

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 15th 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:-

Annual Report and Financial Statement of the Agricultural Development Corporation, Garissa Irrigation Project, for the year ended 31st March, 2011 and the Certificate thereon by the Auditor-General.

*(By the Assistant Minister for Regional Development Authorities
(Mr. ole Metito) on behalf of the Minister for Agriculture)*

The Financial Statement of the Kenya Film Classification Board for the six months period ended 30th June, 2010 and the Certificate thereon by the Auditor-General.

*(By the Assistant Minister for Regional Development Authorities
(Mr. ole Metito) on behalf of the Minister
for Information and Communications)*

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

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

The Financial Statement of the County Council of Meru South for the two-year period ended 30th June, 2009 and the Certificate thereon by the Auditor-General.

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

The Financial Statement of the County Council of Embu for the two-year period ended 30th June, 2009 and the Certificate thereon by the Auditor-General.

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

The Financial Statement of the County Council of Thika for the year ended 30th June, 2009 and the Certificate thereon by the Auditor-General.

The Financial Statement of the County Council of Makuyu for the year ended 30th June, 2009 and the Certificate thereon by the Auditor-General.

The Financial Statement of the Municipal Council of Kitui for the year ended 30th June, 2009 and 2010 and the Certificate thereon by the Auditor-General.

*(By the Assistant Minister for Regional Development
Authorities (Mr. ole Metito) on behalf of the Minister for Regional
Development Authorities and Acting Minister for Local Government)*

(Mrs. Ngilu stood up in her place)

Mr. Deputy Speaker: Hon. Charity Ngilu, do you wish to lay some Papers on the Table?
Yes, hon. Kapondi!

Report of the Departmental Committee on Administration and National Security on the Vetting of the Nominees to the National Police Service Commission.

(By Mr. Kapondi)

NOTICE OF MOTION

ADOPTION OF REPORT ON NOMINEES TO NATIONAL POLICE SERVICE COMMISSION

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

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the Vetting of the Nominees to the National Police Service Commission laid on the Table Tuesday 15th May, 2012.

ORAL ANSWERS TO QUESTIONS

Question No.1219

STALLING OF COMMUNITY MARKET CENTRE PROJECT IN GATIMU

Mr. Mureithi asked the Minister for Local Government:-

(a) whether he is aware that the Government had set aside a plot of land for a community market centre at Gatimu Shopping Centre, and;

(b) whether he is also aware that despite availability of Kshs200,000 from the CDF kitty for fencing and building of a toilet on the plot, the project has stalled due to illegal allocation of the plot.

Mr. Deputy Speaker, Sir, this Question has been on the Order Paper since last year and it has not been answered.

Mr. Deputy Speaker: Where is the Minister for Local Government? We will come back to it.

Question No.1306

CONSTRUCTION OF DAM ON KIPKARREN RIVER

Mr. Deputy Speaker: Hon. Members, I am made to understand that hon. David Koech is not in town. Consequently, I direct that this Question be listed on the Order Paper one week from today.

(Question deferred)

Question No.1390

COMPENSATION FOR ACCIDENT VICTIMS

Mr. Deputy Speaker: Mr. Mututho!

Question No.1392

PROVISION OF LAND ALLOCATION DETAILS IN
RUIRU/THIKA MUNICIPALITIES

Mr. Kabogo asked the Minister for Lands if he could provide a list with details of all new land grants (Letters of Allotment, copies of receipts thereof and title deeds) issued within Ruiru and Thika Municipalities since 2009.

Mr. Deputy Speaker, Sir, this Question requires a written answer. The Speaker put it on the Order Paper so that the Minister could bring an answer. I hope he has the answer; I do not have one.

Mr. Deputy Speaker: Is the Minister for Lands present? Ordinarily, as provided by our Standing Orders, you can ask for an answer in a written form. If you have it, the Minister does not have to read the same answer. We will wait until the second round.

Question 1403

DELAY IN CONSTRUCTION OF FRESH PRODUCE MARKET AT IKUTHA

Mr. I. Muoki asked the Minister for Local Government:-

(a) if he is aware that the fresh produce market projects, funded under the Economic Stimulus Programme (ESP) at Ikutha stalled at the foundation stage; and

(b) what measures the Minister will take to ensure that the project is completed.

Mr. Deputy Speaker, Sir, this Question appeared earlier and there were some issues which were raised. The Minister was to come back with answers amongst them the exact completion date of this specific project and the status of all the fresh produce markets in the country. Those were the issues.

Mr. Deputy Speaker: Have you got a written answer to that effect?

Mr. I. Muoki: Mr. Deputy Speaker, I have it.

Mr. Deputy Speaker: Okay.

Mr. I. Muoki: Mr. Deputy Speaker, Sir, I have the written answer for the original Question, but for the subsequent questions I have no additional written information from the Minister.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, the hon. Member is correct that the Speaker ruled that the status of all the ESP projects and other markets reports be laid on the Table before this Question is answered. He gave us two weeks. Subsequently, the report was finalized by the Ministry. However, as you realize, the substantive Minister was changed, and I would seek the indulgence of the Chair. The substantive Minister had asked that we lay the Report on the Table on Tuesday next week, and then we will be in a position to answer the Question. That way, he can also familiarize himself with the Report. We will be ready then.

Mr. Deputy Speaker: On the understanding that hon. I. Muoki will be in possession of that written answer at least two days before the day he will be required to prosecute the Question.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, I undertake to do that.

Mr. Deputy Speaker: Hon. I. Muoki, are you comfortable with that? You must also realize and appreciate the fact that there was a change of guard at the Ministry. It is directed that this Question be listed on the Order Paper on Tuesday, next week.

(Question deferred)

Question No.1409

IRREGULAR PLACING OF MUKSERO SUB-LOCATION IN KISII CENTRAL DISTRICT

Mr. Deputy Speaker: Hon. Member for Kasipul Kabondo! Hon. Magwanga!
Next Question!

Question No.1411

DELAY IN REHABILITATION OF KAKAMEGA-KISUMU ROAD

Dr. Khalwale asked the Minister for Roads:-

(a) if he is aware that the repair works on the Kakamega-Kisumu Road, at the section between Lukose River Bridge and Muraka Shopping Centre, have stalled thereby occasioning an increase in traffic accidents, and;

(b) the reason for the stalling and when the construction works will resume.

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

(a) I am aware that the repair works on Kakamega-Kisumu Road, at the section between Lukose River Bridge and Muraka Shopping Centre are temporarily stopped.

(b) The reason for the temporary stoppage was because the funds from the original contract were not adequate to complete the works. The implementing agency KeNHA, effected a variation order of Kshs33, 844,116. The works resumed early this year and were completed in February, 2012.

Dr. Khalwale: Mr. Deputy Speaker, Sir, allow me to thank the Assistant Minister for coming to the site as soon as he received the Question. However, there were two contracts on this road, which runs from Kisumu to Kabrengu. The section between Kakamega and Kisumu is the one we are referring to. The section between Kakamega and Webuye was completed the way this one was completed and, in fact, that contractor went on to clear the bushes and construct the shoulders of the road. Why has the contractor on this particular section not done a similar job?

Dr. Machage: Mr. Deputy Speaker, Sir, I am very much aware of that situation on the ground, but it has been left like that because I have awarded another Kshs4 billion through the World Bank for the proper reconstruction of that road starting June, 2012.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. It is important that the taxpayer knows whether this guy will be paid only for the work of recarpeting, or he will be paid for bush clearing, recarpeting and grading of the shoulders of the road. Is the Assistant Minister in order to refuse to answer that when he might very well---

Mr. Deputy Speaker: That is a supplementary question and not a point of order.

Dr. Khalwale: My question was---

Mr. Deputy Speaker: The Assistant Minister is not out of order. You rise on a point of order when there is a serious breach of the order itself; you can ask the supplementary question and he will proceed to answer it.

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

Mr. Deputy Speaker: What is your point of order?

Mr. Olago: Mr. Deputy Speaker, Sir, the road runs from Kondele in Kisumu and I have a question on it as well. I humbly ask if you could allow hon. Khalwale to give me a chance before the answer is given.

Mr. Deputy Speaker: Order! Ordinarily, when you ask a Question, you have the first shot, but the second shot is given to any other Member of Parliament. You rose on a point of order and effectively asked a supplementary question. Since the question is valid, I ask the Assistant Minister to proceed and answer it.

Dr. Machage: Mr. Deputy Speaker, Sir, I am aware of that situation on the ground. From my earlier response, I indicated that there was less money for the repair of this road and hence the addendum. That addendum was not enough to complete the works of clearance and shoulder repairs. I have also said despite that situation, we are still revisiting that road with proper reconstruction. I think that is good enough.

Mr. Olago: Mr. Deputy Speaker, Sir, this construction work was supposed to run from Kondele in Kisumu up to Kitale. It was divided into two sections. The section that we are referring to is the one that has been done partly from Kondele. The understanding was that this was supposed to be relief works and proper work was going to start. So, when the Assistant Minister says that Kshs5 billion has been set aside for proper construction of the road, could he explain to the House from which section is he talking about?

Dr. Machage: Mr. Deputy Speaker, Sir, actually, I have divided that road into three sections; each section has been given to a contractor: M/s Covet, for the section between Kisumu and Kakamega for a cost of Kshs4 billion; the rest is BVA Limited and J. Young X1 for the section between Kakamega-Webuye-Kitale. That is how I have divided that road.

Mr. Njuguna: Mr. Deputy Speaker, Sir, could the Assistant Minister inform the House what steps he has taken to make sure that quality work will be done on that road? Recently, a road was done in Lari Constituency and within three months, it was worse than even before.

Dr. Machage: Mr. Deputy Speaker, Sir, the contractors are going to construct the road to the specifications that they signed for. I will make sure that I have full value for the money awarded for that project.

Mr. Deputy Speaker: The question is: What measures do you have in place to make sure that they will do quality work because the hon. Member says a road that was constructed three months ago, today it is worse than its original state?

Dr. Machage: Mr. Deputy Speaker, Sir, the contractor will be supervised by my own engineers from the Ministry to make sure that the road is constructed to the specifications signed for.

Mr. Deputy Speaker: Dr. Khalwale, the last supplementary question.

Dr. Khalwale: Mr. Deputy Speaker, Sir, this road which is very narrow, very dangerous and which is the seat of fatal accidents, was constructed in 1962. In 2004, hon. Mwiraria announced in the Budget that this road was going to be overhauled. During the Referendum of 2005 and 2010 respectively, both the Prime Minister and the President used this to ask the people of western Kenya to follow them. Now that the Assistant Minister has already announced that the tender for construction of this road has been awarded, when will the constructors report on site, so that before we go to the general elections we can also partake of these superhighways that are being built in Central and Nyanza provinces and not Western Province?

Dr. Machage: Mr. Deputy Speaker, Sir, I announce that the works will be starting at the beginning of June this year.

Mr. Deputy Speaker: Next Question by Dr. Eseli.

Question No.1467

CLOSURE OF NAMANG'OFULO COFFEE FACTORY

Is he not in? We shall come back to it at the end.

Question No.1474

NON-PAYMENT OF PENSION DUES TO ERNEST
OBWOCHA/HARRISON BUYUKA

Mr. Olago asked the Minister for Finance:-

(a) why he has not complied with the direction of the Chair to pay the pension due to Mr. Ernest Obwocha and Mr. Harrison Buyuka as per the order/judgement of the High Court given on 27th October, 2010 when the Minister answered Question No. 479; and,

(b) whether he is now willing to comply and discharge the order as per the court judgement and direction of the Chair.

Mr. Deputy Speaker, Sir, I wish to say that he has not served me with a written answer. If he has one, I can take it now and we deal with the matter.

Mr. Deputy Speaker: Do you wish to proceed?

Mr. Olago: Yes, Mr. Deputy Speaker, Sir.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I am sorry about that because we sent those answers and they should be somewhere in Parliament. I think they have arrived because we sent them about three hours ago. I am sorry about that and I am prepared to answer.

Mr. Deputy Speaker: Proceed.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Pensions Department processed and paid pension benefits to Mr. Ernest Oduso Obwocha amounting to a lump sum of Kshs449,190 on 25th July, 1997 following his retirement and continues to draw a monthly pension currently of Kshs7,615 paid at Post Bank Kisumu City.

Mr. Harrison Buyaka Atei was paid a lump sum amount of Kshs261,131 on 9th October, 2000 and continues to earn a monthly pension of Kshs5,444 and is paid at the National Bank of Kenya in Kisumu City. These payments were made in accordance with the Cabinet decision at its meeting on 18th May, 1998, that is, Cabinet Minute No.4098 of 18th May, 1998 that Judiciary pensions be paid based on the prevailing Civil Service salaries.

Mr. Obwocha and Mr. Atei filed court cases against the Government to have the court determine their correct pension benefits. The court ruled that they be paid Kshs845,000 and Kshs639,822, respectively. However, and I am sorry to say this, it has been difficult to implement the court awards as the Director of Pensions acts on delegated authority from the Minister and the Cabinet and could not pay the amount beyond the mandate given by the Cabinet as indicated above.

I am pleased to inform this House that a Cabinet memo has been prepared for the Cabinet to rescind its decision of 1998. I can confirm that I have actually signed the memo and it is due to be presented to the Cabinet any time from now.

(b) Yes, the Minister is willing to comply and discharge the court order and directions from the Chair as soon the Cabinet memo, which I have prepared, is approved by the Cabinet for it to rescind its 1998 decision.

Mr. Olago: Mr. Deputy Speaker, Sir, I have listened very keenly to the reply by the Minister for Finance and clearly that answer is, in all terms, the same as the one that was given last year when this House debated the issue and all the hon. Members, including the Chair, directed him to effect payment as per the court order. For over one year, he has failed to do so. The reason this Question is on the Order Paper is for him to explain why he has not complied not just with the court order but also with the directive of the House. What he has read to this House is basically the answer he gave earlier on. This matter is more serious than that. It raises grave issues about how the Executive can ignore Judicial orders that are valid and which have not been appealed against. Allow me to read a letter I wrote to the Minister for Finance on 5th May, 2011. These are the words that I used:-

“The essence of the Speaker and the Members are that you cannot purport to subordinate an order with judicial proceedings to further consideration by the Cabinet or by the Office of the Attorney-General. The Attorney-General’s advice may apply to any other case, but not these two claimants whose matters have been dealt with by the court and by this House.”

Under these circumstances, is it in order for him to come back to the House with the same answer that he had given one year earlier instead of explaining to the House why he has not complied with the court order and directive of the House?

Mr. Githae: Mr. Deputy Speaker, Sir, indeed, this is a sorry state of affairs. We have not refused to pay. There is only a delay in payment and not refusal. We follow all the court orders.

That is why immediately this issue was brought to my attention; I quickly prepared a Cabinet memo and sent it to the Cabinet purely for technical reasons. I am a Member of the Cabinet. I cannot be seen to be going against decisions made by the Cabinet. That is why I have now prepared another memo to rescind the decision that was made by the Cabinet.

