

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 8th February, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Paper was laid on the Table:-

Annual Report and Financial Statement of the Kenya Anti-Corruption Commission for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Education on behalf of the Minister
for Justice, National Cohesion and Constitutional Affairs)*

Financial Statement of the Postal Corporation of Kenya for the years ended 30th June, 2006 and 30th June, 2007 and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Education on behalf of the Minister for Information and
Communications)*

Annual Report and Financial Statement of the East African Portland Cement Company Limited for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Education on
behalf of the Minister for Trade)*

Annual Report and Financial Statement of the National Housing Corporation for the year ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Education on behalf of the
Minister for Housing)*

Annual Report and Financial Statement of the Kenya Coconut Development Authority for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Education on behalf of the
Minister for Regional Development Authorities)*

Annual Report and Financial Statement of the Kenya National Bureau of Statistics for the year ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Education on
behalf of the Minister of State for Planning,
National Development and Vision 2030)*

Annual Report and Financial Statement of South Nyanza Sugar Company for the year ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Education on
behalf of the Minister for Agriculture)*

Annual Report and Financial Statement of Githunguri Water and Sanitation Company for the year ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Financial Statement of Nakuru Water and Sanitation Services Company for the year ended 30th June, 2007 and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Education on behalf of the
Minister for Water and Irrigation)*

QUESTIONS BY PRIVATE NOTICE

GOVERNMENT POSITION ON VICE-PRESIDENT'S "SHUTTLE DIPLOMACY"

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

(a) Could the Minister clarify whether the mission by the Vice President and Minister for Home Affairs to lobby African States to support Kenya's bid to pull out of the International Criminal Court (ICC) reflects the official Government position on the issue?

(b) How much money has the Government spent on the Vice President's "shuttle diplomacy" so far?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, I am not quite sure whether this is appropriate, but I would like to seek your indulgence. This is because the Vice-President and Minister for Home Affairs, Mr. Kalonzo, is

willing to give a Ministerial Statement on the same issue. I do not know whether it is applicable that he comes here to discuss the figures on this matter.

Mr. Speaker: Is the Vice-President and Minister for Home Affairs prepared to give this Ministerial Statement today, this afternoon?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, from the details I got from the HANSARD, he said that he will issue the Statement today. So, I think he will be able to do so.

Mr. Speaker: In that case, then we will expect him to come this afternoon and make that Ministerial Statement by the time we get to Order No. 7 - Statements. Please, ensure that he does so.

The Member for Ikolomani, you can await that Statement.

Dr. Khalwale: Mr. Speaker, Sir, since the Question touches on accounts, could you, please, direct that the Vice-President and Minister for Home Affairs releases those accounts to Parliament before we interrogate them?

Mr. Speaker: I do not want to be anticipatory. I expect that he will come fully prepared.

STRIKE BY MIGORI MUNICIPAL COUNCIL WORKERS

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

(a) Is the Minister aware that workers at the Migori Municipal Council went on strike from Friday 3rd December 2010 due to three months' unpaid salary arrears?

(b) Could the Minister disclose the current financial position of the Council, clarify whether there are any funds meant for the Council held by the Ministry and state the measures the Ministry is taking to address the problem and avert recurrence of the same in the future?

(c) What is the state of the working relationship between the Chief Officers and the Councillors and what measures is the Minister taking to restore a functional working relationship?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, this Question was asked on 14th December, 2010 and parts (a) and (b) were satisfactorily answered. What was not answered was the state of the working relationship between the chief officers and the councillors.

(Off record)

Mr. Pesa: I have no objection, but I hope you note that this Question came up on 14th December, 2010 and today is 8th of February, 2011.

Mr. Speaker: Very well! If you have no objection, the Question is deferred to Tuesday, next week at 2.30 p.m.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.593

IMPROVEMENT OF FACILITIES AT MAKONGENI MARKET

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

(a) If he is aware that Thika Municipal Council does not collect garbage on time at Makongeni Market, thereby exposing traders and locals to serious health risks;

(b) if he is also aware that, despite daily collection of revenue, the Council does not use the funds to improve the facilities at the market; and

(c) when the Council will improve the drainage system, which is faulty as a result of the short rains.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyayi): Mr. Speaker, Sir, I would request for a one week deferment because we have also consulted with the hon. Member. This is because I want to go to the ground and assess the situation. The answers seem contradictory. I would request the hon. Member to allow us time to pay a visit to the place and then come to give the answer.

Mr. Speaker: Hon. Kabogo, is that the position?

Mr. Kabogo: Mr. Speaker, Sir, that is so. However, the Ministry has been deferring many Questions to get satisfactory answers. Last week, one of my Questions was postponed by the Deputy Prime Minister himself. He said that he wanted to bring an appropriate answer. The answer he brought, however, was the same one he had given that same week. I have no problem though going with the Assistant Minister to the ground in order to ascertain the position.

Mr. Speaker: Very well, Mr. Kabogo. Let us give the Deputy Prime Minister and Minister for Local Government the benefit of the doubt and particularly so for hon. Nguyayi who happens to be very close to your generation. I am sure he will do a good job.

So, the Question is deferred until Tuesday, next week at 2.30 p.m!

(Question deferred)

Question No.566

BREAKDOWN OF EWASO NYIRO NORTH DEVELOPMENT AUTHORITY PROJECTS

Mr. M'Mithiaru asked the Minister for Regional Development Authorities if he could provide a breakdown of the projects to be undertaken by the Ewaso Nyiro North Development Authority in the 2010/2011 Financial Year, indicating the cost of each project and the

districts where the projects will be implemented, considering that Kshs2,325,000,000 was allocated to the Authority.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Speaker, Sir, I beg to reply.

The Authority has engaged four consultancies to undertake survey, design and supervision of water-points development and is currently preparing specifications and bills of quantities to determine the cost of the projects. These projects will be implemented in the following areas: Mandera; Wajir; Garissa, Marsabit; Isiolo; Moyale; Meru North; Meru Central; Nyeri; Nyandarua; Laikipia; and Samburu districts.

Mr. Speaker, Sir, the breakdown of the projects to be undertaken by the Authority in 2010/2011 and the cost of each project will be submitted when the consultancy report is ready.

Mr. M'Mithiaru: Mr. Speaker, Sir, I thank the Assistant Minister for the short answer he has given us. He has mentioned that some of the projects will be undertaken in Meru Central. However, I would like to remind him that Meru Central is not under the jurisdiction of Ewaso Nyiro Development Authority.

Mr. Speaker, Sir, he said that there are quite a number of projects to be undertaken. I would like to know, with regard to Meru North, the specific locations where the projects are going to be undertaken.

Mr. ole Metito: Mr. Speaker, Sir, Meru Central is covered by two regional development authorities. There is a little part of it that is covered by Ewaso Nyiro Development Authority while the larger part is covered by Tana and Athi River Development Authority (TARDA).

In Meru North where Igembe North Constituency is located, we have the following projects: One dam with a capacity of 150,000 cubic metres; one large pan of 80,000 cubic metres; and one medium-size pan of 30,000 cubic metres. We also plan to do rain water harvesting at six different points.

With regard to the specific locations where the projects will be undertaken, we are waiting for the consultancy reports which will show the design and the survey. It is at that point that we will sit down and agree on the areas with the potential for us to implement the six projects.

Mr. M'Mithiaru: On a point of order, Mr. Speaker, Sir. The Assistant Minister says that he cannot give the specific locations where the projects could be undertaken. These are projects to mitigate drought and it is known in Meru North that there are specific areas where drought is rampant. So, could he specifically name those projects so that we can know that he is addressing the issue?

Mr. ole Metito: Mr. Speaker, Sir, that could have been a very good question instead of a point of order. I want to categorically say that the kind of projects that we are intending to do are those for domestic, livestock and irrigation purposes in Meru North. Other projects will help in flood mitigation. I have said that the kind of projects that we have designed for the larger Meru North are about three pumps and six rain water harvesting points. In terms of where they will be, we are waiting for the report of the consultancies that we have engaged to do the survey, the designs and the supervision of water point development. The report will be submitted in two weeks time from now. We expect that they will indicate, from a technical point of view, the suitability of locations where these projects should be implemented.

Mr. Letimalo: Mr. Speaker, Sir, in his answer the Assistant Minister says that the consultancies will be to table the report in two weeks time. I would like to know from him if, when the consultants are carrying out the study and determining the projects to be implemented, the leadership and the public in the relevant areas will be consulted.

Mr. ole Metito: Mr. Speaker, Sir, intensive consultations need to be undertaken at all levels. When we engage the consultancies, they really do not know the geographical locations on the ground. So, I do expect that all the stakeholders, including the political leadership, will be consulted.

Mr. Warugongo: Mr. Speaker, Sir, I want the Assistant Minister to tell me whether there are projects in Kieni which are going to be funded under this programme.

Mr. ole Metito: Mr. Speaker, Sir, the reason why in my initial reply I referred to the larger districts is because I am aware that all constituencies are now either districts or contain two or three districts. So, with respect to the hon. Member for Kieni, we have the following projects for the larger Nyeri, one dam of a capacity of 150,000 cubic meters, one large pan of 60,000 cubic meters, two medium-sized pans of 30,000 cubic meters, and rain-harvesting at two points. After we get the report from the consultancies we will know where they have identified as suitable points for these projects in the larger Nyeri District, which has six constituencies.

Mr. Lekuton: Mr. Speaker, Sir, in July, 2008 the hon. Member for North Horr had asked a Question to this Ministry about the development in Laisamis, Chalbi and Saku. At that time the Assistant Minister said that the budget for those specific areas was Kshs9,890,000. To date, not even one single project has been done in Chalbi, Laisamis or Saku. So, where has that money disappeared to?

Mr. ole Metito: Mr. Speaker, Sir, that is the greater Marsabit District. If that amount has not been invested in those districts, I will find out why. I know that for most of those projects, we try to source for funding from donors. At times the budget may not be equal to the reality on the ground. So, we may have budgeted that amount, but maybe the donor funding that was expected did not materialize. I will seek more information and be able to inform the hon. Member on the correct position on the matter.

Mr. M'Mithiaru: Mr. Speaker, Sir, I am not satisfied with the answer given by the Assistant Minister. He said that he is still waiting for the report from the consultancies. He is talking about putting up a dam of 150,000 cubic metres. What informed the size of the dam to build if they have not even known where to locate the projects.

Mr. ole Metito: Mr. Speaker, Sir, we are still at the planning stage; when you plan a project, it may not be exactly the same when you implement it. So, maybe we planned to have a dam of that size in Meru North District, but when we come to implementation it will be subject to all the dynamics identified by the consultancies. If it will not be suitable to do a dam of that size, we will go as per the consultancy report, but that is what we intend to do.

Question No.614

PROGRESS REPORT ON ESP PROJECTS IN KONON

Dr. Kones asked the Minister for Education whether he could provide a progress report of all the projects undertaken by the Ministry through the Economic Stimulus Programme in Konoin Constituency.

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

The progress report of the Economic Stimulus Programme in Konoin Constituency is as follows:

We have Mogogosiek Primary School with a project of constructing three classrooms, two pit latrines and rainwater harvesting facilities. For the classrooms, the floor slabs have been done, and for the pit latrines the ground has been cleared. Work on the rainwater harvesting facilities has not yet started. The amount that has been spent on the classrooms is Kshs780,000; nothing has been spent on projects which have not started.

There have been delays because of interference by rain. There was also delay in the customization of the bills of quantities, which are supposed to be done by the Ministry of Public Works.

Mr. Speaker, Sir, there is Kitala Primary Schools, where there is a project for three classrooms, two pit latrines and rainwater harvesting facilities. The floor slabs for the three classrooms have been done. Work on the pit latrines and the rainwater harvesting facilities has not yet started. The amount spent is Kshs560,000 shillings. The reason for delays was rainfall interference and delayed customization of bills of quantities. That is for the two primary schools, where we are doing the classrooms, pit latrines and then the rainwater harvesting facilities.

We also have a secondary school called Kimolot Secondary School. That is the school of excellence and it is being upgraded. The projects to be done there are a laboratory, an administration block and a three-bedroom teacher's house. What has been done is that the laboratory is at the completion level; we are plastering, installing water and fixing the interiors and the ceiling. For the administration block, walling of the first floor has been done. The teacher's house is at the completion level, plastering and fixing of the windows. The amount spent so far is Kshs2 million. There was minimal delay in that project.

We have 20 primary schools, each of which was allocated Kshs60,000 which is a total of Kshs1.2 million for tree planting. The headteachers of all schools were trained and given the seeds to prepare seedbeds and nurseries. The seeds were planted, germination took place but the seedlings have not reached the transplanting stage. There is 95 per cent survival rate of the seedlings in all the primary schools. The biggest challenge is lack of transport for District Education Officers for monitoring of the projects. Kshs0.7 million has been utilized by the schools as indicated in the table which, I think, the hon. Member has.

Thank you.

Dr. Kones: Mr. Speaker, Sir, while appreciating the answer from the Assistant Minister, I would like to inform him that probably he got the response slightly a month ago. The situation has actually changed and most of the projects are almost complete. However, there is an issue he has raised about the difficulty by the District Education Officer (DEO) to supervise these projects. One of the problems is lack of transport. Has

the Ministry given the DEO funds to hire vehicles to monitor the Economic Stimulus Programmes (ESP)?

Prof. Olweny: Mr. Speaker, Sir, that is a problem across the country and not in the hon. Member's constituency only. During the financial year 2010/2011 my Ministry requested Kshs416 million from the Treasury to buy 114 vehicles to be distributed to the districts. So many districts are new and do not have vehicles. We are still waiting for that money. The request did not go through, but we hope the Treasury will take into consideration that request when we consider Supplementary Estimates in this House.

Mr. James Maina Kamau: Mr. Speaker, Sir, the ESP is very important to the country. The projects under this programme have gone a long way in assisting development in all constituencies and not just Konoin Constituency. Is this programme going to continue or it will stop?

Prof. Olweny: Mr. Speaker, Sir, this is a programme that was mooted by the Government through the Treasury. Its continuation will depend on what the Ministry of Finance allocates to all of these ESP projects during the next financial year or in the Supplementary Estimates.

Mr. Kigen: Mr. Speaker, Sir, considering that the Assistant Minister has allocated so much money to the ESP in respect to education and that you had budgeted to use Kshs400 million to supervise that programme to its success; considering the fact that it is not being supervised effectively today, who will be held accountable when it does not succeed because of lack of supervision?

Prof. Olweny: Mr. Speaker, Sir, the Ministry of Public Works was given some money to help in the supervision, particularly in construction. If anything goes wrong, we will blame the Ministry of Public Works.

Mr. Ruto: Mr. Speaker, Sir, the hon. Assistant Minister should enlighten us on the following fact: After we have constructed these buildings, what funding is available for equipment? For example, is the Kshs30 million availed enough for the construction and equipping of the schools?

Prof. Olweny: Mr. Speaker, Sir, the construction work should be scaled down so that the cost of construction is not extremely high. We know how much can be spent on building a classroom.

As regards equipping laboratories in particular---

Mr. Ruto: Even desks.

Prof. Olweny: I think you can buy desks using the Constituencies Development Fund (CDF).

However, equipping the laboratories is still under the ESP; therefore, we expect continued funding from the Treasury. However, if we do not get the continued funding from the Treasury and the buildings are done, then I think the Ministry of Education and the CDF can come in.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to make a statement relating to funds he does not control? The CDF is not under the Ministry of Education. He cannot, therefore, purport to make a statement that the CDF will be used to equip the buildings.

Prof. Olweny: Mr. Speaker, Sir, the CDF is for constituency development and the ESPs are part of constituency development. I am appealing to Members of Parliament to chip into these programmes.

Mr. Njuguna: Mr. Speaker, Sir, while thanking the Assistant Minister for the very positive answer he has given for this Question, I would urge him to indicate--- Due to the skyrocketing prices of building materials some of the projects already started have stalled, what clear strategic plans has the Ministry put in place to make sure that the projects started are going to benefit the students as intended?

Prof. Olweny: Mr. Speaker, Sir, we have told the DEOs and the Public Works Officers (PWOs) to customize projects to the needs and requirements of the people. However, in case anything stalls, we shall put a request to the Treasury to ensure that all the projects that were started are completed.

Mr. Speaker: Last question, Dr. Kones!

Dr. Kones: Mr. Speaker, Sir, it is apparent now that the ESP projects appear to have good success; but there are those projects which were funded through the Kenya Education Sector Support Programme (KESSP) which have stalled. What is the Ministry doing to ensure that those projects are completed?

Prof. Olweny: Mr. Speaker, Sir, we are not sure which of the projects started through the KESSP have stalled. In case the hon. Member has one in his constituency, let him bring the information. We shall follow up to know what happened to the particular project.

Dr. Kones: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Order, Member for Konoin! The Assistant Minister is available and accessible to you. You can see him in his office and give him the information.

Next Question by the Member for Emuhaya!

