

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 18<sup>th</sup> January, 2011

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### PRESIDENTIAL ASSENT TO ANIMAL TECHNICIANS AND FINANCE BILLS

**Mr. Speaker:** Hon. Members, I have the following Communication to make regarding the Animal Technicians Bill, 2009, and the Finance Bill, 2010.

You will recall that the Animal Technicians Bill was passed by the National Assembly with amendments on 28<sup>th</sup> October, 2010 while the Finance Bill was passed with amendments on 8<sup>th</sup> December, 2010. I have now received returns dated 11<sup>th</sup> January, 2011, from the Attorney-General in respect of both Bills, submitted pursuant to Standing Order No.125 (5). The returns indicate as follows:-

1. The Animal Technician Bill, 2009 was assented to by His Excellency the President on 21<sup>st</sup> December, 2010 at 11.00 a.m.
2. The Finance Bill, 2010 was assented to by His Excellency the President on 21<sup>st</sup> December, 2010 at 11.00 a.m.

I thank you.

*(Applause)*

**Mr. Speaker:** Let us move on to the Question by the Member for Turkana Central.

**Mr. Ethuro:** Mr. Speaker, Sir, I want to wish you a happy new year, given the fact that I am the first hon. Member this year to ask a Question.

### QUESTIONS BY PRIVATE NOTICE

#### PROPERTY RIGHTS FOR PASTORALISTS/ MARGINALIZED GROUPS

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

(a) What plans has the Minister put in place to secure property rights to all pastoralists, marginalized and other minorities in the Republic of Kenya?

(b) Could the Minister indicate the number of landless people in the country and especially the minorities such as the Endorois, IIIchamus and Ogiek?

(c) What steps has the Minister taken to comply with the resolution of the African Union case of the Endorois in February, 2010?

**Mr. Speaker:** Thank you, the Member for Turkana Central. May I then follow the example of the Member for Turkana Central and wish all the hon. Members a happy new year.

*(Applause)*

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, for purposes of the record, may I also wish you and the House a happy new year.

**Mr. Speaker:** Thank you very much.

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, I have not been able to give a copy of the written answer to the Member for Turkana Central, but if he has no objection, I will proceed to answer the Question.

I beg to reply.

(a) The Government through my Ministry---

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir. Since I was in the mood of the "happy new year", I did not want to question the Minister for not availing a copy of his written answer. However, now that he has owned up and being a man of honor, could you give me a bit of time so that I can look at the copy of the written answer? I will be ready to prosecute the Question maybe after the next Question.

**Mr. Speaker:** Fair enough! We will revisit this Question after we have gone through the rest.

**Mr. Ethuro:** Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Minister, please, note that.

#### PREMATURE RETIREMENT OF SENIOR MILITARY OFFICERS

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

(a) Could the Minister explain the reason for the premature retirement of Major-Gen. Enock Sasia, Brig. Arthur Owour, Col. Joseph Ojwang, Lt. Col. Rono and Lt. Col. Machasiu from the Armed Forces?

(b) Could he provide a list of senior military officers whose services were extended, the respective justifications for the extension of service and explain the apparent skewed application of the decision?

(c) Could the Minister also explain the correlation between the premature retirements and the procurement of the 42 AMR Parhard Light Armored Cars from M/s Sayamar (an Israeli company), APC from a single-sourced South African Company, *KN Nyayo* and *KN Umoja* war ships from Financantieri of La Special based in Italy and F5 Aircraft from the Government of Jordan, and clarify whether the Government got value for money in the deals?

**The Minister of State for Defence** (Mr. Haji): Mr. Speaker, Sir, I beg to reply.

(a) Major-Gen. Enock Sasia, Brig. Arthur Owour, Col. Joseph Ojwang, Lt. Col. Rono and Lt. Col. Machasiu voluntarily opted to resign from their commission for reasons that are confidential between them and the Defence Council. In the premises, it will be improper for me to breach this confidentiality. Perhaps the hon. Member would care to approach the officers directly.

(b) All officers of the Kenya Defence Forces serve at the pleasure of His Excellency the President who is the Commander-in-Chief of the Defence Forces. The Commander-in-Chief is responsible for among things the extension of the services of senior officers on the recommendation of the Defence Council.

(c) The Defence Forces neither has 42 AMR Panhard Light Armoured Cars in its inventory nor has it entered into a contact with M/s Sayamar Limited to procure the same. There is no correlation between the resignation of the senior officers and the procurement of Armored Personnel Carriers from South Africa, and F5 Jets from the Jordanian Government.

There is no procurement of Kenya Navy Ships, Nyayo and Umoja, from Fincantieri of Italy. What is being done on the ships is a mid-life refit which was long overdue. The technical evaluation of all our procurement confirms that the Government of Kenya will obtain value for its money in that the firms awarded the contract are the most responsive.

**Mr. Ochieng:** Mr. Speaker, Sir, I am really surprised by the Minister's answer. There have been a lot of flaws in the procurement of various military hardware or items in the Armed Forces of late. It is a matter that is causing a lot of concern among members of the public. I wonder whether the confidentiality the Minister has talked about is related to the flawed process of procurement of the F5 Jets that were purchased and yet they cannot take off and the navy ships that have been under repair for very many years. Could he confirm whether there is any relationship?

**Mr. Haji:** Mr. Speaker, Sir, from the outset I said that the resignation of the said officers has no relationship with the procurement of military equipment. I am not aware of any flawed procurement process that is being alleged. Unless the hon. Member wants me to say something that I am not aware of--- He has not told me the way he wanted this Question answered.

**Mr. C. Kilonzo:** In the last sentence, the Minister has said that the technical evaluation confirms that the Government of Kenya will obtain value for its money. If that is the case, I would like to refer to a letter from the Office of the President addressed to Sayamar Limited where the Government has questioned value for money. The letter says:-

"It is further noted that nine of the engines already fitted in the Parhard Light Armored Cars failed."

If the Office of the President questions value for money with regard to some of these contracts, how come the Ministry of Defence does not see any evil in this? Or, is the policy of the Ministry to see no evil?

**Mr. Haji:** Mr. Speaker, Sir, I am not aware of the letter referred to by the hon. Member. I would like to peruse it so that I can answer him.

**Mr. Speaker:** Mr. C. Kilonzo, could you table that letter so that the Minister can have a look at it?

**Mr. C. Kilonzo:** Mr. Speaker, Sir, this letter is from the Permanent Secretary.

**Mr. Speaker:** Order, Member for Yatta! Please, table the letter!

*(Mr. C. Kilonzo laid the letter on the Table)*

**Mr. Speaker:** Mr. Minister, will you, please, peruse that letter? In the meantime we will proceed with other Questions as there may be.

**Mr. Mungatana:** On a point of order, Mr. Speaker, Sir. I do not have a copy of my Standing Orders here, but I am not sure whether we can sincerely discuss in the

open Parliament matters that regard procurement of military hardware. We are talking about our national defence! Is it possible for this matter to be handled in the relevant Departmental Committee so that the Minister can be open to the hon. Members who will be in that Committee? I am not sure whether we can discuss this matter the way we are doing.

**Mr. Speaker:** Order, the Member for Garsen. What I would expect the Minister to do is that if he is not comfortable to answer any question or giving any information in public, then he is supposed to make that plaint and I will decide. However, as long as the Minister is prepared to proceed, I want to believe, therefore, that the information is not classified, confidential or secret.

**Mr. Konchella:** Mr. Speaker, Sir, a number of officers were retired prematurely. When I retired from the Military, I stated that I was going to join politics. Now, we are being told here that the Member who asked the question can go and ask them. Surely, how could officers be retired forcefully if was not meant to conceal corruption which is going on in the base and protect those who are involved in corruption? So is the Minister in order to mislead this House?

**Mr. Speaker:** Order, Member for Kilgoris! Do you have a question to ask or are you standing on a point of order? You caught my eye because you were going to ask a supplementary question but it turns out that you have no question to ask.

**Mr. Konchella:** Mr. Speaker, Sir, why were the officers allowed to retire without following the due process yet under military law, these officers were supposed to actually be court martialled? They should not be forced out of the Military and continue getting pension out of the public coffers yet they are facing corruption cases.

**Mr. Speaker:** Very well! Mr. Minister, you can now answer the last question.

**Mr. Haji:** Thank you, Mr. Speaker, Sir. First of all, let me deal with the question asked by my brother in connection with this letter.

**Mr. Speaker:** First, answer the question by the Member for Kilgoris and then revert to the question by the Member for Yatta.

**Mr. Haji:** Thank you very much, Sir. Joining the Army is not a conscription with strict rules to stay on the job. If an officer opts to retire, we have no reason to refuse him to retire. In this case, the officers concerned decided to retire and they were allowed to retire---

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

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

**Mr. Haji:** Mr. Speaker, Sir, with regard to this letter, the question asked was in regard to AMR---

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

**Mr. Ochieng:** On a point of order Mr. Speaker, Sir. Is the Minister in order to mislead this House that if a military member decides to walk out, he is allowed to do so, yet they did it in a row? There must have been circumstances that led them to leave in a row. Could he explain further? Is he in order to mislead us?

**Mr. Speaker:** Mr. Minister, are you misleading the House?

**Mr. Haji:** Mr. Speaker, Sir, I am not misleading the House. It is ironical that the Questioner is insisting that if somebody wants to leave the job, he should be forced to stay on the job. That is not the procedure in any system of government or in

any system in the public life. So the officers opted to retire and they were allowed to retire.

**Mr. Speaker:** Have you completed your answer to the Member for Yatta?

**Mr. Haji:** I have not completed that, Mr. Speaker, Sir. The question which was before me talked about AMR whereas this letter talks about AMF. There is a difference of the calibre of the AMR he is talking about. Therefore I will answer when he asks the question in an appropriate manner.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, the reason why I read the last sentence is, because it is general. I am not referring to the AMR. I am referring to the AML. So is he now indeed confirming that when it comes to AML, there is no value for money, because that is his Ministry?

**Mr. Speaker:** Order, Member for Yatta! Let the Minister answer the question.

**Mr. Haji:** I am sorry, Mr. Speaker, Sir, I was distracted. Could he repeat that question, please?

**Mr. Speaker:** Could you do that, precisely?

**Mr. C. Kilonzo:** I think the Vice President and Minister for Home Affairs was trying to assist him but rest assured nothing will save him. My question was not on AMR. It was not AML. He has given a general summary there that they get value for money when they procure goods and services. Is he indeed now confirming that when it comes to the AML, Light Armour cars, we are not getting value for money because his own PS has brought this matter to question?

**Mr. Haji:** Mr. Speaker, Sir, as I said earlier, this question is outside the question which was before the House. I will answer that question appropriately when it is asked by the hon. Member. In any case, I will also reiterate that it has become very common that questions are being asked on the security of this nation. Although I would say that I am not prepared to answer, I am answering the question to the best of my knowledge and I would like the hon. Members to understand it that way.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I am rising under Standing Order No. 214 which requires that strangers can be withdrawn from this Chamber to allow us an opportunity to debate a sensitive matter. I rise on this point of order because the hon. Konchella and the hon. Mungatana have indicated earlier that they have some dossier which they would like to table in this House to bring to light the rot in the procurement procedures within the Department of Defence. I would like to invite you to look at the Standing orders and rule that all strangers leave the House so that these documents can be brought here. We want to deal with that rot at the DoD.

**An hon. Member:** This is impunity!

*(Mr. Y. Haji stood up in his place)*

**Mr. Speaker:** Hold your horse, Mr. Minister! Please, resume your seat!

*(Loud consultations)*

Order, Member for Nyando! Order, hon. Members! The Member for Ikolomani is within the parameter of the Standing Orders in asking that strangers be ordered to withdraw from the galleries but in accordance with the provisions of Standing Order No. 214, the way to proceed would be for me to put the question and if the House resolves that strangers be excluded, they then will be. But for purposes of the business which is before the House this afternoon, that would be disruptive. So I

want to direct that this question is deferred to tomorrow afternoon and I will then put the request by the Member for Ikolomani to the House. If the House so decides, then I will exclude the strangers.

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

**Mr. K. Kilonzo:** Thank you, Mr. Speaker, Sir. Whereas I have no issue with your ruling, I just want the House to benefit with the information that this matter on the procurement procedures in the Ministry of State for Defence is already before the Committee of this House which deals with matters of defence and foreign affairs. Now that the matter is before the Committee, will it be prudent to let the Committee to handle it and the portion which is left out, which is on the premature retirement of the officers concerned which does not in any way risk our national security, be debated in the House? I seek your direction.

**Mr. Speaker:** Yes indeed---

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

**Mr. Konchella:** Mr. Speaker, Sir, while I cannot presume what your decision will be, I request that as you make your judgment that the Committee may continue, let us look at the interest of the officers who are likely to lose their jobs because of what I had indicated earlier; that there is a problem, so that the Committee or any other authority can handle these things speedily so that the officers can go back to work.

**Mr. Speaker:** Order! Member for Kilgoris, those are matters that I would listen to as the Question appears on the order paper tomorrow afternoon.

**Mr. Mututho:** Thank you, Mr. Speaker, Sir. You have made previous rulings on a similar matter, and your ruling was--- I may not be verbatim because I do not have it here, that where a committee is handling a particular business and it comes before the House, the House cannot be stayed by Committee proceedings. Essentially this means that what we are doing here cannot be stopped by what the Committee is doing at the backyard. Thank you.

**Mr. Speaker:** That maybe a useful contribution. I will bear that in mind.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, as you bear that in mind, I wish to plead with you because this matter could be best handled at the Committee level because of its nature. In any case, Committees are open to all Members.

Mr. Speaker, Sir, the Minister and his staff have already appeared before the Committee. I was, indeed, surprised that he could allow this Question to come here knowing very well that it was before the Committee. I do not know whether he is losing focus on his work.

**Mr. Speaker:** Indeed, that is a useful contribution.

Mr. Minister, if you were aware that this matter was already before a Committee of the House, surely, then you ought to have raised some objections or, at least, a concern, which then the Chair would have taken time to consider.

**Mr. Haji:** Mr. Speaker, Sir, in the first place, I was not here when this Question appeared on the Order Paper. I was outside the country.

Secondly, I have not lost any focus because this Question appeared on the Order Paper. I do not think I have a right to determine which Question appears on the Order Paper. If it is within my right to do so, I wish to know.

**Mr. Speaker:** Order, Mr. Minister. Please, resume your sit.

You certainly have a right to object or raise a concern even if you do not do it so well; I will be able to help you to package it.

*(Laughter)*

Order, hon. Members! Leader of Government Business!

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I beg of the Chair, in the light of what the hon. Member for Yatta and the hon. Member for Mutito have said with regard to this matter being before the Committee, that the question be deferred.

Mr. Speaker, Sir, I am aware of the Standing Order as raised by my friend from Ikolomani. However, in those days when we wrote that Standing Order, we did not then have this openness of society; that a Member sitting where the hon. Member for Naivasha is sitting could always send us a Short Message Service (SMS) or receive a SMS. Therefore, in terms of secrecy of the proceedings of this House, I am sure it will not be difficult for me to convince you that we need even to have a relook at that very Standing Order, so that we can act in the best interest of this nation at all the times .

Mr. Speaker, Sir, I, therefore, want to plead with you to review your ruling since a Departmental Committee is already dealing with this matter, so that the matter does not come up tomorrow afternoon.

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

**Mr. Speaker:** Order, hon. Members! As I said, I have heard all the salient aspects of this matter and I will be in a position to give comprehensive directions. Now instead of tomorrow, I will do so, on Thursday afternoon, so that I consider it carefully.

**Mr. Linturi:** On a point of order, Mr. Speaker, Sir, on the same matter.

**Mr. Speaker:** Order, Mr. Linturi!

I will give directions on this matter on Thursday afternoon. So, the Question will appear on the Order Paper. Before any business is transacted on it, I will give directions. I will stick to all those issues and concerns as have been raised.

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

**Mr. Speaker:** Order, Mr. Linturi!

I have already said that in my opinion and, indeed, I am entitled to it, because it is only me sitting in this position that can judge the mood of the House and can determine what is relevant, important and what is of value to enable me give directions. Up to the point that I have made that communication, I am satisfied that I have received all the information that I require from the House. So, Mr. Linturi, I am afraid you are out of order.

I do not wish to hear you on the same matter.

