

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 3<sup>rd</sup> February, 2011

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

NOTICES OF MOTION

### ESTABLISHMENT OF A FUND FOR SPORTSPERSONS

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

THAT, recognizing that Kenya has produced a number of world renowned sportsmen and women who have dominated the international arena for decades and raised our country's flag high world over; recalling that this has brought not only fame, but promoted unity and harmony amongst Kenyans as well as making this country a tourist investment destination; acknowledging that hundreds of professional sportsmen and sportswomen retire each year and unfortunately, many of them spend time in physical and mental time suffering from ailments such as dementia, severe arthritis and dietary problems which are associated with their sporting career and which is compounded by lack of sound Government policies to support them in their retirement days; this House resolves that the Government establishes a fund under the Government Financial Management Act, 2004 to be known as the sportsmen and sportswomen Fund for the purposes of ensuring that the athletes are taken care of at retirement and matters incidental thereto and connected therewith.

### REQUEST FOR INFORMATION ON LOANS AND DEBTS OWED BY THE REPUBLIC OF KENYA

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

THAT, in accordance with the provisions of Article 211(2) of the Constitution, this House resolves that the Deputy Prime Minister and Minister for Finance present to the Budget Committee of the House within seven days of this resolution information concerning the loans and debts owed by the Republic of Kenya as at 31<sup>st</sup> December, 2010 in respect of:

1. Loan to KenRen Chemicals and Fertilizers Company Limited.

2. External Commercial Debts on security-related projects as reflected in the 2008/2009 Annual Public Debt Report published by the Ministry of Finance. Further, the Deputy Prime Minister and Minister for Finance should include all information as enumerated in Article 211(2) necessary to show the following:

- (i) The extent of the total indebtedness by way of principal and accumulated interest.
- (ii) The use made or to be made of the proceeds of the loan.
- (iii) The provisions made for servicing or repayment of the loan.
- (iv) The progress made in the repayment of the loans.
- (v) Names of the creditors and their beneficial owners.
- (vi) Circumstances that led to the cancellation of the contracts on security-related payments in 2004/2005 while giving details of the party or parties that refunded Kshs1,050,702,075.25
- (vii) Circumstances that led to the suspension of the payment of the External Commercial Debt on security-related projects.
- (viii) The concrete steps taken to recover payments made on security-related projects where no commensurate value has been received in return.
- (ix) Steps taken to pay of all contracts on security-related projects that have been validated.
- (x) Action taken against any culpable or negligent officer(s) in regard to acts of omission or commission with respect to part (vi) above.

### QUESTIONS BY PRIVATE NOTICE

#### SOURCE OF CONTAMINATED MAIZE DISTRIBUTED TO IDPS

**(Mr. Mututho)** to ask the Minister of State for Special Programmes:-

(a) Could the Minister state the source and quantity of the contaminated maize recently distributed to IDPs in Mawingo and Naivasha camps?

(b) Could the Minister confirm whether uncontaminated food has now been distributed to the IDPs and what action has the Government taken against the supplier?

(c) What is the total loss of grain incurred so far by *ex-MV Aquila, MV Siam Opal* and *MV Fonarun Naree* and who will compensate the Government and consumers of the contaminated grains?

**Mr. Speaker:** Member for Naivasha! He is not in. The Question is, therefore, dropped.

*(Question dropped)*

#### MEASURES TO STABILIZE HIGH COST OF FERTILIZER

**Dr. Khalwale:** Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that food production is threatened by the rapidly escalating prices of fertilizer?

(b) Why has the Revolving Fund for Stabilization of Fertilizer Prices that was initiated in 2010, through which the Government released funds for purchase and subsequent sale of subsidized fertilizer for farmers, stalled?

(c) What measures is the Minister taking to arrest the above situation?

**The Assistant Minister for Agriculture** (Mr. Mbiuki): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the escalating fertilizer prices may contribute to a decrease in the level of utilization of fertilizers contributing to low productivity hence threatening food production.

(b) I am not aware of any revolving fund for the stabilization of fertilizer prices. However, Kshs3.57 billion was released by the Treasury in 2008/2009 and was utilized to purchase 84,823 tonnes of various types of fertilizers which were sold to farmers at subsidized prices.

(c) I have taken the following measures to arrest the situation:

(i) The Ministry has developed a contingency plan for fertilizer prices stabilization for long rains. I requested the Treasury for allocation of Kshs4.13 billion for its implementation. We are negotiating on the source of funds.

Mr. Speaker, Sir, I would like to lay on the Table the fertilizer price stabilization plan for the long rains for the financial year, 2010/2011.

(ii) The Ministry has developed a proposal for the establishment of a revolving fund that will be used to stabilize fertilizer and seed prices.

Mr. Speaker, Sir, I would also wish to Table the concept note in which we are trying to develop the revolving fund.

(iii) The Ministry has initiated the process of undertaking a feasibility study for fertilizer manufacturing in the country.

In this regard, I would like to Table the evaluation report on request for expression of interest on the feasibility study of setting up the factory in the country.

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

**Dr. Khalwale:** Mr. Speaker, Sir, when the Government released Kshs3.57 billion for the purchase of fertilizer, the agent for selling that fertilizer at a subsidized fee was the National Cereals and Produce Board (NCPB). Could the Assistant Minister Table the accounts of that particular figure of money in view of the fact that the fertilizer was not eventually given to farmers for free? The fertilizer was sold! He needs to table the accounts so that the House can familiarize itself with the position of that particular account of Kshs3.57 billion.

**Mr. Mbiuki:** Mr. Speaker, Sir, indeed, the Government received Kshs3.57 billion in 2009/2010 financial year. Some of that fertilizer was sold at a subsidized price. At the same time, the Government is unable to use the Kshs2.5 billion proceeds from the previous UK fertilizer. This is because as at now, the Government's audit reports are not yet over. We are not able to table those accounts until the audit report is over. The money, to the tune of Kshs2.5 billion less the amount which was used to subsidize the prices, is still with the Treasury.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, the Assistant Minister has said that the Government is undertaking a feasibility study with a view to establishing a fertilizer

manufacturing plant in the country. We are aware that in the first Republic, there were efforts of establishing a similar plant. In fact, importation of equipment was done. What become of that initiative? Why did it stall? How much money did the Government lose at that time?

**Mr. Mbiuki:** Mr. Speaker, Sir, that is a very different Question. I am not prepared with all the facts about the KenRen factory which was to be set up at that particular time. Perhaps the hon. Member could ask a Question that is particular about that factory which was to be set up in the 1970s.

**Dr. Eseli:** Mr. Speaker, Sir, the production of food relies on fertilizer to some extent. It is the type of fertilizer used that determines the quantity harvested. In 2009, this Assistant Minister assured this House that they will eventually do a soil survey to determine the kind of fertilizer that is required. Have they now done that survey, and if so, what are the results?

**Mr. Mbiuki:** Mr. Speaker, Sir, the soil tests are normally done on a continuous basis. It is upon the farmers to take soils to relevant Government agencies for testing. I am able to lay on the Table, given time and space, a report on the acidic content of most of the soils in the country.

**Dr. Kones:** Mr. Speaker, Sir, the Assistant Minister has said that out of the Kshs3.5 billion they had been allocated by Treasury, they still have a balance of Kshs2.5 billion and yet this is supposed to be a continuous programme. What happened with the Ministry? In the South Rift region, it is now planting time and yet fertilizers' prices are going up.

**Mr. Mbiuki:** Mr. Speaker, Sir, the Kshs3.5 billion was disbursed by Treasury to the Ministry of Agriculture. Immediately we sold the fertilizers, the money was remitted back to Treasury. From August 2010, the Ministry of Agriculture has been requesting Treasury to release the money to us so that we can plan for the current long rains. However, the Ministry of Agriculture is still negotiating with Treasury so that they can release the money. I want to say in this House that as at now, we have not received the money, but negotiations are still going on.

Thank you, Mr. Speaker, Sir.

**Mr. Mwangi:** Mr. Speaker, Sir, the first answer given by the Assistant Minister is that he is aware that we have a problem with fertilizers and yet this country is in short supply of foodstuffs. How did he consider remitting the money to Treasury when people are suffering and when we do not have fertilizer? What is the reason behind that decision?

**Mr. Mbiuki:** Mr. Speaker, Sir, in accordance with Government regulations, whatever amount of money is realised from the sale is remitted to Treasury. As a Ministry, we have always been requesting Treasury to remit the money to us for the current financial year. Unfortunately, the money has not been forthcoming. It has been extremely frustrating for officials of the Ministry of Agriculture to camp at Treasury Building requesting for money year in, year out.

I would like to table some documents to demonstrate the extent to which the Ministry of Agriculture has gone to plead for money from Treasury. The first letter is dated 17<sup>th</sup> August, 2010, requesting for funds to purchase the fertilizer. I hereby table the letters from the Permanent Secretary (PS), Ministry of Agriculture, which he wrote to the PS, Treasury.

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

**Mr. C. Onyancha:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House by saying that there was a revolving fund and at the same time state that the money was sent back to Treasury knowing very well that a revolving fund revolves within itself? You do not have any money coming out of such a fund except for the intended purpose, which in this case was fertilizer financing and purchasing.

**Mr. Speaker:** Mr. Assistant Minister, that is a valid observation.

**Mr. Mbiuki:** Mr. Speaker, Sir, I am very categorical. There was no revolving fund at all. It is now that we are trying to establish a revolving fund. So, the funding for fertilizer was agreed upon between the Ministry of Agriculture and Treasury. There is no revolving fund.

Thank you, Mr. Speaker, Sir.

**Mr. Ngugi:** Mr. Speaker, in order for the Government to realise the best fertilizer prices, procurement of fertilizers should be done through open tendering. Can the Assistant Minister assure this House that this was done and that the National Cereals and Produce Board is not single-sourcing importers but rather it is tendering for importation of fertilizers?

**Mr. Mbiuki:** Mr. Speaker, Sir, the procurement of fertilizer is done transparently through an open tender system where the lowest bidder is given the opportunity to do business with the Government. There is nothing like single-sourcing when it comes to doing business in the Ministry of Agriculture.

**Mr. Ochieng:** Mr. Speaker, Sir, could the Assistant Minister confirm or deny that they have failed to account for the monies that were disbursed to them earlier, and that that is why the Ministry of Finance is finding it difficult to disburse more funds to them?

**Mr. Mbiuki:** Mr. Speaker, Sir, it is not true that we have been unable to account for the money. The amount of money we are talking about was for the 2009/2010 financial year. The Government is in the process of auditing the accounts for that financial year.

**Dr. Khalwale:** Mr. Speaker, Sir, in the Report of the Public Accounts Committee, which we tabled in this House a few months ago, and which the House adopted, the Controller and Auditor-General confirmed that a company called “Kenron” went into negotiations with Government in the early 1970s and Kenyans incurred a loan, which is being paid as we speak irrespective of the fact that the Government of former President Moi, which lasted for 25 years, refused to pay that loan. In view of the fact that some of the senior Ministers who are serving in the current Government were also in the Government that created “Kenron” in the 1970s, what assurance is the Government giving the House now that it has undertaken another feasibility study with a view to setting up a fertilizers factory? What assurance can they give us that they are not planning an opportunity for the same Ministers to steal money in the way they did previously?

**Mr. Mbiuki:** Mr. Speaker, Sir, I would like to give an undertaking that the Grand Coalition Government will undertake a very transparent and open process of setting up a new factory. The Moi era is gone. Right now, we are doing everything on the table – transparently and as open as possible.