Question No.446

INSECURITY IN EMUHAYA CONSTITUENCY

Dr. Otichilo asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware of the increase in cases of insecurity in Emuhaya district;

(b) when he will provide vehicles for the District Commissioner, the district Administration Police Commandant and the OCS Luanda; and,

(c) when Mwichio Police Patrol Base will be upgraded to a Police Post.

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

(a) I am not aware of the increase in cases of insecurity and robberies in Emuhaya District.

On the contrary, crime statistics at the time of the Question and indeed, up to now, indicated that robbery incidences had decreased in the area. I believe that the hon. Member for this constituency is aware that insecurity cases have gone down.

(b) I am aware that the District Commissioner, Emuhaya has no vehicle as the one he had was involved in an accident. Further, the District Administration Police Commandant (APC) has not been allocated a vehicle.

Mr. Speaker, Sir, Luanda Police Station was allocated a motor vehicle Registration No. GK A916G, Toyota Land cruiser Pick up. It was recently rehabilitated

with the assistance of the Constituencies Development Funds (CDF). However, it needs replacement which will be done once the police acquire a new fleet under the Police Reforms Programme.

My Ministry has also initiated dialogue with the Treasury, aimed at increasing the budgetary allocation that will enable acquisition of more vehicles. The District Commissioner and the District APC, among other officers, will be considered during the allocation on priority basis. In other words, once we get the vehicles, we will prioritize and Emuhaya will be a beneficiary of a brand new vehicle once they have been acquired.

Mr. Speaker, Sir, Mwichio Police Patrol Base has an office building and staff houses which were funded by the Emuhaya CDF. Currently, the title deed for the piece of land on which the patrol base is situated is being processed to transfer the land to the police department. Once the process is finalized, the patrol base will be upgraded to a fully fledged police post. This will require additional security officers and additional equipment which the police will be using in order to contain the insecurity within Emuhaya Constituency.

Dr. Otichilo: Mr. Speaker, Sir, I would like to thank the Assistant Minister for the good answer. However, I wish to inform him that in the last three months, we have had a lot of insecurity in Emuhaya and these are the cases in point: In September, thugs killed the Principal of Ebwali Secondary School. In December, an old lady from Wemilabi was killed by thugs. Last week, thugs attacked an *M-pesa* trader in Emuhaya and robbed him of money.

I would like the Assistant Minister to take into consideration the fact that insecurity in Emuhaya is increasing. However, what provision is he making to ensure that the DC for Emuhaya has a vehicle? Currently, he cannot move. He stays in Majengo, 15 kilometers away. What provisions is he making to ensure that our DC comes to the office?

Mr. Ojode: Mr. Speaker, Sir, you may be aware that this is not just an ordinary constituency. This is the constituency which houses the Speaker of the National Assembly. In the meantime, I will try my level best to look for any vehicle to allocate the DC for services to continue. I would like to assure the hon. Member that we will try and ensure that the DC gets a vehicle which is serviceable in order for him to continue working.

Mr. Chanzu: Mr. Speaker, Sir, this problem is not only confined to Emuhaya. Insecurity is now a countrywide problem. About three weeks ago at a Chango Secondary School, a teacher and his family were attacked. Last week on Thursday night, Keveye Secondary School and Vokoli Secondary School were attacked by thugs.

So, when the Assistant Minister says that there is no insecurity in Emuhaya Constituency, I think he is misinformed. What is the Assistant Minister doing to ensure that he stems this problem which is now becoming rampant in Vihiga County?

Mr. Ojode: Mr. Speaker, Sir, it is true that in some areas we have witnessed an increase in insecurity. However, this is as a result of the poverty level which we are facing. We have discussed this issue and we have agreed that in the majority areas where we have insecurity, we are going to try to use the Elite Squad stationed in each and every province, to tackle insecurity. I am glad that we have done the same in Kisumu and we are also going to do the same in Kakamega in order for the Elite Squad to reduce

incidences of insecurity. I think they are up to the task and they will bring down insecurity in those areas.

Dr. Laboso: Mr. Speaker, Sir, I want to begin by thanking the Assistant Minister for giving us a vehicle in Sotik District. As I thank him, I would like to inform him that the Sotik/Borabu border has continued to give us problems in terms of stock theft. I do not want to call it cattle rustling. What is the Assistant Minister doing to address that issue which is a perennial problem? On most of the other times, we are very peaceful neighbours.

Mr. Ojode: Mr. Speaker, Sir, we have a competent security team to deal with stock theft cases. This is what we call the Anti Stock Theft Unit. If those officers are not doing their work, it will force me to remove them from that area and post new officers there, who will be equal to this task. I am ready to do that if at all there is a complaint that the officers who were posted there are not doing a good job.

Mr. Bahari: Mr. Speaker, Sir, the problem of insecurity is not isolated to western Kenya although this morning as I was listening to an FM radio station, the situation in western Kenya is getting out of hand. I had the opportunity to visit one of the anti stock theft units between my constituency and hon. M'Mithiaru's constituency. What I saw there were police officers using a very old vehicle in a very bad terrain. They did not even have radio call equipment.

What is the Assistant Minister doing to ensure that vehicles used in arid areas are in good condition and they are all fitted with radio call equipment?

Mr. Ojode: Mr. Speaker, Sir, it is true that some vehicles have not been installed with radio call equipment. We have requested the Treasury to give us enough funds in order for us to install new radio call equipment. The Treasury has accepted and they are doing something in order for us to install them. Equally, we have requested the Treasury to give us funds for the vehicles. Once the agreement is reached, I will give new vehicles to all constituencies so that they can be served properly without any hindrance. That is once the Treasury signs the lease agreement.

Mr. Speaker: Last question, Member for Emuhaya!

Dr. Otichilo: Mr. Speaker, Sir, since the Minister cannot provide a vehicle for the District Administrative Officer to patrol, could he deploy Administration Police (AP) officers to the newly created locations, so that they can patrol on the ground and, therefore, minimize insecurity in the district?

Mr. Ojode: Mr. Speaker, Sir, I will, definitely, look for a serviceable vehicle because Emuhaya is a special constituency. In the same vein, I would not wish that the APs go round without a vehicle. This is because also I am losing police officers to thugs in the process. From 2006 to date, we have lost 127 AP and police officers. That is why we are very keen on---

Mr. Yakub: On a point of order, Mr. Speaker, Sir. It is very sad to hear from the Minister that we are losing people who really guard and take care of us. What is he doing to control the arms possessed by thugs?

Mr. Speaker: Order! Minister, you need not respond to that. It is out of order!
Member for Gwasi!

Question No.528

IMPROVEMENT OF MBITA-SINDO-MAGUNGA-SORI ROAD

Mr. Mbadi asked the Minister for Roads:-

(a) what plans the Ministry has to improve Mbita-Sindo-Magunga-Sori Road, which cuts across Gwasssi Constituency, to bitumen standards; and,

(b) when the works on the road will commence.

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

(a) My Ministry has finalized the design for Mbita-Sindo-Magunga-Sori Road (D210) after which, the road will be considered for upgrading to bitumen standards. In the meantime, the Ministry has set aside Kshs10.5 million for the maintenance of the same road.

(b) It is envisaged that the road works will commence on the first section of the road within the next financial year, that is, 2011/2012.

Mr. Mbadi: Mr. Speaker, Sir, first of all, the answer I have here talks of the works commencing in 2012/2013, but it is good that the Minister has corrected, that it will begin from 2011/2012.

Mr. Speaker, Sir, Gwasssi Constituency produces the highest volume of fish in this country. Actually, Gwasssi Constituency is referred to as the Kitale of Homa Bay County due to its agricultural potential. This particular road which is over 60 kilometres long leads to the Ruma National Park. This road is black cotton soil. Finally, Gwasssi Constituency is the only constituency in Nyanza that has not even one metre of tarmac road and yet, the design of this road was completed way back. What has stopped the Ministry from improving this road to bitumen standard? Could the Minister give an assurance that in the coming financial year, 2011/2012 as he has put it, at least, work on the first section of the road will begin?

Mr. Kinyanjui: Mr. Speaker, Sir, I want to agree with the hon. Member that, indeed, this section of the road serves a very important part of this country that is very productive. It is, indeed, our desire that the fish should be able to get to the markets. But I wish also to remind the hon. Member that, indeed, my Ministry has done considerable work in that section of this country; the roads having begun from the north. The remaining part will, indeed, be considered. I also wish to state that the design work commenced in December, 2008 and was to be completed in January, 2011. It was awarded at a cost of Kshs180 million. This is in recognition of the fact that this road must, indeed, be upgraded to bitumen standards. Once the design is complete, we will prioritize it, as I have already indicated.

Mr. Twaha: Mr. Speaker, Sir, could the Minister make it clear what criteria they use to decide which road is to be upgraded to bitumen standards and which one is to be left as murrum, because 47 years after Independence, the Lamu Road is still gravel?

Mr. Kinyanjui: Mr. Speaker, Sir, I think that is a very important question. I wish to say that my Ministry came up with the Roads Sector Investment Programme that was launched early in the year and the criteria that will be used henceforth in ensuring that roads are prioritized in a manner that can also be subject to scrutiny. But, currently, my Ministry also takes into consideration the road classification that we have in the country and the economic activity in the area in question. Even having said that, we appreciate

also that many roads that ought to have been upgraded, have not been upgraded, largely due to the budgetary constraints that my Ministry has been having. We hope that in the next financial year we will be able to get substantial amounts of money to upgrade the backlog that has been in the Ministry.

Dr. Eseli: Mr. Speaker, Sir, you heard the Minister say that they spent over Kshs100 on the design of this road. Could he explain to this House how many roads in the western region have been designed and not constructed? Could he also explain when the designs were made? Road C44 was designed in 2007 and has never been upgraded up to now. Could he explain why there are so many designs in the western region which have not been acted on?

Mr. Kinyanjui: Mr. Speaker, Sir, you will admit that there are a number of roads whose design is complete and ready for procurement, but we cannot move to that stage because of financial constraints. I wish also to say that until you have done the design of a road, you may not be able to know how much money would be required. More so, before we engage in any financial agreements with any would-be financier, you are required to have the design. Therefore, it is expected to continue that we will, indeed, be having more roads that have already been designed, but awaiting financing.

Mr. Speaker, Sir, regarding the last question by the hon. Member requiring me to list the number of roads in western Kenya, that would entirely be a different Question. Once it is brought to the Floor of the House, I would be more than happy to answer it.

Dr. Eseli: On a point of order, Mr. Speaker, Sir. I think this is knowledge within the Minister's hands; that the designed roads in the western region are more than those in other areas and yet, they have not been constructed. Is the Minister in order to say that they have to get the design before they can decide to build, yet they keep on designing and not building?

Mr. Kinyanjui: Mr. Speaker, Sir, I have indicated that for us to be able to get financing through the Treasury or even other donors, we do require the design work. Therefore, we must design the roads before we can actually be able to construct them. As I have said, we will continue doing design in the hope that the Treasury will give us sufficient funds and that we will be able to upgrade these roads.

Mr. Speaker: Last question, Member for Gwassi!

Mr. Mbadi: Mr. Speaker, Sir, the Minister has stated that works on the first section of the road will commence in the 2011/2012 financial year. Could he come out clearly on which section he is referring to as the "first section" of the road; from which place to which place?

Mr. Kinyanjui: Mr. Speaker, Sir, first of all, I want to indicate to the hon. Member that Mbita Causeway will be implemented as a "stand alone" bridge project. It is on the same section of the road. It falls within the C19 Road. It will be done under the Kenya National Highways Authority. This section is from Mbita-Sindo-Magunga-Sori.

Mr. Mbadi: Mr. Speaker, Sir, the Assistant Minister is not answering my Question. This road is about 60 kilometres. Forget about the Causeway because that is not in my constituency. I am referring to Road D210. This is Mbita-Sori Road. Which is this first section he is referring to? How many kilometres is that section? Is it from Mbita to Magunga? Is it from Sori to Magunga? That is what I want to hear.

Mr. Kinyanjui: Mr. Speaker, Sir, I do not have that information with me. However, I do undertake to furnish the hon. Member with that information.

Mr. Speaker: Very well! Member for Gwassi, please, follow up the Assistant Minister for that information. Perhaps, you could meet with him in his office.

Next Question, Mr. Kiptanui!

Question No.617

COST OF NAIROBI METRO 2030 STRATEGY

Mr. Kiptanui asked the Minister for Nairobi Metropolitan Development÷

(a) how much the “Nairobi Metro 2030 Strategy” will cost, and,

(b) how the Ministry will raise the funds?

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): Mr. Speaker, Sir, I beg to reply.

(a) The Nairobi Metro 2030 Strategy requires approximately Kshs33.2 trillion to implement.

(b) The Ministry expects to raise the funds from a number of sources.

(i) From the Treasury, which will include direct Government of Kenya funding and funding support from development partners, as well as infrastructure bonds.

(ii) Contributions by other Government agencies and Ministries.

(iii) Private-public partnership.

(iv) Private investments.

It should be noted that the Metro 2030 Strategy programmes are interventions required for the region and not for the Ministry only. It is the sum total of all the investments required by the region to achieve the vision.

Mr. Kiptanui: Mr. Speaker, Sir, I would like to inform the Assistant Minister that Kshs33.2 trillion is a lot of money. The Budget of this country is less than Kshs1 trillion. If you divide 33 by Kshs1 trillion, then we need Kshs1.5 trillion per year to achieve this vision. How much does she expect to raise from the Ministry of Finance in the next 19 years?

Mrs. Ongoro: Mr. Speaker, Sir, it is said that Rome was not built in a day. Where there is no vision, people perish. Our mandate was to come up with the Metro Strategy that would upgrade this City to a metropolitan status by the year 2030. What we have presented is the list that is required by the Ministry. I have gone ahead to explain that we do not expect to raise all these from the Central Government.

We believe that we need to partner with the private sector to actualize this vision. Soon we will be tabling the Metropolitan Bill before this House. Once it is passed by this House, we will have a platform through which we will raise funds, especially from infrastructure bonds.

Mr. Ogindo: Mr. Speaker, Sir, from the cost that the Minister has outlined, would it not be much more practical to call this Nairobi Metro “3020” Strategy?

Mrs. Ongoro: Mr. Speaker, Sir, I believe that this is achievable. We have a blue print for it. Anybody can interrogate it and see how achievable it is. All we are waiting for is for our Bills to be passed so that we have a platform. This is the sum total of all the development activities that will be undertaken both by the private sector, the Government

and everybody else who will undertake anything within the area that will now be designated as the metropolitan region.

Mr. Njuguna: Mr. Speaker, Sir, I thank the Assistant Minister for doing a very commendable job in my constituency. In Kimende Township, for example, the business climate has improved and security enhanced.

Could she assure the nation that the street lighting project will be a constant feature and not a cosmetic exercise?

Mrs. Ongoro: Mr. Speaker, Sir, I wish to assure the nation and those enjoying all development activities within the metropolitan region that this intended to be a continuous exercise. All we are doing right now is implement our activities according to the budgetary allocation that we have. But we are eagerly awaiting the passing of the Metropolitan Bill so that, as a Ministry, we then provide this country with a platform to raise funds to implement all our strategies.

Mr. Kiptanui: Madam Assistant Minister, how many counties will this strategy cover?

Mrs. Ongoro: Under the old Constitution, we were working with 15 local authorities. Under the new Constitution, we will operate within at least seven counties.

Mr. Speaker: Member for Ndaragua! Question dropped!

Question No.538

IRREGULAR TRANSFER OF LAND

(Question dropped)

Question No.599

POLICY GUIDELINES ON VEHICLE LEASING FOR GOVERNMENT MINISTRIES

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

(a) what policy or policy guidelines informed the Ministry's decision on the leasing of vehicles for Government Ministries;

(b) how cost effective the vehicle leasing policy is and what the associated benefits are and costs of the policy, and,

(c) whether he could explain why the Government is taking long to implement the vehicle leasing directive.

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, on behalf of the Deputy Prime Minister and Minister for Finance, I beg to reply.

(a) The decision to adopt leasing of vehicles for Government Ministries is part of the new transport policy that was approved by the Cabinet due to the unsustainable increase in expenditure on transport. This is a viable means of promoting business growth and for providing to Government cheaper access to vehicles for enhancing service delivery.

(b) The implementation of the leasing policy is considered to be a more cost-effective approach. The anticipated benefits include realization of savings on insurance, financing, maintenance and fleet management, greater efficiencies and shifting of expenditure from capital cost on the vehicles into critical areas of development and service delivery. The economies of scale will be realized in the larger number of vehicles to be leased and the lower cost to be achieved from a reduction in the number of vehicle models and makes.

(c) The Government is implementing the leasing policy in accordance with the provisions of the public procurement and Disposal Act of 2005. Subsequently an Expression of Interest (EOI) notice was issued on 16th December and has already been evaluated and 15 firms have already been shortlisted. They will soon be requested to present their proposals.

Mr. Chachu: Mr. Speaker, Sir, this is a major transport policy shift since Independence. Taxpayers' money will be spent to lease these vehicles for Government Ministries and Department in this financial year. The grasp of my Question is about the cost effectiveness of this new policy *vis-a-vis* the old transport policy.