These are now administrative measures. In addition, I as the Minister for Finance, I am not just concerned about these three people, but I am concerned about everybody who was in the Judiciary and retired at that time. I have even gone further and said that even those who have not gone to court, we have calculated the pensions due to them and the total is about Kshs3 billion. So, I had to consider everybody and not just three. I have the Kshs3 billion to pay all those people. We have moved quite far.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. I feel bad that I have to repeat myself. If you have heard the Minister, he is repeating himself again. The question was; why have you not complied with the court and the directive of this House? Instead he says that he has prepared a Cabinet memo. In effect, what he is saying is that what the court and this House have decided is still subject to the Cabinet decision. Is that in order?

Mr. Githae: Mr. Deputy Speaker, Sir, I did not say that. I said that these are now purely administrative issues. I would like to ask my fellow learned friend to also understand that I am a member of the Cabinet. Therefore, I cannot be seen to be going against its decision. So, I am now trying to implement the court decision. This is the procedure. The Government has its procedure. I am now implementing the court decision through that procedure. In fact, the hon. Member needs to commend me that I am now implementing the court decision.

Mr. Imanyara: Mr. Deputy Speaker, Sir, apart from not complying with a court order and, therefore risking contempt proceedings, is the Minister not aware that the Judiciary has been freed from the shackles of Executive control that was obtained in 1998 and as a result of the new Constitution, it is independent of the Executive including matters relating to payment of pensions? Therefore, rather than await Cabinet decision on a memo that he is drawing, would it not be quicker if he referred this matter to the Judicial Service Commission with a recommendation that they take over and pay in accordance with the new Constitution that guarantees the Judiciary independence rather continue to subject it to Executive control as was the situation when the original memo that the Minister seeks to rescind was given out?

Mr. Githae: Mr. Deputy Speaker, Sir, I fully agree that the Judiciary is now independent. For the current judicial officers, there is no issue at all. It is the ones who have already retired and are not covered by the Judiciary Pension Scheme. I would like to seek for the indulgence of this House because within the next three months, all these procedures will have gone through and I will be able to implement the court order. That is exactly what I am doing. I am actually implementing the court order, but it does not mean that there are no procedures to be followed. We need to follow procedures, so that everything is done rightly and correctly. We have no intention of not obeying the court order. I am obeying the court and I need to be commended that I am actually implementing it.

Mr. Mungatana: Mr. Deputy Speaker, Sir, I think there is a problem in the Government when it comes to executing lawful court judgements. This is because most of the time you will find that Ministries are unable to execute those orders. So, in terms of future compliance with court orders, particularly compensation, pensions and so on, have you, as Minister for Finance made necessary budgetary allocation to meet and satisfy court judgements?

Mr. Githae: Mr. Deputy Speaker, Sir, we have instructed all the line Ministries to provide sufficient and adequate funds for payment as per court orders because this is where the

problem comes in. Kenyans may sue the Ministry through the Attorney-General, but the Attorney-General does not have the money. When he requests the line Ministries to give him the monies to pay and they say they have not budgeted for it, it becomes difficult to execute court orders. So we have asked all the line Ministries to prepare and provide for adequate funds to be meeting all the court orders. But this was not foreseen and in addition to these three people who retired, as I said, there are other thousands who were affected and we are saying that we do not want them to go to court. So we want to sort out this issue once and for all. As I have said, we have calculated the liability; it is Kshs3 billion. I have provided for it in the Budget and I am only asking for the next three months and this issue will be over.

Mr. Olago: Mr. Deputy Speaker, Sir, the answer by the Minister only demonstrates and perpetuates impunity and disregard for the law. These two old men; Ernest Obwocha and Harrison Buyuka gave all their lives to the Judiciary and they have to go to court for proper computation of their pensions. They got court orders and now they are being subjected to the Cabinet. Could the Minister kindly clarify that it is possible to isolate these two cases from the others that are subject of the Cabinet memo so that these two are paid immediately?

Mr. Deputy Speaker: Minister, ordinarily when somebody retires, if he is of an advanced age, all these other opportunistic diseases come in; diabetes, blood pressure and what have you. It does not do any good for somebody who has given all his services to wait for this long before he can access that pension so that he or she is able to take good care of himself or herself. Can you give us a definitive period now so that the---

Mr. Githae: Mr. Deputy Speaker, Sir, yes, I fully agree with that. What is happening is that they have been paid their pension as per the directive made by the Cabinet but then they went to court. So, for the one that was due to them at that time, they have been paid. We are talking about the enhancement. The answer by the Minister shows that he is implementing the court decision. The answer by the Minister shows that he is not a party to impunity. The answer by the Minister shows that he wants to implement the court's decision. He is only asking for the indulgence of the House that within the next three months this issue for these three gentlemen plus all the others will be sorted out. As I have said, I have already provided for Kshs3 billion to pay all the ex-judicial officers who have not even gone to court. So, in addition to those three, I want to pay all the others who were affected. That is why I am saying that I am still waiting for a commendation from my senior learned friend in order to take care of all the ex-judicial officers.

Mr. Deputy Speaker: Fair enough! Next Question!

Question No.1516

REMOVAL OF MEDICAL TRAINING COLLEGES PRINCIPALS

Mr. Nyamai asked the Minister for Medical Services:-

(a) whether he is aware that college principals at Msambweni, Machakos, Kenyatta and Kisii medical training colleges were recently removed from their positions and, if so, if he could provide particulars of the principals; and,

(b) under what circumstances the principals were removed from their offices.

The Assistant Minister for Medical Services (Mr. Kazungu): Mr. Deputy Speaker, Sir, I beg the indulgence of the Chair. My Minister had indicated that he was going to answer this

Question in addition to the Ministerial Statement which the House was expecting. So he is the one with the answer.

Mr. Deputy Speaker: So, when do you want to answer this? When do you want this to be listed on the Order Paper?

The Assistant Minister for Medical Services (Mr. Kazungu): Mr. Deputy Speaker, Sir, on Thursday.

Mr. Deputy Speaker: Thursday afternoon! Is that okay with you Mr. Nyamai?

Mr. Nyamai: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: It is so directed!

(Question deferred)

Question No.1521

FREQUENT ACCIDENTS AT KAGWE-GACHOIRE BRIDGE

Mr. Njuguna asked the Minister for Roads:-

(a) whether he is aware of the frequent accidents at Kagwe-Gachoire bridge which has caused many deaths; and,

(b) what urgent measures the Ministry will take to ensure that the bridge is reconstructed to avoid future accidents.

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

(a) I am aware that there have been a number of accidents in Kagwe-Gachoire Bridge.

(b) I have instructed the regional manager in Kiambu to liaise with Lari Constituency Roads Committee and prioritize the widening of the bridge to accommodate a two lane carriageway and also widen the bridge as it approaches the river. The works will also include installation of road signs and guard rails to enhance safety of the road users.

Mr. Njuguna: Mr. Deputy Speaker, Sir, as the Assistant Minister is fully knowledgeable of the fatal accidents that have taken place on this bridge, what action or how much funds has the Ministry allocated for this very important bridge as it connects Lari Constituency and Gatundu South Constituency?

Dr. Machage: Mr. Deputy Speaker, Sir, all the construction is estimated to cost Kshs10 million which will be subsequently carried out using the 1 per cent Roads Maintenance Levy Fund (RMLF).

Mr. Mwangi: Mr. Deputy Speaker, Sir, while I appreciate the answer given by the Assistant Minister, he has not indicated the timeframe within which this will happen. Due to the long rains, the Assistant Minister is aware that very many roads all over the country have been damaged and require immediate action. What programme has the Ministry drawn up to repair the major roads in the country that have been damaged by the heavy rains?

Dr. Machage: Mr. Deputy Speaker, Sir, as I indicated in part "b" of the answer, I instructed my regional manager to liaise with the constituency roads committee where the hon. Member is a patron. So, the construction of this road will really depend on the roads committee. I am aware that the rains have caused havoc in very many parts of this country, not only in Lari but the rest of the country. We are assessing the situation. Let us hope that the prediction that the

rains might be over at the end of May will give us some space to repair the areas that already have been destroyed. We cannot do a lot of construction work at this time with the heavy rains.

Mr. Mureithi: Mr. Deputy Speaker, Sir, considering that the fuel levy that comes to the constituency is only 2 per cent, could the Assistant Minister allocate more money to the constituency? He has told us that he will allocate Kshs10 million for that one bridge yet the fuel levy is given for the whole constituency.

Dr. Machage: Mr. Deputy Speaker, Sir, we have taken that into consideration. If there will be any additional funds required, we will take care of that.

Mr. Njuguna: Mr. Deputy Speaker, Sir, accepting the very positive response that has been given by the Ministry, could the same Ministry consider compensating the families that have lost their loved ones on this bridge over the last couple of years?

Dr. Machage: Mr. Deputy Speaker, Sir, Unfortunately the Ministry is not an insurance agency and I may not be able to consider that.

Question No.1535

VIOLATION OF BANKING ACT BY BANKS

Mr. Mwau asked the Minister for Finance:-

(a) whether he could confirm that several banks were operating in violation of the Banking Act and the Central Bank of Kenya Prudential Guidelines from January 2007 to February 2012 and, if so, provide the list of such banks; and,

(b) whether he could provide a list of violations attributed to each of the banks and indicate the fines and the remedial action taken against each of the banks.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I beg to reply.

(a) In the course of conducting supervision and surveillance as mandated by the law, the Central Bank, from time to time during inspections, comes across banks that are not strictly observing all the requirements of the Banking Act and the Prudential Guidelines issued by the Central Bank as a regulator. However, Section 31(1) of the Banking Act prohibits disclosures or publication of information in the possession of the Central Bank as a result of the performance of its duties under the Act. Accordingly, the CBK is not in a position to give a list of the banks that may have violated the Banking Act and the Prudential Guidelines over the stated period for very obvious reasons.

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

Mr. Mwau: Mr. Deputy Speaker, Sir, I am sure the Minister is aware of the provisions of the Standing Order that prohibits a Member from answering a Question. Secondly, I want to refer him to the provisions of Section 35 of the Constitution of Kenya that requires that information held by the Government must be made public. Thirdly, I would like to request the Chair to look at the Question that I have asked, which is a very simple one, which is: Could the Minister confirm that several banks were operating in violation of the Banking Act and the Central Bank of Kenya Prudential Guidelines from January, 2007 to February, 2012 and, if so, provide a list of such banks?

It cannot be correct for him to be compounding offences because an offence cannot be confidential. If a bank has violated the law or has committed an offence, the offence must be

made public. In part “b”, I have asked whether he could provide a list of violations attributed to each of the banks and indicate the fines and remedial action taken against each of the banks. So, it cannot be confidential that a bank violated the Banking Act and it was fined or punished. That punishment cannot be confidential.

Therefore, I kindly request the Chair to ask the Minister to answer the Question. If he is not ready to answer it, he be given time to go and bring a proper answer, other than going round in circles. The answer he has given, categorically, violates Chapter 6 of the Constitution which prohibits dishonesty, favoritism or giving incorrect information.

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to give misleading information on an issue that has been canvassed on the Floor of this House through a committee that was constituted by this House? We have on record a report of a select committee of this House clearly stating that certain banks had violated the Banking Act and even stating how much they were charged in terms of fines. This is before this House in form of a report. I was the Vice-Chairperson of that Committee and I can guarantee you that even when the banks appeared before us, they admitted that they had been fined by the CBK for violating the Banking Act. Is it in order for the Minister not only to say that this is a matter of secrecy, but also that he cannot disclose it when it is before the House?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to purport that an Act of Parliament is superior to the Constitution? Only the other day, Parliament almost capped interest rates. Now, the Minister wants to tell this House that we shall never know the evil deeds that are being done by banks and that, that information is only available to the CBK as the regulator. We know that these banks have been looting from innocent bankers who want to take legal recourse but this information is not available to them courtesy of the CBK. Is it in order for the Minister to act in the interest of the banks rather than the interest of the citizens of this country?

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to come here and avoid facing the people of Kenya? If you look at the answer he has given, you will see that he has referred to Article 31(i) and there is no 31(i). I think he meant 3(1). If you allow me, 31(1) is what he refers to as (i). It says that:-

“The Central Bank or the Minister may publish in whole or in part at such time and in such manner as it or he thinks fit any information furnished to it or him under this Act, provided that that information shall not be published if it will disclose the financial affairs...”

We are not talking about the financial affairs here. We are talking about violations and the only other situation is in 31(2), which says in part that:-

“---except as provided for in this Act”.

So, in 31(1), it is provided how he is to give information. So, let him not hide under Section 31(1) to avoid giving us information. I want to table information that was laid on the Table of this House about a particular bank and its deeds and it was accepted by the same Ministry.

(Mr. Kabogo laid the document on the Table)

Mr. Keynan: On a point of order, Mr. Deputy Speaker, Sir. Some of these banks and it is on record, have operated using public resources. Indeed, quite a number of these banks lack capital and institutional framework. The CBK has provided an enabling environment for them to engage in arbitrage, speculation and discount window manipulation and soon or later, these

banks will be put under receivership. What measures is the Minister taking at this stage to ensure that these political banks are reined in and made to operate within the law? Is he in order to mislead Parliament and Kenyans?

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I urge the Chair to find that the answer given by the Minister is not satisfactory. He is hiding behind the Banking Act, yet Article 35(3) of the Constitution is very clear that the State shall publish and publicize any important information affecting the nation without exception. The answer given to us by the Minister does not meet the threshold of the answer that this House should accept. I urge that you find the Minister out of order and he goes and prepares adequately to answer this Question.

Mr. Deputy Speaker: Minister, can you respond to the series of points of order?

Mr. Githae: Yes, Mr. Deputy Speaker, Sir. I will do that. I would like to thank hon. Kabogo for that observation that it is Section 31(1) of the Banking Act that prohibits disclosures or publication of information in possession of the CBK as a result of the performance of its duties under the Act. It provides that it does not disclose the financial affairs. I want us to look at this through very sober eyes. Banks are run on trust and confidence. If we are not careful, if a bank gets bad publicity, there is big risk of having a run. Bad publicity includes even mentioning that this bank violated this section and this bank did this. I can confirm that it is true banks have violated the law, but this is dealt with on case by case basis in strict confidentiality.

(Mr. Imanyara stood up in his place)

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

Mr. Deputy Speaker: He is responding to a point of order! Proceed!

Mr. Githae: Mr. Deputy Speaker, Sir, if we start giving banks bad publicity, all the depositors will start running to that bank asking for their deposits tomorrow? If you give the names of the banks and the sections they violated, you are in effect---

(Mr. Mwau stood up in his place)

Mr. Deputy Speaker: Order! Hon. Harun Mwau, the Minister is responding to a point of order. You allow him to respond and then you rise on your point of order.

Mr. Githae: Mr. Speaker, Sir, what I am saying is that--- It has happened to one bank. Some people somewhere decided to give it bad publicity, accused it of so many things and the result is that, that bank was closed. I can give a list of all the provisions that the banks have breached. But I am asking this august House to take into account that we can actually bring down banks because of bad publicity. I am asking this House to take into account that you can actually cause a financial crisis in this country by bringing bad publicity. Let the banks continue the way they have and then, deal with them on a case by case basis and with strict confidence. That way, other people will not know that a certain bank has breached either one of the provisions.

