

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 6<sup>th</sup> December, 2011

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:  
Mr. Nyambati Walter Enock Oisebe

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

**Mr. Speaker:** Order, Member for Naivasha! My attention has been drawn to your request to make some statement with respect to the Petition relating to the former Member of Parliament for Butere, hon. Martin Shikuku and the former Deputy Speaker, hon. Marie Seroney. However, we want to first of all to take some action from the Speaker's desk before we raise the matter again in the House. We have noted your very serious concerns and we are taking some steps. We will revert to you accordingly. Please, note that.

### QUESTIONS BY PRIVATE NOTICE

#### AWARD OF CURRENCY PRINTING CONTRACT TO DE LA RUE

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

Can the Minister confirm that De La Rue, a British Company, has been awarded a 10-year monopoly for printing Kenyan currency notes without being subjected to competitive international tendering?

Mr. Speaker, Sir, may I bring it to your attention that this matter had actually been concluded. The reason for it being on the Order Paper is that the Minister made an undertaking that he would appear before the Public Accounts Committee (PAC), so that this matter could be dealt with. We have been unable to invite the Minister, willing as he is to appear before us, because I tabled a letter in the House written by the then Controller and Audit-General, which said that the Central Bank of Kenya (CBK) could not be audited. My Committee is unable to interrogate the Minister in the absence of a special audit on the CBK. So, if you rule on that letter, then we will be guided whether or not under the law we can audit the CBK. We could ask for a special

audit at the end of which we would invite the Minister. I request that you make that ruling either now or when you will be ready.

**Mr. Speaker:** I acquainted myself with the record of the HANSARD before we started this sitting, and I am aware, as you rightly say, Member for Ikolomani, that this matter was largely transacted. It more or less had been disposed of. We left it at a stage where the Minister was going to report to the House on the progress made towards amicable resolution, following a meeting with the PAC which you, Member for Ikolomani, Chair. I would really want to hear the Minister's report on what progress has been made and then we can take it up from there.

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Mr. Speaker, Sir, as you have correctly stated, when answering this Question, we offered to sit with the PAC and go through this matter in further detail. As he has correctly said, we are still willing to appear before the PAC as I had previously indicated, but we need clearance on the issue that the hon. Member has himself raised, so that we know how to proceed. From the Ministry's point of view, we are still willing to appear before the PAC.

**Mr. Speaker:** Deputy Prime Minister and Minister for Finance, you said to the House that you would meet the PAC with a view to arriving at an amicable settlement, or resolution, of the matter. As I understand it from where I sit, amicable resolution does not involve interpretation of the law as to whether or not the CBK can be audited – that is why it is amicable. You are trying to settle any areas of dispute and then you arrive at an amicable settlement. The Member for Sirisia will tell you for free that, that should be the position. You do not talk about amicable settlement and then come back and say, "We want you to interpret the law as to whether or not the CBK can be audited." Then we are not talking!

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Mr. Speaker, Sir, as I said, we are ready to appear before the PAC. It is for the Committee to invite us. As you heard from the hon. Member there is that issue. For us, we are ready to appear before the PAC at any time. I am really not sure how to answer the Question. It is not that I have received an invitation from the Committee and I have refused to attend. I am yet to receive an invitation from the PAC to attend its meeting.

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

**Mr. Speaker:** Order, Member for Mutito! I know you want to speak to this matter, but it can be settled quickly, so that we save on time.

Mr. Minister, as the HANSARD says, you gave an undertaking to the House that you would meet the PAC and attempt to arrive at an amicable resolution of the matter. In fact, those are the exact words in the HANSARD. Will you please make that effort and now indicate to the House how long it will take you to arrive at that amicable settlement? If you fail to, then I will make a ruling on whether or not CBK should be audited. As it is now, we are not yet there and we should not be there. Please, do not take us there. Member for Ikolomani, I am sure you appreciate what I am saying. The country is looking for resolution of this matter on whether or not De La Rue will still be the one printing our currency notes, and if so on what terms. Is there going to be a partnership between the Government and De La Rue? What are the conditionalities? How does it affect the Kenyan taxpayer? Minister, essentially, that is

what we are looking for, and that is the way you must go. Confirm that you will do so and say how long you will take. Should we give you two weeks?

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Speaker, Sir, I am ready to meet him now.

**Dr. Khalwale:** Mr. Speaker, Sir, I want to thank the Deputy Prime Minister and Minister for Finance for agreeing to meet us as soon as tomorrow, but could he also confirm that he is opening the doors for a special audit, so that before I meet him I am sufficiently armed to interrogate him? This matter is so complex. We are dealing with four different companies whose details are at the CBK. We are talking about investment, that is the seed money that was put in the CBK many years ago, and those details are at the CBK. We are dealing with the changing of Cabinet decisions. One Government--

**Mr. Speaker:** Order, Member for Ikolomani! You know those are matters that you will now raise at that meeting. Can you meet tomorrow, Minister?

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Speaker, Sir, I would want to sit down with the hon. Member, who is the Chair of PAC, because he is not just inviting me as the Minister. There are other officers and I need to ensure that the date and time we agree on is suitable. It is not a personal issue; rather it is an issue relating to the CBK and the Treasury and we need the officers there. It is just a question of agreeing when all the officers and hon. Members are available and then we meet.

**Mr. Speaker:** I direct that the meeting takes place within the next 10 days, and that you file a report in the House as to the progress you will have made towards an amicable resolution. If there are any sticky issues, then you will refer them to the House and to Mr. Speaker for directions as may be necessary.

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Speaker, Sir, will I file the report or will the PAC file it?

**Mr. Speaker:** The Committee will.

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Thank you, Mr. Speaker.

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

**Mr. Speaker:** That must rest the matter, Member for Mutito. We have a lot of other Questions here to deal with.

Member for Kisumu Town East!

#### MEDICAL ASSISTANCE FOR AILING HON. JOSEPH O. JOWI

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

(a) Is the Minister aware that Hon. Joseph Odera Jowi, a former Cabinet Minister and Kenya's Permanent Representative to the United Nations, who was instrumental in the establishment of the United Nations Environmental Programme (UNEP) headquarters in Nairobi, is currently ailing and is in need of medical attention?

(b) Could the Government consider meeting his medical bills, given the distinguished service he rendered to the nation?

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

(a) I am not aware that hon. Joseph Odera Jowi is ailing.

(b) The Ministry provides highly subsidized medical services in public health facilities in the country, and has a waiver facility for those who cannot afford the charges. Hon. Joseph Odera Jowi is welcome to make use of medical services in a public health facility of his choice. He will be expected to meet the modest treatment expenses, but in case he is not able to do so, the facility management will gladly process a waiver for him.

However, public health facilities provide limited specialized medical services. Should hon. Jowi be in need of medical services that are not available in our public health facilities, then he would have to meet the cost since we do not have a budget for meeting the medical bills for persons who are not in our employment, including those who may have given distinguished service to the nation.

**Mr. Shakeel:** Mr. Speaker, Sir, I can only say that I am shocked at the insensitive way in which the Assistant Minister has answered this Question. This man was a former Minister for Planning. He brought the United Nations here. Is this the way the Assistant Minister should answer this Question, in an insensitive manner? He says Mr. Jowi should seek a public health facility waiver! I am totally shocked and unsatisfied with the answer.

**Mr. Speaker:** Very well. Assistant Minister, you have no question to answer. Anybody else who is interested?

**Mr. Outa:** Mr. Speaker, Sir, I want to thank the Assistant Minister for understanding that hon. Jowi can, indeed, be assisted. Could he, however, confirm to us that if we bring the bills and other paper work belonging to Mr. Jowi he will be in a position to help him pay all the bills?

**Mr. Kambi:** Mr. Speaker, Sir, I said earlier that if one is treated in our facilities and has a problem of meeting his bills, then a waiver can be done. We have been doing that at Kenyatta National Hospital (KNH). As a Ministry, we do not have a budget to pay for people who are not in Government service. The same applies to many others, including these honorable Ministers.

**Mr. Speaker:** Hon. Member for Yatta!

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I am the hon. Member for Mutito. It is rather unfortunate to see what is happening. Just the other day, a nationalist like hon. Paul Ngei who fought for this country went through the same problem. What is this Government doing to come up with a policy to assist those veterans who have served this country with dedication and have not been involved in corruption to get money for treatment when they are sick? Those people gave their lives to the nation. What policy does the Government have to ensure that such peoples' medical requirements are taken care of?

**Mr. Kambi:** Mr. Speaker, Sir, I think as Members of Parliament, we should create a fund to cater for the needs of such people when they retire from service.

**Mr. Speaker:** Hon. Member for Nyatike!

**Mr. Ogindo:** Mr. Speaker, Sir, I am the hon. Member for Rangwe. It is very unfortunate to see the reckless manner in which the Assistant Minister is responding to this Question. Mr. Odera Jowi gave a lot of service to this country and my question is:

Given his contribution to this country, from the time he received the Question, what research has he done regarding the state of health of Mr. Odero Jowi?

**Mr. Kambi:** Mr. Speaker, Sir, as a Ministry, we have not been asked to go and visit the former Minister. However, I have said that we have facilities and if he visits them and is unable to meet his medical expenses, then we are going to waive his bills.

**Mr. Shakeel:** Mr. Speaker, Sir, you can see the insensitivity of the Ministry of Medical Services. The Assistant Minister says that he can use Kshs2,500 for lunch and yet, he cannot look at his case. Would I be in order to request that this Question be now redirected to the Ministry of State for Public Service?

**Mr. Speaker:** Very well, hon. Member for Kisumu Town East, please, resume your seat. I have heard the request you have made and I am not satisfied that it is necessary to refer this Question to any other Ministry because the Assistant Minister has answered and has given as much information as was in his possession.

Next Question is by hon. Member for Mt. Elgon!

AWARD OF TENDER FOR SECOND HAND  
MOTOR VEHICLE INSPECTION

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

(a) How many companies bid to offer second hand motor vehicle inspection clarification services to the Kenya Bureau of Standards (KEBs)?

(b) Under what circumstances was the tender awarded to a Japanese company, M/s Japan Vehicle Inspection Centre?

**Mr. Speaker:** Is the Minister for Industrialization not here?

Mr. Deputy Prime Minister and Minister for Finance, the Minister for Industrialization is not here. Do you have any explanation?

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Mr. Speaker, Sir, maybe, we can just give him a little bit more time. Let us give him a few more minutes. He might be here in the second round.

**Mr. Speaker:** Order, Deputy Prime Minister and Minister for Finance! You are aware that there is nothing like second round in the House.

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. It is rather perplexing because this is not the first time that this Question is appearing. This Question was here last week but one, and the Minister himself asked for more time. He requested that the Question be deferred so that he can come and answer it today. We are talking at a time when maize with aflatoxin is getting into the country; when some of the agencies which are supposed to check it are not doing their work. Is it in order for the Minister to keep on delaying to answer this Question and yet, there are issues which are touching on the lives of people?

**Mr. Speaker:** What is it hon. Member for Dujis! Please, be relevant to the Question. Do not start talking about maize aflatoxins when this Question talks about motor vehicles.

**Mr. Duale:** Mr. Speaker, Sir, I have just left the Minister having lunch. This Question touches on a very important national issue that affects business people in that

sector. I kindly ask if you could wait for the Minister because he is having lunch. He is around.

**Mr. Speaker:** Order, hon. Member for Dujis! You do not really direct the Speaker or even imply that you can influence him on how to determine how he deals with a matter.

Hon. Members, I order that this Question be deferred to Tuesday next week. It will be answered by the Minister. We will bear in mind the statement by the hon. Member for Mutito, even as the Minister comes on Tuesday.

Hon. Member for Nyakach!

#### COUNTRYWIDE SHORTAGE OF COOKING GAS

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

(a) What is the cause of the current shortage of LPG (cooking gas) in the country?

(b) What urgent steps is the Ministry taking to address the situation?

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

The following are the causes of Liquefied Petroleum Gas (LPG) shortage in the country:-

(i) During the month of September, 2011, the crude oil ship destined for Kenya Petroleum Refineries (KPRL) Limited arrived late. That delay reduced daily crude oil processing with an attendant drop in LPG production from 100 tonnes to about 60 tonnes a day.

(ii) During the same month, an LPG ship arrived late due to rough tides off the coast of Mauritius.

(iii) Another LPG ship arrived on schedule, but its LPG cargo did not meet the Kenyan specification and was, therefore, not allowed to discharge given that LPG, if not of the right quality, can cause serious hazards.

(iv) In addition, there was a defect of an LPG pipeline from KPRL to Shimanzi Oil Terminal and, therefore, LPG transfer from Shimanzi to depots of all companies could not be effected.

Those four factors substantially reduced the supply of LPG to the local market.

(b) Mr. Speaker, Sir, to address the current biting shortage, the following measures have been put in place:-

(i) The defect on the LPG pipeline from KPRL to Shimanzi has been repaired, thus facilitating receipt of LPG in the limited storage facilities owned by oil marketing companies.

(ii) Oil marketing companies with limited storage tanks at Shimanzi and Changamwe have agreed to arrange joint LPG imports.