CAUSES OF MASS FAILURES IN KCPE EXAMINATIONS IN  
KISII AND NYAMIRA COUNTIES

**Dr. Monda:** Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) What was the cause of mass failure in the 2010 Kenya Certificate of Primary Education (KCPE) examinations in Kisii and Nyamira Counties?

(b) Could the Minister provide a list of all registered candidates in the 2010 KCPE examinations in the two counties and give the breakdown of their performance?

(c) What is the Government doing, in terms of policy development to address the poor state of education standards nationally?

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, before I reply, I would like to say that the answer is a little long. So, I beg the House to bear with me as I go through it.

Mr. Speaker, Sir, I beg to reply.

(a) The performance of 2010 KCPE examination in Kisii and Nyamira counties is not a mass failure. Performance of KCPE is not a pass or failure issue but rather a tool for grading pupils' performance on a measurement scale of grade "A" to grade "E". It is designed to confirm candidates' successful completion of primary level schooling and also to indicate their high or low performance relative to the National Mean Score in each subject.

Pegged against the National Mean Score of 245.35, Kisii and Nyamira counties registered negative deviations of 19.30 and 18.09 as follows:

	<b>Mean Score</b>	<b>Deviation</b>
National	245.35	0
Kisii County	226.05	-19.30
Nyamira County	227.26	-18.09

Mr. Speaker, Sir, Kisii and Nyamira counties are some of the 24 counties in the country that posted KCPE performance below the national mean score. The negative mean score deviation can be attributed to the following factors:-

(i) Teachers employing inappropriate teaching methods which do not equip children with the relevant and adequate competences in literacy, numeracy, manipulative and adoptive abilities necessary for good performance in KCPE.

(ii) Supervisory inadequacies by head teachers and education officers due to little capacity building.

(iii) Inadequate supervisory staff at the District Education Officers' (DEOs) offices leading to minimal monitoring and capacity building;

(iv) Shortage of vehicles, particularly in the newly established districts, which has undermined quality supervision.

(v) Child labour in coffee and quarry industries leading to absenteeism.

(vi) Sponsors' interference on management of schools.

(vii) Mushrooming of substandard private schools.

(viii) Lack of community/parent support and clannism towards education in some districts and unnecessary migration of children to other schools.

(b) I hereby table the lists of all registered 2010 KCPE candidates in Kisii and Nyamira counties. There were 28,978 candidates in Kisii and 8,864 candidates in Nyamira.

*(Prof. Olweny laid the documents on the Table)*

(c) The Government has undertaken the following intervention measures to improve education standards in the country.

The Ministry has developed a number of policies including nomadic education policy and alternative provision of basic education and training which I table, gender policy in education, special needs education policy, Early Childhood Development Education (ECDE) Policy which I did not bring but if necessary, I can bring it and the school health and nutrition policy which I also table in this House.

*(Prof. Olweny laid the documents on the Table)*

Mr. Speaker, Sir, the Ministry will also recruit the ECDE teachers in the next financial year. That has been advertised. There is also the school feeding programme. The Ministry has also established national assessment system for monitoring learner achievement under the Kenya National Examination Council (KNEC). The Ministry yesterday launched a task force on the realignment of the education sector to the new Constitution and its findings will be presented to Parliament for deliberation at a later date. The Ministry has instituted a task force to establish the causes of poor performance in Mathematics and sciences. The Ministry has also operationalized the school infrastructure investment programme and the Economic Stimulus Programme (ESP) in primary and secondary schools. The Ministry recently recruited contractual teachers. The Ministry has also strengthened the capacity building programme for teachers and officers through Strengthening Mathematics and Science Education (SMASSE) programme in schools. The Ministry is also enhancing standards assessment of weak performing schools and also upgrading teachers' pedagogical skills through capacity building workshops, particularly for weak performing counties in Kenya Certificate of Primary Education (KCPE).

The Kenya Education Staff Institution (KESI) is also organizing capacity building seminars for school management committee and head-teachers as managers and supervisors of education programmes in primary schools. The Ministry has actually closed and will close sub-standard private schools and freeze the registration of such schools that do not meet the standards set by the Ministry of Education.

Lastly, the Ministry has carried out the redeployment of teachers who have overstayed in schools. For instance, in Nyamira County, 66 teachers have already been transferred.

**Dr. Monda:** Mr. Speaker, Sir, the Assistant Minister has highlighted the causes of the big deviation in performance from the national mean score in both Kisii and Nyamira counties. In both counties, you realize that the deviation is negative and up to a negative of about 20 from the national mean score. The Assistant Minister has given some key reasons for this poor performance and among them are education officers who do not perform their functions of supervising schools. He has also talked about the

mushrooming of private primary schools and it is the Ministry which registers such schools.

**Mr. Speaker:** Order, Dr. Monda! Come to the question!

**Dr. Monda:** Mr. Speaker, Sir, what has the Ministry done to address the mentioned causes for deviation of poor performance in Kisii because the generalized reasons that he has given and the concerns that he has raised do not address the issues that he has pointed out specifically in Kisii and Nyamira?

**Prof. Olweny:** Mr. Speaker, Sir, part “a” of the Question wanted me to enlist the causes of failures in Kisii. Part, part “b” wanted me to give the list of candidates while part “c” wanted me to indicate what the Ministry is doing to address the problems of standards of education nationally. That is what is on the Order Paper. He did not narrow it down to Kisii and Nyamira, but if he wants me to do so---

**Mr. Speaker:** Order, Prof. Olweny! If that is your view, then you should just say that, that is a different Question and leave it there.

**Mr. Olago:** Mr. Speaker, Sir, although the Assistant Minister has not addressed this issue, could it be that there are some areas in this country that were used to “stealing” examinations and now that the Ministry has tightened the rules, they are not able to cope?

**Prof. Olweny:** Mr. Speaker, Sir, I think the hon. Member is trying to mislead the House. There is no part of this country which specialized in cheating in examinations.

**Mr. Njuguna:** Mr. Speaker, Sir, Kagwe Township Primary School is in my constituency and it is a public school. In 2010, it had KCPE candidates who had qualified to join national schools but unfortunately the Ministry categorized this school as private. That denied qualified candidates national slots. What has the Ministry done to rectify that anomaly and prevent it from happening in future?

**Prof. Olweny:** Mr. Speaker, Sir, we had a few cases on the issue that the hon. Member has raised. Those cases happened by mistake but the Ministry is addressing them. So, let the hon. Member take it easy because the matter is being handled by the Ministry.

**Mr. Pesa:** Mr. Speaker, Sir, while answering this Question, the Assistant Minister has alluded to the fact that there are mushrooming of private schools in Kisii and Nyamira. I wonder whether these schools have been registered by the Ministry or not. If they have not been registered by the Ministry, how do they come into operation?

**Prof. Olweny:** Mr. Speaker, Sir, some of them were registered when they met the criteria for registration but were deregistered later on when they could not meet the requirements of the Ministry.

**Mr. Mureithi:** Mr. Speaker, Sir, I would like to address myself on mass failure of children nationally and particularly in my constituency. In Nyandarua Central District not a single school achieved the national mean score and we are wondering what the Ministry is doing about the situation. It is worrying when there are nearly 100 primary schools and not a single one achieves that mean score. That notwithstanding, they were denied teachers. What will the Ministry do to make sure that the mass failure does not occur again?

**Prof. Olweny:** Mr. Speaker, Sir, I have indicated in this House what we will do nationally. If there is a county that has a specific problem as the hon. Member has indicated, we will address it. We will try and find out the causes of low standards of education in that county.



**Dr. Monda:** Mr. Speaker, Sir, in the Assistant Minister's answer, he has highlighted the closure of substandard schools. How many schools have they closed in both Kisii and Nyamira counties, because of not meeting the required national standards?

**Prof. Olweny:** Mr. Speaker, Sir, I did not bring the actual number and names, but if there is need, I can bring it at a later date.

## ORAL ANSWERS TO QUESTIONS

### *Question No.465*

#### OUTCOME OF MINERALS SURVEYS UNDERTAKEN IN KENYA

**Dr. Otichilo** asked the Minister for Environment and Mineral Resources:-

- (a) the outcome of specific minerals surveys that have been undertaken in the country since 2000;
- (b) which minerals have high economic potential for exploitation and where they are found; and,
- (c) whether it is true that western Kenya has gold deposits.

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

(a) Mineral resource surveys in the country are undertaken by the Government through the Mines and Geology Department, and also by licensed prospecting and exploration companies. Due to financial limitations, the surveys carried out by the Government are mainly aimed at providing preliminary baseline information to guide further detailed work by private exploration companies. The surveys conducted since 2000 have largely been preliminary geological surveys to determine occurrences of mineral in general. The surveys done by the Mines and Geological Department since the year 2000 have resulted in the identification of the following mineral resources:-

1. iron ore deposits in Ikutha area of Kitui County;
2. limestone deposits in Mutomo in Kitui County;
3. limestone deposits in Mt. Elgon area;
4. tourmaline deposits in Nyanga area of Bungoma County;
5. clay deposits in Nyakahure area of Murang'a County;
6. dolomite deposits in Tawa area in Makueni County;
7. iron ore deposits in Mariene area of Meru County;
8. natural carbon dioxide gas in Londiani area of Mau Forest;
9. iron ore deposits in Homa Bay;
10. kipsome deposits in Aliemji area of Ijara District;
11. Silica and sand deposits in Malindi and Kwale districts;
12. manganese deposits in Ganze area of Kilifi County;

Jointly with the Ministry of Energy, we have identified coal deposits in Mutito, Mwingi and Kitui areas of Kitui County.

Mineral deposits discovered through surveys by private exploration companies are as follows:-

1. Titanium deposits in Msambweni area of Kwale County and parts of Kilifi County by Tiomin Kenya Ltd;
  2. Gold in Lolgorian area of Trans Mara County by International Gold Exploration Company and Kilimapeta Gold Company.
  3. Gold in Turkana North and Turkana West Districts by Nazareth Exploration Company;
  4. Copper, zinc, silver and gold deposits in Bumbo area of Kaimosi by Lasos and Apri Kenya Ltd;
  5. Gold deposits in Migori County by Migori Mining Company Limited and Abur Mining Company Limited.
- (b) The following minerals have high economic potential for exploitation:-
- (i) titanium deposits in Kwale and Kilifi counties;
  - (ii) coal deposits in Mutito and Mwingi areas of Kitui County;
6. gold deposits in Lolgorian of Trans Mara County;
  7. gold deposits in Nyatike area of Migori County;
  8. limestone deposits in Mutomo area of Kitui County;
  9. limestone deposits in West Pokot;
  10. iron ore deposits in Kishushe area of Taita Taveta County;
  11. iron ore deposits in Meru County; and,
  12. rare earth elements of the Mirima area of Kwale County.

(c) It is true that western Kenya has gold deposits as indicated by progress reports of various exploration companies as well as the activities of miners. I would also like to add that the largest gold mine in Kenya was located in Kakamega at an area called Roasterman. It operated during the pre-independence days and closed down in June 1952.

Mr. Speaker, Sir, other mines existed in Sigalagala, Bukura and Kaimosi as well as Migori, Nyatike, Bondo and the new Trans Mara area. According to available reports, nearly two million ounces or 62 tons of gold valued at Kshs186 billion have been discovered in the Migori area, with significant quantities of the mineral having been estimated currently in the country within the Lolgorian area of Trans Mara.

**Dr. Otichilo:** Mr. Speaker, Sir, I want to take this opportunity to thank the Assistant Minister for the very comprehensive answer that she has presented to this House. You note that this country has a lot of mineral resources which remain unexploited. What plans does the Ministry have, so that we can have the minerals exploited for the benefit of this country? We have lack of employment opportunities and if exploited, these minerals can create a lot of job. This is particularly so in the case of iron ore, gold and titanium.

