

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 15th November, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

Mr. Speaker: Hon. Members, we will give those hon. Members at the entrance a few seconds to come in.

(Hon. Members at the entrance entered the Chamber)

Hon. Members, I have the following Communications to make.

BILLS ASSENTED TO BY THE PRESIDENT

First, I wish to make a Communication regarding returns on Bills received from the hon. Attorney-General pursuant to the Standing Orders. Standing Order No.125 requires the Attorney-General to present to the President within 14 days of receipt from the Clerk every Bill passed by this House. Thereafter, at the expiry of 14 days, the Attorney-General is required to file a return to the Speaker indicating the time and date when the Bill was passed and presented to the President.

The returns now received indicate the following three Bills, which were all passed by the National Assembly on 7th September, 2011 were presented by the Attorney-General to His Excellency the President for assent, and were all duly assented to on 30th September, 2011 at 11.00 a.m. The Bills are:-

1. The Kenya Citizens and Foreign Nationals Management Service Bill of 2011;
2. The National Police Service Commission Bill of 2011; and
3. The Prohibition of Female Genital Mutilation Bill of 2011.

Hon. Members, I have further communication to make under this purview.

CORRECTION OF ERRORS DETECTED AFTER SCRUTINY OF BILLS PASSED BY PARLIAMENT

Hon. Members will recall that on Tuesday, 11th October, 2011 following concerns raised by hon. Danson Mungatana on the Floor of the House regarding the published version of the Elections Act, 2011, the Chair directed that considering the circumstances in which the Bills required to be enacted by Parliament before the first anniversary of the

promulgation of the Constitution were passed, the Clerk of the National Assembly liaises with the Office of the Attorney-General and other appropriate offices, and scrutinizes all relevant documentation and published Acts to ensure that no other errors are contained in the published Acts. This scrutiny which covered a total of 16 pieces of legislation was to be concluded and results reported to the Speaker within 14 days from that date.

Hon. Members, the Office of the Clerk, in liaison with that of the Attorney-General, has undertaken and concluded the audit of the Acts and submitted a report to my Office. The Report indicates that the audit revealed a number of formal errors of a typographical nature and further proposes that these errors be rectified through the mechanism provided for in the Revision of the Laws Act, Cap. 1 of the Laws of Kenya. Having considered the Report, I have initiated correspondence with the Office of the Attorney-General requesting that Office to give consideration to the need to invoke the powers under the Revision of the Laws Act to give effect to the necessary corrections to these Acts.

Thank you.

(Several hon. Members stood at the entrance)

Hon. Members, we will, again, pause for a second, so that hon. Members at the door can come in.

(Hon. Members at the entrance entered the Chamber)

SELECTION COMMITTEE ON APPOINTMENT
OF REGISTRAR OF POLITICAL PARTIES

Hon. Members, further to the Communication from the Chair made on Thursday, 9th November, 2011 detailing the law and the process for the nomination of persons to serve on the Selection Committee established under Section 35 of the Political Parties Act, 2011, I wish to inform the House that the following nominations of members have been received:-

1. Under Section 35(1)(b), the Law Society of Kenya (LSK) has by a letter dated 9th November, 2011 nominated Mr. Bernard Mbai and Ms. Koki Muli;

2. Under Section 35(1)(c), the Institute of Certified Public Accountants of Kenya (ICPAK) has by letters dated 9th November, 2011 and 11th November, 2011 nominated Mr. Patrick Mahonga Mutange and Ms. Rosemary Kinanu Gituma respectively;

3. Under Section 35(1)(d), the Association of Professional Societies in East Africa (APSEA) has by a letter dated 9th November, 2011 nominated Ms. Grace Kahome Mugambi Injene and Mr. Felix Owaga Okatch;

4. Under Section 35(1)(e) and 35(1)(f) the Party of National Unity and its affiliates has nominated Mr. Justin Muturi and Ms. Pamela Tutui, while the Orange Democratic Party has nominated Mr. Joseph Kiangoi Ombasa and Ms. Mumbi Ng'aru.

The name of the nominee for the position of Chairperson of the Selection Committee under Section 35(1)(a) is expected from the Office of the President. It should be noted that under Section 35(1) of the Act, the Selection Committee is required to have been appointed within 14 days from 1st November, 2011 when the Act came into effect.

This works to today 15th November, 2011. It must, however, be noted that owing to a delay in the commencement of the selection process, as well as the transmission of nominations to this House, it may not be feasible to meet this deadline while observing our approval processes. This House is now required to consider the names, and to either approve or reject some or all of them.

After the approval of nominees, the National Assembly is required to forward the names of the approved nominees to the President, who shall appoint the nominees as members of the Selection Committee. In terms of our procedure, the names of these nominees and the accompanying curriculum vitae stand committed to the relevant Departmental Committee of the House for consideration and report.

I note in particular that, at this moment, my Office has received and approved two Motions, whose object and effect is to normalize the operations and functionality of the Departmental Committee on Justice and Legal Affairs. I, therefore, urge the House Business Committee (HBC) to prioritize and allocate time for the disposal of these Motions, preferably tomorrow, Wednesday, 16th November, 2011 in the morning, so that the Justice and Legal Affairs Committee transacts this Business timeously in order that the appointment of the Selection Committee and subsequently the appointment of the Registrar of Political Parties are not delayed.

I thank you.

(Several hon. Members stood at the entrance)

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

Mr. Speaker: Order! Let us allow hon. Members at the entrance to walk in first.

(Hon. Members at the entrance entered the Chamber)

Member for Gichugu, what is it?

Ms. Karua: Mr. Speaker, Sir, arising from the Communication from the Chair, would it be in order for me to request that the Report of the Committee tasked by the Speaker to check on the errors in the Bills be tabled, so that hon. Members and Kenyans can know which errors they were and in what clauses of the said Bills? I think we have a need to know even as the corrections are proposed.

On the second Communication, I beg your indulgence and direction because it contains certain information conveyed to the House by the two Principals, which is totally inaccurate. Where the political parties are concerned, I would imagine that reference to the Party of National Unity (PNU) and its affiliates would erroneously include NARC(K) which was not consulted, and which forms a substantial part without which they cannot even merit to nominate the people they have nominated. I wanted, at the outset, to say that this will be raised and that inaccuracy will be dealt with!

(Loud consultations)

Mr. Speaker: Order, hon. Members! Order, Member for Gichugu! You have addressed the House, including the Speaker. So, please, listen to my response!

First, with respect to the need for the Report of the team that carried out the inquiry to be tabled in the House, I am satisfied that, that is a genuine request and I will ensure that it is processed and tabled at the earliest opportunity, if not by the beginning of next week but, possibly earlier. In any event that should not be later than Tuesday, next week.

With respect to the second one, Member for Gichugu, I have noted your sentiments and concern, and, indeed, so has the House, and we will carry it with us even as the Committee goes to look into the nominees, whose names have been presented to the House and prepares a Report. Member for Gichugu, it may be advisable for you and your party to express those concerns to the Committee as they begin to vet those nominees. It will be critical because the Committee will do so on behalf of the House and, subsequently, the House itself will have to approve those nominees. So, it is possible that if your concerns carry the day, genuine as they appear, that the nominees may be varied; indeed, that has been the practice. So, that is noted and it is recorded.

PAPERS LAID

The following Papers were laid on the Table:-

Annual Report and Financial Statement of the Ethics and Anti-Corruption Commission for the Financial Year 2010/2011.

(By the Minister for Justice, National Cohesion and Constitutional Affairs)

Compliance Report in form of Quarterly Economic and Budgetary Review for the period ending 30th September, 2011.

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

Exit Report of the Interim Independent Electoral Commission (IIEC), 2009/2011

(By Mr. Abdikadir)

(Mr. Mungatana stood up in his place)

Mr. Speaker: What is it, Member for Garsen?

Mr. Mungatana: Mr. Speaker, Sir, I am standing first to thank the Minister for Finance for filing that Compliance Report, because this was the last day. The Budget Committee was keenly watching to see if they would comply. However, there are various things that have not--- After we filed the Budget and approved it, there are issues around the Exchequer Issues which have not complied with what we expect from the Budget Policy Statement.

Mr. Speaker, Sir, is it enough for the Report to be laid on the Table, yet there are very serious issues? For example, the Ministry of State for Immigration and Registration of Persons, to date, has zero Exchequer Issues. Is it enough for that Report to be tabled without this House having the benefit of knowing exactly what is going on? The Report needs to be brought for debate because we are very unhappy with the way the Budget has been managed up to date. We need a direction on this matter. It is not enough for them to just table the Report and leave everything just like that.

Mr. Speaker: Member for Garsen, I have heard you, but from what you have said you were a bit general. I would like you, perhaps, so that I can give direction, to speak to the matter more succinctly. Please, give details. Indicate areas of default and areas of compliance or otherwise, and then I will be obligated to give directions. You may want to do that, possibly, tomorrow after Order No.7. You could rise on a point of order, in the morning after Order No.7. The Assistant Minister is on notice to actually be present, so that he hears the issues that will be raised by the Member for Garsen.

Mr. Mungatana: Thank you, Mr. Speaker, Sir.

Mr. Speaker: Dr. Oburu, you may also want to, perhaps, make a response, so that you help Mr. Speaker to give suitable directions.

The Assistant Minister, Office of the Deputy Prime Minister and Minister for Finance (Dr. Oburu): Mr. Speaker, Sir, I wish I knew what the issue is.

Mr. Speaker: Very well. The hon. Member for Garsen is your colleague. So, if you could retreat at some point to my Chambers behind here, Mr. Mungatana can inform you what the issues are, as he will speak tomorrow. Then you can prepare your response. Hon. Member for Garsen, I am sure you will want to co-operate.

Mr. Mungatana: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well. Proceed. Next Order!

QUESTIONS BY PRIVATE NOTICE

EVICITION OF KYANG'OMBE/MAASAI RESIDENTS

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

(a) Why were the residents of Kyang'ombe and Maasai villages in Embakasi area, Nairobi, evicted without notice?

(b) Why has the Government not provided the residents with alternative settlement?

(c) What measures has the Government taken to offer assistance to the evictees?

Mr. Speaker, Sir, I wish to say that this Question was deferred two Tuesdays ago, so that the Government could sort out who was to answer the Question. I also want you to note that I do not have a written answer.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, indeed, last week I stood here to say that I would endeavour to respond to this Question. I communicated to the other Ministries but the information I got was completely inadequate. I have communicated to you indicating that the information availed was not sufficient to enable me to respond to this Question.

Therefore, I am seeking your guidance because the indications that we got from the preliminary position was that the evictions and orders emanated from the Kenya Airports Authority and the Ministry of Transport. Therefore, the information they availed to me to be able to respond was still inadequate and I seek your guidance on this matter, which has been compounded by the development around Syokimau.

Ms. Karua: On a point of order, Mr. Speaker, Sir. I think the Government is treating Parliament with utter contempt. I asked this Question by Private Notice two Tuesdays ago. I had directed it to the Office of the President. The Minister then said that it was the City Council and you ordered that it goes to the Ministry of Local Government. Last week, a week after this Question was asked, the Deputy Prime Minister and Minister for Local Government uttered the same words that he has uttered today. He said that he had no information and that it could be under the Ministry of Transport. You then ordered him and the Minister of State for Provincial Administration and Internal Security to liaise and come with an answer today. If you recall, two weeks ago, I asked for an undertaking from the Minister of State for Provincial Administration and Internal Security that no further demolitions would go on while that issue is pending. It is now common knowledge that, apart from the KPA, Kyang'ombe and Maasai villages which were demolished, the Government has been on a demolition spree in Nairobi. I believe that is why they are hesitating to answer, so that they can buy time to continue traumatizing as many Kenyans as possible.

Is it in order for the Deputy Prime Minister and Minister for Local Government and the Government generally to treat this House with contempt?

Mr. Speaker: Are there any other hon. Members who would want to speak to this? Order, hon. Members! Please, note that this morning, I received three areas of concern on this matter, among others. I received a Notice of Motion from the hon. Member for Gwassi asking that the House adjourns under Standing Order No.23. That Motion came to my desk yesterday. I have considered it and, on the face of it, I will be giving directions on when the hon. Member Gwassi should stand. But as things stand now, I have approved that Motion. So, depending on whether or not the hon. Member for Gwassi will have support, you will have an opportunity to actually speak to this matter substantively later on today. Maybe, hon. Members may want to leave that to that point.

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

Mr. Speaker: Order, hon. Member for Gichugu! Further, hon. Members, I received a request to issue a Ministerial Statement by the Minister for Lands. In order of priority, if the Motion for Adjournment finds support of the membership, then the Minister will not deliver a Ministerial Statement. Instead, we will expect the Minister to respond to the Motion. We will allow the Minister 20 minutes towards the end to make his responses on behalf of the Government.

Finally, I received a Question by Private Notice, which I had approved, by the hon. Member for Mutito. Again, the hon. Member for Mutito is encouraged to be available to participate in the Motion for Adjournment and raise his issues when he catches the Speaker's eye. That is where we are going. So, I will allow you, perhaps, to supplement the point of order by the hon. Member for Gichugu, but restricted to Question No.1 by Private Notice.

Yes, hon. Member for Garsen!

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. This Government approved the Constitution and, indeed, campaigned for it. Under Article 43, there are the economic and social rights. One of them is to accessible and adequate housing and to reasonable standards of sanitation. Is the Government in order, while we were pursuing this matter of Syokimau, which the Minister had given an undertaking on, to proceed and carry out the same issues that are being complained about, but on a different part? Is the Government in order?

Mr. Speaker: Very well, hon. Member for Garsen! Your matter would fall squarely in the Motion for Adjournment.

Mrs. Shebesh: On a point of order, Mr. Speaker, Sir. You are on record in this House instructing the Executive to take collective responsibility. Is it fair that on issues touching on the livelihoods of Kenyans, Ministers are still passing the buck from one to the other? The issues have been clearly stated in this House and an answer is being awaited for today.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. You realize that you gave us an opportunity to ask Questions by Private Notice because of the urgency of the matter. Within 24 hours from the time that the Minister gets the Question, he should bring an answer to the House. This matter has been in the House for three weeks and yet, the Minister continues to demolish homes of Kenyans.

Hon. Members: Shame!

Mr. Kabogo: Is it possible that we get a proper undertaking from the Government today that, until this matter is resolved, no further demolitions will happen in Nairobi?

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I remember when this issue first came up and the Minister of State for Provincial Administration and Internal Security gave an undertaking to this House that before this matter is addressed comprehensively, demolitions would stop. I would ask for your ruling given that the Government and the Minister in question have gone ahead to violate their commitment to this House. What action are we going to take as a House on this Minister who has given a commitment to the House which he has failed to live up to?

Mr. Speaker: Order! Hon. Member for Gwassii, could you avail to me the wording of that commitment and the date of it?

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

Mr. Speaker: If you can be of help, yes!

Ms. Karua: Mr. Speaker, Sir, it is in the HANSARD. When Prof. Saitoti asked for one more week, I asked him to undertake that there would be no further demolitions and, Mr. Speaker, you helped me to push him to undertake that there will be no further demolitions.

Mr. Speaker: I will have to acquaint myself with the HANSARD but, for the moment, I will keep my directions in abeyance. But I will give directions before the end of the sitting. I would want the Deputy Prime Minister and Minister for Local Government to make his responses to the points of order raised.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, first of all, I want to put it on record that I, personally, take this House very seriously. Indeed, when this matter was brought up, it was referred to me. When I went to cross-check – and I have made every attempt to cross-check and get correct information which I can genuinely give to this House feeling that I am satisfied it

is right - I had not got it. Therefore, I have taken the step to communicate to both the Minister of State for Provincial Administration and Internal Security and the Minister for Transport that the issues here, looking at the face of it, squarely emanate from notices issued by Kenya Airports Authority and not notices by the Ministry of Local Government. It is in that light that I am seeking your guidance that, since this is originating from KAA, the relevant Ministry is either the Provincial Administration and Internal Security or Transport. That is because they worked together in this process and so, they should respond to this Question.

Mr. Speaker: I will give directions on this matter later on. The Clerks-at-the-Table, please, make that HANSARD record available to me, so that I can make those directions. Perhaps, those who are in Front Bench may want to be in touch with the office of the Leader of Government Business so that the Government can give us some indication on where they want to go with this matter. I think the Leader of Government Business is the right person to do that. The Minister for Justice, National Cohesion and Constitutional Affairs, once in a while, I know you hold brief for the Leader of Government Business. This matter is urgent and it is important. So, maybe, you would want to get in touch with him.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I will do so, Mr. Speaker, Sir.

Mr. Speaker: Before the end of this Sitting?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I will try to do that.

Mr. Speaker: Next Question, hon. Member for Mosop!

PREMATURE REPLACEMENT OF JKUAT COUNCIL MEMBERS

Mr. Koech: Mr. Speaker, Sir, I beg to ask the Minister for Higher Education, Science and Technology the following Question by Private Notice.

(a) Is the Minister aware that Council Members of Jomo Kenyatta University of Agriculture and Technology (JKUAT) were replaced on 15th July, 2011, one year before the expiry of their term?

(b) What informed the decision and why was it done only six months to graduation?

(c) Can the Minister confirm that there is a relationship between the timing of the changes of the Council members and the expiry of the Deputy Vice-Chancellor's term?

Mr. Speaker, Sir, the Minister was supposed to clarify an issue that she had indicated in her answer; that the process of appointing the Deputy Vice-Chancellor was on-going. But I did indicate that it had already been finalized.

Mr. Speaker: Proceed, Dr. Mwiria!

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I have spoken to the Questioner and I have requested that, on the basis of the fact that we have not received some information from the university, we be given until Thursday. We can get that information tomorrow and we can respond with more information by Thursday.

