

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 17<sup>th</sup> February, 2011

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Justice and Legal Affairs on Nominations to the Offices of Chief Justice; Attorney-General and Director of Public Prosecutions.

*(By Mr. Namwamba)*

**Mr. Namwamba:** Mr. Speaker, Sir, the Report is accompanied with all the annexures and supporting minutes.

### COMMUNICATION FROM THE CHAIR

PRESENTATION OF REPORT ON NOMINATION OF JUDICIAL OFFICERS BY  
JUSTICE AND LEGAL AFFAIRS COMMITTEE

**Mr. Speaker:** Hon. Members, yesterday afternoon at about 3.30 p.m., I received in my Office a Report from the Chairman of the Departmental Committee on Justice and Legal Affairs as has been tabled this afternoon together with a proposed Notice of Motion.

Hon. Members, just like I directed with regard to the Notice of Motion on the Report of the Departmental Committee of Finance, Planning, and Trade, I will later on this afternoon be speaking to the matter of the two Notices of Motion.

At this point, however, allow me to thank hon. Members of the Departmental Committee on Justice and Legal Affairs for being able, as they have said to me, under very difficult circumstances, to complete the writing of their Report and almost complied with the deadline which I had set. They fell short by two hours. So, we really want to commend them and I think it is deserved. I know it is a twin Report – there is a majority report and a minority report in that same Report – but that notwithstanding, it is a Report of the Committee.

*(Applause)*

## QUESTIONS BY PRIVATE NOTICE

### LAND OWNERSHIP IN LAMU COUNTY

**Mr. Yakub:** Mr. Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Could the Minister provide the names of land owners and acreage of ownership in Lamu County and those issued with title deeds in the last ten years and indicate the specific dates they were issued?

(b) Could the Minister confirm that the Government plans to settle persons displaced during the 2008 Post-Election Violence (IDPs) in Lamu County and, if so, is the Minister aware that the plan is creating tension in the area?

(c) What measures is the Minister taking to ensure that the concerns of the residents are addressed and could the Minister consider resettling the local IDPs first before resettling IDPs from outside the county?

**The Minister for Lands (Mr. Orengo):** Mr. Speaker, Sir, I am in a rather unfortunate circumstance. Yesterday, when this Question was called, hon. Dor was not here and as a consequence, it was dropped. To my amazement, I have just noticed that the Question is on the Order Paper. If it may please the Speaker, could it be passed for another ten or 15 minutes? I will be able to respond to it then.

**Mr. Speaker:** Very well, Mr. Minister! That I can do. We will take it after we go through the rest of the Questions.

Next Question by Mr. Ochieng!

### ESSENTIAL DRUGS SHORTAGE IN NYANZA HOSPITALS

**Mr. Ochieng:** Mr. Speaker, Sir, I beg to ask the Minister for Medical Services the following Question by Private Notice.

(a) How many public hospitals in Nyanza have run out of essential drugs and what are the names of those facilities?

(b) When did they last receive their stock of the essential drugs?

(c) When does the Ministry intend to stock them and what measures is the Government taking to ensure that drugs do not find their way into private chemists?

**The Assistant Minister for Medical Services (Mr. Kazungu):** Mr. Speaker, Sir, I beg to reply.

(a) No public hospital has run out of essential drugs in Nyanza Province.

(b) Distribution of drugs is done in cycles. For rural health facilities, health centres and dispensaries, there are four cycles or quarterly while for hospitals there are six cycles or bi-monthly. Distribution of drugs to rural health facilities has been completed for the first two cycles, that is, July to September, 2010 and October to December, 2010. Presently, distribution is on-going for the third cycle, that is, January to March, 2011.

For the hospitals, distribution of drugs has been completed for three cycles, that is, July and August; September to October; and November to December. Distribution for the fourth cycle, that is, January to February, 2011 is ongoing.

(c) Since distribution of drugs has been done as scheduled, it is not correct to make reference to restocking of hospitals.

Regarding security of public drugs, the Ministry has taken a number of measures to prevent leakages to private chemists. These include: -

(i) Government of Kenya/Ministry of Medical Services markings on all drugs and other medical commodities up to the lowest pack possible. This is to ensure that drugs supplies are easily identified during inspections in private chemists.

(ii) Routine surveillance has been undertaken by the Pharmacists and Poisons Board together with the Drugs Inspectorate Division of the Ministry.

(iii) Improved inventory management for drugs in hospitals presently has made it easier to conduct regular audits and thus identify leakages.

(iv) Since public drugs can only find their way to private chemists through members of staff, the Ministry has ensured that any member of staff involved in theft of drugs is dismissed and prosecuted as necessary.

(v) Distribution of drugs has been outsourced to avoid losses on transit as couriers take the responsibility in case of losses.

**Mr. Ochieng:** Mr. Speaker, Sir, on a number of occasions whenever we visit these facilities, we normally come across patients who have been sent away by doctors using prescriptions to go and buy medicine in various chemists. Why does this happen if the hospitals are properly stocked with essential drugs?

**Mr. Kambi:** Mr. Speaker, Sir, I am not aware of that. However, if the hon. Member is telling us the truth, we are going to investigate that matter and drastic measures will be taken against those people engaging in that practice.

**Mr. Yinda:** Mr. Speaker, Sir, could the Assistant Minister tell this House what the Government is doing to make sure that there are enough drugs at Siaya District Hospital? As we speak now, there are no drugs there, but when you go to local chemists, you find the drugs there. What is the Ministry doing to ensure that all district hospitals, including Siaya District Hospital, have sufficient drugs?

**Mr. Kambi:** Mr. Speaker, Sir, all district hospitals as I said earlier have been stocked with drugs by the Ministry through Kenya Medical Supplies Agency (KEMSA). I have a list of the dispatch from KEMSA. I can table the list. In fact, Siaya District Hospital is among the hospitals which have been stocked.

**Mr. Chanzu:** Mr. Speaker, Sir, I want to thank the Assistant Minister for giving information about the cycles. It shows that, at least, the Government gives out medicine to the facilities in the districts. However, could he assure us that they have enough capacity to monitor this? I think the problem is having information in the head office on what they have done, but not having capacity to monitor what is actually going on down there. Could he assure us that the Ministry is getting realistic information about what is happening on the ground?

**Mr. Kambi:** Mr. Speaker, Sir, I want to assure this House that there is enough capacity at KEMSA. In fact, KEMSA is one of the best performing parastatals in my Ministry. We have put systems in place and if we want to know how many panadol they have today and how long they will last, we will know.

**Mr. Ochieng:** Mr. Speaker, Sir, I want to dispute one point here.

**Mr. Speaker:** Order! Member for Nyakach, this is Question Time.

**Mr. Ochieng:** Mr. Speaker, Sir, what the Assistant Minister has stated - that they are engraving medicine - is not true. When you visit those facilities, you will see that---

**Mr. Speaker:** Order! Member for Nyakach, you have the brilliance. Frame that into a question!

**Mr. Ochieng:** Mr. Speaker, Sir, I am building my question.

**Mr. Speaker:** Get there quickly then.

**Mr. Ochieng:** Mr. Speaker, Sir, could the Assistant Minister confirm to this House that the tablet that is engraved with the word GK is only panadol? There is no other medicine which is engraved. That is why most of those medicine find their way to private chemists.

**Mr. Kambi:** Mr. Speaker, Sir, that is not true. We have been labeling all our drugs from capsules to panadols. So, if there is medicine that has not been labeled, then those are not our drugs.

## ORAL ANSWERS TO QUESTIONS

### *Question No.534*

#### NUMBER OF BURA CONSTITUENCY YOUTHS UNDER KKV PROGRAMME

**Dr. Nuh** asked the Minister for Youth Affairs and Sports:-

(a) whether he could provide a list of names of youths who worked under the Ministry's *Kazi Kwa Vijana* Programme in June and July 2010 in Bura Constituency, indicating the location of work, number of days worked by each person and the amount of money owed to each one of them;

(b) whether he is aware that the said youths have not been paid their dues; and,

(c) what occasioned the delay in payment and when they will be paid.

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): Mr. Speaker, Sir, I beg to reply.

(a) A total of 200 youths worked for 308 days in eight locations under the *Kazi Kwa Vijana* Programme in the month of June/July 2010 in Bura Constituency as follows: Madogo Division, Mororo, Sala, Bangal, Bura, Chwele, Nanighi and Hirimani. The list of the youths who worked is hereby attached for the perusal of the Member of Parliament. I wish to lay the list on the Table.

*(Ms. Ndeti laid the document on the Table)*

(b) I am aware that some youths were not paid since the money was returned to the Treasury at the closure of the Financial Year, 2009/2010. The delay in payment was occasioned by transport problems due to poor road network, lack of local supplies for trees, seedlings were procured in low quantities and the area is very vast.

(c) The Ministry has put in place measures to ensure that the youths who had not been paid are paid within the third quarter of this Financial Year 2010/2011.

**Dr. Nuh:** Mr. Speaker, Sir, I had requested the deferment of this Question from yesterday to today so that I can go through the list of the youths who had, allegedly, been paid. I seek your guidance because the Assistant Minister has provided me with a list of the youths who were paid. Specifically, in Bangal, she alleges that youths were paid for 22 days. However, I have been with four of the youths, including the youth leader, and their contestation is that they worked for 40 days and they were only paid for four days. Could the Assistant Minister provide the vouchers that show the 22 days that the youth were paid? I would be grateful.

**Ms. Ndeti:** Mr. Speaker, Sir, I will go through the list. There is Mandogo where 72 youths were engaged---

**Mr. Speaker:** Order! Madam Assistant Minister, please, resume your seat for a moment. The hon. Member is contesting the list that you have laid on the Table. In the information that you have supplied, you have said that certain youths were paid for a given number of days. He is disputing that and asking if you could table vouchers which were used to pay them. Try and be relevant to the question.

**Ms. Ndeti:** Mr. Speaker, Sir, I do not have the vouchers now. However, I am willing to lay them on the Table. I want to make it clear to you that some of them were not paid. Some money was returned because of the problems that we had. We will, however, ensure that they get their money because they worked for it.

**Dr. Nuh:** Mr. Speaker, Sir, I do not doubt the Assistant Minister's undertaking to pay the youths who were not paid. I am sure the undertaking will be strictly adhered to. I, however, would like to request once more that she tables in this House the payment sheet or the so-called vouchers because the youths are also contesting the number of days paid.

**Mr. Speaker:** Ms. Assistant Minister, will you be able to table it by Tuesday?

**Ms. Ndeti:** Mr. Speaker, Sir, could I lay it on the Table on Wednesday?

**Mr. Speaker:** Very well! I so direct that this Question will be deferred to Wednesday afternoon for you to table the payment vouchers.

**Ms. Ndeti:** Thank you Mr. Speaker, Sir.

*(Question deferred)*

*Question No.674*

#### DISBURSEMENT OF YEDF MONEY IN THARAKA CONSTITUENCY

**Mr. Mwiru** asked the Minister of Sports and Youth Affairs:-

(a) how much funds have been disbursed to Tharaka by the Youth Enterprise Development Fund (YEDF) through the Constituency Youth Enterprise Scheme (C-YES) and financial institutions (FIs); and,

(b) whether he could table a list of financial institutions involved in the disbursement of funds as well as the list of beneficiaries, whether individual or group(s), since inception of the Fund.

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): Mr. Speaker, Sir, I beg to reply.

(a) The YEDF has disbursed a total of Kshs9.8 million to Tharaka. Out of that amount, Kshs2 million has been disbursed through the Constituency Youth Enterprise Scheme (C-YES) and Kshs7.8 million has been disbursed through the financial institutions.

(b) The YEDF has partnered with three financial intermediaries that are present in Tharaka. They are South Imenti Credit Company, Business Initiatives and Management Assistance Service (BIMAS) and Kenya Women Finance Trust.

The following is a list of beneficiaries of the Fund in Tharaka:-

In terms of groups, we have more than 40 of them and 76 individuals. I am willing to table the list.

*(Ms. Ndeti laid the list on the Table)*

**Mr. Mwiru:** Mr. Speaker, Sir, in 2009, one of the financial institutions mentioned here, the South Imenti Credit Company, started collecting money in form of savings from the youth of that area. That exercise was supposed to encourage the youth to get loans from them. I would like to know whether it is a Government policy for the youth to pay Government institutions before they secure a loan.

**Ms. Ndeti:** Mr. Speaker, Sir, money from YEDF is supposed to be given to the youth to enable them start their own businesses. We are trying to help the youth. So, I do not see how an institution would ask the youth to save money so that they can use the money that the Government has set aside for them. I assure the hon. Member, who mentioned the matter to me last week, that we are looking into it as a Ministry. I want to give him comfort that this time round, we have given out Kshs1.5 billion to constituencies and only Kshs300 million to banks and other financial intermediaries.

**Mr. Chepkitony:** Thank you Mr. Speaker, Sir. I would like the Assistant Minister to tell this House how much interest is charged when money is disbursed through the C-YES and financial intermediaries. How much do those two institutions charge as interest?

**Ms. Ndeti:** Mr. Speaker, Sir, the banks are supposed to charge a minimal interest of about 8 per cent. The Fund gives loans to these intermediaries at 1 per cent interest rate. They use the 7 per cent difference to cover administration costs and mitigate losses that may arise from the clientele, which are perceived as a risk. The intermediary should shoulder 100 per cent risk of this component and can lead up to Kshs1 million.

**Mr. Njuguna:** Mr. Speaker, Sir, could the Assistant Minister indicate to this House the strategic plans the Ministry is taking to enhance the funds allocated to the youth in the constituencies? The funds allocated are not adequate nationally.

**Ms. Ndeti:** Mr. Speaker, Sir, I have said that we allocated Kshs1.5 billion to the constituencies and Kshs300 million to the intermediaries. We are facing some financial constraints, but we are working on getting more money for the youth.

**Mr. Langat:** Mr. Speaker, Sir, this Fund is meant to help the youth in our constituencies. Unfortunately, there is no sensitization of the youth in the constituencies on how these funds can be obtained. Could the Assistant Minister tell us what they have been doing to sensitize the youth on the existence of this Fund?

**Ms. Ndeti:** Mr. Speaker, Sir, we have already employed two youths from every constituency to work with the youth on the Youth Enterprise Development Fund. From the end of last year, we have been going around the country, county by county, with the

Minister and the Assistant Minister, to sensitize the youth on the importance of the Youth Enterprise Development Fund. I can assure you we are on the ground and we are giving our employees motorbikes, so that they can access all the areas in their constituencies.

**Mr. Wambugu:** Mr. Speaker, Sir, indeed, if the Youth Enterprise Development Fund is used properly, it can help alleviate poverty in the rural areas. Who comprises the committee that sit at the constituency and who nominates the members to those committees? What part is the Member of Parliament supposed to play in the running of this Fund?

**Ms. Ndeti:** Mr. Speaker, Sir, the Member of Parliament should be the patron. The Fund is under the District Youth Officers. If it is within a council, the Town Clerk runs the Fund. I am prepared to provide a list of the names of the members of the committees.

**Dr. Kones:** Mr. Speaker, Sir, the Assistant Minister has said that the Ministry has employed some youths. I know that these youths were taken as interns on contract basis. Does the Ministry intend to employ them on permanent basis?

**Ms. Ndeti:** Mr. Speaker, Sir, we are trying to create employment for the youth. It is better for us to start taking them as interns while looking at the long-term when we can employ them on permanent basis. We have created more than 420 jobs for the youth of this country in our Ministry.

**Mr. Mwiru:** Mr. Speaker, Sir, we have a scenario where the youth are paying money to these institutions that I have mentioned. Will it be possible for the Ministry to ask these institutions to refund this money to the youth? They have suffered so much and they are not getting the loans.

**Ms. Ndeti:** Mr. Speaker, Sir, we are going to look into the Member's complaints against these financial institutions. I want to assure him that we are there for the youth and we will not allow anyone to take money from the youth.

#### *Question No.739*

#### ILLEGAL ACQUISITION OF UHT EQUIPMENT

**Mr. Baiya** asked the Deputy Prime Minister and Minister for Finance:-

(a) whether he is aware that some officials of Githunguri Dairy Farmers' Co-operative Society Limited breached the provisions of the Public Procurement and Disposal Act 2005 in the procurement of the Ultra Heated Temperature (UHT) plant and equipment;

(b) whether he is also aware that the Public Procurement Oversight Authority (PPOA), acting on complaints about the irregular procurement, conducted an investigation and, if so, could he provide the report of the investigation to the House; and,

(c) what action he will take against the officials involved in the irregular procurement to safeguard the interest of the members.

