

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 5th May, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Select Committee on Constituencies Fund Committee on the Study Tour to the Republic of Singapore from 5th November, 2009 to 13th November, 2009.

(By Mr. Ethuro)

NOTICE OF MOTION

ADOPTION OF CONSTITUENCIES FUND COMMITTEE REPORT
ON STUDY TOUR TO SINGAPORE

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

THAT, this House adopts the Report of the Select Committee on Constituencies Fund Committee on the Study Tour to the Republic of Singapore from 5th November, 2009 to 13th November, 2009 laid on the Table of the House today, Thursday, 5th May, 2011.

QUESTION BY PRIVATE NOTICE

STALLING OF WORKS ON ROAD B5

Mr. Gaichuhie: Mr. Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) Is the Minister aware that the contractor on Road B5 has moved out of site after doing only six of the 62 kilometres for three months?

(b) When will the contractor resume the works and what is the expected date of completion?

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

(a) I am not aware that the contractor on Road B5 has moved out. Road B5 is the Nakuru-Nyahururu Road. However, I am aware that in April, 2011 there was a

breakdown of the contractor's asphalt plant which slowed down the works, mainly pothole-patching.

(b)The asphalt plant has now been repaired and pothole-patching has commenced. It is expected that the works will be completed by 17th August, 2011. It was a six-month contract.

Mr. Gaichuhie: Mr. Speaker, Sir, I want to thank the Minister for that answer. However, I want to tell him that although the contractor had moved out of the site, he has now come back. The parts that he had already sealed when he began the works are already in bad shape. Is he going to re-do the work?

Mr. Bett: Mr. Speaker, Sir, that section of Road B5 is still on contract and on the completion date when the certificates will be given, there will be an inspection to make sure that the road is in a condition that was anticipated in the contract.

Mr. K. Kilonzo: Mr. Speaker, Sir, incidents of contractors abandoning sites when they are supposed to be doing their work are rampant in this country. The Minister and I had an occasion to visit one of the roads leading to Kitui Town where a contractor had moved out of site. What stern measures is the Ministry taking against such contractors?

Mr. Bett: Mr. Speaker, Sir, it is for that very reason that we are introducing two pieces of legislation; the National Construction Authority Bill and the Engineers Bill. The two pieces of legislation are expected to assist the Ministry in making sure that the engineers are adequately disciplined in their respective places of work. We take seriously the issue of contractors abandoning sites. This is a matter that will be placed under their performance levels. We will take note of that.

Mr. Njuguna: Mr. Speaker, Sir, as I thank the Minister for that satisfactory response, I would like him to indicate to this House what measures he is taking with regard to the poor quality of work being executed by contractors in many parts of this country. For example, there is a road in Lari Constituency, from Gichingo to Kijabe, where Kshs10 million was spent just the other day and yet it is in a very deplorable condition.

Mr. Bett: Mr. Speaker, Sir, it depends on the specifications of the contract. I want to appreciate Members of Parliament and members of the public. This is because they always compare one road to another without realizing that specifications of the road under construction could be lower or higher than the other one. However, we do not condone shoddy work amongst our contractors, hence what I said earlier about the two pieces of legislation that will assist us in dealing with such contractors.

Mr. Lessonet: Mr. Speaker, Sir, now that the Ministry does not condone contractors who do shoddy work, how many of them have been blacklisted, say, in the last one year?

Mr. Bett: Mr. Speaker, Sir, I must say we have not blacklisted any.

Mr. Ogindo: Mr. Speaker, Sir, I appreciate the steps being taken by the Minister in terms of legislation. However, administratively, what is he doing to ensure that the public does not lose money as a result of these contractors abandoning work?

Mr. Bett: Mr. Speaker, Sir, a contractor is obligated to deliver to the Ministry and, indeed, to the public the works as specified in the contract and we are not prepared to go below that level.

Mr. Gaichuhie: Mr. Speaker, Sir, the main reason for the bad condition of this road is poor drainage. Currently, we are experiencing very heavy rainfall around

Menengai Crater. What steps is the Minister going to take to ensure that the drainage system around Menengai Crater is well done so that we do not have this road getting worse?

Mr. Bett: Mr. Speaker, Sir, the issue of run-off water, that is, water flowing from our hills and also on our roads is a matter that concerns so many Ministries. It concerns, for instance, the Ministry of Forestry and Wildlife, the Ministry of Environment and Mineral Resources, the Ministry of Agriculture and even the Ministry of Livestock Development. So, I think it is a matter that will need to be attended to by so many Ministries.

Suffice it to say that when it comes to drainages on the roads, the greatest difficulty we are facing today relates to farmers or people who own land along the roads not allowing us to construct drainage fences along their farms. In fact, if you do it, in the next few minutes, they will block them. That forces water to run on the road, therefore, removing all the gravel on the road. I want to plead with hon. Members to assist us in educating the public to appreciate that we need to drain water off the roads, if we are to retain those roads in a good condition.

Mr. Speaker: Next Question!

ORAL ANSWERS TO QUESTIONS

Question No.880

FUNDING OF TUWANI BRIDGE PROJECT

Mr. Wamalwa asked the Minister for Roads:-

- (a) how much money was released for the construction of Tuwani Bridge in Kitale and why the project has not been completed; and
- (b) what measures the Minister is taking to ensure that the project is completed.

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

(a) My Ministry released Kshs20 million for the construction of Tuwani Bridge. The project was not completed as a result of exhaustion of funds that were allocated to that bridge.

Mr. Speaker, Sir, I hesitate to indicate that it is not the only bridge and they were done on emergency basis. The money was allocated for the construction of various bridges across the country. We have made a deliberate decision to place them under urgent attention so that we complete construction of all those bridges.

Again, this particular one was occasioned by the variation of the size of the box culvert. We needed to have it slightly bigger given the amount of water that was flowing through that particular point. That significantly increased the cost of the project.

(b) My Ministry, through the Kenya Urban Roads Authority (KURA), has quantified the pending works and is in the process of documentation and procurement of a contract to complete the bridge. We expect that the works will be tendered in the course of May, 2011 and construction will begin in the next financial year, which is next month.

Mr. Wamalwa: Mr. Speaker, Sir, this bridge has actually cut off all the residents of Tuwani and Mitume estates of Kitale Town. It has taken over a year to complete. Will

the Minister assure the residents that sufficient funds will be allocated to ensure completion? When is this completion likely to take place?

Mr. Bett: Mr. Speaker, Sir, as I indicated, KURA is in the process of documenting and quantifying the balance of the works. We intend to place it on tender this month. I believe the tender is a six-month contract. So, I foresee it being completed before the end of this calendar year.

Mr. Lessonet: Mr. Speaker, Sir, I would like the Minister to tell us whether the money he gets from Treasury to do these bridges is different from what he gets from the Road Maintenance Levy Fund (RMLF).

Mr. Bett: Mr. Speaker, Sir, first of all, I want to indicate that all monies used by the Government are from the Exchequer. There is none that is coming from elsewhere unless it is from our development partners. This particular money is not all from the RMLF. Yes, some of it is from the RMFL.

Mr. Wamalwa: Mr. Speaker, Sir, the information we have is that the variation was caused by a mistake on the part of the contractors and engineers on site. Could the Minister confirm that? If so, what action has been taken against this particular contractor because they have exposed a lot of children to suffering due to the long distances they must travel to get to school on the other side of town?

Mr. Bett: Mr. Speaker, Sir, I am not aware that it was due to a mistake. I am only aware that during construction it was realized that the amount of water flowing through that particular valley was more than the project was designed for. That is why we needed to extend the size of the box culvert.

Question No.400

STAFF ESTABLISHMENT AT BURA/HOLA IRRIGATION SCHEMES

Dr. Nuh asked the Minister for Water and Irrigation:-

(a) to provide a list of staff establishment at Bura and Hola Irrigation Schemes indicating their respective details, departments, terms of service, and date of employment, and;

(b) whether she could also provide the details of all workers who have retired from the schemes in the last 15 years and indicate whether or not they have been paid their respective retirement benefits.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Speaker, Sir, I have consulted with the hon. Member because the answer I have is not exhaustive enough. I seek your indulgence that I bring a more conclusive answer on Wednesday, next week.

Mr. Speaker: Member for Bura, do you agree?

Dr. Nuh: Yes, Mr. Speaker, Sir.

Mr. Speaker: The Question is deferred to Wednesday morning, next week.

(Question deferred)

Question No.628

DEMOTION OF CHIEF INSPECTOR SIMON G. MWANGI

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

(a) whether he is aware that Simon G. Mwangi (P/No.87084988) was demoted from the rank of a Chief Inspector of Police because he questioned and chased away someone who was bribing voters at Thika Municipal Stadium Polling Station during the just-concluded Juja by-election,

(b) why the officer was also transferred from Thika West District to Gatundu South District following his demotion on the 28th October, 2010, and;

(c) when the Ministry will reinstate the officer to his earlier rank.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, this Question had already been answered exhaustively. What was remaining was for the Disciplinary Committee to sit and decide on whether to reinstate this particular officer to his rank or let him remain as an Inspector. Since the Disciplinary Committee has not constituted the hearings of cases of indiscipline, I would request that we wait for some time and then I will report to the House the outcome of the committee.

Mr. Kabogo: Mr. Speaker, Sir, the Assistant Minister has a tendency of twisting words to suit what he wants to say. I want to remind the Chair that the Assistant Minister did actually ask the Chair to give him two weeks to be able to deal with this matter conclusively. Now he wants to buy time. I did give him, through the House, two letters; one dated 27th of October, telling the officer that he was transferred and thanking him for his good conduct. However, he received another letter the following day demoting him for disorderly conduct. This issue came up during the Juja by-election. The officer found people bribing voters and he arrested them. Thereafter, he was disciplined for doing his duty.

Would I be in order to seek the indulgence of the Chair that the Assistant Minister follows his earlier lead, that he deals with the matter and brings it back to the House concluded? Would I be in order to seek that?

Mr. Speaker: Yes, Member for Juja. You will be in order and I recollect the episode that this matter transpired in the manner that you have actually recited.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, it is, indeed, true. But when you want somebody to be promoted after being demoted--- If we were to go that way, I think we are following a wrong direction because---

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

Mr. Speaker: Order, Member for Juja! Just resume your seat for a moment! Let us hear the Assistant Minister!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, this officer was a Chief Inspector. He was found drunk and disorderly. Later on, he was transferred from his previous station. After the transfer, we said that he had to appear before the Disciplinary Committee to appeal. If he will not have appealed by the time the Disciplinary Committee will be

sitting, then we will not be discussing the officer. The only advice I can give to my good friend is to ask that officer to appeal so that he gets his rank back. In the process that the Disciplinary Committee sits and gives him a hearing, that is the time he can be reinstated as a Chief Inspector or he can still be retained as an Inspector.

Expecting me to promote somebody through Parliament without the Disciplinary Committee listening to his problem will not be good.

Mr. Speaker: Order, Mr. Assistant Minister! Do you remember what you said to the House the last time you answered this Question?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I asked for two weeks to check whether the Disciplinary Committee will be sitting. I thought that after two weeks, the Disciplinary Committee shall have sat and discussed this issue exhaustively. But unfortunately, they have not sat.

Mr. Speaker: Order, Mr. Assistant Minister! Please, resume your seat! Do you understand what you say in this House has to be taken very seriously? We give you the benefit of the doubt and presume that whatever you say is accurate. If you make any undertaking to the House, you must honour that undertaking. Do you understand that?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I understand that very well. But, in the event that the Disciplinary Committee has not sat, the only thing which I am doing and I have done before you here is to ask for the extension of time.

Mr. Speaker: Member for Juja, do you have the HANSARD record of what the Assistant Minister said last time?

Mr. Kabogo: Mr. Speaker, Sir, I do not have it here, but I can pick it up. I would just like to draw your attention to the fact that this House has the HANSARD and it runs on a daily basis. Would I be in order to ask you to defer this Question to the end of Question Time? I will walk out and get the HANSARD.

Having said that, I would like to tell the Assistant Minister - I gave him copies - that this officer had written an appeal because he says he has not appealed. I want to table his request for a fair hearing. I also want to table the two letters; one congratulating him for good service and transferring him on 27th of October and the other one dated 28th October demoting him for disorderly conduct.

(Mr. Kabogo laid the documents on the Table)

I am not asking for promotion; I am asking for justice for this officer. The Assistant Minister is attempting to remove this matter from the House and take it back to the Office of the President so that he can deal with it internally. That is what he is not telling the House.

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

Mr. Speaker: Order, Mr. Assistant Minister! You may now proceed!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, sometimes, I am at a loss especially on matters dealing with indiscipline. I assured the House that within two weeks, we would deal with this matter. We could not have dealt with the matter because the disciplinary

team had not sat. So, that is why I am asking for more time so that the team can sit and peruse all the papers that have been tabled here. I also need to see the additional papers he has tabled in order to assist that particular officer.

(Several hon. Members stood up in their place)

Mr. Speaker: Order, hon. Members! Hon. Members, I have seen these documents and all of them are admissible because they are authenticated by signature and by date, save for the request for fair judgment, which is dated 30th October, 2010. Mr. Kabogo, unless you have a copy that bears the signature of the author of the letter, this will not be admissible because it has no signature. If it is a photocopy as it is without a signature, then it ought to be certified as a true copy of the original. Unfortunately, that is wanting. So, I will admit all the others except that one. Hon. Members, so that this matter is prosecuted in a manner that is logical, I want to defer this question to Tuesday next week. Mr. Assistant Minister, I am doing so, so that I have an opportunity to acquaint myself with the HANSARD record. You have confirmed to the House that you take the business of this House seriously. Indeed you have shown that. You must honour your undertakings to this House. So, be careful! Make sure that you also acquaint yourself with the HANSARD record, and that you will live within your commitments to this House.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): On a point of order, Mr. Speaker, Sir. Instead of having it on Tuesday, I would request that we have it on Wednesday morning. This is because I will be away. I will come back on Tuesday evening.

Mr. Speaker: Very well, Mr. Assistant Minister! Wednesday morning at 9.00 a.m. Mr. Assistant Minister, in your own interest, and that of the Office of the President, make sure that you put your house in order before you get here on Wednesday morning!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, our house has always been in order!

Mr. Speaker: I have given you those directions. They may appear to be superfluous now, but I can assure you that we will be very serious in the manner in which we manage this business. Acquaint yourself also with the letters which have been tabled this afternoon. Obviously, we are concerned that, *prima facie*, you are promoting an officer on 27th and the next day you are demoting him! That does not look normal! So, that is why I am saying: "Just be careful how you proceed." The matter will rest there. I have given adequate directions.

(Question deferred)

Next Question by Ms. Chepchumba.

Question No.847

UPSURGE OF INSECURITY IN ELDORET SOUTH CONSTITUENCY

Mr. Speaker: Is the hon. Member away on parliamentary business? I seem to have an inkling of her being away. Okay, we will ascertain the position. In the meantime, hon. C. Kilonzo's Question!

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 Kshs.5 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 and officials of the schemes.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Speaker, Sir, I was asked to table a list of companies or names which were investigated by the Central Bank of Kenya (CBK), that is the Investigation Department of CBK. I have already given a copy of the response to the hon. Member and I am tabling another one before the House.

(Dr. Oburu laid the document on the Table)

Mr. Speaker, Sir, the House will recall that I had responded to the subject Question, and what I was directed to do was to table a report from the Banking Fraud Investigation Department (BFID) of CBK on pyramid schemes to the Attorney-General for prosecution. The expectation is that such a report will contain the names of individuals recommended to the Attorney-General for prosecution.

Mr. Speaker, Sir, we have now established that other than the files which were forwarded to the Attorney-General for review and guidance, there were no other reports exchanged between BFID and the Attorney-General's office on the subject matter. I, therefore, wish to apologise to the House that though the original answer stated that there were reports, those were not reports. They were just letters and exchanges between the Attorney-General's Chamber and BFID. The only correspondence between BFID and the Attorney-General's office were letters forwarding the files to the Attorney-General for perusal and advice or returning the files to BFID. The issue of reports compiled by BFID and forwarded to the Attorney-General is, therefore, not there. In view of this, I wish to lay copies of the correspondence relating to the case against DECI Capacity Building and Entrepreneurship Limited where a Mr. George Odinga Donde was the accused. It is part of the documents that I have already laid.

Mr. Speaker, Sir, BFID of CBK investigated only three of the pyramid scheme cases. They were Akiba Micro Finance, DECI Capacity Building and Entrepreneurship Limited and Silvia Investments. There were several complainants in the case of Akiba Micro Finance. The people who were accused in that particular case were Mr. Gideon

Mwiti Irea, John Miriti Josiah and Bernard Irungu. The offence for which they were charged was carrying out banking business without a licence, contrary to Section 3(1)(A) as read in Section 3(2) of the Banking Act, Cap.488, Laws of Kenya.