**Prof. Kamar:** Mr. Speaker, Sir, I would like to mention that the Minerals and Mining Bill is in the final stages of preparation. I once mentioned here that the Minister has already gazetted a committee that is aligning the laws in the Ministry with the new Constitution. The mining sector was overhauled by the new Constitution, especially in what accrues after mining. Therefore, because of that, a lot is going to happen. The Ministry is going to come up with a law that will be passed in this House to streamline the whole process from licensing, exploration and mining to quantifying the amount to the point where we can know what quantities are found in which area, because of the implications that the law will have on the sharing of the accrued benefits. The Ministry is happy and our Committee has started work. We believe we are on course on that.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, you may have realized that the coal deposits are in Kitui County. It appears a conspiracy between the Government and some private companies to get into exploring these minerals without involving the locals. Why is the Government keeping the locals in the dark more so when it comes to dealing with coal in the Kitui County?

**Prof. Kamar:** Mr. Speaker, Sir, it is not true that the locals are not involved. Before any licence for exploration is issued – which is under our laws – there has to be consent given. That consent has to be given, either by the county council, when it is county council land or the owners of the land. We also have hon. Members in this House who have been dealing in gemstones and so on, and they are aware that you cannot go into a private land without that. So, the licences are always given after the consent has been given.

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead the House that the locals are involved whereas the mining of iron ore in Kitui County has been advertised and we have been seeing private companies going in yet there has never been a tripartite meeting between the private companies, the local leaders and the local people to involve us in what is going on?

**Prof. Kamar:** Mr. Speaker, Sir, I would like to get information about that specific case. I would be very happy if the hon. Member could give us that specific information. I will not be surprised that the advertisements that are appearing now are being done because of consents which were done much earlier. Normally, there is the point of exploration before you even go into the mining. Before you even come from exploration to mining, the process is very long. It is possible that there is something which the hon. Member is not aware of or I am not aware of. But I would welcome the hon. Member to give us the information that he has.

**Mr. Ogindo:** Mr. Speaker, Sir, I would like the Assistant Minister to confirm to this House how much iron ore deposits are in Homa Bay County, where specifically they are, and whether it is viable for mining because Homa Bay County is up and running?

**Prof. Kamar:** Mr. Speaker, Sir, you are aware that is a brand new Question. The Question that was asked was which ones are viable and which ones we can exploit. If the hon. Member would like to know the amounts, we will be able to give that information. But it has to be raised as a different Question. It is slightly different from the information that I have here. We have that information in the Ministry.

**Mr. Mwiru:** Mr. Speaker, Sir, I have seen quite a number of activities in an area called Kithiori-Marimanti in Tharaka-Nithi County and I have seen the kind of deposits for exploitation of iron ore. Could the Assistant Minister confirm or deny that the iron ore in that area can be exploited for economic activities?

**Prof. Kamar:** Mr. Speaker, Sir, I mentioned that out of the preliminary exploration that was done by the Ministry, iron ore deposits in Meru County were identified.

**Mr. Mwiru:** Mr. Speaker, Sir, I did not refer to Meru County. I am referring to Tharaka-Nithi County.

**Prof. Kamar:** Sorry, Mr. Speaker, Sir, I did not get him right. That is extremely new, and if you would like me to get information, I will do so.

**Mr. Speaker:** Mr. Mwiru, can you liaise with the Assistant Minister and get that information?

**Mr. Khalwale:** Mr. Speaker, Sir, the reason why the Roasterman, Sigalagala, Ikolomani, Shinyalu and parts of Sabatia mines closed down in 1952 was because of the emergency period. Hon. Michuki went on and became the first District Officer in Kakamega and he knows the truth about this.

*(Laughter)*

Mr. Speaker, Sir, the Assistant Minister knows very well that the gold mines were abandoned because of the emergency period and not that the deposits had been exhausted. Why would a Government, led by a Minister who saw it with his own naked eyes, led by a President who together with the late Tom Mboya held a rally on the ground where we have built the Kenya Commercial Bank, sit there and subject the people of Western Province to poverty and refuse to explain this query?

The Assistant Minister has told us that in one of the smaller deposits in Migori there is gold worth Kshs186 billion. That is the smaller one. So, when you come to Kakamega where we have the largest, we are probably talking about trillions of shillings. When is the Government going to remove poverty in this area by investing so that we exploit gold?

**Prof. Kamar:** Mr. Speaker, Sir, I would like to agree with the hon. Member that once we do systematic mining in this country, we will eradicate poverty. We are very conscious to that fact as a Ministry. That is why the first law we are going to reform is the law on the minerals and mining. So, as a Ministry, we rushed on that one. That is why the Minister got a team to work on the law. When that is done, I am sure the Member for Ikolomani will be very happy that they did not exploit it yesterday and that they are going to exploit it in the new law. The new law is going to enable the communities to enjoy the benefits from the mining. We are going to bring the new law here. We shall exactly tell how much the county and the people will get. You should be a very happy man that the Minister was able to protect it for you.

**Mr. Kabogo:** Mr. Speaker, Sir, part “b” of this Question is asking about the minerals and the economic potential. I know that we have fluorspar in Elgeyo Marakwet. I am not sure why it is not being mentioned. Is it that it does not have potential? What is the amount available, and can Kenya exploit this as a mineral?

**Prof. Kamar:** Mr. Speaker, Sir, the Question that was raised was with regard to 2000 and after. I wish the Member read the Question properly. The mining in fluorspar is ongoing even currently and I answered that in a latter Question No.445 which was asked by the Member for Emuhaya. He had asked a very important Question with regard to the areas. So, if you refer to my answer to Question No.445, there is fluorspar and many other minerals. This Question was very specific to 2000.

**Dr. Otichilo:** Mr. Speaker, Sir, in the answer from the Assistant Minister, it is clear that the Department of Mines and Geology, which is responsible for mineral exploration in this country, is highly underfunded. Because of that reason, the Department of Mines and Geology cannot carry out surveys effectively. This department does not have modern equipment for exploration. When is the Ministry going to fund this department so that they can carry out more extensive surveys?

**Prof. Kamar:** Mr. Speaker, Sir, that is true. We need to equip the department and support exploration. As I mentioned earlier, it is because of financial limitations that

surveys that are done by the Ministry are only preliminary baseline surveys. It is very important that our budget for the next financial year is enhanced. If you do not know the amount of minerals you have as an explorer or the company that is doing exploration knows more than you, then we are in danger of losing. We might not be able to quantify and get the right benefits for the community. That is a very important observation from the Member. Our next budget is going to go towards minerals more than anything else and we shall be seeking the support of this House towards attaining that.

*Question No.681*

STATISTICS ON POLICE SHOOTING SINCE AUGUST 2010

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

(a) whether he could state how many people have been shot dead by police in the country since 4th of August, 2010 giving the names and places they were shot and the circumstances;

(b) whether he could also provide the identities of the officers involved and indicate the disciplinary action taken against them; and,

(c) what measures the Minister has taken to ensure the trend is curbed.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, as you are aware, I answered this Question yesterday. But we agreed that the format should be changed to relate to what was asked by my friend, hon. Karua.

Mr. Speaker, Sir, I beg to reply.

Since August 2010, 18 people have been shot dead by police officers. The following are the victims and circumstances under which they were shot dead.

1. Nicholas Omondi: On 2<sup>nd</sup> September, 2010, Nakuru Municipal Council *askaris* were evicting tenants from council houses within Flamingo Estate. The residents turned riotous and police officers from Nakuru were called to quell the riot. During the riot, seven police officers were attacked and seriously injured. One officer sustained a fracture on the leg and the above named person who was participating in the riot, unfortunately, was shot dead in an attempt to rescue the officers who had been surrounded by the mob.

2. Joyce Waithera---

Mr. Speaker: Order, Mr. Assistant Minister! Can you, please, try and give that in an abbreviated form? Just give the name, place and circumstances in summary.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, the second person is Joyce Waithera Ngigi. She was shot on 31<sup>st</sup> October, 2010 along Ahero Trading Centre while accompanied by Anthony Karanja Kibe.

3. Julius Kiharu Njeru was a cattle rustler. He was also accompanied by three other people.

4. Martin Opiyo was killed at Tondonyang area of Turkana North District. The others are:

5. Domiano Muchira.

6. Elphantus Muthimi Munyi.
7. Rachel Muthoni.
8. Augustino Kinyua Kithumbi.
9. Anthony Mwaniki Nyaga.
10. George Ng'ang'a.
11. Kennedy Namu.
12. Lydia Ng'endo.
13. Wilfred Gitonga, an Administration Police Officer.
14. Frederick Okwako, an Administration Police Officer.

Both Administration Police officers were killed by Peter Karanja, an Administration Police officer on 6<sup>th</sup> November, 2010, within Siakago Town of Mbeere District. The circumstances are that at about 11.30 p.m., the officer left his duty station while armed with a G3 rifle and went on a shooting spree killing ten people, including two of his colleagues. The others include:

15. Paul Jomo Wanjiku.
16. David Kanini Mwangi.
17. Hussein Gichuki Mwangi.

These people were killed on 19<sup>th</sup> January, at about 9.00 a.m. The circumstances are that the Criminal Investigations Department (CID) officers from the Special Crime Prevention Unit were pursuing armed suspected robbers who were in a motor vehicle registration No.KBE 637G, Toyota Corolla Station Wagon, along Lang'ata Road following a tip-off from members of the public. On reaching the area between Wilson Airport and Nairobi West Prison, the suspects, who were six in number, were challenged to stop and surrender. Three of them named above were shot. The others escaped on foot towards Kibera slums, while another drove off with the suspected motor vehicle. All the three victims had previous criminal convictions of robbery with violence and police had information that they were headed for a robbery mission. One pistol, an American Star serial No.xx00022, loaded with two rounds of ammunition was recovered.

Mr. Speaker, Sir, following the incident, the six officers involved in the incident were all interdicted and an inquest file No.3/2011 – Lang'ata Police Station – was opened by the Provincial Criminal Investigation Officer (PCIO), Nairobi. Since I mentioned the names of the officers yesterday, I do not need to repeat them, because they are also in the HANSARD which I have given to the gracious lady. The case file will be forwarded to the Attorney-General in due course after completion of investigations for perusal and advice.

18. Joseph Ewoi. An incident occurred on 29<sup>th</sup> January where Administration Police officers from Shibuli AP Camp in Kakamega Division of Kakamega County were called to a scene of robbery by the area councillor, Mr. Benedict Ambudo. The officers, Nos.220413AP, Corporal Evans Cheruiyot and 220135, APC Sawe, rushed to the scene where it was alleged that the robbers were still inside in the compound of one Mrs. Agneta Ambudo. Acting on these reports, they shot dead the watchman, Mr. Joseph Ewoi, who was guarding the homestead. He died while being rushed to the hospital. An inquest file No.2/2011, Kakamega Police Station, was opened and is pending under investigations.

