

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 26th July, 2011

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

DETENTION OF MSF SWITZERLAND WORKERS BY UGANDAN SECURITY AGENCIES

(Mr. Affey) to ask the Minister for Foreign Affairs:-

(a) Is the Minister aware that two Kenyans (Messrs Mussa Hassan Bulle and John Lodong), employees of MSF Switzerland, were detained by Ugandan security agencies on June 5, 2011?

(b) What reasons led to their detention?

(c) What measures has the Minister taken to secure their release?

Mr. Deputy Speaker: Is Mr. Affey not here?

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Mr. Affey is not in the country!

Mr. Deputy Speaker: Indeed, the Chair is aware that Mr. Affey is out of the country on official Parliamentary business. This Question is, therefore, deferred to a day that he will be around.

(Question deferred)

STALLED PROJECTS IN RONGAI

(Mr. Kigen) to ask the Deputy Prime Minister and Minister for Local Government:-

(a) Is the Minister aware that the construction of a school storey building in Boror Location, construction of classrooms at Solai Kale Secondary School, construction of Kipsyenani Health Centre and Kasururei Water projects (all funded through Local Authorities Transfer Fund) have stalled due to insufficient funding?

(b) Could the Minister state when each project was initiated and provide the progress reports on the status of the projects?

(c) What is the Ministry doing to ensure all the projects are completed without any further delay?

Mr. Deputy Speaker: Mr. Kigen is not around!

REPAIR OF LORENGIPPI PRIMARY SCHOOL

(Mr. Ethuro) to ask the Minister for Education:-

(a) Is the Minister aware that the roof of the entire block of Lorengippi Primary School in Loima District was blown away by wind thereby forcing pupils to learn in the open under the scorching sun?

(b) When will the Government allocate adequate funds to repair the school?

Mr. Deputy Speaker: Mr. Ethuro is not in!

ORAL ANSWERS TO QUESTIONS

Question No.840

ENHANCEMENT OF HOUSE ALLOWANCE
FOR TEACHERS IN KISUMU MUNICIPALITY

Mr. Olago asked the Minister for Education:-

(a) to inform the House the plans the Ministry has to enhance House Allowance for teachers in schools in Kisumu Municipality within the framework of the new Constitution, considering that the allowance paid to teachers engaged by the Teachers' Service Commission (TSC) is higher for those working in the City of Nairobi; and,

(b) what steps the Ministry is taking to co-ordinate with the Ministry of Local Government to enhance salaries for teachers in Kisumu Municipality.

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, I beg to reply.

(a)The Ministry has no plans for enhancing the House allowances for teachers in schools in Kisumu Municipality. The current House Allowance raise for all civil servants and teachers were approved in 2001by the Directorate of Personnel Management in the Office of the President. Since they have not been reviewed, the current rates will continue to apply until the Salaries and Remuneration Commission approves new rates as provided for in the Constitution.

(b)The Ministry of Education has no plans of coordinating with the Ministry of Local Government to enhance teachers' salaries. The responsibility of reviewing teachers' salaries and House Allowance, including all the civil servants lies with the Ministry of State for Public Service.

Mr. Olago: Mr. Deputy Speaker, Sir, I find this answer unsatisfactory because the Ministry is fully aware that house allowances for teachers in municipalities, particularly in Kisumu Municipality, are lower than those in the City of Nairobi because of the status of the city. Probably the Assistant Minister is aware that we just came from a rigorous workshop in Naivasha in which we were discussing the preparedness of the Ministry of Local Government in devolution. One of the Draft Bills that we were

discussing is how we are going to classify cities and towns in the devolved system. Under these circumstances, what is the Ministry doing to ensure that they are up to speed like other Ministries in updating themselves and getting ready for cities such as Kisumu?

Prof. Olweny: Mr. Deputy Speaker, Sir, I beg the hon. Member to repeat that question.

Mr. Olago: Mr. Deputy Speaker, Sir, I was saying that we are just from a two-day rigorous workshop in Naivasha, discussing the preparedness of the Ministry of Local Government in the devolved system of government and one of the issues that we discussed at length was how we are going to classify cities and towns in the devolved system. So, in these circumstances, what is the preparedness of the Ministry of Education in enhancing the House Allowance of teachers who are serving in municipalities when that comes into effect?

Prof. Olweny: Mr. Deputy Speaker, Sir, we all know that salaries and other remunerations of the public service employees in this country are going to be handled by the new commission to be formed. So, there is no way the Ministry can handle that matter at the moment. In any case, the salaries and other remuneration of teachers have always been done through a negotiated settlement involving the Kenya National Union of Teachers (KNUT) and Kenya Union of Post-Primary Education Teachers (KUPPET) who negotiate with the Teachers Service Remuneration Committee. That is the way it has been done all along but things are going to change because we are going to have a new commission handling it. That issue will also pass through Parliament.

Mr. Pesa: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is stating that the allowances were negotiated but, according to his answer earlier on, he said that they were arrived at by the Directorate of Personnel Management. So, is he in order to tell us that he has to wait for that negotiation?

Prof. Olweny: Mr. Deputy Speaker, Sir, the Teachers Remuneration Committee negotiated with KNUT on behalf of the Government.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, could the Assistant Minister confirm that, indeed, there are some allowances which are normally given outside the negotiations like the hardship allowance? There are areas which get hardship allowance and others do not. On the same breadth, house allowances vary from one area to another depending on the cost of town. For instance, in Kitui County, teachers there are suffering a lot just like those in Kisumu. So, could the Ministry consider increasing the allowance for teachers in Kitui County?

Prof. Olweny: Mr. Deputy Speaker, Sir, the Ministry cannot consider increasing those allowances because we shall be going against the Constitution.

Mr. Deputy Speaker: Mr. Olago, the last supplementary question on the same?

Mr. Olago: Mr. Deputy Speaker, Sir, the Assistant Minister is aware that in the year 2001, the former President Moi, in the presence of the President of Uganda and Tanzania declared Kisumu a city. Since then, what has the Ministry done to ensure that teachers get the city status allowances?

Prof. Olweny: That was a verbal declaration. I do not think it was formalized.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to trivialize an Executive Order by the Head of State? An Executive Order is similar to the one that repossessed the Kenyatta International Conference Centre (KICC) by the Head of State who appointed him and when he declared that, he was in the

presence of other Heads of States. So, Kisumu City is Kisumu City and cannot be interpreted otherwise!

Mr. Deputy Speaker: Mr. Assistant Minister, you cannot determine how an Executive Order has not been executed by none other the Executive itself. When the President makes a pronouncement, it takes effect unless it is contravening the Constitution or the laws of the land.

Prof. Olweny: Mr. Deputy Speaker, Sir, I have here documents that indicate that those allowances were approved by the Government when the President was Mr. Moi. If these documents were against the order of the President at that time, then they should have formalized the issue of Kisumu being a city then reorganized and rearranged the allowances accordingly. If necessary, I can table the documents here.

Mr. Deputy Speaker: You can proceed and table the documents!

Prof. Olweny: Mr. Deputy Speaker, Sir, I am tabling here the document that is referred to as “*The Harmonization of Terms and Conditions of Service in the Public Service.*” The first item is “House Allowance Rates, Lease Housing, Institutional houses” and so on.

I want to table it here.

(Prof. Olweny laid the documents on the Table)

Mr. Ruteere: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to say that the terms and conditions of service are given by the Ministry of State for Public Service while the teachers’ terms and conditions of service are given by the Teachers’ Service Remuneration Committee?

Mr. Deputy Speaker: Fair enough! Next Question!

Question No.910

Mr. Deputy Speaker: Mr. I. Muoki, did you make a presentation to the Speaker’s Office that you will not be in a position to proceed with this Question today?

Mr. I. Muoki: No. Mr. Deputy Speaker, Sir. I said that for last week but for this week I am in and I am ready to ask the Question.

UPGRADING OF POLICE STATIONS IN MUTOMO/IKUTHA DISTRICTS

Mr. I. Muoki asked the Ministry of State for Provincial Administration and Internal Security:-

(a) whether he could upgrade Mutomo Police Station to a Police Division and post an OCPD to serve Mutomo and Ikutha districts with an area of 12,500 square kilometers and a population of 180,000 people;

(b) whether he could also upgrade Mutha Police Post, Athi Police Post and Ikutha district headquarters to police stations; and,

(c) whether he could establish police posts in Ikanga, Kamutei, Kituti (Mwangeni), Kanziko and Kasaala centres.

Mr. Deputy Speaker: Okay. Where is the Minister of State for Provincial Administration and Internal Security? If he is not in then we shall come back to the Question at the end of Question Time.

Question No.918

ROLES OF INSTITUTIONS UNDER EMC ACT

Mr. Jamleck Irungu Kamau asked the Minister for Environment and Mineral Resources:-

(a) whether he could explain and rationalize the roles of the institutions under the Environmental Management and Coordination Act (EMCA), namely National Environment Management Authority (NEMA), the Public Complaints Committees (PCC), the National Environmental Tribunal (NET) and the National Environment Trust Fund (NETFUND);

(b) to tell the House the relationship between NEMA and NETFUND and to who the Board of Trustees of the NETFUND reports; and,

(c) how many employees NETFUND has and whether he is aware that the employees have not been paid their salaries since February 2011.

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

(a)(i) NEMA is established under Section 7 of Environmental Management and Coordination Act (EMCA) as a body corporate with perpetual succession. The object of which the authority was established is to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.

(ii) The PCC is established under Section 31(1) of EMCA. It is composed of a Chairman appointed by the Minister for Environment and Mineral Resources. The Chairman of PCC should be a person qualified for appointment as a High Court Judge. There are seven other members representing the Attorney-General, the Law Society of Kenya (LSK), Non-Governmental organizations (NGOs), business community and persons active in environmental management. The main role of PCC is to investigate allegations or complaints against any person or against NEMA in relation to the conditions of the environment in Kenya. It is also mandated to investigate on its own motion, any suspected cases of environmental degradation and make a report to the National Environmental Council (NEC).

(iii) The NET is established under Section 125 of Environmental Management and Coordination Act (EMCA). It is composed of a Chair nominated by the Judicial Service Commission, an advocate nominated by LSK, a lawyer with professional qualifications in Environmental Law and two persons with academic competencies in environmental management. The tribunal's main role is to hear appeals from any person or institution aggrieved by a decision of NEMA or any of the committees of the Authority, which include a refusal to grant a licence, imposition of conditions and restoration orders.

(iv) The NETFUND is established by Part Three, Section 24(1) of EMCA. The Fund is vested in NEMA and should be administered by a board of five trustees appointed by the Minister. The object of NETFUND is to facilitate research intended to further the requirements of environmental management, capacity building, environmental awards, environmental publications, scholarships and grants.

(b) Under Section 23(3) of EMCA, the law vests the trust fund in the Authority - NEMA itself - making it a fund within NEMA. It is, therefore implied that the trustees have the responsibility of administering the fund while NEMA should provide the infrastructure for administration.

(c) The Authority employed a manager to start up the fund in September 2006. Later in the year 2009, the Permanent Secretary, Ministry of Environment and Mineral Resources appointed seven officers on contract basis. Those contracts have continued to be renewed and are valid to date. Two additional officers were deployed to NETFUND by the Ministry in April 2010.

On the question of salaries, there were delays in payment of the sum for March, April and May 2011 as NETFUND had not submitted the necessary supportive documents to NEMA - which is the institution they report to - to facilitate the release of the funds. However, arrangements have since been made and I want to confirm the latest, as of this morning everything has been paid. The salaries up to June have been paid!

Thank you, Mr. Deputy Speaker.

Mr. Jamleck Irungu Kamau: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for answering that Question. But a lot is left to be desired because I know that Kshs50 million was given to NETFUND in the 2010/2011 Financial Year. As of 9th May, 2011, just a month away from the end of the financial year, the money had not been released to NETFUND. I would like to table a document here, as I ask my question, which is from the Ministry of Finance that clearly indicates that Kshs50 million which had been allocated to NETFUND for the Financial Year 2010/2011 as of 9th May, a month before the end of the financial year, was still being withheld by the Ministry. In that connection, auctioneers went to seize the property of NETFUND. I also want to table another document here headed "Notice of Distress in the matter of Distress for Rent Act, Laws of Kenya", which has attached the property of NETFUND - which is Government property - worth Kshs1,085,000 simply because there was no money.

(Mr. Jamleck Irungu Kamau laid the documents on the Table)

My question is: Why would it take the Ministry of Environment and Mineral Resources a whole ten months to release funds which are meant for NETFUND and cause all those problems?

Prof. Kamar: Mr. Deputy Speaker, Sir, it is true that by 9th of May, Kshs50 million had not been released. The reason, as I said earlier, was because the CEO of NETFUND delayed the release of documents to substantiate who was going to be paid. It is also true that we have a copy of the letter that was released, but we were not able to respond to it because internally, between NEMA and NETFUND, the officer had not followed the regulations that are required. There are regulations for any institution to pay even salaries and that was not forthcoming from the officer.

Mr. Jamleck Irungu Kamau: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is not answering my question. I want to know whether she is in order? I asked her why it took ten months for those monies not to be paid because NETFUND was established under the law. What is it that made the Ministry stay with the money for ten months and refuse to pay NETFUND its dues?

Mr. Deputy Speaker: Madam Assistant Minister, I thought you indicated that. Could you do it one more time!

Prof. Kamar: Mr. Deputy Speaker, Sir, let me repeat for his sake; I do not know why he did not hear that. I said that the only reason why the money was not released was because the CEO of NETFUND was not giving the returns that were required. All established institutions in this country require that you also give a feedback. So, yes, the money was there, but nobody touched it. The problem was that the officer herself did not make the returns that are required by NEMA so that the payments can be made.

Mr. Ruteere: Mr. Deputy Speaker, Sir, there has been a struggle between NEMA and NETFUND. Is the Assistant Minister aware that, initially, the money was supposed to go directly to NETFUND and not to NEMA? Why is it that NEMA is taking the responsibility of NETFUND and holding the money until the institution suffers?

Prof. Kamar: Mr. Deputy Speaker, Sir, I am not aware that an institution that is formed under another organization is supposed to receive money directly. That is because if - and I have explained - NETFUND is a creation of NEMA--- I have even given the law that gave birth to it. I do not know where hon. Members are getting the assumption that they are supposed to be receiving the money.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to refuse to answer the question by Mr. Ruteere when, in fact, her Ministry has a letter – which I will table – which shows that Kshs29 million was deposited in the account of NEMA and it was intended for use by NETFUND? The Assistant Minister, by refusing to answer this, is simply shielding lack of transparency and accountability in this Ministry because even the Kshs50 million that Mr. Jamleck Kamau talked about, the Treasury was forcing the Permanent Secretary to spend. Here, the same officer has deposited money in a different account so that an Accounting Officer of that different institution would find it difficult to access.

(Dr. Khalwale laid the document on the Table)

Prof. Kamar: Mr. Deputy Speaker, Sir, I would like hon. Members to familiarize themselves with how NETFUND was formed. I would like to ask them to read Part Three Section 24(1) of EMCA. It will tell you that the fund is vested under NEMA itself. That, notwithstanding, it is very important to note that, as the hon. Member is saying that there is a lack of transparency, it may be the reverse that the lack of transparency was from the hon. Member. That is because the Ministry did not spend the money. If the Ministry of Education is given money to transmit to Teachers Service Commission (TSC) under regulations that the TSC must submit how many teachers they have in schools, there is no way that the Ministry will release money for more than the required teachers. It is very important to understand that. In some cases, you may require a budget to spend. If the requirement is a budget to be able to spend, those are submissions that the CEO must submit to the parent institution that is holding the funds on their behalf. So, there was no

misdirection of that money. None of the NETFUND's funds have been spent in any other docket within the Ministry - I want to assure hon. Members and the House on that. The problem was simply that the CEO was not following the regulations that are laid down by law.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. You have heard the Assistant Minister say that NETFUND is a creation of NEMA; it a body created by NEMA. But, clearly, that cannot be so because NETFUND is a creation under Section 24(3) of the Act. It is an independent fund and to that extent, I wish to table here a letter to the Chairman of NETFUND by the Solicitor-General dated 15th May, 2011, in which clearly the Solicitor-General advised that unless a trust deed is registered, the fund will not be able to operate. So, is it in order for the Assistant Minister to tell the House that NETFUND is a creature of NEMA when that is an independent body under the Act?

(Mr. Olago laid the document on the Table)

Prof. Kamar: Mr. Deputy Speaker, Sir, I want to help the hon. Members again because I think they are mis-reading the communication – we have the same communication that came from the Solicitor-General which was trying to explain that NETFUND cannot be independent of NEMA. They cannot be independent of NEMA because they do not have a trust deed that is registered. But that was the intention of the law. The intention of the law was to create NETFUND under NEMA, but not an independent NETFUND. So, if you read what the Solicitor-General was giving, he was giving the guidance that you cannot be independent as NETFUND. We know the CEO tried to be independent, but you cannot be independent if you are not established to be independent. The Solicitor-General came out very clearly that it cannot be independent; NETFUND is under NEMA unless a trust deed is registered. Anything run by a trust has to be under something else and that is exactly the intention of putting NETFUND under NEMA.

Mr. Deputy Speaker: Last supplementary question, Mr. Jamleck Kamau.

Mr. Jamleck Irungu Kamau: Mr. Deputy Speaker, Sir, in view of the fact that the Minister for Finance had advised the Ministry of Environment and Mineral Resources to be depositing the money directly into the account of NETFUND, I want to ask the Assistant Minister whether that advice has been adhered to or whether, in future, it will be adhered to.

