

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 3rd May, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

NOTICE OF MEETING TO DISCUSS MATTERS REGARDING CHAIRPERSON OF JUSTICE AND LEGAL AFFAIRS COMMITTEE

Mr. Speaker: Hon. Members, I have the following communication to make.

Hon. Members, the Office of the Speaker received a copy of a letter dated 21st February, 2011, from seven Members of the Departmental Committee on Justice and Legal Affairs, addressed to the Chairperson of that Committee, and expressing their desire to pass a resolution that they have no confidence in the Chairperson pursuant to the provisions of the Standing Order No.175, and requesting the Clerk to convene a meeting to deliberate on the matter.

Subsequently, the Office of the Clerk received another letter dated 16th March, 2011, from some Members, who had signed the earlier letter of 21st February, 2011, urging the Speaker's and the Clerk's Offices to urgently convene a meeting to resolve the matter.

After consultations, the Clerk convened the meeting requested above, on the 29th March, 2011, which was chaired by the Deputy Speaker. The meeting ended without the resolution envisaged under the provisions of Standing Order No.175.

Another notice of a meeting was given for the Committee to meet on Thursday, 28th April, 2011, to address the same matter under the Chairmanship of the Deputy Speaker. I am informed that in this meeting there was no conclusive resolution on the matter either.

In view of the foregoing, and in order to settle this matter, I direct the Clerk of the National Assembly to convene a meeting of the Departmental Committee on Justice and Legal Affairs on Thursday, 5th May, 2011 at 11.00 a.m. in Committee Room No.7 to finalize the matter in accordance with the provisions of Standing Order No.175, and that the outcome of the meeting be reported to the Liaison Committee. The notice convening the meeting will be dispatch by the Clerk of the National Assembly to the following Members of the Committee, whose membership was approved by the House, on Wednesday, 17th June, 2009:-

Hon. Ababu Namwamba, MP, Chairperson
Hon. Njoroge Baiya, MP, Vice-Chairperson
Hon. Millie Odhiambo-Mabona, MP

Hon. Isaac K. Ruto, MP
Hon. Olago Aluoch, MP
Hon. Sophia Abdi Noor, MP
Hon. Amina Abdalla, MP
Hon. Mutava Musyimi, MP
Hon. Abdikadir Mohammed, MP
Hon. Eugene Wamalwa, MP
Hon. George Nyamweya, MP
This will be a closed door meeting.

Photocopies of the two letters referred to herein above dated the 21st February, 2011 and 16th March, 2011 are both annexed hereto.

I thank you.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. Thank you for that statement. However, there is a trend that is emerging, which is worrisome. Some media houses are taking the liberty to create an impression that there is conflict. That the Office of the Speaker is interfering with the running of the House Business; not only the Office of the Speaker, sometimes, some media houses, without any basis take upon themselves to run the business of this House even without any facts, causing anxiety and animosity among the public.

Mr. Speaker, Sir, would I be in order to request that such media houses be admonished; that the issue of running the business of the House shall be left to the House? These speculations are causing undue anxiety to the public and the House. A good example is the issue you have just ruled on. Some media of houses have gone to an extent of alleging that the Chair, who is the Speaker himself, is protecting the removal of the Chairperson of that Committee. This is without any basis and evidence. Those media houses need to stand guided, because the business of the House is not run through the media.

I thank you.

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order, Member for Gwassi. This matter must rest with the Communication I made. Under practice, traditions and rules, a Communication by the Speaker is not subject to debate.

However, the issues canvassed by the Member for Mutito are important and pertinent. If anything, they do not seek to debate the Communication, which I have made. But they express a concern, which is obviously legitimate that the media cannot run this House, or even Committees of the House outside the House.

As we know, for all practical purposes, and as a matter of fact, the media is a stranger to the conduct of business in this House. The media must respect that position. What the media is enjoined to do is to report the proceedings, as they take place in this House and its Committees, accurately and factually. I urge the media to endeavour to do so. Stay within the parameters of what is in the public interest and what is constitutionally provided for, as the right for the public to access information. It is not for the media – and they must refrain from this – to speculate and read implications into things where they do not exist.

On that basis, I want to urge media houses to restrain themselves because, as a matter of fact, the media has said many times that it has organs and instruments in place to internally control itself. I want this to be demonstrated in actual practice, and not just in rhetoric or writing. So, the media is accordingly guided. If we have instances where the media will stray from this rule of thumb, then, I am afraid, we will have to deal with each one of them singly, case by case. All hon. Members, including the Member for Mutito, are allowed to raise those concerns, as and when they arise.

In so far as the Office of the Speaker is concerned, it is a matter that is of public knowledge that the Speaker is the Speaker of the National Assembly. It is for this reason that the Constitution of Kenya expressly provides that the Speaker shall not represent any constituency. So, my constituency, as a matter of fact, is the Republic of Kenya. I have no partisan interests. I do not belong to any particular political party, notwithstanding the fact that at the time I was elected, I came from a party, but I immediately ceased, as I assumed office, to be a member of any particular party. I apply myself as best as I can, in accordance with the Constitution, in accordance with the rules, in accordance with the Standing Orders. I have no interest in a particular hon. Member of this House other than that that Member is my colleague, because I am an ex-officio Member of this House. So, that is how I relate to hon. Members of this House.

In so far as the conduct of business is concerned, the business of this House will be conducted in accordance with the Constitution, in accordance with all relevant law, in accordance with the Standing Orders, in accordance with usages, forms, precedent, customs, procedures and traditions of the National Assembly. We will play by the rules, and I urge the media to do so as well. It should reciprocate kindness to the National Assembly and to this nation. I will expect that from today onwards, the media will be progressive in each report. It may be coincidental that hon. Ababu Namwamba does not come very far from the home where my parents gave birth to me, but that does not mean that I, therefore, favour him. I have no such interest. Hon. Members, I urge you to, please, note this.

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

Mr. Speaker: I will not allow any further points of order on this matter. It must rest where it is.

Next Order!

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Departmental Committee on Defence and Foreign Relations on the familiarization visit to the Kenyan Embassy in Somalia, dated 11th November, 2010

(By Mr. Keynan)

Report of the Departmental Committee on Finance, Planning and Trade on The Salaries and Remunerations Commission Bill, 2011

(By Mr. Okemo)

NOTICE OF MOTION

ADOPTION OF REPORT ON TOUR OF KENYAN EMBASSY IN SOMALIA

Mr. Keynan: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the familiarisation visit to the Kenyan Embassy in Somalia, laid on the Table of the House on Tuesday, 3rd May, 2011.

ORAL ANSWERS TO QUESTIONS

Question No.747

FATE OF “PYRAMID SCHEME” MONEY HELD BY BANKS

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

(a) what became of the approximately Kshs5 billion held by the Central Bank of Kenya and other commercial banks in “frozen” accounts belonging to “pyramid schemes”;

(b) when the “pyramid scheme” victims will be refunded their money; and,

(c) why the Government has failed to institute criminal proceedings against the directors/proprietors/officials of the schemes.

Mr. Speaker: Deputy Prime Minister and Minister for Finance!

The Minister for Agriculture (Dr. Kosgei): Mr. Speaker, Sir, I have been asked to convey the apologies of the Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance, Dr. Oburu, who was on his way to Parliament, but who was suddenly taken ill.

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

Mr. Speaker: What is it, Member for Yatta? You have heard that the Assistant Minister is unwell!

Mr. C. Kilonzo: Mr. Speaker, Sir, you will agree with me that this matter has been here for long. I personally spoke with the Personal Assistant to the Minister himself, and we agreed that this matter can be handled by any other Minister, because it is only a matter of tabling documents. So, I am now looking for the chair’s protection. This is a deliberate move by the Government to refuse to address the issue of “pyramid schemes”, because tabling documents does not need to be by the Minister. It can be done by anybody in the Government.

Mr. Speaker: Those sentiments are valid. Hon. Sally Kosgei, could you undertake that this Question will be answered on Thursday, at 2.30 p.m., even if the Minister will not be here?

The Minister for Agriculture (Dr. Kosgei): Mr. Speaker, Sir, I will convey that information to the Ministry of Finance; I was only requested on my way here to convey the information that hon. (Dr.) Oburu Odinga had suddenly been taken ill. I can only promise to do that, because this afternoon I have to go to a Government meeting outside the country. Therefore, if I undertake to answer this Question, I may not deliver and I do not like making undertaking things that I cannot deliver on; but I will certainly convey that information to the Ministry of Finance. I will also ask my colleagues, who are in the House Business Committee to, today, convey the message to the Ministry of Finance, which is represented on this Committee.

Mr. Speaker: Please, sensitise the Minister to ensure that he is here on Thursday afternoon, at 2.30 p.m. If he will not be here, he should designate somebody else to actually answer this Question. It has been pending for a long time. So, I even agree. Unless there is something which the Minister thinks should not come out to the public, the Question must be answered. We must bring it to an end.

The Minister for Agriculture (Dr. Kosgei): Mr. Speaker, Sir, you are very clear. So is hon. C. Kilonzo. The message will be conveyed this afternoon.

Mr. Speaker: Very well! Note, Member for Yatta. You will definitely deal with it in some manner or other.

Next Question, Member for Samburu East!

Question No.756

ESTABLISHMENT OF GUM/RESIN
FACTORY IN SAMBURU EAST

Mr. Letimalo asked the Minister for Industrialization:-

(a) whether he could indicate the potential of “*Gum Arabic*” and “*Gum Resins*” in northern Kenya; and,

(b) when the Government will establish a gum and resin factory at Sere Olipi in Samburu East, which has abundant *Acacia Commiphora* trees.

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

(a) The potential for “*Gum Arabic*” is estimated at 31,732 metric tonnes per year. At the current market prices of US\$2.3 per kilogram, this is estimated to be worth US\$72.9 million, which is the equivalent of approximately Kshs6 billion per year.

(b) The Government through the Ministry of Regional Development Authorities, in particular, through the Ewaso Nyiro North Development Authority, is looking at the prospect of establishing a Gum Arabic factory at Sere Olipi in Samburu East. The Ewaso Nyiro North Development Authority is also constructing a factory for resins and gums at Wajir, which is ongoing and is currently 75 per cent complete.

Mr. Letimalo: Mr. Speaker, Sir, even though the Assistant Minister is reading a different answer from what he has given me, I will still be able to ask some supplementary questions. I want to thank him for that answer. It is true, just like he has said, that the manufacturing sector in Kenya is largely concentrated in urban and peri-urban areas. The ASAL districts have few options for alternative sources of livelihood due to the difficult environmental conditions. Now that gum and resins are found in

abundance in these ASAL districts, why should the Government stagger the construction of our factories instead of building them concurrently in districts where these raw materials are found in plenty?

Mr. Muriithi: Mr. Speaker, Sir, first of all, it is true that I did not read the answer verbatim, but I merely summarized the key points. The Government is a facilitator. It is not expected that the Government will be the key developer and builder of industries across Kenya. The Government is a facilitator. Its job is to create an environment that allows the private sector to build factories and industries across Kenya. For example, if you invest outside the urban and peri-urban areas, the Government gives you an incentive by providing you with an investment allowance of 150 per cent. So, you get to write off your investment one and a half times. This is intended to encourage private investors to go there.

In the specific location, the Government is establishing a collection centre for all Gum Arabic, so that the volumes can be properly estimated in order to encourage the private investors to construct the factories.

(Loud consultations)

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): On a point of order, Mr. Speaker, Sir. We cannot hear what the Assistant Minister is saying!

Mr. Speaker: Order, hon. Members! Please, lower the level of your consultations, so that we can hear those who are contributing.

Mr. Affey: Mr. Speaker, Sir, the Assistant Minister has said that this has a potential of generating Kshs6 billion yet he does not give any concrete activities of the Government to encourage the farming of this very important Gum Arabic. What is the Government doing to encourage Kenyans to grow this Gum Arabic? What incentives is the Government giving to investors so that they can put up factories in places where the Government has failed to do so over the last few years?

Mr. Muriithi: Thank you, Mr. Speaker, Sir, for asking the Members to consult quietly. I have just answered the question that hon. Affey is asking. He has asked about the incentives that we are providing to private investors so that they can invest in this area. I have just explained that right now, we have an incentive called investment allowance which provides that if you establish a factory outside an urban centre, you will write-off your investment one and a half times before you begin to pay Income Tax. This means that you will enjoy, perhaps, the best tax holiday anywhere in this world by establishing a factory outside the urban centres.

In addition, I have just explained that through the Ewaso Nyiro North Development Authority, we have put up one factory and we are putting up a collection centre at Sere Olipi in Samburu East in order to provide a platform to encourage private investors.

*(Mr. Haji stood in front of
Mr. Muthama and Mr. Mwau)*

Mr. Speaker: Order, hon. Haji! You can consult those Members if you sit in between them! Please, sit in between those Members and consult with them, if you must

talk to both of them! If you read the Standing Orders, they will tell you that you are not allowed to stand and stay still in the passageways of the House. This is your Fourth Term, you know that, obviously!

Dr. Otichilo: Mr. Speaker, Sir, you have heard from the Assistant Minister that gum resins are very important and have a potential to give this country a lot of money. Now that we do not have a factory, how are the gum resins that are currently being harvested on *ad hoc* basis marketed? How much money is this country receiving from this very important product?

Mr. Muriithi: Mr. Speaker, Sir, most of what is harvested today is exported. Just to provide some details, approximately 700 metric tonnes is consumed in Nairobi. About 560 metric tonnes go to the paint industry, 86 metric tonnes go to the food industry and approximately 20 metric tonnes is used to produce ink. As I said, the current export price is US\$2.3 per kilogramme. The collectors in the north earn about US\$1.5 per kilogramme. Therefore, approximately US\$1.8 million is going into the economy out of what is being harvested today.

Mr. Letimalo: Mr. Speaker, Sir, the Assistant Minister has said that the factory in Wajir is 75 per cent complete, which is supposed to pave way for the construction of another factory in Sere Olipi. When does he intend to start constructing a factory at Sere Olipi?

Mr. Muriithi: Mr. Speaker, Sir, as I have explained, the factory that we are building in Wajir under the Economic Stimulus Programme is intended to demonstrate that manufacturing and processing is possible. In Samburu East, we have looked at establishing a collection centre to allow private investors to see the absolute enormous potential of Gum Resins and Gum Arabic.

Question No.667

COST OF UPGRADING POLYTECHNICS

Mr. K. Kilonzo asked the Minister for Youth Affairs and Sports:-

(a) whether he could state the amount of money spent in upgrading polytechnics in the 2009/2010 Financial Year as well as the amount utilized in the 2010/2011 Financial Year for the purpose;

(b) how many polytechnics were established in the 2010/2011 Financial Year; and,

(c) what criteria is used in selecting the constituencies/districts to establish youth polytechnics and whether Mutito Constituency meets such criteria.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry spent a total of Kshs391,117,000.52 in the 2009/2010 Financial Year in constructing new workshops, hostels, procurement of tools and equipment. The Ministry plans to use a total of Kshs590,300,000 in the 2010/2011 Financial Year to upgrade youth polytechnics.

(b) Forty five youth polytechnics have so far been established in the 2010/2011 Financial Year.

- (i) (c)The following criteria was used to equip and construct projects in youth polytechnics:-geographical distribution;
- (ii) community contribution towards the project through Constituencies Development Fund (CDF), Local Authorities Transfer Fund (LATF) and others; prioritized needs by Provincial Directors in the Ministry of Youth Affairs and Sports;
- (iii)consideration of past projects and earmarked projects for development by the Ministry or in conjunction with the development partners in the country;
- (iv)the number of youth polytechnics in each province;
- (v) youth polytechnics with potential to roll out new curriculum in terms of enrolment, staff and management.
- (vi) the youth polytechnics should have been registered with the Ministry of Youth Affairs and Sports; and,
- (vii) Land ownership. The Youth polytechnic is supposed to have a title deed or an allotment letter for the land.

Mr. Speaker, Sir, Mutito Constituency meets the criteria and already, three youth polytechnics are supported and registered by the Ministry in that constituency. They are Mutito, Zombe and Kanduti youth polytechnics. Three more youth polytechnics are being assessed for registration and subsequent support. They are Endau, Mbitini and Muthulini youth polytechnics.

Mr. K. Kilonzo: Mr. Speaker, Sir, I want to thank the good Assistant Minister for this answer. However, I want to inform the Assistant Minister who comes from this region that Mbitini is not in my area. Mbitini is actually in Kitui Central Constituency, and yet it has been included in this answer. When will the Assistant Minister include Mathulini Polytechnic which was in the list of the polytechnics to be constructed at a cost of Kshs5 million? I did hand over the letter of request to the Assistant Minister, and yet it does not appear among those where Kshs5 million has been spent on construction. When will she do that?