- (a) Mr. Speaker, Sir, the officers have so far been charged and the cases are pending before the court.-

- (i) Inquest file No.2/2010 was opened to establish the circumstances leading to the shooting of Nicholas Omondi and the officer involved during the Nakuru riots. The same was forwarded to the Attorney-General's Chambers, Nakuru, for perusal and advice;
  - (ii) Corporal Joseph Mwangi was charged with murder of Joyce Waithira Ngigi vide murder case file No.Cr.769/168/2010;
  - (iii) Corporal Dishon Musau Kithuka was charged with murder of Julius Kihara Njeru, vide case file No.Cr.759/15/2010. The case is pending before the court.
  - (iv) APC Ferdinand Madegwa Shivada was charged with murder of Martin Opiyo vide criminal case No.881/32/2010. The case is pending before court.
  - (v) APC Peter Karanja was charged with killing ten people in Siakago vide police criminal case No.4B2/379/2010.
- (b) Mr. Speaker, Sir, the following measures are being put in place to curb the trend:-
- (i) Officers with proven history of mental instability are being identified with a view of retiring them on medical grounds.
  - (ii) We are offering continuous guidance and counseling to all officers to avoid cases of depression and mental stress.
  - (iii) Close supervision of officers on duty;
  - (iv) Facilitating officers to take their leaves and off days; and,
  - (v) In the spirit of police reforms, the Kenya Police Service had been training top police managers on human rights as enshrined in the new Constitution and on how to deal with both internal and external customers.

**Ms. Karua:** Mr. Speaker, Sir, you will notice that the answer given today is exactly the same answer which was given yesterday, except the words "in circumstances where the police had criminal intent." I will take the answer in my stride, but it appears that the Assistant Minister is intent on covering up.

Mr. Speaker, Sir, following the brief answer yesterday, I have received several information from members of the public. I have a list of 62 people, some of them different from the ones he has. I know that it is over 70 people who have been killed. It is the police and the Ministry that has information and should table it here.

With your indulgence, I want to draw the Assistant Minister's attention and to confirm whether he is misleading the House by not giving this information. The first murder after the passing of the new Constitution was on the 6<sup>th</sup> of August, at Kigumo, a man Jackson Gatetwa, mistaken identity. On the 7<sup>th</sup> of October, 2010 at Kayole, three people allegedly suspected to be robbers were killed. On 14<sup>th</sup> August, that is ten days after the passage of the Constitution, five men were shot dead in Nairobi. On 18<sup>th</sup> August, 2010, in Mombasa, three men were killed. On 28<sup>th</sup> August, 2010, at Kasarani Sports Complex, three men were shot dead. On 25<sup>th</sup> October, in Naivasha, Kabati, two men were shot dead. On 31<sup>st</sup> August, last year, Nyamira North District, five suspects were shot dead. On 23<sup>rd</sup> September, 2010, along Nyahururu-Nyeri Road, two people were shot dead. On 6<sup>th</sup> September, at Kinoo, three people were shot dead. On 18<sup>th</sup> October, 2010, at Majengo slum, one person was shot dead. On 3<sup>rd</sup> November, Nakuru, one person was shot dead. On 18<sup>th</sup> November, Kiambu, two people shot dead. On 11<sup>th</sup> November, 2010, 14 young men were killed in Kinoo and dumped in Lari. On 11<sup>th</sup> November, 2010, the Siakago one which he has already admitted. Finally, this year, three men who were shot dead by police in broad day light on Langata road.

Mr. Speaker, Sir, apart from this, my colleague has three other people shot dead.

**The Assistant Minister for Co-operative Development** (Mrs. Kilimo): On a point of order, Mr. Speaker, Sir. Could the hon. Member also indicate the number of police officers who have been killed by the criminals? He should not just concentrate on civilian citizens!

**Mr. Speaker:** Order! You stood on a point of order---

**Ms. Karua:** Mr. Speaker, Sir, the Assistant Minister can ask that question. Mine is different. I have asked about the people shot dead by the police. Later on, if she approaches me, I can ask the number of police officers shot dead on her behalf.

Mr. Speaker, Sir, with your permission, so that the Assistant Minister does not say he does not have the dates and places--- I do not have the names; it is the Government that is the custodian of the information. Kenyans deserve to know. After the passage of the new Constitution, police should be publishing on a quarterly basis the number of people killed and they should be investigating the circumstances.

With your permission, I table a list of the information I have received---

**Mr. Speaker:** Order! What are you tabling!

**Ms. Karua:** Mr. Speaker, Sir, I am tabling a list I have made from the telephone calls I received.

Mr. Speaker, Sir, I have already referred to the HANSARD.

**Mr. Speaker:** Order! Reading it would be fine. You have given names, which the Assistant Minister will respond to. However, tabling a document that is not authenticated in terms of the direction, which I have previously given, is not regular. It will not be anticipated.

**Ms. Karua:** Mr. Speaker, Sir, it has a full signature. Would you like to have a look at it?

**Mr. Speaker:** Yes, let me look at it.

**Ms. Karua:** I am tabling it for the Speaker's consideration. In view of this evidence, which was in the public domain, why is the Assistant Minister intent on a cover up and on misleading the House?

**Mr. Ojode:** Mr. Speaker, Sir, this is a very serious issue. I might agree or disagree with what hon. Karua has stated.

One, she asked me the number of people who have been killed by the police. Yes, there those who have been killed by thugs. Those are the thugs my police officers are looking for to kill.

*(Laughter)*

Mr. Speaker, Sir, we need to be serious when we are talking about security.

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

**Mr. Speaker:** Order hon. Members!

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

This Question is prompted by the many extra judicial killings. Did you hear the Assistant Minister say that the police are looking for thugs to kill, when we know that the law does not allow them to kill them? They are supposed to be taken before a court of law. Is he in order to say that the police are looking for thugs to kill?



**Mr. Ojode:** Mr. Speaker, Sir, let us be serious when we are talking about thugs versus the innocent Kenyans. In a circumstance, where the gracious lady, Ms. Karua is carjacked by thugs and she has bodyguards, what will happen to the bodyguards who are guarding her? They will have to open fire!

*(Applause)*

Mr. Speaker, Sir, it is important for us----

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

**Mr. Speaker:** Order, Member for Gwassi. Please, try and relax. Let us hear the Assistant Minister for a moment.

**Mr. Ojode:** Mr. Speaker, Sir, it is important for the bodyguards of all hon. Members to be alert, so that if the Members or any innocent Kenyan is attacked by thugs, they have to retaliate.

The reason why we are providing security officers to the hon. Members is to protect them.

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

I believe we do not live in a banana republic. What the Assistant Minister has said and on which, hon. Karua rose on a point of order, was that the police are looking for “thugs” to kill. They are not looking for those who are confronting or want to kill hon. Members. He says they are looking for thugs to kill. How can a Government look for thugs to kill?

**Mr. Speaker:** Order, Member for Gwassi! You have made your point. You have been heard.

Mr. Assistant Minister, would you, please, clarify that area?

**Mr. Ojode:** Mr. Speaker, Sir, I am saying that my officers will not allow thugs to come and take over this country. That is exactly what I am saying.

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

**Mr. Speaker:** Order, Mr. Assistant Minister, please, resume your seat!

Order, hon. Members! Mr. Assistant Minister, I want you to come out clearly on this one. If people are thugs, is that the same thing as those people being suspects?

**Mr. Ojode:** Mr. Speaker, Sir, they are criminals.

**Mr. Speaker:** Order, Assistant Minister! Please, resume your seat!

Mr. Assistant Minister, in law as is known, a person does not become a criminal until he is found guilty by a court of law.

**Mr. Ojode:** Mr. Speaker, Sir, I said that the police officers will strive to arrest those thugs and take them to court. The Constitution is very clear.

**Mr. Speaker:** Mr. Assistant Minister, will you withdraw the word that the police are looking for thugs to kill them?

**Mr. Ojode:** Mr. Speaker, Sir, the police will not kill anybody, but they will arrest those thugs and take them to court. If at all I said the police will look for them and kill them, I beg to withdraw.

*(Laughter)*

**Mr. Speaker:** Order, Mr. Assistant Minister, you must withdraw the words “police are looking for thugs to kill”.

**Mr. Ojode:** Mr. Speaker, Sir, I beg to withdraw that particular statement, but I want to substitute with this: We have instructed the police that they must weed out known criminals. “Weed out” means they have to arrest them and take them to court. That is weeding them out!

*(Laughter)*

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

**Mr. Outa:** Mr. Speaker, Sir, I want to talk about the entrepreneur from my constituency who my good friend the Assistant Minister knows for sure that his police officers went to his house with a criminal intent. They killed Mr. Martin Opiyo in cold blood and took away his money. I came here and sought a Ministerial Statement. He has not issued any Ministerial Statement! What is he doing about it? Mr. Opiyo was not a criminal. He was an entrepreneur.

**Mr. Ojode:** Mr. Speaker, Sir, that is why I said that any police officer who is trigger happy will face the full force of the law. They all know the consequences. They use guns to arrest people. In the same vein, known criminals must be arrested and weeded out.

**Mr. Joho:** Mr. Speaker, Sir, could the Assistant Minister tell this House what disciplinary measures he has taken against police officers who commit crimes by killing thugs instead of taking them to court?

**Mr. Ojode:** Mr. Speaker, Sir, the law is very clear. If you make a mistake of that nature, the law will take its course; you will be taken to court and charged with murder. The law is very clear and we are not sparing anybody.

**Ms. Karua:** Mr. Speaker, Sir, I was carjacked and I am glad nobody was killed because the courts of law would be the ones to determine. Could the Assistant Minister tell us under what basis the police determine a person is a thug? Secondly, even if I have provided him with some information, is he willing to go and get the information, and then table before this House the number of people who have been killed by the police? You have also heard other hon. Members talking about other people he has not included in his list. Will he do his duty and give this House the actual number of people who have been killed by the police? We must stop those extra-judicial killings!

**Mr. Ojode:** Mr. Speaker, Sir, I agree that I have already given the actual number of people who have been killed by the police. They are only 18!

*(Mrs. Kilimo stood up in her place)*

**Mr. Speaker:** What is it Mrs. Kilimo!

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): On a point of order, Mr. Speaker, Sir. Mine is just a request. As we sit in this House and castigate police officers, unless it comes close home like it came to my house the other day where thugs came and killed the police officer who was guarding me. I pray that even though police officers---

**Mr. Speaker:** Order, Mrs. Kilimo!

**Hon. Members:** You are in the Government!

**Mr. Speaker:** We are not fighting! I just want to give you direction; do not be so irritated! Everything that we do in this House is governed by the Standing Orders. The Standing Orders do not provide for a Member of the Front Bench, a Member of the Cabinet, an Assistant Minister for that matter, to stand up as if on a point of order to make a request. Read your Standing Orders! This is your second term in this House and it does not earn you any respect to appear as if you are so aggressive and yet, you are in breach of the rules. What you should have done is to stand up on a point of information and give that information to the Assistant Minister. Then you will have no reason to be irritated. Please, proceed and calmly give your information.

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): Mr. Speaker, Sir, I stood earlier on a point of information but I did not catch your eye. So, I thought a point of order would help me!

*(Laughter)*

What I am saying is that we should not also castigate police officers who guard us. They put their lives on the line everyday on our behalf. I was just trying to illustrate. When thugs came to my house in September, they killed Malicha Dupa, my bodyguard. There was nobody else in the compound. So, you wonder why they came in the first place. Were they looking for people to kill or to take them to court?

*(Laughter)*

**Mr. Ojode:** Mr. Speaker, Sir, indeed, the story is true. Those of us who have not experienced those kinds of carjacking and criminal activities are the people who are not supporting the services of the police. I would like to urge my colleagues: Let us not demoralize police officers. Let us all support the work of police officers.

*(Applause)*

The reason why I am saying that is because police officers are being bashed every now and then. The day you will be carjacked is when you will realize that police officers are doing a good job. But I will not hesitate to tell the police to do their work. I would like to request my colleagues that, as the police officers are doing their job, let us support them. Let us not demoralize them!