Mr. Speaker: Very well. Hon. Member for Mosop, have you agreed to accommodate the Assistant Minister?

Mr. Koech: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well. It is so directed. Thursday this week! Hon. Member for Gwassi!

REFUND OF MONEY TO WORLD BANK

Mr. Mbadi: Mr. Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Finance the following Question by Private Notice.

(a) Could the Minister confirm that on 24th October, 2011 the Permanent Secretary, Treasury, wrote to the Country Director of the World Bank committing to refund Kshs479 million by 26th October, 2011 and a further Kshs2.19 billion before the end of the 2011/12 Financial Year?

(b) Could the Minister provide a breakdown of the various projects the refunds relate to, the reasons for the refunds and the action being taken by the Government against those involved?

(c) Under what budget lines are the refunds expended and was parliamentary approval for the same obtained?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Speaker, Sir I beg to reply.

(a) I confirm that on 24th October, 2011, the Permanent Secretary, Treasury, wrote to the Country Director of the World Bank committing to refund to the International Development Agency (IDA) and other development partners funds spent on expenditures that were verified and confirmed to be ineligible.

(b) The breakdown of the projects that the refundable amounts relate to are as follows:-

PROJECT NAME	IMPLEMENTING MINISTRY
Arid Lands Resource Management Project	Ministry of State for Development of Northern Kenya and Other Arid Lands
Kenya Education Sector Support Project	Ministry of Education
Western Kenya Community Driven and Flood Mitigation Project	Ministry of State for Special Programmes
National Statistical System Project	Ministry of State for Planning, National Development and Vision 2030

The refunds follow a joint World Bank and Government of Kenya forensic audit and a request to the Government of Kenya by development partners to refund funds identified as ineligible expenditures as provided for in the financing agreement. Implementing line Ministries under the supervision of the Accounting Officers and authorized officers will take appropriate disciplinary measures against those responsible for the malpractices in line with the existing rules and regulations.

(c) The refunds are being made from reallocations from respective Ministries' budget estimates approved by Parliament. The reallocations will be presented in Parliament during the preparation of the Supplementary Estimates.

Mr. Mbadi: Mr. Speaker, Sir, it should be noted that it is not the World Bank which originated or initiated this forensic audit. This was a Government initiative and it

has verified and confirmed that money has been stolen. If you look at the letter, which I am sure the Assistant Minister has, which was written to the World Bank, it is very clear that this money is being refunded because some Government officers have stolen money through fraud, corruption or what they term as mal-procurement, and I do not know whether that terminology exists. However, the question I want to ask the Assistant Minister is: What are the criminal actions he has taken against the Government officers who were involved in this blatant theft of public resources which has denied this country an opportunity to enjoy services which should have been provided by these funds? What action apart from the normal disciplinary actions he is contemplating--- This is a criminal act. What are the actions, as a Government, is he planning or has already taken against the officers who were involved in this fraud, corruption and the so-called mal-procurement?

(Several hon. Members stood up in their places)

Dr. Oburu: Mr. Speaker, Sir, the Office of the Deputy Prime Minister and Ministry of Finance is responsible, on behalf of the Government, for receipt of these funds which are actually loans. Therefore, the refunds are like repaying the loans in advance but the loans are still there in our loan portfolio. It is only that these projects will be denied those particular funds but the specific question the hon. Member has asked is the action we are taking internally as a Government against officers who have fraudulently used Government money. I have read to you the various programmes and they are not under one Ministry. So each Ministry is responsible for taking action. With respect to the Ministry of Education, it is in public domain that several officers have been taken to court and there are court cases going on in that respect. The Ministry of State for Special Programmes has also taken some action in terms of criminal prosecution. The process of recovery is still ongoing and there are officers who have been surcharged and are repaying the funds.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House that the officers in the Ministry of Education are appearing in court because of the money which is being refunded when we know that the officers are in court merely for Kshs13 million by way of imprests? However, the money which is being reimbursed as being lost in the Ministry of Education is in two payments; one of Kshs347 million and another one of Kshs63 million. Could the Assistant Minister tell us the officers who are answering for that bulk money instead of hiding behind the Kshs13 million for which those officers are in court?

(Applause)

Dr. Oburu: Mr. Speaker, Sir, the hon. Member is aware that investigations are part of another arm of the Government and they are supposed to be independent in doing their investigations. So, it is only cases which have been proved to be of a criminal nature where officers have been identified that are being prosecuted. As soon as investigations are complete the officers will be brought to book or taken to court. This is an ongoing process---

(Messrs. Mbadi and Mungatana stood up in their places)

Mr. Speaker: Order, Mr. Mbadi! Let us adopt another method of doing business, but let me hear the Member for Garsen!

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. The Assistant Minister has said that the money which has been stolen will be recovered by reallocation which will be presented in Parliament during the preparation of Supplementary Estimates. Is he in order to anticipate debate that this House will approve refund of stolen money? Is he in order?

Hon. Members: We will not!

Mr. Speaker: Mr. Assistant Minister, that is a legitimate challenge!

Dr. Oburu: Mr. Speaker, Sir, as I have stated, these refunds are an obligation from the Government in line with financing agreements with the World Bank and other bilateral donors. The consequences of not refunding this money are very grave for this country because what it means is that if the Government committed itself to refund any money which has been audited and found to have been either misused or fraudulently acquired is that they stop all ongoing projects funded by them. This is very grave for the country. Therefore, we have to deal with people who have stolen but we cannot default in making these payments. The emergency payments are normally paid through reallocation because we are not using any money over and above what Parliament had approved. What we are doing is just reallocation of money from the same Ministries. As I have said---

(Mr. Mungatana stood up in his place)

Mr. Speaker: Order, Mungatana!

Dr. Oburu: Mr. Speaker, Sir, this is just reallocation of funds from the various votes which is a normal thing. Even now war is going on in Somalia and we are spending some money which we shall bring to this Parliament for approval.

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order, the Member for Gwass! The Assistant Minister has just slipped into that area. So, let it pass! What is it the Member for Lari?

Mr. Njuguna: Mr. Speaker, Sir, viable and beneficial projects have been affected by this diversion and payments. What measures has the Ministry taken to make sure that what has taken place will not happen in future? What measures have been taken to make sure that diversions of this nature will not happen in the near future?

Dr. Oburu: Mr. Speaker, Sir, we are continuously strengthening our financial management systems under various programmes. We are constantly trying to seal the loopholes which make it possible for officers to loot and dip their fingers into public coffers.

Mr. Imanyara: Mr. Speaker, Sir, this is a country where small people are always subjected to criminal sanctions while the big men and women who are responsible for massive looting and plunder of this country's resources go scot-free. I am interested in this aspect of the Assistant Minister's answer where he says:-

“The implementing line Ministries under the supervision of the Accounting Officers and authorized officers will take appropriate disciplinary measures against those responsible.”

The reason we created the Office of the Director of Public Prosecutions (DPP) is to enable specific actions to be taken by line Ministries. Have they made any reports to the DPP and if so, how many officers in his Ministry and what sums of the money were stolen so that this country can take the Government seriously when they say that they are fighting impunity?

Dr. Oburu: Mr. Speaker, Sir, the amounts of money which have been stolen are broken down.

(Several hon. Members stood up in their places)

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. I started by prefacing on why we set up the Office of the DPP. I want to hear that he has referred the following people regarding these sums of money. Please, let him not go round in circles!

(Applause)

Dr. Oburu: Mr. Speaker, Sir, I started from the last point. The hon. Member should not force me to answer his questions in the same order that he wants. So, I will answer in the order which I feel is convenient to me.

Mr. Speaker, Sir, the DPP is an independent body and all these cases where there is fraud have been referred to investigative arms of the Government. The officers have been directed to take disciplinary action whereas the criminal aspects---

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order, Mr. Mbadi! Just allow the Assistant Minister to make his point. I have seen you and I see your concerns but allow him to, at least, proceed and answer the question.

Dr. Oburu: Mr. Speaker, Sir, the various Ministries concerned have already handed over further investigations on the audit because these things came as a result of an internal audit by the Government of Kenya and later there was a forensic audit done jointly with the World Bank. As a result of this audit, we instituted measures to first reinstate the money which is suspected to have been stolen so that the World Bank projects can continue. We have instructed the various Ministries to take disciplinary actions against the officers who are suspected to have looted the money but on the criminal aspects, the investigating arms of the Government are doing their job. Finally, the cases which have been concluded are already in court while the ones which are being investigated are still being investigated and maybe soon they will be in court.

Ms. Karua: Mr. Speaker, Sir, I can see that the Assistant Minister has used the word “ineligible” which has become the mode of explaining to Parliament money that is improperly used. I want to remind him that this word, among many other meanings, means illegal, unauthorized or irregular. The Assistant Minister has confirmed that they have referred to the DPP. But of greater concern is his statement that this will be

presented to Parliament during reallocation. During the KANU days, the Government was famous for spending without authorization and using Parliament as a rubberstamp. What was so difficult about the Government seeking Parliament's approval before refunding this money?

(Applause)

Dr. Oburu: Mr. Speaker, Sir, even the current Constitution allows the Government to operate and then come to Parliament because there are some emergency issues.

Hon. Members: No! No!

Dr. Oburu: Mr. Speaker, Sir, there are issues which are unpredictable.

(Several hon. Members stood up in their places)

I have not even made my statement!

Mr. Speaker: Order, the Member for Central Imenti! Mr. Assistant Minister, it would be helpful, so that you do not attract all these points of order, you say even the current Constitution allows the Government to operate and then subsequently seek authorization. Please cite the Article!

Dr. Oburu: But, Mr. Speaker, Sir!

Mr. Speaker: Proceed, you now have my protection!

Dr. Oburu: Thank you, Mr. Speaker, Sir. Article 223 of the Constitution states as follows:-

Mr. Imanyara: What? It is not true!

Mr. Speaker: Order, the Member for Central Imenti! You will not speak to the House from a sitting position before you catch the Speaker's eye.

Mr. Imanyara: I am sorry, Mr. Speaker, Sir!

Mr. Speaker: Thank you!

Dr. Oburu: Mr. Speaker, Sir, Article 223 says:-

“(1) Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if -

(a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act.”

This means that if we are spending money which has not been appropriated by the Government and approved by Parliament, of course, we can spend it and then come later on for approval but what we are doing is spending money which has already been appropriated by Parliament. We are just doing an administrative work of reallocation which we shall bring later to Parliament for confirmation during Supplementary Estimates.

(Mr. Mbadi pointed his hand at the Speaker)

Mr. Speaker: Order, Mr. Mbadi! Gestures to the Speaker will not do! Do not point your hands at me! Do it correctly!

Proceed!

Mr. Mbadi: Mr. Speaker, Sir, I did not even notice I was pointing at the Speaker.

Mr. Speaker: It is okay!

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead this House that the money was appropriated for the purpose for which the Government is applying it and yet we know very well that there is no single day this House ever appropriated funds to be refunded to the World Bank after the Government officers have misappropriated them? Could the Assistant Minister clarify to this House the accuracy of his statement that we appropriated funds to be refunded to development partners after their officers have already stolen the same funds?

Ms. Karua: On a point of order, Mr. Speaker, Sir, in relation to that.

Mr. Speaker: Mr. Mbadi, that becomes a further question. It is not a point of order. It is not! Check it again and again. Look at the HANSARD record and you will find that it does not pass for a point of order.

Ms. Karua: On a point of order, Mr. Speaker, Sir. The Assistant Minister has referred to Article 223(1) which clearly says subject to clauses (2) to (4).

Clause 2 says:-

“The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money.”

(Applause)

Now that they have withdrawn the money and the answer is talking about the next Supplementary Estimates which is March, will the Assistant Minister perpetuate this illegality? If that is the case, is he in order to mislead the House that the Government is operating under this clause?

Dr. Oburu: Mr. Speaker, Sir, we are not operating under that clause because this clause only refers to monies which have not been appropriated. As far as we are concerned, the monies were approved by this Parliament. What was not approved is what Mr. Mbadi is alluding to; that they were not for this particular purpose but reallocation of funds is within the administration of the funds by the Treasury. This is specifically given to the Permanent Secretary of the Treasury. Reallocation of funds is within the powers of the Treasury.

Dr. Eseli: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to accept that they are paying money which was spent in ineligible circumstances and in the process also tell us that they are refunding the money in ineligible circumstances because the money appropriated by this House was not for that purpose that they are spending that same money on? So, it is again another ineligible expenditure. Is he in order to continue misleading the House that they are spending the money regularly and yet the way they are spending it is ineligible?

Mr. Speaker: Order, Dr. Eseli! In my assessment, what you have done there is raise an argument and also give your opinion which is at variance with the Assistant Minister's opinion. If you look at Standing Order No.43 as to the contents of Questions, you will find that it does not pass for a point of order. Look at Standing Order No.43, and in particular address yourself to paragraphs 3, 4 and 7!

Mr. Mureithi: Mr. Speaker, Sir, whereas the Government is refunding quite a substantial amount of money, that is Kshs479 million and about Kshs2.19 billion, at the moment there are still some projects under the Economic Stimulus Programme (ESP) which are going on, like schools of excellence where more than one Ministry is colluding to take that money and after auditing they have been found that they have literally overcharged contrary to the contract sum. What will the Assistant Minister do once he discovers that? Will that be the extra money they will add to the money they are already paying to the donor agencies?

Dr. Oburu: Mr. Speaker, Sir, I did not quite get the question. That is because he is asking about ESP, which is not the subject which we are discussing here. That is because ESP is purely funded from Government funds. It has nothing to do with donor funding. So, that question really is not quite in line with what I am answering.

Mr. Lessonet: Mr. Speaker, Sir, I would like to ask the Assistant Minister to tell us the programmes that are affected by those refunds.

Dr. Oburu: Mr. Speaker, Sir, I thought I read out the specific programmes that are affected by the refunds in my answer. I do not know whether I should repeat them.

Mr. Speaker: No. If you read them out, that would be adequate.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I almost let it pass but now that he has brought it up, is it in order for the Assistant Minister to insist that he gave the breakdown, when he only listed the programmes that are affected? He did not indicate the amounts besides those programmes, so that we can know. If it is a question of drought mitigation in western Kenya, how much is being refunded? If it is the Ministry of Education, FPE funds, how much was refunded? That way, Kenyans can know how much we are likely to lose.

Mr. Speaker: Very well. Mr. Minister, have you got those details?

Dr. Oburu: Yes, Mr. Speaker, Sir. In respect of Arid and Semi-Arid Resources Management Project, Ministry of State for the Development of Northern Kenya and Other Arid Lands, the monies which are suspected to have been wrongly spent amount to Kshs40 million. That money has already been refunded.

The second one is Kenya Education Sector Support Project, Ministry of Education where Kshs347,972,827.38 was refunded, leaving a balance of Kshs2,192,202,728.38 for the fast track initiative to be refunded later in the current financial year. West Kenya Community-Driven Development and Flood Mitigation Project, Ministry of State for Special Programmes, KShs8.7 million has been refunded. An amount of Kshs42.1 million will be refunded later in the year.

The last one is National Statistics System Project, Ministry of State for Planning, National Development and Vision 2030. An amount of Kshs42 million has already been refunded.

Dr. Nuh: Mr. Speaker, Sir, out of the monies that have been refunded to the World Bank, the Assistant Minister has quoted Kshs347 million in respect of Kenya Education Sector Support Programme. When the Ministry appeared before the Public Accounts Committee sometimes last week, they were able to explain that they had accounted for most of the monies and explained the ineligibility factor in such a way that they left only Kshs13 million. The PS then produced a letter they had written to the Treasury advising the Treasury not to refund the money because they were unable to explain that, out of the audit queries, it is only Kshs13 million which was ineligible. Why

did the Treasury go ahead and pay the Kshs347 million and even alluded to the fact that they even want to refund some more - topping up to Kshs2 billion - when the Ministry concerned said that it is only Kshs13 million which was ineligible?

Dr. Oburu: Mr. Speaker, Sir, the Ministry of Education does not audit itself. The audit which we are talking about was carried out by the internal audit, together with the World Bank, and these figures were confirmed. If, for whatever reasons the Ministry wants to please the Public Accounts Committee, we are not aware as the Ministry of Finance. What we are dealing with is the official audit---

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

Mr. Speaker: Order, hon. Members! We have already spent 20 minutes on this one Question. Last question by the Member for Gwassi. I will give directions after this.

Mr. Mbadi: Mr. Speaker, Sir, the Assistant Minister has admitted that over Kshs2.4 billion out of the total amount has either been refunded or will be refunded on the Kenya Education Sector Support Programme. It is clearly evident that there are areas where that money will come from. I would like the Assistant Minister to come out clearly and tell the people of this country which programmes will suffer as a consequence of that. That is because he has indicated to this House that he will seek for reallocation from some areas to fill the gap that has been left by that amount. So, could the Assistant Minister tell us the programmes that will be affected as a result of the reallocation?

Dr. Oburu: Mr. Speaker, Sir, we requested the Ministry of Education to indicate to us the areas where they can reallocate money without making any programmes suffer. That is why we are not refunding the whole amount. What is normally done in reallocations is look at areas where monies are unlikely to be spent by the end of the financial year. That is where monies are reallocated. Therefore, there is no programme which will suffer.

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

Mr. Speaker: Order, hon. Members! Order, Member for Ikolomani! I realize that this matter is obviously very burdensome and that, hon. Members have genuine concerns over it, particularly, when so much money is being refunded at the expense of development programmes that would otherwise have taken place. So, it becomes a very grave matter of immense proportions. I will want to give direction as follows:-

First, that the Committee which is charged with the mandate to inquire into matters of this nature which, I believe, would be the Public Accounts Committee, should carry out an inquiry - if it is not already doing so - and table a report in this House expeditiously. It would be preferable that you table your report before the end of the Sitting that we are currently on, which will end around 10th December, or thereabouts.