Prof. Kamar: Mr. Deputy Speaker, Sir, I missed the first part of the question. Could the hon. repeat the first part of the question?

Mr. Deputy Speaker: Can you repeat the question, Mr. Jamleck Kamau?

Mr. Jamleck Irungu Kamau: Mr. Deputy Speaker, Sir, in view of the fact that the Ministry of Finance has directed the Permanent Secretary (PS) in the Ministry of Environment and Mineral Resources to be depositing funds directly to NETFUND account, I want to know whether this has been done, and if it has not been done, whether it will be done in future transactions.

Prof. Kamar: Mr. Deputy Speaker, Sir, I wonder whether the hon. Member means that a PS of one Ministry should make a PS in another Ministry break the law. I have the letter the hon. Member is talking about, in which the PS, Treasury, suggested that kind of thing. The PS, Treasury, did not command or authorise the PS, Ministry of

Environment and Mineral Resources, to do so since he does not have power to authorise a PS from another Ministry to submit money that does not belong to him to an organisation. If the PS, Treasury, had directed, it would have meant that he was demanding breaking of the law by the PS, Ministry of Environment and Mineral Resources. It cannot happen.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House that the PS, Treasury, cannot direct the PS in her Ministry when we all know that the Treasury supervises all the Accounting Officers of the Government of Kenya?

Mr. Deputy Speaker: Order, Dr. Khalwale! The Assistant Minister has told you that there is a law in place, and that the PS, Treasury, is asking for contravening of the Act that establishes NEMA. The same Act establishes the NETFUND itself. The Assistant Minister is very categorical. She has repeated it four times. We have the Act. Why do you not refer to it? Do you want the Chair to help you? If we go to the Environmental Management and Coordination Act itself---

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. As we seek that guidance from the Chair, it is important that the Chair and the Assistant Minister clarify this matter because we know that other PSs are Accounting Officers by virtue of authority given to them by the PS, Treasury. So, the PS, Treasury, has authority to instruct other PSs. If the instructions are illegal, the other PS should be able to reply to the PS, Treasury, and say what he is telling them to do is unlawful. Therefore, the Assistant Minister cannot say that the PS, Treasury, has no authority to direct the other PSs.

Mr. Deputy Speaker: Order! Order, hon. Ethuro! The PS, Treasury, has no powers to contravene the laws of the land. If you look at the Environmental Management and Coordination Act, 1999, which the Chair has cited, Section 24 says:-

“24(1) There is hereby established a Fund to be known as the National Environment Trust Fund hereinafter referred to as the Trust Fund.

(2) The Trust Fund shall consist of-

(a) such sums of money or other assets as may be specifically designated to the Trust Fund by the Authority out of its general funds;

(b) such sums of money as may be received by the Trust Fund in the form of donations, endowments, grants, gifts from whatever source and specifically designated for the Trust.

(3) The Trust shall be vested in the Authority and, subject to this Act, shall be administered by a Board of five Trustees to be appointed by the Minister by a notice in the *Gazette* on such terms and conditions as he deems fit”.

The key word here is “authority”. The NETFUND is not an authority. The Authority is NEMA. That is what the law says. The Act goes further to give the qualifications that one should have in order to be appointed a trustee. The law says the objects of the Trust Fund shall be to facilitate research intended to safeguard the environment. The subject of the matter is that the NETFUND itself cannot be independent of NEMA.

So, if the PS, Treasury, writes to the PS, Ministry of Environment and Mineral Resources and tells him to proceed and put money into the account or to disburse money from it, that will be unlawful. He cannot do it because the law is there. The law says that

the funds can only be disbursed to NEMA itself. NEMA is the one which should give the money to the NETFUND. So, it is a very simple matter.

Assistant Minister, is there anything you would like to say?

Prof. Kamar: Mr. Deputy Speaker, Sir, I just want to thank you for clarifying the matter. Again, hon. Members should familiarise themselves with EMCA, because it is very clear on what should be done.

The only thing I would like to clarify on the communication from the PS, Treasury, is that the PS, Treasury, did not authorise the PS, Ministry of Environment and Mineral Resources, as per what we have heard the hon. Members say. The letter from Treasury says that the Treasury wishes to kindly advise; it arose from a letter which was written by NETFUND. So, NEMA was waiting for returns from NETFUND, but instead of them doing so they wrote to the PS, Treasury. I think the PS, Treasury, was at a loss as to why the money was not going to NETFUND. Therefore, he wrote the letter to advise NEMA on the matter.

So, it is very important to understand that even in this letter itself, there is nothing like “I authorise”. The wording is “I kindly advise” For the information of the hon. Member who suggested that the letter should have been responded to, I would like to confirm that it was responded to and the matter accordingly clarified. The PS, Treasury, was satisfied and he never came back to the Ministry; it was very clear that the returns from NETFUND were required before any payment was to be done. That is the requirement in all Government Ministries.

Mr. Jamlek Irungu Kamau: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Are you rising on the same matter?

Mr. Jamlek Irungu Kamau: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Are you sure that you have understood what you were supposed to have understood about this Question? What is not in order?

Mr. Jamlek Irungu Kamau: Mr. Deputy Speaker, Sir, what is not in order is that the Assistant Minister did not explain what we are going to do about the property of Kenyans worth millions of shillings being auctioned. She must explain to us exactly what she is going to do about that.

Prof. Kamar: Mr. Deputy Speaker, Sir, that is information which is only known to the hon. Member. We do not have that information. He has tabled the information. So, I am getting it for the first time. In view of the fact that the CEO of NETFUND did what she did, it would have been easier for us to hold her responsible for what happened, but what we are saying is that we will look at it and see whether there is anything that the Ministry can do to address the situation. As we speak, they have their money and things are going on well.

Mr. Deputy Speaker: Hon. Jamlek Irungu Kamau, you have raised an issue which should essentially have been very important; given that naturally, as a House, we should take seriously a matter of auctioning of public property. You have tabled a document from auctioneers, which has been plucked off another report, presumably, but which is not signed. For purposes of acceptance in this House, any document tabled must be signed. Therefore, the Chair cannot admit this document. Anything that has to be admitted by the Chair must be signed.

Next Question!

Question No.990

GOLD MINING IN MIGORI

Mr. Pesa asked the Minister for Environment and Mineral Resources:-

(a) whether he can confirm that there are gold deposits in Otacho Location in Migori and that mining is going on in the area currently;

(b) which firms have been licensed to undertake the mining in the area; and,

(c) how the residents of Migori are benefiting from the mining activity.

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

(a) It is true that there are gold occurrences and deposits in Otacho Location in Migori District as indicated by the geological reports of the Mines and Geological Department as well as progress reports of various exploration companies and activities of artisanal miners. There is currently mining of gold by artisanal miners in the area on the side next to Nyarongi Primary School which started about a month ago.

(b) No firm is licensed to undertake mining in the Otacho area. However, Migori Mining Company Limited has been licensed to undertake prospecting and exploration activities in the area for the purpose of delineating and quantifying any economically viable mineral deposits.

This company recently completed airborne, geo-physical and radiometric survey and has commenced a follow up detailed programme. It is only after an economically viable mineral deposit is found that an exploration company may apply for a mining licence to commence mining operations.

(c) During the exploration stage as is the case involving Mid-Migori Mining Company in the Migori area, there is usually no economic gain by the company from which to apportion corporate social responsibility. The company may however, undertake such programmes using part of funds set aside for exploration out of its magnanimity. But it is generally understandable when this is not undertaken to a great extent.

Mr. Pesa: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for giving that elaborate answer and, in fact, for accepting that there is gold deposit in this area. In fact, in most parts of Migori and Nyatike, we have gold deposits. The people who are currently mining, as the Assistant Minister states, are the poor youths in the area who can afford living without this type of business.

What is the Ministry doing to ensure that they can facilitate these youth to get some livelihood in that area? This can be done by giving them certain facilities that they can use.

Mr. Deputy Speaker, Sir, this has been going on for the last 13 years; it started in 1997 as the Assistant Minister put it. All this time, there is nothing forthcoming to benefit the community. That is why the youths who should have been benefiting are now resorting to doing the mining at a very small scale by themselves. What is the Ministry doing to ensure that these youths are capacitated to make sure that they can earn some living out of this wealth?

Prof. Kamar: Mr. Deputy Speaker, Sir, as I mentioned earlier through another question, the Ministry is in the process of revising the Mining Bill. We have actually finished the stakeholders' meeting on that and we are going to bring it here. In the new Minerals and Mining Bill, the Ministry has proposed the creation of a mining fund that is going to be used to assist the artisanal miners. It is true as the hon. Member says, that for many years, our youths have been scrubbing the ground, some have been harvesting gold using very crude methods and they do not get value for their sweat. That has been captured by the Ministry and the new law that is coming we are setting a revolving fund that is going to be borrowed by different groups and even individuals to enable them mine. The Ministry takes very seriously the activities that are being done by the artisanal miners.

I also want to mention at this point that the artisanal miners are being recognized for the first time in law in our new Bill that is coming. Initially, they were not recognized and the absence of their recognition did not enable them to even look for money in the banks. They looked like middle men. However, in the new law, we are recognizing the artisanal miners and they are going to be supported by the Government.

Mr. Murgor: Mr. Deputy Speaker, Sir, I do not know if the Minister has a way of advising district headquarters on where these deposits are so that there is a clear advice as to how much deposits are there so that as they think of empowering the young people with money, there is certainty as to how much deposits there are in these districts. Could the Assistant Minister help advise those districts? West Pokot is one of these districts that have deposits of gold and many other minerals. However, nobody knows for sure how much it is and what minerals they are. Could the Assistant Minister pass that advice and information to the districts so that they can help the young people?

Prof. Kamar: Mr. Deputy Speaker, Sir, we are starting to do that. In fact, as we roll out the new law, we are going to have capacity building sessions. We are going to have District Mining Officers or geologists in the districts. This information is going to move very fast because as you are aware, mining is going to be one of the main things that is going to drive the economy of this country towards Vision 2030. Already areas that have been identified are being marked by our Geological and Surveys Department so that we are able to give more accurate information. The Ministry is going to embark on doing surveys so that we are able to advise more. We are going to go into this and more will be done as soon as the law is out.

Mr. Yakub: Mr. Deputy Speaker, Sir, in part "c" of this Question, could the Assistant Minister inform us the policy of the Ministry regarding benefits to the locals? Whether the mining industry is owned by locals or foreigners what is the policy of the Ministry concerning the benefits going to the locals?

Prof. Kamar: Mr. Deputy Speaker, Sir, the current law is very silent on benefits. That is one of the areas that we have enriched in the new law. In the new law, we want to obey the Constitution. The Constitution clearly states that land belongs to Kenyans and the minerals belong to Kenyans. Kenyans are going to have benefits. In the new law, we have taken care of the fact that we must have benefits. What this House is going to be faced with is deciding how much is going to be given to the local community or the land owner. We have taken care of that; we have shown the distinction between the land owner and the community where the mining is taking place. This was absent in the other law but we are going to take care of it.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Minister to tell the House that there is no direct evidence to show that the locals are being deprived, when in the supplementary information to this Question, she has clearly indicated that there was Kansai Mining Corporation of Canada that was given a licence to prospect and explore in 1989 and, in 2002, that company bought shares in Mid Migori Mining and the main shareholders of the company's inclusion are one Stanley Joseph Mathenge and one Y.W. Owayo? Mr. Mathenge was then the Provincial Commissioner (PC), Nyanza Province and Mr. Owayo was then the Commissioner of Mines. These two must have colluded to deprive the people of Migori of the mineral resources. Is she in order?

Prof. Kamar: Mr. Deputy Speaker, Sir, I do not understand what was out of order. This is because the information we are giving is the chronology of what really happened. We are giving this information so that the hon. Member can have added information on that. When the hon. Member talks of collusion to deprive the people of Migori, it cannot be true because there is nothing that the law had apportioned to the people of Migori that they did not give. In part "c" of the answer, in fact, I did mention that the company would have done it out of their own magnanimity or generosity because the law does not say it. But the new law is going to be very categorical. This House will have to decide what percentage the Government takes as royalties and what percentage the residents get. So, we are going to be very clear because it is our own law. Again, if you familiarize yourself with that law, you will find that there are a number of things that we must correct. I want to invite the hon. Members to familiarize themselves with that law, so that when we come to debate it, we are able to assist.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I rise under Standing Order No.77, but before I really invoke your ruling on whether or not the Minister is anticipating debate, it is good for her to confirm whether that Bill has been published and when she will bring it to the House for debate. This is because you will realize that, basically, the answer to the Question is entirely dependent on what we are going to do with the proposed Bill. But, also, the same Standing Orders advisedly tell us that if the Bill will be coming in reasonable time, then we cannot accuse the Minister of anticipating debate. So, there is an issue of the time involved here.

Mr. Deputy Speaker: Hon. Minister, has the Bill been published?

Prof. Kamar: Mr. Deputy Speaker, Sir, it has not been published.

Mr. Deputy Speaker: Fair enough! Hon. Ethuro, Standing Order No.77 is express. You are actually not supposed to anticipate debate on a published Bill. But any Minister can come up here and say that his or her Ministry intends to have a Bill of this nature on the Floor of the House.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I was equally categorical and that is why I wanted her--- We actually like the answer and I did not want to accuse her of anticipating debate. She should publish the Bill immediately because it has---

Mr. Deputy Speaker: Order! You are out of order, hon. Ethuro!

Yes, hon. Mbadi!

Mr. Mbadi: Mr. Deputy Speaker, Sir, I am concerned about the period it takes to do prospecting and exploration. Could the Minister explain to us for how long the Government gives licences or prospecting rights to these companies? What do you do to

ensure that this is not misused to exploit the mineral resources instead of prospecting and exploring?

Prof. Kamar: Mr. Deputy Speaker, Sir, that is a very genuine concern. This is because you will find that quite a number of prospectors have actually stayed on and on, and keep saying that they are not discovering anything and they still want to explore. In the hope that we think they will discover something, we extend. Normally, we give them straight years for exploration. We give them a huge area of 100 square kilometres. Normally, they are supposed to start releasing the area slowly by slowly; by half in the first year and another half in the second, so that we go into 25 square kilometres by the third year. Our biggest problem, of course, has been that our own Mining Department has not had the capacity to do what we should have been doing. We are insisting in the new law; that most of the explorations that have been done must be confirmed by our own department. Yes, we have challenges in that and that is also part of what we are trying to address in the Bill that is coming.

Mr. Ethuro: Mr. Deputy Speaker, Sir, just like Migori, in several areas in Turkana County including Orum Location, Makutano Junction, towards Lokichar and Nayana, which the good Minister knows, the fact of the matter is that our youth are engaged in this business. What can the Minister do in the meantime, even as she is putting some good proposals in the forthcoming Bill, to ensure that there is some equipment that makes it easier to detect and find that gold, in order to ease the burden of looking for it, especially considering that a county like Turkana is perennially in a state of food insecurity and poverty? If God has blessed us with these gold deposits, it is only incumbent upon the State to do something to ensure that they exploit it properly.

Prof. Kamar: Mr. Deputy Speaker, Sir, that is a very nice proposal and I wish we could do something immediately. Unfortunately, we are not funded to fund, but there are other funds that I would like to encourage Members in this House to explore. It is not the Constituencies Development Fund (CDF) really, but we have the Youth Fund. The Youth Fund is a very nice opening and our youth can be encouraged to use it. They will get a grant of Kshs50,000 and when they return it, they get another grant of 100,000 and up to Kshs200,000. I think we can encourage our youth, as the hon. Member has said rightfully, to exploit those other avenues before some funding specifically to the mining sector comes. It is true that we have been to some mining areas and the situation is pathetic, especially how they are trying to collect little pieces of mineral. I just want to encourage the hon. Members to use the available funding for the time being while we are sorting out ourselves in the Ministry.

Dr. Nuh: Mr. Deputy Speaker, Sir, I want to thank the Minister for the events and actions she took in Bura Constituency concerning mining. However, what the people of Bura think is that it was a public relations exercise because of the clandestine way in which they re-opened the ban which they had effected on the companies. This is an issue which I will take up in a different Sitting in this House. More importantly, this Ministry has been promising the public and this august House for the last one year, to expect a Bill that will actually revive the environment and mining sector, and inspire hope in our public. Today, the Minister has the audacity to say that this Bill has not been published. What is the exact month which the Minister thinks this Bill will be a reality in this House?

Prof. Kamar: Mr. Deputy Speaker, Sir, I want to thank the hon. Member, although we did not do an exercise in futility. I was with him and we were able to close all the illegal mining areas. On the period for this Bill, the Members who attended the stakeholders' meeting are aware that we did it about a month ago. We collected views and we have reached that stage. I think the challenge at the moment for any Bill coming from the Government is the timetable for the Constitutional Bills. This is because even in the Ministry we have a Constitutional Bill that must be here before 28th August, 2011. So, most of us in the Government are trying to work on that other programme and that may delay this, but it is ready. As soon as the backlog of the Constitutional Bills is over, this is going to be our first Bill in this House. We are all looking forward to this, because we really think that it is going to transform the sector.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. This House cannot be taken for a ride. The Assistant Minister is aware of the pending Bills, even if they are ten, within her docket. She knows her timetable. Treating us to an empty gimmick and an open-ended timetable is taking this House for a ride. The Assistant Minister should, at least, anticipate, even if it will be after ten years; let us, at least, be informed because we file Questions and every other time, we are promised that a Bill is coming up; a Bill that is never coming. Therefore, let her tell this House even if it is ten months or one year, when we should expect the Bill. Otherwise, we will bring it here as a Private Members' Motion.