Mr. Speaker, Sir, the response does not address the issue I asked for, which is the cost benefit analysis of this new transport in relation to the old policy. I do not feel I am informed well enough to form an opinion whether this new policy will be gainful to the Kenyan public.

Mr. Speaker, Sir, I need your guidance.

Mr. Speaker: Mr. Kinyanjui, the hon. Member is dissatisfied with the answer that you have given because he says you are not answering the Question as put.

Mr. Kinyanjui: Mr. Speaker, Sir, I wish to say once again that, indeed, that particular policy was contained in the 2009/2010 Budget and, subsequently, in the following year - that is, 2010/2011. The thinking is that, as you will recall, about Kshs5 million was set aside to buy a vehicle upfront. If it was leasing, you would have been required to pay the same amount over the period that you are going to use that same vehicle. After we have received specific proposals from the 15 firms, we will compare that cost against the already existing cost structure that we have when we purchase vehicles. I must also add that, that is an already discussed matter both at the Cabinet, through the Budget and through the contributions by hon. Members here. There was no objection to that policy. Therefore, it received wide acclamation as a way of reducing the transport cost for the Government.

Mr. Lekuton: Mr. Speaker, Sir, I heard the Assistant Minister say that the policy is aimed at promoting business growth and for providing the Government with cheaper access to vehicles for enhancing service delivery. If the service is going to be cheap, it means that it is geared towards Kenyans who are not wealthy enough to help themselves. That is what I understand! How are they going to have that system bullet proof so that the wealthy people do not exploit the cheap service delivered by the Government? They have enough money to help themselves.

Mr. Kinyanjui: Mr. Speaker, Sir, I would like to request the hon. Member to repeat the question. I did not get his question.

Mr. Lekuton: Mr. Speaker, Sir, I said that the aim of that project is to promote business growth and provide the Government with cheaper access to vehicles for

enhancing service delivery. I would like to ask the following: Would the transport be available to the public? Is that correct?

(Mr. Lekuton consulted with Mr. Kinyanjui)

Mr. Speaker: Order, Mr. Lekuton! Speak to the House!

Mr. Lekuton: Mr. Speaker, Sir, maybe, I did not read the Question or the answer well enough and so, I apologise!

Mr. Speaker: Okay!

Mr. C. Kilonzo: Mr. Speaker, Sir, I just want to get an assurance from the Assistant Minister. Could he assure us that the people who get the tenders to supply the vehicles for leasing to the Government are just a few big multi-nationals or a few connected individuals? What measures does he have in place to ensure that the process benefits the common person who can lease a vehicle to the Government?

Mr. Kinyanjui: Mr. Speaker, Sir, as I have indicated, the Ministry will bear in mind the public procurement laws. I also wish to state that the 15 bidders who have expressed interest have already been evaluated. For the benefit of hon. Members, I wish to read the 15 firms. They are Simba Colt Motors, Africa Freight Solutions Limited, DT Dobie Company Limited, Rental Works EA Limited, CMC Motors Group, Ryce EA Limited, General Motors, Marshalls, Associated Motors, Fleet Africa---

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. The Assistant Minister has, indeed, confirmed my fears. That policy is going to benefit a few rich individuals or companies. I want to give him a good example of a good policy by the Electoral Commission of Kenya (ECK). When the ECK leases vehicles, they lease per constituency. So, what I wanted to get from the Assistant Minister is an assurance that, that policy is going to benefit the common person. If there is somebody with a vehicle to lease in Yatta, for example, is he going to do so to the different departments within Yatta? Therefore, is the Assistant Minister in order to mislead the House that it is going to benefit the common people while the list he is reading comprises of the big multinationals and the rich people?

Mr. Kinyanjui: Mr. Speaker, Sir, I agree with the hon. Member. But I wish to inform him that we are talking of a big fleet of vehicles. Those are the companies that can lease fleets; a high number of vehicles to the Government. But, maybe, at another level, that is a matter that we could consider. However, allow me also to indicate that the Government will only consider those who have applied. An advertisement was put forth for Kenyans from across the country to express their interest. Only 15 firms have expressed their interest and they have already been evaluated positively. It is up to us leaders to encourage young and upcoming business people to respond to Government business because, indeed, it is a lucrative way of earning money.

Dr. Khalwale: Mr. Speaker, Sir, my concern is that, that could yet be another opportunity by unscrupulous people in the Government to fleece the public. To that extent, I want to request the Assistant Minister to table in this House an actuarial report that will demonstrate that what you are about to implement has passed through the expert eye of an actuary who has proven that spending in this manner will be an improvement to what they have been spending in the past.

Mr. Kinyanjui: Mr. Speaker, Sir, the request by the hon. Member will come at another time. But leasing vehicles is the way companies in the private sector go today.

Mr. Bahari: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to avoid the question by Dr. Khalwale, which is very clear? It arises out of his answer. He has said that the implementation of the leasing policy is considered to be more cost effective. He has to prove by way of documentary evidence that, that is so, so that we can study and ask questions thereafter. Is he in order to avoid the question?

(Applause)

Mr. Kinyanjui: Mr. Speaker, Sir, the Government has the option of buying new vehicles or leasing from the already existing companies. That is what I have stated. At this stage, we are merely evaluating and we have not received any actual proposals from the bidders. Only when we have received those bids would we be able to demonstrate that we have a better offer than the other. But it is, indeed, an acknowledged fact that leasing is a better form of transport - especially for the Government - than owning the vehicles.

Mr. Chachu: Mr. Speaker, Sir, the Government is going to spend about Kshs5 billion to implement that policy in this financial year. Unless a cost-benefit analysis has been done and we are convinced that the new transport policy will give value for money to Kenyans, I beg the Assistant Minister to fully answer this Question by showing how the policy will benefit Kenyans. We are talking about Kshs5 billion that is going to be spent this year. So, I am not well informed that, that policy is in the good interest of this country. Could he give the necessary information so that we can be fully informed?

Mr. Kinyanjui: Mr. Speaker, Sir, I wish to remind hon. Member that, as I have indicated, that particular policy went through the Cabinet and the Budget for 2009/2010. It was also contained in the Budget which was debated and passed by this very same House. In this current Financial Year, 2010/2011, the same proposals were contained there. They were discussed and debated by this House and passed. Therefore, I wish to request the hon. Member and the House at large to look at the leasing policy from a broader perspective and as a means through which the Government stands to have extra funds that can be released for education and many other policies that the country is in dire need of.

Mr. Speaker: Very well! Please, try and find time to give a comparative cost analysis to Mr. Chachu. Try and do so as soon as possible. In about two weeks, give that cost analysis to Mr. Chachu. You do not have to table it before the House. But if Mr. Chachu will still have concerns then, of course, he will have the liberty to come to the House and raise further pertinent issues.

Mr. Kinyanjui: Mr. Speaker, Sir, thank you! I undertake to oblige.

Question No.603

NON-PAYMENT OF TERMINAL DUES
TO FORMER KCC EMPLOYEES

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

(a) whether he is aware that a winding up order was issued against the former Kenya Co-operative Creameries Ltd on 30th January 2003; and,

(b) why the former employees of KCC have not been paid their terminal dues in line with the court ruling in their favour and when they will be paid.

Mr. Speaker: Assistant Minister for and Co-operative Development and Marketing, I know you may have an answer. You are free to indicate so, but do not proceed to answer until I give further directions.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Much obliged, Mr. Speaker, Sir.

Mr. Speaker: Do you have an answer?

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Yes, Mr. Speaker, Sir.

Mr. Speaker: Could you, please, furnish the hon. Member with a copy of your answer, notwithstanding what I will say?

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, I have to go and make a photocopy of this answer because I will be left with no answer.

Mr. Speaker: Please, ensure that you furnish the hon. Member with a photocopy of your answer as soon as you have the opportunity to do so. Please, resume your seat.

Hon. Members, I have information from the HANSARD that a Question similar to this one, maybe even the same in wording, was asked in the House a number of months back and that the matter was referred to the Departmental Committee on Agriculture, Livestock and Co-operatives to investigate and table a report. I am now advised by the Chair of that Committee that the report is ready and will be tabled in the House any time now. We will keep this matter in abeyance, therefore, pending the Committee report. That is what our Standing Orders provide.

Madam Assistant Minister, please, note that.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, I have taken note of that.

Mr. Speaker: It gives you even greater opportunity to ventilate on the matter when the report is in the House.

Mr. Yakub, please, note.

Mr. Yakub: Agreed, Mr. Speaker, Sir.

Mr. Speaker: You will have a longer period to contribute and speak on the matter.

Mr. Yakub: Much obliged, Mr. Speaker, Sir.

Question No.680

NON-PAYMENT OF SALARIES TO AFRICAN SAFARI CLUB EMPLOYEES

Ms. Karua asked the Minister for Labour:-

(a) whether he is aware that employees of African Safari Club Ltd. Have not received their salaries for August and September, 2008 and some employees have not been paid since January, 2010; and,

(b) what he is doing to address the situation.

Mr. Speaker: Minister for Labour? Leader of Government Business, what is happening to your Minister?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I am informed that the hon. Minister for Labour is out of the country. However, that does not mean that the Ministry should not be able to deal with this Question because Mr. Ojaamong should be around. So, I will follow up this matter. Could it be listed for Tuesday, if the Member for Gichugu would not mind?

Mr. Speaker: Is Tuesday next week okay for you, Ms. Karua?

Ms. Karua: Yes, Mr. Speaker, Sir.

Mr. Speaker: Most obliged. The Member for Gichugu is co-operating. Please, make sure the Minister comes with the answer next week on Tuesday at 2.30 p.m.

(Question deferred)

COMMUNICATION FROM THE CHAIR

SERVING OF COURT PROCESSES TO MPS WITHIN THE PRECINCTS OF PARLIAMENT

Mr. Speaker: Hon. Members, that brings us to the end of Question Time. Before we move to the next Order, I have a brief Communication to make pertaining to matters that are largely to do with House-keeping.

Hon. Members, I have this brief Communication to make about certain developments that have been brought to my attention today and which developments have implications on the powers and privileges of this House.

I have been reliably informed that a number of persons have sought or otherwise gained entry into the precincts of the National Assembly purportedly to serve court processes. I have been further informed that some persons have, indeed, gone so far as to purport to serve court processes within the precincts of the Assembly on individual Members of this House at a time when Committees were sitting.

These developments are worrying as they are in violation of the National Assembly Powers and Privileges Act, the Standing Orders and the Speaker's Rules. I, therefore, wish to take this opportunity to invite all persons who may wish to interact with the National Assembly in the manner aforesaid to familiarize themselves with the provisions of the National Assembly Powers and Privileges Act, Cap. 6 of the Laws of Kenya.

I wish to draw particular attention to the provisions of Sections 4, 5, 6, 7, 8, 12, 13 and 29 of the said Act. Let me reiterate that Committees enjoy only the delegated authority invested in them by the House. They do not have a separate life of their own from the House.

For these reasons, it is useful for all persons to know that service of process intended for the House should be directed at the House itself, represented by the Speaker or the Clerk of the National Assembly who has authority to accept service. Such process should be served personally on the individuals occupying the two offices.

Other persons, be they Members or chairs of Committees, have no capacity to be served with or to accept such process; neither do they have the authority of the House.

In order to stem what is a practice that must not be allowed to set root, I am hereby directing the Office of the Clerk of the National Assembly, the Serjeant-at-Arms and all other relevant officers of the House to abide by and ensure strict compliance with all the laws relating to the powers and privileges of the House.

Thank you.

Next Order!

MINISTERIAL STATEMENTS

GOVERNMENT POSITION ON VICE-PRESIDENT'S "SHUTTLE DIPLOMACY"/ KENYA'S RELATIONSHIP WITH THE ICC

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I rise to make the following Statement which was consolidated with the Question appearing in today's Order Paper as Question One by Private Notice by the Member for Ikolomani and it was to do with the shuttle diplomacy and the ICC.

I am pleased to make a statement on a subject that has lately attracted much public attention and concern. This is the subject of the relationship between Kenya and the International Criminal Court (ICC).

Hon. Members will recall that Kenya ratified the Rome Statute for the establishment of the ICC in March, 2005 and subsequently domesticated this important piece of international legislation through the enactment of the International Crimes Act in January, 2009. In joining the ICC fraternity, Kenya had recognized and affirmed the important role the court plays in international criminal judicial process, especially in securing national and international peace and respect for human rights.

Mr. Speaker, Sir, this continues to be the position of the Government of the Republic of Kenya. The commitment of the Government to the ICC is underscored by the fact that our country is a member of this court in truly good standing. Indeed, our country is among a select few whose national Lady Justice Joyce Aluoch is a serving Judge of this court. I am happy to remind hon. Members that Justice Aluoch joined the ICC through a competitive electoral process that the Government was intensely involved in through commitment of substantial budgetary resources and lobbying at the UN, amongst other places.

Mr. Speaker, Sir, the present public interest and discussions relate to the unfortunate and often embarrassing spate of violence that our country suffered in the aftermath of the last general elections. We witnessed bizarre events where neighbour rose against neighbour and Kenyan against fellow Kenyan. That disgraceful moment in our nation's history was characterized by inter-ethnic hatred, wanton destruction of property, blood-letting and death on a scale hitherto unknown in our motherland.

These sad events deeply hurt our national pride and weakened our country's standing in the region and internationally. The violence also ravaged our economy and dislodged thousands of families from their homes and their abodes.

The violence also ravaged our economy and dislodged tens of thousands of families from their homes. It disrupted their means of livelihood and adversely affected the familiar rhythm that previously gave their day to day lives an assurance. Despite those difficult circumstances, hope remained alive. With the assistance of our external friends and neighbours, we were quickly able to recollect ourselves and restore order and peaceful co-existence within our country.

Hon. Members may already be aware that the social disruption Kenya suffered severely tested the nerve of governance structures, social cohesion and nationhood. Fortunately, we proceeded to renegotiate the terms of governance of our country. We established the Grand Coalition Government as a show of unity, commenced a process of facing up to the truth and the realization of justice and reconciliation; a process of national cohesion and integration and the resettlement of internally displaced members of our society. Above all, we conducted the greatest and most refreshing public dialogue of our time that led to the writing of a completely new and truly progressive Constitution. The public referendum that followed led to the very memorable promulgation of the new supreme law of our land on the historic 27th August, last year. Indeed, our new Republic was born. We have, meanwhile, remained committed to establishing national institutions that, once entrenched, will forestall the recurrence of inter-ethnic violence and surely underwrite the stability of our country.

Indeed, this is the spirit that informed the Cabinet to resolve and support the establishment of a local tribunal here in Kenya to try suspected perpetrators of the 2007/2008 atrocities and deliver justice to victims. Hon. Members will recall that the House, including the Cabinet, the President and the Prime Minister, twice, assembled in the other Chamber in an effort to amend the Constitution to allow for the setting up of the envisaged local Judiciary mechanism to no avail. That effort was unsuccessful, perhaps, due to suspicion and intense anti-local tribunal campaigns at the time with the rallying core-Members saying: “Do not be vague! Go to the Hague!”

At that point, external options began to appear more attractive. Sections of our society began to lean heavily towards the ICC as the first option in the search for justice rather than as the court of last resort as it is actually intended to be. The chance for Kenyans to find a solution was regrettably lost. Happily, the founding of a new Constitution has presented us with an opportunity for a fresh start in laying a firmer foundation for a new Kenya, through the establishment of a more credible and capable national institutions.

Mr. Speaker, Sir, among the new promising institutions in this regard is a new and more robust justice system that includes a reformed Judiciary. The system will have a new Chief Justice and a vetted Bench, a revamped and constitutionally entrenched Office of the Director of Public Prosecutions and a new Attorney-General. Those eagerly awaited changes are bound to create conditions that favour the formation of a credible and reliable local Judiciary mechanism capable of comprehensive delivery of justice. A functioning local judicial process will affirm our collective faith in our own institutions as a civilized, sovereign and reborn nation.

Kwame Nkurumah once stated: “The best way of learning to be an independent sovereign State is to be an independent sovereign State.” Closer home, the late Mwalimu Julius Nyerere stated: “No nation has the right to make decisions for another nation, no people for another people.”

The Kenyan nation and the Kenyan people have to rise up to the right to make their own decisions, including trying their own suspects before their own courts. A Cabinet resolution, late last year, reaffirmed Kenya's commitment to the ICC process with a primacy of place given to our local judicial mechanism. Pursuant to that resolution, the President launched an initiative to lobby the African Union (AU) and the African Members of the UN Security Council to support Kenya's request to defer the ICC case, at least for a period of one year as the country works to set up a local judicial process. Towards this end, the President requested Cabinet Ministers, Njeru Githae, Chirau Mwakwere, Dalmas Otieno and I to proceed on this mission as his special envoys.