The four accused persons were taken to court and while the case was still going on they went to the High Court and made application for a stay order, barring the trial court from proceeding with the case. The High Court directed that the case be stayed until it gave a ruling. The duplicate file was forwarded to the Attorney-General, who called for it. In this case, no accounts were frozen and no bank accounts were investigated.

Mr. Speaker, Sir, Silvia Investments, which is the second case, and which was investigated, the complainant was S. T. Wainaina and Family Bank and the accused was Charles Waweru Chege. The case was taken to the Kibera Court and the accused pleaded guilty to the offence. He was fined Kshs50,000 in default or 12 months imprisonment, and the court ordered that all the deposits be released to the investors whose money was in account No.31558 in the Family Bank.

The third case was DECI Capacity Building Entrepreneurship. The complainant was Felix Malba Mumo, c/o Equity Bank Ltd. The accused, George Odinga Donde, was charged with the offence of carrying out a business without a licence contrary to Section 3(1).

Mr. Speaker, Sir, I have tabulated all the accounts which were there. The conclusion was that the case was subsequently withdrawn by the Attorney-General. The case was not determined. The accused went ahead and withdrew all the more than Kshs11 million which was in the accounts.

Mr. Speaker, Sir, the Report of the Task Force on Pyramid Schemes under the chairmanship of Hon. Francis Nyenze was tabled in Parliament by the Minister for Co-operative Development and Marketing and Parliament is yet to provide a way forward on the same. In any case, hon. Members are privy to the contents of the said Report and asking the Minister for Finance about the names of the individuals suspected to have been involved in the collapsed pyramid schemes, whose names have been mentioned in the Report is contrary to the provisions of the Standing Orders.

Thank you.

Mr. C. Kilonzo: Mr. Speaker, Sir, it is now very clear that the Government has no intention of helping victims of the pyramid schemes. Part “c” of my Question was very clear: “Why has the Government failed to institute criminal proceedings against directors, proprietors or officials of these pyramid schemes?”

In his answer the Assistant Minister says very clearly that all complaints received from members of the public were channeled to the Banking Fraud Investigation Department. After investigations, he says very clearly that this unit forwarded names to the Attorney-General’s office. Is the Assistant Minister confirming that despite the Report by the Nyenze Commission they did not follow the recommendations to institute criminal proceedings against all the directors of the pyramid scheme, but he only dealt with three? This is because the others were politically connected.

Dr. Oburu: Mr. Speaker, Sir, first of all I want to clarify that the Banking Fraud Investigation Unit is a department of the police. They are only attached to the Central Bank of Kenya (CBK) for purposes of investigating fraud in the banking industry. They decided to investigate only these three cases, which they forwarded to the Attorney-General. The Attorney-General gave them a go ahead to prosecute the three. However, in

the process the Attorney-General withdrew one of the charges under the powers given to him by law.

Mr. Speaker, Sir, it is not us who refused to prosecute because it is the Police Department who do the prosecution. They have attached a special unit to the CBK for this particular purpose.

Mr. Ochieng: Mr. Speaker, Sir, my only question is this, how did the Ministry of Finance or the CBK, allow this illegal business, which the Assistant Minister has just mentioned here, to carry on in their midst without taking remedial action in order to save Kenyans from losing their hard earned money?

Dr. Oburu: Mr. Speaker, Sir, as I stated before while answering this Question, these pyramid schemes were illegal. These schemes were crafted by very clever people who wanted to defraud members of the public. They were not under the supervision of the CBK. The CBK supervises only those institutions registered under it, which include banks and deposit-taking micro-finance institutions. These were illegal schemes which do not fall under the purview of the CBK and, therefore, we could not have taken action against them. However, it is a very serious matter which, as a Government, we are taking very seriously. Because of this we are taking action. We have drafted a Bill which we shall be tabling before this House to make pyramid schemes illegal, so that these crafty people do not continue to defraud members of the public in this manner.

Dr. Nuh: Mr. Speaker, Sir, I do not know how the Assistant Minister can convince us that they are deadly serious about this matter. However, as the Assistant Minister overseeing financial matters, has he made any attempts to follow up on your sister Ministry, the Ministry of State for Provincial Administration and Internal Security, as to why they only investigated three cases and not the others?

Dr. Oburu: Mr. Speaker, Sir, these cases were investigated by the Banking Fraud Investigation Unit attached to the CBK. This is the one under our purview. These actions by these fraudulent people are criminal matters, which should be investigated by the Police Department. I do not want to say that we have prompted the Commissioner of Police. However, we can prompt him to take these matters which are criminal in nature, so that they can be prosecuted.

Mr. K. Kilonzo: Mr. Speaker, Sir, it is very clear that the Government lacks the will to implement the Nyenze Report. The Report was very clear; names were there and funds which are still being held by Government were shown. What is the Government doing to implement the Nyenze Report, so that the money which is already in their custody can be refunded to these Kenyans, who suffered because of these illegal schemes?

Dr. Oburu: Mr. Speaker, Sir, the Nyenze Report was commissioned by the Minister for Co-operative Development and Marketing. When the culprits knew that they were about to be caught, they converted their schemes into SACCOs. These SACCOs were squarely under the Ministry of Co-operative Development and Marketing. Because of the nature of these pyramid schemes, the SACCOs collapsed and when they collapsed they became hot potatoes in the hands of the Minister for Co-operative Development and Marketing, because cooperatives are registered by the Government.

We have taken steps, as a Ministry, to advise the Minister for Co-operative Development and Marketing to consider drafting a Bill which will establish a fund like

the Deposit Protection Fund (DPF) under the CBK, which can protect SACCOs when they fall victims of such schemes.

Mr. Imanyara: Mr. Speaker, Sir, I am concerned that the Assistant Minister is not taking this issue with the seriousness it deserves. According to the letter tabled here from the Attorney-General, the Banking Fraud Investigation Unit was directed to carry out further investigations. In this regard officers from the Ministry of Finance, the Ministry of Co-operative Development and Marketing, the CBK and the depositors--- Thereafter he was supposed to send back the file to the Attorney-General for further perusal and advice. That was in February 2007. Has that been done? Has the recommendation of the Attorney-General been complied with, or are you waiting for Kenyans to rise up in arms and take the law into their own hands?

Dr. Oburu: Mr. Speaker, Sir, as I had said before, the Banking Fraud Investigation Unit is a department in the Office of the President and the responsibility of this investigation lies with the Police Department, just as recommended by the Attorney-General.

Mr. Speaker, Sir, some of these investigations, from what I understand---

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

Mr. Speaker: What is it, the Member for Imenti Central?

Mr. Imanyara: Mr. Speaker, Sir, is it in order for the Assistant Minister to fail to answer the question that I am asking him? The directive from the Attorney-General was specific and clear; take statements from the Office of the Deputy Prime Minister and Ministry of Finance, Ministry of Co-operative Development and Marketing, Central Bank and some depositors and, thereafter, return the file to the Office of the Attorney-General for further advice, because there were criminal activities that were being committed by those people. Was this done or was it not done?

Dr. Oburu: Mr. Speaker, Sir, the correspondences between the Attorney-General's Office and the Central Bank of Kenya, just as the Nyenze Report concluded, was that there was lack of proper legislation in terms of pyramid schemes, which would effectively prosecute the---

Mr. Speaker: Order, Assistant Minister! We need to use our time optimally. As I heard the hon. Member for Central Imenti, he asked you a specific question which is so clear. There is a letter there from the Attorney-General who asked the addressee to do a number of things; record statements from the Deputy Prime Minister and Minister for Finance, Minister for Co-operative Development and Marketing and somebody else and then return the file to the Attorney-General. Was this done? It is a simple question!

Dr. Oburu: Mr. Speaker, Sir, from the records that I have, this was not done.

Mr. Speaker: Fine. Yes, the Member for Yatta!

Mr. C. Kilonzo: Mr. Speaker, Sir, as we have always said, there is no will from this Government to help the victims of pyramid schemes. The Assistant Minister says clearly that all victims' complaints were investigated. The Nyenze Report was very specific and its recommendations were very clear; prosecute because there is enough law. Why did the Government fail to investigate those people while there were complaints from the victims? Why did the Government not investigate them?

Dr. Oburu: Mr. Speaker, Sir, I am not competent to answer why all the other investigations were not done because what I was dealing with, as far as we were concerned as the Office of the Deputy Prime Minister and Ministry of Finance was the

violation of the Banking Act. This is what the BFIU did. They identified three organizations which had violated this Act, and they are the ones we took to court. On the others who were not investigated, perhaps, the question could be directed to the investigating arm of the Government, which is the Office of the President.

Thank you, Mr. Speaker, Sir.

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

Mr. Speaker: What is it, the Member for Imenti Central!

Mr. Imanyara: Mr. Speaker, Sir, I seek your clarification and guidance on a matter where an Assistant Minister of the Government comes to the House and tells it that they never did anything; they never complied with the directive of the Chief Legal Advisor – and he confirms they did not and he does not say whether they intend to do it. What are we, as hon. Members, supposed to do when the Government comes up and confirms that they have taken no action? Questions have been asked in this House and the Assistant Minister does not give any specifics on what action to take. Is he inviting Kenyans to rise up in arms and take the law in their own hands because the Government has failed?

(Dr. Oburu stood up in his place)

Mr. Speaker: Order, Mr. Assistant Minister! Please, resume your seat! Mr. Assistant Minister, from what has transpired so far, I am of the view; in fact, I am satisfied that you have not handled this matter properly!

(Applause)

I want you to indicate to the House if you require time to be able to come with a report that is conclusive on this matter as to what action you have taken. Because among other things, you have said that those who engage in the pyramid schemes engaged in acts that were illegal. Those are your own words. If those acts were illegal, then it means that they contravened the law! Does it not follow then, Mr. Assistant Minister that you should have had those people arrested and charged for engaging in illegal trade? Do you need to do anything more, really, Mr. Assistant Minister?

Dr. Oburu: Mr. Speaker, Sir, I have said that the ones which we investigated are the three, and I have mentioned the names of the people.

Mr. Speaker, Sir, I do not know how---

Mr. Speaker: Order, Mr. Assistant Minister! I think I want you to go and acquaint yourself with the HANSARD records on how you have dealt with this matter and the responses you have made. I want to give you time to come and report to this House that you have taken some action as is within your powers to take so that we are satisfied that you have done what you should do!

(Dr. Nuh stood up in his place)

Order, Dr. Nuh! This matter must rest somewhere!

Dr. Oburu: Mr. Speaker, Sir, I wanted you to give me clear directions on what further information I should give, because the investigations that should be done should be done by the investigating arm of the Government.

Mr. Speaker: Order, Mr. Assistant Minister! You must come back and tell the House what action you have taken as a Ministry. Whatever is beyond you, you will tell the House that you have left that with the Attorney-General or with the Minister of State in charge of Provincial Administration and Internal Security or whoever it will be! However, you must come with a categorical position because you belong to a Government. If you interpret the doctrine of collective responsibility seriously, you cannot leave the House unsatisfied because you are saying it is the Minister for Co-operative Development and Marketing or the Attorney-General or BFIU--- I mean, that is unsatisfactory Mr. Assistant Minister! Even if you apply yourself to it logically by common sense, it is not satisfactory! That is what I direct you to do, Mr. Assistant Minister!

(Applause)

Dr. Oburu: Mr. Speaker, Sir, I will do that. I will direct the relevant Questions to the relevant arms of the Government and they will be replied to accordingly.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Yes, that will make the House happy! Can you do so in four weeks?

Dr. Oburu: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well!

(Question deferred)

Yes, the Member for Kisumu Town West!

Question No. 692

ISSUANCE OF LEASEHOLDS FOR INDUSTRIAL PURPOSES

Mr. Olago asked the Minister for Lands:-

(a) whether he could confirm that one of the conditions for the issuance of leasehold titles to KICOMI Ltd and Kenya Breweries Ltd in the Industrial Area of Kisumu was to use the land for industrial purposes so as to create employment and, if so, why are they breaching the same; and,

(b) what steps he is taking to ensure that the current leasehold interest in the land is repossessed and the land allocated to investors who are ready to comply with the condition.

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

(a) I am aware that land parcels No. Kisumu Municipality Block 4/159 belonging to KICOMI Ltd. and Kisumu Municipality Block 4/161 belonging to the Kenya Breweries Ltd. were allocated and are meant to be used for industrial purposes only. If I

may make full disclosure, with regard to KICOMI, the land and buildings were only supposed to be used for the purposes of a textile mill, administration offices and a training centre in connection with the running of the mill and for no other purpose whatsoever. In relation to the Kenya Breweries plot, it was allocated for the purposes of establishing a beer factory and the buildings were to be used for the factory, depot and accommodation for the watchmen. Under those circumstances I am, indeed, aware that they have not been used for those purposes as intended in the allotment and in the lease. In the circumstances, under provisions of Section 77 of the Government Land Act, the Ministry will institute forfeiture proceedings with a view to recover the two parcels of land. The other additional information is that they have not been paying land rates for about five years.

Mr. Speaker: Member for Kisumu Town West, we will allow three clarifications.

Mr. Olago: Mr. Speaker, Sir, I am happy with the answer. However, the issue of the two factories and the fact that their collapse has caused unemployment of a big magnitude in Kisumu, is something that need not be over-emphasized. I agree with the Minister that he should invoke Section 77 of the Government Land Act to institute forfeiture proceedings. However, the problem with Section 77 of this Act is that, in the past, the Ministry has given discretion to hon. Attorney-General to institute the proceedings. That has caused a lot of delay. Knowing that he has competent lawyers in his Ministry; could he confirm to the House that he will instruct them to take action under Section 77 and not the Attorney-General?

Mr. Orengo: Mr. Speaker, Sir, unfortunately, I do not have a legal department with the mandate to undertake court proceedings. However, we have discussed this matter with the Attorney-General and my friend in the Ministry of State for Public Service. Already, some consideration is being made for purposes of deploying lawyers or State counsel to undertake proceedings which relate to land. We have had problems dealing with the Attorney-General. We think we will be better off if we had in-lawyers. So, your suggestion is positive and well taken.

Mr. Ruto: Mr. Speaker, Sir, I want to thank the Minister for being frank. Now that it is clear that these people are not using the land the way they should because it was meant to create employment, considering that there is another firm that is within the area doing very well, for example, the molasses plant and which has very little land, say, 500 acres, would he now take the opportunity to give them the extra land that we will take from Kenya Breweries Ltd?

Mr. Olago: On a point of order, Mr. Speaker, Sir. This Question is of much interest to Kisumu residents. Is it in order for hon. Ruto to trivialize it by mentioning others which are irrelevant? It is my Question and he should not trivialize it.

Mr. Ruto: Mr. Speaker, Sir, I am perfectly in order and within my rights to ask the Minister to allocate the extra land to the molasses plant because it is creating employment and it also has very good raw material for---

Mr. Speaker: Order, Member for Chepalungu! It is Question Time. What is your question?

Mr. Ruto: Mr. Speaker, Sir, I was asking the Minister whether he would consider the firm that produces molasses and raw material for beer production and other alcoholic beverages because that was the intention of the land all along. Would you help the molasses plant, *Bwana Waziri*?

Mr. Orenge: Mr. Speaker, Sir, I really do not want the hon. Member for Chapalungu to trivialize this Question. We only give land to those people who ask for it. In these circumstances, he has not produced evidence that there is that need. So, to that extent, the hon. Member is trivializing a very important Question. The other thing that he should know is that until forfeiture proceedings are concluded, we cannot begin to allocate that land because we have not taken possession. In law, the lease is still under the name of the two companies. Therefore, he should not trivialize a very important matter.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. In your own judgment, you allowed the hon. Member to ask a question which the Minister says is trivial. Is he in order to trivialize a question that the Chair has found relevant to be answered in this House?

An hon. Member: Yes!

Mr. K. Kilonzo: I am asking the Speaker, not you!

Mr. Speaker: Order, Member for Mutito! The Minister is out of order! He ought to have dealt with this Question very simply. The Member for Chepalungu asked you whether you could consider allocating this land to the molasses plant. So, all you should have done, which is the common sense of it, is to say: "No, I am not prepared to consider for the following reasons." Simple!

Mr. Orenge: Mr. Speaker, Sir, under the Constitution, I have the freedom of expression and opinion. It was in his opinion that the land should be given to a firm that--

Mr. Speaker: Order! Mr. Minister, he asked you a question! Note that we are at Order No.6, Question Time. Hon. Members are entitled to ask you questions. Some questions may not be very palatable or friendly. But Members, surely, just like you assert your democratic right to have an opinion; they also have the democratic right to ask questions and to form their own opinions!