Ms. Ndeti: Mr. Speaker, Sir, first, I wish to apologise for putting Mbitini in Mutito. Mathulini Youth Polytechnic has not been registered yet with the Ministry of Youth Affairs and Sports but it is in the process of being registered. I can assure the hon. Member that once it is registered, we will make sure that it gets the support that it needs from the Ministry of Youth Affairs and Sports. If you want us to develop more youth polytechnics for you, you need to enroll more students in those youth polytechnics, since the Government is paying for each student subsidized fees of Kshs15,000.

Mr. Njuguna: Mr. Speaker, Sir, while thanking the Assistant Minister for the very positive reply that she has given, could she inform the House what steps the Ministry has taken to make sure that the started youth polytechnics are completed, so that our youth can start learning in those institutions? In my constituency, I have Nyanduma which is incomplete.

Ms. Ndeti: Mr. Speaker, Sir, we will complete most of the projects that we have started, as the Ministry of Youth Affairs and Sports because we have a budget for them. Maybe the hon. Member should find out because I am not very sure whether some of the blocks were started by the Constituencies Development Fund (CDF) or the Local Authorities Transfer Fund (LATF). However, whatever is done by the Ministry of Youth Affairs and Sports will be completed.

Mr. Gunda: Mr. Speaker, Sir, out of the monies being used to upgrade the polytechnics, how much has the Italian Government put in to assist in this exercise?

Ms. Ndeti: Mr. Speaker, Sir, I do not have the figure here, but I am willing to give it to the hon. Member. However I can assure the House that the Italian Government has helped in a number of the youth polytechnics. We will commission some of them on 5th and 6th. I am prepared to forward the information to the hon. Member.

Mr. Koech: Mr. Speaker, Sir, in order for the Government to encourage and assist the very poor to access education at the polytechnics, the hon. Assistant Minister has confirmed that the Ministry actually pays to the tune of Kshs15,000 per student. The truth on the ground is that the same polytechnics still charge the same fees that were charged before this subsidy. What has the Ministry done to ensure that whatever parents were paying is completely waived and that the children can access village polytechnics free of charge because the Government is paying Kshs15,000 per student?

Ms. Ndeti: Mr. Speaker, Sir, I would like to have the evidence of the youth polytechnics which charge the same fees that they charged before and we, as a Ministry, will take action.

Mr. M'Mithiaru: Mr. Speaker, Sir, most of the youth polytechnics that we have today, including one in my constituency called "Ithima Youth Polytechnic" have low caliber tutors whose pay is very little because the management is unable to employ good tutors. When will the Ministry start a proper scheme of service for the tutors in youth polytechnics, so that they can attract a good calibre of tutors?

Ms. Ndeti: Mr. Speaker, Sir, if the hon. Member has been following what has been happening in the newspapers, he will realise that we advertised for training positions in the youth polytechnics and the interviews are going on. Once we finish, we will ensure that we have an adequate number of trainers in the schools. On payment of the trainers, some are paid by the management committees of the polytechnics while others who are registered with the Ministry; we top up their salaries. So, we need to be clear. If there are any queries regarding your polytechnics, please, visit our Ministry and we will be able to sort them out for you.

Mr. Speaker: Last question, Mr. K. Kilonzo!

Mr. K. Kilonzo: Mr. Speaker, Sir, I want to take this opportunity to thank this Assistant Minister for that wonderful and detailed answer. Could she give a commitment that she will visit Mutito to see for herself the dilapidated state of these polytechnics and decide how she will encourage our people by equipping those institutions?

Ms. Ndeti: Mr. Speaker, Sir, I am ready to visit Mutito. However, we will need, first, to register the youth polytechnic with the Ministry. Once we have done so, we will be able to visit the area. So, let us make sure we register it.

Question No.692

ISSUANCE OF LEASEHOLDS FOR
INDUSTRIAL PURPOSES

Mr. Speaker: Hon. Member, Question No.692 will be deferred to Thursday afternoon, at 2.30 p.m. because the Member for Kisumu Town West is away from Nairobi on official parliamentary business.

(Question deferred)

Question No.869

KILLING OF NANCY VICKY AKINYI

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

(a) Whether he could apprehend the real killer(s) of Ms. Nancy Vicky Akinyi considering that a Mr. Erick Onyango, the suspect in the case, was set free by the court,

(b) What the investigations by the Mtwapa Police revealed and whether he could table copies of the post mortem report, and;

(c) Whether he has satisfied himself that the police are not concealing the identity of the real culprits in the case.

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

(a) I am aware that the suspect in the murder case, Mr. Erick Onyango was acquitted by the court. However, the police case file was forwarded to the hon. Attorney-General for advice on 16th March, 2011. Once the same is received from the Attorney-General, appropriate action will be taken.

(b) According to the evidence collected by Mtwapa Police Station, there was adequate evidence linking Erick Onyango with the crime. Similarly, the Attorney-General's office had concurred through the recommendations of the investigating officers to charge Erick Onyango.

A copy of the post mortem report is hereby tabled.

(Mr. Ojode laid the document on the Table)

(c) Mr. Speaker, Sir, the Minister is satisfied with the manner the police conducted the investigations. There is no evidence that the police are concealing anything against any known suspects in this particular case.

Mr. Ochieng: Mr. Speaker, Sir, this lady died a very painful death in police cells sometime in the year 2004. I do not want to agree with this answer because the lady died in the cells. There is no way the police can actually conclude this matter since they were to blame. Therefore, they cannot investigate themselves fairly.

Could the Assistant Minister agree to tell this House or deny the facts that I am posing across, that this lady actually died in the cells?

Mr. Ojode: Mr. Speaker, Sir, as I mentioned, I am not very sure whether this lady died in the cells or not. The brief I got is that there was a quarrel in a bar within Mtwapa. Later on, the lady could not pay her bill and the bouncers had to be called. Eventually the lady is the one who went to the Mtwapa Police Station in order for the bouncers to be arrested which the police did. I am not sure whether she died at the bar or at the police station. As far as the records are concerned, she never died at the police cells.

Mr. Ochieng: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to deny the true fact that this lady actually died in the cells and yet, he knows very

well that this lady, after getting involved in a brawl in the bar, walked to the police station to report this incident without being assisted? Is he in order?

Mr. Speaker: Order, Member for Nyakach. That does not amount to a point of order. It is a matter of argument. The Assistant Minister has put one proposition and you are arguing that that is not true. So, it cannot be a point of order. There is nothing in breach of the rules. But you have an opportunity to ask a supplementary question at the end.

Mr. Mwangi: Mr. Speaker, Sir, you have heard the Assistant Minister say that he is not sure. Part “c” of his answer, says the investigations are going on. However, he is not sure of the investigations. Is it appropriate to conclude this Question when he admits that he is not sure whether the investigations are correct or whether this lady died in police cells? If she reported to the police, where else will they have put her if it was not in cell?

Mr. Ojode: Mr. Speaker, Sir, that is the reason why we are waiting for the Attorney-General to give us direction. There is an allegation that the lady was taken to the hospital and then, later on, died in the hospital. There is also another school of thought which suggests that the lady died where they were fighting. So, the investigation is what will reveal where the lady died; whether she died while being attended to at the hospital; whether she died in the cells or whether she died at the bar. That investigation will reveal.

Mr. Speaker: Order, Mr. Assistant Minister. Maybe we can assist the Member for Nyakach. According to the post mortem report which you have tabled, this incident occurred in the year 2004. We are now in 2011; this is seven years down the line. What investigations are you still carrying out, Mr. Assistant Minister?

Mr. Ojode: Mr. Speaker, Sir, as I did mention, the Attorney-General is supposed to give us the way forward since Erick Onyango who was zeroed in on had been acquitted by the court on the matter. The police zeroed in on Mr. Onyango for the murder---

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

Mr. Speaker: Mr. Assistant Minister, do you wish to be informed?

Mr. Ojode: Yes, Mr. Speaker, Sir.

Mr. Speaker: Proceed, Member for Nyakach.

Mr. Ochieng: Mr. Speaker, Sir, I have several letters here. One of them is written by Mrs. Dorcas Oduor who is a Deputy Chief State Counsel in the Attorney-General’s office, directing the Commissioner of Police on the 17th of December, 2008, to actually move very fast and investigate this matter thoroughly and then forward the details of the investigation back to the Attorney-General.

The lady, Dorcas Oduor, wrote again to the Commissioner of Police on 17th February, 2009. Again, the last one went to the Attorney-General’s Chambers on 7th February, 2011. All these letters have not elicited any response from the Police Commissioner. This is why this matter is very grave. That is why I want to believe that the police are concealing those who murdered this girl after Judge David Maraga in Mombasa had acquitted Onyango of any offence in this matter.

Mr. Speaker: Member for Nyakach, would you want to table those letters?

Mr. Ochieng: I can table these letters so that the Assistant Minister becomes aware.

(Mr. Ochieng laid the documents on the Table)

Mr. Speaker: Mr. Assistant Minister, now that you have that information, what is your position?

Mr. Ojode: Mr. Speaker, Sir, let me go through the letters and then I will order the Police Commissioner to go ahead with the investigations and I will report back to the House within two weeks---

Mr. Ochieng: On a point of order, Mr. Speaker, Sir! I still want to dispute. Is it in order for the Assistant Minister to keep on repeating that the police will investigate this matter and yet up to this point---

Mr. Speaker: Order, Member for Nyakach. You know sometimes you need to relax a bit, then you can follow what is going on, which may very well be in your interests. The Assistant Minister has said that he will order the Commissioner of Police to complete the investigations and report back to him within two weeks. Surely, you cannot be saying that what he is saying is out of order now.

Member for Nyakach, it is sometimes good to relax and follow the proceedings. It helps you.

Yes, Dr. Eseli!

Dr. Eseli: Mr. Speaker, Sir, with your indulgence, that is a very sad case. The lady was involved in a bar brawl over a bill of Kshs30. They called in a bouncer who roughed her up. She went to the police to report. They came to arrest the bouncer. They went with the bouncer to the police station. The bouncer, somehow, turned the tables on the lady. She was put in the cells, only to be found dead and, possibly, raped. Since then, that bouncer was charged with murder and acquitted by a judge. The judge instructed the police to produce the person who murdered that lady. To date, the police have not produced the murderer. What other ways is the Assistant Minister going to use, apart from the Police Commissioner--- It looks like it is not possible for them to investigate and arrest themselves. What other methods do you have to ensure that the killers of that lady who, apparently, was a jolly person reveling around and running out of money, are apprehended? What other methods are you going to use to ensure that the culprits who murdered that lady – and it appears to be the police - are eventually brought to book? That is because we fear the police are covering up the incident.

Mr. Ojode: Mr. Speaker, Sir, I have gone through the letters. Indeed, it is true that there is a letter that was written on 7th February 2011 by Dorcas Oduor, instructing the police to establish the status and progress of the case. I think I am quite in order to say that the Commissioner of Police will have no choice but to send our detectives to investigate that matter. I will be able to report this matter to this House within two weeks. I do not want to go into allegations. The hon. Member is suggesting that the lady was raped by somebody in the police cells. No! Let us not go that way because he does not have any evidence to show that the lady was raped by police officers. If you have any evidence, we can also have it.

Dr. Eseli: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to accuse me of speculation when I was just quoting what the judge said? He said that she was possibly raped. I did not say she was raped. I said that she was possibly raped and I was just quoting what the judge said in his ruling.

Mr. Ojode: Mr. Speaker, Sir, why go for allegations and yet, I have tabled the post-mortem report? That report does not talk about rape at all.

Mr. Ochieng': Mr. Speaker, Sir, the reason why I was still adamant that the police cannot investigate themselves is that in Part (c) of the Assistant Minister's answer, he says that he is satisfied in the manner in which the police concluded the investigations. He also says that the police are not concealing any evidence. So, what kind of investigations is the Commissioner of Police going to carry out? Would I be in order to request you to allow this matter to proceed to the relevant Departmental Committee of the House?

Mr. Speaker: Ask you last question, Member for Nyakach. We will finish with your last question, which you have asked and I have heard you.

Mr. Ochieng: Mr. Speaker, Sir, when does the Assistant Minister expect the Commissioner of Police to file his report to his office, so that we can get to the bottom of those who killed that young lady?

Mr. Ojode: Mr. Speaker, Sir, I mentioned that two weeks from today, I will bring a report from the Police Commissioner.

Mr. Speaker: Very well. Mr. Ochieng, you can follow up the matter after two weeks. If you are not satisfied, you can come back to the House.

Next Question by Mr. Sirat!

Question No.743

LOW BUDGETARY ALLOCATION TO
WAJIR SOUTH CONSTITUENCY

Mr. Sirat asked the Minister of State for the Development of Northern Kenya and other Arid Lands:-

(a) why Wajir South Constituency was allocated only Kshs.900,000 in the 2010/2011 Financial Year while Wajir East Constituency was allocated over Kshs.40 million;

(b) whether he could update the House on the status of the sewerage program in Wajir East District, who the contract was awarded to and where and how the water to pump the sewerage will be sourced from; and,

(c) whether the Ministry has achieved the mandate for which it was created.

The Assistant Minister, Ministry of State for Development of Northern Kenya and other Arid Lands (Mr. Sasura): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry funds projects across all the areas under its jurisdiction---

Mr. Sirat: On a point of order, Mr. Speaker, Sir. May I have the written answer, please?

Mr. Speaker: Order! Please, resume your seat for a moment. Mr. Assistant Minister, do you have the answer?

The Assistant Minister, Ministry of State for Development of Northern Kenya and other Arid Lands (Mr. Sasura): Mr. Speaker, Sir, we sent this answer a long time ago. That is because the Question was asked two or three months ago. Maybe, he did not check from his office. It was sent.

Mr. Speaker: Order! Just for convenience and so that we do not lose valuable time, can you pass the answer you have to the Member? Then we will revisit the Question towards the end of Question Time.

The Assistant Minister, Ministry of State for Development of Northern Kenya and other Arid Lands (Mr. Sasura): Okay.

Mr. Speaker: All right. Next Question by Mr. Anyanga! He is not here? Hon. Members, we are informed that the hon. Member for Nyatike is away on official parliamentary duty out of the country. So, this Question will be deferred to Tuesday next week at 2.30 p.m.

Question No.750

PROJECTS UNDERTAKEN IN NYATIKE CONSTITUENCY
BY LAKE BASIN AUTHORITIES

(Question deferred)

Mr. Speaker: Next Question by Mr. Kioni! Mr. Kioni is not here? His Question is dropped.

Question No.775

RE-INTRODUCTION OF ALCO-BLOW

(Question dropped)

Mr. Speaker: Next Question by Mr. Waibara!

Question No.784

NUMBER OF DEATHS AT NG'ETHU WATER
TREATMENT WORKS

Mr. Waibara asked the Minister for Water and Irrigation:-

(a) whether she could state the number of people who have died while working for Ng'ethu Water Treatment Works in Gatundu North since its inception, indicating their respective names, dates of death and causes of death;

(b) how many people have drowned in the neighbouring Ng'ethu Sub-location due to untreated water being released unexpectedly by Ng'ethu Water Treatment Works into Geitho River and whether any of the bereaved families been compensated and, if so, how much; and,

(b) what measures she has put in place to ensure safety of residents crossing the Geitho River as well as workers at Ng'ethu Water Treatment Works.

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

(a) Since the inception of the rehabilitation of Ng'ethu Water Treatment Works in Gatundu North, five people have died. The deaths of the five people occurred on 21st June 2010. The five people died when a stretch that was being excavated caved in burying them alive in the trench.

(b) I am not aware of people drowning in Ng'ethu Sub-location as a result of releases from Ng'ethu Water Treatment Works. However, I am aware that two people have been reported to have drowned in the pool discharging water from Ng'ethu Water Treatment Works back to the river. It is not known how the two people found themselves in the pool and the matter is under police investigation. During water production, a mixture of sledge and waltz water is produced due to segmentation and filter cleaning processes. For Ng'ethu Treatment Works, the sledge that is produced is diverted to the pool for resettlement purposes. From the pool, the water flows through the channel to Geita Valley and back to Chania River. The pool and the channel are fenced off with mesh wire and vandals have, on several occasions, destroyed the mesh wire, exposing the residents to risk. In a bid to enhance the safety of the residents, Nairobi Water Company in collaboration with the local residents and the Provincial Administration, have held meetings to sensitise the local residents on the importance of the water discharge, the mesh wire fence and urged them not to vandalize the facility.

