

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 1st September, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:-

Prof. Githu Muigai

Mr. Speaker: Hon. Members, please in the usual manner, welcome the second *ex-officio* Member of Parliament, the Attorney-General!

(Applause)

You may proceed and come in Attorney-General!

(The Attorney-General was escorted to the Bar, bowed to the Chair and proceeded to take his seat on the Front Bench)

NOTICES OF MOTIONS

PROVISION OF FREE CANCER TREATMENT FOR KENYA CITIZENS

Mr. James Maina Kamau: Mr. Speaker, Sir, I beg to give notices of the following Motions:-

THAT, aware that according to the Ministry of Public Health and Sanitation, an estimated 18,000 Kenyans die annually due to various cancers and a further 82,000 new cases are reported every year; further aware that most cancer cases are treatable when diagnosed early and advanced technology and facilities used; concerned that Kenya has no national policy on cancer, cancer control law and national cancer strategy; noting that being diagnosed with cancer for majority of Kenyans is equivalent to receiving a death sentence owing to scarcity of facilities for proper treatment and forbidding costs involved; this House resolves that the Government makes cancer treatment free for all Kenya citizens.

ADMISSION OF MORE STUDENTS TO REGULAR
PROGRAMMES IN PUBLIC UNIVERSITIES

THAT, noting that the Joint Admissions Board (JAB) admitted 32,611 students to public universities in 2009 and 2010 double intake; concerned that less than one-third of the 81,000 students who had qualified to join public universities were admitted; further concerned that parallel degree programme admission continues to expand further stretching resources for regular programmes; aware that the economic growth of our nation is tied to the educational development of our people; acknowledging that the first group of students under the Free Education Programme will be graduating by 2015 and more than 150,000 students are likely to qualify for university intake; this House urges the Government to ensure that, at least, 75 per cent of all qualified students are admitted to the regular programmes in our public universities from 2011.

QUESTIONS BY PRIVATE NOTICE

ACUTE FOOD SHORTAGE IN IKUTHA/MUTOMO DISTRICTS

Mr. I. Muoki: Mr. Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) Is the Minister aware of the serious food shortage being experienced in Mutomo and Ikutha districts (Kitui South Constituency) and residents have not received relief supplies for several months and that the relief food supplied to the area in July, 2011 was condemned by Public Health Officers?

(b) Is the Minister also aware that part of the relief food meant for the area has not reached them and it is being sold locally?

(c) What urgent measures will the Minister take to ensure that there is adequate supply of relief food in the area?

The Assistant Minister, Ministry of State for Special Programmes (Mr. Gabbow): Mr. Speaker, Sir, I beg to answer.

*(The newly-appointed Assistant Minister was applauded as
he rose in his place to answer the question)*

(a) I am aware that there is food shortage in Mutomo and Ikutha due to the current drought being experienced in the districts and other parts of the country. However, it is not true that the residents have not received relief food for several months. Mutomo and Ikutha have been receiving food every month since the drought situation began early in the year. In the months of May to August, Ikutha and Mutomo have each received a total of 7,400 bags of maize, 1,400 bags of beans, 200 cartons of cooking oil and cash amounting to Kshs600,000 each to assist in the distribution of food. In addition to this allocation, the districts are also benefiting under the Protracted Relief and Recovery Operation (PRRO) that is run by the World Food Programme (WFP). There are about

135,900 beneficiaries of this programme in the larger Kitui that also includes the two districts. Further, the districts are also benefiting under the School Feeding Programme under the Ministry of Education and the WFP.

I am aware that some relief food was said to be unfit for human consumption. We have already collected samples of the maize being alleged to be contaminated from the Kitui National Cereals and Produce Board depot and forwarded it to the Government Chemist for testing aflatoxin levels and establish whether the maize is fit for human consumption. I have the results with me here from the Government Chief Chemist, which I wish to table.

(Mr. Gabbow laid the document on the Table)

(b) I am not aware that part of the relief food meant for the area has not reached the beneficiaries and is being sold locally. My Ministry has not received any reports of any relief food being sold in Mutomo or Ikutha districts, but will launch investigations to establish the claims. It will nevertheless be appreciated if the Member of Parliament could provide any evidence that can assist in the investigations. If, indeed, the investigations reveal any such theft, action will be taken against the concerned individuals.

(c) My Ministry will continue to provide relief food to the two districts until the food situation improves.

Mr. I. Muoki: Mr. Speaker, Sir, I want to thank the new Assistant Minister. I am sure this is his first Question to answer. The Ministry is not taking this issue seriously because the Assistant Minister has casually said that some food was alleged to be unfit for human consumption. The truth of the matter is that in the month of July, 10,000 bags of maize meant for the whole of Kitui County, namely, Mwingi North, Mwingi South, Kitui Central and Kitui South received rotten maize which is in the stores of the NCPB, Kitui depot. This food was tested by the Public Health Officers in the district through the Government Chemist and it was found to be rotten and unfit for human consumption. They went ahead to obtain a court order to stop this food from being distributed.

The Assistant Minister has stated that we have been receiving food, yet the food is contaminated and is in the stores. This means that we have not received this food! Could the Assistant Minister withdraw this food or destroy it and replace it with good food so that the people of Kitui County, including my two districts of Kitui South, can receive the food?

Mr. Gabbow: Mr. Speaker, Sir, we always rely on the reports that we get from the Government Chemist. However, we are going to withdraw the food and make sure that food is obtained from Kitale. I am told that the maize which, was discoloured, came from Eldoret. We will withdraw that maize and replace it.

Mr. Affey: Mr. Speaker, Sir, I want to begin by congratulating the Assistant Minister. Knowing him, I am sure the Minister has an able deputy. Now that he has confirmed that relief food is being supplied to every part of the country, could he confirm that in the northern parts of Kenya, and the President himself has directed that the relief food be doubled from the initial distribution levels, will receive enough food so that people can be comfortable before the rains come?

Mr. Gabbow: Mr. Speaker, Sir, I can confirm that relief food distribution to North Eastern Province has been doubled. I will give you an example of Wajir North Constituency, where I come from. We used to receive 4,000 bags of rice and now we are receiving 8,000 bags of rice. I can confirm that, that has been implemented.

Mr. Nyamai: Mr. Speaker, Sir, indeed, the issue raised by hon. I. Muoki is affecting the whole of Kitui County. I have been on the ground, particularly in Kitui West District, where the District Commissioner has been forcing people to collect the rotten maize! In fact, I brought some of the maize, which is with the Serjeant-At-Arms, which I wanted to give to the Assistant Minister! What is the Government doing to stop the DCs and the chiefs from forcing people to collect this bad maize?

Mr. Gabbow: Mr. Speaker, Sir, I can assure you that nobody wants Kenyans to feed on rotten maize. Definitely, the Ministry will take action and look at the type of maize we have on the ground and, through the NCPB, withdraw any rotten maize. The Ministry will give instructions that any food that is considered to be rotten, or discoloured, should not be given to the public.

Mr. Nyamai: On a point of order, Mr. Speaker, Sir. I have said that I had carried some maize for the Assistant Minister to see as he answers the Question! The maize is with the Serjeant-At-Arms. Could you allow the Assistant Minister to be given the maize, so that as he answers the Question, he knows what he is talking about? The Ministry is taking this matter lightly!

Mr. Speaker: Yes, subject to the Clerk confirming that, that parcel has passed through the scanner, I will allow! Order, hon. Nyamai! You do not have to do anything more yourself! Will you, please, pass that maize to the Clerk, so that it is tabled?

(The parcel containing the maize was laid on the Table)

(Mr. Speaker inspected the parcel)

Mr. Assistant Minister, I want you to then look at this! Order Mr. Assistant Minister, you do not collect tabled items from the Speaker! Hon. Nyamai, go back to your position, please! Hon. Nyamai, there is no indication on the package as to where this maize originated from! Is there any way that you can confirm that this maize was from wherever place you are talking about?

Mr. Nyamai: Mr. Speaker, Sir, I can confirm it because I collected it from the stores at the District Commissioner's (DC) office in Kitui West. If you give me time, I can bring the full sack which was given to me by the people, on Tuesday morning. That sack was completely sealed and I came with it to Nairobi but I could not carry it here.

Mr. Speaker: Order, the Member for Kitui West! On what date did you collect it, the time and from which officer?

Mr. Nyamai: Mr. Speaker, Sir, I collected it last Saturday but one from the clerk to the DC, Kitui West. The clerk is the one who is in charge of the store in the DC's office. When I was collecting it I was not alone but with four local councillors and 50 local leaders. This is because this matter has been serious and of concern to us.

Mr. Speaker: Very well! That is good enough! Mr. Assistant Minister, can you look at that maize and then answer the question?

Mr. Gabbow: Mr. Speaker, Sir, first of all the hon. Member claims that the maize was collected from a store and it was not part of the distributed maize on the ground. Secondly, he has to prove to us the origin of the maize, as the Chair has said. So, it has to be accompanied by a document to show that it was not just haphazardly collected from a point.

Mr. I. Muoki: On a point of order, Mr. Speaker, Sir. I think the Assistant Minister is taking this matter lightly! What we said is that the food in the stores is the food which was condemned by the public health officials but it is still in the stores! If he is doubting that, could he send somebody from his office so that we go tomorrow and collect samples directly from the stores to prove that this food is rotten and not fit for human consumption? Is the Assistant Minister in order to take this matter lightly?

Mr. Gabbow: Mr. Speaker, Sir, our officers were on the ground and we have already collected our own samples and I have tabled documents to show the percentage of aflatoxin in the maize. Therefore, there is no need for us to go back again. We have accepted and said that any maize, which is rotten or discoloured, will be withdrawn from the Cereal Board.

Mr. Mututho: On a point of order, Mr. Speaker, Sir. This is a very serious matter! You have heard the Assistant Minister admit severally that the maize is rotten. Indeed, the documents that he has tabled show that the maize is rotten. Am I in order, therefore, to ask the Assistant Minister to go and withdraw all the food that he is talking about because the report he has tabled shows that the maize is rotten?

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

Mr. Speaker: Mr. Gabbow, do you want information from your colleague?

Mr. Gabbow: Yes, Mr. Speaker, Sir.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Speaker, Sir, I wanted to inform my colleague that, in fact, it is true I have personally been to the stores in Mwingi and Kitui and this maize is all rotten. That is a fact.

Mr. Gabbow: Mr. Speaker, Sir, as I have said, we will withdraw all rotten maize from the stores and that it will not be distributed.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I think the HANSARD must have captured this. A few minutes ago, the Assistant Minister claimed that the discoloured maize is actually from Eldoret. I have looked at some of this maize and we do not grow this type of maize in the Rift Valley. I think the Assistant Minister owes us an explanation! Let him substantiate his statement or make an apology to the people of Eldoret who actually grow very good maize. He has actually defamed Rift Valley! Is he in order to make such a statement without properly substantiating his claims?

Mr. Gabbow: Mr. Speaker, Sir, I want to correct that. I said that it came from the National Cereals and Produce Board (NCPB) in Eldoret and we have no doubt about that. That does not mean that the people of Eldoret are producing bad maize. Maybe the storage facility may have had that problem. So, it has completely no connection with whoever is growing maize around there. I also said that we are getting fresh maize that has already been bought for distribution to Kenyans.

Mututho: On a point of order, Mr. Speaker, Sir. My Committee on Agriculture, Livestock and Cooperatives visited Mombasa and sampled some maize in one of the ships that are contentious. This maize is a replica of the maize we saw in Mombasa which

was suspected not only to be GMO but also to have come in illegally because it did not have any marking! Is the Assistant Minister in order to mislead this House that this maize is locally-grown and if so, who supplied it to the NCPB?

Mr. Gabbow: Mr. Speaker, Sir, the Committee has the right to table whatever report it has before this House. We are not aware of any maize from Mombasa being discoloured or being contaminated.

Mr. I. Muoki: Mr. Speaker, Sir, the Assistant Minister has said that there is no food that is lost on the way but I would like to tell him that we have not received food for August except on papers. The food has not reached my constituency! I raised this issue in 2009 and the Minister sent a team to investigate and found that a lorry-full of food reached our area but the food was taken away and resold! The only action that the Ministry took was to transfer that District Officer (DO) to another place! So, what will the Assistant Minister do to ensure that we get food promptly and that it is not lost on the way?

Mr. Gabbow: Mr. Speaker, Sir, first of all, DOs do not fall under the Ministry of State for Special Programmes. So, we have no authority to transfer any DO. Secondly, the hon. Member claimed food had not reached them for several months but now he is only talking about August. I think there is also a contradiction there but definitely we will make sure---

Mr. Speaker: Order, Mr. Gabbow! I want you to concentrate on answering the question, that you will ensure that food is available and that it is not lost on the way. Avoid the rest of it because the rest of it does not go to the gist of the matter.

Mr. Gabbow: Thank you, Mr. Speaker, Sir, for your direction. We will ensure that food is received safely and that it is distributed without fail.

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. While I appreciate the excellent attempt by the freshly admitted Assistant Minister to respond to these questions, is he in order to mislead this House that the people of Kitui South are getting relief food whereas when you look at the four months that he is referring to, they only got 1,850 and the number of beneficiaries is 139 according to these figures and he has not talked about the major component of the World Food Programme/GOK relief food supplies? This is only the small portion that goes through the Provincial Administration. I know for a fact, because we are beneficiaries of the same programme that in the months of May, June and July, the WFP did not provide food to these constituencies because of pipeline difficulties. Is he in order to get away that Kitui South is receiving relief food when it is just getting what is usually given to the highly vulnerable groups?

Mr. Speaker: Order! The Member for Turkana Central, you are asking: "Is he in order to get away?" I do not see the Minister getting away. So, you must withdraw that part. "Is he in order to mislead the House?" that is legitimate, but not "get away"

Mr. Ethuro: Mr. Speaker, Sir, I stand corrected, but when he was misleading he got away when he moved from the Dispatch Box to the Front Bench.

Mr. Speaker: Withdraw the words "get away!"

Mr. Ethuro: Mr. Speaker, Sir, having recognized your authority in these matters, I wish to withdraw the words "get away" and replace with the words "strategically withdrawing to his Bench."

Mr. Gabbow: Mr. Speaker, Sir, we have evidence and weigh bills which I wish to table to show that food has been sent to that area.

(Mr. Gabbow laid the documents on the Table)

Mr. Speaker: Very well!
Yes, the Member for Turkana Central!

RATIO OF KPRs *VIS-À-VIS* REGULAR SECURITY PERSONNEL

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

(a) What is the ratio of Kenya Police Reservists (KPRs) in Turkana County *visa-vis* the other established security forces and could the Minister state their numbers and locations?

(b) Why has the Government not deployed more KPRs in light of the worsening insecurity situation in the county and when will they be deployed?

(c) What are the terms and conditions of service for KPRs?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I would like to seek the indulgence of this House to present the answer to this Question on Tuesday.

Mr. Speaker: Very well! The Member for Turkana Central, do you have any difficulty with that?

Mr. Ethuro: Mr. Speaker, Sir, I have no difficulty with that except for the Minister to confirm to the House that as he buys time to bring the answer, the people of Turkana County are being attacked on a weekly basis. I hope that he will do something, so that even as he reports he can demonstrate that he has prevented further attacks between now and Tuesday.

Mr. Speaker: Mr. Minister, some interim measures?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I would like to confirm that, indeed, we will ensure that security personnel are boosted to make sure that attacks do not take place. As a matter of fact, the hon. Member is aware that we have already posted a substantial number of security personnel, which include the police and the military in some strategic places. We will be very vigilant to make sure that no attack takes place.

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

(Question deferred)

CIVIC EDUCATION ON GMOS

Ms. Chepchumba: Mr. Speaker, Sir, I beg to ask the Minister for Higher Education, Science and Technology the following Question by Private Notice.

(a) Does the Government have a plan to conduct civic education on the effects of consuming Genetically Modified Organisms (GMOs) food?

(b) Is the Minister aware that due to inadequate information on the importation, sale and consumption of GMOs, farmers in grain-growing areas are suspicious of seeds being provided by Government agencies?

(c) How many experts on GMOs does the Government have in the country, particularly in Eldoret South and can the Minister confirm to the House that no GMOs, particularly seeds, have been imported into the country?

The Minister for Higher Education, Science and Technology (Prof. Kamar): Mr. Speaker, Sir, I seek your indulgence to answer this Question later on. This Question had been sent to the Ministry of Agriculture and was re-directed to my Ministry on Monday, a day before I was sworn in and I saw it on Tuesday. The answer that we have currently requires a little bit of depth, especially on part “c” of the Question. I have already consulted with the Member for Eldoret South and I seek your permission to come back in two weeks because we need to address this issue of GMO thoroughly. So, I request that I come back in two weeks with a proper answer.