I visited some African countries and held discussions with the respective leaders. I visited the Republic of South Africa and conferred with President Jacob Zuma. Hon. Members will appreciate that the Republic of South Africa is a current member of the UN Security Council. I also visited the Republic of Malawi and held discussions with the then outgoing AU Chair, President Dr. Bingu wa Mutharika. I visited the Republic of Uganda and met with President Yoweri Museveni. I also visited the Federal Republic of Ethiopia and held discussions with Prime Minister Meles Zenawi who is also the current Chair of the Inter-Governmental Authority for Development (IGAD). While in Addis Ababa, I had an occasion to visit and held discussions with AU Commission Chair, Mr. Jean Ping.

The final phase of the mission took me to Tripoli where I held talks with my brother, leader and colleague, Muammar al-Gaddafi of the Great Arab Socialist Libyan, Jamahiriya. I then went to Abuja and met the Vice President Namadi Sambo who received us very well. By that time, President Goodluck Jonathan was in Addis Ababa supporting President Kibaki's request. It is worth noting that Nigeria is also a current Member of the UN Security Council. My colleague, hon. Njeru Githae, visited Djibouti, Burundi and Tanzania while hon. Mwakwere travelled to Botswana, Lesotho and Zambia. The total cost of those visits by the delegations - and this will be of interest to hon. Dr. Khawale--- In the case of the Ministry of Home Affairs, considering the strength of the delegation, the cost amounted to Kshs31.5 million. That does not include expenses by the Minister for Tourism who travelled to Tripoli because he covered his costs from the Ministry of Tourism. The same can be said of the Ministry of Nairobi Metropolitan Development which is led by hon. Njeru Githae. The same also applies to the Ministry of Home Affairs which funded Ambassador Mr. Abbas and Ambassador Mr. Mathenge who constantly travelled with me.

Mr. Speaker, Sir, I am pleased to report to this House that all the leaders we met in all the countries that we visited received the President's message very positively. The leaders accorded support for Kenya's request for a one year UN Security Council Deferment of the ICC cases. All the African leaders maintained that African problems, however difficult they may be, required internal solutions which are organic and responsive to the peculiarities of our local circumstances and challenges. In our Kenyan case, we need to see justice for the victims of the election violence, compensation for losses incurred and, most importantly, we need to promote national healing, reconciliation and integration. The mission was very successful.

The IGAD Summit Resolution in support of Kenya's resolution to the ICC was adopted unanimously by the AU Summit. You should have listened to President Kibaki explaining about those who contributed to this very important matter affecting, not just

Kenya, but the future of the African Continent. There were very powerful statements that were made by Heads of African Republics. The AU Commission has, subsequently, written to the UN Security Council calling for the deferment of the Kenyan case that is presently before the ICC at the Hague. It will also be recalled that His Excellency the President received, in his Office here in Nairobi, the Chair of the State Parties to the Rome Statute who called on him here and he had a positive response.

Mr. Speaker, Sir, I urge the hon. Members and the whole nation to understand that the troubles that we faced in the aftermath of the December, 2007 General Elections have multiple dimensions. On one dimension, we need to deliver justice for the victims. On a second dimension, we need to heal and reconcile our communities, rebuild our nationhood, safeguard peace and social stability and guarantee economic stability and growth that we now know is quite vulnerable. The final dimension is that we need to regain our national pride and distinguished regional and international standing as a country that is nowhere near a failed State. Indeed, a country, with citizens accustomed to the opposite draw where Kenya is often called upon to assist other countries around the world on peace-keeping missions, conflict mediation and arbitration as well as peace advocacy. How proud we feel that one such role has literally given birth to an independent nation of Southern Sudan! May God bless our great land!

Dr. Khalwale: Mr. Speaker, Sir, I am shocked by the answer from the Vice-President and Minister for Home Affairs, who is not just an ordinary Member of Parliament, but a very senior lawyer in this country. He knows that there is a law that governs the ICC. How could he allow himself to engage in futile exercise that has wasted public funds, when he knows very well that the countries he went to like Tripoli and Malawi are not part of the five permanent members of the UN Security Council? If he had spent public funds going to one or all the five permanent members of the UN Security Council, who have the power to decide what he was looking for, then we would forgive him. He should tell us how much money he spent in that futile exercise. Secondly, he should clarify whether, now that I have pointed the law to him, he is going to abandon further wasting of public funds, especially in view of the following:- First, two weeks ago, the Prime Minister is on record as having said that what the Vice-President and Minister for Home Affairs was doing was not with the concurrence of the entire Cabinet. If that is true, he is, therefore, still living in the old Constitution which allowed the President to have Executive sweeping powers.

I beg the Vice-President and Minister for Home Affairs to go and read Article 133 which does not allow the President any more to have those kinds of Executive powers. He is violating the Constitution because it says that to now exercise any form of powerful mercy, the President must fall back to an Advisory Board, which should be constituted under this Article by this House, and we have not done this. He should confirm that he is going to stop this futile exercise, so that we do not waste public funds any more.

Mr. Imanyara: Mr. Speaker, Sir, at the beginning of the Statement, the Leader of Government Business indicated that we, indeed, are members of the ICC. It is not a foreign court. We domesticated the International Crimes Act in this very House. Therefore, could the Vice-President and Minister for Home Affairs tell us why they are not taking the much shorter step of appearing before that court, as is provided for in the Rome Statute, and instead applying for deferment? They know that under the Rome Statute, deferment can only be listened to on grounds of breaches of international peace

and security, which the trial of these six will not, in any way, breach. Why are they not going to the court and making an application, as advised by the ICC President, Wenawesar, when he was here just last week? This is much simpler, cheaper and in accordance with the Rome Statute, which we signed voluntarily.

Mr. Twaha: Mr. Speaker, Sir, the whole purpose of “shuttle diplomacy” was to persuade the African Union to eventually rise to the UN Security Council to request for a deferment, but we know for a fact that some, if not all the members of the UN Security Council, are not signatories to the ICC. So, what moral authority do they have to decide on such matters?

Mr. Njuguna: Mr. Speaker, Sir, while thanking the Vice-President and Minister for Home Affairs for his clear dedication on this assignment assigned to him by the Grand Coalition Government, I would like him to indicate to the House what response he got from the five permanent members of the UN Security Council. Could he indicate to the House whether there is real commitment by the permanent secret members of the UN Security Council, namely, the Russians, Chinese, French and the United States of America to address this matter seriously? He should also indicate the extra-ordinary measures the Grand Coalition Government is taking to settle the remaining IDPs in the country.

Ms. Karua: Mr. Speaker, Sir, a sovereign nation protects the lives and property of its people. In a matter like this, it would try to balance the interests of all, especially the larger interest of Kenyans. Were the views of the surviving victims of the post-election violence, the IDPs, taken into account or it was just the comfort of the Ocampo six that is driving the Government? Secondly, does the Government recall that it was mainly Members of the Cabinet who disrupted the first initiative to bring a local statute? Is there now change of mind, yet the judicial appointments are being made without regard to the law? What commitment is there?

Mr. Olago: Mr. Speaker, Sir, I wish to seek three clarifications. Listening to my brother, the Vice-President and Minister for Home Affairs, I am dismayed by the conflict in what he has told the House and what he has been reported to have said in the media. He is reported to have told the country that on this “shuttle diplomacy”, he was acting as an emissary of the President and that when the President asks you to do something, you do not ask why. If you are asked to jump, you do not ask why, but how high. So, is there a conflict in the reason he has given to this House this afternoon and the one he gave to the country last time? Secondly, following up on what hon. Karua has just asked---

Mr. Speaker: We will give indulgence, but you are supposed to examine yourself such that if you are a Member seeking clarification after the originator of the request for a Statement, you are restricted to one only. So, out of those two, can you try, as a good lawyer, to just formulate one?

Mr. Olago: I am much obliged, Mr. Speaker, Sir. If the reason was to convince the AU about the need to defer the trials, what value did two members of the ODM(K) add to the delegation, namely, Prof. Kaloki and Mr. Affey?

Mrs. Shebesh: Mr. Speaker, Sir, the Vice-President and Minister for Home Affairs has started by showing Kenya’s commitment to the ICC. He has heaped a lot of praises and given the reason why we are facing this predicament. He has said that we said that we should not be vague. Every legal opinion that I have heard has clearly stated that

this process could jeopardize the fate of the Ocampo six even more. Is he, as a senior counsel in this country, giving proper advice to the President and this country?

Mr. Lagat: Mr. Speaker, Sir, I want to thank the Vice-President and Minister for Home Affairs for that mission. I want him to confirm to this House that the reason why he could not go to the “permanent members” is because those members will give an automatic okay to his request because they have not---

Mr. Ogindo: On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to start answering the question on behalf of the Vice-President and Minister for Home Affairs?

(Laughter)

Mr. Speaker: Order! Order! Member for Ainamoi, could you please respond and note that you caught the Speaker’s eye because you wanted to seek a clarification? What clarification are you seeking?

Mr. Lagat: Mr. Speaker, Sir, I was just asking the Vice-President and Minister for Home Affairs to confirm that he is actually going to get an okay from the five “permanent security members” because they have not seen the need to be members of the ICC.

Mr. Speaker: Member for Ainamoi, please, acquaint yourself with the designations of the United Nations. There is no “permanent members”. There is “permanent security council members”.

Let us have the last clarification from Sheikh Dor.

Mr. Yakub: Mr. Speaker, Sir, the issue of “shuttle diplomacy” is an issue of trying to protect the six Kenyans on the Ocampo list. I want His Excellency the Vice-President and Minister for Home Affairs to clarify some issues. He mentioned very important issues about Kenya’s sovereignty. He said that we have had Independence for the last 47 years. However, we also have 13 Kenyans who have been renditioned to Uganda. What about those 13 Kenyans? Are they not as important as those six Kenyans on the Ocampo list? What is the Vice-President and Minister for Home Affairs doing to make sure that those Kenyans come back, and that if they are to be charged, they are charged in Kenya?

Mr. Speaker: Vice-President and Minister for Home Affairs, you may now respond.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I thank my hon. colleagues for raising fairly important thoughts, because they are truly worth listening to.

First of all, the hon. Member for Ikolomani quoted the Constitution extensively, and I thank him for that. He has been able to advise me against undertaking what he calls “futile exercise”. I want to assure him that this is not an exercise in futility. If he listened carefully to the Statement that I made, first of all, we got our country back. I want to thank Kenyans because initially, they were of the same view with hon. Khalwale. They thought: “What is the Vice-President and Minister for Home Affairs up to?” Of course, I made it clear.

Mr. Speaker, Sir, my learned friend, hon. Olago, really likes to quote the media. I can assure him that the days are gone when you could say that you cannot question a

directive from the President. Unfortunately, he falls prey to machinations by the media. What I said was that I was an envoy of the president. I did not say anything beyond that. So, for anybody to imagine that if the President says: “Jump”, you jump and if he wants you to commit suicide, you commit suicide, is unreasonable. I think my learned friend would want to be kinder to his senior learned friend.

This matter is very important. You should hear the compliments that this country is receiving from within the African continent. The United Kingdom (UK) is a member of the ICC. The United States of America (USA) is not a member of the ICC. Those of us who have got some interactions with officials of the USA over the matter of the ICC know that the USA has been very consistent in lobbying the world to give exemption to the USA to what is referred to as “Article 98”. The effect of that is that even if American soldiers commit atrocities anywhere in the world, they will not be taken to The Hague.

So, a lot of countries in Africa and everywhere in the world are beginning to ask questions. As I said, we are a member of the ICC in good standing. For the avoidance of doubt, nobody is trying to pull Kenya from the ICC. The reason as to why I went to hon. Prof. Kaloki and hon. Affey was because the Member for Kibwezi, like hon. Olago, was not convinced about that mission. Indeed, hon. Affey held brief for those Members of this House. You will recall that this House passed a resolution, calling on Kenya to consider pulling out of the ICC, and I was faced with opposition from Members of Parliament from my own party.

Mr. Affey: On a point of information, Mr. Speaker, Sir.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I will take that information.

(Laughter)

Mr. Speaker: Order! Order! Leader of Government Business, it is not you who finally decides, but proceed Amb. Affey.

Mr. Affey: Mr. Speaker, Sir, I want to congratulate the Vice-President and Minister for Home Affairs and thank him for a job well done.

The information I want to share with the House is that the House passed a Motion unanimously, calling upon the Government to pull out of the ICC. However, the Government did the opposite. The Government has asked for deferral of the Kenyan case at The Hague instead of asking for a pullout. So, when I went to these meetings, I was insisting that this House actually decided that we pull out of the Rome Statute, and not to request for a deferral of the Kenyan case from the ICC, as the Vice-President and Minister for Home Affairs was asking. So, that is important information for this country to know.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Affey to misinform the House that the Motion that called for this country to pull out of the ICC was unanimously passed when I voted against it? So, the word “unanimous” would not apply.

Mr. Speaker: Amb. Affey, that is genuine.

Mr. Affey: Mr. Speaker, Sir, I thought it was overwhelmingly passed.

Mr. Speaker: Order, Amb. Affey! You know that there was dissent, even if it was by a single Member. So, just withdraw that word since it is inaccurate. It is that easy!

Mr. Affey: Mr. Speaker, Sir, a great majority of Members of Parliament decided that we pull out. So, I withdraw the word “unanimous” and replace it with the words “a great majority of the Members of the House”.

Mr. Speaker: Just withdraw the word “unanimous”, which you used, because that is not true. It is inaccurate. Just withdraw it.

Mr. Affey: Mr. Speaker, Sir, I withdraw and apologise.

Mr. Speaker: Very well! Thank you.

Mr. Olago: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Member for Kisumu Town West?

Mr. Olago: Mr. Speaker, Sir, is it in order for hon. Affey to mislead the House by saying that he went on a mission to convince the AU to get Kenya to withdraw from the ICC when His Excellency the Vice-President and Minister for Home Affairs has just said that his mission was to seek a deferral?

Mr. Speaker: Order! Order! I am not certain I heard Amb. Affey say that. If anything, the Vice-President and Minister for Home Affairs did say that he took Amb. Affey along with him, so that he would persuade him to take the position that the other Member was taking. That is what I heard.

Proceed, Vice-President and Minister for Home Affairs!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, therefore, I want to thank hon. Ngugi, hon. Imanyara, hon. Twaha, hon. David Njuguna, hon. Martha Karua, hon. Olago, hon. Shebesh and hon. Benjamin Lagat. Of course, I cannot refer to Ogindo.

Finally, I would like thank hon. Sheikh Dor, because he raised a very important matter, which I want to comment on finally.

The issue here---

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. You heard the Vice-President and Minister for Home Affairs say that he can never refer to me. I did not make any reference to him. Why is it necessary for him to bring my name in that bad light?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I did not use the word “never”. If my friend, the hon. Member for Rangwe, felt that way, I sincerely apologise. There are certain words I can never use. All I meant to say was that he did not contribute to this particular Statement. I think he had issues with a colleague, but not with me. That is actually correct.

Mr. Speaker, Sir, Mr. Imanyara feels that we should make direct appearance before the ICC. Indeed, he is a learned friend for many years, and we have come together a long way, right from the university. I can tell you that in Addis Ababa, the European ambassadors accredited to the African Union, actually tried to argue like the hon. Member for Imenti Central. They asked why Kenya did not use the provisions of Article 19, which basically deals with inadmissibility of evidence; they said we should just go before the ICC and argue that way. As a Government, we felt that, that was not the route that we wanted to pursue, because that engages you directly and you can never know whether you can get back your sovereignty. As much as I feel persuaded by Mr. Imanyara’s argument that we should deal directly with the ICC, I feel that he should also be persuaded that deferral is a better option; I want to thank him for conceding that.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Is it in order, for the Vice-President and Minister for Home Affairs, who is the Leader of Government Business, to

thank me for conceding while he knows that I can never concede to a deferral as he prefers? The short answer to all this is, go before the court and make that application. It is part of the judicial system of this country by our own application of the law. We domesticated the Rome Statute when we passed the International Crimes Act.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, now you know who used the word “never”. The hon. Member for Imenti Central can “never” concede. I am not trying to misquote him; it is with a lighter touch. These are issues of grave national importance.

Mr. Twaha is wondering why some of the African Union members, who are not members of the ICC should feel---

Mr. Twaha: On a point of order, Mr. Speaker, Sir. I feel that the Vice-President and Minister for Home Affairs misunderstood me. I was saying that some of the permanent members of the security council are not members of the ICC; so, what moral authority do they have to decide on the matter?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Thank you so much. Then I must congratulate you for agreeing with me.

That is the same issue that Mr. Njuguna raised on this matter. The P5, as they are commonly referred to, are the United States of America (USA), the United Kingdom (UK), Russia, China and France. We all know that each of them has a veto. I can tell you that the UK is a member of the ICC. That is why I disagree with Dr. Khalwale, that this is a waste of public funds. It is not. The figures that I have given have actually shown that we have been very moderate in our expenditure. We will even cut down on the number of people who will accompany the Vice-President and Minister for Home Affairs, on his delegations. It is important that we lobby the UK.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. The Vice-President and Minister for Home Affairs is hiding behind his own words. He has not told this House how much money was used for his “shuttle diplomacy”. Is he in order?

(Loud consultations)

Can I talk for myself then you can help me with a point of information?

Mr. Speaker: Order, Dr. Khalwale! Proceed!

