

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 23rd May, 2012

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Financial Statement of the Town Council of Nambale for the two-year period ended 30th March, 2009 and the certificate thereon by the Auditor-General.

Financial Statement of the Town Council of Malakisi for the two-year period ended 30th June, 2009 and the certificate thereon by the Auditor-General.

Financial Statement of the Municipal Council of Nakuru for the two-year period ended 30th June, 2009 and the certificate thereon by the Auditor-General.

Financial Statement of the Municipal Council of Embu for the year ended 30th June, 2010 and the certificate thereon by the Auditor-General.

Financial Statement of the County Council of Nyambene for the year ended 30th June, 2010 and the certificate thereon by the Auditor-General.

Financial Statement of the Town Council of Mwingi for the year ended 30th June, 2010 and the certificate thereon by the Auditor-General.

Financial Statement of the County Council of Murang'a for the year ended 30th June, 2010 and the certificate thereon by the Auditor-General.

Financial Statement of the Town Council of Wote for the year ended 30th June, 2009 and the certificate thereon by the Auditor-General.

*(By the Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry)
on behalf of the Minister for Local Government)*

Annual Report and Financial Statement of KASNEB for the year ended 30th June, 2011 and the certificate thereon by the Auditor-General.

*(By the Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry)
on behalf of the Minister for Finance)*

Financial Statement of the Kenya Industrial Property Institute for the year ended 30th June, 2011 and the certificate thereon by the Auditor-General.

(By the Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry)

on behalf of the Minister for Industrialization)

Constitution Implementation Oversight Committee Report (CIOOC) on the public hearings on the Constitution of Kenya (Amendment) Bill, 2011.

(By Mrs. Odhiambo-Mabona)

Report of the Departmental Committee on Finance, Planning and Trade on the examination of the 2012/2013 Financial Estimates for the following line Ministries and Commissions:-

Vote 106: Ministry of Planning, National Development and Vision 2030;
Vote 107: Office of the Deputy Prime Minister and Ministry of Finance;
Vote 116: Ministry of Trade;
Vote 146: Ministry of Tourism;
Vote 160: Ministry of Industrialization;
Vote 206: Commission on Revenue Allocation; and
Vote 208: Salaries and Remuneration Commission.

(By Mr. Okemo)

Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on the examination of the Financial Estimates for the year 2012/2013 for:-

Vote 109: Ministry of Regional Development Authorities;
Vote 110: Ministry of Agriculture;
Vote 119: Ministry of Livestock Development;
Vote 122: Ministry of Co-operative Development and Marketing;
Vote 156: Ministry of Fisheries Development; and
Vote 158: Ministry of State for the Development of Northern Kenya and other Arid Lands.

(By Mr. Chepkitony)

Report of the Kenyan Delegation to the 125th Assembly of the Inter-Parliamentary Union (IPU) held in Bern, Switzerland, from 16th October, 2011 to 19th October, 2011.

(By Mr. Chachu)

NOTICE OF MOTION

ADOPTION OF REPORT OF THE 125TH IPU ASSEMBLY

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

THAT, this House adopts the Report of the Kenyan Delegation to the 125th Assembly of the Inter-Parliamentary Union (IPU) held in Bern, Switzerland,

from 16th October, 2011 to 19th October, 2011 laid on the Table today, Wednesday 23rd May, 2012.

ORAL ANSWERS TO QUESTIONS

Question No.1467

CLOSURE OF NAMANG'OFULO COFFEE FACTORY

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

(a) what led to the closing down of Namang'ofulo Coffee Factory in Sirisia;

(b) what progress has been made towards the apprehension of suspects in the coffee bean theft at the factory; and,

(c) what role officers from the Provincial Administration play in curbing coffee bean theft and what measures the Ministry is taking to curb the menace and tackle the illegal cross-border coffee trade between Kenyan and Ugandan businessmen in Bungoma County.

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

(a) Namang'ofulo Coffee Factory has not been closed down. However, due to scarcity of coffee beans, the factory does not operate at full capacity.

(b) Following theft of coffee beans from the factory, five suspects have so far been arrested and arraigned before court vide Lwakhakha Police Station Criminal Case No.918/11/2011, Court File No.2515/2011. The case is pending before court. The suspects are:-

1. Wycliffe Khakai Wasike;
2. Dorcas Makokha;
3. Cornelius Wanyonyi;
4. Geoffrey Wanjala;
5. Mustafa Idd Juma.

(c) Mr. Deputy Speaker, Sir, the Provincial Administration plays a major role in the fight against coffee theft and smuggling across the Kenya-Uganda border. The officers co-ordinate border meetings between Kenya and Uganda security committees, and also sensitizes the public on the importance of co-operating with the security agencies to curb coffee theft and smuggling.

The following measures have been put in place to curb coffee theft and cross-border illegal trade:- public sensitization through public *barazas*; enhanced joint patrols along known smuggling routes; frequent joint security meetings between Kenya and Uganda security officers; and, enhanced intelligence collection. That will reduce the smuggling within the borders of Kenya and Uganda.

Dr. Eseli: Mr. Deputy Speaker, Sir, due to scarcity of coffee beans, the factory is operating at low capacity. The coffee beans have been smuggled across the border. Way back in the late 1970s and the early 1980s there was a huge smuggling racket of coffee across the same border, and that impacted on the economy of this country. At that time there was involvement of the "who-was-who" in various positions in Government, including the Provincial Administration. Could the Assistant Minister, in his answer, inform this House how many of

those who have been arrested are in the Provincial Administration and what role some elements of the Provincial Administration have played in this case of Namang'ofulo Coffee Factory, including the District Commissioner (DC) of Sirisia?

Mr. Ojode: Mr. Deputy Speaker, Sir, the DC is the one who is co-ordinating the activities on the ground for coffee not to be smuggled from Kenya to Uganda. Among the suspects, not a single person is employed by the Provincial Administration.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to tactfully evade what I had asked, that is the role the DC of Sirisia played in the incident that led to the theft and murder of people at this coffee factory at that time, and if that DC is still serving in Sirisia?

Mr. Ojode: Mr. Deputy Speaker, Sir, it is very clear that the Provincial Administration is the organ that is sensitizing the people of Sirisia against smuggling of coffee beans.

Mr. Kombo: On a point of order, Mr. Deputy Speaker, Sir. The Member for Kimilili has been very categorical. When the incident took place, the entire community believed that the DC had played a role. The hon. Member has asked whether or not that DC is still serving in Sirisia. Could he, please, just answer the question? This is because if he is still there, then obviously, he has completely lost the public's faith in him.

Mr. Ojode: Mr. Deputy Speaker, Sir, that is a very simple question. If, indeed, the DC was involved in this racket, the hon. Member should have whispered to me. I would have removed him immediately because we cannot have Government officers involving themselves with smuggling of coffee. We will never accept that. If that is the case, I urge him to inform me, so that I can take action, but as of now---

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

Mr. Ojode: Wait a second! *Ngoja!* As of now, we do not have anything linking the DC with the smuggling of coffee. That is speculation, otherwise where is evidence?

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

Mr. Deputy Speaker: Do you want to inform the Assistant Minister?

Dr. Eseli: Yes.

Mr. Deputy Speaker: Mr. Ojode, do you wish to be informed?

Mr. Ojode: No!

Mr. Deputy Speaker: Order, Mr. Ojode! Ordinarily, when lives of Kenyans are involved and there is an allegation of criminality on the part of senior civil servants, you have said that the hon. Member of Parliament should come and whisper to you, so that you can take action. So, he is ready to give you the same information openly now.

Mr. Ojode: Mr. Deputy Speaker, Sir, trying to give me information now is not trying to whisper to me what he wants to say to me. He is not whispering to me. I would want to encourage---

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Minister to purport that they lack a way of collecting data while we have the National Security Intelligence Service (NSIS) which we give billions of money to collect information, so that it can be used by the Government in its day to day operations? Is he in order to rely on the hon. Member whispering to him?

Mr. Ojode: Mr. Deputy Speaker, Sir, first of all, I was relying on him as a colleague to tell me what is taking place there. This is because even if it is true that the DC is involved, we will not be able to get that information from that channel he is talking about.

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

Mr. Ojode: Allow him to conclude!

Mr. Ojode: Allow me to conclude. When the Government is on its feet generally---

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. You must have heard Mr. Ojode saying that if DCs are involved in irregularities, they do not expect such information to come from the NSIS. Is he now confirming to this House that he has no confidence in the entire NSIS such that when things go wrong in Government offices they cannot report? Is he in order?

Mr. Ojode: Mr. Deputy Speaker, Sir, I mentioned that we may not get information, but all the same we want to correct an anomaly. The only way to correct it is by him telling me what is happening on the ground although I have a lot of information that I can share with you because you do not know it. If it is true that the DC is involved in the smuggling racket, I want to assure my colleagues that we will take action against him. If there is also evidence to show that the DC is one of the people smuggling coffee from point "a" to point "b", you know the consequences. I will take action.

Mr. Olago: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister addressing this House implying that the Government cannot be involved in the racket. But it is common knowledge that in mid 1970s the famous *Chepkube* smuggling racket involved civil servants and public officers. In these circumstances, could the Assistant Minister confirm to the House that, indeed, he has done investigations and exonerated the DC who is being talked about?

Mr. Ojode: Mr. Deputy Speaker, Sir, the new Constitution is quite clear that you must come with evidence in order to penalize somebody. Since Mr. Olago is a lawyer, he knows that I cannot speculate that so and so is doing something. So, if there is any sort of evidence, I will take action straight way. He should have given us evidence.

Mr. Kapondi: On a point of order, Mr. Deputy Speaker, Sir. With all due respect, is the Assistant Minister in order to mislead the House because the said factory is not very far away from where I come from. I neighbour the said coffee factory. The DC was accused of being involved because the Administration Police (APs) who were lynched by members of the public pointed a clear finger at the DC. What happened thereafter is that he was removed. Is he in order to mislead the House because it appears he does not have facts right? I believe that he should be told to go back and come back with a proper answer before the House.

Mr. Deputy Speaker: Did you say that there were APs who were lynched?

Mr. Kapondi: Yes, some APs were lynched by members of the public. It was a very serious issue in Namang'ofulo.

Mr. Deputy Speaker: Lynching involved death?

Mr. Kapondi: Yes. That is what happened.

Mr. Deputy Speaker: Are you aware?

Mr. Ojode: Mr. Deputy Speaker, Sir, I am not aware of any AP who was lynched. "AP" means "Administration Police", that is not a DC. If the DC was involved, why would they lynch an AP?

Mr. Kapondi: Mr. Deputy Speaker, Sir, the Assistant Minister is trying to exonerate the DC. If he was not involved in this case, why was he removed? Was it not a case of cover up?

Mr. Ojode: Mr. Deputy Speaker, Sir, it is common knowledge that we do transfers on a daily basis. Even recently we had to do some redeployment. We can deploy one person from North Eastern Province to Coast Province, from Coast Province to Nyanza or from Kisumu to South Nyanza. The fact that we are removing people from one place to the other does not necessarily mean that he was stealing or was involved in the racket.

Mr. Deputy Speaker: Mr. Ojode, why do you want to treat this very serious issue as if it is a comedy?

Mr. Ojode: Mr. Deputy Speaker, Sir, Mr. Kapondi alleged that because we removed the DC from that station it means that he was involved in the racket, which is not true. You are aware that we have been moving people. You are aware that we have even deployed County Commissioners. That does not necessarily mean that this one was involved in something else which is negative. Dr. Khalwale knows that we do move DCs or County Commissioners as and when it is necessary.

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. When the Chairman of the Committee on Administration and National Security addressed the House, it was interesting to hear that a soul is said to have been lost in the process. When the Assistant Minister stands up to respond, he sweeps it under the carpet and talks about the issue of DC's transfer. Is it in order for him to ignore addressing that matter concerning the loss of life?

Mr. Ojode: Mr. Deputy Speaker, Sir, if there is life which was lost as a result of smuggling coffee beans, I would have known because it is me who has information on the ground. As I said---

Mr. Kombo: On a point of order, Mr. Deputy Speaker, Sir. I think the Minister is honestly taking the House for granted. He says if a life was lost he would have known. It was not just one life, but many lives were lost during that period. Personally, I went and talked to the Provincial Criminal Investigation Officer (PCIO) and gave them information about what was happening. The security forces were pursuing the journalist that had exposed this matter. He would even have been arrested if I was not in his car. All these things happened. So, why is he pretending that he does not know?

Mr. Ojode: Mr. Deputy Speaker, Sir, I want to confirm to this House that I am not aware of any life being lost as a result of smuggling coffee beans.

Mr. Kapondi: On a point of order, Mr. Deputy Speaker, Sir. We are not being serious in this House because the Assistant Minister is repeatedly misleading the House. The hon. Minister, Prof. Saitoti himself, accompanied by Mr. Wetangula and Dr. Eseli visited the scene where many lives were lost. Five people perished in the incident. So, for him to allude on the Floor of the House that he is not aware of any loss of life, it means he does not have his facts right and should be referred by the Chair to go and bring a proper answer before the House.

Mr. Ojode: Mr. Deputy Speaker, Sir, I believe that you heard me correctly. I said and I want to repeat what I said. I said that I am not aware of any life lost as a result of coffee smuggling from Kenya to Uganda.

Mr. Deputy Speaker: Are you aware of any lives that were lost in Namang'ofulo factory?

Mr. Ojode: Not at the factory itself. I am aware of lives lost within the hon. Member's constituency.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. First, that factory is not in my constituency. Secondly, lives were lost at the factory when the smugglers killed two guards at the factory. In the process of trying to smuggle the coffee across the border, *wananchi* lynched some of the thieves and some of them were APs.

Mr. Deputy Speaker: Now that you have some additional information, would you want to go back to your office and get this Question right?

Mr. Ojode: Mr. Deputy Speaker, Sir, I will check whether the information that I am getting on the Floor is correct. I will allow---

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Mr. Ojode is the Assistant Minister who, a few months back, when a Turkana man died of hunger, came here and suggested to the House that the person did not die of hunger even before they conducted a post-mortem. Is the hon. Member in order to impute that Dr. Eseli is misleading the House or giving falsified information when it is the hon. Member who represents the constituency?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. It is only fair that the Assistant Minister takes this House more seriously because he has turned it into a theatre for acting. It is our hope and belief that as we do police reforms, we will also reform and reshuffle this Assistant Minister because he comes here to entertain us. We do not want entertainment. We want facts. The House is getting tired because every day he does not take this House seriously. Is he in order to continue misleading the House and doing drama at the expense of the citizens of this country?