(iii) KPRL is expected to resume its normal crude oil processing throughput this week and production of LPG is expected to normalize at 100 tonnes daily.

Mr. Speaker, Sir, the anticipated commissioning of the second half of 2012 of LPG import handling and storage facility at Miritini, which is at an advanced stage of completion, will be capable of handling LPG ships loads of up to 14,000 metric

tonnes. LPG shortage will, therefore, become a thing of the past given that, that facility will be capable of handling more than 300,000 tonnes annually. It will also be expected to handle larger quantities in tandem with the growing demand.

Mr. Speaker, Sir, by way of general statement, I would like to inform this august House that, since early 1990, demand for LPG has always exceeded supply. Efforts made since 1994 to promote private sector investment in LPG import handling and storage facility were unsuccessful until 2006 when, through an open tender floated by the Ministry of Energy and the Ministry of Finance including KPRL, an investor was awarded a 30-year concession. That facility, as I have already stated, is at an advanced stage of construction at Miritini Mombasa and is expected to be fully operational by the second quarter of 2012.

Thank you.

**Mr. Ochieng:** Mr. Speaker, Sir, could the Minister explain to us what is the current demand of that particular product all over the country? At the same time, why do we have that abnormal increase in the price of that particular product? Why has it become so expensive all of a sudden?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, the demand for LPG in the country is currently in excess of 200,000 metric tonnes per year. Currently, only 30,000 metric tonnes are processed by KPRL every year, while 60,000 tonnes are imported by oil marketing companies. As to the reason why the price is very high, as of today, there are many ships at Shimanzi Oil Terminal discharging LPG. So, the facilities are not adequate and many costs are incurred by way of demurrage. The production is determined by the market price. So, that is why the price is very high. But with bulk handling which we expect to commission by the first quarter of 2012, the price will come down.

**Mr. Bahari:** Mr. Speaker, Sir, this Government is not serious. You know that the price of sugar is very high, the price of maize is unaffordable and now, LPG is also becoming unaffordable. They are pursuing a very dangerous trend. Why can the Government not ensure that there is enough capacity and extra storage for that facility at the Port for at least three months even if we have a problem? *Serikali gani hii?*

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, I do agree with the hon. Member. But as I mentioned, in the next four months, we are going to commission a large facility which is going to deal with the issue of supply. We hope that, that facility will de-bottleneck the LPG processing in the country. That is because, currently, the infrastructure we have is not adequate. Therefore, importing, storage and distribution will be adequately improved. Currently, we have limited infrastructure for LPG supply in the country.

**Dr. Khalwale:** Mr. Speaker, even as the Assistant Minister has assured us that ships have docked with LPG, we have unscrupulous people who have LPG in the estates now. They are selling gas in the estates when there is no gas at petrol stations at all. What is the Assistant Minister doing to crack down on unscrupulous businessmen who are hoarding gas to make it expensive?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, I am not aware of any hoarding but, if that is the case, then it is a very serious matter. We will investigate that problem immediately.

**Mr. Njuguna:** Mr. Speaker, Sir, the Assistant Minister has admitted that the price of LPG is very high. What is the Government doing to cushion the gas consumers?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, LPG is imported and distributed by private companies. As I said, currently, the infrastructure for handling LPG is very inadequate. We have a concession with a company which is building the facility at Miritini. Once that facility is complete, there will be proper competition and the price of gas will come down.

**Mr. Speaker:** Last question, hon. Member for Nyakach!

**Mr. Ochieng:** Mr. Speaker, Sir, as you have heard, this Question has generated a lot of interest from hon. Members. We realized that the demand started shooting over the supply in the 90s up to now. The Government has never thought it fit to even have a storage facility for that particular product. Does it mean that it is trying to promote the greedy traders who keep on cashing in on the shortage of that product?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, the business interest in this area is owned by the private sector. We have no intention, as Government, to monopolise and be the ones to import and distribute LPG gas. So, what we are doing is creating a good environment so that the facility will be adequate to handle LPG gas and eventually have the prices of the same stabilised.

**Mr. Speaker:** Next Question, Member for Kamkunji.

**Mr. Hassan:** Mr. Speaker, Sir, I had converted this Question into a Ministerial Statement.

**Mr. Speaker:** Order! Order, Member for Kamkunji! You, first, ask the Question and then offer the explanation.

#### MEASURES TO AVERT STRIKE BY MATATU OPERATORS

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

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

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

**Mr. Speaker:** Very well. Now, what is your explanation?

**Mr. Hassan:** Mr. Speaker, Sir, last week, I requested a Ministerial Statement on a subject relating to the Matatu Owners Association of Nairobi, covering the imminent strike and other factors. The Minister for Transport agreed to respond to it on Thursday and I withdrew this Question. So, I am waiting for a Ministerial Statement from the Minister on the matter.

**Mr. Speaker:** Very well, Member for Kamkunji. Please, resume your sit.

*(Mr. Hassan resumed his seat)*



**Mr. Speaker:** Hon. Members, in those circumstances, by the actions of the Member for Kamkunji on his own Motion, another development has overtaken this Question. So, I stand it down.

*(Question deferred)*

**Mr. Speaker:** Next Question, Member for Isiolo.

#### RELEASE OF SUSPECTS FROM POLICE CUSTODY

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

(a) Under what circumstances was P.C Mohamed Haru Katu murdered and Mr. Joseph Kirimi injured in Malaba Township on 4th November, 2011?

(b) Can the Minister confirm that the suspect(s) involved in the murder were arrested and charged in a court of law?

(c) Under what circumstances was the suspect(s) released from police custody and what action will the Minister take to ensure that the suspect(s) face the full force of the law?

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

(a) On 4<sup>th</sup> November, 2011, at about 8.45 pm, three police officers, namely, Mohamed Haru, deceased, Personal No.40030, and Joseph Kirimi, Personal No.55516, together with Michael Muthiora, Personal No.89256, were on patrol within Malaba Township. They came across a suspicious person who defied orders to stop for questioning and ran into Mama Kevin Cafe before escaping through the rear door, which was open at that particular time. Coincidentally, the OCS, Malaba Police Station, Chief Inspector Peter Ndung'u, and the OC, Crime, Inspector Alexander Kihara, were taking supper in the cafe. They witnessed the suspect flee through the backdoor. The OCS pursued the suspect, who disappeared into the darkness.

The OC, Crime, Inspector Alexander Kihara, went out through the front door to check on who was pursuing the suspect. He met three police officers who were in civilian clothes, and owing to the fact that it was dark and he could not identify them, he pulled out his official pistol and opened fire, fatally injuring Mohamed Haru and seriously injuring Police Constable (PC) Joseph Kirimi. The injured officer identified himself, prompting Inspector Kihara to stop shooting. Mohamed Haru was rushed to Kocholia District Hospital, where he was pronounced dead on arrival, while PC Kirimi was admitted for treatment.

(b) Immediately after the incident, Police Case File No.962/200/2011 was opened by the Criminal Investigations Department (CID) and the suspect, Inspector Alexander Kihara, was arrested. He was charged before Busia High Court on 7<sup>th</sup> November, 2011 with the offence of murder and remanded in prison until 10<sup>th</sup> November, 2011, when the High Court ordered that a public inquest be held instead.

(b) Following the order by the High Court to hold a public inquest, the suspect was released from prison custody to await the outcome of the inquest. Once the inquest is finalised, appropriate action will be taken accordingly.

**Mr. Bahari:** Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer but I want him to confirm that Corporal Mohamed Haru Katu was investigating a case where one of the *boda boda* operators, by the name Peter Maranga, was shot by police, and this could have been the reason as to why he was killed.

**Mr. Ojode:** Mr. Speaker, Sir, I am not aware of that. So, I cannot confirm what I am not aware of.

**Mr. Njuguna:** Mr. Speaker, Sir, the second victim, Corporal Kirimi was also attacked and admitted to hospital. Could the Assistant Minister inform this House what financial assistance has been given to this police officer? Could he also inform the House on the patient's health status?

**Mr. Ojode:** Mr. Speaker, Sir, the second fellow is improving in hospital. I wish to say that the family members have not asked for any assistance from the Government.

**Mr. Speaker:** Last question, Member for Isiolo South!

**Mr. Bahari:** Mr. Speaker, Sir, now that an inquest file has been opened, could the Assistant Minister ensure that an independent team of officers investigates this matter?

**Mr. Ojode:** Mr. Speaker, Sir, as I mentioned earlier, this case is in court, and it is *sub judice* to handle it outside court. Once we get the investigations report, we will act accordingly.

## ORAL ANSWERS TO QUESTIONS

### *Question No.1036*

#### PAYMENT OF HONORARIA TO ADULT EDUCATION TEACHERS

**Mr. Speaker:** Hon. Members, I am aware that the Member for Mosop chairs the Committee on Climate Change. So, it is possible that he is in South Africa, Durban. Therefore, I will defer his Question until he returns.

*(Question deferred)*

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

### *Question No.868*

#### AIR POLLUTION BY M/S. LEATHER INDUSTRIES COMPANY

**Mr. K. Kilonzo,** on behalf of **Mr. C. Kilonzo,** asked the Minister for Environment and Mineral Resources:-

(a) why the National Environment Management Authority (NEMA) has not taken action against M/s Leather Industries of Kenya Limited in Thika for continued air pollution over the years; and,

(b) what action the Government will take against the company.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I would like to bring to your attention the fact that I do not have a written answer to the Question.

**Mr. Speaker:** Mr. K. Kilonzo, do you want to proceed without a written answer?

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I have just been given the written answer. So, we can proceed.

**Mr. Speaker:** Yes, Mr. Assistant Minister!

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

(a) It is not true that NEMA has not taken any action against M/s Leather Industries of Kenya Limited in relation to air pollution. NEMA inspected the factory and agreed on the road map with the factory management to bring the factory into compliance in terms of controlling the foul smell emanating from its waste water treatment plant by ensuring that the management undertakes the following:

1. increases the proportion of hydrogen peroxide into the soaking lining treatment tanks; this chemical reacts with sulphide to eliminate the irritating hydrogen sulphide gas;

2. run the tractors to the soaking lining tanks 24 hours in a day to ensure that water is continuously aerated; this accelerates the mixing process and ultimately reduces smell altogether;

3. add aluminium sulphate focalants to hasten the settlement of the lying sludge in tanks; The sludge is ultimately removed, dried and used as a soil conditioner;

4. introduce eco-solution chemicals of organic nature from Organic Solutions Limited to reduce sulphates in the waste water, thus reducing the smell;

Mr. Speaker, Sir, the NEMA has also processed and issued the company with an Effluence Discharge Licence No.772 on conditions to be adhered to as not to pollute the environment with the factory process waste water, and has continued to monitor the level of compliance with the conditions of the Effluence Discharge Licence.

On the wider and sustainable effort to address similar concerns within the country, NEMA has formulated the draft Environment Management and Co-ordination Air Quality Regulations, 2011. These regulations stipulate emissions limit on hydrogen sulphide, HS, Sulphur Octoxide, SO, volatile organic carbons, ammonia and particulate matter, which are major pollutants from the tanning process.

(b) NEMA has not received any complaints lately regarding the foul smell from M/s Leather Industries, Kenya Limited in Thika. However, if and when such complaints are brought to the attention of NEMA, appropriate enforcement action will be taken in accordance with the Environmental Management and C-ordination Act, 1999.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, the Assistant Minister has elaborated the conditions that the NEMA has given to this company. Could he table a report of compliance with the same conditions that NEMA has given to the company to prove that those conditions have been complied with? As we speak, the residents of that area are still complaining. Since he has given the parameters within which the company should operate, he should give us a report of compliance by the company.

**Mr. Kajembe:** Mr. Speaker, Sir, compliance is there. If the House needs a report, I am ready to bring it at a later date.

**Mr. Baiya:** Mr. Speaker, Sir, the Minister has enumerated conditions that NEMA has set for Thika Leather industries. The question is: What is the effect of the measures taken on the pollution that used to take place from the company? Is that pollution still there? Can he really say that there are no complaints when this Question is a complaint from the hon. Member?

**Mr. Kajembe:** Mr. Speaker, Sir, I am very clear in my answer. I said that already, the smell has been reduced and that environment management experts are going to eradicate the smell in its totality. In my answer, I said that if there are any complaints, NEMA will go back and look into the matter.

**Mr. Duale:** Mr. Speaker, Sir, the tannery in question is along the Thika-Garissa Road. I came back from my constituency only yesterday. Anybody travelling on the Thika-Garissa Road within a range of 500 metres will sense the smell. I am sure that residents within the estates around there are affected. Could the Assistant Minister tell us when he is going to visit the tannery and what action he is going to take to address the situation? The smell is there as we speak.

**Mr. Kajembe:** Mr. Speaker, Sir, I am very happy with the hon. Members for letting me know that the smell emanating from the tannery is increasing. I will visit the site with my experts.