Dr. Khalwale: Yes, Mr. Speaker, Sir. I had kindly asked that he table the accounts and he has not done so. I am concerned because Members of Parliament who accompanied him were not paid for by the Office of the Vice-President and Minister for Home Affairs; instead they drew money from Parliament. Parliamentary responsibilities, including the business of the Public Accounts Committee (PAC), within and outside the country, sometimes cannot go on, yet money is misused to help the Vice-President and Minister for Home Affairs to travel with his party members.

Mr. Speaker: Order! I want the record to be correct. With respect to hon. Members, the practice that we have established in Parliament is that if there is a request from the Office of the Vice-President, Office of the Prime Minister or the Office of the President to be accompanied by hon. Members, then we do cost-sharing because we honour those offices. What we normally do is that we ask them to pay for the air travel and then we pay the *per diem* for the hon. Members who travel with them.

The Vice-President and Minister Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, thank you very much for that clarification which, I am sure, the hon. Member for Ikolomani will find useful.

I was not on a party mission. It is not just Prof. Kaloki and Mr. Affey who joined me; Mr. Balala, who is an ODM Member of Parliament, came in as the Minister for Tourism and his expenses were covered by the Ministry. I really want to plead that we appreciate that we are going to be absolutely careful in the use of public funds. It is our intention to now try to lobby the P5s.

Hon. Members will recall that a very senior delegation of the USA visited the President soon after he returned from Addis Ababa. Mr. Johnny Carson, who is in many ways a Kenyan, was able to, even in Addis Ababa itself--- This is in answer to Mr. Njuguna. They gave an indication that the Americans will be able to listen to Kenya. Therefore, it is our intention to lobby the USA, because we know they have a persuasive voice. Already the People's Republic of China, through their ambassador here in Nairobi--- It is important that we take this battle to its logical conclusion. The passion with which the Vice-President and Minister for Home Affairs and the Government have taken this matter goes to show that there is nothing personal here. It is just that we must get our country back in order to be respected.

Therefore, I was dismayed to read one of the best newspapers, *the East African*, giving a completely distorted view of Kenyan diplomacy. Today if you walk across our border with Southern Sudan, you will appreciate the warmth with which you will be received as a Kenyan. Right now we are lobbying to see whether the CD No. 2 of Northern Sudan should properly come to Kenya. The East African Community is going to be richer as a result of Kenyan diplomacy. That paper gave the impression that Kenya has become a diplomatic joke. I want, in the strongest words possible, to condemn that thinking, because nothing can be further from the truth. I indicated that we even want to take the chair of---

Mr. Speaker: Order, Mr. Vice-President! Do you really want to pursue that matter beyond what you have said? You know that, that is a newspaper report. Are you citing it as authority for anything at all?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I stand guided. My friend, Ms. Karua is concerned, and rightly so, with the views of Kenyans who are the victims. In my statement, I did cover that fairly elaborately. It is not that we are out to save the Ocampo Six, but we are just bringing the integrity of the nation State back to where it truly belongs. The ICC is a court of last resort. I think we were beginning to be the laughing stock as we are seen to be the only country in the world which believed in the integrity of the ICC. Of course, we do believe in ICC, as I have said without temptation to repeat myself. The Government has not decided to pull out of the ICC. I would be the last person to give the advice that we take that decision.

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

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I think you need to protect me so that I can cover the other points.

Mr. Speaker: You have the protection. Order, hon. Member for Rangwe! Relax!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I heard what Mr. Olago and Mrs. Shebesh said. I want to assure them---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Please allow the Vice-President and Minister for Home Affairs to say a little more.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, Mrs. Shebesh feels that what we are trying to do would actually jeopardize the fate of those who have been named by Mr. Ocampo. I want to tell her that there is no indication whatsoever, in law or in fact--- This is a very respectable approach. We are doing these things above board, and I am sure that future generations will prove us right. This is the best thing to do at this particular point in our country's history. We are not saying "yes" to impunity. I would be the last person to embrace impunity. That is what we are running away from; but in trying to fight that we must also be decent enough to appreciate that the destiny of this country is, indeed, in our own hands, and we must have faith and confidence in ourselves.

Mr. Speaker, Sir, Mr. Sheikh Dor raised a very important matter of the rendition of 13 Kenyans to the neighbouring State of Uganda. I want to invite him to discuss with me, and all of us in Government, the best way to help Kenyans in Uganda.

Ms. Karua: On a point of order, Mr. Speaker, Sir. I had asked a direct question, whether IDPs were consulted and what change of mind the Government now has to improve our courts while it is appointing a Chief Justice contrary to the law; none was answered. Is the Vice-President and Minister for Home Affairs in order to evade those very direct questions?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, the reason I evaded the last question is because it amounts to anticipating debate. I am sure my learned friend will agree with me that I cannot begin to deal with that.

However, with regard to the issue of exercise of collective responsibility by the Cabinet, where the Cabinet is behind the establishment of a local initiative, that Cabinet decision stays. This is truly what we are acting upon. It is nothing related to what hon. Olago referred to. I want to say that Kenyans will continue to be consulted. This is a continuous process. We are for delivery of justice and at the same time ensuring that the nation stays and its integrity is not compromised. I think these are very important matters; there is no way we will not work hard to ensure there is justice for the victims, a lot of whom we know are still languishing in IDP camps. It is our responsibility to make sure they get justice.

Mr. Speaker: Order, Vice-President and Minister for Home Affairs! The Member for Gichugu is still concerned, and I think rightfully so; she has put a very direct request for clarification by you: Did you consult the IDPs? That is what she asked.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I thought the Government was the Government. When you take a Cabinet decision it encompasses--- I said the welfare of the IDPs is actually taken into account in this mission and always. I can confirm that over and over again.

(Ms. Karua stood up in her place)

Mr. Speaker: What is it, Member for Gichugu? You still do not appear to be satisfied!

Ms. Karua: Mr. Speaker, Sir, you have heard the Vice-President and Minister for Home Affairs disobey your directive that he answers the question. Is he in order to continue to disobey the direction that he answers the question whether the IDPs were consulted? Would I be in order to suggest that he be named?

Mr. Speaker: Vice-President and Minister for Home Affairs, try and answer the question!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, Ms. Karua might want to name me, but I think it would be inappropriate because I have not disobeyed the Chair; I have no intention of disobeying the Chair, which would then lead to such a harsh sanction.

The truth of the matter is that the Government took into account, and continues to take into account, the interests of the IDPs. However, as to actual consultation like going to Mawingu to ask them whether I should be allowed to go to Malawi that has not happened. I do not think it is the kind of approach that she would have expected the Vice-President to take.

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

Mr. Speaker: What is it Member for Gwassu? Are you concerned about the Statement that the Vice-President and Minister for Home Affairs has issued? Is something out of order?

Mr. Mbadi: Mr. Speaker, Sir, following the Vice-President and Minister for Home Affairs' answer, normally when someone is accused of wronging someone else, before you even think of withdrawing the case, that person who is wronged needs to be consulted. Therefore, Ms. Martha Karua was asking whether he consulted the victims of the post-election violence. Why have you ignored consulting them? I think that question needs to be answered and addressed properly.

Mr. Speaker: Order! From where I sit, the Vice-President and Minister for Home Affairs has actually given you an answer. The answer might not be satisfactory, in your opinion, but he has given an answer. Therefore, that will be a matter of argument.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. His Excellency the Vice-President and Minister for Home Affairs has, indeed, put a very good case. However, on the issue of rendition, which is already before our Committee, he did not come out clearly. He was not very specific. The Minister for Justice, National Cohesion and Constitutional Affairs has, indeed, condemned the rendition. The Minister of State for Provincial Administration and Internal Security has apologized to Muslim Members of Parliament. Therefore, I would have really wanted the Vice-President and Minister for Home Affairs to give a definite answer or, opted to leave the matter to our Committee to handle as opposed to brushing it aside.

Mr. Speaker: Order! Again, from where I sit I heard the Vice-President and Minister for Home Affairs respond to that aspect. He did plead with hon. Members to volunteer modalities as to how they would like to be supported to deal with the question of rendition. I heard that; Member for Yatta, if you are sincere, I am sure you will recollect that.

Dr. Eseli: On a point of order, Mr. Speaker, Sir. Listening to His Excellency the Vice-President and Minister for Home Affairs, he said that all the Heads of State of the

countries he went to were willing to support the position of Kenya on deferral of the cases. Could he confirm whether Botswana was one of the countries that supported that position? What has been available in the media has been that South Africa and Botswana were not with us.

Mr. Speaker, Sir, while I sort of congratulate the Vice-President and Minister for Home Affairs on his “shuttle diplomacy” to regain the sovereignty of Kenya, I would like him to know that sovereignty is like virginity: Once it is lost, it is not recoverable, unless you are looking for secondary virginity.

(Laughter)

Mr. Speaker: Order! Dr. Eseli, you rose on a point of order, but at the end of the day what you have done is just ask for further clarification, yet we had brought this matter to an end. Unless you put it better than you have, I am afraid I will rule that out, because it is not a point of order! Could you rephrase it?

Dr. Eseli: Mr. Speaker, Sir, is the Vice-President and Minister for Home Affairs in order to say that all the countries they visited were in support of Kenya’s position, yet it is in public knowledge that Botswana and South Africa did not seem to support Kenya’s position? Is he in order to mislead the House?

Mr. Speaker: Very well! That will pass!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I thank Dr. Eseli for standing on that point of order. The opposite is actually the case. I am informed that at the Council of Ministers it was the Minister for Foreign Affairs of Tanzania who proposed adoption of the resolution in favour of Kenya and that Botswana seconded it. However, I need to check. This is what I was told and Botswana explained it very well.

I did not go to Botswana, but I had serious and lengthy discussions with President Zuma of South Africa. South Africa is a member of the UN Security Council on a rational basis. All that President Zuma said was, “Kenya, please keep us informed; we will do Kenya’s bidding”. I can quote President Zuma without any fear of contradiction. Please, be selective about some of the media material you are reading.

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

Mr. Speaker: What is it Member for Rangwe! You have been persistent, and we have to bring this matter to a close.

Mr. Ogindo: Mr. Speaker, Sir, I find it very hard to believe the Vice-President and Minister for Home Affairs. You remember when Mr. Ruto brought a Motion here seeking House resolution for Kenya to withdraw from the ICC, the Vice-President and Minister for Home Affairs said that was a Government Motion. Today, he is saying he strongly believes in the ICC. Is he in order to send conflicting messages to the same House?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, the hon. Member for Rangwe is actually involved in semantics. When I stood at that point, when the House Business Committee had approved the agenda of the following day, I did indicate that an asterix meant Government Order of the day. That did not mean that as Leader of Government Business, I supported the Motion. If you recall, we were actually experiencing shortage of business. I think we all unanimously felt that, that matter should come before the House. I do not think this is frivolous. I am sorry to

say that. I think this is not the kind of point of order that I really want to deal with. This is a matter of grave national importance.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I think this is a matter that really needs to be addressed. I am asking the Chair to look at the answer because hon. Ogindo has said that the Leader of Government Business branded that Motion, a Government Motion and we know the meaning of a Government Motion.

The Leader of Government Business is saying that he did not say that. Could this be checked and a ruling be made so that we may know whether this was branded a Government Motion or not?

Mr. Speaker: Order! The Vice-President and Minister for Home Affairs who is also the Leader of Government Business has explained himself as to what he meant even when he used the word "Government Business". He says that he looked at the Order Paper and Government Business is signified by two stars. On that Order Paper, he says that that Motion had two asterisk; two stars. So, really, I do not see much on this one. I am afraid I do not see substance in it.

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

Mr. Speaker: What is it Member for Ikolomani? And it had better be a point of order!

Dr. Khalwale: On a point of order Mr. Speaker, Sir. Is the Leader of Government Business in order to mislead the House that this was a collective Cabinet decision when a principal partner of the coalition; the Orange Democratic Movement (ODM) held a Press conference and told the country a position contrary to what he is telling Parliament today?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, with your indulgence, I really do not want to be drawn into that kind of debate because strong language will get used occasionally. People will take collective decisions and others will seek to jump out of it depending on the heat of the moment. So, I have no difficulty with any hon. Member of the Grand Coalition who in trying to gain political mileage or losing some of it. There is nothing personal here. It was a Cabinet decision.

Mr. Mbadi: Mr. Speaker, Sir, the Vice-President and Minister for Home Affairs has just stated that this was a Cabinet decision and some people were jumping out of it. Is it in order to conclude that the Minister for Justice, National Cohesion and Constitutional Affairs, who is a prominent member of his party also jumped from the Cabinet decision?

Mr. Speaker: Order! Vice-President and Minister for Home Affairs, if you have any response at all you may, otherwise it is a matter that can pass.

Assistant Minister for Forestry and Wildlife!

RECRUITMENT OF RANGERS BY KWS

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, you may recall on 18th January, 2011 the Member for Isiolo South, hon. Bahari sought for a Ministerial Statement from my Ministry wanting us to indicate how the recruitment of rangers by Kenya Wildlife Service (KWS) was conducted and as to whether resulting from the methodology and the formula used, imbalances of marginalization or discrimination will not arise.

The Kenya Wildlife Service is a State corporation under my Ministry whose mandate is to conserve, manage wildlife and habitat throughout the country on behalf of the State. It oversees the management of 27 terrestrial and marine parks and 34 terrestrial and game reserves. Efficient and effective management of the 61 terrestrial marine and game reserves requires adequate number of game rangers amongst the human resources and logistical requirements.

The Kenya Wildlife Service has been experiencing an acute shortage of rangers in recent years, which has recently placed a huge operational physical burden on its current limited ranger workforce. The deficit is mainly attributed to the fact that the KWS had not undertaken recruitment of rangers for the past five years due to budgetary constraints. A recent Government directive that required the service rangers to protect the Mau Forest Complex had in addition necessitated withdrawal of rangers from other operational areas. This led to further shortfall in the areas from which rangers had been withdrawn. The current ranger strength in the KWS is 1,635 which is far below the optimum ranger requirement of 3,053.

In addition, increasing new challenges and new responsibilities which include protection of water catchment areas have necessitated recruitment of additional rangers. Thus the force is currently understaffed by about 47 per cent. To undertake the exercise in a prudent manner, the KWS undertook the recruitment in all the 47 counties in the Republic of Kenya in which 500 rangers were finally recruited. It would not have been economically viable for the recruitment to have been undertaken from all the country's 297 districts bearing in mind the small number of rangers that were to be recruited. Thus, recruitment at county level was considered to be a better option with fewer recruitment centers and hence, lower recruitment cost to the taxpayers.

The county recruitment option was adopted in light of the new constitutional dispensation which sets out the 47 counties as the units into which the country is administratively divided.

The recruitment process also ensured that candidates were accommodated from all the 287 districts in the Republic of Kenya among the 500 rangers. It is only those districts that did not have qualified applicants as set out in the minimum qualification requirements that missed out on the final selection. It is indeed noteworthy that this is the first recruitment that has been undertaken under the new Constitution and which was carried out in a most transparent and fair manner. Equity and fairness in the recruitment exercise as well as ensuring that the complement of recruits represented the face of the country, were the principal guidelines used in this recruitment.

A total of 14 counties with national parks and human wildlife hotspots were awarded 13 recruits each, while 21 counties with national reserves were awarded ten slots each and 12 counties without national parks and national reserves were awarded nine slots each. This was the criteria used to allocate the 500 vacancies for rangers in the Service to the 47 counties of Kenya.

The names of the 500 successful ranger recruits were published in the *Daily Nation* and *The Standard* newspapers on 3rd February 2011 and the recruits are scheduled to report to the KWS Field Training School, Manyani between 5th February and 9th February 2011 for appropriate training prior to deployment in the Service.

Thank you.

Mr. Speaker: Hon. Members you may seek clarifications. We will restrict them to three. Minister, please keep notes.

Member for Isiolo South!

Mr. Bahari: Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer. However, I want to take great exception to the manner in which this Ministry is trying to interpret the new Constitution by using the fact that we have 47 counties in the country and forgetting the spirit of devolution where it is clearly stated that devolution will go to the lowest levels possible.

An hon. Member: But that is the county!

Mr. Bahari: It is not the county!

Mr. Speaker, Speaker, Sir, it is very costly, for example, across Isiolo District, the furthest point to the district headquarters where the recruitment took place, it is over 300 kilometers. Given the level of unemployment, a lot of Form Four leavers came for that recruitment and only very few were picked. That is a very serious cost.

Why did the Ministry not take that into account and why did they not consider recruiting at the constituency level which is less than the 287 they are talking about?

Mr. Imanyara: Mr. Speaker, Sir, there were incidents of corruption reported in relation to the exercise. Indeed, there were cases of rangers being sent back. Could the Minister shed light on this and tell us whether, indeed, there were cases of corruption involved and what action has been taken with regard to those cases?

Mr. Speaker: Mr. Minister, you may make responses.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, in response to the clarifications that have been requested, first of all, you may realize that our Constitution has two levels of devolution; national and county. As I had said in my comprehensive Statement---

Mr. Bahari: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Member for Isiolo South! The Minister has hardly said anything. Hear him first!

