is a slight exaggeration of what we are dealing with here. Kenya engaged with the *Shifita* in a legitimate war that was voted upon by this House. We sent men for six years to be engaged in the war. In those days, there were not many women in uniform. I want to remind my colleagues, with tremendous respect, that this is a self-succeeding House. Parliament never changes. Members of Parliament may change but Parliament remains the same.

When the *Shifita* War came to an end, in its wisdom, Parliament decided that it required an Indemnity Act for those persons who had served in that war, and who had acted within the law. Parliament then said that that indemnity did not cover acts in bad faith and outside the purview of the interest of public safety or public order or the maintenance of the public interest. If there was an officer who looted resources in that part of the world during that engagement, this law does not cloth him from prosecution or otherwise. If any person molested another citizen during that war, he does not enjoy immunity, but the men and women who wore the uniforms of the Kenya Armed Forces---

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, let us bring this matter to an end. These are procedural issues.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I want to rest my case by suggesting that it was not a flippant or frivolous amendment that the President sought. As Head of State, he sought to find a legitimate accommodation between the expectations of this House about this law and the expectations of our new Constitution and our moral, political and legal obligations to the men and women who served to defend this country in a very serious engagement.

Thank you.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! I have heard the arguments from the hon. Members who raised very valid concerns. I have also heard the Attorney-General's response. I am convinced that this Order is inadmissible. I shall communicate the reasons in a considered communication from the Chair. As of now, the Chair is convinced that this order, as drawn, is inadmissible.

*(Committee Stage of the Indemnity (Repeal)
Bill deferred)*

Next order!

MOTION

ADOPTION OF REPORT FOR APPOINTMENT
OF CHAIRPERSON/MEMBERS OF SALARIES
AND REMUNERATION COMMISSION

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion.

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade, laid on the Table of the House on Tuesday, 13th December, 2011, on the following nominees for appointment of chairperson and members of the Salaries and Remuneration Commission:

1. Mrs. Sarah Jepkemboi Chumo Serem - Chairperson
2. Mr. Peter Oloo-Aringo, EGH
3. Mr. Daniel Ogutu
4. Ms. Sellestine A. Kiuluku
5. Mrs. Serah Kinyua
6. Brg. (Rtd) Samuel Ndururi Kirugi
7. Mr. Jason A. N. Namasake
8. Mrs. Jacqueline Mugo
9. Mrs. Anne Elizabeth Owuor
10. Mr. Joseph Kinyua, CBS
11. Mr. Wanjuki Muchemi, CBS
12. Mr. Titus Ndambuki, CBS

Mr. Temporary Deputy Speaker, Sir, on 18th November, 2011, a letter was written to the Clerk of the National Assembly by the Head of Public Service and Secretary to the Cabinet indicating that His Excellency the President, in consultation with the Rt. Hon. Prime Minister, had nominated the persons that who been named in the Motion and, therefore, they were to be presented to Parliament for vetting.

Mr. Temporary Deputy Speaker, Sir, on 22nd November, 2011, the hon. Speaker in a Communication to the House referred the names of 13 nominees together with their curriculum vitae to the Departmental Committee on Finance, Planning and Trade for vetting and directed the Committee to submit its report.

We went through the vetting process. The Constitution provides for 14 nominees. Out of the 14 nominees, only 12 appeared before the Committee. The nominee from the Police Service Commission was not available because the Commission has not been formed yet. So, we will wait for that and when it is done then we will receive that nominee for vetting at a later date.

Mr. Temporary Deputy Speaker, Sir, the nominee for the Central Organization of Trade Unions (COTU) had certain issues because there are about four trade unions which represent the Public Service. There is Organization of Civil Servants Union, Kenya Union of Post-Primary Education Teachers (KUPPET), an organization that represents non-teaching staff and another one that represents the academic staff of the universities. These are unions which represent employees in the Public Service. They wrote raising objections because they felt that they are not part of COTU because COTU is defined as an umbrella trade union. Their argument was that COTU only represents unions in the private sector and they are not affiliated to COTU. They have made attempts to be registered under a different umbrella that represents the public servants and that application for registration has not been accepted by the Registrar of Trade Unions. Therefore, they felt that they had not been included and they had, therefore, not participated.

They went to court and received a judicial review. They had applied for the process to be stopped until their review had been heard and determined. So, when we

received this communication we felt that for purposes of inclusiveness and participation by all relevant parties, we would defer this particular nominee until the matter has been resolved. That would involve inviting representatives of these four or five unions that represent employees in the Public Service. That process has not been completed. That is why the nominee that was given by COTU in the name of Isaiah Kubai was not presented among the 14 nominees that are supposed to be there for the Salaries and Remuneration Commission. Since the Salaries and Remuneration Commission needs to commence work immediately, we felt that even if we have 12 nominees, if Parliament approves them and they are subsequently appointed then at least the Salaries and Remuneration Commission can start its work immediately as we sort out the issue of the COTU nominee and also await the appointment or vetting of the nominee by the Police Service Commission.

Otherwise, we went through the normal process of vetting. We went through all these names that I have mentioned and we found that they were suitable; they met the criteria as specified in the Constitution. We, therefore, passed them and found them fit to serve in the Salaries and Remuneration Commission.

Mr. Temporary Deputy Speaker, Sir, I want to stop there. I would like to ask Prof. Kaloki to second the Motion.

Prof. Kaloki: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion for the simple reason that these are capable Kenyans. They came through the vetting process. They have the right experience out there to be able to do the job in terms of revenue allocation and dealing with issues pertaining to the country. So, their experience and expertise make them suitable for this office.

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

(Question proposed)

Mrs. Odhiambo-Mabona: Thank you, Mr. Temporary Deputy Speaker, Sir, first of all, I want to thank the Committee for doing a commendable job. I want to believe that they have done adequate vetting. I do not know most of those people personally and, therefore, I can only say by faith that the Committee has done a good job. However, I want to just contribute on two issues. One *prima facie*, if you look at the persons who were appointed, there is dominance by a few communities. I think it is a challenge that we will be facing when we are looking at appointment by bodies.