**Mr. Speaker:** Last question, hon. K. Kilonzo.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, this is a very serious Question because it touches on the lives of people. The Assistant Minister is taking it casually. There is no way the Assistant Minister can do justice to this Question if he cannot table a report of compliance issued by NEMA, if they, indeed, visited the tannery. Would I, therefore, be in order to ask you to defer this Question until the Assistant Minister tables that report, so that we can interrogate him further? What he has told us falls short of a serious answer to this House.

**Mr. Speaker:** Very well. I will ask the Assistant Minister to visit this factory, ascertain compliance and table the report of compliance in the House in the month of February, 2012.

**Mr. Kajembe:** I am obliged, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. Next Question, Member for Makadara!

*Question No.1144*

SHORTAGE OF ENGINEERS IN THE COUNTRY

**Mr. Speaker:** Is the Member for Makadara not here? The Question is dropped!

*(Question dropped)*

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

*Question No.1255*

## DEPLORABLE CONDITIONS AT KIOTO DUMPSITE

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

(a) whether he is aware of the deplorable and unhygienic condition at the Kioto dump site in Nakuru town;

(b) whether he is also aware of the negative effects of flooding on the dumpsite; and,

(c) what plans the Ministry has to relocate the dumpsite to an appropriate site.

**Mr. Kigen:** Mr. Speaker, Sir, even as I ask the Question, I have not gotten the written answer yet.

**Mr. Speaker:** Hon. Members, I have a letter addressed to the Office of the Speaker by the Deputy Prime Minister and Minister for Local Government. He says that he will be out of the country until 14<sup>th</sup> December, 2011 but he has an Assistant Minister. So, where is the Assistant Minister?

Hon. Ojode, do you want to hold brief for the Assistant Minister?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, let me undertake to prevail upon the Assistant Minister to answer this Question on Thursday.

**Mr. Speaker:** Member for Rongai, is Thursday good for you?

**Mr. Kigen:** Mr. Speaker, Sir, I would wish that this Question was answered yesterday, but because of the position as advanced by the Assistant Minister, I ask that before we proceed to the next recess, it be looked into.

**Mr. Speaker:** I direct that the Question appears on the Order Paper on Thursday, at 2.30 pm. We expect that the Assistant Minister will offer an explanation as to why he is not here today. Further to that, he shall furnish a written answer to the Member for Rongai.

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

Next Order!

## MINISTERIAL STATEMENTS

### COURT RULING AGAINST PRESIDENT OF SUDAN

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, I am offering to make a short unsolicited Statement to the House on the issue of the court case against the President of Sudan.

On 28<sup>th</sup> November this year, a court sitting in Nairobi made a ruling ordering the arrest of the Sudanese President Omar Al Bashir in the event he sets foot in Kenya. Within 12 hours of the ruling, the Kenyan Ambassador to Sudan, Amb. Robert Ngesu was summoned to the Ministry of Foreign Affairs in Khartoum at midnight and given 24 hours to leave. Sudan also ordered its ambassador to Kenya to vacate and go back within 72 hours.

Mr. Speaker, Sir, based on this, President Mwai Kibaki sent me as his Minister for Foreign Affairs with the Minister of State for Defence, hon. Yusuf Haji, to deliver a special note to his counterpart on the issue. The content of the letter was in part to the effect that courts in Kenya are not under the control of the Executive and that when a decision such as that is made, the appropriate avenue for redress is appeal, and that the Government had instructed the Attorney-General to file an appeal.

We did meet the President of Sudan and in our meeting, it came out that several retaliatory or reprisal measures were being undertaken by Sudan against Kenya.

(a) One thousand five hundred Kenyans living and working in Sudan, who include 450 students, were being expelled from Sudan.

(b) Our Ambassador was under expulsion.

(c) Kenya contributes a contingent of police under the UN Peace Keeping Force in Darfur (UNAMID.) Sudan was contemplating the removal of those policemen and as you know, peacekeepers under the UN do so with the concurrence of the recipient country.

1. Sudan was also to ban the import of tea and other products from Kenya. Last year Kenya exported tea worth US\$250 million and Sudan is the number five major consumer of Kenya's tea.

2. Sudan was going to impose an air embargo on all flights to and from Kenya. It should be noted that up to 70 per cent of air flights to Kenya overfly Sudanese airspace.

3. Sudan was going to cease participating in any IGAD meetings to which Kenya is---

**The Minister of State for Defence** (Mr. Haji): On a point of information, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Minister, do you want to be informed by your colleague?

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, can I finish and then I get the information?

**Mr. Speaker:** Order! If the Minister wants to inform you at this point, he should be having a reason as to why!

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, I accept the information since he travelled with me.

**Mr. Speaker:** Very well!

Proceed, Mr. Minister!

**The Minister of State for Defence** (Mr. Haji): Mr. Speaker, Sir, as the Minister has rightly said, I accompanied him to Sudan. I am really saddened that in spite of the fact that he used one-and-a-half hours and all the skills that he has both as a lawyer and as a diplomat to convince President Al Bashir to stand down the threat that he was giving and succeeded, unfortunately, yesterday some activists in Non-Governmental Organizations (NGOs) who want to sustain themselves were attacking him directly, when what he only did as a Minister was to fight for the interest of Kenya, otherwise Kenya would have suffered. Seventy percent of the Kenya Airways flights pass through Sudan. You can imagine if that was to stop. The Kenyan economy would have suffered.

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, I thank the Minister very much for the information.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

Mr. Deputy Speaker, Sir, the last and more important issue is that Kenya is the chair of the CPA implementation committee of IGAD. Although Southern Sudan is independent, there are several outstanding issues. There is South Kordofan that is still outstanding, the Blue Nile State, the un-demarcated boundary and citizenship issues. Above all, there is the issue of Abyei.

President Bashir stayed all these conditions and gave us two weeks to observe the developments and see how further we can deal with the issue. But let me say that when the judgement was made, as the Foreign Affairs Minister for this country, I was reached by the media. It should not be lost that I am a lawyer of over two decades standing in this country. I said that this is a judgement in error. This is what every lawyer says when we go to the Court of Appeal to appeal against any judgement. I also said that this is a judgement incapable of obedience. This is what every good lawyer says when you go to court on appeal. I also said that this is a judgement in error of law. The law is very clear and I do not want to go into it because the Attorney-General is appealing against this ruling. At no time did the Ministry of Foreign Affairs of Kenya say that we shall not obey the court order. The Minister for Foreign Affairs said that it is a judgement incapable of obedience. These are not one and the same thing.

Mr. Deputy Speaker, Sir, I am a lawyer and I participated in bringing to this country this Constitution at Bomas, Naivasha and in this House. I feel saddened for some activists to start saying out there that I said “do not obey a court order.” I have never said that and will not say that. Saying “a judgement is incapable of obedience” is not saying that we will not obey a court order.

Let me finish by saying that the Government is not about the Executive, the Judiciary or Parliament. It is about all of us; the Judiciary, the Executive and the Legislature. We all form the Government and we have a duty to protect the interests of this country. Obviously, all the six sanctions I have listed here that Sudan was taking against Kenya, were going to hurt this country and our economy. These issues were also going to hurt innocent Kenyans working and living in Sudan, our soldiers who are keeping peace in Sudan and above all, the image of this country as a peacemaker and leader in pursuit of peace in this region.

Mr. Deputy Speaker, Sir, that is the message that I wanted to give to Parliament. I thank hon. Haji for accompanying me. We did meet you in Khartoum as well, and you fully understood the message that we went to deliver.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Baiya:** Thank you, Mr. Deputy Speaker, Sir. I would want to thank the Minister for Foreign Affairs for the clarifications he has made. But the main concern of this country, especially of the Executive, is the role the Executive has played in actually getting itself to where it finds itself. Is it not true that the Executive did not

actually bring before the court all the information relevant to the harm and hurt this country was going to actually go through as a result of which the court made a decision that the Executive found difficult to comply with? Having done that, is it really in order? Is it optional for the Government to choose to say: “On this decision, we are incapable of compliance; we are not going to comply?” Where does that, really, leave the Constitution of this country and the rule of law?

**Mr. Olago:** Mr. Deputy Speaker, Sir, I had actually asked for a Statement from the Minister in respect of this matter today. It is good enough for a lawyer like my colleague, the Minister for Foreign Affairs, to say that the judgment is erroneous; it is not based on law and not capable of being complied with. That is quite proper in law.

Mr. Deputy Speaker, Sir, as we address this issue, another very, very important issue that comes up is this, while the country has been debating this issue, the hon. Chief Justice has come out in the media to comment on this matter. As an advocate of the Court of Kenya, I think I have a duty to advise that while a matter is still live, as this one is, the Chief Justice should be cautious and keep away from making public comments because it is possible that this matter may come before him to make arbitration.

*(Applause)*

Mr. Deputy Speaker, Sir, I am quite relieved that the Minister for Foreign Affairs has today said that what was said in the Press is not what he uttered. To that extent, therefore, could he tell the House how far he has gone with the appeal?

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, this is not the first time the Government has been caught napping, as usual. Where was the Government when this matter was in court? Why did the Government not put up a strong case? My understanding is that the Attorney-General’s Office sent very junior officers who probably never understood the consequences of this matter.

So, Mr. Deputy Speaker, Sir, this Government now cannot turn around and push the blame to the courts. The blame goes squarely to the Government! If, indeed, Sudan is a friendly country to Kenya, we should have sent the best presentation in court. And if we do not have it in the Attorney-General’s Office, you hire from the private sector. What is the Government going to do to that person who was responsible for not taking proper representation to put the proper case in court – because this is not a matter which can be left lying down – so that it can be a lesson in future that nobody takes matters of this nature lightly?

**Mr. Ngugi:** Mr. Deputy Speaker, Sir, I just want to ask the Minister for Foreign Affairs the following; just in case the Judiciary does not overturn that decision, does the Government have plan “b” to protect our interests?

Thank you, Mr. Deputy Speaker, Sir.

**Mrs. Shebesh:** Mr. Deputy Speaker, Sir, it is unfortunate to hear members of the civil society being called activists who are busybodies because, honestly, they speak for the people and the day that this Parliament will realize that they will stop throwing around words like “activists who are busybodies.”



But, Mr. Deputy Speaker, Sir, let me ask the Minister the following; Mr. Minister, you are very concerned about our diplomatic ties with Sudan. I wonder whether you are also just as worried about our diplomatic ties with South Sudan, a new country whose population has gone under what we call in courts “genocide” and the reason for the kind of sanctions that are being leveled against the President of Sudan. Are you also aware that we also have diplomatic ties with South Sudan and that the people of Darfur have suffered long enough?

**Mr. Gunda:** Mr. Deputy Speaker, Sir, I want to thank the Minister for Foreign Affairs and the Minister of State for Defense for what they did in trying to protect the interests of Kenyans.

*(Applause)*

But that aside, if it were not for those interests, would the decision to arrest the President of Sudan if he sets foot here be proper or not?

**Mr. Deputy Speaker:** Can the Minister for Foreign Affairs respond to the five or six issues raised by hon. Members?

**The Minister for Foreign Affairs** (Mr. Wetangula): Thank you, Mr. Deputy Speaker, Sir. My learned junior from Githunguri Constituency asked me about compliance and I did say, and I think perhaps he was consulting with my other learned junior, Mrs. Odhiambo-Mabona. I said that this is a judgment incapable of obedience. I did not say we will not respect the court order. That is standard language that any good lawyer who goes on appeal uses in indicting a judgment. And any good lawyer like Olago Oluoch here will tell you that a judgment incapable of obedience is not an assault on the Judiciary. It never will be!

As to whether the Executive was negligent in handling this matter or not – and this comes to the point raised by Mr. C. Kilonzo – Mr. Deputy Speaker, Sir, the Attorney-General has indicated that he is not satisfied in the manner that the case was handled in the first place. He has filed an appeal and I have no doubt that he has a good chance on the law, because the law is very clear on this matter.

Mr. Deputy Speaker, Sir, hon. Olago Oluoch has said it very clear – and I agree with him – and I want to beg the Chief Justice, my own teacher, that if he makes statements on a case that he is likely to sit on appeal, it can easily embarrass him because this matter will likely go to the Court of Appeal and end up in the Supreme Court, where the Chief Justice is the President.

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

**The Minister for Foreign Affairs** (Mr. Wetangula): I am just responding to what---

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

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Deputy Speaker, Sir, am I out of order in any way? I am responding to what Mr. Olago Oluoch said.

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

**Mr. Deputy Speaker:** What is out of order, Mr. Baiya?

Proceed, Mr. Baiya!

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I also listened to the statement that has been made by the Chief Justice and at no time have we heard the Chief Justice

defending the decision of the High Court on merit. That would actually embarrass him if he sat on the appeal. He has merely sought to defend the principle that if you have any issue with the decision, the right pattern and the right thing to do is to go on appeal. Is it in order, therefore, for the Executive to keep attacking the Chief Justice for doing that which he has actually sworn to do – to defend the Judiciary?

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. I raised that issue, first of all, and I have heard my junior colleagues, through the Minister, talk about it as well. The issue that we find unpalatable is that when a matter is live; a matter is trite, then the Chief Justice comments about it. Whether it comes before him by way of contempt proceedings or it comes before him by any other proceedings, he should not be commenting in public! All lawyers should know that.