**The Assistant Minister, Office of Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai):** Mr. Speaker, Sir, on behalf of the Deputy Prime Minister and Minister for Finance, I consulted the Member due to a few details that are

lacking in the answer to this Question. I would like to answer it on Tuesday next week in the afternoon.

**Mr. Speaker:** Hon. Baiya, have you conceded?

**Mr. Baiya:** Mr. Speaker, Sir, I have conceded.

**Mr. Speaker:** Very well! The Question is deferred to Tuesday next week at 2.30 p.m.

*(Question deferred)*

*Question No. 589*

#### NON-ALLOCATION OF FUNDS TO CHERANGANY SPMC COMMITTEE

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

(a) whether he is aware that the Cherangany Stimulus Project Management Committee (SPMC) has not received any funds allocated for the construction of a fresh produce market; and,

(b) Could he explain why the funds have not been availed and state when the funds will be released to the Committee.

**The Assistant Minister, Office of Deputy Prime Minister and Ministry of Local Government** (Mr. Nguyai): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the Cherangany Stimulus Project Management Committee (SPMC) has not received any funds allocated to the construction of a fresh produce market.

(b) The Ministry will advertise the tender on 10<sup>th</sup> February, 2011. Once the tender is awarded, the construction is expected to commence early April, 2011.

**Mr. Kutuny:** Mr. Speaker, Sir, in part “b” of the answer, the Assistant Minister has talked about readvertisement. My CDF Tender Committee sat on 15<sup>th</sup> December, 2009, as per the procedure, and awarded the tender to Belcon Company Limited. I have documents to this effect, which I want to table. What informed the Assistant Minister to readvertise the tender?

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

**Mr. Nguyai:** Mr. Speaker, Sir, first, let me thank the Member for providing quite a lot of information and visiting my office yesterday, so that we could discuss and look at the differing issues. It is true that there was a meeting on 15<sup>th</sup> December, 2009, and the CDF Tender Committee awarded the tender to Belcon Company Limited. Unfortunately, as per the minutes of 23<sup>rd</sup> April from the Ministerial Tender Committee, the CDF Tender Committee did not provide certain documents which included the performance bond and other details. They were requested to provide the documents, but they were not able to do so. As such, the only course of action was to re-tender.

**Mr. Linturi:** Mr. Speaker, Sir, the Economic Stimulus money was in the 2009/2010 Budget. This money was supposed to stimulate economic growth in the

various constituencies in this country. Out of these delays, has this money achieved the expected stimulus in the various constituencies?

**Mr. Nguyai:** Mr. Speaker, Sir, there were quite a number of implementation problems. At first, the particular tenders were advertised by the Ministry of Finance but when they started receiving the tender documents, they realised that they did not have the capacity to evaluate. So, they forwarded all the documents from the CDF back to the Office of the Deputy Prime Minister and Ministry of Local Government. We then followed the normal procurement procedure and found that many committees within the local CDFs had not met the threshold required by the procurement procedures. Those bureaucracies delayed the process. The intention was to stimulate the economy, and I want to assure the House that we are now in the final stages of ensuring that all the markets are in place by the end of this financial year.

**Mr. Sambu:** Mr. Speaker, Sir, even where the funds have been availed, the actual process of facilitating payment is very long, and is centralised in Nairobi. In order to ease the burden of contractors travelling all the way to Nairobi to claim their payments, I would be grateful if the Ministry could consider decentralising the payment process. If so, when?

**Mr. Nguyai:** Mr. Speaker, Sir, we are looking into the possibility of decentralising the payment process. I would want to inform the House that the challenge we have had is that we only have provisional Local Government Officers, who are basically desk officers. We do not even have District Local Government Officers. So, we are looking at the structures to ensure that there is adequate management, not from a central point but, hopefully, from the county level.

**Mr. Olago:** Mr. Speaker, Sir, the problem of failure by the Ministry to disburse funds for the construction of fresh produce markets does not affect Cherengany alone. Only yesterday, I engaged the Assistant Minister in a discussion because even Kibuye Market in Kisumu Town West has up to now not received funds. Could he confirm that the frustration of this project is not caused by anything else except corrupt officers in the Ministry?

**Mr. Nguyai:** Mr. Speaker, Sir, it is true that the Member for Kisumu Town West has been very frustrated, and I engaged my officers for about one-and-a-half hours yesterday, looking at the problems that his project has. I would want to say that it is possible that there are some challenges which the Ministry has encountered. I would not say that it is necessarily corruption from the Office of the Deputy Prime and Ministry of Local Government but probably, more of structural and implementation challenges.

**Mr. Mwiru:** Mr. Speaker, Sir, the Assistant Minister has hinted that they may not be having enough officers to decentralise the payments for this year's bills. Could he consider using the services of county clerks within those areas, so that there can be speedy payment of these bills?

**Mr. Nguyai:** Mr. Speaker, Sir, the eventual beneficiaries will obviously be the councils. That is a channel we would be willing to consider and probably give further light as to whether it is viable or not.

**Mr. Kutuny:** Mr. Speaker, Sir, on the tender notice that appears on one of the daily newspapers of 10<sup>th</sup> February, 2011, the re-advertisement reads "Kachibora Market". The area that was identified by my CDF Committee was Kapsara. Is the Assistant Minister aware that Kachibora does not have any space for this facility?

**Mr. Nguyai:** Mr. Speaker, Sir, from our consultations with the hon. Member, we are aware that Kachibora does not have any space. The first identification of the market was done through the Economic Stimulus Programme Report, which indicates, on page 41; that the CDF Committee members are the ones who had chosen Kachibora but we are now looking into the issue of reallocating the market.

**Mr. Kutuny:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is talking about my CDF Committee having identified Kachibora initially. I was in that particular meeting, and I have all the minutes of our meetings. The place we identified was Kapsara. Who gave him the permission to change the resolution of my CDF Committee?

**Mr. Nguyai:** Mr. Speaker, Sir, I am only making reference to the Economic Stimulus Programme Report. It must have been an input from his constituency. Probably, the hon. Member does not have very good control over all the members of his CDF Committee.

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

**Mr. Speaker:** Order! Order, Member for Cherengany!

**Mr. Nguyai:** Mr. Speaker, Sir, we have, however, taken into consideration the new location. We will ensure that the market is established at Kapsara.

**Mr. Speaker:** Next Question, Member for Mumias!

*Question No.608*

ILLEGAL ALLOCATION OF BUSIA AIRSTRIP LAND

**Mr. Washiali** asked the Minister for Lands:-

(a) whether he is aware that the land meant for Busia Airstrip has been sub-divided and allocated to individuals; and,

(b) what measures he is taking to ensure that the land reverts to its original use.

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that that the land meant for Busia Airstrip has been sub-divided and allocated to individuals. In fact, the position is quite the contrary. Busia Airstrip was planned to be developed on the land, which is privately owned, in anticipation of having the land acquired through The Compulsory Acquisition Act, Chapter 295, of the Laws of Kenya.

(b) The acquisition process was initiated and it is yet to be finalised to place the land to the Government. The Ministry of Lands is merely acting as an agent. The Ministry of Roads and the Ministry of Public Works and the Clerk to Busia County Council, have been notified of the requirements.

*[Mr. Speaker left the Chair]*

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

**Mr. Washiali:** Mr. Temporary Deputy Speaker, Sir, taking the House through memory lane, on 25<sup>th</sup> January, 2003, there was a fatal accident on that airstrip, where we lost an hon. Member of this House by the name of hon. Ahmed Khalif and two pilots. Amongst hon. Members of this House who were in that plane were hon. Martha Karua, hon. Kilimo and hon. Tuju. Others were Mrs. Kuria.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Washiali, what is your question?

**Mr. Washiali:** Mr. Temporary Deputy Speaker, Sir, I am taking the House through memory lane first, so that I can put the question to the Minister for Lands.

The then Minister for Transport, hon. John Michuki, appointed a Commission, which was headed by Mr. Mutunga. Among the reasons that the Commission gave for that accident was that the runway was over 1,000 metres but 300 metres had been interfered with. Since 2003, when this accident occurred, has the Minister for Lands done anything to make sure that the length of the runway is back to its normal size?

**Mr. Orengo:** Mr. Temporary Deputy Speaker, Sir, I want to repeat that the land on which the airstrip is located is privately owned, and that the Minister for Lands was merely required to act as an agent for the purpose of acquiring the land through compulsory acquisition. To that extent, it is probably the Ministry of Transport which can source for funds. Our role, as the Ministry of Lands, is to ensure that there are funds with which to compulsorily acquire the land, before acquiring the land compulsorily; and that the purpose for which the land is being compulsorily acquired is public utility. So, I hope that since we have advised the relevant Ministry on what to do in order to regularise the process, this matter is going to be resolved. I emphasise that the Ministry of Lands is merely an agent. We do not develop or maintain airstrips and airports, but I sympathise with the hon. Member.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, there is collective responsibility in the Government. Could the Minister tell the House why it has taken almost eight years for the Government to synchronize its act and make this airport public land for purposes of expansion? If he feels that he cannot answer the Question, could he consider transferring it to the relevant Ministry, so that this House is told what plans there are for ensuring that the Busia Airport is expanded.

**Mr. Orengo:** Mr. Temporary Deputy Speaker, Sir, there are ongoing negotiations between the relevant Ministries and the county council. As you know, Busia is growing into a bigger town. The County Government is going to be there. In that airstrip, there is no room for parking of any aircraft, or building a small terminal. So, discussions are going on as to whether or not it would be sustainable to spend money and expand that airstrip, or whether to acquire a larger piece of land, which is comensurate to the growing town of Busia. We can then use resources to build a better airport. Busia is going to be the headquarters of Busia County. So, they deserve something better than the airstrip that the hon. Member is talking about.

*Question No. 642*

TRANSPORT FOR GOVERNMENT OFFICERS IN VOI DISTRICT

**Mr. Mwakulegwa** asked the Ministry of State for Provincial Administration and Internal Security:-

(a) whether he is aware that security operations are hampered due to lack of mobility for the Provincial Administration and police officers;

(b) when the Ministry will provide transport to the Voi District Commissioner (DC) and Voi Officer Commanding Police Station (OCS); and,

(c) when the police post in Maungu Town will be opened.

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

(a) I am not aware that the security operations are hampered in Voi due to lack of mobility. However, I am aware that there is a problem of transportation for the security agencies in Voi.

(b) The District Commissioner (DC) in Voi has no serviceable vehicle. However, he is using an old Land Cruiser, GKA 330E, which used to be for the District Officer (DO). The Officer Commanding Police Station (OCS) was allocated a Toyota Land Cruiser GKA 490G on 9<sup>th</sup> September, 2003. His vehicle was involved in an accident on 7<sup>th</sup> July, 2010 while on official duties between Voi and Mwakingali area, after which it was declared unroadworthy. Currently, the OCS shares a vehicle, GKA 413H, with the Officer Commanding Police Division (OCPD), which also serves the entire area.

(c) Maungu Police Post, which is situated 800 metres from the main Nairobi-Mombasa Highway on a five-acre piece of land, was closed due to lack of sufficient habitable housing units and office accommodation. The construction of the houses and offices requires an estimated Kshs3,378,067.35. The part development plan was completed on 27<sup>th</sup> October, 2010 by the Director of Physical Planning, and a proposal for the construction of the post was presented to the local Constituency Development Fund (CDF). It was approved and is now awaiting funding. This is an important police post and police officers will be posted there immediately the infrastructure is in place.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Ojode, could you look at part (b) of the Question? It is very specific. The question is: "When the Ministry will provide transport to Voi DC and the OCS?"

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, I said that the DC and OCS will be allocated vehicles once the Ministry acquires them. Last week, I did mention in this House that there is an arrangement between Treasury and companies under which we are trying to lease some 3,500 vehicles for the Government. Once the agreement is signed, I will be able to sort out some of these problems.

**Mr. Mwakulegwa:** Mr. Temporary Deputy Speaker, Sir, for once I would like to appreciate the answer given by the Assistant Minister that there are problems in transportation and the DC's vehicle is unserviceable. We know that Voi District covers more than 11,000 square kilometers and has no vehicles to cover the highway, which is 250 kilometres long. What is the Ministry doing to make sure that the DC and the OCS get vehicles with immediate effect, so that all emergencies, accidents and robberies can be attended to? As of now, the OCS is using a taxi to attend to emergencies.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Mwakulegwa, I was trying to assist you and the Assistant Minister has been very clear, that about 3,500 vehicles are on the way and then he will be able to allocate one to you.

**Mr. Mwakulegwa:** Mr. Temporary Deputy Speaker, Sir, this is a strategic location for this country and not only for the people of Voi. This is a highway that serves all Kenyans. Now that his officers do not have a serviceable vehicle, when will he give one to serve this area?

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Ojode, this is an emergency. Could you do something to assist the hon. Member?

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, I am sorry. It is quite unfortunate that I cannot do anything. The reason is that we are waiting for the Treasury to sign the agreement with the leasing company. In the meantime, there is nothing I can do. The only thing I can do is to fast-track the signing of that agreement in order for us to get the vehicles. The vehicles will not be just for my Ministry; they will be given other sectors of the Government. As of now, it is quite unfortunate that I cannot help my friend, but I will do something once the agreement is signed.

**Mr. ole Lankas:** Mr. Temporary Deputy Speaker, Sir, in the answer given by the Assistant Minister to one part of the Question, he has accepted that Maungu Police Post was closed down because of unhabitable housing conditions. He has also just confirmed that there is a critical problem of lack of transport. How does the Government expect this district to operate, considering that availability of transport and housing is critical? Who is supposed to provide staff with housing in this Ministry?

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, fortunately, we have put some measures in place: First, the CDF has been allocated some money in order for the operations to continue. The CDF has already approved the use of its money.

**Mr. Mwakulegwa:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am the patron of CDF, Voi, and I have not seen any proposal from his Ministry for CDF to assist in the construction of staff houses!

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, the information that we have from the ground is that--- The OCS said that the CDF Committee had accepted to pump in some money. They wanted us to come up with some funds---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Ojode! The hon. Member for Voi is very clear. He is saying that he has not allocated any funds to your project.

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, even if they do not allocate funds, there is no problem. We will allocate some money to the project in the next financial year. We have allocated about Kshs3.3 million in the next financial year to construct those houses.

**Mr. Mureithi:** Mr. Temporary Deputy Speaker, Sir, I would like to thank the Assistant Minister for promising Mr. Mwakulegwa that he is going to give him a vehicle, and he is also going to fast track the signing of the leasing agreement. Does he have an inventory in his office of the promises he has given most of us, namely that we would get vehicles? Hon. Mwakulegwa should not be served ahead of other hon. Members who have been given promises in the last three years.

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, the Office of the President is the highest office in the land. I have to give hope that once we get money, we will have to give these vehicles. Right now, there is good progress. The Treasury has come up with an arrangement where they want to acquire 3,500 vehicles though leasing. I promise this

House that we are going to fast track acquisition of vehicles. Once they sign the leasing agreement, we will get the vehicles we require.

**Mr. Ochieng:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Assistant Minister to continue complaining here that he does not have vehicles, while the Government has allocated Land Rovers to some civil servants and Ministers as trailing vehicles? Why does he not give those Land Rovers and give them to the new districts?

*(Applause)*

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, as far as I am concerned I am not aware of any Minister who has been allocated a Land Rover for purposes of trailing them. If the hon. Member has the name of such a person, he should come over, get me the name and I will take action.

**Mr. Mwakulegwa:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, I do not need the information.

**The Temporary Deputy Speaker** (Prof. Kaloki): Next Question by the Member for Gichugu.

**Mr. Mwakulegwa:** On a point of order, Mr. Temporary Deputy Speaker, Sir, I have not asked my last supplementary question.

**The Temporary Deputy Speaker** (Prof. Kaloki): Do you have a burning question that you want to ask?

**Mr. Mwakulegwa:** Yes, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): Okay, proceed!

**Mr. Mwakulegwa:** Now, that the Assistant Minister is evading a very serious question about assisting Government officers so that they can perform their jobs, can I be assured that the vehicles will be given in next financial year? How many will be given to the police and to the District Commissioners?

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, as at now, I cannot say how many, because I do not know how many are going to be acquired. I will only be able to give the numbers once the approval has been given by the Treasury to the leasing agent. As of now, I can only say that we can wait until we get the approval.

**Mr. Ogindo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard the Assistant Minister say that he cannot say how many vehicles they are going to acquire until he gets “approval”, I do not know for what. The Ministry of State for Provincial Administration and Internal Security is known to have made orders for 520 vehicles. These vehicles have been paid for. Is he in order to mislead the House that he still does not have vehicles when payments have been made for vehicles, and the vehicles are only awaiting delivery and distribution?