(c) Nairobi Water Company has plans to rehabilitated the wire at a cost of Kshs1 million.

Mr. Waibara: Mr. Speaker, Sir, as I appreciate the answer given by the Assistant Minister, could he inform the House whether the bereaved families have been compensated and, if so, by how much? If not, when are they going to be compensated?

Mr. Waititu: Mr. Speaker, Sir, the death of five people was a result of an accident by way of a channel falling off. The matter is being handled by the police so that we can compensate them.

Ms. Karua: Mr. Speaker, Sir, the police handle criminal issues and not civil issues dealing with compensation. Could the Assistant Minister be specific and tell us when he will engage the families of the deceased so that they can be compensated, without claiming that the police are handling compensation issues?

Mr. Waititu: Mr. Speaker, Sir, the families are yet to forward their claims to the Minister so that we can consider the compensation.

Mr. Ruteere: Mr. Speaker, Sir, that serious accident caused the deaths of five people. What precautionary measures has the Assistant Minister taken to ensure that such an accident will not occur in future?

Mr. Waititu: Mr. Speaker, Sir, it is important for the hon. Member to understand that this accident occurred due to the construction that was being undertaken by a company called Kurdat Singh Construction which was building some trench. After lunch break, some of the casual workers went to the trench and because it had some loose soil, it buried them. This is an accident that had not occurred before.

Mr. James Maina Kamau: Mr. Speaker, Sir, why is the Government not finding it fit to have security guards patrolling that area day and night?

Mr. Waititu: Mr. Speaker, Sir, this treatment plant is on an area of about 100 acres which is well fenced but there are some people who have been trying to access the area for grazing and have been cutting the fence. Some neighbours have also been

trespassing on the land. The Ministry is planning to put up an electric fence to make sure that nobody enters the area.

Mr. Waibara: Mr. Speaker, Sir, what action has the Ministry taken on the contractor; Kurdat Singh, who opted for a shorter channel to Chania River to cut down costs thus leading to the death of five people? Will the Ministry also ensure that the contractor compensates the families of these five men who died?

Mr. Waititu: Mr. Speaker, Sir, the contract that was awarded to Kurdat Singh is still ongoing using the bill of quantities for the works. I would like to ask the hon. Member to request the families to forward the claims so that we can try to settle the issue through our channels at the Ministry.

Question No.824

SCHOOLS FUNDED BY KESSP IN KONOIN CONSTITUENCY

Mr. Speaker: Is Dr. Kones not in the House? That Question is dropped!

(Question dropped)

The Assistant Minister for Education (Mr. Mwatela): On a point of order, Mr. Speaker, Sir. I really do not know why the hon. Member is not in the House but this Question attempts to interrogate a very important area in my Ministry. I have tried to get an adequate answer and I have not managed to get it. So, I would like the Question to be deferred rather than being dropped.

Mr. Speaker: Order, Mr. Mwatela! You do not enjoy that prerogative. I will live within the Standing Orders.

Question No.743

LOW BUDGETARY ALLOCATION TO WAJIR
SOUTH CONSTITUENCY

Mr. Sirat asked the Minister for Development of Northern Kenya and Other Arid Lands:-

(a) whether he could explain to the House why Wajir South Constituency was allocated only Kshs900,000 in the 2010/2011 financial year while Wajir East Constituency was allocated over Kshs40 million;

(b) whether he could update the House on the status of the sewerage program in Wajir East District, who was awarded the contract, where and how the water to pump the sewerage will be sourced from; and,

(c) whether the Ministry has achieved the mandate for which it was created.

The Assistant Minister, Ministry of State for Development of Northern Kenya and Other Arid Lands (Mr. Sasura): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry funds projects across all areas under its jurisdiction and not necessarily on the basis of constituencies. The projects, their identification and prioritization is a

continuous process and only those projects that have gone through the preliminary processes and estimates are funded.

The funds referred to were part of development funds released during the first half allocation of the period of July to December, 2010. The second half for the allocation to various sector activities will be disbursed in due course and Wajir South Constituency is among others being prioritized for funding in the period January to June, 2011.

Planning and forward budgeting for 2011/2012 financial year is ongoing and all areas under the jurisdiction of this Ministry will be given fair consideration subject to available funding of the Ministry.

(b) Regarding the status of the Wajir Sewerage Project, the construction of the two sewerage pumping stations is currently ongoing and will be completed by February, 2011. The contract for the construction of primary trunk sewers and associated facilities for Wajir Town was awarded in January, 2011 and the site handing over was done on 10th February, 2011. The contract was awarded to Triple Eight Construction Company Limited. A third phase for the construction of the sewage stabilization ponds will follow and constitute the final stage.

(c) My Ministry was created in the words of His Excellency the President; “to address the unique challenges facing northern Kenya and other arid lands”. It was established in line with Agenda Four to reduce inequalities between these areas and the rest of Kenya. Its mandate is to develop policy and the prioritization of programmes and projects across a range of areas as well as the implementation of some special programmes.

Mr. Sirat: Mr. Speaker, Sir, you have heard the Assistant Minister say that the Ministry of State for Development of Northern Kenya and Other Arid Lands was created to reduce inequality between the arid lands and the rest of Kenya. You have also heard the Assistant Minister say that Wajir South was given Kshs900,000 this financial year while Wajir East was given Kshs40 million. The sewerage project which was allocated Kshs1.5 billion is also for Wajir East. I would like to know from the Assistant Minister why there is that disparity between Wajir East and Wajir South.

Mr. Sasura: Mr. Speaker, Sir, the sewerage project covers about four constituencies and it is being utilized by the entire Wajir Town. That is a project that is ongoing and which needs to be funded. In the funding of projects for 2009/2010, Wajir South got Kshs10 million while Wajir North got about Kshs5 million. So, it keeps on fluctuating every year. One year, the constituency could get more funding than the others and the following year, the allocation could be less. In the next financial year, if he has other bigger projects that he needs to be considered, he could be subjected through the necessary process and will be given consideration.

Mr. M.H. Ali: Mr. Speaker, Sir, this Ministry was created in order to bring down the level of disparity between developed areas and those less developed in this country. It is supposed to correct the marginalization which has been there in the past but it looks like this Ministry is marginalizing some parts of these areas under its jurisdiction while favoring some areas. For example, for the last three years, there has not been a serious allocation of resources to my constituency despite requests for a number of projects in the area. Could the Assistant Minister come out clearly and tell us whether this Ministry was created to favour certain areas within its jurisdiction?

Mr. Sasura: Mr. Speaker, Sir, the allegations made by the hon. Member are not correct because as I have said, we give funding to projects which are prioritized at the district level. The proposals are normally presented to the District Steering Committee which analyzes and comes up with priorities as per the requests from other districts. They could still do so through District Steering Committees and they will be given consideration.

Mr. Sirat: Mr. Speaker, Sir, before I ask my last supplementary question, the Assistant Minister has not answered my third question. I wanted to know whether the Ministry has delivered its mandate so far or whether it has achieved its mandate for which it was created

Mr. Speaker: Order, hon. Member for Wajir South! When you ask a Question and the Assistant Minister stands to give an answer, if it fails to answer any part of the question, then you immediately rise on a point of order and alert the House that the Assistant Minister has failed to answer a certain part. You do not wait until after another question has been asked and then come back to revisit the first answer. For you, I think I will take that as a point of order and then we will continue. Mr. Assistant Minister, please, proceed!

Mr. Sasura: Mr. Speaker, Sir, I think that was an oversight. The last question he asked was on part "c". My Ministry works in four main areas.

- (i) We work to ensure a more conducive policy and institutional environment for ASAL development.
- (ii) We promote stronger co-ordination of development across geographical areas.
- (iii) We implement specific projects which add value to what Ministries, departments and authorities are already doing.
- (iv) We engage at regional level.

My Ministry has not achieved its mandate. That would not be a reasonable expectation after less than three years' work given the decades of under-investment and inappropriate development that have plighted Kenya's ASALs.

Mr. Speaker: Last question, Mr. Sirat!

Mr. Sirat: Mr. Speaker, Sir, this Ministry was created to uplift the constituencies in northern Kenya, so that they can catch up with the rest of Kenya. However, three years down the line, there is nothing tangible the Ministry has done in northern Kenya. It seems the Ministry runs its programmes and affairs on an *ad hoc* basis. It is run on the basis of whoever goes to their offices. What plans does the Ministry have for Wajir South for the financial year 2010/2011?

Mr. Sasura: Mr. Speaker, Sir, the Ministry is not run on an *ad hoc* basis. We are working effectively. On the ground, we have the Arid Lands Management Project staff who co-ordinate projects. There are effective officers on the ground; they have a lot of capacity and co-ordinate well.

I request the hon. Member to take his priorities to the district offices where we have our officers who will sit down with the DSG. Members of Parliament are normally members of the DSGs. Please, can you do your homework; sit down with your DSG, bring your proposal and we will consider it.

Mr. Speaker: That brings us to the end of Question Time.
Next Order!

MINISTERIAL STATEMENT

INVESTIGATIONS INTO DISAPPEARANCE OF GOLD FROM DRC

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I promised to give a provisional report on investigations into the disappearance of the DRC Gold. I wish to state the following:

Mr. Speaker, Sir, in January 2011, the Government of the Democratic Republic of Congo (DRC) allegedly discovered a loss of 2.5 tonnes of gold minerals worth about Kshs8 billion, which was destined for the United Arab Emirates (UAE), Dubai market. The DRC Government officials suspected that the culprits were rebel groups from the Eastern and Northern Kivu region of the DRC and the proceeds may have been used to destabilize the country. Consequently, the Government delegation led by the Minister for International and Regional Corporation, hon. Raymond Shibanda, and the Minister for Mining, hon. Martin Kabwelu, visited Kenya as special envoys of His Excellency Joseph Kabila, the President of the DRC.

Mr. Speaker, Sir, they delivered a special message to His Excellency hon. Mwai Kibaki, the President of the Republic of Kenya. The official delegation indicated that there had been continued smuggling of gold from the DRC using forged documentations. Among the documents presented to the Kenyan Government were two forged evaluation and export certificates dated 22nd February 2011 relating to 2.5 tonnes of gold estimated at US\$62,500,000 destined for the UAE from Kivu through Kenya.

The President of the DRC was, therefore, appealing to the Kenyan Government to cause investigations into the alleged smuggling, arrest the culprits, intercept the gold consignment and surrender the same to the Government of the DRC. Consequently, His Excellency President Mwai Kibaki, the President of the Republic of Kenya, issued instructions for a joint investigations team, comprising of the Kenya Police Criminal Investigations Department (CID), the Kenya Revenue Authority (KRA) and officers from the DRC. The team was constituted and investigations commenced on 24th February 2011.

The investigations team visited the Jomo Kenyatta International Airport (JKIA) Customs offices and obtained records of shipment for scrutiny and discovered that:-

- (i) KRA records covering the period 25th January 2010 to 20th January 2011 indicated that about 2.6 tonnes of gold was processed for various destinations.
- (ii) Printouts from the Emirates Airline covering the period 1st January to 24th February 2011 did not have records of gold exports.
- (iii) Records from Qatar Airline covering 1st January to 24th February 2011 did not also indicate the nature of exports.

Mr. Speaker, Sir, on 25th February 2011, a list of 15 suspects was provided by the Congolese team, with details of their Kenyan registered cell phone numbers. Analysis of communication between the numbers of other subscribers, both local and international, is on and efforts are being made to trace the registered subscribers. Subsequently, the investigations team applied and obtained a search warrant to carry out search of their residences and cease any gold minerals or documents related to the stolen gold.

Mr. Speaker, Sir, so far, the residences of six of the 15 suspects have been traced and searched without any success. However, one of the suspects, Jean-Claude Mutindo, whose house was searched and ten shiny blocks labeled 500g carat gold DRC assorted stones in plastic bags were recovered. The exhibits were tested by the Government geologist and the ten blocks were found to be brass, and the assorted stones were classified as per their characteristics.

The suspect was arrested and charged with the offence of preparation to commit a felony, namely obtaining by false pretences, vide criminal case No.121/171/2011, Kiambu Court File No. 353/2011. The case is pending before court, and is not related to the gold investigations. The team is in the process of tracing the rest of the suspects.

On 26th of February 2011, at about 1.15 a.m. a member of the investigation team, Mr. Joseph Cheptarus, was shot dead outside his Soledo Estate, South C, by unknown gangsters. During the incident, the deceased was robbed of his motor vehicle KBM 772 N, Toyota Allion, which was later abandoned along Magadi Road. After the vehicle was dusted for fingerprints, it was handed over to the wife of the deceased. The watchmen guarding the gate at the time were kidnapped and later dumped near Multimedia University College, where they were found the following morning unharmed.

Mr. Speaker, Sir, prior to the shooting of the late Joseph Cheptarus, the same gang had carjacked another motorist, Mr. Singh Verdi, who was driving a motor vehicle KBE 444G. The motor vehicle was later recovered within Karen. So far several statements have been recorded and the two cartridges recovered from the scene of the shooting forwarded to ballistic experts for examination. A cell phone stolen from the deceased has not been activated to date. All efforts are being made to trace and arrest the suspects behind the murder. However, so far there is nothing to indicate or connect the murder with the ongoing investigations into the disappearance of gold.

Thank you.

Mr. Speaker: Any hon. Members interested in clarifications on that Statement? If there are none, is there another Statement which is due?

(Mr. Koech stood up in his place)

Member for Mosop, do you want a clarification on this one?

Mr. Koech: Mr. Speaker, Sir. I want to thank the Assistant Minister for his answer. However, listening to him very keenly, it looks like the investigative team is not serious with its work. The Assistant Minister has clearly stated that one Joseph Kiptarus, who was part of the investigation team, was actually shot dead and to date, they are yet to get the culprits. What has the Assistant Minister done to ensure that many others are not kept off the real investigation? What has he also done to ensure that the culprits – those who killed Joseph Kiptarus – are actually apprehended?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I do not want to give some information on that matter because it is sensitive. We are having very good leads; we have dusted the fingerprints of those who took Kiptarus' car and sooner or later, we will arrest those behind the heinous acts. The rest are being guarded by the police while investigation goes on. Sooner, we will definitely know who killed Kiptarus. However, let the matter rest there because it is sensitive.

Mr. Speaker: Order! Hon. Members, you know how we normally conduct this business. The only interest that I saw timeously was by the hon. Member for Mosop. So, I am afraid, we have to move to the next Statement. If there is no Statement due for delivery, we will now take requests for Ministerial Statements!

Hon. Member for Turkana Central!

POINTS OF ORDER

MASSACRE OF KENYANS BY ETHIOPIAN MILITIAMEN

Mr. Ethuro: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the massacre of Kenyans by Ethiopian Militias at Todonyang in Turkana County.

Mr. Speaker, Sir, only last night, militias from a neighbouring country attacked pastoralists grazing in Todonyang area of Turkana County and many Kenyans – over 35 of them – were reportedly killed and thousands others displaced. I would like the Minister to confirm to this House the exact number of casualties and further, how many pastoralists were displaced, how many livestock were carried away by the raiders and what assistance has the Government given to the dispossessed and the displaced pastoralists in terms of emergency aid?

Finally, what permanent security measures has the Minister put in place to curb the perennial insecurity concern, including securing our borders where the Ethiopians live and stationing the Kenya Army personnel?

Mr. Speaker: Mr. Assistant Minister, when will this be available?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I will deliver this Statement on Tuesday next week.

Mr. Speaker: Very well. It is so directed!

Yes, the hon. Member for Rangwe!

APPOINTMENT OF SECRETARY OF INFORMATION AT KENYA NEWS AGENCY

Mr. Ogindo: Thank you, Mr. Speaker, Sir. I wish to seek a Ministerial Statement from the Minister for Information and Communications on the impending filling of the position of the Secretary of Information at the Kenya News Agency (KNA). In the Statement, the Minister should confirm whether a new position of Secretary of Information has been created at the KNA and, if so, the functions attached to this position.

Secondly, what are the qualifications and criteria required for the occupier of the position? Thirdly, what is the job description of the position? Lastly, why is he set to fill the position without advertising the vacancy and, if so, were there any consultations with the Ministry of State for Public Service? If not, when will the job be advertised for interviews?

Mr. Speaker: Where is the Minister for Information and Communications? Yes, the Minister for Nairobi Metropolitan Development!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Thank you, Mr. Speaker, Sir. I will transmit the information to the Minister for Information and Communications so that he can issue that Statement, may be on Thursday next week.

Mr. Speaker: It ought to be on Thursday this week. On the face of it, if you listened to the hon. Member, you will find that it is a very urgent matter.