Mr. Deputy Speaker: Assistant Minister, given the anxiety and the interest in this matter which is a very critical matter, indeed it is something that is sensitive and a matter of resource. Could you give a tentative period when you can have this Bill in place?

Prof. Kamar: Mr. Deputy Speaker, Sir, since it is ready and we are just panel beating it, and considering that we all know that the backlog of the Constitutional issues will end by 28th August, I can say that within September, we can bring that Bill.

Mr. Pesa: Mr. Deputy Speaker, Sir, I would like to commend the Assistant Minister for the indication that there will be funds that the youths can use to work on the gold deposits in the area. My concern here is that some time ago, we saw a finished product of gold from this area produced in this House by a Member of Parliament. Could the Assistant Minister confirm to this House whether or not those people that are claiming to have been licensed to do the prospecting are not also doing mining in Migori and Nyatike?

Prof. Kamar: Mr. Deputy Speaker, Sir, I know that arising from the finished product, we agreed that the Committee concerned visits Migori. As a Ministry, we will also visit Migori. I think it is after doing the report that we will be able to confirm that. An allegation was made that the product was from Migori, but we would like to ascertain that. We will do that.

Mr. Pesa: On a point of order, Mr. Deputy Speaker, Sir. There is also another issue that was arising from the delays caused by the Ministry. Madam Assistant Minister, you will remember that you promised three months ago that you would visit Migori. Today, you are promising that again. Can you tell us when you will go to Migori with your team to tell Migori people what is taking place on the ground?

Prof. Kamar: Mr. Deputy Speaker, Sir, I can say that we will go to Migori next week. I would like to go with Members of Parliament.

Mr. Deputy Speaker: Fair enough! Hon. Members, while we are still on the Ministry of Environment and Mineral Resources, I would like to clarify an earlier communication here. When we were talking about NETFUND, the Chair said that Act is the NEMA Act. It is not the National Environment Management Act, it is the Environmental Management and Coordination Act. For the record, I am just trying to correct that bit.

Next Question!

Question No.733

ENFORCEMENT OF COURT ORDER
IN CIVIL CASE NO.711

Mr. Yakub: Mr. Deputy Speaker, Sir, I have not received my written answer.

Mr. Deputy Speaker: Would you like to prosecute the Question?

Mr. Yakub: Mr. Deputy Speaker, Sir, no. I wish to get the written answer.

Mr. Deputy Speaker: Is the hon. Attorney-General here? He is not here. Is there any Minister of the Government who can respond to it? Is there any Minister of the Government here in line with collective responsibility? You know that you cannot answer on his behalf. The Attorney-General is not here to answer any question and you cannot answer on his behalf.

The Minister for Forestry and Wildlife (Dr. Wekesa): I will pass the message to the Attorney-General.

Mr. Deputy Speaker: While you are passing that message to the AG, could you also pass another message that the hon. Member must be furnished with a written answer before this Question comes before the Floor of the House?

The Minister for Forestry and Wildlife (Dr. Wekesa): That will be done.

Mr. Deputy Speaker: Fair enough! The Chair directs that this Question be listed in the---

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. I agree with your ruling that the Question should be listed. However, I am concerned about the inability of the Attorney-General to come to the House in the recent past. There is a need by the Executive to take charge of this situation. Day in, day out, the Attorney-General fails to come to the House. Is it in order for the Chair to keep on postponing matters when the Attorney-General should be here?

Mr. Deputy Speaker: This is a matter that the Chair should make an undertaking. The Chair will contact the Attorney-General, through the Chair's channels, to have an indication on how this should be handled. Indeed, you are right. Everybody knows that the Attorney-General is involved in the vetting of judges. Is he involved in the vetting of judges by the way?

Hon. Members: Yes.

Mr. Deputy Speaker: That is almost a full time job. He must give an indication on how Questions that are directed to him will be handled. This is a matter that the Clerk's Department will write to the Attorney-General and the Speaker will gladly sign that letter. It will be in form of an undertaking on how this business should be transacted.

(Question deferred)

Next is Question No.870 by Mr. Charles Nyamai.

Question No.870

DELAYED CONSTRUCTION OF SYOMAKANDA/SYOTUVALI BRIDGE

Where is Mr. Nyamai?

Mr. I. Muoki: On a point of order, Mr. Deputy Speaker, Sir. I am aware that hon. Charles Nyamai is out of the country on parliamentary business.

Mr. Deputy Speaker: Fair enough! Under the circumstances, the Chair directs that this Question be listed on the Order Paper at a time when Charles Nyamai will be in the country and able to prosecute it.

(Question deferred)

Next is Question No.884. Where is William Kabogo?

Mr. Kabogo: Thank you, Mr. Deputy Speaker, Sir. Sorry! I was on a natural call at the back.

Question No.884

SHORTAGE OF MATERNITY BEDS AT THIKA DISTRICT HOSPITAL

Mr. Kabogo asked the Minister for Medical Services:-

(a) whether he is aware that the maternity ward at the Thika District Hospital has only 48 beds instead of the required 150 beds, thus forcing women to share beds;

(b) whether the Ministry has plans to expand the maternity ward and, if so, by when; and,

(c) when the Ministry will repair the hospital's washing machine, which has been faulty for several months.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): I beg to reply.

(a) I am aware that the maternity ward at Thika District Hospital has 48 beds.

(b) The Ministry plans to construct a 150 bed reproductive health unit in the hospital comprising of the following:-

(i) An antenatal ward, a labour ward, post natal ward, new born unit or nursery and an operating theatre. In this regard, the Ministry has approached the Ministry of Public Works to develop designs and drawings for the units and generate a bill of quantities. As soon as this is completed and the cost estimate given, we plan to engage the Treasury and all our development partners for the purpose of obtaining funds for construction. Our aim is to commence work in the present Financial Year, 2011/2012, subject to securing funding.

(c) The hospital's washing machine has been in a working order since 3rd August, 2010 when it was repaired at a cost of Kshs397,137. Prior to that, it had been faulty for a

while owing to unavailability of spare parts for the machine in the country and a lengthy process of importation.

Mr. Kabogo: Mr. Deputy Speaker Sir, Thika District Hospital serves very many districts. The Minister has admitted that it has only 48 beds. Normally, they have about 150 cases. That means that a bed is shared by three mothers. I agree with what the Minister is saying. He has said that they are planning to build a 150 capacity unit. What elaborate plans does the Ministry have in as far as this is concerned? That is because the Permanent Secretary promised that in the year 2011/2012, the project would start? When exactly will that be?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, yes, I agree with the hon. Member that Thika District Hospital is a very important hospital, with a very big catchment area. In fact, it is the referral centre for Matuu Sub-District Hospital, Ruiru Sub-District Hospital, Kirwara Sub-District Hospital, Gatundu and Maragwa District Hospitals, and all the surrounding lower level health facilities. We know that the bed occupancy rate ranges from 100 per cent to 200 per cent. The hon. Member is right that because it functions well above capacity, beds are, indeed, shared by patients in that hospital. For that reason, we have developed a very elaborate plan to extend or provide adequate facilities in the hospital. This plan was developed in conjunction with the hospital management at Thika District Hospital. Let me also assure the Member of Parliament that on Thika District Hospital and Kiambu District Hospital, we have a memorandum of understanding (MOU) with the new Aga Khan University Medical School to use those two hospitals as teaching and research facilities. This will make it possible for a lot of resources to be available to the hospital.

Nonetheless, as the hon. Member has requested a specific plan for the hospital, I will go through it very carefully so that we know what we are going to do from this financial year to the financial year 2014/2015; we cannot get all the money from the Treasury and development partners at once. One, in this financial year, we shall construct a 150-bed reproductive health unit for meeting the Millennium Development Goal (MDG) No.5. Second, for the financial years 2012 to 2014, we are going to construct a casualty and emergency unit comprising of a trauma ward, a theater, an intensive care unit (ICU), an X-ray Department and offices and an oxygen generation plant. Indeed, we have done a survey and we are going to put oxygen generation plants in at least 11 district hospitals nationally. Three, we will develop and construct a pediatric ward to meet MDG Goal No.4 in the years 2013/2016. Four, a surgical ward, medical wards, psychiatric ward unit, all incorporated in the hospital, will be provided in the years 2012/2015 to meet the MDG Goal No.6. Five, the reconstruction of a new ward and outpatient department block will be constructed between the financial years 2012 and 2015. Six, construction of a perimeter wall for fencing the whole compound will be undertaken in the financial years 2013 to 2015. Seven, construction of an administration block will be undertaken in the next financial year, that is 2011/2012. Eight, construction of a mortuary, a lecture theatre and offices will be undertaken between the financial years 2012 and 2015. Finally, construction of a laboratory, physiotherapy building with a swimming pool and a sauna, occupational therapy and dental wards will be constructed in the financial years 2013 to 2015.

Dr. Nuh: Mr. Deputy Speaker, Sir, while realizing that the Ministry of Medical Services has a problem with the budget in that they have been given very little, the Hola

District Hospital, which serves the whole county of Tana River, is in dire need of structural adjustment, because of the old type of building, which is almost collapsing and so is the maternity. What provisions has the Minister made in this financial year, or even in the next financial, year to ensure that these facilities are improved to a standard that can cater for the county?

Mr. Deputy Speaker: Minister, the Chair realizes that this is a different question.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, that is okay since I have the answer. The Ministry has actually condemned Hola District Hospital because it was built on quick sand and it is actually sinking. So, we cannot reconstruct Hola District Hospital. What we would want to do is to build a brand new hospital in Hola. This was, indeed, in the Budget but, as the Member realizes, the Ministry has not been given the money we need to do this hospital as we planned; but since we do quite a number of things in collaboration with development partners, this is the one of the hospitals that we have put as a priority in requesting assistance from development partners for rehabilitation of hospitals, so that it can be done as quickly as possible. But we are not going to do any reconstruction. We want to build a hospital, lock, stock and barrel.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. You have heard the hon. Minister, my good friend, Prof. Anyang'-Nyong'o, stating categorically that Hola District Hospital is condemned. That hospital is still in use, even when the Minister has condemned it. He is still looking for money for the condemned hospital. Surely, where do his priorities lie? I would imagine he would want to deal with the condemned institution as a matter of priority and emergency. I agree with him that it is condemned, but when you condemn it, then build another immediately.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. If you heard my question correctly, the reason as to why I talked of reconstruction was because at least I was aware of the condemnation. More importantly, is the Minister in order to say that he is waiting to build a brand new hospital and encourage the use of an already condemned hospital by the entire Tana River County?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, it would be very irresponsible for me to go and demolish that hospital, and then people have nowhere to go; it would be equally irresponsible for me to put good money on bad money. So, there is a very painful decision to make. Let the people use their hospital as it is today when we are working with the Ministry of Public Works for a brand new hospital, and we will do it as quickly as possible. Indeed, if the Treasury gave me money yesterday, we would have built that hospital then; but I happen to be the Minister for Medical Services and not the Minister for Finance and, therefore, I have what I receive and I use what I get.

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to suggest that an institution that has been condemned, and for which his own ministry will not give an occupation certificate, should be used illegally? Is he in order?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, there is a difference between using an institution, and using it illegally. There is absolutely nothing illegal in continuing to use that institution, provided certain safety measures are taken. So, safety measures are there. The only thing that we cannot do is to begin reconstruction because it will not help. The reconstruction, according to the advice of the Ministry of Public Works, is not advisable. Therefore, I can only do what they advise me to do. They have said: "Look, if you try to reconstruct this thing, you will be wasting money. Please, go

ahead and build a new one". In any case, although it has been condemned, it is not collapsing. It can still be used; the thing is that in the meantime we must do the best we can to get something that will be of a longer-term viability. It is not my mistake that the thing was built on quick sand. I was not even born when it was built; nonetheless, now that I am there, I have to do what is rational and sensible.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I want to thank the Minister for that very comprehensive answer, especially in respect of the plans his Ministry has between now and 2016 for Thika District Hospital in respect of maternity. It is a matter of statistics that Kakamega, Vihiga, Nyamira and Kisii counties have the highest fertility rates in the country. Therefore, it is there where maternity services are most needed. Could the Minister confirm that along with this comprehensive plan he has for Thika, he also has a similar plan for the other areas? If he has it, could he undertake to give the Members of Parliament from those areas copies of those comprehensive plans for purposes of oversight?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, quite rightly so. I will be more than willing to provide them to the Members of Parliament from those cases. In any case, it is the Members of Parliament who are the eyes of the Government on the ground. Therefore, when these plans are there, the Members of Parliament play two roles; one, is to keep a hot spur on our posterior to ensure that these plans are implemented. The other one is to keep on getting information from the ground on what is needed. So, I will definitely give the Member of Parliament the plans for those areas.

Mr. Kabogo: Mr. Deputy Speaker, Sir, I am satisfied with part "a" and "b" of my Question, which are very well answered by the Minister. However, with regard to part "c" of my Question that deals with the machine was not well answered. He is aware that this machine is obsolete. I know that the hospital has requested that they be funded with Kshs6 million to be able to buy a machine that will serve the hospital. This machine keeps on breaking down every now and then, and clothes have to be taken from Thika to Kiambu for laundry. Could he consider financing this machine in this year?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, we did budget Kshs6 million to buy a new machine for Thika District Hospital. As soon as this money is made available to us, then we shall decommission the machine because it is costing the Ministry too much to keep on repairing it. As I said, we spent Kshs397,197 on 3rd August, 2010, and the machine has already broken down. I agree with the hon. Member of Parliament that we need to buy a new machine. As I said, the money was put in the Budget and as soon as it is made available to us, we will get a new machine for Thika District Hospital.

Question No.888

PROVISION OF FREE ARV DRUGS
TO PERSONS WITH HIV/AIDS

Mr. Deputy Speaker: The Chair has been informed that the hon. Boaz Kaino is out on Committee work. Under the circumstances, Question No.888 is deferred to a such time when hon. Kaino will be in the House to prosecute it.

(Question deferred)

Next Question by hon. Odhiambo!

Question No.895

CHARGING OF INTERNATIONAL CALL RATES
TO BUSIA RESIDENTS

Mr. Odhiambo asked the Minister for Information and Communications:-

(a) why M/s Safaricom Ltd is charging Kenyans residing in parts of Busia, including those resident 30 kilometres from the border, international call rates,

(b) what measures he is taking to protect Kenyans from the inflated charges; and,

(c) whether he could ensure that the company compensates the citizens for the loss.

The Assistant Minister for Information and Communications (Mr. Godhana):
Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that M/s. Safaricom Ltd is charging international call rates to Kenyans in parts of Busia, including those residents living 30 kilometres inside the Kenyan border.

(b) Consumer protection is a core mandate of the Communications Commissions of Kenya (CCK) under my Ministry. The CCK has, therefore, commenced investigations with a view to addressing the concern urgently. In order to expedite this investigation, I would request the hon. Member for Butula to provide me some of the mobile phone numbers that have been subjected to this pricing mechanism by the licensee.

(c) Upon completion of the investigations, any transgressions on the part of the licensee, with respect to consumer rights, will be remedied in line with the Act and regulations.

Mr. Odhiambo: Mr. Speaker, Sir, I appreciate the answer given by the Assistant Minister. However, I would like to know from him whether he consulted with the District Information Officer who represents him on the ground. If so, he should not say that he is not aware because I am sure he or she would have told him that is what happens when you are near the Ugandan border. As you approach Uganda, you are told welcome to MTN and Safaricom ceases to give services. So, the residents in that area are charged more because they are charged as if they are in Uganda. I think Ugandan telephone boosters are stronger than ours.

Mr. Godhana: Mr. Deputy Speaker, Sir, as I said, I am not aware about the information the hon. Member has given. However, we have already started investigations. I am only requesting over and above the effort the Ministry is doing, if he could give us the additional information to compliment our information, so that we get to the bottom of this matter as soon as possible.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I appreciate the difficulties the Assistant Minister has to confirm these charges. However, I would like him to request Safaricom to

extend its services to other border points in Turkana County, so that when this kind of question comes, I can also confirm whether the charges are international or ordinary. When would he ensure that Safaricom penetration is extended to Lorengipi, Lokiriama and all the other areas that do not have mobile telephony in Turkana County?

Mr. Godhana: Mr. Deputy Speaker, Sir, a similar Question on the issue of access gaps was asked last week. I think I gave a very comprehensive response to that. Maybe, if the hon. Member can read last week's HANSARD, he will get some of the insights I gave in that response.

Mr. Kombo: Mr. Deputy Speaker, Sir, it is actually surprising for the Assistant Minister to say that he is not aware. Has he spoken even to Safaricom before he came here to give this answer? When you get to the border, it immediately becomes a roaming facility. So, you are not only charged international rates, but you are also charged roaming facilities on your phone. Just check with Safaricom what happens. Could he work with Safaricom to ensure that the border areas have sufficient and strong communication machines to ensure that our phones remain on local networks?

Mr. Godhana: Mr. Deputy Speaker, Sir, I was not aware whether M/s Safaricom, leave alone other networks, is charging international rates to Kenyans. That is what I am not aware of. But I am aware of the fact that there are interconnection charges across the border. That is why I am saying we will investigate to establish whether it is actually M/s Safaricom doing the international charges. Once we are through, then we will be able to give the House a feedback.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for this Assistant Minister to continue misleading this House? He is taking the House for a ride. A Member has asked Question No.895. He should either confirm or deny after doing his home work. He is asking the same Member to provide him with information. That is not our job. That is the job of the Communications Commission of Kenya (CCK) which falls under his docket.