The Principals should be advised that in situations where you have different bodies nominating persons, they must be very careful to ensure gender, regional and ethnic balance because it is constitutional. But when the bodies are left on their own, I know at one point we might just discover that we have actually nominated persons from one ethnic community, if we are not careful.

Secondly, I would want to encourage the Principals that in nominating persons to bodies where names are then brought before Parliament--- We have seen about three instances where number one is left and number four is taken. There may be valid reasons for including persons either from a regional perspective or a gender perspective, but I would want to encourage in those instances that reasons must be given in the forwarding letters by the Principals and even by the nominating bodies, so that we are not left to guess why you leave number one and take number four.

With those few remarks, I beg to support.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, I also want to support and congratulate the Committee. However, I would like the Chair of the Committee, who is right in front of me to, probably, give us some clarification because in his short presentation he has not made it clear. The last three names that I see represent certain organizations and bodies. Would I, therefore, be assuming the right thing or the wrong thing if I was to say that those are not the names that will forever be there because those offices could change? That is something he needs to clarify for us.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Chairman, did you want to make a clarification?

Mr. Okemo: Yes, I would like to clarify that the last three names bear the title "CBS".

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. The rules of this House are very clear. It is only during Ministerial Statements that Members seek clarifications and the Ministers respond. This is a Report and the Chairman has already moved it. He has exhausted his portion of the contribution and, therefore, is speaking twice to the same Motion. Is he in order?

The Temporary Deputy Speaker (Mr. Imanyara): He was informing the Member. She requested and the Chair allowed him. So, there is nothing out of order there.

Mr. Okemo: Thank you very much indeed, Mr. Temporary Deputy Speaker, Sir. The clarification that I would want to make to the hon. Member is that the three last names---

Mr. Chanzu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Just some additional correction! It is actually from number eight; the five names. That is because there is---

The Temporary Deputy Speaker (Mr. Imanyara): Order! If you are not certain of what you want to raise then, please, do not raise it!

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, what I am raising is clear. These are organizations from number eight, nine, ten, 11 and 12. I am very clear about what I am raising. So, you can combine that.

The Temporary Deputy Speaker (Mr. Imanyara): What is your point of order? That is what I am asking you.

Mr. Chanzu: I was just making a further point of order because these are organizations which are represented here. There is the Federation of Kenya Employers (FKE), COTU and Ministries. Are we implying that the names are going to remain---

Mr. Okemo: Can I clarify all the names; each name one by one? One, Mrs. Sarah Jepkemboi Chumo Serem is just a name that came from the President as chairperson---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Okemo, let me put my colleague in peace because he seems to think that the Chair is wrong. I want to bring to the attention of Mr. Ethuro the provisions of Standing Order No.74 which permits a Member who has spoken to give an explanation. That is why I have allowed Mr. Okemo to do that. Mr. Ethuro you can be reading the provisions of Standing Order No.74.

Mr. Okemo: As Mr. Ethuro reads the relevant Standing Order so that he stops--- Hon. Oloo-Aringo is representing the Parliamentary Service Commission (PSC); Mr.

Daniel Ogutu is representing the Public Service Commission (PSC); Ms. Sellestine A. Kiuluku is representing the Judicial Service Commission (JSC); Mrs. Serah Kinyua is representing the Teachers Service Commission; Brig. (Rtd) Samuel Ndururi Kirugi is representing the Defence Council and Mr. Jason A.N. Namasake is representing the Senate. You remember the name came there for Parliament to approve because the Senate is not yet in place.

Mrs. Jacqueline Mugo represents the Federation of Kenya Employers (FKE); Mrs. Anne Elizabeth Owuor represents the Association of Professional Societies in East Africa; Mr. Joseph Kinyua is nominated to represent the Cabinet Secretary in charge of Finance and is currently the Permanent Secretary to the Treasury; Mr. Wanjuki Muchemi has been nominated by the Attorney-General and he is the Solicitor-General. Mr. Titus Ndambuki is Permanent Secretary in the Ministry of State for Public Service and has been nominated by the Minister of State for Public Service.

Mr. Temporary Deputy Speaker, Sir, that is the complete list.

The Temporary Deputy Speaker (Mr. Manyara): For the benefit of Mr. Ethuro, I just want to read to you now the provisions of Standing Order No.74 (1):-

“No Member shall speak more than once to a question except in Committee of the whole House provided that:-

(i) a Member who has spoken on a question may again be heard to offer explanation of some material part of the Member’s speech which has been misunderstood, but must not introduce new matter.

Mrs. Shebesh simply sought the Mover to explain and it is permitted by the Standing Orders. Does anybody else want to contribute?

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to thank you for bringing this to my attention. Indeed, it is talking about being misunderstood. Mrs. Shebesh asked for clarifications. Secondly, the same Standing Order No.74 (2) also says that:-

“The mover of a substantive Motion may surrender all or part of his or her right to reply to another Member---”

So, all I was asking is: It is possible for the Chair to delegate to the rest of the Members of the Committee? He is not alone in the Committee.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I also rise to support the good work that has been done by the Committee. Let me indicate that the Committee has done a sterling job. In addition, Kenyans in this Report are highly experienced, highly qualified and have given meritorious service locally and internationally. For example, Jacqueline Mugo is the current CEO of FKE. That is a key position in that organization and being a lady in this country, she is challenging all the men among 40 million Kenyans. That lady has already distinguished herself in terms of performance. We cannot forget the good role that has been played by Oloo-Aringo in this House.

Mr. Temporary Deputy Speaker, Sir, it is high time that we set up the Salaries and Remuneration Commission so that the issue of salaries can be addressed once and for all.

With those few remarks, I fully support this Report.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I rise to support the Report and thank the Committee for doing a lot of work. I belong to that Committee. The Committee became so busy and did a good job.

Mr. Temporary Deputy Speaker, Sir, I want to urge this House to support this Report so that, as my colleague has said, we get the resolution to constant complaints about salaries. We hope that the Commission will adhere to the law as passed by this House. We hope it will follow the rules of the game and not act in haste. But it should act with speed so that Kenyans can stop being angry at the Government.