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. I am dismayed by the attitude of the Assistant Minister in view of the seriousness of this matter. You have heard from Mr. Kombo, Dr. Eseli and Mr. Kapondi stating very clearly the facts which they know as Members of this House. If the facts they are telling the House are in contradiction to what he is saying would it be in order to order him to go back and come with a proper answer?

Mr. Ojode: Mr. Deputy Speaker, Sir, I said that I will check whether the information which has been given on the Floor is the truth. You could even defer the Question so that I check what he has just informed me. I want to assure my colleagues that I take this House seriously. The only problem is that I do not want to rely on hearsay and speculation and that is why I am also asking the Chair to allow this Question to appear again next week so that I come with information, whether negative or positive.

I cannot be forced to mislead the House because I am the Assistant Minister. If a Minister comes and misleads the House, what is going to happen to the ordinary *wananchi*? I cannot allow myself to mislead this House. I will never!

Mr. Anyanga: On a point of order, Mr. Deputy Speaker, Sir. I am disturbed to learn that the Assistant Minister was not careful while answering this Question. Recently, an Administration Policeman was found in Nyatike with a stolen gun. That was very serious and the man was arrested. The police officers discovered that the gun that the AP was holding was a stolen gun. That particular person was employed by hon. Ojode at the age of 40. It is important to defer this Question so that hon. Ojode can come with a more comprehensive answer because it is very serious. Our lives as Members of Parliament or Kenya are in danger and it is high time we took action on this issue.

Mr. Ojode: Mr. Deputy Speaker, Sir, let me just respond to that bit. I employ all police officers in this country as an Assistant Minister. My portfolio allows me to do that.

Mr. Anyanga: On a point of order, Mr. Deputy Speaker, Sir. The law is very clear. He has no powers to employ a person at the age of 40. That is irregular and it must be noted by Kenyans because in Nyatike he has never given us a chance to employ somebody at the age of 40. It is always either 25 years old and below. So, could hon. Ojode tell us the truth?

Mr. Ojode: Mr. Deputy Speaker, Sir, ordinarily, the Minister has powers to employ all police officers in the country and I have never seen a Member of Parliament whose constituent is employed and then he comes here and says that we should not have employed that particular person. It sounds strange! All my colleagues look for employment for their own kind. I have never seen this. This is the first time. I am at a loss!

Mr. Deputy Speaker: Order, hon. Assistant Minister! Is it true that you influenced the employment of somebody at the age of 40?

Mr. Ojode: Mr. Deputy Speaker, Sir, I do not have that kind of influence because the requirement is lower. I do not go outside there to say that “employ so-and-so and leave so-and-so.” I do not do that. However, I would want on a serious note to check the statements made and the information which I have gathered from my colleague and then report to the House whether it is indeed true that there are some police officers who were involved in the smuggling of coffee. I will come with a statement with regard to that. Otherwise, you have seen that I have elaborated on this. I have answered everything except that bit whether my officers were involved in the racket. I will do that.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. The hon. Member has made a very serious allegation that in spite of the provisions of the police rules and regulations of employment where youth are not employed unless they are between the ages of 18 and 26, the Assistant Minister went and personally employed a 40-year old man who besides being 40 was also a criminal. I beseech the Chair that the Assistant Minister be put to task to come and tell us the circumstances under which a 40 year old man took a chance meant for a youth – a man who for all intents and purposes was a criminal.

Mr. Kapondi: On a point of order, Mr. Deputy Speaker, Sir. I think it is important for hon. Anyanga to come before the House with evidence to demonstrate because it would be hearsay that we are discussing. He should come with evidence and table it before the House to confirm that the said person was indeed 40 years and above.

Mr. Anyanga: On a point of order, Mr. Deputy Speaker, Sir. You have seen that some Backbenchers are being used. Hon. Kapondi has no powers to advise me.

Mr. Deputy Speaker: Order! Hon. Anyanga, you have made a very serious allegation on the Floor of the House that indeed contrary to the police regulations, the hon. Ojode influenced the employment of one person from Nyatike who was 40 years old. Are you prepared to withdraw that or to substantiate that statement?

Mr. Anyanga: Mr. Deputy Speaker, Sir, let me make it clear that the person is my constituent and I will bring all details surrounding that issue.

Mr. Kombo: On a point of order, Mr. Deputy Speaker, Sir. I just want your guidance because the Question was about the lives lost in Namang’ofulo and now we have digressed and gone to Nyatike. So, we are going to lose out on a very serious matter.

Mr. Deputy Speaker: Order! The Chair will give direction. The Chair is clearly not satisfied.

(Maj-Gen. Nkaisserry consulted loudly)

Mr. Deputy Speaker: Order! The hon. Rtd. General Nkaisserry, I understand in the military you shout orders but in Parliament you consult very softly!

(Laughter)

The Chair is clearly not satisfied with the lackluster manner in which the hon. Assistant Minister has addressed this matter. The Chair directs that the Assistant Minister goes back and comes back with a comprehensive answer – an answer that can befit and be able to address the issue which is at hand.

On the same breath, hon. Anyanga has made an allegation. Hon. Anyanga, you cannot impute improper motives on any Member of Parliament unless that is substantiated. But given that this is in the line of duty, the actions of an Assistant Minister in the exercise of his own functions including influencing employment of the youth or members of this country does not constitute a personal matter. So, in that sense, the Chair also directs that you come back with substantiation and the Question will be listed on the Order Paper on Wednesday morning next week.

(Question deferred)

In the meantime, given the urgency and seriousness of the matter as it touches on the security of the people who live in Sirisia Constituency where Namang'ofulo coffee factory is and, the serious allegations of smuggling of coffee from Kenya to a neighbouring country, the Chair directs that the relevant Departmental Committee also moves with speed, investigates this matter and brings a report to the House in a maximum of two weeks.

Next Question!

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir. You have made a ruling. First, you have deferred the Question as I had requested in order for me to furnish the hon. Member with the names of those who were involved in the racket. Secondly, you have also referred the same Question to the relevant Departmental Committee. So, which is which? I am seeking clarification because it has not been a tradition that the same Question is taken to the relevant Departmental Committee and at the same time you are deferring it. So, I am at a loss!

Mr. Deputy Speaker: Mr. Assistant Minister, the Question is deferred, in line with the expectations of the House and your own intimation that you wish to go back and bring a comprehensive answer, which will also address the issues that were raised. The matter is also referred to the relevant Committee because of the national interest in it. The issue of coffee beans being smuggled out of this country is a matter that touches on the core of the economy of this country. That is precisely what it is.

Hon. Members, the other bit is a matter that concerns the dignity with which Members of Parliament have to conduct themselves. In the absence of that, there has to be a very good reason. That now has got to be with the Member of Parliament. So, that matter is settled.

(Question deferred)

Mr. Deputy Speaker: Next Question, hon. Omondi Anyanga!

Question No.1457

ILLEGAL ENTRY OF TANZANIAN
VEHICLES INTO NYATIKE DISTRICT

Mr. Anyanga asked the Minister of State for Immigration and Registration of Persons:-

(a) whether he is aware that motor vehicles from Tanzania are using illegal routes into Nyatike District;

(b) whether he could provide details and tracking movements of the vehicles using the illegal entries; and,

(c) what measures the Government is taking to ensure that immigration rules are not flouted at border points, particularly in Nyatike District, and also ensure that revenue collected benefits the local community.

The Assistant Minister, Ministry of State for Immigration and Registration of Persons (Mr. Baya): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that motor vehicles from Tanzania are using illegal routes into Nyatike District.

(b) The tracking of details of vehicles entering or leaving the country does not fall within the purview of my Ministry but on the purview of the Kenya Revenue Authority (KRA), and in particular, the Customs Department. My Ministry only facilitates entry and exit of persons.

(c) The Government has made deliberate efforts to gazette and construct--

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I wish to bring to your attention a matter regarding this particular Ministry. If I recall very well, yesterday the Chair placed some sanctions against this Ministry to the effect that the Minister and his Assistant Ministers should not transact any business in this House until they give reasons as to why they have not been taking the business of this House seriously. I would like to confirm whether that is still the position.

Mr. Deputy Speaker: Hon. Members, my memory is indeed jogged. I have that perfect recollection.

Hon. Assistant Minister, you cannot transact any business here as of now until the sanctions are lifted. You will have to approach the Chair in his office to explain exactly why you have not been able to answer the Questions that were listed for you in the Order Paper yesterday.

Therefore, this Question is deferred to tomorrow afternoon.

(Question deferred)

Question No.1526

NON-PAYMENT OF BENEFITS TO
ALICE WAMBUI KABUGI

Mr. Mbadi, on behalf of **Mr. Kabogo**, asked the Minister for Education:-

(a) whether he is aware that Ms. Alice Wambui Kabugi, a retired primary school teacher (TSC No. 73615), has been following up on her benefits since June 2007, without any success; and,

(b) when she will be paid.

Mr. Deputy Speaker: Hon. Mbadi, indeed, the Chair has communication that you will ask this Question, on behalf of hon. Kabogo.

Proceed, Minister.

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, you will recall that yesterday, I undertook to go back and ensure that the pension benefits of retired teacher Ms. Alice Wambui Kabugi are released. I have made an effort to find out the exact position. I have also updated myself on issues relating to pension benefits, and I wish to state on

the outset that there is nothing that can stop the release of pension benefits to a retired person, even if that person is facing a criminal offence.

Mr. Deputy Speaker, Sir, I would like to state that the pension benefits of Ms. Alice Wambui Kabugi were, indeed, released to her account but there was an excess payment of Kshs1 million. This discrepancy was discovered belatedly and the account was frozen. This was done as recently as 11th May, 2012 by the Banking Fraud Investigation Unit of the Kenya Police.

Therefore, the Pensions Department feels that the matter lies with the police, who are handling the investigations. However, I would like this House to understand the situation and give me a little time, in the spirit of collective responsibility, to co-ordinate and ensure that the Banking Fraud Investigation Unit ensures that what is due to Ms. Alice Wambui Kabugi is released to her and what is not hers can then be a matter of further action by them.

Mr. Deputy Speaker: How much time do you want?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I need a week.

Mr. Deputy Speaker: Are you sure that a week is enough?

The Assistant Minister for Education (Mr. Mwatela): Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Mbadi, are you comfortable with that request?

Mr. Mbadi: Mr. Deputy Speaker, Sir, this matter has been outstanding for quite some time now. I am not so sure that the Assistant Minister is sure of resolving the matter within a week. Therefore, I would ask him to take two weeks and deal with the matter exhaustively because the law governing pension payments in this country is very clear. Nobody has a right to stop the payment of anybody's pension. Even if that person owes the Ministry money, the law, which was amended in 2005, is very clear that pension has to be released to the recipient. It cannot even be put as mortgage.

Mr. Deputy Speaker: You have made your point, hon. Mbadi.

Mr. Mbadi: Mr. Deputy Speaker, Sir, I would ask the Assistant Minister to take two weeks, so that he can come back and address this matter properly.

Mr. Deputy Speaker: Assistant Minister, you have got two weeks, on the outer limit. Are you happy with that?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I am happy with the two weeks that I have been given but I would like to make it clear that I do not blame the police because they also need to establish that the money that has been paid as pension is really the pension due to Ms. Alice Wambui Kabugi.

Mr. Deputy Speaker: The Chair directs that this Question be listed on the Order Paper two weeks from today.

(Question deferred)

Question No.1391

ILLEGAL SALE OF WATER TANKS
AT MATUU DISTRICT HOSPITAL

Mr. C. Kilonzo asked the Minister for Medical Services:-

(a) whether he is aware that two water tanks at Matuu District Hospital, complete with towers and borehole accessories, were sold without following the procurement process and, if so, how much money was realized from the sale;

(b) whether he is also aware that the community has objected to the illegal sale; and,

(c) what action the Government will take against the officer(s) who were involved.

Mr. Deputy Speaker: Hon. Members, the Chair has communication from the Ministry to the effect that this Question be listed on the Order Paper next week, and there is a compelling reason for the request.

So, the Chair directs that this Question also be listed on the Order Paper a week from today.

(Question deferred)

Next Question, hon. Daniel Muoki!

Mr. D. Muoki: Mr. Deputy Speaker, Sir, before I ask the Question, I would like to inform you that I have not received a written answer.

Question No.1429

PROJECTS UNDERTAKEN BY
WATER MINISTRY IN ASALS

Mr. D. Muoki asked the Minister for Water and Irrigation:-

(a) whether she could provide a list of all major projects that have cost Kshs50 million shillings and above, undertaken by the Ministry in the Arid and Semi Arid Lands (ASAL) Districts of Eastern and North Eastern Provinces in the past ten years, indicating their locations and cost of each project; and,

(b) what major water and irrigation projects the Ministry has undertaken in Mwala Constituency for the past ten years and which ones were earmarked for implementation in the 2011/2012 Financial Year.

Mr. Deputy Speaker: Hon. Muoki, do you wish to proceed and prosecute the Question or do you want to receive a written answer first?

Mr. D. Muoki: Mr. Deputy Speaker, Sir, I would like to have the written answer first.

Mr. Deputy Speaker: Yes, Minister for Water and Irrigation! Is the Minister not here?

Fair enough! The Chair directs that this Question be listed on the Order Paper one week from today and the Minister be furnished with the written answer very latest before the end of the day tomorrow.

Can a Government Minister give an undertaking on behalf of the Minister for Water and Irrigation on the same?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, on behalf of my colleague I undertake to inform the Minister to come.

Mr. Deputy Speaker: That is okay! Let us move on to the next Question!

(Question deferred)

Question No.1345

NON-COMPLETION OF STAFF HOUSES AT
KAPSABET DISTRICT HOSPITAL

Mr. Deputy Speaker: Mr. Lagat is also not able to prosecute this Question. The same Minister for Medical Services is not able to answer this and the same direction will be given that this Question be listed on the Order Paper one week from today.

(Question deferred)

Question No.1230

A-G'S RESPONSE TO INQUEST
FILE NO.2/2008

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

(a) whether the Attorney-General has responded to Police Inquest File No.2/2008 (CID Tana-River) for the three men shot by General Service Unit (GSU) police officers at Charindende;

(b) what the Attorney-General's comment was and whether the victims have been informed; and,

(c) what action the Government has taken against the officers involved.

Mr. Deputy Speaker, Sir, I beg your indulgence before the Minister proceeds to answer the Question. I had raised a weighty issue yesterday when I asked for your guidance and direction because it has become a habit and I am pleased that the Prime Minister who co-ordinates and supervises the Government functions is in this House today. I filed this Question on 26th of August, 2011---

Mr. Deputy Speaker: Order! The Right hon. Prime Minister, there is a matter which essentially concerns co-ordination. Dr. Nuh, you better ask the question again.