Mr. Orenge: Mr. Speaker, Sir, I answered the question. However, since he offered an opinion, I also offered an opinion in return. He said that it was in his opinion; it was not really a question. He said in his opinion, the land should be given to the molasses plant. I said since the molasses plant has not asked for that land, that opinion is extremely trivial in the circumstances.

Mr. Speaker: Order! Mr. Minister, I think we are stretching it out unnecessarily! Is there anybody else interested in this matter?

Mr. Njuguna: Thank you, Mr. Speaker, Sir. Appreciating the good work that the Minister is doing, of revoking title deeds on grabbed land, could he assure this House that such land will not be re-allocated and new title deeds issued to unscrupulous people?

Mr. Orenge: Mr. Speaker, Sir, could I give my opinion on that question!

Mr. Speaker: Order! Mr. Minister, please, give an answer.

Mr. Orenge: Mr. Speaker, Sir, that was with a light touch! The tradition in this House has been to have a fair share of expression of opinion.

The question being asked by the hon. Member for Lari is extremely important. Allocations of land must follow the proper process. I can guarantee him that the land will not go into the hands of a land grabber, but to those who need it in accordance with the statute.

Mr. Olago: Mr. Speaker, Sir, apart from the fact that KICOMI and Kenya Breweries Ltd. have breached, fundamentally, the lease conditions by deviating from

what the land was given for, they have also breached by purporting to sublet these leases to other people. In the case of KICOMI, the land has been sublet to a company that is using it for storage of construction equipment and machinery. For Kenya Breweries Ltd, it is being used to store Brookside Milk. Under these circumstances, could the Minister confirm to the House that action will be taken and all issues will be considered in a bid to revoke these leases?

Mr. Orenge: Mr. Speaker, Sir, I did not find it necessary to give a cocktail of all the breaches. However, they are quite a number, including the breach that the hon. Member has mentioned. However, he had better wait until we conclude the forfeiture proceedings. Since these will be judicial proceedings, we cannot predetermine what the court will say in the matter.

Question No.668

LACK OF MORTUARY AT ZOMBE DISPENSARY

Mr. K. Kilonzo asked the Minister for Public Health and Sanitation:-

(a) whether he is aware that Zombe Dispensary in Mutito District has no mortuary and the nearest public facility is in Kitui, which is 50 Kilometres away; and,

(b) what plans the Ministry has to construct a mortuary at the dispensary.

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Zombe Dispensary in Mutito District has no mortuary, and the nearest public facility is at Kaumu Dispensary, which is six kilometres from Zombe Market and not 50 kilometres as stated.

(b) My Ministry has no immediate plans to construct a mortuary at Zombe Dispensary as this dispensary is run by the African Inland Church (AIC).

Mr. K. Kilonzo: Mr. Speaker, Sir, the public facility I was referring to, which is more than 50 kilometres away from Zombe, is the morgue. It is not a public dispensary. Therefore, my question to the Assistant Minister is this: Now that Kaumu is about six kilometres away from the district headquarters, and given that both Nzambani District and Mutito District have no morgues – people have to travel all the way to Kitui Town – could the Ministry consider putting one at Kaumu Dispensary, now that he has identified it?

Dr. Gesami: Mr. Speaker, Sir, as probably the hon. Member knows, we have several levels at which we offer healthcare. The first one is the community level. The second one is the dispensary level. The third one is the health centre level. The fourth one is the sub-district hospital level. We do not, as a matter of fact, build mortuaries at the dispensary level. Therefore, we cannot, as a matter of policy, build a mortuary at the dispensary. The best you can do is to identify that dispensary and upgrade it from level one through to level four before you can ask the relevant Ministry, which is the Ministry of Medical Services, to put up a mortuary there.

Mr. Wambugu: Mr. Speaker, Sir, actually, most of the dispensaries do not have mortuaries. Even in Mathioya, we have to transport bodies to either Murang'a or Nyeri. However, if you can remember, sometime last year, the Minister made a budgetary provision for the purchase of an ambulance for every constituency. When are these ambulances going to be provided, and in particular the one for Mathioya Constituency?

Dr. Gesami: Mr. Speaker, Sir, I remember answering the Question on ambulances, during which we indicated, as a Ministry, that we would buy or hire an ambulance for every model health centre. The Ministry is still waiting for funds from the Treasury to undertake this process.

Mr. Speaker: Order! Leader of Government Business, maybe, you need to take your Ministers to some training on how to answer Questions. That was obviously a different Question, and you would have saved our time.

Yes, Member for Webuye!

Mr. Sambu: Mr. Speaker, Sir, even in the districts where mortuaries exist, those mortuaries do not have basic equipment like cooling facilities. What plans does the Government have to ensure that where mortuaries exist, they also have cooling facilities?

Dr. Gesami: Mr. Speaker, Sir, mortuaries are not under the jurisdiction of the Ministry of Public Health and Sanitation. All mortuaries are in district and sub-district hospitals and, therefore, the Question should be directed to the Ministry of Medical Services.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! Last question, Member for Mutito.

Mr. K. Kilonzo: Mr. Speaker, Sir, I would want to seek your direction. The Question is very important to the people of Mutito and Kenyans at large. The Assistant Minister has been purporting to answer it, but he now says that it is not under his Ministry. Would I be in order to ask that this Question be directed to the relevant Ministry, so that we can interrogate it further?

Mr. Speaker: Attempt your last question. Let us see if the Assistant Minister answers it.

Mr. K. Kilonzo: Mr. Speaker, Sir, the Assistant Minister has talked of levels through which to upgrade a dispensary. Mutito Sub-District Hospital is certainly at level four, and it is 20 kilometres away from Zombe District Headquarters. Could he then commit himself to building a morgue at Mutito Sub-District Hospital since the hospital is at an appropriate level?

Dr. Gesami: Mr. Speaker, Sir, Mutito Sub-District Hospital is not under the Ministry of Public Health and Sanitation. Please, direct this Question to the Ministry of Medical Services.

Mr. Speaker: Hon. Members, in those circumstances, I defer this Question to Thursday next week and order that it be re-directed to the Ministry of Medical Services.

(Question deferred)

Next Question, Member for Isiolo South!

Question No.763

LEVEL OF GIRL-CHILD ENROLMENT
IN MARSABIT/ISIOLO COUNTIES

Mr. Bahari asked the Minister for Education:-

(a) what the level of girl-child enrolment and transition rate in Marsabit and Isiolo counties at all levels is; and,

(b) what Government schemes exist to encourage and promote girl-child education in the two counties.

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, I beg the indulgence of the House to answer this Question next week, on Wednesday afternoon because I do not have an appropriate answer yet.

Mr. Speaker: Member for Isiolo South, do you agree?

Mr. Bahari: Mr. Speaker, Sir, I agree but most likely, I will be away on parliamentary business. Therefore, if it can be put on a different day---

Mr. Speaker: Two weeks away?

Mr. Bahari: Yes, Mr. Speaker, Sir.

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

Next Question, Member for Migori!

(Question deferred)

Question No.842

PROGRESS REPORTS ON PROJECTS UNDERTAKEN THROUGH
ESP IN MIGORI CONSTITUENCY

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

(a) whether he could provide progress reports for all the projects undertaken through the *Economic Stimulus Programme* in Migori Constituency; and,

(b) what plans the Government has to complete projects whose allocated funds have been exhausted.

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

(a) The ESP projects in Migori Constituency are at different levels of implementation. I encourage the hon. Member to visit the ESP website, [www//economicstimulus.go.ke](http://www/economicstimulus.go.ke), for a detailed analysis of the implementation status of ESP projects in the constituency. The actual co-ordination of these projects is undertaken by the respective implementing Ministries.

I table the latest implementation status of the ESP projects from the website.

(Dr. Oburu laid the document on the Table)

(b) The Government has put in place an elaborate ESP Project Implementation Framework to ensure that all commissioned projects are completed. In this regard, I do not anticipate a situation where projects are not completed due to lack of funds.

Mr. Pesa: Mr. Speaker, Sir, I want to thank the Minister for the answer, which gives a lot of relief to Kenyans who have been wondering what would happen about their unfinished facilities.

The Assistant Minister has referred me to the website, which is okay, but can he tell the House how often they update that website, so that we know whether whatever is on the ground has been captured on the website?

Dr. Oburu: Mr. Speaker, Sir, we receive reports from various implementing Ministries at various times. Every time we receive information, we feed it into the website. So, we do not have any specific period during which we feed information into the website.

Mr. Ochieng: Mr. Speaker, Sir, the Ministry should confirm to this House whether the ESP projects have technical staff from the Ministry, or any other Ministry, who go to the ground to check on the progress status of these projects. Implementation of some of these projects has been very slow. Some of them have taken too long to be completed.

Dr. Oburu: Mr. Speaker, Sir, our ESP Department is too thin. So, we do not have any specific officers who are attached to various Ministries and departments to follow up the implementation process of these projects. In any case, these were just one time projects, to which we could not allocate many officers.

Mr. Anyanga: Mr. Speaker, Sir, the Assistant Minister has indicated clearly that the hon. Member can visit the ESP website for information. According to that website, Items 14 and 15 indicate clearly that the Ministry can buy bicycles and motorcycles in Nyatike, Migori and other constituencies. I wonder if they have bought those bicycles and motorcycles. Could he come out clearly and tell this House whether those projects really exist in these constituencies?

Dr. Oburu: Mr. Speaker, Sir, they exist in the constituencies. If they have not been implemented in his constituency, the relevant Ministry will submit them to the Treasury for re-voting next year.

Mr. Pesa: Mr. Speaker, Sir, I am quite satisfied with part “b” of the answer. I want the Assistant Minister to confirm to the House that all the projects will be completed as scheduled.

Dr. Oburu: Mr. Speaker, Sir, they will be completed as designed. Even if they are beyond the scheduled time, money will be re-voted and they will be completed.

Question No.846

NON-PAYMENT DUES TO LUDOFICK ONDIEK OFUNYA BY UFUNDI SACCO

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

(a) why Mr. Ludofick Ondieki Ofunya (Member No.3476), who retired in August, 2000 from the Ministry of Roads and Public Works in

Kapenguria has not been paid his dues by Ufundi Co-operative Savings and Credit Society Limited and when he will be paid; and,

(b) what measures the Ministry is putting in place to ensure timely payment of dues to members by the SACCO.

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

(a) The Ufundi SACCO has been applying the first in, first out formula in effecting refunds to its former members who were retrenched during the downsizing of the Civil Service in 2000. However, the money due to Mr. Ludofick Ondieki Ofunya from Ufundi SACCO amounting to Kshs31, 000 has been processed and disbursed to the member.

(b) I wish to inform the House that my Ministry has been working closely with the management committee of Ufundi SACCO in the management of refunds to members without destabilizing the operations and the stability of the SACCO. This is being done in conformity with the Co-operative Societies Act, rules and by-laws. For this reason, the SACCO, with the guidance of my Ministry, has since 1999 issued refunds to the tune of Kshs100 million. In addition, the establishment of the SACCO Societies Regulatory Authority (SASRA) through the SACCO Societies Act, 2008, is playing a major role in assisting the society in applying prudential standards for effective management.

Mr. Washiali: Mr. Speaker, Sir, when I received a copy of the answer from the Assistant Minister, I went out and called Mr. Ofunya who has confirmed to me that he has not received a single cent from this society. Looking at the answer, I have not seen the cheque number and the date when this payment was made. Would I be in order to request you to defer this Question until the Assistant Minister indicates the cheque number and the date when the payment was made?

Mr. Speaker: You will not be in order because the way we have transacted business in this House is that we take Ministers by their word. So, if a Minister tells us that something is factual, we assume it is, until it is proven otherwise.

Mr. Washiali: Mr. Speaker, Sir, I would request the Assistant Minister to tell us the cheque number and the date when the payment was made.

Mr. Speaker: Very well! You are entitled to ask that! Assistant Minister!

Mrs. Kilimo: Most obliged, Mr. Speaker, Sir. I will do so. I can respond on Wednesday next week.

Mr. Speaker: On Wednesday next week you will come with full details. Very well! I will defer the Question to Wednesday next week at 2.30 p.m.

(Question deferred)

Question No.861

ENGAGEMENT OF YOUTH IN INCOME-GENERATING
PROJECTS IN GAZETTED FORESTS

Mr. Kaino asked the Minister for Forestry and Wildlife whether the Ministry could consider engaging youth in income generating

activities such as silk farming and bee keeping projects within gazetted forests.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, I beg to reply.

My Ministry is engaging the youth in income generating activities such as silk worm cultivation, sericulture and bee keeping in various gazetted forests countrywide. The Ministry through the Kenya Forest Service supports the youth to undertake bee keeping for the production of honey, bees wax, propolis and royal jelly wine. Silk worm cultivation is mainly for the production of natural silk. Youth groups that wish to undertake income generating activities in silk and beehives projects in gazetted forests are advised to forward their requests to my Ministry for prompt assistance.

Mr. Kaino: Mr. Speaker, Sir, I am really grateful for the answer the Assistant Minister has given. However, I am afraid this is not practised on the ground. Our forests are very important and we have to preserve them. We have nine gazetted forests in my constituency, but there is a lot of insecurity. As an alternative, we decided to engage in sericulture and epic-culture, which involves bee keeping. I would like to know in which county this has been practised or where the Ministry has supported the youth to do this, so that we can even send some people there to see how it is being done.

Mr. Nanok: Mr. Speaker, Sir, we have groups that are partnering with the Kenya Forest Service in Nyeri, Kabaru, Ngeta in Nyandarua and Kibili in Kakamega.

Mr. Ogindo: Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer. However, this could be a very useful undertaking if the youth could be sensitized and trained. What is the Ministry doing to ensure that the youth are trained and sensitized, so that they can take up these matters instead of asking those who are entrusted to contact the Ministry?

Mr. Nanok: Mr. Speaker, Sir, we have encouraged communities living around the gazetted forests to establish community forest associations and through those associations, plans have been put in place for them to engage in income generating activities and access the forests for certain products. In a number of places, this is ongoing. In areas where youth groups or communities are not involved, I would request them to approach our Forest Officers within those areas, so that those arrangements can be put in place.

Mr. Chanzu: Mr. Speaker, Sir, the Assistant Minister has said that they have encouraged the youth to engage in these activities. Could they make it a policy, so that there is proper communication all over the country where we have these forests and the youth can know how they can approach this?

Mr. Nanok: Mr. Speaker, Sir, it is a policy and we will ask our officers on the ground to sensitize communities and youth groups all over the country once again.

Mr. Kaino: Mr. Speaker, Sir, the Assistant Minister has come out very clearly. However, what are the steps the Ministry is taking to engage the youth in Marakwet because of insecurity in the area? Insecurity in Marakwet is related to poverty and lack of resources. If we engage them in epi-culture and sericulture, the youth will stop engaging in activities that cause insecurity. When will the Assistant Minister send an expert to these two areas of Marakwet?

Mr. Nanok: Mr. Speaker, Sir, we have forest officers within Marakwet and we will ask them once again, during the community sensitization meetings, to raise these

issues and discuss with communities and local groups on how best they can engage to benefit from some of the forest products, including these income generating activities.

Mr. Speaker: Yes, the Member for Eldoret South!

Mr. Koech: Mr. Speaker, Sir, the Member for Eldoret South is bereaved and she has requested me to ask the Question on her behalf.

Question No.847

UPSURGE OF INSECURITY IN ELDORET SOUTH CONSTITUENCY

Mr. Koech, on behalf of **Ms. Chepchumba,** asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware of the recent increased insecurity cases in Eldoret South Constituency;

(b) whether he is also aware that a number of investments, among them, El'Periso, Soin and Mariot hotels have been targeted by thugs and, if so, what is the status of police investigations into the incidents; and,

(c) what steps the Government is taking to arrest the heightened state of insecurity in the constituency.

Mr. Speaker: Is anyone here from the Ministry? The Minister of State for Provincial Administration and Internal Security was actually here earlier on. Mr. Minister for Lands, do you want to hold brief or you want the Leader of Government Business to do that?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I seek the indulgence of the House so that we could seek Mr. Ojode and have him come. The Member for Meru Central seems to know where he is.

Mr. Speaker: We have the red light on Order No.6. So, I am afraid we will have to defer this Question to Thursday, next week at 2.30 p.m. I think there has been some confusion over this.

(Question deferred)

That brings us to the end of Order No.6.
Let us move on to the next Order!

MINISTERIAL STATEMENTS

Mr. Speaker: Hon. Members, we have four Statements, including that of the Leader of Government Business. The Leader of Government Business will go first.