We have no political banks. All banks are licensed by the Central Bank of Kenya (CBK). So, we have no political banks. Again, Section 31(2) of the Banking Act says: "The Minister may"

(Mrs. Shebesh stood up in her place)

Mrs. Shebesh. On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: The hon. Shebesh wants to inform you.

Mr. Githae: How can I refuse information from the gracious lady?

Mrs. Shebesh: Mr. Deputy Speaker, Sir, that is why I like this Minister.

Mr. Deputy Speaker, Sir, I just want to inform the Minister that when we began our investigations to set up the select committee, the reason for that was because the CBK Governor himself raised the alarm. He told Kenyans that the reason for the depreciation of the shilling was because of three banks which he mentioned by name, and which he said had violated the Banking Act and said that they were speculating in dollars.

So, I am just giving him information. He is saying that you cannot say it when the CBK Governor, himself, raised the alarm on the banks that he quoted and that were even fined by him. There was no run during that time.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. I am concerned and worried about the attitude this Minister is taking, given the very clear language of the Constitution. Just like your last question on why he is relying on a Cabinet memo of 1998, he is now purporting to rely on Section 31 of the Banking Act, which predates the Constitution. Article 35 of the Constitution is very clear and we are all obliged at all times to uphold the Constitution. The information that is being held by the banks is being held in trust for the public. The banks are collapsing not because they are badly run, but because you are concealing the mismanagement and the crimes that are being committed.

Mr. Deputy Speaker, Sir, is it in order for a Minister to rise on the Floor of the House and say that he cannot give an answer to a Question, when he is saying that he acknowledges that crimes have been committed and, rather than take action to get the Director of Public Prosecution (DPP) to bring charges against the banks that have committed crimes, he says that we deal with them on a case by case basis? They will continue to commit more crimes. Is it in order? This is a matter that you need to consider whether the Minister can possibly rely on provisions of an Act of Parliament that is subsidiary to the Constitution and fail to acknowledge that under the new dispensation, we are required to give all public information that is being held by public institutions, including CBK?

Mr. Mwau: On a point of order, Mr. Deputy Speaker, Sir. I just want to point out to the Chair that the information being sought is not information that should be denied this House. It is not information that has not been previously tabled before this House. There cannot be any information held by the Government which can be confidential to the National Assembly.

Mr. Deputy Speaker, Sir, on 21st June, 2002, information from the CBK relating to violations of Banking Act by banks was tabled before the Floor of this House. These are the reports that were tabled. I would like to table the same reports.

(Mr. Mwau laid the documents on the Table)

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. I rise on a point of order to invite you to find the answer by the Minister unacceptable.

Mr. Deputy Speaker, Sir, the Minister is apparently relying on the Banking Act. I just want to read the section which he says prohibits the disclosure of information held by CBK.

Mr. Deputy Speaker, that portion says:-

“That provided the information so furnished shall not be published if it will disclose the financial affairs of any person.”

Mr. Deputy Speaker, Sir, the key word there is “any person” The Banking Act defines a bank and a bank is not a person. We do not want to know the financial affairs of people. We want to know the activities of the bank as an entity. Is the Minister in order to refuse to tell us the banks that have not conformed with the regulations, when the Constitution guarantees that we get the information? Is he in order?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I wish to seek guidance from the Chair. On two previous occasions, one on Committee of Finance the Minister provided a list of violations up to the year 2006. Two, during the sitting of the Select Committee on the depreciation of the Kenya Shillings, the Governor provided a list of those banks which had violated the Prudential Guidelines. Is it in order for the Minister to come here and purport that, indeed, he cannot provide that information to the House, which is superior to the Committees?

Mr. Githae: Mr. Deputy Speaker, Sir, first of all, I would like to say that when we use the word “person” you also have bodies that are also legal persons. So, the legal person there includes also the banks.

Mr. Deputy Speaker, Sir, as I am saying, I have no problems with circulating the list of the violations. In fact, that has been done before. It is when you say that this bank violated this and this. What we might do without knowing is actually to cause a crisis in the bank. Under my watch, that is the last thing I would want; to cause any financial crisis in the banking system. Then, thirdly, you cannot disclose the bank and the violation without disclosing the financial affairs of that person. As I said, it happened to one bank. We gave it bad publicity. The media gave it bad publicity. It was accused of all manner of ills and, as a result of that, it led to the closure. I am saying: Let us avoid that. We have to look at what we are trying to cure. What will be the effect that we give this information and it ends up causing a financial crisis? What have we done? Are we prepared, as a House, to take responsibility that if there is any financial crisis - if banks start collapsing - people will know which bank violated which rule? It will be dangerous in my view.

Mr. Deputy Speaker, Sir, I believe not all information can be given. For example, if today the police was investigating you, surely, they will not tell you that they are investigating you. It will defeat the same purpose even if it is provided for in the Constitution. So, we need to look at what---

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. The Article of the Constitution that I quoted was very clear. I would like to read it to the hon. Minister, so that he may not give an example that is completely different from what we are talking about. It says:-

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

Mr. Deputy Speaker, Sir, this is not information about criminal acts or information about you. We are talking about information affecting the nation. We are talking about banks which are violating the rules. This is clearly affecting the nation. So, he should just address himself to that particular aspect instead of digressing and bringing irrelevant matters to an important issue.

Mr. Githae: Mr. Deputy Speaker, Sir, if you look at what the public institutions have been doing in compliance with that article--- For example, if you take the Ethics and Anti-Corruption Commission (EACC) when they give their summary, they do not give the name of the person who was investigated. They say: “There were accusations against this person and that person” without giving names. The same case applies to the Central Bank of Kenya (CBK) when it is giving its own summary, it says: “So many banks violated such and such a section of the Constitution.”

Mr. Deputy Speaker, Sir, we might cause a crisis where there is no crisis. I know the issue is before this House because it has been brought to my attention. I am trying to sort out the issue that led to that bad publicity that led to the closure of that bank.

Mr. Deputy Speaker: Order! Mr. Minister, the Chair is clearly at a loss. The Question is very explicit and express. It says:-

“(a) Could the Minister confirm that several banks were operating in violation of the Banking Act and the Central Bank of Kenya Prudential Guidelines from January 2007 to February 2012 and, if so, provide the list of such banks?”

“(b) Could the Minister provide a list of violations attributed to each of the banks and indicate the fines and the remedial action taken against each of the banks?”

Your answer proceeds in very general terms whereas the Question is very express and explicit. I have not seen any citing of either the Constitution or the laws of the land itself that essentially protect people who are violators.

(Applause)

A violation entails either a criminal conduct or a matter of civil nature, but that is breaking the laws. So, where you say that you have to protect the law breakers, that is the problem. All that your answer says is that in the course of conducting supervision and surveillance as mandated by the law, the CBK, from time to time during inspections, comes across banks that are not strictly observing all the requirements of the Banking Act and the Prudential Guidelines issued by the CBK as a regulator. You then proceed on and give that section. However, this section does not expressly also protect violators. It does give---

(Applause)

So, I am at a loss although I am not a finance person. I do not see a situation in which there can be State complicity itself or, for that matter, institutional complicity to hide wrong doings. So, I am satisfied with this answer which you have given right now. I do want to agree with you that there are issues of a run for depositors and that you do not create panic. But nonetheless, you must be able to satisfy Kenyans that they will not get the panic when it comes to things like these which may fleece the country completely or when the country is bankrupt and the banks have been doing all sort of violations and the regulator is hiding it because of fear of a run on to the banks.

(Applause)

So, I want you to be able to navigate through where your own prudence in terms of the practice dictates, so that there is no run. But, at the same time, Kenyans do get the information that they are entitled to; which is the state of affairs and the manner in which their money is taken care of because our national economy depends on this.

So, I direct that this Question be listed on the Order Paper on Wednesday morning, next week.

(Applause)

(Question deferred)

In the meantime, find a way in which you can protect the interest of the country and also take into consideration the fears that you have.

Mr. Githae: Mr. Deputy Speaker, Sir, I thank you for that ruling and guidance.

Mr. Deputy Speaker, Sir, as I said, I have no problem, but could I do it in camera on Wednesday?

Mr. Deputy Speaker: Fair enough! Yes, you can!

(Several hon. Members stood up in their places)

Order, hon. Members! For those of you who have been in Parliament before and for those of you who do understand the practice of the House, that kind of a provision is always there; a matter can be handled in camera by Parliament. That will be invoked at the appropriate moment and the Chair will be too glad to do so!

Thank you.

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

Mr. Deputy Speaker: Not on the same! I have already given a direction on this one and it is disposed of. Proceed to the next Question! We will go back to the Questions that were not answered. Let us start with Question No. 1219 by hon. Mureithi!

Mr. Mureithi: Mr. Deputy Speaker, Sir, I want to ask Question 1219 for the second time this afternoon.

Question No.1219

STALLING OF COMMUNITY MARKET CENTRE PROJECT IN GATIMU

Mr. Mureithi asked the Minister for Local Government:-

(a) whether he is aware that the Government had set aside a plot of land for a community market centre at Gatimu Shopping Centre; and,

(b) whether he is also aware that despite availability of Kshs200,000 from the CDF kitty for fencing and building of a toilet on the plot, the project has stalled due to illegal allocation of the plot?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Thank you, Mr. Deputy Speaker, Sir. I want to apologize for not being here when the Question was asked for the first time.

However, I beg to reply.

(a) I am not aware that the Government had set aside a plot of land for a community market centre at Gatimu Shopping Centre. According to the records held by the council, there is no shopping centre known as Gatimu Shopping Centre. All the land in Gatimu Ward belongs to the Settlement Fund Trustee (SFT). This is not a trust land and the council has no powers of allocating it.

(b) The council has not allocated any plot at the centre and, therefore, we are not aware of any stalled project. Any person who unlawfully occupies the plot has acquired it illegally without the consent of the council.

Mr. Mureithi: Mr. Deputy Speaker, Sir, this Question has been on the Order Paper for quite a while now. Parts “a” and “b” of the answer given by the Assistant Minister are contradictory because the council admits that whoever has occupied this land has occupied it illegally without the consent of the council.

Mr. Deputy Speaker, Sir, I would like to table here a list of the ladies who were allocated this Gatimu Open Air Market. They were given Kshs200,000 by my predecessor to put up the fence and a toilet only to find that a couple of people had grabbed that plot. Would he tell this House who is responsible for these open air markets because the SFT has no capability of establishing markets? The SFT only establishes public areas. The public areas are taken by the markets. Would he confirm who is responsible in establishing the open air market under which my predecessor gave Constituencies Development Fund? I hereby table a list of the ladies.

(Mr. Mureithi laid document on the Table)

Mr. Nguyai: Mr. Deputy Speaker, Sir, as I stated before, all the land belongs to the SFT. This is not trust land and so, the council has no powers in allocating. I would not be in a position to know who particularly allocated this, unless I was to do a search in the Ministry of Lands and find out the details.

Mr. Deputy Speaker: Last question, hon. Mureithi!

Mr. Mureithi: Mr. Deputy Speaker, Sir, the Assistant Minister has committed himself, because there is collective responsibility, that he will go to the Ministry of Lands to get the correct information. Could I request that this Question is brought back when he has full information and disclosure, because there is nothing in the council showing who took the plot? Could this Question be brought back when he has consulted the Minister for Lands and found out the true information in order to guard the public utility plot?

Mr. Nguyai: Mr. Deputy Speaker, Sir, yes, through collective responsibility, I can inquire from the Ministry of Lands about the various lands transactions that have taken place and then come and give a substantive reply. I have no problem with that, but I would request for a little time so that we can go---

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

Mr. Nguyai: Two weeks, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Are you comfortable with that, hon. Mureithi?

Mr. Mureithi: Yes, Mr. Deputy Speaker, Sir.

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

(Question deferred)

Question No.1390

COMPENSATION FOR ACCIDENT VICTIMS

Mr. Deputy Speaker: Hon. Mututho is out of the country on Parliamentary business and so, this Question is deferred to a time when he will be around.

(Question deferred)

Question No.1392

PROVISION OF LAND ALLOCATION DETAILS
IN RUIRU/THIKA MUNICIPALITIES

Mr. Kabogo asked the Minister for Lands whether he could provide a list with details of all new land grants (Letters of Allotment, copies of receipts thereof and title deeds) issued within Ruiru and Thika Municipalities since 2009.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, first, I want to apologize to the House for coming late. I was held up and not able to be here on time.

Mr. Deputy Speaker, Sir, I have had a small discussion with the hon. Member and the answer that I have is not comprehensive. This is the second time that I am seeking his indulgence, but I think it is in the public interest that the information he seeks is given comprehensively, and the documents that he is seeking, which include letters of allotment and title deeds, should be provided. Otherwise, even if I give the answer, I do not think that I will be doing justice.

Mr. Deputy Speaker: How much more time do you need?

The Minister for Lands (Mr. Orengo): Wednesday, next week.

Mr. Deputy Speaker: Fair enough! The Chair directs that this Question be listed on the Order Paper---

Are you okay with that, hon. Kabogo?

Mr. Kabogo: Mr. Deputy Speaker, Sir, I was worried that you would make a decision without hearing me. Yes, indeed, it is twice---

Mr. Deputy Speaker: The Minister said that he has had consultations with you and he---

Mr. Kabogo: Mr. Deputy Speaker, Sir, I am building my consent.

Mr. Deputy Speaker: The Chair cannot have any doubt when a senior Member says that he has consulted with the Questioner.

Mr. Kabogo: Mr. Deputy Speaker, Sir, I was just going to say that I do concede, but it is the second time that the Minister has asked for time to give a comprehensive answer. The previous one was my Question and the Assistant Minister came with the same answer and was given audience by the House. So, I do hope that this time, the Minister will come with a comprehensive answer, as he has promised. I have no problem with that.

Mr. Deputy Speaker: The Minister has heard that.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, in fact, even without giving that answer, I have given him an insight to the information that I already have. So, we are sharing that.

Mr. Deputy Speaker: Fair enough! The Chair directs that this Question be listed on the Order Paper next week on Wednesday morning.

(Question deferred)

Question No.1409

IRREGULAR PLACING OF MUKSERO
SUB-LOCATION IN KISII CENTRAL DISTRICT

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

(a) whether he is aware that the administrative boundaries of Muksero Sub-location is currently in Kisii Central District; and,

(b) what urgent steps the Government is putting in place to ensure that the sub-location is administratively controlled by the Rachuonyo District offices.

Mr. Magwanga: Mr. Deputy Speaker, Sir, I apologize to the House for coming late. I was held up in the Committee on Health and could not actually be in the House on time.

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

(a) Yes, I am aware. It is rightly stated that Muksero Sub-location is currently in Kisii Central District and borders Konyango Sub-location in Rachuonyo South District. The residents of Muksero and Konyango share a market called Ruga and are both Kisii and Luo. The bordering constituencies are Kitutu Chache and Kasipul Kabondo. A quarter of the population is from the Luo community while three-quarters are from the Kisii community. The Luo community has over the years registered as voters in Kasipul Kabondo Constituency. The issue of administrative boundaries has been long outstanding. However, the mandate of the electoral and administrative boundaries lies solely with the Independent Electoral and Boundaries Commission (IEBC) as stipulated in the new Constitution.

(b) The issue must be treated with utmost sensitivity, bearing in mind that there must be deliberations at grassroots level between communities involved. The IEBC has the mandate to review boundaries in consultation with all affected.