#### HUMAN-WILDLIFE CONFLICT IN NAIVASHA

**Mr. Mututho:** Mr. Speaker, Sir, I be to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) Is the Minister is aware that in the recent past, five people and hundreds of sheep and goats have been attacked and killed by wildlife in Naivasha?

(b) What immediate measures is the Minister taking to relocate all rogue buffaloes to the park; and when will he compensate farmers for destruction of crops by buffaloes and baboons?

(c) Could the Minister state the measures taken by the Ministry over the last five years in Naivasha to solve human-wildlife conflicts?

**Mr. Speaker:** Minister for Forestry and Wildlife!

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, perhaps, we could have this matter also stood over until tomorrow because I have received communication from hon. Dr. Wekesa that he is actually on the way from Kitale and clearly, he may not be able to be here in good time to answer this Question. So, I think it could be deferred until tomorrow afternoon.

**Mr. Speaker:** Very well, Member for Naivasha, can we deal with this Question tomorrow afternoon?

**Mr. Mututho:** That is okay, Mr. Speaker, Sir.

*(Question deferred)*

**Mr. Speaker:** Very well, Member for Karachuonyo!

VANDALISM OF TELECOMMUNICATION  
PLANTS/ELECTRICITY EQUIPMENT

**Eng. Rege:** Mr. Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Is the Minister aware that the crime of vandalism of telecommunication plants and electricity equipment is rampant, with Telkom Kenya having experienced 225 fibre cuts and 117 copper cuts in 2010 alone?

(b) Could the Minister confirm that the inadequacies in the Kenya Information and Communications Act and the Penal Code are contributing a great deal to Commission of the crime and, if so, what legislative action and other measures has the Ministry taken to curb the vice?

(c) Is the Minister planning to make the necessary amendments to the relevant Statutes and introduce a new offence to address the economic sabotage?

**The Minister for Information and Communications** (Mr. Poghismo): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

**Eng. Rege:** On a point of order, Mr. Speaker, Sir. May I ask the hon. Minister to furnish me with the written response, if he as any.

**Mr. Speaker:** Order, Member for Karachuonyo. Mr. Minister, do you have a written answer?

**The Minister for Information and Communications** (Mr. Poghismo): Yes, Mr. Speaker, Sir. We sent the answer yesterday. If it has not reached the hon. Member, I can give him an extra copy.

**Mr. Speaker:** Could you, please, supply him with a copy?

*(Mr. Poghismo gave a document to Eng. Rege)*

Proceed, Mr. Minister!

**The Minister for Information and Communications** (Mr. Poghismo): Mr. Speaker, Sir, I now beg to reply.



**Eng. Rege:** On a point of order, Mr. Speaker, Sir. I have just received this document. Could I ask for extra time to study the answer?

**Mr. Speaker:** Mr. Minister, will you, please, bear with us? We will revisit it after we have gone through the rest of the Questions.

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

**Mr. Speaker:** Order, Member for Turkana Central!  
Member for Gwasssi!

## ORAL ANSWERS TO QUESTIONS

### *Question No.564*

#### IRREGULAR AWARD OF CONCESSION TO RVR

**Mr. Mbadi** asked the Minister of State for Public Service what disciplinary measures the Government has taken against the public officers mentioned in the 16<sup>th</sup> Report of the Public Investments Committee adopted by the House, for their involvement in the irregular concessioning of the train operations to Rift Valley Railways by the Kenya Railways Corporation.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Speaker, Sir, I beg to reply.

The 16<sup>th</sup> Report of the Public Investments Committee recommended that the Director of the Kenya Anti Corruption Commission should carry out investigations to establish the roles played by the Chief Officers from the Treasury and the Ministry of Transport in awarding the concession to Sheltam Railways/Rift Valley Railways. The PIC Report did not recommend any disciplinary measures to be taken against the Chief Officers who participated in awarding the concession to the railway company. However, it did recommend further investigations on the process of concessioning. Consequently, no disciplinary action has been instituted against any of these officers.

**Mr. Bahari:** On a point of order, Mr. Speaker, Sir. I need your guidance on this matter because with regard to matters of PIC, there are clear procedures on how to handle them by way of a memorandum, where the relevant Ministry is contacted and appropriate action is taken.

I was wondering whether this has become a summary matter. When will the Minister for Public Service handle all those matters?

**Mr. Speaker:** Minister, are you able to respond to that?

**Mr. Otieno:** Mr. Speaker, Sir, indeed, the Treasury prepared and sent to the Office of the Speaker the relevant memorandum and, possibly, a ruling could be made by the Speaker. But since the original Question by Mr. Mbadi was asking about disciplinary measures and, really, it was not exact as to the manner in which this Question should have been treated, I thought we should dismiss Mr. Bahari's question for being superfluous.

**Mr. Mbadi:** Mr. Speaker, Sir, Chapter 6 of the Constitution of Kenya is very clear on the requirements on the part of public officers with regards to integrity. Not long ago, the Minister for Foreign Affairs and the Permanent Secretary had to step aside before the Report of the House was debated. Early last year, we had a case where five permanent secretaries were asked to leave office because of pending investigations by the Kenya Anti-Corruption Commission. My question is: Why is the

Executive applying double standards in terms of asking for accountability from its public officers? That is because we have---

**Mr. Speaker:** Order! Do not explain why you are asking the question!

**Mr. Mbadi:** Mr. Speaker, Sir, I am not explaining why I am asking the question. I am expounding on why it is very necessary for the Minister to have a clear picture of what I am asking. One of the officers mentioned in that Report is the Investments Secretary and her integrity in terms of advising on investments--- As we speak, she is still in office. That, to me, looks like the Government is not serious with the management of its affairs. Could the Minister explain why the Government has applied double standards in the treatment of its officers? It asked some to step aside because of parliamentary reports while some are still in office as is the case presently.

**Mr. Otieno:** Mr. Speaker, Sir, the Committee recommended investigations. There is no basis of taking any disciplinary action until we get the report of that investigation.

*(Mr. Shakeel and several hon. Members  
stood up in their places)*

**Mr. Speaker:** Order, hon. Members. Mr. Shakeel, the way you are conducting yourself is bordering on disorderly conduct. Just be careful so that we get some order there!

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to evade my question? I was very clear. I said that in February last year, the Government asked five permanent secretaries to step aside because they were facing investigations by KACC. Here is a case where two Ministers, one Permanent Secretary and the Investments Secretary of the same Government are confronted by investigations by KACC. Why is it that they have not been asked to step aside to pave way for investigations? In fact, one of the Ministers is in charge of the Ministry of Transport at the moment, where investigations are supposed to take place.

**Mr. Otieno:** Mr. Speaker, Sir, the Committee, in its wisdom, did not ask anybody to step aside when it asked KACC to proceed on this matter. In other cases, the Committee recommended stepping aside to facilitate investigations. It means that the Committee did not have adequate information. It was referring the matter to KACC to investigate. But it did not, in its wisdom, request any stepping aside to facilitate that investigation.

**Mr. Mbadi:** Mr. Speaker, Sir, I want to find out from the Minister how investigations will take place in that Ministry and that State Corporation when the Minister in charge is among the people to be investigated?

**Mr. Otieno:** Mr. Speaker, Sir, I think we all know that KACC is very competent and can investigate whether you are in office or not. At an appropriate time when there is need to step aside, they have procedures to follow.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to continue misleading the House, while he knows very well that the reason why Ministers and public officers are asked to step aside is – and in their own words when they step aside – it has become a tradition to say that they are leaving to give room for fair investigations? The main reason for stepping aside is to give room for fair investigation. It is not that a body is incompetent or not. Could he explain why, this time round, you are leaving those officers in office and yet, other officers in a similar situation were asked to step aside to give room for fair investigations?

**Mr. Otieno:** Mr. Speaker, Sir, the hon. Member should be framing his Questions more accurately. He asked if there are any disciplinary actions taken and I am answering that the Committee did not recommend any disciplinary action. The Committee asked KACC to investigate. As a result of the KACC investigations, there may be other steps to be taken, including who should leave what office for what action to proceed.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Could the Minister indicate why the five permanent secretaries in the report of the maize scandal were asked to step aside? Could he also indicate where---

**Mr. Speaker:** Order, Mr. Mbadi! You certainly are out of order! You asked a supplementary question which the Minister answered. You are now proceeding to ask further questions apart from your supplementary question. If you stand on a point of order, then, surely, you must bring yourself within the provisions that enable what you are saying to be a point of order!

**Mr. Mbadi:** Mr. Speaker, Sir, I will rephrase my point of order.

**Mr. Speaker:** Order! Mr. Mbadi, you know this is not a *baraza*! This is not a little place where you now design and experiment; say one thing in a different form and then you want to rephrase. A point of order is raised and it either passes as a point of order or it fails. In your case, it failed because, instead, of raising a point of order, you asked two further questions. So, Mr. Mbadi, we really cannot revisit that matter. At any rate, the Minister has said a number of things that you also need to address yourself to; that the Committee in certain cases asks that the public servants or Ministers step aside. In this case, the Committee had not asked in its Report – I have seen that Report – that anybody steps aside. If that is so, then even your Committee is applying double standards. So, you need to go back and check the records of your Committee even before you push the Minister further.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to apply double standards? In the Report that the Government asked the Permanent Secretary in the Ministry of Education to step aside, could the Minister prove that in that case, there was anything that asked that Permanent Secretary to step aside? As far as I am concerned, that Minister stepped aside to give room for investigations. Why is it that in this case, investigations are going on and yet, the officers are in office? Is that not double standard? Is it in order for the Government to apply double standards? There are some cases where public officers have stepped aside without any report asking them to do so. I have cited the case of the Permanent Secretary in the Ministry of Education. Could the Minister prove otherwise?

**Mr. Speaker:** Can you allow the Minister to respond?

**Mr. Otieno:** Mr. Speaker, Sir, we make decisions on the basis of the content of the issues that arise. Where the content is of a type that stepping aside is the way forward, then that direction is taken. The other examples he is giving, there was content that warranted such steps forward. In this particular case, the Committee itself did not even see it fit to suggest that anybody should step aside. There was insufficient content in that Report and I have said that the Treasury has already addressed the Office of the Speaker on this particular matter; on the basis of the facts that were laid before the Committee, which need to be further reviewed and possibly the Committee will make a different decision after receiving all this feedback from the Treasury. So I am not contradicting myself; I am talking in terms of content which warrants what way is forward.

*Question No.583*

## PROJECTS UNDERTAKEN IN MANDERA EAST

**Mr. M.H. Ali** asked the Minister for Water and Irrigation:-

(a) what substantial projects, if any, has the Ministry undertaken in Mandera East, in the last 3 years;

(b) whether he could consider constructing a dam in order to harvest runoff water from the nearby hills, which cause flooding in the town every rainy season; and,

(c) what plans the Ministry has to ensure a sewerage system is constructed in the town, which now has a population of over 100,000 people.

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): Mr. Speaker, Sir, I beg to reply.

(a) My Ministry has undertaken over 33 water projects in Mandera East in the last 3 financial years. The list of water supplies is shown in Annex A.

(b) My Ministry through the Northern Water Services Board (NWSB) has considered and developed proposals for construction of two dams at Kamor, Golja and Dasheeq Ahmed Nur in Mandera East. The two dams each with a capacity of 100,000 cubic meters will harness flood waters during the rainy seasons for domestic, livestock and irrigation purposes.

The proposal for the two dams has been presented to the development partners for funding and the Inter Governmental Agency for Development (IGAD) has shown interest in funding the construction of the dams once the designs are complete. As soon as the Ministry receives the firm offer of support, I shall inform the hon. Member appropriately.

(c) My Ministry, through the NWSB, has carried out feasibility studies on development of a sewerage system in Mandera Town. The Board is currently undertaking a detailed design for the sewerage system and expansion of Mandera Urban Water Supply. The designs will be completed in this financial year, 2010/2011, after which funds will be sourced from development partners.

**Mr. M.H. Ali:** Mr. Speaker, Sir, whereas I am happy with the answer by the Assistant Minister, he has talked of designs being worked on in the next financial year. Could the Assistant Minister commit the Ministry to do these designs now so that we can be able to harvest the water during the coming rainy season? As you know very well, at the moment, Mandera is one of the areas affected by drought and one of the problems right now is water. We do not have water and when the rains start, this water is emptied into River Dawa, which also is emptied into the Indian Ocean.

Could the Assistant Minister commit himself to this House that the designs will be completed this year so that from the next financial year, the works can start?

**Mr. Waititu:** Mr. Speaker, Sir, as I have just said, the designs will be completed during this financial year and we expect that we shall get a development partner who will give us funding for the projects.

Mr. Speaker, Sir, during the next financial year, my Ministry will make sure that we allocate funds to every constituency so that they can prioritize the work that they are supposed to do.

**Mr. Ethuro:** Mr. Speaker, Sir, this Question is driven by the current drought that northern Kenya is experiencing. Part "b" of the Question is asking the Assistant Minister when they will construct a dam in Mandera. The same Ministry promised Bura Constituency Bangale Dam on the 18<sup>th</sup> of December, 2010. This House has

information about 400 boreholes that were drilled by the same Ministry, but were not in northern Kenya.

When is the Ministry going to prioritize the areas of Turkana, the entire north eastern, upper eastern and Bura in order to make sure that the dams are constructed within reasonable time in order to mitigate the effects of frequent droughts?

**Mr. Waititu:** Mr. Speaker, Sir, last week we had a very fruitful meeting where we had invited all hon. Members of Parliament and the chief officers from my Ministry. We had about five hours of discussions for the hon. Members from the dry areas to prioritize what they want our Ministry to do. In that meeting, we agreed that we are going to have another meeting where we shall invite all the district water officers so that we can have an interactive and a co-ordinated effort between them and the hon. Members of Parliament. What was very surprising is that some of the hon. Members who have problems in their own areas did not come for that meeting.

Mr. Speaker, Sir, what I can promise is that, I can convene another meeting immediately with the hon. Members and the district water officers and other chief officers from my Ministry---

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead the House? We have no problem with this desire to convene as many meetings as possible – we wish him well – but even in those meetings where we have agreed on certain dams or projects, including Watotankari; what we are saying is that, he has not delivered. What is the point of holding those meetings when you cannot deliver on the previous commitments?

**Mr. Waititu:** Mr. Speaker, Sir, what I can say is that some of the works that are said to have been done at the grassroots, it is only the hon. Members who can tell us at the headquarters that the work has not been done. That is why I thought that if we could have that interactive meeting, then the hon. Members could tell us when the district water officers are here, that certain water projects were never done and may be even the money was misappropriated. It is the hon. Members who can tell us the truth on the ground because they are the ones who come from those areas.

**Mr. James Maina Kamau:** Mr. Speaker, Sir, could the Assistant Minister tell us the main criteria used to decide on the areas in which dams will be dug up? You will find that in an area like Kandara where I come from, it is so dry. We have never had a dam and there is no water. So, people are dying of hunger.

**Mr. Waititu:** Mr. Speaker, Sir, some of the projects that are supposed to be done by my Ministry are prioritized by the District Development Committee (DDC) at the grassroots or at the district level, and they come to the Ministry headquarters. What we normally think is that the hon. Member has an input in that report from the DDC. The hon. Member should write a letter and bring it to my Ministry Headquarters so that it can be considered together with the other projects.

**Mr. Mbadi:** Mr. Speaker, Sir, the Assistant Minister, in his response to hon. Ethuro, did say that it is us, hon. Members of Parliament who need to inform the Ministry whether these projects are implemented or not. Does your Ministry have supervisory capacity to follow up the projects that you are implementing in various parts of this country? Do you really require hon. Members to bring this information to your attention or do you need to employ supervisors and engineers to go and check whether these projects are implemented?

*(Applause)*

**Mr. Waititu:** Mr. Speaker, Sir, I called the last meeting because I had been talking to hon. Members privately and I had received so many complaints. I talked with my Permanent Secretary and the officials there and we decided that it is important that we meet hon. Members so that we can discuss this matter.

**Mr. Chanzu:** On a point of order, Mr. Speaker, Sir. I think the Assistant Minister is not getting the point. The point is that when Members of Parliament are making noise or complaining---

**Mr. Speaker:** Order, Member for Vihiga. You have stood up on a point of order. So, please be careful to ensure that you actually raise a point of order.

**Mr. Chanzu:** Is the Assistant Minister in order to get to the point of saying that it is Members of Parliament who should be supervising jobs instead of getting the officers to give information on the projects that are on-going? He is misleading the House.