BUSINESS FOR THE WEEK COMMENCING TUESDAY, 10TH MAY, 2011

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I rise on this procedural matter. Pursuant to Standing Order No.36(4), may I

take this opportunity to make the following Statement with regard to the business of this House for the week commencing Tuesday, 10th May, 2011.

Mr. Speaker, Sir, the House will on Tuesday, continue with debate on the following two Bills currently at the Second Reading stage:-

(i) Independent Electoral and Boundaries Commission Bill (Bill No.6 of 2011); and,

(ii) The Salaries and Remuneration Commission Bill (Bill No.8 of 2011).

Mr. Speaker, Sir, the House will also consider the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on hearings on the challenges facing the sugar sector in the country laid on the Table this House on Wednesday 13th October, 2010. During the week, the House will consider at the Committee stage, the following five Bills:-

(iii) The Nurses (Amendment) Bill (Bill No.25 of 2010);

(iv) The Limited Liability Partnership Bill (Bill No.21 of 2010);

(v) Prohibition of Female Genital Mutilation Bill (Bill No.24 of 2010);

(vi) Memorandum from His Excellency the President on the Price Control Essential Goods Bill (Bill No.9 of 2009); and,

(vii) The Vetting of Judges and Magistrates Amendment Bill (Bill No.9 of 2011).

Mr. Speaker, Sir, the House will also consider two Private Members Motions. There is the party sponsored Motion by Mr. Namwamba, urging the House to establish a Parliamentary Select Committee on the cost of living, whose debate was interrupted yesterday due to lack of quorum. There is also the Motion by Mr. Mbadi to the Office of the Deputy Prime Minister and Ministry for Finance urging the Government to create a scheme to pay a monthly allowance of not less than Kshs2,000 for persons aged 60 years.

Finally, the House Business Committee will as usual convene on Tuesday 10th May, 2011, to be able to consider and review business for the rest, of the week. I want to take this opportunity to congratulate hon. Members because clearly, we do have now quite a handful before us and the country is watching and waiting. So, we should make progress, as we certainly are, with regard to all the important matter of full implementation of our new Constitution.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Members! We have three Statements which are ready for delivery. We would like the hon. Members and Ministers concerned to share the time that we still have. We have 20 minutes within which to take three Statements. Try and share that fairly. Be brief in your Statements.

Yes, the Minister for Lands!

IRREGULAR TRANSFER OF PUBLIC LAND

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I beg to apologise for the fact that this Statement has been in demand for quite a bit of time. However, I think it is a very important Statement, as it depicts the whole issue about land grabbing and the problems that we have about it.

Mr. Mbuvi raised five issues relating to purchase of the pieces of land. If I can deal with them issue by issue, the first and second were parcels of land which were reserved for the Kenya Veterinary Vaccines Production Institute (KEVEVAPI). The plots

were, however, allocated to individuals in 1995 on speculative grounds as the same were transferred to the National Social Security Fund (NSSF), all of them for a sum of Kshs675 million, in the same year before they were developed. The plots were transferred as follows: L.R 209/342 was allocated to Shajaa Trading Company Limited for a term of 99 years from 1st January, 1995. The plot was later transferred to the NSSF for Kshs225 million on 26th May, 1995. It is important to note that the private individual only paid Kshs500,000 for the land in terms of stamp premium , but went on to sell it for Kshs225 million without doing anything on the land.

Mr. Speaker, Sir, the second plot, again, was allocated to the same company on the same day and on 26th May, it was sold to the NSSF for Kshs225 million. The third plot also went to the same company on the same day and on the same 26th May, it was sold to the NSSF for Kshs225 million. The NSSF has caused the subdivision of the land into 371 portions with an intention of selling them to the public. As a Government body is involved, which has applied workers contributions totalling to Kshs675 million, the Ministry is considering the steps to take to ensure that the institute's interests are protected and secured and that the workers do not lose their contributions.

Thirdly, there were parcels which were public utility plots, planned for a hospital and vested to Nairobi City Council. The same were, however, transferred by the Council as follows: L.R No.36/VII254 was transferred to Penjinia Enterprises on 24th January, 2007 at a consideration of Kshs44,000. The same was later transferred to Computerian Enterprises Limited for a sum of Kshs5 million.

[Mr. Speaker left the Chair]

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

In May, 2010, the same, again, was transferred to Almiramin Investment Limited for Kshs10,200,000. LR.No.36/VII255 was transferred by the Council to Sunrise Reprographics for Kshs44,000. The same was later transferred to Jamaa Musa Hussein for Kshs5 million. LR.36/257 was transferred by the council to Lydia Wanjiru Mutambai and Vesta Furniture Matt for a sum of Kshs1.1 million. Nothing, so far, has been done on those pieces of land.

The above transactions clearly indicate the land was being transferred for speculative purposes as the transferee immediately transferred the same even before developing the same.

The Ministry has put a stop to these kinds of transactions by placing a requirement for approval of the parent Ministry and the Ministry of Lands to give approval before transfer of land by any public institution. The City Council is one of the local authorities in general which is in the habit of just disposing of public land without seeking the authority of the parent Ministry.

With regard to Issue No.4, the Ministry received a letter from the Kenya Anti-Corruption Commission (KACC) on 24th January, 2011, in regard to LR.No.2009925 requiring revocation of title deed. This land was planned for a nursery school and clinic, but was later allocated to Gemini Properties in 1978. The user of the plot, without any proper justification, changed it into commercial use.

The Ministry has placed a restriction on the title deed, pending its revocation. The Ministry is also consulting with the Attorney-General regarding the rulings made in High Court Civil Case No.2262009 which is also of the same property and was dismissed in favour of Gemini Properties.

The last issue No.5, the plot was allocated to Lucy Ruto in 1993. A restriction has been placed on the title deed as forfeiture proceedings for repossession of the land are being prepared. The Ministry is doing that because it is evident since 1993 that the land has not been put to any use, consistent with the lease. The land is merely being used for speculation.

Mr. Temporary Deputy Speaker, Sir, from these cases, it is apparent and clear that public land has been used in many occasions by private individuals in a speculative manner. This is a trend which the Government has decided to curb in order to protect public land.

Thank you.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I thank the Minister for that Statement. However, it would appear---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Chanzu. Sorry. I had not seen Mr. Mbuvi. This was his request, so he has the first chance. Sorry, Mr. Mbuvi.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, could the Minister explain to this House why up to now, he has not revoked title deed No.2099295 in New Muthaiga? That plot was meant for a nursery school and a hospital. There is a request by the Director of the KACC, Dr. P.L.O. Lumumba. He wrote to the Minister and requested him to revoke this title deed. However, the Minister has just imposed a restriction on the land use instead of revoking the title deed. Could he explain why he has not revoked the title deed?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Minister, you take notes and then you can answer all of them together.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for the Statement. An hon. Member raised a question for us to deal with this in piecemeal. If you look at Public Investments Committee reports, there are similar cases which are very disturbing. Could he give this House an update of what he has done about the Ndung'u Report? It contained most of this information that is being given in piecemeal.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, with regard to the issue raised by Mr. Mbuvi, we even placed a restriction before we were requested by the KACC to revoke the title deed. We are in a Catch 22 Situation because the purported owners of this property went to court. They are in court together with the KACC and they have a judgment in their favour. Therefore, it would be inappropriate for us to proceed without seeking some advice from the office of the Attorney-General as there is a clear order by the court that the status quo of the property should be maintained until final conclusion of the proceedings before the court.

The Temporary Deputy Speaker (Mr. Imanyara): On the second issue by Mr. Chanzu?

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, on the second issue, probably, what we should do is to give an update to Parliament on what

we have done so far, in dealing with various properties which have been mentioned in the Ndung'u Report where we have placed restrictions, where we have revoked title deeds and so forth. I think such an update would indicate to the House that we actually have done a lot in recovering a lot of public land.

If you ask the Judiciary, all over the Republic from Kisumu, Eldoret, Nakuru and Mombasa, they will tell you that we have recovered a lot of their property which was allocated to individuals. The same goes to a lot of other institutions.

For purposes of the future, the new Constitution has now given us a framework which would make it even easier, not only in terms of exempting the illegally acquired land from the provisions of the Bill of Rights, but if land is shown to have been illegally acquired, then the fundamental rights relating to right to own property will apply.

Secondly, a special court will be created to deal with land issues. The Constitution in terms of Article 40(6) and the creation of new courts to deal with land and environment, will expedite the process of recovering public land. It is not an easy effort, but we have done the much we can do, at the moment. If you have any doubts, ask the Member for Limuru.

Mr. Mbuvi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I have a last question to ask the Minister for Lands before we proceed to take another Statement.

The Temporary Deputy Speaker (Mr. Imanyara): Order. That was a request for a Ministerial Statement that you made. But I will allow you a chance because you have not mustered the procedures of the House.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, the Minister gave an assurance to this House that he would issue Maziwa Traders along Jogoo Road within Kamukunji Constituency with their title deed. Up to now, he has not issued that title deed to them. Could he give a further undertaking that he will issue this title deed to them?

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, I promise to institute forfeiture for proceedings, which is in place. Unfortunately, the hon. Member should give support to Maziwa Traders to ensure that they are properly represented in court. This is because the court cases that have been filed, heard and determined in relation to this particular property, have been ruled against them. So, we have those rulings also to contend with. I am trying to use other provisions in the law to try to make sure that public land, I am not really interested in Maziwa Traders alone, but I am interested in securing public land to ensure that it is not grabbed by anybody for whatever reason.

SECURITY OF RADIOACTIVE MATERIALS

The Minister for Public Health and Sanitation (Mrs. Mugo): Thank you, Mr. Temporary Deputy Speaker, Sir. On Thursday, March 31st, 2011, hon. Olago requested for a Ministerial Statement on the---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Madam Minister! How many pages is that statement? You have to summarise and then table it because as the Speaker indicated, we have a very short time for Statements. So, please, summarise your statement and table it. We have only five more minutes.

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Temporary Deputy Speaker, Sir, as I said, hon. Olago was concerned about our security regarding

radioactive materials, especially after the accident in Japan. On specific concerns, I would like to say that the Government of Kenya has a board that deals with radioactive materials. Although this Ministerial Statement had been requested from the Ministry of Energy, radioactive materials and such issues fall under the board on radiation, which regulates the sector according to the Act. Despite the efforts by Japanese authorities to control the meltdown of the nuclear reactors, damage continues to spill out of control, until it reached the highest accident scale.

On the international nuclear and radiological events scale, such radioactive releases have long-term health effects over a wide area across borders. It is for this reason that the International Atomic Energy Institute (IAEI) is offering technical support to the Japanese Government. It is also liaising with other States through response and assistance network. The IAEI continues to liaise with the Japanese authorities to monitor the situation as it evolves.

Mr. Temporary Deputy Speaker, Sir, with regard to the steps taken by the Kenyan Government, after the Chernobyl nuclear power plant accident in Ukraine in 1986, the Radiation Protection Board (RPB) put together a mechanism to monitor food imports and other consumer products at the port of entry to guard against entry of contaminated products into Kenya. It is a requirement of the RPB that consumer products imported be accompanied with a radio analytical certificate from a corresponding regulatory body in the country of origin. Where a radio analytical certificate is not available, the board demands that imports must undergo radio analytical tests locally before the goods can be released. The board works closely with the Customs Department of Kenya Revenue Authority (KRA) in this regard.

Last year, the Government, with the assistance from the United States (US) Government, has installed 11 radio action photo monitors at Kilindini Port to scan all containerized cargo arriving at the Port. The monitors are now operational. They are guarding against importation or exportation of illicit radioactive or nuclear substances.

Mr. Temporary Deputy Speaker, Sir, the Ministry is also in the process of constructing an expanded central radioactive risk processing facility. That facility is intended to accommodate the increased number of disused radiation sources from various users for purposes of safe storage awaiting natural decay. This is an important project for the country because radioactive waste management is necessary if we are to keep our environment safe from contamination from radioactive materials.

Therefore, I would like to assure the House that all the foods and other imports entering the country are accompanied by a clean certificate, and those which do not have the certificate are tested. Thank you.

Mr. Mwathi: Mr. Temporary Deputy Speaker, Sir, I thank the Minister for that comprehensive Statement. I wish to point out a few areas of concern. She has rightly put it that food products that are coming in or containerized cargo is being scanned. We realize that items like electronics - and we are high consumers of electronics from Japan, motor vehicles and other machinery - may not have a system of checking whether they carry radioactive materials. Those can actually come and affect the users here in Kenya. What is the Ministry doing to ensure that machinery, electronics and mostly vehicles, are also scanned and have certificates to show that they are not radioactive. We should also take care of products that do not pass through the port. That is because some come by air. How are you going to ensure that those which land in our airports are also scanned?

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Temporary Deputy Speaker, Sir, I shortened the Statement as requested by the Temporary Deputy Speaker. We have scanning equipment in all airports like Jomo Kenyatta International Airport (JKIA) Nairobi, Mombasa, Garissa and Eldoret. So, all the major cargo entry points are catered for. On machinery, as I said, we have equipment that can scan all types of things. That was possible with the support of the US Government.

Mr. Mwathi: On a point of order, Mr. Temporary Deputy Speaker, Sir. It is in regard to the second question. I had asked for a clarification from the Minister. I feel it has not been properly addressed. If you can allow me, I will re-phrase it so that I can clear the air.

Mr. Temporary Deputy Speaker, Sir, I talked about machinery which is coming in. You realize that some of it does not come as cargo. Mostly, vehicles just drive out of the ships and into the port and yards where they are taken by the owners. My question is: How do you ensure that they are radioactive-free because Kenya is one of the highest consumers of vehicles? They continue to come up to now. Is there a certificate to show that a vehicle that has come in is radioactive-free?

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Temporary Deputy Speaker, Sir, as I said, I want to believe that no cargo is offloaded without going through proper customs. Therefore, at that point, we have the facility to scan everything that comes into the country, including machinery and motor vehicles. If goods come from suspected areas, we scan them. We have the equipment.

CREATION OF THE POST OF INFORMATION SECRETARY

The Assistant Minister for Information and Communications (Mr. Khaniri: Mr. Speaker, Sir, on the 3rd of May, this month on Tuesday---

The Temporary Deputy Speaker (Mr. Imanyara): How many pages is your Statement?

The Assistant Minister for Information and Communication (Mr. Khaniri): I will take about five minutes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Please, summarize!

The Assistant Minister for Information and Communications (Mr. Khaniri): On the 3rd of May, the Member for Ragwe, Mr. Martin Otieno Ogindo asked for a Ministerial Statement on the creation of the post of Information Secretary in my Ministry. I wish to give the following Statement.

The post of Information Secretary, Job Group T, was created via Public Service Commission of Kenya letter Ref. No.247/11 of 9th March 2011, following the Ministry of State for Public Service recommendation that the post was necessary for the smooth coordination and effective management of the technical service departments, namely Information Services, Public Communication Services and the Filming Department after a study of workload analysis by that Ministry.

Mr. Temporary Deputy Speaker, Sir, the duties and responsibilities are that the Information Secretary will be responsible to the Permanent Secretary, Ministry of Information and Communications, for the following:-

(a) deployment of public communication officers in the Ministry's departments and agencies;

(b) through a network of field offices, the office will facilitate constant awareness and preparedness of the office of the Government Spokesman by sharing information that is also passed to the Kenya Broadcasting Corporation (KBC) and other print and electronic media subscribers;

(c) communication of Government policies and development agenda to the public;

(d) monitoring and analyzing media content in order to enhance national security, peace and cohesion.

Mr. Temporary Deputy Speaker, Sir, the requirements for this appointment are:-

(i) for appointment to this grade, an officer must have served in the grade of Director of Information or in a comparable and relevant position in Public Service for a minimum period of three years;

(ii) he must have a Masters Degree in any of the following disciplines: Mass Communication, Communication Studies, Information Sciences, Public Relations, Journalism, International Relations, Social Sciences or any other proved equivalent qualification from a recognized institution;

(iii) he must possess strong leadership skills required at that level;

(iv) he must have excellent oral, written communication skills in English and Kiswahili;

(v) he must be of high integrity, self motivated and a team player with ability to plan, organize and implement information and public communication programmes;

(vi) he must possess an advanced computer application skills;

(vii) he must have a clear understanding of the National Development Goals, Policies and Programmes, Vision 2030 and Millennium Development Goals;

(viii) he must be capable of developing strategies to implement media related issues in line with the Constitution.

Mr. Temporary Deputy Speaker, Sir, ---

The Temporary Deputy Speaker (Mr. Imanyara): You can table the rest.

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Speaker, Sir, I beg to table the rest of the Statement.

(Mr. Khaniri laid the document on the Table)

The Temporary Deputy Speaker (Mr. Imanyara): Who had sought this Statement?

