

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 21st November, 2012

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

REPATRIATION OF MS. LILIAN NYAMBURA FROM SAUDI ARABIA

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

(a) Is the Minister aware that the remains of Ms. Esther Muthoni Ngarega (Passport No.A1746327) who died in Saudi Arabia three months ago have not been transported back to the country for burial?

(b) Is the Minister also aware that Ms. Lillian Nyambura, a sister to the deceased and working in Saudi Arabia, is not allowed to communicate with her parents by her employer?

(c) What urgent measures is the Minister taking to ensure that Ms. Lillian is repatriated to the country and a postmortem on the deceased is carried out and her remains brought back to the country?

Mr. Deputy Speaker: Is the Minister for Foreign Affairs not here? We will come back to that Question later.

FAILURE TO ADHERE TO LAID DOWN CRITERIA FOR RECRUITMENT OF DIRECTOR OF KWS

Dr. Otichilo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) Under what circumstances did the former Director of Kenya Wildlife Services (KWS), Mr. Julius Kipng'etich, resign?

(b) Why was a competitive process not used in the recruitment of the new director as per the proposal to the Office of the President by KWS Management Board?

Mr. Deputy Speaker: Is the Minister for Forestry and Wildlife not here?

An. hon. Member: In jail!

Mr. Deputy Speaker: Order, hon. Members! Hon. Nanok is not in jail. He is out. But he is not the only Minister in that Ministry in any case. We shall come back to that Question later.

FAST-TRACKING REGISTRATION OF VOTERS

Dr. Eseli: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Justice, National Cohesion and Constitutional Affairs the following Question by Private Notice.

(a) Given that the law provides that for a candidate to be nominated by a political party, he or she must have been a member of that party for at least three months prior to nomination and noting that to be registered as a member of a party one has to be a registered voter, what action is the Minister taking to ensure that potential candidates to elective positions who are not yet registered as voters especially the youth are not disenfranchised?

(b) What measures will the Minister take to ensure that those who failed to register as voters during the registration exercise conducted prior to the 2010 referendum on the Constitution are not disenfranchised since they cannot register as members of a political party before they are registered as voters?

(c) When will the Minister harmonize the provisions in both the Political Parties Act, 2011 and the Elections Act, 2011, with the new election date of 4th March, 2013, since these Acts were based on the projection that the next general election would be held in December, 2012?

However, this Question was filed very many months ago and by the events that have gone on through the amendments that we made, this Question has been overtaken by events. So, I would wish to seek your guidance on how to get it off the Order Paper.

Mr. Deputy Speaker: Yes, indeed, I agree with you that the content of the Question has been overtaken by events. By the indulgence of the House, I withdraw this Question.

Mr. Wambugu: On a point of order, Mr. Deputy Speaker, Sir. Although you have said that we will have the Question removed from the Order Paper, there is still a burning issue especially with the youth who do not have identity cards even up to now. I do not know how the Minister will handle this because without identity cards, they will still not be able to register as voters and even participate in the forthcoming elections.

Mr. Deputy Speaker: There are two issues here on which the law is very clear. You can only vote when you have an identity card. Not only that, the Question is still not validly the property of the House because the Questioner has withdrawn the Question before he asked it. So, he has that option. The contents of the Question have been overtaken by events. The law is in place and whether it has to do with political parties and nominated candidates or it is the identity cards, it has been overtaken by events. Given the fact that the Questioner has withdrawn it, then it has not become validly the property of this House.

Mr. Kabogo: Mr. Deputy Speaker, Sir, my point of order is on a procedural matter. This is because the Questioner said that this Question was put a long time ago, and it is a Question by Private Notice. Really, it beats logic for a Question by Private Notice to come after 48 hours. The Clerk's Office ought to style up so that we do not have these eventualities in the House.

Mr. Deputy Speaker: It is true that a Question by Private Notice has to find its way in the Order Paper within 48 hours. Within 48 hours, the answer must be in place and it can only take a little bit more than that. So, for this Question to have been out there for months, I think there was a lapse somewhere. I agree with you and I am sure that this will not be repeated again.

(Question withdrawn)

ORAL ANSWERS TO QUESTIONS

Question No.1756

DELAYED COMPENSATION TO FAMILY
OF LATE KEVIN M. MUTUA

Mr. Kiilu asked the Minister for Finance:-

(a) why injury benefits amounting to Ksh.1871520 for Mr. Kelvin Mutuku Mutua (P/F No 20060559976) a former Administration police Officer, who died while on duty on 2/8/2000 have not been paid to his next of kin; and,

(b) when the next of kin will be paid.

Mr. Deputy Speaker: Is the Minister for Finance not here? We will come back to this Question again.

Let us move on to Question No.1814 by hon. Mwau!