**Mr. Speaker:** Order, Member for Vihiga. Mr. Assistant Minister, you need not address yourself to that. That is just a different opinion. Do not address yourself to it.

**Mr. Kivuti:** Mr. Speaker, Sir, could the Assistant Minister look into this Question from a national perspective? Looking at the amount of water that flows into the Indian Ocean and Lake Victoria, year in, year out, and the droughts that we have been having every year, could the Assistant Minister tell us how many billions of cubic metres of water flow out of this country and what steps he will take? How many cubic metres of water are we likely to harness each year?

**Mr. Waititu:** Mr. Speaker, Sir, I agree with the hon. Member that we should as much as possible try to harness water from rain. We are taking every step possible to address this. Just two weeks ago, we had a tour to Egypt, and negotiated for some dams that we will construct very soon.

I want hon. Members to understand that arising in the meeting we had last week, we agreed that there is a problem with regard to the structure that we have in our Ministry---

**Mr. Speaker:** Order, Mr. Assistant Minister! You are also bound to live within the Standing Orders. You only stand and answer a question which is asked. When you want to give a Statement then you ensure that you catch the Chair's eye at a suitable moment to give a Statement. Otherwise, please stick to the rules. Be relevant all the time.

**Mr. M.H. Ali:** Mr. Speaker, Sir, you heard the Assistant Minister say that the Ministry of Water, through the Northern Water Service Board, is working on the feasibility study on whether there is need for a sewerage system in Mandera. To me, that shows how light the matter is to him. It is 47 years since Independence and Mandera Town is the Mandera County headquarters. It has been a district headquarters since Independence, but it has no sewerage system. Could the Assistant Minister commit himself firmly that this sewerage system will be up and running before the county government is in place?

**Mr. Waititu:** Mr. Speaker, Sir, I have informed the hon. Member that we are doing the detailed designs which will be completed this financial year, so that we can source for development partners who can fund that project.

*Question No.588*

MISMANAGEMENT/CORRUPTION AT MUMIAS  
SAVINGS AND CO-OPERATIVE SOCIETY

**Mr. Washiali** asked the Minister for Co-operative Development and Marketing:-

(a) whether he could explain why officers who have been surcharged by the High Court are still serving at Mumias Savings and Credit Co-operative Society (MOSACCO) in Mumias; and,

(b) what he is doing to address gross mismanagement and corruption in the said SACCO.

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware of any official in the above mentioned co-operative society who was surcharged by the High Court for any reason. However, the Commissioner for Co-operative Development instituted an inquiry into the affairs of MOSACCO in 2003, and some recommendations were made by the inquiry team for the Commissioner to implement in accordance with Section 58, Parts 3 and 4, of the Co-operative Societies Act, 1997, which was revised in 2004.

Some affected officials went to the High Court seeking to quash the entire report but without success. The Commissioner then issued notices of intention to surcharge certain former officials as recommended in the report.

On appeal, two committee members were pardoned for reason of having been in the committee for barely three months before the inquiry was conducted. These were Messrs. Calcanos Olimwa Ekesa and James W. Mapao.

Mr. George Dipondo, the current chairman, was elected back after he had appealed to the Commissioner on grounds that some of the money he was being surcharged for was part of a criminal case against a consultant taken to court by the State.

The General Manager and the Chairman were prosecution witnesses in the case against AL Refrigeration and Beat Link Services Limited, which swindled the society of Kshs11 million. It would not have been proper for the Commissioner's office to pass judgment against Mr. Dipondo when the same matter was in a court of law.

Mr. George Dipondo had also appealed to the Minister for Co-operative Development and Marketing over the matter in accordance with the provisions---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Let us lower the level of our consultations so that we can hear the Assistant Minister. Order, Mr. Franklin Bett. You can actually find a place where to consult with your colleague instead of doing what you are doing, which is disorderly.

Proceed, Madam Assistant Minister.

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): Mr. Speaker, Sir, Mr. George Dipondo had also appealed to the Minister for Co-operative Development and Marketing over the matter in accordance with the provisions of the Co-operative Societies Act and subsidiary legislation. He is not in office illegally as it is being purported.

What is happening today is that there is a fight-back in the society by those whom the Chairman, together with the Ministry, had sent home for malpractices. There are those who are still inside but are scared of the war on corruption, and so have looked for a way of removing from office the current Chairman for their own

survival. As a Ministry, we do not condone such practice, because corruption must be fought at all costs.

(a) My Ministry has continuously monitored the operations of the society through spot checks and inspections. Where impropriety has been detected, appropriate action has been taken. The measures taken include suspension, dismissal, termination of service and taking legal action.

**Mr. Washiali:** Mr. Speaker, Sir, I am shocked at the answer from the Assistant Minister because she says she is not aware of anyone who was surcharged, yet I have a list here of names of officials of MOSACCO who were surcharged; the list is from the Ministry of Co-operative Development and Marketing. To add to that, there is a recommendation from the inquiry report, Recommendation No.19, which states that for having mismanaged the affairs of MOSACCO Society Limited, all persons who have served the society in the management and supervisory committees for the past five years should not hold any elective post in a co-operative society for 10 years as stipulated by Rule 30(g) of the Co-operative Societies Rules, which I would want to table alongside the list of those who have already been surcharged.

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

Mr. Speaker, Sir, I also have a letter with me from the Commissioner for Co-operative Development which in part reads as follows:-

“In view of the foregoing, the election of Mr. Dipondo stands null and void, hence you are advised to arrange for a fresh election”.

This was the Commissioner for Co-operatives advising the District Co-operatives Officer in the Butere/Mumias District at the time. I am wondering who this George Dipondo is, who is above the law and can go against the directives of the Registrar of Co-operative Societies and also the Commissioner, who in this case was Dr. Ndoiyo.

**Mrs. Kilimo:** Mr. Speaker, Sir, to answer the concerns of my colleague, I said that we are not aware of members who were surcharged by the High Court for any reason. His argument is based on the inquiry report which recommended the surcharging of the members, including Mr. Dipondo. But this was in 2003 before the Co-operatives Act was repealed in the year 2004. So, unless my colleague says that the revised Co-operatives Act should be implemented, but at that time Mr. Dipondo appealed to the Minister against the advice of the Commissioner of Co-operatives. He was given the benefit of doubt because part of the surcharging concerned a criminal case against consultants who had swindled the company of some money. So, he could not be surcharged as a person despite being in office. Under the recommendation of the Commissioner of Co-operatives that they hold elections--- Co-operative societies have the prerogative of choosing their own members. During the meeting, members said that they wanted Mr. Dipondo back and so, they chose him as the chairman.

**Dr. Khalwale:** Mr. Speaker, Sir, the struggle you see the Assistant Minister going through to try and defend Mr. Dipondo is because she is trying to confirm what we all fear in this country; that Ministers do not respect institutions of Government. After the new law – the one of 2004 - came into force and Mr. Dipondo realized that he was on the verge of being thrown out, he went to the High Court in Kakamega and appeared before Justice J.B.M Kariuki. On 19<sup>th</sup> November, 2004, while the new Act was in force, Justice J.B.M Kariuki, the presiding Judge ruled that Mr. Dipondo should not sit in that office. Why are you protecting him and not respecting the ruling that was made by the judge?



Mr. Speaker, Sir, allow me to table the ruling.

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

**Mrs. Kilimo:** Mr. Speaker, Sir, that ruling is not in our Ministry's possession. However, if there is any complaint from any society, it is from the members themselves. So, I would advise my colleague, the bull fighter, that members of MOSACCO should now raise a complaint as to why Mr. Dipondo is still in office against the ruling of the High Court. I do not even know who Mr. Dipondo is.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to avoid answering my question and hide in the fact that those members should raise a complaint when she knows that as a representative of the people of Kakamega County, they have send me to ask this supplementary question? Now that she knows that there is a ruling, why does she not use this opportunity to ask this chairman to vacate the office? He is stealing the co-operators' money.

**Mr. Speaker:** Madam Assistant Minister, are you aware of this ruling from the High Court sitting at Kakamega, in Miscellaneous Case No.146 of 2003?

**Mrs. Kilimo:** Mr. Speaker, Sir, I am not aware of that ruling.

**Mr. Speaker:** The ruling of a court is law. If it says something or otherwise, you must act in accordance with the decision of the court. So, you will have to acquaint yourself with this ruling. In the meantime, I will defer this Question for two weeks, so that you come back and satisfy the House that you have complied with the decision of the court, which you must!

**Mrs. Kilimo:** Much obliged, Mr. Speaker, Sir.

**Mr. Speaker:** Very well! Acquaint yourself with it.

*(Question deferred)*

*Question No.632*

DISCONNECTION OF ELECTRICITY SUPPLY  
TO MANYATTA POLICE STATION

**Mr. Speaker:** The Member for Manyatta is not here? The Question is dropped!

*(Question dropped)*

QUESTIONS BY PRIVATE NOTICE

PROPERTY RIGHTS FOR PASTORALISTS/  
MARGINALIZED GROUPS

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

(a) What plans has the Minister put in place to secure property rights to all pastoralists, marginalized and other minorities in the Republic of Kenya?

(b) Could the Minister indicate the number of landless people in the country and especially the minorities such as the Endorois, IIIchamus and Ogiek?

(c) What steps has the Minister taken to comply with the resolution of the African Union case of the Endorois in February 2010?

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

(a) The Government, through the Ministry of Lands, having listened to the land rights concerns of Kenyans, especially the pastoralists, marginalized and minority communities, undertook a holistic approach to these issues as raised by the Member for Turkana Central, by developing a National Land Policy. The National Land Policy that was heavily inputted by the pastoral and minority groups addresses pastoral land issues and land rights of the minorities, including historical injustices committed in areas where these communities are found. It should be noted that the Government has embarked on the implementation of the land provisions in the Constitution and the National Land Policy. Legislation for protection of property rights will be done in accordance with the constitutional principles and Article 60 which will allow communities to participate and chart their future in the use, access and sustainability of resources found within their environment. Articles 63, 68, 69, 70, 71 and 72 are very key to marginalized minority and pastoral communities' property rights, especially when implemented alongside Articles 183 to 199 of the National Land Policy.

(b) The Ministry does not have the actual number of landless people in the country. However, it recognizes that the situation is actual to the Endorois, Ilchamus, Ogiek and other communities spread in different parts of the country. It has also taken cognizance of the fact that landlessness can be situational, perceptual and futuristic depending on needs. To this end, the Ministry as a matter of policy has emphasized on securing land rights to these marginalized communities by proposing geographical mapping of their areas and resources. More importantly, the Ministry will develop a framework that emphasizes equitable access to land for use rather than ownership.

(c) The concept of access to land and natural resources for use is as spelt out in the African Union Land Policy Guidelines on land to the marginalized communities, the African Charter and the African Commission on Human and People's rights and better still, in our own Constitution in the case of the Endorois. Although I have a copy of the ruling on the Endorois community land complaint by the African Commission on Human and People's Rights, I have not received a copy of an authenticated or sealed copy of the ruling to enable me move the process forward.

**Mr. Ethuro:** Mr. Speaker, Sir, I thank the Minister for the comprehensive answer and the effort to deal with issues pertaining to pastoralists, minorities and marginalized communities. However, his efforts fall short of what we expect from this Government and this Minister in particular. In order not to be like the Minister who is talking about a situation of landlessness, perceptual and futuristic issues, I want to give him the real facts. The fact is that on 20<sup>th</sup> March, 2010, he went to a place and celebrated this ruling. This ruling makes the following recommendations – and he has a copy similar to mine. The ruling reads: It is in view of the above that the African Commission on Human and Peoples' Rights finds the respondent state, which is the Republic of Kenya, in violation of Articles of 1, 8, 14, 17, 21 and 22 of the African Charter. It recommends the following:-

- (i) Recognize rights of ownership.
- (ii) Ensure that the Endorois Community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rights.
- (iii) To pay adequate compensation to the community for all the loss suffered.

- (iv) Pay royalties to this community from existing economic activities and ensure that they benefit from employment possibilities.
- (v) Grant registration to the Endorois Welfare Community.
- (vi) Engage in dialogue with the complainant.
- (vii) Report on the implementation of these recommendations within three months from the date of notification.

Every May and November, the Kenyan Government attends the African Commission on Human and Peoples' Rights to make presentations. This ruling was made in February. It asked the Government to implement this ruling within three months. From February, 2010, the ruling should have been implemented by May, 2010. You went there and said that you were not ready. In November, 2010, you said that you were ready. The Minister has come to the House and said that he has a copy, but he needs a sealed copy. He went to celebrate this particular ruling. I want to ask the Minister a question.

The Kenyan Government threw out the case regarding the Endorois Community in 1998. They had to go to the African Commission. Even when the Commission agreed with them, the Government is still discriminating against the minority groups of this country by not implementing the recommendations that the Minister is fully aware of. He went to celebrate them. When will he implement those recommendations? You cannot feign ignorance, Mr. Minister.

**Mr. Orenge:** Mr. Speaker, Sir, in that celebration, I had agreed with the leadership of the community, together with the Kenya National Commission on Human Rights, who were hosting that event, that they should give me a sealed or an authenticated copy of the ruling because what the hon. Member is reading from is a publication of the Kenya Land Alliance.

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir. Whose responsibility is that? The Kenyan Government is a signatory to the African Charter like many other Governments. They make presentations--- They report progress on human and peoples' rights every May and November. Why should they put a burden on an already---

**Mr. Speaker:** Order! That is not a point of order. That is a matter of argument. Proceed, Mr. Minister.

**Mr. Orenge:** Mr. Speaker, Sir, the publication he is holding is by the Kenya Land Alliance. It is not even a publication of the African Union or the Commission on Human and Peoples' Rights.

**Mr. Speaker:** Order! I have ruled what the hon. Member has said in that purported point of order as out of order. So, proceed with your answer.

**Mr. Orenge:** Mr. Speaker, Sir, my answer is that, as soon as I get an authenticated sealed copy, I will proceed to take the necessary steps. I did, in a letter written---

**Mr. Mungatana:** On a point of order, Mr. Speaker, Sir. I did not want to interrupt the Minister. However, is he in order, being aware that the African Union endorsed on 4<sup>th</sup> February, 2010, the ruling of the Court of the Commission – and Kenya is a Member of the African Union? With the African Union's endorsement of that Commission Ruling, it becomes legally binding to the State. Is the Minister in order to come and say that he is not aware and that he needs a legally binding copy of the document and yet, we have an Ambassador in the African Union in Addis-Ababa? Is he in order?

**Mr. Speaker:** You have to improve that point of order. It is close to being a point of order. However, Mr. Minister, you may now respond.

**Mr. Orenge:** Mr. Speaker, Sir, I am saying that from the point of view that I have sat with the leadership of the community and the Kenya National Commission on Human Rights. The moment they give me the authenticated copy, I will be able to execute that order. I will take steps to execute that order. My learned friend is a lawyer and the fact that a High Court has made a decision, it is not implementable until you have a sealed order of the court to execute. Indeed, they have not responded to my letter---

*(Mr. Ethuro stood up at his place)*

**Mr. Speaker:** Order! Member for Turkana Central! Just allow the Minister to finish. I will allow your intervention. Mr. Minister, could you proceed and conclude?

**Mr. Orenge:** Mr. Speaker, Sir, I have said that immediately that issue was brought to my notice, I wrote to them in March last year to give me a sealed copy. If there was failure on their part, they should have advised me and I could get it after which I could have seen how to execute the court order. However, my understanding with the community was to get a sealed copy of the court order so that I could take the process forward. In any case, I know that my Ministry is part of the Government of Kenya. My Ministry was not enjoined to the suit so that I can appeal to them to get me a copy of that letter. They are saying that the Government is slow. As it emerges now, they are the ones who are delaying the process of getting that order.

**Mr. Ethuro:** Mr. Speaker, Sir, to allow the Minister to get away with this is promoting impunity.

**Mr. Speaker:** Order, Member for Turkana Central! You caught my eye on a point of order. So, proceed and raise it.

**Mr. Ethuro:** Mr. Speaker, Sir, I was proceeding. Mr. Speaker, Sir, you have just made a ruling on the issue of the Ministry of Co-operatives Development and Marketing. There was a ruling in the High Court of Kakamega, which the Minister should know about. We are demanding the same from the Minister!