Mr. Godhana: Mr. Deputy Speaker, Sir, I think what is not in order here is the fact that the Question did not give evidence to the fact that---

Mr. Deputy Speaker: Order! Hon. Assistant Minister, to begin with, you do not determine what is in order and what is not in order. It does not fall within your own mandate. You have a question to answer here, could you answer the question adequately. Do not send it back to a Member and tell him go and bring me evidence on that, unless you want to say categorically that this does exist. You can deny it. Proceed.

Mr. Godhana: Mr. Deputy Speaker, Sir, I have already denied and said that we will conduct investigations. In fact, we have already started investigations.

Mr. Deputy Speaker: Order! Hon. Assistant Minister, you are out of order. What is the basis for the information that you have that makes you deny, when you have to go and carry out another investigation again? Where are you getting the information to deny it now when you have to launch another investigation?

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House when he has categorically said in his answer that he is not aware? Being not aware means he is ignorant. So, he is not denying the fact that they are charging international call rates, he is only saying he is not aware.

Mr. Godhana: Mr. Deputy Speaker, Sir, I have said that I am not aware whether--

Mr. Deputy Speaker: Order, hon. Assistant Minister! You have not done sufficient work and research on this matter. The Chair directs that you go and contact the service providers. The Chair directs that this Question appears on the Order Paper on Wednesday, next week in the morning. Is that okay with the hon. Questioner?

Mr. Odhiambo: Thank you, Mr. Deputy Speaker, Sir, for that directive because I know that what the Assistant Minister has told us is not based on investigation but rather on his imaginations!

(Laughter)

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. As the Assistant Minister seeks answers as to whether those within the borders of this country are charged roaming services, because of the intrigues concerning where Migingo lies; that is, Uganda or Kenya, could he also confirm whether Migingo Island is recognized by Safaricom as being part of Kenya? Could he also confirm that the people of Migingo Island are not being charged roaming services?

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

Mr. Deputy Speaker: Who do you want to inform?

Mr. Mbadi: Mr. Deputy Speaker, Sir, I want to inform Dr. Nuh that it is not only Migingo Island, but also Gwasssi. At times, along the shores of Lake Victoria, Gwasssi is reflected as being in Tanzania. If you get there with your phone, you are told that you are in Tanzania. So, it is not just Migingo Island, but also far from Migingo Island inside my constituency.

Mr. Deputy Speaker: Hon. Assistant Minister, could you give that undertaking that you will, indeed, have a comprehensive and complete answer on Wednesday, next week in the morning?

Mr. Godhana: I oblige, Mr. Deputy Speaker, Sir.

(Question deferred)

Mr. Deputy Speaker: Fair enough! Let us go back to Question No.2 by Private Notice. Yes, Mr. Luka Kigen!

Mr. Kigen: Mr. Deputy Speaker, I am sorry I was supposed to ask this Question at the very beginning but I came in late.

QUESTIONS BY PRIVATE NOTICE

STALLED PROJECTS IN RONGAI

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

(a) Is the Minister aware that the construction of a school storey building in Boror Location, construction of classrooms at Solai Kale Secondary School, construction of Kipsyen Health Centre and Kasururei Water projects (all funded through Local Authorities Transfer Fund) have stalled due to insufficient funding?

(b) Could the Minister state when each project was initiated and provide the progress reports on status of the projects?

(c) What is the Ministry doing to ensure that all the projects are completed without any further delay?

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

(a) The status of the projects as requested by the hon. Members are as follows. I will summarize because I have a very lengthy answer. However, I have provided the hon. Member with the full answer.

In the 2006/2007 Financial Year, the Council of Nakuru granted Boror Secondary School Kshs900,000 for the construction of two classrooms. However, owing to the scarcity of land, the school management resolved to put up a one-storey building. As a consequence, the cost of construction rose up.

Unfortunately, the contractor engaged by the school management did not do proper work and, in particular, did not provide a staircase to the upper floor and the constructed roof slab started falling down. Since then, the contractor has been changed. First, there was a Mr. E.K. Mureithi and Company Ltd who was unable to proceed for what he termed as interference from the school management and local politics. He pulled out claiming Kshs215,000 as his cost.

Secondly, Alule Autoworld Construction took up the job for Kshs1.017 million. The work commenced and he put the reinforcement bars. Once again, the school management committee argued that the building was structurally unsound and through a council letter, they requested the Ministry of Public Works to carry out a structural assessment of the building. The Ministry of Public Works confirmed that the building was sound but the management refused to co-operate with the contractor.

In a nutshell, the delay to complete the project is generally attributed to the unco-operative school management.

Solai Kale Secondary School is located in Maji Tamu Ward. On 7th May, 2009, the county council contracted Aeronics Construction Company to construct two classrooms for a total of Kshs540,000. The contractor carried out the work well at the initial level. He, however, abandoned it upon receiving payment and realizing that the quoted works were less than what he was meant to make and, therefore, he was unable to proceed.

On 2nd June, 2011, the council gave Kshs300,000 directly to the school to complete the stalled classrooms. The school management committee has successfully completed the project. The only works remaining are floor spreading, Frazier Board, verandah, window panels and black board painting. The principal has assured the council that the classrooms will be fully completed and ready for use in August, 2011.

Kipsyenani Dispensary is located in Kambi ya Moto Ward in Nakuru. In the 2006/2007 Financial Year, the County Council of Nakuru gave the dispensary management committee Kshs500,000. The work was immediately started and construction was done up to three courses. However, the construction stalled because there was no funding due to none availability of budgetary provisions.

In the 2010/2011 Financial Year, the County Council of Nakuru contracted Walga Company Limited to construct 50 cubic meters of water storage tank and a cattle trough and supply 500 PV of one inch and 400 PV of three-quarter inch at a cost of Kshs1.167

million to Kasururei Water Project which is located in Maji Tamu. The contract was signed and the contractor has completed the works.

Mr. Deputy Speaker: Mr. Nguyai, can you table the copy of the written answer because it is very long?

The Assistant Minister, Office of the Deputy Prime Minister and Minister for Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, it is a very long answer as I said.

Mr. Deputy Speaker: Mr. Assistant Minister, you have to be concise, short and to the point.

The Assistant Minister, Office of the Deputy Prime Minister and Minister for Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, I am on the last paragraph.

In the 2011/2012 Financial Year, the County Council of Nakuru has made budgetary provision of Kshs15million to complete all the stalled projects through the Local Authority Transfer Fund (LATF).

Mr. Kigen: Mr. Deputy Speaker, Sir, I want to congratulate the Assistant Minister. However, while doing so, I am surprised with some of the answers he has given in respect to a few of those projects, particularly, the building of the tank in Kasururei and the storey building put up in Boror Secondary School.

How much money was the first contractor paid considering that he did a sub-standard job? What has the Ministry done to recover that money now that the structure fell because it had no staircase?

Mr. Nguyai: Thank you, Mr. Deputy Speaker, Sir. I do not have the specific amount of money as this is a Question by Private Notice. I do not have the supplementary information because the Question came to the Ministry--- However, I can find out how much the contractor was paid and provide the details of what we have done about that.

Mr. Shakeel: Mr. Deputy Speaker, Sir, I am very surprised with the answer that we were given. I know for sure that each local authority has a town engineer. The impression I have is that the projects were implemented in the school, but we are not told whether the town engineer inspected the constructions before payment was made. Could the Assistant Minister be very clear whether the town engineer was involved at every stage? If so, did he do his job because it appears that he did not?

Mr. Nguyai: Mr. Deputy Speaker, Sir, the Nakuru County Council has a town engineer. As I stated earlier, the town engineer in conjunction with the Ministry of Public Works looked at those projects.

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. If the engineer from the local authority and that of the Ministry of Public Works actually supervised the structures, how come that they had no staircase, the slab collapsed and they finally wrote a report that it was sub-standard? Did they do their job effectively?

Mr. Deputy Speaker: Hon. Assistant Minister, do you wish to go back to your office so that you can get the information that the hon. Member has sought? I propose that from the look of things.

Mr. Nguyai: Mr. Deputy Speaker, Sir, you will remember that this Question was very lengthy. The first contractor left and disengaged, the Ministry of Public Works came and said that the project can go on. I have summarized that and said: "In a nutshell, the delay to complete the projects has been due to un-co-operative school management." I

think it is important that we also address the issue of the school management committee in conjunction with the hon. Member and see whether this project can go on.

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to ignore answering the question whether the Government engineer was involved in the project all the time and not only when the Ministry of Public Works came in?

Mr. Nguyai: Mr. Deputy Speaker, Sir, I think you will bear me witness that I have answered that question. I said that the town engineer was involved.

Dr. Khalwale: Mr. Deputy Speaker, Sir, the Assistant Minister has told us in his answer that this project was being interfered with by local politicians. Could he confirm that the politicians he is talking about are either Mr. Kigen who is seated right behind me, or the area councilor, Mr. Joseph Cheruiyot? I would like the Assistant Minister to confirm whether, indeed, Mr. Joseph Cheruiyot is the one who influenced the identification of that particular contractor, supplied sand, hardcore and cement?

Mr. Nguyai: Mr. Deputy Speaker, Sir, when the second contractor left the site, he said that he was unable to proceed with the project because of interference from the school management committee and local politics. Those were the reasons he cited and I was referring to that citation. So, I do not have the details about the local politicians who were involved.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Can you guide us? Since the Assistant Minister has admitted that he is unable to respond to my question, can you ask him to go back and come back with the answers to our questions? These questions are very important because they touch on matters of transparency and accountability and corruption in the Office of the Deputy Prime Minister and Ministry of Local Government?

(Applause)

Mr. Deputy Speaker: Order! Mr. Assistant Minister, the Chair notes that you have, indeed, failed to answer the very basic question. Are you aware that these projects have stalled because of insufficient funds? You did not say “Yes” or “No”. You went ahead to give a litany of the process that you went through, including all the shenanigans with contractors and interference without specifically answering this question very precisely. It is a long story, but it does not take us far.

Mr. Nguyai: Mr. Deputy Speaker, Sir, if I can re-quote the paragraph, I said:-
“However, construction stalled as no further funding was done due to non-availability of budgetary provision for the Kipsyen Dispensary.”

I think there were six or seven projects and I gave an indication on how we will ensure that budgetary provisions are made. I gave the indication that Kshs15 million will be provided to fund those stalled projects.

Mr. Njuguna: Mr. Deputy Speaker, Sir, while thanking the Assistant Minister for that very lengthy answer that he has given to this House, could he indicate clearly when the Ministry will release the required funds to complete those critical projects?

Mr. Nguyai: Mr. Deputy Speaker, Sir, this will be within this financial year as soon as the Local Authority Transfer Funds (LATF) are released.

Mr. Deputy Speaker: You are confirming to the House that, indeed, all those interferences that you have talked about have been overturned. Have you?

Mr. Nguyai: Mr. Deputy Speaker, Sir, the one for Boror is still is a problem. The conclusion I gave at the end was that the project will not go on until we get co-operation from the school management committee.

Dr. Nuh: Mr. Deputy Speaker, Sir, when giving the answer, the Assistant Minister said that they had sought advice from the Ministry of Public Works as regards the building that the school management committee said was structurally unsound. Could he table the evidence from the Ministry of Public Works which confirm that, indeed, that building is structurally sound?

Mr. Nguyai: Mr. Deputy Speaker, Sir, I can do that on a later occasion. As I indicated, this was a Question by Private Notice and I had a very short time to provide that information. I will provide that information.

Mr. Deputy Speaker: Last question on the same, Mr. Kigen!

Mr. Kigen: Thank you, Mr. Deputy Speaker, Sir. You have seen the hon. Members are not satisfied as much as I am not with the answer that I have been given. Will I be in order to request that this Question be referred to the Departmental Committee on Local Authorities for further investigations? This should include inviting the Assistant Minister to the ground to appreciate the disuse position in which some of the structures that have been put up are in.

Mr. Nguyai: Mr. Deputy Speaker, Sir, even before he refers the issue to the Departmental Committee, I can also welcome him to my office, we have a look at our diary and visit the particular sites so that we can be able to address the issue.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

Mr. Ethuro: Hiyo ni sawa!

Mr. Deputy Speaker: That is fair enough. I think you have an Assistant Minister who is willing to settle the problem.

Let us move on to the next Question by Mr. Ethuro!

Mr. Ethuro: Mr. Deputy Speaker, Sir, I apologize for coming late.

REPAIR OF LORENGIPPI PRIMARY SCHOOL

Mr. Ethuro: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that the roof of the entire block of Lorengippi Primary School in Loima District was blown away by wind thereby forcing pupils to learn in the open under the scorching sun?

(b) When will the Government allocate adequate funds to repair the school?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I also wish to apologise because I also came late.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Lorengippi Primary School in Loima District was extensively damaged as a result of very strong winds.

(b) The Ministry is yet to allocate funds for the repair of the school. We are still waiting for budgetary approval, including the emergency infrastructure funds by Parliament for the 2011/2012 Financial Year. The Ministry will, thereafter, provide Kshs2 million towards the repair of the classrooms as soon as we get the processes done. That amount is in accordance with the assessment that we have received from the officers on the ground.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Ethuro: Thank you, Mr. Deputy Speaker, Sir. I welcome the promise by the Assistant Minister to provide funds to renovate the school. However, if the damage took place in April, 2011, the end of the preceding financial year was 30th June, 2011. The Assistant Minister had an opportunity to provide the money. Assuming he did not do so and now he is talking about the 2011/2012 Financial Year and he is still waiting for the authority of Parliament---

Mr. Deputy Speaker, Sir, you will recall that in June, 2011, many days before the end of the financial year, this House allowed this Government, even when they could not add up the figures, to utilize 50 per cent of the money by the end of December, 2011. The Assistant Minister has the money. What is he waiting for? Does he still want the kids of Turkana to continue suffering under the sun?

Mr. Deputy Speaker: You have made your point, Mr. Ethuro!

Proceed, Mr. Assistant Minister!

Mr. Mwatela: Mr. Deputy Speaker, Sir, I plead with the hon. Member to bear with us for two weeks before we can give them the money. In fact, the amounts stated here for emergency which the Ministry allocated is Kshs40 million. However, it was not part of what was granted.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I really did not expect this to go on this long. However, the Assistant Minister is inviting questions. He says when we, as a House, approved the 50 per cent of his Ministry's budget, did not include the emergency money. You will remember we gave blanket approval of 50 per cent of the total budgetary provisions as per the law. Why was he in a hurry to seek for that approval if he is not willing to utilize it? Is he in order to mislead the House that he does not have money when he has 50 per cent? If it is Kshs40 million, he has Kshs20 million to expend and we only need Kshs2 million.

Mr. Deputy Speaker: Hon. Assistant Minister, the Chair wants to understand that you must have been to Turkana. You have to understand the temperatures. Those young boys are really suffering learning under that scorching sun. You clearly need to give an answer that essentially befits the dignity and stature of both your Ministry and the House.

Proceed, Mr. Assistant Minister!

Mr. Mwatela: Mr. Deputy Speaker, Sir, can I give you a precise answer tomorrow?

Mr. Deputy Speaker: The hon. Assistant Minister has undertaken to deal with this thing tomorrow. Is that not so, Mr. Assistant Minister?

(Dr. Ethuro stood up in his place)

Order! Why do you want the Turkana children to suffer when the Assistant Minister wants to implement the project of roofing the school effective tomorrow?

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order because he did not say he will do something tomorrow? He said he will give an answer tomorrow.

Mr. Deputy Speaker: Hon. Assistant Minister, can you confirm this solidly so that the Chair and the House as well are in no doubt?

Mr. Mwatela: Do not be in doubt.

Mr. Deputy Speaker: So, you will work on this project?

Mr. Mwatela: Yes. We will work on the project.

Mr. Deputy Speaker: Fair enough. Mr. Ethuro, you must be happy.

Mr. Ethuro: Mr. Deputy Speaker, I am a very happy man. But before I express that happiness, this Assistant Minister has had occasion---

Mr. Deputy Speaker: Order! You are out of order. It is not "this Assistant Minister". It is the hon. Assistant Minister for Education.

Mr. Ethuro: Thank you, Mr. Deputy Speaker, Sir. I apologize. The hon. Assistant Minister for Education, hon. Calistus Mwatela, I hope he will be as honorable as his word because on the Floor of this House, none other than the substantive Minister, Prof. Ongeru, promised me six teachers to Turkwell Boys Secondary School which up to date, he has not posted to the school. So, I need extra assurance that tomorrow is tomorrow and not another one year.

Mr. Deputy Speaker: Under the circumstances, if you had a definitive undertaking by a Minister on the implementation of a matter that needs to be implemented in the service of this country and that undertaking was made on the Floor of the House, you are at liberty to raise that and bring it to the attention of the Chair. There are rules in the Standing orders that hon. Members of Parliament, including Ministers, must stand by their word.

Next Question by hon. I. Muoki!

ORAL ANSWER TO QUESTION

Question No.910

UPGRADING OF POLICE STATIONS IN MUTOMO/IKUTHA DISTRICTS

Mr. I. Muoki asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he could upgrade Mutomo Police Station to a police division and post an OCPD to serve Mutomo and Ikutha districts with an area of 12,500 square kilometres and a population of 180,000 people,

(b) whether he could also upgrade Mutha Police Post, Athi Police Post and Ikutha District headquarters to police stations; and,

(c) whether he could establish police posts in Ikanga, Kamutei, Kituti (Mwangeni), Kanziko and Kasaala centres.