Dr. Nuh: Mr. Deputy Speaker, Sir, I have said that I raised a weighty issue here yesterday which was also raised this morning by Mr. Mbadi and Dr. Khalwale. The issue affects the order in which Ministers are supposed to respond to Questions filed by the Back Bench. I was saying I filed this Question on 26th August, 2011. I think it is close to a year now and the answer which has been supplied to me, in fact, in this Chamber just a few minutes ago was signed by the Minister concerned on 22nd May, 2012, which was yesterday.

The Standing Orders as read yesterday, and I want to repeat for the benefit of the Prime Minister and maybe if the Leader of Government Business is around, Standing Order No.42(5) says:-

“When the Speaker directs that a Question is in order, the Clerk shall as soon as possible forward the Question to the Minister to whom it is directed and the Minister shall, within five days of receipt of the Question, submit a written reply to the Clerk.”

In terms of Questions which are supposed to be orally answered Standing Order No.42(8) says:-

“Upon receiving a Question for oral reply, the Minister shall within the period specified in paragraph (5), submit to the Clerk, fifteen copies of the reply and shall be required to appear in the House to reply on the designated day.”

I am lost as to how we are supposed to treat, as a House, Question Time.

Mr. Deputy Speaker, Sir, when Members of Parliament file Questions, it is to seek the necessary action and it is pressing for action as stated in Standing Order No. 41(2). The essence of us asking Questions is lost if the Executive appears to answer Questions only when they appear on the Order Paper. This Question was not listed on the Order Paper because of the enormous number of Questions which are filed by hon. Members, which are also seeking for action. If the Executive Bench has to wait until the Question appears on the Order Paper for them to respond, that is unfair. We are supposed to interrogate the Questions but we are not given ample time to go and do a background search as to what actions the Government has taken. In fact, we are supplied with answers in the Chamber. The Government has continued acting in contempt of this House.

Thank you.

(Applause)

Mr. Deputy Speaker: The Right. hon. Prime Minister, this is an issue that the Chair did admonish the Government yesterday, in that the Government side needs to respect the spirit and the letter of the Standing Orders of this House and take the business of the House seriously.

Clearly, a Question that was presented to the Clerk’s Department in August, last year and appearing on the Order Paper towards the end of May, it defeats the whole purpose for which that Question was listed.

Maybe the Prime Minister will tell us something about that.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, unfortunately I was not in the House yesterday. I have just heard the hon. Member’s complaint now. Government matters in the House are usually co-ordinated by the Leader of Government Business in the House who is not here right now. However, the sentiments by the hon. Member have been noted and I will convey this to the Leader of Government Business to ensure that the Executive side does comply with the provisions of that Standing Order.

Mr. Deputy Speaker: Fair enough! In the meantime, do you wish to proceed and prosecute the Question or you wish to have more time to study it?

Dr. Nuh: I will proceed, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Assistant Minister, proceed!

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

(a) Yes, the Attorney-General responded to Tana River CID Inquest file No.1/2008 on 4th November, 2010 vide his letter reference AG/MLD/1986.

(b) The Attorney-General advised that the file be disposed by way of public inquest. The surviving victims were informed accordingly. They were subsequently bonded to testify, which they did. Witnesses finalized giving evidence on 24th August, 2011 and ruling was fixed for 15th September, 2011, during which the presiding magistrate did not find the police officers criminally responsible for the death of the three men and ordered the file closed.

(c) The Government will not take any action against the officers since the presiding court did not find the officers criminally responsible.

Dr. Nuh: Mr. Deputy Speaker, Sir, because of the benefit we have been denied of prosecuting this matter fairly because of the delay by the Government side to provide answers, I would like to request for the indulgence of the Chair and the House that the Assistant Minister provides to the House the letter that is dated 4th November, 2010, that was written by the Attorney-General. In the same light, can the Assistant Minister table in the House the purported ruling by the magistrate court and all the proceedings and the witnesses who testified? I request that you defer this Question for me to go and conduct background check because as per my own recollection the survivors have not been contacted and they have not appeared before a magistrate to record any statements. So, if the Assistant Minister can kindly table the magistrate's ruling, the proceedings of the inquest and the testimonies that the witnesses had given and the advice by the Attorney-General, then I can respond to this Question and prosecute it next week. I seek your indulgence.

Mr. Deputy Speaker: Hon. Assistant Minister, how soon can you furnish the hon. Member with the inquest file and the other information that he is seeking?

Mr. Ojode: Mr. Deputy Speaker, Sir, he is seeking for the Question to be deferred until next week. So, I will go by his---

Mr. Deputy Speaker: No, but he needs to be furnished with further information. I do not know if you have the inquest file among other things for the hon. Member to peruse.

Mr. Ojode: Mr. Deputy Speaker, Sir, I will have to check with the Attorney-General when we can get this file and then I can ask him---

Mr. Deputy Speaker: Can the Chair safely say that you give him in the next two days so that this Question can be put on the Order Paper next week?

Mr. Ojode: Yes, I can do that on Tuesday, next week.

Mr. Deputy Speaker: Fair enough! The Chair now---

Dr. Nuh: Mr. Deputy Speaker, Sir, I would prefer if the Assistant Minister can come, table all these documents and then we can prosecute in the---

Mr. Deputy Speaker: Do you wish to be given these documents by the Assistant Minister in advance so that you can go through them or you want them to be tabled?

Dr. Nuh: No, I can be given in advance.

Mr. Deputy Speaker: Fair enough! The Assistant Minister has given an undertaking to do it within the two days. The Chair directs that this Question be listed on the Order Paper one week from today.

(Question deferred)

COMMUNICAITON FROM THE CHAIR

APPOINTMENT OF 47 COUNTY COMMISSIONERS

Mr. Deputy Speaker: Hon. Members, you may recall that on Thursday the 17th of May 2012, the Minister of State for Provincial Administration and Internal Security, Prof. Saitoti delivered a Ministerial Statement in the House on the appointment of 47 County Commissioners by His Excellency the President. In that Statement Prof. Saitoti informed the House that those appointments were actually redeployment of serving officers, and were meant to facilitate specified national Government functions in the 47 counties in preparation for the restructuring of the Provincial Administration as anticipated in the Constitution. He further stated that the

appointments were prompted by the need to ensure co-ordination of service delivery by the Government following an earlier deployment of officers from other Ministries.

Hon. Members, the Ministerial Statement by Prof. Saitoti generated intense debate in the House and was punctuated by interjections by several Members seeking clarifications and rising on points of order. Indeed, the vigour with which the debate on the matter was carried out in the House was a pointer to the immense interest the matter has generated in the public domain.

The issues raised during debate are genuine and go to the heart of the system of devolved Government designed by the Constitution. Similarly, the need to restructure county governments properly cannot be understated. As a result of the interest and passion the matter generated in the House, the Chair undertook to deliver a communication on the same. Indeed, at the sitting of this House Mr. Chachu reminded the Chair of this undertaking.

Hon. Members, some of the issues canvassed before the House had a bearing on the constitutionality of the matter. It thus behooves the Chair to affirm and reiterate at the outset what the Chair has stated on numerous occasions in the past, which is that issues of constitutionality can be raised in the House at any point during debate on any matter, and that it is open to the Chair to make a determination thereon at any time. In matters where unconstitutionality is alleged, I find it necessary to disabuse the view that the Speaker's direction must be specifically solicited. This would not be the correct reading of Articles 3, 10 and 259 of the Constitution, and the Constitution as a whole, which enjoins all persons to respect, uphold and defend it.

It is also important to note, and again the Chair has reiterated this on several occasions, that a determination on constitutionality or otherwise of a matter by the Speaker is not a derogation from the principle of separation of powers, or an infringement on the role of the Judiciary. Such a determination is limited to enabling the House to proceed independently in the discharge of its constitutional functions. What is pertinent is that for the Chair to make a determination on the constitutionality of any matter, the issue must be one of which the House is then appropriately seized as part of the business of the House and the determination must be necessary for the disposal of the matter.

As hon. Members are aware, the House has a multiplicity of devices through which it carries out its functions. These include Questions, Statements, Motions, Bills, Select Committees *et cetera*. Each of these devices has its merits and delimitations. In the present matter, the issue of County Commissioners came to the House through a request for a Ministerial Statement, which Statement the Minister issued.

The Member at the Bar can walk in.

(Several hon. Members entered the Chamber)

Hon. Members, the House was then to note the contents of the Statement and get appropriate clarifications thereon as, indeed, happened when the Statement was delivered. Questions of unconstitutionality raised in this context may not be adequately disposed of because of the nature of a Ministerial Statement and the remedy it provides. Neither the House nor the Chair can bind a Minister to any particular action, or inaction, on the basis of the Statement. That said, and arising from the constitutional obligations incumbent on the Chair, it needs to be reiterated that constitutional provisions relating to devolved government and the public service in general are not mere platitudes. The requirement for fair competition and regional diversity and balance are mandatory as is the requirement on gender. So also are the values and principles of

public service that require accountability for administrative acts. These are binding on all State organs.

Similarly, issues raised in the House regarding the National Accord and Reconciliation Act, and the extent of its requirement on power sharing and consultation, are legitimate constitutional questions to be addressed.

Hon. Members, it will suffice to say that for the present, the Ministerial Statement on the question of appointment of County Commissioners has been issued as was sought. If however, the House, in its wisdom, is minded to interrogate the matter further, or to otherwise deal with it, the House may do so by the use of appropriate mechanisms at its disposal. In the alternative, of course following the doctrine of separation of powers, it is open to any person to seek authoritative determination of the legality and constitutionality of the appointments in the courts of law.

Hon. Members, I wish to conclude by expressing the concerns of the Chair on the manner and the tone into which the debate on this matter degenerated. While it is the right of this House, and of every Member to express themselves on issues before the House, I urge that we do so in a manner that is not needlessly impassioned and divisive. We are, after all, the National Assembly of the Republic of Kenya. We are the House of the people; all the people of Kenya and not pockets of it, or ethnic enclaves in it. We need to recognize that however strongly we feel about any matter we must still express ourselves in a manner that is sensitive to our people and to the need to maintain the unity and integrity of our country, as one indivisible sovereign nation.

Hon. Members, I want to thank you. The Chair has given a clear direction on this. If you want to interrogate this matter any further, there are other avenues on the Floor of the House. Should you wish also to go in line with the doctrine of the separation of powers, there is the Supreme Court which can deal with this. However, the House is not adequately seized of this matter in the manner in which it can give a direction and say that this is unconstitutional, or constitutional for that matter.

Mr. Mbadi: Mr. Deputy Speaker, Sir, thank you for your ruling. However, having noted that this is a matter that is weighty in terms of constitutionality, could I, therefore, ask the Chair to specifically rule--- This House set up a Committee called the Constitution Implementation Oversight Committee (CIOC). The task of that Committee is to ensure the constitutionality in the implementation process of the Constitution. Therefore, would it be in order for me to ask the Chair to specifically ask this Committee to investigate this matter and do a report to this House within a time line, so that the matter is properly dealt with by this House? I think this is a matter that we cannot just let go, as a House, without proper debate and consideration.

Mr. Ogindo: Mr. Deputy Speaker, Sir, you remember I drew the attention of the Chair to Article 3 of the Constitution, which requires everyone to respect the Constitution. Sub-Article (2) of the same says that any attempt to establish a Government other than in a manner that is described in the Constitution is unlawful and unconstitutional.

The attempt that has been made is an attempt of creating Government organs, which is unconstitutional. For that reason, I want to invite you to find this matter worthy of being referred to the CIOC.

Mr. Ruto: Mr. Deputy Speaker, Sir, on the same matter, I think it is not fair to the people of the Republic of Kenya for us to just ignore a matter as pertinent as deployment of County Commissioners. Other departments have taken cue. The Teachers Service Commission (TSC) has already sent others. They have not followed the constitutional requirement about gender or

other issues like regional representation. If we allow the Office of the President to lead in that direction we will be failing in our oversight responsibilities.

Mr. Deputy Speaker, Sir, can I suggest that as one of the avenues, you give us a direction on whether the House can pass a resolution demanding that the Government follows the Constitution strictly, and that they should not establish structures that have no basis in law. This particular one has no basis whatsoever. This is because it is a new rank and new arrangement, yet the same Government has the opportunity to bring to us a Bill on any office that is not based on law.

Secondly, Mr. Deputy Speaker, Sir, the Government cannot be allocated funds to fund a function that is not sanctioned by the Constitution.

Mr. Deputy Speaker: Messrs. Mbadi, Ogindo and Ruto, yes, indeed, the House can have a resolution but the Motion of the resolution is not originated by the Chair; it is originated by a Member of the House. It is your responsibility to do it, if you have to. Secondly, the Chair cannot take this position because this matter is not seized of the House in the manner it is seized on the operationalization of the Constitution by bringing Acts or Bills to the Floor of the House that have to be debated and moved or the appointment of individuals who have to be ratified by Parliament. So because Parliament does not have that role, the Chair does not have a matter that it is legitimately seized on to give a direction or to rule on the constitutionality or unconstitutionality of this matter. So, you have the options that are available to you. The Constitution Implementation Oversight Committee (CIOOC) is involved in the operationalization of the Constitution by being involved in the laws that are generated along with the Constitutional Implementation Commission (CIC) and the relevant Ministries themselves. So because this matter has come in the manner it has come, the Chair has recognized that there are issues but the Chair is not in an authoritative position to rule on that because the Chair is also bound by practice, by law and by the Constitution.

Thank you.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Not on the same! Is it on the same?

Mrs. Odhiambo-Mabona: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: It had better be the last point of order.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. As the Vice-Chairperson of the CIOOC I just wish to notify the House that we are already dealing with it.

Mr. Deputy Speaker: Fair enough! Hon. Members, I gave an undertaking yesterday that I was going to give communication on the roadmap on the Police Service Commission issue. The Chair is going to give a roadmap in a form of communication tomorrow afternoon.

Next Order!

PRIME MINISTER'S TIME

PRIME MINISTERIAL STATEMENT

SECURITY SITUATION IN SUDAN AND
SOMALIA: IMPLICATIONS FOR KENYA

Mr. Deputy Speaker: It is the Prime Minister's Time! I want to call the Prime Minister. Proceed, Mr. Prime Minister!

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I rise to make a Statement on the security situation along the border between South Sudan and Sudan. I will also talk about the security situation in Somalia. I will also appraise the House and the public at large about the implications of the regional security situation for Kenya, diplomatic and military efforts by Kenya to secure peace and stability in the region and defend its interests.