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, the Ministry together with the management of KWS considered various options. In the pre-2006 period when the KWS was recruiting rangers, we were doing it at the district level. The number of districts then was only 71 as opposed to four times that figure now. Secondly, we also looked at the budget cost of doing this. To recruit at the district or constituency level, it would have cost more than Kshs4 million, as opposed to the Kshs1.2 million which is the cost that has been incurred in the recruitment in 47 counties. But, you also have to take note that in each of the recruitment centres, after the advertisement had been done two weeks earlier for the youth who met the criteria that was indicated to assemble at the county headquarters, the first thing the recruiting officers did--- The KWS recruiting officers were also in partnership with the Kenya Airports Authority officers who were also recruiting some cadres of staff for the airports. The first thing they did publicly was to indicate to the members of the public who were present the allocated number of slots per constituency. They sought their concurrence on what approach should be used; whether it is the constituency or district. After seeking that concurrence, the officers went ahead and did those interviews using the criteria that had been set for the officers they required. They were able to arrive at the list of 500. I believe and trust that there was full transparency in terms of that recruitment, because even after

the recruitment in every county headquarters, the public was informed on the number who had been selected and everyone was applauding. I think that is the feedback we have gotten.

Mr. Speaker, Sir, with regard to the clarification sought by hon. Imanyara, this is the first time I am hearing about cases of corruption. Indeed, we have not received any particular case. If, indeed, the hon. Member knows of any particular case of corruption that took place, he should notify us so that we can make a follow-up.

Mr. Bahari: On a point of order, Mr. Speaker, Sir. Is the Minister in order to avoid my question? I made it very clear that the arid counties are very vast. The Minister is looking on the side of the KWS only. What about the costs incurred by those prospective candidates *vis-à-vis* the spirit of the new Constitution, which is looking at bringing services closer to the people? I know that the KWS has never recruited at the national level. It has always recruited at lower levels, but now it is going backwards. The gains that we had achieved are being taken away because of meagre costs like the ones the Minister is talking about. Is he in order to avoid my question?

Mr. Speaker: Minister, there is a specific area that the Member wants you to deal with, that is, the costs.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, I am not actually avoiding his question. I think this is a concern all over. Since 2008 when I was appointed to this Ministry, we have been making strong comments about the need for the KWS budget to be increased. This is because, basically, poaching and human/wildlife conflict have been on the increase. But we have not been able to recruit the 1,400 rangers that we need to meet the optimum number, for us to be able to undertake our responsibility. After perusing all options, we realized that going to the 287 districts would still mean recruiting one or two rangers per district and I do not think it would have made economic sense. The hon. Member is one of those from Isiolo that had slots of 11 rangers and his own constituency got six out of the 11. To me, this is very fair. If he has concerns, I think we can re-look at them so that in future, when budgetary amounts are increased, we can take this recruitment down to the constituency or district level.

Mr. Speaker: Order, hon. Members! We will be coming to the end of that Order now!

What is it, hon. Olago?

POINT OF ORDER

HIGH COURT RULING ON NOMINATION TO JUDICIAL/FINANCE OFFICES

Mr. Olago: Mr. Speaker, Sir, I rise on a point of order to seek direction and guidance from the Chair on an issue that is currently galvanizing the attention, not just of the House, but also of the country, that is, how the twin doctrines of *sub judice* and injunction apply to proceedings of the House and, in particular, how they impact on the current proceedings in the Committees of the House dealing with the issues of nomination to Judicial and Finance offices by His Excellency the President.

Mr. Speaker, Sir, in seeking your direction and guidance, I wish first of all to state that Committees of this House are not creatures of the House itself. They are creatures of

the Constitution. I wish to kindly refer to Clause 124 of the Constitution that states amongst others:

“The House of Parliament may establish Committees and shall make Standing Orders for the orderly conduct of its proceedings, including proceedings of its Committees.”

Mr. Speaker, Sir, I am quoting this because, Committees and proceedings before Committees and Standing Orders of this House have their foundation in the very Constitution of this country. Therefore, they are not rules and they are not proceedings. I remember that you said against your own wisdom that the Speaker will not interpret the Constitution. But the Speaker will confine himself in so far as the Constitution concerns the proceedings of the House. That was the right position, which I really respect and for which, I am very proud as a Member of this House under your guide.

But, Mr. Speaker, Sir, I wish to refer specifically to page four of your ruling, in which you said something. You are dealing with the issue of proper interpretation of the Constitution and function of the Judiciary.

“In so far as a constitutional question arises before this House, within the conduct of business of the House, it is the constitutional duty of the Speaker to interpret the Constitution to that extent and for that purpose alone so as to enable the House to proceed with its Constitutional functions”.

Mr. Speaker, Sir, that is the right position. But as at the time when the Speaker was making that ruling, certain factors which are now clear had not come to the attention of the House. I do remember very well that at the conclusion of the ruling, hon. Orendo attempted to bring to the attention of the Speaker, the fact that the High Court had just issued a ruling that pertains to the issues that the hon. Speaker was dealing with. Hon. Speaker said that he had made a ruling. Clearly at that time, you could not have been expected to have dealt with that issue because there was no substance on which you could have dealt.

But subsequently, the ruling of the High Court issued by Justice Daniel Musinga on the 3rd of February was brought to the attention of the Speaker. I am informed that this ruling, at the request of the Clerk, was forwarded on the 4th of February, 2011, by the Registrar of the High Court, Ms. Lydia Achode.

Subsequently in addition to that ruling that is in the hands of the Clerk, and, which with your permission, I may kindly lay on the Table---

(Mr. Olago laid the document on the Table)

An order was extracted from that ruling. That order subsequently was forwarded to the Speaker today, 8th February.

Mr. Speaker, Sir, allow me to read part of that order. It is signed and certified by the Registrar of the High Court and it reads as follows:-

“Upon reading the petition presented to this honourable court on the 2nd of February, 2011, by counsels for the petitioners/applicants under Articles 22 and 23 of the Constitution of the Republic of Kenya, in the alleged contravention of fundamental rights and freedoms under Articles 3, 10, 27, 73(1)(a), 129, 131, 156, 166 and Article 228 of the Republic of Kenya and Section 12 and 24 of the Sixth Schedule of the Constitution of the Republic of Kenya and in the matter of the nominations for approval and eventual

appointments of the offices of the Chief Justice, Attorney-General, Director of Public Prosecutions and the Controller of Budget under the Constitution of the Republic of Kenya filed under certificate of urgency and upon reading the supporting affidavit of Ann Wairimu Njogu drawn on the 2nd of February, together with the annexures thereto and upon hearing counsel for the petitioners/applicants and counsel of the respondents and counsel for the party of the National Unity, it is hereby declared as follows:-

- (i) That it will be unconstitutional for any State officer or organ of the State to carry on with the process of approval and eventual appointment to the offices of the Chief Justice, Attorney-General, Director of Public Prosecutions and Controller of Budget based on the nominations made by His Excellency the President on 28th January, 2011.
- (ii) That the process of approval and eventual appointment to the offices of the Chief Justice, Attorney-General, Director of Public Prosecutions and Controller of Budget will have to wait the hearing of this petition or further orders.

Mr. Speaker, Sir, that is the order I extracted from the ruling and this order is also with the Chambers of the Speaker. I wish to lay it on the Table.

Mr. Speaker: Order! Order! Are you ascertaining that, that order is in my Chambers because I have not seen it. Even as I sit here, I have not seen that order.

Mr. Olago: Mr. Speaker, Sir, what I have with me is a letter dated today addressed to the hon. Speaker from counsel for the petitioners attached to which the order is made.

Mr. Speaker: I have not received it.

Mr. Olago: Mr. Speaker, Sir, allow me under those circumstances to table it for your attention, Sir.

Mr. Speaker: Very well, proceed.

(Mr. Olago laid the document on the Table)

Mr. Olago: Mr. Speaker, Sir, based on that which was extracted yesterday, I wish, therefore, to read Standing Order No.80(1) on matters that are *sub judice* or secret. It says:-

“Subject to paragraph (5), no Member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.

(3) In determining whether a criminal or civil proceeding is active, the following shall apply...”

I wish to rely on Standing Order No.80(3)(c). It says:-

“Civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance.”

Mr. Speaker, Sir, again, I have with me here, a letter addressed to the Deputy Registrar of the High Court by counsels for the petitioners asking the Deputy Registrar to place the above matter before the judge for directions on a hearing date for the petition, on the 9th February, that is tomorrow.

Mr. Speaker, Sir, may I with your permission table this as well.

(Mr. Olago laid the document on the Table)

To that extent, therefore, the proceedings are active and steps have been taken to set a date for hearing and it is coming up before the Deputy Registrar tomorrow.

That being the case, therefore, I wish to kindly refer to Clause 165 of the Constitution, particularly in respect of the jurisdiction of the High Court. Clause 165(3)(d)(ii) says:-

(ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with or in contravention of this Constitution”.

Mr. Speaker, Sir, under those three circumstances, the High Court in the pleadings which I have already placed before you is referring to an application for an act which is being contravened under this Constitution. I have with me here a bundle containing complete pleadings in the High Court of Kenya at Nairobi, Petition No.16 of 2011 that I am referring to. It is a complete and certified copy of the pleadings, including the certificate of urgency, the chamber summons, affidavits in support thereof, together with a complete bundle of annexures. With your permission, I wish to kindly table the complete bundle of pleadings before the House. It is certified by the Deputy Registrar of the High Court.

(Mr. Olago laid the document on the Table)

Mr. Speaker, Sir, in addressing you on this issue, I am fully conversant with the fact that on the 27th November, 2008, at about 3.30 p.m., you issued a ruling in a matter brought to your attention for direction, when this House was dealing with the legislation to set up the Interim Independent Electoral Commission (IIEC) and “kill” so to speak the former Electoral Commission of Kenya (ECK). Commissioner Kivuitu and members of his Commission then went to the High Court to seek order to stop this House from deliberating any issue that would then set up a law that would disband them.

I brought that to the attention of the Speaker but, eventually, you ruled that: “A court cannot prevent the Assembly from conducting its legislative functions.” At that time, the House was dealing with an enactment of legislation but in the present case, the House is dealing with the implementation of legislation and, in particular, the Constitution. I am fully aware of the fact that under the Constitution, we must have a new Chief Justice by 27th of this month and time, therefore, is of essence. It is hardly 19 days--

Mr. Speaker: Order, Mr. Olago! Why do you say so? Which provision of the Constitution says that we must have a Chief Justice by the 27th of this month? Which provision?

Mr. Olago: Mr. Speaker, Sir, I do not have it at my fingertips right away but I know given time, I could get it.

Mr. Speaker: I would like you to be certain because you appear to be categorical on that matter.

Mr. Olago: Mr. Speaker, Sir, in that case, allow me to kindly withdraw that.

Mr. Speaker: I am not certain that I see that to be the position.

Mr. Olago: Mr. Speaker, Sir, allow me to withdraw that bit of my submission then.

Mr. Speaker: Yes! You need to be careful about that because what I know - and I want the House to benefit from this - is that the Constitution provides that the Chief Justice will leave office within six months of the date of promulgation and the Constitution is silent on when the Chief Justice will be appointed.

Mr. Olago: Mr. Speaker, Sir, I am much obliged; I stand corrected!

Mr. Speaker: Thank you!

Mr. Olago: Mr. Speaker, Sir, that is well enough. But my worry was that we may have to go without a Chief Justice. That is what is worrying me. I bring these issues to your attention in seeking your direction because of the fact that, in view of the clear ruling that the High Court has issued, and which was not within the Speaker's notice at the time that the ruling was made on 3rd February, 2011 on the Floor of this House, whether or not it will be proper for the House Committees to proceed to consider the nominations to those offices in view of those orders. My concern is based on the fact that, whereas the different arms of the Government have to proceed with their responsibilities without interference from each other, as a House, we need to be cautious and not stand in the way of any other organ of the Government. Therefore, I seek your direction.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): On a point of order, Mr. Speaker, Sir. I have had an opportunity to look at the documents that my learned friend has tabled. I have enormous amount of respect for him and also as a lawyer. I would like to ask whether I would be in order to suggest that this country should not work itself into a paralysis. It is beginning to emerge that, as we debate the constitutional provisions of the country, that paralysis that sends a sense of fear; a sense of insecurity and a sense of disquiet in the country is very unfortunate. It is unfortunate because my learned friend is suggesting that we use the rule on *sub judice* and yet it says – I am reading Standing Order No.80 – that a matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings when the discussion of such matter is likely to prejudice its fair determination. The word is “likely to prejudice its fair determination.” I have had occasion only late afternoon to look at the ruling of the learned judge and it seems to me that he has already made a decision that the nomination of the five, without a woman, is unconstitutional. Therefore, strictly speaking, if we were to accept this matter is *sub judice*, we will merely paralyze this very essential debate that is taking place in the country. The question is what prejudice then do our women really suffer when Parliament, which is an institution, not only for purposes of legislation but also for implementing the Constitution, continues its work under the Constitution and under the Standing Orders? Therefore, I am persuaded that, much as I feel so much pain that my country, after merely six months, has not really comes to terms with the issue of implementing the Constitution, nor has it realized that it is required to establish what my learned friend, the Chair of the Constitutional Implementation Oversight Committee called a “constitutional culture”. That is the debate. In that debate, no single institution or person - ever for the rest of history - will have the last word. Therefore, I wish to appeal to you, using the enormous skills that you have developed in the last--- In fact, when I was practicing law with you, I did not know, for once, that you would rise to the Solomonian status that you have been elevated in the recent past.

(Laughter)

For example, when you were representing the Mombasa Law Society in the Law Society of Kenya (LSK); when I was president of the Bar, I used to think that Mr. Marende was just another lawyer from Mombasa. But you have emerged – with respect – to have enormous ability to avoid the challenges that a lot of our leadership cannot overcome. This is the ability to make a decision even if the decision is wrong, because it is important that we have these decisions.

(Dr. Eseli stood up in his place)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I am on a point of order! Why do you not protect me?

Mr. Speaker: I appreciate that you are but I have that prerogative and Dr. Eseli seems to be particularly concerned. So, I am just wondering what it is that is disturbing him.

Dr. Eseli: On a point of order, Mr. Speaker, Sir. Indeed, I am very concerned. Is the Minister in order to be cajoling and sounding patronizing to the Speaker?

(Laughter)

Mr. Speaker: Order, Dr. Eseli! Mr. Minister, you need not respond to that. As a matter of fact, a number of the things the Minister has said are correct. We practiced law actively at the same time and, as I practiced my law from Mombasa, I actually held brief for the Minister on a number of matters that he could not travel to Mombasa to do. So, he is not cajoling me.

(Laughter)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, again, you rose to Solomonian abilities and I accept!

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Given that you were, in fact, holding his brief, then is it not right that he should accept he knew right from the beginning that you could live to the standards you have set in this House when he chose you to represent him in Mombasa?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you very much, Mr. Speaker, Sir. The hon. Member is right and I was saying all those things with a light touch so that the country understands that Mr. Marende is not a new creature in these activities. So, I was pleading with you to look at Standing Order No.80(5) which says: “Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the House or a Committee.” That is even if it is *sub judice*. I am submitting with respect that in so far as the ruling appears to create an impression that the judge has already decided that the nominations were unconstitutional, I think the prejudice that is protected by Standing Order No.80 will not arise. Anyway, it should not paralyze this House from performing a function that is its own.

I would like to agree with you that the date for appointment of the next Chief Justice is not 27th of February, 2011 although, ideally, in view of the issues engaging the

country at this moment--- We have just listened to the Vice-President and Minister for Home Affairs attempting to justify the “shuttle diplomacy”.

(Applause)

I use the word “attempting” very advisedly. I am a good lawyer. The fact of the matter is that the country would appear even better in the light of democratic countries like France, the United Kingdom and the United States of America. The USA seeks to protect its citizens because every citizen of the USA has complete confidence in their judiciary. We do not have that ability at this point.

Mr. Speaker, Sir, therefore, you utilize Standing Order No.5 so that unlike other situations that I am seeing emerging, we do not paralyze this country. We want this country to move forward. We want this country to attempt to implement the Constitution.

Going by remarks I have heard from Members of the Committee, they have not even started vetting. They are saying that they want to decide on the issue of constitutionality. In fact, they are interrogating the consultation that is required under the constitutional provisions. Therefore, with utmost respect to the court, I think the new Constitution is no longer the sort of constitution that anybody thought that it was their reserve for interpretation. I say so with utmost respect to the section. This Parliament has also got a right to say it has a constitutional function. Therefore, we want to move this process forward to hear what the Committees have said.

Mr. Speaker, Sir, would I be in order to request you to use Standing Order No.80(5)?

Thank you.

Mr. Speaker: Hon. Members, I may allow interventions, but restricted to a maximum of five because that would clearly indicate to me the mood of the House. I will also acquaint myself with any positions that the membership of this House has. We will go strictly by that.