*(Applause)*

The other thing is that we are undertaking reforms. Yes, we will get rid of trigger happy police officers to clean the Police Force. We want a Police Force to mind about the welfare of innocent Kenyans. Otherwise, my appeal is that let us support the police officers to do their work.

You are also aware that, as we sleep in our houses, police officers are outside there waiting for anybody who will come and fight us. What do I do with those who

come to compounds of hon. Members to either carjack or do other odd things? We have to act and I need that support! You are aware that Kisumu City is full of thugs. What do I do with those thugs? We have to do something!

*(Laughter)*

We have to do something!

**Hon. Members:** Weed them out!

**Mr. Olago:** Mr. Speaker, Sir, you have heard the Assistant Minister say that Kisumu City is full of thugs and, indeed, he is aware that only about ten days ago, two taxi drivers were shot dead and they are being buried this weekend. It is true it has been brought to his attention; but what is he doing about it?

**Mr. Ojode:** Mr. Speaker, Sir, just as I am saying, if I get your full support, we will try our level best to weed out the thugs.

*(Laughter)*

**Mr. Speaker:** Order, hon. Members! Next Question by Mr. Mwadeghu! He is not here. So, the Question is dropped!

*Question No.416*

ELIMINATION OF BLUE GUM TREES

*(Question dropped)*

*Question No.492*

CONSTITUENCIES COVERED BY LAKE  
VICTORIA NORTH WATER BOARD

**Mr. Speaker:** Is Mr. Koech not here?

**Mr. Keter:** Mr. Speaker, Sir, Mr. Koech has a problem and cannot be here today.

**Mr. Speaker:** What did you say?

**Mr. Keter:** Mr. Speaker, Sir, I am saying that Mr. Koech is not with us today. He lost a relative and so, he cannot be here.

**Mr. Speaker:** That is not the way we communicate to the House. I am afraid you should have approached the Chair earlier. So, I will drop the Question.

**Mr. Keter:** Mr. Speaker, Sir, I tried to but you were busy writing your ruling!

*(Laughter)*

**Mr. Speaker:** Order! The Question is dropped!

*(Question dropped)*

Next Question.

*Question No.526*

REDUCTION OF BUDGETARY PROVISION TO REA

**Mr. Mbadi** asked the Minister for Energy:-

(a) why the Ministry reduced the budgetary provision for the Rural Electrification Authority by 50 per cent in the 2010/2011 financial year; and,

(b) whether the Ministry will allocate more funds in the 2010/2011 Supplementary Estimates to enable the Authority provide electricity to the rural areas and help unlock the economic potential of those areas.

**The Assistant Minister for Energy** (Eng. M.M. Mahamud): Mr. Speaker, Sir, I beg to reply.

My Ministry submitted to the Treasury a Development Expenditure requirement of Kshs6,203,000,000 for the year 2010/2011. However, due to financial constraints, that figure was reduced to Kshs4,518,000,000; a reduction of Kshs1.7 billion. It is not 50 per cent, but 31.6 per cent.

(b) It will not be possible to allocate more funds as the Treasury has informed my Ministry that no more funds will be available during this financial year.

**Mr. Mbadi:** Mr. Speaker, Sir, as you will notice from the Assistant Minister's answer, the budgetary allocation was modestly reduced by about Kshs1.7 billion. Be that as it may be, why did the Ministry reduce the budgetary provisions for Rural Electrification Authority (REA) by 50 per cent? What led to the Ministry reducing the budget allocation to REA by 50 per cent, thereby denying rural areas the much needed energy?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, it is not true that the Ministry reduced the budget by 50 per cent. In fact, the figure for last year for the Development Vote was Kshs6.283 billion for rural electrification. This year it is Kshs4.583 billion. So, the reduction was actually Kshs1.7 billion. It was not the Ministry that reduced it. We had requested for enough money, but we got less Kshs1.7 billion.

**Dr. Eseli:** Mr. Speaker, Sir, given the fact that the allocation of funds for rural electrification is not uniform throughout the country, could the Assistant Minister give us an explanation as to why constituencies that are least electrified are allocated a similar amount of money to those constituencies that are widely electrified? Could he also tell us what the Ministry is doing to rectify this anomaly?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, as you realize, the REA has done its best to electrify the rural areas. Annually, we have been contributing about Kshs16 million per constituency. However, this year that figure has been reduced to Kshs10 million because of the budgetary reduction. Depending on the finances we get, we try to be as equitable as possible. The areas which are off-grid get specific allocations. So, it is true that we are giving all areas the same amount. We actually have the off-grid stations mainly in the ASAL areas.

**Mr. Baiya:** Mr. Speaker, Sir, could the Assistant Minister explain where the money for those constituencies that are, for one reason or another, unable to utilize their

allocation based on the restrictive principles goes to? What criteria is used to allocate that money to other areas?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, I would request the hon. Member to go to REA because monies allocated to the constituency are normally carried over cumulatively to the next financial year. So, maybe he could check with REA which will give him their implementation programme for the whole year.

**Mr. Bahari:** Mr. Speaker, Sir, 30 per cent reduction is quite a big figure. Could the Assistant Minister provide a list of the planned projects which are affected by that reduction?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, as I said, the allocation for rural electrification programme to each constituency in the last financial year was Kshs16 million. However, it has been reduced to Kshs10 million. So, each constituency will get less Kshs6 million during this financial year.

**Mr. Mbadi:** Mr. Speaker, Sir, when the Ministry was rolling out this programme, the intention was to meet some target by the year 2015. With this kind of reduction, is the Ministry still satisfied that they will be able to meet the stated targets?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, I did mention that we requested for a certain amount of money, but that was what was allocated. Our targets are still the same. In fact, the strategic plan for the REA for 2008 to 2012 is on course. In fact, we require about Kshs10 billion per year for the rural electrification programme. However, we will adjust accordingly depending on the finance we get from the Treasury.

*Question No.534*

YOUTHS UNDER KKV PROGRAMME  
IN BURA CONSTITUENCY

**Mr. Speaker:** Order, hon. Members. I am aware that the Member for Bura is indisposed. So, this Question is deferred indefinitely until such time that the Member for Bura is able to appear before the House.

*(Question deferred)*

Question No. 566 and Question No. 614 are both deferred to Tuesday next week at 2.30 p.m.

*Question No.566*

PROJECTS BY EWASO NYIRO NORTH  
DEVELOPMENT AUTHORITY

*(Question deferred)*

*Question No.614*

PROGRESS REPORT ON ESP PROJECTS IN KONONIN

*(Question deferred)*

**COMMUNICATION FROM THE CHAIR**

**Mr. Speaker:** Hon. Members, before we get to the next Order, I have two communications to make.

WORKSHOP FOR MEMBERS OF EALA AND KNA

First, hon. Members, the Ministry of East African Community has organized a half day interactive session with all Members of the Kenya National Assembly and the East African Legislative Assembly to be held tomorrow, Friday, 4<sup>th</sup> February, 2011 at the Laico Regency Hotel, starting from 8.00 a.m.

This workshop is expected to enhance the working relations between the Kenya National Assembly (KNA) and the East African Legislative Assembly (EALA). Among the key issues to be discussed during the workshop are implementation of the Common Market Protocol Trade Facilitation and East African Community integration.

The office of the Clerk is distributing invitation letters to all Members of Parliament together with the workshop programme. I appeal to all Members of Parliament to attend this important workshop.

Thank you.

Members at the bar, you may walk in.

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

**CONSIDERED RULLING**

CONSTITUTIONALITY OF NOMINATION OF  
JUDICIAL OFFICERS BY THE PRESIDENT

Hon. Members, this is the second communication. On Tuesday, 1<sup>st</sup> February, 2011, the Member for Imenti Central rose on a point of order to seek the assurance, guidance and direction of the Chair on what hon. Members of the National Assembly should do where incidents of gross violation of the Constitution occur, instigated by either Members of this House, the Executive or the Judiciary.

Mr. Imanyara drew the attention of the Speaker to the provisions of Article 3(1) of the Constitution enjoining every person to respect, uphold and defend the Constitution. He further drew the attention of the Chair to, and tabled a statement attributed to the Judicial Service Commission (JSC), among other things “expressing grave concern and misgivings about the nomination of the Chief Justice made by His Excellency the President” and calling for a re-think of the matter, putting the country first, that would entail a withdrawal of the nominations and a fresh start.

Mr. Imanyara went on to cite the Judicial Service Commission as having held the view that in order to give the process of appointing judicial officers legitimacy, public

confidence, ownership and acceptance by the people of Kenya, the Judicial Service Commission must play an integral part in the process as contemplated in Article 172 as read together with Article 166(1) and Section 24 of the Sixth Schedule to the Constitution.

Hon. Imanyara also cited and tabled a statement by the Commission for the Implementation of the Constitution (CIC) which stated, *inter alia*, that the process of appointment of the Chief Justice should commence with recommendations by the Judicial Service Commission to the President who, in turn, should consult the Prime Minister, after which the President should forward the name of the nominee to the National Assembly for approval before final appointment by the President.

It was the further position of that Commission that the role of the Judicial Service Commission should be respected and the Judicial Service Commission should be allowed to undertake the function reserved to it by the Constitution.

Mr. Imanyara claimed to be aware that the Right Honourable Prime Minister had written to the Speaker and tabled a copy of the said letter in which the Prime Minister disassociated himself from the nomination process. In the Member's view, there was a clear attempt to undermine the Constitution, creating a dangerous trend which, to his mind, would lead back to the old days and thus, defeating the essence of the long crusade for a new Constitution in this Republic.

Mr. Imanyara concluded by seeking the directions and guidance of the Chair on how the House should proceed, bearing in mind the provisions of Standing Order No. 47 which empowers the Speaker to direct that any proposed Motion that is contrary to the Constitution, without expressly proposing appropriate amendment of the Constitution, to be inadmissible.

What followed were a number of interventions by 17 Members rising on substantive points of order and providing various perspectives on the matter of the nomination of certain constitutional office holders by His Excellency the President. Hon. Members, I permitted considerable ventilation on this matter and I am glad that I did because deep and profound reflections on the nature, character, letter and spirit of our Constitution were proffered.

From those submissions, which were too numerous and varied to be cited and attributed individually, I have filtered the following issues:-

1. Whether or not the Speaker is competent to make a pronouncement or determination on the matter of the constitutionality of the nominations and their propriety for transmission to and disposal by this House or whether conversely, this would be a matter for other constitutional organs and in, particular, the Judiciary.
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 and, going hand in hand, if the Constitution dictates that the process be participatory, competitive and transparent?
5. Were there consultations between the President and the Prime Minister as contemplated by Section 26(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 consultation as they did.

6. What is the import of making the consultations subject to the National Accord and Reconciliation Act? What does it denote?
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 nomination of office-bearers amount to a dispute within the meaning of the Political Parties Act?
10. And finally, whether or not the correct approach to the questions raised on the propriety of the nominations can be resolved by a vote in this House to approve or disapprove the nominees.

I undertook to give a ruling today, Thursday 3<sup>rd</sup> February, 2011.

Hon. Members, I wish to begin by pronouncing myself on the matter of the jurisdiction of the Speaker to determine the questions raised as the answer to this question is a pre-requisite to proceeding with the other issues raised. Hon. Members will recall that I indicated, at the onset, on Tuesday 1<sup>st</sup> February 2011, in promising to give this ruling, that I had no doubt in my mind that the Speaker has jurisdiction to rule on this matter. Indeed, I have previously ruled on various occasions that it is settled law in the Commonwealth and beyond that every independent Legislature is the sole judge as to how it shall conduct its own affairs. The Speaker, as the Leader of the House and the manifestation of the authority of the House, is mandated and obligated to safeguard and jealously protect its sovereignty within the Government, to determine what it shall or shall not do, and when and in what manner it shall do those things without interference from any other person or authority.