On 4th October, 2011 the Government invoked Article 51 of the UN Charter to act in self defence against *Al Shabaab* militia in Somalia. We then sent our troops across the border in “*Operation Linda Nchi*”. The Kenya Defence Forces (KDF) entered Somalia on 14th October, 2011 and commenced “*Operation Linda Nchi*”. The KDF has liberated from *Al Shabaab* control major towns in Somalia such as Garbaahavey, Burgabo, Doble, Tabda, Bilis Qoogani, Ras Chiamboni and Burgavo.

With *Al Shabaab*'s capability to wage conventional warfare completely degraded, the militia has resorted to guerilla tactics. This includes the use of grenades, improvised explosive devices and sporadic shootings to attack business premises, security forces and members of the public. So far, the militia has attacked Gerille Administrative Post in Wajir South, Mtwapa open air crusade, Machakos Country Bus Station, Ngara Pentecostal Church, Mombasa Hotel, Ifo Police Station in Daadab District and shootings in refugee camps.

Mr. Deputy Speaker, Sir, Kenya hosted peace talks over several years that culminated in the establishment of the Somali Transitional Federal Charter and subsequently the formation of the successive Transitional Federal Governments. Kenya has continuously provided technical capacity training to the TFG Public Service including the training of its diplomats, immigration and revenue officers, administrators and security forces and provided numerous other forms of support. Kenya remains the base for managing and organizing humanitarian and United Nations Political Office for Somalia (UNPOS) operations in Somalia and facilitates medical facilities to the African Union Mission to Somalia (AMISOM) troops. Comparatively, Kenya carries the largest burden on account of the instability in Somalia than any other country in the world.

Efforts to realize a constitutional government in Somalia by August 2012, that is this year, continue to be undermined by partisan and rival clan interest and the influence of *Al Shabaab*. The KDF, with approval of the Cabinet and this House, joined the AMISOM contributing a total of 4,660 military personnel. The KDF's integration into the AMISOM externalizes the cost of the mission with guaranteed reimbursement through the AU/UN system. The projected costs stand at Kshs7.5 billion for operational enablers, that is equipment and Kshs3.2 billion for rear operations.

Mr. Deputy Speaker, Sir, Kenya has embarked on aggressive diplomatic offensive to raise international attention and consolidate support for its efforts to secure and stabilize Somalia. In this respect Kenya has been working closely with Inter-Governmental Authority on Development (IGAD), the East African Community (EAC), the AU, the Indian Ocean Rim Association for regional Co-operation (IOR-ARC) and the Commonwealth. The Istanbul I Conference on Somalia held in May 2010 established a roadmap for the smooth end of transition and the establishment of an all-inclusive and broad-based government in Somalia. The roadmap to a legitimate and representative political dispensation includes all-inclusive national reconciliation, establishment of functioning state institutions and security organs, adoption of a new Constitution and economic recovery programme.

The London Conference on Somalia in February this year and the follow up Istanbul II Conference on Somalia to be held at the end of this month and the Rome Conference which should be held in July this year aim to improve on the coordination of international efforts and

harmonization of strategy in assisting Somalia to make the transition to a functioning democratic state.

Kenya urges the international community to establish a new UN Mission on Somalia to co-ordinate all international efforts on Somalia. Such mission should include a UN peace keeping force post transition. Kenya also hosted the mediation that yielded the Comprehensive Peace Agreement (CPA) in 2005 between the Sudan People's Liberation Movement (SPLM) and the Government of Sudan. Unfortunately, the interlude of peace following the birth of the Republic of South Sudan in July, 2011, now appears threatened with the new outbreak of armed conflict.

Although the current tensions revolved around the oil rich area of Heglig, areas of continued disagreement include the demarcation of the North/South border and that of Abyei, Southern Kordofan, South Kordofan (Nuba mountains) and the Blue Nile States. The two countries continue to have disputes over sharing of oil revenues, the waters of the Nile, nationality and citizenships, assets, liabilities and external debts, currency and international agreement obligations. Both countries accuse each other of sponsoring rebels in their respective territories.

Kenya supports the AU efforts under the Thambo Mbeki led High Level Implementation panel mediating between the two countries. The UN adopted Resolution 2046 on 2nd May, 2012, calling on both the South Sudan and Sudan to resume negotiations unconditionally.

While the South Sudan has expressed her willingness to abide by the UN Resolution 2046, the Sudan insists that the security issues should be resolved first before negotiations can commence. The KDF is actively engaged in peace keeping operations in Dafur under UNAMID and in South Sudan under UNAMISS. It is in the security and economic interest of Kenya that peace prevails in the region. Continued instability in the region undermines Kenya's economic opportunities for trade and investments and imposes heavy budgetary demands on the national treasury. We have already seen some of the refugees beginning to flock back to Kenya. It is in our interest that the conflicts that we are having along our borders are speedily brought to an end, so that normalcy can return to our neighbouring countries.

Mr. Kapondi: Mr. Deputy Speaker, Sir, while appreciating very much what the Prime Minister has said as far as security implications are from the Somali and Sudan issue, the internal security of this country has never got the necessary support that is commensurate to the threats posed to this country, particularly in respect to CCTV cameras for surveillance purposes. Terrorism which *Al Shaabab* has applied to inflict pain on Kenyans requires the installation of CCTV cameras in major urban areas like Nairobi, Mombasa, Kisumu and Nakuru, for the purpose of providing a backup for the security of this country. Could he tell us what the Government is doing to ensure that incidences of terrorism attacks which are associated with *Al Shaabab* are minimized by giving the necessary support to the internal security of this country?

Mr. M.H. Ali: Mr. Deputy Speaker, Sir, I would like to seek a clarification from the Prime Minister on the issue of Somalia. As he is aware, Kenya has invested heavily, as he has also mentioned in his Statement, in getting peace in Somalia, for the last 21 years. Right now, he has said that over 4,000 of our Military personnel are in Somalia trying to secure peace there. We have heard that a number of countries have opened their embassies right in Mogadishu despite the insecurity there, so that they can create confidence for even the Somalis who can re-invest back in Somalia. Why is Kenya, up to now, hesitating to open up her embassy in Mogadishu? Although we have an ambassador here, he has been operating from Nairobi. I would like the Prime Minister to tell us when the Government will open the embassy in Mogadishu?

Dr. Nuh: Mr. Deputy Speaker, Sir, while appreciating the Statement by the Right Hon. Prime Minister, I want to seek for two clarifications. First, now that we have over 4,000 of our Army personnel engaged in Somalia, what component of their emoluments or funds are being paid by foreign Governments? Is the Kenyan Government supposed to foot all the bills of this force that we have deployed to Somalia? Secondly, there are allegations that the recent killings and shooting in Dadaab and many others could be as a result of the young men who were trained to go and fight alongside the TFG forces, some of whom were Kenyans and who we are told found their way into the country. Are there any mechanisms by the Government to try to track and make sure that those youths who were recruited for purposes of going to fight alongside the TFG are not redeployed or do not find themselves back into the country to wreck havoc in our nation?

Mr. Keynan: Mr. Deputy Speaker, Sir, I would like to seek the following clarification from the Prime Minister. When this Parliament authorized our Defence Forces to move into Somalia, the reason was that we needed security for the people of Somalia and also for the people of Kenya. But shockingly, as our security forces have managed to bring the lawlessness in Somalia, especially across the Kenya/Somalia border, to manageable level, the reverse is happening in Kenya. Mr. Deputy Speaker, you know where you come from and as I speak, the road from Garissa to Wajir is now infested with bandits, namely, the very boys who deserted from Somalia. What are you going to do, as a Government, to weed out these criminal elements in Kenya, so that the people of Kenya can enjoy peace and in particular the people of northern Kenya, so that we do not go back to those old days of banditry menace?

Mr. Deputy Speaker: We will take one last one, namely, Hon. Midiwo. Then later, we will take hon. Sirat. We will take one more round. But for now, hon. Midiwo, you will be the last one and the Prime Minister will respond. Then we will have hon. Sirat, hon. Mbadi, hon. Ochieng and hon. Chachu.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I just need to seek a clarification. We lauded the Government for doing the right thing when we went into Somali to flee this country and the world of the threat of *Al Shaabab*. When you go into a war, you go with a timeline. Do we not run the risk of overstaying in Somali? Could the Government give us a clear line, because we are paying money to keep our soldiers there? When will we take our soldiers out of Somali? The Government itself declared that the mission has been accomplished. Why would we want to stay there a day longer? What would be the real reason that our Forces are turning into a police force for Somalia?

Mr. Deputy Speaker: The Rt. Hon. Prime Minister, will you respond to those five clarifications sought and then we will have a second round? Rt. Hon. Prime Minister, proceed.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, the hon. Member for Mt. Elgon was concerned about internal security.

Mr. Deputy Speaker, Sir, I did say that the situation in Somalia is posing serious problems within our own borders. That is true. He went further to ask what steps are being taken to install facilities that will help to track down terrorists within our cities. That is a matter that the Government has taken very seriously, indeed. I would like to inform the hon. Member that we have now acquired about US\$100 million which is going to be used to install CCTV in our cities, starting with Nairobi. We are going to start the installation almost immediately. That is going to spread to other cities. Mombasa is next. Then it will be Kisumu and other cities. Installation of CCTVs will help the police with their work for surveillance, because they will be able to detect

the criminals as they move around trying to commit crimes, or if after they have committed crimes, they can be quickly apprehended.

Mr. Deputy Speaker, Sir, I want the hon. Member to also know that *Al-Shabab* has been a more complicated enemy to deal with. That is because they recruited our own youths; our own boys and then trained them. So, you do not know a typical *Al-Shaabab* by the looks. That is because *Al-Shabaab* can be anybody. It can be Mr. Kapondi's brother from Mt. Elgon. It can be Mr. Koech. It can be a Mr. Kamau. It can be a Mr. Rashid Onyango. It can be anybody. So, that has made the work of our security forces much more complicated. But there is a resolve to deal with this matter.

Hon. Mohamed Hussein wanted to know when the Kenyan Mission in Mogadishu---

Mr. Baiya: On a point of order, Mr. Deputy Speaker, Sir. Could the Prime Minister say where he got the US\$100 million to install CCTV? He cannot tell us that without saying where the money came from. Is it from Budget of Kenyan, externally or where is the money coming from? Yes, we want to know the source of the money.

Mr. Deputy Speaker: That is a further clarification sought. It is not a point of order.

Mr. Baiya: It is a point of order, Mr. Deputy Speaker, Sir, in the sense that it is incomplete information and, therefore, I wonder whether it is in order for him---

Mr. Deputy Speaker: Order! Order! A point of order is when something is not in order. When something is out of order, is when you rise. But, nonetheless, it is a matter that---

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I agree with you that, that is not a point of order. But all the same, he is seeking further information. I want him to know that this is a grant from the Government of the People's Republic of China.

(Applause)

The hon. Member for Mandera East wanted to know when the Kenyan Embassy in Mogadishu is going to be operationalized. I want to say "operationalized" because we do have a mission. We have recognized the Transitional Federal Government of Somalia. So, it is a question of operationalizing the embassy. For quite sometime, the security situation was such that it was dangerous to post our staff to Mogadishu. So, the reason why the Embassy has continued to operate from Nairobi is purely as a result of the security situation in Mogadishu. We have continued to review that, given the fact that, unlike other countries which have now posted missions in Somalia, Kenya has got troops now inside Somalia. That poses a further security threat to our mission there. But as and when the security situation allows, our staff will move from Nairobi and relocate to Mogadishu.

Hon. Dr. Nuh wanted to know about the cost of the Kenya Defence Forces (KDF) mission in Somalia. I mentioned that before our troops were rehattd to join the AMISOM in Somalia, it had cost us a total of Kshs7.5 billion. By rehatting, the agreement is that the money that has been spent by the Kenya Government is going to be refunded by the UN to us and, henceforth, the cost of maintaining those troops in Somalia is being footed 100 per cent by the UN. So, it is costing us nothing as a country. He further went on to talk about the Kenyans who were serving with the TFG forces. It is a similar question to the one that has been raised by hon. Keynan.

Mr. Deputy Speaker, Sir, first, the truth need to be known that when we started training for *Al-Shabaab*, we were very clear that we were training for *Al-Shabaab* Somali, Somalis, and not Kenyan Somalis. They were asked to provide their staff for training by our forces here.

Unfortunately, maybe, because of lack of employment, some of our own Kenyans also went there and posed as Somali Somalis and got themselves recruited into the training. When that became apparent, a purge was done and a number of those young Kenyans were removed from the forces. But in that kind of operation, you cannot be a 100 per cent foolproof. Therefore, it is exactly on the cards that there were some other Kenyans who were trained in the forces and who found themselves at the other side of the border but who quickly, because of lack of patriotism, found their way back into our country.

It is a situation that our security forces are very alive; they know about this and every effort is being made to deal with these characters. That is the reason why the security forces in North Eastern Province has been beefed up. They have got several mobile units roaming the area looking specifically for characters like these ones.

Mr. Deputy Speaker, Sir, hon. Midiwo was concerned about the timelines. His view was that we had overstayed our welcome in Somalia. I want to assure him that, first, we were not invited; we went to Somalia out of need. That is why the operation was dubbed *Operation Linda Nchi*. We are in Somalia in order to protect our country and secure our borders. So long as the situation in Somalia is not resolved, there will continue to be the need for our troops to be in Somalia. We are there searching jointly with the rest of the international community for lasting peace and a sustainable solution to the Somalia crisis. We are not there because we love to be there.

(Mr. Midiwo consulted the Deputy Speaker)

Mr. Deputy Speaker, Sir, the hon. Questioner is not listening to my answer.

Mr. Deputy Speaker: Proceed, hon. Prime Minister!

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I was answering hon. Midiwo's question and I saw him consulting with the Chair. So, I decided to pause until he was able to pay attention to what I am saying.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Midiwo to walk out from the House when his question is being addressed?

Mr. Deputy Speaker: Order! Hon. Midiwo has not walked out; he is finding his sitting position in the House. There he is; he is on the Bench!

Proceed, Right hon. Prime Minister!

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, we are there out of need, not because we love to be in Somalia. But we believe that our presence there helps to secure our country. Jointly with our other friendly nations, we are looking for a lasting solution to the Somalia crisis. That is why we talked about the conferences which are taking place. Another one will take place in Istanbul at the end of this month while another one will take place in Rome in July. In these conferences, we are trying to find a way in which we can have a responsible civilian administration in Mogadishu which can take over the task of defending Somalia. Until we have peace in Somalia, there will be no total security in our own country.

Thank you, Mr. Deputy Speaker, Sir.

The Assistant Minister for Lands (Mr. Rai): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Does the Prime Minister wish to be informed?

The Prime Minister (Mr. Raila): Yes, Mr. Deputy Speaker, Sir.