Mr. Magwanga: Mr. Deputy Speaker, Sir, allow me to thank the Assistant Minister for attempting to answer the Question. This Question was asked in the Eighth Parliament as Question No.282, in 2000, but up to date, the Ministry has not actually acted. The number of people referred to in this case is actually vice-versa. The Luos are actually three-quarters and Kisiis a quarter. My people are being marginalized when it comes to employment and devolved funds. What steps will the Ministry take to address the plight of these marginalized people?

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Did you hear the hon. Member say that his people are being marginalized by the Kisii? What does he mean because he is tribalizing the country?

Mr. Deputy Speaker: Order! Hon. Magwanga, the Kisiis are your people too. You are a Kenyan!

Mr. Magwanga: Mr. Deputy Speaker, Sir, I have said that my people are being marginalized. I have not indicated who is marginalizing them, but they are being marginalized. I think the hon. Member has gotten it wrong.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Who do you wish to inform?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Deputy Speaker, Sir, I wish to inform the Assistant Minister.

Mr. Deputy Speaker: The Assistant Minister has to be contributing for you to inform him. Let him start moving his information first and then you can inform him.

Proceed, Assistant Minister!

Mr. Lesrima: Mr. Deputy Speaker, Sir, I do not mind being informed by my colleague, the Assistant Minister for Foreign Affairs.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Deputy Speaker, Sir, first of all, I would like to inform the House that Muksero Location actually falls within Kitutu Chache. The chief of Muksero Location, where I am the Member of Parliament, is actually a member of the Luo community who, fortunately, is able to speak both Kisii and Luo. Thirdly, Muksero Location happens to be a community where there is cross-border intermarriage. The two communities have lived, worked and trade together happily. A secondary school known as Ong'icha Secondary School falls within my constituency but within Muksero Location, which is within the boundary of Gusii County. I want to also inform the House that if the Member for Kasipul Kabondo felt so strongly that this boundary had to be changed, his community should have actually gone out there with the Interim Independent Boundaries Review Commission (IIBRC) and made recommendations, which then the IEBC would have allowed or disallowed. Under the circumstances, his actions and requests have been overtaken by events because the IEBC has left Kitutu Chache Constituency intact and nobody will change it, unless the Assistant Minister will explain later.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I think the policy I was going to read has been summarized by my colleague. It is true that this sub location is not in Rachuonyo but falls in Mosochi Division. Despite the challenges, Luos and Kisii have coexisted peacefully. Due to intermarriages between the two communities, they have always been engaging one another in dialogue. Majority of the residents are Kisii. They said that we should pass the new Constitution. These are boundaries between two counties and I have no powers to change the boundaries. Changing of boundaries is provided for under Article 188 of the Constitution of Kenya. It must be recommended by the Independent Electoral and Boundaries Commission (IEBC) that was set up by Parliament and it must be passed by the National Assembly with the support of two thirds of all Members. The Senate must also support, at least, with two thirds of its Members. The county assemblies that want to interfere with the boundaries must also pass the same with a two thirds majority.

(Dr. Khalwale stood up in his place)

Mr. Deputy Speaker: Hon. Dr. Boni Khalwale was dying to raise a point of order. What is your point of order?

Dr. Khalwale: Mr. Deputy Speaker, Sir, I rise under Standing Order No.97 that demands of a Member to be responsible for the accuracy or discourages Members from deliberately giving false information to the House.

Hon. Richard Onyonka has clarified a very sensitive issue, where an hon. Member had deliberately given us false information by saying that the Luos are marginalized.

Mr. Deputy Speaker: You are out of order! To begin with, "false" is not parliamentary language. This is your second term in Parliament and you should have known better than that. Under those circumstances, you should say; "misleading information." Secondly, the HANSARD will bear this out. I have not heard Mr. Magwanga talking about the Luo Community being marginalized. His people can be construed to mean---

Dr. Khalwale: Even the Kisii, Mr. Deputy Speaker, Sir. Allow me to read Standing Order No.97(1)(f). It says:-

“Conduct is grossly disorderly if the Member concerned deliberately gives false information to the House;”

I am raising this because when the hon. Member said; “my people” and said that they were marginalized in a constituency that had more than one community, I took it to mean his ethnic group. That being the case, as I prosecute my point of order, we need direction from the Chair because there are utterances, in a year of elections, that can ignite violence or hostilities in communities. What kind of action will the Chair contemplate against the Member?

Mr. Deputy Speaker: Fair enough! Under those circumstances, the rules of engagement are very simple. You should rise on a point of order and ask the hon. Member to substantiate what he means by saying; “my people.”

Mr. Magwanga: Thank you, Mr. Deputy Speaker, Sir. There are quite a number of forms of marginalization. When I talked about marginalization, I meant that whenever my people go for the Constituency Bursary Fund, they do not get it. Whenever they go for the Teachers Service Commission (TSC) recruitment, they do not get employment. That forces us to employ them in Rachuonyo South. These are the issues. When they go for the armed forces recruitment, they are referred to Rachuonyo South. This is marginalization and I stand by my words. These are not just mere allegations.

Mr. Deputy Speaker: Order! I will not have tribal heroes on the Floor of the House. Hon. Magwanga, when you say “my people”, the assumption on the part of Kenyans is that you are talking about Kenyans. There is no constituency in this country that does not have the 43 different ethnic communities of this country.

(Applause)

If you clearly want to talk about discrimination of a section of people of that place, then you can say that a section of Kenyans are being discriminated against. You are perfectly in order and justified to fight against discrimination on a section of Kenyans. However, when you say “my people, the assumption of the Chair will be that you are trying to compartmentalize Kenyans and segregate them on the basis of ethnicity. The Chair will not accept or entertain that, and in the context you have said it now, you need to apologize, withdraw and replace that with “a section of Kenyans”.

Mr. Magwanga: Thank you, Mr. Deputy Speaker, Sir. I apologize for using the words “my people” and replace that with “a section of my people.”

The Assistant Minister for Foreign Affairs (Mr. Onyonka): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: What is it, hon. Onyonka? This is a matter for the National Assembly of Kenya and not a contest between--- The Chair has the responsibility to protect the dignity, integrity and the unity of this country. So, you had better be very relevant.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Deputy Speaker, Sir, I will be very relevant. Is it in order for a Member of this House to state how members or “his people” as he calls them---

Mr. Deputy Speaker: Order, hon. Onyonka! That matter has been dealt with by none other than the Chair and disposed of. The hon. Member has apologized and withdrawn!

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. I need your direction. The direction I need is that the Constitution says that there shall be no discrimination on several grounds including that of ethnicity.

I am glad that the Member has apologized for what he said and I am glad I was not very keen. However, I listened to what you said and it is upon what you have said that I need your direction. I have stood on this Floor, in the past, and named even tribes which do not include mine but which I have felt are being discriminated against. I sit in the Equal Opportunities Committee and we look at discrimination even on the basis of ethnicity. The direction I need from you is; is it the view of the Chair that we should not mention where there is discrimination on the basis of ethnicity? With all due respect, the Constitution provides otherwise.

Mr. Deputy Speaker: I have heard your point. The Chair is conscious of those emotions. The Chair is also conscious of the possibilities of what can happen in this country. However, the Chair will also enforce the cohesion of this country. Right now, if a section of people who live along the boundary of the two constituencies feel that they are discriminated against on account of ethnicity, that is unconstitutional and it is not allowed. The Chair will not take this matter sitting down. Owing to the history of this country and the need for us to open a new chapter for Kenya, the Chair directs the Equal Opportunities Committee to move with haste, investigate the matter, come back and report to the House in a maximum of two weeks.

Mr. Deputy Speaker: Next Question by Dr. Eseli!

Question No.1467

CLOSURE OF NAMANG'OFULO COFFEE FACTORY

Mr. Deputy Speaker: Hon. Members, this Question by hon. Dr. Eseli is deferred since he is out of the country on official parliamentary business. The Question is deferred to a day he will be in here.

(Question deferred)

COMMUNICATION FROM THE CHAIR

PRE-NOMINATION BRIEFING ON
ELECTION OF EALA MEMBERS

Mr. Deputy Speaker: Hon. Members, as you are aware, the process for the election of Members of the East African Legislative Assembly (EALA) is currently underway. On the 11th of May 2012, the treaty for the establishment of the East African Community (EAC) election of the Members of the Assembly Rules, 2012 which were passed by this House were published. Pursuant to Rule No.4(1) of the rules, the Returning Officer, who is the Clerk of the National Assembly, has, through Gazette Notice No.6606 of 11th May, 2012, issued a notification of the election of the Members of the EALA and has invited interested persons to apply for nomination by a parliamentary political party. Applications are presently being received in the office of the Clerk of the National Assembly. The application period shall close on Thursday 17th May, 2012 at 5.00 p.m.

Hon. Members, Rule 7 of the rules provide that the relevant departmental committee may invite the party leaders or whips of all parliamentary political parties entitled to nominate candidates for a pre-nomination briefing on the nomination requirements under the treaty for the establishment of the EAC and under the rules. Still on this provision, a pre-nomination briefing

which shall be convened and facilitated by the Departmental Committee on Defence and Foreign Relations has been scheduled for Wednesday, 16th May, 2012 at 12.30 p.m., in the Old Chamber of Parliament which is where we are sitting now. All party leaders and all political party whips of the parties that are entitled to nominate candidates for election to the EALA are invited to attend the pre-nomination briefing. Owing to the critical importance of the nomination process to Parliament and to the country as a whole, all Members of Parliament are also invited to attend the pre-nomination briefing.

Thank you, hon. Members.

Mr. Deputy Speaker: Next Order!

POINTS OF ORDER

CRITERIA FOR APPOINTMENTS OF 47 COUNTY COMMISSIONERS

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I request for a brief Ministerial Statement from the Minister in the Office of the President in charge of Provincial Administration. I would like to request the Minister to issue a Ministerial Statement on the recent appointments of the 47 County Commissioners. In issuing this Ministerial Statement, I would require the following clarifications from him.

1. Whether the appointments complied with the one-third gender constitutional principle.
2. Whether those appointments considered marginalised groups and in particular whether any of those appointed, these being 47 appointments, come from the Tana River County.
3. Whether the basis of the law upon which these appointments were made was taken into consideration.
4. Whether he is aware that a Bill for the restructuring of the Provincial Administration was supposed to be tabled and debated in this House and when he will bring this Bill.
5. Whether the ethnic and regional balance principles as envisioned in the Constitution were adhered to.
6. Under which criteria the appointments were carried out and whether there was merit as we know it under the Public Service Commission (PSC). If there was any criteria, whether the Minister could table the said criteria before the House.
7. Whether there were, in fact, any consultations between the Office of the President and the Office of the Prime Minister and if there was, whether he can table proof of that consultation.
8. Whether in the course of these appointments, these being senior positions, there was vetting of these appointees before they were raised.
9. Whether the Minister can approach the appointing authority with a view to suspending these appointments until the issues that have been raised are resolved.

Thank you.

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I would also wish to request the Minister in his response to also indicate the specific role of these County Commissioners *vis-a-vis* the roles of Governors and what measures have been put in place to avoid conflict in terms of competing roles.

Finally, I spoke earlier about the issue of ethnicity and for the first time the Constitution provides that---- and many marginalised communities always complain that they are not included. For the first time, we had an opportunity to give at least one ethnic community a

position. Why was it not possible to consider one person per ethnic community and there would still have been extra five to distribute amongst the bigger tribes if we must? So, could we not just give one per ethnic community?

Mrs. Shebesh: Mr. Deputy Speaker, Sir, as the Minister is responding, could he tell us whether he is cognizant of the fact that this issue had been raised before and answered by the Minister of State for Public Service? The Minister assured this House that, that exercise of posting the County Commissioners would not be done until we had completed the Bills that we were debating on devolution.

Secondly, could he inform the House whether they are aware that because of the purported seniority in terms of the current Regional Commissioners, District Commissioners and senior District Commissioners, there is already disquiet among those who feel that they are senior and were not considered and some who were not yet even confirmed DCs were put on the list?

Mr. Mbadi: Mr. Deputy Speaker, Sir, in his response I would also request the Minister to address himself to whether those appointments have followed Article 232 of the Constitution and more particularly Article 232(1) (c) and also Article 233 and 234 of the Constitution.

Mr. Ruto: Mr. Deputy Speaker, Sir, I would also like to request that the Minister specifically further addresses the functions that are purportedly allocated to these particular County Commissioners. This is because the Constitution provides that Parliament shall appropriate funds to a function that is provided for. Is this not misuse of public funds, which is contrary to the provisions that guide budgeting?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I will issue the Ministerial Statement tomorrow afternoon.

Mr. Deputy Speaker: It is so directed.

MINISTERIAL STATEMENTS

INACCURACIES/INCONSISTENCIES IN TREASURY TAX/REVENUE ACCOUNTS

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, on Thursday, 21st April, 2011, the Member of Parliament for Gwasi, hon. Mbadi, sought a Ministerial Statement on the Tax Account at the Treasury. In particular, he wanted explanation made to the House on the following:-

- (i) whether our Tax Account, and especially the revenue rates are properly kept;
- (ii) the number of revenue statements that were certified by the Controller and Auditor-General for the financial years 2007/2008 and 2008/2009;
- (iii) the actual receipts of revenue for the financial years 2007/2008 and 2008/2009 in respect of various Budgetary Heads, including Mining, Profits and Dividends, Fines and Penalties, Other Charges, Taxes on Income, Profits and Capital Gains; Taxes on Goods and Services, Taxes on International Trade and Transactions, Other Taxes Not Classified; Property Income Interest Receivable, Property Income, Rents on Land, Sale of Goods and Services, Other Records not Classified; Repayment from Domestic Lending and On-lending, Tourism and Wildlife, and Trading Licences; and,

(iv) whether the receipts of the revenue for the financial years 2007/2008 and 2008/2009, as declared to Parliament in the Estimates of Revenue, reflected the actual receipts into the Exchequer Account for the respective Revenue Heads for the same period.

On 15th March, 2012, the Chair directed the Minister for Finance to issue a Ministerial Statement in relation to the receipts of revenue for the financial years 2007/2008 and 2008/2009 as only the accounts for the financial years 2008 and 2009 were already receiving attention by the Public Accounts Committee (PAC).

Mr. Deputy Speaker, Sir, I beg to, first of all, tell this august House that revenue collection and accounting is a process, and that it involves various stakeholders. The taxpayer pays his or her taxes due directly to the tax collector or indirectly into the Kenya Revenue Authority (KRA) collection accounts in the banks appointed by the KRA. On receiving the tax revenue payments, the revenue collector remits the same to the appointed receiver of that revenue, who subsequently remits the same to the Exchequer Account.

The KRA is legally appointed collector of Income Tax, Customs Duty, Excise Duty and Value Added Tax (VAT). Collectors of other revenues, who largely include Ministry Departments, are appointed by respective receivers of revenue, who are in turn appointed by the Treasury.

Mr. Deputy Speaker, Sir, from the above description, you appreciate that the process of collecting and accounting for revenue involves parties who are independent of each other, and who maintain their own separate sets of books of accounts. Indeed, the revenue records maintained by these parties often show different revenue positions and, therefore, require reconciliation – in some cases, on monthly basis and in other cases even on a daily basis.