Hon. Members, this position is recognized in parliamentary practice and traditions and in both the former and the present Constitutions. This is what the Constitution means when it vests the legislative authority of the Republic in Parliament and provides that Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty. This is also the essence of the separation of powers that I have every so often pronounced myself upon from this position.

The view that it can fall to another organ, whether the Executive or the Judiciary, to determine for Parliament a matter before Parliament is, to my mind, constitutional heresy; which I would urge that every person in this country and more so, in this House, completely purges and disabuses themselves of. This disposes also of the question of whether or not the Speaker can properly interpret the Constitution or that this function belongs to the Judiciary. The answer, of course, is that in so far as a constitutional question arises before the House, within the conduct of the business of the House, it is the constitutional duty of the Speaker to interpret the Constitution to that extent and for that purpose alone, so as to enable the House to proceed with its constitutional functions.

I emphasize the following, hon. Members. It is not fathomable and it would be a grave negation of the Constitution that the House should adjourn or otherwise suspend its business and seek the directions of another body or organ before it can proceed.

I want all of us to note that emphasis. I think that it is time to debunk and demystify, for all time, the question of the interpretation of the Constitution.

It is not the intention of our Constitution and, indeed, the Constitution does itself make it clear in various Articles including Article 10(1) and Article 20(4), among others, that the interpretation of the Constitution is not the exclusive property or preserve of any particular organ, person or authority. Article 10(1) in particular, binds every State organ, State officer, public officer and all persons to the national values and principles of governance when they apply or interpret the Constitution, enact, apply or interpret any law or make or implement public policy decisions. I invite all Members of this hon. House to acquaint themselves with Article 10(1) as well as Article 20(4).

It is clear that the interpretation of the Constitution is as much the mandate and obligation, in their respective capacities, of a forestry officer, a labour officer, a magistrate, the Board of a public school, a police officer, the Director of Public Prosecutions or the President of the Republic. Each of these persons is bound to administratively interpret and apply the Constitution in their actions and functions. To do so, they must interrogate and understand what the Constitution means and how it applies to any particular situation in which they find themselves.

Article 3(1) of the Constitution to which hon. Imanyara referred this House, in obligating every person to respect, uphold and defend the Constitution, would have no meaning if the individual is not permitted to interpret the meaning and application of the Constitution. This is, of course, not to say that the courts no longer have jurisdiction to interpret the Constitution. It is to say that it is not a jurisdiction exclusive to the courts. It is important that interpretation of the Constitution for the purpose of its application be distinguished from the exercise of judicial authority as provided for in Article 159(1) of the Constitution. It is important that we understand that distinction.

There is probably no way that this House could possibly function if the Speaker could not interpret the Constitution. Standing Order No. 47, in particular, in requiring the Speaker to rule to be inadmissible a Motion which, in the Speaker's opinion is unconstitutional, would naturally be unconstitutional because the Speaker would be prevented from forming that opinion. In forming that opinion and in all other interpretations of the Constitution, the Speaker is not acting in a judicial capacity within the meaning of the Constitution. Judicial interpretation is the preserve of the judiciary.

Hon. Members, having settled the question of jurisdiction, I now move to address myself to the issues raised. As will become apparent presently, it may not be necessary to pronounce myself on all of the issues which I have set out as having been raised. In this regard, it is important, at the outset, to emphasize that the primary question, the mother of all the points of order, as it were, in respect of which the guidance and directions of the Speaker were sought and promised, was the point of order by hon. Imanyara, the essence of which was to invoke Standing Order No.47 to urge the Speaker to find that the nomination process, having been done contrary to the Constitution, was not admissible before this House or any of its organs and could not properly be considered by either this House or any of its Committees.

Before I make this determination, I think it is important to consider the provisions of Standing Order No. 47. The Standing Order No. 47(3), which is the relevant provision, presupposes the existence of a Motion or a proposed Motion in respect of which the Speaker can form an opinion that it is contrary to the Constitution. I invite you once again to acquaint yourselves with Standing Order No.47 (3). In the present case, clearly, we are not at the point where there is either a Motion or a proposed Motion. I think it is quite clear that Standing Order No. 47 is inapplicable in the present circumstances and cannot be relied on by the Speaker for the guidance sought by hon. Imanyara.

A related issue, therefore, must be the question whether the House is properly seized of the matter in respect of which hon. Imanyara sought guidance. Is there a matter before the House in respect of which the Speaker is being invited to find that there has been contravention of the Constitution? To answer this question, I wish to call the attention of hon. Members to the procedure and practice that have evolved in this House in relation to the vetting of persons for approval by the National Assembly. One of two procedures is available.

In the first case, the responsible Minister tables a list of names proposed for appointment as a Paper Laid and the Speaker thereupon commits the matter to the relevant Committee for deliberation and report to the House. The Committee is then responsible for considering all aspects related to the suitability of the candidates proposed as well as the constitutionality or legality of the processes by which the nominees have been arrived at. The matter is thereafter brought to the House on a Motion by the Chairperson of the relevant Committee asking the House to resolve that it approves or does not approve the nominees or some of them. It is then open to the House to approve or disapprove the Motion. It is also open to any member of the House to raise any objection, including an objection under Standing Order No. 47(3), that the Motion is a contravention of the Constitution.

Hon. Members, in recent times, the more prevalent practice and procedure, which is the second, has been for the Minister or other nominating authority to write a letter to the Office of the Speaker, forwarding the proposed names of persons to be vetted for approval and requesting the Speaker to transmit the Communication to the House for vetting and approval through its recognized organs, namely, the relevant Departmental Committees. This is the procedure that has been adopted in respect of a long list of recent nominees, including the Commission for the Implementation of the Constitution, the Commission on Revenue Allocation, the Judicial Service Commission, the Privatization Commission, and the Advisory Board of the Kenya Anti-Corruption Commission, among others. Members of the House will respectively remember this.

By this procedure, the role of the Speaker usually consists of receiving and transmitting to the relevant Committee the names of the nominees received for the Committee to exercise its mind on behalf of the House to determine if the law has been complied with in all respects and whether or not additionally, the persons nominated are suitable for recommendation to the House for approval. To reach this determination, the committee may call for evidence in the usual manner, including summoning the nominees to physically appear before it for vetting, summoning witnesses to assist it in making findings both of fact and of law and receiving representations from the public on the legality of the process or the suitability or otherwise of particular nominees.

Hon. Members, from the foregoing synthesis, the question whether or not this House is properly seized of the matter of the nominees for the purpose of enabling the Speaker to make the determination he has been called upon to do becomes central and key to this matter. The question at hand is as follows: When a nominating authority sends the names of nominees to the Speaker, what is the legitimate role of the Speaker in respect of the correspondence transmitting the names? Is the correspondence addressed to the Speaker as Speaker or as a conduit to the House?

What role does the Speaker have in regard to that correspondence before it goes to the House in plenary or to a committee of the House? Is the Speaker permitted to process the correspondence and form a judgment and make a determination as to whether or not it should get to the House? Is it permissible for the Speaker, administratively in his Chambers, to determine, for example, that the nominees do not qualify for appointment and that therefore the relevant statute or the Constitution has been contravened and decline to transmit the correspondence to the House or its committees?

Hon. Members, these questions are relevant because in the present case, the Speaker received a letter from the Office of His Excellency the President on 31<sup>st</sup> January, 2011, averring that he was forwarding the names of nominees in accordance with the Constitution for processing by the House. At the point at which the Honourable Imanyara sought the guidance of the Chair, the letter had neither been tabled before the House nor been received by a committee of the House. Subsequent to the receipt of the letter from the Office of the President, the Speaker did also receive, on 1<sup>st</sup> February, 2011, a letter from the Right Honourable Prime Minister making certain representations as to the validity and constitutionality of the earlier correspondence received.

Two important questions arise: Firstly, whether the Speaker could rule that nominations were unconstitutional before the House had formally become aware of the nominations and, secondly, whether it would be proper for the House to deal with the correspondence of the Prime Minister before the preceding correspondence from the Office of the President, to which it related, had been formally brought to the attention of the House.

Hon. Members, before I pronounce myself on whether the House is properly seized of this matter, I wish to indicate that I have not been able to find any precedents of this House in which the Speaker intercepted correspondence addressed to the House and unilaterally made a determination as to its legality or validity, and returned it to the nominating authority. I further wish to urge the House to recollect that in the course of the points of order that were raised on Tuesday 1<sup>st</sup> February, 2011 in this House, the Speaker, this House and the nation at large was taken through the elaborate detail of the events preceding the submission of the names of the nominees to the Speaker. I would think that some hon. Members of this House may have had questions they would have liked to ask of both the Vice-President and Minister for Home Affairs, and of the Prime Minister.

Possibly, some hon. Members may have had information relating to those events, which they would have liked to bring to the attention of the House. Members of the public may have had their own thoughts which they would have liked to share with this House on these matters. Constitutional organs like the Judicial Service Commission (JSC) and the Commission on the Implementation of the Constitution (CIC) were mentioned and certain claims made in relation to them. Certain statements were attributed

to these bodies. I have no doubt in my mind that these bodies would have had something to say in relation to those claims.

Bodies like the Law Society of Kenya (LSK), the International Commission of Jurists (ICJ) and the Federation of Women Lawyers (FIDA) have come out in the public domain asserting certain positions, which they contend would assist the country in arriving at a lawful and fair determination of the matters in issue. These are important matters to note, because, as hon. Members are no doubt aware, if there is any matter relating to the conduct of public affairs in general, and to the Legislature in particular; that the Constitution has comprehensively addressed, it is the matter of the centrality of the rule of law, democracy, transparency, accountability, inclusiveness and the participation of the people.

Hon. Members, as I have indicated, the issues I have set out as requiring determination entail both matters of law as well as matters of fact. I acknowledge and appreciate the learned interventions made in the House in support or opposition of an array of propositions. The importance of questions posed and the critical ramifications that may have to follow the overall implementation of the new Constitution are such that a more collegiate and participatory process is required not only as a matter of natural justice and sound conduct of public affairs but also as a requirement of the Constitution.

As your Speaker, I do 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 without a full hearing; either that the Constitution was contravened or that it was complied with. If I were a judge sitting on the Bench in a court of law, and not on the Speaker's Chair, I would rule that the matter proceeds to hearing and that the objections raised be heard and determined at that stage.

In parliamentary parlance, the forum for a full hearing entailing adducing and rebuttal of evidence, examination and cross-examination of witnesses, is the Committee of the House. The Standing Orders, recognizing that the plenary is unsuitable for a detailed examination of important matters, has made provision for committees to precede plenary consideration of such matters.

Hon. Members, I do recognise, of course, that the point has been made that the matters complained of, being unconstitutional, they do not merit even transmittal to the committee. With respect, in the present case, I disagree. The role of a Committee in the vetting process is to consider all aspects of the proposed nominations, including compliance with the Constitution and all relevant, enabling and incidental laws. In answer to the question I have previously posed, I do find, and I therefore so rule, that in conformity and consonance with the precedents and practice developed and embraced by this House, the proper role of the Speaker when he receives nominations, and particularly those made pursuant to the provisions of the Constitution, is that, the minimum he will do, as a first mandatory step, is to convey these to the relevant organs of the House.