Question No.1814

ARREST OF MR. PETER G. ODHIAMBO FOR
FORGERY/FALSIFICATION OF VISA DOCUMENTS

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

(a) whether he could confirm that police officers arrested Mr. Peter George Odhiambo on 8th December, 1999 and on or about 14th December, 1999 was charged by the Central Bank of Kenya Banking Fraud Investigations Department;

(b) whether he could give details or reasons for his arrest including a copy of the investigations report, investigations diary, statement of the suspect, witness statements and the charge sheet; and,

(c) whether Mr. Odhiambo was also charged with the offence of forgery and making false documents for the purpose of applying for a visa to migrate to the United States of America and was the crime detected by the US Embassy in Nairobi.

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

(a) I confirm that Mr. Peter George Odhiambo was arrested on 8th December, 1999 and charged before the Chief Magistrates Court, Nairobi on 14th December, 1999 with the offence of forgery, contrary to Section 349 of the Penal Code by the Banking Fraud Investigations Department.

(b) Mr. Peter George Odhiambo was arrested after presenting a forged bank statement and for a non-existent Barclays Bank of Kenya Account No.3284016 and also presenting an employment letter to the US Embassy, Nairobi, purporting to be an employee of Barclays Bank of Kenya. Both documents were confirmed forged by the bank and hence, the suspect was arrested outside the American Embassy by the Banking Fraud Investigations Unit accompanied by Barclays Bank Security and Investigation Officers. In that regard, I wish to table the documents which hon. Mwau had requested for.

(Mr. Khangati laid the documents on the Table)

Further, I also wish to confirm that, indeed, Mr. Odhiambo was also charged with making a document without authority, contrary to Section 357A of the Penal Code. The offence was

detected after the US Embassy officials called Barclays Bank Investigations Unit to confirm the authenticity of the documents he had presented to the Embassy while applying for a visa to USA.

Mr. Mwau: Mr. Deputy Speaker, Sir, I really thank the hon. Assistant Minister for his answer although I have not seen the documents which he has tabled. However, I would request him to confirm whether the Peter George Odhiambo we are talking about is the person who in 2007 was employed by the Central Bank of Kenya and purported whistle blower who was given asylum by the American Government purportedly having given information about Charterhouse Bank. Could he also confirm that this fellow had ambition and relationship with the American Government as far as 1999?

Mr. Khangati: Mr. Deputy Speaker, Sir, I confirm that it is one and the same Peter Odhiambo. What I cannot confirm here is the relationship that the hon. Member has indicated that existed between Peter Odhiambo and the American Embassy.

Mr. Kabogo: Mr. Deputy Speaker, Sir, I do not understand how the Assistant Minister cannot find the relationship, yet a few weeks ago, information came to the House that the same George Odhiambo has sued the Kenya Government in the US for close to Kshs2 billion in compensation for information given to him. Is that not contradictory on the part of the Assistant Minister?

Mr. Khangati: Mr. Deputy Speaker, Sir, I can confirm that I am aware that the same Peter Odhiambo has sued the Government of Kenya. But what hon. Mwau had alluded to is a relationship existing between the same Mr. Peter Odhiambo and the US Embassy. I want to confirm something that I have seen, I am aware of, or is documented. I am not aware about that relationship. The mere fact that Peter Odhiambo was given a visa to go to USA and he is residing in the USA does not confirm any form of relationship.

Mr. Deputy Speaker: Mr. Assistant Minister, you need to do a bit better than that, because a relationship of a nature that essentially has some parties who have a criminal issue here is the responsibility of the Government to establish and fathom. You do not need to have a written letter from the American Embassy for you to say, “yes, I have a written letter” or for Peter Odhiambo to write and say, “this is a written letter.” It is part of the investigation itself. Is he still charged in court or his matter has been disposed of by the courts?

Mr. Khangati: Mr. Deputy Speaker, Sir, when the case was taken to court, it was thrown out. So, the matter is no longer in court.

Mr. Deputy Speaker: So, he was not in any way sentenced?

Mr. Khangati: No, Mr. Deputy Speaker, Sir. He is not in any way sentenced.

Mr. Mwau: Mr. Deputy Speaker, Sir, I would like the Assistant Minister to confirm whether Peter George Odhiambo was charged by the Banking Fraud Department, which is a Criminal Investigation Department (CID) attached and solely works for the Central Bank of Kenya. Could he also confirm whether, even after he had been charged, he was actually employed by the Central Bank of Kenya as one of its officials?