Let me underscore the fact that variances are usually explained by the timing differences when revenues are received and then ultimately remitted to the Exchequer. For instance, when a taxpayer pays his or her taxes through the KRA collection account in a bank, the KRA immediately recognises the receipts in their books but such receipts take time to be reflected in the receiver's account at the Central Bank of Kenya (CBK) and subsequently to the Exchequer Account.

Mr. Deputy Speaker, Sir, with this background, I now wish to respond to the specific questions raised by hon. Mbadi.

First, I am not aware of a Tax Account under the Government Financial Management Act but I presume that the hon. Member was referring to the Exchequer Account.

Let me clarify that for all revenues due to the Government – tax, non-tax and proceeds from borrowing – are paid into the Exchequer Account, which is properly kept and indeed audited on a daily basis by officers from the Office of the Controller and Auditor-General. As part of his or her legal mandate, the Auditor-General also keeps a mirror account of the Exchequer Account.

Mr. Deputy Speaker, Sir, with regard to the question of the number of revenue statements for the financial year 2007/2008 that were certified by the Controller and Auditor-General, I would like to confirm that only two statements were certified. These were the Property Income Interest Received Account, and the Dividends and Fines, Penalties and Forfeitures Account. For the financial year 2008/2009, all the 14 statements were qualified.

The Report of the Controller and Auditor-General for the financial year 2007/2008 provided specific reasons as to why each revenue statement was excluded from his certificate, and this was basically for accounting reasons. The Report of the Controller and Auditor-General for the financial year 2007/2008 has already been discussed by the PAC, and the Committee has

given specific recommendations on actions to be taken by the respective receivers of revenue. Indeed, revenue receivers have been taking action as directed by the PAC, through the Treasury.

Mr. Deputy Speaker, Sir, therefore, I wish to say that the action by the PAC is in order, and this is being implemented.

Regarding the question as to whether the receipts for the financial year 2007/2008, as declared to Parliament in the Estimates of Revenue, reflect the actual receipts into the Exchequer Account for the respective Heads and for the same period, I wish to clarify that the actual receipts for that year, as reflected in the Printed Estimates of Revenue, were based on unaudited revenue returns because at the time of reporting to Parliament the accounts were in the process of being audited. So, preparation of the Printed Estimates of Revenue was based on unaudited accounts.

Mr. Deputy Speaker, Sir, in conclusion, let me reassure this House and the public at large that the Treasury remains fully committed to ensuring full accountability and optimal utilisation of all revenues collected and received by the Government of Kenya. Indeed, we have strived to uphold a high level of transparency in dealing with public finances. We have continued to demonstrate this, in accordance with the Fiscal Management Act, by publishing in the Kenya Gazette, on monthly basis, the Statement of Revenues and Net Issues out of the Exchequer Account.

In addition, we submit to this House the Quarterly Economic and Budgetary Report, as required by the law. Indeed, the later publication can also be downloaded from the Treasury's website for wider access.

Thank you.

Mr. Mbadi: Mr. Deputy Speaker, Sir, the Statement by the Minister sounded like a Paper prepared for a seminar, but not a clear explanation on accountability to the National Assembly on the part of the Government.

According to the Minister, only two out of 14 revenue accounts were certified. According to my information, three out of the 14 revenue accounts were certified. So, I have added him one account that was also certified. These are the Mining Account, the Profits and Dividends Account, and the Fines and Penalties Account; which are the smallest revenue accounts. All the other major revenue accounts such as the Taxes on Income Account, the VAT Account, the Corporation Tax, *et cetera*, were only qualified.

Mr. Deputy Speaker, Sir, in accounting language, "qualified" means they were not certified. When the Minister says that the accounts were qualified in the following year, it may mislead one to think that everything was perfect. It means that all the 14 accounts did not meet the threshold of auditing standards. Revenue is collected and banked in the Exchequer Account.

The Constitution is very clear under Article 206, which states that there is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national Government. This actually has been uplifted from the other Constitution that we did away with in August, 2010. So, it is just a law that has been in place all this time. Once the money is banked, that is what the Controller and Auditor-General is given and that is what should be reported to this House. Could the Minister now address the following three pertinent issues?

First, could the Minister tell this House why, for example, taxes on income - and I want to be very particular, Pay-As-You-Earn--- According to the Exchequer Account, what was given to the Controller and Auditor-General for 2007/2008 was Kshs81.6 billion. To Parliament you reported Kshs85.9 billion. That is over-reporting by Kshs4.3 billion.

On taxes on corporations, to the Controller and Auditor-General you reported Kshs86 billion, but to Parliament you reported Kshs79 billion. It is now the opposite. That is under-declaring to Parliament of Kshs7 billion. I could go on and on, but the most interesting one is net domestic borrowing. You reported to the Controller and Auditor-General that for the year 2007/2008 you collected zero. This is very straightforward. On this one you do not need any book reconciliation because it is the CBK borrowing. So, if you are telling the Controller and Auditor-General that you collected zero and yet you come to Parliament and report that you borrowed Kshs13.8 billion then the question is, if you borrowed that money, where did you bank it such that the Controller and Auditor-General could not find it in the Exchequer Account?

Mr. Deputy Speaker, Sir, finally, I want to take the Minister to task for saying that the reason why there is a difference between the figures given to the Controller and Auditor-General who is now the Auditor-General and what was given to Parliament is because the figures given to Parliament were based on unaudited revenue returns. Could the Minister tell us why these figures were based on unaudited revenue returns and yet he reported to Parliament in June, 2009 and the audit was conducted between September, 2008 and May, 2009? The audit report was actually out by May, 2009 and he reported to Parliament in June, 2009. Why did he then base it on unaudited accounts? Does it really make sense? So, this is a very big issue and the Minister should not treat it casually as if that this is just mere book entry. The Controller and Auditor-General is telling this Parliament--- Remember that this Parliament has employed the Controller and Auditor-General to be auditing on its behalf and be reporting to Parliament. The Controller and Auditor-General is telling us: "Parliament, I have done my work. I cannot certify these accounts because they do not make sense to me. There is a total sum of Kshs489 billion for the 2007/2008 Financial Year that I cannot give my opinion on."

I think this House deserves clear reasons as to why the Controller and Auditor-General found it difficult to certify our accounts; why the figures in the Exchequer account where we should keep all our money are different from what the Minister has given us on the Floor of the House.

Thank you, Mr. Deputy Speaker, Sir.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, as I explained, the balance differences will always be there. They will be there this year and they will be there next year. Why? Basically because of timing differences.

As I said, if you look at the whole scenario where you as an individual, for example, if you pay to the Kenya Revenue Authority (KRA) as a collector it recognizes that tax immediately. But if you pay to the bank on behalf of the KRA, there is a difference of one or two days before the money is actually reflected in the KRA account. It is even worse where it is another collector. So, if you do--

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

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, let me explain so that the hon. Member can understand the timing differences.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. I would have allowed the Minister to continue with his time differences. The Minister can tell this House what it may not understand. However, can he just explain to us, for example, in his timing difference, the net domestic borrowing? The Central Bank of Kenya is the one which gets the money through borrowing and reports. Why is it that the Minister reported to the Controller and Auditor-General that there was zero in the Exchequer Account for that year and yet he reported to Parliament Kshs13.8 billion? It is just as simple as that. One can understand the Minister's talk about paying

through banks, PAYE, VAT and whatever. However, can he explain the net domestic borrowing, for example, where it is the CBK which borrows? That should go directly to the Exchequer Account. Can the Minister tell me, for example, why there was that difference? That is where he told the Controller and Auditor-General that we did not borrow anything according to his records in the Exchequer Account but he came to Parliament one month later to report to us that he borrowed Kshs13 billion. How does this tally with the Minister's timing difference?

The Minister for Finance (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. Let me begin from the beginning. As I said, differences in balances will always be there. They were there last year, they will be there this year and they will be there next year, basically, because of timing differences. I was giving you the example when you pay your taxes. If you pay them directly to the KRA it is recognized immediately but if you pay to a collector, it takes some time. There are other collectors who take more time before this is recognized. Ultimately, the total taxes will find their way into the Exchequer. So, depending at what time you are looking at the figures, there will be time differences. That is why reconciliations are done – I said some on daily basis---

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

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I think they do not want to hear the answer

Mr. Deputy Speaker: Proceed, Mr. Minister!

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, depending on when you ask for the books of account, there will be these timing differences. I assure you that they will be there and that is why there is reconciliation. In this particular case, since the figures were being audited, what we reported to Parliament were the unaudited accounts.

Coming to the specific accounts - and I thank Mr. Mbadi - they are three. In fact, I mentioned them but the calculation is wrong. There were three that were satisfied by the Auditor-General. If you look at the reasons for non-certification, you will see that they are basically auditing issues and more of reporting time. Again there are other collectors who do not remit their accounts immediately. So, it will take time. There are others, for example, which are shown as having been received but ultimately this has not been remitted to the Auditor-General. Again, this depends on the timing. For example, if you closed your books today, you will have a different figure but when those figures on the net borrowing are taken to the Exchequer Account tomorrow, they will be different. So, these timing differences will be there.

Mr. Deputy Speaker, Sir, the most important thing is that not a single cent of Kenyan money has been lost and it will not be lost under my watch.

Thank you.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. I do know whether the House is convinced, but you will agree with me that if there is timing difference, it should be systematic and consistent; if PAYE is low in terms of this date, the corporation tax should be the same and the Value Added Tax (VAT) should be the same. Why is it that we have a difference; for some the report to Parliament is higher and for others the report to Parliament is lower? How then would we be sure that this is a timing difference?

Mr. Deputy Speaker, Sir, I was very clear to the Minister that he reported to this House in June after the audit was concluded. Why did the Ministry choose to bring to this House what they are calling "unaudited" accounts? The Minister has not addressed himself to that. Again, when you are presenting the books to the auditor, it is assumed that you have done reconciliations. Can the Minister tell us, these figures that he gave to Parliament, where did they

come from? Did they come from the Exchequer Account? Is he giving us figures from the Kenya Revenue Authority (KRA)? Can he explain to us where these figures are from? These figures are different from what is in the Exchequer Account, where we expect our money to be banked. If today, I come to this House and tell you that you gave me Kshs50,000 to bank in your account and I give you a banking slip that shows a banking of shs35,000, and then I tell you there is a reconciliation and timing difference. Am I not supposed to explain to you how that timing difference has resulted into the difference in the amount?

Mr. Deputy Speaker, Sir, I would expect the Minister to be very clear and forthright to the people of Kenya. You are new in this Ministry. You might not even know how the money disappeared; chances are that money disappeared. This is because the Auditor-General is saying, "I do not know how much this country is collecting".

Mr. Deputy Speaker: Order, Minister! Allow another request for clarification!

Mr. Ogindo: Mr. Deputy Speaker, Sir, I rise to seek clarification from the Minister. According to the Constitution, the Auditor-General is required to audit the books after eight months. Previously, audits have been done after a reasonable period of time. The question of timing difference does not, therefore, arise. This is because the only tax that is collected through agents is VAT. The remittance is done in not more than a week's period. The auditing is done after about three months. Therefore, the question of timing does not arise.

Having said that, Article 216 says that the revenue allocation shall be based on the revenue collected by the central Government. At this point when we are going into devolution, it is very important that we get the figures of revenue accurately. Could the Minister clarify the differences in view of the fact that we want to know the accurate figure to be used for revenue allocation?

Mr. Deputy Speaker: We are going to allow the Member of Parliament for Lari to seek one clarification; that is the last clarification.

Mr. Njuguna: Mr. Deputy Speaker, Sir, it is sad and a bad signal to this House, and even the country, that 14 accounts were presented to the Auditor-General and only three qualified. What measures is the Minister taking to make sure that the remaining 11 accounts are qualified? In addition, what measures will the Government take to make sure that this will not happen in this country in future, as the Minister tries to display a degree of accountability and transparency in his new Ministry?

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, beginning with the last question by the Member for Lari, it is not our intention to have the accounts qualified. In fact, to the contrary we would like the accounts not to be qualified by the Auditor-General.

Coming to the other issue raised by Mr. Ogindo, the funds that are to be remitted to the county governments will be based on the last year's audited accounts for every year. That is what the Constitution says. Those are the figures that have been used by the Treasury and the Commission on Revenue Allocation (CRA).

Coming to the other issues that were raised, as I said these accounts are reconciled on a daily basis. I have a schedule here which I would like to share with Mr. Mbadi. It shows that for every account you would have what was estimated, the actual receipt and the amount paid to the Exchequer, as per the revenue statement, and then the actual receipts in the Exchequer Account. You will find that in any given day there will always be differences. Even for reporting purposes, if you close your books today and the other institution accepts the figure from the following day, there will be a difference. I would like to share this list with Mr. Mbadi. As I said, we have absolutely nothing to hide. He can actually see even the causes for the differences. Sometimes

payment is made directly by the collector of revenue. Sometimes some loanees pay directly. If dividend income is declared it may not be received until sometime later. Therefore, these differences will always be there.

Mr. Okemo: On a point of order, Mr. Deputy Speaker, Sir. From the information available to me, these same accounts we are querying here are exactly under scrutiny, currently, by the Public Accounts Committee (PAC) whose report will be brought here because the qualification means there must be reasons which have been given why the 11 accounts were not satisfactory. Therefore, unless we want to anticipate what is going to be in that report--- Why can we not give the PAC the opportunity to complete their work and bring the report to Parliament?

Mr. Deputy Speaker: Mr. Okemo, for the benefit of the Chair when will that report be ready? Chair of the PAC, are you in concurrence with what Mr. Chris Okemo is saying?

Dr. Khalwale: Mr. Deputy Speaker, Sir, we have lost a bit of time because of the work we are doing on the special audit of De La Rue; therefore, probably in another two weeks to three weeks, we will have concluded and presented the report to the House.

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

Mr. Deputy Speaker: Who do you wish to inform?

Mr. Mbadi: The hon. Chair of the Committee.

Mr. Deputy Speaker: Dr. Khalwale, you should be ready to have that information.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I can only get reliable information from Members of the Committee if I am not right about it.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. It is very sad that the Chair of the PAC is not even aware of the work of his Committee. You had ruled that the accounts of 2007/2008 had been looked at by the PAC. They have been tabled there and adopted. You made a specific ruling that the 2008/2009 accounts, which are before the Committee, will not be addressed by the Minister. However, the 2007/2008 accounts were finalized by the Committee, and a report brought here; it had only one small paragraph on revenue to be addressed. That is why the Minister is addressing this issue. It is very sad that the Chair of the PAC is not even sure. When I want to inform him, he behaves in a funny way.

Mr. Deputy Speaker: Fair enough! He is a medical doctor! He is not an accountant like you! Proceed, nonetheless. Dr. Khalwale, listen to the experts at times. It helps.

Mr. Mbadi: Mr. Deputy Speaker, Sir, this is my final plea to the Chair. Let me put this matter very clearly; the accounts we are referring to were for the year that ended on 30th June, 2008. These accounts were audited between September 2008 and May 2009 and a report issued by the Controller and Auditor-General in May 2009. The financial statements I am referring to, which were brought to this House, were brought in June, 2009, 12 months after the end of the financial year. Therefore, the figures that were tabled before the House should have been the same ones that the Controller and Auditor-General was given.