The Minister for Nairobi Metropolitan Development (Mr. Githae): I will transmit the information, Mr. Speaker, Sir.

Mr. Speaker: Thursday at 2.30 p.m.!

The Minister for Nairobi Metropolitan Development (Mr. Githae): So be it, Mr. Speaker, Sir.

Mr. Speaker: Yes, the hon. Member for Central Imenti!

MURDER OF MR. KIMELI KEMEI

Mr. Imanyara: Thank you, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security.

(Mr. Githae consulted with Mr. Ojode)

I hope he is listening to me.

The Statement is with regard to the circumstances under which a former senior police officer, Mr. Kimeli, was murdered less than 48 hours ago. In that Statement, I wish the Minister to confirm:

(i) Whether or not Mr. Kimeli was not a witness in the Waki Commission and he gave very confidential information before that Commission.

(ii) That he was also listed as one of the ICC witnesses and was due to fly out of the country as one such witness at the time he was murdered. Could the Minister give us an assurance that investigations will be carried out by the same police officers who may be implicated, because we have had far too many cases of Kenyans dying at the hands of the police and then promises of police investigations and nothing coming out of it?

Mr. Speaker, Sir, at a time when the ICC is actively preparing for confirmation hearings, it is important that Kenyans get assurance from the Government that there will be co-operation rather than intimidation of witnesses.

Mr. Speaker: Mr. Assistant Minister, when will that be available?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I can deliver the Statement on Wednesday morning.

Mr. Speaker: Tomorrow?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): On Wednesday, next week, because tomorrow, I have got another Statement to deliver.

Mr. Speaker: Order, Mr. Assistant Minister! In that case, why do you not do it on Tuesday afternoon? It is also a very urgent matter because this is one of your former officers.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I can do it on Tuesday next week.

Mr. Speaker: It will be done on Tuesday at 2.30 p.m. It is so ordered! What is it, the hon. Member for Makadara?

ILLEGAL ACQUISITION OF PUBLIC LAND IN NAIROBI COUNTY

Mr. Mbuvi: Mr. Speaker, Sir, on 24th March, 2011, I sought a Ministerial Statement from the Minister for Lands on illegal acquisition of public land in Nairobi County. The Minister promised to deliver that Statement today, but he is not in the House.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order, the Member for Makadara! As a matter of fact, the Minister was ready on Thursday last week, and you know why it could not be delivered. So, I will just direct that the Minister comes with the Statement on Wednesday in the afternoon. Is that good for you?

Mr. Mbuvi: It is, Mr. Speaker, Sir.

Mr. Speaker: It is so ordered! The Statement will be made on Wednesday at 2.30 p.m..

Is the Minister for Lands not here? Where is Mr. Bifwoli Wakoli?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, we will transmit the information to the Minister for Lands.

Mr. Speaker: Please do! The Statement will be made on Wednesday at 2.30 p.m. That then brings us to the end of Order No.7!

Order, hon. Members! Before we proceed to---

(Mr. Nyambati stood up in his place)

Order, hon. Nyambati!

Before we proceed to Order No. 8 and subsequently Order No. 9, I have this communication to make.

COMMUNICATION FROM THE CHAIR

PROPOSED AMENDMENTS TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL

Mr. Speaker: As you are aware, the House will, under Order No. 9, resume debate on the Second Reading of the Independent Electoral and Boundaries Commission Bill and on conclusion of debate, if the Bill passes the Second Reading, a date will thereafter be appointed for the Committee of the Whole House on the Bill. As hon. Members are further aware, this Bill on account of the totality of all the prevailing circumstances has generated tremendous interest in this House and in the country as a whole. In this respect, may I request all individual hon. Members who may wish to propose amendments to the Bill at the Committee Stage to prepare their proposals and submit them to our office of Legal Counsel for processing. This will ensure that your proposed amendments are drafted and that they appear in the Order Paper on the date of the Committee for the Whole House on the Bill.

I thank you.

(Applause)

MOTION

ADOPTION OF REPORT ON BUDGET POLICY STATEMENT

THAT, this House adopts the Report of the Budget Committee on the Budget Policy Statement for the year 2011/2012 laid on the Table of the House on Wednesday 13th April, 2011 subject to deletion of the words “In this regard, the ceiling for the PSC for development budget should be Kshs.2.0 billion which is 0.62% of the national development budget” and insertion of the words “In this regard, the ceiling for the PSC for development budget should be Kshs.2.4 billion which is 0.65% of the national development budget” in place thereof; and inserting a new recommendation as follows:- “(k) That pursuant to Article 241 of the Constitution, the budget for Ministry of State for Defence should be separated to reflect allocations to each of the three arms of Defence Forces and General Administration”.

(Mr. Sambu on 21.4.2011)

(Resumption of Debate interrupted on 28.4.2011)

Mrs. Odhiambo-Mabona: Thank you, Mr. Speaker, Sir, for giving me this opportunity.

Mr. Speaker, Sir, before I continue with the line of argument I had before, I want to say that we must all embrace the culture of constitutionalism. We are in a different era. As I look at the Budget Policy Statement (BPS), it is not alive to this fact. It is proceeding as though it is business as usual, yet we are in a different era. I would want to encourage the Deputy Prime Minister and Minister for Finance that in future he must actually look at what the Fiscal Management Act says. They must ensure that they comply with each and every section of that Act. I just want to give an example. If you look at Section 7(3e), it says:-

“The Budget Policy Statement shall state the broad strategic macro-economic issues that would be the basis of the Budget of the succeeding financial year and the medium term, and shall include, (e) the criteria used to allocate or appropriate the available public resources among the various programmes”

Mr. Speaker, Sir, if you actually look at this BPS, it does not show what criteria have been used in allocating those resources. What I would like to encourage is that in future when he is preparing this BPS, he should actually follow the order that is provided very clearly under the Act of Parliament. When we passed this law, we did not pass it, so that we keep it in our shelves. We passed it, so that we implement it. We must embrace a culture of change.

Mr. Speaker, Sir, last time, I was talking about the issue of inequalities. I am glad that the BPS alludes to the fact that the issue of inequalities is a very big problem in this country. It acknowledges further that it is one of the reasons that have caused a problem of economic growth in this country.

Mr. Speaker, Sir, resource allocation in this country should not depend on political patronage. That is why I was saying last time that I was very discouraged when I heard a whole presidential candidate, a young presidential candidate, alluding to the fact that there are certain areas of this country that had not developed, because of the politics that they have taken and that they have always opposed the Government.

Mr. Speaker, Sir, it is a democratic right for anybody to belong to any party of their choice and to have any political opinion of their choice. It is not dependent on charity of a presidential candidate. It is not dependent on any Government. I want to read Article 6(3) of the Constitution for those who are still living in a colonial era. Article 6 of the Constitution is on devolution and access to services. Article 6(3) says:-

“A national state organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service”.

Mr. Speaker, Sir, again, I want to refer to Article 73(1) on authority assigned to state officer. Article 73(1)(b) says:-

“vests in the state officer the responsibility to serve the people rather than the power to rule them”.

Mr. Speaker, Sir, I want, therefore, to encourage Kenyans when they see leaders who are still in an era where leaders rule and do not serve people, to reject them overwhelmingly. We are in a country where we talk about equitable access to resources. If you look at some of the underlying core issues that resulted in the post-election violence, was the issue of exclusion. So, I want to encourage my dear brother and friend, hon. Uhuru Kenyatta, that in future when he meets people of Nyanza and he wants to encourage them to give him their votes, he should say that one of the reasons he want their votes is because he will bring them resources. He should not attempt to threaten the people of Nyanza. The resources of this country do not belong to him. They belong to us under the Constitution. If he does not know that, let him read Article 6(3) and 73(1b) of the Constitution.

Mr. Speaker, Sir, I want to talk on the issue of devolution. If you look at what the Constitution provides, the chapter on devolution has not been suspended. So, it is already in effect. The BPS does not talk about the issue of not less than 15 per cent of the funds going to the devolved units. Devolved units are already in operation. We may not have created the county headquarters, but we all know there 47 counties. I would like to encourage the Ministry to start effecting the distribution of these funds to these devolved units.

I want to encourage that the culture that I have seen that the Constitution talks about 15 per cent, is that the 15 per cent is a maximum? It is not a maximum. If you want to follow what His Excellency the President said in his statement when he opened Parliament that these are going to be centres for the new economic growth, then the amount that we should be putting is no less than 40 per cent.

[Mr. Speaker left the Chair]

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

So, I would want to encourage the Treasury that the amount that should be put from now henceforth should be not less than 40 per cent.

Madam Temporary Deputy Speaker, the BPS acknowledges that investor confidence is important for us to have economic growth. Yet, on the other hand, you see that our political rhetoric does not actually address itself to this. When we go to public rallies, we spend all energies using hate speech, abuse our opponents and show how skilled we are at abuses. Those kind of abuses cannot restore investor confidence in this country. The time for rhetoric is over and the time of action is now. I want to encourage the Deputy Prime Minister and Minister for Finance that changes begins with self. So, this nice policy statement cannot be effective unless change begins with him. So, could he start preaching peace in this country?

Madam Temporary Deputy Speaker, I also want to that I note the BPS talks about the issue of constitutional implementation at the core of economic growth in this country.

I want to encourage that, as a House, we must focus all our energies towards constitutional implementation in this House. We, in the Departmental Committee on Justice and Legal Affairs, are not the only Members of this National Assembly. The House can go on with or without us. So, I would want to encourage that we put to the fore the issue of constitutional implementation.

I would also want to note that even though the Budget Policy Statement highlights some of the issues very well, for instance, the issue of the effects of climate change – you do not see as much focus in terms of money put aside to mitigate the effects of climate change. So, I would want us to actually put money where we think the problem is. We must put money to mitigation of the effects of climate change. We should move away from the approach of looking at the symptoms and effects of climate change and not actually looking at the root causes of climate change and seeking to deal with them.

Madam Temporary Deputy Speaker, Sir, I want to say the same in relation to the issue of food security. If you look at the Policy Statement, you will see that it attributes the challenge of food insecurity that we are facing to the occurrences in northern African and climate change. We knew this three years ago. So, when the Office of the Deputy Prime Minister and Ministry of Finance addresses such issues, they should not give us what we call “killer assumptions”. When we budget for food, we should not assume that there will be good weather. That is the old model of planning.

In the new model of planning, you must actually look at all those factors and deal with them, so that we do not talk about climate change every year. We cannot be talking about climate change every year. If you have control over climate change, you must find different ways of dealing with the issue of food security. Amongst those ways would, for instance, entail diversifying our agricultural activities. In the areas which are not agriculturally-rich, we can invest in irrigation and other means, so that we do not speak about the issue year in, year out. We passed the new Constitution last year. This year, we have moved on to implementation. We are no longer talking about passing the Constitution. So, as a country, we must learn to move forward.

Madam Temporary Deputy Speaker, Sir, if you look at the section on the Judiciary, you will realise that the Policy Statement does not address itself to the fact that we recently passed; the Judicial Service Bill, which provides that there will be 47 County High Courts. This provision must be factored into the Budget. That is why I am saying that if you look at this Policy Statement, you will find that it is not aligned to the constitutional provisions and the laws that are being passed under the Constitution, to make the Constitution alive.

Regarding the issue of diversification, which I was talking about, we must also learn to capitalise on what we already have instead of diversifying into areas which might not be productive and ignoring what we already have. A look at page 48 of the Budget Policy Statement on Fisheries Development, under Programme Objectives, shows that the programme objective is to maximise the contribution of fisheries to the achievement of national development goals, especially poverty eradication, food security and creation of employment and wealth.

However, if you look at the programme output, you will see that it is about the increase of acreage of land under aquaculture production, increase of fish production from aquaculture, increase of fingerlings supplied to farmers, *et cetera*. I do not see where we have tried to deal with the issue of water hyacinth. Our greatest source of fisheries in this country is Lake Victoria. There is hyacinth in Lake Victoria but instead of dealing with it, we want to increase acreage of land and fingerlings. So, we are getting our priorities wrong. We are also not following the Fiscal Management Act, which provides that we must prioritise.

Madam Temporary Deputy Speaker, I am glad that the Policy Statement also addresses itself to the issue of insecurity in this country. I would want the Government to take the issue of insecurity seriously. Only last week, two Members of Parliament were attacked by armed thugs in a hotel in the Western Kenya region. When I reported that I had been attacked, the Commissioner of Police himself mocked me and made a joke out of the incident. I became the more senior person and let go the matter. I want to say that whether or not we make a mockery of this matter, insecurity has moved to rural Kenya and the Government must deal with it decisively. Otherwise, we are going to lose our investors as a country. Previously, you could say that insecurity was only an urban problem. The problem is now in the rural areas and people do not feel safe in their homes. Surely, where can we go? Will we move to Uganda? The story is probably worse there.

Finally, I want to speak on the issue of women's rights as provided for in the Constitution. Even though the Policy Statement recognises the issue of constitutional implementation as core, I would have wanted to see a lot more attention and focus placed on issues of reproductive health, access to water and other things which affect the day-to-day lives of women. Two days ago, I was in Ikolomani; at the burial of a woman who was born in 1981, and who died as a result complications of a simple delivery procedure. If in this century and time, we are losing young women because of very simple things like lack of access to doctors and urgent medical care, surely, we cannot say that we are a liberated country.

Madam Temporary Deputy Speaker, looking at the issue of prioritisation, I am informed that a big chunk of the Budget of the Ministry of Medical Services was hived off and given to the National Security Intelligence Service (NSIS). As a country, we may

not be serious if we do not prioritise the allocation of resources to take care of the issues of youth unemployment and protection of women and children.

Therefore, I want to conclude by saying that unless we protect women, we will put our country into a crisis. I would like to take this opportunity to laud an exemplary woman who has done excellent work in this country in terms of protection of women. She is today receiving an honorary degree from the Great Lakes University. I laud Her Excellency Ida Odinga.

With those few remarks, I beg to support.

The Assistant Minister for Regional Authorities Development (Mr. ole Metito): Madam Temporary Deputy Speaker, I do not intend to take much time, because of the interest hon. Members have in this debate. However, I want to be very categorical that I stand here to oppose this Motion.

One of the recommendations by the Budget Committee says that pursuant to Article 241 of the Constitution, the Budget for the Ministry of State for Defence should be separated to reflect allocations to each of the three arms of the Defence Forces and General Administration. Looking at Article 241 of the Constitution of Kenya, which establishes the Defence Forces and the Defence Council, you will see that Section 2 says that the Defence Forces consist of the Kenya Army, the Air Force and the Kenya Navy.

Going through the entire Article 241, which has about seven sections, there is no single word on the finances of the Defence Forces. There is no single line which touches on the use of finances. So, to say that the Budget of the Ministry of State for Defence should be separated to reflect the specific budgets for the three arms of the Defence Forces and General Administration is like saying that every Government Ministry established under the Constitution of Kenya should enumerate its financial proposals for each department. The three arms of the Defence Forces are just like other Departments within the Ministry of State for Defence.

Madam Temporary Deputy Speaker, in my humble submission, I see nothing wrong with the Policy Statement that was laid on the Table of the House by the Deputy Prime Minister and Minister for Finance on Wednesday, 13th April, 2011. He did not separate the Budget for the Ministry of State for Defence amongst the three forces, just like it happens in other Ministries. This is like saying that even the Ministry of Agriculture should specify the budget proposals for all the departments within it. That is not possible. It is unrealistic because there is the holistic sum which is budgeted for each and every Ministry. In my opinion, there is need for a command in the Ministry of State for Defence, which is consolidated by the authority within it to allocate financial resources on need basis.

If you look at the responsibilities of the Defence Forces as enshrined in our Constitution, in particular Article 241(3) says that:-

“(a) The Defence Forces are responsible for defence and protection of the sovereignty and territorial integrity of the Republic;

(b) shall assist and co-operate with other authorities in situations of emergencies or disaster, and report to the National Assembly whenever deployed in such circumstances”.

For instance, if you have allocated a specific amount of money for the Kenya Army, the Kenya Air Force and the Kenya Navy, and a disaster or an emergency arises, you will have tied your hands by allocating the money for the Kenya Navy. You did not

foresee the possibility of such a disaster and you now want to send the defence forces to such situations. It is only wise that we only approve, as the National Assembly, the Budget for the Defence Forces as a holistic Budget and leave the details of deciding how much goes to which department to the Ministry of State for Defence.

Article 241(3) (c) says that:-

“The Defence Forces may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly”.