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, I want to thank the Assistant Minister for that Statement, and I would wish to get the following clarification. Does the Ministry intend to advertise this position, and if so when?

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, I want to confirm with the Assistant Minister whether this position has quietly been filled by one Mr. Ezekiel Mutua. If so, what was the recruitment process to get the gentleman to the job?

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, the first question by Mr. Ogindo, no we do not intend to advertise this post.

This position is supposed to be filled by the Public Service Commission (PSC) which falls under Mr. Dalmas Otieno here. What my Ministry did was that we

recommended Mr. Mutua to the PSC and whatever step they take, I think it will be their decision either to go by our recommendation---

Mr. Ogindo: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Assistant Minister has talked of “Mr. Mutua”; is it in order for him to give just one name that does not really fall on somebody?

The Temporary Deputy Speaker (Mr. Imanyara): Order! If you were listening, you would have heard your colleague mentioning the names in full. Allow the Assistant Minister to complete his answer, please.

Assistant Minister, please proceed.

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, Mr. Mutua is the current Secretary for Communications. The next stage after this position is this job that has been created. It is, therefore, just a promotion within the civil service.

The Temporary Deputy Speaker (Mr. Imanyara): Assistant Minister, you were supposed to respond to the two issues raised. You have clarified to Mr. Ogindo but you have not clarified the issue raised by Mr. Mbadi.

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Speaker, Sir, I did. I said that my Ministry recommended to the PSC the name of Mr. Mutua. The reasons for this are in the rest of the Statement that I have just tabled.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Ministry to violate the provisions of the Constitution by making recommendations for such a senior position in the Civil Service without giving other Kenyans a chance as envisaged in the Constitution? Is it in order for the Assistant Minister to violate the Constitution?

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, we are perfectly in order to make this recommendation. If I was given time to read the rest of the Statement then I was going to quote the relevant section of the Public Service Act that we used to make this recommendation to the PSC. It is just a recommendation. It is up to the PSC to take a decision on who to employ.

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

The Temporary Deputy Speaker (Mr. Imanyara): We are not going to have a shouting match here! What is it, Mr. Mbadi?

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, from what the Assistant Minister has read, it appears that the qualifications were tailor-made for an individual. Is it in order for a Ministry to operate in a manner that only favours an individual?

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, as I stated, it is not my Ministry that came up with the qualifications. It is the PSC that came up with the qualifications of the candidate for this position.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. It pains me because this Ministry is fond of filling positions---

The Temporary Deputy Speaker (Mr. Imanyara): Raise your point of order, please!

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, just allow me to build it. I am raising my point of order. This Ministry is notorious for filling positions without

following a competitive process. Would it be in order for this matter to be referred to a Committee of the House to deal with it? I think we are doing a lot of disservice to this country by allowing the Government to just dish out jobs, yet the Constitution is very clear.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Mbadi! There have been so many rulings on that issue. No Committee requires a specific directive from the Chair in order to investigate any matter. The Statement has been tabled, and it is perfectly in order for the relevant Committee to look at it and proceed to undertake investigations as you wish. You do not require any direction to that effect.

The Assistant Minister for Information and Communications (Mr. Khaniri): On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard Mr. Mbadi say that my Ministry is notorious for making appointments without following the right procedures in appointments. This is a very serious allegation and insinuation on the part of my Ministry---

The Temporary Deputy Speaker (Mr. Imanyara): Indeed, it is. Mr. Mbadi; you have made a very serious insinuation and the Assistant Minister demands a substantiation and he is entitled to it.

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, I am very ready to substantiate.

The Temporary Deputy Speaker (Mr. Imanyara): When? Now?

Mr. Mbadi: Right away, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Wait a moment; how are you proposing to substantiate?

Mr. Mbadi: I will just give a case which this House has handled, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Order! The way to substantiate is to bring documents that confirm that---

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, I agree but when matters are in the records of the House, we can just refer to them.

I want to refer to a case in this House where the Minister appointed the Board of the KBC. This House had to tell him to go back and re-do the job. The other case was the appointment of the Managing Director of the same corporation, who was appointed without being subjected to a competitive process. This is in the records of this House.

It is the same Ministry. Very notorious!

(Laughter)

The Temporary Deputy Speaker (Mr. Imanyara): That is an issue that can be canvassed at the Departmental Committee concerned.

Assistant Minister, that is sufficient substantiation because these are issues that came to the Floor of the House.

Minister for Energy, this is your time!

FUEL SHORTAGES IN NAIROBI

The Minister for Energy (Mr. Murungi): Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Temporary Deputy Speaker, Sir, yesterday, Mr. Polyns Ochieng Onyango, the Member for Nyakach and Mr. John Mbadi, the Member for Gwassi, asked me to issue a Ministerial Statement on the current super petrol shortages. They requested me specifically to clarify five things as follows:-

(i) The reasons for the shortage.

(ii) The measures that I will take to ensure a sustainable availability of fuel products.

(iii) Punitive measures that I will take against the dealers, who are responsible for the shortage.

(iv) I was to explain why a company called “Gulf”, which was awarded a tender to import 70,000 metric tonnes of petroleum products has not been able to offload its vessel and whether this has caused the current fuel shortage and the possibility that buyers have refused to accept products from Gulf.

(v) I was requested to give details of the petroleum products in terms of volume held by the Kenya Pipeline Corporation (KPC) tanks and, more specifically, the volume meant for transit against the volume meant for fuel for local markets.

Mr. Temporary Deputy Speaker, Sir, in response, allow me to make the following Statement. The Government is aware that there have been fuel shortages in Nairobi in the last five days which have greatly inconvenienced motorists and consumers. The Government is also aware that fuel shortages have far reaching implications for various sectors of this economy. I would like to clarify at the very beginning that there has been enough diesel and kerosene in the country during this entire period. The fuel shortage only affects one product; that is, super petrol.

I would like to inform the House and Kenyans at large that this crisis is very quickly coming to an end as we have now got adequate supply of super petrol in the country and we expect that by tomorrow, all the petrol stations within Nairobi, where there has been a shortage, to have sufficient super petrol.

Mr. Temporary Deputy Speaker, Sir, I would like to appeal to Kenyans not to engage in panic buying, which is creating the long queues that we are seeing, with people filling both their cars and jerricans that they take to petrol stations because there is no cause for alarm. We have enough products for tomorrow and the day after tomorrow. So, let them buy what their cars require.

Mr. Temporary Deputy Speaker, Sir, there are about for causes of the shortages. Every month, the Ministry runs what we call “industry tender” through an open tender system. In the March tender, there was under-supply of super petrol to the tune of 7 million litres. The importer was not able to bring, as part of that tender, 7 million litres and that reduced the quantity of super available in the market.

We expected during the month of April to receive 8 million litres of super petrol from the Kenya Petroleum Refineries (KPRL). However, due to a technical problem at Kiambere Power Station, which supplies power to the Coast Region and the KPRL, there was a blackout. As a result of this power failure, the KPRL was shut for seven days. As a result of that shutdown, the KPRL up to now has not been able to produce or deliver into the market, the expected 8 million litres of super petrol. So, we have not received that product to date.

On the import cargo for April, we imported 29 million litres of super petrol. This cargo was delayed in its arrival by five days. The ship was supposed to discharge on 21st

April, but it was only able to do so on 27th and 28th of April, 2011. This cargo was inspected for its quantity and quality last Friday, 29th April, 2011, and because of the weekend and the holiday, the taxes could not be paid to the Kenya Revenue Authority (KRA) on time and, consequently, the products could not be released to the market until those taxes were paid. The taxes have now been paid and from the evening of 3rd May, that product was available and released to the market. That is why we are saying that we now have sufficient products available in the market.

Mr. Temporary Deputy Speaker, Sir, it was not only super petrol which was available. There was availability of some products within the pipeline system during this period but between 29th of April and 2nd of May, the oil marketers did not request for any pump over of the products from the pipeline system into their storage tanks and, therefore, whatever they had ran out. We suspect that this could have been caused by an action we took as a result of the high prices that had caused some demonstrations in town over a week ago.

Mr. Temporary Deputy Speaker, Sir, you recall that the Deputy Prime Minister reduced the tax on both diesel and kerosene. Once the tax was reduced, the oil marketers waited for the legal notice to reduce the tax and because they wanted to pay less tax to the KRA, they held the products without picking them from the pipeline system and the diesel which was in the pipeline system congested the system, therefore, delaying the delivery of super petrol from Mombasa to Nairobi. The taxes have now been paid as a result of our intervention and things are moving.

On the measures we are taking to ensure sustainable availability of fuel products, we are not sure whether the KPRL will be able to supply us with super petrol to replace the 8 million litres that we did not get last month.

Mr. Temporary Deputy Speaker, Sir, my Ministry has, therefore, decided to float a special tender for super petrol of eight million litres to replace the one that was coming from refinery. The special tender will be floated on Tuesday, next week, to ensure that there is continuous flow of the product.

To avoid clogging of the Kenya Pipeline Company (KPC) system, the Ministry, in consultation with the Kenya Revenue Authority (KRA), has requested the KRA to reduce the period of tax payment for oil marketers from 30 days to 10 days. In the past, while the products come into the pipeline system, we were allowing 30 days within which to pay their taxes, the financiers and to take out the products. That meant that an oil marketer could import products and store them within the pipeline system for 30 days. The 30 days ended up clogging the system. We made a decision to reduce that period from 30 days to 10 days. This will enable faster flow of the products within the pipeline system.

Hon. Members are aware because I have been talking about this before; we have been running, almost on permanent crisis in the petroleum subsector. We operate on almost a hand to mouth basis because this is one of the few countries of the world where there are no strategic reserves. If one ship does not arrive, the effect of that cargo is felt, not only in Nairobi, but all the way to Eldoret.

The world is becoming more uncertain, with pirates and war among other things. I think time has come now for us to establish a strategic storage facility of some flows to cushion us from interruptions and erratic supply of petroleum products in this country. We had way back on 2008, after the post election violence asked ourselves; supposing there was a lot of violence in Mombasa and products could not be brought to Nairobi,

what would happen? Even the military would not move. We decided to establish strategic reserves for the country. We thought that we could have a strategic cover of 90 days. However, when we presented the Bill to the Treasury, because the amount was quite astronomical, almost Kshs80 billion and Kshs4 billion for building storage facilities, the Treasury did not have the resources to support that exercise. Therefore, it was shelved. We have gone back to the Treasury and told them that even if we cannot have one for 90 days, why can we not have one for five or six days, so that we have one week or a few days of cushion because we do not know what is likely to happen and the supply can be erratic? This discussion is continuing and my officers and Treasury officers have agreed to meet next week to see what possibilities could be available within the budgetary process.

We have also been facing a challenge because there is only one jetty supplying the country, Uganda, Rwanda, Burundi, DRC Congo and parts of Southern Sudan. We can only offload one ship at a time. The Departmental Committee on Energy, Communications and Information visited the installations and came back and gave a report to this House. They said it is a very dangerous operation we are doing; it was high time we did something else.

Building another jetty would require to dredge the port so that larger ships can come in. That would also require a lot of money. We are talking with the Treasury to see if we can introduce a SBM, so that we just connect a pipe from the port, all the way to the deeper sea where large vessels can offload from. Instead of the ships coming to the port, we pump products from the ships to the tanks. This is a project that we have decided to fast track with the Treasury. We believe it will solve the problems we are facing.

We also have problems of storage. When the pipeline system is clogged, we cannot remove those products because there is nowhere to take them. The pipeline shuts sometimes because until those products are removed, we cannot pump more products from Mombasa. Therefore, we are discussing with the private sector to establish storage tanks along the pipeline. We are looking at places like Konza, Industrial Area, Nakuru and Mtito Andei, among other places. Those are some of the structural constraints that we are seeking to address, so that we can increase the flow of petroleum products and, in the medium term, prevent the recurrence of what we are talking about.

Mr. Temporary Deputy Speaker, Sir, I was asked what punitive measures we will take against oil companies that could have caused the current shortage. I have advised the Energy Regulatory Commission (ERC) to investigate and establish whether any of the oil companies have artificially caused the shortages we have experienced in Nairobi. If we find any company operating in such a manner, in breach of the Energy Act, we will take the steps and apply the penalties we are allowed to take by the Energy Act. This means that we can impose fines, suspend or cancel the licences of that company. So, after these investigations, if any company is found to have caused this shortage and in breach of the Energy Act, action will be taken in accordance with the Act.

Regarding Gulf Energy, it is true that they won an industry tender for the month of April. However, it was not for 70,000 metric tonnes. The tender was for the supply of 57,000 metric tonnes of diesel. As I said at the beginning, we have no problems with the supply of diesel. The problem we had was with the supply of super petrol. Therefore, the Gulf Tender of diesel has no contribution, at all, in the current super shortage. The Gulf cargo was discharged on 16th April, 2011. It has not caused any fuel shortage in Nairobi

or elsewhere. I would like to confirm that no buyers have refused to accept products from Gulf Energy.

Lastly, I was asked to give details of petroleum products in terms of volume held by the KPC tanks and more specifically, the volume meant for transit against the fuel meant for the local market. The details are as follows. Within the KPC today, we have diesel of 99,000,339 litres. Of that amount, the volume meant for the local market is 64,600,000 litres. The amount meant for export is 34,749,000 litres. Regarding super, we have, in the KPC 66,074,000 litres. Of that amount, 43,598,000 litre are meant for the local market and 23,476,000 litres for the export market.

We have 102,062,000 litres of kerosene, out of which 71,440,000 litres are meant for the local market and 30,622,000 litres, for the export market.

Thank you.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, I just want to get some indication of the clarifications being sought. Minister, you will take notes. I will start with hon. Pollyns Ochieng, who will be followed by hon. Mbadi. I will then come to other hon. Members.

Mr. Ochieng: Mr. Temporary Deputy Speaker, Sir, firstly, the Minister said that there is sufficient diesel in this country. Personally, on two occasions, yesterday and today, I tried to fuel my car at two different filling stations and I was told that I could not buy diesel worth more than Kshs3,000. The petrol attendants said that the stocks of diesel they had were also running out and they did not know when they would have the next stocks. So, could the Minister further confirm whether this story is true?

Secondly, the Minister talked about the refinery having some breakdown, which means that it is not functioning at this particular time. He said that the breakdown only affected the refining or processing of super petrol. What about diesel? We know that there is only one refinery plant in this country, which is located in Mombasa. How sure are we that the other part may not also affect the flow of diesel to this part of the country, and not lead to this country coming to a halt as a result?

Finally, could he undertake to table the findings of the Energy Regulatory Commission (ERC) following their investigations into who caused this problem?

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Mbadi: Mr. Temporary Deputy Speaker, the ullage committee, which determines how to allocate storage space to the various companies, is co-ordinated by the Ministry. Why does the Commission allocate space to small players, who have no capacity in terms of marketing outlets?

Finally, the Minister rightly said, in his Statement, that Kenya relies heavily on this particular energy source to drive this economy. Since there have been problems time and again in the energy sector, and more particularly in the petroleum subsector, and considering what happens in other countries, where if something serious like this one happens, which can cause a shutdown of the economy, the Minister or the person responsible for policy decisions takes political responsibility, could the Minister be courageous enough to take political responsibility, together with the Permanent Secretary, and resign, so that investigations can be carried out in this sector, and so that we can have fresh blood to run this Ministry, because we cannot afford this crisis?

The Temporary Deputy Speaker (Mr. Imanyara): Minister, you can respond to the clarifications sought by those two hon. Members because they are the basis upon

which the Ministerial Statement was made. I will then come back for the next lot of clarifications.

The Minister for Energy (Mr. Murungi): Mr. Temporary Deputy Speaker, Sir, hon. Ochieng talked about filling his car with diesel, and not super petrol. I said that there has not been any crisis regarding diesel in this country. We have sufficient diesel in Nairobi and elsewhere. Yesterday, I was with the oil marketers, and they confirmed that there is sufficient diesel. This morning, I was with the management of the Kenya Pipeline Company (KPC), and nobody talked about shortage of diesel. They talked about super petrol. So, I want to confirm that there is sufficient diesel in the country and, therefore, there is no cause for panic.

Regarding the ERC report, I undertake to table it in this House once the investigations are complete.

Regarding hon. Mbadi's clarification, it is true that the ullage committee is chaired by my Ministry, but its membership comes from the industry players. We look at the market share of each industry player as well as their throughputs – how much they have been putting through the system in the past. It is on that basis that they are allocated space in the pipeline system.

Mr. Temporary Deputy Speaker, Sir, we reserve some ullage for those companies which win tenders to supply fuel for emergency electricity generation in both this country and in neighbouring countries like Uganda and Rwanda. So, if a small company wins such a tender, it is allocated sufficient ullage just to meet the requirements of electricity generation.