Mr. Deputy Speaker, Sir, from the Minister's answer, either he has not reconciled himself to the gist of this matter or he has deliberately been misled by his Office. I want you to help this House and this country because this is taxpayers' money. We are talking about the Kshs489 billion in question. The Controller and Auditor-General is not sure. If today you asked the Minister how much we collected as a country in that particular year, he may not answer us because the figures he gave the auditor are different from what he gave to this Parliament. So my concern is that this matter needs to be revisited by this House. We need to take this matter to either the Revenue sub-committee of the Budget Committee or the Public Accounts Committee (PAC) to specifically look at the revenue. Otherwise, we may approve and give a clean bill of

health to the Government to proceed with inaccuracies. The following year the amount was less but in 2007/2008, it is shocking.

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to persistently mislead this House that the differences in account of revenue are as a result of timing difference? The Government accounting system is cash based and the cutoff point is very clear; 30th June and the Government does not engage in accrual. So, the Government can never put in its books dividends that it has not received. I want to invite you to find the Minister's answer unacceptable and hollow. I want you to order that this matter be taken up by the Budget Committee because Kshs489 billion is a mind boggling sum if it is being included or excluded as revenue. It is going to affect the operations of this Government and also the county governments. I invite you to find the Minister's answer unacceptable!

Mr. Deputy Speaker: Mr. Okemo, maybe you can help us and help this House because you are the former Minister for Finance. Indeed, the Chair finds this mind boggling and finds reason to direct the matter to the Budget Committee as well as the Departmental Committee on Finance as a joint committee.

Mr. Okemo: Mr. Deputy Speaker, Sir, personally, I think to help the House I would recommend that this matter which involves accounts for the year 2007/2008 be referred back to the PAC because all audit queries or all accounts that have queries are the responsibility of the PAC and they can incorporate the Budget Committee and the Departmental Committee on Finance and we can then interrogate this issue because they are actually very genuine concerns, in my view. That, indeed, if there are issues that cannot be explained between the revenue collected as reported by the Minister, then this must be looked into much more deeply.

Mr. Deputy Speaker: Clearly, the Chair also finds reason or cause to give a direction because the amounts and the figures and the disparity is clearly mind boggling and we have a responsibility, as much as possible, to the extent we can do it within our means; to use the relevant Committees to interrogate this issue at length. The Chair directs a joint Committee of the Budget, the PAC and the Departmental Committee on Finance to be led by the Budget Committee because the PAC Chairman has already said he is too busy with some other issues---

So proceed with speed and report back to this House in a maximum of two weeks. If you can do it in one week, so much the better! Clearly as the argument goes, we want to see if the money that we have contributed as taxes and for any reason that it does not look like it is tallying up, then there is need for the House with its own limited understanding and knowledge to use the relevant Committees who can also seek experts in the process both inside and outside Parliament to get to the bottom of this and report to this House in a maximum of two weeks.

Next Order!

(Several hon. Members stood up in their places)

Not on the same!

Mr. Ogindo: Mr. Deputy Speaker, Sir, I thank you for your ruling but I want you to appreciate that the Budget Committee today is seized of the Budget process which takes precedence over this thing. If we give it the same time within which we are processing the Budget, it might not work. So, I would plead that you give us a month.

Dr. Khalwale: It is on a different matter, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: No; on the same! Mr. Okemo, much as you are not rising on a point of order---

Mr. Okemo: Mr. Deputy Speaker, Sir, I think I want to support Mr. Ogindo's observation that we finish the Budget process and then maybe deal with this one more exhaustively.

Mr. Deputy Speaker: Fair enough! I will revise my earlier direction and direct that this matter be done within a month; four weeks!

(Applause)

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. The Chair had ruled that a Ministerial Statement I had requested from the Minister for Medical Services on the issue of the National Hospital Insurance Fund (NHIF) be given today.

Mr. Deputy Speaker: The Minister for Medical Services was, indeed, ready to do that but I wish to direct that I have further communication from the relevant Committee on this matter. The role or the purpose of Committees is to enhance and enrich the functions of the House and the plenary for that matter and it is not fair sometimes to duplicate matters. When a matter is being handled by the Committee, we need to give time to the Committee to bring the report to the Floor of the House and then the matter to be interrogated in an integrated form and exhaustively once and for all. The Chair is in possession of a letter and the Chair has directed that whereas the Departmental Committee on Health had requested to be given two weeks to conclude this report and present it to the Floor of the House; and even indeed to have that Ministerial Statement also postponed for that period of time, the Chair directs that because of the sensitivity of the matter, this report be concluded within a week.

The Minister was, indeed, ready to deliver his own Ministerial Statement but I directed that I cannot allow that now but one week from today, that report will be here and the Ministerial Statement will also be delivered at that time.

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. I appreciate your ruling. However, I would just like to get further clarification. When this matter was brought up last time, we raised these points of orders and canvassed for them very hard with Mr. Mbadi. We have not also seen the Committee engaging its own hon. Member who is bringing this issue to the Floor as a Member of that Committee. Would you also give guidance on the role of hon. Members of a Committee coming out of that particular Committee and canvassing an issue that the Committee itself is currently undertaking?

Mr. Deputy Speaker: Clearly, that is a very clear sign of denigration of the dignity of the House itself and the Committees. The Chair is actually surprised that that kind of a thing happens; that an hon. Member of a Committee who is also involved in the Committee's affairs is out there campaigning or canvassing. Is that what you meant?

Mrs. Shebesh: Yes, Mr. Deputy Speaker, Sir, that is what I meant!

Mr. Deputy Speaker: And counter or contrary to the collective will or collective role of the Committee?

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I want to categorically say that when I asked hon. Khalwale why he was bringing this matter, he told me that--- When I asked him about the Committee engaging, he told me not to disturb him because he is even a Member of that Committee. I have gone further to the website of Parliament and confirmed that he is a Member of the Departmental Committee on Health. So, I would like that clarification about a Member of that Committee himself engaging and why the Committee itself has not taken action against its own Member.

Mr. Deputy Speaker: There is a tradition in this House; we are not going to discuss the conduct of Members of Parliament without a substantive Motion and in a manner that is essentially--- But I have given a direction on this Ministerial Statement and I have also given a direction to the Committee. Any contributions on the same can be done at the appropriate time.

Ms. Karua: Mr. Deputy Speaker, Sir, I am just concerned about an issue raised by my colleague, hon. Shebesh, that when a person is a Member of a Committee, he or she cannot come before the House and seek to explore the matter further. I am seeking that, that matter ought to be left to a time when Members can canvass the point. Otherwise, we will start having positions which are not well canvassed and which have not been well thought out. The House is superior to any Committee. Therefore, we cannot be told that since I am a Member of the Public Accounts Committee (PAC), I shall not debate any other matter here unless if the Committee reports. That would make this House useless.

Mr. Deputy Speaker: Frankly speaking, it is not that a Member cannot take a position or an opinion that runs contrary to the view of the majority of that Committee. But the practice the world over is that you wait, first of all, for that Committee to conclude its work. When it has concluded its work and it has reported to the plenary, then the House is seized of the matter. Once the matter has now been referred to a Committee or a Committee has taken it up, it is premature. It is jumping the gun for us to debate the same at this stage. So, I have given a direction on that.

(Several Members stood up in their places)

Order, Members! I have given a direction on this. I have directed the Committee on Health to come up with this report within a week from today. I am looking at the latest by Tuesday next week.

Next Order!

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

Mr. Deputy Speaker: What is the procedure, Dr. Khalwale?

Dr. Khalwale: Mr. Deputy Speaker, Sir, it is important that the records of the House be clear. The Member she is referring to is none other than myself. I want to confirm, for a fact, that when I lost my seat and regained it through the by-election, the Chief Whip only returned me to the PAC. The records are clear. From last year when I last went to that Committee, I have never sat in a meeting there because I am not a Member of the Committee. On this issue of procedure, whereas I want to go by what you have ruled, in my request for a Ministerial, we had safeguard measures that I was building. For example, I was addressing myself to the issue of the accounts--

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Mr. Deputy Speaker: Do not go to the content!

Dr. Khalwale: Mr. Deputy Speaker, Sir, I just want you to help me.

Mr. Deputy Speaker: Hon. Khalwale, if clearly you want to do justice to the matter at hand and if clearly you have the interest of the country, can you wait at the appropriate moment and do your contribution in a very exhaustive manner without indicating clearly like there is going to be a debate? What is your procedure?

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, this is still related. Because of what has happened this afternoon, we would have wanted an assurance. There are people who were covered this morning and now they are not covered because this universal health care has been suspended. Without discussing the issues which Dr. Khalwale raised, I would have pleaded that

you allow the Minister to assure this House the Government is going to ensure that the people who were covered under this universal health care are covered by tomorrow morning. This is only to that extent, so that we can interrogate the Minister to that extent only.

Mr. Deputy Speaker: Order! The Chair has given a direction. Hon. Minister, you are under no obligation, but should you feel the humanitarian aspect of it, which the Member has stated, the Chair will be glad to listen to you very briefly.

The Minister for Medical Services (Prof. Anyang'-Ny'ong'o): Mr. Deputy Speaker, Sir, with regard to the specific issue that hon. C. Kilonzo has raised; whether the members will continue to be covered, I want to assure the House that the action that was taken was just to block the accounts for the two service providers, but services continue. The caretaker Board will take appropriate measures to make sure that the services continue. That is a very temporary measure. We should distinguish between this scheme for the Ministry of State for Public Service and the normal NHIF scheme, which goes on regardless of what happens to the Public Service Scheme. So, that should be understood.

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

Mr. Deputy Speaker: I think we have exhausted this matter!

Mr. Ruto: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a matter of life and death for certain Kenyans. We, in Parliament, can sit with the comfort of comprehensive medical care and continue to prevaricate on matters that touch on other peoples' lives. The Minister has just mentioned that those civil servants who had been covered by those particular institutions will continue to get medical cover without telling us specifically where they would go today if they want dialysis for the kidney patients? What happens to them today? He should make a clear Statement, so that the civil servants know where they will go tomorrow morning with their beloved ones for comprehensive medical care. We know about the usual NHIF cover that pays for bed charges only. We are not interested in paying for bed charges. We are talking about comprehensive medical care.

Mr. Deputy Speaker: Order! If I got the Minister right, he said that the services of two service providers were suspended, but the scheme is on.

Hon. Members: Where?

Mr. Deputy Speaker: Order! The presumption of the Chair is that there are many service providers. Are they the only two who have been suspended?

Mrs. Shebesh: Mr. Deputy Speaker, Sir, just to ask the question more clearly because we have been following this issue, these two providers are covering about 100,000 civil servants. Those 100,000 civil servants cannot go anywhere else because these two health providers are what they signed against. If these 100,000 civil servants would need dialysis today, which is an outpatient service, where would they go?

The Minister for Medical Services (Prof. Anyang'-Ny'ong'o): Mr. Deputy Speaker, Sir, let me clarify. The point that the Members are raising is very important; that once there is a contractual obligation between the NHIF and the Ministry of State for Public Service to provide these services, they must be provided. The point I am making is that because of the problem that has faced these two service providers, what has been affected is not the service provision, but the account. Now, the caretaker Board must make arrangements for services to continue notwithstanding the problem. That is my understanding. We will be taken to task if services stopped because that is very tragic. Whatever problems exist must be solved without suspending services to the civil servants. The services must continue regardless of whatever problems there are. The problems that are there are solvable. They are not insolvable.

Mr. Deputy Speaker: Hon. Minister, I want the Chair to be comfortable in this case that you have given an undertaking that those services will not be stopped. Can you say that on the microphone so that the HANSARD can carry it?

The Minister for Medical Services (Prof. Anyang'-Ny'ong'o): Mr. Deputy Speaker, Sir, let me go on record for the purpose of this House that those services will not stop.

Mr. Deputy Speaker: Fair enough! Next Order!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang'): Mr. Deputy Speaker, Sir, there is a matter that has been outstanding in this House for a long time and I have been ordered to respond to it, I think five or six times, and I have not been able to respond to it. It is a short matter about a visitor who was not allowed to get into the country. Can I be allowed to respond to hon. Duale's request briefly, so that I can get this out of my desk?

Mr. Deputy Speaker: Order! Fair enough! Hon. Kajwang', that is the last Ministerial Statement. Any other Ministerial Statements will clearly be either sought or delivered tomorrow. Proceed!

DEPORTATION OF ABU AMENA BRADLEY PHILLIPS

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang'): Mr. Deputy Speaker, Sir, the Ministerial Statement that was sought was for me to explain why one Abu Amena Bilal Bradley Phillips was deported from this country. I want to respond briefly as follows:-

The subject is a Jamaican national holding a Canadian passport No.BA542923.

He had been declared prohibited immigrant in both the United Kingdom and United States of America (USA) for radicalising the Muslim youths. So, on 23rd February, 2012, the subject arrived at Jomo Kenyatta International Airport (JKIA) from Qatar aboard Qatar Airways, flight No.QR533. He was denied entry on the advice of our security agencies.

On 24th February, 2012, the security agencies requested that the subject be put in the watch list for being a security threat to Kenya. The subject was, therefore, not deported as alleged but refused entry into Kenya.

Mr. Duale: Mr. Deputy Speaker, Sir, I can now confirm why this Minister was dodging to answer this Question for the last six months.

Mr. Deputy Speaker, Sir, that Muslim cleric is a renowned Islamic scholar. He is known for preaching anti-radicalism across the world. This Minister is telling the nation--- The question I asked is: "How many Muslim scholars have been deported from the country over the last six months?" I am asking that because it is only Muslim scholars who are invited by reputable Muslim institutions such as the Supreme Council of Kenya Muslims (SUPKEM) and Jamia Mosque. But when they arrive at the airport, they are denied entry. It is not any other people.

Could he confirm to the nation, as the Minister in charge of immigration, that the Muslim community in this country is discriminated under the guise of terrorism? Could he table any evidence apart from saying that the same Muslim scholar was denied entry by the UK and the US? If somebody has been denied entry by the UK and US, the Kenya Government can deny him entry also? Is Kenya a sovereign State? Are we independent? Can you confirm to the Muslim community today that, as you deny them identity cards and passports, you are now denying them the choice of preaching?

Mr. Deputy Speaker: Order! Order! Order, hon. Duale!

Hon. Duale, by now, I think you should understand the practice of the House. When you seek a Ministerial Statement, you seek clarifications on the Statement itself. That is why on the basis of the Statement--- That is why it is important for you to understand the difference in what you intend to achieve between asking a Question or seeking a Ministerial Statement. Ministerial Statements are matters of policy. Let us not turn the House right now into another forum. If the Minister has given a Ministerial Statement, seek clarifications on that Statement, short as it is. Seek clarifications!

Mr. Duale: Mr. Deputy Speaker, Sir, I was building my case. This is a very sensitive matter for the last six months. I want to ask him three clarifications, if you allow.

Mr. Deputy Speaker: Proceed!