Mr. Speaker: Very well, Madam Minister! The Member for Eldoret South, do you agree to give the Minister two weeks?

Ms. Chepchumba: Mr. Speaker, Sir, I have no problem. The Minister can answer the Question in the next two weeks.

Mr. Speaker: Madam Minister, please note the sensitivity around this matter even as you go for those two weeks. This is because we have received a Statement in this House, not very long ago, on the authority of the Rt. hon. Prime Minister, contending that no GMO maize has been imported into the country. But, subsequently, there is information in the public domain, which appears to be authoritative that GMO maize has, in fact, been imported into the country for many months in the recent past!

The Minister for Higher Education, Science and Technology (Prof. Kamar): Mr. Speaker, Sir, it is for that reason that we want to be very thorough in our investigations. More so, our officers and ourselves will appear before the Departmental Committee on Agriculture, Livestock and Cooperatives because there is a pending appointment between the Committee and us. I want to assure you that we will be thorough in the way we look at the issues so that we harmonize everything that is known.

Mr. Speaker: Very well!

(Question deferred)

UTILIZATION OF BALANCES OF FUNDS AFTER COMPLETION OF ESP PROJECTS

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

(a) Is the Minister aware that projects started late under the Economic Stimulus Programme (ESP) still had balances of funds at the close of the 2010/2011 Financial Year?

(Mr. Ruto started reading out the terms of the Question)

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. Is it in order for Mr. Ruto, my very good friend, to depart from practice and read the Question when you have ruled that one can just ask because it is already written on the Order Paper?

Mr. Speaker: Order! We have provision in our Standing Orders for an option to read the Question, if the hon. Member so desires and I know the Member for Chepalungu likes to be seen and heard by his constituents!

(Laughter)

You may proceed, the Member for Chepalungu!

Mr. Ruto: Mr. Speaker, Sir, the Questions we ask belong to the Kenyan people!

Mr. Speaker: Proceed, the Member for Chepalungu! I have already given directions!

Mr. Ruto: Mr. Speaker, Sir, I will continue.

(b) What measures will the Minister take to ensure that District Treasuries continue to pay contractors on time?

(b) Whose authority is required to enable expenditure of balances of funds at the District Treasuries and could the Minister direct Accounting Officers to issue requisite instructions to effect payments for the ongoing projects?

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, I beg the indulgence of the House because the nature of this Question calls for us to get answers from the line Ministries. This is because the Economic Stimulus Projects were actually being implemented through the line Ministries. I, therefore, wish to request that this Question be deferred to Thursday, next week, so that we can give a comprehensive answer to the satisfaction of the hon. Member.

Mr. Speaker: The Member for Chepalungu, the Assistant Minister wants time to find the information for you.

Mr. Ruto: Mr. Speaker, Sir, I filed this Question by Private Notice two weeks ago. As you can see, this Question is fairly straightforward. It is just a matter of giving authority for the expenditure of the balances, which at the moment are still at the District Treasuries for these ongoing projects to proceed. But nevertheless because the substantive Minister has been busy with the Budget, I am willing to indulge, but probably only up to Tuesday.

Mr. Speaker: Very well, the Member for Chepalungu, except that you did not have to say all those things. The Question is deferred to Thursday, next week!

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.944

PROVISION OF FUNDS TO OPERATIONALIZE
“CENTRES OF EXCELLENCE”

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

(a) whether he is aware that “Centres of Excellence” put up or upgraded through the *Economic Stimulus Programme* cannot be provided with the necessary infrastructure with the funds allocated;

(b) when he will provide more funds to the schools; and,

(c) whether he could also address the shortage of teachers in the schools.

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware of any existing budgetary shortfall with regard to the financing of the “Centres of Excellence.”

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

(c) The Ministry will consider budgetary provision to cater for employment of additional teachers in the context of the revised budgets of the current financial year and subsequent budgetary allocations.

Mr. Ruteere: Mr. Speaker, Sir, this is the third time this Question has been asked in this House. The first time the Question was asked, the Minister for Education said that because of the financial implications, it be referred to the Ministry of Finance. The second time, the Minister himself said that he be given time to do a bit of searching to find out what is required by the Centres of Excellence. Centres of Excellence were the brainchild of the Deputy Prime Minister and Minister for Finance. They are supposed to have perfection in infrastructure, staffing and the standards of education. I am surprised to hear from the Assistant Minister that he is not aware of the budgetary shortfalls in that area. We know that Kshs30 million could not adequately cater for all the infrastructural work in the schools. I am asking---

Mr. Speaker: Order, Member for North Imenti! Come to your question quickly.

Mr. Ruteere: Mr. Speaker, Sir, my question is: Where the schools have put up three buildings, that is the dormitory, dining hall and a laboratory, is there not a shortfall when we do not have adequate classrooms or equipment for those classrooms?

Mr. Kinyanjui: Mr. Speaker, Sir, the guidelines that were given out by the Office of the Deputy Prime Minister and Ministry of Finance were very clear; that within the first phase of the Economic Stimulus Programme you were to budget for Kshs30 million and nothing in excess of that. We appreciate that Kshs30 million is not enough to transform an ordinary school into a center of excellence. However, within the first phase, we could not exceed the Kshs30 million mark. But as I said in part “c” of my answer, we hope that in future we will include another phase to upgrade those schools to the necessary level for them to compete nationally.

Mr. Mureithi: Thank you, Mr. Speaker, Sir. I have listened to the answer by the Deputy Prime Minister and Minister for Finance. I would like to raise something on the same issue. The Center of Excellence in Ol Kalou - the school that we were to upgrade - got Kshs30 million. Unfortunately, the contractor colluded and exaggerated the costs to an extent that he has completed only five classes. He has not finished the dining hall and yet, he is about to exhaust the Kshs30 million. We understand that there are some people who are working with him. Could the Assistant Minister tell us what he will do to deal with such cases? No girls have been admitted during the 2011/2012 Financial Year?

What will the Assistant Minister do to deal with such kind of contractors who seem to have godfathers and cannot be touched at the ground level?

Mr. Kinyanjui: Thank you, Mr. Speaker Sir. As I indicated earlier, the projects under the Economic Stimulus Programme were being handled by line Ministries. That included even the procurement process. We appreciate that we have had challenges as the hon. Member has stated. The Ministry has asked for an evaluation of all the projects to ensure that we do remedial work on any projects that are facing challenges. More importantly, with regard to any contractor who has gone against the contractual obligation stated out in the contracts, we will terminate the contracts and invoke the necessary laws.

Mr. Washiali: Mr. Speaker, Sir, whereas I appreciate the answer given by the Assistant Minister, I do not think he has enough information to guide us in his answer. Under the ESP guidelines, we were to put up five projects. One of the projects was a dining cum an assembly, which had a Bill of Quantity (BQ) of Kshs21 million. The Kshs21 million was more than two-thirds of what you were giving. So, how do you expect the Kshs30 million to complete all the five projects?

Mr. Kinyanjui: Mr. Speaker, Sir, it is true that guidelines were given. However, each constituency has its own unique circumstances. There are situations where constituencies did not have land and had to start at that level. In some areas, it was just a question of having dormitories or starting at another level. So, there is no answer that can satisfy all the Members. However, even with the guidelines, there was opportunity for Members to domesticate their projects to meet the requirements of the constituency.

Mr. Ruteere: Mr. Speaker, Sir, in view of the scanty information that has been given by the Assistant Minister, knowing that the budgetary allocation shortfall is there and the Assistant Minister is denying, would I be in order to ask that you defer this Question so that he can give us the details of what has been done in each constituency?

Mr. Speaker: Order! You would be out of order because the Member who has answered from the Front Bench is a Minister. If you look at your Standing Orders, you will see that. Maybe, you want another Minister and you have not said so. So, you would be out of order.

Question No.971

IRREGULAR ACQUISITION OF KERUGOYA
DISTRICT HOSPITAL LAND

Ms. Karua asked the Minister for Lands:-

(a) whether he is aware that land parcel No.

Inoi/Kerugoya/250/275, measuring 0.527ha belonging to Kerugoya District Hospital, has been irregularly acquired; and,

(b) what the Minister is doing to halt the ongoing construction on the parcel and restore the land to the hospital.

Mr. Speaker: Order! Member for Gichugu, I thought unlike the Member for Chepalungu, your constituents see and hear you very often!

Ms. Karua: Mr. Speaker, Sir, I just thought we could make Parliament more lively.

Mr. Speaker: Proceed, Minister.

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I beg to reply. First, I will apologize because there was an answer that I had given earlier. I do not know whether the hon. Member got it, but it was overtaken by events. It was an outdated answer. The answer I have now is as follows:-

(a) Yes, I am aware that parcel No.Inoi/Kerugoya/250/275 measuring 0.507 hectares and not 0.527 hectares as alleged by the hon. Member, was irregularly allocated to one Edward Mugo Munene. The plot is located within the precincts of the Kerugoya District Hospital.

(b) The Government, through the Provincial Administration, that is the Office of the District Commissioner, has stopped the construction on the parcel. In the meantime, the Ministry of Lands has revoked the title issued to the said Edward Mugo Munene through Gazette Notice No.6334 published in the special issue of the *Kenya Gazette* on 8th June, 2001 on the basis that the land was a reservation for Kerugoya District Hospital and was, therefore, not available for alienation. I have a copy of the gazette notice in case the Member wants to have a look at it.

Ms. Karua: Mr. Speaker, Sir I want to thank the Minister for that comprehensive and very good answer. I would like to ask him to table the gazette notice otherwise, I have no further questions for him. Well done, Mr. Minister.

Mr. Speaker: As a matter of fact, the answer is so exhaustive that I do not know what other questions would arise. Let us hear the Member for Ikolomani.

Dr. Khalwale: Thank you, Mr. Speaker, Sir. So that other officers in this Government can realize that things have changed, what action have you taken against the Land Registrar and other officers who abetted the crime of issuing an illegal title deed to Mr. Munene?

Mr. Orengo: Mr. Speaker, Sir, indeed, for the many title deeds that we are revoking, we passed the details of the title deeds to Kenya Anti-Corruption Commission (KACC). It is evident that there was some level of misconduct - almost criminal - in giving out Government land for alienation. Normally, the Government is not given title deeds to any land. It is considered to be reservations. Military and Prisons land falls under special cases where the areas are gazetted. That also includes forest land. However, generally, other Government land would not be gazetted. It is just declared to be reservations. So, nobody is allowed to alienate any Government land which is a reservation for public use.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Is the Minister in order to pretend to answer my question when he is dwelling mainly on generalities? The question was: What action is he taking against that specific Land Registrar whom he has employed and whom he knows so as to send a clear message to others?

Mr. Orengo: Mr. Speaker, Sir, I said from the beginning that whenever we have revoked any title deed we pass on the evidence to the Kenya Anti-Corruption Commission (KACC) to deal with it. It is not within our mandate to deal with the criminal aspect of any case. Once we have made a recovery, we have performed our mandate. However, we go a step further and pass over the information to the KACC.

If the hon. Member wants to know the details he can come to my office and I will give him the details of all the pieces of land that we have revoked and handed over to the KACC.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead the House that once an offence has been committed by his own officers in the Ministry he cannot take action without forwarding the matter to KACC? We know very well that he can directly take action against those officers without having to forward the matter to the KACC which we know has not been doing a good job?

Mr. Orengo: Mr. Speaker, Sir, there are some times when it is not my officers who actually commit these misconducts or malpractice. In this particular case, the land was allocated by the Provincial Administration. We must understand there was a time when anything coming from the Provincial Administration or from the Office of the President was considered to be the position of the Government. A lot of these alienations bore their approval from the Head of State at that time. You will find that in any allocations of this nature, there would be an approval signed by the President. The officers would then give out the land on the basis that authority had been given by the Head of State.

I can tell you and this is something that I am very happy to say in public, that since His Excellency Mwai Kibaki became the President of this Republic, I have never seen any letter for approval of public land to be alienated to anybody. I have never come across such a case. However, from 2002 backwards, you will find that most of these allocations were being approved at the highest level of Government.

Question No.1002

REPAIR OF KATITO-KENDU BAY ROAD

Eng. Rege, on behalf of **Mr. Ochieng,** asked the Minister for Roads:-

(a) whether he is aware that Katito- Kendu Bay Road has developed serious gaping holes just a few years after re-construction,

(b) how much was allocated for the recent re-construction of the road, whether the entire budget allocation was spent and if he could table the details of works and specifications given to the contractor; and,

(c) what measures he will take to ensure the reconstruction works are re-done.

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Katito-Kendu Bay Road has developed some potholes in some sections of the road. This is as a result of increase of construction traffic for Kendu Bay-Homa Bay Project; the irrigation works for Oluch-Kimira Small Holder Irrigation Scheme Project and Phase II of the Sondu Miriu-Sangoro Hydro Electric Power Station.

(b) My Ministry, through the Kenya National Highways Authority made a budgetary allocation of Kshs784,242,687.20 out of which Kshs783,644,949.73 was spent on the rehabilitation of the road.

The scope of works and specifications were as follows:-

Site clearance, earth works, excavation to spoil of contaminated material, scarifying existing pavement layers comprising of surfacing, Graded Crushed Stones (GCS) base and sub-base process, improve with lime/ cement to form a 200mm thick

layer for sub base for carriageway and shoulders, provision of 150mm thick layer of cement/lime, improved natural gravel as base for carriageway and shoulders; and, application of double seal of 14/20 mm and 6/10mm chippings using 80/100 penetration grade bitumen cut back.

(c) My Ministry has set aside Kshs60 million in this financial year for carrying out the maintenance of the road and especially the sections which either have failed or show signs of weakening.

Eng. Rege: Mr. Speaker, Sir, I want to thank the hon. Assistant Minister for agreeing to spend Kshs60 million to repair this road. This road connects all traffic from Uganda, Sudan to Homa Bay which is the capital of Homa Bay County. The road from Kendu Bay to Homa Bay has been tarmacked extremely well with about 30 centimetres thickness of bitumen. He says Katito-Kendu Bay Road is 14 centimeters thick. Fourteen centimetres of bitumen is nothing short of 14mm thickness which is 0.1 of bitumen. However, 0.1 centimeters thickness cannot stand the heavy traffic on this road. All the traffic that goes to Tanzania is now diverted to use this particular road. It is completely dilapidated at the moment. Could he reconsider re-carpeting this road to the standards of Kendu Bay to Homa Bay Road?

Mr. Kinyanjui: Mr. Speaker, Sir, I do agree that the design of these roads was not meant to carry the weight of the construction work that is currently going on in the three projects that I have already stated. However, we intend to encourage the contractors to ensure that they do not overload the haulage that they have to carry from the quarries to the sites. In the meantime, we are in the process of considering erecting a mobile weighbridge on this particular road to ensure that we do not have this excess carriage on the roads.

Secondly, let me also take this opportunity to say that in all areas where we have mining, including Kerio Valley, we have roads that were designed to carry weights that are far much less. However, when we have any mining coming up in a place, the tendency is for the contractors and the miners to overload. We hope that before we install the weighbridge, members of the public will realize that when the road is gone, they will also suffer. We all have to take responsibility for our good network.

Ms. Leshomo: Bw. Spika, ningeomba kumuuliza Waziri Msaidizi atueleze mipango yake ya kuikarabati barabara ya Samburu hadi Baragoi. Magari yanayobeba chakula cha misaada hayawezi kufika Baragoi kwa sababu barabara hii ni mbaya sana. Je, tunaweza kutumia ndege kupeleka chakula huko kwa sababu barabara hii ni mbaya sana? Hatutaki kuona watu wetu wakifaa njaa.

Mr. Kinyanjui: Bw. Spika, wiki jana tulijibu Swali hilo hapa Bungeni. Nilisema tayari maofisa wetu wameanza kukarabati barabara hii. Jana jambo hili liliripotiwa katika runinga zetu. Ninamhakikishia mhe. Leshomo kuwa tayari tumetenga pesa za kukarabati barabara hii. Kama nilivyosema tayari kuna maofisa mashinani ambao wanajishughulisha na ukarabati huu ili wananchi wa sehemu hiyo wapate chakula. Hatutaki kuona watu wetu wakifa njaa kwa sababu ya hali mbaya ya barabara hapa nchini.

Ms. Leshomo: Jambo la Nidhamu, Bw. Spika. Ningesema kwamba---

Mr. Speaker: Order! Huwezi kuanza kuongea kabla sijakutambua. Lakini endelea.

Ms. Leshomo: Bw. Spika, watu wanaumia. Wangepewa ndege kwa sababu kusema watatuma watu ambao hawaendi si vizuri; wangetumia ndege kuwapeleka watu

chakula. Kuanzia wiki ijayo kile kimebaki kitaisha, na watapata watu wamekufa kwa sababu ya njaa.