A small company can also win the industry tender because we go by price. The company that offers to import at the lowest price is the one which is awarded the tender. Some small companies have won the industry tender. Once you win the industry tender, obviously, those considerations come into play.

Mr. Temporary Deputy Speaker, Sir, the motive for asking this question has come out clearly. Mr. Mbadi has always wanted me to get out of the Ministry for his own reasons. I want to tell him that I am not getting out of the Ministry. He never appointed me, and he has no right to remove me.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to impute ulterior motive on me? It is not that I want the Minister to get out of the Ministry, but I want the Ministry to be run properly. I would have no problem if there were no problems in that Ministry. So, it is nothing personal. It all has to do with the economy of this country.

The Temporary Deputy Speaker (Mr. Imanyara): Minister, you need not respond to that one. It is now five o'clock and we need to give other hon. Members an opportunity to seek clarifications. So, I will go to Mr. Muthama, who will be followed by the Member for Lari.

An hon. Member: On a point of order!

The Temporary Deputy Speaker (Mr. Imanyara): I will hear your point of order after that!

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, the Minister has given us quantities of fuel, which are in stock. My first question is whether he could say for how many days the current stocks that are being held by the KPC will last. Secondly, I would

like him to confirm whether they expect any consignment of oil, having said that they are able to float only one consignment of oil at any given time.

Lastly, I want him to confirm whether he is truly in firm control of the private businesses being operated by oil dealers. Is he able to impose prices on their products and ensure distribution of fuel, given that the market of every commodity in this country has been liberalised and private businesses are at liberty to operate their business in the way they want?

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, the Minister has clearly informed this House and the country at large that there was power failure at Kiambere. What corrective action is the Ministry taking to rectify this very serious anomaly that has affected the entire industry? Lastly, shrewd businessmen have already increased the pump prices on this product. What action is the Minister going to take because the product has become almost unreachable in the motor industry?

The Temporary Deputy Speaker (Mr. Imanyara): I will take two from this side, namely, hon. Namwamba and hon. Ogindo. Then the Minister can respond to those four and then I will come to the last two after that.

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, the Minister has told us a lot of things and I empathize with him for the very difficult situation he finds himself in on behalf of the country. Could he, specifically assist this country and the Government by pinpointing exactly where the problem is? Where exactly is the problem? Where does this buck stop? Who is responsible? There has been talk that the 57,000 metric tonnes brought in by Gulf Air could be clogging the system. If that is not the problem, who exactly is responsible for what is happening now?

Finally, listening to the Minister decrying challenges like having a single jetty, problems with storage, absence of strategic reserve, he sounds like he is bemoaning in a similar manner as ordinary Kenyans would bemoan this situation. Other than the wish list that the Minister has, what concrete measures is he, taking to redress these challenges? We had the Supplementary Budget only last month and we did not see any specific budgetary measures taken in it. We are expecting the next Budget for 2011/2012. Has the Minister taken any concrete budgetary measures to address these challenges?

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, listening to the Minister, I get the impression that he was appointed yesterday. I know he has been there for the past three years. Could he confirm or deny that the Ministry of Energy is a captive of a cartel that is out to fleece Kenyans? Secondly, sometime back, this House passed a Sessional Paper that was meant to allow the Kenya Pipeline Company (KPC) to expand. The KPC took a loan to expand its services. We also have a situation where---

The Temporary Deputy Speaker (Mr. Imanyara): Please, ask for a direct clarification.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, we also had a situation where the Kiambere Hydro Station broke down. All these are under the Ministry of Energy. Could the Minister tell us what the problem with this Ministry is?

The Temporary Deputy Speaker (Mr. Imanyara): Very well! Minister, you can take those ones. After that, I will do one final round.

The Minister for Energy (Mr. Murungi): Mr. Temporary Deputy Speaker, Sir, I want to thank the Members for the clarifications that they are seeking. We have the current stock which is going to last us for the month of May. We are importing the next

lot on 15th May to take us into June. So, we import products once every month. The products that we have are sufficient to take this country for the rest of the month, if we bring in the emergency cargo, which I said there is a tender to bring it on Tuesday next week.

Both hon. Muthama and hon. Ogingo seem to suggest that the Ministry is captured by some cartels in the oil industry. I want to confirm to the House that this Ministry is not a captive of any cartels and we are implementing our mandate as spelt out in the Energy Act. It is only the other day that the ARC cancelled an operation license of one of the top leading oil marketers in this country. So, we will continue serving Kenyans without any fear. We will continue serving Kenyans to make sure that the fundamental interests of this country are taken into account. This is the only sector in the entire economy where there is price regulation. We acted to protect the interests of Kenyans. If we were afraid of the cartels, we would not have introduced any price regulations.

Mr. Temporary Deputy Speaker, regarding the power failure at Kiambere, I want to confirm that, that has also been rectified. The dams on River Tana were constructed in 1970s and you cannot expect them to continue operating at full efficiency without breakdowns here and there. The turbines which had a problem in Kiambere have been replaced and now we are operating as normal. But I cannot promise that there will not be another breakdown in Masinga or another place because we are dealing with aged plants. We need to continue renovating and monitoring the plants to make sure that we do not have prolonged power failures affecting the refinery like they did in this particular case.

With regard to hon. Njuguna's issue on prices, I have had occasion to address this House on high petroleum prices before. I pointed out the factors; both external and internal and the manner in which we are addressing them. I would like to refer the Member to the HANSARD, so that we save the time of the House. Hon. Namwamba asked a very pointed question: Where is the problem and where does the buck stop? The greatest problem with the petroleum sub-sector is under-investment by the Government. This is the only sector where there is zero budget allocation. You can look at your last year's Estimates where there was zero allocation for the National Oil Corporation of Kenya (NOCK), zero allocation for the KPC and zero allocation for the refinery. You cannot expect the petroleum infrastructure to run without money. In fact, we have been told to find creative ways of working with the private sector to ensure that we resolve this problem, but the private sector will only come in if they can see profits. They will not come in to help you.

So, unless we address, in a comprehensive manner, the issue of chronic public under-investment in the petroleum sub-sector, these problems will keep on recurring. We need some money to set up strategic reserves, so that when there are any hiccups in the system, at least, we can survive for a few days. We need to invest in the jetty that I am talking about in the SBM, so that, at least, we can offload two ships at the same time. We need adequate storage even here in Nairobi. If we had stored products in Nairobi for three to four days, even if those tanks belonged to the private sector, then we could resolve this problem. So, what we need is money and investment. Otherwise, I know the members of the public and the Members of Parliament will continue saying that Kiraitu Murungi has not done this, Kiraitu Murungi has not done that, but until we invest, even if hon. Ababu Namwamba is the Minister, these problems are going to be there.

Mr. Ogindo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to mislead this House that the problem is lack of money, and yet we know that money was available to the Kenya Pipeline Company (KPC) to expand its pipelines and that was not done? Is he in order to mislead this House that, that is the problem, and yet we know that the problem is the mismanagement in the Ministry?

The Minister for Energy (Mr. Murungi): Mr. Temporary Speaker, Sir, I want to disagree with the hon. Member. The pipeline enhancement was done. It was pumping at 440 and we are now talking about 600. We are doing some correction works at PS No.14 in Mombasa and this will move to 831 million litres per hour. Why does nobody talk about the new pipeline that we are doing, which we call Line 4 from Nairobi to Eldoret? We are supervising it to ensure that the problems we faced in Line 1 are not there. We only look at Line 1 and not where we are doing very well in Line 4. So, the KPC, under the new management, is doing very well. That, therefore, should not be a reason for denying us public support. We are doing all that with internal funds from the KPC. If they are not doing well, where would they get money to implement the Kshs14 billion project?

Mr. Temporary Deputy Speaker, Sir, we want a very consultative process. I want to deal with the issues in the petroleum sector in a very comprehensive manner. I have decided to call a stakeholders' meeting where I will involve Members of Parliament, marketers and workers. We will take two days to look at all the problems facing this sector and come up with a comprehensive action plan. I do not want to be coming here to answer questions on prices today, shortages tomorrow and such things. I want us to develop a comprehensive master plan for the petroleum subsector. It should also include investment and funding as we talk, because that is also critical.

Mr. Ochieng: On a point of order, Mr. Temporary Deputy Speaker, Sir. When I requested for this Statement yesterday, my mind was very clear as to what had happened the previous day, where even my children arrived at home from their schools at 2.00 a.m. because the vehicles could not move due to lack of fuel. I did not have any malice when I raised this question in this House. I want the Minister to correct that insinuation that this matter was brought to this House to bring him down.

The Temporary Deputy Speaker (Mr. Imanyara): Order! I do not think that that is a valid point of order, because that was brought up by another hon. Member. I think we have passed that test.

I will take the last three requests from Mr. Chanzu, Mr. Lessonet and Mr. Konchella in this lot. Then, I may be persuaded to take the last remaining two hon. Members, because hon. Okemo is a Chair of a Committee.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, the Minister has given very broad issues on this matter. This matter has been discussed in this House for the last three weeks. What the Minister needs to do maybe on Tuesday is to issue a comprehensive Statement. This is because the business of panic-buying will be there because people are not sure whether there will be fuel or not. That is from what the hon. Members have said in this House. From the time of the Triton case when I heard that the President went with the Prime Minister to open a facility which was not there up to now, it looks like there is a lot of bureaucracy in the running of the affairs of the Ministry and the corporations under it. What has the Minister done to have some informal running of this sector which is very important to the economy and where there appears to be a lot of underhand

dealings? For example, the Minister should use the intelligence or people who can report to him directly. For instance, the Minister should have known by now the cause of this.

The Temporary Deputy Speaker (Mr. Imanyara): Can you seek a clarification?

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, he does not have to say it here on the Floor if he has intelligence mechanism where he gets this information. However, he should give an assurance to the House that there is that kind of ---

The Temporary Deputy Speaker (Mr. Imanyara): Very well!

Yes, Mr. Lessonet!

Mr. Lessonet: Mr. Temporary Deputy Speaker, Sir, as I rise to seek a clarification, of course, I want to appreciate the effort the Minister has put in his Ministry, specifically in setting up KETRACO, the Rural Electrification Authority and the GDC.

Mr. Temporary Deputy Speaker, Sir, my clarification is, why does the Government insist on investing in the petroleum industry while they can encourage individual Kenyans to do so by giving them incentives to participate even in building up another refinery or even injecting equity in the existing refinery? Equally, when it comes to storage, it must not be physical. The Government can equally subcontract the storage facilities for petroleum products to other players or investors. Also, if we are to rely continually on the KPC---

The Temporary Deputy Speaker (Mr. Imanyara): That is clear, Mr. Lessonet!

Mr. Lessonet: Mr. Temporary Deputy Speaker, Sir, the other clarification---

The Temporary Deputy Speaker (Mr. Imanyara): No! You have already sought two and yet you are allowed only one!

Yes, Mr. Konchella!

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, I also want to appreciate what the Minister has said in terms of the way forward or the real problem. I think he has articulated it very well and we support what he has said. But be that as it may, now that we are going to county governments, could the KPC create storage in every county, so that in the long-term, these counties will have enough fuel to run the services? However, we also know that a nation cannot develop without---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Konchella, you have sought a clarification.

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, just one short one on the issue of electricity and private contractors. Today there is a lot of rain. What will happen is that Masinga and other electricity producing dams will silt. As a result, we will have less power because of the storage capacity of water. What has the Minister done to have a permanent desilting system so that electricity production is enough in order to provide cheap power for industries to thrive in this country?

The Temporary Deputy Speaker (Mr. Imanyara): Very well! What you are seeking is now clear. Let us have Mr. Okemo followed by Mr. Ruteere and that will be it.

Mr. Okemo: Thank you very much, Mr. Temporary Deputy Speaker, Sir. I just wish to get a clarification from the Minister for Energy. All the problems that he has outlined are not new. These problems have been there for a very long time. I think what disappoints some of us is that the Minister complains that he cannot do some of the things because there is no money. Really, this is a subject for the Cabinet, because Parliament cannot help him there. Allocation of money is done by the Office of the Deputy Prime Minister and Ministry of Finance in consultation with the other Ministries. Therefore, as

far as I am concerned, the problems are already well known. The solutions are also known, but the problem is implementing those solutions. We know the breakdown or how we arrive at the pump price. The crude oil price is the beginning point, and the Minister has no control over that, except that he has to look for cheaper sources of crude oil. The refinery is a function of what happens with the Kenya Oil Refinery. How efficient can you make it, so that the final refined products are at the cheapest possible price?

Mr. Temporary Deputy Speaker, Sir, regarding the storage, you have told us that you have a problem because storage is lacking and, therefore, you must get investments to increase storage to assure stability for emergencies and so on.

Transportation is the pipeline. Then there is the retailing and you have the margins that the oil companies put there. So---

The Temporary Deputy Speaker (Mr. Imanyara): I have allowed you a lot of time.

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, the clarification I am trying to seek is: Could the Minister analyze these various components that lead to the final pump price and actually offer solutions at each and every stage instead of coming to lament here? To me---

The Temporary Deputy Speaker (Mr. Imanyara): Could you wind up?

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, Mr. Minister, my worry is: you have already reduced duty by 30 per cent. How will that translate? How will we be sure as House or as Kenyans, that this decrease of duty by 30 per cent will translate into lower pump prices for *wananchi* because it will end up somewhere as profits among the marketers? Could he give us an assurance before we support that reduction?

Mr. Ruteere: Mr. Temporary Deputy Speaker, Sir, the Minister say there was an importer who could not supply the required amounts of petroleum products. Why do they give tenders to companies that are unable to supply what is required of them? What action does the Ministry take when a tenderer fails to import what is required, holding the country at ransom, as has happened?

Finally, why could the National Oil Corporation of Kenya (NOCK) which is a corporation of the Ministry, not supply or get the petroleum which was in stock? The Minister said the marketers failed to go for the stocks that were there? Why did the NOCK not supply the necessary petroleum that they had?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Minister, you have a maximum of seven minutes.

The Minister for Energy (Mr. Murungi): Mr. Temporary Deputy Speaker, Sir, the issue raised by Mr. Chanzu is true. After Triton, we tightened the systems at KPC. We said products cannot leave the pipeline unless they have been paid for and unless all the taxes are paid. We enhanced the product accountability system within KPC.

This could cause some minor delays, but I think we cannot change the system. This is because if we relax on it, the House will be calling again because there is Triton No.2 and Triton No.3. So, please, bear with us. We will stick with the strict product accountability system that has been introduced.

Secondly, Mr. Lessonet wanted to know why we are not encouraging the private sector to invest. Since 2008, I have been wooing the private sector to establish strategic reserves. I have got some offers. However, the offers I get are really un-implementable

because the private sector wants to make money even out of this. I have got offers for the private sector offering to come and build tanks and put in products, but on the understanding that the products that we keep there--- The private sector does not make money by just putting products in the tank. We allow them to keep on releasing the products into the market and replenishing them. What are we doing? We are giving about one third or more of the market, to one player. So, we do not want to create monopolies through the private sector participating in strategic reserves. That is why we are saying the Government should invest.

Mr. Temporary Deputy Speaker, Sir, secondly, we had even advertised expression of interest for that SBM. There are very few responses coming in because they are also looking at investments and how fast they will recoup. So, in some of these infrastructure projects, the public sector has got to be involved. It is just like asking the private sector to build roads for us. They can build roads in Nairobi, but they will never build roads in Turkana and other places, where they are not likely to recover their money.

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

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

Madam Temporary Deputy Speaker, regarding Mr. Konchela's issue, we are required by the Constitution to look at the possibilities in the county governments for energy distribution systems. We will be working with the county governments, when they are established, to see whether we can put up a storage facility in every county. That will cushion us even better instead of having a centralized storage facility in Nairobi.

I want to appreciate the former Minister for Finance, Mr. Okemo who was also the Minister for Energy. In fact, he should have resolved these problems that he is asking me to resolve. It is true that the place to go is the Cabinet. We have been there. We have talked about increasing efficiency of the refinery; modernizing the refinery at a cost of Kshs100 billion. We were asked to look for partners to do it. ESA is there; but immediately we brought ESA on board, oil was discovered in Uganda.

As we are enhancing and expanding the refinery, so that we supply Kenya, Uganda and beyond with oil from Uganda, we have to remember that President Museveni has said not a single drop of Ugandan oil will leave that country unrefined. So, we are looking at a future where, instead of relying on imported products from abroad, we will be getting them from the region. The issue now which has arisen is that; should ESA invest Kshs100 billion in expanding a refinery or put up another refinery in Uganda because there will be no market for this refinery? So, we have been taken back to the drawing board to see whether we should reconfigure the entire petroleum infrastructure in East Africa in view of the 1 billion barrels of oil which have been discovered in Uganda. So, the systems might now be moving to Uganda instead of Mombasa. These are not litmus tests of hop, skip and jump solutions, because a different situation is also unfolding.