Mr. Temporary Deputy Speaker, Sir, however, I want to move an amendment to the Report. There is a name which has been left out. That is the name of Mr. Isaiah Kubai. Let me declare that I do not know the person, but I think the reasons do not belong to this Parliament. The Constitution recognizes COTU as the umbrella body of trade unions. Therefore, no other body should come to say that it was not consulted. It is not our business to participate in those consultations. What we wanted is to get a nominee as required by the law. Therefore, I want to move that the Motion be amended as follows:-

By inserting the following words at the end thereof, "subject to deletion of the second paragraph on page 22 of the Report" and adding the name "Mr. Isaiah Kubai" immediately after the name "Titus Ndambuki, CBS".

I want to ask Dr. Bonnie Khalwale to second my amendment.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I rise to support that amendment. As I support the amendment, allow me to congratulate the Chair, Mr. Okemo and his colleagues for working tirelessly to ensure that this most important Commission is put in place. It is sad that doctors, teachers, *matatu* workers and everybody want to strike in order to get better remuneration. We hope that today, we are conclusively going to ensure that, that does not happen. That is why I say that this Parliament must be brave. It should not be held back and leave out only one name. We should ensure that we give a full list of the members and make sure that the Motion as amended is approved.

Mr. Temporary Deputy Speaker, Sir, I say that with the conviction that when COTU proceeded to recommend the name of Kubai, it did that in accordance with Article 230(2)(1) of the Constitution.

Mr. Temporary Deputy Speaker, Sir, in so doing, COTU behaved constitutionally. So, if we are really a Constitution implementing organ, we cannot go against a body like COTU which proceeded constitutionally and reject or delay the appointment of his name. I am aware that in this Report, which I have read, the Chairman and his Committee are telling us that other trade unions namely; KUPPET and university non-teaching staff union are claiming that COTU does not represent them. In the same Report, the same two groups are telling Parliament that they are not part of COTU because COTU represents the private sector and they belong to the public sector. We cannot, as Parliament, be expected to midwife sibling rivalry between trade unions. If these trade unions that belong to the public sector do not recognize COTU and they have conceded in this Report that they have sought registration for their own umbrella and they have not been given, were they expecting Parliament to wait for them until the time they will get registered? Parliament cannot anticipate what the Registrar of Societies will do and even if it could, Parliament cannot be forced to wait. Parliament does not wait for anybody. We have the full mandate. We should allow Kubai to make the list and respect COTU because it does a wonderful job for this country.

*(Question, that the words to be added
be added, proposed)*

Mr. Ethuro: Thank you, Mr. Temporary Deputy Speaker, Sir. I applaud your wisdom in delaying my contribution until the amendment has been moved because I want to support it. First, I want to congratulate the Chair and the Committee for a good job and for taking the trouble of ensuring that the names that came before them were vetted. They were just a bit shy about the name of Mr. Isaiah Kubai.

There is a good reason and I know that the Committee wanted a fair opportunity for everybody. However, we cannot allow this House to wait for the complaints that are being raised by other offices. For example, they went to court for judicial review which they have not been granted. They made an application that they wait for the outcome of the judicial review. They have gone to the Registrar and this has not been granted. This is not for us. Let them pursue those processes until they come to fruition. The KUPPET is a good professional body but the Kenya National Union of Teachers (KNUT) existed before them. Now, was KNUT supposed to wait until KUPPET becomes a professional body? The COTU, according to the Constitution is one person nominated by an umbrella body representing a trade union. So far, COTU is what we understand to be that umbrella body representing trade unions. The Constitution in Article 41, also anticipates an opportunity where every trade union should be part of the collective bargaining agreement with their employer. But we are talking about the Salaries and Remuneration Commission especially at a time like this when everybody seems to be going to the streets on the basis of the same Article 41 of the Constitution; that you have the right to fair practices and the right to go on strike. The sooner we bring this Commission to fruition the better and the amendment by Mr. Jakoyo Midiwo which was seconded by hon. Dr. Khalwale must be carried so that we do not discriminate against one individual. This House must remember that we have just celebrated, 10th December, 2011, an event that we celebrate every year. In fact, this House was invited to a workshop in Mombasa to appreciate human rights and yet we are denying one Isaiah Kubai his rights. Thank you.

I beg to support.

(Mrs. Odhiambo-Mabona stood up in her place)

The Temporary Deputy Speaker (Mr. Imanyara): Why can I not deal with the amendments and then you can speak? Are you opposing this?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I am supporting it just in one minute. The reason I want to support this amendment is because COTU is the known umbrella body. If you look at this period that we have been having strikes, you will realise that the organization or umbrella body that has come out very strongly in support of striking workers, doctors and *matatu* industry is COTU and it would be very unfair to keep their slot in limbo for an organization that is not registered. The organization that is not registered has very valid reasons but I think it is just unfortunate that this is coming at the wrong time. I would encourage them to register and at the appropriate time, they will get their position. This appointment is not forever. So, next

time they can put their person but right now, COTU is the rightful body that should represent these bodies.

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

(Question of the Motion as amended proposed)

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

Resolved accordingly:

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning & Trade laid on the Table of the House on Tuesday, December 13, 2011, on the following nominees for appointment of chairperson and members of the Salaries and Remuneration Commission,

1. Mrs. Sarah Jepkemboi Chumo Serem - Chairperson
2. Mr. Peter Oloo Aringo, EGH
3. Mr. Daniel Ogutu
4. Ms. Sellestine A. Kiuluku
5. Mrs. Serah Kinyua
6. Brg. (Rtd) Samuel Ndururi Kirugi
7. Mr. Jason A.N. Namasake
8. Mrs. Jacqueline Mugo
9. Mrs. Anne Elizabeth Owuor
10. Mr. Joseph Kinyua, CBS
11. Mr. Wanjuki Muchemi, CBS
12. Mr. Titus Ndambuki, CBS

Subject to deletion of the second paragraph on page 22 of the Report and addition of the name “Mr. Isaiah Kubai” immediately after the name “Titus Ndambuki, CBS”.