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, Mr. Ogindo is a Member of the Budget Committee. I will challenge him to go through the Budget of this financial year and he will confirm that we do not have even a single penny for buying a vehicle. There is none! If there is any for purchase of 500 vehicles, he should just tell me the source of the vehicles, and I will leave this place now to go and fast-track the process of distributing the vehicles.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Mwakulegwa, are you satisfied? I think that was your final submission.

**Mr. Mwakulegwa:** Mr. Temporary Deputy Speaker, Sir, I am not satisfied. We approved the Budget for this Ministry, and what Mr. Ogindo is referring to what was passed by this House. Why is the Assistant Minister misleading this House?

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Mwakulegwa your questions are very clear and the Assistant Minister has already covered them.

Next Question by Mr. K. Kilonzo!

*Question No.656*

ESTABLISHMENT OF TREE NURSERIES IN  
NZAMBANI/MUTITO DISTRICTS

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. K. Kilonzo is away on official matters, and so the Question will be deferred to a later date.

*(Question deferred)*

Next Question by Ms. Martha Karua!

*(Applause)*

*Question No.679*

CLOSURE OF LARO AIRSTRIP

**Ms. Karua** asked the Minister for Transport:-

(a) whether he is aware that private planes are landing and taking off at the Laro Airstrip on property No.Narok/Nguruman/Kamarora/1 in spite of a court order to close the said airstrip; and,

(b) what steps he has taken to ensure compliance with the court order.

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

(a) Neither the Ministry of Transport nor the Kenya Civil Aviation Authority has been served with any court order directing that Laro Airstrip be closed.

(b) In view of the answer to “a” above, part “b” does not arise.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, that answer is either deliberately misleading, or is given in ignorance of the facts. I have a letter which I will table here, and a court order clearly indicating that on 18<sup>th</sup> May 2009, the Director-General, Kenya Civil Aviation Authority (KCAA) and his officers were served with a court order and they stamped it “received”. In those circumstances, is the Assistant Minister in order to mislead the House?

*(Ms. Karua laid the documents on the Table)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Assistant Minister, are you misleading the House? Do you have your facts?

**Mr. Ogari:** Mr. Temporary Deputy Speaker, Sir, I am not misleading the House. We would like to know to whom the order cited is addressed to. There is no court order addressed to the Ministry or the KCAA.

**The Temporary Deputy Speaker** (Prof. Kaloki): Take your time and answer the question.

**Mr. Ogari:** Mr. Temporary Deputy Speaker, Sir, let me look at it.

**The Temporary Deputy Speaker** (Prof. Kaloki): Let us allow the Assistant Minister sometime to consult.

*(Mr. Ogari perused the document)*

**Mr. Ogari:** Mr. Temporary Deputy Speaker, Sir, since I have just received this document, I ask for some time to study the same.

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The question that Ms. Karua asked was very clear. She asked whether the Assistant Minister is aware that private planes are landing on this piece of land in spite of the court order. One would have expected the Assistant Minister, in answering this Question, to find out about this court order. Is it in order for the Assistant Minister to refuse to answer a question that is very clear by feigning ignorance of a court order when he should have come to this House well prepared to answer the Question?

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

*[Mr. Speaker took the Chair]*

**Mr. Ogari:** Mr. Speaker, Sir, in my answer, I have clearly stated that we are not aware of any court order. In any case, whatever has been tabled does not stop the operations because KCAA or the Ministry does not operate the aircrafts. The order is neither directed to the Ministry nor the KCAA. We have not received any court order to stop any aircraft landing in Laru Airstrip.

**Ms. Karua:** Mr. Speaker, Sir, first, the Assistant Minister feigned ignorance. When a question is asked, it is the duty of the Minister or Assistant Minister to become aware of all the facts within their docket. It is very clear from the court order here that when the airport is closed, the authority in charge is the Directorate of Civil Aviation. Is it, therefore, in order for the Assistant Minister to claim that they are unconcerned even when the court has closed the facility but it is still in use? Which other Government authority is supposed to supervise airstrips?

**Mr. Ogari:** Mr. Speaker, Sir, my Ministry is the only one that is supposed to supervise airstrips but there is no order to close the airstrip. In any case, I wish to insist that this order is not served on the Ministry or the KCAA. This is a private and commercial matter between two parties and they are only trying to suck in the Ministry through the KCAA. The airstrip is private and the persons operating the airstrip have an

agreement between the two of them. They have so many running cases between themselves. So, the Ministry cannot come in and yet it has not been served by any orders close the airstrip.

**Ms. Karua:** Mr. Speaker, Sir, it is important that the documents tabled be availed to you. This case is against Ngurumani Limited as the applicant and the first respondent is the Kenya Civil Aviation Authority. The second respondent is the Director of Civil Aviation. A Ministry answers questions on behalf of their docket. The KCAA is under this Ministry of Transport. Is it in order for the Assistant Minister to continue refusing to answer the question and to claim that he is not aware when there is a letter which was received and stamped by the Kenya Civil Aviation Authority indicating that they received the order in May 2009? If the Assistant Minister is denying that the airport is in use, I will be able to table further documents to show that it has been used by the high and mighty, some of whom sit in this House.

**Mr. Speaker:** Mr. Assistant Minister, I hope you reflect on that carefully because the Member is actually referring to a court order which I have looked at and on the face of it, this order is genuine. It has a date and it is sealed, although a photocopy and it is stamped by the relevant department which is a parastatal under your Ministry. So, you must be able to respond. If you do not have information, then ask for time.

**Mr. Ogari:** Mr. Speaker, Sir, we are aware of that order. These were interim orders obtained by Nguruman Limited, temporarily restraining KCAA by an order of prohibition from opening the airstrip and from operations, otherwise than in accordance with the provisions of the Civil Aviation Regulations 2008. I would wish that we underline the word “otherwise”. Ngurumani Limited was required to file substantive application to restrain the KCAA from reopening the airstrip. Ngurumani has not filed that application and served the same on the KCAA to date. So, when I say that we have not been served with any court orders, we are expecting court orders on this substantive application. This is therefore, a case whereby the owner of a private airstrip wishes to assert his authority on an airstrip within his land by closing the airstrip on the land but where the former operators of the airstrip, with permission from the owners previously given are keen to have the airstrip kept open.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. Though it may very well be true that the substantive application was never filed, the Directorate of Civil Aviation, which is a party, has not applied for this order to be vacated. The Directorate of Civil Aviation, on 29<sup>th</sup> March 2010, one year after the order issued certain conditions before the airstrip could be re-inspected and licensed. I wish to table that letter.

Since that date, there has been no re-inspection. Is it in order for the Assistant Minister to hide the facts, that even his own parastatal is saying that this airstrip should not be re-opened until certain conditions are fulfilled? I table that letter.

*(Ms. Karua laid a document on the table)*

**Mr. Speaker:** Member for Gichugu, I have now been able to fully peruse this document and on page three of that order, it states:-

“Leave is hereby granted for 21 days, during which time the applicant must institute and serve judicial review proceedings as intended. Failure to do so within the said period shall mean that the leave granted herein shall automatically lapse”

So, are you able to demonstrate that these orders were extended or any further orders given that varied No.5? Otherwise, you are being unfair to the Assistant Minister.

**Ms. Karua:** Mr. Speaker, Sir, I have further orders issued in 2010 maintaining the *status quo*, which *status quo* was the closure of the airstrip on 30<sup>th</sup> August 2010 by the High Court in Nakuru which I proceed to table.

*(Ms Karua laid the document on the table)*

It is the one that contains the documents from the Civil Aviation also insisting that the airstrip has to be rectified before opening. So, is the Assistant Minister in order not to let the House know that they are negligently letting an airstrip that should not be operational operate?

**Mr. Speaker:** Assistant Minister, have you seen those documents before?

**Mr. Ogari:** Mr. Speaker, Sir, not the ones she is now talking about. The order before you was issued and---

**Mr. Speaker:** Order, Assistant Minister! I would want you to look at it because you cannot respond to that question if you have not seen the document. Member for Gichugu, have you now tabled all the documents in your possession?

**Ms. Karua:** Mr. Speaker, Sir, that was the last one.

**Mr. Speaker:** Next Question by Dr. Khalwale!

*Question No. 711*

LACK OF THEATRE FACILITIES AT IGUHU/SHIBWE HOSPITALS

**Mr. Speaker:** Is Dr. Khalwale not here? The Question is dropped!

*(Question dropped)*

Next Question by the hon. Member for Kandara, Mr. James Maina Kamau!

*Question No. 715*

DISMISSAL OF MR. MURUGU NJUGUNA FROM  
PRISONS DEPARTMENT

**Mr. James Maina Kamau** asked the Vice-President and Minister for Home Affairs:-

(a) whether he could confirm that Mr. Murugu Njuguna (APN/PC/6286) once worked for the Prisons Department and that his services were terminated unprocedurally

(b) why he has not been paid his terminal dues since the 1960s and whether the Vice-President could state how much the Government owes him, the formula used in the calculation of the dues and indicate when he will be paid; and,

(c) whether the Government could consider compensating him for the long delay in payment of his dues?

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

(a) The said officer, No. 5944, was appointed as a prison warder on the 1<sup>st</sup> of September, 1957 – a very senior citizen – and retired on 29<sup>th</sup> July, 1968. His pension claim documents were submitted to the Pensions Department on 23<sup>rd</sup> July, 1968. The retirement benefits were then processed and he was awarded a committed pension gratuity of Kshs2, 295.85 along with a monthly pension of Kshs45.90 with effect from 29<sup>th</sup> July, 1968. The gratuity was paid on 8<sup>th</sup> of December, 1969, along with his monthly pension arrears with effect from 29<sup>th</sup> July, 1968, to the 30<sup>th</sup> of November, 1968, totaling Kshs2,483.90. the officer was later introduced into the payroll with effect from 1<sup>st</sup> December, 1968 and his monthly pension cheques were mailed to his postal address, care of ACC Mugaria Intermediate School, P.O. Box 443 Thika until the 1<sup>st</sup> of March, 2000, when his pay point was changed to the Office of the District Officer in Kandara following his instructions.

Mr. Speaker, Sir, on 1<sup>st</sup> March, 2002, the Government stopped remitting pension payments through the Provincial Administration and District Treasury offices. Consequently, Mr. Njuguna's pension was remitted through account No. KPSF 36575, Post Bank, Kandara until 1<sup>st</sup> September, 2003, when it was stopped due to returns from Postbank as a result of non-collection.

Mr. Speaker, Sir, the pensioner later wrote to the department in 2004 requesting the payment of his returned pension but did not provide details of his bank account. The department responded to him in a letter dated 8<sup>th</sup> June, 2004, and advised him to submit his bank account details to enable payment of his dues. He, however, did not respond to the request until July, 2010, when he submitted an account number. At this time, the department was in the process of transferring his data from an old information technology system to the new pension management information system. Presently, his pending dues include the returned pension and monthly pension arrears with effect from 1<sup>st</sup> September, 2010, and pension arrears increases with effect from 1<sup>st</sup> July, 2005, when the minimum pension was raised to Kshs2,000 per month. A subsequent increase raised the minimum pension to Kshs2, 300 with effect from 1<sup>st</sup> July, 2007, and Kshs2, 600 with effect from 1<sup>st</sup> July, 2009, to date.

(b) The pension formula provided under the Pensions Act, Chapter 189, at the time Mr. Njuguna retired was one to 600. Presently, that has now been reduced to one to 408. The pensioner is required to provide the Pensions Department with the following documents so as to reactivate payment of his dues. One, full bank details. Secondly, copy of his bank card; and, thirdly, copy his national identity card certified by the area chief.

Thank you, Mr. Speaker, Sir.

**Mr. James Maina Kamau:** Mr. Speaker, Sir, I would like to thank the Vice-President for the answer he has given, but I would like to assure him that this pensioner has not received a penny for the last 30 years. The last time they communicated to him was in 1969 and he was asked to submit an account number, which he did, and no money was forthcoming. So, I would like the Vice-President to tell this House exactly what he wants to do with this pensioner, because he served the Government diligently for all those years and he retired a very, very poor person.

**Mr. Musyoka:** Mr. Speaker, Sir, for all practical purposes, we are dealing with a very senior citizen of this country. He was recruited as a warder during the colonial period. We owe it to him, and I have just been discussing with the hon. Member for Kandara that I would want his dues to be sorted out expeditiously. I have even referred him to an officer in my office – a Mr. Wanyoike – and I think within two weeks, we want to be sure that he has got all his dues and he will be able to live happily.

Thank you, Mr. Speaker, Sir.

*(Applause)*

**Mr. Olago:** Mr. Speaker, Sir, the hon. Vice-President may do the best he has said and, I believe, he will do the best he can. But the problem is not with his Ministry; the problem is with the Director of Pensions. The Director of Pensions has no respect at all for senior citizens. What will the hon. Vice-President do to ensure that the Director of Pensions pays promptly and efficiently?

**Mr. Musyoka:** Mr. Speaker, Sir, my I earned friend will appreciate that I am in charge of the Prisons Department, but I am also the Vice-President of the Republic. I will just make sure that this Pensions Director complies with what I have just said.

*(Applause)*

**Mr. Speaker:** Very well! I think the matter must rest there now.

**Mr. James Maina Kamau:** Thank you, Mr. Speaker, Sir. It is true that the Vice-President has consulted me and he has directed me to an officer in his officer. But this is very serious injustice. Could he would consider paying this gentleman all his dues with some interest?

**Mr. Speaker:** Mr. Vice-President, the hon. Member is asking that you consider paying interest in addition to the pension.

**Mr. Musyoka:** Mr. Speaker, Sir, I may not want to commit on that particular issue of interest, but whatever is legitimately due to Mr. Njuguna will be paid within a maximum of this month. I actually said two weeks, but I think within that period, we will be able to sort him out.

**Mr. Speaker:** Very well, we will want to go back to hon. Sheikh Dor!

## QUESTION BY PRIVATE NOTICE

### LAND OWNERSHIP IN LAMU COUNTY

**Mr. Yakub:** Mr. Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Could the Minister provide the names of land owners and acreage of ownership in Lamu County and those issued with title deeds in the last ten years and indicate the specific dates they were issued?

(b) Could the Minister confirm that the Government plans to settle persons displaced during the 2008 Post-Election Violence (IDPs) in Lamu County and, if so, is the Minister aware that the plan is creating tension in the area?

(c) What measures is the Minister taking to ensure that the concerns of the residents are addressed and could the Minister consider resettling the local IDPs first before resettling IDPs from outside the County?

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, I beg to reply.

(a) The names and acreage of land owners in Lamu County in the last ten years is as contained in this annex that hon. Sheikh Dor has looked at and which I am laying on the Table.

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

(b) There are no plans to settle any Internally Displaced Persons (IDPs) in Lamu County.

(c) Since there were no persons displaced during the 2008 post-election violence in Lamu County, the local residents have no cause to be apprehensive over the matter.

**Mr. Yakub:** Mr. Speaker, Sir, I wish to thank the Minister. The list is very detailed and I request for more time to go through it. However, if you allow me, I will ask a supplementary question.

**Mr. Speaker:** I would not allow you to do it piecemeal. If you are ready, you must go all the way to conclusion.

**Mr. Yakub:** Mr. Speaker, Sir, I have just received the list less than two minutes ago.

**Mr. Speaker:** Very well, say you need time.

**Mr. Yakub:** Mr. Speaker, Sir, please, allow me time to go through it and we revisit it next week.

**Mr. Speaker:** Mr. Minister, are you comfortable if we defer this Question to Tuesday, 2.30 p.m.

**Mr. Orengo:** Mr. Speaker, Sir, I am very comfortable. I think the hon. Member needs time to interrogate the list and then he can ask questions.

**Mr. Speaker:** Yes, indeed; so it is deferred to Tuesday, next week at 2.30 p.m.

*(Question deferred)*

That then brings us to the end of Questions.  
Next Order!

## MINISTERIAL STATEMENTS

### DELAY IN TABLING LIST OF HON. MEMBERS NAMED IN DRUG TRAFFICKING

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, on Thursday, 3<sup>rd</sup> February, 2011, hon. William Kabogo, Member of Parliament for Juja Constituency, rose on a point of order seeking a Ministerial Statement on the tabling of a report on the drug trafficking implicating some Members of this House.

Mr. Speaker, Sir, in the statement, the hon. Member sought clarifications as to why the Minister cannot present a report to the House after more than 30 days had elapsed, despite having promised the House to do so. He also requested that the Minister attends to the matter of a speech given by the American Ambassador on 16<sup>th</sup> November, 2010, in Mombasa stating, and I quote:-

“Today, I am announcing, based on reliable and corroborative reports, that we have taken steps to ensure that four senior Government officials and one prominent businessman will be permanently prevented from entering the United States.”