Mr. Ruteere wanted to know; if an importer fails, what do we do? There are OTS rules. There are penalties. We have received up to Kshs100 million penalties from people

who failed to honor the OTS. Even if you get the penalty, it does not give you the products. So, we have to go back and do what we are doing to import other emergency cargoes to fill in the gap.

Thank you, Madam Temporary Deputy Speaker.

Mr. Ogingo: On a point of order, Madam Temporary Deputy Speaker. Is the Minister in order to side step a very critical question that was put by the Chairman of the Departmental Committee on finance? He wanted to know what assurance he will give to this House that the intended duty reduction of 30 per cent will result into a reduction on pump price. We see a situation whereby the Government will lose revenue, no pump price will fall and this will end up in people's pockets.

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

Mr. Minister.

The Minister for Energy (Mr. Murungi): Madam Temporary Deputy Speaker, I was asked so many questions that some of them disappeared. The 30 per cent tax reduction which we have put on kerosene and the 20 per cent on diesel will directly translate to the pump prices. I hope to assure the country that that will happen because of the price regulations that were introduced. In fact, when they were calculated, the 20 per cent in diesel translated to Kshs2 and the ERC immediately announced that oil prices have come down by Kshs2 as a result of the tax reduction.

So, if there was no price regulation, then the marketers would pocket that difference.

So, I think Kenyans are taken care of because of the price control regime that we have introduced. Thank you very much.

Mr. Konchella: On a point of order, Madam Temporary Deputy Speaker. The Minister has also avoided my question which is to do with silting of rivers by the ongoing rains which will likely increase the cost of electricity and private electricity generating companies who will dictate the price of electricity by---

The Temporary Deputy Speaker (Dr. Laboso): I am sure he heard your question the first time. Minister, you did not answer all the questions.

The Minister for Energy (Mr. Murungi): No, Madam Temporary Deputy Speaker. Actually, even this second time, I have not understood what question he is asking me. Could he repeat?

Mr. Konchella: Madam Temporary Deputy Speaker, we now have a lot of rain and the chances are that most of the dams where we produce hydro-electric power are going to be silted because of soil erosion, particularly, on the Nairobi-Thika Highway where there is a lot of construction going on. So, in the course of time, electricity generating capacity will lessen because of the silting of these dams. So, as a result, the power capacity generation is going to be low and, therefore, private producers of electricity will take advantage of the situation and increase the prices, thereby making the cost of electricity expensive and also making investors to leave Kenya because they cannot invest here.

The Minister for Energy (Mr. Murungi): Madam Temporary Deputy Speaker, I would like to thank the Member. Actually, part of the problems we have in the country is because of relying on hydro-power. Due to climate change factors, hydro-power is no longer reliable. When we had prolonged droughts about 18 months ago, hydro-power was cut by half; from 700 megawatts to 350 megawatts, forcing us to import very expensive

power. So, the Ministry's policy is not to focus more on expansion of hydro-power. That is why we are moving massively to exploit the geothermal power generation because geothermal being under the earth, is immune to climate change and I think that is the way forward for this country. So, hon. Konchella, follow us on geothermal.

The Temporary Deputy Speaker (Dr. Laboso): Okay. I think that brings us to the end of that. Next Order!

PROCEDURAL MOTION

REDUCTION OF REFERRAL PERIOD OF VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, I beg to move the following Procedural Motion:-

THAT, this House orders that the referral period of the Vetting of Judges and Magistrates (Amendment) Bill (Bill No. 9 of 2011) to the Departmental Committee of Justice and Legal Affairs be reduced from ten to one day.

Madam Temporary Deputy Speaker, we are facing a national emergency. I would like to remind this country and this House that as of 27th of August last year, we had 12 months within which to vet judges. I would also like to remind the country that, in fact, even within those 12 months, the fact remains that by 26th of August, we must have vetted more than 230 judges and magistrates. I was just doing calculations. There are 25 days left in May, 30 in June, 31 in July and 26 in August, making a total of 112 days including Sundays, Saturdays and public holidays.

Madam Temporary Deputy Speaker, this panel that we want to recruit includes three foreign serving judges or retired judges. The House Business Committee (HBC) having recognized the urgency that this country now faces, has sought to fast track this amendment law which has been necessitated yet again by delays in the enactment of the original law.

You will remember we ended up creating a calendar that required the President, after the law came into force on 22nd, to advertise these vacancies within seven days. Again, I think, in its wisdom, the House only allowed that advertisement to appear in the *Kenya Gazette*. We have come to the realization that that was not sufficient for the country to participate in these applications. Secondly, we did not do sufficient civic education in the adverts to encourage our womenfolk who are very important and must constitute one-third of the nine members. We did not encourage them in the application. In consequence, the sourcing of the nine members has hit a brick wall because not enough people applied. In fact, the women for that matter did not even apply up to the number required of nine.

Madam Temporary Deputy Speaker, therefore, in the interests of the country's constitutional provisions, and since this House is the champion of implementing this Constitution, I want to ask it to note that this Motion is not driven by the argument and the issues bedeviling our Justice and Legal Affairs Committee. It is driven by the realities of the day and of the moment and I am happy to see the current chairman nodding. We are simply telling you, including Madaraka Day, Saturdays and Sundays, you have only

112 days. Therefore, by reducing this period by just one day, we will be able to move these amendments and cause the vetting of our judges and magistrates. I want to cite the ongoing interviews for the office of the Chief Justice and say with pride that this country is moving on.

Madam Temporary Deputy Speaker, therefore, I beg to move. I want to request the House to support this very important manouver to enable our country to realize the benefits of a quality Judiciary.

Hon. Kiraitu, my learned friend and my predecessor who helped in setting up the Ministry will second the Motion.

The Minister for Energy (Mr. Murungi): Thank you, Madam Temporary Deputy Speaker. I rise to second this important Motion.

Madam Temporary Deputy Speaker, you know when I was the Minister for Justice and Constitutional Affairs, I tried to vet the judges and magistrates without a law under what we called the “radical surgery” and I actually sent many of them home. I have been very heavily criticized for that exercise. I have nothing to regret about it because they said corruption in the Judiciary had become like the weather that everybody is talking about, but nobody is doing anything about it. So, I decided to do something about it but now we have a structured way of vetting our Judiciary.

Indeed, I feel that we should have passed this law even before this Chief Justice is appointed because we are likely to have a case where a Chief Justice is not going to be vetted. We are going to appoint a Chief Justice who has not been vetted through this process. Constitutional business is important and urgent business for this House. That is why there is that clause in the Constitution which actually threatens and gives powers to the Supreme Court to dissolve Parliament if we are not able to pass these laws.

Madam Temporary Deputy Speaker, hon. Abdikadir, the chairman of Constitution Implementation Oversight Committee (CIOC), came here the other day with a litany of complaints about the number of Bills that we should have passed which we have not passed. The 112 days which the Minister is talking about, many of them are Sundays, Saturdays and Fridays when we will not be working. So I think time has come for us to accelerate the speed with which we pass the laws to implement the new Constitution. One way of doing so is by reducing these days. I do not think by waiting for the remaining ten days there will be any change that is going to take place.

So, I wish to very sincerely second this Motion.

(Question proposed)

Dr. Eseli: Madam Temporary Deputy Speaker, thank you for giving me this chance to support this Procedural Motion. This is because it is of necessity in the sense that we have hit a brick wall, which is a fact. I would like to urge the Minister that the future Bills he brings, if there is anything about advertisement in the Kenya Gazette, we should note that not everybody has access to the Kenya Gazette. He should ensure that all advertisements are made in such a manner that they reach a majority of the people.

We are facing many hurdles in the implementation of this Constitution. As I speak, I would also like to tell the Minister that all pending Bills should have been tabled in the House by now, as we wait to pass the others. After we finish the two that are on the Order Paper, what else? We need those Bills here immediately.

Madam Temporary Deputy Speaker, the issues of circumventing the anti-reform brigade--- Let us not burry our heads in the sand. There is an anti-reform brigade and they are gleefully waiting for the implementation of the Constitution to fail. We need to circumvent them. I expect the Minister to be up to the task and circumvent these anti-reformists.

Look at the issues going on in the Committee of Justice and Legal Affairs. As I said earlier, these are victims of Executive impunity. This is in the sense that the appointments that were made of the Chief Justice, *et cetera*, virtually polarized all institutions of the country, including this House. This led to the problems in that Committee. We have resolved that by the Executive withdrawing the appointments, yet the Committee has not been able to reconcile. Let us be very careful that we do not let anti-reform elements to take over the implementation of this Constitution, because then it will not work.

Madam Temporary Deputy Speaker, I beg to support this particular Motion.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Madam Temporary Deputy Speaker, I very briefly rise to support this Procedural Motion.

As you know, we are the only country in the whole world now without a Chief Justice. We are also, perhaps, the only country whose process of vetting is raising eye brows. Although well intended, individuals who may sometimes feel they are being pushed to the cliff, may raise issues because systems are not in place and, therefore, the culture of vetting is not entrenched.

As I say this, it is also important that the Departmental Committee on Justice and Legal Affairs, which is very critical and which at the moment does not appear to have the harmony and synergy necessary to create a liason with the relevant Ministry – the Ministry of Justice, National Cohesion and Constitutional Affairs – also cultivates harmony and teamwork.

Madam Temporary Deputy Speaker, I take this opportunity to urge my friends in that Committee, who may be facing questions and rebellions, that we need to set precedents. If you see hon. Members raising issues with you, there may be political issues. There could even be competition issues in the House. However, for the sake of this country, I think we need to develop a culture of selflessness, and of not sticking to positions to the detriment of the working of a committee. I have a lot of respect for the Chair and his brilliance and patriotism; I note his contribution to constitutional reform and his role in the establishment of the Chamber of Justice. I am worried that the resistance because of brinkmanship and party interests may blemish, and indeed, stigmatize the image of a very young professional, a young, courageous and focused man who happens to be the Chair of the Committee.

For the sake of moving forward, it may be important for the Chairman to consider being different from the others. He can step aside and allow the Committee to work.

(Question put and agreed to)

The Temporary Deputy Speaker (Dr. Laboso): Next order!

BILLS

Second Reading

THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

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

I want to thank you for giving me this important opportunity. I will be very brief because this House appears very much aware of the challenge we face. We passed a law called the Vetting of Judges and Magistrates Bill. His Excellency the President assented to it very readily, immediately after we passed it on 21st March.

Madam Temporary Deputy Speaker, under Section 9 of that law, His Excellency the President, in consultation with the Prime Minister, was required to declare vacancies within seven days. However, the House, in its wisdom, declared that that declaration of vacancies only appears in the Kenya Gazette.

It has been proved by direct experience that that was not enough. Therefore, we are seeking to amend that section to provide that His Excellency the President declares those vacancies in the Kenya Gazette and in at least two newspapers of national circulation. I want to assure you that I will be advising His Excellency the President to, in fact, declare those vacancies in all the available newspapers, on all radio stations, television and, for that matter, in any other media available, and to make sure that it appears clearly that all women who are qualified are encouraged to apply.

The second amendment is simply in subsection (13) of Section 9, so that we provide that despite all the provisions regarding these vacancies, the President, in consultation with the Prime Minister, should an issue arise whereby the time for doing something is not sufficient, he can extend the time required for that purpose so long as he does not exceed that period by 21 days. That is the purpose of this law. It is well advised. It has been considered by the committee of Parliament on Oversight of the Implementation of the Constitution. I can see the able Vice-chair of that Committee looking at me very happily, knowing that I am presenting this in the best way possible.

Madam Temporary Deputy Speaker, I beg to move, and request my learned friend and successor in the Ministry of Nairobi Metropolitan Development, Mr. Githae, to second the Bill.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Madam Temporary Deputy Speaker, I rise to second this very important Bill.

I think the Minister has clearly explained why it was necessary. I think three or four amendments have been put in the Bill to make it relevant.

Madam Temporary Deputy Speaker, I think Kenya is in the Guinness Book of World Records; it is the only country as of now without a Chief Justice. What a sad day this is!

It is now very clear that before chase away another officer, we must make arrangements for a replacement. Before this is done, then that officer should continue

performing his duties until the new person is ready to step in. We are surviving, I think, by the Grace of God. It is so important that we pass this Bill so that the vetting can start.

Madam Temporary Deputy Speaker, it is clear that the vetting will start from the Court of Appeal and go downwards. That is the way it should be so that Kenyans can start having confidence in their Judiciary. As you know, this is one of the reasons this country went into post-election violence in 2007. The losing party made a decision that they had no confidence in the Judiciary and, therefore, were not going to petition the results. We now know that any judge who will have passed through the vetting process will not only be qualified but will also be full of integrity. He will not bow to political situations in the country, and will make judgments that can stand scrutiny. I think it is a good thing.

Those of us who have been able to watch the interviews being conducted for the position of the Chief Justice will know that, that is a humbling experience. We have seen prospective candidates there losing their temper, being asked very personal questions, being asked to account for their wealth, being asked to justify some of the judgments they made and being asked to justify some of the different judgments they made almost on the same facts. I think this is the way it should be. The only quarrel with this is that we may lose some very good candidates who may not be prepared to go through that kind of scrutiny and interview. Otherwise, there normally would be good people who would make good judges of the Supreme Court. However, I think that is the way it should be.

Madam Temporary Deputy Speaker, because there are only three amendments if you compare this new Bill with the old one, I beg to second.

(Question proposed)

Mrs. Odhiambo-Mabona: Thank you, Madam Temporary Deputy Speaker. I rise to support the Bill. In supporting the Bill, I also want to congratulate my teacher, the Minister for Justice, National Cohesion and Constitutional Affairs for being vigilant because I know when this Bill got into a hurdle, he actually acted very fast to bring it back to the Floor of the House so that we can correct the challenge that the Bill faced.

I agree with the Minister that many women did not apply, not because they are not qualified, but because of the limited circulation of this advert. I am now happy that the amendment proposes that the advert be put in all the dailies. I know that honorable Minister has said that he will tell the President that it should also be in the radios. Because we are moving fast, I would have proposed that we would have included radios in the law other than depending on the Minister's charity. However, I would want to encourage in future, that we include in the law that advertisements should not be in the *Kenya Gazette* because those are things that were used in colonial times. I know it is an official Government publication but for proper circulation, very few Kenyans access the *Kenya Gazette*. So, let us use the means that Kenyans easily access, whether it is the dailies or especially radios. Let us post them outside chief's offices and every other place that Kenyans can easily access this information. However, as women hon. Members of Parliament, we have also taken it upon ourselves to inform the members of the public that women can apply and should not fear that they will be subjected to questions and intimidation. Indeed, I want to agree with the Minister for Nairobi Metropolitan Development that this is a new era and even if I were to leave Parliament and seek any

public office, I must be vetted and I must be willing to go through such a process. Let people ask questions about me. Sometimes people think it is bad, but it is not bad because I know there is a woman that we kept being told was corrupt. However, when she appeared before our Committee and we interrogated her, we discovered that it was merely rumours. So, it gives candidates an opportunity to also clarify misinformation about them.

Madam Temporary Deputy Speaker, I encourage the Minister to continue with the same spirit. Implementing the Constitution is not easy and there are many people who will always bring hurdles to stop us from implementing it. It is not enough for us to have passed the Constitution, but we must ensure that Kenyans get the fruit of the Constitution.

Madam Temporary Deputy Speaker, with those few remarks, I beg to support.

Mr. Chanzu: Madam Temporary Deputy Speaker, I also rise to support this Bill. Based on the account that the Minister gave about the period that we are left with, I think it is very important that we support it. In fact, I would even go ahead and say that the Minister, the Government and Parliament should look into ways of creating more time for us to debate all that has been outlined here. Given the fact that we have got 230 judges and we are left with only 112 days, it is very important that we shorten this period.

Madam Temporary Deputy Speaker, I just have one point about what Mr. Murungi said about the radical surgery that he had tried to put in place. I believe that the Government that took over in 2003 was supposed to be a transitional and reform Government. However, by experience, you will see that if they were given a chance, they would like to maintain the *status quo*. I think there is no regret in what Mr. Murungi has said here, that if he was given time, he would have done the radical surgery. I think it was going to be one-sided because it was a single person doing it. The Constitution now makes more people or more institutions get involved than what happened at that time. Sometimes I thought it was vindictive and there was a lot of vengeance in it. So, I do not think there should be any regrets; that Mr. Murungi regrets that he was not given a chance to do this. There is a time for everything and this is the time for this, now that we have got a new Constitution.

Madam Temporary Deputy Speaker, I beg to support.