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, that is all I said. I did not say anything beyond that.

Mr. Deputy Speaker, Sir, hon. C. Kilonzo also asked about the lawyers who probably misrepresented or inadequately represented the Government in this case. I believe the Attorney-General is hearing this and I thank you for pointing out that because if there was proper representation, we would not be where we are in the first place.

Mr. Deputy Speaker, Sir, hon. Ngugi asked about plan “b.” Plan “b” on this is the appeal that we are pursuing and I believe that it has very good chances of success.

Mr. Deputy Speaker, Sir, hon. Shebesh talked about South Sudan. In fact, the hon. Member is on the same page with me. We are the Chair of the CPA Implementation Committee of IGAD, which takes care of issues of South Sudan and we are trying to protect this as well. South Sudan has no difficulty with what Kenya is doing because we have diplomatic relations with South Sudan. We have an ambassador there, Amb. Leshore, and they have Amb. Majok here as their ambassador, and we have a wonderful relationship. We have no difficulties with this. President Bashir is being indicted at the ICC on matters of Darfur and not on matters of South Sudan. So, South Sudan is not an issue at all.

The reference to activists was not to demean anybody. I mean the word “activism” is commonly used in this country. Everybody uses it. I do not want to deal with abstract. However, we have enormous interest in Sudan as a friend, neighbour, trading partner and as a party to the CPA. Above all, it is a strategic importance to our air routes to the rest of the world. If they were not there, we would still care because it is an African country like we are.

**Mr. Duale:** Mr. Deputy Speaker, Sir, I think the three arms of Government, whether it is the Judiciary, the legislature or the Executive, must be ready at all times for Kenyans of any standing to give their views of any judgement. I think the Chief Justice must come to the reality of that. Under our new Constitution, Kenyans will give their views on any judgement.

Having said that, I think the Office of the Attorney-General has been exposed. I am sure it is not only in this case, but there are many other cases that the Government has lost due to inefficiency. They might even in future see more cases of this nature. There is an AU position on President Bashir and the ICC. There is an IGAD position which Kenya has signed. I think it is now that the Ministry of Foreign Affairs must re-look at its foreign policy. Now that this has happened, and now that he has appealed,

what is the Kenyan foreign position that in future we will not endanger our interests because every country in the world cares about its interest, including the Americans? So, the Kenyan interests are more important than any other country's interest. So, what is your foreign policy and what is the Kenyan interest from Sudan and other countries?

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, as I speak now, there is a court order which is in force. That court order has not been overturned. I would like the Minister to confirm that since he is reported as having said that they want to invite Mr. Bashir to come to the country. Could he confirm that if he steps his foot here, he will be arrested on the spot so as to comply with the Constitution of Kenya which provides that the rule of law must be upheld?

The second clarification is that the Minister has clearly said they fear the loss of trade. He talked about US\$250 million in tea. Is he also aware that the route he is pursuing risks our country in being given economic and trade sanctions by the international community because he wants to convert our country into a pariah state?

Finally, because, apparently, Mr. Bashir seems to have a very big voice in the Executive, we would like the Executive to know that the public which voted for the new Constitution has also got a very big voice in this Parliament. It is important---

**Mr. Deputy Speaker:** Order!

**Dr. Khalwale:** My last clarification.

**Mr. Deputy Speaker:** Order, Dr. Khalwale! You seek a clarification on the Statement by the hon. Minister. You do not use this as forum to make speeches and that goes for every Member of Parliament. Those are the basic rules of the engagement of the House. If you cannot respect your own rules, how do you expect somebody else to respect the laws of the country?

Proceed, Dr. Khalwale!

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, lastly, is the Minister aware that once the court makes its pronouncement, this matter is not merely a legal issue? It is now a serious political issue requiring wide consultations. Is he doing those consultations, so that he does not unilaterally appeal against a popular ruling by a Court of Kenya?

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, while thanking the Minister of State for Defence and the Minister for Foreign Affairs for the visit they made to Khartoum, could he, therefore, inform this House the precautionary measures they have taken regarding the security of our people and students in that country, now that the Khartoum Government has firmly directed our Government to respond in two weeks time?

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, our country's best interests are served in defending our Constitution. For those of us who have fought for this Constitution for many years much longer than Bomas and other times, our first duty and the best interests of this country are served by obeying the Constitution.

The Constitution requires each and every one of us, at all times, to uphold the Constitution. Now that there is a judgement of the court, notwithstanding that the Executive may not be in agreement with it, will the Government stop issuing vague statements and confirm that they will comply with the court order immediately? Secondly, could the Government apologize for the statements that defies a court order in defense of a fugitive from international justice?

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, arising from the statement that he has made, because he has only looked on one side, could he clarify whether this country is so helpless and that we are at the mercy of Sudan? He is talking about the students, the Ambassador in Kenya, the Kenyan tea and so on. Could he also tell us whether he has also considered that Kenya is a sovereign State? Could he also tell us whether they sat as Cabinet and were able to analyze our strengths and weaknesses before they just looked at one side of the case?

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I just want to thank my senior counsel for giving his Statement and also thank his senior counsel, hon. Olago, for also responding.

He has indicated that in two weeks the Government will give a comprehensive statement on what they will do and yet, we know that there is a court case and an appeal. He is not the Chief Justice, the last time I checked. He is short of defying the court. I am more interested in him saying that he is not in contempt of the court, because I am very keen on following and respecting the Constitution. Otherwise, we will tell all Kenyans to disobey all court orders because the Constitution talks about equality. So, what I would want him to clarify to us is what assurance he will give in two weeks with a court order pending? Is he God? How does he know? He is not the Chief Justice.

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, I cannot agree more with Mr. Duale. The positions of IGAD and African Union (AU) are fortified very strongly. I want my friend, Dr. Bonnie Khalwale, to be informed of those positions by reading Article 98 of the Rome Statute which has been domesticated in Kenya. I also want to invite Dr. Bonnie Khalwale to read the Vienna Convention of 1963 on the diplomatic immunity for sitting Heads of States and Governments. I also want to remind hon. Members that our own Constitution, which we are quoting here - and which I also believe in like my learned senior, Mr. Imanyara, says very clearly---

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Whereas I like the references that the hon. Member is giving me, is he in order to mislead the House that the Vienna Convention takes precedence over the provisions of the ICC and the Constitution of Kenya when we are exercising our judicial authority?

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, I never said anything of the sought. I do not know where he got that from. I was reminding him that the Vienna Convention under our new Constitution--- Our new Constitution adopts all conventions, treaties and protocols acceded to by Kenya as part of our law. I will volunteer information and free legal advice to my friend, Dr. Khalwale, that the Vienna Convention would be superior in interpretation to any domestic law.

Mr. Deputy Speaker, Sir, another point---

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Wetangula, do you want to be informed?

**The Minister for Foreign Affairs (Mr. Wetangula):** No, I do not wish to.

Mr. Deputy Speaker, Sir, Dr. Khalwale asked whether we are going to obey the court order. If you listened to me, I said very clearly - and my learned senior, Mr.

Imanyara, came in late – that, that is a judgment in error. I have heard you say it in court when you are arguing your appeals on any judgment. I said this is a judgment incapable of obedience. I never said that we will not obey it. I never said this is a judgment we will not execute.

Secondly, ---

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to mislead this House by splitting hairs and saying that, that judgment is incapable of compliance when, in fact, we are bound and are required to comply with it? The order of the High Court of Kenya is the final determinant of all these interpretations that the Minister is giving, including the Vienna Convention. The judge was perfectly aware of all these conventions and yet, he made that order. Will this Government comply or not comply with a court order of the Republic of Kenya?

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, further, Dr. Khalwale talked about the popularity of the judgment. Once a judgment is passed, values as to whether it is popular or not are neither here nor there. The parties to the case can choose and elect to appeal. This case was filed by the International Commission of Jurists (K) against the Attorney-General and the Minister of State for Provincial Administration and Internal Security.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** On a point of information, Mr. Deputy Speaker, Sir.

**The Minister for Foreign Affairs (Mr. Wetangula):** I do not want it!

Mr. Deputy Speaker, Sir, the Attorney-General, as the principal respondent, has filed an appeal. Popularity or the lack of it is neither here nor there. We should wait for the outcome of the appeal.

The Member for Lari asked about the security of our students and nationals. They are perfectly secure and there is no harm pending to them.

Mr. Deputy Speaker, Sir, on Mr. Imanyara's clarification, the Executive is part of this Government. The Executive respects the Constitution because it is founded on the Constitution. The Executive respects the Constitution and that is why it has asked the Attorney-General to appeal against the ruling.

Mr. Chanzu thought that this is a one-sided affair; Kenya has had no issues with Sudan other than the ruling. It is Sudan that has issues with Kenya because of the ruling and we are responding in accordance with the issues raised. Of course, we can also have issues, but they are not necessary at this stage.

Thank you.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to fail to respond to my question? He has given an assurance of two weeks and yet, he is not the Chief Justice. Does he know a way that the decision is going to be made within two weeks? If so, can you tell us how you know that and you are not in the Judiciary?

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, if my learned junior, Milly, listened to me very well, I never said that Yusuf Haji and I gave two weeks. We said that Sudan expects a response from Kenya in two weeks; those are different things. I did not say that we gave an assurance of two weeks. The appeal has been filed and it will come when we reach it. Let us wait for the appeal to take its course and let us respect what is going on in court.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Sorry to drag you back. I had asked the Minister to tell us whether, in his mind, it is worse to invite international trade sanctions against losing business with Sudan because of enforcing the court order.

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, that is another point that I had omitted to answer. Dr. Khalwale asked whether I said we will invite President Bashir to come to Kenya. I also saw it in the media. I said - and it must be on a clip in all media houses, including international media - that Kenya is going to ask IGAD to call for a meeting very urgently to deal with the outstanding issues of the CPA because they were on the agenda of the Summit that we held in Addis Ababa on 25<sup>th</sup>. But because the President of Sudan and the President of Southern Sudan were not there, the agenda was put aside. When the meeting is called - and I hope it will be called in Addis Ababa because the Chair of IGAD is the Prime Minister of Ethiopia - we will be there to attend hoping that the President of Sudan and the President of South Sudan as the two principals, will be there to resolve the outstanding issues.

If President Bashir was to come to Kenya, it is certainly not the Ministry of Foreign Affairs or any other Ministry to invite him. That is because Ministers do not invite Presidents to visit other countries. It is the Head of State who can invite another Head of State. I cannot be that careless as to say that I will invite President Bashir because I have no capacity to invite him.

Secondly, there is absolutely no risk of any sanctions on Kenya arising out of the altercations on this case. I am sure the international community is more serious than that.

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

#### COUNTRYWIDE DOCTORS' STRIKE

**The Assistant Minister for Medical Services (Mr. Kambi):** Mr. Deputy Speaker, Sir, I want to give a Ministerial Statement on the doctors' strike.

On the morning of 5<sup>th</sup> December, 2011, doctors did make their threat to go on strike a reality. As a Government, I would like, first of all, to thank all the consultants and other health professionals, including lecturers of University of Nairobi and Moi University who have ensured that the lives of Kenyans are not lost.

Mr. Deputy Speaker, Sir, we thank doctors for putting patients first, before anything else, in accordance with Hippocratic Oath that they took. That is a true demonstration of patriotism and professionalism for fellow Kenyans during this trying time that our nation is going through. So far, as a Government, we have reviewed several allowances and introduced other such allowances such as extraneous allowances, among others. Each doctor will earn up to Kshs50,000 per month in allowance only. This figure translates to about Kshs1.35 billion per year. We appreciate the work of our doctors and the health sector. Hence, the Government has agreed to review various allowances based on Government remuneration policy and not pegging it on basic salaries as demanded by the doctors.

Salaries cannot be reviewed by any institution except by the Salaries Remuneration Commission. This is in accordance with the Constitution. It is only

through this Commission that all salaries in the public sector will be reviewed, harmonized and create equity for all professionals. The Government cannot, therefore, breach the Constitution of the Kenyan people. We ask all the doctors to rescind their decision because very many people will suffer. I want to refute the statement given by the media that one person in Mombasa died as a result of the doctors' strike. That person died earlier, even before the strike started. He died on Sunday.

I will table the letter from the Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Finance committing the Government to pay the doctors Kshs1.3 billion.

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

**Dr. Eseli:** Thank you, Mr. Deputy Speaker, Sir. Obviously, the Ministry has been hiding under the Hippocratic Oath to underpay the doctors expecting that because of the oath, the doctors will never rebel but they have rebelled now. The Government wants to continue underpaying them. Could the Assistant Minister explain to us why, at the moment, when the Constitution of Kenya allows people to go on strike if they have grievances, the Ministry is currently harassing 95 doctors by withholding their salaries with the intend of breaking the strike, meanwhile causing suffering to the families of these doctors? Why is the Ministry using medical superintendents to harass junior doctors to get back to work?