Eng. Rege: Mr. Speaker, Sir, could I ask the hon. Assistant Minister to kindly consider that in Karachuonyo we will be carrying out geothermal mining and this road has one centimetre thickness of bitumen. It is not even bitumen, it was sprayed. The spraying was not of bitumen. It will not handle heavy traffic. So, could the Assistant Minister consider recarpeting this road to the best possible standards?

Mr. Kinyanjui: Mr. Speaker, Sir, we shall review the design of the road to ensure that it is compatible with the load.

Question No.851

LEVEL OF SUCCESS OF TREE PLANTING EXERCISE
IN EMUHAYA CONSTITUENCY

Dr. Otichilo asked the Minister for Education:-

(a) how successful the programme to establish tree nurseries in 20 primary schools in each constituency, particularly in Emuhaya Constituency, was, considering that Kshs60,000 was allocated to each school through the Economic Stimulus Programme (ESP) in 2009/2010; and,

(b) how successful the programme to purchase and plant seedlings in 50 schools in every constituency was, particularly in Emuhaya Constituency, considering that Kshs30,000 was allocated for this purpose.

Mr. Speaker, Sir, I need your indulgence in this matter because you deferred this Question for more than two weeks, and the answer I have received is the same one that the Assistant Minister gave two weeks ago. So, as far I am concerned, the Ministry has not answered this Question and I need your indulgence.

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I share the sentiments of hon. Otichilo. This is a Question on accountability of funds disbursed to schools throughout the country; it is fair that a detailed response is given of the exact manner in which the money was spent. I just arrived this morning from official duty in Mbarara, Uganda. I also got the same money. I beg the indulgence of the House that I take it upon myself to order for a proper review of the Question so that we get a detailed answer. I sympathise with the situation.

Mr. Speaker: Can you do that by Tuesday?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, whereas that is what I would love to do, having looked at the nature of the Question, it is about the Economic Stimulus Package, and that is the---

Mr. Speaker: Mr. Assistant Minister, how long do you want, bearing in mind that this Question has been on the Order Paper for the third time? It has to be reasonable.

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I would like to be given two weeks.

Mr. Speaker: Dr. Otichilo, are you ready to extend that indulgence to the Assistant Minister?

Dr. Otichilo: Mr. Speaker, Sir, the Assistant Minister requested for two weeks, and you graciously gave him two weeks. Now, he is again requesting for two weeks. I am not very sure he will be able to provide the answer; if he assures this House that this time he is going to give a comprehensive answer--- He has clearly said this is a matter of accountability. This House gave the Ministry of Education more than Kshs250 million to give to schools to plant trees, but so far the Ministry is unable to account for this money. I am willing to grant him the time, if he is not going to change goal posts after two weeks.

Mr. Speaker: Mr. Assistant Minister, can you give the commitment that you will personally be responsible to ensure that the answer comes in two weeks time?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I would like to give that undertaking.

(Question deferred)

Mr. Speaker: Next Question by Mr. Njuguna!

Question No.1024

NON-PAYMENT TO PAY CONTRACTOR BY NAIROBI SCHOOL

Mr. Njuguna asked the Minister for Education:-

(a) whether he is aware that M/s Kariuki Construction Co. Ltd. was contracted by Nairobi School to construct Nairobi School “Junior House” in 2006/2007;

(b) whether he is also aware that the final contract value of determination by both parties was Kshs6,389,431.90 but the contractor was paid only Kshs4,252,500.00; and,

(c) when the school will pay the contractor the balance of Kshs2,136,931.90.

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

(a) Yes, I am aware that M/s Kariuki Construction Company Limited was contracted by the Board of Governors (BOG) of Nairobi School to construct Nairobi School Junior House in 2006/2007.

(b) Yes, I am also aware that the final contract value was determined and agreed upon by both parties after termination of the contract, which was Kshs4,769,964, and not Kshs6,389,431.90 as alleged by the hon. Member. A total of Kshs517,964 is still outstanding as 5 per cent retention fees. However, the contractor lodged a claim for Kshs1,619,467, being loss of profit after the termination of the contract. The school felt that the claim was in bad faith, because it was the contractor who contributed to the termination of the contract after failing to fulfill its terms and obligations.

(c) The contractor and the school mutually agreed to await the final valuation accounts of the project after completion to determine the party that owes the other any amount. It is hoped that the current contractor will complete the project by September

2011, after which final accounts will be determined and whoever is supposed to be paid gets paid.

[Mr. Speaker left the Chair]

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

Dr. Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Having read this Question, and listening to the Assistant Minister give the answer, with all due respect, could the Chair guide the House whether Parliament is one of the avenues that people are supposed to resort to when they are attempting to collect debts? This is an issue of somebody owing another one money and they are supposed to use the normal channels to recover the money instead of coming to this National Assembly to be helped to recover debts.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, are you competent to answer this question?

Mr. Mwatela: Indeed, the Member is right, that this matter should end up in the litigation in court.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, but you have laboured to answer the question?

Mr. Mwatela: Mr. Temporary Deputy Speaker, Sir, I have said that there is a pending dispute, and after it the school will determine who owes the other money. Part “c” of my answer gives the very final arrangement that the contractor and the school mutually agreed. I think it was in order that they mutually agreed that they will determine the costs.

Mr. Njuguna: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister, therefore, in order to mislead the House when I can lay on the Table of this House documentary evidence on the contract agreement between the school and the contractor? The date can be confirmed by the Provincial Director of Education in Nairobi.

(Mr. Njuguna laid documents on the Table)

Mr. Mureithi: Mr. Temporary Deputy Speaker, Sir, we have a problem with the Ministry of Education. There is also a complaint in my constituency with one school called Gatimu Girls Secondary School. We have, through the District Education Board (DEB) sent a complaint where the contractor has exaggerated the figures and we are requesting for guidance. It has taken more than two months. What is the Assistant Minister doing to resolve these conflicts between the DEBs and the contractors so that children can continue---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Mureithi! That is a completely separate question.

Mr. Mureithi: Mr. Temporary Deputy Speaker, Sir, it is the same because there is a problem when it comes to contracts and payments. However, I remain guided.

The Temporary Deputy Speaker (Prof. Kaloki): Assistant Minister, are you prepared to answer that question?

Mr. Mwatela: Mr. Temporary Deputy Speaker, Sir, I can only assist the Member by telling him to refer to the procurement law.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, of late, the Government has been trying to assist schools in development. I am grateful to the Ministry that they have been trying to take care of our national schools. Knowing that some of these contractors have really assisted many of our schools, could the Assistant Minister consider footing the bill as a Ministry?

Mr. Mwatela: Mr. Temporary Deputy Speaker, Sir, I have not quite understood the request by the Member. Could he repeat?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Koech, could you make it clearer to the Assistant Minister?

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I thought I was very clear. I said; of late, the Ministry has been doing very well assisting in development and improving our schools by giving money to the schools to spend on construction. Given that this is one of the national schools where a majority of our children go to, could the Ministry consider footing the Kshs2 million directly?

Mr. Mwatela: Mr. Temporary Deputy Speaker, Sir, that is something we can consider as a Ministry.

The Temporary Deputy Speaker (Prof. Kaloki): Final question by Mr. Njuguna!

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, with the current outstanding balance as indicated in the paper that I have laid on the Table of this House, could the Assistant Minister consider paying the balance of Kshs2, 136,931.90 with some interest? This contractor went to a bank and was advanced some facilities.

The Temporary Deputy Speaker (Prof. Kaloki): Assistant Minister, when do you think the contractor will be paid?

Mr. Mwatela: Mr. Temporary Deputy Speaker, Sir, the Ministry cannot pay. This is a matter between the contracting parties. In this case---

Mr. Mwangi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House? Earlier on he had said that the Ministry would commit to pay the debt.

The Temporary Deputy Speaker (Prof. Kaloki): Assistant Minister, did you give that assurance?

Mr. Mwatela: Mr. Temporary Deputy Speaker, Sir, I think I said it very clearly that it is the Board of Governors of Nairobi School and the contractor. Those are the two parties.

The Temporary Deputy Speaker (Prof. Kaloki): Are you able to intervene?

Mr. Mwatela: Mr. Temporary Deputy Speaker, Sir, part "c" of my answer is very clear that the contractor and the school mutually agreed to await the final valuation. Surely, I think we can wait.

The Temporary Deputy Speaker (Prof. Kaloki): Next Question by Mr. Emilio Kathuri!

Question No.1051

DEATHS OF ARMY OFFICERS ON TRAINING

Mr. Kathuri is not here? Alright, we will wait to see if Mr. Kathuri will make it to the Chamber!

Next Question by Dr. Julius Kones!

The Assistant Minister, Ministry of State for Defence (Mr. Musila): On a point of order, Mr. Temporary Deputy Speaker, Sir. I had stood earlier on! This Question was answered by the Minister on the 17th of August, 2011. It was completed and the Member only wanted the Minister to produce postmortem documents of the deceased soldiers.

Mr. Temporary Deputy Speaker, Sir, I have these documents and if you allow me, I will lay them on the Table or, since the Questioner is not there, we can drop the Question.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Musila! Let us allow some additional time for Mr. Emilio Kathuri to get to the Chamber then we will come to that. Otherwise, what we have at the moment is the Question that is before the House. We have to deal with it as it appears on the Order Paper.

Dr. Kones, please, proceed!

Question No.1058

LIST OF ROADS MAINTAINED BY CESS
COLLECTED BY KTDA

Dr. Kones asked the Minister for Agriculture:-

(a) whether she could table details of the total cess collected from each of the KTDA-managed tea factories, multinationals and private factories from September 2010 to date;

(b) how much of the tea cess from each factory was remitted back for rural roads maintenance; and,

(c) whether she could provide a list of roads maintained by each factory from 1st October, 2010 to date, indicating how much was spent.

The Temporary Deputy Speaker (Prof. Kaloki): The Minister for Agriculture! The Minister is not here?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I would like to ask the hon. Member, through the House, to have this matter brought back sometime next week. This is because, as I speak to you, the Ministry of Agriculture is hosting this year's edition of the Mombasa Show. The Minister and the Assistant Ministers are actually accompanying the President during the official opening of the show today.

The Temporary Deputy Speaker (Prof. Kaloki): That is fair enough. The Chair will defer the Question to a later date!

(Question deferred)

Dr. Kones, is that fair enough?

Dr. Kones: It is not fair enough, Mr. Temporary Deputy Speaker, Sir. This is because this is the fourth time the Question is being deferred. The explanations given by the Vice-President, I do not think suffice. A Minister alone is enough to accompany the President and then the Assistant Ministers would have been here. There are two Assistant Ministers in that Ministry.

The Temporary Deputy Speaker (Prof. Kaloki): Dr. Kones, the Government is responsible enough and they have given an assurance that the Question will be dealt with at a later date. I think that is fair enough.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, could we be definite and say next Tuesday so that Dr. Kones will feel comfortable about certainty of the fact that this matter will come up next Tuesday? We seek his indulgence because being the fourth time it is being deferred, I can understand his anxiety.

The Temporary Deputy Speaker (Prof. Kaloki): Fair enough! Dr. Kones, on Tuesday!

Dr. Kones: Accepted, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Prof. Kaloki): Next Question by Mrs. Noor!

Question No.1083

PROVISION OF WATER TO IJARA DISTRICT

Mrs. Noor asked the Minister for Water and Irrigation:-

(a) whether she could state the amount of money allocated through the Ministry to Ijara District for the past three years;

(b) how much money has been used to provide clean water in Masalani, Korisa, Kotiley, Hara, Abdi Gure and Gababa locations for the past three years and whether she could also indicate the source of water to residents of these locations; and,

(c) what the steps the Ministry is taking to ensure residents of Ijara Constituency have access to clean and safe water.

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

(a) My Ministry has allocated Kshs45 million for the development of water projects to Ijara District through the North Water Service Board for the last three Financial Years; 2008/2009, 2009/2010 and 2010/2011.

(b) My Ministry has spent a total of Kshs45 million to provide clean water in Ijara District for the last three years out of which Kshs37 million has been used in Masalani and Hara water supplies whose sources of water is River Tana. Further, my Ministry has allocated Kshs2 million for de-silting of Gababa Water Pan through the *Kazi kwa Vijana* Programme and released Kshs9.5 million in the last eight months to mitigate the current drought. My Ministry has released Kshs10 million to the Northern Kenya Water Services Board for use in drilling and equipping boreholes at Hulugho and Sangailu Town Centres. Further, plans to expand the capacity of existing water sources with a view to increasing availability of water to the residents of Ijara Constituency are on course.

Mrs. Noor: Mr. Temporary Deputy Speaker, Sir, I would like to thank the Assistant Minister for the answer he has given. Due to the prolonged drought and water scarcity all over the country, the little water that is left in water pans in Ijara has been contaminated and is not good for human consumption. The Ministry has just given Kshs3 million for emergency water intervention, which has covered 30 villages. What is he going to do to cover the remaining 70 villages that have not benefitted from the emergency intervention? They are in dire need of water.

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, it is true that the condition is very bad in Ijara District. My Ministry has released Kshs9.5 million, and not Kshs3 million. We are also in the process of procuring water bowsers for some of the constituencies, which are hard hit. Ijara District and the new Hulugho District are some of the earmarked beneficiaries.

Mr. Duale: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a great opportunity for me, having got my freedom from the Government, to speak for the people of Dujis from this side of the House.

For the last two months, the Assistant Minister has been talking of procuring water bowsers for the people of northern Kenya, who are in the middle of the worst drought crises witnessed in recent years. Could he be very specific as to when he will deliver a water bowser to Hulugho?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, it is true that we have been promising to provide water bowsers. It is also true that we have ordered for water bowsers. We are waiting for money from the Treasury. We expect to have the water bowsers by the end of September.

Mr. Duale: On a point of order, Mr. Temporary Deputy Speaker, Sir. It is very sad to hear in this House that the people of northern Kenya will get a water bowser at the end of September.

The Temporary Deputy Speaker (Prof. Kaloki): What is your point of order, hon. Duale?

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, is the Assistant Minister in order to mislead the nation when His Excellency the President has put in place drought mitigation mechanisms? The Ministry of Water and Irrigation has been given money for that purpose but the Mr. Assistant Minister is saying that they will take their sweet time and provide water bowsers to the people of northern Kenya at the end of September.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Duale! That is not a point of order.

Mr. Assistant Minister, do you have any other comment?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, the money we have provided for that area can also be used for the hiring of private water bowsers. They have been doing this in the past. What I have promised is that we are going to give them another water bowser. They already have one water bowser. We are going to give them another water bowser from among the ones we have procured.

Mr. M.M. Ali: Mr. Temporary Deputy Speaker, Sir, the Mr. Assistant Minister has said that he has allocated Kshs10 million for the drilling of two boreholes in Hulugho and in another place. What assurance can he give? I am asking this because he had promised that he would sink a borehole in my constituency in October last year; up to

now that borehole has not been sunk, and the rig is just lying idle in the nearby constituency. Could he come clean---

The Temporary Deputy Speaker (Prof. Kaloki): Order! Order! First of all, could you withdraw the word "lie"? The Assistant Minister cannot lie.

Mr. M.M. Ali: Mr. Temporary Deputy Speaker, Sir, I withdraw the word "lie".

Could the Mr. Assistant Minister assure this House that the promises they make in this House that they will do this and that are fulfilled within reasonable time?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, already, Kshs10 million has been released to the Northern Kenya Water Services Board. The money is not with the Ministry. It is with the water services board for the sinking of boreholes in Hulugho and Sangailu. What I need to mention here is that we have a problem in those areas, because some areas do not have underground water. There are so many boreholes which have been sunk, but which are dry. So, getting underground water in that area is also a problem.

The Temporary Deputy Speaker (Prof. Kaloki): Last question, Mrs. Noor!

Mrs. Noor: Mr. Temporary Deputy Speaker, Sir, the amount of money that was released to Ijara Constituency in the last three years is Kshs37 million. If you divide that by three, it is about Kshs12 million per year for water in Ijara Constituency, which covers about 13,000 square kilometres, has over 100,000 people, and has no permanent water source. It is just too little. What will the Mr. Assistant Minister do to change this habit of allocating too little resources to places which have severe water problems?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, it is not true that we have no proper plans for the constituency. In the last financial year, we released to it Kshs38 million. I have a list of the projects that we implemented in the constituency. In the year before last year, we released to it Kshs15 million.

Mrs. Noor: Mr. Temporary Deputy Speaker, Sir, this is the answer which the Assistant Minister gave me, and it is what I was responding to. Is he in order to give me another answer when in the written answer he has given me, he says that Kshs37million has been released to the constituency in the last three years?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, I normally have the details. I do not release everything to her at once. I expect her to know these facts since she comes from there.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, which is the correct figure?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, I can even read out the projects and the money that was spent on each one of them; all of which totals to Kshs38 million.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Assistant Minister! Just give the correct figure!