**Mr. Speaker:** Order! Member for Turkana Central, please, resume your seat for a minute! With regard to the directions that I gave with respect to Question No.588 on the Order Paper, it was on the basis of an original ruling that bears the signature of the Judge and the date. So, in my judgment, which I am entitled to, which is objective, I was satisfied that I had a proper ruling of the court before the House. In this situation, I do not have the judgment, a certified order or an endorsed order. Surely, Member for Turkana Central, that cannot be the basis of your argument against what the Minister is saying.

**Mr. Ethuro:** Mr. Speaker, Sir, I agree if I was the one producing the document. That is the gist of my argument. I need to be heard very clearly. You cannot allow a Government to continue---

**Mr. Speaker:** Member for Turkana Central, please, make your point!

**Mr. Ethuro:** Mr. Speaker, Sir, my point is that the Government is under obligation; because it is a Member of the African Union--- It attends those meetings. I have explained everything. My good friend, Mr. Mungatana, who is a lawyer, as if being a lawyer is the only thing to be in this country, has just confirmed to him that the African Union agreed with the ruling of the African Commission Human and Peoples' Rights. Why should the Minister leave that burden to our poor community when the Government, including an embassy, can convey the same ruling to him?

**Mr. Speaker:** Order, hon. Ethuro! Are you saying that the members of the Endorois Community are unable to obtain the judgement of the court?

**Mr. Ethuro:** Mr. Speaker, Sir, relative to the Minister, they may be unable. However, if he insists, they can get it. Government Ministers are paid from our taxes, including those of the Endorois people, and he is under obligation to the people of the Republic to look for that document. He should do so because he attended a function to celebrate this ruling.

**Mr. Speaker:** Order, Mr. Ethuro! As I have heard the Minister answering this Question, he said that when he attended that function to celebrate the judgement, there was an agreement between him and the community. They undertook to avail a certified copy of the judgement to this Minister. It is not until now that you, Member for Turkana Central, say that the members of the community are unable to furnish him with the judgement, which then changes the scenario. If the Minister takes your word, then perhaps, he can answer on that basis.

**Mr. Orengo:** Mr. Speaker, Sir, in fact, and hon. M. Kilonzo can bear me witness because he is a senior Member of the Bar. There is a procedure for implementing foreign decisions and judgements. I cannot come with a judgement from the Supreme Court of the United States or even a court to which we belong and wave it here and say I can implement it. I need a sealed copy. They told me they were in a position to do so. They were there with their lawyers. I have been waiting and have written to them on several occasions. But be that as it may, within the context of the Constitution, if you look at Article 60, we are now implementing legislation, notwithstanding the ruling by the Tribunal, which will provide a framework in which this matter will be addressed fully. Within the new Constitution, Parliament is under duty to bring legislation in order to enforce or implement the rights of these marginalized communities. I urge the Member to read Article 60 of the Constitution and the consequential provisions that require of us to enact implementing legislation.

**Mr. Twaha:** Mr. Speaker, Sir, after the last elections, it was suggested that the party which the Minister belongs to seek legal redress in the courts. However, he was quoted as saying that they would not go to those courts. Does he still hold the same contemptuous view about our courts?

**Mr. Orengo:** Mr. Speaker, Sir, we are now engaged in the process of reforming the courts. If the Member had confidence in our courts, I would have heard him saying that the courts should stay the way they are. But within the constitutional framework, we have said that the Chief Justice must go and all the judges must be vetted. If there is any evidence of my view and the Member's view of the Judiciary, he got it by voting for a new Constitution, that there is no confidence in the Judiciary as presently constituted.

**Mr. Njuguna:** Mr. Speaker, Sir, while appreciating the answer given by the Minister, I would urge him to indicate to this House the measures he is taking to settle the crying Internally Displaced People (IDPs) and the Ndorobos who have been living in forests since time immemorial.

**Mr. Orengo:** Mr. Speaker, Sir, again, we need relevant implementing legislation. If I can refer my colleague to Article 63 on Community Land, there are provisions about making land available to these communities if those areas are considered traditionally occupied land, hunters' or gatherers' ancestral land and places of worship. All these are within the constitutional provisions. We are working on a National Land Commission Bill together with a Land Bill that will enable us to implement these provisions in the Constitution. There is now a constitutional framework for addressing these issues. Our old Constitution did not give us a framework for ensuring that these traditional and ancestral lands are protected.

I urge the Members to support the Land Bill when it comes to the House. They will see the provisions that cater for such cases in the Bill.

**Mr. Ethuro:** Mr. Speaker, Sir, now that you have requested the Minister to access this document, when will he do so? I am not dealing with an ordinary Minister. This is a Minister who was a Member of the negotiating team between the Party of National Unity (PNU) and the Orange Democratic Movement (ODM) to form the Coalition Government. At that time, he was acting like the other Attorney-General of the Republic. Even in the celebrations that he attended, he was accompanied by another Minister, namely, Prof. Sambili, and his chief lieutenant, hon. Mbadi from Gwassi. Could a Minister of this calibre and stature---

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Whereas I do not deny that I accompanied the Minister to the celebration with the Endorois people and actually I identify myself with the Endorois because I am also marginalized, I have heard hon. Ethuro saying that I am a lieutenant of hon. Orengo. Could he clarify that title because I have never known that I hold such a title?

**Mr. Ethuro:** Mr. Speaker, Sir, I was just trying to explain the relationship between the Member for Gwassi and the Minister for Lands, who participated in a Government function, which was promoted by the Kenya National Human Rights Commission. These are very substantive organizations.

**Mr. Speaker:** Address yourself to the discomfort of the Member for Gwassi that you are referring to him as a lieutenant of the Minister for Lands!

**Mr. Ethuro:** Mr. Speaker, Sir, I will do so by apologizing very profusely to my good friend. It was said so, with a light touch. I hold the Member for Gwassi with utmost respect and he knows it, just like I do to the Minister.

**Mr. Speaker:** That is good enough! That should appease the Member for Gwassi! Minister for Lands, proceed!

**Mr. Orengo:** Mr. Speaker, Sir, the Member for Gwassi should not be worried because in a public rally in Turkana, an old man stood up and said that hon. Ethuro is now the Orengo in the Tenth Parliament and the Minister was very happy with it.

I have written to our Mission to the AU to secure me a certified copy of the ruling. As soon as I get it, I will take the necessary steps. We need not worry about this ruling because within the context of our new Constitution, which goes beyond the recommendations of the ruling, we will bring implementing legislation in good time in order to deal with the problems, not just of this particular community, but even the Suba who are also a marginalized community. We need to deal with all such cases in a very comprehensive manner.

**Mr. Speaker:** Order, hon. Members! That brings us to the end of Question Time. We will now go to the next Order!

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

**Mr. Speaker:** Order, Member for Karachuonyo! If we undertook to revisit your Question, I am afraid, that is overtaken. Question No. 4 by Private Notice will have to appear on the Order Paper tomorrow morning. Minister for Information and Communications, please, be ready to deal with it tomorrow morning, at 9.00 a.m.

*(Question deferred)*

## STATEMENTS

### CRITERIA FOR APPOINTMENT OF EAC SECRETARY-GENERAL

**Dr. Eseli:** On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for East African Community regarding the appointment of the new Secretary-General for the East African Community. In his Statement, the Minister should explain why Kenya is going against the Treaty, which allows for the position to be rotational. Burundi or Rwanda should be the next holders of the position, and not Kenya. The Minister should also explain whether Kenya is intentionally reneging on our obligation to international treaties, given the move to de-bank from the Rome Statute. Could the Minister also confirm whether the “big brother” attitude by Kenya is what led to the collapse of the former East African Community?

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. Could we have an undertaking, Minister?

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I will communicate to the Minister, and we will have a response by Thursday, next week.

**Mr. Speaker:** It is so ordered!

Yes, Member of Parliament for Saboti!

#### EVICION OF SQUATTERS FROM MWAKIRINGO SETTLEMENT SCHEME

**Mr. Wamalwa:** On a point of order, Mr. Speaker, Sir. I rise to request a Ministerial Statement from the Minister for Lands on the circumstances under which squatters occupying a 100-acre farm in Kisauni, famously known as “Mwakiringo Settlement Scheme” were evicted, when they had been issued with allotment letters for which they had paid the requisite Government charges. They have now been turned into Internally Displaced Persons (IDPs) at a time when the country is trying to resettle all the IDPs.

I would also like the Minister to state in his Statement what measures the Government is putting in place to address the squatter problem at the Coast and other parts of Kenya, where similarly other Kenyans have been evicted, particularly from Agricultural Development Corporation (ADC) farms.

Thank you, Mr. Speaker, Sir.

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

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I will communicate the same to the Minister, and we should have an answer by Wednesday, next week.

**Mr. Speaker:** It is so directed!

Yes, Member for Isiolo South!

#### IMBALANCES IN COUNTY-BASED RECRUITMENT OF KWS RANGERS

**Mr. Bahari:** On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Forestry and Wildlife regarding the ongoing recruitment of rangers by the Kenya Wildlife Service (KWS). I would like him to explain why the recruitment exercise is being carried out at the county-level as opposed to other recruitment exercises, which were all held at the district level. In view of the fact that recruitment at the county level is disadvantageous to the people in the vast and arid counties, the Minister should clarify the methodology and formula

used to address any imbalance, marginalisation or discrimination that may arise as a result of the county-based recruitment.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. Could you give an undertaking, Deputy Leader of Government Business?

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I will communicate the same to the Minister, who is busy on that recruitment exercise. We should have an answer by Thursday, next week.

**Mr. Speaker:** Very well. It is so ordered.

Yes, Member for Bura!

**Dr. Nuh:** On a point of order, Mr. Speaker, Sir. I had sought two Ministerial Statements, one from the Minister for Information and Communications and one from the Minister for foreign Affairs.

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

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I believe those are outstanding Ministerial Statements.

**Mr. Speaker:** Yes, that is so.

**The Minister for Transport** (Mr. Kimunya): I will liaise with the Ministers, and we will give an answer by Thursday, next week.

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

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

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir. I thought the job of the Deputy Leader of Government Business is more than just being a conveyor of requests for Ministerial Statements and returns, especially when Ministerial Statements are outstanding. I thought he would have ensured that the Government worked very hard during the recess. We had to cut short our recess and come back, so that all the pending business could be finalised.

**Dr. Nuh:** On a point of order, Mr. Speaker, Sir. These Ministerial Statements have been pending since September, 2010. I have seen the Minister for Information and Communication walk out just a minute ago. I think this is doing a disservice to this House if Questions and Ministerial Statements are attended to at the convenience of Ministers. This House does not operate as per their calendars, and they should respect the calendar of the House.

**Mr. Speaker:** Deputy Leader of Government Business, you have heard those sentiments. Do you have any response at all?

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, indeed, this matter kept on coming up last year. The Minister was here at least by 4.00 p.m., ready to issue the Statements. In any case, the matter that was raised has since been overtaken by events, and that has been communicated to the hon. Member. However, because he wants the response put on record, we will have it officially put on the record of this House at the next available moment, which is Thursday, next week.

## CONSIDERED RULLING

ADMISSIBILITY/AUTHENTICITY OF HON. KABOGO'S  
DOSSIER ON DRUG TRAFFICKING



**Mr. Speaker:** Hon. Members, before we move to the next order, I have the following Communication to make.

Hon. Members, you will recall that on Wednesday, 22<sup>nd</sup> December, 2010, during the Afternoon Sitting, the Member for Juja rose on a point of order and tabled the following three documents:-

(i) a letter dated 20<sup>th</sup> December, 2010 from the said Member of Parliament, addressed to the Minister of State for Provincial Administration and Internal Security, and Acting Minister for Foreign Affairs, Prof. George Saitoti;

(ii) a document titled “Classified Information in the United States”; and,

(iii) a document which the hon. Member described as “dossier” containing the names of hon. Members said to be involved in drug trafficking.

Following the tabling of the documents, I undertook to acquaint myself with the documents and establish their authenticity, and thus the admissibility or otherwise of the same. The Chair has often had occasion to set out standards required to be met for the purpose of establishing the authenticity of documents. The standards include requirement for signatures on documents and some form of certification where a document other than the original has been tabled.

Hon. Members, the first document, which is the letter dated 20<sup>th</sup> December, 2010 and captioned “Secret” bears a name and signature purporting to be those of the Member for Juja. Indeed, the document was laid on the Table of the House by the hon. Member himself. The letter further has the letterhead of the hon. Member, and is stamped as having been received by the Minister of State, Office of the President, on 20<sup>th</sup> December, 2010. With this information, I have no reason to doubt the authenticity of the document and I, therefore, find that it is admissible.

However, I have had some difficulty with the other two documents tabled by the hon. Member. The first of these documents appears to be a download dated 17<sup>th</sup> December, 2010 from the website “Wikipedia”, which, as the hon. Member would be aware, is a free online encyclopedia, which, unlike the orthodox encyclopedia, employs an open editing model, permitting any person to edit anonymously any posted article. The articles on the Wikipedia are not owned by any person, nor does any person vouch for their veracity. It is also known that when changes to an article are made they usually become available immediately before undergoing any review, even if they contain errors or are misguided. The value to be attached to an article on the Wikipedia is, therefore, minimal.

Be it as it may, the admissibility of documents is another matter altogether, and while the Chair may wonder what value is to be attached to a Wikipedia article, which, as in the instance case, clearly indicates that it is an outdated article requiring to be updated to reflect recent events or newly available information; the Chair, nevertheless, finds that to the extent that the publisher of the document is known, and to the extent that the article is freely in the public domain, the document is admissible.

Hon. Members, the final document is titled “Secret/Real Kenya”. It is not dated, and there is no indication who the author is, or to whom it is addressed. On a number of pages, it bears what appears to be a stamp of the Kenya Anti-Corruption Commission (KACC), but does not indicate the date on which the stamp was imprinted, and the person who did stamp it. There is no signature or other identification of source or ownership. I have further perused the document with a view to ascertaining its source and admissibility but find that the document, whatever may be its value or use outside this House, does not speak for itself in any of the crucial aspects pertaining to the admissibility under our rules and is therefore, inadmissible.

Hon. Members, arising from all the circumstances including the precedence we have set on the admissibility of documents, I rule that the following documents laid on the table of the House on Wednesday the 22<sup>nd</sup> December 2010 by the Member for Juja; namely, the letter dated 20<sup>th</sup> December 2010 from hon. William Kabogo addressed to Prof. George Saitoti, the Minister of State for Provincial Administration and Internal Security and Acting Minister for Foreign Affairs and the document titled “Classified Information in the United States” being a download from the Wikipedia website are admissible.

I further rule that the document described by the Member for Juja as a dossier containing the names of hon. Members involved in drug trafficking is inadmissible and that it be and is hereby expunged from the records of this House. It follows, and I accordingly so order that the references to Members of this House purportedly named in that so called dossier are out of order and that the said references to the hon. Eugene Wamalwa and the hon. Simon Mbugua by the Member for Juja in the context of that document be expunged from the records of the House. Note that it is in the context of that document.

Thank you, hon. Members.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I wish to congratulate you for that ruling---

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

**Mr. Speaker:** Order, Member for Juja! The Member for Ikolomani is on a point of order!

**Dr. Khalwale:** Mr. Speaker, Sir, I would like to congratulate you for that ruling. However, I wish to draw your attention to the fact that on this very momentous issue just before we left and now that we are here, a lot seems to have taken place. Our colleague, the Member of Parliament and Assistant Minister, Mr. Mwau resigned. In view of the fact that Mr. Mwau was resigning so as to acknowledge the high standard that this Parliament and the Constitution has set for public officers, I would like you to guide us because we do not want to be a House that seems to speak loudest when it comes to Members of the Executive, but keeps quiet on matters involving Members of the Backbench.

Mr. Speaker, Sir, I would like you to exercise your mind and guide us. Now that Mr. Mwau has set precedence, will Mr. Kabogo, Mr. Mbuvi and Mr. Joho, still enjoy Membership to House Committees or will they, in your view, be forced to borrow from the high standards that we have set for the Executive? Until after they are cleared, should they temporarily stop serving on House Committees?

Mr. Speaker, Sir, you could also possibly address yourself on the issue of half-pay.