MOTIONS

ADOPTION OF REPORT ON DEMOLITIONS/ EVICTIONS AROUND AIRPORTS IN NAIROBI

THAT, this House adopts the report of the joint Committee on Administration and National Security, Lands and Natural Resources, Local Authorities, and; Transport, Public Works and Housing on the demolitions and evictions in Syokimau, Kyang’ombe, KPA, Maasai and Mitumba villages and Eastleigh laid on the Table of the House on Wednesday December 7, 2011.

(Mr. Musyimi on 8.12.2011)

(Resumption of Debate interrupted on 13.12.2011)

The Temporary Deputy Speaker (Mr. Imanyara): Mr. James Orengo, you have ten minutes to go.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I beg to continue with my contribution from yesterday. I want to put to rest a matter that I promised to put before the House. We should not play politics with this very serious issue.

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

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

I indicated yesterday that the decision that was made in respect to the demolitions was a decision of a Cabinet Committee; the Security and Foreign Affairs Committee, which is chaired by His Excellency the President. Its members are His Excellency the Vice President and Minister for Home Affairs, the Rt. Hon. Prime Minister, the two Deputy Prime Ministers, who are Ministers for Local Government and the Minister for Finance respectively, the hon. Attorney-General, hon. Minister of State for Defence, hon. Minister of State for Provincial Administration and Internal Security, hon. Minister for Foreign Affairs and hon. Minister of State for Immigration and Registration of Persons. This decision came as a directive to the Ministry of Transport. I think this should be put in context. Therefore, this matter should not be put to the House, as if the Government was divided in making this decision. There are Members of the Cabinet who have been saying it was wrong to carry out the demolitions, yet they sat in this particular Cabinet Committee and did not make any comments to the contrary, when that Committee sat. Under the principle of collective responsibility, when these matters came to some of us, we had collectively to abide by a decision, which came from a Cabinet Committee that was properly constituted.

Mr. Temporary Deputy Speaker, Sir, a lot of people are trying to make political capital by saying an individual Member within the Government was responsible, or other powerful persons were responsible, who may own land, or may have some interest in some of these areas. I think anybody who is saying that is first undermining the authority of the Republic of Kenya, as properly constituted under the Constitution. If they do not know it, they are also undermining the authority of His Excellency the President. All the decisions in accordance with the current Constitution must be in writing. Once it is a Committee chaired by the President, any Minister, or any member of Government who seeks to say that that decision was made otherwise, is undermine the authority of His Excellency the President. I think even the President was very clear on this when he was in Rwanda. He said he supported the demolitions in clear terms. What hon. Waititu was trying to say was that this decision had something to do with the Prime Minister for extraneous reasons, which had nothing to do with the demolitions. If hon. Saitoti was

here and the other member, who were part of this Committee, I think they should stand up and say that it was their decision. Yesterday, during the debate I saw His Excellency the Vice-President and I thought he would take the opportunity of defending this decision that was made by the Cabinet.

Mr. Temporary Deputy Speaker, Sir, let me just summarize by saying that I have made points about how demolitions should be done. I support this report because demolitions were not carried out in the manner they should be processed and undertaken. A decision of any organ of Government or any office in Government must be in accordance with the Constitution. But as regards the institution in the Ministry of Lands, I want to say that the Chair of the Committee is one of the persons who on many occasions have risen in many contributions to comment on matters to do with land. Unless we have a modern land information system, dealing with the problems in the lands office based on manual records that date back to 100 years, cannot stand the demands and stresses of a modern economy. It is something which we do not have a choice. I am prepared to take political accountability. I believe that even if you took somebody else to the Ministry of Lands, I think the institution will not be any different. For that particular reason, I think one of the strong points we should be making at the end of the day is to support the Committee in its recommendations, that the land information system is outdated, obsolete and it is an antic relic of a system that does not prevail in any modern democracy, where title deed to land must be protected.

The second reason why I am saying that it is important to be careful about demolitions is in terms of Article 40 of the Constitution. It says very clearly that when it comes to compensation in relation to any land, that a title deed in itself is not the only standard to be used. Even institutions, where people do not have title, an interest in land is not necessarily exemplified or concretized in a title. In fact, most of the land in Kenya, as I speak today, has no titles. One should not be heard to be saying that if somebody does not have title to land, then he is not entitled to compensations. There are all notions in the law that, again, I think my learned friend Millie Odhiambo will support this, that where it comes to property law, there are principles of equity that sometimes go against innocent Kenyans that may have bought land for value, but not knowing that there was no proper titles. As I speak today, none of the people who derived title from Mlolongo--- I have not seen anybody who derived title from Mlolongo, or one of those entities coming out with a title to show that, indeed, they had a proper title registered with the Commissioner of Lands. That is not to say that they cannot be compensated. If you say they have to be compensated then you have to demonstrate the legal right or the constitutional right. So, the formulation that the Committee has come with, an ex-gratia payment does not mean that it is of any lesser value. But it means that the person to be paid does not have to demonstrate that they have a legal right or a constitutional right, which means notwithstanding any other considerations in the law, they should be awarded some kind of damages. I think this should be done on a case by case basis. Let all these matters be interrogated. A lot of time, you will find people who will represent themselves for compensation, maybe just professional squatters, or people who really do not derive a proper title from any of this kind of situation.

The final point that I want to make, unless Kenyans are prepared to live together sharing the territory called Kenya, resolving conflicts in land will continue to bog us from centuries to century. We cannot live in a situation where some people in this country, let

us say in Taita Taveta, own 90 per cent of the county and the rest of the community is confined to 30 per cent of the land. When you go to Taveta Constituency itself, you find about three or four individuals owning more than 95 per cent of the land in that county. The problem that we have with land is that, and I can tell you without fear of contradiction, we have speculation on land. We have people who cannot access land, because it is in the hands of a few people, who are using it for speculative purposes, or they have public land which they are not using, and is idle. I would ask this hon. House, by the time we bring the land Bill, especially in relation to public land, that anybody who is holding public land and is not using it, that land should be given back to the public. It should go back to the public and given to the people of Kenya, who have nowhere to stay or nowhere to earn a living.