Mr. Deputy Speaker: The Minister of State for Provincial Administration and Internal Security not here?

*(The Clerk-at-the Table consulted with
Mr. Deputy Speaker)*

The Chair is informed that, indeed, the Assistant Minister, Mr. Ojode, did indicate that he will be out of the country. However, that Ministry has a substantive Minister and another Assistant Minister. So, that is not good enough.

Deputy Leader of Government Business, what do you have to say for that?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, let me apologize for the absence of the Minister, the Assistant Minister and undertake to communicate to them that they avail themselves to respond to this Question at the earliest opportunity, preferably tomorrow.

Mr. Deputy Speaker: Could you tell the Minister that the Question will be listed on the Order Paper tomorrow afternoon? Is that okay with you, Mr. I. Muoki?

Mr. I. Muoki: Yes, Mr. Deputy Speaker, Sir, I am ready to ask the Question tomorrow.

Mr. Deputy Speaker: Mr. Minister, the Government side had better be ready to answer this Question tomorrow afternoon.

The Minister for Transport (Mr. Kimunya): Yes, Mr. Deputy Speaker, Sir. We will communicate to them.

(Question deferred)

Mr. Deputy Speaker: Fair enough. Next Order!

Mr. Chris Okemo, are you hesitating whether you should seek the Statement or not? The Chair remembers that you---

Mr. Okemo: I am ready, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Why are you sitting? You are supposed to stand. You cannot catch the Speaker's eye when you are seated.

Mr. Okemo: There is somebody else on his feet.

Mr. Deputy Speaker: Order! You do not determine who will catch the Speaker's eye. Could you go ahead and ask your Ministerial Statement?

You do not expect Members of Parliament to catch the Speaker's eye for you. Proceed.

POINTS OF ORDERS

LAWSUIT BY MUMIAS SUGAR COMPANY

Mr. Okemo: Thank you, Mr. Deputy Speaker, Sir, for being hard on me, but being extremely kind towards the end.

Mr. Deputy Speaker Sir, I wish to stand up to request a Ministerial Statement from the Minister for Agriculture.

Mumias Sugar Company (MSC) claim it is owed over Kshs100 million by Busia Sugar Company (BSC) Limited. Because of that, they approached the Kenya Sugar Board (KSB) to take over the loan. The KSB agreed that they were going to pay that loan. However, before they did so, they needed to do an audit on the books of MSC to ascertain that the amount of money they were asking for was correct.

In the meantime, MSC have actually gone to the High Court and they have sought orders to sell a parcel of land belonging to BSC which order they have already been granted. This morning, we learnt from the Ministry of Agriculture and from the KSB that they were not aware of this action by MSC which is a very strange action because the KSB had undertaken to repay the loan. However, despite that undertaking, they went to the high court and received the orders.

Mr. Deputy Speaker, Sir, in the process of auditing the MSC books to ascertain the correct figure that was owed, MSC were actually fiddling with their books and they were trying to ask for more money than is owed to them. That, probably, explains why they had to go to the high court. If they were going to be repaid the loan, what was the necessity for going to the high court?

So, I would like the Minister for Agriculture to come and clarify the question of the ownership of the parcel of land which the high court has ordered to be sold by private treaty. That piece of land is owned by BSC in which the Kenya Government has a shareholding. The only reason why the Kenya Government has a share in the BSC is to protect the public interest. The public interest means all those farmers in the Busia Sugar zone who supply a large quantity of sugar cane to MSC to make it viable and to make it continue to operate.

This is an act of bad faith. We are prepared to go and tell the farmers to withhold all cane to MSC if they act in that bad faith because that piece of land was reserved for the construction of a sugar factory and the Government was making plans. You even heard the Prime Minister stand before this House and say that there was an investor who was coming---

Mr. Deputy Speaker: Order, hon. Okemo! Whereas the Chair is sensitive to the fact that this is a matter that touches you fairly emotionally and a matter that involves your constituency, I want to remind you that we have certain procedures in seeking Ministerial Statements. Do seek the Ministerial Statement and the clarifications that you want to seek and do not turn it into a debate. The Chair has given you sufficient leeway for you to be understood and the HANSARD is going to bear us out.

Proceed!

Mr. Okemo: Mr. Deputy Speaker, Sir, I thank you for your indulgence. Let the Minister come here and clarify this because two official searches have produced different results and they were actually carried out yesterday. One shows that the land still belongs to the Busia Sugar Company and another one shows that it belongs to somebody else who bought the land. This was done on the same day from the same Land Registrar. The Minister should come here and clarify who is the true owner. Has any transaction taken place? What happens with the debt which the Kenya Sugar Board had undertaken to pay? Does Mumias Sugar Company still expect good faith from the Busia sugar cane farmers to continue supplying sugarcane to them?

LOSS OF VALUE OF KENYAN CURRENCY

Mr. Baiya: Mr. Deputy Speaker, Sir, I rise to request for a Ministerial Statement from the Deputy Prime Minister and Minister for Finance on the loss of value of the Kenyan currency. In the Statement, I ask him to clarify the following:-

(i) The nature of financial activities or trading by some banks that the Governor of the Central Bank was complaining of recently which allegedly led to the loss of value of the Kenyan currency and the basis upon which that complaint by the Governor was grounded.

(ii) The scope and extent to which the alleged activities have affected the Kenya shilling.

(iii) The measures the Government intends to institute against the banks to cushion the currency and safeguard stability in the wake of the rising cost of living.

(iv) The names of the banking institutions involved in the aforesaid activities.

Mr. Deputy Speaker: Minister, you need to give an undertaking on the Ministerial Statement sought by hon. Okemo from the Ministry of Agriculture and subsequently, you deal with hon. Baiya's Statement.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, on the issue of Mumias and the Ministry of Agriculture, I will communicate to the Minister for Agriculture. Could I ask that that Statement be delivered on Tuesday next week? This will give adequate time for the searches and harmonizing of the information because it looks like there is much more than just meets the eye.

On the request of a Statement from the Office of Deputy Prime Minister and Ministry of Finance, I believe we could get the same on the same day. So, the two Statements should be delivered on Tuesday next week.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. I remember that a day before we went on recess, I had asked for a similar Ministerial Statement to the one that has been asked by hon. Baiya from the Office of Deputy Prime Minister and Minister for Finance.

Would I be in order to ask the Leader of Government Business to tell the Minister that when he is bringing his response to hon. Baiya's Statement to incorporate the issues that I had already sought explanation for?

Mr. Deputy Speaker: Have you given a firm undertaking on the dates?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I asked for Tuesday next week and it makes a lot of sense to consolidate the two requests and deliver one Statement.

Mr. Deputy Speaker: Tuesday for both the Ministry of Agriculture and the Office of Deputy Prime Minister and Ministry of Finance?

The Minister for Transport (Mr. Kimunya): Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Fair enough! It is so directed.

ARREST/CONVICTION OF KENYA POLICE RESERVISTS FROM OLOPOI

Mr. Ethuro: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Forestry and Wildlife on the circumstances that led to the arrest,

arraignment in court and conviction of the Kenya Police Reservists from Olopoi area. Under what circumstances were these KPRs arraigned in court on the basis of alleged poaching of elephants? How many KPRs were killed by the elephant that was killed by the KPRs in self-defence? On what basis did the Kenya Wildlife Service (KWS), all the way from Lodwar, take the KPRs who were also policemen to court when they were acting in their line of duty?

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, I would like to bring the Statement on Thursday next week.

Mr. Deputy Speaker: Fair enough! It is so directed.

ARREST OF PROTESTORS MARCHING TO STATE HOUSE NAIROBI

Dr. Khalwale: Mr. Deputy Speaker, Sir, I rise to request for a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security. The Members will remember that for one month, patriotic Kenyans kept vigil at Jogoo House and their intention was to capture the imagination of the leadership of this country to a matter of grave national importance, namely, the loss of Kshs4.2 billion that was meant for free primary education. They were not noticed and patriotically, they decided to march to State House. While on their way, they were arrested. I would like the Minister to clarify the following:-

(i) Whether the Government has finally decided to act in breach of the new Constitution, the same Constitution it so enthusiastically fought for especially Article 37, which these Kenyans were enjoying.

(ii) Whether the Executive is using the Kenya Police to ensure that corruption is the order of the day.

(iii) When the President is going to provide leadership on this matter by sacking hon. Prof. Ongeru, since the latter has remained adamant that he is not going to take political responsibility and resign.

(iv) Since this arrest is so annoyingly in breach of the new Constitution, could the Minister use his opportunity this week, preferably tomorrow, to direct the Commissioner of Police to release these gallant sons and daughters of the country, so that we believe that the new Constitution has been operationalized?

As I conclude this request for a Ministerial, may I remind the Chair that just before we went on recess, the same Minister came before this House in an attempt to clarify this matter, but the House sent him back and asked him to go and get his figures right. I would like to request that the Chair directs that on that day, the Minister also comes with those figures that he was directed to bring before the House.

Mr. Deputy Speaker: Is hon. Deputy Leader of Government Business in the House?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I am still trying to digest the issues that were requested and I am sure the Minister will take the same. Could I ask that we have this on Thursday next week, so that we can get a comprehensive response bearing in mind the fact that the Ministers are not here and they might need to have further consultation? It also involves so many other Ministries. It is

not just a straightforward matter of the Ministry of State for Provincial Administration and Internal Security. I request that the Statement is delivered on Thursday next week.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. These young people are being held under the usual Kenyan conditions that are not acceptable and they have committed no offence. Secondly, some of the young people have refused to eat. The few wellwishers who are taking decent food for them, the food was eaten, I understand, by some policemen who were on duty. In view of this urgency, could you order that this Statement is issued tomorrow in the afternoon?

Mr. Deputy Speaker: You will realize, hon. Khalwale, that in the first place, no citizen or even a resident of this country can be held without a formal charge for anything more than 24 hours or detained for that matter unless it is a corporal offence. Indeed, if they are still in detention, it means that they have been taken to court and a charge has been entered against them. Under those circumstances, the Minister you are asking to take a decision on that is not here. It is only the Attorney-General or under these circumstances, the Director of Public Prosecutions who can enter the *nolle prosequi* or withdraw the charges against them. So, would you want to take this either to the right person - in this transitional period the Attorney-General - or would you want to ask somebody else who has that capacity or authority to direct?

Dr. Khalwale: Mr. Deputy Speaker, Sir, thank you for the direction. In that case, because the matter touches the Ministry of State for Internal Security, and the State Law Office, I would request that the Prime Minister takes up the matter tomorrow afternoon since it is cross-cutting.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. I sympathise with the sentiments of hon. Khalwale about the continued remand of these Kenyans. I agree with him in the first part of his request. However, as we talk about the release of these people, I want the Chair to understand that these Kenyans have not been remanded because of what they did at State House. It is because of the insulting language they used in court, and their disorderly conduct in court. That is a completely a different matter. I am a strong believer in the rights of the people, but nobody in Kenya should trample on other people's rights as he fights for other's rights.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Hon. Khalwale has sought a Ministerial Statement from the Government. With all due respect, hon. Olago, who is a good lawyer, cannot purport to be responding on behalf of the Government. That is why we are asking the Government to bring the Ministerial Statement. Let the Government put its case. We will know whether the matter has already been determined in court or otherwise. The point we are making as a House is that this country has gone through serious demonstrations to bring forth a new law known as the Constitution. We cannot continue to behave as if there is no freedom of association and assembly in this country.

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Deputy Speaker, Sir. I seek guidance from the Chair. Is it really in order for hon. Members to ask the Government to violate the Constitution? You gave instructions a couple of minutes ago that the entering of a *nolle prosequi* is the province of the Director of Public Prosecutions, which is a constitutional office which shall act under no instructions from any other person. So, to ask the Government to purport to ask the

Director of Public Prosecutions to do one thing or another is actually asking the Government to violate the Constitution.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Order, hon. Members! Hon. Muriithi, what you have just said has to be said by the relevant Ministry. The points of arguments are what the Minister has to respond to. Under the circumstances, right now, the matter has an element that is *sub judice*, and which cannot be dealt with here. There is an element which essentially has something to do with the basic rights of all Kenyans – the ability for you to go out there and demonstrate as enshrined in our Constitution and whether that arrest itself was lawful. That is a matter you can ask. Of course, that is, again, something which the Government will have to deal with through the Attorney-General. In this interim period, the Attorney-General still holds forth for the Director of Public Prosecutions as the Director of Public Prosecutions is not a Member of this House. He cannot come here and explain his actions.

When can you give an undertaking for this matter to be responded to, Deputy Leader of Government Business?

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. On behalf of those Kenyans who are currently in police cells, I feel seriously insulted. I feel pained because these are the same young people who fought for the new Constitution. Some of whom had their limbs broken and others their lives lost when the hon. Member was a busy chief executive in some other areas I do not know. He has no respect for them. The same hon. Member---

Mr. Deputy Speaker: Order! Order! Dr. Khalwale, you are out of order! You cannot attack the person of an hon. Member. He has expressed his own opinion on the matter. Nevertheless, the Chair has already given direction.

Deputy Leader of Government Business, could you tell the Minister to have the Ministerial Statement delivered in the course of this week?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I have undertaken to have the Ministerial Statement issued by Thursday next week because of the issues that were canvassed.

I will also communicate the sentiments that have been expressed about the people who are suffering in police cells. However, that issue does not necessarily require a Statement to be issued here, in terms of whatever actions are permissible within the Constitution. We can only do what is permissible by the Constitution. In terms of the comprehensive Ministerial Statement sought, it will be delivered by Thursday next week.

Mr. Deputy Speaker: Leader of Government Business, in view of the log jam you are in, given that we are operating under both the old Constitution and the new Constitution, and given that the Directorate of Public Prosecutions is now under the Director of Public Prosecutions and not under the Attorney-General or the Minister, can you give an undertaking that the Prime Minister, who basically co-ordinates and supervises Government business, will take up this matter as requested by Dr. Khalwale?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I can communicate the same although I am not quite sure that it is within the Prime Minister's mandate to instruct the Director of Public Prosecutions to do anything on this matter. The

people have already been charged. The matter is already in court; this raises the issue of *sub judice*. I will pass on the message in terms of the comprehensive Government Statement that has been sought on all the issues that were canvassed. I will also pass on the sentiments of the House in terms of the conditions in which the people are held.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. I hear the Deputy Leader of Government Business wondering whether the Prime Minister can direct the Director of Public Prosecutions to do something. Whereas the Prime Minister cannot direct him under the Constitution, is it in order for him to talk as though he does not know that a letter expressing concern can go to the Director of Public Prosecutions?

Mr. Deputy Speaker: The fact is that the arrests were done by the Government and the prosecution was done by the Director of Public Prosecutions. There are two issues here. The first one is the original arrests, which touch on the basic rights of Kenyans, and the second one is the conduct of the so-called “activists”, who were there at that time. I say “so-called” not, in the least, to try and demean them. That is what I am saying right now, in the sense that they are activists in their own minds and hearts, and in the hearts of many Kenyans, fighting for people’s rights. Whether they infringed on the rights of other people in the process, it is a matter which the House cannot debate now. Nonetheless, I think the Prime Minister should be the right person to deal with this matter. What the Deputy Leader of Government Business needs to do is convey the same – that the Chair strongly feels that the Prime Minister has to deal with this matter because of the lacuna we are in right now due to the application of the old Constitution and the new Constitution.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I have already undertaken to communicate the same to the Prime Minister.

Mr. Deputy Speaker: Fair enough. It is so directed. In the event that the Government is of the opinion that it can give a response by issuing a Ministerial Statement on the same, the Prime Minister might as well put this to his Ministerial Statement tomorrow during the Prime Minister’s Time.

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

Mr. Deputy Speaker: On the same matter?

Mr. Ogindo: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: What is your point of order?

IDENTITY OF BUYERS/SELLERS OF GRAND REGENCY HOTEL

Mr. Ogindo: Mr. Deputy Speaker, Sir, sometime last week, I rose here and sought a Ministerial Statement from the Deputy Prime Minister and Minister for Finance in relation to the sale of Grand Regency Hotel. The undertaking was that the Ministerial Statement would be delivered today. The House was seized of this matter and the House remains anxious. I rise to seek your guidance on how to proceed.

Mr. Deputy Speaker: Assistant Minister for Finance, the Chair recollects that you were, indeed, the one who gave the undertaking to issue the Ministerial Statement today. Am I right or has my memory not served me well?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I was not the one who gave the undertaking, but we can deliver the Ministerial Statement on Thursday, if you allow us.

Mr. Deputy Speaker: On Thursday of this week?

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

Mr. Deputy Speaker: Fair enough. It is so directed.

NOISE POLLUTION FROM LIONS EYE HOSPITAL

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Mine is also a reminder that before the House went on recess, I sought a Ministerial Statement from the Ministry of Environment and Natural Resources on noise pollution from Lions Eye Hospital, which affects the residents living in the neighbourhood of that hospital. It was promised that the Ministerial Statement would be delivered within a week.

Mr. Deputy Speaker: Yes, Minister for Environment and Mineral Resources!

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, the numbers are growing for Tuesday so we will let the Minister deliver the Statement on Wednesday.

Mr. Ethuro: Mr. Deputy Speaker, Sir, for the reason you know, I may not be available next week. I will be generous to him to give it the following week. However, in the meantime, they do not need to wait to report here. They can just tell them to stop.