The Assistant Minister for Lands (Mr. Rai): Thank you, Mr. Deputy Speaker, Sir. I want to agree with hon. Keynan, first, on the issue of the highway robberies and attacks. Tana River has not been spared either, because just the other day, we had some attacks near the Madogo Junction. You will remember that some few months ago, there was an incident---

Mr. Deputy Speaker: Order! Do you wish to inform the Prime Minister or---

The Assistant Minister for Lands (Mr. Rai): Exactly, Mr. Deputy Speaker, Sir. I am informing the hon. Prime Minister. I just wanted to agree first---

Mr. Deputy Speaker: Order! Order!

The Assistant Minister for Lands (Mr. Rai): Mr. Deputy Speaker, Sir, I just wanted to inform the Prime Minister that, also, there was an incident where some Kambas were abducted---

An hon. Member: Kambas?

The Assistant Minister for Lands (Mr. Rai): Yes; some residents of Ukambani were abducted and they were seen---

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

Mr. Deputy Speaker: Order! Order! He is on a point of order.

Proceed, Mr. Chachu!

Mr. Chachu: Mr. Deputy Speaker, Sir, is it in order for the Cabinet Ministers to inform each other on the Floor of the House when, as Members of the Executive, they have their own functions and their own spaces where they can actually discuss and inform each other?

An hon. Member: Yes!

Mr. Chachu: Is it in order for them to use the Floor of the House?

Mr. Deputy Speaker: Order! Mr. Rai, if you seriously want to inform the Prime Minister on matters that you think you should inform the House, get very close to him and whisper to his ears! That is how the rule is.

Mr. Sirat: Thank you, Mr. Deputy Speaker, Sir. Before *Operation Linda Nchi*, our region of north eastern was very peaceful. Since then, our region is not peaceful. There is a lot of insecurity in my constituency and in other constituencies. Leaders and residents---

(The microphone failed)

Mr. Deputy Speaker: Go to the next microphone; that one has a problem!

Mr. Sirat: Thank you, Mr. Speaker, Sir.

(Mr. Sirat moved to the next microphone)

Mr. Deputy Speaker, Sir, leaders and residents are not able to do business as usual in my region. I, for one, am not able to traverse my constituency without three to four vehicles full of administration and regular police officers. I, therefore, consider that this *Operation Linda Nchi* has brought more harm than good to my constituency and my region at large.

(Applause)

The Ethiopian forces are, in fact, very effective, efficient, on the spot and are doing a better job more than the Kenya Defense Forces (KDFs).

Mr. Ruto: How?

Mr. Sirat: The KDFs are just amassing and having strategic camps in Dhobley and Tabda. In fact, they are spending a lot of their money in building camps.

(Several hon. Members stood up in their places)

Mr. Keynan: On a point of order, Mr. Deputy Speaker Sir. As much as I empathize with the question raised by the hon. Member, our defence forces have done very well---

(Applause)

They have done exceptionally well and, therefore, it would be wrong to cast aspersions on the entire defence forces. However, we must accept that there are lapses on the issues that we raised which need to be classed up and segregated instead of collectively condemning the entire defence forces. Is the hon. Member in order?

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Hon. Sirat has not completed his clarification.

Mr. Sirat: Thank you, Mr. Deputy Speaker, Sir. I said the KDF is doing an extremely good job, but Ethiopian forces are doing a better job. We read newspapers, we watch the television---

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

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Order! What is your point of order, hon. Ruto?

Mr. Ruto: Mr. Deputy Speaker, Sir, there was debate when there were elections in his constituency that he may not even be a Kenyan, if you can recall.

(Laughter)

Mr. Deputy Speaker: Order! Order! Mr. Ruto, you will laugh, enjoy this moment and have that comedy, but you will spend the rest of the day out of this House because of casting aspersions on your fellow hon. Member.

Hon. Isaac Ruto, the Chair has been very categorical on many occasions; the Chair will not allow the lowering of the dignity of the House! How dare you call a fellow hon. Member of Parliament a foreigner? Could you apologize and withdraw?

Mr. Ruto: Mr. Deputy Speaker, Sir, maybe you cut me short---

Mr. Deputy Speaker: Apologize unconditionally and withdraw!

Mr. Ruto: Mr. Deputy Speaker, Sir, if, indeed, I said that he is not a Kenyan--- I only said that there was a debate that he may not be a Kenyan. I did not say he is not a Kenyan. There were some aspersions cast elsewhere, not here.

Mr. Deputy Speaker: Order! Order!

Mr. Ruto: Mr. Deputy Speaker, Sir, if, indeed, I have indicated that he might not be a Kenyan, I withdraw that part. I was just informing the House that there was a debate---

Mr. Deputy Speaker: Order! Apologize and withdraw for your own benefit!

Mr. Ruto: I apologize and withdraw, Mr. Deputy Speaker, Sir. I only ask the hon. Member not to cast aspersions on Kenyan soldiers in Somalia.

Mr. Deputy Speaker: Order! You can fault the hon. Member on his contribution and show your counter argument, but for the benefit of everybody who is here, hon. Sirat comes from a constituency that is next to my constituency. I have known him from the time he was a child. He is a Kenyan just like any other Kenyan.

(Applause)

Proceed and conclude, Mr. Sirat!

Mr. Sirat: Thank you, Mr. Deputy Speaker, Sir. I will conclude.

The Prime Minister knows very well that in the Gille attack, two senior Kenyan officials were abducted. Where was the KDF? At the moment, I am not able to give ID cards to my constituency because of insecurity. All of them have to come to the district headquarters from 250 kilometres away. Where is the KDF? Why can they not give my people security, so that they can be issued with ID cards?

Mr. Deputy Speaker, Sir, when will the *Operation Linda Nchi* end? Can we have peaceful elections when we are still fighting *Al Shabaab* in Somalia? Can we have elections when there is insecurity in my constituency? I am not able to traverse my constituency. My constituents are not able to get ID cards in the Dadajabula, Biff, Gerille, Burder, *et cetera*. My people are not able to get ID cards, so how will they be able to vote in the coming elections? Are we able to vote when there is insecurity in Wajir South?

Mr. Deputy Speaker: You have made your point.

We will take hon. Mbadi, hon. Chachu Ganya and then hon. Pollyns Ochieng.

Mr. Mbadi: Mr. Deputy Speaker, Sir, let me, first of all, thank and congratulate our Defence Forces for a job well done in Somalia. I just wanted to say that up to November, when we were fed with the information---

Mr. Sirat: On a point of order, Mr. Deputy Speaker, Sir. Hon. Isaac Ruto keeps telling me to go back to Australia and you have just told him to be out of the House. Is he in order?

Mr. Deputy Speaker: Order! Order, hon. Ruto! Can you maintain the decorum of the House?

Proceed, hon. Mbadi!

Mr. Mbadi: Mr. Deputy Speaker, Sir, I have just thanked and congratulated our Defence Forces for a job well done in Somalia. Up to around November, if I am not wrong, when we were fed with the information about the progress, I think Kenyans appreciated and continue to appreciate the work that our Kenya Defence Forces have done in Somalia. But the clarification I would like to seek from the Prime Minister is: What is the policy of the Government with regard to this operation, especially given that what we are seeing internationally, is the Americans withdrawing from Afghanistan and Iraq? What programmes do we have as a country to train the civil servants in Somalia and give capacity to the Somalia Government to take care of their security and work on a system of bringing our security forces back to Kenya, to create a buffer zone between Kenya and Somalia, so that we take care of our country, but at the same time, do not have our personnel taking too long in Somalia?

Mr. Chachu: Mr. Deputy Speaker, Sir, I want to thank the Prime Minister for this Statement. I also want to appreciate the good work that is being done by our men and women in uniform. The problem of Somalia should be dealt with holistically. Up to now, whenever we

have been dealing with the issue of Somalia, it has been in Somalia. But there are also other independent states like Somaliland which have had successive democratic presidential elections and have even changed governments, where an opposition party took over power in a very successful manner. Kenyans even teach in high schools and universities, and also work for the civil society there. Therefore, the interest of Kenya itself needs to be appreciated. What is our position on Somaliland, if we are looking at the whole issue of Somalia from a holistic context?

Mr. Ochieng: Mr. Deputy Speaker, Sir, the Prime Minister has indicated that sanity has actually been brought back to some areas in Somalia. What is the Government doing in terms of resettling the refugees who are in Dadaab back into those particular areas, so that, at least, the security of that particular area in Dadaab, Garissa and its environs can be improved?

Mr. Njuguna: Mr. Deputy Speaker, Sir, appreciating the very positive Statement that has been given by the Prime Minister, could he inform this House clearly, what the Government is doing about the insecurity and harassment of Kenyan businessmen in Sudan and South Sudan? Recently, there have been unnecessary arrests and detentions. Currently, two of my constituents who were conducting legal business in Southern Sudan are in detention.

Mr. Kapondi: Mr. Deputy Speaker, Sir, there is reliable information that because of the high influx of refugees from Somalia, arising out of insecurity there, a number of them have found their way to Tana River - areas in Bura – and are causing insecurity. What measures is the Government taking to ensure that these people, who are not within refugee camps and have managed to sneak out and interacted with Kenyans and, hence, in the process caused insecurity to them, are repatriated back to their country, because they do not have refugee status within our country, but want to stay in our country as *bona fide* citizens illegally?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, hon. Sirat said that in his constituency, it is now not business as usual, but business unusual, because of the scare as a result of the state of insecurity. I want to assure the hon. Member that the Government is trying to do what is possible to provide security, including in his constituency. We know that the area is also big. For example, we can blame our forces because two Kenyans were abducted and ask: “Where were the Kenyan Defence forces when this was happening?” But it is humanly impossible for the Kenyan Defence Forces to be everywhere at the same time when they are also fighting inside Somalia.

Mr. Keynan: On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Do you wish to be informed, Rt. hon. Prime Minister?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I do not mind.

Mr. Keynan: Mr. Deputy Speaker, Sir, I want to inform the hon. Prime Minister that, indeed, if you look at Chapter 14 of the Constitution, on the Establishment of the National Security, there is a difference between Kenya Defence Forces, National Security Organs and the Intelligence Service. I want to read what the Constitution says, so that we get it clear, in trying to answer hon. Sirat, that, indeed, that is the work of the Homeland Security and not the Kenya Defence Forces. It says:

“Chapter 14; National Security: Part 1 – National Security Organs.

The National Security Organs are:-

- (a) the Kenya Defence Forces;
- (b) the National Intelligence Service; and,
- (c) the National Police Service.

Mr. Deputy Speaker, Sir, that is Articles 238 and 239. If you read Article 241, it talks about the Establishment of the Kenya Defence Forces. It reads:-

“There are established the Kenya Defence Forces.

(2) The Defence Forces consist of—

- (a) the Kenya Army;
- (b) the Kenya Air Force; and
- (c) the Kenya Navy.

(3) The Defence Forces—

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

(b) shall assist and cooperate with other authorities”---

Mr. Deputy Speaker, Sir, “other authorities” means that for them to get involved in Homeland Security, the Government, through the established agencies, must request for the assistance of the Kenya Defence Forces.

Mr. Deputy Speaker, Sir, thirdly, it is this Parliament that decided. They may be deployed to restore peace in any part of the country under emergency circumstances with the approval of the National Assembly. Therefore, what is happening in hon. Sirat’s constituency, your constituency and my own constituency is the work of the Police, Administration Police and other security organs. It is not the work of the Kenya Defence Forces.

Thank you, Mr. Prime Minister, for allowing me to give you that information.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I am so delighted that hon. Keynan was able to give that information to hon. Sirat. I was answering the question as asked by the Member for Wajir South. If the hon. Member listened carefully, the Member for Wajir South was actually casting aspersions on our Defence Forces and saying that they were not as efficient as the Ethiopians. I was actually going to tell him that he is blaming the Kenya Defence Forces for something that is not their responsibility. I am very much aware of the provisions which the hon. Member has read, and the Member for Wajir South needs to actually be informed. I hope that he is now properly informed.

Mr. Deputy Speaker, Sir, the Kenya Internal Security Forces; that is, the Kenya Police, Administration Police and so on, are in charge of internal security.

Mr. Deputy Speaker, Sir, they monitor crossings at the border and the territory to ensure that our borders are secure. We also have a National Security Council. We also have a National Security Advisory Committee which brings together all the heads of various security forces for regular comparison and exchange of information.

I want to inform the honourable Member that I disagree with the notion that Ethiopian Forces are more efficient than Kenyan forces. It has now been accepted universally by those who are involved in Somalia that it was until the Kenyan Security forces got involved in Somalia that the situation was very fluid. The entry of Kenyans into the scene in Somalia completely turned the tables and changed everything. Even our friends from Uganda who had been thinking that the Kenyan Military was more elitist now admit that Kenyan soldiers know how to fight.

(Applause)

They are highly professional. Their engagements both on the land, sea and by air have shown a very well trained and disciplined force. So, I want the hon. Member to be patriotic enough and give credit where it is due. These young Kenyans, men and women, are prepared to give their very best. They have put their lives on the line in defense of the country. What we need at this

moment is to stand behind them 100 per cent and not to be praising Ethiopians when our own people are placing their lives to save our country.

(Applause)

We must be prepared to scale the stairs and shoot the gun at the same time. Whereas we are engaged in security operations in Somali, life cannot come into a standstill in our own country. We will make all the necessary arrangements and preparations to ensure that identity cards are provided to all the people who have attained the age that entitles them to be issued with those documents. We will ensure that they get identity cards so that they can participate in elections; and that they are also registered when the time for registration comes.

On hon. Mbadi's query, yes, in areas that we have captured, we are engaged in creating a civilian administration working together with the TFG. We have been creating civilian administration because we know that when a country has been in civil war for that long period, there are lives which are more or less wasted. Infrastructure had completely been destroyed. In some places, there are no roads, schools, health centres and so on. We are working together with other international agencies which are constructing and restoring infrastructure in Somalia. However, capacity building and training is the responsibility of the African Union (AU). The AU is very much engaged in that aspect of trying to create capacity within Somalia so that when a proper civilian government takes over, they will have the capacity to help them manage their country.

The hon. Member for North Horr, Mr. Chachu Ganya, tried to draw a comparison between Somaliland and Somalia. He was attempting to compare oranges with apples. However, I want to inform the hon. Member that our neighbour, Somalia, has had serious problems almost from Independence. As you know, during the colonial days, Somaliland had been divided to various spheres of influence. We had Italian Somaliland which bordered Kenya; British Somaliland which is at the horn, whose capital is Hargeisa and French Somaliland which is also known as the land of Afas and Isas which is now Djibouti. Then, there was another area that was inhabited by Somalis but was part of Ethiopia that they call the Ogaden. Of course, there is another part of it which is in Kenya. That is what formed what they called the "greater Somalia with the five stars".