**Mr. Langat:** Thank you very much, Mr. Deputy Speaker, Sir. It is very unfortunate that our doctors are on strike; the people who are supposed to be taking care of our health. The Assistant Minister has said that somehow, he may not take action because the Salaries and Remuneration Commission has not been set up. The Assistant Minister is misleading us because the role of the Salaries and Remuneration Commission, as far as public servants are concerned, is advisory. Therefore, the Assistant Minister can still take action at the moment. Given the fact that there is a strike at the moment, what actions are currently in place to ensure that our doctors go back to work?

**Mr. Njuguna:** Thank you, Mr. Deputy Speaker, Sir. Agreeing that this is a very serious matter, and noting that the Assistant Minister has agreed that hefty allowances will be paid, could he notify the country as to when these allowances will be backdated and paid?

**Mr. Pesa:** Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister who is speaking to us today because yesterday, I saw him meet the doctors when they were demonstrating. That was quite good. However, the Assistant Minister has told us that he is not able to decide on the salaries now and yet he knows how this can be done. Could he tell the House and Kenyans how many meetings he has held with these doctors recently? In fact, when the Assistant Minister talks about the threat, I do not think it was a threat because these doctors have talked for a long time. I feel that he should have met them and explained to them what channels they were to follow in order for him to give them the award if it was possible. Could the Assistant Minister tell us how many meetings he has held recently with these doctors?

**Dr. Nuh:** Thank you, Mr. Deputy Speaker, Sir. The letter that has been tabled by the Assistant Minister was written on 2<sup>nd</sup> December, 2011. That is just a few days ago and barely 48 hours to the strike by the doctors. The letter says in paragraph two:-

“Please, note the payment of strenuous allowances will be done in three phases with effect from January, 2012 and should be based on the rates approved by the Ministry of State for Public Service vide the letter dated 11<sup>th</sup> June, 2010.”

Why must this Government only respond to distress calls and strikes? Why did they not affect the strenuous allowances by June because the same rates were approved by the Ministry of State for Public Service in June, 2010?

**Mr. Jamleck Irungu Kamau:** Thank you, Mr. Deputy Speaker, Sir. The Assistant Minister has said that he cannot adjust the salaries because of the Salaries and Remuneration Commission not being in place and yet he has set aside Kshs1.5 billion to go to the doctors. Is that not a contradiction in itself? How will they adjust the allowances and give them this money if, in the first place, they cannot adjust the salaries?

**Mrs. Shebesh:** Mr. Deputy Speaker, Sir, this Government likes working on a crisis mode. Lecturers went on strike and they were eventually sorted out. Teachers went on strike and they were eventually sorted out. Doctors gave notice 19 days prior to the strike. Why must the Ministry wait to initiate dialogue with doctors until they go on strike when they know the vital sector the doctors serve?

**Mr. Baiya:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance. The Assistant Minister has said that the consultants have taken over the work that the doctors have been performing. Is the Assistant Minister saying that the work the doctors, who are over 2,300 do can very easily be taken over by other consultants and, therefore, they have been redundant or something? Can this Government demonstrate to this country that one of the biggest problems we have is brain drain; that is training doctors at public expense, only for us to end up losing them to countries like Namibia, Botswana, South Africa and the rest of Europe? Is this not an opportunity for the Government to alleviate this problem and ensure that doctors are properly remunerated so that they can be retained? Could the Government come out clear and say that they will do this rather than adopt the kind of attitude it has adopted of ignoring the doctors and telling them that it does not give a damn whether they work or not?

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, could the Assistant Minister confirm that the real reason why the “do not care or arrogant attitude of the Government” is because, they themselves, members of the Government, do not use public hospitals where these doctors work? This is because they go to private hospitals that majority of Kenyans who are poor cannot afford. That is why the Government is exhibiting the same attitude that we saw from the Minister for Transport who is seated next to him in ordering the demolitions in Syokimau, Maasai Village and other places.

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, you have heard hon. Imanyara say that the Minister for Transport demonstrated some arrogance by ordering demolitions in Syokimau.

Mr. Deputy Speaker, Sir, I am not aware of any order that I have done, either by way of a written directive or by pronouncement on the demolition. Could he substantiate the claim he is making that I actually ordered any demolitions when I know I have not done it?



**Mr. Imanyara:** Mr. Deputy Speaker, Sir, it is self-evident. It is a matter that is so obvious. The Minister stood on the Dispatch Box when all of us were sitting in this House to defend and say they will not go to court. They will not seek court directions, and they will watch while thousands of Kenyans were being improvised. However, the question was addressed to the Deputy Prime Minister and Minister for Finance. Is it in order for him to try to divert attention of the Assistant Minister for Medical Services from answering the question that this Government does not care about the plight of its citizens?

**Mr. Kambi:** Mr. Temporary Deputy Speaker, Sir, I will start with my good friend that the Government has not exhibited arrogance. If at all we exhibited arrogance, we will not have sat and burnt the midnight oil with the Treasury officials. I want to thank the Treasury officials in this case, because the whole of Sunday, we were together with them until 2.00 a.m., and we managed to secure, Kshs1.3 billion as allowances.

Mr. Temporary Deputy Speaker, Sir, the Government has actually shown goodwill to all the Kenyans.

**Dr. Eseli:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to shower such grand accolades to the Treasury, yet the Treasury is the one responsible for the suffering of these doctors? Is he in order to shower these accolades?

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

**Mr. Deputy Speaker:** Is that a point of order? You rise on a point of order when something is out of order or when the hon. Assistant Minister is misleading the House and you draw the attention of the Chair to it. However, if it is a difference of opinion, it is not a point of order!

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

**Mr. Deputy Speaker:** A serious point of order! What is it?

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I am standing on a point of order to require that a Member must be responsible for the facts that he states in the House. The document, the Assistant Minister has tabled here, indicates that Treasury has allocated Kshs1.339 billion for these striking doctors, which is all very well. However, there is an annexure on it which shows that the so-called Kshs1.3 billion which doctors think they have been given, they are sharing it with clinical officers, nurses, paramedics, mortuary attendants, drivers, subordinate staff, cooks, sweepers, dressers and everybody else. Is he in order to lead doctors into a discussion when he is hoodwinking them the fact being that the Kshs1.3 billion is not meant for them as a matter of fact? What is he doing to return the doctors on duty? This is not for doctors alone. It is for mortuary attendants who are not on strike. It is there!

*(Dr. Khalwale laid the document on the Table)*

**Mr. Kambi:** Mr. Deputy Speaker, Sir, let me first answer the hon. Member, who said that 95 doctors have been removed from the payroll. That is not true. As I speak, the preparation of this month's payroll has not started. If there is any, I have no

information. Last month's payroll was done before they went on strike. So, I do not have any information, whatsoever that some doctors have been removed from the payroll. Which payroll is he talking about? He should tell me.

**Mr. Deputy Speaker, Sir,** as I said, we, as a Ministry, cannot discuss salaries because we do not have authority to do so according to the new Constitution. It clearly states that this is the responsibility of the yet to be formed Salaries and Remuneration Commission.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, you have heard the Assistant Minister say that the Constitution is very clear on salaries. According to him, any negotiations of salaries must be done by the Salaries and Remuneration Commission. Could he tell us which particular Article of the Constitution says so? I am not aware of any.

**Mr. Kambi:** Mr. Deputy Speaker, Sir, I would urge the hon. Member to read the Constitution very well. But it is, indeed, in the Constitution.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. I challenged the Assistant Minister to tell us the exact article, which he has just quoted. As far as I am concerned, the salaries negotiations given to the Salaries and Remuneration Commission are not clear to me. So, could he educate me because he seems to know more about this Constitution than I do? Could he tell me the exact article which says that any salary negotiations between employees of Government and the Government must go through the Salaries and Remuneration Commission?

**Mr. Kambi:** Mr. Deputy Speaker, Sir, the hon. Member voted for the new Constitution. So, I wonder which Constitution he voted for if he does not know and understand that the Salaries and Remuneration Commission is an organ authorized by the Constitution to discuss anything about salaries in this country. Could he read the Constitution because he seems not to understand it?

**Mr. Deputy Speaker:** Could you conclude?

**Mr. Kambi:** Mr. Deputy Speaker, Sir, while concluding, let me say we have tried to discuss this issue with doctors. As I said, services in Kenyatta National Hospital and Mbagathi District Hospital are normal. We have made sure that Kenyans will not suffer and no life would be lost.

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

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House that he has gone round all hospitals and that the services being rendered are normal even if doctors are on strike? Is he suggesting that we no longer need doctors in the hospitals? Is he in order to mislead the House?

**Mr. Kambi:** Mr. Deputy Speaker, Sir, we want doctors back to work. However, we hope for the best and prepare for the worst. So, in this case, we have made sure that Kenyan life will not be lost.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. This House is entitled to accuracy of statements either from Ministers or Members of Parliament.

The Assistant Minister said that the Government cannot negotiate salary with doctors, because that is the responsibility of the Salaries and Remuneration Commission. I want to read for the Assistant Minister, Article 234, which sets out the powers and functions of the Salaries and Remuneration Commission. It says:-

“Shall be to set and review the remuneration and benefits of all State Officers”.

I want to tell the Assistant Minister that according to the definition of state officers, doctors who are on strike do not fall in that category. It is only to advise the national and county government on the remuneration, and benefits of all other public officers. "Advice" is not mandatory. So, he cannot still go ahead and negotiate. Advice does not exclude you from carrying out your duty by negotiating with doctors and giving them salaries, if the Government can afford it. So, this idea of running away and hiding behind the Salaries and Remuneration Commission when patients are suffering in hospitals is unacceptable.

**Mr. Deputy Speaker:** That is a valid information. It is more of a point of information.

**Mr. Kambi:** Mr. Deputy Speaker, Sir, the hon. Member is very correct to say that the Commission must advise. If it is that, we must be advised. So, we, as a Government, are still waiting to be advised by the Salaries and Remuneration Commission.

**Mr. Deputy Speaker:** Hon. Ochieng, you are seeking one Statement, and then we go to the next order.

Proceed, hon. Ochieng!

## POINTS OF ORDER

### ASSISTANCE TO FLOOD VICTIMS

**Mr. Ochieng:** Mr. Deputy Speaker, Sir, I rise to request for a Ministerial Statement from the Minister of State for Special Programmes regarding the current flooding being experienced across the country, particularly in Nyakach, Nyando, Alego, Ugenya, Budalangi, Mumias, Isiolo South and Isiolo North constituencies.

Mr. Deputy Speaker, Sir, in the Statement, the Minister should:-

(a) Outline the scope of the floods as well as the estimated cost of damage caused by the floods so far.

(b) Explain the urgent measures being taken by the Government to provide the affected persons with food and non-food items as well as medication and other basic needs and clarify whether the Ministry has sufficient funds to take care of the needs of the affected persons.

(c) Clarify the mitigation measures the Government has put in place, if any, to stop further damage by the floods and ensure that flooding is controlled.

(d) Explain the long-term measures that the Government contemplates to ensure that the enormous damage caused by the floods does not recur in future; and,

(e) Explain the steps that the Government plans to take in future, once the floods have subsided, to settle or reconstruct houses for all the victims of flooding in the country, as has been done in respect to other Internally Displaced Persons (IDPs).

**Mr. Deputy Speaker:** The Deputy Leader of Government Business, could you give an undertaking on the same?

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, let me, first of all, confirm that the Minister of State for Special Programmes is actively working on this matter. She has actually been to the ground and as we are talking, has gone back to the ground to work on the modalities of assisting the victims of the

flooding. I will communicate the matter to her to bring the comprehensive Statement by next week. This is because much as we appreciate that it is urgent, the confirmation I have given earlier is that the Minister is already on the ground and taking urgent measures to assist the victims. If I were the hon. Member, I would be giving priority to letting the Minister do the work in flood mitigation rather than preparing the Statement. This is because it is more important being on the ground to actually sort out the matter. We can get a Statement in terms of what is happening by Wednesday, next week. However, I can confirm that action is already being taken to mitigate the effects of flooding.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. We are already getting a lot of complaints from Budalangi, Kisumu and all over the country, especially in relation to children and women who are stranded and are at risk. I am informed that the Minister was actually in Mombasa as per yesterday and yet, the Minister is informing us that she is on the ground. So, is he in order to mislead this House? Given the urgent nature of this matter and because we are in the technological era, could she, at least, give us the information by tomorrow?

**The Minister for Transport (Mr. Kimunya):** On a point of order, Mr. Deputy Speaker, Sir. Just to clarify the matter, the Minister is not on holiday in Mombasa. We have just been with her in the Cabinet meeting and she has given an update on what is happening on the ground. She has already visited Budalangi and other areas together with the Minister for Lands, hon. Orenge, and the Minister for Youth Affairs and Sports. Measures have been put in place in terms of assisting the victims. So, it is important that we appreciate that Kenyans are starving out there and let us give the Minister time to mitigate the issues on the ground.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. The floods have caused a crisis. The Government has been briefed by the Minister. All we are asking is; "Bring that brief to Parliament". She does not need to be here in person. I do not need to tell this Minister how to run his Government. He can come and give us the brief that he will be given by the Minister and the House will be happy or will take other action.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Whereas we would like to agree with the Minister that he can bring the Statement even next week or next year, what is crucial to us is humanitarian intervention. Right now in Budalangi, Kisumu and other places, illnesses are on. Malaria is on and children have nowhere to sleep. We would like the Minister to tell us now, if not on Thursday, what humanitarian intervention they have taken immediately. This is because when this Minister tells us about the Minister and yet we know that she was in Mombasa yesterday, and today he has confirmed that she was in the Cabinet meeting, who is this Minister who can be in four different places at the same time?