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, the figure is Kshs38 million, which was spent on seven projects during the last financial year.

The Temporary Deputy Speaker (Prof. Kaloki): Fair enough!

We will now go back to the Question by Hon. Kathuri.

Question No.1051

DEATHS OF ARMY OFFICERS ON TRAINING

The Temporary Deputy Speaker (Prof. Kaloki): It appears that hon. Kathuri is still not in the Chamber.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): On a point of order, Mr. Temporary Deputy Speaker, Sir. You had said that I could stand at this time. I was reminding the House that this Question was actually answered!

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Musila! The Question has not been asked! So, you cannot attempt to answer it!

The Questioner is not here! So, I will drop it!

(Question dropped)

MINISTERIAL STATEMENTS

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I have two Statements to make. The first one has to do with this House's business for the coming week.

BUSINESS FOR THE WEEK COMMENCING TUESDAY, 6TH SEPTEMBER, 2011

Mr. Temporary Deputy Speaker, Sir, first, allow me to thank my colleagues for the dedication and sacrifice they demonstrated by sitting late and extra days from Tuesday, 23rd August to Friday, 26th August, 2011. That enabled us clear a total of 15 Bills required to be enacted within the timelines set out by the Constitution. I think it is in order that we congratulate ourselves because this was unprecedented and the country was able to see this wonderful gesture. This earned all of us confidence from the Kenyan people since this has never happened before. This House is committed to ensuring the full implementation of our Constitution.

Mr. Temporary Deputy Speaker, Sir, this House will consider the Report of the Constitutional Implementation Oversight Committee on the approval of the Chairperson and members of the Judges and Magistrates Vetting Board. The following Bills are scheduled to be read the Second Time: The National Police Service Commission Bill, (Bill No. 32 of 2011); the Independent Policing Oversight Authority Bill (Bill No.33 of 2011); the Engineers Bill (Bill No.25 of 2011) and the Finance Bill (Bill No.12 of 2011). In the same list is the Capital Markets (Amendment) Bill (Bill No.13 of 2011) and the Central Depositories (Amendment) Bill (Bill No.14 of 2011). The House will consider the National Police Service Commission Bill and the Independent Policing Oversight Authority Bill at the Committee Stage at the earliest opportunity once the Second Reading is concluded. I know that Prof. Saitoti is present in the House and willing to do serious business.

The House will also consider the Report of the Joint Departmental Committees on Finance, Planning and Energy and Communication and Information on the Sessional Papers Nos. 1, 2 and 3 of 2011 laid on the Table of the House on Friday 26th August,

2011. Upon adoption of these sessional papers as above highlighted, the House is subsequently expected to consider them for adoption. The House Business Committee (HBC), as usual, will meet next Tuesday at the rise of the House.

Thank you!

STATUS OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS

The second Statement is as follows: That on Tuesday, 30th August, 2011, Mr. Ruto sought a Ministerial Statement from the Leader of Government Business on the status of the Departmental Committee on Justice and Legal Affairs. Mr. Ruto sought to know why the Committee has not been allowed to meet in spite of an order to that effect by the House Liaison Committee. Mr. Ruto further sought confirmation whether it was true that the HBC made a resolution to dissolve the Committee and, if so, what powers the HBC based its resolution on.

I would like to outline a chronology of events and efforts made so far in a bid to solve the problem facing the Departmental Committee on Justice and Legal Affairs. I think it is worth noting that its Chair, Mr. Namwamba, at some stage, tendered his resignation. On Monday, 21st February, 2011, seven hon. Members of the Committee gave notice of the intention to move a vote of no confidence on the Chairperson under Standing Order No.175. A meeting of the Committee was scheduled to be held on Tuesday, 29th March, 2011 at 12.00 noon. in Committee Room No.7 within the Main Parliament Buildings. As it is practice, notices of the meeting were delivered to all the Committee Members. That meeting was chaired by the Deputy Speaker and was attended by ten Members of the Committee and four non-Members. The meeting ended without the resolution envisaged under Standing Order No.175. On Wednesday, 27th April, 2011, the Liaison Committee, under the chairmanship of the Deputy Speaker, met and deliberated on the matter. The Liaison Committee called upon the leadership of Parliament to expedite the resolution of the dispute to enable the Departmental Committee on Justice and Legal Affairs to proceed with its mandate.

The Departmental Committee on Justice and Legal Affairs met on Thursday, 28th April, 2011 to address the same matter under the chairmanship of the Deputy Speaker. Again, no resolutions were made at that meeting. On Tuesday, 3rd May, 2011, Mr. Speaker made a Communication from the Chair directing that the Departmental Committee on Justice and Legal Affairs conducts a meeting on Thursday, 5th May, 2011 at 11.00 a.m. to finalize the matter in accordance with the provisions of the Standing Order No.175 and report the outcome of the meeting to the Liaison Committee. The meeting under the Chairmanship of the Vice-Chairperson was attended by six Members of the Committee. That meeting resolved that it had no confidence in the Chairperson of the Committee. The meeting further resolved that this resolution be forwarded to the Liaison Committee as provided for under the provisions of the Standing Order No.175(1) for action. Another meeting of the Committee under the Chairmanship of the Leader of Government Business and attended by the two joint whips was held on Wednesday, 10th August, 2011. I want to say that this was as a result of the concern that all of us, as Members of the HBC, had. There was a serious stalemate to the level of this very important House Committee. That meeting resolved that the Committee meet again on

16th August, 2011 to elect a Chairperson. However, this meeting scheduled for 16th August, 2011 at 11.00 a.m. to elect a Chairperson did not take off due to lack of quorum.

Mr. Temporary Deputy Speaker, Sir, the House Committee has, on more than one occasion, deliberated on the matter with a view to ensuring that the operations of the Committee are expedited. On Tuesday, 30th August, 2011 the HBC discussed the issue yet again and considered all the factors relating to this Committee and resolved to revisit the issue for a final decision on Tuesday, 6th September, 2011, which is next Tuesday.

Thank you!

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I must thank the Vice-President for the attempt he has made; only that the Statement is short on facts and accuracy. In real terms, I will also try to shorten my Statement. The fact is that, as much as there have been several attempts by the Committee to meet, this Committee has actually been deliberately sabotaged by the Office of the Deputy Speaker. On the last occasion, without having to revisit too many things--- On the last attempt to meet---

(Mr. Midiwo stood up in his place)

I am making my Statement!

The Temporary Deputy Speaker (Prof. Kaloki): Order!

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it right for the hon. Member to insinuate that the Deputy Speaker has been sabotaging the functions of the Departmental Committee on Justice and Legal Affairs? Is that really proper?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Ruto, indeed, that is touching on the character of a Member of Parliament - the Deputy Speaker. So, I think you are out of line there. For you to proceed, I want you to revisit that issue one more time and restate what you meant.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I withdraw the word "sabotage" and I proceed.

The Temporary Deputy Speaker (Prof. Kaloki): Very well!

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I wanted to state that on several occasions, the Deputy Speaker attended our meetings and insisted on specific outcomes. Instead of sitting and allowing the Committee to deliberate and function in a proper manner, he has insisted on specific outcomes. The last one, which is factually not correct on the part of the Vice-President and Minister for Home Affairs---

The Temporary Deputy Speaker (Prof. Kaloki): What is the question that you are trying to ask? What clarification are you seeking? What is not clear?

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, the last one is that we are told that there was no quorum when we were asked to meet. In fact, on this date---

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Ruto, what is not clear from the Statement of the Vice-President and Minister for Home Affairs?

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, the Vice-President and Minister for Home Affairs stated that the last meeting failed to take off because there was no quorum. On this date, we were six Members who attended the meeting; that is more than a quorum, but we decided to call off the meeting to Thursday, the next two days difference----

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Ruto, what is not clear? I want to know what is not clear from the Statement.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, it is factually not right that there was no quorum. We had the quorum.

The Temporary Deputy Speaker (Prof. Kaloki): Thank you very much.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I have to clarify. I have to give him the information. On that day, we met and decided not to proceed with the meeting, indifferent to the fact that one of our colleagues was bereaved. We simply postponed the meeting to Thursday. When we wanted to meet on Thursday, we were told we could not meet. We are only asking for an opportunity to meet. Eight Members---

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Ruto, can you resume your seat? You are going to be specific and not make another Statement. What is not clear – I want you to be specific – from the Statement that has been given?

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I do not know how you want me to put it, but I want to clarify to you. What is not clear is why the Vice-President and Minister for Home Affairs can say that there was no quorum when we had the quorum.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I thank the Member for Chepalungu for that clarification. The important thing is that no meeting took place. I think both of us are agreed on that. I just want to make it very clear that all of us are very concerned, as a House, that the work of this very important House Committee has now been literally delegated to another House Committee. This is not proper. We would wish that the Members could agree, but in the event they do not agree, and we do not see them agreeing between now and Tuesday, the House Business Committee will meet to take a final decision.

Mr. Baiya: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am also a Member of this Committee and my concern is the perception that---

The Temporary Deputy Speaker (Prof. Kaloki): And you rose on a point of order!

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, yes, I am. I am setting out the background to raise my point of order. The perception being put across the country makes us, as Members of this Committee, feel very frustrated. It is being implied that we are not in agreement or willing to meet. Nothing can be more misleading. The point is that we have been holding meetings and we are willing to elect a Chair, but certain forces within the establishment of Parliament are determined to paralyze this Committee. It has been paralyzed for almost seven months now. Even if we were to hold a meeting while some people are determined to sustain the paralysis and not to play by the rules, we are not going anywhere as far as this Committee is concerned.

Is it, therefore, in order for the Leader of Government Business---

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

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I am also on a point of order.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to seek the following clarifications from the Leader of Government Business and the Chair of the House Business Committee. It is now over eight months since the controversy in this Committee began. The functions of this Committee have been transferred to another Committee, which is a great burden to the other Committee.

However, those functions have been discharged fairly effectively by that Committee. I am aware, and I am sure the Leader of Government Business is aware that one party of the Coalition has withdrawn its Membership from this Committee in writing. Why can the House Business Committee not decide to disband this Committee and reconstitute another one?

We have over 222 Members of Parliament who are qualified to be Members of this Committee. Why should we be held at ransom by people who are only interested in trying to fulfill and satisfy their egos, which is not necessary? This country needs to move forward. The Committee to which the functions of this Committee were transferred, discharged its functions and cleared 15 Bills in a week. What do we have to do with a Committee that has become rogue? Why can the House Business Committee not disband this Committee and have a new Committee in place?

The Temporary Deputy Speaker (Prof. Kaloki): Very well! Let us take about three clarifications and then they can be answered by the Vice-President and Minister for Home Affairs.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I participate in the activities of the Liaison Committee and I want to thank the Leader of Government Business for the steps he has offered to take. It is unfortunate that while we think that the Committee on the Implementation of the Constitution (COIC) has done a good job, it is the work of the Back Bench to scrutinize Bills. It is our work to involve the public after the Cabinet; the Government, has presented the Bills. It is unfortunate that this work had to be done by a Committee that is all inclusive of the Government and the Back Bench. It is important that this is handled properly. It is important for this House to be sober and allow every Member to attend and be in every Committee. Let us not kill a Committee because of a very small matter.

Could the Leader of Government Business confirm that surely, on Tuesday, 6th, they are going to ensure that this Committee is allowed to operate, so that the other Bills that come can be handled in the proper way?

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I want the Vice-President and Leader of Government Business to clarify on the direction of the Speaker on the provisions of the Standing Order No.175(1). It is not the first time the leadership of a Committee of Parliament had wrangles and the Standing Order No.175 (1) was used. What is so special about the Justice and Legal Affairs Committee, that the provisions of this Standing Order cannot be used? Finally, outside this Standing Order, on 6th September, 2011, what other laws and Standing Orders will the House Business Committee use to solve this crisis?

Mr. Bahari: Mr. Temporary Deputy Speaker, Sir, the House Business Committee is a creature of this House. From the events that the Chairman of the House Business Committee has enumerated, it looks like they are unable to resolve this matter. Why can they not bring this matter here, so that the Plenary can sort it out once and for all?

Mr. George Nyamweya: Mr. Temporary Deputy Speaker, Sir, I really hope that we would be patient with ourselves and try and help the country by being a bit more candid. The truth of the matter is that there has never been a dispute in the Justice and Legal Affairs Committee. There has never been a dispute. The Committee passed a vote of no confidence in its Chairman. That is not a dispute. The problem has been that the

Chairman of the Liaison Committee has simply disallowed the Committee from being able to conduct an election. This is the clarification that---

Mrs. Shebesh: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is the third time that Members are referring to the office of the Deputy Speaker. I believe that he chairs that Committee as the Chairman of the Liaison Committee as per the Standing Orders. Is it in order for them to keep referring to the office of the Deputy Speaker?

Mr. George Nyamweya: Mr. Temporary Deputy Speaker, Sir, you know the truth is always a little bit difficult but we can do it in a different way. The leadership of the House---

The Temporary Deputy Speaker (Prof. Kaloki): Order! If you are going to refer to the Deputy Speaker then it should be by a substantive Motion. You should withdraw that statement that you have made.

Mr. George Nyamweya: Mr. Temporary Deputy Speaker, Sir, I withdraw the reference to the Deputy Speaker. I will then say that those charged with the responsibility of managing the affairs of this House have deliberately frustrated the efforts of the Justice and Legal Affairs Committee from electing its own Chair. The clarification I seek from the Vice-President and Minister for Home Affairs who is the Leader of Government Business is: Is it not a fact that we are required, as that Committee, to particularly have a specific individual as the Chair of that Committee? Our concern is, how is it that the Committee is required to meet only if the Members are willing to elect So and So? That is the clarification we seek. If you want, I can even say whom we have been asked to elect.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I thank the hon. Member for Githunguri, who is the Vice-Chair of this Committee, the hon. Member for Gwassi, the hon. Member for Mosop, the hon. Member for Dujis and my very good neighbour, the hon. Member for Isiolo South - another neighbour and hon. Nyamweya for their contributions. All I can say is that arising from the comments that have gone forth this afternoon on the Floor of the House, it is clear we do have a problem and I want to give this assurance. For instance, the hon. Member for Bahari asks why we should not bring that matter to the Plenary, but we can only do that through a Motion.

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

The Temporary Deputy Speaker (Prof. Kaloki): Order! Proceed, Mr. Vice-President and Minister for Home Affairs.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I think the hon. Member for Kaloleni has a problem!

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Prof. Kaloki): Order!

Proceed, Mr. Vice-President and Minister for Home Affairs!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Thank you for your protection. I was just in the middle of responding to these issues. If there is need, for instance, I cannot pretend that I can take the decision on behalf of the House Business Committee. I can see the hon. Member for Ikolomani listening to me very carefully

because should I, for instance, take a decision here on his behalf, that will be improper. I have said that we will meet on Tuesday at the rise of the House and be able to take into account the sentiments that have been expressed in this House this afternoon. So, let us all agree that we need to get this Committee functioning. I, therefore, think it has been improper that we have had the work of the Committee which, in accordance with the Standing Orders, is a very important Committee on Justice and Legal Affairs---. This is a Committee that should set the example in terms of making sure that we are all facing justice, and the all important matter of implementing our new Constitution.

Therefore, as to whether to disband or not to disband in accordance with the suggestion by the hon. Member for Gwassu, I cannot talk about it now. Indeed, we will have to look at it, if it is within the powers of the House Business Committee to disband the Committee. In the first instance, that is what the Member for Chepalungu was questioning because it had erroneously been suggested that the House Business Committee had disbanded this Committee and yet it was not within our mandate. We will report progress because it is important. I urge that all of us belong to political parties. We went with the joint whips to try and see whether we could talk as such because the reality of the current arrangement is that we have a Grand Coalition Government. We also took a decision that we will not disband any of the Committees. The Committees will continue until this House is dissolved. I do not know if it is by operation of the law. I think even His Excellence the President has got those powers saved under the Constitution. So, I think he can still dissolve this Parliament, if I can correct myself. I would like the House to take me very seriously that we would like to deal with this matter decisively on Tuesday so that this Committee can become operational again.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I want to refer to Standing Order No.158 which sets out the House Business and gives it functions. Standing Order No.158(5) says:-

“The House Business Committee shall consider such matters as may from time to time arise in connection with the business of the House and shall have and perform such powers and functions as are conferred on and ascribed to it by these Standing Orders or from time to time by the House.”

Mr. Temporary Deputy Speaker, Sir, this Standing Order clearly indicates that the House Business Committee cannot possibly act outside the provisions of the Standing Orders and if we were to read Standing Order No.198 it clearly states that Committees are appointed at the beginning of every Parliament. I want to refer the Vice-President and Minister for Home Affairs to Standing Order No.198(1) which states:-

“There shall be select Committees to be designated Departmental Committees which shall be nominated by the House Business Committee and approved by the House at the commencement of every Parliament.”