Mr. Deputy Speaker: Mr. Ethuro, the House works within its own rules. You did seek a Ministerial Statement and you shall get it.

Mr. Ethuro: Thank you, Mr. Deputy Speaker, Sir, I am advised. I am looking for the Ministerial Statement but with a view to the problem being handled. If they could handle the problem, the Statement will only confirm the action taken.

Mr. Deputy Speaker: Dr. Wekesa, you have a Ministerial Statement to give, please, do so.

PROTECTION OF CHERENGANY FOREST ECO SYSTEM

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, this House made the following resolution on 23rd July 2008.

THAT, in view of the fact that Cherengany Hills, a Government gazetted forest is under serious threat from human activities such as logging; aware that the forest is an important natural resource which is a source of a number of rivers and streams; further aware that it is the Government's stated objective to conserve forests in order to mitigate the effects of climate change, this House urges the Government to protect Cherengany Hills from adverse human activities.

I beg to submit in line with Standing Order No.183 which informs the House on what action my Ministry has taken to protect Cherengany Hills from adverse human activities following the House resolution.

Mr. Deputy Speaker, Sir, the Cherengany Hills forest ecosystem which is based in the Rift Valley covers an area of 120,000 hectares and consists of 13 forest blocs that traverses West Pokot, Trans Nzoia and Elgeyo Marakwet counties.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. The Report that is being delivered by the Minister arising from the Motion passed by this House in 2008 is made pursuant to Standing Order No.183. This says that the Minister responsible must table the action taken within 60 days of that Report. A Minister who fails to submit a Report under this Standing Order shall be deemed to be disorderly within the meaning of Standing Order No.97.

Therefore, having been disorderly the first thing the Minister should do is to apologize and ask for retention of time.

Mr. Deputy Speaker: Minister, indeed, you are in a situation that clearly nobody else is. In the first place, it has been brought to the Chair's attention that, indeed, it took more than 60 days. Whereas we are going to deal with it at a later stage when the Chair has meditated over this matter and probably had more consultations with you and the Committee, for the moment, you do not have to make any speech. You just have to table the Report. That does not necessarily get you off the hook.

You know that Standing Order No.183(b) says that a Minister who fails to submit a Report under this Standing Order shall be deemed to be disorderly within the meaning of Standing Order No.97 on disorderly conduct.

Standing Order No.97 is known to all of us. It has its own sanctions. So whereas we are going to meditate over this, the Chair will direct you to table the Report as a first step.

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, I would like to apologize to the House. However, this Statement was supposed to be made after all plans by my Ministry had been completed. This has taken this long for some of the issues to be resolved. I, however, appreciate the importance of Standing Orders and apologize.

I would like to lay this Report before the House.

Mr. Deputy Speaker: Not so fast! You have to give an undertaking that you are going to do it tomorrow at the appropriate time. We are not on Statements and not on Papers Laid. Therefore, you will have to lay the Report in accordance with the way the business of the House is arranged. You can lay your Report tomorrow when we come to the order on Papers Laid. You can do that in the morning.

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, I will not be available in the House tomorrow.

Mr. Deputy Speaker: Fair enough! You are not the only Minister. Any Minister can deliver this on your behalf.

The Minister for Forestry and Wildlife (Dr. Wekesa): Thank you.

Mr. Deputy Speaker: It is so directed!

Next order!

MOTION

ADOPTION OF BUDGET COMMITTEE REPORT ON ESTIMATES OF REVENUE AND EXPENDITURE

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. I am concerned and I am asking for your ruling--- When we discussed the Report of the Budget Committee

especially on the last day, I had expressed my reservations and finally, I registered my dissent with an issue which was ruled contrary to my wish. The Chairman of the Committee directed that my dissent should be recorded.

When I looked at the Report, I realized that it has not captured my dissent to that particular issue of the allocations to the NSIS.

Mr. Deputy Speaker: The Report and the content of the Report is not the property of the House until it is proposed. You will raise that issue after the Motion has been moved, seconded and question proposed. If you want to move amendments, that is the right time.

Mr. Mbau, please, proceed!

Mr. Mbau: Mr. Deputy Speaker, Sir, I want to move the Report of the Budget Committee on the Estimates of Revenue and Expenditure for the year 2011/2012 on behalf of Members of my Committee and as required by Article 221(5) of the Constitution as well as the Speaker's ruling of 8th June 2011.

I take this opportunity to present the House the Committee's Report on the 2011/2012 Budget Statement and proposals of Estimates of Revenue and Expenditure laid by the Deputy Prime Minister and Minister for Finance on 8th June 2011.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, specifically the Report covers the expenditure estimates for the Parliamentary Service Commission (PSC) laid by the Vice-Chairman of the PSC on 28th April 2011, the estimates of expenditure for the Executive laid by the Deputy Prime Minister and Minister for Finance on 7th June 2011 and the estimates of expenditure for the Judiciary laid by the Minister for Justice, National Cohesion and Constitutional Affairs on 7th June 2011.

Mr. Temporary Deputy Speaker, Sir, the Budget Committee currently comprises the following Members:-

1. The hon. Elias P. Mbau, Chairperson
2. The hon. Alfred Wekesa Sambu, Vice-Chairperson
3. The hon. Martin Ogindo---

(Loud consultations)

The Temporary Deputy Speaker (Mr. Ethuro): Order! Hon. Members, the Mover must be heard in silence.

Hon. Mbau, you need to move the Motion as stated in the Order Paper before you go into your Report.

Mr. Mbau: Thank you, Mr. Temporary Deputy Speaker, Sir, for your guidance.

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

THAT, this House adopts the Budget Committee Report on the Estimates of Revenue and Expenditure for 2011/2012 laid on the Table of the House on Thursday, July 21, 2011.

Mr. Temporary Deputy Speaker, Sir, in moving the Motion, I wish to note that the Members that comprise the Budget Committee include:-

1. The hon. Elias P. Mbau, Chairperson
2. The hon. Alfred Wekesa Sambu, Vice-Chairperson
3. The hon. Martin Ogindo.
4. The hon. Danson Mungatana.
5. The hon. Moses Lessonet.
6. The hon. Omar Zonga.
7. The hon. John Mbadi.
8. The hon. Nemesyus Warugongo.
9. The hon. Sheikh Dor.
10. The hon. John Mututho.
11. The hon. Nelson Gaichuhie.
12. The hon. Emilio Kathuri.
13. The hon. Abdi Bahari.
14. The hon. Johnson Muthama.
15. The hon. Jackson Kiptanui

Mr. Temporary Deputy Speaker, Sir, I also need, in addition, to notify you that the above Members are also enjoined by the following Chairpersons of Departmental Committees who are *ex-officio* Members of the Budget Committee:-

1. The hon. (Eng) James Rege, Chairperson, Committee on Energy, Information and Communications.
2. The hon. David Koech, Chairperson, Committee on Education, Science and Technology.
3. The hon. Mutava Musyimi, Chairperson, Committee on Lands and Natural Resources,
4. The hon. John Mututho, Chairperson, Committee on Agriculture, Livestock and Co-operatives.
5. The hon. Robert Monda, Chairperson, Committee on Health.
6. The hon. David Were, Chairperson, Committee on Transport, Public Works and Housing.
7. The hon. Aden Keynan, Chairperson, Committee on Defence and Foreign Relations.
8. The hon. Fred Kapondi, Chairperson, Committee on Administration and National Security.
9. The hon. Chris Okemo, Chairperson, Committee on Finance, Planning and Trade.
10. The hon. Sophia Abdi Noor, Chairperson, Committee on Labour and Social Welfare.
11. The hon. Mohamed Gabbow, Chairperson, Committee on Local Authorities.
12. The hon. Ababu Namwamba, Chairperson, Committee on Justice and Legal Affairs.
13. The hon. (Dr.) Julius Kones, Acting Chairperson, Public Accounts Committee.
14. The hon. Mithika Linturi, Chairperson, Public Investments Committee.
15. The hon. Thomas Mwadeghu, Chairperson, Local Authorities and Funds Accounts Committee.
16. The hon. Ekwe Ethuro, Chairperson, Committee on Constituencies Funds.

17. The hon. Mohamed Abdikadir, Chairperson, Constitutional Implementation Oversight Committee.

Mr. Temporary Deputy Speaker, Sir, the mandate of the Members of the above Committee is established under Standing Order No.190. It is mandated to:-

(a) Examine the Budget Policy Statement presented to the House and shall report to the House what, if any, economies should be made consistent with the proper carrying into effect of the policies implied in or by such Statement and the Estimates.

(b) Evaluate tax estimates, economic and budgetary policies and programmes with direct budgetary outlays.

Mr. Temporary Deputy Speaker, Sir, the Budget Committee is further given legal backing under the Fiscal Management Act, 2009, and the Constitution, Article 221, Subsection 4 and 5. It is important to underscore that the new Constitution has given Parliament a more expanded role in the Budget making process, because it has changed the role of Parliament from a Budget approving institution to a Budget making institution. Indeed, the enhanced responsibility includes the ability to decide on resource mobilization, allocation, monitoring and control.

Mr. Temporary Deputy Speaker, Sir, pursuant to Article 221, Subsection 4 of the Constitution, the National Assembly will only consider the Estimates of Revenue and Expenditure after a relevant Committee, in this case, the Budget Committee, discusses and reviews the Estimates and makes recommendations to the National Assembly. This is what we have been doing.

Mr. Temporary Deputy Speaker, Sir, I want to move on and inform the House of what we have done in reviewing the 2011/2012 Budget Estimates. The Committee has held public hearings with organized groups and the general public in line with Article 221, Subsection 5 of the Constitution. The public hearings were held in Nairobi, Mombasa, Kisumu, Embu, Nakuru, Nyeri, Garissa and Kakamega. Further, the Committee also received written submissions from all the 12 Departmental Committees, which it considered and are annexed to this Report. Other written submissions were also received from organized groups, civil society, organizations including former Parliamentarians Association of Kenya and members of the public, among others. I want to acknowledge that the Committee is grateful to the Office of the Speaker and the Office of the Clerk of the National Assembly for the support received as it discharged its mandate of reviewing the 2011/2012 Budget Statement and Estimates of Expenditure and Revenue. The Committee is also grateful to the Members of Parliament who participated in the process, especially the public hearings in all the eight centres named above. The Committee also appreciates the very positive contributions by stakeholders, public, organized groups who appeared before the Committee and its Members, as well as those who made submissions during the hearings. The Committee is also grateful to the Office of the Deputy Prime Minister and Minister for Finance, other Ministries, heads of departments and Government agencies who appeared before the Committee and the relevant Departmental Committees. Let me also extend gratitude to the Provincial Administration across the country that helped in the co-ordination and mobilization of the people during the Budget public hearings.

Mr. Temporary Deputy Speaker, Sir, it is, therefore, my pleasant duty and privilege as well, on behalf of the Budget Committee, to expound on the various findings and recommendations, as is expected of this Committee, that we have been able to come

up with, which we wish to be revealed, debated and eventually adopted by this House. In highlighting the various issues that have been discussed, we note that the first one related to the need to discover whether the Budget proposals were linked to the 2011 Budget Policy Statement Report and resolutions that were discussed by this House as well as adopted.

Mr. Temporary Deputy Speaker, Sir, I want to say that the Committee was able to find the following:-

That, it is important to note that in this Financial Year, 2011/2012, the Budget has been prepared against the backdrop of several challenges arising from external as well as internal shocks. From the external front, the political instability in the oil producing countries, the Japanese earthquake, the debt crisis in Europe and piracy in the Indian Ocean have all resulted in unfavourable climate and soaring prices of imports. On the domestic scene, the prevailing drought and famine, together with inflationary pressures and high foreign exchange rates have also driven the cost of living for ordinary Kenyans to unaffordable levels.

Mr. Temporary Deputy Speaker, Sir, it is against the afore-mentioned operating environment that the Minister expects to collect a total revenue amounting to Kshs789.53 billion, which includes Kshs713.62 billion of ordinary revenues and Kshs75.91 billion of Appropriations-in-Aid. One of the key recommendations that we had made in the Report on the Budget Policy Statement was for the Minister to urgently review all the Appropriations-in-Aid items and identify them so that they can be turned into ordinary revenue to increase efficiency and accountability.

To this end, the Committee notes with commendation that the Minister, indeed, has been able to turn A-in-A worth KshsKshs9.2 billion into ordinary revenue. However, the Committee wishes to encourage the Minister to institute further measures, including fully automating all Government institutions that collect revenue, which include hospitals, local authorities, land registries, public universities and judicial registries, among others.

The Committee also considers the above recommendations very important and has already asked the relevant Committee on Energy Information and Communications to take the lead in ensuring that the proposed computerization is achieved to ensure that all loopholes are sealed and revenues are duly collected for the economic development of our country.

Mr. Temporary Deputy Speaker, Sir, you may recall that one of the recommendations in the Report of the Budget Policy Statement (BPS) was to limit total expenditures, including net lending at 30 per cent of GDP by cutting the non-essential expenditures of Government. This recommendation was in line with the need to reduce public debt to the internationally admissible level of 42 per cent of the GDP over the Medium Term. However, a review of the proposed expenditure for the year 2011/2012 indicates that expenditures, including net lending, is poised to stand at 33.5 per cent of the GDP. This means that the gap between expenditure of revenues has widened further and this may lead to an increase in domestic borrowing with the obtaining effect of locking out local investors.

The Committee's view is that the proposed estimates may become unsustainable. We further note, as a Committee, that the 5.7 per cent growth of GDP focus for the Financial Year 2011/2012 as presented in the Minister's Statement seemed rather

ambitious. Independent forecast by the Parliamentary Budget Office puts the growth forecast at 5.1 per cent.

The World Bank, in its recent Report, further forecasts Kenya's growth for 2011 at about 4.9 per cent. The IMF, in a recent Report, indicated that Kenya will achieve broad based growth in 2011 only if various risks such as inflationary pressures and drought are strategically mitigated. The Committee is of the view that there are no sufficient mitigation measures to warrant the Government's optimistic view of 5.7 per cent growth rate.

The public out there are suffering due to high inflation rates. When they shout "unga" and run in the streets, they are not mad, neither are they people disrupting peace. They are going through difficult times and yet, as a leadership, we seem to have nothing to offer them.

Hon. Members, the current inflation is largely due to food and transport component as indicated by the numbers from the Kenya National Bureau of Statistics in June 2011. The items; food and transport component, recorded an inflation of 22.52 per cent and 22.71 per cent, respectively. It is important that the Government institutes firm measures to deal with the food shortage and the oil crisis before the situation gets out of hand.

Mr. Temporary Deputy Speaker, Sir, you may also recall that one of the recommendations of the Report of the Budget Policy Statement was to limit the ceiling of the Parliamentary Service Commission to Kshs6.5 billion and Kshs2.4 billion in Recurrent and Development expenditure, respectively. In the proposed Estimates that we have scrutinized, the Minister has allocated Parliamentary Service Commission Kshs6.496 in the Recurrent Expenditure and Kshs1.6 billion in Development Expenditure. This implies that the allocation in the Development Expenditure was below the Budget Policy Statement recommendations by Kshs800 million. Therefore, this recommendation was not adhered to by the Ministry of Finance.

It was further recommended that pursuant to Article 241 of the Constitution, the budget for the Ministry of State for Defence be separated to reflect allocations to each of the three arms of the defence forces and general administration. However, a look at the estimates of the expenditure indicates that, that also was not done. Those are a few areas that the Government, in presenting its estimates of revenue expenditure, was unable to comply with the resolution of this House as contained in the BPS. We also have some further key issues on the revenue side of the Budget that I would like to be considered, debated and adopted.

(a) Under the overall revenue forecasting and setting of targets, the Committee is very concerned by the revenue under-performance in recent times. In the just ended Financial Year, 2010/2011, the Kenya Revenue Authority (KRA) realized a collection of Kshs634.9 billion against the original target of Kshs645 billion, representing an under-performance of Kshs10.1 billion. That trend is worrying given that the KRA also missed its target by over Kshs14 billion in the 2009/2010 Financial Year. However, hon. Members are aware that it was reported that the KRA had over-performed on a revised target that had been agreed upon between themselves and the Treasury. The Committee is concerned that such targets are agreed upon without due reference to Parliament. Therefore, the Committee recommends that the National Assembly resolves that, in

future, any revenue target revision must be agreed upon by Parliament to avoid misleading the country.

Mr. Temporary Deputy Speaker, Sir, we also note the failure to disclose the revenue impact of discretionary tax measures. As a committee, we noted that the Finance Minister, in his 2011 Budget Statement, failed to disclose the revenue impact of discretionary tax measures, and thus contravened the constitutional principle of transparency and full disclosure of information. This is important given that each and every revenue measure proposed in the Budget results in either revenue loss or revenue gain. The committee, therefore, recommends that as the Finance Bill, 2011 is being reviewed by the relevant committee of this House, the Minister be required to disclose the gains and losses from each of the proposed revenue measures.

Mr. Temporary Deputy Speaker, Sir, we further needed to highlight on the question of zero rating policy. We are concerned about the zero rating policy by the Government, which has now been extended to non-priority items such as the security detectors and closed circuit television (CCTV) cameras. Indeed, even some of these items that have now been zero rated do not qualify to be the so-called essential commodities and, therefore, do not lead to the intended benefits to the common man. The committee thus recommends that when the Finance Bill 2011 is being reviewed, the issue of zero rating of all products be adequately considered so as to ensure that items that are not a priority to common *mwananchi* are removed from the list of zero rated items.