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, this is a very weighty matter. I say so before going into the pleadings which have been placed before the House by Mr. Olago Aluoch. I want to revisit the Constitution which says in Article 2 that this Constitution is the supreme law of the Republic and binds all persons and State organs at both levels of Government.

Article 10 deals with national values and principles of governance. There are similar provisions to that effect. More importantly, Article 94(4) on page 63 says:-

“Parliament shall protect this Constitution and promote the democratic governance of the Republic.”

Further, if you may allow me to refer to the schedule that contains the oaths of affirmation or allegiance which is found in the Third Schedule. The oath of allegiance that is taken by every elected Member of Parliament states very elaborately that it is required of each Member of this august assembly that they will obey, respect, uphold, preserve, protect and defend this Constitution.

Mr. Speaker, Sir, having said all this, and if you look at the ruling by the learned judge, there are matters that it would be very difficult for this august House to ignore. On page 12, Ms. Mbiyu, who I know very well, is a very senior lawyer in the Attorney-General’s Chambers, acting on behalf of the Republic of Kenya. She was representing the

Attorney-General. Her submissions begin from page 12. On page 13 of those submissions, she says:-

“To the extent that the Judicial Service Commission was not entitled to make recommendations to the President before he nominated the new Chief Justice in consultation with the Prime Minister for approval by the National Assembly---”

These were the submissions by Ms. Mbiyu. She addressed the court on the issue of discrimination and then the court made a finding on those submissions by the Attorney-General. I think this is very weighty because much as we may want to disregard these submissions, these were submissions by the Attorney-General of the Republic of Kenya who is the principal legal advisor to the Kenya Government.

She says on page 19, Ms. Mbiyu, on behalf of the Attorney-General conceded that the President ought to have received recommendations from the Judicial Service Commission before he made the aforesaid nominations. It is in the public domain that the Attorney-General who is a member of the Judicial Service Commission signed a joint statement of the Commission to that effect. That was done just about four days ago.

Then he continues:-

“Under Article 156(1) of the Constitution, the Attorney-General is the principal advisor to the Government. The qualifications as an Attorney-General are very high. They are the same as for appointments of the Chief Justice. He is the person who is highly learned and experienced in law. More importantly, the President is therefore supposed to take his advise seriously.”

Then the judge says:-

“On the basis of the concession made by the Attorney-General who is the respondent in this petition, it must be accepted that the said nomination did not comply with the constitutional requirements.”

These are findings by a judge of the High Court.

To that extent, the judge further finds that the petitioners have proved that the nominations were unconstitutional. This is a judge talking from the pedestal of the Bench in the High Court. He deals with the issue of consultation to some length which I do not want to refer to, but they are to the same effect.

When she comes to the issue of violations regarding equal treatment to men and women, on page 24 the judge says this:-

“In view of the violations to the letter and spirit of the Constitution as shown herein above, even without considering other relevant provisions like Article 10 which sets out national values and principles of governance, I am satisfied that the petitioners have demonstrated that they have a *prima facie* case with the likelihood of success.”

Finally, I am sorry I have taken long on this, bear with me. He says words similar to the ones that you pronounced here and I think to some extent, I said something to that effect that the court cannot restrain the National Assembly from performing its constitutional duty. However, where it is demonstrated that in giving its approval, the National Assembly will be perpetuating an unconstitutional act unless the Speaker of the National Assembly points out the unconstitutionality of the intended action and that disallows the process of approval, this court is under an obligation to make an appropriate declaration and bring it to the attention of the National Assembly.

Mr. Speaker, Sir, I think that is why the High Court took the unprecedented effect that instead of just a personal service that this matter through the Office of the Registrar, should be brought to your attention.

Finally, he says: Consequently, in view of the court's findings regarding the unconstitutionality of the manner in which the foresaid nominations were done, I make a declaration that it be unconstitutional for any State officer or organ of the State to carry on with the process of approval and eventual appointment to the Office of the Chief Justice and so on."

So, the judge is saying: "How can the National Assembly consider the provisions that I have read out when it is part of our obligation to defend and protect the Constitution?" We cannot be seen to be going against that finding by the court. Obviously, there was prejudice. The gracious ladies went to court and convinced the judge that they had been discriminated against. That is more than a prejudice. It is a violation. By allowing the National Assembly and the President to go to the next step and gazette those appointments, the gracious ladies and all the ladies in this country will be prejudiced as far as their rights under this Constitution are concerned.

One of the judgments here says that the Constitution is a living document. It has to be given life. If those are just mere words, then they are not worth the piece of paper they are written on. I want to conclude by saying that one of the most inspiring events about the American democracy is what the courts did when that Republic was founded. Right now, we find judges who are able to intervene. The major contribution of Justice Marshall under the Doctrine of Limited Government over 200 years ago was able to stand against unconstitutional measures taken by the Government of that day. Unlike Kenya, in the United States, people still saw the President in the unity of the king who had imperial power. I sometimes wonder why, in this country, at this time, with a new Constitution and all that, somebody can still think that he can make a decision without putting into consideration that we are acting under a delegated authority. The sovereignty belongs to the people. In this matter, I invite you, without further ado, to give the courts space so that the interests of the gracious ladies are not prejudiced and the constitutional violations are determined and, therefore, proceed with the matter.

Mr. Imanyara: Mr. Speaker, Sir, I will be very brief. I am aware that you did, in fact, not just make a ruling, but deferred the ruling to the issue that I raised. I assumed that, at some stage, when the issue is revisited, you will make a ruling. When you make that ruling, I am aware that you will be bearing in mind what the words of Article 2 require of each one of us; that is, "Every person has an obligation to respect, uphold and defend this Constitution."

Both my learned seniors, hon. Mutula Kilonzo and hon. James Orengo, have emphasized the point that the court has already made a decision on the issue of unconstitutionality. That decision has already been made whether the matter will proceed to hearing or not and the issue as to whether the process adopted was unconstitutional or not. There is a conclusive finding to that effect. Therefore, to that extent, we must look at Article 165 of the Constitution and the jurisdiction of the High Court. We should invite, when we are considering the issues, Article 165(3)(d) which says that the High Court shall have jurisdiction to hear any matter in respect of the interpretation of this Constitution, including the determination of the question as to whether any law is inconsistent with or in contravention of the Constitution. That includes the question of

whether anything said to be done under the authority of this Constitution or any other law is inconsistent with or in contravention of this Constitution; the question of whether anything said to be done under the authority of this Constitution or law or any other law is inconsistent with or is in contravention of this Constitution; any matter relating to the constitutional powers of State organs in respect of County Governments is also relevant.

Mr. Speaker, Sir, the jurisdiction to make the pronouncement as to the constitutionality of the process has been determined. We must refer to the decision of the High Court. We are sailing in uncharted waters and giving meaning to a new document. The spirit of this Constitution requires us, as we develop what the Chair of the Departmental Committee on Justice and Legal Affairs called it, the culture of constitutionalism and requested that we refer the aspects of the interpretation of the law to the institution that is uniquely qualified to make those determinations.

I am aware and do respect the point made by hon. Mutula Kilonzo that you are perfectly capable of interpreting the Constitution in the same manner as any judge of the Superior Court or the High Court. Sitting as the Speaker of the House, I plead with you because we must not be seen to be encouraging anything that would give the impression that we are claiming absolute power in this House; power that is inconsistent with the Constitution. We are subject to the Constitution just as the Judiciary is subject to the Constitution. Any other institution is subject to the Constitution. The National Assembly can only operate within the Constitution. The authority and the jurisdiction to make findings and interpretations rest with an institution other than us. We must refer to those institutions. In this case, Justice Musinga made a conclusive and final finding on this issue.

I am inviting you, when you are making a ruling on this issue, to bear this very heavy responsibility on your part, a responsibility that will determine whether we shall, indeed, develop a culture of constitutionalism or whether we shall allow this House to go against a decision of the High Court that bars us, and says that all State organs must not proceed further. I am aware that when you gave your directions, you were not aware of the ruling. However, it has now been brought to your notice. The pleadings have been tabled in the House and you have been told that the Chief Legal Advisor to the Government has conceded. How can we go behind this? I am pleading with you that you must not allow this House to undermine the spirit of the Constitution.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Speaker, Sir. The more I listened to hon. Members, who spoke before me, the more we were being reminded about the people who were blindfolded and told to touch various parts of an elephant and give a description of what, in their view, an elephant looked like. Those who touched the tail said that an elephant is a very thin animal. Those who touched the tusks described it in the way they felt the tusks looked like. Those who touched the legs described them that way.

We were here last week and you pronounced yourself very clearly. We all listened and applauded when you claimed the space that other people were attempting to take away from this House. The power of this House is to play its rightful constitutional duty to represent the people and ensure their participation is seen in decision-making through Parliament. You were very clear that nobody should even dream of taking away that power from Parliament; the power to carry out its role as set out in the law.

I believe that we are all talking about the Constitution. We should know that it is the product of our people. We have been through this process and the people were very clear in terms of who they were giving the final say in determining who will become the Chief Justice, the Attorney-General and the Auditor-General, among the various other people who have to be appointed. They gave that responsibility to this House; that nobody should be appointed unless he or she has been approved by this House. It does not matter where the nominations came from or how much you frustrate the process. The names will eventually have to come to this House for approval.

It is important that we bear in mind that Parliament is not just rubber-stamping. It has to approve and determine who gets appointed on behalf of the people. This is the only forum where people can participate through their elected representatives.

Mr. Speaker, Sir, I am surprised that suddenly, we are now talking about judges on a pedestal. We are talking about how the courts are good. We are the same ones who have been saying that we do not trust the judges. We got into this quagmire because we said that we cannot trust the Judiciary to make any decision, but because it seems to be making decisions in a certain favourable way, all of a sudden, it is our darling. The good thing is that, at least, we know that this Parliament represents the fullness of Kenya, through the 210 constituencies plus the Nominated Members. Nobody has doubted the ability of this Parliament to do its work. If it was not for this, we would be discussing The Vetting of Judges and Magistrates Bill. Why do we need to vet them? It is exactly because we do not have any confidence in them. When they make a ruling that we seem to be happy with, we now want the Judiciary to prevail upon Parliament not to do what it has been elected to do.

I do not want to go into the merits or demerits of how judges do their work, but as a layman, I am confused. How does one give a ruling on a matter even before the matter has gone for hearing? People are seeking an injunction and all of a sudden, a final declaration on the matter is made. This is exactly the same frustration that I heard the Director of the Kenya Anti-Corruption Commission, Dr. P.L.O. Lumumba, who we voted for overwhelmingly in this House and a very learned lawyer who I have had occasion to consult. This is the same frustration that he had about the selective misinterpretation of some of these laws when they suit some people, especially in the fight against corruption. You could see the frustration he was going through when he was told that he cannot do certain things because they are unconstitutional. These are the same people that we are now applauding here and saying that they can injunct Parliament not to do certain things when Mr. Speaker has pronounced himself very clearly that, as Parliament, we must go ahead and do what is required of us.

I believe this same Constitution gives power to Parliament. We swore to protect this Constitution in this House. That gives us power to do what is required of us. I would like to urge all the Members who would like us to give that power to the courts to go and take their oath in court to protect the Constitution from that angle and leave those of us who want to protect Parliament in Parliament to protect the supremacy of Parliament and let it do its work.

Mr. Speaker, Sir, I would like to ask you to stand by your decision and we will be there to support you.

Mr. Speaker: Order, hon. Members! I had indicated that we will finish with the Member for Kipipiri, but for very good cause, which is that the Member for Narok North

is a senior Member of this House and also a senior citizen of this country, I will make the exception and hear him and then proceed.

The Minister for State for National Heritage and Culture (Mr. ole Ntimama): Thank you, Mr. Speaker, Sir. I have always chosen to sit at this dark corner and that is probably why you have not been noticing me. Anyway, thank you very much, indeed.

This House, the Judiciary and the Executive are three arms of an Executive Government and no one arm can sit to overrule or undermine the other. That is what democracy is all about. Although my friend, hon. Kimunya, has said that the Judiciary has lost fame or something like that, I do not know about that. First, of all, I want to thank you, Mr. Speaker, for your decision which has cooled tempers in the country. Thank you very much. You know very well that I always have a lot of respect for you.

I do not know whether we are really carrying all the reputation of the people of this country as a House. You will remember very well that last year, the Media was full of reports that we have a few Members in this House who are supposed to be mouths for hire. It was put very clearly that we have a few Members in this House who are pointed out as mouths for hire. Of late, I have been wondering because I have watched people sponsoring Motions in this House and, at least, one or two Motions went straight to suggest that there was tribalism in them. They clearly went to suggest that there was favouritism and reasons to try and exonerate certain people, outside or inside this House, of wrong doings and stealing, as a matter of fact. It has not been really very good.

I congratulated Prof. Saitoti. The other day he said that the Motion on the Ambassador for the United States of America should not be debated in the House because it had not been discussed in diplomatic circles and could have brought a lot of crash between this country and the United States of America. These are the little things that go wrong when we pass these Motions. You could see that the sponsors were ganging up for trouble. I have been watching these things very carefully and I think that if we are not very careful, we will plunge this country into a constitutional crisis. I have observed that certain groups in this country want to subvert the Constitution, a good Constitution that we have passed with a lot of pain, which came out to be the best in the region and even in Africa as a whole. I have also observed that there are small groups, and very dangerous groups too, which want to scuttle the Coalition. We have not forgotten the red brigade during the campaign for the referendum. They are still there and are working. They still want to subvert this Constitution. We must, as the people, watch them, point at them and not forget them because they are there. They are having meetings all over this town for only one big reason, namely, to subvert the Constitution of this country. We must not allow them to do so.

I was very worried the other day because when House Committees were given the responsibility to make a decision as to whether the Judicial nominations were constitutional or unconstitutional. Before they started meeting, there were statements from some Members of the Committees. This indicated very clearly that they were going to talk about tribes and parties. They were not going to sit down and see whether the nominations were constitutional. They had already made statements. I do not know whether we are going to get a fair Judicial report from these Committees because they are already divided between tribes and parties. It is very clear. We are probably going to get a situation which is going to be murkier than what we have today, as a country.

Mr. Speaker, Sir, you have a responsibility, and a big one for that, because even the Constitution allows you to run this country if everything else fails. The most important thing is for you to make a real decision to try and put this country together, because we are completely asunder. There are too many things happening in this country. We know very well that for a long time, we have never been as divided as we are today. We have a lot of people who want to divide this country for their own interests. I can see things are not really going right because, as somebody said here, there is already a conflict between the Judiciary and the Executive; when those two arms of Government should actually be working together for the sake of the country. The decision by the High Court on the recent appointments goes contrary to what the Executive is saying, and it is very dangerous indeed.

I do not want to say much. My friend, Mr. Mutula Kilonzo is here. We were talking about shuttle diplomacy just a few minutes ago, but I do not remember the Cabinet approving that shuttle diplomacy. At my age, I am not supposed to tell lies. That is what my elders in Narok say. I never knew of such a decision by the Cabinet. I have never been, in many cases, absent from Cabinet meetings. Therefore, I want to say that if everything else has to go wrong, let us go back to the people. Let us have a referendum for the people, so that we can see the truth of how our people are thinking because, listening to them shows very clearly that they are dissatisfied with the way things are running right now. Things are tribal. There are many caucuses in the city today, sitting all over little hotels, trying to influence the Committee Members, and I am very worried.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well! Hon. Members, after all those views, I am satisfied that I have a feel of the position hon. Members are taking, varied as it is. I will be able to give directions on this matter as to whether or not it is *sub judice*, as asked by the Member for Kisumu Town West, on Thursday, at 2.30 p.m. In the meantime, the Committees should endeavour to live within directions as I have previously given, and not just within the directions that I gave last week. I have given many other directions on this matter. Please, live within those directions.

Mr. G. Nyamweya: On a point of order, Mr. Speaker, Sir. I am a Member of the Justice and Legal Affairs Committee. We have been sitting up to just a few minutes ago. This morning, the Member for Kisumu Town West did indicate to the Committee that he intended to raise a matter of *sub judice* in the House and the Committee pleaded with him not to do so, having felt that that out not to be the case. Is it really in order for a Member of the Committee to leave the Committee and come here to raise such an issue, leaving the Committee Members unable to respond or deal with it? I just need your guidance, so that in future, maybe, I can sneak out of the Committee proceedings and come here to do something else.

Mr. Speaker: Order! Order! Hon. G. Nyamweya, that is a legitimate concern. I will be able to speak to that matter in the directions that I will make. Now that I have become aware that it may have been deliberated in the Committee, I will acquaint myself with the Minutes of the Committee and make sure that I embrace that issue in the communication that I will make.

(Mr. Olago stood up in his place)

Mr. Speaker: What is it, Member for Kisumu Town West?

Mr. Olago: Mr. Speaker, Sir, with your permission, may I inform the House what transpired, in light of the point of order that has been raised by hon. G. Nyamweya?

Mr. Speaker: If it is going to be helpful, proceed.

Mr. Olago: Mr. Speaker, Sir, it is true that this morning, I indicated to my Committee that I was going to raise this issue on the Floor of the House, and I gave my reasons for taking that decision. The truth of the matter is that some Members of the Committee pleaded with me to delegate that responsibility to another Member of the House to do so. I told the Chairman of the Committee clearly that I would endeavour to try my best to get somebody else to do it for me. I did not get that somebody else, and I did it myself.