If, indeed, there is a wish to disband the Committee, it is this House that can only rescind its decision by a Motion, and it cannot possibly act outside the rules as enshrined in the Standing Orders, nor can it act outside the resolutions of the House. I would like a confirmation from the Vice-President and Minister for Home Affairs that the House Business Committee cannot act outside the Standing Orders and the resolutions of the House.

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

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, the House Business Committee has no intention of acting outside its mandate as defined under the Standing Orders and as read by the hon. Member for Chepalungu. For instance, if we take the decision to disband this Committee, I am sure it is not assuming too much, if I was to say that the decision will have to be brought through a Motion, and that the House itself dissolves the Committee. I think that is the only way to go.

Mr. Duale: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want the Vice-President and Minister for Home Affairs who is the Leader of Government Business not to evade the question that I have asked. My colleague has put it very well. This is a House of rules. What provision will the House Business Committee use outside the rules of this House on 6th September, 2011 to finalize on the eight-month long dispute? That question has not been answered.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Duale! I think that has been clarified. The House Business Committee will meet, resolve the issue and bring some recommendations to this House on Tuesday.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Yes, Mr. Temporary Deputy Speaker, Sir. I also said that we shall take into account the sentiments expressed by each hon. Member because it is on the HANSARD. I would like to propose to the Clerk that a copy of what has gone on this afternoon be presented before the House Business Committee so that hon. Members can look at all that. This is because I cannot specifically answer some of these things, but one thing is clear in my mind; that we have to abide by the provisions of Standing Order Nos. 175 and 198 and all the other Standing Orders of this House. Should it become necessary to disband this Committee, that will have to be a decision of the House.

The Temporary Deputy Speaker (Prof. Kaloki): Very well!
Let us move on to the next Statement by Mr. Otieno!

CIRCULAR ON SECONDMENT OF STAFF TO COUNTIES

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I wish to make the following Ministerial Statement with regard to a point of order raised by Mrs. Shebesh on 16th August, 2011, requiring clarification on a circular issued by the Head of the Public Service on 4th July, 2011.

Mr. Temporary Deputy Speaker, Sir, I was required to:-

(a) confirm whether the decision to second staff to the counties was made by the Cabinet and if so, confirm when;

(b) clarify whether the Circular is not in breach of Article 174 of the Constitution of Kenya, which stipulates that counties should be in charge of their own staffing; and,

(c) explain whether this decision does not preempt the proposed County Government Bill that is yet to come to the Floor of the House for debate and enactment.

Mr. Temporary Deputy Speaker, Sir, I wish to state as follows:-

1. The Government issued Circular Reference No. OPCabinet17/90A dated 4th July, 2011 addressed to all Permanent Secretaries and Accounting Officers in which the staffing of county offices was addressed. The deployment of public servants in the current Government structure is a routine administrative function that does not require

involvement of the Cabinet. The Head of Public Service, therefore, issued these instructions as the Chair of the Central Human Resource Management Committee which handles postings of public servants.

2. I also wish to clarify that the staff have not been seconded to county offices as secondment of public servants only takes place between the Government and existing institutions. County governments are not yet in place hence public servants cannot be seconded to them. As Members are all aware, under Chapter Eleven, Part 2 of the Constitution, the provisions relating to devolved government are suspended until the first elections for county assemblies and governors take places. The services of the counties must, in the meantime, continue to be rendered to Kenyans from the Central Government. It was found, however, necessary to issue the Circular in view of the need to ensure that services to citizens at the county level are not interrupted during the transition and the post-transition period. This is also a move towards provision of initial staff capacity in counties, as a basis for support to county governments which need to start somewhere when they become operational.

3. These services have always been provided by various categories of public servants in the districts, right down to sub-location levels. These districts, to the lowest service points, now fall within the 47 counties. The civil servants and local authority staff who provide these services have hitherto been recruited and deployed according to service demands on the ground, under the auspices of the Public Service Commission, either directly by the Public Service Commission or under delegated powers.

4. With the coming into place of the county governments from 2012, these services will continue to be rendered to Kenyans. The county governments will, however, have the power as provided under the Constitution to decide which of these staff they wish to retain and also to recruit skills from all over the country. This will, however, have to be done in the context of the requirements of Chapter 13, Article 232, of the Constitution, regarding the values and principles of Public Service, which among others, require that every public entity, including the county public service, ensures fair competition and merit in appointments as well as representation of Kenyans of diverse communities. The deployment instructions were also clear that Permanent Secretaries were to ensure that the existing staff are equitably distributed in all counties and that their deployment is guided by devolved responsibilities as set out in the Fourth Schedule of the Constitution. The point here is that we are preparing that each and every county has a staff complement that will be able to hand over to the county governments when they are established so that services will continue seamlessly as the counties recruit their own staff from and in the manner they like.

In expressly informing Permanent Secretaries that the deployment of staff is meant to assist counties in starting off, the circular actually advances the provisions of Article 174 of the Constitution. As hon. Members will note, the instructions were not in violation of Article 174 but, indeed, in support of this very Article, particularly Sections (f) and (h) of the Article which talk about provisions of easily accessible services throughout Kenya and the facilitation of decentralization of functions and services from the centre.

Mr. Temporary Deputy Speaker, Sir, finally, I am aware that the Taskforce on Devolved Government is in the process of preparing a draft Bill on devolution. I believe, however, that the action on staffing taken by the Government does not preempt any of the

provisions of the Bill since staffing at county level is an interim measure meant to ensure that services to Kenyans continue uninterrupted. This Circular is actually a preparation to implement the Article in a seamless manner, in the continuation of services to the counties.

Thank you.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, I really want to thank the Minister for a very long Statement. But, unfortunately, the answer has not really addressed some of the core issues that I raised.

My first clarification is on the first section of my request for the Ministerial Statement, which asked the Minister to confirm whether the decision to second staff to the counties was made by the Cabinet. The Circular that I am referring to was addressed to Permanent Secretaries without the knowledge of the various Ministers in some of these Ministries. That is why I would like to seek this very important clarification. The argument of deployment or secondment, I believe is semantics. What we know is that there are people who are physically being moved from Ministries and being deployed to entities that are being called “counties”, that we know are not yet operational. So, the question is: Since this is a particular task that had been given to a line Ministry, which is the Ministry of Local Government, which came up with a Taskforce; which then has come up with a recommendation which Members of Parliament went to Naivasha for two days and were taken through, and which we know what transition method was to be used, is this not circumventing the work of the Taskforce that has talked about a transition authority which leads to the deployment of members to the counties?

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, there have been media reports that the Office of the President is trying to deploy officers that they are calling County Commissioners. We know why we fought for devolution. I want the Minister to clarify what will be the function of the County Commissioners and how will they co-exist with the Governors who are democratically elected, which is akin to the Queen of England sending another Governor here to come and sit next to our President?

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, just to make a further clarification on the point raised by Mr. Ogindo, could the Minister confirm if, indeed, they are posting the so-called County Commissioners, before they do it, will they recognize the role of the National Assembly? If the Minister does that, it will, therefore, require that he bring to this House a Bill which will define the form, structure and functions of those people so that we debate, and when we are agreed, we give them that power? We could not have fought for the new Constitution so that after we have enacted it, we end up having things done through the reverse way, but in the usual way?

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to bring to your attention that Mr. Speaker has already approved, specifically, a Ministerial Statement that I will seek from the Office of the President on the issue of County Commissioners. I was requesting that we leave that issue to the relevant Ministry because I will rise on it. It is too hefty to be handled by the Ministry of State for Public Service.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. Thank you for that information.

Mr. Mbadi: Thank you Mr. Temporary Deputy Speaker, Sir. The clarification I am seeking is: When Ambassador Francis K. Muthaura, Permanent Secretary and

Secretary to the Cabinet wrote this letter to give these directives, was the Government aware that this House is supposed to legislate on the operations, functions, structures and content of the county governments as spelt out under Schedule Five? If so, after the PS issued that circular, has he not pre-empted what this House is likely to legislate on?

Finally, when Ambassador Francis Muthaura wrote this letter, were there consultations within the Government, knowing very well this is a Grand Coalition Government of Party of National Unity (PNU) and ODM? Were there consultations and an agreement between these two bodies especially where the Office of the Deputy Prime Minister and Ministry of Local Government is already in the process of facilitating the preparation and tabling of Bills relevant for the implementation of the Devolution Chapter of the Constitution?

Mr. Imanyara: Mr. Temporary Deputy Speaker, Sir, I am shocked, beyond belief, that a Minister of Government, who has taken an oath under the new Constitution, can stand up in this House and say that filling of positions in the county governments and a circular that purports to fill positions in the county governments is a routine administrative function that does not require the involvement of the Cabinet. Would he agree with me that the circular he is referring to, which he has indicted is a routine circular, undermines the very principle of devolution and that undermining of the Constitution actually amounts to an actionable criminal offence on the part of any civil servant or a Minister who defiles the clear language of the Constitution by purporting to fill vacancies administratively, when he knows that there is a procedure set out in the law on how to fill those positions?

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I am equally shocked because the Government, which believed in the new Constitution--- Devolution means that the people of a region should manage their resources for the benefit of their region. I have listened to the Minister and he has indicated that once the governance at the county level begins to work, those officers will hand over the positions. My question is: If there are 1,000 people in Nandi County who are supposed to hand over, where will they go to?

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, there is, clearly, a confusion here. The county governments are not in place. All Government services are to be rendered right now up to the county level. Reference to the county is reference to the new region. In that region, Government services must currently be deployed. So, the confusion here is that the action taken will subsist after the county governments are established. That is not true.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to mislead this House when the letter written, the headline of the letter from Ambassador Muthaura, without going into the content is:-

“Roll Out of Devolved Governments”

“Staffing of County Offices”

That is without reading the details. What does that tell the Minister? Even if the intention was different, is it in order for him to mislead us when the title of the letter is very clear on what the Central Government is doing? It wants to take staff to the devolved governments!

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, the letter may have been ambiguous. The reference is to county areas as they exist now. That is because there are no county offices as of now.

Mr. Imanyara: On a point of order, Mr. Temporary Deputy Speaker, Sir, is it in order for the Minister to continue misleading this House, when we know that by the letter of the law, there will be an election next year in August? Is he in order to tell us what he is doing now will subsist up to August next year and, therefore, expend public finances in an exercise that undermines the very principle of devolution? Would I be in order to request that; given that this Ministerial Statement is contrary to the law, letter and spirit of the Constitution, it be withdrawn and this matter be referred to the Committee for investigation with a view to having whoever wrote it, including the Minister who sits in this House, being held responsible for undermining the Constitution?

The Temporary Deputy Speaker (Prof. Kaloki): Order! Mr. Minister, there is a letter here written on 4th July, 2011. Do you have a copy of this letter? What is the purpose of the letter? It is written by Amb. Francis Muthaura.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, yes I do have a copy of the letter. The purpose of the letter is to instruct the Accounting Officers to prepare staff deployment into county areas so that services that would be handled by the central Government in those county areas are properly set up early in advance, while awaiting the establishment of the county governments. Where the services currently handled by the National Government will be taken over by the county governments, the county governments will hire their own staff for those functions at that time. The central Government functions that will be handled by the central Government up to the county level will continue under the operations of the central Government staff within those county areas.

The Temporary Deputy Speaker (Prof. Kaloki): Order! I want to stay with this letter. I would like to read a paragraph of it.

“One of the major initiatives has been a formation of a National Taskforce on Devolved Governments whose interim report has already been presented to the Government. Among the issues that need immediate attention is ensuring that the services to citizens at the county level continue uninterrupted in the transition and in the subsequent performance of functions at the two levels of Government as stipulated in the Fourth Schedule of the Constitution.”

That is what part of the letter says. Therefore, hon. Shebesh is that what is not clear to you? That is because it is already stated here. The letter is from Amb. Francis Muthaura.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, Chair, if you can allow me to then read the answer that the Minister has given in relation to the question that I asked on the taskforce. He said:-

“I am aware that the taskforce on devolved government is in the process of processing a draft Bill. I am however, not yet briefed of its contents.”

So, if he is not briefed of its contents, on what basis are they working? If he is not briefed of the contents and they are not using the report of that taskforce to roll out, on what basis are they rolling out? That is the question.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, if the hon. Member checked the HANSARD, I never read the part of the answer that says I am not briefed. That is an old statement I had given earlier. As for the briefing, we are waiting for the publication of the Bill that would govern the issue. At this stage,

what we mean is that the Bill is not published. However, we are sure it will not be a contradiction of the deployment currently arranged.

Mr. Temporary Deputy Speaker, Si, I think the main problem is suspicion that some of these staff will be used later on to take over services of county governments. There are also fears that they will undermine the power of the county governments under the Constitution to employ their own staff. Nobody can dictate to any future county government how they will hire their staff. When they will be doing so, the Constitution provides how they will proceed to do so.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Minister, have you dealt with all the questions asked by the hon. Members?

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, as to the other question whether Cabinet was informed or consulted, I was informed and consulted. This preparation is necessary because as of now, there are some counties that do not have some of the technical staff in place to be able to prepare for services.

With regard to the County Commissioners, I think there is a substantive question that will be answered by the relevant Minister.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Prof. Kaloki): Just allow him to answer. Mr. Minister, are you through with your answers?

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I think I have responded to all questions asked by hon. Members.

Mr. Imanyara: Mr. Temporary Deputy Speaker, Sir, you heard the Minister makes references to a task force. It is a matter of common knowledge that, that task force was not set up by him. It clearly shows that there are two wings of Government that are working at cross purposes. Given that the Minister who formed this task force and in whose docket this matter lies, is here in this House now, would I be in order to request that he give his views on this matter, so that we know what the Government is actually doing? We are now being told about a task force which he knows nothing about and yet we have the Minister who set up this task force sitting in the House. Would I be in order to ask the Chair to ask the Minister responsible for the task force to give his views on this matter?

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Imanyara, I will not be able to take up that matter. The Minister has already dealt with that part of the answer. I do not see any need for that.

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

(Mr. Otieno stood up in his place)

I am on a point of order, Mr. Minister---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Dr. Khalwale. Proceed, Mr. Minister.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, there is no Minister who has complained to me over this circular. It is

rather presumptuous for a Member of Parliament to presume that the Minister has an issue over this when we consult enough over issues.

When we develop Bills as a result of the task force, any operations of Government will automatically be adjusted to comply with the law after these Bills are passed in Parliament. So, all the presumptions as to the future, I think are all premature.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. My point of order is whether the Minister is in order not to respond to the clarification that I sought about legislation. Just to emphasize - unless he is reading the new Constitution upside down - basically what the Government is trying to do is to attempt to operationalize the devolved Government. This new Constitution has provided, in the transitional and consequential issues, Section 14, how you should go about it. It tells him that he should consult the Commission on the Implementation of the Constitution and the Commission on Revenue Allocation; and then draft legislation and bring it before this Parliament. This he has not done. Instead he is going ahead, trying to persuade Parliament to accept that piece of communication from Mr. Muthaura, so that he misleads the Cabinet that we have concurred.

We are saying you are either practicing impunity, or you are reading the new Constitution upside down or you have decided to kill the letter and spirit of devolution.

The Temporary Deputy Speaker (Prof. Kaloki): The Statement from the Minister is very clear and really we want to rest this matter now. Looking at this letter and Ms. Shebesh has a copy of it, I do not see any contradiction between it and the Statement by the Minister. This one is to provide transitional capacity building. Let us reason together and see what is not clear from this Statement.

In this regard, the Government will provide initial staff capacity in all counties. In fulfillment of its constitutional obligations, the Government will provide support to county governments. It is also expected that in the transitional period after county government become operational, the national Government will continue to support the counties in capacity building of existing and any new staff who will be recruited at the county level from 2012.

What I want to get from Ms. Shebesh because that will be the last question from her is what is not clear from this Statement by the Minister.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, because you have taken time, allow me also to take more time. We, as Members of Parliament, were taken through this for two days by the task force. So, I kind of understand where the problem is. If you listen to the Minister you will hear his contradictions because what you are quoting is something that must be put under a structured legislated in this House. So, the contradiction is: Yes, there is goodwill from the Government which should be there. Yes, county governments need to start preparations. They must be prepared, but under what? It cannot be in a vacuum. It cannot also be at the pleasure of certain individuals who send circulars. That is the concern of this House because we do not trust this circular. We are seeing mischief. Under which structure is this being done? The structure we have approved, we were taken through for two days in Naivasha. It is what the task force on devolution has come up with which talks about a transition which is not what we are seeing here.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Minister, that is your final comment.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, as I mentioned earlier, the circular has drawn suspicions of mischief; to the extent that it is not clear and continues to draw such suspicion, we will correct this at Cabinet level, in consultation with the other Ministers. The objective is purely to prepare our staff – both the staff who will continue to serve the national Government and the staff who may, at present, be in local authorities, or otherwise, and who will be serving the county governments. We must take stock, that in each county we are fair with staff deployment, and are fully prepared for the operations of the counties. If there is any suspicion that this deployment is intended, in any way, to undermine the future functions of the county governments, that is not intended and it will be corrected within the Cabinet and as per legislation.