Of course, we also noted that the Ministry needed to tighten administrative measures on tax collection further. We are proposing, as a committee, that in order to streamline tax collection, the Ministry needs to tighten rules for Pay As You Earn (PAYE) relief, increase withholding taxes for professionals from 5 per cent to 10 per cent, and introduce withholding tax on winnings from betting and lotteries at 20 per cent. Whereas these measures are expected to streamline tax collection and raise more revenue, they may be unlikely to resolve the rampant tax evasion menace of the targeted groups. In addition, some targeted taxes like winnings of betting and lotteries may be difficult to determine, assess and collect. The committee therefore recommends that when the Finance Bill, 2011 is being reviewed, the Minister be required to provide the measures the Government will adopt in order to enforce the applicable tax laws. In addition, it is the view of the committee that 20 per cent withholding tax be levied on winnings from lotteries and price competitions. We urge the Finance, Planning and Trade Committee to consider this issue as they review the Finance Bill.

Mr. Temporary Deputy Speaker, Sir, many stakeholders, and even the Government, appreciate that Kenya's tax laws need comprehensive reforms in line with modern day tax practices. The committee observed that this year, 2011, the Deputy Prime Minister and Minister for Finance did not propose any changes in the Value Added Tax (VAT) Act, with a promise that the whole Act will be overhauled, and presented to Parliament for approval. There is hope that the new VAT Bill will correct some of the existing problems towards realizing Government revenue. In addition, the Government should work to reduce the number of taxes and levies that Small and medium Enterprises (SMEs) have to administer to make it easier to train staff to administer compliance with tax liability. The committee, therefore, recommends that the said Bill be brought to Parliament for passing and implementation not later than October, 2011.

Mr. Temporary Deputy Speaker, Sir, tax laws remain very complex to many taxpayers, with the effect that they become expensive to comply with. Organizations are, thus, faced with a big burden to employ or engage very expensive tax experts to help them. Even though turnover tax attempted to achieve this, it failed and even distorted the environment by only leaving it to individuals or business names, and excluding companies, rental income and consultancy. This market distortion, therefore, creates room for difficulty in implementation, and does open fronts for continued evasion.

Mr. Temporary Deputy Speaker, Sir, as a strategy to further enhance collection of VAT, the committee recommends the modernization of Electronic Tax Register (ETR) machines to include GPRS, which stands for "General Package Radio Service". The ETR control system based on GPRS terminals is designed to provide wireless connection of ETRs with the Kenya Revenue Authority (KRA) central server. This means automatic management and control of ETR from a central point. The system solves the problem of updating collection of data from trade with ETR located in remote locations regardless of their number. Collection of VAT revenue can be remitted according to the desired programme to the designated KRA account on daily, weekly and monthly basis, thereby enhancing both the cash flow of KRA and tax revenue collection.

With the GPRS integrated system, VAT could be collected from the large numbers of small traders located anywhere in the country at minimum cost, thereby reducing tax evasion. The new generation GPRS integrated ETRs will, therefore, save costs and enhance collection of VAT.

Mr. Temporary Deputy Speaker, as I end my presentation of this report, I need to mention and highlight some key priority areas for the 2011/2012 Budget that members of this committee were able to capture when they listened to and engaged the public across the country in line with Article 221(5) of the new Constitution, which requires that these estimates in being discussed and reviewed, hon. Members must in a structured manner constitute themselves and conduct public hearings. This was done on the 24th of June, 2011 in seven centers of this country, as earlier stated, and on 28th in Nairobi. The people around the country wished that the public hearings, which were undertaken on two days, should have been carried out earlier in the Budget making process to ensure their views did inform, and were included in, the various tax proposals as well as the various allocation proposals. Based on the revisions, the key priority areas are as detailed below.

Mr. Temporary Deputy Speaker, Sir, top on the agenda of Kenyans as of today is food security or insecurity. On food security, the public is very concerned that the Government policy on this item is haphazard, unco-ordinated and does not recognize diversity in food needs in the country. The public also highlighted the frustration of the farmer regarding timely release of resources for procurement of farming inputs such as certified seeds, fertilizers and other farming implements. The committee is of the opinion that there is need to move away from consumption subsidies and emergency type of policies to more strategic production subsidy oriented policies to enable the farmers enhance production of food. Such strategies may include timely provision of affordable certified seeds, creation of a sustainable and inclusive strategy on livestock, food storage and post-harvest management, as well as research and development in the agricultural sector.

In this regard, hon. Members will recall that one of the recommendations in the BPS was for the Government to make adequate provisions in the 2011/2012 Budget for

building the required strategic food reserves and creation of a sustainable and inclusive livestock development fund meant for off-take and restocking with an initial capital of, at least, Kshs1 billion. In 2011/2012 Budget, Kshs1 billion has been provided for strategic grain reserve. However, only, Kshs400 million has been provided for the livestock off-take fund.

The next big issue is the question of youth unemployment; this was faulted by the public as a strategy being used by the Government to alleviate the suffering of young people. Indeed, in most of the areas we visited, young people do not support the *Kazi Kwa Vijana* initiatives since it does not recognize skills and is not on a long term employment solution. An effective way of addressing the challenges of unemployment of our youth is to help them develop their skills in entrepreneurship and supporting them in small business development. Youth unemployment is a significant problem in Kenya. Kenya's economy is currently dependent on agriculture. However, the youth are quickly moving from the rural areas to urban centres in large numbers.

Therefore, most new entrants to the labour force must choose between working in small scale enterprises and being self employed. These factors have led to high levels of youth unemployment. Available data and statistics from the Kenya Bureau of Statistics indicate that 60 per cent of the Kenyan population is under the age of 35 years, whereas Kenya's unemployment rate is estimated to be over 30 per cent among the working age youth and adults. This, indeed, is a very high figure compared to the status that other countries in our economic level of development find themselves in. A further estimated 64 per cent of our unemployed persons comprise the youthful population.

Mr. Temporary Deputy Speaker, hon. Members are aware that the resources that have been provided for small scale enterprises are being channelled through private banking institutions as opposed to the existing Government institutions, for instance, the Kenya Industrial Estates, which had a wide network in the country, and can train and equip the youth to take up such endeavours. The public and, in particular, the young people brought out the plight of the educated and skilled youth who are sprawling in the country side, unemployed, idle or are under-employed.

The Committee, therefore, recommends that in order to generate employment, there is need to revise, and invest in all local industries such as the Pan-African Paper Mills, Numerical Machining Complex, textile industries like Kicomi and Rivatex; and Ramisi Sugar company, among others, so that we are able to provide and create gainful employment for our young population.

On provision of basic social services, during the Nairobi public hearing, the Committee was particularly moved by the plight of persons with albinism in Kenya. These are people who cannot enjoy a simple stroll in the sun without the risk of developing cancer, but who out of stigmatization are openly relegated to the confines of the Jua Kali Sector, where they are continuously exposed to the damaging effects of the sun. The Committee was presented with a moving story of Agnes and Master Victor. Agnes lost her eyesight to the ravaging effects of cancer, but is luckier than those who have lost their lives. Master Victor was the young boy who needs a guarantee to lead a normal life like every other Kenyan. However, he runs the risk of ending up like Agnes if he does not have access to sun screen considered only a luxury item by the Government. The Committee, therefore, recommends that funds be urgently voted to provide free sun screen to these people and provide more cancer screening machines.

Mr. Temporary Deputy Speaker, Sir, the public was also concerned on the access to health facilities, and in particular, the shortage of health staff and drugs. The Government has not met its obligation of allocating 15 per cent of the national Budget to the health sector in line with the Abuja Declaration, to which Kenya is a signatory. The Committee recommends that additional resources be provided to recruit additional medical personnel, adequate equipment and drugs.

Mr. Temporary Deputy Speaker, Sir, turning to matters of the education sector, the public is concerned about the perpetual shortage of teachers in public schools. Indeed, the public indicated that the better off members of society are able to take their children to private schools whereas the ordinary Kenyans have no option other than taking their children to public schools, whose teacher/pupil ratio is very worrying. The Committee, therefore, recommends that additional resources be voted for the employment of 28,000 teachers; and that those currently serving on temporary basis would be the first ones to be employed on permanent and pensionable terms and the remaining being from fresh recruitments.

Mr. Temporary Deputy Speaker, Sir, on infrastructure, the public appreciates very much the efforts the Government is making on the ongoing expansion and enhancement of urban roads. However, there are areas and regions where there is no tarmac road at all. This negatively affects business and makes it difficult for farmers to transport their produce. The public were also concerned over the slow and poor quality of road works in some areas. The public recommends that there is need for affirmative action when it comes to resource allocation, so that areas without good roads receive a little higher percentage of total budgetary allocations for the road sector to be able to bring them at par.

On railways, the public are concerned that the railway transport subsector has been left to degenerate and thus recommend that the rehabilitation of the existing railways network be extended to other areas and regions, so that the cost of transport of wananchi can come down.

Mr. Temporary Deputy Speaker, Sir, on energy, the public is concerned over the access and cost of energy. The cost of energy is high on account of transmission and fuel, therefore, it is important that more funds be allocated to rural electrification to improve on access in order for more rural areas to be covered. More funds should also be allocated to geothermal development in order to bring down the cost of energy through provision of alternative sources. You are aware that even as we speak today, we have an announcement by the Kenya Power that this country will experience rationing of power beginning today. This only exacerbates the concerns of the general public and Kenyans as a whole.

On issues of security and defence, the Committee noted that security is one of the most important determinants of investor confidence. It was the view of the public that the allocation of funds to boost security operations is not enough. They expressed the need to increase the Budget for the provincial administration and internal security sector, and ensure the equipping of the police to combat rising crime levels. Further, we, as a Government, need to ensure police officers should be sufficiently remunerated and provided with suitable housing in order to boost their morale.

Mr. Temporary Deputy Speaker, Sir, hon. Members do recall that this House resolved that institutions involved in the implementation of the Constitution be

adequately funded. In particular, the House resolved the levels of expenditure that should be provided for the Judicial Service Commission, the Kenya National Assembly, and the Electoral Commission. However, a review of the Budget proposal submitted to this House by the Deputy Prime Minister and Minister for Finance indicates that the provisions for Vote D29 for the National Assembly is lower than the recommended level by Kshs800 million. The Committee recommends that this House approves Vote D29 which was laid in this House by the Vice-Chairman of the Parliamentary Service Commission as it is the one that was abiding to the resolution of this House on the Budget Policy Statement.

As much as Kenyans overwhelmingly voted in the affirmative action on the new Constitution, many are still unaware of the fulfillment of the full implications of this dispensation. The Committee was informed that inadequate provisions were made for civic education. After a careful review of the Estimates of the Ministry of Finance Recurrent Estimates, we were able to establish that Kshs2 billion had been provided for the activities related to the implementation of the Constitution and, therefore, recommend that some of these funds be re-allocated to the Ministry of Justice, National Cohesion, and Constitutional Affairs which is at the centre of facilitating the various activities and institutions required for the implementation of the Constitution.

Hon. Members will also recall that the Minister, during his 2010 Budget Speech, outlined some austerity measures on various items of expenditure which were aimed at reducing the overall non-essential expenditures in the Government. A review of the 2011 Budget proposals indicates that these measures seem to have been reversed and the Government is back to business as usual.

The hard times that we find ourselves in require or call for hard decisions. The general public is already tightening its belt because of the hard economic times that we find ourselves in. The Committee, therefore, recommends that the Budget proposals for these items that were over-provided or are non-essential be reversed back to the original policy and level as was in the 2010/2011 Budget. This is because even that time, the Government and its departments was still able to undertake its mandate to the full. We are only calling upon the Government, as a Committee, to ensure the levels in terms of revenue expenditure are upheld in the 2010/2011 Budget.

The Constitution has completed the transition of Parliament from a budget-approving legislature to a budget-making legislature and has brought openness and accountability in the Budget process. The Committee is concerned that some Budget documents, for instance, the Estimates of Revenue and Expenditure for State corporations for 2011/2012 exhibited perceived mathematical errors. In addition, the Revenue Estimates Book does not show the line for withholding tax which is a critical component of the income tax. It is imperative that any budget document must be understandable, simple, clear and may need to be printed or presented in Kiswahili or have a Kiswahili version in future as was recommended or required by the public.

In addition, the Committee is concerned at the slow pace of the Government in moving to programme-based budgeting which is a basic tool which supports the Medium-Term Expenditure Framework (MTEF). The Committee recommends that the Government moves with speed from input-based budget to output-based programme budgeting framework. Further, the Development Budget needs to have an attachment that

gives specific projects the envisaged total costs as well as the expected time of completion.

Mr. Temporary Deputy Speaker, Sir, in view of what the Committee was able to receive from the public in compliance with Section 221(5) of the Constitution, the Committee makes the following recommendations:-

1. In future any revenue target revision must be agreed upon with Parliament.
2. As the Finance Bill, 2011, is being reviewed by the relevant Committee of the House, the Minister shall be required to disclose the gains and losses from each of the proposed remedial measures.
3. In the process of reviewing the Finance Bill, 2011, the issue of zero-rating of all products be adequately considered so as to ensure that those items that are not a priority to common *mwananchi* are removed from the designated list of zero-rated items.
4. The Value Added Tax Bill be brought to Parliament for passing and implementation not later than October, 2011.
5. The Minister considers modernizing Electronic Tax Registers machines to make them General Packet Radio Service (GPRS).
6. Convinced of the imperative need to address the pathetic condition of most former Members of Parliament, the Committee agrees and, therefore, recommends that the Akiwumi Report which was adopted by the Parliamentary Service Commission be operationalized so that former Members of Parliament are able to continue earning a monthly pension not less than the Commonwealth minimum recommended of an equivalent of US\$1,000 per month.

The Committee further recommends that the Parliamentary Service Commission introduces a Bill to amend the Parliamentary Service Pension Act to provide that those Members of Parliament who served for one-term qualify for some pension.

I must, hereby, notify hon. Members and the public for general information that the Budget Committee, contrary to media reports, has not necessarily alluded to the Akiwumi Report as far as their salaries are concerned. What the Committee is saying is that the Akiwumi Report that recommended minimum monthly pension which was adopted by this House on 30th June, 2010 be operationalized.

7. As resolved by the House, the Budget for the Ministry of State for Defence be separated to reflect allocations to each of the three arms of the Defence Forces and General Administration.

8. To enable Kenyans with albinism live a decent life, Kshs100 million be allocated for purchase of sunscreen to be availed to them free of charge. In addition, Kshs150 million be allocated for the purchase of three cancer scanning machines to be distributed to Coast General Hospital, Kenyatta National Hospital (KNH) and Nyanza Provincial General Hospital. These projects should be operationalized by the Kenya Medical Supplies Agency (KEMSA).

9. The Committee further recommends, as is required by Section 221 (5), that an additional 28,000 teachers be employed on permanent and pensionable terms by absorbing 18,060 intern teachers and an additional 10,000 teachers.

(Applause)

To this end, Kshs5 billion be allocated to achieve this purpose.

10. That Kshs2.4 billion be transferred from Vote D31 in the Ministry of Education to the Teachers Service Commission (TSC) under Recurrent Expenditure, Vote R47.

11. To boost food security, the following measures should be provided.

(a) Kshs500 million should be provided for affordable certified seeds which should be supplied timely, and there should be no Genetically Modified Organisms (GMOs).

(b) There should be an increase of funding for the Livestock Development Fund to Kshs800 million by providing an additional Kshs400 million, which is now less by half.

(c) The Government should provide an additional Kshs1.1 billion for the Strategic Grain Reserve (SGR) for the production of locally grown cereals and preferably for use by the National Youth Service (NYS).

(d) To open up the rural areas, an additional Kshs4 billion should be allocated to the Rural Electrification Authority.

(Applause)

This should be financed from the following areas; Kshs2 billion from the dividend income earned from preferential shares of KPLC owned by the Government and the Ministry of Energy; and, Kshs2 billion to be allocated from Vote D30, Item 0243, Sub-Item2630200.

12. To boost the provision of alternative sources of energy, an additional Kshs3 billion be allocated to Geothermal Development Corporation (GDC) for drilling in Menengai. To this end, Kshs3 billion under the Ministry of Energy, Vote D30 Item 3110500 – KenGen – be revised to zero.

13. To ensure that there is a peaceful, united and harmonious integrated Kenyan society, Kshs100 million should be allocated to the National Cohesion and Integration Commission.

14. To fully operationalize the Judges and Magistrates Vetting Board, Kshs160 million should be allocated to this entity.

15. That Kshs150 million be allocated to the Political Parties Tribunal. This is an important body especially as the 2012 elections near.

16. To fully automate the Lands Registry, which is a key prerequisite for collection of composite tax for county governments, Kshs650, 346,484 should be allocated for this purpose.

17. To equip our hospitals with the necessary tools and human resource so as to offer medical services adequately, Kshs234 million should be allocated for hiring of medical personnel.

18. Kshs1 billion under Vote D07, Head 137 Item 2640500 be allocated to fund development for small scale micro enterprises and for the Youth Fund; it be allocated to the Kenya Industrial Estates, which has a nationwide network.

19. Kshs845 million be allocated for cash transfers to seniors, orphans and vulnerable women and communities and, specifically, Kshs300 million, Kshs200 million and a further Kshs200 million and another Kshs145 million respectively be allocated to the elderly, orphans, Women Enterprise Fund and grants to the women.