It is also the role of the Speaker to see to it that the Committees of the House do consider any forwarded nominations, observing constitutional requirements as to public participation and due process and report to the House their findings both as to the constitutionality and other propriety of the nominations as well as their recommendations for action by the House. If this is not done, I am of the considered opinion that the Legislature shall not meet the requirements of the Constitution.

Hon. Members, let me clarify that reference of the correspondence so far received both from the Office of His Excellency, the President and the Right Hon. Prime Minister to the relevant Committees of the House does not amount to a finding or determination that these nominations were or were not constitutionally made. Nothing can be further from the truth. It is merely a pronouncement that it is inopportune at this stage for the Speaker to make such a determination because the House is not yet substantively seized of the matter, and further that other players whom the Constitution recognizes as having a role in the matter have not had opportunity to formally participate in the process in a manner that would enable the Speaker or indeed the House to make that determination from a point of full knowledge. In a manner of speaking, these stakeholders have not been consulted. It may very well be that at the end of this exercise, the relevant Parliamentary Committees as they are obligated to, having delved into the matter, there will be a Motion or proposed Motion as presumed by Standing Order No.47 that the House shall deal with.

Hon. Members, from my pronouncements above it should become apparent that all the other issues raised requiring determination of facts or law have not crystallized because of my finding that from a constitutional, legal and procedural point of view a summary and preliminary determination of the matter is neither possible nor desirable.

I, therefore, rule that as at where we are, it is not appropriate and I accordingly decline 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 arrived at 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. It follows that I accordingly withhold any determination or comment on the veracity and weight to be accorded to the letter received from the Rt. Hon. Prime Minister. I will repeat that so that it is clear. It follows that I accordingly withhold any determination or comment on the veracity and weight to be accorded to the letter received from the Rt. Hon. Prime Minister. I further direct that the two letters be forwarded to the Departmental Committees on Justice and Legal Affairs and Finance, Planning and Trade according to their respective mandates for disposal as provided for in the Standing Orders and the law. Given the urgency of the matter and the Constitutional deadlines, I direct that the Committees shall carry out the requisite inquiries and table their reports in the House on or before Thursday, 10<sup>th</sup> February, 2011.

Hon. Members, this is particularly important because as hon. Members shall recall the House is in special sittings convened to discharge this business. As hon. Members are aware the Committee of the House---

*(Loud consultations)*

Order, hon. Members! Order, hon. Kajembe and your team!

As hon. Members are aware, a Committee of the House collects evidence and makes findings to help the House arrive at an informed decision. A Committee does not of itself finally determine a matter for the House. Additionally, it must be noted that questions of constitutionality and observance of the law are not matters to be determined only by the vote of either the Committee or indeed of the House. To this end without pre-empting the findings of any of the Committees of the House or any action of the House,

it is important that the House remains alive to the Speaker's mandate when timeously obligated to give guidance and direction sought by Mr. Imanyara. Needless to say, the window remains open and it is to be hoped that developments may occur that make this important nomination process uncontested on the basis of either constitutionality or otherwise and thereby render such guidance as may be expected from Mr. Speaker and directions unnecessary.

Hon. Members, permit me to make a few concluding observations on this matter. In legal balance this would be *obiter dictum/dicta*. I wish to echo the observations of Mr. Abdikadir Mohamed, the Member for Mandera Central who called for the cultivation of the culture of constitutionalism without which the Constitution becomes a mere paper. Constitutionalism can be broadly defined as the bundle of ideas, attitudes and patterns of societal behaviour which shows a subscription by that society to, and a belief by it, in the principle that all authority of the Government derives from and is limited by the Constitution and exists to advance the common good and welfare of that society.

Hon. Members, I want to plead with all of us, the leadership and the people of this country that we all imbibe from the fountains of constitutionalism so that it becomes part of our lives and our adherence to the Constitution ceases to be laboured legalistic and minimalist.

Painful as the memories maybe, I think it bears reminding that three years ago almost to the day, this country was at war with itself in circumstances not so dissimilar. We were on the brink of the precipice because a dispute relating to an election was not referred to the judiciary because of a lack of faith in it. It is this very judiciary whose head is now sought to be appointed by a process entrenched in the new Constitution resoundingly enacted by the people of Kenya for themselves. It is nothing short of heartbreaking to the people of this country that this process that should herald a new beginning and inspire a new confidence and legitimacy in this crucial organ of state should take off to such a rough start.

*(Applause)*

It is the kind of process that Mr. Abdikadir has described as a "zero-sum" game.

Hon. Members, few countries have had the opportunity of a second chance as we have. Events around the world in recent days are a testimony as to how situations that may have been easily avoided, or acted upon while there was an opportunity can rapidly deteriorate and become unmanageable.

Hon. Members, to my mind, it will be a pity and a severe indictment of our collective leadership if in time to come history shall record of our country in general and of our leadership in particular that we learned nothing from history.

Thank you.

*(Applause)*

**Mr. Musyimi:** Mr. Speaker, Sir, when you were saying your prayers, somebody said they detected a tremor in your voice. They were a little concerned about what lay ahead. I told them that that tremor would normally precede a solemn statement. You have not disappointed. We thank you very much for what you have said today.

I stand here today to also add my voice to the fact that the sovereignty we exercise today is delegated to all of us in power. That sovereignty belongs to the Kenyan people. Being a Member of the Committee on Justice and Legal Affairs we are aware of the magnitude---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Those of you withdrawing, please, do so quietly so that we can hear those hon. Members who wish to make contributions.

Proceed, Mr. Musyimi!

**Mr. Musyimi:** Mr. Speaker, Sir, as I was saying, the sovereignty we have, in your words, is exercised on behalf of our people. Therefore, I stand here today to remind us that this sovereignty, whether exercised in the Judiciary or in this Parliament or by the Executive, is delegated. It is sovereignty that belongs to the people of Kenya.

The people of Kenya have given to themselves a new Constitution, and they have huge expectations from those whom they elect. I stand here to make a plea to all of us who are in positions of power, and remind ourselves that power is, indeed, a privilege. It comes with enormous privileges and tremendous obligations. However, power can also be abused; it can be blind. Power can make us completely insensitive to the needs and cries of our people. It can make us blind to what is obvious to other people, who are not in power.

Mr. Speaker, Sir, we owe it to our people to read the mood that they have huge needs of poverty; they need water, they need predictability in Government, they need stability and they need an end to corruption. As I stand to thank you, I want to say that we need to be humbled by the positions we have.

In a book that some of us may be familiar with, The Bible, in the story of Esther, the one lesson we learn is that the people in power are often the last people to know what is happening in the country. That has nothing to do with whether or not you have a national intelligence service. You can have it but be completely impervious to the actual needs of the people.

*(Applause)*

Mr. Speaker, Sir, let me take this opportunity to make a plea to my colleagues here and in the Committee and those who enjoy high office in the Executive. To the two Principals I say this: The authority they exercise as our Principals is delegated authority. It is delegated to them by the people of this country. The sovereignty belongs to the people. It is vested in the people. So they enjoy it as delegated authority. That, I think, is a statement of fact in line with the new Constitution. So, we humbly appeal to our Principals to, please, create the kind of environment that allows us to go through a very difficult time. Reforms are not easy. This is something that was said three years ago. Anybody who has been involved in reforms in any institution, big or small, knows the pain of reforms. They are not easy! However, what reforms require, particularly in a country like ours, is a point of reference, a stabilizing centre---



**Mr. Speaker:** Order, Mr. Musyimi! I allowed you that latitude because you serve on the Committee on Justice and Legal Affairs; any other interventions after that must be limited to just a minute. This is because we do not want to open up this subject again.

**Mr. Musyimi:** Mr. Speaker, Sir, I plead through the Chair that the Principals provide the stability, a credible centre and a place around which we can begin to enjoy the new Constitution and make it meaningful.

**Mr. Speaker:** Mr. Balala, I am giving you just one minute; you do not have to do more than that!

**The Minister for Tourism (Mr. Balala):** Mr. Speaker, Sir, I observed your ruling and final prayer that it is the leadership of this country that needs to be serious to steer this country well. We know what we went through three years ago; this is truly the second chance. If we do it wrong today, we will plant a seed of violence in 2012.

I think even before going to the Committee that you have referred this subject to, I think our two Principals need to be wiser. They are our leaders and they need to be wiser than us, discuss this matter thoroughly and come to the right conclusion.

Mr. Speaker, Sir, my worry---

**Mr. Speaker:** Order; I think you must conclude! The minute is over. Say whatever you want say.

**The Minister for Tourism (Mr. Balala):** My worry is that if we do not do it right, then we will go wrong even in 2012. I plead to my leaders that this is the time to do it right.

**Mr. Imanyara:** Mr. Speaker, Sir, I thank you very much for the expression of hope that is contained in your Communication. It was an expression of hope that things will be done right within a reasonable time. You have expanded the window of opportunity in order for the Principals to understand that consultations are consultations within the National Accord. Consultations are preceded by the principle that is recognized in that law, and is anchored in the Constitution. That is power-sharing.

Mr. Speaker, Sir, we must understand; you have expressed the hope that this is not a matter that will be determined by numbers. One hopes that the two Principals will recognize that sharing of power that is enshrined and anchored in the Constitution has meaning. This meaning cannot be found in sheer numbers in Committees.

You have said you have that jurisdiction. I want to assure you that when the time comes, and if the Constitution and the spirit enshrined in that Constitution is not met, then we will be ready to raise the issues again, because the Constitution of this country has stated in Section 3 that we all, at all times, must uphold that spirit of constitutionalism.

**The Minister for Lands (Mr. Orengo):** Mr. Speaker, Sir, I am grateful to be given this opportunity to say a few words. First, I agree with you entirely that no other body, including the Judiciary or the Executive, can interfere with the internal workings or mechanisms within the National Assembly. That is a matter which is entirely within the province of Parliament and the various Committees.

However, since we do not work in a vacuum, I was going to seek your direction. The High Court has now held that the nominations were unconstitutional, and no State organ is allowed to process any of those names. That leads us almost into legal anarchy. Could it be possible that this matter is revisited on Tuesday, so that we know exactly how

to proceed? This is because we also cannot take the Judiciary for granted. I agree entirely that the internal mechanisms and processes of this House cannot be interfered with.

**Mr. Speaker:** Hon. Members, that must bring us to the end of this matter. Mr. James Orendo has sought direction, but I am afraid that I will not give any further direction, because my ruling speaks for itself. I have given clear directions, including on the area that he has now canvassed; it is very well covered in that ruling.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. I was just pleading with you; in view of the importance of the matter, to just give us a little leeway to ventilate. Please, Mr. Speaker, Sir. You should begin with me!

**Mr. Speaker:** Member for Gichugu, the practice of this House and, indeed, the traditions of this House and even the procedure is that when the Speaker gives a ruling, we do not revert to the matter again. I would be setting a very dangerous precedent.

What is that burning issue, Member for Gichugu!

**Ms. Karua:** Mr. Speaker, Sir, we would like to appreciate your ruling. The ball is squarely on the shoulders of the Executive and Parliament. I want to plead with the two Principals that they must lead the way; we must retrace our steps; there is a lot of business to transact after this. Owing to that, we need, as the Speaker said, to have collegial relations. For the sake of the country, let us heed the wisdom of the Speaker and retrace our steps.