You could try and table your report by the end of the month of November, so that the House can have an opportunity to debate this matter, interrogate it even further and carry out resolutions that may lead to investigation, arrest and possible prosecution.

Secondly, hon. Members, please note that the Standing Orders and, in particular, Standing Order No.21 gives you a window to revisit a matter in which the House may have more interest than may have been covered during Question Time. You may want, therefore, to address the Speaker so that you can be permitted at the end of any Sitting Day - and it has got to be one in a week - to have a Motion to deliberate on the matter, whichever matter it is. You will have 30 minutes between 6.30 p.m. and 7.00 p.m. to speak to any given matter. So, please, note.

Member for Kisumu Town West!

DEATH OF HILLARY OMONDI GUYA IN POLICE CUSTODY

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

(a) Under what circumstances did Mr. Hillary Omondi Guya die while in custody at Kayole Police Station on 30th September, 2011?

(b) What action is the Ministry taking to ensure that an independent investigation by police officers from outside Kayole Police Station is conducted, considering that there are contradictions in the statements of witnesses in the Occurrence Book at the police station, the alleged treatment at Patanisho Hospital and the postmortem report, which disclosed the cause of death as torture by police officers on duty at the station?

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

(a) On 25th September, 2011, at around 23.40 hours, a suspect, Mr. Hillary Omondi Guya, was taken to Soweto Police Station by one Milton Omondi accompanied by Mr. Stephen Mwanja on allegations that he had broken into Mr. Omondi's house and stolen the following items: One DVD machine, one shaving machine, two litre jerrycan and a remote control for the DVD. It is worth noting that Mr. Omondi had earlier reported the theft vide OB No.16/14/2011 at the same station. The suspect appeared unwell and alleged that he had been beaten up by members of the public at the time of his arrest. He was subsequently placed in a cell. His condition deteriorated and at around 5.30 a.m., he was rushed to Patanisho Hospital vide OB No.3/26/9/2011 where he was pronounced dead on arrival. An inquest file No.78/2011 was opened to ascertain the cause of the death.

(b) The case is being investigated by officers from the Provincial Criminal Investigations Office, Nairobi Area, and not from the Kayole Police Station. Further, it is important to note that the deceased passed on, on arrival at Patanisho Hospital and no treatment was given to him. A postmortem was conducted by a police pathologist, Dr. Njeru, and indicated that the cause of death was extensive soft tissue injuries due to plant tumor with raised intracranial pressure and chronic lung infection.

I wish to table the postmortem report.

(Mr. Ojode laid the document on the Table)

Mr. Olago: Mr. Speaker, Sir, first I would wish to have a copy of the written answer from the Assistant Minister. I did not have a copy. I will proceed all the same.

The circumstances surrounding the death of Hillary Omondi Guya are very sad. I had the opportunity to attend the funeral and interview witnesses. This afternoon, I have shared with the Assistant Minister an affidavit sworn by Joel Aduma Achuth on 27th October, 2011 together with the postmortem report prepared by Dr. Dickson Muchana Mwaludindi on 1st November, 2011. The postmortem report says that the cause of death was extensive soft tissue injuries and torture is a strong possibility. I wish to table this postmortem report. I also wish to table before the House the affidavit sworn by Joel Aduma Achuth.

Paragraph five of that affidavit says:-

“While Hillary was in custody, he complained of acute stomachache and was rushed to Patanisho Hospital for treatment where he died while undergoing treatment”.

Paragraph six says that:-

“When Joel Aduma inquired at the Patanisho Hospital, he was informed by the persons who were on duty that when Hillary was brought by the police, he had visible injuries on the body, but upon examination, he was found to be dead and they declined to do anything on the body and released the body to the police to take it away”.

Under these circumstances, what is the police doing to ensure that these contradictions in statements of witnesses and in particular the contents of this affidavit are verified against independent evidence?

(Mr. Olago laid the document on the Table)

Mr. Ojode: Mr. Speaker, Sir, this is a very grave matter, but I thought that hon. Olago would declare his interest first because if you look at the affidavit---

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

Mr. Speaker: Order, Member for Kisumu Town West! Try and be calm. Be contained! Let him say why he wants you to declare your interest in the matter.

Mr. Ojode: Mr. Speaker, Sir, if you look at the affidavit, it is signed by none other than hon. John Olago Aluoch. That notwithstanding, the postmortem report which I have tabled and the postmortem report which hon. Olago has tabled talk about the same thing. We have asked the PCIO to investigate this matter because it looks like there is foul play. There is some professional negligence. If, indeed, it is true that Omondi was taken to the cell in that particular condition, then it will force us to reprimand the police officers who put him in the cell instead of the hospital. That is why I am requesting my friend to allow investigations to be done. Once the investigations are done, we will know where the problem is and we will take action immediately.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to say: “If it is true that Mr. Omondi died”? In his statement, he says: “It is worth noting that Mr. Omondi had earlier reported theft vide OB No.16/14/2011. The suspect appeared unwell and alleged that he had been beaten up by the members of the public”. This information is contained in the answer by the Assistant Minister. Is it in order for him to now say that “if it is true”, namely, if that is the position, they will take action? Could he not be in order to take action immediately because it is clear that the circumstances of this death are most foul?

Mr. Ojode: Mr. Speaker, Sir, I have said here and I want to promise the House that once we get the report from the PCIO, the police officer will be reprimanded. We will take action against the police officer.

Mr. Olago: On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister ask that I should declare my interest. Although it went in passing, I wish to state categorically that one, Hillary Omondi Guya is my constituent. Two, I am a Commissioner for Oaths under the Oaths Authority Declarations Act and I commissioned the affidavit after I interviewed the respondent and all that in view, is properly in order.

Mr. Lessonet: Mr. Speaker, Sir, as we wait for the Police Oversight Authority to be in place---

(Dr. Kones consulted loudly with Mr. Cheruiyot)

Mr. Speaker: Order, Member for Konoin! If you want to talk to the Member for Kuresoi, maybe it would be helpful for you to move to where he is. Otherwise, that is disorderly conduct!

Mr. Lessonet: Mr. Speaker, Sir, as we wait for the Police Oversight Authority to be in place so that it can investigate matters where police officers ---

(Mr. Duale consulted loudly with Maj-Gen. Nkaisserry)

Mr. Speaker: Order, Member of Dujis! If you want to talk to the General, please ask him to come to where you are. You have space there. Otherwise, both of you are out of order!

Proceed, Member for Eldama Ravine!

Mr. Lessonet: Mr. Speaker, Sir, as we wait for the Police Oversight Authority to be in place to investigate matters where police officers are suspects, could the Assistant Minister consider appointing an independent person or committee to look into this matter? We are not going to believe the report of the police investigating themselves. Could he consider---

Mr. Speaker: Order, Member for Eldama Ravine! You know you have done well asking the question. Now you are giving your opinion that you are not going to believe the outcome of an investigation. That is an opinion, but the question is heard. Hon. Assistant Minister, will you, please, answer the question?

Mr. Ojode: Mr. Speaker, Sir, that is the very reason why we did not want this investigation to be done by the police from Kayole.

Mr. Speaker, Sir, we have constituted a credible committee from the Provincial Criminal Investigations Officer (PCIO) which is now investigating this particular case and once the results are out, I will definitely take action.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well. Last question, hon. Olago!

Mr. Olago: Mr. Speaker, Sir, considering the fact that in this case we have got the issue of the police being asked to investigate the police, could the Assistant Minister kindly confirm that the two complainants the police said have made reports against Hillary Omondi and Mwanja have recorded statements? If they have, what is the outcome of the police investigations? Will an inquest be held or the file will be closed like that?

Mr. Ojode: Mr. Speaker, Sir, I did mention right from the beginning that there is an inquiry file which has been opened.

Mr. Speaker: Very well. Yes the hon. Member for Konoin!

Dr. Kones: Mr. Speaker, Sir, although I have not received a copy of the written answer, I beg to ask Question No.1057.

ORAL ANSWERS TO QUESTIONS

Question No.1057

STALLING OF WORKS ON EMBOBOS-KUSUMEK-KAMWAURA ROAD

Dr. Kones asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware that the construction of the security road from Embomos to Kusumek/Kamwaura has stalled due to lack of funding; and,

(b) how much the Ministry proposes to spend in the 2011/2012 budget to ensure completion of the road.

Mr. Speaker: The Minister of State for Provincial Administration and Internal Security, did you forward a copy of the written answer? Could you pass a copy to the hon. Member?

(Mr. Ojode passed a copy of the written answer to the Clerks-at-the-Table)

You may proceed Mr. Assistant Minister!

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

(a) The Government allocated a total of Kshs2 million towards the preliminary construction works for the Phase I of Embomos to Kusumek/Kamwaura security road in the 2009/2010 Financial Year. However, the road passes through a Government forest and there was need of approval from the Ministry of Forestry and Wildlife to continue. This was eventually granted leading to completion of the preliminary construction works.

(b) The Ministry has set aside a total of Kshs3 million for Phase II of the project in the 2011/2012 budget.

Thank you, Mr. Speaker, Sir.

Dr. Kones: Mr. Speaker, Sir, while thanking the Assistant Minister for this answer, I really would like to know how he has arrived at the Kshs3 million allocation when the engineer's estimate is about Kshs20 million.

Mr. Ojode: Mr. Speaker, Sir, we were allocated Kshs210 million. It is the Ministry of Public Works and the Ministry of Roads officials who give us the estimates on how much we should allocate in order to do the gravelling or in order to open up those roads. That is how we arrived at the Kshs3 million. That is not the only road we are doing since we are doing all the security roads in the whole country.

Mr. Letimalo: Mr. Speaker, Sir, could the Assistant Minister tell us how much he has set aside for the construction of security roads and specify the security roads that he intends to construct this financial year?

Mr. Ojode: Mr. Speaker, Sir, I had said that the total allocation was Kshs210 million, which is not enough anyway This is because we had requested for Kshs1.8 billion in order for us to do loose spot gravelling. It is expensive to do a road which is all weather. We got all those estimates from the Ministry of Roads and not from our side since we only finance.

Thank you, Mr. Speaker, Sir.

Dr. Kones: Mr. Speaker, Sir, I would like to know from the Assistant Minister when Phase II of the project will start. What works will it involve?

Mr. Ojode: Mr. Speaker, Sir, right now, we are just waiting for the work schedule from the Ministry of Roads. We will disburse the money to them directly once they give us the schedule. That will be done.

Mr. Speaker: Yes, the hon. Member for Mutito!

Question No.1088

GAZETTEMET OF LOCATIONS/SUB-LOCATIONS
IN MUTITU/NZAMBANI DISTRICTS

Mr. Kabogo, on behalf of **Mr. K. Kilonzo**, asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware that the newly created locations and sub-locations within Mutito and Nzambani districts are not gazetted; and,

(b) when they will be gazetted.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Speaker, Sir, hon. Members will recall that this Question was partly answered on 3rd November, 2011. Arising from a number of supplementary questions by hon. Members on this Question, I was asked to submit the criteria used in creation of administrative units. That is all that was required of me.

Mr. Speaker: That is correct, Mr. Assistant Minister. Proceed and supply the criteria!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Speaker, Sir, the intention of creating administrative units is to bring services closer to the citizens in a rational manner and, therefore, the following criteria has been developed. The first one is population density. This refers to the population *vis-à-vis* the area in square kilometers.

Mr. Speaker, Sir, the three broad categories are low, medium and high population density areas. The two parameters of population and area in square kilometers are applied and given different weight depending on the merits of the case. Tabulated below is the optimum population per administrative unit in their different categories. In the high density population areas, a district would qualify if it had a population of 357,000 or thereabout, whereas in a low density population area, a population of 84,000 would qualify for a district. Similarly, in the case of size, in the high density areas a district of 1,200 square kilometers would qualify for a district. In a low population area, 11,647 square kilometers would qualify for a district.

Mr. Speaker, Sir, there may be other considerations such as security concerns such as cattle rustling, conflicts over water and pasture associated with low density areas; robbery, rape and organized gangs associated with high density areas. Geographical and physical features are also considered, infrastructure development, socio-cultural considerations and community of interests will also dictate that we support the creation of a district.

Thank you, Mr. Speaker, Sir.

Mr. Kabogo: Mr. Speaker, Sir, let me thank the Assistant Minister for finally giving the House the criteria which they use to gazette or to declare these sub-divisions. Just as the Member for Mutito had asked when those areas will be gazetted, there are

many places in the Republic that meet these criteria which have applied for divisions and sub-divisions. When will the Ministry create those divisions in accordance with the criteria the Assistant Minister has given? When will he gazette the ones for Mutito?

Mr. Lesrima: Mr. Speaker, Sir, the position of Mutito has now been finalized. As I said, the Act does not require us to gazette locations. We gazette districts. So, the case of Mutito has been sorted out.

Mr. Speaker, Sir, I am aware---

(Loud consultations)

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

Mr. Lesrima: Thank you, Mr. Speaker, Sir. I do have a number of pending cases. As I said, requests have been put forward and we have been analysing and referring back to the leaders and District Commissioners (DCs) to rationalize where criteria that are quoted are not met. I can guarantee that we will expedite the requests that have not been finalized as soon as possible.

Mr. Kabogo: Mr. Speaker, Sir, I am satisfied if the undertaking will be an actual one, so that all the places in the Republic that qualify will receive the necessary action. Thank you.

Mr. Speaker: Fair enough! Order, hon. Members! Hon. Members, I will at this point, because of the nature of business which is on the Order Paper and the point where we are in terms of time, defer the last six Questions. I will divide them into two. The first three will be deferred to tomorrow morning and the last three will be deferred to Thursday afternoon.

Question No. 815

NUMBER OF PRISONERS WITH KCPE QUALIFICATIONS

(Question deferred)

Question No.1053

LACK OF AFFORDABLE CREDIT TO SMALL SCALE SUGAR-CANE FARMERS

(Question deferred)

Question No.1115

PAYMENT OF RETIREMENT BENEFITS BY NCC

(Question deferred)

Question No.1269

DROUGHT INTERVENTION MEASURES IN ASALS

(Question deferred)

Question No.1074

PAYMENT OF TERMINAL DUES TO M/S KTEC LTD. WORKERS

(Question deferred)

Question No.1193

REPAIR OF ROADS IN CHERANGANY

(Question deferred)

Mr. Speaker: Hon. Members, I want to go back to Question No.1 by Private Notice. I wanted the Deputy Prime Minister and Minister for Local Government to respond to the concerns raised by hon. Members on points of order, beginning with hon. Karua as supplemented by four other hon. Members. Do you have any response at all, Deputy Prime Minister? Proceed.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I had responded to the issues. Indeed, I was awaiting guidance from the Chair in view of the issued that I raised.

Mr. Speaker: Very well. Hon. Members, I have acquainted myself with the HANSARD record for 3rd November 2011; yes, I agree with hon. Karua that we pushed the Minister in charge of Internal Security, Prof. Saitoti, to give an undertaking. He did give the following undertaking, and this is what is recorded in the HANSARD: “Mr. Speaker, Sir, I wish to state that we will give the undertaking depending on the nature of the request put to us by another Ministry.” So, he was not unequivocal in that undertaking. He was a bit evasive. He appeared to have been referring to the Minister for Transport. I have also received a letter from the Deputy Prime Minister and Minister for Local Government, and he says the following in his letter which I received today: “The evictions were undertaken by two Ministries, namely the Ministry for Transport and the Ministry in charge of and Provincial Administration and Internal Security.” So, he passes, so to speak, and in the words of hon. Karua, the buck to two others; the Minister concerned is now here and, maybe, he is equal to the task. Perhaps, he has a statement.

Ms. Karua: On a point of order, Mr. Speaker, Sir. In the HANSARD of the same day, as the Minister in charge of internal security was giving that evasive undertaking, he also categorically stated that it was not his Ministry involved in demolitions. Now that it has been confirmed by a fellow Minister that his Ministry was involved, would it be in order for Mr. Speaker to issue sanctions to this Minister who misled the House? If he did not have the information, is an apology not due to the House for the delay and for the misleading information?

Mr. Speaker: Hon. Karua, I have the HANSARD record here, and I do not find any place where the Minister says that his Ministry was not involved. He does not say

that his Ministry was not involved. He seems to imply, and this is not explicit, that his Ministry may have been involved but from a peripheral perspective. That is what he implies.

Yes, Mr. Kimunya!

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I will be in a position to respond to this Question on Thursday, especially because the hon. Member indicated that she does not have a written answer, and I would like to give---

Mr. Speaker: Order, hon. Minister! Just proceed. Address the House. Look at the Speaker or the general membership. Do not look at hon. Karua!

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I have my facts on this matter, and I will be happy to respond to the Question as raised by hon. Karua, except that I do not have the answer that I would have signed for submission to the House.

Mr. Speaker: Order! For the purpose of the practice of the House, and for the purpose of ensuring that we have a record, including a paper trail on this matter, I think it is necessary that you have a written answer, Minister, because of the gravity of the matter as well. Hon. Karua, perhaps, one more day will not dilute the interest that there is in this matter.

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. In the same manner that the Minister in charge of internal security gave an undertaking that there would be no further demolitions, as we wait for the answer on Thursday, could the Minister for Transport give an undertaking that there will be no more demolitions not only in that place but in other places in this country until this matter is resolved appropriately on Thursday?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, there is a programme of demolitions to clear people who have legally, illegally, irregularly, or in whatever way settled on land where they should not be, including at security installations. Given the situation, I am not in a position to give any undertaking that the demolitions shall not continue because there is a programme of ensuring that this country is safe, and that safety comes first especially when you are talking of a country that is engaged with a terrorist group. We have taken our young men and women to war. Now, we are talking in this House about saving some people who have squatted on land when that is jeopardizing our security installations.