Mr. Khangati: Mr. Deputy Speaker, Sir, I have already confirmed that, indeed, Mr. Peter George Odhiambo was charged before court on 12th December, 1999 but he was acquitted under Section 210 of the Criminal Procedure Code on the following grounds. One, the suspect documents were never taken to the document examiner to support evidence by Mr. Obadiah Mbaya of Barclays Bank. He did not sign the employment letter presented to the Embassy. Further, specimen signatures were not taken to Mr. Mbaya for comparison by the document examiner. No evidence to the contrary was produced to prove that the suspect was not at the time an employee of Barclays Bank. No witnesses testified from the Embassy to prove that the

suspect was the one who presented the documents to them. In fact, the officer who was in charge of the investigations, Inspector Stanley Miriti, was thereafter disciplined for doing a shoddy job. I presume on those grounds, he was free, therefore, to seek employment elsewhere, including the Central Bank of Kenya (CBK).

Mr. Deputy Speaker: Was he employed at the CBK?

Mr. Khang'ati: Yes, Mr. Deputy Speaker, Sir, he was later employed by the CBK.

Mr. Mwau: On a point of order, Mr. Deputy Speaker, Sir. I just want the Assistant Minister to confirm that Mr. Peter George Odhiambo was arrested and charged by the Banking Fraud Unit (BFU) of the Criminal Investigation Department (CID), which works for the CBK. Could he also confirm that subsequently CBK employed him? I want a simple answer 'yes' or 'no.'

Mr. Deputy Speaker: I think he has already confirmed that. He said he was subsequently employed by the CBK. Did you not say that, Mr. Assistant Minister?

Mr. Khang'ati: Mr. Deputy Speaker, Sir, I have confirmed severally and it is even in my written answer.

Mr. Deputy Speaker: Indeed, he confirmed that.

Mr. Khang'ati: Mr. Deputy Speaker, Sir, I have confirmed that. But I can repeat it for the hon. Member that Mr. Odhiambo was subsequently employed by the CBK.

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is not very clear on the circumstances of the withdrawal of the case. I would like to ask him to be clear because it appears to me as if he is misleading the House. He says nobody complained from the Embassy, but the officer who was investigating this case withdrew it. Could he confirm that was the position?

Mr. Deputy Speaker: Mr. Assistant Minister, did the complainant withdraw the case?

Mr. Khang'ati: Mr. Deputy Speaker, Sir, the case was preferred against Mr. Peter Odhiambo by the BFU and not by the American Embassy. Indeed, Mr. Peter Odhiambo was charged. I only mentioned that the Embassy did not present themselves as witnesses to the case.

Mr. Deputy Speaker: You did say that he was acquitted on technicalities and, subsequently, the investigating officer was disciplined because of doing a shoddy job.

Mr. Khang'ati: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: But then, in the same Government, how does somebody who has been charged by the BFU get employed by the CBK? What is happening or what is not happening? Clearly, it is a bit of a puzzle for the Chair. Come clean on this and tell us what you know and what you do not know.

Mr. Khang'ati: Mr. Deputy Speaker, Sir, what I know is what I have already stated that Mr. Peter Odhiambo was charged, but later on acquitted. He was not found guilty---

Mr. Deputy Speaker: He was not found guilty not because of the substantive evidence that you had in your place, but because of the manner in which---

Mr. Khang'ati: Mr. Deputy Speaker, Sir, he was not found guilty by court.

Mr. Deputy Speaker: He was acquitted because the prosecution did a shoddy job.

Mr. Khang'ati: Yes, Mr. Deputy Speaker, Sir, it was on the failure on the part of the prosecution and the officer who conducted the investigation, Mr. Stanley Miriti. The BFU took disciplinary measures against the officers. I do not know on what basis the CBK employed Mr. Peter Odhiambo.

Mr. Deputy Speaker: Yes, hon. Washington Jakoyo Midiwo?

Mr. Midiwo: Thank you, Mr. Deputy Speaker, Sir. That is a strange name to me. The

word 'Washington' scares me because you know how those people behave.

Mr. Deputy Speaker, Sir, this Odhiambo was charged. The Assistant Minister has admitted that the officer who was investigating this matter did not do a good job. Mr. Odhiambo was granted "amnesty" by the American Government for that fraud case. It is like they were rewarding him for that fraud. He fled the country for fear of his life, but he is a regular person on the streets of Kisumu and Nairobi. The Assistant Minister knows this because he is in charge of security.

Mr. Deputy Speaker, Sir, could he reinstate these charges against this criminal because crime has no time limits? Could he further consider conducting more investigations on this particular individual who is masquerading as somebody standing for justice on behalf of the American Government and he is a fraudster?

Mr. Deputy Speaker: I do not know how well he can do that because it is the same Assistant Minister who admits that another arm of his own Government employed the same person who was in the dock just for a short while earlier. The CBK is an institution of the Government of Kenya. So, it is interesting. I want to hear from somebody in the banking industry to tell us how they deal with suspects.

Yes, hon. Erastus Mureithi!