I think that, that is a good call. It is not for cosmetic reason that we said in our Constitution that every Kenyan must be guaranteed access to land. It may not mean ownership but every Kenyan has a right to access and security to land. I believe that with the fullness of time; when we have the full regime of the law relating to the land sector, we will be able to resolve these matters once and for all.

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

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, let me also add my voice on this Report which was tabled by hon. Musyimi and his team.

I do concur and accept that the Report has come out very well. If you look at the whole Report, it has given proposals on a number of laws which need to be enacted in order for us to safeguard the interest of the common *mwananchi*.

Mr. Temporary Deputy Speaker, Sir, I do commend the entire team for having gone beyond what they were supposed to do and propose that we should fast-track some of the laws in order for us to keep law and order in various corners of this country. I came across an article which talks about reforms in the Ministry of Lands. This is Article 13.7 on page 63. If we enforced what is recommended in this Report, then we will have minimal problems on matters which border on security. I will give some examples. We have a land buying company known as “Mbo-I-Kamiti”. You and I know that Mbo-I-Kamiti has made several people die. In order for us to avoid death cases of some sort we need to fast-track the introduction of the Court Bailiffs Act in order for the officers to use it for purposes of serving the court orders. This is because many a times you will find that if the police do not honour the court orders, then we have a big problem of people killing one another. The chairman, secretary and a number of other officials of Mbo-I-Kamiti have been killed because of land. Land is an emotive and very sensitive issue and we need to come out with laws that will govern the issuance of titles.

Mr. Temporary Deputy Speaker, Sir, I had a privilege also to serve as an Assistant Minister in the Ministry of Lands. What hon. Orendo is saying is true; that we have an archaic system of land registry. As long as we have obsolete equipment, we will not go far. It needs complete overhaul. It needs not just computerization but also new equipment for land registry so that if you click a button you will definitely know that this land belongs to hon. Ojode or hon. Ethuro who is the Chair now.

Mr. Temporary Deputy Speaker, Sir, I also said in this House on Thursday, last week that there is a firm known as “Swani Coffee Estate in Thika”.

Swani Coffee Estate was sold to Terapla Limited. I mentioned that last week on 8th Thursday.

After the agreement, a down payment of 10 per cent was paid, which was totalling to about Kshs3 million. There was a balance of Kshs27 million. What happened is that Terapla which was supposed to buy that particular land formed another company in the name of Chania River Bank Estate. So, Chania River Bank convinced the Chairman of Swani Coffee Estate to allow him to use the title deed to get some money from the bank based on the memorandum of understanding. Later, the same Terapla went ahead and formed another company in the name of Chania River Bank which now purported to have bought the land using the same title deed. In other words, Swani Coffee Estate lost the title deed because he never got the money and the title deed went to somebody else. These are some of the things we are talking about. Another one is Synergy Industrial Credit versus Cape Holdings Limited. I mentioned on Thursday 8th December, 2011 that the matter regarding the investigation of Synergy Industrial Credit is between Synergy Industrial Credit and Cape Holdings. It is a civil matter which is also in arbitration. It has nothing to do with fraud. We said that investigations on the directors of Synergy Industrial Credit for money laundering are independent. We shall give the report later because we want to know whether it is, indeed, true that Synergy Industrial Credit is involved in money laundering. So, the issue of somebody coming up and saying that it is Cape Holdings who are involved in fraud and so on, is unfair. It is not that way. The fact of the matter is that there is an arbitration which is going on. It is a civil matter and has nothing to do with criminal matters.

Mr. Temporary Deputy Speaker, Sir, we have also said that laws should be enacted to tackle issues of evictions and resettlement. The reason why I am agreeing with the recommendations on evictions and resettlement is because it will minimize the issue of lawlessness.

The Temporary Deputy Speaker (Mr. Ethuro): Please, wind up!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Yes, I am winding up. I also mentioned in this House that my main work is to provide security. I said that I will provide security to those who are constructing their houses and those who are demolishing.

With those few remarks, I beg to support.

Mrs. Odhiambo-Mabona: Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to support the work of the Committee and I want to thank them for working very hard in a short time and coming up with a very comprehensive Report. I know that some pessimists were arguing that they are giving us the same recommendations that we have heard over and over again. Sometimes, it is not an issue that we get new recommendations, but ensuring that we hear it over and over again and make sure that it is done. That is why I am happy that the Minister for Lands and the Assistant Minister, Ministry of State for Provincial Administration and Internal Security have sat here through. I am hoping that they will listen very keenly to what the Committee has recommended and hasten reforms in their respective Ministries.

Mr. Temporary Deputy Speaker, Sir, one of the issues that has come out very clearly is the issue of sanctity of title deeds. Most Kenyans are not sure whenever they buy land in this country. You cannot be sure whether the title deed is yours. So, it is very unfortunate not only for investors, but for young Kenyans who are hard working, not

corrupt and who want to do their things in a very straight forward manner. They have sacrificed and invested in buying a little house. Then they wake up one day and are told that they built on a road reserve or Government land and yet, the original person who irregularly acquired that land is not punished. Even though I know that we do not make laws retroactively, but this is one of the cases where we should because, really, we cannot have persons acquiring land irregularly and selling it unknowing to Kenyans, and then punish the persons who have no clue or knowledge about the wrong title deed of the land.

Mr. Temporary Deputy Speaker, Sir, I am very happy that hon. Orengo has mentioned one of the areas that is not usually talked about. I know that yesterday there were hon. Members who spoke very lengthily on Article 40 (2); I want to speak to the other one, which is Article 40 (4):-

“Provision may be made for compensation to be paid to occupants in good faith of land acquired under Clause (3) who may not hold title to the land.”

So, Mr. Temporary Deputy Speaker, Sir, if there are people who do not have title and who, in good faith, are occupying a place, it is the responsibility of the Government of Kenya to ensure that these persons are actually compensated.

Then I want to talk to the issue of rule of law. Even when people improperly occupy land, for us to evict them, we must follow the rule of law. We cannot use shortcuts because we passed the Constitution so that we follow and obey it. We cannot have different classes of persons and different laws applied to them. We are in a new era and that era must be respected.