**Mr. Kabogo:** On a point of order, Mr. Speaker, Sir. I do not want to seem to go back on the issue you have ruled on. However, I would like to bring it to the notice of the House that the ruling you have given was made with the documents I tabled. I would wish to inform this House that I wrote to various Government organs namely; the Kenya Anti-Corruption Commission (KACC), Prof. Saitoti and the Prime Minister, requesting them under Section 35 of our Constitution to give information they have about this dossier. I confirm that Prof. Lumumba gave me a copy.

Mr. Speaker, Sir, if you allow me, I would receive the copy that was given to me by Prof. P.L.O. Lumumba under the statutory letterhead of the KACC and table it.

**Mr. Speaker:** You will be entitled to do that, but as at where we are, you did table certain documents in the House. What I was addressing myself to is the admissibility of those documents as tabled. I have been able to find that two of those

documents are admissible. I have found one inadmissible for the reasons that I have given in my ruling. If you now wish to table a different version of that document, then you will have to do so regularly. You cannot do it at this point.

**Mr. Kabogo:** Mr. Speaker, Sir, I was just requesting your indulgence on how I would do it procedurally. I have the document in the car and it bears the letterhead of KACC. It was given to me from a Government body that uses it for their investigations. I am just requesting your authority or approval for me to get that document and table it.

**Mr. Speaker:** Which I decline to give at this point in time!

Mr. Kabogo, you can find ways of getting an opportunity to table those documents when it is relevant to business that may be before the House on any given occasion. Perhaps you will want to get the help of some more seasoned Members of the House. The Minister for Lands and the Minister for Justice, National Cohesion and Constitutional Affairs may be of help to you. As at where we are, I am afraid I decline.

**Mr. Mungatana:** Mr. Speaker, Sir, arising from your ruling, I would like to raise a very much wider and much more fundamental issue; that is the admissibility of evidence that is downloaded from computers. We are moving with technology and I quite agree with the way you have tackled this particular instance. However, it would be necessary for you to give proper guidelines in terms of rules for those of us, for the future of this Parliament and those to come in terms of the rules and procedure on the admissibility of evidence that is downloaded from computers because this is the way we are going. It would be necessary to have that guidance. This may not be immediate but in future you should give a more comprehensive guideline.

**Mr. Speaker:** Thank you, Member for Garsen. I believe that this House has been careful and indeed I as your Speaker, I have been careful to ensure that we embrace technology. I am conscious that we have to be futuristic and it is for that reason that in my rulings in the past, for example, I have directed that e-mails are admissible. This afternoon I have given directions that a download from Wikipedia on the internet is admissible. So, I believe I am very progressive and indeed, I urge the rest of you to be.

*(Applause)*

With respect to the matter raised by the Member for Ikolomani, that is a matter that obviously needs further consideration. I will give it the attention that it deserves and give directions in the next 14 days. It is not a “run of the mill” matter. I think we will want to consult with the relevant organs that constitute Parliament including the House Business Committee (HBC), parliamentary political parties and legal theory. We will then give you direction.

**Mr. Twaha:** On a point of Order!

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

**Mr. Twaha:** Mr. Speaker, Sir, I left Parliament that day a bit disturbed. I am wondering if the Minister of State for Provincial Administration and Internal Security did not jump the gun by releasing the names before taking these people to court, the way Ocampo did. Ocampo did not name names until he had presented his case to the court in The Hague. The result of all this is that this House has been brought into disrepute. Six hon. Members had their names released. This was equivalent to discussing the conduct of a Member without moving a substantive Motion. We were ambushed as a House.

Mr. Speaker, Sir, I would like you to reflect upon whether the House was brought into disrepute or not. I do not know if those people were innocent or not, but they should have been given time to explain their case.

**Mr. Speaker:** Mr. Twaha, what you are saying maybe useful, but unfortunately coming too late in the day. You ought to have been there to raise those issues when the matter was before House. But as it is now, you must bear in mind the provisions of different laws and the import of it is that I cannot give directions beyond what I have done or what had transpired at that point in time.

**Mr. Twaha:** Mr. Speaker, Sir, on the day in Question, the accused persons themselves were there to speak for themselves. However, at the heat of the moment, they could not speak for themselves.

**Mr. Speaker:** Order! Mr. Twaha, please relax!

Mr. Twaha, you know you may end up compounding the issue. You may end up doing more damage than had already been done. You are, for instance, referring to certain accused persons. As far as I know, there are no accused persons. So, please, be careful. Let that matter rest where it is for the moment.

**Mr. Ethuro:** Mr. Speaker, Sir, I also wish to agree with your ruling. I just want you to exercise your mind as relating to the matters raised by Dr. Khalwale, which you have actually stated that they will need more consultations. The Standing Order is very clear; it is if you are mentioned adversely in a Report of the House, where you are a Committee Member. As far as we are concerned, that did not happen in this particular case.

Mr. Speaker, Sir, secondly, you may also wish to consider the measures the Chair will take against Members who throw in names of other hon. Members; where the Chair makes those kind of documentation inadmissible or out of order. Do we just leave it at that level or we look for punitive measures to take against certain Members who are not careful enough in the kind of issues they raise, especially when it injures the reputation of certain Members?

**Mr. Speaker:** Very well, let us allow this matter to rest where it is.

Those Members who feel that they are adversely affected by anything said in this House ought to rise immediately and canvass their objections or concerns. If you do, then we will obviously deal with it and give appropriate directions. But there are certain things which are innocent, if you did raise objections. For example, if a Member stands and says: "It is alleged or it is claimed", even if he puts in a name, then you cannot say there is damage because it is an allegation or a claim. But let us deal with every case as it arises.

For the moment, Member for Juja, I think you are shielded by the law. So, you need not panic as and where things are. But if you go and say it away from my presence, that is your responsibility.

**Mr. Kabago:** Mr. Speaker, Sir, that is why I was pleading with the Chair because I never alleged that the two hon. Members are involved in drug trafficking. I only said that hon. George Saitoti did not mention the names that were in the document; a document that the Prime Minister confirmed to you that it was the one that they were using. That is why I was requesting you to kindly allow me to produce this document from the hon. Dr. PLO Lumumba, which attaches the same document that you have said is inadmissible.

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

I have not said anything beyond what transpired on that day. I have not added to what you said to the House. I have not taken away from what you have said. I have

only said that the document, which you tabled at that time, does not pass the admissibility test.

I am sure, Member for Juja, you have been involved even in litigation either affecting your companies or relatives and you do know that a court arrives at a judgment depending on the evidence adduced. The evidence adduced in this House on the basis of which I have given directions, was not admissible in so far as the dossier is concerned. So, it must rest there.

If you follow due process, then you may want to prefer and appeal and adduce additional evidence. You know that is how it goes. There are no two ways about it. You cannot just come back and throw documents in without any attention to the law and the Standing Orders. Do you understand that?

**Mr. Kabago:** Mr. Speaker, Sir, I understand that and I will find the appropriate time.

**Mr. Speaker:** I am glad that you are properly guided.

Next Order.

## BILL

### *Second Reading*

#### THE JUDICIAL SERVICE BILL

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, while wishing you a happy new year together with the hon. Members---

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

**Mr. Speaker:** Order, Member for Ikolomani! Let us hear the Minister. He has hardly said anything other than wishing you a happy new year.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, I rise to seek that in accordance with Standing Order No.123, the Judicial Service Bill on the Order Paper, be withdrawn together with Bill No.19, a Bill called the Vetting of Judges and Magistrates Bill.

Mr. Speaker, Sir, I am an extremely cautious man and I make this request to the hon. House after a very careful consideration and consultations. I have consulted with the hon. Attorney-General. I have also called you, Sir. I have also consulted with Mr. Charles Nyachae, the Chair of the Commission on the Implementation of the Constitution. I have also consulted and received advice from the Leader of Government Business who is also present. I have also consulted the entire Commission on Implementation of the Constitution in a meeting lasting nearly half day yesterday.

Mr. Speaker, Sir, I also want to beg for understanding from my wonderful country for making this request because it is allowed by our Standing Orders and, therefore, by the law. I beg that forbearance because since the Constitution was promulgated I have been in the forefront seeking to implement it, particularly focusing on the Judiciary.

Mr. Speaker, Sir, the Judiciary has been an extremely urgent institution for purposes of reform. It will be recalled that soon after I was transferred to this Ministry in May 2009, the first thing I did was to appoint, after consultation with the Attorney-General and the hon. Chief Justice, a taskforce chaired by the Justice William Ouko to look for ways and means of renewing our Judiciary. The Committee reported to the

three of us; the Attorney-General, Chief Justice and myself in July. When I move the Bills in due course, I will be tabling that report on the Floor of the House.

Mr. Speaker, Sir, I would also, in seeking forbearance and understanding of my country, following the enormous endorsement of the new Constitution on 4<sup>th</sup> August, 2010 and promulgation on 27<sup>th</sup> August, 2010, like to remind this honourable House, if I may use such impolite language, that it was not until 22<sup>nd</sup> December, 2010 that this House finally passed the Motion appointing the Commission on Implementation of the Constitution (CIC). I would also like to remind the House that following that Motion's approval, His Excellency the President, in consultation with the Right Honourable Prime Minister, appointed those Commissioners on 29<sup>th</sup> December, 2010. As a result of that, on 4<sup>th</sup> January, 2011, the Commission was sworn in before the Right Honourable Chief Justice.

Mr. Speaker, Sir, although I speak with confidence that we have facilitated this Commission by giving them offices and facilities, you will be surprised that we are also hoping that this House will approve the Supplementary Estimates so that I can get money to get them rolling in a proper manner. Therefore, the Committee has been working day and night. In fact, as I speak, the Commission is in a meeting with senior officers of my Ministry and the Office of the Attorney-General continuing the consultations that are envisaged under Article 259(11) of our Constitution. Because of this enormous workload, it was not until yesterday, 17<sup>th</sup> January, 2011, that it was possible for a meeting between myself, the Attorney-General and the Commission together with the Chairman of the Law Reform Commission, Mr. Kathurima M'Inoti. We met yesterday and we had daylong consultations. I would like to say that although the Commission was of the view that they did not have any serious objections to the Bill that is on the Order Paper, it is essential for hon. Members to note that in Part IV of that Bill, we have included the issue of funds of the Judiciary and yet under Schedule V, strictly speaking, this House ought to pass a substantive law on that particular aspect. Therefore, it was - and I could see it in their eyes--- You may believe it or not but I know you believe it; that I am a pretty good lawyer and judge of body language. I could see a serious sense that the Commission was doing this in a hurry just to accommodate the House.

Mr. Speaker, Sir, I want that when I stand here to move those Bills no Kenyan, born and unborn, should ever raise an issue regarding the renewal of our Judiciary. This Bill, together with that of Vetting of Judges and Magistrates will be the beginning, the actual turning point for this country on dispute resolution. Therefore, the Commission, in our consultations yesterday, insisted that the Bill on Vetting of Judges and Magistrates be withdrawn and re-published. They said that I can re-publish those as quickly as possible even tomorrow, as soon as--- I am waiting for their letter so that if there is any substantive changes, amendments and proposals, we can also incorporate them. Similarly, I will also be waiting for any comments on the Judicial Service Bill so that we can incorporate them in the re-publishing.

Mr. Speaker, Sir, the issue arose in our consultations yesterday that, in fact, the consultations envisaged by Article 259(11), the timing of when the consultations should be made is not clear. But in the end, because my Ministry is trying to develop consensus in this country as we move forth, it was quite clear that, at the very least, that consultation should and ought to take place prior to publication.

Of course, I want to salute you, Mr. Speaker, Sir, because that is the advice you have been giving all along since we published these Bills in early September 2010. Therefore, I want to pay tribute to your Office and to you personally for the guidance that you have been giving, and giving rise to the late tabling of it in First

Reading and now the Second Reading at this point. Therefore, arising from these circumstances, I would like to tell the country and this House that starting on Monday, 24<sup>th</sup> January, 2011 for three days or probably even for the entire week, my Ministry has organized a workshop – you might call it an induction workshop – so that we can go there and together with other stakeholders, including the Office of the Attorney-General, we can all blend together and come up with a formula where when other Ministers table Bills and propose laws for the implementation of the Constitution, there will be clarity, understanding and above all, the Commissioners will also have internalized Government procedures.

Mr. Speaker, Sir, as the saying goes, a journey of a thousand miles is started by one step. I want to embrace that saying and say that I do not want to start off on the wrong foot. I do not want, for one moment, to bring in the Vetting of Judges and Magistrates Bill and then open a window for anybody in the country, or anybody born and unborn, to challenge the procedure that we will embrace. I am anxious as you are to implement the Constitution. The Grand Coalition Government is anxious to implement the Constitution. But I am guided by Standing Order No.123 that allows me to request you, Mr. Speaker, Sir - I am glad to see that you are smiling. It is possible that you are smiling in good spirit – that we utilize this Standing Order No.123 which I have already shared with the Leader of Government Business and the Attorney-General so that these Bills be withdrawn for re-publication immediately in order to reflect the consultations contemplated by Article 259 of the Constitution.

First of all, allow me, in conclusion, to thank you and to thank hon. Members for coming so speedily shortly after Christmas, interrupting their holidays, discussions and consultations with the people of Kenya; agreeing to come and speed-track implementation of the Constitution. I was amazed when I walked in to find the House full. But I want to assure them that by withdrawing these two Bills, there will be no further delay. The time between the withdrawal and the re-publication which has been agreed will be utilized effectively so that no questions arise.

With those few remarks, I beg to move.

**Mr. Speaker:** Hon. Members, in a nutshell, the Minister for Justice, National Cohesion and Constitutional Affairs is invoking Standing Order No.123 to move that he be allowed to withdraw the two Bills: The Judicial Service Bill and the Vetting of Judges and Magistrates Bill. According to the provisions of Standing Order No.123, being the hon. Member in charge of the two Bills, he is entitled to do that. But because we all know that this matter has come on the Order Paper as a result of an express request on the part of the Government for the House to convene for a special sitting, I will allow just three other hon. Members and, perhaps, the fourth, if the Attorney-General wants to speak to this before I make the final decision and give directions.

**The Vice-President and Minister for Home Affairs (Mr. Musyoka):** Mr. Speaker, Sir, I rise in support of the Motion to withdraw these two Bills as eloquently and ably moved by the Minister for Justice, National Cohesion and Constitutional Affairs.

Last night, I watched the Chair of CIC, Mr. Nyachae, pronounce himself on the need to do exactly what the Minister proposes to do. That Commission is a creation of this House that rose to the occasion and supported the decision by His Excellency the President to appoint this Commission. This was done, of course, in consultation with the Prime Minister as per the requirements of the Constitution.

I think it is important that we all move with the same speed, and I think it remains on the part of this House to be seen to be acting in contradiction of the

expressed desire by the Commission on the Implementation of the Constitution (CIC) to have these Bills withdrawn and re-published. I think they are clearly aware that there could be some people in this country who might want to challenge and actually say that this matter is actually unconstitutional if we proceed as originally anticipated in the Order Paper.

Mr. Speaker, Sir, therefore, we consulted widely; we consulted with the Chair and the Minister and I think we are all in agreement that this is the way to go. I do not think we will lose much time. Soon after the Business of the House today, the House Business Committee will meet and be able to look at the issue that you were able to allude to in your comments when you said that, specifically, the President, in consultation with the Speaker, did ask for this special session in order to be able to deal with these two crucial pieces of legislation. Therefore, when the House Business Committee meets, we will be able to come back to the House tomorrow with our recommendations.

Mr. Speaker, Sir, I just want to say - I am sure that the country will understand - that this House is desirous in our totality, because I have not heard anybody expressing contrary indication. Indeed, when the Minister says that he intends to withdraw, I could hear the foot-thumping. I think this is one matter that we can expeditiously deal with so that we get the Charles Nyachae Commission moving with speed, in consultation with the Law

Reform Commission as well as the Office of the Attorney-General so that in the next few days; a maximum of one or two weeks, they will be set for us to deal with this matter so that the country can see progress with regard to the all important matter of fast-tracking the implementation of the Constitution.

Thank you.

**Mr. Mbadi:** Mr. Speaker, Sir, whereas I support the request for withdrawal from the Minister, I just want to make a comment about the rush and the quick judgment by the Minister for Justice, National Cohesion and Constitutional Affairs.

I think it is not right for the Minister for Justice, National Cohesion and Constitutional Affairs to go out there in the public and start condemning Parliament for having gone on recess without passing crucial legislations and making the public look at this august House as being irresponsible whereas he knows very well that we deferred these particular Bills because we felt we required the involvement and participation of the CIC.