He also sought clarification on what steps the Minister has taken to get this corroborated information, for the benefit of the entire republic.

Further, hon. Imanyara, the Member for Imenti Central, sought clarification on whether the Americans are seeking to extradite Kenyans involved in drug trafficking for trial in the United States of America and requested the Minister to explain whether there is an agreement in place to allow Kenyans to stand trial in the United States of America.

Mr. Speaker, Sir, I beg to state as follows. It is, indeed, true that on the 22<sup>nd</sup> December, 2010, I promised this House that I would ensure speedy and thorough investigation on this matter. I also gave the undertaking that, hopefully, the matter would be concluded within a month.

Pursuant to that, I directed the Commissioner of Police to urgently conduct thorough investigation in the subject matter and furnish me with a report. Unfortunately, due to the complexity of the investigation, the Commissioner of Police could not complete the investigations and provide a report within the given period. However, he has submitted a progress report on the subject matter. He is also liaising with the other relevant agencies to get more detailed information as investigations continue.

Mr. Speaker, Sir, I would like, at this particular moment, to table the report. With this Report, I am also enclosing the letter of transmittal of report to me. What the Commissioner has stated is as follows. This is addressed to me. It says:-

“Interim Report on drug trafficking investigations; forwarded herewith, please, find Interim Report on the Drug Trafficking Investigations. The investigations are incomplete. I have written to the Director of Kenya Anti Corruption Commission and the Commissioner-General, Kenya Revenue Authority to pursue the investigation into other areas under their ambit, that is whether the suspects have been compliant in accordance with the Public Officer Ethics Act, No.4 of 2003 and if they have been tax compliant on their many companies. Investigations are still ongoing and we require collaborations of both the KACC and the KRA, in order to conclusively ascertain whether the suspects are compliant or otherwise.”

I, therefore, table it.

*(Prof. Saitoti laid the document on the Table)*

Mr. Speaker, Sir, on the issue of corroborative information, a foreign envoy is the representative of his sovereign state. He is given the mandate to represent and pursue the interest of his country. The Vienna Convention on Diplomatic Relations to which both Kenya and the United States are parties, provides him with this framework. He is, therefore, free to pursue the interest of his country.

Mr. Speaker, Sir, notwithstanding this, I requested the American Ambassador, this is in reference to the statement that he made on 16<sup>th</sup> November, 2010, in Mombasa; to provide me with the names and the details relating to the senior Government officials he talked about. In his response, he sent me a dossier with a covering letter, which mentioned the four hon. Members of this House, amongst others, including, of course, the name of that particular businessman. This document is essentially now in the public domain because it was even given to some other Members. But more importantly, the covering letter was copied to the Right Hon. Prime Minister, who as you may very well recall, was in this House on 22<sup>nd</sup> December, 2010, when I responded to complaints by hon. Mbuvi. The Prime Minister admitted that he had received this particular dossier. This dossier was also given to PLO Lumbumba. I, therefore, would like to table this document because it is already in the public domain.

*(Prof. Saitoti laid the document on the Table)*

On the clarification sought by hon. Imanyara, an extradition treaty was signed between the United States of America and the United Kingdom in London on 22<sup>nd</sup>, December, 1931, which was also applicable to Kenya. It came into force on 24<sup>th</sup> June, 1935. Subsequently, there was an exchange of notes, signed in Nairobi on 14<sup>th</sup> May, 1965 and 19<sup>th</sup> August, 1965. It came into force on the latter date by which Kenya and the United States of America agreed that the Treaty of the 22<sup>nd</sup> December, 1931 would continue to be in force.

The original 1935 Bilateral Treaty at that time is noted in Article 3(24). Cap.76(2) 9(i) of the Laws of Kenya on extradition from foreign countries describes an extradition crime as that which is committed within the jurisdiction of Kenya. It is one of the crimes described in the schedule. The latter states those crimes include narcotics and dangerous drugs and, specifically, offences related to narcotics and trafficking in dangerous drugs.

Mr. Speaker, Sir, Cap.76(12) on banking of warrants issued in another country further states that where a warrant has been issued in a country to which this part applies for the arrest of a person accused of crimes punishable by law in that country, and he is, or is suspected of being on his way to Kenya, a magistrate may, if certified that the warrant was issued by a person who had authority to issue it, endorse such a warrant. Therefore, the question as to whether the Americans are seeking to extradite Kenyans involved in drug trafficking to be tried in the USA--- I wish to confirm that, so far, Kenya has not received such a request.

The fight against drug trafficking in the country remains an enormous challenge and requires concerted efforts of all stakeholders to stem the vice. The foregoing, notwithstanding, I wish to point out that the Government is in the process of strengthening the Anti-Narcotics Police Unit by posting more senior and well trained officers. We want to start regional offices to deal with the drug menace. The Government, in collaboration with friendly partners, is in the process of upgrading the Anti-Narcotics Police Unit into a fully fledged drug enforcement agency that will be fully equipped and adequately staffed with a multiplicity of professional competencies. In addition, international collaboration on information, intelligence gathering and capacity building on this matter has been stepped up so as to jointly address that demand and

supply sides of the drug menace. Moreover, Government agencies, including the Kenya Revenue Authority (KRA) and the Kenya Anti-Corruption Commission (KACC), will also play a critical role in the provision of information that will assist us to apprehend the suspects.

It is also important to inform this august House that following the intensive crackdown on drug trafficking, the Government has taken victims to rehabilitation centres within and beyond Government hospitals. Adequate drugs are being supplied to treat victims with withdrawal symptoms.

Mr. Speaker, Sir, finally, I would like to state here that the Office of the Right Hon. Prime Minister is co-ordinating an Inter-Ministerial Committee comprising the Provincial Administration, the Kenya Police, the KACC, the NACADA, the KRA and the Immigration Department to come up with strategies to address the menace.

**Mr. Speaker:** Hon. Members, we will take requests for clarification from that Statement by the Minister, beginning with Mr. Kabogo.

**Mr. Kabogo:** Mr. Speaker, Sir, thank you. I have listened quite carefully to the Minister and to say it simply, he is playing games with the names of hon. Members. Why do I say so? On Tuesday, 15<sup>th</sup> February, 2011, when the Temporary Deputy Speaker was in the Chair, the Minister said on page 29 of the HANSARD: “As a matter of fact, Mr. Kabogo knows that I have already talked to him informally and informed him that I will, indeed, table the report tomorrow in the afternoon.” The Temporary Deputy Speaker says in the next sentence: “Very well, Mr. Kabogo! Let us settle the matter. The Minister has already taken it up with me and he will bring a comprehensive report to the House.” I have quickly looked at this Report that he has tabled – the one I have just picked from you – and on page 47 of this Report, it says: “The complete documents, investigations file and the final report are now forwarded to you for your perusal and directions.” But if you look at that Report that he has tabled and I want to be honest, Prof. Saitoti talked to me extensively that day and Mr. Mwau was sitting on the Front Bench. He said that he does not understand why the Commissioner says that the Report is interim and yet, inside the report, it shows that it is final. He was sharing his frustrations with me and Mr. Mwau on the Front Bench. It is evident that Prof. Saitoti is working under the directions of someone else so that they can continue to call us suspects – Members of this House. He is asking for more and more time and yet, the document itself says it is comprehensive. The Chair then directed that a final and comprehensive report be brought to this House. We are aware that this is the game that the American Ambassador is playing with the Minister, so that the issue of the deferral of the “Ocampo Six” matter can get the support of the Americans. They want to jettison us; they want to continue calling us suspects and yet, he knows that investigations have been completed and he has shared that information with me here in the House. Are we going to allow this House to be used like this? In this Report, he must say that we are exonerated. We are clean and if they want to bring CIDs from America or wherever, then we will deal with the matter at that point in time.

**Mr. Speaker:** Very well! I have heard you, except one part. You have said that according to the HANSARD or by your own assertion, the Speaker promised that an exhaustive report will be brought. Is that so? The Speaker has no capacity to make that promise.

**Mr. Kabogo:** Mr. Speaker, Sir, if you heard me--- I want to repeat. The Temporary Deputy Speaker on page 29 says: “---Very well, Mr. Kabogo! Let us settle the

matter. The Minister has already taken it up---” After he had spoken to the Speaker there, he said: “---and will bring a comprehensive report tomorrow.” I am quoting from the HANSARD.

**Mr. Speaker:** Very well! That is the accurate part. The promise is not by the Speaker. The Speaker is expecting that the Minister will bring an exhaustive report.

**Mr. Kabogo:** Mr. Speaker, Sir, I stand corrected. It is the Minister who promised the Speaker.

**Mr. Speaker:** That is it!

**Dr. Machage:** On a point of order, Mr. Speaker, Sir. I beg to be directed on this. I do not remember a substantive Motion being brought to the Floor of this House to discuss Members of Parliament. Is precedence being set for that kind of line or attitude? There is something missing here! Is it in order that a Member of Parliament is being discussed in this House without a substantive Motion?

*(Applause)*

**Mr. Speaker:** Order, Dr. Machage! You are supposed to address yourself to the Statement given by Prof. Saitoti this afternoon. If you had objections with respect to the content of the assertions read by Prof. Saitoti three weeks ago, you ought to have raised the matter at that point. I think you have just been overtaken by the development of events. That is because just now, I do not have before me a record of the assertions that Prof. Saitoti made so as to give you guidance or directions on whether or not you require a substantive Motion. You know that! I am sure you do!

**Ms. Karua:** Mr. Speaker, Sir, I am seeking clarification from the Minister. If he says the report is interim because investigations have to be time-bound, when does he expect these investigations to be complete? Is he lacking capacity or competency within the force? This is an issue where hon. Members should not be held under a cloud and also Kenyans who are crying about the menace should not stay without knowing the real outcome of these investigations.

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. I wish to raise a point of order, first, on the issue of the Minister tabling an interim report in the House, whether it is acceptable as an interim report. I say so, because an interim report should be something temporary, provisional and not definite.

Mr. Speaker, Sir, I might wish to refer to your own ruling when you were on the Chair, you did mention and I quote:-

“Order, hon. Members. This matter must rest now. The hon. Minister of State for Provincial Administration and Internal Security has assured the House that these investigations will be completed within a month. We have a timeline. “

He has also undertaken that there will be thorough investigations.

Mr. Speaker, Sir, those were your words. What he has tabled here is an interim report. I am raising this because every time something is being covered up, investigations are never completed. They are done to the level of interim reports.

Mr. Speaker, Sir, we have cases where interim reports were made for the Goldenberg scandal, the pyramid schemes scandal and now it is drug trafficking. I wish to find out from you whether an interim report is acceptable in this House. This is

because it is against your ruling which was very clear that whatever is tabled here must be conclusive.

Finally, he did not come out clearly because he has said it is a progress report. Is he asking for more time to conclude this matter?

**Mr. Speaker:** Very well. What is the date of those directions?

**Mr. C. Kilonzo:** Mr. Speaker, Sir, these are dated 22<sup>nd</sup> December, 2010.

**Mr. Speaker:** Prof. Saitoti, note that it is pursuant to a commitment by you that investigations will be completed within a month.

**Mr. Mwau:** Mr. Speaker, Sir, the allegations at hand undermines the integrity of the House. I say so, because when a newspaper reports that four Members of Parliament of the Republic of Kenya are suspected of being involved in drug trafficking, that particular stigma follows every other hon. Member.

As you are aware, hon. Members are always travelling in and out of the country. In other countries where they go, they are subjected to a more strict customs formality. When you have four Members of Parliament of the Republic of Kenya suspected of being involved in drug trafficking, then it gives the impression that the number could be bigger.

Mr. Speaker, Sir, that report that Prof. Saitoti has tabled, has become a matter of public notoriety because it has been serialized frequently in the media. The Commissioner of Police, the Minister and his Permanent Secretary have not denied that, that is not the report. They have not made any comments about that report. The purpose, therefore, is to continue scandalizing people and creating a sensational process, so that if the final report will indicate that the hon. Members mentioned were only being framed, there can be hue and cry.

Prof. George Saitoti has been a victim of scandalous allegations. I used to see his face; he knows how painful it is to be scandalized. However, it only shows that maybe it was because he was not in that office. Now that he is in that office, he can mete out the same punishment to us. That should not be allowed to happen because Prof. Saitoti is not one of the new Members in this House. He has been here for over 20 years. He has been the Leader of Government Business and he knows how the integrity of the House must be protected.

I made a Statement in this House. I said that I have never been involved in, or committed any criminal activity whatsoever. I believe internal security starts from the bottom right from the police post, police station, up to the police headquarters. Prof. Saitoti is also the Minister in charge of provincial administration. The provincial administration starts from the grassroots; from the village headmen, assistant chief, chief, district officer up to the top. Also his Ministry is in charge of the administration police starting from the constable at the village level up to the commandant.

Finally, the hon. Members in this House are the custodians of the people. The 210 elected hon. Members and the 12 who are roving ambassadors in the constituencies have the data from the grassroots level; right from the village headman, village elders, women leaders and business community, among others. If any other hon. Member or I, is involved in any of these criminal activities, he should be able to state clearly that, that is the case.

I will have no honor entering this Chamber if I am a suspect of drug trafficking. That stigma is---

**Mr. Speaker:** Order, Member for Kilome. I have given you so much indulgence because you are one of those who were mentioned. Could you, please, try in a nutshell, after all that you have said, to state what clarification you want from the Minister, arising from the Statement that he made?

**Mr. Mwau:** Mr. Speaker, Sir, firstly, he has denied the allegations leveled against me and the other hon. Members. He must now table the allegations which Michael Ranenberger has manufactured or fabricated against me and, possibly, the other hon. Members.

Secondly, we must have an apology. There must be an apology because the young people or children who read newspapers today, at the ages of eight, nine or 10 years, who see my name or face on the television, accused of being a drug peddler, 20 years from today, they will still view me as such. The House must protect my integrity and that of others.

Mr. Speaker, Sir, there are three arms of Government. When a member of the other two arms is touched they are always up in arms. When a member of the Judiciary is touched they are always up in arms. We, as Members, of the third arm are under the Speaker. The Chair, therefore, has a duty to protect us from these attacks. It is so painful that the Chair cannot rise and stop this heinous and inhuman attack of character.

You do not know how serious it is when you are going outside the country with another hon. Member and when you are entering maybe, Europe or Britain--- There are two entries; red is for those who have something to declare. Green colour, you have nothing to declare. As you are following your comrade to pass through the entry for those who have nothing to declare, but since your name is indicated in the computer that you are one of the Kenyan MPs who are alleged to be involved in criminal activity, you are picked by the customs officers and taken to the other side. They search you even in your body cavities. They open your bags and search them, to find out if you have something there. It is a pity that Prof. Saitoti can sit here comfortably and stand here to make some useless statements.

The professor has come out clear. If he wants to use us as his bid for the presidency, I am sure that will not work. he must---

**Mr. Speaker:** Very well, Member for Kilome. You have done well. Among the clarifications you want from Prof. Saitoti is that the Speaker must protect you because you are a Member of this House; which I accept. Do you know that at the time you were mentioned by Prof. Saitoti, your colleagues in the Cabinet, should also have protected you from the Cabinet?

**Mr. Joho:** Thank you, Mr. Speaker, Sir. I would like to seek two clarifications. I had an opportunity to look at the Report tabled by the Minister. If you look at page 12 of this Report, at the end of it, it says that the police conducted thorough investigations and interviewed several people. At the end of the Report, with regard to me, it says that none of the witnesses interviewed had linked me to drug trafficking. So, clearly, the police found no evidence against me.

Mr. Speaker, Sir, I would like to tell the Minister - and I have said this before - that we have families. I had an incident where my 13 year old daughter was engaged in a physical fight with another child because she was told that her father is a drug trafficker. That is a very serious allegation. On 22<sup>nd</sup> December, 2010, when the Minister stood here to speak, he mentioned four names of Members of Parliament and one of a prominent

businessman. I also had an opportunity to look at the so-called dossier by the US Ambassador. One of the issues that got me concerned was the following: He said that Ali Punjani was a suspect among the four MPs. In the dossier, it is said that Ali Punjani is an agent of an Israeli Company called Amiran. My Question to the Minister is this: How can it be that a principal is not a suspect but an agent?

The work of the Kenya Revenue Authority (KRA) is to simply collect revenue and ensure that Kenyans are compliant when it comes to tax collection. How can the Minister say that this is an interim Report and that he is waiting for the taxman to say whether hon. Joho or hon. Mwau pay tax?