It is good that we really do not have a categorical unit and say that the general administration of the Defence Forces of the Republic of Kenya is entitled to this much in terms of a Vote, so that we give the leeway to the Ministry of State for Defence to foresee or allocate the resources on a need by need basis. I am only concerned with tying up the entire Ministry with the specifics. If we were to do that, then we should do it in all the Ministries because all the Ministries have departments. These are just departments within the Ministry of State for Defence. So, I would like to urge my colleagues that let us not, as a House, try to interfere with the day to day activities of this Ministry. It will really tie them down. It will not give the Minister the leeway to use the money allocated by this House on a need to need basis. It is the responsibility of this House to go into the details of knowing how much has been allocated to the Ministry of State for Defence, offer the oversight role of knowing how much has been spent and whether it has been spent in accordance with the approval of this House. To say that we must decide how much goes to the Army, the Navy and the Air Force is like saying that this should be done in all other Ministries.

For instance, if you take the Ministry of Youth Affairs and Sports, you have the two departments, namely, youth and sports. Then we are saying that in that Ministry, the policy statement should show how much should go to the Youth Department and how much should go to the Sports Department. It is always enough to say that we have two votes in every Ministry, namely, the Development Expenditure and the Recurrent Expenditure. I agree that even in the Ministry of State for Defence, this House ought to know how much is allocated for the Development Expenditure and how much goes to the Recurrent Expenditure.

As I said earlier, I do not intend to take much time because of the interest of the other Members, but I want to plead with this House that the recommendation by the Budget Committee - unless somebody comes with amendments - my observation is that I stand to oppose the Motion as it is.

The Assistant Minister for Livestock Development (Mr. Duale): Madam Temporary Deputy Speaker, from the outset, I want to thank the Budget Committee for the Report that it has presented to Parliament. I have an issue with the last bit of this Motion that says that:-

“Pursuant to Article 241 of the Constitution, the Budget for the Ministry of State for Defence should be separated to reflect allocations to each of the three arms of the Defence Forces and general administration”.

My problem is mainly on that Article 241 of the Constitution. We should not interrupt that Article because it is very clear. Article 241(1) (2) (3) talks about the Defence Forces, the Defence Council and what it consists of. It talks about the arms of the Defence Council. I do not find anywhere in Article 241 of the Constitution where the element of the separation of the finances of the three arms of the Defence Forces is. I also

went back to Chapter 12 of the Constitution of the Republic of Kenya on Public Finance. Article 201 talks about the principles of Public Finance. It talks about the quality and the cornerstone of public finance in this country. Very candidly, it talks about the usage of public finance and financial management. So, I have an issue with the last bit of the Motion.

One of the most important items in the Policy Statement that was presented by the Deputy Prime Minister and Minister for Finance is on the National Economic Stimulus Programme which in his wisdom, in this year's Budget, he has not allocated anything.

As you know, the National Economic Stimulus Programme was an item in the Budget in the last two years that brought equity to this nation. This Programme is mainly on health, education, infrastructure, *Jua Kali* sheds and the produce market. We felt for the first time, that the Kenyan Budget with that element on the National Economic Stimulus Programme was going towards a more equitable nation.

Madam Temporary Deputy Speaker, on the same line, the National Economic Stimulus Programme was factored into the Budget and it made my good friend, the Deputy Prime Minister and Minister for Finance, the most popular Minister for Finance in the history of this country. One of the aims of this programme was to create 500,000 jobs every year. We need the Minister and Government to tell us how we will create the 500,000 jobs that were to be under the Economic Stimulus Programme.

Secondly, we know that we have many unfinished public projects under the Economic Stimulus Programme, mainly because of the cumbersome procurement process of the Government. What is the transition period? How does the Minister want to take care of that at the end? If he has stopped the Economic Stimulus Programme, the end result will be many ghost and unfinished projects. We want the Deputy Prime Minister and Minister for Finance to think about that and see what he can do.

Madam Temporary Deputy Speaker, the Deputy Prime Minister and Minister for Finance, under this policy has factored Kshs9.5 billion to finance the implementation of the new Constitution. He has also factored in Kshs7.6 billion for social safety nets. Again, he has removed the Economic Stimulus Programme. To me, it is like robbing Peter and giving Paul or you robe Mohammed and give Kyalo. That is exactly what the Deputy Prime Minister and Minister for Finance has done in his Public Budget Policy. However, the Budget for this year has shrunk to Kshs975 billion from last year's Kshs998 billion, of course, with the Kshs5.6 billion outstanding. The Minister has made an undertaking in this House, during the Finance Bill, that that money will be factored in Budget. I do not think hon. Members should be very worried now on the Constituencies Development Fund (CDF) accumulated amount.

I want to thank the Deputy Prime Minister and Minister for Finance because, for the first time in the history of this country, he has factored in the Livestock Development Fund and the Committee has supported him. We will have a fund with a capital of Kshs1 billion. At no time in the history of this country will we beg money as pastoralists from the Government. We will have a fund that will take care of emergencies as a result of the weather conditions among the pastoral communities that I represent in Parliament. So, that was a step ahead and I want to thank the Committee and the Deputy Prime Minister and Minister for Finance for seeing that.

Madam Temporary Deputy Speaker, if I look at the positives on the part of the Minister, I find that he has cut on Recurrent Expenditure, which is very great. All along

we have talked about wastage and accumulation of huge bills. However, this year the Minister has cut on Recurrent Expenditure. He has drastically reduced wastage in various Ministries. He has not factored in a number of crucial programmes that will affect the economy of our country regionally and globally. These programmes include drought, escalating oil prices, global economic recession and, of course, the Internally Displaced Persons (IDPs).

I also get very worried when I look at the collection done by the Kenya Revenue Authority (KRA). Under the policy, the cumulative revenue received for February, 2011 by the KRA was Kshs394 billion against a target of Kshs426.4 billion. This has already created a shortfall of Kshs31.9 billion from KRA in terms of collection. At the same time, the Deputy Prime Minister and Minister for Finance predicts a growth rate of 5.7 per cent again, with a deficit of Kshs122.2 billion in the 2011/2012 Budget. This leads us to domestic borrowing and financing. All these have to come out very clearly.

Madam Temporary Deputy Speaker, I think the Committee in this Motion--- I will go back to the earlier issue that I raised. I am sure the Chairman and the Members of the Committee are here. We need an explanation from the Committee Members because Section 241 of the Constitution does not talk about how public finance should be divided. Today, in the Ministry of Livestock Development, we have one single line budget, but within that budget, we have various departments. I am sure it goes on even in the Ministry of State for Provincial Administration and Internal Security. Every Ministry has individual departments and directorates. So, we need to be convinced why for the first time, you want to know how much the Kenya Air Force and Police are given. If we had scrutinized last year's Budget, as a Committee and House, we would have known how much even small departments within the Kenya Air Force were allocated. This also applies to the Kenya Army. If we had one budget for the Ministry of State for Provincial Administration and Internal Security, the National Security Intelligence Service (NSIS) and the Ministry of State for Defence--- Again, if you go to Section 201, under Public Finance, it is my humble opinion that Committees should not use the Constitution without due diligence on how that Article is to be interpreted.

Madam Temporary Deputy Speaker, on the last bit of this, I will oppose this Motion.

Mr. Oyongo Nyamweya: Thank you, Madam Temporary Deputy Speaker, for giving me a chance to support this Motion. I also thank the Committee for doing a good job so that we can have a Budget which is more transparent and one that will make the Ministries more accountable.

I will, first of all, go to Section 241 of the Constitution which hon. Members have referred to. The Constitution clearly identifies the Kenya Army, the Kenya Air Force and the Kenya Navy as constitutional offices. If they are constitutional offices, it is important that they be allocated funds separately. They should explain how they have used the funds instead of giving them a blanket amount of money.

So, for that I support what the Committee has done. They have done a commendable job.

Madam Temporary Deputy Speaker, when I look at the Budget, we talk about economic growth. When we look at economic growth, the Deputy Prime Minister and Minister for Finance is relying on rain. I think it is time we stopped being simplistic as a

nation. We cannot come up with a budget, give figures and say: “God, give us rain for us to get the money we need.”

When I look at this Budget, I expect at least the Minister to come up with funds. We have got fresh water from Tana River going to the sea. I would expect him to come up with a programme on how we can make dams on Tana River, so that we have enough water for farming, irrigation and for our animals.

We talk about North Eastern Province every year. A Budget is made and we treat North Eastern Province like it is not part of this country. It pains me when I see that in a Budget like this one, economic growth relies on rain and yet, we know agriculture is the biggest drive for economic growth. We have got water flowing into Lake Victoria. Year in, year out, there are floods on Kano Plains. This water should be harnessed. It would not cost a lot of money for this nation, if there is political goodwill from the leaders and the people who prepare this Budget. They should know that this country, Kenya, belongs to all of us. We should not have a budget tailored to favour specific regions. We need a budget which is inclusive and touches all parts of this country. So, I support this Budget because I believe the section covered by the Budget Committee, if it is followed and we are serious about it, will help this country.

Madam Temporary Deputy Speaker, another point I would like to talk about is public debt. Personally, I have no problem with the public debt of this nation increasing so long as it is used to develop basic infrastructure facilities. If public debt is increased so that we sink more dams in the country, control floods or pump water to North Eastern Province, there is no problem in increasing it. We should not increase it for Goldenberg scandals. We should not increase it for Anglo Leasing scandals. That is where the problem is. The problem is not how much the Government is spending, but where the money is going. Who is benefiting from the resources of this country? If that money is used to build modern ports, roads, to increase supply of electricity, there is nothing wrong in increasing it. As long as it is spent for the good of the nation, there is nothing wrong with us increasing it. So long as it is not used like it has been in the past to promote scandals in this country, it can be increased.

Another point I would like to mention is reallocation of funds. This is a ritual done in this country every time. We have just passed the Supplementary Estimates. This money will be used within one month. What is the rush? Why does Treasury wait for the month of April to bring Supplementary Estimates to be used for one month only? We are talking of billions of shillings. To me, this is a way of using funds in an improper way. Given that money has just been given, when will goods be purchased? When will services be procured? Why can the Supplementary Budget not come earlier? If the budget is brought earlier, funds can be utilized properly.

Now money will be spent in a rush because the financial year is about to close. Where does that lead this nation to? This happens every year. To me, the Ministry needs to look at the issue of allocation of funds, so that funds are allocated properly. The Ministry needs to put a ceiling so that it is not abused. A time like this when the national Budget is being prepared, Ministries are rushing to spend the money they have been given. What was happening before that?

So, I support the idea that we need a ceiling on the amount of money that can be allocated to a Ministry. Who knows, it could even be a trick to move money from one location to another to favour particular firms. The challenge here is, when will these

goods be procured? Will the procurement system by the Ministries be used or the suppliers have already been selected; they have been given Local Purchase Orders (LPOs) and they are waiting to deliver goods or “air”.

We have talked about the environment, water and irrigation. Really, there needs to be a deliberate policy to increase production in agriculture by use of irrigation. They were talking about a policy of 10 per cent. We should look for more money so that more funds are available to develop agriculture, so that we produce enough food in this country. The other day we were talking about removing Import Duty on maize and wheat. The truth here is that in the world market, people are struggling to feed themselves. Every nation is struggling to feed itself. This is the case everywhere. So, it is important for us, as a nation, to put our priorities right. We should address the issues of irrigation in rural areas and how we can help to reduce poverty. This can only happen if the Government takes deliberate steps to provide funds. We had money for the ESP, but this year it is not provided for. Projects which were started cannot be financed. This shows that the Government is not serious when it comes to developing certain areas so that we, as a nation, move forward.

Since other hon. Members want to contribute to this Motion, I beg to support it. I believe it is good for the nation.

Thank you, Madam Temporary Deputy Speaker.

Mr. Keynan: Thank you, Madam Temporary Deputy Speaker. I would like to take this opportunity, first of all, to thank all my colleagues in particular, the Members of the Budget Committee for their tireless efforts in making sure that Parliament remains an epicenter of change.

Madam Temporary Deputy Speaker, the Tenth Parliament is on record as having insisted that impunity in all institutions must cease to be the hallmark of the Republic of Kenya. We, as Members of the Tenth Parliament, must be prepared to face institutional reforms. If we go back to what happened in 2007, it is not that the Kenyan people wanted to fight. It is because institutions failed to meet the expectations of the Kenyan public.

Madam Temporary Deputy Speaker, for us to succeed in reforms, we must make the rule of law the basis for changing some of the key institutions. Over the last 20 years, since the advent of multi-partyism, the Kenyan public and, in particular, Kenyan leaders have been in the forefront in ensuring that this country has a new constitutional dispensation. That was at a price. We paid dearly. We paid billions that could have gone to developmental projects in 1991. We wasted a lot of time. Many Kenyans lost their lives as a result of their struggle for multi-partyism. Many Kenyans were put in jail and this must be defended jealously. This must be defended constitutionally. This must be defended from the Floor of this House. Positive change, sometimes--- The weak, the naïve and those who are normally averse to change, fear change. Positive change must become an ingredient of the Kenyan society.

Madam Temporary Deputy Speaker, I have heard two or three previous speakers make comments on the issue of the Department of Defence (DOD). We need to understand that militarism is one of the pillars of diplomacy. In the old days when we had two ideological blocks; communism and capitalism, military might and the barrel of the gun was all that was required to subdue any group, individual or society. Today, what we require is ideological persuasion. The later part of this Report, in our humble

submission, was made to assist the gallant sons and daughters of the Republic of Kenya who are serving in our armed forces.

Madam Temporary Deputy Speaker, one institution - and this is the practice in all democracies - and I want to be challenged--- This is the trend in America, Israel, France and in all developed democracies, where civility, the rule of law, accountability, transparency and institutionalism are the key dominant factors. What we have proposed--

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(Loud consultations)

Madam Temporary Deputy Speaker, Members are consulting very loudly. I want to be given an opportunity to make my presentation. What I am trying to say is this: Positive change is something that we require. The current Constitution provides that we have the Kenyan defence forces, unlike previously. Therefore, it means that we want to strengthen the different units of our armed forces so that we have the best navy, air force and army in the world. For us to do that, and for the Ministry to continue attracting public finance, it is fair that this Act that we have provided is clearly separated.

Madam Temporary Deputy Speaker, this does not jeopardize the national interests in any way. Let us not fear change, It does not, in any way, say the number of assets in the armed forces. No! We are not saying that we want to know the military techniques that they use. No! We are not saying that we want to know and let the public know the intelligence techniques that they use. No! What we are saying is that instead of having a one-man institution called the Chief of General Staff (CGS) in the headquarters, and this institution has over the years taken away powers from the field commanders, I want the air force commander to make prudent financial, administrative, institutional and technical decisions at that level. I want the army commander to make prudent institutional decisions tailor-made for the army at that level. I do not want the army commander to be a clerk of a one man institution at the headquarters. That is one thing that we are trying to run away from. I want this change or proposal to be seen positively.

I am one person who is proudly here in support of our sons and daughters who are serving in the armed forces. As a country, we are proud of them. However, positive change must be accepted. I want to be told how this, in any way, jeopardizes the national interests. That is because I am a Kenyan and all the committee members who are proposing this are Kenyans. How does it jeopardize the national interests? What we are saying is give them more funding, instead of just having a one-line budget. That has been the trend. You have a one-line budget which says "DOD – Kshs40 billion." In the mind of Kenyans, that is a lot of money. But if you segregate it into units like the army or navy, Kenyans will even say we want the DOD to be funded more.

Madam Temporary Deputy Speaker, I want this to be seen positively and, therefore, the culture of saying: "No, this institution should not be touched or it should be the preserve of so-and-so," must end. This is our institution and it is one of the key pillars of the Republic of Kenya. This is a constitutional entity. We must be courageous enough to say that we want to reform those institutions. Let us not fear because there is nothing to fear. We are helping those people. We are helping them to get more finances. We are helping them to become more professional. We are helping them to follow the

rule of law and we are also helping them to become a centre of excellence. That must be achieved constitutionally and through the rule of law.

Madam Temporary Deputy Speaker, if you look at what we have in the national resource basket, every sector of this economy competes to get a share of the resource basket. For this, how do we justify that? The justification must come from the end users. The end users are those institutions. Those institutions must be reformed.

If we have generously adopted this Constitution in our own minds and fearing to implement sections of the Constitution using frivolous assumptions that are not part of the law that we have, in my opinion and humble submission, it will be taking us back. I want to plead with my colleagues that this proposal does not take away our right as a country to have a well-funded, trained, protected and guarded DOD. This, if anything, consolidates the same. It will assist them get more finances and make them institutions that are professionally run and that attract the best brains in this country. They will always be ready to serve in those institutions.