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. The Leader of Government Business chairs the House Business Committee and is perfectly aware that it is the Committee's decision that he will bring a Motion in this House this week to adjourn. So, is it in order for him to say that the Minister will bring the Statement next week?

**Mr. Deputy Speaker:** This is a Ministerial Statement that has been sought by hon. Ochieng and the content of which is now known to every hon. Member. The only

issue is the urgency with which the matter should be handled and when you can have the Ministerial Statement available here. So, can you give a date other than next week?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, we can have the Statement coming in on Thursday. All I was asking the House is that in terms of priority, I would rather give the Minister time to be on the ground than to be here to issue a Statement confirming what we have just confirmed that measures have been taken to avoid further disaster with what has been caused by the floods.

**Mr. Deputy Speaker:** Fair enough! The Chair directs that this Ministerial Statement be made available on Thursday this week!

Yes, Hon. Jamleck Irungu Kamau!

TRANSFER OF BARCLAYS BANK  
OFFICE OPERATIONS TO INDIA

**Mr. Jamleck Irungu Kamau:** Mr. Deputy Speaker, Sir, I would like to request for a Ministerial Statement from the Deputy Prime Minister and Minister for Finance on the alleged intended transfer of Barclays Bank back office operations from Kenya to India.

Mr. Deputy Speaker, Sir, in the Statement, I would like the Minister to clarify the following:-

(a) Whether, indeed, Barclays Bank of Kenya has written to the Central Bank of Kenya (CBK) requesting for the transfer of these services to India;

(b) How many jobs Kenya will lose if these operations are transferred to India;

(c) Whether the Minister is aware that Barclays Bank made such requests in Ghana and Zambia and these countries turned down these requests to protect jobs and the economies in their countries; and,

(d) What action the Minister will take if, indeed, Barclays Bank proceeds with its intention to transfer these services to India.

**Mr. Deputy Speaker:** Mr. Minister, can you give an undertaking on when that Ministerial Statement will be available from the Deputy Prime Minister and Minister for Finance?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I would like the Minister to respond to that next week. I am aware that there is a proposal but I do not want to anticipate debate on the Motion. Last week when we were looking at all the issues and Statements that were scheduled, it was very clear that the whole of this week is clogged with Statements. We may not even have time for all those Statements. The Statement will come on Thursday, next week, in order to get him adequate time to look through all the issues.

**Mr. Deputy Speaker:** Fair enough! Is that okay with you, hon. Jamleck Irungu Kamau?

**Mr. Jamleck Irungu Kamau:** Mr. Deputy Speaker, Sir, I think it is okay as long as---

**Mr. Deputy Speaker:** Order! It is so directed. That "as long" is not there.

**Mr. Jamleck Irungu Kamau:** Mr. Deputy Speaker, Sir, it is just a request that these services are not taken before they answer the question.

**Mr. Deputy Speaker:** Fair enough! We will take only one Ministerial Statement from hon. Ojode, defer the rest of the Statements and proceed on the substantive business.

### MINISTERIAL STATEMENT

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, I have two Statements to make.

**Mr. Deputy Speaker:** You will give just one and the rest in the course of the week.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, I have one which was asked by hon. Mwau and the other one by hon. Wamalwa. I do not know which one I should make.

**Mr. Deputy Speaker:** Which is the shorter one?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, hon. Mwau's Statement is shorter.

**Mr. Deputy Speaker:** Fair enough! Hon. Mwau is, indeed, in the Chamber! So, proceed!

*[Mr. Deputy Speaker left the Chair]*

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

CONSIGNER OF CONTAINERS PCLU433452/4/PCLU43352/5

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Madam Temporary Deputy Speaker, you may recall that on Wednesday 16<sup>th</sup> November, 2011, while issuing another Statement with regard to what hon. Mwau had requested, several issues were raised by various Members of this House which required clarification.

Madam Temporary Deputy Speaker, I, therefore, wish to clarify some of the issues by stating as follows.

The consigner of the two containers involved in the case, that is, container Nos.PCLU433452/4 and PCLU433452/5 to Netherlands was Central Valley Supplies Limited of P.O. Box 66593/00800 Nairobi.

Madam Temporary Deputy Speaker, the directors of the company are as follows:- George Kiragu, George Njoya and David Alexander Gachago. I wish to table Annex 1 to prove the details of the directors and secretaries.

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

Madam Temporary Deputy Speaker, the containers were shipped through the Port of Mombasa aboard MV Sudan from Antwerp Port, Belgium, and were received by the Kenya Ports Authority (KPA) at Kilindini, Mombasa, on 30<sup>th</sup> January, 2004, and I have earlier on tabled documents to that effect.

Madam Temporary Deputy Speaker, the owner of the speed boat in which the drugs were seized in Casuarina Estate in Malindi also belonged to Central Valley Supplies Ltd., of P.O. Box 66593-00800 Nairobi. The boat Serial No. is USBWCFF036J899, and the make is Boston Whaler Model 21 Outage. I wish to also to table the proforma invoice for the boat with the details.

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

Madam Temporary Deputy Speaker, on the destruction of drugs, I wish to table the Government Chemist Analyst report Reference No. Q117/04 and Q121/04. The destruction certificate which was prepared and filed in the court is being sought. Due to lack of time, and the fact that the court registry recently relocated to Milimani the paralegal staff are yet to finalize reorganizing the registry; thus more time is required to trace the same.

Similarly, Madam Temporary Deputy Speaker, a letter inviting representatives from the UK and US governments through the Drugs Enforcement Agency (DEA) and the United Nations Office on Drugs and Crime (UNODC) during the destruction is being traced as the correspondence file has been archived, and more time is required to trace the same. The Commissioner of Police letter, Reference SECPOL/2/6131 is relevant; Annexes 3 and 4 are hereby tabled.

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

Madam Temporary Deputy Speaker, it is also imperative to note that the file in this case is still open as the warrant of arrest against the first accused, George Kiragu, ID No. 07802247 from Kirinyaga District, who is yet to be extradited from Netherlands, is still in force. Therefore, releasing detailed information may jeopardize the investigations and prosecution of the fugitive.

Madam Temporary Deputy Speaker, as earlier stated, I wish to table a copy of a letter from my Ministry to the Ministry of Foreign Affairs in which we requested information on the alleged Executive Order that the President of the United States of America had issued on specific allegations on hon. Harun Mwau. We are awaiting their response. This is Annex 4 and it is hereby tabled.

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

Finally, Madam Temporary Deputy Speaker, the Government will ensure that any person found trafficking drugs through our ports is apprehended and taken to court forthwith.

Thank you so much, Madam Temporary Deputy Speaker.

**Mr. Imanyara:** Madam Temporary Deputy Speaker, I do not want to say that I am shocked, because I cannot find stronger language to use; but the Assistant

Minister should not have waited until yesterday to write to the Minister for Foreign Affairs when he knew he was coming to give further clarifications on a Question or a Statement that he gave before this House, which specifically had requested that he consults the Minister for Foreign Affairs.

So, Madam Temporary Deputy Speaker, I would have expected the Assistant Minister to explain why it took so long before he wrote a letter to the Minister for Foreign Affairs. More importantly is the issue regarding disclosure of the directors of the company. I have not heard the Assistant Minister make that disclosure, which was part of the undertaking that he gave when he sought to make this Statement.

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

**The Temporary Deputy Speaker** (Dr. Laboso): You want a clarification, do you?

**Mr. C. Kilonzo:** Yes.

**The Temporary Deputy Speaker** (Dr. Laboso): Proceed and ask for a clarification, hon. C. Kilonzo.

**Mr. C. Kilonzo:** Thank you, Madam Temporary Deputy Speaker. I will also want the Assistant Minister to clarify whether, indeed, the drugs which were destroyed by the Government were real drugs, and whether he has a certificate of destruction or any evidence which can confirm whatever was destroyed by the Government was, indeed drugs and the quantity was the right quantity which had been confiscated from the traffickers.

**Mr. Njuguna:** Madam Temporary Deputy Speaker, the Assistant Minister has just informed the House that they have requested the US Government to respond to this matter. What action is the Government taking against the US for non-compliance, because non-compliance will continue to tarnish the name of the hon. Member?

**The Temporary Deputy Speaker** (Dr. Laboso): Yes, Assistant Minister.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Madam Temporary Deputy Speaker, I did mention that I had the names of the directors, and I have tabled them. I can read them out. We have George Kiragu, who is a director. His date of appointment is 19<sup>th</sup> December, 1997. We have George Njoya Wangu, director; appointed on 19<sup>th</sup> December, 1997 and David Alexander Gachago, director; appointed on 19<sup>th</sup> December, 1997. George Kiragu is the secretary of the company. I wish to table the list.

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

Madam Temporary Deputy Speaker, the issue of the certificate of destruction, I did mention here that we have received a report from the Government Analyst showing that the items were received by them, or that they saw the items. As I did mention in my Statement, they are still looking for the certificate of destruction and it will take time because of the shifting of the High Court Registry to Milimani

**Mr. Imanyara:** On a point of order, Madam Temporary Deputy Speaker.



**The Temporary Deputy Speaker** (Dr. Laboso): What is your point of order, hon. Imanyara?

**Mr. Imanyara:** Madam Temporary Deputy Speaker, to the extent that the Assistant Minister is not able to get the details because the files cannot be traced, it means that the Statement is not really ready and he should not have rushed into giving a Statement which does not contain all information. More importantly, these are details of the company directorships as at 17<sup>th</sup> December, 2004. Is it in order for the Minister to purport to give current information when the information that he is tabling before the House was obtained on 17<sup>th</sup> December, 2004?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Madam Temporary Deputy Speaker, there is no change in terms of the directors of that particular company to date, and that is why I was giving the same---

**The Temporary Deputy Speaker** (Dr. Laboso): Can you confirm that, Assistant Minister?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Yes, Madam Temporary Deputy Speaker. There is no change. Those are the names of the directors of Central Valley Supplies.

**Mr. C. Kilonzo:** On a point of order, Madam Temporary Deputy Speaker. Is the Assistant Minister in order to give an excuse that the file has been missing or misplaced while we are dealing with a Government that issues documents? Why can the same Government – which issues the certificates which are allegedly misplaced or missing – not go ahead and issue orders because the working documents are still there?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Madam Temporary Deputy Speaker, we sought these documents two or three weeks ago and the information we got was that when they were transferring the Central Registry to Milimani, they could not ascertain which files had the document. So, I have nothing to give, but I have said that once they get the documents, I will be able to table them in this House.

**Mr. Njuguna:** On a point of order, Madam Temporary Deputy Speaker. The Assistant Minister has not responded to my question on non-compliance.

**The Temporary Deputy Speaker** (Dr. Laboso): Assistant Minister?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Madam Temporary Deputy Speaker, I thought I mentioned that we had complied with what was required of us. My colleagues were asking for the letter which we wrote to the Ministry of Foreign Affairs; we did write a letter and stated what we required from the Drugs Centre. I think we have done our part, as the Government.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. C. Kilonzo, ask your question now.

**Mr. C. Kilonzo:** On a point of order, Madam Temporary Deputy Speaker. I am asking for certificate of destruction showing that, indeed, these drugs were destroyed. We want to confirm, indeed, whatever was destroyed was actually drugs. There are allegations that whatever was destroyed was *unga* and not drugs. Is the Assistant Minister in order to tell this House that he will only be able to give those

documents when they are given to him? This means that if he is not given, he will never bring them to the House.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Madam Temporary Deputy Speaker, if it was *unga* which was destroyed then the Government Chemist would have not given this kind of certificate. I would rather challenge my friend to go through the Government Chemist analysis report. It is not true at all that it was *unga* which was destroyed. We believe in the Government Chemist. This is the only agency which we can trust to do this. I hereby table the documents.

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

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

**The Temporary Deputy Speaker** (Dr. Laboso): Order! The Assistant Minister has tabled the documents. Hon. Member, why do you not take a minute or two to look at what he has tabled?

**Mr. C. Kilonzo:** What I am asking---

**The Temporary Deputy Speaker** (Dr. Laboso): Allow Mr. Mwau to speak. As I said, just take a minute or two to look at those documents.

**Mr. C. Kilonzo:** I have seen the documents!

**The Temporary Deputy Speaker** (Dr. Laboso): Allow Mr. Mwau to speak. Mr. Mwau, the Floor is yours.

**Mr. Mwau:** Madam Temporary Deputy Speaker, I thank the hon. Assistant Minister for the lengthy reply. However, I would like to know whether he is aware that out of his response both the British and the US governments have decided to retaliate because they do not want to take a defeat. They have recruited one John Githongo and one Ndung'u Wainaina to recruit youth, so that they can demonstrate in Mombasa, Nairobi, Nanyuki, Nakuru and Eldoret purporting that the Government is hiding something. What is he doing about that because it is wrong for foreign governments to continue tarnishing the names of innocent people just because they have money that they can give through the United States Agency for International Development (USAID) or Department of International Development (DFID)?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode) Madam Temporary Deputy Speaker, I do not want to rely on speculations or rumours. The Government has a Constitution. We have a law which we have to use. If there is something like that, the law will take its own course. We need proof. We will take action if, indeed, there is something like that because the law is very clear on that.