Hon. Members: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I just wanted to be of assistance, if possible; but let me say that I am not talking about the circular *per se*; I cannot say anything about it, as I am a member of the Government. But I just want us to understand the constitutional framework; the Constitution itself says that the county governments and the national Government are separate and distinct. So, no level of government can operate on the basis of the other level of government. It is important that we, as the Government, are not in too much of a hurry because the county governments will do what they are required to do under the Constitution. I am just talking about the pure legal position.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Orengo, are you talking about from today to 2012, that is during the transitional period?

The Minister for Lands (Mr. Orengo): No; you see, for example, this issue we were faced with, of setting up of the new Ethics and Anti-Corruption Commission--- The answer came from the Constitution that the commission that now Parliament has provided for is separate and a new institution. So, the national government cannot begin to organize county governments, otherwise you will frustrate the Constitution. These are two levels of government which are distinct. One level of government can even say we do not need the national government.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Otieno, your final comment on the way forward. Dwell on that letter, which is a circular from Mr. Muthaura. I know the Deputy Prime Minister and the Minister for Local Government had already constituted a task force. Harmonise that as we try to make the county governments to be able to function, especially in view of the circular that you have.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, we have consulted with the Deputy Prime Minister and Minister for Local Government, and agreed that the best way forward is to withhold this circular, because the Bills have already been prepared and are within the system; they will be enacted. The Bills will provide for the preparation necessary in the transition period; it is within the provisions of such Acts that any preparation by the central Government, like arranging for support to the counties, will be implemented.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. Next Statement!

POINTS OF ORDER

FINDINGS\RECOMMENDATIONS OF INTERNAL AUDIT ON WORLD BANK-FUNDED PROJECTS

Mr. Ogindo: On a point of order, Mr. Temporary Deputy Speaker Sir. I rise to seek a Ministerial Statement from the Deputy Prime Minister and Minister for Finance in relation to the World Bank funded projects. In this statement, I would like the Minister to clarify the findings and recommendations of the Internal Audit Department on the following World Bank funded projects. One, the Western Kenya Flood and Community-Driven Development. Two, the Kenya Education Sector Support Programme, popularly known as “Free Primary Education (FPE)”, and three, the Arid Land Resource Management Project Phase II. I would like the Minister to further explain in his statement the responses of the World Bank to the audit report, if any. Finally while delivering that statement, could the Minister also table copies of the audit report and the aforementioned responses from the World Bank?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Deputy Prime Minister and Minister for Local Government, can you give an undertaking as to when that statement will be brought to this House?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I propose that the statement be issued on Tuesday, next week.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, we have a lot of business to transact; so, I will allow only one statement to be requested. Mr. Imanyara.

STATUS OF LIBYAN INVESTMENTS IN KENYA

Mr. Imanyara: On a point of order, Mr. Temporary Deputy Speaker, Sir. I requested for a Ministerial Statement last week from the then acting Minister for Foreign Affairs regarding the Libyan investments in Kenya, and whether the Government had seized the properties as per the United Nations Security Council directive. That statement was due today, and I do not know whether the then acting Minister for Foreign Affairs has passed on the information to the new Minister on when I can expect this statement, which was due today.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I think it is a very well known fact that I have already ceased being the acting Minister for Foreign Affairs and a substantive Minister has already taken over. So, the only thing that I can assure this House is that I will inform him that, indeed, this House is awaiting that statement. That can be known in the course of next week. I undertake to inform the Minister to come and deliver that statement on Tuesday, next week.

STATUS OF PUMWANI MATERNITY HOSPITAL

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. Mine is not a statement. I notice that the Deputy Prime Minister and Minister for Local

Government is here. The Chair directed last week that he issues a Ministerial Statement I had asked for in respect of Pumwani Maternity Hospital.

The Deputy Prime Minister and Minister for Local Government (Mr. Musalia): Mr. Temporary Deputy Speaker, Sir, I would like to seek the indulgence of the House; I got this information and we are preparing a comprehensive statement. From the HANSARD, we have noted that hon. Khalwale has asked for quite a detailed report regarding Pumwani Maternity Hospital. So, I would like to say that I will be able to deliver the statement on Tuesday. As my officers were preparing it, we were hit by a fire at City Hall. This put some of our people into disarray; but I undertake that on Tuesday I will be ready with the statement.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. Members, please bear with me. We need to transact some business here. We will continue with requests for Ministerial Statements tomorrow.

Next Order!

MOTION

ADOPTION OF REPORT BY CIOC ON APPROVAL OF CHAIRPERSON AND MEMBERS OF JMVB

Mr. Abdikadir: Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Constitutional Implementation Oversight Committee on the approval of Mr. Sharad Sadashiv Rao for appointment as Chairperson of the Judges and Magistrates Vetting Board, Mr. Justus Maithya Munyithya, Ms Roseline Odhiambo Odede, Prof. Ngotho Wa Kariuki, Ms Meuledi Mabruki Iseme, Mr. Abdirashid Abdullahi, Sir Stephen Sedley, Chief Justice Georgina Wood and Hon. Ms Louise Otis for appointment as Members of the Judges and Magistrates Vetting Board laid on the Table of the House on Tuesday, 23rd August, 2011.

Mr. Temporary Deputy Speaker, Sir, may I first of all take this opportunity to thank the House and members of staff of the House for the excellent work done these previous two weeks, as we raced towards meeting the deadlines for the Constitutional implementation process. Under Section 23(1) of the Sixth Schedule of the Constitution, the following is stated:

“Within one year after the effective date, Parliament shall enact legislation which will operate despite Articles 160, 167 and 168 of the Constitution establishing mechanisms and procedures for vetting within a timeframe to be determined in the legislation the suitability of all judges and magistrates who were in office on the effective date to continue to serve in accordance with the values and principles set out in Articles 10 and 159”.

(Loud consultations)

Mr. Temporary Deputy Speaker, Sir, I seek your support in getting Members to be less noisy, if I was to say so.

The Temporary Deputy Speaker (Prof. Kaloki): The Members are listening!
Please, proceed!

Mr. Abdikadir: Mr. Temporary Deputy Speaker, Sir, Parliament enacted the Vetting of Judges and Magistrates Act (2011) which commenced on 22nd March, 2011. The Act was later amended to commence on 19th May, 2011.

Section 7 of that Act states that:-

“The Vetting Board shall consist of nine members comprising of a chairperson, a deputy chairperson and seven other members of whom:-

(a) Six shall be citizens of Kenya appointed in accordance with Section 9(1) to 12 and of whom three of those six should be lawyers; and,

(b) Three shall be non-citizens of Kenya appointed in accordance with Section 9(3).

The following are the Kenyan nominees as I had stated; Mr. Sharad Rao, Justus Maithya, Roseline Odede, Prof. Ngotho Wa Kariuki, Meuledi Mabruki and Abdirashid.

Further, on 18th August, 2011, the Permanent Secretary and Secretary to the Cabinet did inform the House through a letter to the National Assembly that the Right hon. Prime Minister was indeed consulted on these matters. He further sent three nominees under the international component who are the two ladies and gentleman I read earlier.

Mr. Temporary Deputy Speaker, Sir, under Section 8 of the Vetting of Judges and Magistrates Act, the qualification for the appointment of people to that Board are stated. One should qualify if:-

(a) They hold a degree from a recognized university.

(b) They have 15 years distinguished post-qualification experience.

(c) They satisfy the requirements of Chapter Six of our Constitution.

One should not be appointed as chairperson or deputy chairperson unless that chairperson or deputy chairperson has at least 20 years or aggregate of 20 years experience as a judge of a superior court or equivalent qualification.

Let me then go to individual appointees.

Mr. Sharad Rao is a citizen born on 13th October 1935. He holds a Bachelor of Law degree, admitted in Leucoxene in London. He was admitted as an advocate of the High Court of Kenya on 1st July, 1960. He practices law in the country now. He was a former Assistant Deputy Public Prosecutor, former Deputy Public Prosecutor and briefly acted as the Attorney-General, I am informed.

Mr. Temporary Deputy Speaker, Sir, he is a life member of the Kenya African National Union (KANU). He was charged in 1984 in his capacity as an Executive Director of Ellis Chemicals Limited under the Foods, Drugs and Chemical Substance Act together with three others. However, he has never served as he was out of the country. Thereafter, his case as an Executive Director was withdrawn. The Committee found him qualified.

For Justus Maithya Munyithya, I must confirm that indeed he was a classmate of mine for purposes of disclosure. Mr. Munyithya holds a Bachelor of Laws degree from the University of Nairobi. He was admitted on 11th of January, 1996 and, therefore, has 15 years experience as a lawyer. He practices currently under Kioki/Munyithya/Ngugi and Company Advocates. He has volunteered as a legal officer and holds a Certified Public Secretaries (CPS) certificate. He was awarded a Head of State commendation

(HSC) in December 2010 by His Excellency for distinguished service as the Chair of the National Adoption Committee. He is not a member of a political party. He has never been charged in court and the Committee found him qualified.

With respect to Roseline Odede Odhiambo, she is a lawyer born on 26th March, 1967. She holds a Masters of Law degree (LLM) from the University of Witwatersrand, Johannesburg, a Bachelor of Law degree from the University of Nairobi, a diploma in law from the Kenya School of Law (KSL) and was enrolled as an advocate of the High Court of Kenya with almost 20 years experience.

Mr. Temporary Deputy Speaker, Sir, she has received awards from the East African Law Society (EALS) for distinguished legal practice and service and from FIDA Kenya for pro-bono work. She is not a member of any political party and the Committee found her qualified.

With respect to Prof Ngotho Kariuki, he holds a Masters of Business Administration in Finance Accounting, Bachelor of Commerce (Accounting) from the University of Nairobi and was born in 1949 June. He also has a certificate in Job Evaluation from the Ernest and Young in Zimbabwe. He has been a professor in many countries in sub-Saharan Africa in accounting, auditing and fraud investigations, finance and taxation including East African countries, Zimbabwe, South Africa and Cameroon as a professor, lecturer and consultant.

Prof. Ngotho was one time a secretary of KANU, Kangema Sub-branch and contested for Kangema parliamentary seat in 1974, 1983 and 1992 on FORD(K) ticket. He formed the Social Democratic Party (SDP) in 1994 but currently, he is not an active member of any political party.

He was charged on several counts of sedition in the famous case of Anyona and others. He was convicted on all charges and jailed for a cumulative sentence of 47 years running concurrently for seven years. The conviction was, however, quashed on appeal and he was released in 1992.

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

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

It is, indeed, a sign of the times that a man who was convicted for sedition is before the House for approval. I am happy another man who is familiar with these matters has taken the Chair.

Mr. Temporary Deputy Speaker, Sir, I think it is a celebration of this Constitution that we have Prof. Ngotho Kariuki before this House today even after having been convicted unfairly, unjustly and unconstitutionally. The Committee celebrates him and found him qualified.

Ms. Meuledi Mabruki Iseme is qualified in Business Administration. She holds a Masters of Business Administration (Finance). She is a Bachelor of Commerce degree holder from the University of Nairobi. She was one time Deputy Managing Director of the Kenya Seed Company. She is not an active member of any political party. She has

never been charged in a court of law for any offence and the Committee found her qualified.

Mr. Abdirashid Abdullahi served in the Committee of Experts (CoE). He holds a Master of Arts (History) from Rhodes University, a Master of Arts in Conflict Resolution from George Medison University and a Bachelor of Education from Kenyatta University. He has worked as a member of the CoE as I said before and he has never been mentioned adversely in any investigative report to Parliament or any commission of inquiry. He is not a member of any political party. Those then are the components of the Kenya section of the Board. The foreign component, I must say, are really a man and two women of exceptional quality.

The first is Sir. Stephen Sedly. He is a British national. He was a judge of the Court of Appeal of England and Wales from 1999 to March 2011 when he retired. He spent 28 years in the bar working principally in the fields of civil liberties and discrimination law. He was elected President of the British Institute of Human Rights in 2000. He is currently an associate advisor on various legal issues that range from employment, discrimination, equality, injury clinical negligence, commercial law and many others. He is a man of exceptional qualifications and the Committee found him fit.

Lady Justice Georgina Wood as member of the Judges and Magistrates Vetting Committee is indeed a milestone. Her Ladyship is the current, I believe, Chief Justice of Ghana. She is the first woman to hold that post. She was approved by the Ghanaian Parliament by unanimous vote. I think for the second time, she will be approved by a Parliament on the continent if this Parliament agrees with the proposals of this Committee.

Mr. Temporary Deputy Speaker, Sir, she worked with the Ghana Police Service as a Deputy Superintendent and Public Prosecutor for three years. She was appointed by Prof. John Kufuor on 12th November, 2002 to the Supreme Court of Ghana. She was nominated for the position of Chief Justice of Ghana in May 2007. On 1st June, 2007, the Parliament confirmed her. She was awarded Ghana's highest award; the Order of the Star of Ghana for meritorious public service. She holds a PhD in law on *honoris causa* basis from the University of Ghana. She is a choir leader in a gospel centre in Accra. She is also the chairperson of the Alternative Dispute Resolution Process in Ghana. The Committee found her eminently qualified.

Mr. Temporary Deputy Speaker, Sir, Hon. Louise Otis is a member of the Judges and Magistrates Vetting Board. The Committee considered the Curriculum vitae of Hon. Louise Otis. She is a graduate of the La Vale University and was called to the Quebec Bar in 1997. While a judge in the Quebec Court of Appeal, she developed one of the world's first judicial mediation systems and later helped to establish mediation programmes in Canada and elsewhere.

She was appointed by the then United Nations Secretary-General, Kofi Annan, to a five member group of international experts charged with re-designing UN's internal justice system, including the creation of a mediation system. She has lectured and taught in many universities, including the Harvard University, the Weatherhead Centre for International Affairs, the European Conference for Judges, the International Academy of Mediators, the American Bar Association, many other Brazilian judicial institutions, and many other distinguished entities and institutions.

She has been involved in the reform of judicial systems in many countries, including Haiti, Mali, China and Russia, among others. The Committee, indeed, found her exceptionally qualified.

Mr. Temporary Deputy Speaker, Sir, the following are the recommendations of the Committee:

(i) That this House approves the appointment of Mr. Sharad Sadashiv Rao as the Chairperson of the Judges and Magistrates Vetting Board.

(ii) That this House approves the appointment of Mr. Justus Maithya Munyithya as a member of the Judges and Magistrates Vetting Board.

(iii) That this House approves the appointment of Ms. Roseline Odhiambo Odede as member of the Judges and Magistrates Vetting Board.

(iv) That this House approves the appointment of Prof. Ngotho wa Kariuki as a member of the Judges and Magistrates Vetting Board.

(v) That this House approves the appointment of Ms. Meuledi Mabruki Iseme as a member of the Judges and Magistrates Vetting Board.

(vi) That this House approves the appointment of Mr. Abdirashid Abdullahi as a member of the Judges and Magistrates Vetting Board.

(vii) That this House approves the appointment of Sir Stephen Sedley as a member of the Judges and Magistrates Vetting Board.

(viii) That this House approves the appointment of the Hon. Lady Chief Justice Georgina Wood as a member of the Judges and Magistrates Vetting Board.

(ix) That this House approves the appointment of Hon. Louise Otis as a member of the Judges and Magistrates Vetting Board.

Mr. Temporary Deputy Speaker, Sir, in conclusion, while we beseech the House to approve these names, I must say that, as a country, we must celebrate the reforms taking place in the judicial system. I believe that 28 new Judges of the High Court were today sworn in as part of the process of reform. Recently, this House passed a law which allowed complete independence of the Judiciary as far as finances are concerned. Recently, we witnessed the process under which the Chief Justice, the Deputy Chief Justice and the Supreme Court Judges were appointed, and this House approved the names of the Chief Justice and the Deputy Chief Justice.

So, if we have completely human resource in the Judiciary; if we have completely new infrastructure, in terms of the Judicial Service Commission and the Supreme Court; if we have all judges and magistrates vetted through an open, transparent and fair process; if we are going to have this new Judiciary, surely, as a county and Parliament, we must give that institution the benefit of doubt and, indeed, the support they will deserve as the Judiciary, so that people in the country, elsewhere, and in this House will have the trust, confidence, integrity and honour in that institution, and so that tomorrow, nobody will have the excuse, or choice, to say: "I will not go before to the Judiciary" or "I may not be able to go before the Judiciary because I fear that this Judiciary is not clean".