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

Mr. Speaker: Order, hon. Members! Hon. Members, I have intimated to you earlier on during this sitting that I received a Motion for Adjournment to deliberate on this matter. It will be pursued under Standing Order No.23. I will urge hon. Members to, perhaps, hold their concerns until we come to that Motion. For the time being, maybe, if there are very pertinent aspects, you see, you can ventilate them at that point. You will say as much as you wish, including very powerful statements that I envision will be forthcoming from all the membership of this House. In the meantime, let us try and contain it.

Ms. Karua: On a point of order, Mr. Speaker, Sir. You have heard the Minister allude to security. Nobody is faulting the Government on enhancing our security. But, at the same time, this is a Question by Private Notice. By our Standing Orders, it should be answered within 24 hours. This is the third week and the Minister is asking for two more

days and, at the same time, making certain allegations. I think that Parliament is being made to watch helplessly as demolitions that create a humanitarian crisis go on. Would I be in order, in the circumstances, to ask the Minister to give an answer, with or without anything in written form? It will go into the HANSARD, which is a permanent record. That way, we can deal with that particular issue.

(Ms. Karua gestured at Mr. Kimunya)

Mr. Speaker: Order, Member for Gichugu! That is not orderly conduct. Are you saying that you are talking to each other from your sitting positions?

Mr. Minister, are you ready to proceed? Do you have all your documents and information that you require?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I had offered that suggestion but I stood further guided by your ruling that, in view of the need to preserve the records of the House, and not to start a new precedent in the House, it would be good and desirous that I provide a written answer. I will then answer the Question on Thursday in the afternoon. I will be prepared to do that.

Mr. Speaker: We could settle the matter this way: Can you fast-track your written answer and give it tomorrow afternoon? We will give it priority because of its urgency.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I will do better tomorrow morning.

Mr. Speaker: That is even better. Tomorrow morning. Very well! That makes sense to me.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. While that ruling is favourable, could the Minister also, while he is coming up with his answer, tell Kenyans whether there are two sets of laws in this country; one for the poor and the other for the rich? Just the other day, on Mombasa Road where multinationals have built illegal buildings on Government land, this Government, led by the Prime Minister, met the billionaires. They agreed that they were going to spare those multinationals and billionaires because they are known. The property of poor people who have legal documents, title deeds and approvals from the council is being destroyed. This Government has not had time to even have a courtesy meeting with them, just the way they had a meeting with those billionaires in the Prime Minister's Office while having coffee, tea and champagne. Shame on you! Tell us why!

Mr. Speaker: Order! Order, Member for Mutito! You have done reasonably well except when you come to imputing improper motive on the part of your colleagues. You must withdraw that part about having champagne in the Prime Minister's Office.

Mr. K. Kilonzo: Mr. Speaker, Sir, you can see the emotions. I want to withdraw the word "champagne" but, certainly, they had water, sparkling water and juices!

Mr. Speaker: Order, Member for Mutito! I asked you to withdraw the word "champagne" being taken in the Prime Minister's Office and apologize for that part. Then, I will be comfortable.

Mr. K. Kilonzo: Mr. Speaker, Sir, on that particular part of the champagne, the bottles looked like that. I want to withdraw and apologize, because I cannot confirm whether or not it was champagne.

Mr. Speaker: Very well! Order, hon. Members! We will leave the rest on this matter to come during the Motion of Adjournment if it wins the requisite support as per the Standing Orders. The answer to the first Question by Private Notice will be forthcoming tomorrow morning and the Minister will be expected to avail a written answer both to the House and the Speaker's Office in the normal manner.

Mr. Minister, in the meantime, I want to direct you as follows:-

Between now and tomorrow morning, you will not carry out any unlawful evictions. That is the direction I have given.

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

Mr. Speaker: Not on the same matter, Member for Juja! I have given directions and they will stand.

Mr. Kabogo: Clarification, Mr. Speaker, Sir.

Mr. Speaker: No, Member for Juja. We want to take the next Order!

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. While we were about to take that Order last time, specifically on 2nd November, 2011, I had risen on a point of order immediately after hon. Mungatana had risen on another similar point of order. Time ran out before I had completed. So, I am seeking your indulgence to conclude my submission on that point of order, upon which I was addressing the Chair as at the time that I was unable to complete.

Mr. Speaker: That is so and I am aware. I am on notice. We will be able to take you, if you are still interested, before we get to Order No.8.

Mr. Abdikadir: On a point of order, Mr. Speaker, Sir. Last time, on the same matter, the Speaker had ruled that you would hear only hon. Imanyara on this matter. We, in the Constitutional Implementation Oversight Committee (CIOC) have had discussions on this matter and would request that, with the indulgence of the Speaker, we be heard on this matter, contrary to the ruling that the Speaker had given that he would only hear hon. Imanyara.

Mr. Speaker: Fair enough! I shall hear you after the Member for Imenti Central completes his submissions on this matter. I propose further, then to hear anybody from the Front Bench. Any Member of the Executive who will want to speak to objections to Order No.8 will have an opportunity to do so. I will carry in that any sentiments of the Attorney-General if he has any. We will then finish with the Minister for Justice, National Cohesion and Constitutional Affairs and, thereafter, I will give directions.

Next Order!

NOTICE OF MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.23(1)

DEMOLITION OF HOUSES IN SYOKIMAU

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.23 to give notice that this House do adjourn to discuss a matter of urgent national importance with regard to the ongoing demolitions of multimillion shillings worth of property at Syokimau Estate in the outskirts of Nairobi City, where residents were left homeless.

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! I am satisfied that this is a matter of urgent and definite national importance. The Member for Gwasi has the requisite support from hon. Members. I, therefore, allocate time to this Motion, to begin today at 5.00 p.m.

POINTS OF ORDER

NOMINATION OF ATHLETE OF THE YEAR BY IAAF

Eng. Gumbo: Mr. Speaker, Sir, I wish to request for a Ministerial Statement from the Minister for Youth Affairs and Sports on the nomination and award criteria used by the International Athletics Association Federation (IAAF) in selecting the IAAF athlete of the year. In the Statement, the Minister should clarify and state the following:-

(i) The criteria used by IAAF in nominating considering winners of IAAF World Athlete of the Year.

(ii) To what extent local athletics federations like the Athletics Kenya (AK) are involved in the nomination, selection and shortlisting of athletes to be considered for the prestigious award of the IAAF World Athlete of the Year.

(iii) What assistance, if any, does the Ministry give to the Kenyan nominees to boost their profile and chances of winning?

(iv) Is the Minister satisfied that justice was done to the two Kenyan nominees for these awards; David Lokuta Rudisha in the men's category and Vivian Chepkemai Cheruiyot in the women category?

(v) What reason do Kenyans have to continue believing in a process that can declare a one-title wonder girl called Sally Pearson of Australia as the Female Athlete of the Year ahead of our most highly decorated Vivian Chepkemai Cheruiyot who carried to the nominations a double world gold medal and three world athletics championships amongst other exploits she has achieved this year. Thank you.

Mr. Speaker: That is directed to the Minister for Youth Affairs and Sports.

Deputy Leader of Government Business, when can this Statement come?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, we can have the Statement on Tuesday next week.

Mr. Speaker: Very well. It is so directed!

Member for Saboti, please, proceed!

STATUS OF KIBABII UNIVERSITY/DIPLOMA COLLEGE

Mr. Wamalwa: Mr. Speaker, Sir, I rise to request for a Ministerial Statement from the Minister for Higher Education, Science and Technology on the status of Kibabii University and Kibabii Teachers Diploma College. I would like the Minister in the Statement to clarify whether the gazettelement of the Kibabii University means the end of the existence of Kibabii Teachers Diploma College or whether the two institutions are and will continue to co-exist.

Secondly, I would like the Minister to come up with a clear official Government policy as far as creation of new universities is concerned and the fate of existing tertiary colleges. Thank you.

Mr. Speaker: I think this is for the Minister for Higher Education, Science and Technology.

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, I will be able to tell the Minister for Higher Education, Science and Technology to give the Statement but I have my own views about it.

Mr. Speaker: When did you say you would deliver it?

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, it is not me but the Minister for Higher Education, Science and Technology.

Mr. Speaker: I appreciate but when?

The Minister for Education (Prof. Ongeru): On Tuesday next week.

Mr. Speaker: Very well! It is so directed!

Member for Makadara, please, proceed!

ALLEGED POLICE INVOLVEMENT IN DRUG DEALINGS

Mr. Mbuvi: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on alleged police involvement in drugs and execution of key witnesses.

In his Statement, the Minister should clarify the following:-

(a) The actions the Government has taken to prosecute errant police officers who have killed many Kenyans under the pretence of maintaining law and order.

(b) Confirm whether a judicial commission of inquiry under Cap.102 of the Commissions of Inquiry Act has been set up to inquire into and report on *extra-judicial* killings as it relates to drug dealing.

(c) To confirm whether the Commissioner of Police and other senior police officers listed as alleged killers of Supt of Police Erastus Kirui Chemorei will step aside to facilitate independent investigations into police involvement in drug dealings and killings.

(d) Confirm whether the State will compensate the families of the victims of police executions carried out to conceal evidence on the real drug barons.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I will give a very strong Statement on Thursday next week!

(Laughter)

Mr. Speaker: Is that tomorrow afternoon?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I said Thursday next week.

Mr. Imanyara: Mr. Speaker, Sir, on a related issue, while the Assistant Minister has promised to issue that Ministerial Statement, he will recall that I presented a dossier here regarding the circumstances including the names of police officers, containers and serial numbers. This House was given an assurance that investigations will be carried out.

Therefore, in that Statement, could the Assistant Minister explain to the House how far he has gone with regard to these investigations and whether any persons have been arrested or prosecuted following those investigations? This has been pending for several months now.

Mr. Speaker: Fair enough! Assistant Minister, please, do revisit that dossier which was tabled by the Member for Central Imenti and see if it will be useful to your Statement.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I cannot remember the contents in that dossier. However, let me check and I will include them in my Statement.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. On the same issue that the Member for Imenti Central is speaking about, it is not available in Room 8. I seek the indulgence of the Chair.

Mr. Speaker, Sir, I said before that some documents which are tabled in the House are not available in the normal Room No.8 where Members collect documents from.

Mr. Speaker: Order, Member for Juja! I am not aware that there are any normal and abnormal rooms. However, we will check and make sure that you get a copy.

SECURITY SITUATION IN THE RIFT VALLEY

Mr. Cheruiyot: Mr. Speaker, Sir, three weeks ago, I asked for a Ministerial Statement on the security situation in the Rift Valley Province. I was assured of a strong Statement today.

(Laughter)

Mr. Speaker: Deputy Leader of Government Business, was that supposed to be from the Ministry of State for Provincial Administration and Internal Security?

Member for Kuresoi, can you just indicate what area it was covering and what subject?

Mr. Cheruiyot: Mr. Speaker, Sir, it was on the killings of certain prominent personalities in Uasin Gishu, Kuresoi and Chebilat.

Mr. Speaker: That falls under the Ministry of State for Provincial Administration and Internal Security then.

Mr. Cheruiyot: A strong Statement, please!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, let me give that Statement on Thursday this week because I have two others which I am supposed to give.

Mr. Speaker: Very well! It is so directed! You will bring it on Thursday.

NOISE POLLUTION FROM LIONS EYE HOSPITAL

Mr. Ethuro: Mr. Speaker, Sir, you recall that last Thursday you ordered the Government to issue my Statement on the noise pollution from the Lions Sight First Eye Hospital. This was a second reminder after I sought the Statement on June 15th.

Mr. Speaker: Yes, indeed, that is a long wait. That goes to the Minister for Public Health and Sanitation.

Deputy Leader of Government Business, when can this be available?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, we can try for Wednesday morning next week.

Mr. Speaker: Very well! That is fair because we have too many for this week already.

Mr. Ethuro: Mr. Speaker, Sir, I think there were two aspects to this; the medical waste disposal which is properly for the Ministry of Public Health and Sanitation and the critical element of noise pollution which I suspect is for the Ministry of Environment and Mineral Resources.

I am also concerned, this being a reminder, how do they take another one more week?

Mr. Speaker: Order, Member for Turkana Central! If you heard me, I said that we already have too many Statements for the rest of this week. Therefore, it would not be practical to, for example, expect more than three Statements on any single day. That is what I said. Maybe you did not hear.

Mr. Ethuro: Indeed, Mr. Speaker, Sir, I heard you loud and clear. I am just requesting that maybe fresh ones could be deferred to other days and the old ones can take place of the ones crowding the field.

Mr. Speaker: Member for Turkana Central, for the moment, let it rest there because we must have had reasons why we directed certain Statements to come earlier than others.

Hon. Members, that brings us to the end of Order No.7 and I want us to go to the next Order.

(Mr. Imanyara stood up in his place)

Mr. Speaker: Order, Member for Central Imenti! There are things we will have to do before you can raise your point of order.

BILL

First Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Order for First Reading read)

Mr. Speaker: Member for Central Imenti, you may now proceed.

Mr. Imanyara: Thank you, Mr. Speaker, Sir. I had already made my introductory remark regarding the Constitution of Kenya (Amendment) Bill. I just wish to conclude those remarks by reminding the House that the Constitution, in Article 93(2), requires of us, as Members of Parliament, to perform our respective functions in accordance with the Constitution. In fact, the wording is as follows:-

“The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.”

Mr. Speaker, Sir, it is, again, the same Constitution that makes provision for the setting up of Standing Orders, which make specific provisions. I am inviting hon. Members to the provisions of Standing Order No.47(3), which provides that if the Speaker is of the opinion that any proposed Motion is contrary to the Constitution, without expressly proposing appropriate amendment of the Constitution, the Speaker may direct either that the Motion is inadmissible or notice of it cannot be given without such alterations as the Speaker may approve.

My submission in this respect is that the Constitution of Kenya (Amendment) Bill that my learned friend, Senior Counsel Mutula Kilonzo, is introducing to this House does not accord with Article 10(1) of the Constitution, which contains the national values and principles of governance. Article 10(1) provides:-

“10(1) The national values and principles in this Article bind all State organs, State officers, public officers and all persons whenever any of them-

- (a) applies or interprets this Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.”

Mr. Speaker, Sir, the relevant Article 10(2) provides as follows:-

10(2) The national values and principles of governance include-

(a) patriotism, national unity, sharing and devolution of any power, the rule of law, democracy and participation of the people;”

Mr. Speaker, Sir, it is quite clear that this amendment Bill, that is being sought to be read the First Time, has not been subjected to the people of Kenya, under Article 10 of the Constitution, which requires participation of the people. Therefore, to that extent, it does not comply with the provisions of Standing Order No.47 and, therefore, it is contrary to the Constitution.

[Mr. Speaker left the Chair]

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

Had the Cabinet intended to bring the people of Kenya to participate in whether or not we require this amendment Bill, they would have come by way of a Sessional Paper, as we have always done in the history of this House. Whenever the Government intends to introduce legislation that has the input of the people of Kenya, it comes in the form of a Sessional Paper.

Mr. Temporary Deputy Speaker, Sir, it is common knowledge that what is now being brought here is a product of a sub-Committee and a Cabinet decision. What we have in Kenya today is not a Government of the Cabinet or Government of the Executive or Government of the Judiciary. It is a Constitution of the people. If I may refer to the Preamble of the Constitution, it begins with “We, the people---“

Therefore, to the extent that any attempt to introduce an amendment to the Constitution is not brought under the concept of the people’s participation, then it does

not comply with Standing Order No.47 and, therefore, it is inadmissible and ought to be rejected.

Mr. Temporary Deputy Speaker, Sir, I want to, further, state that in the event that you are not satisfied, or you are not persuaded by that argument, this House has developed certain principles, traditions and usages in over 40 years of Independence that govern the procedures in this House. We are fortunate enough in that respect in that none other than the Clerk of the National Assembly has published a book entitled *The Speaker's Rulings*.

In that book, Mr. Gichohi, who is also the Clerk of the National Assembly, has examined every single constitutional amendment from 1964 to date and in none of them has more than one topic for constitutional amendment been brought to the House in one constitutional amendment Bill. This is the first time that an attempt is being made to bring to this House a Bill incorporating three subjects under one constitutional head. This is contrary to the usages and traditions of this House. Therefore, under Standing Order No.1, which provides that when Mr. Speaker is not faced with any specific provision, then Mr. Speaker's decision must be based on the usages, forms, precedents, customs, procedures and traditions of the National Assembly.

Mr. Temporary Deputy Speaker, Sir, I have reproduced all the constitutional amendments as contained in this book, from 1963 to 2009 and you will notice that not in any one of them has there been more than one amendment brought in the same constitutional amendment Bill. Therefore, to that extent also, it is inadmissible. It is violating the principles that have governed the procedures of this House since we attained Independence. This is institutional memory that is available, and which you can call upon. It is from your own Clerk of the National Assembly; it his book which is on *The Speaker's Rulings – 1963 to 2008*.

(Mr. Imanyara laid the document on the Table)

The practice that my learned Senior Counsel is attempting to introduce now undermines the very principle upon which this House has debated constitutional amendments since Independence. Therefore, as long as the Bill contains more than one constitutional amendment, it does not comply with our traditions and usages, as we have known them.

Mr. Temporary Deputy Speaker, Sir, the third aspect that I referred to is that this amendment undermines and breaches the principle of separation of power that the Constitution of Kenya recognises. Whereas we, in this House, are Government by a specific article of the Constitution, the Judiciary also has provisions in the Constitution that insulate it against any form of control or influence from any authority, including this House. Article 160(1) says as follows:-

“In the exercise of judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.”

Mr. Temporary Deputy Speaker, Sir, it is common knowledge – and it is, again, known to the Minister for Justice, National Cohesion and Constitutional Affairs because he is the one who answers Questions on behalf of the Judiciary in this House – that pending in the High Court of Kenya is Constitutional Petition No.185, which was filed on

7th October, 2011. This is the case that was filed by Milton Mugambi Manyara against the Attorney-General, which seeks specific orders relating to this Constitution of Kenya (Amendment) Bill.