**The Temporary Deputy Speaker** (Dr. Laboso): Is that the last of the Statements?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Madam Temporary Deputy Speaker, I have one more Statement asked by Mr. Eugene Wamalwa.

## MEASURES TO ADDRESS POLITICAL VIOLENCE

Madam Temporary Deputy Speaker, on 24<sup>th</sup> November, Mr. Wamalwa asked for a Statement on measures to address political violence. In the Statement, he requested the Minister to explain what the Ministry is doing on the growing culture of violence that is creeping back into the politics on the eve of another general election. In the Statement, he wanted the Ministry to address the violence that occurred on 4<sup>th</sup> October, 2011, when Mr. Raphael Tuju's convoy was stoned in Kisumu.

Secondly, the attack on Justin Shikanda Kongo on 14<sup>th</sup> November, 2011, a New FORD (K) supporter while on his way home.

Thirdly the attack on Patrick Shikuku on 20<sup>th</sup> November, 2011, another New FORD (K) supporter who was assaulted after attending a meeting at Matayos.

Fourthly, the death threats received by Hannington Odairo Mukudi who was the ODM secretary for Funyula Branch who had defected to New FORD (K) before he died. He wanted to know what we are doing to nip this trend to ensure that the country does not relapse into violence in the coming general elections.

Further, Mrs. Odhiambo-Mabona requested that I clarify what the Ministry has done in relation to supporters of ODM who were attacked during the Ikolomani by-elections.

I wish to state as follows:- on 4<sup>th</sup> October, 2011, Mr. Raphael Tuju visited Kisumu City for a political tour. He was in a convoy of two buses and several cars which drove from his Milimani Estate residence to Kondele Estate, about four kilometers away. On reaching Kondele Playground, an area next to City Clock Bus Stage and car wash area, some unruly young men started shouting and throwing stones at the convoy, protesting the presence of Mr. Tuju in the area. The rowdy youth forced him to abandon plans to address his supporters who had started gathering. The unruly mob continued stoning the convoy as it moved towards Kibuye. There were no injuries reported, but some vehicles had their windscreens broken.

At Kibuye Market, Mr. Tuju addressed the crowd which had gathered and proceeded to the Bus Stage within Kisumu Town where he managed to address another crowd in spite of disruptions from a few members of the crowd. After addressing the crowd at the bus stage, his convoy proceeded to his Milimani residence. After the incident, police officers at the bus park police base booked the report.

CID officers took over the investigations and managed to arrest three suspects and arraign them before court on 9<sup>th</sup> October, 2011, vide police case file No. Criminal 627/552/11 and Court File No.598/2011 charged with two counts of one, creating disturbance in a manner likely to cause a breach of peace contrary to Section 95(1) of the Penal Code and malicious damage to property contrary to Section 331 of the Penal Code.

The accused persons in this case are: Caleb Owino Nyamor, Farida Ochieng Omar and Joseph Onyango alias Abiolo. The accused were released on a cash bail of Kshs60,000 and a surety of Kshs100,000

On the clarification sought on the case involving Justin Shikanda Kongo, a New FORD (K) supporter, the circumstances are that on 14<sup>th</sup> November, 2011 at about 8.00 p.m. Justin Kongo was going home while riding his bicycle from Port Victoria to Mundere where he was ambushed on the way by four young men whom he could not

identify. They hit him with a club and he sustained injuries on his forehead. They robbed him Kshs4,000 and left him unconscious. When he regained consciousness he went home and reported the incident to the police the following day on 15<sup>th</sup> November, 2011, at around 1.20 p.m. vide OB. No.13 at Port Victoria Police Station. He was treated at Port Victoria District Hospital and discharged. Investigations are ongoing and, at the moment, the case is being treated as a normal crime as no political motive has so far been identified.

On the case of Patrick Shikuku, the police are not aware that he was assaulted after meeting at Matayo's as there is no report to that effect either in Bumula Patrol Base or Busia Police Station. Therefore, no investigations are being carried out on the same. The victim is requested to avail himself before the nearest police station and record a statement to help investigations be undertaken if such an incident ever took place. Similarly, the Government is not aware of any threats issued to the late Hannington Odairo Mukudi, formerly the ODM secretary for Funyula Branch before his death.

According to his relatives, Mr. Odairo fell sick and started complaining of chest pains on the night of 24<sup>th</sup> November, 2011. He was rushed to Nangina Mission Hospital where he died while undergoing treatment. It is after his death that the relatives alleged that there was a threat on the life of the deceased. This prompted police to launch investigations to ascertain the cause of the death.

Madam Temporary Deputy Speaker, the body of the deceased was taken to Busia District Hospital Mortuary where a postmortem was conducted on 26<sup>th</sup> November, 2011. According to the doctor who performed the postmortem, the deceased died due to pulmonary embolism due to cardiomyopathy. The case is pending under investigation vide Inquest No.1/2011. I wish to table the postmortem report for ease of reference.

On the clarification sought by Mrs. Odhiambo-Mabona, on 19<sup>th</sup> May, 2011, at about 7.35 p.m., six people who alleged to be ODM supporters made an assault report at Iregi Police Patrol Base. They were Albert Ambila, aged 52 years; Fredrick Makali, aged 37 years; Erick Mwati, aged 24 years; Calistus Shikoli, aged 50 years and Beatrice Makali, aged 40 years

They alleged that they were accosted and attacked by New FORD (K) supporters as they were coming to Musoli area. Investigations were carried out leading to the arrest of one Mr. Wycliffe Muhanji after positive identification. He was charged in court with four counts of assault; causing actual bodily harm vide Criminal Case No.921/677/2011 and Court File No.992/2011. The case is still pending before Kakamega Law Court.

Madam Temporary Deputy Speaker, the Government has put adequate security measures in place to forestall attacks on politicians and their supporters while campaigning. Similarly, the police have put adequate security plans in place in preparations for next year's general elections. However, for the police to be able to cover such political campaigns adequately, the conveners are duty-bound to notify the local police stations of areas they intend to visit to enable proper and adequate security preparations to be put in place. However, in all the above instances, the conveners and organizers failed to inform the police and, hence, could not plan or provide security in time.

Thank you.

**The Temporary Deputy Speaker** (Dr. Laboso): We will allow only very few clarifications because of time. Mr. Wamalwa and then Eng. Gumbo!

**Mr. Wamalwa:** Madam Temporary Deputy Speaker, the Kriegler Report said that unless this country reforms its critical institutions of governance; and unless we act, what we saw in terms of Post-Election Violence (PEV) will be like a Christmas party come the next general election. What we are seeing are very dangerous signs and worrying trends of violence emerging again, whether it is between parties or even intra-party activities. We have seen violence in the ODM grassroots elections. We have seen violence in the recent by-elections. What I want the Assistant Minister to assure this House is really what the Government is doing - particularly his Ministry - and other agencies involved like National Cohesion and Integration Commission (NCIC) and Independent Electoral and Boundaries Commission (IEBC), to work together to ensure that they nip in the bud the culture of violence that is creeping back into our politics.

Madam Temporary Deputy Speaker, I would also like the Assistant Minister to assure the House and all those aspirants like Mr. Raphael Tuju, of adequate security wherever they will go and campaign in this country.

**Eng. Gumbo:** Madam Temporary Deputy Speaker, arising from what we went through in 2007/2008, all of us as leaders in this country have a duty to sue for peace. I think it is something that we must preach in all occasions. However, even as we sue for peace, we as leaders of this country, have a right and a duty to behave responsibly. I do not see why, as someone who comes from the Nyanza region, I should make it a point of always calling the Press whenever I am going to have a rally in Nyanza.

I want to particularly talk about the case of Raphael Tuju. It is on public record that in 2005, when we were doing the Referendum, Raphael Tuju went for a rally in Kisumu, when security officers had advised him that it was wrong to do so. In the process, several people died. When he got a chance to give an account of that incident, he said that he owed nobody an apology. This matter was very painful to those of us--- In fact, not only did he say that he owed nobody an apology, but he also made very derogatory remarks about certain communities in this country. The question I am asking the Assistant Minister is this: Clearly, the case of Raphael Tuju has been a case where somebody apparently goes out of his way to provoke people. What does the security forces in this country do against politicians like Tuju, who provoke people and then run back to start looking for sympathy?

**The Temporary Deputy Speaker** (Dr. Laboso): Okay, the last one by Mr. Mungatana!

**Mr. Mungatana:** Madam Temporary Deputy Speaker, in most developed countries, when people are declared presidential candidates, there is a special security arrangement for them because the assumption is that any one of them could become the Head of State. In America, for example, there is no distinction between a sitting President and an opposition candidate from the major parties. What I want to know from the police, through the Assistant Minister, is this: Is there a policy or arrangement in place, knowing that we have several major political parties; knowing that we have two rounds of elections to choose a President, or are we leaving things to chance like we have always done?

**The Temporary Deputy Speaker** (Dr. Laboso): The very last one, my fellow Member of the Speaker's Panel!

**Mr. Imanyara:** Madam Temporary Deputy Speaker, indeed, as the Assistant Minister is giving these assurances in the House, an international conference is taking place in Nairobi to review the situation and to assess the likelihood of violence occurring next year. All those who have spoken have warned of the dangers that lie ahead if measures are not taken.

One of the measures taken under Agenda 4 reforms in the Kriegler recommendations was: Apart from holding those with the greatest responsibility for the PEV, the second category of offenders will also be brought to account and be brought to justice.

Madam Temporary Deputy Speaker, there has been no attempt, since the failure of the Government effort to introduce a local tribunal, to review the situation. What measures has this Government taken to ensure that the second category of perpetrators is brought to justice?

**The Temporary Deputy Speaker** (Dr. Laboso): Let the Assistant Minister respond.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Madam Temporary Deputy Speaker, you can see the mood of the House on this particular Ministerial Statement. I would like to say the following:-

First of all, we are putting in place measures. We are not going to leave any stone unturned. All the presidential candidates - but not those who are announcing now! That is because they have not been cleared by IEBC. All presidential candidates will apply for security and we will give them adequate security personnel.

This country belongs to all of us. The country does not belong to an individual. This country belongs to Kenyans and presidential candidates must also know what to say wherever they are, and when they are addressing their perceived supporters.

Madam Temporary Deputy Speaker, on the issue of violence, the law is very clear. We are not going to have a repeat of 2007. We cannot afford to lose lives of innocent Kenyans simply because one person has lost or one person has done whatever. We will not accept such a thing as the Government. We will never accept something like that. We will beef up security. As long as we are notified that Joshua Ojode is going to address people at Marigat or wherever, we will beef up security in that area.

Madam Temporary Deputy Speaker, I am requesting that all candidates must notify the police in order for us to give him or her security, and we will do that as a Government. Reforms are also coming. You are aware that we will recruit further 7,000 police recruits come next year to help us in maintaining law and order. I want to caution that if you are man enough go to any rally and start causing chaos. We will arrest you, take you to court and show you that there is a Constitution which we are mandatorily required to follow. This is not a joke. Those who want to do their campaigns, let them do it freely but notify the police. If you do not do that, we will arrest you. If you want to provoke and incite people or incite one tribe against another, we will arrest you. The law will take its course. So, I want to assure Members of the

august House who are my colleagues, that they should be rest assured that they are at liberty to address any rally anywhere.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Ojode, I hope you are addressing yourself to the question asked. This is because you now seem to have gone into a lecture.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): No, Madam Temporary Deputy Speaker. It is very painful for you to organise a rally at Chebilat and then somebody comes to beat you and your people. That is what I am talking about. We will not allow something like that. The Government is there and we are in full control. We will arrest all those guys.

Thank you.

**The Temporary Deputy Speaker** (Dr. Laboso): That is the end of that Order. Next Order!

## COMMITTEE OF THE WHOLE HOUSE

### THE INDEMNITY (REPEAL) BILL

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, this Order is deferred as both the Government Responder, the Attorney-General and the Mover of the Bill are not available.

Next Order!

*(Committee of the Whole House deferred)*

Let us move on to the next Order!

## BILL

### *Second Reading*

### THE LABOUR INSTITUTIONS (AMENDMENT) BILL

**Mr. Mututho**: Madam Temporary Deputy Speaker, I beg to move.

**An hon. Member**: That The Labour Institutions (Amendment) Bill be now read a Second Time!

**Mr. Mututho**: Madam Temporary Deputy Speaker, I beg to move that The Labour Institutions (Amendment) Bill be now read a Second Time.