Mr. Temporary Deputy Speaker, Sir, we have gone through serious reforms and, we, as a country, must see the benefits of those reforms. We must also start celebrating the benefits of those reforms. Earlier, in the House, we had the issue of mistrust, which is as a result of our history. It is as a result of decades of disappointment by national

institutions. So, people's confidence had been shuttered; but time has come for those institutions to be given the benefit of doubt, the trust and the confidence of the people.

I will ask my able and very experienced Vice-Chairlady to second the Motion.

With those remarks, I beg to move.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I will be very brief because the Chairman has been very elaborate.

First of all, I would like to thank Members of Parliament for the support they gave me during the loss of my mother and my grandmother.

Mr. Temporary Deputy Speaker, Sir, I would like to say that the members who have been appointed are outstanding. I will only speak on two of them, whom I personally know very well, because the Chairman has spoken very well about the others. I have worked for very many years with Mr. Munyithya. He is an excellent lawyer. He has done a lot of work *pro bono* for children and women. Indeed, Mr. Munyithya was awarded the Pro Bono Lawyer of the Year Award by the Cradle, the Children Foundation, for outstanding *pro bono* work for children.

The same is true of Roseline Odede, who has done a lot of work. I know that the other members, as the Chairman has said, have done commendable work for this country, including being jailed.

With those few remarks, I beg to second the Motion.

(Question proposed)

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, I rise to support the Motion. In supporting the Motion, I have just some brief comments on the general purpose and intent of going through this vetting process.

Mr. Temporary Deputy Speaker, Sir, by enactment of the new Constitution, we have a new constitutional order. We have what has been properly called "the Second Republic" and there must be a new jurisprudence, as it were, because Kenya has substantially changed in terms of not only the basic law, but we have undergone the process of enacting implementing legislation.

Therefore, I would think that during the vetting process that this body is going to undertake, they will want to ensure that those who are going to be vetted and found to be suitable will bring a new thinking and a new culture within the Judiciary. I agree with the Chairman that we still have to give this new institution the benefit of doubt, since they have not quite been well established, but as time runs, we want to see that the Judiciary is, indeed, fundamentally changed. It should be just like the newly established countries like South Africa, where you could see that there was new jurisprudence and constitutional order; the country was re-awakening to a different way of looking at things.

Mr. Temporary Deputy Speaker, Sir, the reason as to why I am saying this is because sometimes, I tend to get the feeling that within the Judiciary, there is still business as usual. Even with the enactment of the new Constitution, a lot of matters which are still going to court are being dealt with in the same old fashioned way. Talking from my position as the Minister for Lands, I would have hoped that as the Constitution now brings completely new jurisprudence on land, where land does not just belong to individuals, but belongs to the nation and the people of Kenya collectively, this new

jurisprudence would inform the judgements that our judges are making within the framework of the new constitutional order.

So, we want to feel that a new country has been born, a new Judiciary has been born, and make no mistake about it. In terms of what we are doing in Parliament, many times, I feel that a new Parliament has been born. This feeling is just from the way we go about legislation and our other business in the House. I support the Motion, and I feel that the Judiciary is very critical. I would rather that every arm of the Government fails, but not the Judiciary. I believe that we had an impartial and independent Judiciary, we could not have failed just like in many countries where there were dictatorships and yet the Judiciary was able to open up space for the country to move forward.

This Committee has a duty not just to look at the moral character of these new judges, but to find out that in their thinking, they are alive to the new Kenya, which is a different country in many ways by the enactment of the Constitution.

Otherwise, I beg to support.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I just want, first of all, to support this Motion by the Chairman and thank the Committee for the good work it has done. I have three points I want to make in terms of my remarks.

The first thing is to congratulate ourselves, as Parliament, in the manner in which we have made sure that the Executive presented names by requiring under the Act that these names must have gone through the Public Service vetting process. These people were required under Article 7 of the Vetting of Judges and Magistrates Acts, 2010, to have gone through some process before they were nominated by His Excellency the President and the Right Hon. Prime Minister. In other legislations where we have not made it open for the applicants to sort out those qualifications to be done, we have witnessed some kinds of nominations which have immediately drawn reactions from the public that the President and the Prime Minister were, in fact, favouring the regions from where they came. But you can see that in this particular process, there was nothing like that. Although the nominations were by the President and the Prime Minister, they went through a process. I would urge the Members of this House that in any future legislation, we should put this kind of requirement, so that all future public officers that need parliamentary approval or the President in future to nominate shall protect the President. Then, having gone through a process like this, there will be nothing like accusations that we have seen in other appointments.

The second point, and I support the kind of processes they have gone through, I need to say that I am very proud that one of the people that we are approving, Mr. Justice Munyithya, is a fine character from my law school. We shared the same classroom in the university with the Chairman here and I can vouch for him that he will do a good job. Secondly, I support the fact that two of the members have been very active in terms civic duty. I particularly want to single out the Chairman, Mr. Sharad Sadashiv Rao, who declared that he is a life member of KANU. The assumption here is that he has been interested in matters concerning Government and public duty. The other one that I want to single out is Prof. Ngotho wa Kariuki, whose history we all know very well and how he has participated consistently in trying to find a country that he would be proud of. Today, I am very happy that some of these people that we were reading in history books are now part and parcel of the reformation and rebirth of this nation.

I am mentioning this particular issue of civic duty because sometimes we are over mesmerized by qualifications that are brought to us even by the Public Service Commission. We need, in future, to make it very clear about people who sit in their houses, when it is time to vote, they never vote because they are too educated, too middle class or too important. They never participate in issues regarding formation of the Government; they are never interested, but when the Government is formed, they come waving huge degrees and they want the positions where people have fought and struggled to form those kind of governments. People have gone to vote. I would ask that this Committee chaired by hon. Abdikadir, my very good friend, to insist, in future, whether the people who need to take Government positions have participated and done their civic duties. For example, are they registered voters? Some of them live in far away countries and have no investments in this nation. They have not invested emotionally or even in matters concerning this country. In fact, when they hear it is time to vote, they take off out of this country. When the Government has been formed, they come waving their beautiful degrees and then we look at them and forget the Kenyans who went to vote and took interest in civic duty and just follow those beautiful degrees. I am a holder of a Masters Degree in International Trade and Development Law from the University of Nairobi and a degree holder from the University of Nairobi. These are not simple degrees, but I participate in civic duty. There are some of these people who are not interested. In fact, they think you are crazy to go and line up to vote as a Kenyan to participate in civic duty.

I urge this Chairman, because we will be approving other positions, that they look and disqualify people who do not have voters card and people who have never participated in any political parties. They are not even members of political parties. They do not care about what happens to the Government, but they want to take those positions after we have formed this Government. We must make it a duty. We have to look at the history of these people. Were they really interested or maybe they have just come to take up positions in order to have retirement plans? I never saw in this report of the Committee any mention at all of participation in civic duty. I think that is an omission that they must look at. We cannot give public positions to people who were never interested. In this Kenya, we must give public positions to people who are interested.

The final and the third point that I wanted to make is that I have a lot of respect for qualifications, but there is something that I think this nation needs to address itself to. When we are making appointments and approvals to some important positions such as this one, which requires more, we have said very many times in this House that the Judiciary needs to be like Caesar's wife, completely, above reproach. So, it is not a matter of degrees. There are many people who have beautiful degrees, but they are not above reproach. So, the people who are going to be vetting those people, we cannot just be emphasizing on the degree and beautiful qualifications. Apart from that, I feel very sad that we are approving a board here, we have emphasized on their beautiful qualifications, but there is not a single member of the clergy in this list. This country needs to involve our spiritual self. This nation was created and founded on spiritual values and even in the National Anthem, the mention of the Lord God is important for the foundations of this country. We cannot be selecting a group of people who are going to be vetting our judges and then we leave out the clergy.

I have been asked this question many times by my constituents. Do we exclude the clergy just because they voted against this Constitution? We need to relook again. There are some positions that need consentaneous thinking. Which other group in this nation can represent that better than the clergy? So, I am a bit disappointed that we are approving these gentlemen and not even one of them will be there to say that before they start speaking, they should pray. There is no one and I am disappointed with that. Having said those three points, I want to urge the House to pass the Motion but we should have this in the background that next time we are approving important positions, we must think about this procedure, civic duty of those people, and must give a special place to our clergy.

I beg to support, Mr. Temporary Deputy Speaker, Sir.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I just want to speak very briefly about this Motion and say that it is a Motion which is most welcome for the very fact that it is intended to set up the Board which is intended to vet the judges and the magistrates. When I look at the proposal to appoint Mr. Sharad Rao as the Chairman of this Board, I do feel that a prudent recommendation has been arrived at. This is not somebody that we do not know. This is somebody we know very well as having had an extremely good record in terms of having been a very hard working person. He is a person who has distinguished himself with abilities. At an extremely difficult time, he did his work and one cannot have any report where they can say that he will not do his job. He is known to be a very strict person and fair to that point of view. Therefore, I commend the Constitutional Implementation Oversight Committee (CIOOC) for having seen that this person will be able to lead this Board which has a very enviable job of vetting the magistrates and the judges.

Mr. Temporary Deputy Speaker, Sir, the other thing that I feel I should speak about is that there is Prof. Ngotho wa Kariuki. During my university days as a don, this is somebody that I worked with very closely not in the same discipline. I was a mathematician and he was in the Faculty of Commerce. He is a scholar and he demonstrated his ability to carry out his duties both as a teacher and a researcher taking into account that in the academic world, a person is well known not only by teaching but basically by carrying out fundamental research. That is what makes somebody to be called a scholar. But the more fundamental point is what he actually did when he left the university. He left university to set up his own private firm in accounting. At the same time, he did not forget that ours is a dynamic society. Therefore, he needed to align himself with the process of reform in this country at the time when we had a one-party system and things were extremely difficult. He was one of those who spoke loudly, clearly and courageously. He had to go through moments of suffering. He was put in. What I am saying here is that we should pay tribute to this Committee chaired by Mr. Abdikadir for recognizing that there needs to be somebody in this Board who knows what reform means and the suffering that has gone into it.

The biggest problem in this country is that we tend to thrash away people with experience and who have made a contribution in this country. It is unlike many countries where those who have made a contribution to the country are normally honoured, given places and recognized on public occasions. In so doing, we set up those people to be role models and, therefore, our young people can say that when they grow up, they want to be

like so-and-so and they aim that. We have to change the culture where people do a lot of work and make sacrifices for the betterment of this country but when they step aside, we bury them. Things do not work like that. Societies work on the basis that those who have been role models, who have made their contribution and are part of a history which is told to young people are remembered.

Mr. Temporary Deputy Speaker, Sir, my last point is that there are two elements here. First, is to recognize the fact that we are part of the international community. This is a globalised society and that we cannot have the monopoly in this country. So, when this very delicate exercise is being carried out, it should be done within the context of understanding that we can also learn from some people who are distinguished in their countries. I am talking about the inclusion of some foreign elements. There is always a discussion as why we need to bring foreigners. There is always a generalized statement that we can do these things on our own. Sorry. Knowledge is global and we are living in what we call a knowledgeable society. So, the very inclusion of some of these people who are distinguished is an acceptance that this exercise must be able to meet the best practices in the world. It is for that reason that I feel very comforted that we have done a very good job here.

Lastly, it is the magistrates and judges who will be vetted and it is absolutely important that we must get the best. The process must be transparent, thorough and must be carried out in a dignified manner. It should not be that the process must be carried out in a way where it looks like it is an opportunity to humiliate people. I have no doubt that it is possible to carry out this process in an extremely civilized manner where you will be able to weed out those who do not meet the score and get the best. We must carry out this exercise in a very good environment. I think it is important.

I beg to support this Motion.

The Minister for Public Works (Mr. Obure): Thank you, Mr. Temporary Deputy Speaker, Sir, for allowing me to make brief comments on this Motion. First, I would like to congratulate the CIOC for the hard work and for bringing this Motion to this House. The fact that this Motion is before this House is sufficient testimony that the reform agenda is clearly underway. Nobody could imagine this a few years ago. Appointment to public offices is something that Kenyans were used to hear on the radio at 1.00 p.m. news. The fact that we have reached this stage where, as a House, we are now being asked to appoint people who will vet people who will be appointed to the high positions is tremendous development in the right direction. This process will ensure - because it is a very transparent process - that people of good quality and have been achievers in their various fields of endeavour; that persons of high integrity and standing in society are appointed to these very important positions. The fact that this process is transparent will ensure and guarantee that we appoint people who are known for having been achievers. This is very important for this nation and the people of this nation will benefit from this process.

Mr. Temporary Deputy Speaker, Sir, we have looked at the quality of people, their qualifications and what they have done before. These are people who are very highly qualified. They have special skills and have distinguished themselves in the society. Therefore, I want to support their appointment.

I also want to mention something about the Chairperson; Mr. Sharad Rao, whom I know personally. He has had an outstanding career and distinguished service as the

Deputy Public Prosecutor. He did a very good job at the time, but I also know him as a man who distinguished himself as a sports administrator. He was a member of the National Sports Council, where he served this nation extremely well. I have known Mr. Sharad Rao because he is the Chairman of my residence's association. He is a very focused individual. He has worked very hard to ensure that very high standards are set in terms of conservation of the environment within our residence. I also know him to be involved in very many other voluntary activities. He is a person who loves his country. The more of such people we have, the better the country we will have. Therefore, I think that this Committee has done a tremendous job in identifying these people. They deserve to be appointed to these positions and we will encourage them.

Mr. Temporary Deputy Speaker, Sir, I agree with the previous speaker, Prof. Saitoti. We have seen some of these interviews, because the whole process is transparent and open. However, I agree that we can be a bit more civil. Let us not use this forum to humiliate people who have served this nation. They may not be the most qualified people, but I think we can do it better and a bit more professionally.

Mr. Temporary Deputy Speaker, Sir, overall, I support the work of the Committee and the names proposed and this Motion.

Dr. Eseli: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to also add my voice in support of the nominees for the Board to vet Members of our Judiciary.

Mr. Temporary Deputy Speaker, Sir, it might appear that as time goes on, we are quite on the right path to reform our Judiciary, but we should take cognizance of the fact that the Judiciary is not the only cog in the justice world, for providing justice to Kenyans. As we proceed to pass these names and have our judges and magistrates vetted, we must remember that we are still faced with more work because we also need to revamp the investigation wing of our police service. We also need to empower the Director of Public Prosecutions (DPP) for the prosecutorial wing so that we can actually deliver justice. These people who have been nominated are highly qualified for the jobs they have been nominated for. What we do not expect them to do is to get there and set up an inquisition. It is not an inquisition we are looking for, but we want to clean up our Judiciary so that we retain the best that we have. This is because, indeed, we have very many good men and women serving in the Judiciary. We expect that if they go about their work diligently and carefully, without bringing in inquisitorial methods, we will be able come up with a proper Judiciary to run the justice system in this country.

As I say that, we also need to look carefully at some issues which are in the Constitution and are proving very difficult to meet, like the issues of regional representation, ethnic balance and so forth. They do not seem to be going uniformly because as we are on the Constitutional Implementation Oversight Committee (CIOC) and people have been coming on for vetting, we have started realizing that there are some gaps along the way. Perhaps, it is because there is no standard that was set up to say that this is what we should come up with such that people are being nominated by different groups, and as they nominate them, they are not aware of who else has been nominated elsewhere so that regional balancing becomes a problem. Ethnic balancing is even more difficult. I think it is something that we need to look at carefully and, perhaps, as a Parliament, sit down and form an *ad hoc* Committee to look into this so that we are able to as closely as possible follow the Constitution on those issues of regional and whatever

balancing. This is because it is very important. We have had some complaints already. Certain people are up in arms saying that they have been left out of the new dispensation. I think we need to look at that very carefully so that we do not continue raising the anger of certain societies within our country.

Mr. Temporary Deputy Speaker, Sir, finally, the issue of vetting judges and magistrates is very important because the common Kenyan has totally lost faith in the Judiciary as it is now, to the extent that, in the villages they prefer meeting as families, where somebody has been wronged and they decide their own compensation because they ask: "Why should we go and give our money to somebody else who will just "eat" it and not solve our problem?" This particular issue is very important and I hope that the members of the Judiciary do not feel that the country is vilifying them unfairly. It is not all of them, but a few who have tarnished the Judiciary. Therefore, these few need to be weeded out, so that the Judiciary regains its stature and the respect they deserve from the rest of Kenyans for the good work they are doing.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I also take this opportunity to very strongly support this Report.

Initially, let me register my appreciation to the two principals for the agreement and concurrence in the appointment of these nominees. This act is very important towards the required reforms in the Judiciary. In addition, let me also appreciate the good work that has been done and achieved by the CIOC under the leadership of Mr. Abdikadir, who today is attired in a very elegant manner. We admire his leadership and dedication in this critical process.