At Independence, the British Somaliland decided to federate with the Italian Somaliland to form the Federal Republic of Somalia at that time. But those countries had been ruled as two separate colonies. Italians had ruled the south while the British had ruled the north. There was a big difference between these two Somalis. The British had created a lot of order in the north. There were proper education, health and administration systems. In the south, the system was different. Somebody said that it was only chaos that Italy was capable of creating. These two parts of Somaliland came and co-existed for a long time. However, as it has happened in many other African countries, because of bad governance, there was misrule and dictatorship in Somalia that tore the country apart. Many different groups came up led by warlords. That is why we are where we are. Somaliland is now a splinter group that has split away from the original federation and has formed a civilian government which has been carrying out elections as the hon. Member said.

We want to see a solution that is all inclusive and will be acceptable to all the people of Somalia. Whether it is a federation or whatever it is, it is up to the Somalis themselves to decide. All that we are doing is to try and create an enabling environment which will enable the Somalis

to carry out dialogue in order to structure the system of governance that answers the needs of the people of Somalia now and for posterity.

Hon. Ochieng asked about the returning of refugees to Somalia. I wish he would say that to Mr. Ban-Ki Moon and he would see the red lights. These people who have come to our country have become international refugees and are the responsibility of the United Nations High Commission for Refugees (UNHCR). So, their return is not an easy thing. We cannot, as a country, decide today that we are returning very many people back to Somalia. There are rules and regulations that must be followed. However, we have suggested that we set up proper feeding centres in areas which have already been liberated by our forces so that we can stem the tide of the flow of refugees coming from Somalia over to our border. This is because a number of these refugees are more of economic refugees than political refugees. Some of them are running away from hunger or lack of food, medicine and education. So, we have suggested that we set up centres inside Somalia where provisions can be made and given to them. The tents that we have constructed here can be constructed there. We can take water, build schools, health centres and feeding points so that they can be fed inside Somalia.

Mr. Deputy Speaker, Sir, this is something that we have suggested to the international community and we will not stop reminding them that this is necessary because this issue of so many refugees in our country is hurting our own economy. It is affecting our own security. You come from a constituency and you know from your personal experience what kind of environmental disaster the presence of so many refugees within our country portends. So, this is something that we will continue to raise with the international community.

Hon. Njuguna talked about the harassment of Kenyan businessmen in South Sudan. We know that South Sudan is a new country and this is a country that is being run by people who have just come out of conflict and they are in the process of building more durable structures in terms of security. It is true that Kenyan businessmen have been harassed. Kenyans have been killed, but I want to say that from the explanation received, it was not deliberate and that action was taken against the people who harassed Kenyan businessmen and even harmed some of our citizens. At the moment, the country is going through a very difficult period because the disputes with the north over the sharing of oil revenue or the cost of transportation of oil to the sea has forced them to stop the pumping of oil to the north. This from an economy which is 90 per cent dependent on oil is causing a serious economic challenge to them. The question of foreign currency is becoming a major issue. At the moment, the rations are being given selectively to our businessmen only when the need arises. So, we need to have some sympathy with our brothers in South Sudan as they try to resolve this dispute with their brothers in the north so that their economy can begin to function normally, once again.

Mr. Deputy Speaker, Sir, we signed a Memorandum of Understanding (MOU) to construct an alternative pipeline from the southern oil fields to Lamu. As we are talking, negotiations are ongoing in order to begin the construction of that second pipeline to Lamu. Hon. Members also know that in the process of us discussing this, Kenya also struck oil in Turkana. So, we might also now change our own concept of this pipeline to include the pumping of Turkana oil to the south towards Lamu.

Mr. Deputy Speaker, Sir, hon. Kapondi talked about refugees in Tana River who are harassing the locals. Yes, that information was received by the Government; that there were some refugees who had found their way into other parts of the country. We know that there are quite a number of them. In fact, the estimate is about 20,000 refugees who are illegally outside the refugee camps. The Government has now introduced biometric equipment for screening

purposes and this process is ongoing. This is the screening of some of these people who maybe illegally in the country and have them apprehended and taken back to the refugee camps. This is something that is ongoing. It is something that is not being deliberately tolerated by our people. We want to ensure that refugees are in the refugee camps under the charge of the United Nations High Commission for Refugees (UNHCR).

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Hon. Members, we are through with the Prime Minister's Time.

POINTS OF ORDER

CLARIFICATIONS ON CONSTITUTIONAL (AMENDMENT) BILL, 2012

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I rise to request for directions from the Chair and also request for clarifications from the Leader of Government Business. Under Standing Order No.110; "Every Bill Read a First Time shall stand committed to the relevant Departmental Committee without a question being put". The relevant Departmental Committee has ten calendar days to present a report on the Bill.

*(Messrs. Njuguna and Nkaisserry
consulted the Prime Minister)*

Mr. Deputy Speaker: Order, hon. Njuguna and hon. Nkaisserry! Allow the Prime Minister to listen to the debate.

Proceed!

Mr. Ruto: Mr. Deputy Speaker, Sir, I am saying the committee has ten calendar days to present a report on the Bill to the House from the date of committal. In respect of a constitutional amendment Bill, Article 256(1) (c) of the Constitution requires that a Bill to amend the Constitution shall be called for the Second Reading only after the expiry of 90 days as at the date of the First Reading of the Bill.

Mr. Deputy Speaker, Sir, the Constitution of Kenya (Amendment) Bill, 2011, that is dated 13th October 2011 that was published by the Minister for Justice, National Cohesion and Constitutional Affairs was read the first time on 23rd November 2011. I would like to know from the Leader of Government Business why the Bill has not been listed for the Second Reading even after the expiry of six months from the date of the First Reading and after the expenditure of substantial amounts of public resources on public consultation on the Bill.

Two, if the Bill is the property of the House, why is it not being treated with the urgency it deserves and yet there is still substantial debate over the question of the election date?

On the same lines, I would like direction from the Chair on the following: Can the Chair direct the House as to whether it will be possible to amend the Bill in the light of the provisions of Section 32 of the Sixth Schedule of the Constitution which by implication provides that Section 47(a) of the former Constitution is not saved?

Mr. Deputy Speaker, Sir, we are all aware that Section 47(a) (4) of the former Constitution provided that a Bill to amend the Constitution cannot be amended but this provision does not exist in the new Constitution. Is there any provision in the current Constitution, Standing Orders or are we following traditions? Will you allow the House to decide whether any

amendments can be made, save for the rule that it should not negate the intentions of the Bill? So, is there anything that bars the House from amending a Bill that seeks to amend the Constitution? This last part really requires direction from you. The first two parts are for the Leader of Government Business to give us direction.

I must thank hon. Odhiambo-Mabona for putting on United Republic Party (URP) colours as she came to Parliament.

Thank you.

(Laughter)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. I want to acknowledge that I am the one who actually told hon. Ruto that I am wearing URP colours today and that is indicative of something. It is not that I am in URP. It is indicative that he is warming up to me!

(Laughter)

CLARIFICATION ON TWO-THIRDS GENDER PRINCIPLE

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. As the Leader of Government responds to what hon. Isaac Ruto has asked on the Constitutional (Amendment) Bill, I would like him to also be clear about the provision that was dealing with the principle of two-thirds. It was part of this Constitutional (Amendment) Bill. What has been discussed and apparently disposed of by Government or by the courts is the election date but nothing has happened on the principle of two-thirds. That, again, we would like clarification on, as women of this country. We are wondering whether we were right when we said that this two-thirds amendment that was being brought together with the election date was a simple public relations exercise by the Government and it was not real commitment. We would like the Leader of Government Business to tell us the fate of the two-thirds principle on gender requirement in the Constitution.

Mr. Deputy Speaker: In the absence of the Leader of Government Business, and in recognition of the fact that the Prime Minister of the Republic of Kenya is the co-ordinator and supervisor of Government business, both inside and outside this House – a role which also includes supervising the Leader of Government Business – he should tell us how we go forward from here. If he wants to do it another time, the Chair will be more than glad but it is a serious matter that needs to be addressed urgently.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I agree that it is, indeed, a very serious matter which requires more attention and reflection. We will take this point. I will bring the matter to the attention of the Leader of Government Business because it is an issue which needs to be dealt with by the House Business Committee. I want to assure the hon. Member that this matter will be dealt with by the House Business Committee at its next sitting, so that a resolution can be passed as to whether it should be brought back to the House or not, so that the House can accordingly be informed.

Mr. Deputy Speaker: Hon. Members, the Chair is going to give a Communication as to whether an amendment to the Constitution can be further amended on the Floor of the House.

Whereas the Chair is in no doubt on that provision, nonetheless just in case; the Chair will give a ruling on the same next Wednesday morning.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I would like to seek the indulgence of the Chair to possibly give the ruling on the Tuesday after next week because most of us will be out on parliamentary business.

Mr. Deputy Speaker: Where will you be yourself?

Mr. Ruto: Mr. Deputy Speaker, Sir, I will be attending to other parliamentary business.

Mr. Deputy Speaker: Fair enough! The Chair appreciates and recognises the need for hon. Members who rise on points of clarification to be given opportunity to be in the House when the matter is being clarified. Therefore, the Communication from the Chair on the matter will be given on Wednesday morning, two weeks from today.

Hon. Members, you all realise that today was clearly not a very good day for the Government side. Members of the Government have gone to Ndhia, in solidarity with a fellow Member of the Government; the Minister for Finance, who was burying his son today. I received communication from the Minister for Justice, National Cohesion and Constitutional Affairs that he will not be able to move either of the two Bills listed on the Order Paper of today. Consequently, the Chair directs that Order Nos.8 and 9 be deferred to another day.

BILLS

Second Readings

THE KENYA SCHOOL OF LAW BILL
THE LEGAL EDUCATION BILL

(Bills deferred)

Mr. Deputy Speaker: Next Order!

MOTION

ADOPTION OF REPORT OF THE DEPARTMENTAL COMMITTEE
ON DEFENCE AND FOREIGN RELATIONS ON RENDITION OF
KENYANS TO STAND TRIAL IN FOREIGN COUNTRIES

Mr. Keynan: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the rendition of Kenyan nationals to stand trial in Uganda and other foreign countries, laid on the Table of the House on Tuesday, 20th December, 2011.

Mr. Deputy Speaker, Sir, the issue of rendition of Kenyans to Uganda and other foreign countries is a matter of great national concern. Members of Parliament, at different times in the Ninth and Tenth Parliaments, and in earlier Parliaments, have raised the fundamental issue of the constitutional rights of Kenyans. "Rendition" is the transfer or handing over of persons or property, particularly from one jurisdiction to another jurisdiction.

The renditions that took place were as a result of the sad incident of a bomb blast at an entertainment spot in the suburbs of Kampala, where 76 people were killed and many others seriously injured. It was as a result of this that the region moved into action to arrest many people, not only in Uganda but in all the East African states. In the process of doing so, a number of fundamental issues came up.

Mr. Deputy Speaker, Sir, in the Kenyan context, one of the issues that we learnt, as a Committee, which is clearly, again, contained in this Report, is that over the years, radicalism has been associated with particular religions or groupings of people or particular ethnic groups. Out of the 16 Kenyans who were arrested in Kenya, or in other parts of the region, whose names I would like to read out, only two were members of the ethnic groupings that had hitherto that incident been associated with radicalism.

Out of the 16 persons who were arrested, one of them was called Hassan Isaac, who was a convert to Islam; others include Isaac Gedi Godana, a convert to Islam; Hussein Alawi Abdi, who was born a Muslim; Abdul Aziz Madobe, a convert to Islam; Abdullahi Mohammed, a born Muslim; Kanyoro Andrew, a convert to Islam; Osman Mohammed, a born Muslim; Khalif, a convert to Islam; Habib Njoroge, a convert to Islam.

Hon. Members know the history of Al-Amin Kimanathi. Additional persons who were arrested were Omar Aduwa, a convert to Islam; Idris Magondu, a convert to Islam; Hassan Agade, a convert to Islam; the rest were Mohammed Hamidi, Mohammed Ado, and Yahya Mbuthia.

Mr. Deputy Speaker, Sir, I felt that I should read out these names, so that Kenyans can know that indeed radicalism is not the preserve of any particular grouping or ethnic group in Kenya. It is something that cuts across the country. It is, therefore, high time that as we look into the issue of radicalisation and some of the factors that might have contributed to radicalisation of our people, the Kenyan leadership, and in particular those who are in charge of these issues, expand their horizon of imagination and thinking and start to deal with this serious threat, and not to apportion blame to a particular ethnic group in the country.

If hon. Members look at the names that I have just read out, they will appreciate that some of the individuals are from Western Kenya, some from Nyanza Province, some from the Central Province, some from the North Eastern Province, some from the Rift Valley and some from other parts of the country. Traditionally, whenever such events took place, the common notion – which has been a result of the continuation of some of the old stereotypes or historical injustices – would be to associated such radicalism with somebody from Northern Kenya, and more so somebody who was born a Muslim.

Mr. Deputy Speaker, Sir, the dynamics have since completely changed. It is high time that radicalism is addressed in its entirety as a new phenomenon that has no borders or ethnic limitation or communal barriers. It is because of this that two High Court judges made a declaration that, indeed, the rendition of Kenyans to Uganda without subjecting them to any trial in Kenya was unconstitutional, capricious, malicious and oppressive to the extent that those individuals had not been subjected to the due process of the Kenyan law, as required by our Constitution.

Justice is individual. Why should a Kenyan be arrested, bundled into a vehicle and taken to a foreign country without being subjected to the due process as required by our Constitution?

Mr. Deputy Speaker, Sir, as much as the courts have unfettered criminal jurisdiction to determine cases, these issues of just arresting individuals and handing them over to different

entities without any local jurisdiction is something that must come to an end. As a country, this is not something that we envisaged when we zealously voted for a new Constitutional dispensation.

One of the intents of the generous new Constitution was to protect the fundamental basic rights of every Kenyan to the extent that one is assumed to be innocent until proven guilty. Therefore, the notion that whenever you are suspected, you are bundled into a car, taken to Ethiopia or Uganda, is something our current Constitution did not envisage. Therefore, this august House or the Tenth Parliament must say “no” to these injustices, unconstitutionality and the illegal practice that is still going on.