Mr. Speaker, Sir, we know there is technology in this country. I know that if I walked into the KRA offices today and gave them my Personal Identification Number (PIN), they would tell me whether I am tax complaint or not. This is sad. There is no point for me, or any other person in this House, to be called an hon. Member. We have no business being here if we have already been labeled criminals. Drug trafficking is a very serious offence. Through it, people lose lives. I had an opportunity to visit some people who are suffering from withdrawal symptoms. I have seen how much they suffer. I want to plead and urge the Minister - and he has been a victim before, to serve this country the way it deserves to be served.

**Mr. Speaker:** Very well! Try and conclude. I know how you feel.

**Mr. Joho:** Mr. Speaker, Sir, I urge because I know and I am certain that the Minister knows that we are innocent. That is because the Report by the police is very clear. He should say: "Gentlemen, I apologize because I wrongfully mentioned you." Today, if you Google the name Hassan Joho, the first thing that will appear is that he is a drug dealer. I have never and will never do that. Therefore, I urge the Minister to stand up and say "sorry."

**Mr. Mbuvi:** Thank you, Mr. Speaker, Sir. It is unfortunate that the Minister and a former Vice-President of this nation had to rely on gossip to tarnish our names - four hon. Members of this House and a businessman - notwithstanding our position, the people we represent and our families.

As far as I am concerned, the truth has already been revealed. Kenya is known for having the best detectives in the world. Kenya, apparently, chairs the International Police (INTERPOL), worldwide. The Minister should not mislead this House. He should name the real drug barons, some of whom are sons and daughters of top Cabinet Ministers in this House.

**Mr. Speaker:** Order! Member for Makadara, please, resume your seat. You cannot impute improper motive on the part of a Member of the House without bringing a Substantive Motion. You are asserting and making a positive statement that some of them are sons and daughters of Cabinet Ministers in this House. That is an assertion and you cannot hold it unless you have a Substantive Motion. So, you must withdraw that part. Member for Makadara, I am afraid you have to withdraw that part.

**Mr. Mbuvi:** Mr. Speaker, Sir, when the Minister tabled this Report---

**Mr. Speaker:** Order! Member for Makadara, just comply with my directions, unless you want me to read the proviso to you.

**Mr. Mbuvi:** Mr. Speaker, Sir, with all due respect to this House, I will not withdraw or apologize.

**Mr. Speaker:** Then you are at liberty to leave.

*(Mr. Mbuvi withdrew from the Chamber)*

**Mr. Kabogo:** On a point of order, Mr. Speaker, Sir. This is a very serious matter. My point of order seeks direction from you. I requested your intervention to find this Report from the police--- With the exception of the first paper that I believe was inserted today or yesterday, to show that it was an Interim Report, I seek your indulgence to go through this Report and find that it is final and request the hon. Member to apologize to Members of this House that he mentioned and clear their names. In the dossier that I laid on the Table---

*(Loud consultations)*

I seek your protection so that you can hear me.

**Mr. Speaker:** Order! Hon. Members, please, lower your tones so that we can hear the Member for Juja.

**Mr. Kabogo:** Mr. Speaker, Sir, in the dossier that I tabled, which is in Room 8 and already in the internet and can now be seen all over the world, there is the name of the President of the Republic of Kenya. How can we leave the name of the President to hang all over the internet? He is referred to as [www.county47](http://www.county47). This talks about the President.

**Mr. Mwau:** On a point of information, Mr. Speaker, Sir.

**Mr. Speaker:** Member for Juja, do you want to be informed by the Member for Kilome?

**Mr. Kabogo:** Mr. Speaker, Sir, yes.

**Mr. Mwau:** Mr. Speaker, Sir, I have not read the Report because it has just been tabled now. It is important and I request that hon. Members be given copies of the Report so that they can read the findings against the four Members, so that they can know what exactly the police said. I do not know what the police said about me. Since the Report is here, probably, hon. Kabogo should say what the police said about me, himself, hon. Joho and hon. Mbuvi, so that hon. Members are informed.

**Mr. Speaker:** Prof. Saitoti, I want you to respond to the clarifications so far. We will then take another set of five. However, hon. Members who are not mentioned by Prof. Saitoti will be allowed to seek only one clarification. I will give further directions as soon as we finish with those five.

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

**Mr. Speaker:** Order, Member for Juja! As I see it, you have made your point, but I will still give you an opportunity again, if necessary. Let Prof. Saitoti make his response first.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, when I promised the House that I will bring the report, I was serious with the fact that I was going to bring a report here. Indeed, I directed the Commissioner of Police to ensure that thorough investigations, especially on the Members of Parliament who were named here, are carried out. That work was expedited as soon as possible.

I was unable to bring this report much earlier, and I want to repeat what I said, that unfortunately, due to the complexity of the investigations, the Commissioner of Police could not complete the investigations and provide a report within the given period. However, he has submitted the appropriate report on the subject. The Commissioner of Police also liaised with other relevant agencies to get more detailed information and verifications. This is captured fully in the letter of transmittal to me by the Commissioner of Police. Mainly, the area of drug trafficking is extremely complex. The investigations require much more time than we probably thought that they would have. This is the report that has been given to me. I have been under obligation to discharge my duty and bring a report. I do not think that it was stated anywhere that I should not bring an interim report. I was asked to bring a report and I had to abide by your ruling that I must bring the report today. As a matter of fact, on Tuesday, I had tried to ask you for more time. This was not possible. This is the report that I have brought. It was given to me by the Commissioner of Police. There is a letter of transmittal. Yes, the investigators are under me, but at the same time, this is what they have done.

It should also be recalled that even when I made the Statement and said that I would carry out this work and bring a report within a month, the Prime Minister also said that we may require more time, perhaps even two months. So, it was very clear to this House that although the police were undertaking an investigation, there was also another organ of the Government which was undertaking the same. Therefore, this has not been brought here out of malice. It has been brought here to inform the Members of Parliament how far the investigations have reached. I have been fairly transparent, contrary to what has been stated. Hon. Kabogo indicated that there was a Statement that was made by the Ambassador of the United States of America on 16<sup>th</sup> November, 2010. In that Statement, he stated that four senior Government officials and a businessman had been banned from travelling to the United States. I did my duty, as a Minister of State for Provincial Administration and Internal Security, on matters which have to do with crime. I talked to the American Ambassador and told him that I wanted to have the information about the Government officials, including the businessman, who had been banned from travelling to the United States for drug trafficking.

Mr. Speaker, Sir, I have accordingly tabled before this House this afternoon the dossier which was forwarded to me by the American Ambassador, including a covering note on matters of drug trafficking. It is upon the receipt of that document that I said that investigations must be carried out. Drug trafficking is a very grave crime. We know the harm it is doing in our country. So, we started working on it. This matter came into this Parliament as a result of a Statement made here by hon. Sonko, complaining against police harassment.

**Mr. Kabogo:** On a point of order, Mr. Speaker, Sir. This Minister is playing games with this House. He is evading the matter that is before you to try and just argue that these are grave issues. I invite you to quickly look at this report. The basis of the investigations is a dossier from the American Ambassador, which is not part of this report. How can a report be prepared without the base or the complaint document? He wants to tell the House that this is a grave matter that needs more time to investigate. As hon. Mwau has said, if you look at each of the Members of Parliament who were investigated, for example, hon. Harun Mwau, you will realize that no evidence has so far

been found to link him with drug trafficking. This Minister is attempting to keep us on the list of suspects, so that he can please whoever he is working for.

With regard to hon. William Kabogo, if you look at the last sentence on page 10 of this report, again, you will see that no evidence has so far been adduced connecting him to drug trafficking. Are you going to allow this Minister to get away with all this? This document is final and I wish to invite you now, if possible, to make a ruling on its finality.

**Mr. Speaker:** Order! I will obviously find time to read that report, but as at now, I will want the Minister to respond to the request for clarification. Member for Juja, I know how you feel about this matter, obviously. That is why I am according you as much time as possible for you to ventilate on the matter. Obviously, your whole integrity is at stake and on the line. So, I appreciate that. I quite understand.

Prof. Saitoti, you have referred to a Member of this House as “Sonko”. Who is “Sonko”? You must withdraw that and apologize because I have no such Member in my record!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I withdraw that remark. I was referring to hon. Gideon Mbuvi.

However, let me make one fundamental clarification. It is important that we see this matter within the context it came about. Hon. Kabogo wrote me a letter on 20<sup>th</sup> December, 2010. It will be recalled that I talked of the Members being investigated on 22<sup>nd</sup> December. This is what hon. Kabogo wrote to say. I cannot read all of it, but in part, it says that:-

“I write to address you as under: Defamatory, malicious and derogative remarks made against myself by Michael Rannerberger, United States Ambassador, in a statement---“

**Mr. Mwau:** On a point of order, Mr. Speaker, Sir. My request is that we should not waste a lot of time on this matter. I feel that the Minister should only say that the report is final. If it is not final, he should explain to the Chair the areas which have not yet been investigated. I say so because, as I stand here, I do not know what Michael Ranneberger has said that I traffic. Which drugs? Is it cocaine? Is it bhang? What is it? I have no idea. After the Minister has received the information from Michael Ranneberger, he should be able to tell the House that Michael Ranneberger says that “the MPs are trading or trafficking in the following drugs”, but just making a blanket statement that “they are drug traffickers” is an insult. So, the Minister should only be able to be very clear and precise, so that we remove the ambiguity.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Minister, could you try and go through the list quickly?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, would you like me to go through the list?

**Mr. Speaker:** I mean the requests.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, on the request by hon. Mwau, having tabled this report, it is now the property of the House. So, it is not possible for me to singlehandedly change it. However, this House, in its own wisdom, can decide to accept it as it or amend it or throw it out altogether. That is my answer to the clarification sought by hon. Mwau.

Mr. Speaker, Sir, what I want to say here is that hon. Kabogo wrote to me and said:-

“---Under the circumstances, and based on the contents of the outrageous, ridiculous, nonsensical, malicious and hollow accusations devoid of any known authority, unsubstantiated and reeking of diplomatic impunity, I am ready and willing to be investigated on all those accusations and do make the following demands---.“

Mr. Speaker, Sir, the most important thing here is that hon. Kabogo himself offered that we carry out investigations. In other words, what I stated here – that he was one of the hon. Members to be investigated – is something he asked himself.

**Mr. Kabogo:** On a point of order, Mr. Speaker, Sir. I will not allow---

**Mr. Speaker:** Order! Order, Member for Juja!

**Mr. Kabogo:** Mr. Speaker, Sir---

**Mr. Speaker:** Order, Member for Juja! Obviously, we cannot allow an altercation between you and Prof. Saitoti. We have some procedure to follow here. I know you feel very strongly about this matter, and I have given you so much indulgence so far. I am prepared to give you even more indulgence but, please, let us calm down.

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

**Mr. Speaker:** What is it?

**Mr. Kabogo:** Mr. Speaker, Sir, the line this Minister has taken is that I knew and I offered to be investigated. The dossier was in the public domain. I wrote to him because I knew he had it. He has not put the dossier in this report. He has put some names in this report selectively, because there are those he is protecting; so that they are not mentioned in this House.

Mr. Speaker, Sir, that dossier is in this House. The letter he is attempting to use against me is a property of this House, tabled by none other than me. I have been chasing this matter on a weekly basis, and you know about it. There are many people mentioned in that dossier. That dossier, on the last page, says “the second wife of the President of the Republic of Kenya.” He is trying to protect names of people. That document, in my possession---

*(Applause)*

**Mr. Speaker:** Order! Order! Hon. Members, this matter is obviously very sensitive, and is very vague, but the best way to deal with it is that all of us will have to be a bit rational and calm; because I know it evokes a lot of emotions. I know that it is a very serious matter but I do not think it would be right for us to escalate the damage caused by mentioning even more persons before investigations are completed.

Member for Juja, please, it does not help if you hurt somebody else. It does not help you. Let us just be careful about this and, as a matter of fact, I am listening to all the points that you have raised. At the end of this, I will be able to address myself to those issues and see how best this matter can be brought to an end expeditiously. That is what I will be seeking to do at the end of this exercise. So, let us refrain from causing more damage, or is it collateral damage?

**Mr. Kabogo:** Mr. Speaker, Sir, if I may finish raising my point of order, I am not trying to say that anybody mentioned in that dossier is a trafficker. I am only saying that one malicious document mentions people – it even mentioning the most credible force on

this land – yet Prof. Saitoti wants to keep the suspense moving, so that he can please someone by continuing to say “five Members of Parliament.” So, he should accept and put the dossier here. It is for that purpose that that dossier is not part of this report.

**Mr. Speaker:** I hear you, Member for Juja.

**Mr. Kabogo:** Mr. Speaker, Sir, therefore, my issue with Prof. Saitoti, should be dealt with, both by him and you, as the Head of this House. He must find that Members of this House mentioned by him on 22<sup>nd</sup> January, 2011, have not been found to be linked with drug trafficking at all; he must clear our names and apologise. Nothing less!

**Mr. Speaker:** Member for Juja, you have made your point fairly forcefully.

**Eng. Maina:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** What is it, Member for Mathira?

**Eng. Maina:** Mr. Speaker, Sir, as we go through this matter, it is important that we maintain the dignity of this House and the sovereignty of this country by respecting various offices. It is on record that His Excellency the President at one time specified his family members. It is not fair, and I seek your guidance over this matter as to whether anybody should continue deviating from the truth given to us. I think that is completely out of order, and the remarks should be withdrawn.

**Mr. Speaker:** Order! Order, Member for Mathira!

Hon. Members, according to our Standing Orders, an hon. Member is not allowed to invoke or refer to the name of His Excellency the President unless he is stating an official position, in which case it must be a Minister. I do not believe the Member for Juja intended to do that, did you?

**Mr. Kabogo:** Mr. Speaker, Sir, I am one of those Kenyans who are worried about the mention of that office. I am not mentioning that office. I am saying it is in that document that Prof. Saitoti is relying on to investigate us.

**Mr. Speaker:** Very well! Let us leave it there.

**Mr. Kabogo:** Mr. Speaker, Sir, I have not mentioned that office, and I have a lot of respect for the President.

**Mr. Speaker:** Then leave it where it is.

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): On a point of order, Mr. Speaker, Sir. I have been listening very carefully to this debate. The way the English language is used is important. I have heard two important words; “so far” and “interim”. So, why do we not wait until the full report comes out? Why should we ask Prof. Saitoti to apologise when the full report is coming? In the interim, nothing has been found so far, but something might be found.

*(Applause)*

**Mr. Speaker:** Order! Order, hon. Members! Let us try and calm down! Prof. Saitoti, can you try and conclude this matter? Make your responses quickly.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I want to remind this House that on 22<sup>nd</sup> December, 2010, I said I was requested to respond to requests made by hon. Members here that I should mention other Members of Parliament. So, I was not being discriminative. I was told that I should name other hon. Members, because I had talked about Mr. Mbuvi. I want to say it here that Ms. Karua in the HANSARD said, and I quote:-

“The Minister told us the other time that he could not name the suspects of drug-trafficking because they are under investigation. Now he has mentioned Mr. Mbuvi, who is a Member of Parliament. We would like to know the others to avoid looking like there is discrimination against the hon. Member for Makadara.”

Mr. C. Kilonzo also followed up and said:-

“I would also want the Minister to clarify to this House that they received the report from the United States of America (USA) through the Kenya Anti-Corruption Commission (KACC). When the Prime Minister stood in this House, he told us that investigations were being done and we need to be told which Members of Parliament are involved. There is a blanket condemnation on the Members of Parliament. Now that Mr. Mbuvi has been identified as one of the six, could the Minister tell us whether they have finished investigation of other Members of Parliament, and whether that report has any substance? Could he also tell us who the others are, whose names have not been disclosed?”

Mr. Speaker, Sir, I want to say that there were demands here. I told this House the circumstances under which Mr. Mbuvi was actually being followed by the police. It was proper for me to include him in the statement that I gave here. I said that Mr. Mbuvi, among other things, was being followed on matters related to drug trafficking. I also want to state here that Mr. Kabogo himself offered to be investigated. To the extent that we received that dossier, we then went on to carry out the necessary investigations. The key thing here is that I was required to produce the names of those Members of this House--- As for the dossier by the USA ambassador, let me clarify that there is no wife of the President who has been named in the connection with drug trafficking.

I have already stated the reasons why I could not bring the complete report. The complete report could not be delivered for the reason that we are dealing with an extremely complex matter; drug trafficking is very difficult. That is the report that was brought to me by the Commissioner of Police; there is no way that I can sit down and falsify the report by the Commissioner of Police. This is not the final report. I have to be transparent. I have also tabled the letter of transmittal from the Commissioner of Police stating the reasons.