Madam Temporary Deputy Speaker, in this budget proposal, this is the first Budget that we will have under the new constitutional dispensation. As we do this, we must look at all sectors of our economy and country. For me as an individual here and as a person who is proudly standing here today in support of our sons and daughters in the armed forces, I am persuaded beyond any reasonable doubt and without any naivety that this proposal is in line with the Constitution, and it is tailor-made for those sons and daughters in the armed forces. Eventually, it is going to make our DOD the best not only in the region, but in Africa.

Madam Temporary Deputy Speaker, I also want to say this: As we continue adjusting to the new reality, which is the new Constitution, some of us might have been in the forefront, some of us might have been “watermelons” or completely the opposite, but the reality is that we have a document. This document is what is going to unite us. This document is what is going to give us a country. This document is what is going to solidify the unity of purpose of the people of Kenya. This document is what is going to assist us achieve the kind of development that we want. At times, when I reflect on where we were in 1968, our Gross Domestic Product (GDP) was at par with that of South Korea, Indonesia, Malaysia and Singapore. In 1968, the newly founded Botswana Meat Commission sent officers here to come and learn. Where is Kenya Meat Commission (KMC) today? It is in the Intensive Care Unit (ICU). Is it because of lack of resources or poor management? It is because of poor management. We must be courageous enough to stand firm and say we have evaluated. We have done both summative and formative evaluation and this particular issue that we have followed blindly over the years has not taken us anywhere.

Madam Temporary Deputy Speaker, when it comes to giving a portion of the national resource to regions, a region like where I come from - and I want to say this in connection with the Constituencies Development Fund (CDF)--- I can say here today without fear of any contradiction that the much that the CDF has done over the last seven years is more than what the colonialists, Kenyatta, Moi, Kibaki and Raila-Kibaki governments have done for the people of northern Kenya.

Madam Temporary Deputy Speaker, my one cardinal stand is to ensure that the CDF remains in our statutes regardless of whatever name we call it. That is the key component of our statutes that has contributed to development and brought us at par with

other Kenyans. So, it must be protected constitutionally and legally. I believe and it is my prayer that the hon. Members of the Tenth Parliament will rise up and ensure that those who are saying that the counties are going to provide this or that--- It says that the counties will get a minimum of 15 per cent of the Gross Domestic Product but it does not say that we should not have another 5 per cent for CDF. Individuals have resorted to their own interpretations. My prayer is that we should approach these issues soberly and be constructive so that we can reform our institutions in line with the national aspirations of the people of Kenya.

Let us not have institutions that are tailor-made for individual aspirations and personal aggrandizement that has failed to serve us over the years like cronyism, sycophancy and individually tailored interests. These have failed in Kenya. We had the *Harambee* philosophy which was abused. We have had forced contributions and skewed development in national allocations. Has that worked in Kenya? Has it given us more infrastructure, educational institutions or anything? If anything, that has bred impunity that must end. It is this Parliament that has endeared itself to the Kenyan public and it has the honour and trust to ensure that the reforms that we are trying to prescribe for another institution, we should do the same to ourselves here without fear of contradiction. This proposal is in line with every aspect that is contained in the document and with other aspirations of our sons and daughters in the armed forces and also in line with the best practices all over the world.

Madam Temporary Deputy Speaker, therefore, my humble plea is that if we are not comfortable with one issue, I plead with my brothers that this proposal should not poison their minds, but they should see it as positive change and a reality. Even if we do not do it today, I am sure somebody will go to court, get an interpretation and this will be the interpretation. I want to be told how allocating single sums of money to the Kenya Navy, Kenya Army or the Kenya Air Force prejudices our national interests. Do we need an interpretation of what that means? Do we need a lawyer, a constitutional expert or a philosopher? I do not think so. So, my humble submission is that we take this positively. Somebody else would have done it, but because we are the ones who have started the implementation, let us accept the domestication of this very important constitutional dispensation. Instead of it being done by the 11th Parliament, let us do it right now and we will be very proud as one Parliament that introduced reforms in all sectors of the Kenyan society without fear.

With those few remarks, I support the Motion.

The Temporary Deputy Speaker (Dr. Laboso): I will now allow Mr. Musila to make his amendment.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Madam Temporary Deputy Speaker, I also want to commend the good job that has been done by the Budget Committee. There is no doubt that this is the first time that the Budget Committee wants to play a major role in doing the critique of the Budget proposals and even consulting the various Departmental Committees before 15th April. I want to commend the Committee, the leadership and all Members because they did a good job. That notwithstanding, I want to propose the following amendment to the Motion.

Mr. Temporary Deputy Speaker, I beg to move that the Motion be amended as follows:-

By deleting all the words after the word “thereof” in line eight of the Motion and insert a full stop.

Madam Temporary Deputy Speaker, I move that this portion be deleted for reasons that have already been alluded to by some previous speakers. The gist of the argument here is in Article 241 of the Constitution. If you read Article 241 of the Constitution it simply defines the formation of the Defence Forces. There is nowhere where it talks about the Budget. This is the same with the Act of Parliament that exists; the Armed Forces Act, Cap.199 of the Laws of Kenya. The formation of the armed forces is the Kenya Army, Kenya Air Force and the Kenya Navy. That is what the Act of Parliament says and that is exactly what the Constitution says. The only difference is that we have changed it from armed forces to defence forces.

Madam Temporary Deputy Speaker, in line with the practice all over the world of defence, money is allocated to the parent Ministry, and then it is divided to the various formations of the defence based on need. What do I mean by that? In defence forces, there are many activities that take place but were not planned. It is upon the Ministry to be able to assess the need of every formation and be able to allocate accordingly. For example, at the moment in Kenya, we have the menace of the pirates. Therefore, it is incumbent upon the Ministry of Defence to look at that problem of pirates and accordingly allocate the Kenya Navy an amount that is clearly suitable for that operation. Similarly, we have operations at the Kenya-Somalia border where Kenya Army is involved. It is upon the Ministry of Defence to sit down in consultation with the commanders of all the formations and allocate the money in accordance with need. This is the practice in all modern defence forces of the world. Therefore, I just wanted to persuade my colleagues, hon. Members, because one hon. Member said that this is in accordance with the Constitution. The former Constitution and this Constitution say the same. The Act of Parliament in which we operate the Armed Forces is the same as the current Constitution. Therefore, by changing what this Motion wants us to change does not make us in any way more compliant with the Constitution than we have ever been.

Madam Temporary Deputy Speaker, an hon. Member also said that Kenya Army, Kenya Air Force and Kenya Navy are constitutional offices. That is not correct. The point is that defence forces is a constitutional formation and, therefore, the request here is that money be allocated to the Ministry of State for Defence and then, as it has always happened, it will be divided to the various formations of the defence, based on the need at the time.

With those few remarks, I beg to move.

The Temporary Deputy Speaker (Dr. Laboso): Who is seconding your Motion?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Madam Temporary Deputy Speaker, Sir, I stand to second the amendment. I will also join my colleague in commending the Budget Committee for a job well done but it appears the last amendment is an afterthought.

I am saying it is an afterthought because when you look at Article 241 of the Constitution it is not mandatory that the three branches must be separated. It is very clear that it will be a disservice to the defence forces if we do this.

Madam Temporary Deputy Speaker, this is going to create chaos in the military. This is going to destroy the command structure of the defence forces. We have only one Constitutional office, which is the Kenya Defence Forces. There will be only one Cabinet

Secretary in charge of Kenya Defence Forces. There will be only one Accounting Officer in charge of the Kenya Defence Forces. So, if you try to split it--- It is like in the Ministry of Agriculture showing the amount going to livestock, crops and fisheries. This will be a recipe for chaos in our armed forces. So far, they have done a good job and we need to commend them.

We have also looked at the budgets of almost all the countries. In the United States of America (USA) they follow the same trend. They only show the amount for the defence forces. They do not show what amount is going to the navy, air force and the army. We must allow the defence forces to react according to the circumstances. They put emphasis on one operational issue, for example the one which the Minister mentioned, piracy. We do not want to tie their hands. This is exactly what we are trying to do; tie their hands. I am asking myself, why? Is there need? What is the reason? I cannot see the reason.

Madam Temporary Deputy Speaker, even if you look at the performance contract, there is only one with the Ministry. You cannot have various performance contracts with the Commander of the Army, the Commander of the Navy and Commander of the Air Force. As I said, this is not necessary. I do not know why it is appearing in our amendment. In order not to cause chaos in the defence forces, in order not to destroy the command structure---

I beg to second.

(Question that the words to be left out be left out, proposed)

Mr. Ogindo: Madam Temporary Deputy Speaker, I think this is the saddest day in my stay in this House. One of the cardinal roles of Parliament is the watchdog role. I want to thank this House because just recently we worked tirelessly to ensure that we brought a new Constitutional order. The essence of a new Constitutional order is that we change the way of doing things for the better of this country. In order to make things better we must embrace change, particularly those positive changes that go a long way in making the management of our resources prudent, efficient and effective.

Madam Temporary Deputy Speaker, I am surprised by the reason being advanced by the proponents of this amendment. We have the Office of the President under which there are several departments. All these departments have their own respective allocations. The police force has its own allocation. The Administration Police has its own allocation. The Provincial Administration has its own allocation. The National Security Intelligence Service (NSIS) has its own allocation. These departments work very harmoniously and very accountably.

(Applause)

In the past we have had a Department of Defence (DoD) that has always had single line budget. It is obvious for what reasons the single line budget is popular.

An hon. Member: Why?

Mr. Ogindo: It is because everybody is able to dip his finger there without anybody noticing it.

The Minister of State for Defence (Mr. Haji): On a point of order, Madam Temporary Deputy Speaker. Could the hon. Member substantiate that people are dipping their fingers into the resources?

The Temporary Deputy Speaker (Dr. Laboso): Can you substantiate your statement Mr. Ogindo?

Mr. Ogindo: Madam Temporary Deputy Speaker, you may be aware that right now the Departmental Committee on Defence and Foreign Relations is undertaking a serious investigation in the expenditure to the DOD. The Committee will soon table a report here.

(Mr. Haji stood up in his place)

The Temporary Deputy Speaker (Dr. Laboso): Order, Minister! What is your point or order?

Mr. Ogindo: Madam Temporary Deputy Speaker, can you protect me from the Minister?

The Temporary Deputy Speaker (Dr. Laboso): Let us hear the last point of order from the Minister!

The Minister of State for Defence (Mr. Haji): Madam Temporary Deputy Speaker, I think the hon. Member has not substantiated. He is talking about a report that has not been submitted to the House. He should, therefore, withdraw the allegation he is making.

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

The Temporary Deputy Speaker (Dr. Laboso): Do you want to be informed, Mr. Ogindo?

Mr. Ogindo: Yes, Madam Temporary Deputy Speaker.

Mr. Mbadi: Madam Temporary Deputy Speaker, this country is even very much aware of sub-standard helicopters bought from China. That is corruption. This is not something to ask for substantiation. Minister, you know we have had many cases of corruption leave alone the ones that are being investigated now. You do not need to ask for substantiation.

Mr. Ogindo: Thank you for that valuable information.

(Mr. Musila stood up in his place)

The Temporary Deputy Speaker (Dr. Laboso): Order, Assistant Minister! Allow Mr. Ogindo to finish.

Mr. Ogindo: It is in their interest that I finish.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): But Madam Temporary Deputy Speaker---

The Temporary Deputy Speaker (Dr. Laboso): Order! Are you challenging the Chair?

(Mr. Musila resumed his seat)

Mr. Ogindo: Madam Temporary Deputy Speaker, I am a Member of the Committee on Defence and Foreign Relations. Also, I am a Member of the Budget

Committee. This decision was reached after a careful consideration of what is wrong with our DOD. This decision was arrived at after an understanding which was out of patriotism that we need to protect the security of our country.

I heard the Minister who moved the amendment say that today we have the threat of pirates. The reason we have this is because of this single line budget. Out of this budget the Kenya Navy has been starved of its allocation. Today, we do not have a single warship that is functional. It is out of that realization that today we have said that in order to strengthen the various departments of the armed forces we have to ensure that the Kenya Navy gets its allocation, so that it can be working. We want to have the Kenya Air Force buy its own jets, so that we can have a functional Kenya Air Force. As it is now, we are not sure which department of the defence force is functional.

With those remarks, I beg to oppose.

(Loud consultations)

Mr. Farah: Order! Order!

The Temporary Deputy Speaker (Dr. Laboso): Order, the hon. Member for Lagdera!

(Laughter)

Mr. Farah: Most obliged, Madam Temporary Deputy Speaker. From the outset, I would like to say that my contribution to this is based on principle and what I think it is good for this country. Both the Minister and the Assistant Minister of State for Defence are known to me and are both men of integrity and men who are basically respected in this country. However, I would like to talk about the institution of defence.

As a matter of fact, it is not true that this happens all over the world. Both in the United States of America (USA) and in the United Kingdom (UK) there are line items for the three different departments or the three different forces. As a matter of fact in the UK for a very long time---

Mr. Midiwo: On a point of order, Madam Temporary Deputy Speaker. I thought we were supporting or opposing the amendment---

Mr. Farah: Hold your horse! Hold your horse!

The Temporary Deputy Speaker (Dr. Laboso): Can you get to it, Mr. Deputy Speaker?

Mr. Farah: I want to oppose this amendment.

(Applause)

Madam Temporary Deputy Speaker, as a matter of fact, as far back as the First World War and even the Second World War, the departments or the different forces in the UK were so distinct from one another. Many of you who have read history will remember that Winston Churchill started off as the Assistant Secretary for Navy. As it is today, not only do they have their line items for the three different forces, but they even have different leadership and there is one Secretary for Defense who is up there. I think it will be a very good thing for us even in our own practice here in future to propose a situation in which we have an Assistant Minister for each one of them.

(Applause)

Madam Temporary Deputy Speaker, having said that, all that we are doing is that we are trying to break loose from the past. The past in this country for all Ministries, defence included, was wrought with sleaze, corruption, embezzlement and monies that were mismanaged to a level or magnitude you cannot imagine. We want to go into a situation in which we have a solid and an accountable system in which Kenyans know that they are getting value for money.

An hon. Member: Yes!

Mr. Farah: Madam Temporary Deputy Speaker, we have had situations in which sub-standard equipment were bought; we have had situations in which certain forces, like the Kenya Navy is so underfunded that it does not have the capacity to be able not only to deal with piracy, but even to deal with such things like people who come and steal our fish! We do not have the capacity to deal with and bring to book the fish pirates or trawlers that come from the developed world and some of the developing world.

An hon. Member: Even Misingo!

Mr. Farah: Madam Temporary Deputy Speaker, the hon. Member seated next to me tells me that we do not have a presence that is good enough even in Misingo in order for us to feel that we are secure. Parliament is here. In the event there is a need to team together or pool together certain funds and do certain things for a given department, Parliament will always be informed, it will be justified and will be explained by the Minister---- Parliament will, in respect of our national security but sufficiently satisfied, always pass that and reallocate the funds. Parliament has the capacity to reallocate those funds at a later stage if the Government, the Minister for Finance and the Minister of State for Defence at that time is able to come and convince Parliament.

Madam Temporary Deputy Speaker, the problem we have is that we want to have an open book in this country. The DOD is one department in which we were told that this is a national security matter and that it is not subject to the Controller and Auditor-General and it is not subject to any audit. As a matter of fact---

The Minister of State for Defence (Mr. Haji): On a point of order, Madam Temporary Deputy Speaker. Is the hon. Member in order to say that it is not subject to the audit? Even in those days, it has never been outside the system of the Government.

Mr. Farah: Madam Temporary Deputy Speaker, it used to be and it was removed in the 1980s. Those of you who have your memory right and if you go back to the records, you will see that it was removed in the 1980s. We have reason to believe that a lot of money went the wrong way. All we are doing right now is that we are saying that we want massive transparency. There is nothing national security about buying a low loader, which is a Mack truck or a Mercedes truck. There is nothing national security about that!

(Applause)

There is nothing national security about buying boots for our forces! We want to see that when we buy boots, those boots are of the right quality and we are getting value for money. That is the reason why we are dissecting it. Actually, this country is devolving funds and expenditure so that there is micro management in the sense that people are able

to see where every penny goes. When it is a lot of it together, it is very easy for these things to go the wrong way. That is why I am inclined to believe that in excess of 70 per cent of our national Budget that is allocated for development projects by the Central Government is lost to corruption. Look at the CDF, for example. We want to have the same thing. We want people to see how much we give to the Kenya Navy. What value do we get for what we give them? We are not a country that will go to war anywhere. We are a Third World country that wants to spend as much as possible and the least amount of money on defence because we do not have a problem with any of our neighbours. But nonetheless, we want to make sure that the money that is allocated to it is put to proper use.