(Laughter)

Mr. Speaker: Order! Order, hon. Members! That will not change my position, but I will ensure that I capture whatever transpired in the Committee in the Communication and directions that I will make.

At this point, I want to urge all of us, and indeed plead with all hon. Members, that you refrain from carrying debate out of the House and out of Committees. The Standing Orders bar you from doing so. Those of you who may be tempted to do so, will do so at your own peril.

Hon. Members, that brings us to the end of Order No.7, and we should move to Order No.8 but before we do so, I have received communication from the Deputy Prime Minister and Minister for Finance, who is responsible for this Business in the Government. He has indicated that he is indisposed and, therefore, unable to proceed with this business. Therefore, I defer Order No.8, and we will take the next Order.

THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) (AMENDMENT) BILL

*(Consideration of Bill by Committee
of the whole House deferred)*

POINT OF ORDER

CONTENT OF SPEECHES

Mr. Mwau: On a point of order, Mr. Speaker, Sir. I rise on a point of order under Standing Order No.79.

Mr. Speaker, Sir, on 22nd December, 2010, the Minister of State for Provincial Administration and Internal Security, Prof. George Saitoti, adversely mentioned me in the House and made allegations that I was involved in certain criminal activity.

Mr. Speaker, Sir, I have never been involved in any criminal activity whatsoever. The Minister went ahead to state that I was being investigated as a result of a criminal complaint filed by one Michael Ranneberger, alleging that I was involved in some heinous criminal activity. As an old Member of this House, the Minister ought to have

known that Standing Order No.79(4) requires that a substantive Motion be filed before raising the matter here.

Nevertheless, Standing Order No.72 requires that his remarks be substantiated. He did not substantiate. However, he tried to rectify that position by alleging that he and his team were carrying out investigations, and that they would complete it within 30 days. Thirty days are now gone. I waited painfully for 30 days, because I wanted to know what it is that one Michael Ranneberger has against me, and what it is that he knows I have done that can cause him to make a criminal complaint against me.

Mr. Speaker, Sir, 30 days have lapsed but the Minister has not tabled any report before the House. Neither has he asked for an extension of time. It seemed then that after 30 days, the report would be ready. This is a matter of public notoriety, which the media has been serialising and alleging that the police have finished their investigations, and that the suspects have been let off the hook.

Mr. Speaker, Sir, I am not a suspect of any criminal activity. I will repeat again and reiterate that I have never committed any criminal offence at all.

Mr. Speaker: Order, hon. Member for Kilome! I allowed you to stand on that point of order, because you had put me on notice that you would want to do so, but we agreed that you would do that under Order No.7. You were to do it immediately we got to the close of Order No.7, but you did not time it correctly. That notwithstanding, I think you have said your piece, the net effect of which is that the Minister has not honoured his undertaking to complete investigations and inform the House as to the final position of those investigations.

Actually the Minister is here. When will you be able to update the House on the investigations?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, this is not the first time that a Statement has been asked for from our docket. Last week, the Deputy Leader of Government Business said that on Thursday we would be able to issue a Statement. With the indulgence of the Chair, I would request that we do it on Tuesday next week, because on Thursday, my substantive Minister will be out of the country and I will also be out of Nairobi to attend to an urgent matter. So, I am requesting the Chair to allow us to make a Statement on Tuesday, next week.

Mr. Speaker: Note that it is a very urgent matter. It is important that you do come up with that Statement. I know that the hon. Member for Juja had also put me on notice that he is concerned about this matter. These hon. Members are concerned about their reputations. So, it is critical that you do so not later than that day.

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

Mr. Speaker: Hon. Member for Juja, please, restrain yourself because we have business to carry out.

Mr. Kabogo: I am advised, Mr. Speaker, Sir. I just want to remind you that on Thursday, last week, I asked the Minister to bring that report. The HANSARD will bear me witness. You ordered the Minister to bring that report on Thursday, and we know that it is circulating all over. We have children and we are leaders! He has the report!

Mr. Speaker: Order, hon. Member for Juja! I understand you, know the pain that you are undergoing. I know that I may have ordered that they bring it on Thursday, but sometimes circumstances are such that we cannot force positions to be concluded beyond

what is humanly possible. The Assistant Minister seems to be saying that developments have been such that the substantive Minister cannot be here on Thursday. In his absence, I think it would be an exercise in futility if we insisted that the Statement comes when the person to generate it is not available.

Mr. Mwau: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! This is not a banana Republic? What is it, hon. Member for Kilome!

Mr. Mwau: Mr. Speaker, Sir, our Standing Orders define a Minister to include an assistant minister. We cannot---

Mr. Speaker: Order, hon. Member for Kilome! We are also aware of those provisions. As a matter of fact, they are so mundane that even the newest, and latest Member in this House, knows the definition of a Minister.

Mr. Mwau: Mr. Speaker, Sir, the pain is that the report has been circulated to the media. So, the media has continued antagonizing and calling us suspects. This is a conspiracy, so that maximum damage can be caused to us. This House, where we are hon. Members, should protect us and make sure that the honour of this House is respected. I cannot sit next to these other hon. Members and purport to be honourable if my credibility is in question.

Mr. Speaker: Your point is made. Mr. Ojode, please, indicate if you have released any report to the media.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, as the Assistant Minister, I am not aware of any report which has been released to the media. I will check if the report is ready, and the Chair allows, I will give it to the Leader of Government Business to table. However, you know the consequences. It is not just a question of laying the report on the Table. There will be interventions. Hon. Members will be asking questions.

Mr. Speaker: Very well! While you do that, will you please check and see that if you have not released any report, then whatever the media is purporting to circulate or serialize is, therefore, illegal? You have a law which enables you to deal with the media, if they are circulating something that is false.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, if at all there is something being serialized, I will check whether it is the same thing which the Commissioner of Police has and we will deal with them.

Mr. Speaker: Will you, please, take information from the Member for Kilome and the Member for Juja? I will want you on Tuesday, as you table the report, to make a report as to what action you took against the media, if they are serializing a report that is non-existent. Please, give us that undertaking.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, we will check whether what they are serializing, if at all there is some serialization going on, is the same as what is held by the Commissioner of Police. We will take action against the media---

Mr. Speaker: If that is so, invoke the law to deal with the concerned media houses.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Much obliged.

Mr. Speaker: The Member for Juja, I think that should satisfy you.

Mr. Kabogo: Mr. Speaker, Sir, in addition I would want to say that the investigations that were done were all over, and it is known that there are names they came across. These are the names of people the police know are dealing in drugs. Could the Assistant Minister also bring that information to the House?

Mr. Speaker: I am certain the Assistant Minister will be able to do that, if they have names.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I do not want to anticipate debate. Let us get the report, tabled it and then we will accept interventions from hon. Members. That will also come as an intervention.

Mr. Speaker: Very well! Let us go to Order No.9.

BILL

Second Reading

THE VETTING OF JUDGES AND MAGISTRATES BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I beg to move that The Vetting of Judges and Magistrates Bill be now read a Second Time.

Mr. Speaker, Sir, with your kind permission, allow me to draw your attention to Section 23 of the Sixth Schedule of the Constitution, which provides that this House do set up a mechanism and procedures for vetting the suitability of judges and magistrates who were in office on or before the 27th August 2010.

With outmost respect, this was a demand by the people of Kenya. As a matter of fact, many of them were asking for the entire existing Bench to be sent home without question. However, we settled for this compromise of vetting.

Mr. Speaker, Sir, the essence of vetting judges and magistrates is to restore public confidence in the Judiciary and provide a fresh start under the new Constitution.

In the context of transitional justice, vetting is linked to the State's duty to prevent the recurrence of human rights abuses, corruption as well as abuse of office. From this perspective, vetting can be a significant pillar of institutional reform. In fact, I am willing to say that it will be a significant pillar of institutional reform.

To this end, The Vetting of Judges and Magistrates Bill (2011) seeks to provide the legal framework through which the integrity of the concerned judicial officers with regard to their suitability to continue in public office will be assessed. I want to reassure the country, including the Judiciary, that this is not intended to be a witch-hunt nor is it intended to be punishment; nor is it intended to be some sort of whitewash, for that matter. We will not accept whitewash, but we will not engage in a witch-hunt.

Mr. Speaker, Sir, the Bills seeks to ensure that the Commission is non-political, objective and respects the rule of law, human rights and the principle of individual responsibility.

The Bill is a product of an amazingly extensive stakeholder consultations as well as contribution and input of the Commission for the Implementation of the Constitution.

As such, the Bill is in conformity with international best practices and standards. It borrows heavily from the United Nations Development Programme operational guidelines for vetting of public employees. It is essential that at this very early stage, I indicate that Clause 9(14) was in the original draft of the Ministry. The CIC thought that it should be removed, but after careful consultation with the Attorney-General, the sub-clause has found its way back. I will be seeking to persuade this House that that sub-clause should remain.

Mr. Speaker, Sir, to this end, the Bill establishes an independent Board comprising of members, none of whom was a sitting judge or magistrate on the effective date. You will find that in Clause 6 as well as Clause 8(3)(b). The vetting process in the Bill ensures that fundamental rights of the persons subject to vetting are respected and political misuse or abuse of the vetting process is prevented. The positions, subject to vetting, have also been extremely clearly defined if you look at Clause 4 of the Bill. Particular care has been taken to ensure that the independence of the judges, both in the process by which they are vetted, and in formulating the criteria is protected. In other words, the vetting is to be done by panels chaired by their own peers from within the country and the Commonwealth, because we have added a segment of three Commonwealth serving senior judges or retired judges.

Mr. Speaker, Sir, the Bill further limits the time within which the vetting process must be completed to such extension as may be granted by the National Assembly. This is in Clause 4. I will be asking this House that we do not extend this time although we have squandered a period of nearly six months since 27th August last year. I am satisfied that without fear, we can be able to finish this process before August. If we do so, this will ensure that the matter of vetting is brought to a closure and the functioning of the Judiciary is normalized within a reasonable period.

The Bill designated the vetting process in such a way that there is no vacuum at any time at all. To this end, the vetting has been staggered according to the hierarchy of the courts and you will find that if you look at Clause 20 and Clause 24(2). We will start at the top coming down. We also decided that instead of doing it haphazardly, all the panels act simultaneously so that there is uniformity.

Mr. Speaker, Sir, the most important consideration upon which the judicial officers are to be vetted are clearly set out if you see clauses 18 and 19 of the Bill. This is in line with international best practices which provide that the proposed categories for vetting criteria are clearly defined to allow for an impartial and transparent process. Again with your kind permission, I want to mention that we have drafted this Bill in line with United Nations Development Programme operational guidelines in vetting of public officers.

Mr. Temporary Deputy Speaker, Sir, allow me at this point, with your kind permission, to table before this House the Final Report of the Task Force on Judicial Reforms, chaired by the hon. Mr. Justice William Ouko and presented to the Government in July, 2010. This Task Force was appointed jointly by the Chief Justice, Attorney-General and I.

(Mr. M. Kilonzo laid the document on the Table)

Mr. Temporary Deputy Speaker, Sir, this House will see that at page 81 of the Report, the vetting of judges and magistrates is canvassed. Again, at page 224 of the Report, the guiding principles for vetting have been canvassed. The legislative content of the Bill – and I speak with confidence – derives from these consultations in addition to the consultations with the Committee on Implementation of the Constitution (CIC).

Mr. Temporary Deputy Speaker, Sir, you will note that in Clause 9(14), we have inserted the following words: “Nothing under this section shall be construed as precluding the President in consultation with the Prime Minister, from nominating and forwarding names other than those submitted by the Public Service Commission to the National Assembly for consideration and approval.”

Mr. Temporary Deputy Speaker, Sir, we have inserted that sub-clause very guided and advisedly because we recognize that the two principals are critical organs of this country. The mere fact that this power is given does not mean that it will be utilized. In any event, if it is utilized, this House, in its wisdom, will be the final arbiter as to whether whoever is nominated meets the requirements of the Constitution and the law.

Mr. Temporary Deputy Speaker, Sir, the other item---

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like you to guide me. What the Minister has just said on Clause 9(14) is very crucial and important. Could he confirm whether that insertion was with the concurrence of the CIC?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I am very grateful that my good friend, the hon. Member, has raised that issue. In fact, I have with me a letter written by the Chairman of the CIC, on 3rd February, after the publication of the Bill. The CIC is sticking to their position that, that sub-clause should be deleted. But as I said, from a policy perspective, it is my Ministry that makes this policy and I am quite confident that the House will be able to make a determination as to whether or not the sub-clause should remain. I am making what is called full disclosure, so that the House understands where I am coming from. My understanding of the Constitution is that even as we make these recommendations for the nomination process, the two principals are key players and that window should be left open. But, again, at this point, I would like to hear further contribution. My position is that consultation does not mean concurrence, agreement, consent or approval. We have consulted and this sub-clause has been inserted here in full consultation with the Attorney-General, to seek whether or not the House will approve. It will be recalled that during the actual passage of the law on the CIC, we had a similar clause. Parliament declined to have it and it was deleted. Therefore, I am giving this opportunity again to the House to say whether they recognize the two principals as the executives of this country and whether the discretion given to them by the Constitution should be respected.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not wish to interrupt the Minister, but I was thinking that because this is just one of the many constitutional Bills that will go through the hands of the CIC, it would be useful for the Chair to give a firm position, so that the CIC is guided in understanding what happens when they are arm-twisted to have a Bill that is contrary to their expectations. It would be important that this House guides the CIC.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, perish the thought of Mr. M. Kilonzo

seeking to armtwist the Commission on the Implementation of the Constitution because I am very clear in my mind the sort of legal policy that this country deserves. Therefore, I see no harm whatsoever as a Minister bringing that legal policy to the Floor of the House for the House to determine, whether they will give it its blessings or they will not. There is no property in this sub-clause. I just want to assure the House and the hon. Members that inserting this sub-clause in consultation with the Attorney-General, it is not an attempt to armtwist or for that matter, to circumvent the law. That is my interpretation of consultation. You may differ with me and that is your absolute right. My interpretation of consultation does not mean agreement to the extent that during the Third Reading of this Bill---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Minister, there is a letter you referred. Could you table it?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, allow me, therefore, so that I can conclude my contribution to table the letter that the Commission has written in full disclosure because I think it is the least that I can do. It is dated 3rd of February. It will enable you to make a decision as to how a finding should be made.

(Mr. M. Kilonzo laid a document on the Table)

Mr. Temporary Deputy Speaker, Sir, therefore, I present this Bill to the honourable House saying. Since it was first published in August last year, it has received enormous public attention. I am satisfied that the role now rests with Parliament to determine whether to give this country afresh start on the Judiciary. If you look at the end of the Bill, we have given the objects. We have satisfied all requirements.

I beg to move.

Hon. James Orenge has kindly agreed to second it.

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, first of all, I wish to commend the Minister for the work he has done. It is not an easy job making preparations for these Bills. There are quiet a myriad of Bills, which fall under his docket.

I think more than any other Minister, the Minister for Justice, National Cohesion and Constitutional Affairs is burdened with the responsibility of piloting many Bills in this House. In a matter of months, we have had several Bills, including these two. But since the promulgation of the Constitution, this Bill could be the second or third.

Mr. Temporary Deputy Speaker, Sir, you would notice that for very good reasons, under the Constitution of Kenya, the chapters dealing with the Executive have been suspended nearly in their entirety. The Chapter dealing with the legislature, the provisions that relate to the legislature, not in their entirety, but most of those provisions, have been suspended. This National Assembly is now performing the functions of the National Assembly and the Senate as contemplated in the Constitution. There are other matter that may arise that relate either to the Senate or the National Assembly as contemplated under the Constitution that this House will be required to deal with but we have not been forced to go back to the electorate. We have continued the tenure under the old Constitution until another Parliament will be elected on the basis of the Constitution

that we promulgated. Similarly, the Executive continues to function in terms of the former Constitution, which have the National Accord entrenched in it.

However, when it comes to the Judiciary, the Constitution requires of us to reform the Judiciary. Why the Judiciary? Because over the years, it has been felt that if we had an independent and impartial Judiciary, probably, we would never have got to where we got to the extent that we required a new Constitution. Even under the old Constitution, I believe in the areas of Bill of Rights, including the freedom of association, freedom of expression, all those rights, if we had a strong, independent and impartial Judiciary, we would not have gone so low. So this Bill that has been placed before the House requires the entire Judiciary to be reformed in one way or another. I think this is good for the country. One of the provisions that excite me about the Constitution says that the judicial authority of the Republic of Kenya is a delegated authority. It is an authority that is derived from the people of Kenya and delegated to the Judiciary as contemplated under the Constitution and as reformed under the many Bills that we will enact in implementing the Constitution.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Orengo, you will have 16 minutes to continue when we resume on this matter.

Hon. Members, it now time for interruption of business. The House is, therefore, adjourned until tomorrow, 9th February, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.