Mr. Speaker, Sir, if you read this report, regarding the four hon. Members, Mr. Kabogo, Mr. Mwau and Mr. Joho---. It says: After discussing what has been carried out we cannot state that we have made a conclusion about all of them. None of the witnesses interviewed has linked them to drug trafficking. That is in the case of Mr. Joho. No evidence has been adduced connecting Mr. Kabogo to drug trafficking. Even for Mr. Mwau the conclusion is that no evidence has so far been found to link him to the drug trafficking. There was also an allegation against Mr. Simon Mbugua, which was brought about by Mr. Kabogo. Again, as far as Mr. Mbugua is concerned, it also states as much; there is no evidence linking him to drug trafficking.

Mr. Speaker, Sir, I just want to talk about the Members of Parliament here---

**Mr. Speaker:** Order, Prof. Saitoti! All the people mentioned in the allegation which you made on the Floor of the House are Kenyans; so, you must cover all of them.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, they are all covered in this document.

**Mr. Speaker:** Yes, you are reading the outcome of an interim report. You cannot discriminate against other citizens, and talk about hon. Members. It is the fairest thing to do. Otherwise, you will be selfish.

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. I want to seek guidance. If he goes on that way, he will be making the same mistake, and the Government will not be able to investigate the matter. In this document, it is true that there are daughters and sons of Ministers. I am asking the Chair if it is asking the Minister to go ahead and name these family members here.

**Mr. Speaker:** Order, hon. Member for Yatta! Maybe you did not follow what I said. Prof. Saitoti had started to go through an interim report, and he said that according to the report, there is no evidence linking drug trafficking to Mr. Kabogo, Mr. Joho and Mr. Mwau. If in the interim report he is exonerating Members of Parliament, what is he doing with the others? That is it. It is damaging. If anything, it is ameliorating the damage.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, the question here is, if hon. Members claimed that they were mentioned before investigations were done---

**Mr. Speaker:** Order, hon. Member for Yatta! You are now going to a different line altogether.

**Mr. C. Kilonzo:** I stand corrected, Mr. Speaker, Sir.

**Mr. Speaker:** You know the rules of this House!

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. Further to your assistance to the Minister, I want to remind him that he, indeed, mentioned one other Kenya, a certain Ali Punjani, and he is under obligation to either exonerate him or tell us more about that particular Kenyan; he cannot just discriminate, as the Speaker is saying. He did mention Ali Punjani; I am not talking about the others whom he did not mention. I thought I heard such a name, and I think he is under obligation to also tell us something about it.

**Mr. Speaker:** Yes, Mr. Minister. You have to be fair.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I concur with your observation, namely that I cannot just go on and talk about every Member of Parliament. The names I was required to tender here were those of Members of Parliament. That is why I was going that way. However, clearly, I have no doubt at all that were we to proceed that way, the general public will see us, Members of Parliament, to be very selfish.

Mr. Speaker, Sir, I would like, therefore, to revert to the duty that I was required to perform, which was to come and present the report. Every Member then can actually go and study it. I think that will be the safest thing to do.

**Mr. Speaker:** Hon. Members, I will take the last five, beginning with Mr. Gabbow!

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

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. He did not answer my question.

**Mr. Speaker:** Mr. Gabbow, please resume your seat for a moment!

The Member for Chepalungu is unhappy that his request has not been responded to.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I thought I responded in a manner I thought was fair. This was to say that, that particular gentleman, who is a Kenyan has been investigated and the result of that is contained in this document.

**Hon. Members:** Tell us! Tell us!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, this Report is circulated here. I hope that hon. Members will read it.

**Mr. Speaker:** Hon. Members, the document has been tabled. I think then it will speak for itself on a balance.

Mr. Gabbow, please, proceed!

**Mr. Gabbow:** Mr. Speaker, Sir, then it is not in order for the Minister to have selected Members of Parliament and said they are innocent. What is going to happen to the rest of Kenyans, especially Mr. Punjani? We are also told that Mr. Punjani is an agent of M/s Amiran. What about M/s Amiran? Are they being investigated and what is the result?

**Mr. Speaker:** Minister, please, just take notes.

Member for Isiolo South, please, proceed.

**Mr. Bahari:** Mr. Speaker, Sir, this issue is very important as you can see; the silence of the Members attest to that; it affects the life and health of Kenyans. On the other hand, it also touches on the Members of Parliament and other citizens. Now that the Minister has said from the report that this matter is complex, and because we require expeditious investigations, can the Minister confirm that the police have the capacity to investigate this matter to conclusion, so that tomorrow, he does not come back and say that he has other methods to employ to investigate the matter, and that way keep it pending forever?

**Mr. Joho:** Mr. Speaker, Sir, I sought two clarifications that the Minister deliberately chose to ignore---

**Mr. Speaker:** Order! The Minister does not "ignore". If he makes an omission, then it is your duty to remind him that he has not responded to your clarification.

**Mr. Joho:** Mr. Speaker, Sir, thank you.

If you look at page 12 of the Report, it says: "None of the witnesses interviewed has linked him to drug trafficking". I want the Minister to say what is interim about this? Even if we go by the advice of Mr. ole Ntimama, it does not even say, "so far". It clearly says, "None of the witnesses". Therefore, there is nothing interim about this.

Secondly, I raised the point about an agent being a suspect and the principal is not even talked about. The dossier talks of an Israeli company called "Amiran". It says, "Amiran ties with police allowed it to move cargo in and out of Kenya without inspection". Does it, therefore, mean the police are also suspects? Can the Minister come out clearly and say why it is that an agent like Mr. Punjani is a key suspect, but the principal, a company, is said to be linked to the police.

**Mr. Speaker:** Order, Member for Kisauni! You know if you look at our Standing Orders, they say we should avoid being repetitive. Mr. Gabbow has just raised the same point! Member for Kisauni, please, have some decorum. Let us not belabour matters. I know it is an emotional matter. I appreciate the importance of it.

Member for Ndaragwa, please, proceed.

**Mr. Kioni:** Mr. Speaker, Sir, I am looking at the document that was tabled by the Minister. It is dated 7<sup>th</sup> December 2010. This document came from the American ambassador, Mr. Michael Rannerberger. On page 1 the document talks about a Mr. Adamo, who is mentioned as having worked at a company called M/s Amiran. M/s Amiran is said to be an Israeli company. The name of Punjani features in the document as

having been a clearing agent. We had an opportunity in the Committee on Defence and Foreign Relations to meet the Israeli ambassador to Kenya. We asked him whether he has been contacted on this issue, and he said he was hearing it from us for the first time.

It was also confirmed to us that this company is a British company. We do not have Ali Punjani as one of their clearing agents. They have never heard of a person by the name "Adamo" in their company.

In my opinion, this is a document that is full of allegations based on nothing. It is causing a lot of prejudicial publicity to many Kenyans. It was originated by the American ambassador to Kenya. What has the Government done or is about to do to this individual, who seems to have formed that kind of--- This document is full of names! Kenyans have been subjected to unnecessary publicity. What is the Government doing about it?

**Mr. Speaker:** Member for Limuru!

**Mr. Mwathi:** Mr. Speaker, Sir, I am also seized of the same document, which emanates from the ambassador of the United States of America (USA), and which contains very many names, and not just those of the four Members of Parliament. For the sake of not furthering the injuries already caused to the Members of Parliament, I will not mention those names. It is true that some sons and daughters of some Members of Parliament are this dossier; it has been laid on the Table.

If this document has come from the USA ambassador--- You can see the acrimony it has caused, and the pain Members of Parliament are going through. It is just like what the Ocampo six are going through, because of injustice from foreign masters. What informed the Minister's decision to pick on the names of four Members of Parliament, and one citizen and leave all the other names contained herein?

**Mr. Speaker:** Hon. Members, we will not allow more names to be mentioned, because doing that does not help the matter. Those Kenyan citizens are not here. They do not have the advantage of the Floor to say their piece.

Member for Keiyo North, please, proceed; That will be the last one.

**Mr. Chepkitony:** Mr. Speaker, Sir, indeed as it has been said, this matter is very serious because it involves an Ambassador of another country. Has he tried to seek for international co-operation the way it happened when there was a grenade explosion in Eastleigh Estate? This country sought for assistance from the Federal Bureau of Investigations (FBI) immediately. Has he sought assistance from the FBI or any other foreign investigating body so that this matter can be investigated with speed and the transparency it deserves?

**Mr. Mwau:** On a point of order, Mr. Speaker, Sir. I would want two to three clarifications. First there has been a suggestion that the FBI or the CI A should be involved in the investigation, whereas the person alleging is the American Ambassador. You cannot give a dog meat to take to the House because it will eat it. So, there is no way they can be impartial in their investigations because the American Ambassador is the complainant. Therefore, they would want to look for evidence to justify or to link the hon. Members whom he has actually scandalized.

Secondly, does the Report say that the four Members of Parliament have not been linked to drug trafficking?

Thirdly, I agree that drug trafficking is a serious menace to the public. If that is the case, I have no problem with the police and the other people continuing to investigate

until we unearth the actual drug barons. We should not use digressionary situations where we are diverting the actual issues. The Minister should be able to confirm that, to date, the four Members of Parliament are not linked to drug trafficking.

**Eng. Maina:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Member for Mathira! I will not allow further ventilation on this matter. No more points of order.

**Eng. Maina:** It is regarding the conclusion of this matter.

**Mr. Speaker:** Order Member for Mathira! You do not have the Floor!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, the point of the matter is that I have tabled this document. Before, you had drawn my attention to the fact that it would be extremely unfair to only read the names of the hon. Members of Parliament. I had actually basically stated what the police found out which was that, Messrs Kabogo, Mwau, Joho, Mbugua--

**An hon. Member:** Sonko!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, he has not been mentioned in connection with that, but I do not want to talk about it.

**Mr. Kutuny:** Jambo la nidhamu Bw. Spika. Wakereketwa waliotajwa wa mihadarati hapa Bungeni ni Wabunge wanne ambao wamekuwa wakichunguzwa. Waziri amekariri vizuri na akasema kwamba uchunguzi umefanywa na ukaonyesha kwamba hawana hatia. Anazingatia kuzungumzia watatu, lakini hajatueleza kwa undani uchunguzi uliofanywa kwa mheshimiwa wa Makadara, Bw. Gideon Mbuvi, ama kwa jina la utani “*Sonko*”; kama yeye hana makosa ama hahusiki katika mihadarati. Ningependa Waziri afafanue zaidi.

**Mr. Speaker:** Order! You have made your point. Although it is not regular, we will allow it.

Minister, as you make your responses can you cover that as well? As a matter of fact, you also had mentioned the former Member for Kamukunji. Maybe you may want to mention his case as well.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir that is alright!

In the case of hon. Mbugua, the police said that they did not find any evidence on him. In the case of Gedion Mbuvi Kioko, this is the conclusion:-  
“He denied allegations of involvement in drug trafficking, only admitting verbally that he was in the business of large frauds”

**Hon. Members:** What? What?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, it says that he denied two things: He denied his involvement in drug trafficking and also in the business of large frauds.

**Hon. Members:** Ooh!

**An hon. Member:** What is the conclusion?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, he denied any relationship to hon. Kabogo and hon. Mwau, apart from the fact that they were fellow Members of Parliament. In other words, the allegation was that he was being linked to drug trafficking through hon. Kabogo and

hon. Mwau. So, the effect is that, in a way, that kind of linkage which was supposed to be the centerpiece of his involvement in drug trafficking does not hold.

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

**Mr. Speaker:** Order, Member for Vihiga! We cannot go on like this much longer. Member for Vihiga, we did say that we will allow a last round of five requests for clarification. Now you are standing on a point of order and you are seeking clarification. Surely, that cannot be regular. Honestly! Minister, proceed!

**The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti):** Mr. Speaker, Sir, I think what I have actually stated clearly here is the fact that he was not in any way; family-wise or business-wise involved with hon. Kabogo and hon. Mwau because that is the link that was used to link him to drug trafficking. As a result---

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

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

**Mr. Speaker:** Order, Member for Juja! Relax!

**Mr. Kabogo:** I am relaxed, Mr. Speaker, Sir.

**Mr. Speaker:** When you stand to raise a point of order, you stand in the position where you are supposed to be. You do not move to the microphone until you catch my eye.

**Mr. Kabogo:** On a point of order, Mr. Speaker, Sir. Carefully listening to Prof. Saitoti, he is not trying to move this thing further by saying that hon. Mbuvi's link to drug trafficking is his involvement with hon. Mwau and hon. Kabogo. That is exactly what he said.

**Mr. Speaker:** Order! As I heard Prof. Saitoti, he said: "It was alleged". Now, you are asserting by questioning that Prof. Saitoti is saying that hon. Mbuvi is linked. Do you see the difference there? Be careful also. You may cause so much damage. When you think you are doing damage control, you are escalating it.

**Mr. Kabogo:** Mr. Speaker, Sir, you have heard the Minister trying to go piecemeal into this Report. The same Report alleges that I am married to hon. Mwau's daughter. He is not even saying that hon. Mwau does not have a daughter, according to this Report. The issue I raised earlier – I need your indulgence – the basis of this Report--

**Mr. Speaker:** Order, Member for Juja! I will allow you the last word, but are you certain that the further statements you are making are really helping you? You know what you are doing is that you are putting even more information to the public. Unless you do not have a problem with it!

**Mr. Kabogo:** I have no problem, Mr. Speaker, Sir. This document is in the worldwide web. I even invite some of our senior colleagues here who seem to want to keep this matter pending to acquaint themselves with the dossier, because their daughters are in this report - hon. Members of this House! What I am saying is that – and this is my final part – the dossier by the American Ambassador is full of untruths and the basis of this report has not been annexed here. I did request, through you, that Prof. Saitoti does annex the complaint in this report. It is as simple as that!

**Mr. Speaker:** Very well. I heard that.

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

(Prof. Saitoti): Mr. Speaker, Sir, I believe that at the time I stopped I was at the point of explaining about hon. Mbuvi. I said that he, himself, denied any involvement with drug trafficking and that has been accepted. I also said that he also went much further to say that the allegation which has also been made in that report that he was also working in drug trafficking in the company of hon. Kabogo and hon. Mwau was wrong and that he never had any personal involvement other than being here. That was also agreed. So, to that extent, as of now, right now in this one here, hon. Mbuvi has been exonerated by the police.

Mr. Speaker, I do not have another organ, and I want to say here clearly that I rely on the police to carry out investigations on crime in this country. I, of course, also take note of whatever whistleblowers tell me and the necessary specialized organs involved in the investigation of the crime. I do not have any other instruments of being able to carry out investigations.

Mr. Speaker, Sir, if I do not take what was brought to me by the Commissioner of Police, then it means that I do not have any confidence in him. That would mean that I will have in possession with me alternative information. I do not have alternative information and that is why I have brought the report to this Parliament.

**Mr. Speaker:** Very well, Mr. Minister!

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

**Mr. Speaker:** Order! Order, Ms. Ndeti! This matter must now rest there, except this. Minister, will you be so kind as to indicate how much longer this investigation will take? On 22<sup>nd</sup> December, you told this House that you anticipated that investigations would be completed in about one month. You are now in the second month. How long will this continue? Any indication on that?

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

**Mr. Speaker:** Order! Order, hon. Member for Limuru! I have already just directed a little while ago that---

**Mr. Mwathi:** But he did not answer my question.

**Mr. Speaker:** Order, hon. Member for Limuru!

Proceed, Prof. Saitoti!

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

(Prof. Saitoti): Mr. Speaker, Sir, the letter from the Commissioner of transmitting the report to me did make it clear that he is liaising with other organs to carry out further investigations.

First of all, Mr. Speaker, Sir, he did mention the Kenya Anti-Corruption Commission (KACC) and we do know for sure that he is already carrying out his own investigation. He also did talk of the fact that he is also awaiting the report--- In fact, he has written to the Kenya Revenue Authority.

I should also, Mr. Speaker, Sir, wish to remind this House that the hon. Prime Minister stood on this very Floor and said that he, too, had received the dossier; that there is a central committee consisting of the police, the KRA, KACC and that also he is going to require other organs from outside this country to be able to carry out investigations because the issue is very complicated. I did say at that particular time I spoke that I do not have the authority to direct the KACC. It is an independent body and I think it will be

better to allow, therefore, all these organs to gather all the information they have, take into account what this report has said and, within a reasonable time---

**Mr. Speaker, Sir,** I will require to be able to also liaise with the Office of the Prime Minister which is chairing the central committee which brings together all these organizations as to when we can be able to bring a comprehensive report.

**Mr. Joho:** On a point of order, Mr. Speaker, Sir. The Minister started by telling this House that he has full confidence with the police, which falls under his Ministry. He went ahead to say that, as per the police, they have concluded their investigations. He is now awaiting the KRA and the KACC. Am I, therefore, in order to ask the Minister to come out clearly to say that under his docket and the police, this investigation is conclusive and we will now question the Prime Minister on other areas, like the KRA and the KACC? But, for the time being, he has said it clearly; and he has not even responded to my point of order that there is nothing interim about my investigation; no witness has linked me to drug trafficking!