I do not need to go through the complete dossier but I have a copy of original pleadings in the Kenya High Court. It is interesting that only this morning, the Hon. Chief Justice of Kenya, sitting for the first time to preside over the Supreme Court, gave certain directions with regard to these particular cases that are related to this constitutional amendment. He gave direction that these cases be heard on a day-to-day basis and on priority by the High Court.

Therefore, to attempt to introduce this Bill in this House when this matter is alive and current before the Judiciary, we, again, are seeking to undermine the provisions of Article 160 which completely insulates the Judiciary from any form of control and influence and, also, is contrary to Standing Order No.80 regarding matters that are alive in the High Court.

I want to table these pleadings before the House so that we can see them.

(Mr. Imanyara laid the documents on the Table)

Mr. Temporary Deputy Speaker, Sir, only yesterday, the Chief Justice, while swearing in the new members of the Independent Electoral and Boundaries Commission (IEBC) had the following to say. I only quote just one paragraph from the speech that was given by the Chief Justice. This is what he says---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Imanyara! I do not want to interrupt you but given the balance of time, I would encourage that you finish by 20 minutes to 5.00 p.m., so that the Chairman can have five minutes. There are two people from the Front Bench and others who will get five minutes each, so that we dispose of the matter before 5.00 O'clock.

Mr. Imanyara: Thank you, Mr. Temporary Deputy Speaker, Sir. In fact, I will not take more than two more minutes.

Mr. Temporary Deputy Speaker, Sir, I was saying that just yesterday, when the Chief Justice was swearing-in the new members of the Independent Electoral and Boundaries Commission, he stated the following - and this is a very solemn declaration on the part of the Chief Justice of the Republic of Kenya. This is a document which I have tabled from the Judiciary and I had alerted Mr. Speaker regarding my tabling it. This is what he says:-

“I offer the guarantee of the Judiciary that when it comes to the protection and upholding of the Constitution, we shall play our part without fear or favour. It is a commitment I give the country. Kenyans did not fight and vote for a new Constitution so that it can become a political toy. They did so because, in all its provisions and articles, they so codified their aspirations and struggles of a people. Therefore, all institutions and individuals, either in the interpretation, implementation or application of the Constitution, must not seek to defer or defeat this dream.”

He concluded by saying this:-

“I know there are matters before the court on the determination of the election date. The Supreme Court and the Constitution and Human Rights Division of the High Court will soon be making determination on these matters.”

So, we heard it on the authority of the Chief Justice of the Republic of Kenya, himself!

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. I am aware that the hon. Member was about to complete his submission but, in his opening remarks, and before he tabled this document, he raised the issue that looking at all the amendments that have been made before in this House, no single amendment has carried more than one issue. Is he in order to mislead this House that no constitutional amendment has been made in this House containing more than one issue when, going through this document, I have just identified several amendments that carried with them an omnibus kind of situation? I could just give him an example so that he knows whether he is misleading us or not.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Kimunya! That point of order is valid, except that it is misplaced. You should have responded at the time he was laying that document. Granted that you did not have a copy of the document, that is why the Government side has another 10 minutes and you can raise that matter at that particular time when you are making your contribution.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, once he stands down, there will be no chance of correction. He actually stated here that no amendment has been made. He tabled a document that shows several amendments contained within a single amendment.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Kimunya! I do appreciate that. But when you are making your contribution, you will be making use of the document that he has laid on the Table.

Proceed, Mr. Imanyara!

Mr. Imanyara: Mr. Temporary Deputy Speaker, Sir, as much as I would not want to engage the Minister, I would just refer him to read the book because this is a summary version and the author is available, alive and well. In addition to the book, he has been sitting in this House for the last 34 years. I am sure he will be very well guided on the practice and procedures of this House.

Nevertheless, just to answer that question, I have referred to the book---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Imanyara! The Chair has already pronounced himself on that matter.

Mr. Imanyara: Thank you, Mr. Temporary Deputy Speaker, Sir. Let me conclude then with the words of the Chief Justice. He said:-

“I know that there are matters before the court on the determination of the election date. The Supreme Court and the Constitutional and Human Rights Division of the High Court, will soon be making a determination on these matters.”

Mr. Temporary Deputy Speaker, Sir, in those circumstances, we will be undermining the principle of separation of powers by not allowing the court that is mandated by the Constitution to be the final arbiter.

As I conclude, the Constitution of Kenya is made by we, the people of Kenya. It is for us, the people of Kenya, and if the Cabinet, on behalf of the people of Kenya, wishes to introduce any amendments to this Constitution, let them come by way of a Sessional Paper that will be subjected to public participation and debate.

For those reasons, I do urge that you rule that this attempt to read this Constitution of Kenya (Amendment) Bill as inadmissible.

Mr. Abdikadir: Mr. Temporary Deputy Speaker, Sir, I wish to make the following remarks on behalf of the Constitutional Implementation Oversight Committee (CIOOC).

The amendments are purported to come under the section of the Constitution referred to as “amendment by parliamentary initiative.” That is very clear. It is amendment by Parliamentary Initiative. It is not an amendment by Ministerial Initiative. It is not an amendment by Executive Initiative. It is amendment by parliamentary initiative.

It is very important why the Constitution says so. That is because part of our constitution-making history clearly demonstrates that amendments and constitution-making are not Government projects. They are not exercises for Executive authority. Legislation broadly is a legislative matter for the Legislature, but more importantly, amendments can only come by two ways; Parliamentary Initiative and by popular initiative. This is neither Parliamentary initiative nor popular initiative because the way Parliament does constitutional issues is also very clear. That is because the Constitution sets up a particular committee to handle matters of the Constitution and constitutional implementation. It does not set up a Cabinet Sub-committee. The Constitution could very easily have said: “We will set up a Cabinet sub-committee.”

Let me read what the Constitution says:-

“There shall be a select committee of the National Assembly to be known as the Constitutional Implementation Oversight Committee which shall be responsible for overseeing the implementation of this Constitution.”

That is the first issue. This is not a parliamentary initiative. I know that there will be an issue about the fact that Members of Parliament will have their say. We will have our say in debating the matters but not in initiating. It is very clear that we have to have our say in initiating this process.

Mr. Temporary Deputy Speaker, Sir, the second issue is that my colleagues are saying this amendment brings several amendments into one. No. These are more than 20 amendments in one day. That is absolutely unacceptable. We cannot have more than 20 amendments in one day. But worst of all, that will not be the end. If we take this through, we will require to amend the Constitution even further. Let me give you an example. Just yesterday, we swore in the IEBC. The term of the IEBC is six years, assuming that it starts from when they were sworn in. That ends in November, 2017.

As the Constitution is now, that will be after the next general election - not this one of 2012 but the other one. If we were to carry these amendments, that will be a month before the elections are held. That will require us to again amend Section 250 to ensure that the term of the IEBC---

Let me read for Mr. Kimunya because he seems to be shaking his head.

Section 250 says as follows:-

“Unless *ex-officio* shall be appointed for a single term of six years and is not eligible for re-appointment---“

We have already appointed them. Their six year term starts now. By constitutional fear, if you carry the amendment making December the elections date, their term will end in November, 2017, a month before the election of 2017. That is the reason why we feel that this amendment will necessitate even further amendments.

Thirdly, my colleague read Section 160, but let me refer to Section 165(3) which says as follows:-

“The High Court enjoys unlimited jurisdiction including jurisdiction to hear any question respecting the interpretation of this Constitution”.

That is the exclusive jurisdiction of the High Court. The Minister, through his own words, proposes to clarify the Constitution. That is the interpretation. That is not the function of the Minister. That is the function of the Judiciary as per the Constitution so that, if we go into the realm of interpreting the Constitution by Executive proposal, we are taking away the role of the Judiciary. The Constitution very clearly says that issues of interpretation of the Constitution are of the High Court.

Finally, we have a history of these kinds of interpretations. The famous Ngei amendment was an issue of the Executive wanting to interpret the Constitution. The famous Change the Constitution Movement was the whole idea of the Executive trying to use constitutional amendment and this House to set the political agenda. I have not even gone to the fact that substantively, majority of these amendments are not necessary by an interpretation of the current Constitution. Since you have given me a short time, I will stop there. We strongly urge, as the Committee of Parliament charged with this responsibility, as a constitutional Committee, as a Committee that the Constitution has given mandate over this matter, that this matter be withdrawn. If the Minister wishes to discuss with Parliament, a parliamentary institute, we should be more than happy to listen.

I oppose.

The Temporary Deputy Speaker (Mr. Ethuro): The Front Bench, you should remember that you have at least 10 minutes, so that we clear with you the other five.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, these are very serious comments coming from the Members of Parliament on this proposed amendment. Where to start from is that the first amendments in this House that demolished the Senate, created new constituencies and did many other things that re-organized this country beyond recognition were more than one amendment.

The first Senate has gone down in history as the first constitutional and legal body that ever dissolved itself democratically. So, there were many more amendments. In fact, they were more than 50. I will have to consult that book later on, but there were many more amendments coming in one bundle in one afternoon and there are very few Members who debated it. I remember it was almost unanimous in both the Upper and the Lower Houses.

Let us start from this other position. Is it true what we are saying that this Parliament cannot amend this Constitution? Definitely, not! It cannot be true that this Parliament---

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

The Temporary Deputy Speaker (Mr. Ethuro): What is it, hon. Mungatana? Members, you should remember that you are raising your points of order for consideration by the Chair. It must be something the Minister has contradicted.

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to mislead this House that we are saying that this Parliament cannot amend the Constitution? In fact, our complaint is that the Minister is bringing three issues

in an omnibus manner, therefore, reducing the whole of this constitutional amendment into something like a Miscellaneous Statute (Amendment) Bill. Is he in order to mislead this House?

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, I thought that was a matter of argument. He should have waited to respond substantively after this. But let me put it this way; is it even true that this House cannot amend several sections of this Constitution at once in one afternoon? It has been done before several times.

An hon. Member: It is bad manners!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, you can call it bad manners or bad law, but the history of this country is replete with amendments several of them in one afternoon and I will show you.

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

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): What you are saying is not a point of order.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Kajwang! Members, let us not get excited about this thing. The Chair has been extremely generous to all of you, particularly the Back Benchers, and we allowed many of you to make your contributions. Let us allow the Members of the Executive also to make their contributions.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, is it even true that we cannot bring more than two issues under one constitutional amendment?

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

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

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Can you let me debate? Where did you learn how to debate?

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Mungatana! Proceed, hon. Minister! Hon. Kajwang is proposing. He is not making definite statements.

Proceed, hon. Kajwang!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, I was a member of the debating club ever since I was young and I am shocked being interrupted here. Is it possible even to suggest that we cannot make 40 or 50 amendments? There was even a time when we were toying with the idea of how to amend the old Constitution and we suggested that we could---

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to continue misleading this House by asking us questions as to whether it is possible to bring in several amendments through one Bill yet the Constitution is very clear in Article 256? The Minister is a lawyer and should understand this better. In Article 256(d), the Constitution says that:-

“A Bill to amend this Constitution may not address any other matter apart from consequential amendments to legislation arising from the Bill”.

The reason why this was put in the Constitution was to avoid the mischief of any Member bundling several amendments together in a way to mislead even the people who would have opposed some amendments. This is very clear. Even if the traditions---

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Mbadi! You have made your point. Hon. Members, the way I understand this is that, the Executive is trying to respond to the issues you had raised. So, let us allow them to respond.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, first and foremost, questions do not mislead. Secondly, your interpretation of the Constitution can very well be canvassed by you when you get the chance to do so. Do not interfere with my argument.

Is it really true that this House, by debating this constitutional amendment, is undermining the separation of powers? Let me look at it this way: The courts are created to interpret the law; this House is created to make the law and the courts interpret the law as it is. This House makes any law and the courts will interpret it as made. So, do not suggest that this House cannot make any laws even if the Chief Justice and the Supreme Court are sitting on this matter and it has been referred to the High Court. But even if they were sitting on it, this Parliament can still make any law and the court will then interpret the law as made by Parliament. You cannot gag this House.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I appreciate what hon. Kajwang is trying to tell the House and the nation. Is it fair for the Minister not to answer to the claims or grievances of Members of Parliament with regard to the amendment of this Constitution, which is, separate the amendments?

(Applause)

We are not saying we cannot do them but we are saying that he separates them because we believe that some of them are not necessary. That is all hon. Members are saying

Mr. Temporary Deputy Speaker, Sir, it is important that hon. Kajwang knows that for us to amend any part of this Constitution, he will need two-thirds. So, arrogance will not force us!

(Laughter)

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order! Order!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, that is not a point of order. My friend, hon. Midiwo, is making a statement, and that is a political statement. Should we separate or should we not is a matter of tactic. It is up to the Government. If they make the mistake of bringing here more than---

Hon. Members: We will *angusha* it!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): That is fine. You can *angusha* it, but that is not a legal argument. That is a political argument!

Mr. Temporary Deputy Speaker, Sir, let me just put it the other way---

(Loud consultations)

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Hon. Mbadi, in all fairness, hon. Kajwang is making his submissions to the best of his abilities. The Chair has entertained the Back Bench for many years and not just one afternoon as we are doing to the Executive. They will be heard and heard in silence!

Proceed!

(Applause)

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, can somebody suggest that if this Parliament makes these amendments, it will be unpatriotic; that, the Government or the hon. Members of the Government will be unpatriotic? It is crazy to suggest that to propose an amendment to this House, it would be---

Hon. Members: Shhhhh! Shhhhh! Shhhhh!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, I was used to the “See, See” business---

(Laughter)

So, I can take it for a long time. But can it, really, be true that this would be unpatriotic?

(Several hon. Members stood up in their places)

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! I think we can tolerate arguments even when they are inimical to our interests.

Proceed, hon. Kajwang!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, what I learned in debate before is that even if somebody is saying what you do not like, you give him the time to say it and then when you get an opportunity to respond, you do so with all passion that you can put together. So, just be decent and allow Kajwang to say something.

However, is it true that somebody can say that it would be unpatriotic and against the rule of law for the Government – because this is a proposal from the Cabinet – to bring amendments to this House?

An hon. Member: Yes!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, what is the meaning of patriotism? Patriotism means only one thing; the love for your country, and I love my country!

(Applause)

I love my country and we are the people!

(Laughter)

These amendments, because we are restricting ourselves to the legality of this arguments, I do not want to go to the reasons why they have been brought because the reasons why they have been brought will be canvassed in a separate time. However, the issues that have been canvassed by GI are actually serious matters of constitutional interpretation.

(Several hon. Members stood up in their places)

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! I am not allowing any points of order because you had your session!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, a proposal has been made---

(Mr. Mungatana stood up in his place)

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Mungatana!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, a proposal has been made---

Mr. Temporary Deputy Speaker (Mr. Ethuro): Mr. Mungatana when the Chair was consulting upon--- You want to behave as if you know better than the Chair.

(Mr. Mungatana stood up in his place)

Order, hon. Mungatana!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, a proposal has been brought---

Mr. Temporary Deputy Speaker (Mr. Ethuro): The Chair is going to allow another five minutes because we must conclude this matter today.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, a proposal has been brought to suggest that if you really want the national participation in any debate of a constitutional amendment, you must come up with a Sessional Paper. The only reason that constitutional amendments take 90 days after they have been proposed is to allow for public participation. Ninety days is long enough for this country to discuss the constitutional amendment. In fact, they have already been discussed very extensively! They have been extensively discussed in---

(Dr. Khalwale stood up in his place)

Mr. Temporary Deputy Speaker (Mr. Ethuro): What is it, Dr. Khalwale?

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. I appreciate your ruling, but you also remember that a few hours ago, the Chair also ruled that at 5.00 p.m. sharp, the House will adjourn to discuss a matter of grave national importance.

(Applause)

Mr. Temporary Deputy Speaker, Sir, in view of that, allow me to remind the Chair that you remain in that ruling which you made yourself so that we go---

(Applause)

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order, Dr. Khalwale! Now you are treading on very dangerous grounds.

(Laughter)

You are alive to the fact that we have Standing Order No.36 which allows the Chair to re-order the business depending on how the business is. However, the Chair, on his own Motion, has considered that it will be unfair to the Executive to be given five minutes when the Back Bench had a field day in terms of the number of days they contributed.

(Applause)

So, in the light of that – and hon. Imanyara, you must be one grateful person to the Chair because this Motion was brought all the way to today to allow you. So, we---

(Mr. Imanyara stood up in his place)

Order, hon. Imanyara!

We will, therefore, give hon. Kajwang just a minute and then we go to the next Motion. The Order will be on the Order Paper tomorrow for the Minister to finish the submission.

(Applause)

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Thank you, Mr. Temporary Deputy Speaker, Sir. Because I will not get another chance to say what I wanted to say, let me say quickly the following. Public participation does not have to be brought by a Sessional Paper only. Merely because a constitutional amendment requires 90 days, gives the public sufficient time to participate in the proposed amendments.

Lastly to suggest that there are no principles and no usages or customs or procedures that are broken by bringing these amendments--- They may be unpleasant – I may even concede that – they may be unwise; they may be all those things, but this House can entertain the debate and resolution on these amendments. However, for the hon. Members to suggest that we cannot even debate them; for hon. Members to suggest that we cannot even vote on them is to deny this Parliament its rightful role to debate and throw away, or to debate and then act.

I support.

(Applause)

(Mr. Mungatana stood up in his place)

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Given the earlier ruling by the Chair, we will now entertain the Motion of Adjournment.

Yes, the Mover!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): On a point of order, Mr. Temporary Deputy Speaker, Sir. I am sorry, Sir. Do I take it that this matter will be on the Order Paper for tomorrow so that we can continue?