Mr. Konchellah: On a point of order, Madam Temporary Deputy Speaker. I can see that most hon. Members are not dissenting on this Bill, in their view. So, would I be in order to request you to call upon the Mover to reply?

The Temporary Deputy Speaker (Dr. Laboso): Is that the consensus?

Hon. Members: Yes, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Dr. Laboso): Yes, Minister.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, I want to thank the House.

I beg to move!

The Temporary Deputy Speaker (Dr. Laboso): Order, Mr. Minister! Can you give us a minute to put the Question so that there is concurrence?

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

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, I admire the 10th Parliament for rising to the occasion.

Hon. Members: Just for today!

(Laughter)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you!

Madam Temporary Deputy Speaker, I beg to move.

(Question put and agreed to)

*(The Bill was read a Second Time and
committed to a Committee of the whole House tomorrow)*

The Temporary Deputy Speaker (Dr. Laboso): Let us move on to the next Order!

Second Reading

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

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

(Resumption of Debate interrupted on 4.5.2011)

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Thank you, Madam Temporary Deputy Speaker. I would like to support this Bill and say, as many Members have said before, that it is an important milestone.

A lot of blame has been placed on the former Electoral Commission of Kenya (ECK) for the problems we had in 2007. I think this was not necessarily the case. The problem was not the people and the team. The problem was about the politics of the time. The politicians themselves were not very honest. Even as we blame the ECK, Kivuitu and company, politicians were busy rigging elections. They were using voters to rig and voters themselves were rigging deliberately. The problems we witnessed were prepared before 2007 as it was witnessed by the tensions that were beginning to build up in the country, long before the elections. Nevertheless, it is important that we have a credible IIEC because there came a point when it was not quite clear whether or not we could depend on their leadership.

Madam Temporary Deputy Speaker, The issue of membership has been spoken about, especially relating to integrity. It is important, therefore, that we come up very quickly with a mechanism that is objective and one that is seen as not biased in terms of how we measure integrity. How do we measure integrity? Unless it is quantified, it can be played around with in the courts, Parliament and in other fora. It is not quite clear

what we will use as benchmarks to decide that a person can become a judge or be involved in any election or be a member of a commission because he has passed the integrity test.

Madam Temporary Deputy Speaker, in addition to the qualifications that have been listed, it is important for us also to ask for useful exposure in terms of having the experience in dealing with these kind of problems. In this regard, we can draw upon applicants from outside Kenya who have external experience related to the process. Being Information Technology (IT) compliant in this day and age when we want to use computers in terms of managing the electoral process, is crucial. It is important that many of the Commissioners, the CEO and others in the secretariat be IT compliant. It is important that they have practical experience much more than just the academic experience, with regard to the specific disciplines that are cited in the Bill.

It is important and it does not need to be repeated, that we should avoid former politicians, especially going by the experience of what we saw with the Independent Interim Boundaries Review Commission (IIBRC). We know what former politicians can get us into, especially when they are clearly aligned to specific political parties. In this regard, we should target people in terms of their nationalism. We know that some people have associated with tribal alliances that are very strong to the extent that they have said that people from certain communities cannot settle in one area or the other. It is important to make it clear that such kind of people do not fit being members of a national commission that would be out there to identify and select for us people that will determine major national leadership issues.

In terms of competition, I think the point about this process being competitive has been made very strongly. In this regard, therefore, we acknowledge the work that has been done by the Interim Independent Electoral Commission (IIEC). Let us also, first of all, appreciate there is a team. Given what happened in 2007, nobody will get an opportunity in this country to create a mess. Everyone would want to distinguish himself or herself. It is important that they also apply, like anybody else, if they are that good and they can, in fact, draw on that experience to convince the panel and those that will be involved in the selection process, to ensure that they pick people who have qualified for those jobs. However, I do not think it is right to reserve any positions for members, especially at a time when we are saying all positions must be filled by a competitive process.

I support the separation of powers and agree that we should give a lot of powers to the Secretariat, especially if it comprises of professionals. In many ways, that would deal with the issues of how we stagger the appointments. There is politics involved in it. For example, if the appointments are staggered, it will not matter which communities are represented and so on. If we have a secretariat that is permanent and professional, we do not have to worry about whether or not the Commissioners have much executive powers-- It should be a team effort of both the professionals and the commissioners.

With regard to the professionals, the criteria must be water-tight in terms of being more active. In the past, we have had commissioners--- Although retirement has some benefits, some of them have been “tired” a long time that in terms of their contribution; when they go to the constituencies, they sleep halfway through the meetings because they are not really into it. So, even the commissioners and professionals that get into this, must be people who are dynamic, have exposure to analyze situations and make

recommendations based much more on professional judgment as opposed to whether or not, they are close to any political alignments.

The issue about donor funding of a commission has been talked about. It has been said that, usually, we tend to rely so much on foreigners, therefore, they determine the agenda. If foreigners determine what happens in those commissions, it is because they find willing players. Some of the people we have in those commissions are not necessarily people of integrity. It is also because Government has not put enough resources to support the process.

The issue about boundaries and the new constituencies has come up very strongly. There are Members here who have said that we should go by the Ligale Report. In spite of the fact that we acknowledge that there were major problems, the essence of this commission, even more than having qualified people, is to ensure that there is fairness. If Members of Parliament cannot stand for what is fair in terms of boundaries when they know very well that this report was contested and insist that it should be the basis for determining new boundaries just because some of them are benefiting, that is a very serious problem. In fact, we can almost say if Members of Parliament do not believe in fairness, even where they can see it clearly, then when we talk about vetting, I think these are the people who should be vetted, in the first place, before we talk about vetting other people.

I would like to talk about whether or not there will be regional and district co-ordinators. There have been many complaints from district co-ordinators of the current IIEC regarding conflict of interest. Whereas there is one regional co-ordinator representing several counties, they tend to favour the counties where they come from. In other words, if we have a co-ordinator from Embu and that is the Regional Coordinator for Meru, Nithi and Embu as well, there are issues about how much we can expect him to be fair. Therefore, it is important that when we come up with a law that will govern the management of this body, that we do not duplicate responsibilities. There is no need to have several layers, from the headquarters to the regions and to the districts. I think it is important to go directly to the constituencies. If there is another level with the new Constitution, let it be the county.

Finally, a point has been made about the composition. Those who come from the so called small ethnic communities have complained that they need stronger representation. As a matter of fact, I said that to the extent possible, a majority of members of this commission should come from smaller ethnic groups. If there is a way of leaving out the big five tribes who are already the judges, who occupy all the big positions and around whom all the political contests revolve, we would solve many of our problems. We should ensure that they do not form the majority in terms of political party representation and dominance in other professions, including key professions. People from the small ethnic communities should be the ones we give responsibility of governing a lot of this business because they are less partisan than those who come from groups that kind of influence, by virtue of numbers, how business is done both in politics and professionally.

I support.

Mr. Keynan: Thank you, Madam Temporary Deputy Speaker for giving me an opportunity to contribute to this important Bill. Kenya, as a country, as a result of what happened in 2007, is at a crossroads.

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

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

Mr. Temporary Deputy Speaker, Sir, history is a collection of important events. This country was comprised of many nation states before the colonialists brought us together. We have had the Kikuyu nation, the Somali nation, the Kamba nation, the Luo nation, and many other nations but, today, we are all under one “tribe” called the “Kenyan nation”, because of a number of things like the national flag, the currency, the presidency, the Constitution, our sportsmen and sportswomen, and the National Anthem. These are realities which are part and parcel of our history.

What happened in 2007, in my opinion, was because of a deliberately stage-managed process which was naturalised over the years. We did not strengthen our institutions, which would otherwise have proved effective at the time of the crisis. Since the advent of multiparty politics, this country has gone through so many challenges. It has also taken positive steps. If I may recollect what used to happen in northern Kenya under the emergency law, when we used to have the District Contingency Act--- We used to carry special identity cards called “Somali Screening Cards”. During that time, crossing River Tana from Garissa was a privilege. Seeing tarmac road was also a privilege, and when we saw people from the rest of Kenya, we used to say: “We are going down to Kenya”.

Mr. Temporary Deputy Speaker, Sir, all that is now history, but we must reflect on it. I am saying this because when I see colleagues demonising the Tenth Parliament, I am normally taken aback. This House lacks business. That is the reality we must talk about. The work of the Government and the independent Constitution Implementation Commission is to generate Bills for the implementation of the Constitution, but they have not done so. Sometimes I see my good brother, the Minister for Justice, National Cohesion and Constitutional Affairs, blaming the Tenth Parliament, which is idle.

Five months ago, we were recalled from a recess. We came here, but there was nothing to be done, because the Government had not put its act together. The independent Commission that we have put in place, and the Ministries, which are expected to generate Bills, have failed to measure up to the expectations of Kenyans. Sometimes I wonder why Parliament has become a dumping ground for all the failures of other Government Departments, when we know the reality. This blame must be borne by those who are tasked with this particular responsibility.

As Parliamentarians, we must stand up and say: No, it is not us who have failed. It is those individuals. That is why, over the years, we have said that we needed to have independent institutions. We wanted institutions which are free from the day-to-day political manipulation and interference. So, the Commissions that have been given this role must work day and night and ensure that we meet our targets, otherwise, we will all fail.

Mr. Temporary Deputy Speaker, Sir, the Kriegler Report has two extreme recommendations on the issue of elections and electoral boundaries. For those of us who

come from ASALs, including you, we used to say “one kilometre, one vote”. Those who come from the advantaged regions used to say “one man, one vote” but, eventually, we came together. We must accept the fact that Kenya is a country of diverse regions, diverse people, diverse religions and diverse ethnic interests, but all these must come under our national interest.

The Bill before the House is very important. First of all, in order for us to have free and fair elections, we must not only have an effective electoral commission but we must also ensure that we have a working Judiciary. A working Judiciary is the only resemblance of continuity and respect for law. Right now, we are talking about the kind of Judiciary we envisage. Even if we have the best electoral laws but we do not have a working Judiciary, we will fail because it will just take a rogue judge to sit down and craft a ruling or judgment, and throw out all the good things that are contained in this Bill. Things must be done early enough. We must reform the Judiciary and come up with a working election and boundaries review commission.

Mr. Temporary Deputy Speaker, Sir, these things must be done hand in hand. We must reform the Judiciary and also come up with a working Electoral and Boundaries Bill. I want to congratulate the Minister for Justice, National Cohesion and Constitutional Affairs. Although at times he says a lot of things, it is good to speak his mind. If we reform the Judiciary, we will have a free election. Let us have a fair Bill that takes into account the regional, ethnic and religious diversities of Kenya. Regardless of whether a community is categorized as small and another one is considered numerically strong in Kenya, we are all equal in the eyes of the law and in the eyes of God. We are all equal under the flag of the Republic of Kenya. This reality must dawn on all of us. So, those of us who are products of a policy of assimilation, those of us who are sons and daughters of colonial collaborators, those of us who are products of the petty bourgeois must respect that this is not a country of classes. This is a country of 40 million Kenyans who must be respected at all times and their interests remain supreme.

This Bill proposes that after the Commission goes round and completes its work, it shall report to the President. I thought we are running away from the era of an imperial presidency. Why do you want to take us back to where we left? You are not sure who is going to be the President. President Kibaki might be a very good President, but you are not sure who is going to be the next President of Kenya. Why do you want to take us back to that era of darkness? Why can we not have institutional separation? Why can you not allow the Commission to do an independent job and gazette or bring it to Parliament? Why should we have the report of an independent Commission subject to the approval of the Executive? In my opinion, this is an anomaly which should not be accepted. This is what this Bill proposes.

Mr. Temporary Deputy Speaker, Sir, we will be proposing amendments to delete that particular section, so that this Commission either gazettes its report directly or brings it to Parliament for the Members of Parliament to familiarize themselves with it and gazette it. This Bill again talks about doing this and that before the 2012 elections. The elections in 2012 will just be an annual event. It is going to be one event in our calendar. We need to have a Bill for posterity. If whatever we are going to do here is geared towards the 2012 general elections, then we are bound to fail because everybody is going to focus on 2012 and those are the failures that we had in 2007. Therefore, any reference to 2012 must again be deleted from this Bill.

We have had the Ligale Report. It is a reality that we have had the first review. It is a reality that under the able leadership of colleagues in the Parliamentary Committee on Justice and Legal Affairs, the Committee sat down and came up with a compromise that accommodated all the issues that came up as a result of the Ligale Report. We cannot assume that we are operating in a vacuum. This must be the basis of anything that we are going to do. Taking into account the limited time that we have, we cannot run away from this reality. This Bill must be constitutional. The Ligale Report should be centred, oriented and placed. This is going to be the essence and you know the sentiments of the majority of the Members of Parliament, but that does not mean that we trample on the rights of other Kenyans who have raised these issues. That must also be taken into account, but within the framework of what was said.

Mr. Temporary Deputy Speaker, Sir, we have a generous Constitution. It took us years and courageous Kenyans to shed blood for us to have the current Constitution. We are not saying that it is perfect but, at least, it gives us a working document. This document must be respected and it cannot be trashed. At times when I see that a document that has cost us over Kshs40 billion--- Those who struggled for the first multipartism, like Kenneth Matiba, Charles Rubia and those who disagreed with the *status quo* at that time when everybody else was a servant of the *status quo* must be appreciated. How can we appreciate their efforts? We can do so by being adherents of the rule of law.

The Minister for Nairobi Metropolitan Development (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. I just want to correct this. The hon. Member has said that under Section 254, the Commissions are supposed to report to the President. I think it would be better if he were to correct that. This is because I have a copy of the Constitution and it says “to the President and to Parliament.” So, it is both institutions and not just one.

Mr. Keynan: Mr. Temporary Deputy Speaker, Sir, indeed, I know that the Minister agrees with that part. I was saying that there should be no reference to the President. We will have to look at it, but that is my opinion. There should be no reference to the Executive. I know my brother here is a fierce loyalist of today’s regime, but that does not take away my right to voice what I want to say.

Mr. Temporary Deputy Speaker, Sir, the other bit is---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Keynan! The Minister is right because this is the Constitution and we have sworn to protect and defend it. So, it is important to subscribe to it.

Mr. Keynan: Thank you, Mr. Temporary Deputy Speaker, Sir. The other bit that I find unacceptable is the Bill making reference to the use of appropriate technologies and approaches. Which are these appropriate technologies and approaches that we are not being told? The Minister should be clear in this thing. Which are these appropriate technologies and methodologies? He should describe them. He should tell us that they will use this so that a person like me who represents a rural constituency where there is limited communication, knows whether this technology will be suitable to the majority of Kenyans who live in the rural areas. Otherwise, making a sweeping statement like “appropriate technologies and approaches” in my opinion, will be taking us back.

Mr. Temporary Deputy Speaker, Sir, again, the Bill is silent on the component or the very essence of the Kenyan society; that Kenya is a country of regions and diverse

interests. This aspect must be captured. If you can recall, last year when we first attempted to come up with a draft Constitution - when we were talking about five or three commissioners - I challenged everybody that we must take into account the aspect that every region is represented in key national institutions. This is because psychological satisfaction is a very important component in human life. That again is anchored in the Constitution.

On the issue of Commissioners, we are talking about an entity that will manage a very important exercise. If we go back to what made us quarrel in 2007, we will find that it was because the then Commissioners failed to meet the expectations of the people of Kenya. This is simply because they were either manipulated, so naive or did not know what they were doing. When we propose that we will have Commissioners who are part-time, what you are saying is that I will have the right to send, as a Commissioner, my employee. The first loyalty of that Commissioner will be to the employer. That, in my opinion, is scandalous, illogical and does not make sense. These Commissioners must be allowed to work full time.

We are talking about the board of directors. At the end of the day, we must pay heavily because these are people that we want to be independent, fair, and judicious and at all times, to remain patriotic. After the Second World War, there was the issue of nationalism and patriotism, but today we have biological nationalism and vested interests on trivialities. We also have negative ethnicity. All these can be controlled if we have an effective and working legislation. For us to achieve this, we must have a truly Independent Electoral and Boundaries Commission. If we can create that and allow the people of Kenya to appreciate this aspect, we will have a free and fair 2012 general election. If we get the start wrong, I can assure you – because the human mind works in a very funny way – that we will not have a free and fair election.

Mr. Temporary Deputy Speaker, Sir, I want to plead again with the Minister that managing an election is a very difficult thing. That is the reality even in the developed countries. But we must attempt as a regional hub and very important nation in the map of Africa, to be the first country in Africa and, indeed, in the globe to---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Keynan! You will have another five minutes to continue when this matter will be on the Order Paper next.

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 Tuesday, 10th May, 2011, at 2.30 p.m.

The House rose at 6.30 p.m.