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Prof. Saitoti, it would be good if you give some indication of what reasonable time is very fluid; and the lawyers will tell you that reasonable time is infinite!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): I think, Mr. Speaker, Sir, there is, and I tabled here a report from the Commissioner of Police. He talked of the fact that he is now liaising with other organs. In other words, as far as the police are concerned, this is their interim report. But I believe that the name “interim” comes about because whatever they have requires to be collaborated by the other organs. That is why he has stated that he has written to the KACC and the KRA and at this particular time, we would wish to seek the indulgence of this House. I do not want to give an undertaking of a timeline only to come here tomorrow and find that I have failed to give that report. I would like to seek the indulgence of this House to give me up to Tuesday next week so that I can talk to the Commissioner of Police and the other organs to be able to know when a comprehensive report can be brought here.

**Mr. Speaker:** So, are you saying that you want another week to report to the House again?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, even one week--- The Commissioner of Police is out of the country right now.

**Mr. Speaker:** You are categorical that you will report to the House again after one week?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, what will then be coming will be a comprehensive report consisting of all the organs of State.

**Mr. Speaker:** Very well! We will wait to have that further report a week hereafter!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): No, no, Mr. Speaker, Sir, no. I have said that I need to be able to consult the other organs to know how far they have reached for me to be able to come here and make an undertaking of when the comprehensive report can be brought to the House.

**Mr. Speaker:** So, when do you want to be able to come back to report to the House?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): To seek the time, Mr. Speaker, Sir, give me one week; I will carry out the necessary consultations and come and give an indication to this House as to when such a comprehensive report can then be brought here.

**Mr. Speaker:** So, next Thursday, you will be able to make that report?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): No, Mr. Speaker, Sir---

**Mr. Speaker:** Yeah, it is a report indicating when the comprehensive report will be ready! I have heard you!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, this is because the report will be a voluminous document.

**Mr. Mwau:** On a point of order, Mr. Speaker, Sir. The names of the Members of Parliament must not be allowed to continue being publicised in the newspapers, based on falsehoods.

Mr. Speaker, Sir, the Minister is aware of the jurisdiction of the KACC. The KACC has no mandate to investigate drug trafficking. So, the purpose of consulting the KACC, that for me, looks like an exercise that is only a smokescreen. Mr. Speaker, Sir, the KRA's mandate is clearly known. It is revenue collection. They are an agent of the Government for collecting revenue. They are not investigators of drug traffickers. So, if we remove this mirage, there will be adequate intellectual intercourse that will be able to help us finalize this matter. The Minister should not drag this matter, so that our names can continue being bombarded in the internet on daily basis. There will be no way we shall be able to remove them. The sooner we bring this matter to an end, the better it is. I thought he would be able to say that the Members of Parliament, so far, are exonerated, but investigation will continue on drugs. That I will understand.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, the hon. Member can say what he wants, but the fact of the matter is that I was asked to table a report here. The demand was made by this House that I should actually divulge the names of other Members of Parliament who are under investigation by the police. That is not a crime that I committed.

Mr. Speaker, Sir, I have also fulfilled that particular requirement of bringing the report, within the time, albeit in a slightly longer time. I have tabled the report here. Now, the Commissioner of Police has also stated that in his opinion, this an interim report because there are some other organs of the Government that need to be consulted.

Mr. Speaker, Sir, I am under obligation to also lay those facts here on the Table. It is, therefore, up to the House to decide whether this report should actually be held until such a time that the comprehensive report comes. In my view, I hope that, since you have heard about the hon. Member's case, you will allow me as you had already done, to come next Tuesday. I will come here to present the result of my consultation with these other organs, which are not under my own Ministry. They are carrying out investigations and they will tell me when a comprehensive report can be brought here.

**Mr. Speaker:** Very well, you will do so, on Thursday, next week.

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

**Mr. Speaker:** Order! Member for Juja! This matter must now rest at the moment. I have heard the other concerns which you raised and I will endeavour to address myself to them as best as I can, if I have the *locus standi* to do so, and give directions on notice. They are complex matters that I have to look at. I cannot just say that I will do. I may not have the *locus standi* or jurisdiction.

There is a Statement which is slightly formal by the Deputy Leader of Government Business.

## MINISTERIAL STATEMENT

### PARLIAMENTARY BUSINESS FOR THE WEEK

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I wish to make the following Statement in accordance with Standing Order No.36(4) as it relates to the Business of the House, during the week commencing, Tuesday, 22<sup>nd</sup> February, 2011.

Mr. Speaker, Sir, on Tuesday, 22<sup>nd</sup> February, the House will continue discussion on the Second Reading of the Veterinary Surgeons and Para-Professionals Bill, as well as the Tourism Bill. On Wednesday morning, 23<sup>rd</sup> February, 2011, again, the morning sitting is reserved for Private Members' Motions. In the afternoon, again, we will continue with the Second Reading of the Tourism Bill. On Thursday, 24<sup>th</sup> February, 2011, we hope to be entering the Committee Stage of the Tourism Bill, as well as the Veterinary Surgeons and Para-Professionals Bill.

Mr. Speaker, Sir, the House Business Committee will again be meeting on Tuesday, 22<sup>nd</sup> February, 2011 to review this programme and update it accordingly.

**Mr. Speaker:** Order, hon. Members! There should have been another Statement due for delivery from the Minister for Public Works, hon. Chris Obure, but we will defer it until Tuesday, next week at 2.30.

We will now very quickly take requests for Ministerial Statements and I have notice for three beginning with the Member for Limuru.

## POINTS OF ORDER

### GOVERNMENT POLICY ON REVOCATION OF TITLE DEEDS

**Mr. Mwathi:** Mr. Speaker, Sir, I require a Ministerial Statement from the Minister for Lands in regard to revocation of title deeds.

In that Statement, he should address the following concerns: Whether it is in the Government policy framework to revoke any title deed and within which legal framework he is doing it. Which kinds of land parcels title deeds are targeted for revocation and how back in years this will address. How will the Government address the issue of land title deeds, which have multiple transactions? What action is the Government contemplating on those who grabbed land and how will the Government protect innocent individuals of companies which bought land without knowledge of the illegality of the title deed?

Finally, what is the impact of the action of revocation of titles on the financial sector, where titles have been used as collateral?

**Mr. Speaker:** Minister for Lands, when will this Statement be available?

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, can I have 14 days to do it?

**Mr. Speaker:** Very well, two weeks hereafter, so directed.

#### IRREGULARITIES IN RECRUITMENT INTO NYS

**Dr. Eseli:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Youth Affairs and Sports in regard to countrywide recruitment for the National Youth Service (NYS) that was recently conducted.

In the Statement, I wish the Minister to explain how 5,000 youths were recruited and yet from the districts only slightly over 4,000 were recruited. Where did the other 1,000 come from and how were they exempted from the conditions that others who were recruited in the field had to face? In the Statement, the Minister should also inform the House as to what has happened to the officers who were said to have given out fake joining letters to candidates who wanted to join the NYS at a fee. Who were these officers and what action has been taken?

Mr. Speaker, Sir, in the Statement, I wish the Minister to also clarify to us, whether it is true that the Director of NYS might be over the mandatory retirement age of 60 years for public service and why his contract was extended. If, indeed, it is true that there is a probe by the KACC, why is the officer still in service? I hope the Minister could give this Statement, so that we can know whether there is an agreed way of extension of service for directors within the Ministry.

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): Mr. Speaker, Sir, we can do so in two weeks' time.

**Mr. Speaker:** Dr. Eseli, is two weeks okay with you? Is it that complex, Assistant Minister?

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): Yes, he needs information on two issues; the Youth Council and also the Director of NYS.

**Mr. Speaker:** Very well, we will accommodate you accordingly.

#### PRESENCE OF KK GUARDS IN KABOGO'S RESIDENCE

**Mr. Kabago:** Mr. Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Minister of State for Internal Security and Provincial Administration on the circumstances under which the American Ambassador, Ranneberger sent four guards to my house on Sunday, 13<sup>th</sup> February; armed KK Guards. I happen to be his neighbour. Under what circumstances did he send guards to my house to check, while armed, whether I was in and how my fence is made.

Mr. Speaker, Sir, at the same time, I would want to request that I be given armed guards in my house knowing that my enemy lives next door. This is a request I have made to the Minister severally. They were in my house on Sunday, 13<sup>rd</sup>, enquiring whether I was in but what they wanted to do, I would not know. What is it that Amb. Michael Ranneberger sent people to my house to do?

**Mr. Speaker:** Order, Mr. Kabogo! Please do not be repetitive! Prof. Saitoti, those are appearing like very serious allegations. When can you avail that Statement?

**An hon. Member:** Monday!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, somebody is saying on Monday. We do not meet on Monday! I will bring the Statement on Tuesday because the way the hon. Member is describing the matter, the mystery seems to be deepening and so we are going to get down to that.

**Mr. Speaker:** Very well! Tuesday at 2.30 p.m.!

*(Applause)*

The hon. Member wants to know if you can give him security!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, as a matter of fact, I will find out, once again, why the hon. Member has not been supplied with a security guard like all hon. Members. I will do that very quickly.

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

**Mr. Speaker:** Order, Prof. Saitoti! We cannot have both of you on the Floor.

**Mr. Kabogo:** Mr. Speaker, Sir, he wants to tell the House that I have a guard. It is true I have a guard. I am asking for an armed guard at home. The guard who walks with me goes to sleep when I go to sleep. I am asking for a guard for the time being until we find out what it is that Michael Ranneberger wants in my house. Simple!

*(Applause)*

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

**Mr. Speaker:** Order, Mrs. Odhiambo-Mabona!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I would like to invite the hon. Member to come to my office tomorrow at 10.00 a.m. so that we can address that issue of the guard.

**Mr. Speaker:** Very well! Mr. Kabogo, please liaise with the Minister at his office tomorrow and he will see what he can do for you.

Hon. Members, that then brings us to the end of Statements.

## CONSIDERED RULING

### NOMINATIONS OF CHIEF JUSTICE/ATTORNEY-GENERAL/DIRECTOR OF PUBLIC PROSECUTIONS/CONTROLLER OF BUDGET

**Mr. Speaker:** Hon. Members, on Tuesday, 15<sup>th</sup> January, 2011, in compliance with my directives given on 10<sup>th</sup> February, 2011 extending the time allowed to complete work and table a report, the Member for Nambale, Mr. Okemo, the Chairman of the

Departmental Committee on Finance, Planning and Trade laid on the Table of the House the Report of the Committee on Nomination to the Office of Controller of Budget. The Report of the Departmental Committee on Justice and Legal Affairs which was also expected to be laid on the Table was not laid and the Speaker, at the request of the Chairman of that Committee, the Member for Budalang'i, Mr. Namwamba, gave authority for extension of time to the Committee to table their Report not later than 12.30 p.m. on Wednesday, 16<sup>th</sup> February, 2011. The Departmental Committee on Justice and Legal Affairs did not meet this deadline. However, yesterday, at about 3.30 p.m. the Chairman of the Committee, Mr. Namwamba, accompanied by about five other Members of the Committee presented the Report of the Committee to me in my chambers and the Report has since been laid on the Table of the House earlier this afternoon.

Subsequent to the laying of the Report of the Departmental Committee on Finance, Planning and Trade by its Chairman, when the Order "Notices of Motion" was read, I explained that by standard procedure, it would have been expected that Mr. Okemo would give Notice of Motion for the adoption by the House of the Report he had just tabled at that point. I, however, informed the House that I had received the proposed Motion only that afternoon and that I needed to acquaint myself with its substance and will speak to the proposed Motion on Thursday, 17<sup>th</sup> February, 2011 at 2.30 p.m.

As all hon. Members are aware, in terms of Standing Order No.47, the Notice of Motion for the adoption of the report of the Committee cannot be given and the Motion cannot be moved unless the Speaker has approved. For the avoidance of doubt, the text of the Motion proposed to be moved by Mr. Okemo reads as follows:

"THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the nomination to the Office of Controller of Budget laid on the table of the House today, Tuesday, 15<sup>th</sup> February, 2011."

By this Ruling today, I will give directions whether in terms of Standing Order No.47, I approve or do not approve the giving of notice and the moving of the proposed Motion by Mr. Okemo. As I had indicated earlier this afternoon, my ruling on the admissibility of the proposed Motion of the Committee on Finance, Planning and Trade will apply equally to that of the Committee on Justice and Legal Affairs. In order to make this Ruling, it is necessary that I commence with some background and context.

Hon. Members, you will recall that on Thursday, 3<sup>rd</sup> February, 2011, I ruled on a point of order raised by the Member for Imenti Central, Mr. Imanyara and canvassed by a number of other hon. Members. Mr. Imanyara had sought to invoke Standing Order No.47 to urge the Speaker to find that the nomination process of the Chief Justice, the Attorney-General, the Director of Public Prosecutions and the Controller of Budget had been undertaken contrary to the Constitution and that it was, therefore, not admissible before this House or any of its organs and could not properly be considered by either the House or any of its Committees.

Mr. Imanyara relied for his claims on statements which he tabled, attributed to the Judicial Service Commission (JSC) and the Commission for the Implementation of the Constitution (CIC) both of them taking the position that the nominations forwarded through the National Assembly by the Office of the President were arrived at by a process that contravened the Constitution. Additionally, Mr. Imanyara stated that the process was unconstitutional because he claimed to be aware that the Right Hon. Prime

Minister, who under the Constitution is to be consulted prior to the nominations, had written to the Speaker disassociating himself from the said nominations process.

Hon. Members, you will recall that I indicated that the issues raised by Mr. Imanyara and other Members required the determination both of matters of law as well as matters of fact and I asserted that as Mr. Speaker I did not feel that the points of order raised and the forum at which they were raised afforded me adequate opportunity to make a summary determination, either that the Constitution was contravened or that it was complied with.

I expressed the view that the importance of questions posed and the critical ramifications that they have to the overall implementation of the new Constitution were such that a more collegiate and participatory process was required and that in the context of the National Assembly, the forum for a full hearing entailing adducing and rebuttal of evidence, examination and cross-examination of witnesses is the Committee of the House. I stated that the role of a committee in the vetting process was to consider all aspects of the proposed nominations, including compliance with the Constitution and all relevant enabling and incidental laws.

Hon. Members will recall that from the presentations of Mr. Imanyara as well as the submissions of other hon. Members, I filtered ten issues as having arisen and calling for determination. Of the ten issues, I disposed of two; namely, issue number one on the question whether or not the Speaker was competent to make a determination on the constitutionality of the nomination process as sought by Mr. Imanyara and issue number ten on the question whether or not the propriety of the nominations could be resolved by a vote in this House to approve or disapprove the nominees.

On the former issue, I ruled that it is within the competence of the Speaker to determine the constitutionality of a matter before the House while, on the later, I ruled in the negative finding that the matter in which the question is whether nominations were arrived at through a constitutional process could not be resolved by a vote of the House.

On that occasion, I found that it was not necessary for me, at that time, to rule on the following remaining eight issues (*Note that I have retained the original numbering of the issues as appeared in my previous Ruling for ease of reference*)

2. Is Parliament properly seized of the matter of the nominations?
3. What is the status, import and weight to be attached to the opinion of the Commission on the Implementation of the Constitution on a matter such as this?
4. Do the provisions of the Constitution require the involvement of the Judicial Service Commission in the nomination process (of the Chief Justice) and going hand in hand, if the Constitution detects that the process be participatory, competitive and transparent?
5. Were there consultations between the President and the Prime Minister as contemplated by Section 29(2) of the Sixth Schedule to the Constitution? Tied to this point, are a number of other questions including what the minimum threshold of consultation should be and if consultation denotes concurrence, consensus or other measure of agreement. Additionally, there is the further point of what was intended by the drafters of the Constitution in providing for consultations as they did.
6. What is the import of making the consultations subject to the National Accord and Reconciliation Act?

7. Is a serving member of the Judiciary constitutionally eligible to be nominated and appointed as Chief Justice?

8. Do the nominations meet the constitutional requirements of regional balance and gender parity?

9. Do the questions raised on the nominations of office-holders amount to a dispute within the meaning of the Political Parties Act?

Hon. Members, in referring the matter of the nominations as well as the letters received both from the President and the Prime Minister to the respective committees to consider and report on or before 10<sup>th</sup> February, 2011, the crux of my Ruling was, firstly, that I could not determine that a Motion or proposed Motion was unconstitutional when there was no Motion or proposed Motion before the House. Secondly, that I did not have the information necessary to enable me make such a determination even if there had been a Motion or proposed Motion.