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mrs. Shebesh) took the Chair]*

Madam Temporary Deputy Speaker, it is a reality that the challenges of some of these imagined threats are real and this country must be protected. We must safeguard our borders and territorial integrity. We must be prepared to protect the lives and properties of the people of Kenya and all other businesses, but that does not take away the fundamental constitutional right of every Kenyan. This is why we have clear separation of institutional roles. That is why we have votes, we have funded and we have clearly enshrined in the Constitution a pro-justice Judiciary, a pro-people friendly Judiciary and a well reformed and well funded Judiciary. That is why we must adhere to the rule of law and ask the Executive to clearly follow the institutional separation and allow the Judiciary to function as required by the Constitution.

Madam Temporary Deputy Speaker, in our opinion, when we looked at this, it is totally wrong for the Executive to take over the role of the courts, the police and determine the “guiltiness” of an individual before even the individual is subjected to a court of law. This is why rendition; surrendering Kenyans to other entities without subjecting them to the due process of the Kenyan law as required by our Constitution takes us back to the old days where everybody was at the mercy of few individuals. You could be arrested, arraigned in court, detained without trial and at times you could even be convicted without being heard. Is this not the era that we really want to go away from? Who would like to be a citizen of a country where the due process or the rule of law does not enjoy the constitutional requirement? Nobody!

(Applause)

Therefore, as much as it is painful, this is why one is assumed to be innocent until the court decides otherwise. If our police forces or those who are in charge of this give themselves the power to arrest, detain and deport you illegally, then is there any need of having a judiciary? Is there any need of having a third arm of Government which is clearly interested in adjudication of cases, be it criminal, civil or otherwise? It is because of this that when we looked at this--- Our observation is that, indeed, what the Government did clearly contravened the Constitution and two Judges, namely; Justice Warsame and Justice Joseph Muchelule, declared the actions by the Government as clearly unconstitutional and, therefore, asked the Government to have those Kenyans returned and tried here. Shockingly to date the Government again has remained contemptuous of the court decisions and most of those Kenyans still languish in prisons in Uganda.

Madam Temporary Deputy Speaker, though we are in the East African Community and IGAD together, the framework of the constitutional applications and implementation in Uganda and Kenya are fundamentally different. Therefore, this is why it is fair that until we have a thorough and comprehensive political, economic, diplomatic, judicial integration at the level of the East African Community, the rights of Kenyans in respective States must be respected so that we do not take away the fundamental rights of individual citizens of each of the member States of the East African Community.

Madam Temporary Deputy Speaker, rendition also contravenes the fundamental rights of an individual. These individuals have families and relatives and are Kenyans. When you are just arrested and bundled and taken to a foreign country where you will not have access to justice and where your relatives and other friends will suffer even in the process of visiting you, then what are we saying? Are we respecting the fundamental rights and the liberties of these particular individuals? Is that not a clear contravention of the generous fundamental rights clearly enshrined in the current Constitution and even in the old Constitution?

The matter of rendition of Kenyans to foreign countries and in particular to Uganda has been forwarded to the East African court. There are quite a number of individuals where even both the lawyers and families have been arrested even on the premise that they visited criminals. If the lawyers are arrested--- You know what happened to lawyer Mbugua when he visited Al Amin Kimathi. Where is justice? Where is the rule of law? Are we going to throw away the rights of Kenyans simply because one is suspected? Does the mere fact that one is a suspect take away the fundamental rights of an individual? These are issues that the courts have adjudicated and made decisions on, but the courts' decisions have not been respected.

Madam Temporary Deputy Speaker, shockingly again, one of the things that we learnt is that there was no clear or common Government position. The Attorney-General would say one thing and the Minister of State for Provincial Administration and Internal Security would say another thing. The Minister for Justice, National Cohesion and Constitutional Affairs would say something else. The police would also say something else. Where is the clear or common Government position as far as this particular issue is concerned? Again, that was an issue of great concern to the Committee.

On the fundamental rights of the individual, an individual is innocent until proven guilty. By the mere fact that those individuals were arrested, bundled into a car and taken to a neighboring country, it is clear that they were affected. It is a reality that there is a real threat of terrorism and fundamentalism. But this is an issue that must be addressed in totality. We cannot apportion blame to a particular group and simply say that because your name is Shebesh, Mohammed or Kinuthia then, indeed, you are a terrorist. No! We need to address the real causes. What is forcing our youth, whether they are called Mbuthia, Kamau or Mohammed, to join Mungiki? What is forcing them to join the Mombasa Republican Council? What is forcing them to join radicalism? Is it not high time that this Government addresses the root causes? The causes are there. They are inequality, lack of jobs, unemployment and corruption. These are the challenges that you must address. You cannot just say that, as leaders, we are there and that we will deal with the MRC. You must address their grievances. What is forcing them to join that group? What is causing radicalism in that region? What is forcing our youth to join Mungiki? What is forcing them to join other radical elements? These are the issues that we must address, as leaders, instead of just dealing with the symptoms. The symptoms are what we are seeing. They are crime, unemployment and radicalism. But what are the causes? The causes must be addressed. That is why I agreed with those who suggested that these groups must be engaged.

These are Kenyans but they must also subscribe to the territorial integrity, the sovereignty and the will of the people of Kenya.

Therefore, when they negotiate or raise some of their concerns, they must raise them under the auspices of our flag and national anthem. We will not negotiate with any group that purports to support any secessionist intention on the republic of Kenya because the territorial integrity and existence of the republic of Kenya as clearly enshrined when we got our Independence and when we got together as a nation State must be respected at all times. That is why I want to urge the Government to engage these people within the confines of our territorial integrity; within the confines of our independent jurisdiction and within the confines of our flag. Therefore, anything outside that will be unconstitutional and to some extent seditious, although in our laws, again, that has been delegated to somebody else.

Madam Temporary Deputy Speaker, if our courts have made a declaration, who is to follow the declaration? How is our Judiciary going to be respected if the very institutions that are expected to enforce the rule of law are not going to follow the decision of our courts? This is why those who fail to execute the orders, the rulings by Justice Muchelule and Justice Warsame, must be held accountable. This is the only thing that can save the people of Kenya. The rule of law is a critical component to the existence of the Republic of Kenya.

Constitutionalism and the rule of law are not issues that can just be cooked in a pot. These are issues that we must nurture as a group and as a nation. We must be prepared to live by this. It is very expensive. Try other things. In all the countries that have plunged into social, political and economic upheavals, one of the contributing factors is the lack of the rule of law, or lack of adherence to the rule of law. Is this where we want to place Kenya? Do you want to project Kenya as a failed nation? The attributes of a failed nation is one where there is no rule of law, there is no clear institutional separation and individuals live by their will. Living by their will means somebody will come and do anything to Madam Temporary Deputy Speaker or to so and so. The reason why we have fought jealously over the years to domesticate the rule of law through our Constitution and other statutes and legislations is because we want to enjoy the freedom, and liberty of being governed through the rule of law, and not by any other means.

Madam Temporary Deputy Speaker, while not vouching for the innocence of these individuals, none of us can--- Even the Committee Members did not make any attempts to vouch for the innocence of these individuals. We also did not want to vouch for the guilt of these individuals. The only thing that we were saying is, can they be subjected to the rule of law? Can they be tried under the existing legal mechanisms? Can they be given a fair hearing? Can they be allowed free access to lawyers or legal counsel? These are the issues we must address. We know at times there are challenges and I empathize with our security apparatus. I empathize and sympathize with them in the execution of their day to day activities. We must respect the good work they have done. However, that does not, again, take us to a country which is governed through the law of the jungle or a country that has no institutional mechanisms. These are issues we have done away with.

Madam Temporary Deputy Speaker, you know the history of this country. There are individuals who have been detained simply because of thinking outside the box and being creative outside the political class of the day. Is this where we want to go back to? These might be lesser beings or ordinary Kenyans; what we do not want to happen to a senior Kenyan, we must not also allow it to happen to any other Kenyan regardless of the social, economic, political, religious or any other form of diversity. These are the issues that we have clearly said “no” to when we deleted sections of the old Constitution to make sure no Kenyan was either

going to be detained or jailed for thinking outside the box. “Outside the box” means thinking outside the parameters defined by the political class of the day.

These are the realities. We have invested in knowledge and this is why quite a number of Kenyans have been detained. We fought hard in the second liberation to make sure Kenya became a multi-party State. I want to salute the many Kenyans who participated in the fight for multipartism. One of the groups or some of the groups which were used in historical stereotypes-- In the old days we used to hear of a Somali bandit. I do not know whether you have heard of a Kikuyu bandit or a Luo bandit or a Kalenjin bandit. Whenever an issue of terrorism or militarism occurs somewhere, the first thing we say is that this must be a Muslim or this must be a Somali or this must be so and so. No! The benchmark has changed. Radicalism cuts across. Out of these 16 names only two are of ethnic Somalis. How many Kenyans will believe me? What I am saying is radicalism is not the preserve of any particular community. This is something that cuts across, and we must address it; it is something that is there. It is something that is real and, therefore, we must seek a comprehensive solution to this menace if we want to have a brighter future.

Madam Temporary Deputy Speaker, as a result of these issues, some of the overzealous institutions have resorted to ethnic profiling and victimization. Some of the individuals involved have lost their business. Over the years, we have attempted to project Kenya as a business haven. We have attempted to project Kenya as an investment destination. If you are already victimized or profiled simply because of your name and background that is unconstitutional and does not reflect the spirit of the new Republic. It does form part of our constitutional framework to have a free and democratic country governed by the rule of law. Therefore, I want our leadership, and in particular the different components of the Kenyan society, to psyche themselves that we are governed by a new constitutional dispensation. This is the reality. We need to shed off those aspects of the old Constitution that we thought would allow you to do anything to a Kenyan citizen. The rule of law is a cardinal principle clearly enshrined in the current Constitution and we must live by it.

Madam Temporary Deputy Speaker, it is as a result of this that I want to appreciate that Kenya, as a premier nation, is an important country that has challenges. We have challenges of insecurity, securing our long and porous border, negative ethnicity and everyday politicking. The issue of radicalization of the youth must play a fundamental role in the policy formulation of the different parties. Until we do this, the youth of this country will just remain a voting tool to be sought after whenever elections come.

I want to ask the youth of Kenya today not to allow themselves to be used as a political decoy or political rubber stamp. I also ask the leadership of different parties what they have done for the youth in terms of policy formulation and the youth rights, education, job creation, eradication of corruption and eradicating or minimizing negative ethnicity.

Madam Temporary Deputy Speaker, today, my daughter does not know the tribe she comes from. My son does not know the tribe he comes from. Her tribe is her school mates. But the individuals who are ready to introduce them to negative ethnicity are other people. They will be told this is where you belong. This is the bit that we need to discourage completely and have a Kenya of one tribe.

One of the reasons why we have Kenya as a nation is because the colonialists, after the Berlin Conference of 1884, decided to temporarily do away with the then existing community boundaries. Therefore, we must accept Kenya and its diversity. We must accept Kenya with its internationally recognized borders. These are the issues that are going to give us solace. These

are the issues that are going to assist Kenyans. Therefore, the leadership must, in its actions, manifesto and creative imagination, accept Kenya as one tribe. We have a common flag, the same internationally recognized borders; our sports men and women have done great things; we use the same currency and, therefore, the same Constitution is above anything else. Those who want to cluster Kenya into different ethnic cocoons must be rejected, whether we are campaigning or in other seasons.

As leaders of this country we must declare that these are the individuals who are encouraging the balkanisation of Kenya, radicalization of the youth and encouragement of negative ethnicity. These are the realities that we must talk about.

Madam Temporary Deputy Speaker, these are the realities we must talk about because for how long will our friends question the existence of the continuity of this beautiful Republic? Whenever the elections come, we see investors pulling out. Whenever the elections come, we see individuals going away simply because, psychologically, they are not comfortable. These are the issues we must address and the only way we can address them is if we clearly follow the rule of law.

These are some of the recommendations of the Committee as a result of this. The first recommendation is that the Government should take all the necessary steps to ensure that Kenyans rendered to Uganda in contravention of the Constitution are returned to Kenya to face the due process of law as soon as possible. Therefore, we expect, because this is the decision of the Committee, this is the reality and it is in line with the declaration of two High Court judges with clear jurisdiction that these individuals must be brought back here to be tried by our competent and independent judicial officers.

Secondly, the Government should take responsibility for the rendition of all the individuals involved. All the individuals involved in the rendition of Kenyans be investigated and prosecuted. For how long will this be? Today, God forbid, that if somebody just decides that we are suspicious of the activities of Madam Speaker and just bundles you into their car and takes you to Ethiopia, Rwanda or elsewhere--- As much as nobody can vouch for the innocence of that individual, what we will not accept and what we will detest is that very action of somebody not being subjected to the rule of law. It is because of this that we are asking these individuals be investigated and brought to book.

Thirdly, in future, while the Government undertakes renditions because there might be some legal agreements; there might be some mechanisms for mutual legal assistance and there is a fundamental difference between extradition and rendition. Extradition is governed and it is a product of the due process of the court of law. Rendition is something in between; you are not subjected to any law. You are just rendered; it is from the English word and so you have been rendered. You have been handed over! With extradition you are subjected to the due process and there must be some sort of legal agreement between all the actors. Therefore, it is because of this that when the Government puts in motion some of these things, the constitutional fundamentals and the rule of law must be followed.

The fourth recommendation is that at all times, the Government must follow, respect and uphold the fundamental rights of citizens as enshrined in the Constitution. We cannot, selectively, simply because it suits our interests, adhere to the Constitution. That this section today is compatible with my rights; it is compatible with my imaginations and, therefore, I will want to follow it. No! The rule of law is whether you like it or not, you must respect it as it is. Therefore, those who are in charge of implementing; executing because our work as the Legislature is to legislate, to pass laws, but there are other arms of Government who are tasked

with the implementation; with the execution of some of these. It is because of this that if these institutions do not follow or adhere to the provisions of these laws, then Kenya will become a banana republic or a country governed by jungle law and this is not the description that we want to get.

Madam Temporary Deputy Speaker, in the light of the danger that we face from this international declaration, there is need to come up with legislation that will be constitutional friendly so that this issue of open ended approach to dealing with radicalism is reduced or eliminated. There is need to legislate and come up with different legislations in tandem with the current Constitution to address some of these security challenges. It is a reality that this must be done because we need to exist; we need to have a peaceful nation. We need to have a prosperous country. We need to have a country where all visitors and citizens will feel secure whenever they come to its borders.

Finally, there is a serious issue. Traditionally, we used to have patriotism and nationalism. As a result of the serious developing ethnic or negative ethnicity, these days what we see is a new phenomenon called biological nationalism; that you are always right to the extent of limiting your confines of imagination within your tribe. Is this the way we want to do it? Our politics has been tribalized, ethnized and trivialized and regionalized. Is this the kind of legacy that we want to give to our children? Is this the kind of thing that we want to leave to this beautiful nation? It is because of this that we must think outside the box. I want to urge the political class and the Kenyan citizen – in particular the political class – that they must get out of their ethnic based cocoons. We must think rationally! We must think as Kenyans.