Mr. Speaker, Sir, I found that irresponsible on the part of the Minister and urge the Minister to act with restraint. Whereas he would want to portray himself as a hard working Minister – I have no doubt about – but please, have respect for this House. This House deserves respect because you portray us negatively!

*(Applause)*

You portray us to the public like we are irresponsible members of this society; people who would want to go on recess when we have business to transact.

Mr. Speaker, Sir, finally, I would also like to ask the Leader of Government Business and the House Business Committee that before you recall hon. Members from their recess - because we do not go on recess just for nothing; we go on recess also to transact constituency business – he should be sure that when we come back we have business to transact. This is not the first time that we have been recalled to come back and when we come back all that we transact are Questions and Ministerial



Statements. This is what I am a bit uncomfortable with and if this can be corrected, we have no reason to stop the Minister from withdrawing these Bills because actually that is what we thought should have been done. That is what is constitutional.

Thank you.

**Dr. Machage:** Mr. Speaker, Sir, indeed, before we went on recess, the idea of tabling these Bill on the Floor of the House was actually raised and caution given by some hon. Members that it was totally unconstitutional to do so. But the spirit with which it was tabled is acceptable because the House found the urgency to pass some Bills to operationalize the new Constitution. I hope the comment by the Chairman of the CIC is not mischief; just to appear to want to stamp his finger on amendments. I hope it will be substantive to warrant this delay. That is the caution I raise. Indeed, if his contribution will not be substantive, then he would have started on the wrong footing on this issue.

I beg to support.

**Mr. Mungatana:** Mr. Speaker, Sir, there was a very strong argument brought by the Executive arm of the Government that the power to bring Bills to this House has not been affected by the section that talks about suspension of the Constitution. There was a very strong argument which convinced many people that the Minister was right in bringing these Bills to the House. Indeed, Prof. Saitoti, the Minister of State for Provincial Administration and Internal Affairs said, in fact, they have the Bills ready which have something to do with security and that they were going to invoke that power that is still residual within the Executive arm of Government to bring in Bills.

Mr. Speaker, Sir, we have come here because we were convinced that we were going to move forward. I am, personally, and I know that many Kenyans are very disappointed that today we are not going to commence the Business of anchoring the new Constitution in the laws. Since it is the arm of the Government, led by the Minister for Justice, National Cohesion and Constitutional Affairs and the Attorney-General who made very strong arguments that we are, indeed, within the residual powers of the Constitution, they owe an apology to Kenya and to this House, and they must state categorically that they were wrong and they are sorry for taking us for a ride. I think they should be surcharged because this Parliament came back specifically for that purpose.

*(Applause)*

They should be surcharged, and these ones are capable of paying; they are not like the other two civil servants who people are saying legal fees should be paid for.

Thank you.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Speaker, Sir. I also rise to support the withdrawal of this Bill and even the next one.

The only contribution I would like to make is that we need consultations and we need to stop empire building. We are all in one country; we are all in one Government. To me, if the CIC was not interested in putting their stamp on the Bill, this could have been avoided. We could have gone ahead and debated the Bills and then if they have any amendments, we could have taken care of them in this House. This House has the authority and the power to make amendments to any Bill. So, that could have been done.

Mr. Speaker, Sir, I am saying this because these are just the first two Bills. There is also one very important Bill that relates to security and the reforms in the Police Force. This is also an urgent Bill. This Parliament has been reconvened specifically to pass the Vetting of Judges and Magistrates Bill, the Judicial Service Bill and the Police Act. Now that we are not meeting, my request to the CIC is that they look at things from a practical point of view.

We all want to anchor the new laws in the Constitution as quickly as possible. That is why when Parliament was recalled we stopped whatever we were doing and heeded the call to duty. But if we start empire-building, and putting our thumbprints on Bills just to make a point, we will not go far. If we are going to pass the 49 laws required, the four bodies must co-operate; they must be practical; they must consult, and stop empire-building for the sake of this country. We passed the new Constitution but unless we pass these Bills to implement it, the Constitution will remain, but a dream.

Mr. Speaker, Sir, therefore, whereas we support what the Minister has said, still this does not remove the power of the Government to bring Bills to this House. Unless we are saying that the Minister for Justice, National Cohesion and Constitutional Affairs, or any other Minister, has no authority to bring any Bill, and that Bills must come here through the Committee on the Implementation of the Constitution--- I do not think that this is the case.

I am convinced that what the Minister tried to do was the right thing. Therefore, there is no need for the Minister or the Attorney-General to apologize. He was right; many Bills will be brought by Ministers, not necessarily through the Committee on the Implementation of Constitution. For me this is simply empire building and we need to avoid it. We need to be practical and not theoretical.

All the amendments that the Committee on the Implementation of the Constitution wanted could have been incorporated here. We could have amended the current Bill. Now we will lose at least 14 days, assuming they are ready with their amendments to the Bill. So, I am appealing to the Committee on the Implementation of the Constitution, the Law Reform Commission, the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs, please sit down, consult, discuss and agree on all the issues. If they do that, we will be able to go through the 49 Bills that are required.

Lastly, in view of the fact that these Bills are urgent my view would be that we move the sittings of Parliament from Nairobi and go to some remote place. We should isolate ourselves for two weeks to some place in a bush, with no telephone, roads or other infrastructure. We should hide in a bush for two weeks, doing nothing else, and meeting from Monday to Sunday and then we can do it. That is my challenge to the administration of Parliament. Let us do it. Kenyans want us to pass these 49 Bills and, therefore, we must take steps that will actually make this possible.

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

**Mr. Speaker:** Order, hon. Members! We will finally hear the Attorney-General. Sorry, hon. Member for Saboti; we have to close this.

**The Attorney-General (Mr. Wako):** Thank you very much, Mr. Speaker, Sir, for giving me this opportunity to support the application of the Minister for Justice, National Cohesion and Constitutional Affairs.

Mr. Speaker, Sir, I want first of all, to commend the Commission on Implementation of the Constitution. In so doing, I also want to commend this House. I

think we tend to forget that this House approved the appointment of this Commission during its last sitting on 22<sup>nd</sup> December, 2010.

His Excellency the President then very quickly formalized the appointments on 29<sup>th</sup> December, 2010. This was during the period when everybody was on vacation. His Excellency the President and the people who work with him were busy working and he appointed this Commission on 29<sup>th</sup> December.

Mr. Speaker, Sir, immediately after the new year the Commission was sworn in on 4<sup>th</sup> January. They did not waste any time but began meeting immediately they were sworn in. I had a day-long session with them the following day, on 5<sup>th</sup> January, 2011. By 17<sup>th</sup> January, yesterday, they had already done considerable work on the two Bills. They called both the Minister for Justice, National Cohesion and Constitutional Affairs and myself, who are the line Ministers in these matters, to talk about the two Bills.

The situation is very simple; it is true that had it worked out, at least the Judicial Service Commission Bill would have been enacted before we adjourned. It would have been properly enacted at that time, because I believe that was the spirit of the new Constitution. In as much as the new Constitution envisaged the Judicial Service Commission being appointed even prior to the appointment of Commission on Implementation of the Constitution, we could have moved, and properly so, and enacted the Bill. But the fact of the matter is that Parliament did not enact this Bill. Since that time, the Commission is now in place. Now that the Commission is in place, it behoves all of us to work in accordance with the letter and spirit of this Commission to ensure that any legislation that is required to implement the Constitution meets the criteria set out under Section 261(4) of the Constitution, in that it is this Parliament which enacted the legislation which has been listed in the Fifth Schedule, and it is the Attorney-General, in consultation with the Commission, who prepares the Bills before they are tabled on the Floor of this House.

Mr. Speaker, Sir, the Minister has now requested this withdrawal to ensure that now that the Commission is in place, the relevant section of the Constitution is followed in any Bill that underpins this Constitution. It will be followed. I can see the spirit of the Commission. Members are very keen. They have studied these two Bills and so on. They have even made some proposals that they be withdrawn and we go through consultation and re-publish them; after consultation we will then bring these Bills before this House.

I just want to say that there is nothing to apologize for. The history is there and I think from now on, the letter and spirit of this has to be followed.

Mr. Speaker, Sir, with those few remarks, I support the application made by the Minister for Justice, National Cohesion and Constitutional Affairs.

**Mr. Speaker:** Order, hon. Members! I have heard the Minister for Justice, National Cohesion and Constitutional Affairs, who has stood on a point of order, pursuant to Standing Order No.123, to move to withdraw the Judicial Service Bill, which is at Order No.8 and the Vetting of Judges and Magistrates Bill, which has been published and gone through the First Reading. The Minister has given reasons for this step that he has taken. Indeed, it is in accordance with the provisions of Standing Order No.123 for a number of reasons.

First, with respect to the Judicial Service Bill, it has been published and gone through the First Reading and was due for Second Reading and appears on the Order Paper. With respect to the Vetting of Judges and Magistrates Bill, again, it falls within the provision of Standing Order No.123 in as much as that Bill has been published

and transited through the First Reading and not yet come on the Order Paper. So, business on that has not commenced. So, the Minister is entitled to move accordingly.

Hon. Members, I think it behooves this House to acknowledge the efforts that the Minister has as so far made and we must be grateful for his industry in an endeavour to ensure that the Constitution is implemented. Yes, the Minister may have been, perhaps, too anxious as he ought to be rightly so, given that the business of implementation of the Constitution actually falls under his portfolio and given that he is the Minister for Justice, National Cohesion and Constitutional Affairs. So, he is entitled to have that concern. Mr. Minister, I am glad you have acknowledged and appreciated that the matters that you have canvassed in your statement to withdraw the Bills are matters that this House was awake to and that I addressed myself to and advised that there was need to ensure that even as we bring Bills to implement the Constitution, we must do so constitutionally. I am glad that we are now all in agreement, including the Attorney-General. So, Mr. Minister, you have my concurrence that you have a sound basis to withdraw the two Bills. I, therefore, direct that the two Bills stand withdrawn.

*(The Judicial Service Bill and The Vetting of  
Judges and Magistrates Bill withdrawn)*

## MOTION

### ADOPTION OF REPORT ON EXTRA-JUDICIAL KILLINGS

**Mr. Kapondi:** Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on its fact finding visit to Lari, Koibatek, Dagoreti, Kisauni and Nyakach over alleged extra-judicial killings in the districts; from October 11th to 27th November, 2010, laid on the Table of the House on 16<sup>th</sup> December 2010.

Mr. Speaker, Sir, on Thursday, 30<sup>th</sup> September, 2010, the Deputy Speaker directed that the matter of mysterious killings of persons in Eldama Ravine and Lari constituencies of Baringo and Kiambu counties respectively be referred to the Committee on Administration and National Security for further investigation. The matter came to the Floor of the House through a Question by Private Notice by hon. Lessonet, the Member for Eldama Ravine, and hon. David Njuguna the Member for Lari. The Members sought to know from the Minister of State for Provincial Administration and Internal Security the circumstances surrounding the mysterious deaths of youths in their constituencies in the recent past.

Mr. Speaker, Sir, hon. Lessonet sought to know from the Minister of State for Provincial Administration and Internal Security:-

(a) if he could explain the circumstances under which Messrs. Evans Kipchumba Keittany and Brian Kiptanui Birir died while in custody of police officers at Katarakwa Police Post in Koibatek District;

(b) if he could provide the postmortem reports and state what actions had been taken against the police officers responsible; and,

(c) what action the Government will take to ensure that such deaths now occurring at high frequency at the police post do not occur.

Mr. Speaker, Sir, likewise, the Member for Lari, hon. David Njuguna, wished to know from the Minister:-

(a) if he could confirm that four male youths were found brutally murdered, two at Kariko in Kinale Forest and two at Gumbi Forest in Lari District on 15<sup>th</sup> September, 2010;

(c) if he could furnish the House with clear details of how the four youths met their deaths and who were the perpetrators of the heinous crime; and,

(d) what urgent security measures he has put in place to guarantee maximum security to people currently living in the crime-prone area.

Mr. Speaker, Sir, from the Minister's responses and the ensuing supplementary questions raised by the Members, the Deputy Speaker ruled that he brings a more comprehensive answer to the House after three weeks. In the meantime, it was directed that the Committee on Administration and National Security investigates the matter and files a report within two weeks. In this regard, the Committee undertook a fact-finding mission to Eldama Ravine and Lari as directed by the House. The Committee consequently visited Lari on Monday, 11<sup>th</sup>, October, 2010 and proceeded to Eldama Ravine the following Tuesday, on 12<sup>th</sup> October, 2010. The Committee held meetings with the District Security Intelligence Committees in Lari and Koibatek districts respectively. It met local leaders from the two districts who shared very vital information. The Committee also received oral and written evidence from family members of the deceased persons as well as other witnesses who had interacted with the victims in one way or the other before their demise.

Mr. Speaker, Sir, the Committee also visited the scenes in Kinale and Gumbi forests in Lari District where bodies of youths had been dumped after they were killed. The Committee also visited Kiptoin, where a family had lost their son who was allegedly killed by Administration Policemen on 17<sup>th</sup> December, 2009.

Mr. Speaker, Sir, having visited the two districts, the Committee agreed that in order to come up with a more comprehensive and inclusive report, it needed to visit other areas where cases of killings had been reported. The Committee, therefore, sought fresh mandate from the House to extend its sittings to Dagoreti, Nyakach and Kisauni districts with a view to coming up with more comprehensive recommendations. The request was granted and, hence, the Committee proceeded to visit the said districts between 21<sup>st</sup> and 27<sup>th</sup> October, 2010.

Mr. Speaker, Sir, based on the findings, observations and conclusions, the Committee came up with numerous recommendations that the Members urge the House to adopt. The submissions by the security committee and the local leaders and relatives of the deceased persons provided the Committee with facts which they drew the conclusions and recommendations contained in this Report. I wish to quickly run through the Committee's observations, findings and conclusions.

The Commission made the following findings:-

(i) That there was no sufficient evidence to declare that the deceased persons found dumped in Lari had been killed extra-judiciously. Evidence adduced before the Committee pointed to Lari as having become a dumping ground for persons killed elsewhere. Other murders reported were as a result of normal thuggery.

(ii) Kinale and Gumbi forests are favourite dumping spots for bodies by criminals due to the presence of thick forests, poor weather conditions and a rough terrain which is a steep escarpment, particularly, towards Kijabe, which the criminals have taken advantage of to perpetuate their heinous crimes.

(iii) The adverse weather conditions around Kinale area have made it difficult for police to mount effective road blocks, checks and patrols. The area is always

foggy, wet and, sometimes, extremely cold. That has led to an increased crime rate because, at times, the police are not well heated to effectively undertake their duties.

(iv) There was apparent reluctance by the locals to provide adequate information to the police in the spirit of community policing. For instance, for a period of several months, a lone gunman along the Naivasha-Nairobi Road within Lari and Kinale Forest nicknamed one-man guitar has terrorized the locals for a long period and yet, the police have not been able to pin him down. He always evades police traps. That means he has contacts that fail to inform the police but keep him informed of possible arrests. It is also puzzling why no arrests have been made in Lari and yet, the security agencies in some cases have been informed about authors of leaflets that warn the locals of dire consequences if they do not part with cash. The authors are known but, interestingly, the police do not take any action to arrest them. That raised the eyebrows of the Committee.

In Koibatek, the Committee observed that the police post at Katarakwa is to blame, in one way or the other, for the death of Evans Kipchumba Keittany, whom they arrested outside a bar, bundled him at the back of a police Land Rover and left him unattended as they drove towards the police station. The young man, in the process of being driven off, apparently jumped off the moving Land Rover and sustained injuries which led, ultimately, to his death.

Mr. Speaker, Sir, observations are many and the recommendations are equally many. However, because hon. Members will be contributing, I would like to raise a few recommendations that the Committee made.

(i) The Government should move with speed and release the investigations of mysterious persons who are killed elsewhere and bodies dumped at Lari. The criminals who have perpetuated the killings should be arrested and prosecuted. When we were investigating, it came out very clearly that the CID was closing in on some suspects. We believe the investigations have been concluded now. We expect those who are responsible for those heinous activities outside Lari, who took the bodies there, be apprehended and prosecuted.