Hon. Members, between the time when Mr. Imanyara first raised the matter and now, I have had the benefit of considering a range of material addressing the various aspects of the matter. Specifically, I have benefited from among others, the position given by the Judicial Service Commission, the Commission on Implementation of the Constitution and the Law Society of Kenya. I have also carefully read and considered the ruling of the High Court relating to the matter of nominations which was delivered on 3<sup>rd</sup> February, 2011. The first three of these bodies are constitutional or statutory and their views on matters of the law, though not binding on this House, are of significant, persuasive value.

Hon. Members, as for the ruling of the High Court, despite my re-statement of the constitutional relationship between the Legislature and the Judiciary, I have repeatedly emphasized that subsisting judicial decisions, while they cannot restrain the Legislature from the discharge of its functions, are of binding effect and may have a bearing on the products emanating from this House. The learned hon. Justice Musinga in his ruling in the above case, found that nomination of the Chief Justice was unconstitutional for it was not according with Article 166 of the Constitution as read with Section 24(2) of the Sixth Schedule to the Constitution. He stated as follows:-

“On the basis of the concession made by the Attorney-General, who is the respondent in this petition, it must be accepted that the said nomination did not comply with the constitutional requirements of Article 166(1) (a) as read together with Section 24(2) of Schedule Six of the Constitution. To that extent, the petitioners have proved that the nomination was unconstitutional.”

Hon. Members, the learned Judge further found that Article 27(3) of the Constitution was violated regarding equal treatment of men and women.

He, therefore, concluded that:-

“In view of the violations to the letter and spirit of the Constitution as shown hereinabove, even without considering other relevant provisions of the Constitution like Article 10, which spells out national values and principles of governance, I am satisfied that the petitioners have demonstrated that they have a *prima facie* case with a likelihood of success.”

Justice Musinga, therefore, concluded as follows:-.

“Consequently, and in view of the court’s findings regarding constitutionality of the manner in which the aforesaid nominations were done, I make a declaration that it would be unconstitutional for any State officer or organ of the State to carry on with the process of approval and eventual appointment to the offices of the Chief Justice, Attorney-General, Director of Public Prosecutions and Controller of Budget based on the nominations made by the President on 28<sup>th</sup> January, 2011.”

The quote by Justice Musinga continues to say:-

“That will have to await the hearing of the petition or further orders of this court.”

Hon. Members, although I have read that, this court decision does not stop the National Assembly from proceeding with its work and cannot determine for the House how to proceed, it must be noted, as matters currently stand, any decision made by this House on the nominations, though perfectly procedural from the point of view of the Legislature, outside the Legislature, it is to the extent that it does not accord with the ruling of the court, null and void, for all purposes. Note least of all, the Chair has had the benefit of reading the Reports of both the Departmental Committee on Finance, Planning and Trade and the Departmental Committee on Justice and Legal Affairs. In this respect, I wish to remind the House that the function and rationale of committees is to assist the House to reach an informed decision on matters referred to them. This role is best discharged when Committees conduct their affairs in an amicable atmosphere that upholds the dignity of the National Assembly. Appropriate procedures exist in our Standing Orders for dealing and disposal of any issues that may arise in the course of the work of the committees.

With the benefit of all these material, I am now able, and in the course of the present Ruling, I will beg indulgence to address and rule not only on the spirit of the Motion but also on all other outstanding issues. I have in particular considered and I am now in a position to rule summarily on at least four of the outstanding issues. I will proceed to do so as follows:

On issue No.2, hon. Members will recall that I had ruled that Standing Order No.47 was inapplicable and could not be relied on by the Speaker for the guidance sought by Mr. Imanyara because there was neither a Motion, nor a proposed Motion before the House as contemplated by Standing Order No.47. In light of the developments that have since occurred, I now rule that the National Assembly is seized of the matter of nominations because it was received by the appropriate organs of the House and a Motion has been proposed, thereon by a Committee of the House.

On Issue No.3, as I have already stated, I rule that the pronouncements of the Commission on the Implementation of the Constitution on a matter such as the present matter have relevance and are of persuasive value and should be considered carefully by the National Assembly and the Speaker. But as I have ruled before in the context of the Judiciary, the opinion of a body or organ outside the National Assembly cannot rise to such a level as to be construed to bind the National Assembly to any particular action or inaction in the discharge of its constitutional mandate.

On Issue No.7, I rule that it is not unconstitutional for a serving judicial officer to be nominated for appointment as the Chief Justice if he or she is qualified under Article 166, notwithstanding that he or she has not undergone vetting as provided by Section 23 of the Sixth Schedule to the Constitution. We have, in fact, set a precedent in this House

by approving serving judicial officers to the Judicial Service Commission before they were vetted under the Constitution. All that this means is that if any of these judicial officers should be found to be unsuitable to serve as such when the vetting process is undertaken, they will have to leave office and a vacancy will arise in their respective offices.

On Issue No.9, I rule that the questions raised on the nomination of office holders do not amount to a dispute within the meaning of the Political Parties Act as questions relating to the constitutionality of these appointments and any dispute thereon affect and relate to the country at large and not any particular party or parties. This is not a dispute between political parties or for that matter, individuals who may be members of parties.

Hon. Members, before I proceed to rule on the remaining issues, allow me to re-visit some of my pronouncements when I last ruled on this matter. Referring the nominations to the relevant Departmental Committees, I declined to make a determination as to whether or not the nominations transmitted to my office by the Office of His Excellency the President, were or were not constitutionally made, nor whether there was or was not consultation within the meaning of the Constitution, nor whether or not ethnic diversity and gender equality were observed. I also withheld any determination or comment on the veracity and weight to be accorded to the letter I had received from the Right Hon. Prime Minister urging that the House declines to consider the nominees because the process for their nominations had not been observed.

I made it clear that the reference of the correspondence received, both from the Office of His Excellency the President and the Right Hon. Prime Minister, to the relevant Committees of the House did not amount to a finding or determination that these nominations were or were not constitutionally made. I promised to rule on that question if an objection under Standing Order No.47 was to be raised again when the Committees, having delved into the matter, propose an appropriate Motion. I cautioned the House to remember that despite the work of the Committees, questions of constitutionality and the observance of the law are not matters to be determined exclusively by the vote of either Committee or, indeed, of the House. This is the reason that Standing Order No.47(3) makes the admissibility of a Motion subject to the opinion of the Speaker. That opinion, must, of course, be reasonable and befall justly and judiciously.

Hon. Members will recall my passionate plea that the window remained open, and my hope that developments would occur that would make this important nomination process uncontested on the basis of either constitutionality or howsoever and thereby render my guidance and direction as requested by hon. Imanyara unnecessary. This was not to be. Indeed, what was an unsatisfactory position at the time has grown by leaps and bounds in the past one week or so to become the source of considerable anxiety in the whole country. The Speaker's efforts to contain the escalation of differences were clearly unsuccessful and the time has, therefore, now come to make difficult decisions. The Speaker takes much solace, however, in the widely reported commitment of both His Excellency the President and the Rt. Hon. Prime Minister to accept, respect and abide by the outcome of the Parliamentary process.

One of the main reasons I had hoped that I would not have to rule on contestations on the constitutionality of the Motion or proposed Motion by the Department Committee was the effect of such a Ruling on the work of any such Committees and of this House. This is because if I were to rule that the proposed Motion is unconstitutional because the

nomination process did not accord with the Constitution as sought of me by Mr. Imanyara, it would follow that at *ab initio*, there were never really any nominations capable of consideration by the Committees or by this House and, accordingly, any Motion seeking the approval or disapproval of the nominees by the House cannot proceed. It will mean that despite all the hard work done by the Committees; the House will not have the opportunity to debate their Reports at all. This would be so even though the Reports of the Committees may themselves contain evidence and findings on the very questions in respect of which I shall have ruled. On the other hand, a Ruling by the Chair that the Motion may proceed, does not prevent the questions of unconstitutionality still arising in the course of the debate of the Reports. Be that as it may, the Speaker must now make this determination in the context of whether or not to approve the proposed Motion.

I will break for a short while to allow hon. Members at the entrance to walk in.

*(Hon. Members at the Bar walked into the Chamber)*

Hon. Members, I have reflected on issue No.3, on whether provisions of the Constitution require the involvement of the Judicial Service Commission in the nomination process of the Chief Justice, and whether going hand in hand with that question, if the Constitution dictates that the process be participatory, competitive and transparent. I have read all the arguments that I could find on the subject. Without going into a lengthy discussion on the matter, I recognize the two contesting arguments: The first demanding a participatory, competitive and transparent process that involves the JSC, in terms of Articles 166 and 172, and Sections 24 and 29 of the Sixth Schedule to the Constitution; and the second, to the effect that in this transitional period, Articles 166 and 172 of the Constitution have no application. Considering all the circumstances, and in particular, Article 259(1), I am personally more persuaded by the first interpretation that entails an open and transparent process that involves the JSC. Considering the history of our country and the reasons why we have adopted a new Constitution, I find the argument that there should be lower constitutional standards during this delicate period of transition and implementation of the Constitution to be untenable. I have, as a matter of fact, not been able to find any language in the Constitution excluding either expressly or by necessary implication, the application of Article 10 or Article 73 of the Constitution to the nomination of the Chief Justice, or the other three offices.

Issue No.7 on whether the nominations meet the Constitutional requirements of regional balance and gender parity needs to be considered in the broad context of all constitutional appointments available, and not on one or two appointments being made at any particular time. It is difficult to establish at this time whether the four nominations accord with requirement for giving a fair deal to all the diversities of Kenya. Considering the emotion which a feeling of unfair treatment has, or may evoke in sections of our society, I see no harm, and it would probably assist the country very much if important nominations were accompanied by some memorandum explaining how the nominating authority has addressed itself to such constitutional requirements. I concede that this is not an express constitutional requirement, but it is not unconstitutional and I have previously urged against dry, technical and uncreative interpretations of the Constitution. On the face of it, however, and in the present case, considering that there has been no set of Constitutional appointments, so far, in which the majority of the appointees were

women, it is hardly inspiring, and it is quite understandable that the argument has been made that the nominations are unconstitutional for discriminating against women contrary to Article 27 of the Constitution.

Hon. Members, on Thursday, 10<sup>th</sup> February, 2011 when ruling on the point of order raised by Mr. Olago on whether or not in the light of the ruling of the High Court delivered by Hon. Justice Musinga on 3<sup>rd</sup> February, 2011 in Nairobi High Court, Petition No.16 of 2011, Centre for Rights, Education and Awareness (CREAW) & Others Vs. the Attorney-General, the matter of the nominations was *sub judice*, I remarked about how identical the issues raised on that occasion were to those raised by the same hon. Member on the 12<sup>th</sup> November, 2009, when he asked the Chair to rule as to whether or not conservatory orders issued by the High Court in Judicial Review Petition No.689 of 2008 (Samuel Mutua Kivuitu & 22 others – versus - the Attorney-General) amounted to a derogation from the Constitutional principle of separation of powers by the Judiciary.

Hon. Members, I cautioned the House that the conduct of Parliamentary business requires respect for the procedure, traditions, practice and precedents established by the House. I emphasized that the Chair represents the institutional memory of the House to ensure this, and that the Chair could not, therefore, indulge in the luxury of changing positions and departing from practice and precedents, unless the operational circumstances can be shown to be distinctively different.

I say this because once more, I note that we have a precedent which may have some relevance to issues Nos. 5 and 6 on whether there were consultations between His Excellency the President and the Prime Minister as contemplated by Section 29(2) of the Sixth Schedule to the Constitution, and the related questions of what the minimum threshold of consultations should be; whether consultation denotes concurrence, consensus or other measure of agreement, and the import of making the consultation subject to the National Accord and Reconciliation Act.

The matter of the interpretation of the Constitutional provisions of the National Accord and Reconciliation Act was dealt with at length in a Ruling from this Chair on 28<sup>th</sup> April 2009. As matters would have it, this Ruling was also delivered at the request of Mr. Olago, who had on 23<sup>rd</sup> April 2009 sought the guidance of the Chair in respect of a dispute that had arisen on the choice of the Leader of Government in this House. Among the issues for determination then, which bear a semblance to the present matter were how any inconsistency between the National Accord and Reconciliation Act and the Constitution was to be resolved, and what the Speaker was to do in the event that he received two different letters from the same Government designating different persons as Leader of Government Business in the House.

Hon. Members, on that occasion I observed that the Speaker acts as a neutral arbiter, not a protagonist in the arena that is the House, and that any Member may at any time raise to the Speaker a question on the constitutionality of any action or set of circumstances in this House and it was always open to the Chair to entertain and rule on the merits of such questions. I made it clear that the National Accord and Reconciliation Act was an integral part of the Constitution of Kenya and quoted some words for it, which you will bear with me as they warrant recitation:-

“Given the current situation, neither side can realistically govern the country without the other. There must be real power sharing to move the country forward and begin the healing and reconciliation process. With this agreement, we are stepping

forward as political leaders to overcome the current crisis and set the country on a new path. As partners in a coalition Government, we commit ourselves to work together in good faith as true partners through constant consultation and willingness to compromise. This agreement is designed to create an environment conducive to such a partnership and to build mutual trust and confidence. It is not about creating positions that reward individuals; it seeks to enable Kenyan political leaders to look beyond partisan considerations with a view to promoting the greater interests of the nation as a whole. It provides the means to implement a coherent and far reaching reform agenda; to address the fundamental root causes of recurrent conflict and to create a better, more secure and more prosperous Kenya for all”.

(Applause)

**Jamleck Irungu Kamau:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order hon. Members! Please, kindly bear with me. I will be through in just a minute.

I ruled then that in considering the matter of multiple letters received by the Speaker designating two different individuals in the position of Leader of Government Business, that the House and the country at large needed to understand that the changes made in the Constitution with introduction in it of the provisions on the National Accord and Reconciliation Act had fundamentally altered the nature and character of Executive decision making in this country. As hon. Members are aware the Constitution of Kenya, promulgated on 27<sup>th</sup> August, 2010 saved and continued the National Accord and Reconciliation Act until the first elections are held.

Hon. Members I have noted, and so have you, I am sure, that a good part of the debate on the constitutionality of the nomination process has centered on whether or not His Excellency the President consulted the Right Hon. Prime Minister on the nominations, the duration and extent of consultations and whether there was or there was required to be any concurrence. Section 9(2) of the Sixth Schedule has been much quoted in the contributions in the House. Although it is quoted in my write up, I will not read it.

Because of this sub-section, there have been a number of suggestions on the meaning of consultations. Numerous precedents have been cited from the Commonwealth and beyond. I acknowledge with much appreciation that I have been referred by friends and well wishers and very well meaning ordinary Kenyans, to learned commentaries and opinions on how courts and tribunals in various jurisdictions have interpreted the phrase “after consultation”. Having considered all these, I do think that the over-emphasis on the meaning and scope of consultation can lead to a blurring of the larger picture on this matter. I also think that the matter is probably not nearly as complex as it has been made out. In legal circles, it is said that precedence should not be invoked unless they are *pari materia* with the matter being dealt with. This means that you must compare only comparable situations and circumstances.

Hon. Members, the consultation required of the two Principals in our Constitution is subject to the National Accord and Reconciliation Act. With respect, I have been unable to find, because there have to exist, a precedent from anywhere in the world where “consultation” is made subject to an identical standard as our National Accord and Reconciliation Act. The threshold of consultation and its parameters are demarcated in

the National Accord and Reconciliation Act as cited above. After careful consideration of this matter, doing the best I can, weighing one thing against another, it is my considered opinion that the required standard of consultation is not so high as to mean concurrence or agreement and thereby become a recipe for deadlocks and brinkmanship. In my estimation, considering Article 259 (1) of the Constitution and the events that led to the Accord, I am convinced that the minimum consultation expected and required by Section 29 (2) of the Sixth Schedule to the Constitution is one that results in “compromise”.

*(Applause)*

Indeed, hon. Members, willingness to compromise is the center piece of the National Accord.

In my ruling of 28<sup>th</sup> April, 2009, I held that in the current state of our Constitution, the office of the Speaker of the National Assembly was not well suited to determine and, therefore, I declined to determine who the Leader of Government Business was to be in a situation where I had received two letters from His Excellency the President and the Prime Minister respectively.

Hon. Members, may I, with your indulgence, reaffirm that the Chair remains faithful to the oath of allegiance I took on 2003.

Hon. Members, I thank you.

*(Applause)*

### **ADJOURNMENT**

**Mr. Speaker:** Order, hon. Members! That brings us to the end of business for today. The House, therefore, stands adjourned until, Tuesday, 22<sup>nd</sup> February, 2011, at 2.30 p.m.

The House rose at 6.40 p.m.