Madam Temporary Deputy Speaker, I beg to oppose.

The Minister for Education (Prof. Onger): Madam Temporary Deputy Speaker, this is a very serious Motion and from the outset, I want to support the amendment. This Motion clearly quotes Article 241 of the Constitution. It did not say any other legislative process. What does it say? Article 241 of our Constitution talks about the Kenya Defence Forces and the Defence Council. That is the main Article. The heavy sentence is about Defence Forces and the Defence Council. Sub-section 2 gives details on how the Defence Council will operate. The operative Article states that there are established the Kenya Defence Forces. Because this Constitution is quoted in this Motion, I want to draw the attention of the hon. House to Section 7 of Article 241 of the Constitution which talks about the Defence Council. I have already said there is established the Kenya Defence Forces and the functions of the Defence Forces are stipulated there. Section 5 talks about the Defence Council; there is established a Defence Council and the membership of the Council is defined. The key point I want to bring out is in Section 7(a) which says, the Council is responsible for the overall policy, control and supervision of the Kenya Defence Forces. The operative word here is “control.” We may have all the goodwill from Parliament to try and micro-manage the functions of the Defence Forces and the Defence Council, but I think our business as a House – and I want to plead with my colleagues on the other side – is really to ensure that there are sufficient resources to be able to manage the security of this nation and put it in perspective.

Mr. Ogindo: On a point of order, Madam Temporary Deputy Speaker. Is the Minister in order to mislead this House that Parliament is interested in micromanaging the defence forces, while in actual sense, Parliament is just out to play its rightful role on oversight to ensure that Kenyans get value for their money?

The Minister for Education (Prof. Onger): Indeed, Parliament’s role is to allocate resources in an equitable manner. It is there in the Constitution. The resources shall bear into account the various duties. That is our responsibility as Parliament. However, when we have allocated those funds, I think it would be a mistake on our part, as Parliament, to try and then specify how every single penny must be spent in that department.

Mr. Midiwo: On a point of order, Madam Temporary Deputy Speaker. The Speakers who are speaking seem to be contributing to the main Motion. Could we dispose of the amendment, so that we go back to the main debate?

The Temporary Deputy Speaker (Dr. Laboso): Could you conclude hon. Minister.

The Minister for Education (Prof. Ongeru): Madam Temporary Deputy Speaker, since I am on the Floor; could I, please beg for your silence. I am building up a case. The reason why I am supporting the amendment of this Motion is because these very basic Articles of the Constitution do not give us room to try and riggle out what is already contained in the main body of the Constitution, which is quoted in this amendment. That is why I am saying we should expunge the amendment that pursuant to Article 241 of the Constitution, the Budget of the Ministry of State for Defence should be divided into----

We are talking about the defence Council. We are not talking about the Kenya Army, Kenya Air force and Kenya Navy. Let me also say that this is a very sensitive area. I think even with the past historical events we may have witnessed, we are in the new constitutional era. We should give the benefit of doubt to the new officers who may come to the office, who will constitute the bulk of this Defence Council. They are the people who will be operative. I would like to see a situation, where the Army Commander or the Kenya Air force Commander or the Kenya Navy Commander are justifying their expenses within the Defence Council, rather than coming to seek separately through a different line of Budget, a budget line from this House. One of the best well guarded secrets is the integrity of the defence forces. Even the Pentagon of the United States, when they act jointly, you cannot know whether this is the Navy, Army or Air Force. They are under a joint command. We have largely borrowed some of these Articles from them.

Therefore, Madam Temporary Deputy Speaker, in all honesty, even if you feel that you want to give separate votes for these departments, let us give them the benefit of doubt. The Defence Council will be formed. If there is need in the future to amend this law, this Parliament has a free hand in amending any Article.

With those few remarks, I beg to support the amendment.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Madam Temporary Deputy Speaker, I stand to support the amendment. We are an institution.

An hon. Member: Are you sure?

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Yes, I am 100 per cent sure. First of all, as a General and I know what I am talking about.

We cannot misunderstand the institution giving this country security. What is important is command and control. The Defence Council has been given the responsibility by the Constitution to ensure the defence forces of the Republic of Kenya are given specific resources to manage the security aspect as regards the external threat.

In our Ministry, we have something called Strategic Defence Review (SDR). This SDR is based on national security interest. Each service is given that specific line. Therefore, it is the Defence Council which has the overall responsibility to allocate funds according to those interests.

QUORUM

The Assistant Minister for Youth Affairs and Sport (Mr. Kabando wa Kabando): Madam Temporary Deputy Speaker, I am worried that there appears to be no quorum. It is a House issue.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Member, I am waiting for guidance. Do we have quorum in the House? So, could the Division Bell be rung?

(The Division Bell was rung)

We have a quorum now; Maj-Gen Nkaisserry, you can continue to conclude.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Madam Temporary Deputy Speaker, I was saying that we cannot micromanage the Ministry of State for Defence. The Ministry has the capacity to allocate resources to the services according to defence needs. I find this Motion very flawed.

(Loud consultations)

Madam Temporary Deputy Speaker, could you protect me?

The Temporary Deputy Speaker (Dr. Laboso): Allow the Member to conclude his contribution.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Madam Temporary Deputy Speaker, I find this Motion to be very flawed. You cannot mix what is in Chapter 14 of the Constitution with Chapter 12 of the Constitution. We need to separate the issues of defence and the issues of the budget. When you look at this Motion, you will see that it is flawed. When you look at it, it is an addition. We are talking about a Budget Policy Statement, and then we put in “pursuant to this, the Ministry of State for Defence needs to separate---

So, as I was saying, our strategic defence review is based on national security threats. We match resources with the threats. The only body which makes these decisions is not the service units, but the Defence Council. Therefore, despite the fact that these hon. Members are eager to micro-manage Ministries, we cannot accept this to go on.

With those few remarks, I support the amendment.

(Question, that the words to be left out be left out, put and negated)

(Debate on the original Motion resumed)

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Speaker. Is it in order for a Member of the Cabinet to raise the issue of Quorum? If they are not ready to work, they can leave us in the Back Bench to work.

The Temporary Deputy Speaker (Dr. Laboso): The point has been made.

The Assistant Minister for Sports and Youth Affairs (Mr. Kabando wa Kabando): On a point of order, Madam Temporary Deputy Speaker. I rise on a point of order because I believe that we must remain sensitive to the fact that whether we are in the Back Bench or in departmental or watch dog Committees, or in the Government, we occupy our Member of Parliament status. Therefore, as the Member of Parliament for Mukurweini, I am concerned when there appears not to be qualitative and quantitative representation on an important issue and, therefore, no interest in the House. Hon. Odhiambo-Mabona---

The Temporary Deputy Speaker (Dr. Laboso): Your point has been made, Assistant Minister!

The Assistant Minister for Sports and Youth Affairs (Mr. Kabando wa Kabando): Madam Temporary Deputy Speaker, hon. Odhiambo-Mobona must be reigned in---

The Temporary Deputy Speaker (Dr. Laboso): Let us hear your contribution, hon. Konchela!

Mr. Konchela: Madam Temporary Deputy Speaker, Sir, I want to thank you for giving me the opportunity to contribute to this Motion.

First of all, I want to advise the very senior members of the military and the Government that this is not about the operations of the military. This is not about micro-managing the military. This is about accountability for the money that Parliament allocates to this Ministry. Since this amendment does not seem to be provided for in the new Constitution, many Members of the Cabinet are still living in the past. The time for change has come and unless they adapt to change, they will be sent out by the change.

I want to read Article 201, of the Chapter on Public Finance, which says as follows:-

“201. The following principles shall guide all aspects of public finance in the Republic of Kenya-

(a) there shall be openness, accountability, inclusiveness, public participation in financial matters---“

Madam Temporary Deputy Speaker, this Article goes on to say, under part (d), that public money shall be used in a prudent and responsible way.

The Department of Defence has to show this House how prudent they are using the money that is allocated to them. The other day, they skewed procurement of equipment because of reallocation of money; this was because they had so much money they did not plan for. The Minister has not yet bothered to tell us about the military equipment that is crashing. The other day, a military helicopter crashed because there is no training. There are no pilots because of misuse of money. It is because there is no openness or inclusiveness or public participation.

The same Article 201 goes on to say, under part (e), that financial management shall be responsible, and fiscal reporting shall be clear. When we talk about responsibility and fiscal reporting, we are talking about accountability. We are saying that we want accountability in the Ministry, just as the Ministry of State for Provincial Administration and Internal Security has done with the Police, the Criminal Investigations Department, and with all other aspects within that Ministry.

Madam Temporary Deputy Speaker, we also want the military to move on, just as it is done in the United States of America (USA) and in the United Kingdom (UK), where Force Commanders are directly responsible to the Commander-in-Chief. They should not report to the Chief of General Staff (CGS) or the Defence Council. They report directly to the President in times of war.

How will the Service Commanders be able to do that if they have no resources with which to create the capacity of their forces to defend the country? That is why pirates can come to Mombasa and do whatever they want. That is why there is no way we can fire a single bullet in the air to defend this country. That is why our neighbours are saying that Kenya has a commercial military. That is the attitude that our neighbours

have about our military. So, all we want is proper management of public resources in the military. That is what we are trying to tell this Minister, who is a very senior person in this country. Please, allow change to take its own course. Do not allow the status quo to hold us back.

Madam Temporary Deputy Speaker, we have the Public Procurement Oversight Authority (PPOA). In fact, one of the things that the Ministry of Finance ought to do is to, quickly, bring an amendment to the Public Procurement Disposal Act, 2005, to address the shortcomings of financial management in this country, and include the Economic Stimulus projects, which are found in the Ministry of State for Defence and other Ministries, so that the procurement process is shortened to be able to provide services to the people of Kenya in good time; in this way the Government can expend money, and not reallocate it because they have excess money that they have not used because they have not planned for it.

We now know the real time of procurement in the military. Sometimes it takes four or five years. They should plan their procurement for major equipment. They should not ask for money which they will not use next year. We are saying that if we allocate money to the Navy Commander, the Air Force Commander and the Army Commander, they will be able to plan their specific needs. Each Service Commander will be able to operationalise and service the equipment in his unit. That way, each unit will be able to do what it is supposed to do.

Madam Temporary Deputy Speaker, I do not want to go into details, because the Report of the Departmental Committee on Defence and Foreign Relations is going to agree with me on this one. Without talking too much, I want to support this proposal. It is very important because it will ensure that our military's capability is enhanced.

With those remarks, I beg to support.

Mr. Bahari: Madam Temporary Deputy Speaker, I thank you for giving me the chance to contribute to this Motion.

From the outset, I want to support this Motion because this very important issue came up as a result of reforms which this Parliament has undertaken. Indeed, in the old dispensation, before the Financial Management Act came into force, as Parliament, we did not have the opportunity to discuss Budget Policy Statements. It is only through reforms that this country is where it is now, in terms of alleviating poverty, ensuring education for all and ensuring that the citizens of this country live honourable lives, and not the lives of desperation that we have seen.

Madam Temporary Deputy Speaker, Parliament should not just be talking. Parliament should be the one to bring the amendments to Acts as well as new laws, so that this country can move forward. In the past, you would come to Parliament and just talk, and that would be the end of everything. Parliament can now act. I will give an example of the Constituencies Development Fund (CDF). When the CDF Act was put into place, Members of the Back Bench had to literally arm-twist the Executive into implementing it. If you refer to history, you will realise that we declined to pass the Appropriation Bill, until and unless the CDF Act was implemented by the then Minister for Finance.

You can now see that today, the CDF has brought development to a level we could not have imagined before. You are a witness as to how many countries in Africa have come here to study the example of CDF that Kenya has put in place. Many countries

in Africa have borrowed the CDF model, and they have introduced it in their countries. So, we must appreciate this development. Always, when it comes to reforms, there must be those who will be opposed to change. Therefore, it is incumbent upon this House to always look into the issue of reforms because it gives us an edge over and above other countries.

Madam Temporary Deputy Speaker, I want to come back to the issue of the economy, because this debate is not about the defence forces, and we should move away from the defence forces. The world over, the economic situation has become very difficult. You have seen how the issue of food prices and the prices of other commodities has affected India. Currency devaluation is a global matter. It is, therefore, important that we treat these issues as global issues.

Madam Temporary Deputy Speaker, it is important that we treat these issues like global issues and avoid the temptation to localize some of our arguments that I have seen on the Floor of this House. It is only then---

Mr. C. Onyancha: On a point of order, Madam Temporary Deputy Speaker. Going by the mood of the House and seeing that we are now being repetitive, would I be in order to ask that, the Mover be called upon to reply?

Mr. Ogindo: On a point of order, Madam Temporary Deputy Speaker. We are debating the report on the Budget Policy Statement, which is a very important report. It would be imperative that Members be left to debate this report exhaustively so that they can make recommendations that will enrich the Budget that is coming up.

Mr. Mbadi: On a point of order, Madam Temporary Deputy Speaker. I agree that we are discussing a very important report, namely; the Budget Policy Statement, but we started debating it last week. We have other very important pieces of legislation. For example, we have not finished with the Independent Electoral and Boundaries Commission and the Salaries and Remuneration Commission. If we allow the 220 Members to debate the Budget Policy Statement, we will never finish and we will be taking too much time. Could you put the question, so that we can vote whether the Mover should be called upon to reply?

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, let me give an opportunity to three more Members to contribute and then we can call upon the Mover to respond. Hon. Bahari, you can conclude!

Mr. Bahari: Madam Temporary Deputy Speaker, therefore, global issues must not be trivialized. It is only when we address them as they are, that we will get the right direction. I am not saying that there are a lot of things that we cannot improve in this country. Certainly, there are. There are a lot of loopholes that we can seal. It is extremely important that these issues are looked at globally. I want to raise an issue on the current drought situation. This matter has not been handled properly to date. There is serious food deficiency in the ASAL areas of this country. Although the Government has provided for this in the Supplementary Estimates, it has been poorly handled. Up to now, the food situation is alarming. There is serious food deficiency.

I want to touch on the issue of the private sector in this country, particularly the oil and the banking industries which make super normal profits, yet Kenyans are suffering. This is not permissible. The Ministry of Finance and the relevant Ministries must work very closely together and ensure that this matter is brought to an end. They are reaping from the common person where they ought not to, particularly the banking

sector. It is high time that the Ministry looked into cost-cutting measures at this particular point in time. Prudence requires that we take bold steps like many other countries have done and painfully so, to ensure that we cut costs rather than just think about the issue of increasing taxation as is the thinking of the Executive right now.

The issue of election financing has come up severally. I know the Members may have discussed it. Currently, the finances we have allocated to the IIEC are insufficient. It is important that the Minister revisits this matter and ensures that appropriate financing is done. Without that, you can imagine how costly it can be, particularly where we have acted in a manner that does not suit this country at all and where in an election process, you cannot afford to send an agent to a particular polling station for fear of that agent being penalized, yet we sit in this House saying that we have gone through an election process. Indeed, it is extremely faulty and this kind of exercise should not be repeated.

With those few remarks and in the interest of the Members, I beg to support.

Mr. Namwamba: Madam Temporary Deputy Speaker, the greatest challenge this country faces today is to make the transition from the Constitution to constitutionalism; a state of affairs where we not only mouth the letter of the Constitution, but we also live by the spirit of the Constitution. The greatest challenge that this Government seems to have failed to internalize and live by is the necessity to make that transition; that we have to live by the spirit of the Constitution.

Article 35 of this Constitution says:-

“(1) Every citizen has the right of access to-
(a) Information held by the State”.

Article 35(3) says:-

“The State shall publish and publicise any important information affecting the nation”.

The information about the Budget, there can be no information more important to the public than information affecting the utilization of resources given to the State by the citizen. This is a primary right that the citizen has. Further, I have heard Members of the Government here argue that Parliament cannot and should not engage in scrutinizing certain aspects of finances. Article 95 of the Constitution gives the National Assembly wide ranging roles which include in Article 95(2) that says:-

“The National Assembly deliberates on and resolves issues of concern to the people”.

One of the greatest concerns to the people of Kenya today is how the Government prioritizes the allocation of resources. The people of this country are concerned that over the years, including today, at a time when many Kenyans cannot keep body and soul together because of the spiraling cost of living, we have a Government that continues to spend beyond its means as it misallocates resources. This House also has the constitutional authority to exercise oversight over all the State organs. That section has no exception. There is no exception that this House cannot exercise oversight on budgets allocated to any department, whether it is the Department of Defence.