**The Minister for Education** (Prof. Ongeru): Mr. Speaker, Sir, I just want to add my voice; that your ruling has given us an opportunity for this matter to be properly before this House. It is the function of this Parliament to examine, to vet and make a decision in one way or another on how this matter should proceed. I think from what I have heard from hon. Orendo, if that situation has happened, it would be the most unfortunate situation, because the function of determining those appointments lies squarely before this House. Therefore, there should be no other body beyond this House. Until that decision is made by this House, I think they would be jumping the gun on false premise.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Kilonzo): Mr. Speaker, Sir, since you have allowed comments, allow me to make only one. As I said during this point of order, you certainly have demonstrated that you are qualified to be a Chief Justice or even a High Court Judge. I want to salute your findings and perhaps suggest that at some opportunity, you also emphasize that Article 3 of our Constitution and Chapter 6 of our Constitution is one that all organs of the State must pay attention to, in addition to Article 10. I salute you and welcome the findings.

**Mrs. Shebesh:** Mr. Speaker, Sir, I just want to congratulate you for keeping the faith of Kenyans with the rulings that you make in this House. There must be some hope that Kenyans are holding onto. If there is no hope from the Executive, then at least there should be hope from the Legislature, in Parliament. I want to thank you especially in the light of the kind of threats that had been sent to you. Thank you for holding firm.

**The Assistant Minister for Public Works** (Mr. Kiunjuri): Mr. Speaker, Sir, let me join my colleagues in thanking you for your wisdom in mid-wifing this process. You have given us a breather. When we were young boys, our parents used to leave us in the house so that we could make sure that when the traditional *githeri* is put on fire, we are able to control the fire so that in the evening, we can have something to eat. Whenever a lot of fire was burning, if you did not remove the reed, then the same pot would over-

flow, the food would pour out and, therefore, there would be no food to eat. What you have done today is to use the wisdom of Solomon, whereby you have given back the child to the two women to decide whether they want the child to live or to die.

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, thank you for allowing me to add my voice to my colleagues' in congratulating you for a brilliant ruling. I want to assure this House that these matters are going to be dealt with to the satisfaction of this country. I think you are very generous; you have allowed us to comment after your ruling. I just want to sincerely thank you for asserting the supremacy of this House. Committees of this House are Committees of this House. I think really, this is where the whole thing will have to be sorted out in addition to fuller consultations. I want to assure the House and the country that nobody will be let down. I think you have taught us the spirit of internalizing the new Constitution. I think it behoves all of us.

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): Mr. Speaker, Sir, I would like to take this opportunity to really thank you for what you have done today. You have given the young people of this country hope. You have shown them that things can be done in the right way. Kenya has been going through a lot of pain. The young people of this country have lost hope. I request the young people to look at you as one of the lay leaders in this country and follow your footsteps. Hon. Members should also follow the Speaker's footsteps. We should ensure that whenever we do things, we do them the right way. We should not take sides. I want to take this opportunity to thank you. You should not fear man. There is nowhere man can take you. You should only fear God and He will protect you when you do the right thing for this country.

**Mr. Speaker:** Hon. Members that brings us to end of that matter.  
Next Order!

## POINTS OF ORDER

### NON-TABLING OF LIST OF NAMES OF HON. MEMBERS NAMED IN DRUG TRAFFICKING

**Mr. Kabogo:** Mr. Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security and the Acting Minister for Foreign Affairs.

On 22<sup>nd</sup> December 2010, the Minister named names of Members of Parliament as suspects in drug trafficking. He promised the House that he would table in the House a report within 30 days. It is now over 30 days and he has not come up with that report. You are aware like we all are that it has been in the media that investigations have been done yet the House has not been given the opportunity to get this report.

In addition, as the Minister gives his report, I would wish him to also attend to the matter of a speech given by the American Ambassador on 16<sup>th</sup> November 2010 in Mombasa, a speech that I have a copy of and I wish to lay on the table of the House, stating :-

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

He has corroborated information that enables them to make a certain decision. So, as the Acting Minister for Foreign Affairs, would he be able to tell the House what steps he has taken to get this corroborated information so that he can be of benefit to the entire Republic?

**Mr. Speaker:** Deputy Leader of Government Business!

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir---

**Mr. Speaker:** Order, Minister! Resume your seat. The Member for Imenti Central has something to say.

**Mr. Imanyara:** Mr. Speaker, Sir, while the Minister for Foreign Affairs is giving that Statement, we would like him also to clarify the issue raised today, again, by the Americans that they will be seeking to extradite Kenyans involved in drug trafficking for trial in the United States. Could the Minister, while giving that Statement, explain further what this entails and whether, indeed, they have entered into an agreement with the Government of Kenya to send Kenyans for trial in the United States?

**Mr. Speaker:** Deputy Leader of Government Business!

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I would like to ask that we give the Minister adequate time to consult with the American counterparts as well. In that regard---

**Mr. Speaker:** How long do you require?

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, Thursday next week, to afford adequate consultation, but should the information be available earlier---

**Mr. Kabogo:** On a point of order, Mr. Speaker, Sir. You have heard the Minister say that he wants to consult with America. It is not America that was investigating but the Minister of State for Provincial Administration and Internal Security. He did promise the House---

**Mr. Speaker:** Order, Member for Juja! It is you who has brought in those aspects by the documents you have tabled this afternoon. So, that is just a logical consequence of your actions.

I direct that the Statement be availed on Thursday next week.

Member for Kisauni, you may then raise your issues at that time. Do you have a request that you want to make?

**Mr. Joho:** Mr. Speaker, Sir, it is on the same matter.

**Mr. Speaker:** Not on the same matter. That is done!

Member for Isiolo South!

**Mr. Bahari:** On a point of order, Mr. Speaker, Sir. On 19<sup>th</sup> January, I had requested for a Ministerial Statement from the Minister for Forestry and Wildlife. When I reminded the Speaker a day ago, he directed the Ministry to bring that Statement today. I request that, that Statement be read.

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Speaker, Sir, I seek your indulgence on this, following the undertaking by the Deputy Leader of Government Business yesterday for us to give the Statement today. Unfortunately, my officers have not finished preparing it. So, I seek your indulgence to present the Statement on Tuesday afternoon.

**Mr. Speaker:** Tuesday afternoon, it is so directed!

Are there any Statements due for delivery?

## MINISTERIAL STATEMENT

PARLIAMENTARY BUSINESS FOR THE WEEK  
COMMENCING TUESDAY, 8<sup>TH</sup> FEBRUARY, 2011

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, pursuant to provisions of Standing Order No.36(4), I take this opportunity to make the following Statement with regard to the business for the week commencing on Tuesday, 8<sup>th</sup> February, 2011.

Mr. Speaker, Sir, the House will deliberate on the Insurance (Motor Vehicle Third Party Risks) Amendment Bill, Bill No.10 of 2010, currently at the Committee of the whole House Stage.

Mr. Speaker, Sir, also, two crucial Bills will be read a Second Time. They are: The Vetting of Judges and Magistrates Bill, Bill No.1 of 2011, and the Judicial Service Bill, Bill No.2 of 2011. As you are aware, yesterday, the House did pass the Procedural Motion to reduce the publication period of the two Bills from 14 days to six days.

Mr. Speaker, Sir, the House Business Committee did ballot for consideration a Motion by hon. Martin Ogindo to the Office of the Deputy Prime Minister and Ministry of Finance.

Mr. Speaker, Sir, finally, the House Business Committee will sit on Tuesday, 8<sup>th</sup> February, 2011 to consider business for the rest of the week.

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, you will recall that yesterday afternoon, I undertook to give a Ministerial Statement with regard to my recent “shuttle diplomacy” over this very important matter of Kenya’s relationship with the International Criminal Court (ICC) at the present time.

Mr. Speaker, Sir, I have a draft Statement but I felt that in order to be able to do justice to this important matter, I could make this Statement on Tuesday afternoon. I could just go through it, but I think the atmosphere of the House is such that the importance of this matter may not be fully appreciated because looking around the House, I think many more Members would want to hear what I have to say on this matter. Therefore, I propose that the Member for Ndaragwa bears with me so that we make this Statement on Tuesday.

**Mr. Speaker:** Very well! Hon. Vice-President, just bear in mind that yesterday, hon. Members introduced several aspects to that matter. So, please, ensure that as you bring it on Tuesday, you cover those aspects as well.

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, indeed, I know that the Chair of the Public Accounts Committee (PAC) and Member for Ikolomani had introduced matters about expenditure. If that is okay, I can cover the same in my Statement on Tuesday because I am aware that there is a Question directed to the Ministry of Foreign Affairs, which was not fully answered. So, I think I can consolidate all that and deal with it on Tuesday.

**Mr. Speaker:** Please, do so, so that you cover total Government expenditure on the matter, because I think they will be interested in that.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I want to thank you for ensuring that what I had raised is incorporated in the Vice-President’s Statement. But, kindly, could he be advised that it goes beyond the expenditure at his Ministry? We

would like to know what came from the Office of the President, the Ministry of Foreign Affairs, the National Assembly of Kenya and your Ministry.

**Mr. Speaker:** Very well! Member for Ikolomani, I have said as much. I did tell the Vice-President to ensure that he covers the whole Government and I am sure he will.  
Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

### IN THE COMMITTEE

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

#### THE TRAFFIC (AMENDMENT) BILL, 2010

**The Temporary Deputy Chairperson** (Dr. Laboso): Hon. Members, we are now in the Committee of the whole House to consider The Traffic (Amendment) Bill, 2010.

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Mr. Wamalwa:** Madam Temporary Deputy Chairperson, I beg to move that the Committee doth report to the House its consideration of The Traffic (Amendment) Bill, 2010, and its approval thereof without amendment.

*(Question proposed)*

*(Question put and agreed to)*

*[The House resumed]*

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

## REPORT AND THIRD READING

#### THE TRAFFIC (AMENDMENT) BILL

**Dr. Laboso:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the House has considered the Traffic (Amendment) Bill, Bill No.18, 2010 and approved the same without amendment.

**Mr. Wamalwa:** Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**Mr. C. Kilonzo** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Mr. Wamalwa:** Mr. Temporary Deputy Speaker, Sir, I beg to move that the Traffic (Amendment) Bill be now read a Third Time.

**Mr. C. Kilonzo** seconded.

*(Question proposed)*

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I take this opportunity to once again congratulate the hon. Member for having moved this amendment, especially very appealing to the youthful members of the society. We will work together on getting the necessary regulation to ensure that this amendment actually gets into reality.

Without anticipating debate on a Motion that is yet to come, I want to assure this House that we are also making some comprehensive amendment to the Traffic Act, especially in terms of the amendments to bring heavier penalties as part of curbing the road menace as we are seeing it. I do expect that the hon. Members will work with us in terms of bringing those penalties into action.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed )*

## **MOTION**

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

THAT, this House adopts the Report of the IPU Kenya Delegation to the 123<sup>rd</sup> Assembly of the Inter-Parliamentary Union (IPU) held in Geneva, Switzerland from 4<sup>th</sup> – 6th October 2010, laid on the Table of the House on Tuesday 23rd November, 2010.

**The Temporary Deputy Speaker** (Mr. Imanayara): There being no one to move this Motion, I will defer this Motion to such other time as the House Business Committee will reinstate it on the Order Paper.

Next order!

*(Motion deferred)*

**BILL**

*Second Reading*

THE VETERINARY SURGEONS  
AND PARA-PROFESSIONALS BILL

**The Temporary Deputy Speaker** (Mr. Imanayara): Likewise, I will use my discretion to defer further debate on this Bill to such other time as the House Business Committee would allocate time for it

*(Bill deferred)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, that concludes the business on the order paper. The House is, therefore, adjourned until Tuesday, 8<sup>th</sup> February, 2011, at 2.30 p.m.

The House rose at 5.20 p.m.