In this country we have many institutions that have done us proud. Our sportsmen and women have done us proud internationally, all over. How are we going to encourage them to move on with their heads up if some of these things whenever somebody opens his TV internationally, they say this is Kenya? These are issues that we must address as leaders and since this is our time and since God has allowed us; God has given us the opportunity--- The Almighty God has given us an opportunity today as part of the political class to govern this country. We must always be conscious that one day we will be asked: “When we were there, what did we do for the citizens of the Republic of Kenya? How did we help them in their governance structure? How did we help them in their adherence to the rule of law? How did we help them achieve economic prosperity? How did we help them in job creation?” These are issues that we must address, otherwise, our description as an economic power house; our description as a country governed by one of the most generous constitutional dispensations will only remain in theory.

Madam Temporary Deputy Speaker, finally, the traditional definition of government structure has changed. In the old days we used to talk about the Executive, the Legislature and the Judiciary but right now we have other imagined arms of government. We have the members of the Fourth Estate and members of the Civil Society which now makes the traditional arms of government, three and other imagined arms of government. It is a reality and that is why today this country has one of the most open and vibrant media institutions. This is something that we are very proud of and this is because today the ruling class will always be on the focus and until we get our act in order and stand firm for the rights of Kenyans, our actions will be questioned today, tomorrow and the year after because Kenya is a godly nation. Kenya is a country that subscribes to the rule of law and also to the decrees of God. Whether one is a Christian, a Muslim, Hindu or whether it is African traditions, these are realities that we subscribe to.

Having said this, I would like to move that this House adopts this report and call on Mr. C. Kilonzo to second the Motion.

Mr. C. Kilonzo: Madam Temporary Deputy Speaker, thank you! I wish to second this Motion that this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the rendition of Kenyan nationals to stand trial in Uganda and other foreign countries laid on the Table of the House on Tuesday 20th December, 2011.

As I do that, it is important to know that although we are a new constitutional dispensation, we still have those within the Government or the country who do not seem to understand the rule of law and, therefore, they are still living in the past and still encouraging the old ways of impunity. This Committee interrogated a number of people including the then Attorney-General, Mr. Wako; the Minister for Justice, National Cohesion and Constitutional Affairs, Mr. M. Kilonzo; the Commissioner of Police and the Minister of State for Provincial Administration and Internal Security, Prof. Saitoti and I will come to those details later.

For starters, it is important to understand what we are talking about. What is rendition? What practice is it? Extra ordinary rendition and regular rendition are terms which are used to describe the apprehension and extra judicial transfer of persons from one State to another to be interrogated. It is meant to by-pass the law. It is meant to achieve torture by proxy. That is the whole idea. What the Kenyan Government did was to transfer suspected terrorists to Uganda, a country that is known to employ harsh interrogation techniques that amount to torture. What the Kenyan Government did was to outsource torture. Outsourcing torture is morally repugnant behavior on the part of the Kenyan Government. The Kenyan police used rendition to outsource interrogation. This country has all the machinery and systems. We would have tried those people here or even followed the due process to extradite them to Uganda.

Why is extra ordinary rendition illegal? Extra ordinary rendition breaches international law under Article 3 of the UN Convention against torture and other cruel inhuman or degrading treatment or punishments. Secondly, this convention also prohibits the expulsion of a person to another State where there are substantial grounds for believing that you will be in danger of being subject to torture. The second reason why it is illegal is because extra ordinary rendition involves the transfer of a suspect outside the transferees' jurisdiction. It means that Kenya has no control.

If you look at our report, just to emphasize why it is illegal, when the Law Society of Kenya appeared, they gave enough grounds and I want to refer you to page four of the minutes after the report. None of the suspects have been brought before a court of law in Kenya as required by law. In the first place, they should have been taken to a court of law in Kenya and thereon, if the court rules that they be extradited, then, let the law take its course. The treatment of the suspects has been in contravention of Articles 7 and 9 of the International Court of Civil and Political Rights and Article 6 of African Charter on Human Rights which Kenya has ratified. As we know, the articles provide for protection from torture and ill treatment, the right to liberty and security of a person. There are many grounds which can be given.

Extra ordinary rendition in whatever form is illegal and it is never done in good faith. America has been the god father of renditions. They are behind the renditions in Kenya and many other countries in the world on the pretext of fighting terrorism, thereby by-passing the judicial system. This is what some former CIA agents had to say on allegations of rendition. This can be found in a book, Barnett of 2008. They said as follows:-

“If you want a serious interrogation, you send a prison to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear, never to be seen again, you send him to Egypt”.

You can get the whole idea about rendition. The idea is not about judicial system or justice. Terrorists use abductions and kidnappings to instill fear. Then one wonders why the Kenyan Government would pay lip service to the rule of law by resorting to the same tactics employed by the very terrorists they are fighting. Extra ordinary rendition surpasses the rule of law and undermines essential international law enforcement operation. When hon. M. Kilonzo appeared, what did he have to say, when he was the Minister in charge? Hon. M. Kilonzo, who was the then Minister for Justice, National Cohesion and Constitutional Affairs had the following observation; “that the Ministry of Justice, National Cohesion and Constitutional Affairs was not aware of any policy of the Government of Kenya permitting or allowing extra ordinary renditions”. He went on to say that his Ministry was neither involved nor consulted before the said Kenyans were transferred to Uganda to stand trial. Further on, he recommended that those who facilitated rendition should be arrested for violating the Constitution and the laws of Kenya. I want to repeat what he said, and he is a Minister in the Government. He said that “those who facilitated the rendition should be arrested for violating the Constitution and the laws of Kenya. The Kenyans detained in Uganda should be returned to Kenya to face the due process of the law”. He went on and told us that the matter of rendition was raised in the Cabinet by the Minister of State for Provincial Administration and Internal Security, but the issue was adjourned to await the Attorney-General who was then out of the country.

To the surprise of the Minister, he came to learn of the arrest and the deportation of the Kenyans through the media. That is a Minister in the Government. Let us see what the Attorney-General had to say. He was very clear. He said that: “The persons were rendered to Uganda without reference to the Attorney-General. The Attorney-General was never informed prior to the rendition”. You can imagine that this is the Attorney-General. In the same Government serves the Minister known as Prof. George Saitoti who said that:-

“The decision to hand over Kenyans suspected of terrorism activities was a Government decision that was taken for the interest of the country”.

If the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs who sit in the Cabinet are saying that this was never discussed in the cabinet, where was it discussed? Was it in a kitchen Cabinet? Even then, one wonders, even if this was agreed, why was the due process of the law ignored? That is why our Committee felt that apart from taking the necessary action on the culprits, these Kenyans should be brought back and tried in this country. Action should be taken against all those who were involved in by-passing the law.

With those few remarks, I wish to second.

(Question proposed)

Mr. Njuguna: Thank you, Madam Temporary Deputy Speaker, for giving me the chance to contribute to this very important Motion.

Let me start by thanking the Committee and the Chair for the diligence they have exhibited in the generation of this Report. It is important that we note national security is an ingredient to development in this country. Therefore, it is important for the Government to wage a vibrant fight against any threats by terrorists. I recall when Kenya and Tanzania were hit by

terrorist attacks the same day. Many lives were lost and property was destroyed. That caused a very serious scare to Kenya and to the entire East African region. Consequently, it also affected our social fabric and even scared economic development in this country. Investors were almost trying to avoid this country because of what had happened.

Madam Temporary Deputy Speaker, I want to reiterate that this country is governed by a Constitution. The Constitution guarantees all Kenyans their freedoms, their rights and even the enjoyment of their Constitution even in its implementation. Therefore, when we heard that 11 Kenyans were arrested in Uganda, it would have been prudent if they were tried speedily in that country and their rights guaranteed in a court of law. We have courts in Uganda and if there were merits on the arrests, those people should have been taken to a court of law, avoid unnecessary harassment, traumatizing innocent Kenyans and even denying them their human rights. Up to now, we are not sure of the health status and their families. Even the Kenyan population is also concerned about those 11 Kenyans.

Our memories are quite vivid that when they sought for legal representation in Uganda, the lawyers who went to represent them were also immediately arrested. They were denied their right to practice law in that country. Therefore, it is important that those Kenyans enjoy their rights, just like the way we have our rights in this country.

Concerning the other five Kenyans who were arrested in Kenya and surrendered to the Ugandan Government, that should not have happened because we have our own police. We have our police system. We have our own courts system. They should have been arrested and accorded their rights of representation. That has not happened. Therefore, it is important that, as we continue to fight terrorism and any other threat, basic human rights of our people should not be denied. It is almost clear from the Report that there was no proper co-ordination when those people were arrested and taken to Uganda. That, in my view, should not have been the position and the Government - particularly the departments that were involved - should be held accountable so that, that becomes a lesson to other heads of government departments. Kenyans are now in a free independent country and there should be no threat as we try to address national security matters of this country.

Madam Temporary Speaker, we have international treaties and the Interpol. If it is Interpol that arrested those people, our conscience would be clear. Therefore, now that Interpol was not used in that predicament, it is unconstitutional and illegal to continue holding Kenyans in Ugandan jails. Our people have been harassed in Migingo Island, where they are settled lawfully. The Island is on the Kenyan side and, up to now, we have not been told what is really happening.

The Kenyan Government has not surrendered or sold Migingo Island. Therefore, there must clear demarcation so that our business people and even citizens can enjoy their freedoms in all corners of this country. Our boundaries must be cleared properly so that our current and future generations will not be arrested unnecessarily. As we fight the *Al-Shabaab* and *Al-Qaeda* threat threatening this country, Kenyans should not be taken for a ride.

With those few remarks, I beg to support the recommendations of the Committee.

Mr. M.H. Ali: Thank you, Madam Temporary Deputy Speaker. I wish to say that I am a member of the Committee. This Report was done quite a long time ago. I believe that it should have come before this House much earlier than now. That is because some of the cases are already far much ahead than when we started.

Madam Temporary Deputy Speaker, I am in agreement with the fact that, as citizens of this country, as responsible members of this nation, we should not, at any given time, condone

any criminality, whether committed in Kenya or outside Kenya, whether by Kenyans or non-Kenyans. The fact that the incident that took place in Uganda was associated with terrorism, we should condemn it with the fullest condemnation. The fact is that terrorism is becoming a menace not only in Uganda, not only in East Africa, but the whole world. Kenya, in particular, has suffered as a result of terrorism threats. Those threats could be through the *Al-Shabaab*, *Al Qaeda* or any other groupings in Kenya. Some of them have already been outlawed in Kenya.

Madam Temporary Deputy Speaker, we sympathise with the criminal activity that took place in Uganda; the loss of lives and property. We also commend Uganda for deploying their forces in Somalia to bring back sanity inside Somalia. However, that does not justify any contravention of the law. We have the Constitution that clearly stipulates - as already mentioned by the Mover and Seconder--- The Constitution takes care of how criminal activities should be dealt with. Kenya is a member of the East African Community. Uganda is also a member. But we do not know of any rendition treaty between Uganda and Kenya. The fact is that most of those suspects were arrested in Kenya. They were not arrested in Uganda. Had they been arrested in Uganda, that would have been a different matter all together. But quite a number of them were arrested in Kenya and surrendered without following due process. When our Committee sat with senior Government officials, including the then Minister for Justice, National Cohesion and Constitutional Affairs, they all denied knowledge of how the renditions were made. In fact, as was said earlier, the said Minister had actually said that those people who were behind the rendition should be arrested and arraigned in court. Kenya is a good neighbour to Uganda.

Kenya cannot allow bad things to happen in Uganda. So, if our Government was very sincere, then due process should have been followed. After arresting those people in Kenya for suspicions of having a link with the terrorism action that took place in Kampala, Uganda, due process should have taken place. Our courts should have actually verified and ascertained whether those people had a hand in the criminal terrorism that took place in Kampala. After ascertaining that, that was actually the case, and then they could have been--- If there was an agreement between the two countries, after following the due process, then they could have been taken over to Uganda. But what also surprised us the most is that our own other citizens of Kenya, including some lawyers and some human rights activists including Al-Amin Kimathi, after they went to Uganda to ascertain the situation of those suspects in Kampala, they were arrested. Even after the international community demanded that those people should be released, they only released the lawyers and kept Al-Amin Kimathi captive for a long time. It was only due to the international pressure - not the Kenyan pressure - that Al-Amin Kimathi was later released without any charges.

*[The Temporary Deputy Speaker
(Mrs. Shebesh left the Chair)]*

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

This is where we have a serious problem. Some of these people who have been taken there as suspects may not even have been suspects. It is the courts that should be able to get these facts on whether they are actually part and parcel of this terrorism or not.

Mr. Temporary Deputy Speaker, Sir, we are asking our Government; whose responsibility was it to surrender these Kenyans to Uganda, if everybody is denying? If the

Ministers and the Attorney-General are all denying and saying that they had no knowledge of who surrendered these suspects to Uganda, then who was behind it? Are there some authorities in this country who do not pass through the legal channels to ensure that proper and due procedure is followed? If the police were the ones behind this, then who were they taking orders from? The courts haven't sanctioned this; the Minister has not sanctioned this and the Attorney-General has not sanctioned this. Who sanctioned the rendition of these Kenyans to Uganda? If tomorrow they are found guilty, will the conscience of Kenyans be clear that, actually, due process was followed? That Kenyans who have been tried there were given proper counsel, so that they could be listened to and so that Kenyans and their families, in particular, be clear that they have been given justice?

With these few remarks, Mr. Temporary Deputy Speaker, Sir, I beg to support this Motion.

The Temporary Deputy Speaker (Mr. Ethuro): Are there any other hon. Members to contribute? Since there is no other Member to contribute, I will now call upon the Mover to reply.

Mr. Keynan: Thank you, Mr. Temporary Deputy Speaker, Sir.

I beg to move that this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Kenyan Nationals to stand trial in Uganda---

Mr. Njuguna: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am concerned about the quorum in the House as---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order! You have already spoken, so you cannot do so.

Proceed, hon. Keynan!

Mr. Keynan: Mr. Temporary Deputy Speaker, Sir, I beg to move that this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Kenyan Nationals to stand trial in Uganda and other foreign countries as laid on the Table of the House on Tuesday 20th December, 2011.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members. We have concluded the Business for today. The House, therefore, will stand adjourned until tomorrow, Thursday 24th May, 2012, at 2.30 p.m.

The House rose at 5.55 pm.