Mr. Temporary Deputy Speaker, Sir, I want to talk to the issue of a very unique group of persons in these areas that we are speaking about. There are persons who got wrong titles, sold them to unsuspecting Kenyans and then there are persons who are occupying land for persons who have proper titles, and there are landlords who are encouraging them to occupy it. I alluded to this yesterday.

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

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

Unless we deal with these landlords, who are also abusing persons who have proper titles by encouraging people to occupy land which is not properly theirs, we will have a problem.

Finally, Mr. Temporary Deputy Speaker, Sir, I want to say that on the issue of the Government going to sleep, if you actually look at most of the houses that were actually pulled down, unless these people were using miraculous methods, we know what period it takes for a house to come from the ground and go to the size these houses were; it is not less than six months. And if the Government has been sleeping on its own rights--- Minister for Lands, I hope you will listen. The Minister of State for Provincial Administration and Internal Security has left. If you have been asleep on your rights for this while, really, you cannot even under the law bother these people; they have put in resources and if the Government did not think this land was important to them and people have taken all this while to build and finish their houses, then you should not come and

claim this land. Where were you all this while? If you were not there, you should not bother Kenyans. If Kenyans have spent their energy and time building and putting in resources--- I know a friend of mine who is a single mother of four children, who did not have money, and at one point she was even doing fundraising to put a door and windows to the house. Some of them are not very rich people; they are just struggling, honest Kenyans.

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

Mr. Muthama: Bw. Naibu Spika wa Muda, nashukuru kwa nafasi hii ili niweze kuchangia jambo hili, ambalo ni la muhimu sana na limeweza kuishtua nchi nzima. Mimi mwenyewe niliweza kufika kwenye vikao vilivyokuwa vikiendeshwa na Mwenyekiti hapa, na nilipata nafasi na fursa ya kuweza kusikiza maoni ya wananchi. Vile vile, mimi mwenyewe niliweza kutoa uamuzi wangu.

Bw. Naibu Spika wa Muda, jambo hili lilikuwa ni jambo zito mno na liliumiza nchi nzima; wakenya walipatwa na machungu na hasira kubwa sana. Cha kutia aibu na shaka kubwa ni kwa sababu tangu hawa wananchi wafike katika sehemu walizojenga nyumba zao, ukweli wa mambo ni kwamba hawakujenga zile yumba kwa siku moja, siku mbili, hawakujenga kwa mwezi mmoja, bali walijenga kwa miezi kumi na mine au zaidi.

Ni jambo la aibu kuona ya kwamba mambo haya yalifanyika machoni mwa naibu wa chifu, DO, DC na Mkuu wa Mkoa. Hawa wote ni waakilishi wa Serikali mashinani. Maofisa hawa wangeweza kujulisha Serikali juu ya uvamizi wa shamba hili. Kama wangepanga hivyo, basi wananchi wengi hawangepata matatani ya kununua shamba bandia. Mimi ninapinga vikali uvamizi wowote wa mashamba ya umma na watu binafsi. Hata hivyo, jambo ambalo sikubaliana nalo ni ubomoaji wa nyumba za watu. Nyumba hizi ziliwagharimu watu hawa mamilioni ya pesa. Hii ilikuwa ni mijengo ya kifahari na ilijengwa kwa muda wa miaka mingi. Ni fedheha ilio je kuona nyumba hizi zikibolewa bila ya notisi kutolewa!

Watu ambao nyumba zao zilibomolewa hawajui kama walikuwa wamezijenga katika ardhi ya Serikali. Wao walinunua ploti zao kihalali. Mimi mwenyewe nimepinga mara nyingi njama za unyakuzi wa mashamba ya Serikali. Jambo hili nilijadiliana na Waziri wa Ardhi. Nilimweleza vile watu fulani walijaribu kunihonga ili nikubali wavamie shamba la Serikali la ekari 1,600. Walijaribu kunihonga na zaidi ya Kshs50 milioni na ahadi ya ekari 300 ikiwa ningewakubali wanyakue zaidi ya ekari 1,600; mali ya umma. Nilikataa njama zao na nikamwandikia Waziri wa Ardhi barua juu ya kisa hiki. Kamwe siungi mkono wizi wa mashamba ya Serikali. Lakini watu hawa wa Syokimau na kwingineko walitoa wapi vyeti vya kumiliki mashamba yao? Je, kwani kuna Serikali mbili katika nchi hii? Kwa nini Serikali inatoa vyeti kwa mkono wa kulia na kuvikataa kwa mkono wa kushoto? Ikiwa stakabadhi hizi za kumiliki mashamba ni bandia, kwa nini Waziri hajaamuru uchunguzi ufanywe ili kubainisha ukweli wa mambo na maofisa fulani katika Wizara yake kuchukuliwa hatua kwa kutoa vyeti hivi?

Ikiwa mtu anaweza kutengeneza stakabadhi bandia bila Wizara husika kujua, basi pengine cheti changu cha kumiliki shamba langu ni bandia. Pengine shamba langu tayari limeuzwa bila mimi kujua. Ni lazima mambo haya yachunguzwe kwa kina kirefu ili tujue ukweli wa mambo. Wananchi wengi wameteseka na kupoteza mali kwa sababu ya njama ya watu fulani, walagai wanaowahadaa kwa mashamba ya umma. Ni dhahiri shamba hili ni la shirika la ndege hapa nchini. Kwa hivyo, ninaiomba Serikali hii

kuwafidia walioathirika na ubomoaji wa nyumba hizi kwa sababu makosa yalikuwa ya baadhi ya maofisa katika Wizara ya Ardhi. Tunajua watu hawa walinunua mashamba haya na wakajenga nyumba zao kwa gharama ya juu. Inafaa walipwe.