Mr. Duale: One, could he confirm to the nation and the Muslim community in this country that he takes orders from foreign governments and powers on who to allow to enter the country as far as the Muslim community, preaching and propagation of Islam is concerned?

Mr. Deputy Speaker, Sir, secondly, I want the Minister to clarify that it is a known fact in this country that Muslims are denied identity cards on the pretext of being called Mohamed Abdi? Could he confirm and clarify whether his Ministry has gone ahead and wants to stop the issue of propagation?

Mr. Deputy Speaker: Order! Order, the hon. Duale, order! Proceed and clarify what essentially fall within the purview.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Deputy Speaker, Sir, hon. Duale should not use this Parliament as a political rally. This is not a matter for identity cards for Muslims. That is what I said.

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

Mr. Deputy Speaker: Order, hon. Duale! Hon. Duale, order!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Deputy Speaker, Sir, this country does not take orders from any foreign power. But we have a working relationship on matters of security with other security agencies worldwide. Those security agencies, sometimes, give us information that we do not have, and we use them. That is in our interest as a country. We may not have as much investigative power like other agencies may have across the world and when they advise us, we take that advice seriously and we look at it and advise ourselves accordingly. What we have said is that, that gentleman was put on a watch list and was, therefore, denied entry. In the law that we passed in this House recently, we provided that if you have been put on what we call a "PI" list, that is Prohibited Immigrant List, then there is a committee which we have now put together in the Ministry that includes other members that are not even members of my own Ministry, who would review any case based on evidence. So, if there is a complaint - and it is a genuine complaint - there is a facility to use. In fact, if you are not even satisfied with the ruling of that committee, you can come to me. If you are not satisfied with my ruling, you can go to the High Court. If you are not satisfied with the High Court, you can go to the Supreme Court, whether you are a member of this country, whether you are a citizen or not.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I just want the Minister to tell us, because on the Floor of this House, the Government canvassed the issue of our defence forces going into Somalia. During that time, we were told clearly what the security issues were. It became Government policy and the House adopted it - that there were some measures that were going to be taken to safeguard this country against attack by what is known *Al-Shabaab*.

Mr. Deputy Speaker, Sir, that particular process was led by the then Minister for Foreign Affairs, who is now the Minister for Trade and the Minister of State for Defence. Could the Minister tell us the instructions he has been given as the Minister of State for Immigration and Registration of Persons, which, of course, allows people in and out, in terms of that particular issue of safeguarding Kenyans security due to the Operation *Linda Nchi* that is going on and now we have joined AMISOM. What is the relationship between them? That is because if it is about radicalization, then the Minister should be clear. What has that Muslim cleric radicalized that is more than Christians have radicalized when they were speaking during the No campaign? What this radicalization that has happened that is connected either to the Government policy or the policy that the Government has given you in relation to the Operation *Linda Nchi*?

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Deputy Speaker, Sir, this matter has no connection with what is going on in Somalia and that is a different matter all together from a war situation. This is a matter of a one-to-one issue of those whom we allow in this country and those whom we refuse entry. As a sovereign country, we have the right to allow entry and we have a right to refuse entry. We are advised accordingly. I do not think it is in the interest of this country for me to disclose – unless it is in a Committee and unless it is outside and away from the cameras – the information that I have on this individual. If he is not satisfied, then he can follow the procedure that I have already referred to.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Ruto: Mr. Deputy Speaker, Sir, the Muslim Community constitute quite a large percentage of Kenyans. They are *bona fide* Kenyans. There is a perception that is growing; that the Government tends to listen to America. There is also a perception that they tend to persecute the Muslim Community on very flimsy reasons.

Mr. Deputy Speaker, Sir, what proactive measures is the Government taking to assure the Kenyan Muslim Community that they are not in any way under threat from foreign pressure which is exerted on you, as a Government, to start apparently denying Muslims their rights? We have heard of situations in which some Muslims have been taken to Uganda and others have been taken to America for reasons that later on turned out to have been flimsy.

Mr. Deputy Speaker: For the benefit of the hon. Members, would you, Minister, be in a position to understand that Qatar does not entertain any radical violent Muslim groups? Qatar is supposed to be very conservative. So, if he is living in Qatar, he has a residency there. This is a country that is fighting terrorism just like the Saudis and the other Gulf States.

Proceed, Mr. Minister!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Deputy Speaker, Sir, that is one of the points that can be canvassed in a committee by whoever has that information to advance it. We have that committee which is multi-disciplinary in the Government. In fact, it has people who are not, necessarily, Government officers who sit in that committee. We made a commitment in this House to deal with these issues of discrimination that I hear. However, it does not add up for hon. Members of this House to now use the Floor of this House to suggest that Muslims are not Kenyans or to suggest that the Government is discriminating or harassing Muslims. As a matter of fact, since I came to this Ministry, there are facts to show that we have tried to really open up this space that was denied by the Government before. I think hon. Ruto was a member of the Cabinet in that Government which squeezed the Muslims very badly until I got in there.

So, Mr. Deputy Speaker, Sir, we have done our best to show that this country belongs to everybody. We have done a lot to show that in this country, everybody has a right. There are people who are marginalized and minorities who must get their rights. We do so, every day.

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

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

Mr. Ruto: Mr. Deputy Speaker, Sir, is the Minister in order to say that I was part of a Government that harassed Muslims? I am not aware of any instance in which I participated in any harassment of any religious group in this country. In fact, it is them!

Mr. Deputy Speaker: Order, hon. Ruto!

Mr. Ruto: Yes! If being a Member of Raila's wing of ODM actually made me harass – because they have been harassing Muslims---

Mr. Deputy Speaker: Order!

Mr. Ruto: I have actually pulled out. I am no longer part of the team that harasses others!

Mr. Deputy Speaker: Order! Order! We shall not turn this---

(Several hon. Members stood up in their places)

Order! Order! This is not going---

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

Mr. Deputy Speaker: Order! Order! The Chair is talking!

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

Mr. Deputy Speaker: Order! Order! The Chair is talking!

We shall not allow this to be turned into party politics in the guise of other things.

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

Mr. Deputy Speaker: What is your point of order?

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, is hon. Isaac Ruto in order to mislead the House that hon. Kajwang is talking about the current Government when hon. Kajwang is referring to the KANU Government, which he belonged to and, indeed, he has told us that Moi left him at an airport in South Africa because he was even more overzealous than Moi? Is he in order?

(Laughter)

Mr. Deputy Speaker: Hon. Keynan, the last clarification!

Mr. Keynan: Thank you, Mr. Deputy Speaker, Sir. Taking into account that criminal responsibility is individual, over the last few years, we have attempted, as a country and, indeed, the former Minister for Foreign Affairs, hon. Wetangula, will bear me witness that they have struggled to project, promote and protect this country in every aspect.

Mr. Deputy Speaker, Sir, I want to ask and I appreciate certain aspects of policies that have been introduced by hon. Kajwang as far as the issues of identity cards and other issues are concerned. But what has made it criminal for any international Muslim scholar who visits this country from any quarter; regardless of whether that individual carries the US passport, a Canadian passport or any other passport? When these individuals step at our airport, they are told: "These are militants; they are coming to confuse."

Mr. Deputy Speaker, Sir, you are also aware of the 13 Kenyans who were rendition to

Uganda. The Report is before the House and I want to urge hon. Members to read the individual names. Out of the 13, indeed, only two were originally Muslims. The other 11 were new converts and their names are known – the Mbuthias, the Oluochs, the Kajwangs, the Keynans and many others.

(Laughter)

What has informed the Minister that, indeed, any international Muslim who must carry this bag, whether---

In fact, Mr. Deputy Speaker, Sir, I want to, again, agree with what you said that Qatar is the most observant supporter of the US policy in the entire Gulf States. Therefore, Qatar would not have entertained a militant. So, what have you done---

Mr. Deputy Speaker: Order! Order! What is your question?

Mr. Keynan: I am asking the question. What have you done to stop this indiscriminate, unconstitutional discrimination of the Muslims, profiling of the Muslims, branding them militants and, more so, renditioning them to Uganda and Ethiopia just on flimsy grounds? The former Minister for Foreign Affairs did the same to relatives of the ruler of Dubai in 2009. We know the consequences; it required his Excellency the President intervention to correct that bad image. He was part of that delegation. What is he doing to correct this policy?

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Order, hon. Minister! I want to ask the hon. Members to desist from discussing other foreign nations or other leaders in other parts of the world because our Standing Orders very clearly do not allow that.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Deputy Speaker, Sir, it is unfortunate that we are talking as if we have two countries here. There is only one country. There is no Muslim country, Christian country or atheist country here and so on. We have only one country. We have only one set of laws and that a matter is dealt with as it comes. This one was not even deported because he was not allowed entry. He can reapply. But there are many cases of Christians, of Americans and Australians that have returned---

Mr. Ruto: Name them!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): I can name them, but I was not prepared for this---

Mr. Deputy Speaker: Order, hon. Members!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): So, what I am trying to say is that to talk as if this action was taken against Muslims is not right. It is taken against an individual---

(Dr. Khalwale stood up in his place)

Could you, please, allow me to finish?

Mr. Deputy Speaker: Order, Dr. Khalwale!

Proceed, Mr. Minister.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): It was against an individual, the individual has rights in our law to challenge this. If he successfully challenges it, we will, of course, oblige. We should take it there. If this is not satisfactory, you can take it to the Committee of the House with those limitations and then we can take it that way. But to really talk as if there is a war in this country between Christians and Muslims is not right because I have talked to Muslims for Human Rights (MUHURI) only recently. They invited me as a guest speaker. Yesterday, I was brought a card to address a big gathering of a Muslim Community next week on Tuesday. We are as friendly as we can be to any other person. I think it is not fair.

Mr. Deputy Speaker: Hon. Duale, could you ask for the last clarification?

(Dr. Khalwale stood up in his place)

Order, Dr. Khalwale! We have substantive business. We have to proceed.

Mr. Duale: Mr. Deputy Speaker, Sir, I want the Minister to be very honest and tell us how many such Muslim scholars – which was in my Statement – he has denied entry or deported in the last one year. It was part of the clarification that I sought.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Deputy Speaker, Sir, I did not bring that part of the answer, but I will not only bring the number of Muslims, but also all other international people. This is because I do not want an assumption that everyday we are only deporting Muslims.

Mr. Duale: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to provide the nation and I information that I did not seek? I sought from the Ministry---

Mr. Deputy Speaker: Hon. Duale, if you had sought proper advice, you would have asked a Question. A Ministerial Statement is essentially a general matter and you are supposed to interrogate the content of the Statement. As a matter of fact, if indeed the Chair were to observe the rules strictly, you would not even be allowed to go outside that. That is why it is very important for you to understand when you are asking this.

Mr. Duale: On a point of order, Mr. Deputy Speaker, Sir. In a Statement, you ask for clarification and it is written on the Statement that the Speaker signs. In my Statement, on that day, six months ago, bullet number two was for the Minister to present to this House the number of Muslim clerics that he has deported or denied entry in the last six months. That was the nature of the Statement, and I think I am in order.

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Deputy Speaker, Sir. Generally, when you ask for a Statement, you are seeking information. But if you already have the answer, then seeking a Statement would not be the right mechanism for interrogating the kind of things that hon. Duale is interrogating. If you want a substantive debate, it is either a Motion or Question. But if you want a Statement, it means that you want information. But if you have an answer to that information, what can the Minister do? If you are forcing the Minister to tell you and you already have an answer, then I do not think that there is need for a Statement. I think that makes sense.

Mr. Deputy Speaker: As a matter of fact, it is important that we also educate ourselves from the practice. But, nonetheless, be that as it may, the Minister has already offered himself to give a comprehensive list of all those people who were denied entry. I think that should be able to give the information, which you can then turn into either a Motion or Question, in a manner

that essentially you can interrogate. The Chair can then direct the Minister to make certain information available.

Next Order!

(Mr. Keynan stood up in his place)

Order! Order! Can you approach the Chair?

(Mr. Keynan approached the Chair)

MOTION

ADOPTION OF REPORT ON BUDGET POLICY STATEMENT

THAT, this House adopts the Budget Committee Report on the Budget Policy Statement for 2012/13 laid on the Table of the House on Wednesday, 25th April, 2012.

(Mr. Mbau on 26.4.2012)

(Resumption of Debate interrupted on 10.5.2012)

Mr. Deputy Speaker: Who was on the Floor?

Hon. Odhiambo-Mabona!

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I was actually just about to conclude when we rose.

Mr. Deputy Speaker, Sir, in concluding, I want to talk to two issues. The first issue is about the Constituencies Development Fund (CDF). I would want to indicate that if, indeed, there is one devolved fund that has assisted this country and changed significantly the face of Kenya, it is the CDF. Even if you go by the practice of countries that use the pure presidential system, using or devolving CDF funds is not counter to such a system. Indeed, there are many mechanisms that can be used to devolve it, even through the county levels. But, as a House, we must retain the CDF because we did not pass the Constitution to retrogress, but to move forward.

[Mr. Deputy Speaker left the Chair]

[The Temporary Deputy Speaker

(Dr. Laboso) took the Chair]

Madam Temporary Deputy Speaker, I acknowledge the change of Chair. I just want to indicate that the CDF needs to be retained.

Madam Temporary Deputy Speaker, finally, there are concepts that will be very difficult for us, as a country, to internalize. Earlier in the day, we saw one such concept. Some of the provisions of the Constitution look like double-edged swords. For instance, we are talking on the one hand about the issue of national cohesion and integration, yet on the other hand, we are

talking about non-discrimination on the basis of ethnicity. Talking about one of them, sometimes, seems almost like an anti-thesis of the other. In the allocation of resources, the Constitution speaks about equity. In equity, we must look at areas that have been marginalized whether by ethnicity, political leanings, distance, religion or any factor. Therefore, we must ensure that the Fund is operationalized. If, indeed, in the first two years, it is not operationalized, because it is a fund that has a timeline, my suggestion is that the two years that are lost should find their way in the next budget, so that we do not further marginalize areas and communities or interest groups that have been marginalized before. I am speaking about women who have been marginalized. I know that many of us are thinking of the Equalization Fund as only referring to geographical marginalization. But if you look at the definition of marginalization in the Constitution, it also includes groups such as women, youth and ethnic communities that have been marginalized in the past. So, in terms of the Equalization Fund, I am hoping that we can ensure that women, youth, areas and groupings that have been marginalized before benefit.

Madam Temporary Deputy Speaker, with those few remarks, I support the Committee's Report.

Mr. Mungatana: Madam Temporary Deputy Speaker, I also rise to support the Motion by the Budget Committee.

Madam Temporary Deputy Speaker, very briefly, I would like to state that I think that the projections in terms of the economic growth over the 2012/2013 period by the Ministry and Treasury are overambitious. The Minister always gives us very good figures, but when it comes to real revenue collection, those figures do not add up. Indeed, as I speak now, the Kenya Revenue Authority (KRA) has done a splendid job, but still it has failed to meet its targeted quotas. Therefore, I want to agree with the recommendation of the Report, that the Minister and Treasury should revise downwards the projected economic growth over this period of 2012/2013 to 5.2 per cent.