Thank you.

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Minister! Make good use of your time and your---

(Laughter)

It will be there tomorrow afternoon.

MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.23

DEMOLITION OF HOUSES IN SYOKIMAU ESTATE

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, I beg to move under Standing Order No. 23:-

THAT, this House do now adjourn to discuss a matter of urgent national importance with regard to the ongoing demolition of multi-million worth of property at Syokimau Estate in the outskirts of Nairobi City, where residents were left homeless.

Mr. Temporary Deputy Speaker, Sir, I want to start by saying that on 12th of November, 2011, I think many Kenyans, if not all and even beyond watched with disappointment, confusion and horror and it appeared like a movie when the Government of Kenya decided to demolish several buildings belonging to Kenyans who have toiled very hard; Kenyans, most of whom are below the age of 40 and Kenyans who have no capacity to stop these demolitions.

Watching what was happening without even going to the legalities, the documents and the titles, was, to me, a barbaric act by the Government. It looked to me as insensitive on the part of our Government to wake up and start demolishing the buildings that belong to the citizens – citizens who pay tax to pay the salaries of the same Government officials.

Mr. Temporary Deputy Speaker, Sir, when I watched the police officers guarding those houses being demolished, I asked myself: Who really pays these police officers? I thought it was the same mothers, men, parents and siblings of the children who were left in the cold crying.

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

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Mbadi, do you need a point of information?

Mr. Mbadi: Yes, Mr. Temporary Deputy Speaker, Sir. The small man is always my friend and he will always inform me as and when he feels like.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, hon. Mbadi was asking who pays these police officers. I wanted to inform him that they are usually paid by their masters, who are the hiring gangs.

(Laughter)

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, I would like to thank Dr. Nuh for that information, but I thought that those masters get money from the same people they are making to suffer.

The first question that one would ask anybody who would purport to defend the Kenya Airports Authority (KAA) is whether the KAA had the legal right to order or ask for demolition of those houses. If that land really belongs to KAA, then the question that I would want to put to its management is: Why did they not secure their boundary? Why did they not fence that plot if it was outside their boundary; where were they when all these Kenyans were putting up such expensive houses?

Mr. Temporary Deputy Speaker, Sir, the effect of what we just saw is number one, it is affecting families. Most of these people, as I said earlier, are young Kenyans. These young Kenyans have just started to stabilize in life. I hear most of these young Kenyans have gone to banks to borrow money to put up dwellings – a place they could call home. Now, you render them homeless. They have loans to repay. How will these Kenyans survive? Where was the Government when they were putting up these mansions? I ask myself: If at all any Cabinet Minister, or even a Member of Parliament, had a house in Syokimau, do you think the houses would have been demolished today? My answer is no. If senior Government officers and police officers had houses in Syokimau, I am sure those houses would not have been demolished today. I do not even want to talk about the legality of who owns that land, but the fact that the Government allowed those people to settle in those areas is in itself an indictment of the Government of Kenya (GoK).

Mr. Temporary Deputy Speaker, Sir, from the information I have, which can be challenged, is that so many Kenyans bought land from three groups. One of the groups, according to the information I have here, is called Ungani Settlement Scheme Self-Help Group. This particular group was allocated this land in 1996. It is very clear that since they were allocated this land, they have been paying fees to Government departments, and that money has gone to the Government Exchequer every year without the Government ever rejecting those fees. If people were staying on illegally allocated land, why did the Government not make correction at that point?

Mr. Temporary Deputy Speaker, Sir, I see that the KAA filed a case in 2004. I do not want to go into the details of the case, because I think the rules of this House do not allow us to do that. The year 2004 is when the KAA went to court, after waiting for a period of eight years from 1996. They took this Ungani Settlement Scheme Self-Help Group to court claiming that that land belonged to the KAA. The case had always been adjourned. Why? Because the lawyers of the KAA have always claimed that they were not ready to prosecute the case. They have forced the courts to adjourn. The case was supposed to come up on 17th October 2011 and the lawyers of KAA sought an

adjournment on the grounds that they were not ready and wanted to file a list of witnesses. The suit was then adjourned to today, 15th of November but what happened? On 12th November, the same KAA, with the support of the Ministry of State for Provincial Administration and Internal Security, got the police officers. They got bulldozers and went and flattened the houses of these poor Kenyans.

Mr. Temporary Deputy Speaker, Sir, I am really shocked by the behaviour of my Government. I am really ashamed that the GoK, after we passed the Constitution last year, and Kenyans thought we had broken from the past and that we were starting on a beginning--- We can still see the same barbaric acts that we used to see during the one party system in Kenya. We can still witness such kind of insensitive actions from the Government. Surely, even if you feel that these people--- I have so many documents here which I will table to show that these people have a claim on the land. I will table these documents and they are all signed. They are surveys and plans which were approved by the Commissioner of Lands and the Survey Department.

(Mr. Mbadi laid the documents on the Table)

Mr. Temporary Deputy Speaker, Sir, so, these people have a claim; but to me that is not even a matter of discussion today, legality or otherwise. Whether the Ministry of Lands or the Ministry of Transport or whatever Ministry has legal documents to the contrary, the way this thing was executed was so insensitive. I urge this House that we need to reprimand this Government. We need to ask this Government to be sensitive. You cannot encourage investors to invest when you have no respect for people's property. There is nobody who will come to this country and invest if this country has no respect for the property of its citizens. To make it worse, if you can punish your fellow Kenyans the way you did, who is going to come from out there to come and invest in this country? I want to ask first the Minister for Transport: Honestly, if you were in your house, or wherever, and you watched when those houses were being flattened and you see an adult crying, wailing and talking hysterically, how would you feel in your heart? If you were the Minister for Lands whose officers misbehaved to this extent, how would you feel when you see young Kenyans crying--- Even one *mzee* said that he could not even trace his son and daughter-in-law? How will you feel when you see such a scene happening in a country and you are accused to be the one who has allowed something like that to happen? Could we have done it differently? That is the question that I keep on asking myself.

With those very many remarks, I am aware many of my colleagues would want to contribute to this. I ask hon. Karua to second my Motion.

Thank you, Mr. Temporary Deputy Speaker, Sir, and I beg to move.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, I rise in support of this very important Motion, and I want to say from the outset that the Government has violated the Constitution by carrying out all these demolitions and has forgotten the principle of social justice, which is rooted in our Constitution. It does not matter whether the land is in Mavoko or Nairobi. These are Kenyans who had title deeds to this land. What if the title deeds were double allocations? They were issued by Government officials; therefore, it was the GoK, through its officials, that misled Kenyans, if at all there is an issue about that land. This is a case where under Article 40 of our Constitution, owners would

deserve compensation if the Government actually needed the land. They deserved notice, if it was compulsory acquisition because you wanted to change the user from residential to something else. The fundamental question one should ask is: How come only Kenyans are affected and not the multinationals?

There have been evictions all over in the last one month. We are aware that there are some Chinese structures in those areas where the demolitions are going on. They are intact and there are other multinationals. It appears that the Government's action is selective. If it is a question of security, are the people who are undermining our security only found in those areas? If they are in those areas, why do you not arrest them and leave Kenyans to live peacefully in their homes? This appears to be really selective. We have heard that there are people who are in Kenya illegally and are compromising our security virtually in all the estates in Nairobi. Is the Government going to demolish all the estates in Nairobi? Why do they not start with Muthaiga and Lavington before going to other people?

Mr. Temporary Deputy Speaker, Sir, I am saying that those Kenyans, somebody or a non-governmental organization (NGO) somewhere must go to court and compel the Government to pay for their misery, pain and trauma, and not just for the houses they had constructed. It actually made me sick. It reminded me of Muoroto during the infamous KANU days. To imagine that this particular Government, which is full of people who were champions of human rights, and who have now forgotten anything to do with human rights, can actually do to people what was done in the early 1990s during those infamous KANU days. This is a complete disappointment to many Kenyans. It is a betrayal. The Government stands in a fiduciary position to all Kenyans; they are our trustees. The Government is to every citizen what a parent is to a child. They trust you completely and expect your protection. It is the Government of Kenya now that has been violating the rights of its own people; is creating destitutes out of hardworking people and traumatizing children and adults. It is actually demolishing houses when the occupants are still inside, the very same way it was done in Muoroto, resulting in deaths. It does not matter that death did not result from demolition; it will result from the cold and the trauma, anyway. This Government has waged war on its citizens, at a time when the citizens are willing and have been supporting the Government in its security operations. Was there no other way? Is the Government out of its wits in so far as combating crime is concerned, so that it has to go and violate its people's rights?

Mr. Temporary Deputy Speaker, Sir, we are saying that this Parliament has to rise up to the occasion and compel the Government not only to pay compensation urgently, but also to have a policy on evictions. A serious Government would not cause a humanitarian crisis in the name of a security operation. If the Government and members of Government were all in tears when there was a humanitarian crisis after the Sinai fire, how come this has not touched them? To see families and children running away with mattresses, to see life savings and work of fellow Kenyans being destroyed at this time--- This has become a Government that wages war not on *Al Shabaab* or any other people violating Kenyans integrity, but is a Government that has declared war on its own people. This Parliament must rise to the occasion.

Mr. Temporary Deputy Speaker, Sir, I support this Motion and condemn, in the strongest terms possible, the inhuman, callous and irresponsible acts of the Government of Kenya in so far as those demolitions are concerned.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! The Member has the Floor.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to second this Motion.

(Question proposed)

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Thank you, Mr. Temporary Deputy Speaker, Sir. Media houses have been, in the past few days, covering the demolition of houses in Syokimau area. Those demolitions have been unconstitutional, unlawful and have resulted in loss of millions of hard-earned shillings.

Mr. Temporary Deputy Speaker, Sir, I wish to bring to light several issues concerning the unlawful demolition. The schemes in question are Ungani Settlement, Mlolongo Brothers and Jumbo Settlement Scheme. The issue of Ungani Settlement Scheme is at present in court. I have the court papers filed on behalf of Ungani Settlement Scheme in this document marked "A". The bundle of documents marked "A" includes A1, which is a notice by the Kenya Airports Authority (KAA) dated 15th September, 2011.

(Ms. Ndeti laid the documents on the Table)

The Temporary Deputy Speaker (Mr. Ethuro): Order, Madam Assistant Minister! Are they different from what the Mover tabled?

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Yes, they are different, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Okay! Be at the microphone, please.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Temporary Deputy Speaker, Sir, document "A1" is a notice by the KAA dated 15th September, 2011. The notice is general and relates to Syokimau, which is a very big piece of land.

The Temporary Deputy Speaker (Mr. Ethuro): Just a reminder to you and other contributors. You have five minutes.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Temporary Deputy Speaker, Sir, I will try to manage, but I would kindly request extra time, because this is my constituency and this matter has affected me.

The Temporary Deputy Speaker (Mr. Ethuro): I would want to be sympathetic but I am afraid I have rules to follow.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Temporary Deputy Speaker, Sir, document A2 is a certificate of registration for Ungani Self-help Group issued by the Ministry for Gender, Sports, Culture and Social Services, as it was on 10th April, 2008.

Mr. Temporary Deputy Speaker, Sir, document A3 is the allotment letter from the Commissioner of Lands issued on 20th September, 1996, certified by the Registrar of Lands on 19th February, 2009.

Mr. Temporary Deputy Speaker, Sir, Document A4 is the surveyor's report issued by the Ministry of Lands as ordered by the court in civil case No.489 of 2004. The surveyor's report indicates the deed plan which is attached as document A5. It was approved by the Director of Surveys in March 2008. The portion of land belonging to Uungani is L.R. No.14231/1 while that of the KAA is L.R. No.9042/56. The acreage of Uungani property, which includes Mlolongo Brothers, is 449 hectares.

Mr. Temporary Deputy Speaker, Sir, you will also observe that the Minister for Lands, by Legal Notice No.151 dated 26th August, 2010, gazetted the property known as L.R. No.1351, which is part of the subject property; that is, Document AA1. The title deed under the Registration of Titles Act, I.R. No.58266 in the name of Mlolongo Brothers was subsequently issued, see Document AA2. This property is part of the land on which the demolition occurred over the weekend.

Mr. Temporary Deputy Speaker, Sir, Uungani Settlement Scheme has been issued with a valid clearance certificate on 31st December, 2003 and payments have continued to be made to the Ministry of Lands. Why did the Ministry accept the monies if there was a problem with the property?

Mr. Temporary Deputy Speaker, Sir, I have another documentation "B". This is a topographical map showing the boundaries as published by the Survey of Kenya. It clearly shows the boundary between Mavoko and Nairobi. It shows that the subject property is in Mavoko, and clearly demarcates the KAA land, which does not include the subject property. The general development and land use plan for Jomo Kenyatta International Airport, published in 19---

(Ms. Ndeti laid the documents on the Table)

The general development and land use plan for Jomo Kenyatta International Airport (JKIA) ---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Your time is up!

Mr. Mungatana, please proceed.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, what is in question is not the legality of this issue. What is in question is the manner in which this Government, which I am ashamed to belong to, this morning went to declare homes of people completely nothing.

What is a home? A home is the place you retreat to, where you are most safe and comfortable. It is the place where you hug your little son when you get there. It is the place where you talk to your little daughter. It is the place where you sit on the floor and watch television and feel comfortable. That is home; a place where you can be yourself. The most secure place in the entire Kenya is your home.

Mr. Temporary Deputy Speaker, Sir, we are talking about a Government whose Cabinet sits and makes a decision to destroy that little piece of property that belongs to you. This Government does not make that thing clear.

Article 153 of the Constitution says:-

“Every decision of the Cabinet must be in writing”.

Mr. Temporary Deputy Speaker, Sir, I want to challenge the Minister - whoever it is - who will be replying to this debate to produce the minutes of the Cabinet. We want to know who these heartless men and women are, who sat and approved a decision to destroy the lives of people without any form of compensation or consideration. Who are these people who sat down in the middle of the night? These could not have been people who were normal. They made a decision that has had an impact on little children while they run back to their nice little homes in Runda, Lavington and Karen.

It is a shame for this Government to have made such a decision. We want to challenge these Ministers to tell us who were in that Cabinet meeting and produce the minutes. We must campaign for each one of them never to hold any public office again. They do not deserve the offices they hold.

Mr. Temporary Deputy Speaker, Sir, the next point has been mentioned by my hon. Colleague; this Constitution ensures that we have social and economic rights. In fact, Article 43 says that we must ensure the right to housing. Article 21 of the Constitution says that the State shall take legislative and policy measures to ensure the realization of those rights, the right to housing.

The question that has been bothering me in my mind is: Is this bulldozer policy the policy of progressive realization of housing? Is this policy they are applying under Article 21 to realize the right to housing for those people? The Cabinet stands condemned. I am ashamed to be part of this Government, and I call upon Members of this august House to strongly condemn this and pass this Motion.

Thank you.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, I want to say from the outset that this is an action by the Government that I cannot support.

I say this for several reasons. First, these developments were done by Kenyans after following the proper procedures; it was after getting allocations and titles and doing development plans, and this being approved by the relevant local authority, namely Mavoko Town Council in Machakos County. If the Government wished to demolish these properties for security reasons, as is being purported, they should have done compulsory acquisition and compensated these people in accordance with the Constitution.

Mr. Temporary Deputy Speaker, Sir, when I watched this on my television I wondered whether those who made that decision had human hearts. It cannot be! Nobody with a human heart can sanction such an action where children are removed from houses and *wananchi* are made homeless when they have made so much effort in developing themselves. There are many areas that are under threat of demolition for flimsy reasons when the owners have titles.

The Ministry for Lands must stand accused for bringing all this confusion in Kenya; they issue titles, approve plans and then also go ahead and approve demolition of property of Kenyans.

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Temporary Deputy Sir. I think without saying the position that I have---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Orengo! Who has given you the Floor?

The Minister for Lands (Mr. Orengo): Sorry, Mr. Temporary Deputy Speaker, Sir.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, the Minister can deny this but I even have---

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): What is it Mr. Orengo?

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has made a categorical statement that the Ministry of Lands has approved this or other demolitions, and he should substantiate because it would be a great shame to me to be part of a decision like that one.

The Assistant Minister for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, they said that it was a Cabinet decision. So, I expect the Minister for Lands to have been involved in any decision by the Cabinet to demolish property. If he was not, I withdraw.

I have very limited time; let me finish. Even as the Minister is denying this, I have seen a Gazette Notice signed in his Ministry purporting to revoke titles of properties which were approved by the Ministry in the first instance. Be that as it may, It is a culture of this Government, which I belong to, to demolish properties belonging to Kenyans. I have even seen a Minister for Public Works supervising the demolition of a multi-billion residential house. We cannot continue doing these things if we want Kenyans to develop.

Mr. Temporary Deputy Speaker, Sir, the Minister for Lands must take responsibility to ensure that land of an owner in this country has one title. Where there are two titles, he must ensure that only one title is valid. I say this without any fear of contradiction, because I have seen two people with titles for one parcel of land. The issue of boundaries should not be trivialised. We are aware that Machakos County once upon a time had its boundaries at Kariokor. These boundaries continued to be moved to somewhere past the JKIA, and now there are plans to move them further. I want to say this on behalf of the Kamba community, we will not accept the movement of Nairobi boundary from where it is now by an inch further into Machakos County.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I stand here to condemn the action that was taken by the Government. If I was the Member of Parliament for that area, I would have resigned from the Government. Unfortunately, some of us like this Government.

Mr. Temporary Deputy Speaker, Sir, why am I saying this---

The Assistant Minister for Sports and Youth Affairs (Ms. Ndeti): On a point of order, Mr. Temporary Deputy Speaker, Sir. Have you ever resigned from anything? I am not going to resign! I will fight from within! I am not going to get out!