Mwisho, ninamuomba Waziri atakapokuwa akitoa msimamo wa Serikali kuhusu jambo hili, atueleze vile watawafidia waathiriwa wa mkasa huu wa Syokimau na kwingineko. Ningependa kusikia jinsi watakavyo pata pesa za kuwafidia watu hawa. Ikiwa Serikali hii ina pesa za kupigana na maharamia wa *Al Shabaab* kule Somalia, kwa nini isipate pesa za kuwafidia watu wake?

Kwa hayo machache, ninaunga mkono.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I would like to commend my good friend, the presidential hopeful, hon. Musyimi, for this good piece of work. I had an occasion to appreciate his contribution to this society. I also want to commend his Committee Members, including the joint Committee Chairman, hon. Kapondi, who today is a free man.

This report reminds us of two things; first, the clarion call by the late President of the Republic, namely, *turudi mashambani*. We must go back to our rural areas. The issue of land was still as valid then as it is today. Secondly, it reminds me of the role of hon. Orengo, the Minister for Lands.

The Minister is a man I respect, given that he has fought hard for this country. Now he does not have to fight from the streets. He must now fight to assist the oppressed. I cannot take it from hon. Orengo; for him to come to this House and tell us: "If they could allow him to pay---" who is Government? He is in the Government. He is talking about the Land Registry. The first assignment we gave him, as a House, was computerisation of the land records. At one time, he came here with some very rusty things, which were supposed to be title deeds and we told him that he had better computerise his records. We cannot accept this nonsense in this day and age. This is a country whose talent is recognised worldwide. This is a country where we have produced highly qualified ICT specialists to the extent of exporting expertise in ICT to Rwanda, which now boasts of hosting an IT giant in the name of Dr. Shem Ochuodho.

Mr. Temporary Deputy Speaker, Sir, the Minister for Lands must take advantage of the recommendations of this Committee to do this country one last favour after the promulgation of the new Constitution – reforming our land system. It is about land reforms.

With those remarks, and because hon. Kiema has been compromised by hon. Orengo, I beg to support.

The Temporary Deputy Speaker (Prof. Kaloki): Order! Order! Hon. Njuguna, because of the interest shown by hon. Members in this debate, could you take two minutes, so that we can have many hon. Members contributing?

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I start by thanking the joint Committee Chairman, the aspiring Presidential candidate, hon. Mutava Musyimi, and the Members of the Joint Committee. The shocking demolitions and evictions at the concerned places were brutal acts. Families are now in agony and serious pain. These acts have resulted in a second generation of Internally Displaced Persons (IDPs). These are people who need counselling services. The affected families were really shattered by those events. Those families have nothing to celebrate about during this Christmas. It was total shame, and I would urge the Minister for Lands to make sure that he immediately

initiates transfers, demotions and prosecutions of the officers who were involved in this serious scam. This should be the last displacement of human population in this country.

With those few remarks, I fully support the Motion.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. K. Kilonzo, you have two minutes, please!

Mr. K. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I want to join the rest of my colleagues who have supported this Report. I was, indeed, one of the joint Committee Members who burnt the midnight oil to ensure that we delivered a report that is in tandem with the expectations of Kenyans. Just to give a brief overview, with the assistance of the Government, Kenyans were duped, in the sense that the *Kenya Gazette* Notice that was referred to by the Attorney-General indicates that, indeed, this land was available to be bought and. Therefore, Kenyans worked on the basis of that *Kenya Gazette* Notice. Whether or not the generation of that *Kenya Gazette* Notice was an illegality, it is not within the province of *mwananchi*. Therefore, there is no way the Government can get itself out of this mess.

Mr. Temporary Deputy Speaker, Sir, we do not condone impunity. We are saying that we cannot be in a Government which destroys people's property, and which does things without a human face. Therefore, we want to tell the Government, just like my colleague, hon. Muthama said, that if we have money to pursue the *Al Shabaab* and do other things, we should have money to ensure that those people, who were duped with the assistance of the same Government are compensated, among the other actions we have suggested, relating to compensation.

With those few remarks, I support this Report. Mr. Orengo, we support you in your work. You should be firm as you have always been to ensure that those crooks in your Ministry are sent packing. You have already done well, but you can do more.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I want to support this Report. I am a member of this Committee. We have really heard the cry of the poor. Kenya is no longer a pro-poor country. It is a crime to be poor in this country. This country is for the rich. As a matter of fact, we have gone back to the time of the colonialists where land was used to suppress people. It has been used for different purposes to suppress people. I fail to understand why somebody who has been there for ten years should not have been given a reverse position no matter what.

If you go to a country like India, you will see planes flying over slums. If you go to New York, you will see huge buildings in the middle of the flight path. For God's sake, we cannot use the excuse of flight path to demolish people's houses. Those houses were built at great cost. If the Kenya Airports Authority was serious enough why did they not buy those houses and rent them to their staff? Why did they have to demolish those houses? Mavoko County Council is also very much guilty of this matter. I hope that they are taken to task.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Prof. Kaloki): I will now call upon the Mover to reply.

Mr. Musyimi: Thank you, Mr. Temporary Deputy Speaker Sir. I wish to take this opportunity to thank all the Kenyans, individuals and institutions who gave us information either in writing or orally, who made their contributions to this Committee. We want to thank, especially the victims. Allow me to take this opportunity to send the

Committee's and my condolences to the family of Esther Mutio Mwanza who passed away as a result of this rather tragic experience. In particular to also express our condolences to Dr. Munyaka because Esther was his first cousin. I hear that she is being buried on Friday in Lukenya.

Mr. Temporary Deputy Speaker, Sir, I also take this opportunity to thank all the Members of my Committee for their patience, sacrifice and endurance and hard work. I want to thank my assistant chair, Mr. Fred Kapondi, Mr. David Ngugi and Mr. David Were. I wish to thank the Government Ministers, Permanent Secretaries and other departments for their co-operation. I am grateful to Mr. James Aggrey Orenge who has shown great humility in being with us throughout these discussions. He is a man I have known as a colleague in the struggle for many years. I am not at all surprised that he has been part of this in the manner that he has been. We look forward to standing by him as he brings the necessary reforms in his Ministry.