(ii) There is no sufficient evidence from the facts gathered on the ground to conclude that the victims whose bodies were dumped in Kinale and Gumbi forests were as a result of extra-judicial killings by the police. Therefore, the CID Department should, thus, fast track their investigations so that those who are behind those killings are brought to book and prosecuted.

(iii) The circumstances surrounding the death of Evans Kipchumba Keittany point at police involvement though it may not be termed as extra-judicial execution. It is clear that the young man died due to police negligence. The police officers who were involved in the arrest of Kichumba Keittany should be held accountable for negligence of duty and his subsequent death.

(iv) The police cannot be held responsible for the death of Brian Kiptanui Birir as the circumstances leading to his death are unclear. The young man disappeared immediately he was released from police custody and was found dead three days later. It is not clear why he hanged himself after being released from police cells.

(v) The case of Kiptum Kibor was concluded by the Eldama Ravine Court and the accused officers acquitted. The Committee does not wish to open an inquiry into a case which the court conclusively dealt with.

(vi) The officers at the police post at Eldama Ravine should be investigated for alleged malpractices against the local people. Those allegations range from arbitrary arrests to demand and taking of bribes.

(vii) The Government should urgently address the issue of organized crime in Kisauni where organized gangs have taken control of the district and are killing and maiming innocent *wananchi*.

The issue of drug and substance abuse in Kisauni should also be tackled alongside the one on criminal gangs. The police should further investigate the source of the drugs and charge those who are responsible.

(viii) The matter of the killings of the seven taxi drivers allegedly by the police in Dagoretti is before the court. The judicial process should thus be expedited and the case concluded so that those behind the killings can be effectively dealt with according to the court process.

(ix) The Government should also move with speed and arrest criminal gangs who are involved in killing and terrorizing people in Nyakatch as they steal their livestock. Such gangs and their masterminds are known as names have been forwarded to the security agencies in the district. However, no action against those criminals has been taken.

I wish, with those few remarks, to move. I would like to request Mr. Ochieng to second.

*[Mr. Speaker left the Chair]*

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

**Mr. Ochieng:** Thank you, Mr. Temporary Deputy Speaker, Sir. I beg to second. It is quite sad that we have been losing quite a number of our youth to what I would call criminals. That is because up to now, we have not been able to know who has been killing our youth in this country, especially in areas around Nairobi, Dagoretti, Limuru, Lari and other areas. Our investigations could not go far because we were told that on one hand, the CID Officers were also carrying out investigations. We left it upon them to move fast and make sure that they come to the conclusion of this matter. There are cases where the Government must move fast to unearth and find the motives behind those killings. We have had deaths in Dagoretti where several taxi drivers were killed in one night. The reasons that were given to us were also quite appalling. We know that the people who were suspected to have committed the crime have already been taken to court. We could not go further than that. On the issue of deaths in my Nyakatch Constituency, people disguise themselves as cattle thieves and come to steal animals at night. I believe they collaborate with a few criminals in my constituents. They steal animals and, in the process, vent their anger on my people by killing and maiming them. In the last three years, we have lost 11 to 15 lives and several of them have been left maimed. That is very serious and, as I have always said in this House, the kind of cattle rustling that is taking place in my constituency is not very serious as in other places. If the Government wants to deal with this kind of problem which is in my constituency, it can take a very short time to tame the menace. The gangsters who are involved in these kind of crimes are known. The names have been given to the police.

Mr. Temporary Deputy Speaker, Sir, I want to congratulate the elders from my constituency and those from Belgut where the perpetrators come from, for having initiated some peace meetings which have borne some fruits. This has brought the menace to an end and my people can now sleep peacefully with their animals. The report that we want to adopt in this House today has also recommended various steps

that the Government needs to take in terms of moving very fast and making sure that we stop losing lives in the hands of security agents or organized gangs. I want to urge the Government to take the recommendations in this Report very seriously and act upon them very swiftly. The Government must make sure that the people who are behind these killings are brought to book and if possible, prosecuted and put behind bars.

On the issue of the lives which were lost in the Rift Valley, and I know there has been some misunderstanding here and there between the police and the local community, the reasons why that happened is not coming out clearly. I want to believe that our recommendations should guide the police towards making sure that the culprits are also brought to book.

With those remarks, I beg to second the Motion.

*(Question proposed)*

**Mr. Wamalwa:** Mr. Temporary Deputy Speaker, Sir, I wish to support the adoption of this Report and to thank the Committee for the excellent work done for travelling across Kenya, all the way to Nyakach, Lari, Kisauni and different parts of Kenya to look into this problem.

This afternoon, we have seen a very able Minister who has actually gone beyond the extra mile to get Bills brought to this House ahead of their time although he has had to withdraw them. An area where we need urgent reform is in the police sector. I have gone through the recommendations and I have seen that some of them touch on the police. Some of the killings point to the police. I had expected that this Report should at least, have a recommendation on expediting the reforms in the police sector. We know that the Minister responsible has said that the Bills should be ready soon, but we hope that these Bills are fast-tracked, so this very important part of our society is quickly reformed to comply with the new Constitution.

We realize that the Judiciary, the former Electoral Commission of Kenya and the police were the heart of the post-election violence. I believe that if we can fast-track the reforms in these areas, we will, all as a House, have to burn the mid-night oil to ensure that these reforms are fast-tracked. In an area where some of the recommendations are talking about the police investigating extra-judicial killings by the police itself, it will be very difficult to find justice for the victims of extra-judicial killings, especially where the victims have died in the hands of the police as has been shown very clearly in the case of Evans Kipchumba Keittany and other victims. This would call for a very quick reform in the sector to ensure that we get an independent oversight committee investigating the police and not the police to investigate themselves.

Another area that is quite worrying are the killings relating to organized gangs. Last year, we had a report before this House of a Committee that went across the country. I was a Member of that Committee which was chaired by hon. Kioni. We found that we have gangs existing everywhere in this country. At some point, many people thought that we only have the *Mungiki* in Central Province. They thought that the *Mungiki* problem is a Central Kenya problem or a Kikuyu problem. However, when you read this Report, you realize that this is a Kenyan problem. In all other areas, you will find such gangs. I am very surprised that even in Nyakach, hon. Ochieng's constituency, there are gangs which are terrorizing and killing people. When you go to Kisii, you will find such gangs. As a matter of urgency, we need to come up with policies to ensure that something is done about the youth of this



country, many of whom are unemployed, have lost hope, have nothing to lose and join these gangs. We need to rehabilitate them and give them hope. We need to create wealth and employment for our young people, so that they do not end up in these gangs and we do not find bodies thrown in forests across this country.

This is not only in the areas which have been shown like Lari and others, but even in Kitale Town where I come from, we have forests within the town where many bodies have been found. We need to come up with policies to see how these forests, which are a great resource in our country, are turned into recreational parks like the Arboretum or picnic sites where we can find police officers and there is sufficient security. I can see the Minister for Forestry and Wildlife and he is aware how many bodies have been found in the forest in Kitale next to the stadium and the forest next to Meru Farm. I would have wished that hon. Kapondi's Committee had visited Kitale. They would have been surprised to hear how many women have been raped and strangled and their bodies found in this forest within Kitale Town. I hope that the recommendations of this Committee will be taken seriously by the Government to investigate thoroughly and come up with a proper policy to address this situation.

Mr. Temporary Deputy Speaker, Sir, the other worrying issue goes to the visit of the Committee to Kisauni, where most of the killings were related to organised crime and use of drugs. I was very happy to get the ruling of the Chair today on the very first day of this Sitting. The ruling was made and my name was expunged from a record that had been presented before this House. I believe that the drug menace in this country is very serious. I was recently in Mombasa, in the same area which the Committee visited. There is a whole generation of young people who are being turned into zombies. You will find homes where the victims are housed, and where they go through a painful process of withdrawal syndrome. It is very saddening. We hope that the Government will come up with policies to deal with this situation, help our youth and ensure that those who create wealth out of drugs, thus "killing" an entire generation, are dealt with.

The saddest case of all the matters considered by this Committee was the case of the seven taxi drivers who were killed in Dagoretti. I attended the funerals of those taxi drivers with hon. Beth Mugo. It was sad to see young people who had come together with very little money - some had even borrowed the money - to try and earn a living, because there is no employment---

Many of them had tried to buy motorcycles. They have come up with savings and credit co-operative societies (SACCOs). With the little savings they have made, they have actually bought taxis; but because of the gang wars, and because of some rogue police officers who also own taxis, we have had a situation where seven young people were shot dead in broad daylight; their businesses were destroyed and their lives and the lives of their families were ruined.

Mr. Temporary Deputy Speaker, Sir, although the recommendation by the Committee is that the matter is still pending before a court of law, I hope that we will follow up this matter to ensure that justice is done for those young people who lost their lives at the hands of known armed and dangerous people. Although they might be in uniform, they are the most dangerous criminals, and something needs to be done to address the situation.

With those few remarks, I beg to support.

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, I thank you for granting me this opportunity to also contribute to this very important Report.

First, let me express my gratitude to the Chairman of this Committee, hon. Kapondi. He has led the Committee in a very credible manner, and has been

supported so well by the hon. Members serving in the same Committee. We note with a lot of satisfaction the findings and recommendations of this Committee. We also note the wide coverage that was given by the local media to the incidents which were already noted when the Report was being compiled.

Mr. Temporary Deputy Speaker, Sir, you will note that in Nyakach, there are known criminal gangs operating in that area. Those criminal gangs have actually moved from one area to another. At times, the gangs kill innocent people. Something must be done to eliminate this threat. The gang operating in Nyakach is known and, therefore, security agents must take very strong measures to bring this threat to an end. If nothing is done, learning in the entire Nyakach area will be affected. The quality of education in the schools will be affected.

We have also noted that livestock keepers have not been spared. Their livestock have been taken by these criminal gangs. Farmers and livestock keepers have been rendered paupers in this area. Therefore, it is important that, in the true spirit of serving *wananchi*, something is done about these criminal gangs.

Mr. Temporary Deputy Speaker, Sir, with regard to Lari, I note with a lot of excitement the well-worked out document on the role the police are playing. We note that the police in this area are very lax. There is a lot of laxity. The police are not serious in their execution of duty. It is, therefore, important for the Ministry concerned to take this matter seriously.

We also note that dead bodies have been ferried from Nairobi to Lari Constituency. One would wonder about what is happening at roadblocks manned by police officers. Dead bodies are allowed to pass through roadblocks. This should not happen. Therefore, it is important that the process of reforming the police force is hastened, so that we can have a cleaner and neater police force which will be sensitive to the security of our people.

Mr. Temporary Deputy Speaker, Sir, in addition, you will note that there has been a lone gunman operating in Kinale Forest. This is the second time I am reporting about this person. He has threatened motorists. He has even gone further to murder innocent people. I am happy that since a report was made in this House, the Ministry in charge of internal security has taken very far-reaching steps to improve security in that area. That should be the way to improve security in Lari and in other constituencies.

I note further that many bodies have been thrown into Fari Dam and I would recommend that this dam be secured by fencing, so that people are not dumped into Fari Dam by criminal gangs. An Administration Police (AP) post must be established at the entrance, so that criminal gangs can be discouraged from taking bodies to that area.

Mr. Temporary Deputy Speaker, Sir, we note that the dead bodies found at Kinale, Gumbi and other areas have been of innocent hawkers. Why murder hawkers, who earn their living very honestly? The Government has the responsibility of guarding the security of every citizen of this country. Therefore, innocent blood should not be shed anywhere in this Republic. I am excited by the commitment given in this House by the Assistant Minister, Ministry of State for Provincial Administration and Internal Security, hon. Ojode, that he will not spare anyone involved in this evil.

I urge that security measures be improved in Lari Constituency; I hope that the Ministry concerned will provide adequate means of transport, so that the local police, Criminal Investigations Department (CID) officers and members of the national security team can be able to move about and assure *wananchi* that there is maximum

security, so that they can go about their daily activities unworried. If the issue of insecurity is not addressed seriously, tourism in my area, and in the neighbouring constituencies, will be affected. Investments will not be spared. Therefore, I fully support the contents of this Report.

With those remarks, I beg to support.

**Mr. Lessonet:** Mr. Temporary Deputy Speaker, Sir, I thank you for giving me the opportunity to contribute to the Motion.

Mr. Temporary Deputy Speaker, Sir, I stand to support this Committee's Report with amendment. I want to start by moving my amendment, which I have actually submitted to you. In the amendments, I would like to start with page 31, paragraph eight. I want to delete the words, "are unclear" on the first sentence and insert the words, "point to police involvement". Thereafter I want to delete the sentence from the word, "the young man" all the way to the end---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Lessonet! You are talking of which paragraph on page 31?

**Mr. Lessonet:** Mr. Temporary Deputy Speaker, Sir, page 31 paragraph eight.

On the first sentence, I want to delete the words, "are unclear" and replace with the words, "point to police involvement". Thereafter I would like to delete the sentence that starts with the words, "the young man" to the end and replace with the words, "as the boy was not seen alive since the time he was arrested".

Mr. Temporary Deputy Speaker, Sir, I would also like to make an amendment to page 32, paragraph four. I would like to delete the word, "cannot" and replace with the word, "should".

I also want to request that I delete the sentence---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Lessonet! Can you repeat what you have said?

**Mr. Lessonet:** Mr. Temporary Deputy Speaker, Sir, on page 32 paragraph 4, I would like to delete the third word, "cannot" and replace with the word, "should". On the second line, I would like to delete the sentence from the words, "are unclear" all the way to the end and insert the words, "point to police involvement".

On page 32, paragraph five I want to request that I delete the word, "the" and replace with the words, "though the case" so that the sentence reads, "Though the case of Felix Kiptum Kibor was concluded". I would also like to delete the full stop on the second line after the word, "acquitted" and replace with a comma.

Mr. Temporary Deputy Speaker, Sir, I would like to delete the sentence from the word, "therefore" all the way to the end and replace with the words, "proposes that the prosecution should immediately commence appeal against the ruling".

Those are the amendments I wish to make on this Report.

**The Temporary Deputy Speaker** (Mr. Ethuro): Which was the last one?

**Mr. Lessonet:** Mr. Temporary Deputy Speaker, Sir, delete the sentence from the word, "therefore" to the end and replace with the words, "proposes that the prosecution should immediately commence appeal against the ruling". I am just calling upon the prosecution to appeal against this case. This was a case of murder.

I am saying this knowing very well that seated on the Government side is the Member for Dagoretti who had a similar incident, where Administration Police (AP) officers woke up one day and shot a few of her constituents. In this particular case of Eldama Ravine, two APs walked to a home and shot a boy dead. This was a boy who had just sat his Kenya Certificate of Primary Education (KCPE) examinations.

Mr. Temporary Deputy Speaker, Sir, I am only proposing that the prosecution appeals against the acquittal of those two APs so that justice may be done.

I would like to call upon Mr. Koech to second those amendments.

**Mr. Koech:** Mr. Temporary Deputy Speaker, Sir, thank you for this opportunity.

Before I second those amendments, let me wish all hon. Members a happy new year. I want to commend the Committee on the work they have done to ensure that together the Backbenchers and the Government are able to protect the lives of Kenyans.

Mr. Temporary Deputy Speaker, Sir, in seconding the amendment, I have two reasons to give. When you look at the Report one Brian Kiptanui Birir is a man who was arrested, taken to the cells and nobody saw him until the body was found. It is very clear that if we pass this Report the way it is, then we are actually condemning Brian Kiptanui Birir and that nobody killed him. Therefore, many other Kenyans would face the same circumstances. It is very clear that there was some form of collusion, given that we are being told that the body was found hanging on a tree less than a meter from the ground. I want to plead that when we say the police should be held responsible, we are not talking of the entire police force. We are aware there are a few elements inside the police force that if we continuously cover, will continue tarnishing the name of the police.

By taking this responsibility we are urging the Government through this Report to conduct fresh investigations and get the real culprits. If he is a police officer, let him or her be locked in so that we weed the police of some rogue elements.

Mr. Temporary Deputy Speaker, Sir, the second person, Felix Kiptum Kibor, it is very clear when you look at page ten. It is indicated that:-

“The Committee was then taken to a homestead where one Felix Kiptum Kibor had been shot dead by Administration Police”

It is very clear that this person was shot by an Administration Police.