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, that was not a point of order.

The point I am raising is that if I were the Member of Parliament for Kathiani and I was in Government, today I would have resigned. Let us call a spade a spade. The first culprit is the so-called "Mlolongo Brothers Association". The second culprit in this case is the so-called "Mavoko Town Council" and, lastly are the officials of the Ministry of Lands, who issued different title deeds. As a country, we must protect the flight paths of our airports. As a country, we must respect the sanctity of our individual title deeds. It is

not only about Government. There is a number of players in this game. Mavoko Town Council was receiving rates. They were dealing with clients.

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

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, can you protect me? I am the Member for Dujis, and I am speaking on behalf of---

The Temporary Deputy Speaker (Mr. Ethuro): What is your point of order, Member for Kathiani?

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Temporary Deputy Speaker, Sir, Mavoko Town Council receives rates because the land is within Machakos County, Kathiani Constituency, Mavoko District. That is why they receive. The maps are very clear.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, is the hon. Member in order---

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Temporary Deputy Speaker, Sir, is the hon. Member in order?

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Assistant Minister! You do not get your orders from hon. Odhiambo-Mabona. You get instructions from the Chair.

Dr. Duale: Mr. Temporary Deputy Speaker, Sir, I advise the gracious Member of Parliament for Kathiani to relax and be very cool. We are the august House. We are not in a public rally. We want to debate this matter and bring the players to book. If it is Mavoko Brothers Association who are the culprits, we must bring them to book. If it is the officials of the Ministry of Lands, the Minister is here and he will bring them to book. If it is the Kenya Airports Authority (KAA), the Minister in charge is here.

The Assistant Minister for Tourism (Ms. Mbarire): On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear the hon. Member for Dujis say that this is not a political rally? Is he saying that the hon. Member, Wavinya Ndeti, does not know that she is in the august House? Is that what he means? Is it in order? He should withdraw that statement. He should concentrate on the act by Government and leave the Member of Parliament alone. She is hurt. Her people are in the rain right now.

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order! You also seem to be eager just to confirm his assertion. This House has rules. Once you raise your point, it is sufficient. Let him respond to it.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I did not say she is in a public rally. I was trying to remind the hon. Member that we are in the august House. We are discussing a very serious matter. Kenyan's children are out---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, hon. Duale! Just withdraw those remarks. We are definitely not in a public rally.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I have withdrawn the remarks. I want the House to get the sense that this is a very serious national matter. Kenyans have lost their savings. Kenyan children are out in the cold. The player in this game is not only the Government. There are a number of players. The Minister for Lands is here. He will speak for his officials, who issued different title deeds. The Minister for Transport is here to tell us what KAA did. The Minister for Local Government is here to tell us about the boundary between Mavoko Municipality and Nairobi City Council. The

able Minister for Justice, National Cohesion and Constitutional Affairs is here to interpret all this.

Mr. Temporary Deputy Speaker, Sir, the gist of the matter is that last night I saw the Chairperson of Mlolongo Brothers Association on television. He was very calm. This is the association that, in my opinion, sold the land to the prospective Kenyans. We must get to the genesis of this matter, through the Minister for Lands. We must go to Mavoko Town Council and ask them: Are the properties for which you were receiving land rates genuine?"

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Duale! Time up!

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, today I am very disappointed with the Grand Coalition Government. My cousin's house, Peter Okanda, in which he has lived for less than six months, was brought down on Sunday. It is a shame that the Government is watching. Not even the President or the Prime Minister or a Cabinet Minister has gone to talk to the affected individuals! No wonder this Government does not get it that Kenyans want the election date to remain August. It is because Kenyans want to get rid of them. Kenyans wanted an election as early as yesterday, because this Government is condoning crime of proportions that have never been witnessed anywhere in the world.

Mr. Temporary Deputy Speaker, Sir, the so-called "Mlolongo Brothers" is a group of criminals. Those are the persons from whom my cousin, and other people, bought land. How come until today, the Government has not arrested any of these people? The Minister for Lands is here, and he must understand that the issue here is not who owns the land. The issue is why Kenyans are being evicted. We must all accept that the crime of land grabbing is a major issue in this country.

I want to plead with the Minister for Lands to abolish the Lands Allocation Department in his Ministry, so that we can start again. What became of computerisation of land records?

The Minister for Lands (Mr. Orengo): I was to do it but I was not given money.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, we want him to tell Kenyans that he was to do it but he was never given money, so that we can know who to lay blame on.

I am against the barbaric way in which evictions have been carried out in this country. I was against the way people were evicted from the Mau Forest. Even though people knew that they were living illegally in the forest, the eviction could have been done in a better way. We cannot live as though we do not care about Kenyans, or about hurting Kenyans.

My cousin told me that he built his house using Kshs8.5 million, and that two months ago, he took a loan of Kshs3 million from the Co-operative Bank. He is a civil servant, working for the Kenya Medical Supplies Agency (KEMSA). Who is going to pay that money? Is he going to pay his rent and pay the bank? The same Government has let interest rates sky rocket and be out of reach for Kenyans. Here is a poor man whose house is gone. He is living in the cold with his children. He has to service a loan of Kshs8 million, and the Government is not helping him. The City Council of Nairobi---

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

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I will accept the information.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Temporary Deputy Speaker, Sir, I am really sorry about this. I am a bit disturbed because my people have been affected. It is not something easy. We have title deeds and surveys that were issued to the people whose houses were demolished on Saturday and Sunday. I table them.

(Ms. Ndeti laid the documents on the Table)

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, the big number of fake title deeds flying from the Ministry of Lands is at the heart of this controversy. How many Kenyans own land legally, and why is this problem not fixed once and for all? The KAA must begin to negotiate through the lawyers of the victims of the demolitions and pay for whatever has been destroyed. If the KAA wanted to evict these people genuinely, they would have waited for the ruling in the court case. Secondly, they could have given these people a chance to salvage whatever little they have invested. These are mere peasants. We cannot turn our eyes from them. I want to say that this House must rise to the occasion and support these people for compensation.

Thank you.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, my sympathies to all the families who have been displaced because of that action by the Grand Coalition Government.

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

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

Mr. Temporary Deputy Speaker, Sir, when I think about what is going on now, I say to myself probably this is why we must appreciate that leadership is not an easy thing. This is the challenge to leadership at its highest level. When this House debated the issue of the eviction of the people from the Mau, it was because we wanted a better solution, and still preserve the environment.

Today, when we are debating the issue of Syokimau let us not lose focus. Let us empathize with those families. Let us push the Government to be empathetic to those people, and ensure that the security of the Republic of Kenya is upheld.

We always say in English - and I always read it in the newspapers of this country - that this was always a disaster in waiting. Are you saying that we should just sit here because we do not want to manage the problem of those people? We wait for the disaster of planes being shot at because of insecurity, and then say we always knew this was a disaster in waiting! It is important that Kenyans must be taught to know the difference between what is ours and what is mine.

Mr. Temporary Deputy Speaker, Sir, today, as Members of Parliament, when we talk about our friends and relatives we say, "That is mine." But when we talk about the whole of Kenya we say: "That is ours." Who will speak on behalf of Kenya? Do we want to slide back into the bad old days when KICC could be grabbed by an individual or a

group of individuals? Do we want to slide back to the old days when one hon. lady stood out - the only one in Kenya - to defend Uhuru Park here? If the late Prof. Wangari Maathai had not defended this park here, we would today be debating the issue of people being moved out of Uhuru Park, because we would need our park. It is good to say these things at the individual level. But who will speak for Kenya?

Mr. Temporary Deputy Speaker, Sir, I look at what is going on and I say: Probably, the culture of impunity in leaders of Kenya is now what is driving either co-operative societies, their leaders or individuals to just say: I will settle anywhere and nothing will happen to me. We want to help those people to settle but, as we help them settle, Kenyans must accept that what is not theirs should be respected if it is public property.

Mr. Temporary Deputy Speaker, Sir, in conclusion, I want to persuade the House to accept the following what were the choices to us as the leaders of this Republic. I do not care that I am an insignificant Back Bencher in this National Assembly. The option was: You were to choose between having the airport re-located or having the people who settled in that security zone re-located. What was easier? I move that we push the Government to compensate and move people from security zones.

I support the Motion.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Temporary Deputy Speaker, Sir, let me start by sympathizing with the people who were evicted. At the same time, there is question that this Parliament must address. At the end of the day, we are used to coming here and condemning the Government. We condemn it for a whole hour then we go. The Government repeats the same mistake. It repeats evictions because we never take any action.

This Parliament is the custodian of the law. It is this Parliament that can move either an amendment to the existing laws or come up with new laws that can defend its citizens. Therefore, Parliament must take a share of the blame.

Mr. Temporary Deputy Speaker, Sir, not more than five years ago DECI came up. Kenyans were coned of their money. They were rendered destitute in their own homes. Some of them were left bankrupt, just because a few crooks decided to con other Kenyans. To date, nobody has been brought to book. To date, people are burying their relatives as a result of the effects of DECI.

Mr. Temporary Deputy Speaker, Sir, we went on to buy Safaricom shares. Certain stockbrokers decided to take Kenyans' money. To date, they have not faced any justice. The Government is still in existence. Kenyans are still suffering.

Still on the same, we had the demolitions of 2008. The NARC Government came up and decided to reclaim public land. It was done. Those who had already built on those parcels of land suffered, and some of them died. To date, we have never been told who had allocated the land. To date, no conclusive investigations have been undertaken to make sure that Kenyans are not coned in the same way again.

With regard to the Mau evictees, up to now, we have not been told who issued the title deeds. This is a repeat story. We are here today again condemning the Government. When the Mau evictions were done, we were up in arms again, the same Parliament. It has become a laughing stock.

Unless we now decide to take the action, uproot those criminals and get justice for Kenyans---The Minister for Justice, National Cohesion and Constitutional Affairs, the

Minister of State for Provincial Administration and Internal Security, the Minister of Lands and, by extension the Government, stand accused.

This Government is on trial. This Government stands accused. It is the only institution that can protect the people of Kenya. We have given this Government the mandate. That is because according to the Constitution, the Government is the custodian of all the laws. Kenyans have trusted this Government. Today, if you walk to the lands office, you will once again agree that ignorance of the law is no defence. Even if we come here and discuss these issues at the end of the day the question the Minister of Lands will come and address here is only one. Were those title deeds legal?

True, you will come to realize that those people who were issued with those title deeds had no knowledge that they had to go back and look at the original title deed. So, before you accept the new title deed, the original title deed must be cancelled. True, Ms. Ndeti, your people have got title deeds. That is true but, legally, and this is something that Kenyans must be told, unless you cancel the original title deed - and all these lawyers are aware of this - you have no claim over that land.

The Government has ignored the fact that Kenyans are not aware of that. What is the Ministry of Lands doing to make sure that tomorrow Kenyans will be aware, and will know the law as it is? So, the Ministry of Lands is equally guilty of negligence. The Government is also guilty of negligence. Even the laws of Kenya recognize negligence. It is also equally guilty of ignorance. That is because at the end of the day Kenyans should have been aware of that. We should not only come here to condemn. We should come up with measures that will cushion other Kenyans in future.

I support.

Mrs. Shebesh: Thank you, Mr. Temporary Deputy Speaker, Sir. I will be very brief because many of the concerns that I had wanted to raise have already been raised. One of the issues that really worry me is what we have seen in the Press. On this issue, the Government has been very silent.

One of the issues is that the flight pathway for Jomo Kenyatta International Airport has been interfered with. From listening to very many people, we know that Wilson Airport has the same problem. We know that there are more houses around Wilson Airport than those that were in Syokimau. I am sure that you will address those issues because, if that is the fate awaiting people around Wilson Airport, I can assure you that the Cabinet will never sit in Nairobi. You better go and sit in your areas - wherever you come from - but you will not victimize people for things that the Government has been watching silently, sitting by, waiting for people to build houses, investors to put in money and then a Cabinet decision is made by Ministers who, obviously, have no problem with paying back loans or looking after their families.

We can pontificate as much as we want, say how much this law is not right and so on. I heard clearly what Mr. Kiunjuri said. I heard clearly what Dr. Khalwale said. But, at the end of the day, we are dealing with people, human beings.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): On a point of information, Mr. Temporary Deputy Speaker, Sir. The General Development and Land Use Plan for the Jomo Kenyatta International Airport, which was published in 1995 and which I have already tabled, clearly indicates that where the scheme lies is far from where their boundary is. The Kenya Airports Authority has already secured and fenced its land.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, I appreciate that. I want to finish by saying that on the issues that are being raised here on the Floor of the House, we are more interested to hear what the Government has to say. I do not want to take a lot of time but the answer must be clear. I also want to ask which side of the Government is speaking because this is a Coalition Government. If my side of the Coalition Government, the ODM, had anything to do with this, we will also deal with those concerned very harshly as Members of the ODM.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Abdikadir, can you have one minute and then hon. Odhiambo-Mabona and then we will go to hon. Orengo.

Mr. Abdikadir: Temporary Deputy Speaker, Sir, I will be as brief as possible. Those of us who were wondering why the words “national security” were sneaked into the Constitution, now know why. Some people wanted to subject our rights to national security, and now we know why. The view that we are getting from the Government is that we can only enjoy our rights if they are subservient to national security.

That is not the law. That is not the Constitution. National security is important. Our rights are absolutely important. The two are not mutually exclusive. We need national security but we also need the rights of Kenyans. This Government cannot be resulting to self help. If the Government of the Republic of Kenya results to self help, what will stop the people from resorting to self help? What will stop anybody from taking the law into their own hands? When the KAA decides to demolish houses, by what lawful authority does it do that? By what lawful authority does the Cabinet authorize, if at all it authorized, the demolition of houses, a disaster? That was not an earthquake. That was a disaster. Imagine the people who went to their houses from work that day and found their houses destroyed? How can you even imagine that?

A title deed does not just come about. It goes through 42 offices before it is issued.

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a point of information, Mr. Temporary Deputy Speaker, Sir. Everybody is aware that two weeks ago, bulldozers invaded Kiang’ombe Village without any notice and left about 100,000 people homeless. There was a court order. We have seen that there is a deliberate attempt to get rid of the poor people in Nairobi, including those in slums in Nairobi. Everybody should know that Nairobi belongs to all, including the people in the slums. We are not going to allow---

Mr. Abdikadir: Mr. Temporary Deputy Speaker, Sir, that is enough information.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Just a minute, Mr. Temporary Deputy Speaker, Sir. This matter is more serious than some of us are thinking. There is already a plan to get rid of another ten villages. This is in preparation. These are Mukuru Kwa Njenga, Mukuru Kwa Reuben, Mitumba Village and Umoja III. Nairobi, whether they have titles or not, will not agree to this. Let everybody know that very soon these people will be out in the streets and Nairobi will be ungovernable, unless everybody’s rights are respected as is stated in the Constitution.

Mr. Abdikadir: Mr. Temporary Deputy Speaker, Sir, the Government of Kenya is one. Mavoko County Council is a Government agency, the KAA is Government agency, the Ministry of Lands is Government agency and the Cabinet is the Executive arm of the Government. We cannot have the Government on one hand demolishing houses and on the other hand giving title deeds. Whether they give them rightly or

wrongly, that is their business. It is not the business of individual Kenyans to decide to give title deeds. Whether a title deed is rightly given or wrongly given, that is their business. The shopping out must be procedural. It must be the due process. It cannot be self help.

I support.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, this country is not a jungle. It is a country that is governed by a Constitution and by the rule of law. We are not in doubt that we need to be secure and that we need to remove insecure elements from amongst us, but we must follow the law. If people were given titles deeds wrongly, where was the Government when the wrong titles were being given?

If you want to remove these people, you must compensate them. The problem in this country, and I have said it over and over again, is impunity and it begins with the Government itself. Hon. Kiunjuri has told us not to complain and give the solution from Parliament, but the solution is for them to quit their jobs, and we take them over, so that we can take care and deal with this country well.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Temporary Deputy Speaker, Sir, I rise to support all my colleagues who have spoken and said that we passed a new Constitution that recognizes the sanctity of ownership of property. If you look at Article 40(2) of the Constitution, it actually ties our hands as Parliament; it says that:-

“Parliament shall not enact a law that permits the State or any person to arbitrarily deprive a person of property of any description, of any interest in or rights over any property of any description”.

This House cannot pass laws to allow the State to arbitrarily take away property. It is wrong, it is inhuman and we demand full compensation to these people who have been deprived of their property. To come here and state that the people have title deeds that are not genuine while the same Government issued those title deeds is not right. I own a title deed which I got from the Ministry of Lands. How do I know that I will not wake up tomorrow and I am told that it is not genuine, and I will see people with bulldozers outside my house? We cannot allow that. First of all, we demand an apology. Those families that are homeless should be housed by the Government until they are fully compensated. It is high time we got a Government with a heart for its people.

Although national security is important, we citizens also have a right to the same security to property. I am in the Government, but I feel so hurt. For the first time, I wished I never belonged to it. We want the Minister for Justice, National Cohesion and Constitutional Affairs to tell us whether that was just. The KAA must come out and defend itself. They need to tell us who directed them to do what they did. The management of the KAA needs to go home. They should be fired!

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Hassan and then hon. Ethuro.

Mr. Hassan: Thank you, Mr. Temporary Deputy Speaker, Sir. I was wondering whether I would have the opportunity to ever speak on this issue. I would like to join the others in raising my voice in condemning of what had happened. I was hell-shocked to view the pictures of the demolition. The sheer brutality, the sheer inhumanness of it is something I thought had no place in the Kenya of today. It reminded me of when I lived in Southern Africa, when the apartheid system went on with the act of demolishing African houses to clear places for the rich white and coloured people of South Africa.