I take this opportunity also to appreciate the support given by your office and the office of the Clerk for facilitating the work of our Committee, for the human resource as well as the Parliamentary Service Commission for provision of funds for this noble task in the interest of our people. We look forward very much to this House adopting this Report. I am very grateful for the time that they have debated it. It is now my pleasant duty on behalf of the joint Committee on Administration and National Security, Lands and Natural Resources, Local Authorities, and; Transport, Public Works and Housing to present and commend as I have done this Report to this House and wish to request that this hon. House adopts it.

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

(Question put and agreed to)

ADOPTION OF REPORT ON SHORTAGE/
ESCALATING PRICE OF SUGAR

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to move the debate on the findings of the Committee on Agriculture, Livestock and Cooperatives over the sugar shortages witnessed in the market recently and the aftermath of the high prices.

Mr. Temporary Deputy Speaker, Sir, in moving this---

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Muthutho, just go back, for procedure purposes, to Order No.12 and read it as it is. Then from there, you can go ahead and begin to deliberate on the issues. Read the Motion as it appears on the Order Paper.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, thank you for that correction. I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on the sugar shortage and its escalated costs in the country laid on the Table of the House on Wednesday, December 14, 2011.

Sugar in Kenya is produced locally, but it costs more than petrol. Sugar is produced locally and yet, our children are going without sugar. The Committee was able to meet all the stakeholders. The good news is that, after two weeks of deliberations, which are well captured in this Report, they have agreed to reduce the price from the

current level of up to Kshs250 per kilo to an affordable Kshs130 to Kshs135 per kilo. They have not been coerced to do it, but it is based on logic. It is for this reason that I am asking this House, so that we can make progress, to adopt the Report so that by tomorrow, the millers and importers can have announcements all over and say that sugar for this Christmas will be Kshs130 per kilogramme.

With that I beg to move and ask my Committee Member, Dr. Munyaka, to second.

Dr. Munyaka: Mr. Temporary Deputy Speaker, Sir, I rise to second this Report by the Departmental Committee. I support that sugar prices should be reduced so that Kenyans can afford. At the same time, we support the importation of duty-free sugar for the time being, so that we can allow sugar cane farms to develop, instead of the current situation where farmers are harvesting immature cane. That will save the sugar belt. Thank you very much.

I second.

(Question proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I support this Motion. We know that the cost of living is very high and many Kenyans are suffering. We are going to Christmas and, at least, if the cost of sugar is reduced, most Kenyans will have something to put on their table. However, I am encouraging us to go beyond sugar and consider other basic necessities like *unga* and cooking fat.

With those few remarks, I support the Motion.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion very much. This is a Motion that we require. Sugar is the most expensive commodity in Kenya. We do not know why this is the case. I propose that sugar should no longer be imported by anybody else other than the factories. The best Christmas gift that this Parliament can give to poor *wananchi* is for sugar to be limited to the maximum price of Kshs130.

I support this Motion.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Ngugi, take a minute if you can!

Mr. Ngugi: Thank you, Mr. Temporary Deputy Speaker, Sir. I also add my voice to support this important Motion and say that if this can be done, then it only illustrates the hefty profits that companies have been making. We ought to look at this, the flour and other commodities so that Kenyans can live a life that they can afford.

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion. First of all, we need to start by lowering the price of sugar and then we go to maize flour and all other essential commodities that are used by the common *mwananchi*.

I support the Motion.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, because of the current suffering that Kenyans are undergoing, I fully support this Report so that the suffering is reduced and Kenyans get an opportunity to celebrate the incoming Christmas.

Mr. Temporary Deputy Speaker, Sir, I support the Motion.

The Temporary Deputy Speaker (Prof. Kaloki): That is all right! The Mover you may reply.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I thank all the people who have contributed to this Motion. This is the first time and one of the few occasions when this Parliament has risen to the occasion. This Christmas will truly be a merry Christmas to our children and everybody. All the Departmental Committees should work the same way next week so that *unga* prices come down the same way. Certainly, the Committee on Agriculture, Livestock and Cooperatives will be on the price of *unga* this week because something is wrong in our calculations.

With those few remarks, I wish everybody Christmas with, at least, sugar even for the cake. Most importantly, I urge my Members not to go for Christmas but to meet again by next week and seek further reduction on *unga* prices to less than Kshs70.

(Applause)

I beg to move.

(Question put and agreed to)

The Temporary Deputy Speaker (Prof. Kaloki): Let us move on to the next Order!

BILL

Second Reading

THE LABOUR INSTITUTIONS (AMENDMENT) BILL

(Mr. Muthuto on 6.12.2011)

(Resumption of Debate interrupted on 7.12.2011)

Mr. Mututho: Thank you, Mr. Temporary Deputy Speaker, Sir. Again, this is one Bill like I said which is very critical. The Minister for Labour has abused that privilege provided under Sections 43, 44, 45 and 46 of the existing Labour Act.

The provisions under Section 44 are such that the Minister is capable of developing a Wages Council to cover specialized areas but this is what he has failed to do. Furthermore, like I said last time upon gazetting the wages, he is supposed to come and table that as provided for under Section 46 of the said Act. Apparently, this Minister has avoided that. Therefore, for the last four years, all that we have had gazetted is non-legality. I will urge this House as we move on, and I will demonstrate how these people are suffering, the House should remember the many people who have *ugali* with salt water because they cannot afford *sukuma wiki*. We should remember the many families who are crying and particularly that lady by the name of Wanjiku who has been taken to Gilgil Police Station because her children keep on crying of hunger and she is being charged in Naivasha courts.

This is one time that the House must really look at the plight of these workers. I will be showing, like I said, the inadequacies in the administrative capability of the labour

organs in this country. I will also be demonstrating further by tabling serious reports on what the human rights bodies say; on what the international community is talking about, on what the flower exporters themselves are saying about us and so forth.

The Temporary Deputy Speaker (Prof. Kaloki): Order! Hon. Mututho, you will have additional four minutes to complete submission on your Bill.

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, it is now 6.30 p.m. Therefore, the House stands adjourned until tomorrow, Thursday, 15th December, 2011, at 2.30 p.m.

The House rose at 6.30 p.m.