Mr. Temporary Deputy Speaker, if you watch news these days, you will see rogue APs killing people left, right and centre. Some are even killing their wives. This must be stopped. For them to be acquitted on the pretext that they could not tell which of the officers shot Felix and allow it to end there, we are protecting criminals and murderers.

My appeal is that we request the prosecution to appeal so that the real culprit is arrested and the APs are not condemned wholesomely. By passing this Report the way it is, we are accepting that APs kill people but we cannot know which of them does it. They will always be hiding behind this. I want to plead with the Government and the Committee to consider these amendments so that we can confirm to Kenyans that sure enough we are here to protect their lives. Anybody doing anything contrary to the law shall be found, arrested, arraigned in court and sentenced. That is the only way we can be able to confirm to Kenyans that we are here for them.

I beg to second.

*(Question of the first part of the amendment,  
that the words to be left out be left out, proposed)*

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Temporary Deputy Speaker, Sir, I would also like to wish my colleagues a happy new year because since the beginning of the new year we have not had time to shake hands.

Mr. Temporary Deputy Speaker, Sir, I want to congratulate the Committee for having done a wonderful job.

Mr. Temporary Deputy Speaker, Sir, this Committee had an opportunity to go to the ground to investigate the matter as was ordered by this House. I am glad that there is sufficient evidence that the police who are being alleged to have used their own guns to kill innocent Kenyans are innocent. The report found that the police are innocent. That is why I am opposing the amendment.

*(Ms. Karua gestured at Mr. Ojode)*

Mr. Temporary Deputy Speaker, Sir, we are talking about this Report. You have just come in. Happy New Year!

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Assistant Minister! There are procedures in this House. You cannot respond to what has not been placed before you.

Proceed.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, we are looking at paragraph eight where the hon. colleague wants to amend to read that the police were involved.

I thought that hon. Lessonet would bring a version that contradicts what has been tabled here by the able Chairman of the Committee. I think we are doing a disservice to this country. I think we have used taxpayer's money which was given to that able Committee to investigate what actually transpired on the ground. He came up with a very good report and it says that the circumstances leading to Brian Birir's death are unclear. "Unclear" means that when they were posing questions to those who were on the ground, they were unable to tell what happened. There is no need of forcing words into the mouth of the Chairman of this able Committee, that it is the police who killed him. How is that possible?

Mr. Temporary Deputy Speaker, Sir, let me take you to page 32 on paragraph four where they say that the police cannot be held responsible for the death of Brian Kiptanui as the circumstances leading to his death are unclear. That is what this Committee found out. But when you say that we have to amend that bit to suit what Mr. Lessonet wants, I think that is a waste of taxpayers' money. What Mr. Lessonet should have said is this: "I am not happy with this Report. I am not voting for it and I would like you to give me more time so that I can form my own committee. Let me constitute my own committee and then go and question those people on the ground in order for me to vilify and implicate the police." That cannot work in today's 21<sup>st</sup> Century.

I also want to say this: Those police officers whom he wants to implicate on everything and anything are our brothers and sisters. This is not a Committee that was constituted from outside the House. This is not a Committee that was constituted from a local *baraza*. This is a Committee which has people who are professionals. They came up with an excellent Report and I will vote for it as it is. That is why I am opposing the amendment. It is true that there are some rogue police officers but, in this particular one, that Committee found out that there were no rogue police officers in that particular area at that particular time. That is why they came up with this excellent Report. We are all aware that with a police force of 40,000 people, they cannot all be good. It is true but on this particular case, you cannot implicate a police officer who has not done anything wrong.

With those few remarks, I beg to oppose.

**Mr. Koech:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister, who is a good friend of mine, in order to mislead this House that this Report does not implicate the police when I have a section on one Felix Kiptum Kibor who was shot by an Administration Police officer? Unless we want to differentiate between the police and the AP, he should confirm that an AP killed Felix Kiptum Kibor.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, if you look at the amendments which have already been moved by Mr. Lessonet--- Mr. Temporary Deputy Speaker, Sir, you said that we should concentrate on the amendments. Once the amendments go through or are defeated, I will respond to the entire Report. That is the time I will talk about that particular issue.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, thank you. May I take the opportunity to wish hon. Members a happy new year while supporting the proposed amendment and the Report generally. But I stand here to say that I am disappointed by the level of the effort the Committee put, which is less than 50 per cent. The Committee relied on the investigations of a team of police officers led by SSP Sunkuli.

*(Applause)*

We knew there was the police! When we asked Parliament to investigate, if they go and get wrapped up by the police, then this ends up not being a parliamentary inquiry. It is not that we expect Parliament to be able to thoroughly deal with crime but, at least, to point the gaps. No wonder the Assistant Minister is so happy! This is a report as a result of his officers covering up themselves! That is the real problem.

Mr. Temporary Deputy Speaker, Sir, while I support the amendment and understand the frustration of my colleague, hon. Lessonet, I personally did give a lead to the Chair of the Committee and a name of a person in Dagoretti; people who knew the Kinale six – some of them had been in custody. Apparently, they did not give evidence and, so, none of them is here.

This Report is just going to end up covering the whole thing!

**Mr. Kapondi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member for Gichugu in order to mislead the House that she gave me the name of a person who had crucial evidence about the Kinale killings when, after mentioning in passing that there was somebody and that she would bring that somebody to appear before the Committee, I told her to bring the person before the Committee but the person never turned up? Is she in order to mislead the House?

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Chairman! If a Member offers to give you information or even a name, it is not the responsibility of that hon. Member to offer delivery of the person; it is up to the Committee. This is the Business of the House!

**Ms. Karua:** Thank you, Mr. Temporary Deputy Speaker, Sir. I do recall giving the Chairman a telephone number and also being told by one hon. Member of the Committee - I do not want to go there to cause controversy – that they had been to the Dagoretti DO's office and they noticed that the DO was trying to stop this person from testifying.

Mr. Temporary Deputy Speaker, Sir, this matter reveals the inadequacy, once again, of investigations by parliamentary Committees and I would urge Ministers of Government, especially the Minister in charge of internal security, represented by my

good friend here, to stop compromising Committees when they are investigating issues. Just like we recognize that the police are our brothers and sisters, so are the dead – they are our brothers and sisters as well.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear my good friend, Ms. Karua saying that we should stop compromising Committee Members? Can she substantiate?

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Assistant Minister, that is the opinion of the hon. Member. She has not said that particular hon. Members were compromised. It is wise counsel that you do not attempt to compromise; it is just like when you would say that a Government Minister should not be compromised. That does not mean that somebody has compromised or that one has been compromised.

**Ms. Karua:** Thank you, Mr. Temporary Deputy Speaker, Sir. I also want to clarify that by “compromise”, I do not mean necessarily being given something. But allowing the police to go and investigate instead of the hon. Members going to hear the public that compromises. It may be good for a police investigation, but for a parliamentary inquiry, it compromises the independence of that inquiry as to whether the police have done their work. So, it is to that extent that I am saying that parliamentary investigations should not be compromised by the Executive.

Mr. Temporary Deputy Speaker, Sir, I want to look at the points that---

**The Minister for Public Health and Sanitation** (Ms. Mugo): On a point of information, Mr. Temporary Deputy Speaker, Sir. I do support this Report, but I would like to give some information.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Minister! We are debating on the amendment. So, are you supporting the Report as amended?

**The Minister for Public Health and Sanitation** (Mrs. Mugo): No, not the amendment, but I want to give information on summoning of witnesses, because I took the responsibility. I invited those names given; even those given by the hon. Member, my sister here, to my constituency office to meet the Committee.

I attended and only left after those members arrived because the Committee was a little bit late and I had another meeting. I introduced the people whose names have also been given by the hon. Member. I also know the persons myself, because I worked with them. I introduced them to the Committee. I want to believe that they interviewed those members. They came with their families.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I am looking at this Report, especially paragraph four which my colleague wants to amend, and which says that the police cannot be held responsible for the death of Brian Kiptanui Birir, as circumstances leading to his death are unclear, and that he disappeared immediately he was released from police custody. If I pose there, this, on a balance of probability, implicates the police.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): On a point of order, Mr. Temporary Deputy Speaker, Sir.

**Ms. Karua:** I have not even made my case. What point of order? I am still making my case!

**The Temporary Deputy Speaker** (Mr. Ethuro): What is it, Mr. Ojode?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I do not wish to make contradictory statements on what she is talking about. The Report does

not say that Brian disappeared immediately after he was released. Brian was found dead three days after his release; that does not necessarily mean that it is the police who killed him.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! resume your seat, Mr. Assistant Minister. You cannot purport to be the only literate person in this House to the extent that you read the Report selectively. If you heard Ms. Karua, she said: “Let us pause there”. She has not gone where you have gone. So, there is both the issue of the disappearance immediately after the release and the death, which I am sure she is coming to.

Proceed, Ms, Karua.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, without even going that far, the Assistant Minister should be a sad person today. He should not be smiling. He should be sad that the police cannot investigate all these cases; that we have to stand here in Parliament and plead with the Speaker for the matters to be referred to Committees, and we know Committees cannot fully investigate matters. We are doing this out of desperation, because the Ministry has failed in its duty.

In fact, if we were not reforming it, I would say it be abolished. Since we need security, this calls for quick action in police reforms. We need an independent police authority. We need a civilian oversight board which can investigate police.

We never can expect the police to incriminate themselves. I support the amendment because this matter should not quickly be swept under the carpet, so that this young man disappears without trace and nobody is found liable. The amendment helps to open up the matter. I would plead with the Assistant Minister to be the first to accept the amendment which recognizes that we have unfinished business.

All these investigations are incomplete. They are waiting for the police, a reformed police. So, can we go where we need to go; police reforms? This will ensure that the police force is divorced from the Executive, and we do not have to ask the Minister what is happening. Why is the investigation not deepened? It is sad that all these lives are lost and nobody will be brought to account for them.

I support the amendment and, once again, call for speedy enactment of police reforms; as Parliament, we will support them.

I beg to support.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, for purpose of the record, paragraph four, before the amendment, actually reads:-

“The police cannot be held responsible for the death of Brian Kiptanui Birir as the circumstances leading to his death are unclear. The young man disappeared immediately he was released from police custody, and was found dead three days later. It is not clear why he hanged himself after being released from police cells”.

Surely---

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

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Lessonet! Who are you informing? You cannot inform the Chair. The Chair is well informed and so, it is information to the House. So, the amendment is consistent even with the way that framing was put originally, but that is not for the Chair. That is for the House to determine. But I just wanted to reconcile the two statements made by the Minister and hon. Karua. The two are actually the same paragraph and I think the Assistant Minister was trying to read it selectively.

*(Question of the first part of the amendment, that*



*the words to be left out be left out, put and agreed to)*

*(Question of the second part of the amendment, that the words to be inserted in place thereof be inserted, proposed)*

*(Question of the second part of the amendment that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Question of the Motion as amended proposed)*

**The Temporary Deputy Speaker (Mr. Ethuro):** Order, hon. Members! We are back to the Report now as amended.

**An hon. Member:** No, it is not amended!

**The Temporary Deputy Speaker (Mr. Ethuro):** Order, hon. Members! There is no confusion except in the minds of the Executive. The Chair has been extremely clear. We put the Question and I said “the Ayes have it.” You know the procedure, hon. Members. If you want to challenge the Chair’s ruling, command the Members. You do not have the numbers. So, let us proceed! We cannot revisit the matter. It has been determined and we are back to the Report as amended. If there are any contributions, proceed!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Temporary Deputy Speaker, Sir, I want to say that, although you have made a ruling that the Ayes have taken the day, we are many and we were the loudest.

**The Temporary Deputy Speaker (Mr. Ethuro):** Order! Mr. Assistant Minister, resume your seat.

*(Mr. Ojode resumed his seat)*

You know the rules of the House. You have been in this House the same time as the Chair, if not more. When a Question on an amendment is proposed, it is subject to the louder voice. The Chair then makes a ruling either way. If you are unhappy with the ruling of the Chair, you know what you have to do. You raise the requisite numbers to challenge it. Nobody attempted to challenge, leave alone to raise the numbers. So, on that basis, Mr. Assistant Minister, I am afraid, this is Parliament. Proceed!

**The Assistant Minister, Ministry of State for Minister for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Temporary Deputy Speaker, Sir, I would like to respond to this Report. I will start with the visits made by Committee Members. When the Committee Members were in Lari District, the District Security Intelligence Committee in Lari concurred that on several occasions, bodies had been collected from Kinale and Gumbi forests. That is in this Report. Investigations indicated that the victims were killed elsewhere. That is what the Report says. That is why I was adamant while opposing the amendment that was being moved.

On 15<sup>th</sup> September, 2010, four bodies with clear gunshot wounds were found dumped there. Again, on 18<sup>th</sup> September, two bodies were also found lying along the Mai Mahiu-Kijabe Road. If you go through this Report, you will see that it is true that the bodies were found within Lari District. The bodies were found in Kinale. However, those bodies were brought in from elsewhere, according to the Report. The

killings were not done within Lari or in Kinale. That is what I said earlier. That is also what the Committee came up with and that is the truth of the matter.

The Committee refuted cases of extra-judicial killings. That is also in the Report. I was being forced in this House to say that yes, there are extra-judicial killings. The Report says the opposite. Further, the victims whose bodies were found had not been in police custody as alleged. Lari District lacked the capacity to deal with crime outside the district, but they were working with the CID Headquarters to unravel the situation.

The same Committee moved to Koibatek. You know very well that accusations had been made in this House and I had always denied the accusations. Today, the Report is quite explicit. It talks about what was on the ground, although we are being forced to accept certain issues. But the contrary is there. The Committee intended to investigate the suspicious deaths of two individuals in Koibatek District. In the first case, the deceased was reported to have died as a result of a hit and run accident. It is the police officers who reported the matter as a hit and run incident. This was also refuted by the members of the public who alleged that the deceased had been arrested before he was later found dead under mysterious circumstances.

Mr. Temporary Deputy Speaker, Sir, when they went to Mogotio District, one, Alex Kiptum Kibor, was fatally shot by Administration Police officers, who were later arrested and charged with manslaughter. They were later released due to lack of evidence. The Report says that there was no evidence to implicate these officers.

The Committee moved to Dagoretti District. There is no police station at Dagoretti despite increasing population and crime trends. In fact, we are considering Dagoretti. If we get land, we will put up a police station and an AP camp in Dagoretti to deal with the thugs within that area because the population is increasing on a daily basis. I think the Member for that area will help us to get land in order for us to put up a police division or station in the area. That will reduce the incidences of thuggery within that area.

On the killings of three persons, whose bodies were found dumped at Kinale in Lari, the police could not furnish the Committee with postmortem reports, as this is usually conducted by police officers from where the bodies have been retrieved. The investigations were being conducted by the CID officers together with the police officers helping the Committee Members. The community members interviewed, alleged that one of the deceased, Mr. John Kamau, had been arrested before he was found murdered. A postmortem report indicated that he had seven gunshot wounds. There were no OB records in police stations where he is alleged to have been held. We are not hiding anything. We ask the Committee Members to come and peruse the OBs. There was not a single report which was made there. That means that the killings happened elsewhere and then the bodies were brought to that particular area.

The Committee Members also moved to Kisauni District, which had experienced unrest instigated by land issues. We know very well that Coast Province has landless people. This is not something new to the Government and the Members of Parliament. During the unrest, four civilians and two policemen were seriously injured.

The issues of drug abuse, unemployment and inadequate police presence were also identified as major causes of insecurity in Kisauni. We have revamped the Police Narcotics Division to go into the depth of the investigations in order to know the fellows who are trafficking and ferrying drugs. Soon or later, we will get to know who is who in the drug trafficking scenario.

The Committee further went all the way to Nyakach to check what is happening there. It did a good job because in Nyakach, we have the cattle rustling menace. The Committee also found out that some politicians are involved in cattle rustling. The ordinary *wananchi* were speculating the names. If the names were given to the police officers, we would apprehend and arrest some of these fellows for them to tell us why they kill people and steal livestock.

This problem is compounded by lack of enough physical facilities, especially in Pap Onditi Police Station which had only one vehicle which is being used in the entire district. The Member for Nyakach requested our Ministry to give him an additional vehicle in order for the police to trail the cattle rustlers.

### **ADJOURNMENT**

**The Temporary Deputy Speaker (Mr. Ethuro):** Order, Assistant Minister! You still have 20 minutes to continue from where you left when this matter comes up again.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 19<sup>th</sup> January, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.