The retired Col. Konchella has made reference to Article 201(a) that requires openness, accountability---

Mr. Yinda: On a point of order, Madam Temporary Deputy Speaker. Going by the mood of the House, would I be in order to ask that the Mover be called upon to reply?

Mr. Namwamba: Madam Temporary Deputy Speaker, you can do that after I have concluded in one minute. The point I am making is that a problem cannot be solved from the same consciousness that created it. The problem we have today is that we have a Government that engages in fear mongering. We have had a very outlandish statement here that if we make these changes, we will cause chaos in the military. That is classical fear mongering; the kind of fear that has been spread liberally, to prevent Members of this honourable House and the members of the public from exposing areas of Government expenditure that have remained opaque for long.

I support this Motion in total. Let it be the beginning of a journey to---

(Question, that the Mover be now called upon to reply, put and agreed to)

Mr. Sambu: Madam Temporary Deputy Speaker, I take this opportunity to thank the Members for their very worthy contributions.

Madam Temporary Deputy Speaker, already, this House has made history by promulgating a new Constitution which requires that we have to implement it and this august House is the one charged with that responsibility. One area of the implementation is in the Budget process. The Budget process is a very important factor in Parliament. In fact, we take a lot more time discussing budgetary issues and this is one area that I will be grateful to hon. Members to appreciate and that we proceed and make further history in the budget making process of this House.

Many hon. Members have come up with the question of the Military, but it is part of the changes. We should not fear changes. Change is as good as a feast. In future, in fact, we are coming up with programme budgeting, which will also create more changes in the budget making process. So, I support the views expressed by the Members. I do hope that we now can make history by passing this very important Motion in this august House.

Madam Temporary Deputy Speaker, I beg to move.

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

THAT, this House adopts the Report of the Budget Committee on the Budget Policy Statement for the year 2011/2012 laid on the Table of the House on Wednesday 13th April, 2011 subject to deletion of the words "In this regard, the ceiling for the PSC for development budget should be Kshs.2.0 billion which is 0.62% of the national development budget" and insertion of the words "In this regard, the ceiling for the PSC for development budget should be Kshs.2.4 billion which is 0.65% of the national development budget" in place thereof; and inserting a new recommendation as follows:- "(k) That pursuant to Article 241 of the Constitution, the budget for Ministry of State for Defence should be separated to reflect allocations to each of the three arms of Defence Forces and General Administration"

BILL

Second Reading

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL

*(The Minister for Justice, National Cohesion
and Constitutional Affairs on 26.4.2011)*

(Resumption of Debate interrupted on 27.4.2011)

The Temporary Deputy Speaker (Dr. Laboso): Prof. Olweny still had time left. If he is not here, he will continue with his contribution later. I will ask Mr. Mututho to contribute.

Mr. Mututho: Thank you, Madam Temporary Deputy Speaker. I rise to support this Motion.

In supporting this Bill, I want to alert the House, especially the Minister for Justice, National Cohesion and Constitutional Affairs. Elections and electioneering have become the worst enemies of mankind, particularly in Africa. We need to have men of integrity managing that and we need to have very good laws. We need laws that will stand the test of time; that will not be manipulated just in case it happens like it is happening now in Uganda and all over Africa.

Madam Temporary Deputy Speaker, when you look through what is before us, you will find there is something very important missing in that particular Bill. This is something to do with regulation of opinion polls.

(Mr. Mutula consulted loudly)

I wish the Minister for Justice, National Cohesion and Constitutional Affairs could pay a bit of attention.

The Temporary Deputy Speaker (Dr. Laboso): Minister for Justice, National Cohesion and Constitutional Affairs.

Mr. Mututho: Madam Temporary Deputy Speaker, in absence of his officers, perhaps, he needs to pay more attention.

I am saying elections have become the most dangerous tools now; more than even atomic energy. We need a law that is designed by very sober minds. We need a law that is completely water-tight, so that only the very best ever get elected, but not those ones who have connections.

(Mr. Muthama consulted loudly)

Hon. Chief Whip, if you could just keep quiet, it would be very good! I want him when he is elected in Kangundo, that the laws that make sure that he is elected are so water-tight that no one will doubt his win and there will be no need for petitions.

There is something not quite right in this new Bill; that, we are giving too much power to the Executive. The idea is that power corrupts. I am proud to be in KANU. KANU as a party when they ruled, they did something which I see here again; that is, giving too much power to one *Jogoo*, the President.

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

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

Mr. Temporary Deputy Speaker, if you give it to the Executive, then you are giving it to one person, the CEO. This is because we do not have a yardstick to measure power once we go to that level. The CEO will be able to move his directors or officers and that is what I find wrong.

Mr. Temporary Deputy Speaker, Sir, the other point which I find to be a major weakness, is that I have reviewed all the election laws and all similar commissions around the world, but this one of ours, as meticulous as it may look, lacks one active ingredient; opinion polls before and after. That chapter should be introduced so that people who decided to give opinion polls and make John Mututho imagine that he can be the next president by scoring 65 per cent, that must be checked.

I have looked at Australian law and all the European laws and found that opinion polls are part of the polling process and should be considered in this particular Bill. If you look through what these laws have been talking about, nearly 50 per cent of all opinion polls around the world have been proven to be wrong. But the net effect is that they cause so much suffering to the recipients to an extent that they actually influence elections.

I want to applaud one good thing that has happened with the current Interim Independent Electoral Commission of Kenya; that is the transparent box. We should now in this particular Bill, remove all doubts and generate the ballot from the finger prints. I am saying this because the issue of stuffing of ballot boxes was recorded in Nigeria the other day. The issue of ballot boxes and ballot boxes manufactured in backyard and in the backstreets is such a serious issue. We need to make it very difficult for these people to generate adequate ballot boxes to cause a difference. It is a fact.

I was saying here without fear that I have been a victim about twice or thrice. I have seen with my own eyes, ballot papers being stuffed in those black boxes. It is very painful, particularly when supervised by the Government. I have seen Ministers and painfully so, do it, on behalf of their preferred candidates.

Mr. Temporary Deputy Speaker, Sir, somebody has to win. Somebody has to lose. Let us use affordable but convenient transparent boxes. Let us use the finger prints to generate ballots so that we do not have a situation where somebody, because he is correct politically, ends up getting a gift of 20,000 or 25,000 votes and you end up having a situation where somebody who won is left there suffering. You know, incidentally, the people who get those free ballots are also associated with the Government in power and thereafter, they try to harass you to your death. If you are lucky to survive, you will be so injured to be competent in any future elections. I want to plead with the Minister and also declare interest that he has represented me ably twice. He knows what I am talking about

and the pains that I have gone through during the election petitions--- When you have won in broad daylight and done so with over 4,000 and somebody announces - because he is being directed - that you did not win the elections, we have discussed and he has studied some of those things and seen that happen, including the last general elections. We still do not know how over 25,000 votes were introduced to the box and whoever was favoured by those particular votes would easily tilt the difference. Luckily, John Mututho was voted in with over 41,000 votes and that did not affect much. However, nevertheless, we need to have a system that is fool-proof; a system that is generated by this Bill, so that we do not have so many people having to take that particular decision. Even if the man in charge of the electoral commission is such a holy person that would qualify for the next round of saints, too much power corrupts. He will sit there with his officers. He will issue such instructions that will make this whole thing another battlefield.

I want to support this Bill, most of all because I believe the current Minister for Justice, National Cohesion and Constitutional Affairs means well. I want to support this because I know he has been there at the pain of it, defending several petitions. He knows all the mistakes that were made there such that, as of now, we need to have a law that we do not need to have those petitions in courts. We need to have a law that allows only the popular candidates to be elected.

Mr. Temporary Deputy Speaker, Sir, finally, leadership should not be a preserve of the rich. It should not be left to people who can do electioneering in billions, helicopters and other things. There must be also a chapter or two which will define how a poor man, and who is the material that we are advocating here, can be able to come to this august House and represent his people. That is because the role of Government is threefold: That of representing the people, that of making of laws and that of oversight. None of that includes a cheque book. None of the roles that Parliament gets involved in are gauged by who can draw the biggest cheque. For that reason, we need a law that protects the poor, so that they also have ready access to electoral positions.

Mr. Temporary Deputy Speaker, Sir, I support this Bill with those suggested amendments.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, I stand to support this Bill and in supporting it, I want to echo words of previous speakers who have underlined the importance of integrity in electioneering. Lack of integrity has brought a lot of suffering to our countries. Countries in Africa have become politically stable---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Musila! Are they becoming stable or unstable? Just clarify that!

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, if you heard me, I corrected myself immediately. I said that it is because of lack of integrity in many nations that has caused instability and bloodshed. This is more so in African countries and we have many examples, starting with our own country where because of lack of integrity in elections, there has been a lot of bloodshed and political instability. Similarly, Zimbabwe is another example in Africa. Recently, Ivory Coast has been undergoing similar instability and bloodshed due to lack of integrity in elections. This also includes Nigeria as someone has already said. We can continue giving examples. We are underlining the importance of integrity in elections.

While we are creating an independent electoral body, it must be independent in practice but not just by the word “independent”.

We have created many commissions or bodies in this country in the past and called them “independent”, but they have not been so. What I am saying is that this time round, we cannot afford to go wrong. We must create an independent commission that is going to remove this country from the culture of election rigging which has characterized this country since Independence. I can say that without fear of contradiction. It has gone on for too long; nearly 50 years now since Independence and we are still talking of election rigging. Anyone who losses - even if he is not rigged out - cries foul and says that he has been rigged out.

Mr. Temporary Deputy Speaker, Sir, so, how do we get out of this through this Bill? The only way is to ensure that this body that we are creating is going to be independent. In doing so, the proposed legislation that is going to manage elections and is going to come before this House--- I have been told by the Minister for Justice, National Cohesion and Constitutional Affairs, that a Bill will be brought to us providing penalties for those who do not live to that independence. So, I am suggesting to the Minister that in this Bill, he must ensure that very severe penalties are prescribed for all those commissioners and members of staff who are supposed to be independent and do not live to the expectations of the nation. It does not only apply to the commissioners but even those people in authority or interested persons who make an attempt and not just to succeed in doing so, but just making an attempt to influence an independent commissioner or member of staff; very severe punishment must be prescribed. The schedule that the Minister has provided as Schedule Four has given a code of conduct for commissioners. I believe that other codes of conduct that will be developed, that are going to be followed by all people interested or getting involved in elections, whether they are candidates, agents or anybody playing whatever role, there must be severe penalties prescribed. I am emphasizing this because there have been laws managing elections in this country. Mr. Mututho has just given us experiences that he has gone through where the loser is declared the winner. It should never occur again in this country.

It should never occur again in this country, and I think, as legislators, we owe it to this nation. If we can put to a stop the issue of election rigging and ensure that those who participate in elections are beyond reproach; that, those who are Commissioners are not just Commissioners by word, and that they are independent Commissioners by deed---

Mr. Temporary Deputy Speaker, Sir, the Bill gives certain responsibilities to the independent Commission. One of them is to perform continuous registration of voters. This is one area that we have been lacking in. Large numbers of voters have been locked out of elections simply because they did not have election cards. They were locked out of the voters’ roll because they did not have ID cards. Therefore, as we prepare to give this Commission the responsibility of continuous registration of voters, it would be useless if we do not improve on the issuance of ID cards, so that as Kenyans attain 18 years of age, they are able to walk into a registration centre and be registered as voters. If the department that is responsible for registering persons is unable to do so, then we must devise other documents that can be used to make a person a qualified voter.

I know right now, we use ID cards and passports but these are not adequate. How many people in the rural areas have passports? A large number of youths as I speak have

no ID cards. So, even if you create a Commission and give them responsibility to continuously register voters, they will be sitting there idle and the youth will be suffering because they cannot register. So, could a birth certificate be, perhaps, considered as an additional document that can enable a potential voter to be registered as a voter? I am saying it would be useless to do continuous registration unless you make sure that those who qualify to vote have the necessary documents to register as voters.

Mr. Temporary Deputy Speaker, Sir, the other area is the regular review of the voters' roll. One of the sources of rigging has been using the old voters' roll containing names of dead people. Dead people have been used by some unscrupulous commissioners, or even agents, to ensure that a candidate wins. Therefore, the voters' roll must be cleaned all the time. It must be free of people who do not exist, so that it can then be credible enough to be trusted by all candidates.

Investigations and promotion is another role. In the past, electoral commissions have simply warned people that if you do this, something will happen; if you do this, we will report you to the police. When reports are made to the police, nothing happens. As Mr. Mututho said, those who do these things are in power. This independent Commission must be able to detect offences that are committed under the Act, and be able to prosecute those people without reference to any other body. That is the only way in which the Commission will have teeth to bite. Past Commissions have been toothless bull-dogs. They have been unable to prosecute; they have been unable to do anything. Election crimes have been committed but the Commissions have been unable to do anything. I support this very strongly.

As I conclude, I want to talk about the other role; delimitation of constituencies and wards. I listened to this debate and a number of Members of Parliament here suggested that the former interim commission headed by Mr. Ligale did a job; so, why do we not finish with this and say it was a job well done?

Mr. Temporary Deputy Speaker, Sir, first, I do not believe that, that Commission acted independently. It is one of the Commissions that I would say, it was independent by word but it was not independent by practice. Therefore, simply because I got an additional constituency, I cannot stand up and say it is a good job. Serious concerns have been raised by *wananchi* and even hon. Members---

Mr. Ogindo: On a point of order, Mr. Temporary Deputy Speaker, Sir. You are aware that the Interim Independent Boundaries Review Commission (IIBRC) that was headed by hon. Ligale went across the country under its mandate, collected views, had a verdict and made a report. Is the Assistant Minister in order to mislead this House that the Commission was not independent when we all know that it was independent? Is he in order? What more can the Commission do?

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Ogindo!

Mr. Assistant Minister, you can ignore that because it is not a point of order. The hon. Member is explaining.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Thank you, Mr. Temporary Deputy Speaker, Sir, because that is clearly a point of argument. In his view, it was independent and fair, and in my view, it was not. It is clearly a point of argument.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is my colleague, Mr. Musila in order to

purport that the Ligale Commission was not independent and yet this Parliament approved and adopted the report of the IIBRC?

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, I will be corrected. If Parliament approved this, then there will be no point in suggesting here that the new Commission will take over whatever was done by the Ligale Commission and will address issues. This is clearly in black and white. So, I am merely alluding to the fact that the new Commission will take over that work. So, if that work had been completed, why then is it in this proposed Bill?

So, it was not completed; there are issues raised and the Parliamentary Committee received complaints and they produced a report to this House, acknowledging those concerns. Therefore, all I am saying is that let us not have this culture of, when I am satisfied, everything is fine. Let us tolerate opinions of other people, particularly of those who are aggrieved. This is because when we are all together and embrace a report of a Commission by saying that it is fair, we move forward. However, one section of the House cannot claim that it was completed when we know it was not completed. If it was, it was not gazetted. Why, was it not gazetted? It was not gazetted because there were concerns which were even raised in the High Court of Kenya and these hon. Members are aware of that.

Therefore, Mr. Temporary Deputy Speaker, Sir, I plead with the House that the concerns that were raised by some hon. Members and Kenyans---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Assistant Minister in order to mislead the House that the concerns of hon. Members were not taken into account when I chaired a Sub-Committee on Justice and Legal Affairs that listened to every single hon. Member that had complaints? The issues have been annexed and form part of the recommendations of the Committee. Is he in order, to mislead the House?

The Assistant Minister, Ministry of State for Defence (Mr. Musila): In fact, Mr. Temporary Deputy Speaker, Sir, this good lady is simply confirming what I am saying; that, her Committee listened to the concerns and made a report and, as a result of that report, the Minister for Justice, National Cohesion and Constitutional Affairs has proposed here that the new Commission will, among other things, address the concerns raised by the Parliamentary Committee chaired by the good lady. I do not see where we are differing; we are saying one and the same thing!

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

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! The Chair may give guidance. I think the hon. Member has raised her own interpretation and you are also raising your own interpretation. Those are not really legitimate points of order.

Proceed, Mr. Assistant Minister!

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Thank you, Mr. Temporary Deputy Speaker, Sir. I agree that those are not legitimate points of order and it is only fair, as I said, that a time will come when this House listens to the others. I think this has been clearly agreed to and that is why we have these proposals in this Bill. I urge hon. Members to support that provision that the new Commission, as independent as we will create it, will make an opinion and the opinion will be final.

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

(Applause)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, we have come to the end of today's sitting. Therefore, the House stands adjourned until tomorrow 4th May, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.