I thank the Executive for reminding me that we are reading this Bill for the second time. I want, on the outset, to say that I have received a lot of communication from the Kenya Flower Council, in particular and individual farmers from all over the world. I have received heaps and heaps of communications. However, they all agree on one thing; that they are paying their workers over Kshs10,000. None of them

admits that they are paying Kshs3,700, Kshs3,500 or Kshs3,200. So, they all admit that the way to go is for everybody to do a living wage.

What is a living wage? A living wage is coined by the ethics which are drawn by the industry itself. These people met and set the minimum standards that somebody must meet in order to export flowers to the rest of the world. I thank Naivasha people because they produce 50 per cent of the world's red roses daily, but at what price? For every banquet of flower one produces, the money is enough to pay a worker for a whole month.

I do not want to say the whole story just in case you hate the roses because roses are very good flowers. When somebody buys you a rose, you find it to be a very good move. However, if you imagine that a worker produces 20 banquets and only one banquet pays the salary for the whole month--- I will table in this House some of the pay slips to prove that some people are paying Kshs110 per day. You will have to bear with me that we have to do these amendments so that we have the very minimum to conform to the industry; and that is Kshs10,000.

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

The other reason and I think hon. Members need to hear this; I will apologetically mention the name of the lady. A lady by the name Wanjiru was arrested last weekend and detained at Gilgil Police Station. Her crime was neglecting her children. Neighbours thought so. What they did not know was that Wanjiru is a single mother of four and she earns Kshs170 per day from one of the flower farms. So, when her children are crying because of food, they think she is neglecting them. The police took action and arrested Wanjiru and locked her up for neglecting children. I know and I can count them in 10,000, 15,000 and 30,000 workers. They are hearing this. They are in Naivasha now. There are workers who earn Kshs3,500 and Kshs3,700 and cannot afford *sukuma wiki*. They have to eat *ugali* with water with a bit of salt. This is a fact. The flower farmers know this and everybody knows this. It is easy to say that the minimum wage for farm workers is Kshs3,400 or Kshs3,500. However, in the farm, they get shelter, food, there is no transport, they get firewood and once in a while you give them about Kshs200 to go and buy panadol or malariaquine or whatever they need. That is a basic farm worker. However, when you are working in an industry like the flower farmers and you are paid Kshs3,700, and yet you have to get a house for yourself--- Like in the case of Naivasha, the minimum you can do is Kshs1,000. From there, you have to organize your school fees, medical and everything from that budget. If you look at the pay slips like the one for a very big farm called "*Bila Shaka Farm*" you will find that the basic salary is Kshs5,000 and house allowance is Kshs1,500. At Aquila Farm, the basic salary is Kshs3,600 and the house allowance is Kshs1,500. Oserian are good, they pay a basic salary of Kshs8,722 and house allowance of Kshs1,500. That is already past the Kshs10,000 mark we are talking about plus free housing, transport and medical care. This is the case and yet they all deal with the same market. While we are still grappling with Kshs3,000, Kshs4,000 or Kshs5,000, I was in Israel last week. With the Chair's permission, in Israel, we compete with them in the same market. Their salary is currently US\$1,300 for a farm worker. That is the minimum you can pay and you must provide air



conditioned rooms, free water, medical care, a washing machine and power. This is compulsory. The only thing they buy is food. If you calculate US\$1,300, it is over Kshs100,000. Look at the case of Cecily Islands. It will work out to be the same.

When we talk about the industry, they refer us to Ethiopia. Ethiopia is a very interesting country. They are our neighbours and we do not talk badly about our neighbours. They want our market but I was there too. If you look through the document, the flower farmers have been accused of retaining 97 per cent of the earnings abroad and, subsequently, the Government has banned individuals from owning foreign accounts. That is the Ethiopia that we are talking about. One of the companies there is Sher Agencies which are also domiciled in Naivasha. They are my friends and there is no such a danger of it going to Ethiopia. If it goes to Ethiopia, the conditions there will not be the same as Kenyan conditions. After lunch, Ethiopian workers have a siesta and may not wish to work in the afternoon. Many people are not interested in it because there are serious logistical problems. I travelled to Addis Ababa in Ethiopia. I saw all those flower farms and also learnt how workers are treated. It is not out of rumours that I am saying this. I would like to invite the Departmental Committee on Labour and Social Welfare to visit people in Kabati in Naivasha Town at their appropriate time. They will see thousands of workers who sleep hungry and in cold. This is because they cannot afford to buy cooking gas. A 14-kilogramme cylinder is now retailing at Kshs3,700. How can a worker earning Kshs3,300 per month be able to buy it? This means over 100,000 workers will never use gas in their life time. Naivasha has a very fragile ecosystem. These workers will either use charcoal or firewood. We know very well that next year our Government will not allow use of paraffin in Kenya.

It is a pity that over 100,000 workers who contribute about 10 per cent to our GDP will never use gas in their life time. At the moment, they are using paraffin to cook their meals. How do we expect them to work efficiently in floriculture industry if they eat *ugali* with salty water? Floriculture is a very hazardous business because strong chemicals are used. Most of Naivasha flower farms have funeral departments in their organisation. They organise funerals every weekend. Why do people have to die in these farms at that rate? It is because of cancer and other related conditions as a result of chemicals they inhale.

Workers in these flower farms want to be paid a minimum wage of Kshs10,419. I am quoting from a letter written by one of them. He laments that they are not paid well. We are being accused of interfering with this industry, but workers themselves do not want to be paid Kshs110 paid per day. I would like to table this letter from Globe Limited.

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

Madam Temporary Deputy Speaker, if this Government was not in a deep slumber, it would have exploited the provisions of Section 44 of Labour Institutions Act. This section allows them to set up wage councils which will address wage paid to workers. It would have been good if the Minister had come and gazetted the floriculture workers council. Under Section 46, the Minister is supposed before gazettment of a notice and on advice of the various councils, to table it in Parliament.

I have been in this House for the last four years, but I have never seen her table it. So, whatever is in force as Gazette Notice is an illegality, she did not comply with Section 46. So, the gazette notice is null and void.

Madam Temporary deputy Speaker, I do not have to over-emphasize the fact that people who expect to be protected by the law must also respect it. I am glad that the Chair of the Departmental Committee on Labour and Social Welfare is here. I urge him to visit Israel and Ethiopia, among other countries, to see how much flower farm workers are paid. Here in Kenya, they are subjected to slavery wage. Whether we want to believe it or not, slavery exists in the flower farms.

We want them to be paid a living wage. This is so critical to any human being who is in this industry. We do not want to be told stories that housemaids are now paid Kshs18,000. Have we taken time to understand what kind of house girls we are talking about in the flower farms? The target for this particular industry is Kshs7,500. That should be the minimum amount they should earn. I also believe that no one should earn less than Kshs7,500. If we add other goodies, they should earn a minimum of Kshs12,000. However, some flower companies are paying workers a paltry Kshs3,300 per month. One of them is Sunbird Kenya Limited. This company is owned by our good friends from Israel. Two weeks ago, I was in Israel. Flower farm workers there are paid a salary of US\$1,300. If you convert this into our currency, it is over Kshs100,000. If you see a pay slip of a flower worker in Kenya, it reads as follows:- It shows PIN Number, number of days worked and what he earns per day which is Kshs110 per day. He earns a salary of Kshs3,300 per month. It also shows house allowance of Kshs600, overtime at Kshs23.80 per hour or Kshs249.9 per month, NSSF and NHIF deductions of Kshs200 and Kshs120, respectively, welfare zero, extra advance zero, total deductions, Kshs320, net pay for the month is Kshs3,629.90. This is a worker in a flower farm owned by an Israeli who exports flowers.

Who are our competitors? These are companies from Israel, South Africa and Latin America. If we are talking about the same market, even if we take advantage of air transport, they are paying their workers over Kshs100,000. How do we expect to compete with them when we are paying our workers Kshs3,300 per month? This is not fair.

The other day, Naivasha Municipal Council constructed a mortuary for flower farms in Naivasha. Why? Because there are many deaths reported on daily basis. These deaths are not as a result of road accidents, but because of the chemicals used in flower farms. This was a gift. However, for a couple of years, the local people have refused to use it. If some people can give you a gift of a morgue, then something must be terribly wrong somewhere. Of course, there are companies, for example, Finlays who are paying their workers very well. Finlays is an international company. They are also compliant with all the statutes. However, all the cowboys of the flower farmers do not follow our 23 statutes, which are prescribed by this Parliament. But instead they follow their own statutes. It is sad that the Government allows them to exploit our people. So, the hon. Ministers present should check it out. Why do we pass laws here and allow some people to ignore them and use their own laws? Something is definitely not right.

We have had presentation from quite a number of people. One of them did challenge the legality of a Member of Parliament tabling a Private Members' Bill. In a

lengthy letter written by the Federation of Kenya Employers, they opposed us tabling Private Members' Bills that would better the lives of flower farm workers in this country. I want to educate and tell them that they are behind news. They do not know that we are in a new era and we have a new Constitution. They have no idea what a Bill and law are. If they did, they would not bother to give me a 10-page letter educating me on how to make laws. I am here because I am a Member of Parliament. As I have said before, a Member of Parliament has three basic functions. The first function is to represent the people. I am representing the people and saying that tonight some people can only afford flour, a bit of salt and water. Period! They will not have any other meal and there will be no breakfast tomorrow. I am here representing the people and saying the truth as it is in the flower farms.

Madam Temporary Deputy Speaker, the second function of a Member of Parliament is legislative; making laws. We can amend and appeal them as the Constitution requires. We do not have to ask for permission from FKE or, indeed, any other interested party on that particular function.

Madam Temporary Deputy Speaker, the final function is that of oversight. The oversight function is where the Departmental Committee on Labour and Social Welfare comes in. I wish that they get and spare enough time, particularly when we go for vacations, so that before we come to the Committee Stage, they can verify to be able to see what these workers go through. I am saying this because it is one thing to say here that people are complaining and the economy will flop, but another thing altogether when newspapers screen headlines that the flower industry is avoiding to pay duty to an extent of Kshs42 billion. What is this salary increase? People are saying and nobody challenges them that Kenya is losing Kshs42 billion in tax that is supposed to be collected, but nobody bothers to follow on that particular aspect.

Madam Temporary Deputy Speaker, I want to remind you the figures again so that you know the exact value of the flower industry. The exact value is what they talked about when there was an unfortunate incident of the volcanic ash in Europe. What they reported then is that this industry is worth 1.9 million Pounds per day. That is what this industry is worth. So, you can calculate that by the number of days in a year, because flowers grow every day, and that will give you the billions that Kenyans never earn because of double invoicing. That is for another day.

I want to remind the Members present that it is one thing to sit here and pass laws and another thing altogether when you are a Member for Naivasha seeing a morgue that is congested by people who have been killed by chemicals. You are seated there contributing every day and weekend to tens of people who are dying because of cases that could be managed and they work.

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

*[The Temporary Deputy Speaker  
(Mrs. Odhiambo-Mabona) took the Chair]*

Madam Temporary Deputy Speaker, talk of the economy. What counts more than Article 1 of our Constitution? We represent the people and their view should be

respected. Of course, in this proviso out here there are collective bargaining agreements which have been in force for quite a while, but if you look at the scene--- I have been on it from 2003 and I have seen a Member from the Executive, and may God rest his soul in eternal peace, coming to mismanage the whole thing. The people are left high and dry with no pay. Kenya is good and Kenya will continue to produce flowers, but if we must produce flowers at the expense of killing an average of 100,000 every decade who are workers in those flower farms, that is very sad. If we must produce flowers so that all these people sleep hungry or just take carbohydrates; if we must continue planting trees at a rate of, say, 100,000 and then destroy them at a rate of 200,000 in such a volatile environment because they cannot afford any other source of energy and have to rely on poached firewood and charcoal, then something is flatly wrong.

Madam Temporary Deputy Speaker, I could speak for decades. I am not speaking to the gallery but to Members of Parliament who will be amused to learn that we have had an opportunity to see some of these investors that I am talking about dine. They are able to do Kshs4,000 for lunch and I have proof here. I can say where and when if required. If you commit Kshs4,600 for lunch, you big men, and you are paying the workers Kshs3,700 per month--- This is somebody with children. I will not talk about sexual harassment and prostitution in the flower farms because if I was given a chance and if it was admissible, I would table 200 pages of newspaper cuttings over the years by different people all having one common denominator. Parliament must rise to the occasion and save her people. It must represent the people and make laws.

### QUORUM

**Mr. Njuguna:** On a point of order, Madam Temporary Deputy Speaker. This is a critical Bill that affects all the Kenyans in this country. Therefore, I am concerned with the quorum in this House.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Can we, please, ascertain whether we have quorum?

*(The Clerk-at-the-Table counted the  
hon. Members in the Chamber)*

Hon. Members, noting that we have no quorum, I will request that the Division Bell be rung.

*(The Division Bell was rung)*

*[The Temporary Deputy Speaker  
(Mrs. Odhiambo-Mabona) left the Chair]*

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

## **ADJOURNMENT**

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, we are unable to raise the Quorum and, therefore, we have to interrupt business and adjourn. This House stands adjourned until tomorrow, Wednesday the 7<sup>th</sup> of December, 2011, at 9.00 a.m.

The House rose at 5.40 p.m.