I also want to say that although this was seen on television by many people and it shocked many of us, it is something that happens in Nairobi everyday; it happens in the slums of Nairobi among the poor and the marginalized people of Nairobi. The only difference is that this is done in the darkness of the night and it is not seen on television.

(Applause)

I think it is shocking to live in Kenya today, where we have no consideration for others. We have total contempt for poor people from the poor areas of Nairobi. I would like to say that our Government should think very hard about this and know that these people are human beings, they need to be respected and their rights must be considered under the Kenyan Constitution.

Thank you very much, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Ethuro, take a minute because the two Ministers must respond

Mr. Ethuro: Thank you, Mr. Temporary Deputy Speaker, Sir. I intend to be brief.

One, we are busy trying to settle Internally Displaced Persons (IDPs) while what this Government is trying to do is to create more IDPs! This House must condemn in the strongest terms possible the failure by this Government not only to settle the current IDPs, but to create more.

Shame on them!

Hon. Members: Shame! Shame!

(Applause)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Njuguna, take just a minute before we move on to the General himself!

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir. This is a very sad moment because the Government has created its own IDPs. It is imperative that the Government should provide land to these people. The Government should construct houses and other social amenities for these people. It is high time the Minister for Lands, who has got the capacity, eradicated the menace in the issuance of title deeds.

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

The Temporary Deputy Speaker (Prof. Kaloki): Maj-Gen. Nkaissery, you are the last one before we go to the Minister for Lands.

The Assistant Minister, Ministry of Stated for Defence (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion.

Mr. Temporary Deputy Speaker, Sir, it is immoral. I belong to the Government, but I was shocked when I saw hon. Wavinya Ndeti trying to defend her people and even the monster--- A particular individual brought a machine down and tried to hit a Government Assistant Minister! The Government is supposed to defend the people and their property, but this time the Government destroyed the property of the citizens.

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

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

I belong to the Government, but this time, I stand by the people because what was done was very wrong. The Government must compensate these people; the Government must ensure that these people, who are now IDPs created by the Government, are given proper accommodation until compensation is paid.

Madam Temporary Deputy Speaker, with those few remarks, I support the Motion.

The Temporary Deputy Speaker (Dr. Laboso): The Chair will be magnanimous and give one hon. Member an opportunity to contribute before I call on the two Ministers.

Proceed, hon. Wamalwa.

Mr. Wamalwa: Thank you, Madam Temporary Deputy Speaker. The Ministers are rising here to answer. I just want them to explain to us because we do not understand this. Copies of title deeds have been tabled in this House and we would like the Minister for Lands to tell us whether these titles, which were issued by the Ministry of Lands, are valid or not. If the Minister for Transport comes, let him table the title deed of the Kenya Airports Authority (KAA) that is supposed to be superior to the title deeds of the families that are today displaced.

Madam Temporary Deputy Speaker, we would like the Deputy Prime Minister and Minister for Local Government to tell us whether these parcels of land are in Mavoko County Council or in Nairobi. We want him to come out very clearly and satisfy this House and this nation.

Thank you, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Dr. Laboso): I now call upon the two Ministers. If they are willing, they can continue. How many Ministers are going to respond?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, there are only two who are going to respond, and we need more time.

Now, I think in all that has been said, there should be accountability to this House in order to know where the buck should stop. We should have a full investigation of this matter. I suggest that the matter should be referred to the relevant Departmental Committee to interrogate some of the documents that have been placed before this House, and others which I am going to table. However, there are two components to this issue. There is the issue of the demolition and the issue of the status of land.

Briefly I want to say the following on the issue of demolition. Whether there was a Cabinet decision or not, my position - I do not want to be quoted as speaking on behalf of the coalition Government - as somebody who has sworn to defend the Constitution, is that every decision, and that is found in Article 10 of this Constitution--- In applying and implementing any decision, every authority or Government entity is supposed to comply with the Constitution. So, all that happened should be measured against what is contained in the Constitution.

I want to refer to a few sections of the Constitution on the issue of demolition. I think I have been in this House saying that there are now universally accepted

procedures, which are known as “eviction guidelines”. One of them says that in a democracy even if somebody is trespassing on your land--- When the Government takes action to evict you, it cannot just evict you; it should know where you are going to. That is Articles 40 and 43, which give equal access to land; they are as clear as daylight.

Now, if you look at Article 28, the question of inherent dignity - you know every person is entitled not just to dignity but to inherent dignity. It does not come from the Constitution; it is a right that inheres in you. You have that right under Article 28. If you are being removed from a house at 6.00 a.m. in the morning with your family, that does not comply with the Constitution. You are not being accorded dignity.

Dr. Khalwale: On a point of order, Madam, Temporary Deputy Speaker.

The Minister for Lands (Mr. Orengo): Please, this is so important. Madam Temporary Deputy Speaker, we have a very short time.

The Temporary Deputy Speaker (Dr. Laboso): Okay. I will allow the point of order, and it better be a point of order, Dr. Khalwale.

Dr. Khalwale: On a point of order, Madam Temporary Deputy Speaker. This matter is so fundamental and important to the lives of Kenyans now and in the future. But I would like the Chair to tell us whether the Minister is in order to give us a lecture on the Constitution instead of telling us the genesis of this matter, how the Cabinet sat and---

The Temporary Deputy Speaker (Dr. Laboso): Okay. Dr. Khalwale, do not explain. I think the point has been made.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, what I was trying to say is that whether there was a Cabinet decision or not, we must comply with the Constitution. I think in the issue of evictions, there are certain universally accepted principles and that is where it belongs. So, speaking as James Orengo, I would not support a situation where people are evicted without clear constitutional guidelines.

The second issue on the status of this land---

Mr. Ethuro: On a point of order, Madam Temporary Speaker. While we appreciate the explanation by hon. Orengo, this House knows one hon. James Aggrey Orengo as the Minister for Lands; this Motion is demanding answers from the Government. This lecture needs to be stated at Cabinet level and not in this House. We want actions!

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, that is why I am saying accountability should be ensured. I think about what I say. So, I am saying at the end there must be accountability; that accountability will be looked at through a proper interrogation.

However, since my time has been used I want to first lay on the Table the title deed. I have got the originals here. These title deeds to Kenya Airport Authority (KAA) are still intact. The whole land belongs to the KAA. This is still intact. It has not been excised. If this portion was taken away, it would have been excised. It is still intact.

(Hon. Orengo laid the documents on the Table)

The land that is shown to belong to that group, Mlolongo Brothers, the L.R. number belongs to another land which is near Kenchic. It is a forgery. Those papers do not exist

in the Ministry of Lands. They are a forgery. If I go through the title deed, you will see that, indeed, it is a forgery. In the year 2005, there was a letter from the Lands Office, advising the Kenya Airports Authority (KAA). It says:-

“Please, note that all those purported allocations, as depicted on letters of allotment to Uungani Settlement Self-help Group and Mlolongo Brothers Association, L.R. Nos.14231 and 13512 are not genuine.”

This was in the year 2005. All these---

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): On a point of order, Madam Temporary Deputy Speaker. The documents I tabled have got Government seals and stamps. Those seals belong to the Government. So, who is doing what? In Athi River, the Ministry of Lands has issued three or four title deeds to the same people. What I would ask my brother, Mr. Orengo, is to have proper investigations into land matters in Athi River carried out.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, I can show further that all these papers that have been flying around are not in the Ministry of Lands. We have received them. All of them are fake and do not exist in the Ministry of Lands. Even the search is fake. There is somewhere in River Road where people---

Mrs. Shebesh: On a point of order, Madam Temporary Deputy Speaker. I really respect what the Minister is saying. But I am wondering: Is it in order for him to admit that over two years ago they knew that, that allocation was a forgery, recognized it, as a Government, and all they did - they have security and Government machinery on their side - was to wait until people's houses were demolished to prove their point? Is he in order?

The Temporary Deputy Speaker (Dr. Laboso): Is that a point of order, hon. Shebesh?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, I am prepared to take the Committee to Mavoko and to the Ministry of Lands. All these papers that have been produced here by hon. Ndeti are, with tremendous respect, all forgeries. Even the details---

(Ms. Ndeti stood up in her place)

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Ndeti!

The Assistant Minister, Ministry of Youth Affairs and Sports (Ms. Ndeti): Madam Temporary Deputy Speaker, that is spoiling my name here. I did not forge those documents

The Minister for Lands (Mr. Orengo): It is not you. It is the documents which are forgeries. You are not the author of the forgery. But the documents are before the House and can be interrogated.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Members! Allow the Minister to complete. He only has two minutes.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, even when Mlolongo Brothers wanted this land to be divided into several titles, there was a

document here dated 9th September, 2010 in the name of the Chief Lands Registrar, a Ms. Gicheha, who was supposed to be sending this document for purposes of publication in the Gazette Notice. That particular officer, at that time, was not working at the Ministry of Lands. She was being prosecuted in relation to the house belonging to the Mayor of Nairobi. She was not part of the staff at that time.

Madam Temporary Deputy Speaker, there is even a letter--- Excuse me. I will table all these documents. You can trace my signature from 1980 in the letters I have written. Even today, I wrote one to the Speaker. There is a letter here---

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Members! Allow the Minister to finish!

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, let us get the facts right, at least.

Madam Temporary Deputy Speaker, I have a letter here purportedly signed by me. It is a forgery also. It is quite clear. It is here. You know, if you take part of the land which belongs to Kenya Airports Authority, there must be a history. It is excised and there is a process. But on these whole documents, I invite you, hon. Members, to do an interrogation and find out if the titles, that have been put forward are genuine.

My final point is this; those who have caused this misery and affliction are known. They should be arrested. They should be prosecuted wherever they are. It is a matter for the criminal justice system and it can be done.

With those remarks, I do not know whether I support or not.

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a Pointe of Order, Madam Temporary Deputy Speaker. The question at hand today is the manner in which---

The Temporary Deputy Speaker (Dr. Laboso): Order! Is it a point of order?

The Assistant Minister for Water and Irrigation (Mr. Waititu): Yes, it is a point of order.

Madam Temporary Deputy Speaker, the issue at hand is not the ownership. It is the manner in which---

The Temporary Deputy Speaker (Dr. Laboso): What is out of order in what the Minister has said?

The Assistant Minister for Water and Irrigation (Mr. Waititu): What is out of order is that the Minister himself has come here to clarify the ownership. What is questionable is the manner in which those people's houses were destroyed and people evicted. The question at hand---

The Temporary Deputy Speaker (Dr. Laboso): That is not a point of order! Please, allow the second Minister to respond!

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, this issue is very serious. I am very happy that the House has brought in the issue of the rule of law. A country that is not governed using the rule of law tends towards the rule of the jungle. The rule of the jungle creeps in when people go and fake documents and then treat them with the highest regard in a place which is supposed to be an august House; a House where we are supposed to have tremendous respect for rule of

law. They bring them to the House and create tension in the House, misleading everyone and then say that we are defending the people out there.

The Assistant Minister for Sports and Youth Affairs (Ms. Ndeti): On a point of order, Madam Temporary Deputy Speaker. Someone has mentioned my name

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I have not mentioned a name. I have not mentioned anyone.

The Assistant Minister for Sports and Youth Affairs (Ms. Ndeti): On a point of order, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Dr. Laboso): Minister, allow the point of order by Ms. Ndeti.

Ms. Ndeti, it had better be a point of order!

The Assistant Minister for Sports and Youth Affairs (Ms. Ndeti): Madam Temporary Deputy Speaker, is the Minister in order to stand here and say that I have created and brought fake documents here while those documents have got stamps and seals of the Government. Is he in order?

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, there can only be one set of documents on land matters; the original document and is resident at the Ministry of Lands. The Minister for Lands has come and given that document here. When the truth comes out, you can see the reaction. Nobody wants the truth anymore. People want illusions---

Mr. Midiwo: On a point of order, Madam Temporary Deputy Speaker. I was just wondering if I would be in order; now the two Ministers have said that the documents which were supplied to the Member of Parliament are fake. The Minister for Lands has said that these people are known. Could they undertake to bring these people to be known and table their names, so that they can face prosecution. Alternatively, could they undertake to prosecute them?

The Temporary Deputy Speaker (Dr. Laboso): Minister, can you undertake to do the same?

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I do not see the point of order in terms of what I was saying on this matter.

The matter was raised and Members are at liberty to ask for all those things through a Question. The Minister for Lands said he is prepared to provide all this information to a relevant Committee, and all these matters can be interrogated. There is a relevant Committee that will look into all these things, and the authenticity of all these documents; that is the Departmental Committee on Lands and Natural Resources.

Madam Temporary Deputy Speaker, I think the important thing for us to know as this House is to avoid emotions on the matter. Evictions have been going on in this country. We have had evictions in Mlolongo as we were doing the road. It is the same council that caused this confusion. They allocated all the land that had been reserved for Mombasa. Painfully it cost this country so much more money and delays as we had to go clear all those on the road reserves. People who had been conned into buying the land by the same council ended up having to suffer.

Madam Temporary Deputy Speaker, we have seen similar demolitions on Thika Road. We have seen big buildings housing Nakumatt Supermarket, and others, come down. We have seen the clearing of the bypasses. If we allow people to put up houses wherever there is vacant Government land because they say they are poor and stop

development of this country, we will be encouraging impunity. It is so unfortunate that this is happening on the Floor of this House.

Mr. Mbadi: On a point of order, Madam Temporary Deputy, Sir. It would be a bit insensitive of us as a House to allow the Minister, who has no human heart, to justify the actions by the Government. He does not care about people who are crying. He is comfortable wherever he is. He has made his wealth. He does not care about poor people, and he is trying to justify the evictions. Is it in order for this Minister to continue justifying the eviction of poor Kenyans?

The Minister for Transport (Mr. Kimunya): Madam Temporary Speaker, hon. Mbadi can play to the galleries, if he wants.

Mr. Mbadi: Madam Temporary Deputy Speaker---

The Temporary Deputy Speaker (Dr. Laboso): Order! Order! You have made your point, hon. Mbadi. Allow the Minister to finish.

Mr. Mbadi: This guy has made a lot of money!

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I know that some hon. Members have invoked the name of the late Prof. Wangari Maathai. She must be turning in her grave, wondering where the defenders of public good are in this House. Where are the defenders of public land in this House? All we are bothered with are people who have grabbed Government land. There are court orders telling them not to develop the properties but they continue to develop them. We now come here to defend them, because we do not care about public land. If Karura Forest is grabbed today, I can see the same people saying that poor people are taking public land, and that they should be allowed to take it.

I am very saddened by the grabbing defenders who are defaming this House under the guise of defending people who have taken away public land. People have the audacity of coming to this House and defending people who have taken away public property.

Ms. Karua: On a point of order, Madam Temporary Deputy Speaker. The Minister has referred to a court order stopping the residents from development of their land in Syokimau. Can he table it?

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, in fact, the court of order is in relation to Case No. 206 of 2004. That document is available. We can get the original and bring it to this House. So, there is a court order relating to a case of 2004, when the KAA went to court, and it was decided that there should be no sale or development of that land. In 2005, the KAA went to seek an interpretation. The court ruled that they wanted a report.

An hon. Member: Finish!

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, Sir, these people do not want the truth to come out.

The Temporary Deputy Speaker (Dr. Laboso): Order! Order, hon. Members! You are not even allowing the Minister to say what he has to say.

The Minister for Transport (Mr. Kimunya): Yes, because it is not expedient for them to receive the truth. The truth is very clear.

There is a court order that says there shall be no development on that land, but there are people in this House, who are friends of people out there, who have been the beneficiaries of the sale of this land. That is where the problem is.

The Temporary Deputy Speaker (Dr. Laboso): Order! Order, hon. Members!

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, we cannot allow people to benefit from public assets and use the Floor of this House to protect their ill-gotten gains from the sale of public assets.

(Loud consultations)

The Temporary Deputy Speaker (Dr. Laboso): Order! Order, hon. Members! This is not a market place.

What is your point of order, hon. Mbarire?

The Assistant Minister for Tourism (Ms. Mbarire): Madam Temporary Deputy Speaker, we know that this is a very emotive issue, but is it in order for the Minister to impute improper motive on hon. Members who feel that what was done was wrong by claiming that we have probably benefitted out of the sale of that land, yet the title deeds of the people who are being evicted came from the same Government?

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, there is no title that has come from the Government for all those properties. The titles that those people are holding are forgeries. Instead of Members of Parliament wanting to learn the truth, all we are getting from the Minister for Lands and me is rude interruption, so that the truth does not come out. The point here---

(Loud consultations)

The Temporary Deputy Speaker (Dr. Laboso): Order! Order, hon. Members!

The Minister for Lands (Mr. Orengo): On a point of order, Madam Temporary Deputy Speaker. I really want to plead with you. This is not the National Assembly I know. I have been in this House when there have been so many emotive issues. Please, give us time. Even when you stand on a point of order, there are clear rules by which to do so. If everybody is going to shout “point of order”, we will not have decent debate. The rules are that if you have a point of order, you say “point of order” and remain silent.

Having said so, I want to give information to this House without fear of contradiction. Just as there are some people, including Ministers, who have been defrauded of Kshs20 million or Kshs30 million because they were told “If you give it to me, I will be able to double it”, there are also hon. Members in this House---

Madam Temporary Deputy Speaker, I think we should sit in camera because it would be wrong for me to make certain accusations against some Members of this House in public. Even in relation to a lot of land which is giving us a lot of problems, there are Members of Parliament here who are trying to use their positions to distribute Government land without legal authority.

(Applause)

We should stand here to defend public land rather than defend fraudsters.

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Members! As a result of the interest that hon. Members have in this issue, I order the Departmental Committee on Lands and Natural Resources, and that on Transport and Communications, to investigate this matter urgently and bring a report to this House as soon as possible.

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, it is now time to adjourn the business of this House. Therefore, the House stands adjourned until tomorrow, 16th November, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.