Madam Temporary Deputy Speaker, the other issue that I would like to quickly talk about is the Contingency Fund. The Constitution requires that, at least, Kshs10 billion needs to be put aside in the Contingency Fund for obvious reason. When there is drought in this country, there is hunger. There are so many problems. When there are floods, like now when we have too much rain, bridges and roads are washed away and people displaced. As a matter of fact, the Minister for Roads has been quoted publicly that just to keep the roads back into the condition they were in before the rains began, his Ministry alone requires Kshs10 billion. So, it is unfortunate that this Contingency Fund has not been adequately funded within the Budget and yet, we know that when the drought or rains come, we will have problems. We are asking the Minister to think how to plan that Budget so that we do not go again into disorganizing it and going into development funds that ought to have been allocated to Ministries. It will be a good way of budgeting if these things are done in that manner.

The most disappointing thing though, that I have so say as I conclude, is that although the Budget Committee has brought its Budget Policy Statements, we have done the ceilings for the Judiciary, the Legislature and the Executive, the Treasury has not kept its time limits and as a result, the Budget process in this year, has been negatively affected as it was affected last year. The Budget Policy Statement under which we were supposed to make certain recommendations including the limits on the three arms of the Government has found itself into the House rather late in time. Even the Printed Estimates that are supposed to have been informed by what Parliament is recommending have already come out. This disorganizes the whole thing. We would like to see the Treasury, in the next Budget cycle, operate timeously so that Parliament,

through the Budget Committee, can take its rightful position and that the Budget process follows the Constitution and the law as we have provided it in this country.

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

The Temporary Deputy Speaker (Dr. Laboso): Since there is no further interest in this Motion, I will ask the Mover to respond.

Mr. Sambu: Madam Temporary Deputy Speaker, let me, on behalf of the Budget Committee, thank you and all the other hon. Members for the interest they have shown on this Motion. The Constitution of Kenya has given legislators a very huge responsibility of oversight in a manner in which resources are mobilized, allocated and accounted for. For many years, we sat in this House and talked about under provision and under collection of resources. In most cases, it was an exercise in futility. But today, we have an opportunity to influence the Budget. That influence is not in the name of enriching our pockets as legislators but it is to ensure that every Kenyan, big or small, poor or rich, young or old gets services and goods in an effective and efficient manner.

While the Budget Committee and other Committees are finalizing their Reports to this House on the 2012/2013 Estimates, I hope that some of the resolutions made here today will inform their Budget amendments where necessary and more importantly to include the issues that the public told us over the weekend and on Monday.

Members of the public are congratulating this House for finding time to go round and consult them on the Budget. For those Members who did not show up in these areas and centres, I hope they will be able to bring the views of their people sometimes in the course of the debate for these Estimates.

In future, it will be the conclusion of the Debate on the Budget Policy Statement that will pave way for the annual division of revenue between the national and county governments among various counties. Let us take note of the good things we have done and learn from lessons where we might have faulted especially in the late submission of the Budget Policy Statement which has led to the late debate and conclusion on the same by this House.

Madam Temporary Deputy Speaker, with these few remarks, I thank you and beg to move.

(Question put and agreed to)

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, I beg to move that the Statutes Law Miscellaneous Amendments) Bill, 2012 be read a Second Time. I would like to say, right from the outset, that the hon. Attorney-General is not here to move this Bill. I may not do as much justice as he would but the business of the House and the Government must continue. I have been asked by his office to move this Bill.

I would like to say this at the beginning. Generally, you will find that many of the proposed amendments have to do with the new constitutional order that is in place. There are

some provisions of the Statute Law, as they exist today, that require to be harmonized much earlier than a comprehensive review. This is because the statutes that are affected by this Bill relate to matters which would require some action or implementation with regard to the areas that are covered by this Bill. I encourage Members who are here that we interrogate these amendments carefully and intensively because I must say from my own experience, that the Statute Law (Miscellaneous Amendments) Bills normally tend to be controversial because they may go beyond what the law intended.

As you can see, the preamble of this Bill states that the purpose of this Bill is an Act of Parliament to make minor amendments to the Statute Law. However, I invite you to argue with me because some of the amendments cannot be categorized as minor but they are necessary if the work of the Republic has to continue and be maintained.

The second general point that I need to make is that as we pass legislation on many of these laws, we must always be true to the fact that the existence of laws by themselves is not good enough. It is the observance of these laws and knowing our obligations under the rule of law that we can truly create a government based on the rule of law, constitutionalism and if you want, democratic principles. At the end of my presentation, I will try to deal with specific areas where I think we need to wake up a little bit as a nation and show the public, as leaders, that we are prepared and ready to be guided by the spirit and the letter of the law.

Madam Temporary Deputy Speaker, there is a great Englishman that I like quoting all the time who said that the laws are there for the obedience of the law and poor but for the convenience of the high and mighty. So, if we have such a world view, then we can never really have a truly working democracy that is based on the many values that have come out in Article 10 of our Constitution which every one of us is proud to have been party to its enactment through the people who are actually the makers of that law.

So, in principle, I want to deal with some general amendments that really are not controversial and these deal with the Office of the Attorney-General. As you know, the powers and functions of that office were reduced and limited by the new constitutional dispensation and what used to be prosecutorial powers and the responsibilities of the Attorney-General in regard to the criminal system – those particular powers and functions are now with the Director of Public Prosecutions (DPP). You will find that a large body of these amendments relate to the Office of the Attorney-General and these affect the Advocates Act, the Law Society of Kenya Act, the Public Order Act and the Penal Code which is critical because a lot of the powers which are donated to the Office of the Attorney-General under the old Constitution are found in the Penal Code and again the amendments that affects the Criminal Procedure Code, Chapter 75 of the Laws of Kenya. There is the Evidence Act, the Registration of Persons Act, the Armed Forces Act, the Public Health Act, the Prevention of Cruelty to Animals – the Attorney-General has some prosecutorial powers under that Act and the Children's Act. Finally, there is the Anti-Corruption and Economic Crimes Act. All those intended amendments are to vest powers on the DPP that were vested on the Attorney-General which are now by dint of the Constitution are with the DPP. So, to that extent, those need not be controversial but as I said at the beginning, there is every reason to look at them especially when it comes to the Committee Stage.

Madam Temporary Deputy Speaker, then there are other amendments which are again in my view not very controversial in the sense that we either agree or not that the Truth, Justice and Reconciliation Act has unfinished business and the time for them to conclude their work and report as required by the Truth, Justice and Reconciliation Act of 2008, that time has or is about to expire and within whatever time remains, they cannot be able to do what they must do as

required not only under that law but under the general spirit of the National Accord. This was an important tool and mechanism identified under the National Accord for purposes of getting the country to get to terms with its past and for that matter to heal because healing can only be possible if we, as citizens, are prepared to do so. You will find that on page 118 of this Bill. The relevant provisions give the Truth, Justice and Reconciliation Commission (TJRC) a duty to report to the House but the National Assembly is provided in 4(b) on page 12180 that if we are satisfied for the reasons that they have given and a request is justified, extend this duration of that time. Then there is an important rider that that extension can be carried or realized even after the time has expired so that the door is not closed after the time has expired.

Madam Temporary Deputy Speaker, the other important provisions which I think we should look at are in relation to the Political Parties Act and they are important and this has to do with the extension of the time for the appointment of the selection committee. We have not had a substantive occupant of the Office of the Registrar of Political Parties within the provisions of that Act or in the manner which was contemplated and in the general spirit of the Constitution. So, on page 1121, you will find that there are provisions there that will now make it possible for the President in consultation with the Prime Minister to begin the process for nomination and approval of the person who will be appointed through a panel and we are now used to that process in regard to all appointments especially the ones that touch on the Constitution. We have at all times been able to constitute panels which then give the recommendations to the principals who then submit their decisions to Parliament, and if Parliament approves, then the President can appoint.

Madam Temporary Deputy Speaker, but I just want to say this about the Political Parties Act. There was a mischief which was supposed to be cured by the Political Parties Act although at this point I am only concerned with one mischief but there were several mischiefs which were identified at the time when the Political Parties Act was enacted. This is through a history where democracy was being destroyed and killed through an intervention by a domineering part either in power or a party which could use resources and even State power to try and cripple the activities of other political parties. The point that I am trying to make is that it is no use to have an Act of Parliament by the provisions of the Constitution, because the Constitution actually lays out what is required of a Political Act, and gives the responsibility to Parliament to enact a law that will give to effect the provisions contained in the Constitution in relation to political parties.

So, one of the most important mischiefs that the Political Parties Act was supposed to address was the fragile positions of political parties that since Independence, this nation has seen the death of many political parties by reason of either some kind of interference by a domineering authority or political force that would then translate into the country becoming a *de facto* one party system. In fact, at the end of the day in 1963, actually, there was never any law that prohibited Kenyans to form political parties up to the time when I was about to come to this Parliament. In fact, up to the time I came to this Parliament, there was no law that barred the formation of political parties but over the years, the political parties had been killed through a process in which Members of Parliament were either intimidated or forced out of political parties.

Madam Temporary Deputy Speaker, if you read the records of the journals of this House, you will see that two years into Independence, this country was really a mature democracy in the sense of what used to happen in this same Chamber. When there were debate between KANU and KADU, the Speaker then, who would be seated where you are seated, would give directions

quite forcefully, without fearing who was seated where I sit, be it as Prime Minister or as Chief Minister, because both political parties had room and space.

Hon. Members know the history of the repeal of Section 2A of the former Constitution. It was not easy to repeal that section. Kenyans had to sacrifice, and more so those who have not had the benefit of coming to this House. They did that to make sure that political parties could survive in a system that made it possible for people to freely operate. Immediately after the repeal of Section 2A, when the House congregated in 1993, the first business of the ruling party then was how to destroy the political parties that were then in the Opposition by making it impossible for them to survive.

So, I would plead with the Independent Electoral and Boundaries Commission (IEBC), and to the person who is going to be appointed the Registrar of Political Parties; that we cannot have a democracy where people have to go to court on everything in order for the court to make a finding. A clear reading of the law should make it possible for men and women of goodwill, if they want this country to move forward, to know what the law says. We now have pretensions of not understanding what the Political Parties Act says.

Madam Temporary Deputy Speaker, we may be very happy now that we face an election, to hope from one party to another – and I am not saying this on the basis that I will not move parties – but at some particular point in time, you will find that, that kind of practice will eventually kill the democratic space in the country.

Under the Inter-Parties Parliamentary Group (IPPG) process, there was a provision in Chapter Seven of the Laws of Kenya, which we repealed, so that the President could not appoint as Minister, a Member of Parliament of another political party. In order to appoint anybody from another political party as Minister in the Government that was formed following an election, authority had to be sought from that political party. The law was there but nobody observed it. So, again, KANU, which was then in the Opposition, and which also subsequently did exactly the same things that they were complaining about, found that their Members of Parliament were being taken away either through appointments as Ministers or through patronage.

Madam Temporary Deputy Speaker, therefore, I would want to tell the Registrar of Political Parties that the law now exists, and that they cannot sit and look at the law and assume that it does not exist. They should be candid and tell the country that “this is the behaviour expected of political parties in the new constitutional dispensation”. Hon. Mungatana will probably agree with me that in many countries, when people develop a particular kind of political culture, they do not even need written law.

At the end of the day, may be just from conventions or usage, you come to a position, as a man of honour or woman of honour, and say: “Since I have disagreed with my political party, or since I have disagreed with the movement, I step aside and go back to the people who gave me the mandate to represent them here.” I find it sheer hypocrisy that we used to complain about these things when KANU was in power but now that the situation has changed and we are sitting comfortably, it is very difficult to give effect to these particular provisions of the law.

Madam Temporary Deputy Speaker, another area we should look at, which, again, may be a subject of general comment for me, are the proposed amendments to The Elections Act. I invite hon. Members to look at these amendments, which seek to clarify certain qualifications and in what manner they will be recognised. I think that is important. Another aspect is the proposal to change the time required to submit nominations rules from a period of six months to a period of three months. Maybe, in these times when not everything is in place, that particular requirement may be well advised, but I invite my colleagues to examine it.

Finally, on The Elections Act, we need to amend Section 112 because as it stands now, it will be very difficult to carry out a by-election because the Act seems to only contemplate by-elections after the first elections to be held under the new Constitution but the current Parliament is operating largely under the provisions of the old Constitution. So, there is some justification for us to look into this area.

Madam Temporary Deputy Speaker, members of the public are talking about Members of Parliament seeking to increase their salaries and so on, through the Statute Law (Miscellaneous Amendments) Bill but if you look at the proposed amendments to The National Assembly Remunerations Act, you will appreciate that the persons who are targeted are not necessarily the entire generality of the Members of Parliament. It is only a specific group within Parliament that is being targeted.

Having pointed out the many areas of concern to me, I would like to conclude by saying that in a democracy, you can only exercise power which is derived from some written law. You cannot exercise power that you do not have, or power which the law does not donate to you, or power in respect of which there is no legislation. In this regard, I want to ask His Excellency the President to reconsider the appointments of the County Commissioners because those positions do not exist in any law. Somebody may ask: In which law the positions of County Commissioners are spelt out?

Madam Temporary Deputy Speaker, if you look generally at previous legislations, including The Public Order Act, you will find that the positions of District Commissioners (DCs) and Provincial Commissioners (PCs) are contemplated in law. They exist somewhere in the statute books. However, the positions of the County Commissioners, who have been appointed, do not exist in any statute. Once you begin to appoint people outside the Constitution or the statutes, it constitutes a breach of the basic structure of the laws. I heard one of the newly appointed County Commissioners say that they have been appointed to co-ordinate security activities in the counties. I was shocked to hear him say so, because the new Constitution, in Chapter 14, spells out the national security organs. So, the whole country knows which organs are recognised as such.

The Constitution also spells out the principles of national security. So, it is not like in the old days, where security was seen to be security of the State – that if you were deemed to be doing something against the State, then that necessarily was a matter of national security. For some very good reasons, there having been a mischief we were dealing with, the new Constitution says that national security is subject to the “authority of this Constitution and Parliament”.

So, if you appoint people to these senior positions to co-ordinate security in breach of what is spelt out in the Constitution and not in accordance in the manner stipulated in the Constitution, including public participation but without the authority of Parliament, then it means that the Prime Minister or the President can appoint anybody any-howly or can create any position. That in a constitutional order or where the rule of law exists cannot be done.

Madam Temporary Deputy Speaker, I would like to say that this may have been done in good spirit but if it is not done in accordance with the Constitution, then it cannot stand. It then undermines the devolution pillar of this Constitution which says that what was known as the Provincial Administration must be restructured to conform with - I am not using the exact words - to the institutions of devolution.

So, you cannot create a Provincial Administration in a form that is outside the structure of devolution. You must, first of all, create that structure of devolution which is the counties.

I remember some Members of Parliament here who thought that we may be caught off guard and amend the County Governments Bill. I remember it was the hon. Member for Bura and hon. Mungatana---

QUORUM

Mr. Mbadi: On a point of order, Madam Temporary Deputy Speaker. There is no quorum in the House.

The Temporary Deputy Speaker (Dr. Laboso): Ring the Division Bell.

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, we are unable to raise the requisite quorum. Therefore, the House stands adjourned until tomorrow, Wednesday, 16th May, 2012, at 9.00 a.m.

The House rose at 6.10 p.m.