Regarding Mr. Sharad Rao, I wish to indicate that this is a man who has provided prominent and distinguished degree in the legal profession. It is also notable that he is a member of KANU, the party that produced the first Vice-President of this country - the late Jaramogi Oginga Odinga, the first Prime Minister of this country - the late Jomo Kenyatta and also the first President of this country. Therefore, his association with this party is key. This is a person who has got the best credentials to direct the affairs of this Board.

Regarding Prof. Ngotho wa Kariuki, he is a man who suffered for the liberty and freedom of this country. He was detained, suffered, humiliated and disturbed. He has served this country with a lot of dedication. He will excel well in his service once the Board is constituted. He is in his twilight years and it is a unique period for him to serve well in this country.

The other members have displayed a high degree of competence. They have very high qualifications. We have no doubt that with those impeccable Kenyans, it will be possible to provide the required reforms in the Judiciary. Let me also thank the Attorney-General who was sworn in a few minutes ago and hope that he will work jointly with the Director of Public Prosecutions to address the more than one million cases which are pending before our courts, so that Kenyans can be free from those acts of inertia.

With those few remarks, I fully support the Report.

Dr. Khalwale: Thank you Mr. Temporary Deputy Speaker, Sir. I will start by congratulating Members of our Committee who, obviously, continue to impress us, as colleagues in this House, for the good work they continue to do. I also would like to congratulate the nominees for landing an opportunity to serve our country proudly.

However, more importantly, I would like to congratulate and thank family members of the foreign experts. That is because, obviously, they will be away from their mother countries serving us here in Kenya. We must say thank you to them for that sacrifice.

I would also like to use this opportunity to thank the former Attorney-General of the Republic of Kenya for having served this country for 20 years. He has finally and peacefully accepted to hand over without resistant - considering the way some of the other older professionals have done in the politics of Africa. That is something I would like to recognize this afternoon.

I support this Motion because I am attracted by the issue of balance. There has been very careful balance where the youth have been included in the names of Justus Maithya and Roseline Odede. I am also happy to note the balance on gender where I notice there is Roseline Odede, Meuledi Mabruki, Justice Georgina Wood and hon. Louise Otis. Having seen the balance here, especially on gender, I will address myself to the female constituents of this country. Whereas initially we seemed to have started having hiccups on matters of gender, I want to say that one cannot possibly achieve gender balance in one office, two offices or even three offices. The ladies of this country have spoken. We must be alive on matters of gender. We want to say that the people in leadership must emphasize to our ladies that this will be achieved over many appointments. That is when you can sit back, take stock and see whether we are moving nicely or we have started to shortchange our women.

For those who like reading political history, you will remember what Patrice Lumumba said in 1961. He told the King of France that the African people of Congo had refused to be their monkeys. Those of us who see our women complaining, we must take it in the same strength that Lumumba said. Our women are simply saying that they have refused to be our monkeys as men. So, when they ask us, we must listen to them.

I have a further point why I am supporting this list. I have seen that there has been a deliberate effort to recognize experience. In Sharad Rao and Sir Stephen Sedley, we have attracted a lot of experience in the vetting committee and I believe that they will draw from that experience.

I have two reasons why I am supporting Mr. Sharad Rao. It is not because of his legal expertise because I have no knowledge of how he is good at it. But I am supporting him for two reasons. The first one is that, here is a man who served in the dispute panel of FIFA at the World Cup that was concluded in South Africa last year. Unknown to many Members of Parliament, maybe, a disputed decision at the World Cup causes more pain than a disputed decision in any nation. That is because a disputed decision at the World Cup affects and causes pain to billions of people who follow it. The international community was able to recognize Sharad Rao as someone who has the impeccable qualities that could attract him to serve on this panel speaks volumes.

One little point I liked about the summary by the Committee on Sharad Rao is that he came out and admitted that once upon a time, he was charged in a court of law. This gives an opportunity to many people who think that being charged in a court of law, once, twice, three times or many times, is a crime that can deny you an opportunity to serve this country. This would make many more people to come forward irrespective of the few charges they are attracted to in their professional journey and life, knowing very well that because they were acquitted by those court processes, it is a further emphasis to the fact that they are men and women of impeccable character.

I have, in conclusion, found a very interesting sense of belonging. I have found a sense of belonging to this list. This time, not because somebody of my tribe was on the list. I have a sense of belonging on this list because this is a list that recognizes professionalism. It gives me hope that in the unlikely event that the people of Kakamega County were to throw me out of politics, my professionalism will still earn me recognition. It also gives me a sense of belonging in that in Prof. Ngogho Wa Kariuki, we have a comrade in the struggle. This is a man who fought for the second liberation of this country. What is more important is that he was a member and Parliamentary aspirant on a FORD(K) ticket.

With those few remarks, I support.

The Minister for Transport (Mr. Kimunya): Thank you Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support this Report. I will take this opportunity to congratulate the Committee for the work they have been doing under very difficult circumstances. They have been handling many Bills. However, they have spared enough time to give us this Report.

I do not want to take time on the professionals and the people who have been named in this Report because their CVs speak for themselves. They are properly qualified. They have passed through the process and, to date, I see no objections raised so far. I believe that they will pass through this final process today. I just want to say a few things on why we need this panel. That is because they are not an end in themselves. They are part of a process. This vetting process is not an end in itself. It is part of the means to achieve a Judiciary that we can have confidence in. Looking through - and if I go back in terms of various dockets I have served within the last eight years starting from Lands, Finance, Trade and Transport now - the one common factor that has been talked about concerning our Judiciary is that when investors lose confidence in a country, their first point is the Judiciary. If I put my money in this country and something went wrong, would I get redress? Would I be protected? That has been lacking. As a result of that, whether in reality or as a perception, the cost of doing business in this country has been rather high. The cost of political risk insurance that you have to take to secure your business deals has been quite high.

I do believe that this vetting process will bring back that confidence. The message we are sending to the world out there is that Kenya will be a place where you can do business; where your business transactions and contracts can actually be respected. If they are not respected, you can seek recourse in the courts of law.

Madam Temporary Deputy Speaker, as we were passing the Bills last week on the operationalization of the Constitution, the one thing that kept on coming up was the Bill of Rights which talks about the rights of the people. There is no other assurance that we can find in terms of securing those rights. We can only secure these rights in a court of law. We can go to court to ensure our rights have been reinstated if they are jeopardized and to get the right interpretations.

I am sure that this panel will appreciate the task they have ahead of them. It is not just a matter of a clearing house for the judges. They must keep their eye on the ball in terms of ensuring that we bring back confidence in our Judiciary.

Madam Temporary Deputy Speaker, I know we have had problems with our Judiciary whether in terms of perception or bad judgments that we have also seen. The variety of judgments has also given some issue in terms of why one should do this and

the other does the opposite. As Prof. Saitoti and Mr. Obure did mention, let this process not be a witch hunt. Let this process not start from the premise that all judges are bad unless they have been vetted. Let us start from the perception that everyone is good and what we are really looking for is that assurance test and a validation for purposes of building the confidence.

Obviously, the ones who do not fit the goodness test will fall on the wayside. However, not the reverse that everyone is bad unless they pass the fitness test.

I also want to agree with Mr. Mungatana in terms of the commissioners not just the ones on this panel, but they must pass the patriotism test. They are doing this for Kenya. Hopefully, they are not just doing it because they have retired and they need to seek a retirement job.

I want to put it on record here and express my disappointment on what happened at the CIC and that unnecessary fight over the salaries. It showed Kenyans in very bad light that we thought we were getting commissioners to help the country, but people were demanding to be paid so much money. When you compare with what these people were earning before that, it speaks volumes. There is not enough sense of patriotism or the kind of patriotism that was exhibited last week by Parliament when we stayed until midnight. There was nobody who asked that we be paid overtime. This is the patriotism that we are looking for. If hon. Members could stay until midnight for several days without asking to be paid overtime, I think this was real patriotism. I saw Dr. Laboso as the Chair working her throat out in calling out clauses without asking to be paid overtime. When commissioners are appointed and the first thing they demand is to be paid so much, I think they are already failing the patriotism test.

However, looking at the people in this panel, these are people who are ready to serve this country rather than to make some extra money as they go along. I do hope that this can be inculcated as a culture in all commissioners who will be appointed.

I also do agree with Dr. Eseli that there might be some problems in terms of balancing across all the counties. However, I would suggest that we start now looking through the whole schedule; for example, do we have commissioners coming from every county? If we have to go that route of having an all inclusive wider team of the various commissioners, by the time we have filled all those, at least, there will be one man and one woman from every county. We should not just look at the regions and ethnicity.

Madam Temporary Deputy Speaker, let me conclude by wishing this panel luck. They need all the luck. Let me wish the judges and the magistrates luck in the vetting and validation process; may the best judges and magistrates move succeed to give this country the Judiciary we all want, for purposes of ensuring that justice will be our shield and defender.

With those words, I beg to support.

Mr. Koech: Thank you, Madam Temporary Deputy Speaker, Sir, for giving me this opportunity to support this Motion. In doing so, I want to thank the CIOC for a job well done. I know, as others have already indicated, there were a lot of Bills before then, but they were still able to find time to vet members of this Board. Again, I want to support it by indicating here that it is a very important Board given that in our country, we have three arms of government, and the Judiciary has been wanting. This Board is expected to vet judges and magistrates in this country, so that we can regain, as the

people of Kenya and leaders in this country, the confidence of the Judiciary. That judiciary is going to ensure justice.

This Motion could not have come at a better day than today. Today, you are aware that the International Criminal Court (ICC) is on live, I am told, all over the world, and Kenya is being watched from all over the world. Everybody watching that is wondering whether Kenya is a failed state. The reason why our colleagues are there is because everybody felt that the Judiciary in Kenya may not have dispensed justice. The justice that we need is eminent. I want to indicate here that by establishing this Board, we are moving in the right direction to assure the whole world that, as Kenyans, we can deal with our matters internally. Otherwise the perception created outside there is not the right one.

I want to thank our athletes for really having made us proud as a nation. In 2008, during the post-election violence, they went to the Olympics and changed the perception of Kenya out there. As the world is watching the ICC, today our two able Kenyans, Asbel Kiprop and Ezekiel Kemboi, gave us two gold medals. I really want to thank them for really helping this country have the name and the glory that we deserve. I, therefore, want to support these people. As earlier on indicated, I want to thank the panel that identified them to ensure that there is some balancing. If there is anything that this country has yearned for is that people from any corner of this country can qualify to join any Board. I am glad that some Kenyans have joined this Board.

Madam Temporary Deputy Speaker, recently, we passed the Ethics and Anti-Corruption Commission Bill, which is now an Act of Parliament. I want to indicate here that if the Judiciary is vetted and vetted well to assure justice, and if the police will carry out reforms properly, I want to believe that at some stage, we may not require this other commission. All that we are doing is because the police have failed. So, I want to believe that we shall be able to save the costs we are incurring on the Ethics and Anti-Corruption Commission in the near future when we ensure that our courts are able to deliver justice.

I just want to make an appeal that as we form these commissions that are going to help this nation, we should always ensure that they are all inclusive, so that every region and community feels represented. I want to agree with the proposal that in relation to the bodies to identify people to do vetting or interviewing, there is need for some reorganization. There is need for information so that if ICPAK, the Office of the Prime Minister and all other offices are giving people, they should be able to declare the names of those people, so that they do not end up finding that they have nominated people from one area, region or ethnic community. That will make Kenyans not to believe in the outcome of their interviews.

Again, I want to indicate that since the beginning of the vetting process, I think we have not seen or heard any committee bringing a report rejecting even one name. This raises concern unless those doing the vetting are doing a wonderful job and, therefore, I must thank them for that. We want to see to it that our committees do not end up being conduits of names already released to them. I think it is important to ensure that we do proper vetting and we even take enough time and give the public enough time to respond and give information.

Therefore, Madam Temporary Deputy Speaker, I want to conclude by thanking the body that we have established today. I would like to remind them that as Kenyans, we expect them to do a good job and the right job for the Republic of Kenya.

I support.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, you can just take as short a time as possible so that we can conclude this matter.

Mr. Ruteere: Madam Temporary Deputy Speaker, I also want to add my voice to those who are supporting this Report by the Members of the Constitution Implementation Oversight Committee (CIOC).

The Committee has done a splendid job. If you read their minutes, they took time to go through each candidate one by one. Because of the CVs of individual candidates, they were satisfied that the nominees met the criteria for which their names should be presented to us.

Madam Temporary Deputy Speaker, the process of having an effective judicial system makes people trust it. This will give them what we were given at Independence; that justice shall be our shield and defender. Without that justice, people feel disillusioned and they do not attend courts. We have noticed that people have been deprived of their property through the courts. That is why this judicial system must be changed.

Corruption that we have been talking about is a result of not having an effective judicial system. Once we have this in place, corruption will be a thing of the past. We will not even need the commissions. We will need people to be prosecuted and action taken by the courts.

Otherwise because you have said there is no time, I beg support.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, because it is constitutional, we must finish this debate today. We need a minute or two for the chair. So, if you could just take a minute each, let us have Mr. Imanyara and then Mr. Bahari.

Mr. Imanyara: Madam Temporary Deputy Speaker, like those who have spoken before me, I also want to thank the CIOC for a good job. The men and women who have been recommended to be members of this Committee are men and women of eminent qualifications. They qualify.

I am very happy that we have finally accepted the role that Prof. Saitoti mentioned; the people who have suffered and humiliated, those whose characters have been assassinated by the previous regimes; Nyayo House Torture Chamber graduates, who fought so hard under great pain to bring the changes--- In this respect, I am recognizing the recommendation of Prof. Ngotho wa Kariuki whom I have known as a great Kenyan and a well qualified man.

Madam Temporary Deputy Speaker, Sharad Rao is somebody I have known for a long time. He rose through the ranks under Charles Njonjo to become an acting Attorney-General of this country at one time. As a Deputy Public Prosecutor as they were then known, he is one person who administered the functions of a prosecutor impartially.

As far as I can remember, he did not accept to be used in the manner in which we saw several others being used by the powers that were to achieve political purposes. I am grateful that this Committee did single him out to chair this Commission. I worked with him when he was the Chairman of the Business Premises Rent Tribunal, and I can say that he is a man of great fairness and impartiality. That is why even world organizations like FIFA did seek him out to act as a judge in arbitration and dispute resolution matters.

Madam Temporary Deputy Speaker, I would have liked to speak a little longer but, because everything I will say will be a repeat of what has been said, I wish to support this Motion.

Mr. Bahari: Madam Temporary Deputy Speaker, I want to be very brief. I appreciate that you have given us the limited time. I want to make two points.

The first point is that we must realise that we have moved in the right direction. These positions were advertised. Shortlisting was done. The interviewing panel was different. The vetting board for judges and magistrates is now different from the people who interviewed the persons to sit on the Board. Finally, it had to come through this process. So, this is the right thing.

The second point I want to make to the CIOC is that it is important that we get a complete list to show why each and every candidate was short-listed and why others were disqualified at the short-listing stage. That way, we will be able to know that we are not being used as a rubberstamp.

Thank you.

The Temporary Deputy Speaker (Dr. Laboso): Yes, Chairman of the Committee.

Mr. Abdikadir: Madam Temporary Deputy Speaker, I thank the hon. Members for their contributions, and for the kind words they have used about the nominees and the Committee. I specifically thank the Member of Parliament for Lari for commenting so nicely about my regalia today. We celebrated Idd el Fitr yesterday, and I would like to say “Mubarak to you”.

I am gratified that hon. Members have commented on a number of key issues – that the process is historic but it must be dignified. Even though it should be strict and fair, it must be undertaken, knowing that those who are approved will continue as judicial officers will have dignity, confidence and trust.

Madam Temporary Deputy Speaker, I am happy that hon. Members have mentioned a number of institutions which require further support, including the Office of the Director of Public Prosecutions. I was very disappointed the other day, when we passed the Budget, the Office of the DPP attracted a small Budget of only Kshs170 million or thereabouts. That is something which needs improvement.

With those remarks, I beg to move.

(Question put and agreed to)

BILL

Second Reading

THE NATIONAL POLICE SERVICE COMMISSION BILL

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Madam Temporary Deputy Speaker, I beg to move that The National Police Service Commission Bill, Bill No.32 of 2011, be now read a Second Time.

In this respect, I have already---

The Temporary Deputy Speaker (Dr. Laboso): Order! Minister, you have a balance of 59 minutes to move your Bill.

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, it is now time for interruption of business. Therefore, this House stands adjourned until Tuesday, 6th September, 2011, at 2.30 p.m.

The House rose at 6.30 p.m.