(Applause)

20. Mr. Temporary Deputy Speaker, Sir, to achieve comparative advantage in agricultural potential across the regions, Kshs1.1 billion be reallocated from Kshs8.5 billion earmarked for irrigation under the National Irrigation Board in the Ministry of Finance to go towards ensuring that the regional authorities that undertake agricultural activities as specified are also given a task to do.

21. Kshs63 million be allocated from the Kshs2 billion set aside by the Communications Commission of Kenya (CCK) for the purchase of frequency to the Kenya Information Communications Board for Business Processing Outsourcing (BPO), that is IT-enabled services marketing activity.

Mr. Temporary Deputy Speaker, Sir, in line with the principle of maintaining macro-economic stability, the Committee further recommends that the following areas be rationalized to create savings so as to fully fund the above mentioned priority areas. This is to ensure that the funding proposals that the Committee of this House is recommending are not necessarily overshooting the curve of the Ministry of Finance, which is at Kshs1.15 trillion, but are only endeavouring to shift, reallocate and apply resources where there is value for money.

To achieve this, Mr. Temporary Deputy Speaker, Sir, the Committee identified and recommends the following areas to be rationalized to create savings so as to fully fund the above-mentioned priority areas.

1. The provision of budget reserves under the Ministry of Finance be revised to zero, as this is a miscellaneous allocation.

(Applause)

This will free resources amounting to Kshs2 billion.

2. Under the Ministry of Finance, Vote D07 Head 137, that is Economic Affairs, and Sub-head 2640500071 - Financial Services – be revised to zero to free resources worth Kshs2 billion.

3. Hard times require hard decisions. With this in mind, foreign travel and subsistence and other transportation costs, including those of the Kenya National Assembly, should be maintained at the level approved in 2010/2011 – that is last year – and this will free resources amounting to Kshs206,733,281.

The allocation for Head 2210500 on printing, advertising and information supplies and services, this allocation be reduced by 50 per cent to create savings of resources amounting to Kshs1,807,318.

(5) We are also suggesting that allocation for hospitality supplies and services be cut--

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

Mr. Mbau: With those remarks, I wish to move and call upon my Vice-Chairman, Mr. Alfred Sambu to support.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Sambu, you are at liberty to continue from where your chairman left.

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, I rise to second the Motion. Before I make my own remarks, may I just conclude the remarks that were supposed to be concluded by my chairman. Continuing with the same number five, the allocation by hospitality supplies and services to be cut by 25 per cent to get savings amounting to Kshs1,076,690,038.

(6) The budget for office and general supplies and services should be allocated for the same amount as was in the revised estimates of 2010/2011. This will result in a saving of Kshs487,509,880.

(7) The allocation for purchases of vehicles be reduced by 50 per cent, except the allocation for the Ministry of State for Provincial Administration and Internal Security, that is the police, as well as the purchase of ambulances under the Ministry of Medical Services. This will create a saving worth Kshs971 million.

(8) In line with the overall principle of re-orientating expenditure to priority areas, the grant to non-governmental organizations under Head D07 Subhead 0422 Item 221300 be revised to zero. This will free resources amounting to Kshs200 million.

Under the Ministry of Finance, Head 136 D07 Item 221300 Other Operating Expenses, be revised to zero to free resources amounting to Kshs250 million.

(10) A sum of Kshs1 billion be re-allocated under the Ministry of Finance, Item 2211300 as operating expenses under Vote R07 Head 1350000 Headquarters.

(11) The item of furniture and fittings, telephone, telex, facsimile and mobile phone services and courier and postal services be maintained at the same level as it was in 2010/2011. This will create savings of Kshs264,405,967.

(12) Additional funds amounting to Kshs845 million under Vote D18 Head 558 Item 2640500 in the Ministry of Gender, Children and Social Development and other capital grants and transfers be revised to zero.

In conclusion, the above proposals of new areas of funding and re-allocation do not add an extra burden to the fiscal framework. Indeed, the Committee has adhered to total gross expenditure ceiling as presented by the Deputy Prime Minister and Minister for Finance of Kshs1,153,000,000,000. Therefore, the recommendations by the Committee do not create additional financing gap.

With that I now beg to second this Motion.

Mr. Temporary Deputy Speaker, Sir, this is the first budget under the new Constitution. It marks a radical departure from the past. It is the first budget whereby Parliament has the express authority to review the estimates and make adjustments which should be considered before the Budget is approved.

Also, for the first time in the history of this country, the public has been given an opportunity to openly critique the Budget and give their recommendations on how it can be re-organized in order to better address their needs and priorities.

Mr. Temporary Deputy Speaker, Sir, I seek to point out that the Budget Committee is the relevant committee as indicated in the Constitution under Article 221(4) and (5).

Article 221(4) says:-

“Before the National Assembly considers the estimates of revenue and expenditure, a committee of the assembly shall discuss and review the estimates and make recommendations to the Assembly.”

Article 221(5) says:

“In discussing and reviewing the estimates, the Committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendation to the National Assembly.”

Any adjustments that the Budget Committee has made to the Budget, therefore, are well within its powers as conferred by the new constitutional dispensation and thus the Committee has not overstepped its mandate.

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

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

Madam Temporary Deputy Speaker, I would like to take this opportunity to dispel the public impression that the Budget Committee took advantage of the responsibility bestowed on them to mischievously insert a Clause that will see Members of Parliament increase their salaries.

Let it be known that the Budget Committee only highlighted the plight of retired hon. Members of Parliament, most of whom are living below the poverty line and sought to request the House to consider their welfare as proposed by the Akiwumi Tribunal.

The Committee is not saying that Parliament adopts the Report as the Report was already adopted on 30th June, 2010. So, we are now recommending that this Akiwumi Report, already adopted by this House, be operationalized.

Madam Temporary Deputy Speaker, the Budget is not an exclusive tool of the Ministry of Finance, neither is it a preserve of Members of Parliament. Rather it is a national policy document in which all citizens must play a part. Therefore, when the public cites wastage of public resources in the manner in which the Government conducts its business through buying of say, flowers or office furniture and other supplies, it is the responsibility of Members of Parliament as the representatives of the people to reduce the wastage.

Madam Temporary Deputy Speaker, it has been said again and again, and I reiterate, the youth unemployment is a ticking time bomb. Members of Parliament are aware that short term strategies employed by the Government to address the unemployment situation in the country have been faulted by the public. Strategies that will generate more meaningful and permanent employment should, therefore, be given priority. These include rehabilitation and revamping of existing industries such as Numerical Machine Complex, the textile industries like Kicomi and Rivatex and, of course, Pan-African Paper Mills.

The high cost of energy is raising the cost of doing business and driving investors out of the country. This has had the effect of worsening the unemployment situation in the country even as substantial resources have been allocated to the energy sector in the proposed budget.

Madam Temporary Deputy Speaker, the food situation in this country is deeply disturbing. Drought and famine have become a regular pattern in the country. Every four to five years, the rains fail and we experience severe famine. As much as climate change has been blamed for this, these are also the negative effects of poor planning. In order for

this country to address the issue of food insecurity, there is need for long-term strategies that will eradicate hunger once and for all. It is high time that this country learnt to put its money where its mouth is. If we truly intend to achieve the Vision 2030, then there is need to re-orientate our thinking from business as usual to business unusual.

Food insecurity, unemployment, national security and creating an enabling environment are among the high priority sectors that the Budget should give preference to. Even with the resource constraints, hard times have to be met. It is in this spirit that the proposed re-allocation of some resources has been made. Resource re-allocation should, therefore, be seen in that light. From my understanding of the information in this report, we have informed the Committee of Supply to release the Budget that will ensure greater participation of Parliament in the Budget process.

In conclusion, I note that what the Deputy Prime Minister and Minister for Finance tabled before this House was his expenditure proposal, but the people of Kenya have given their recommendations. The Budget Committee report, tabled before this House, has taken into account the views of the members of the public. It is, therefore, the people's Budget.

I support.

(Question proposed)

Mr. Mbadi: Madam Temporary Deputy Speaker, I rise to support this Motion subject to an amendment. I propose an amendment to insert an additional subparagraph xxii after sub-paragraph xxi under Paragraph 37 to read as follows:-

“Additional funds amounting to Kshs1,771,944,050 be made available to the Ministry of State for Provincial Administration and Internal Security to take care of increased salary for police officers as per the recommendations of the Philip Ramsey Commission and a further Kshs1 billion be allocated to the Strategic Grain Reserve in addition to that proposed in sub-paragraph xi of paragraph 3”.

I also propose an additional new sub-paragraph xiii after sub-paragraph xii under Paragraph 38 on page 14 to read as follows:-

That Kshs2, 771,944,050 be re-allocated under the Department of National Security Intelligence Service (NSSI) item R450 (General Administration and Planning).

My reason for proposing this amendment is that if you will recall, in 2010/2011, this House allocated Kshs9.7 billion to the NSIS. Later in the Supplementary Budget, we gave additional Kshs900 million to the same agency. If you add that, it amounts to Kshs10.5 billion. In this financial year, this has been enhanced by over Kshs2.7 billion. We sought an explanation as to why this was necessary. The Departmental Committee on Defence and Foreign Relations told us that they also had a problem because the NSIS Budget is not itemized. Therefore, in their recommendation, which is in this report as the Minutes of the 78th Sitting, they recommended that “the NSIS should in future itemize its Budget for scrutiny, transparency and accountability”. I do not see why we should give the NSIS additional funds when, for example, we have not provided enough for stocking our Strategic Grain Reserve.

If you look at what is happening in Turkana, as a country, we need to get our priorities right. Instead of giving the NSIS money to spend in areas which are not very

transparent and some of which are not really for the benefit of this country, it is important that this money is put into proper use. On page 9, my Committee observed that:-

“The issue of equipping the police to combat the rising crime levels was emphasized. Furthermore, police officers should be sufficiently remunerated and provided with suitable housing in order to boost their morale”.

You are aware that currently, the police officers are on a go-slow. Our security is paramount and we need to give additional funds for police officers to be properly remunerated. If this money is made available, I have consulted and I have learnt that it will help to give an eleven per cent salary increase to the police officers. If you add this to the Kshs2.3 billion, which is available in the Ministry, then you can increase their salaries by 28 per cent as was agreed with the Government. I pray that this House finds favour with my amendment and approves it. I ask hon. Linturi to second the amendment.

Mr. Langat: On a point of order, Madam Temporary Deputy Speaker. The recommendations of the Budget Committee were not having any impact on the overall expenditure ceiling. I would have expected the Member to confirm to us whether his proposed amendment has any effect---

The Temporary Deputy Speaker (Dr. Laboso): Is that a contribution or a point or order, hon. Langat? Hon. Linturi, can we have the amendments seconded?

Mr. Linturi: Madam Temporary Deputy Speaker, I want to take this earliest opportunity to dispel the fear from the Member for Ainamoi and tell him very clearly that this particular amendment will not have any effect on the overall Budget. So, we are completely in order to make this amendment.

This amendment is really informed by the need to look at the priorities of this country; to understand clearly whether we need to fund or give money to the NSIS at the expense of the Kenya Police that is on a go-slow and that requires money to boost their morale? Those that have an idea of what happens at the NSIS will agree that in the last Budget, the NSIS has purchased an aeroplane that is not necessary or a priority. We have information that this money is in excess of what they need. This is money that is used for politics at the expense of the priorities in this country. Motor vehicles have been seen going to the Central Bank, namely, vans stashed with cash and driven all the way to their headquarters at the expense of the priorities of the common mwananchi of this country.

I beg to second this amendment. It is for this Parliament to decide what is right for this country and what is not.

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

Ms. Karua: Madam Temporary Deputy Speaker, I rise in support of this amendment. I want to congratulate the hon. Member for moving it.

Madam Temporary Deputy Speaker, you will recall that police reforms were an agreed priority right from Agenda Four. We need the police reforms to get underway, so that we can be assured of our security under a transformed police force before the next general election. This amendment is necessary.

Every Member of Parliament and every Kenyan knows of the dire food crisis in many parts of this country. I am grateful to note that this will not alter the Budget in the sense that the equivalent amount being removed from the NSIS is what will go to the police to top up for the reforms, and the balance will go to the Strategic Grain Reserves.

I want to urge my colleagues that we support this amendment, so that we can move forward and improve the situation in the police reforms and food security situation in the country.

I beg to strongly support.

Mr. Midiwo: Madam Temporary Deputy Speaker, I rise to support this amendment. In so doing, I want to thank hon. Mbadi for knowing that we need to boost our Strategic Grain Reserves. I want to go further and say that this House this afternoon needs to recommend further the mode of distribution of food to our people, who are dying of hunger. Much of this money disappears in the distribution channels. Therefore, this amendment needs to be enhanced, so that whenever this money goes to the relevant Ministry, our people, who are dying in the less fortunate parts of this country, can actually be given this money to buy the food they require. Let us, for once, stop forcing Kenyans to eat maize. Our people need to have choices.

Hon. Members: Enough! Enough!

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

Mr. Midiwo: Madam Temporary Deputy Speaker, I have been ordered to support. Therefore, I support.

Mr. Langat: Madam Temporary Deputy Speaker, I also rise to support the amendment by hon. Mbadi because it is meant to make this country have the right priorities. Internal Security is a very key area. Many people are suffering because of insecurity.

Secondly, people in Turkana and other parts of the country are dying of hunger. We, therefore, need to support this amendment. I want to thank my friend for moving the amendment and recommend him for another term in Parliament in future.

I beg to support.

Mr. Muthama: Madam Temporary Deputy Speaker, I stand to oppose the amendment.

The reason for this is that Mr. Mbadi is a Member of the Budget Committee. We did this Report together, a vote was taken. It is wrong for Mr. Mbadi to ---

Mr. Mbadi: On a point of order, Madam Temporary Deputy Speaker. Is it in order for Mr. Muthama to insinuate that I am disagreeing with the Report yet it is very clear I dissented to that specific aspect and he was present in that meeting? The Chairman even instructed the Committee clerk to minute this dissent.

Mr. Muthama: Madam Temporary Deputy Speaker, even if Mr. Mbadi rejected the Report then, he lost. He is part and parcel of the Report.

Mr. Ethuro: On a point of order, Madam Temporary Deputy Speaker. Is it in order for Mr. Muthama who is an accomplished Kenyan bourgeoisie to claim that Mr. Mbadi who has consistently persisted on this matter all the way from the Nyeri meeting-- - We are saying we are looking for additional resources for what must be agreed as national priorities. Is he disputing the fact that starving Turkanas are a national priority for this country?

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, allow Mr. Muthama to complete his contribution.

Mr. Muthama: Madam Temporary Deputy Speaker, Mr. Mbadi was part and parcel of the Report that was written by the Committee. By insisting and rejecting the Report, he is losing the point.

The Temporary Deputy Speaker (Dr. Laboso): Mr. Muthama, did Mr. Mbadi dissent in the Committee? Is it on record?

Mr. Muthama: Madam Temporary Deputy Speaker, he voted and he lost. So there is a difference between voting and losing, and dissenting.

The Temporary Deputy Speaker (Dr. Laboso): Mr. Muthama, dissenting voices are allowed so long as it is recorded! We have allowed it even before.

Mr. Muthama: Madam Temporary Deputy Speaker, as much as we may want the money to be removed from the NSIS, that is a very serious and important security organ in this country. If it is not funded---

The Minister for Water and Irrigation (Mrs. Ngilu): On a point of order, Madam Temporary Deputy Speaker. Would it be in order to ask the mover to respond?

(Applause)

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Members! We are not going to run this House like a market place. We are going to listen to everybody's view.

Mr. Muthama, complete your submission, please!

Mr. Muthama: Madam Temporary Deputy Speaker, I intend to oppose.

The Minister for Transport (Mr. Kimunya): Thank you Madam Temporary Deputy Speaker for the opportunity to ---

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Dr. Laboso): What is your point of order, Mrs. Odhiambo-Mabona! It should not be anything to do with what Mr. Kimunya is going to say.

Mrs. Odhiambo-Mabona: No, it is not anything to do with what he is saying. I am only asking, would I be in order to call on the mover to respond?

The Temporary Deputy Speaker (Dr. Laboso): I have ruled that we are allowing Mr. Kimunya to make his contribution!

The Minister for Transport (Mr. Kimunya): Thank you Madam Temporary Deputy Speaker, for your protection.

I believe we all fought so hard for the current Constitution because we wanted a document that protects the rights of everyone---

Mr. Mbadi: On a point of order, Madam Temporary Deputy Speaker. Given the interest that this matter has generated, would I be in order to ask that we extend the sitting time to complete Order No.8?

(Applause)

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, that is usually raised one hour before time. It is too late!

The Temporary Deputy Speaker (Dr. Laboso): Mr. Mbadi, that is the right position. We should have done it one hour before.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I rise to oppose this amendment on the grounds that much as I appreciate the

need for allocating more money for the police and these other reforms, taking it from another department does not necessarily solve the problem. We could still do the same by extending the Budget but not necessarily taking it from another Vote. When you take it from another one you are basically saying one thing is more important than the other.

Hon. Members: Standing Order No.1! Standing Order No.1!

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

Mr. Kimunya, have you completed your contribution?

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I have not even begun my contribution. I am entitled to my contribution.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Speaker. With your indulgence could you please extend the sitting time under Standing Order No.1? You have the discretion under this Standing Order.

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, it is now time to interrupt the business of the House. This House is, therefore, adjourned until tomorrow, Wednesday, 27th July, 2011 at 9.00 a.m.

The House rose at 6.30 p.m.