Mr. Mureithi: Thank you very much, Mr. Deputy Speaker, Sir. I do admit that I worked in the bank and in the BFU which was then chaired by Mr. Kamau. I would find it very odd that somebody would actually be suspected of fraud, investigated by a Mr. Miriti who I know and then be acquitted for lack of evidence and be employed by the CBK. Is the Assistant Minister in order to tell us that the CBK was doing it above board and that this gentleman was not a cover up of other things? I know in the banking industry, they do due diligence of individuals before they employ them, including board members.

So, Mr. Deputy Speaker, Sir, he must come out clean, as you have requested, so that we know exactly under what circumstances the CBK would employ somebody suspected of fraud.

Mr. Deputy Speaker: The Assistant Minister has not, in any way, come out in the open to defend CBK's action on this, unless he intends to do so now. In any case, what is even more puzzling is why one would present forged papers to the Embassy to get a visa and the same Embassy ends up granting the same person again a visa and carry him to exile somewhere. Anyway, there are a lot of puzzles in here. Probably, we have to live long enough to see some of these things.

Yes, proceed, hon. Shakeel.

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. Bearing in mind that this matter is being dealt with even by the Ministry of Finance in respect of the famous Charterhouse Bank, will I be in order to ask that this Question, especially with respect to why Peter Odhiambo was recruited by CBK, be referred to the Ministry of Finance for them to give us a conclusive answer as to why he was actually recruited?

Mr. Khang'ati: Mr. Deputy Speaker, Sir, I agree with the suggestion by hon. Shakeel that that aspect dealing with the recruitment of Mr. Odhiambo into the Central Bank of Kenya be dealt with by the Minister for Finance. However, I agree with hon. Mureithi and yourself. When I was compiling the answer to bring to this House, it also puzzled me that even the American Embassy, which reported that something was amiss, did not send its representative to testify in court against Mr. Peter Odhiambo. There are quite a number of things, which, at the point of prosecution, did not go right. These are the facts that hon. Mwau wanted to know and I have presented them to the best of my ability.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Assistant Minister needs to realize that the Treasury is part of the cover up in this thing.

Mr. Deputy Speaker: Order! It was part of the cover up, maybe, because this is a very long thing!

Mr. Midiwo: Mr. Deputy Speaker, Sir, this Question deals with the criminal element of bank fraud. The Assistant Minister has admitted that a police officer, Mr. Miriti, let this gentleman off the hook. This means that the investigations were either bungled up or inconclusive. The Government, by disciplining Mr. Miriti, has admitted. So, could the Assistant Minister agree to reinstate these charges? This is the crux of the matter. It does not matter whether this person was onward employed at the CBK. He committed a crime and that crime must be dealt with. We cannot let him go scot free. Could the Assistant Minister commit himself to do this?

Mr. Deputy Speaker: I do not think the Assistant Minister can just now spontaneously make that kind of commitment because there are legal implications involved. I can see that there are too many unanswered questions. Would the Minister for Finance be willing to do something at this stage?

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, this is something that we could ask the Central Bank of Kenya to shed more light on as to why they would employ a person who is already suspected of committing a fraud. I am just wondering how it can be done unless there is a new Question. You cannot have a Question being answered by two Ministers.

Mr. Deputy Speaker: You are very right. There are too many issues that need to be dealt with in more depth than this, and which, in my opinion--- We want to know how he ended up getting a visa and how the Central Bank of Kenya employed him. There are a number of questions. The only thing I can do is to defer this Question, so that the Assistant Minister can then, if he is happy with that, make wider consultations and then come back with an answer indicating that an action has been taken; that will rest the concerns of both the Parliament and the country.

Mr. Khang'ati: Mr. Deputy Speaker, Sir, I believe that I have provided the answers which hon. Mwau wanted. The new angle which hon. Midiwo has asked me to get involved in, is something that I can only confirm after I have received legal advice. Otherwise, I cannot stand here and indicate to this House that we are going to re-open charges and prosecute Mr. Odhiambo.

Mr. Deputy Speaker: You cannot, but then you have to give an undertaking that you will look into this matter in more depth and come back to the House. The Government is a collective body, anyway. There is the Central Bank of Kenya, the Banking Fraud Unit, your Ministry, the Director of Public Prosecutions and maybe even Americans.

Mr. Khang'ati: Mr. Deputy Speaker, Sir, we will review the matter.

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

Mr. Khang'ati: Mr. Deputy Speaker, Sir, I can do it next week.

Mr. Deputy Speaker: Are you sure one week is good enough?

Mr. Khang'ati: Mr. Deputy Speaker, Sir, I will come back with an answer, one way or another.

Mr. Deputy Speaker: I am not sure one week is enough.

Mr. Mwau: Mr. Deputy Speaker, Sir, after listening to the interrogation of this Question, certain facts have come out which the Members must know. In 1999, a criminal desirous of going to the USA forged documents to seek a visa from the American Embassy. The Embassy

discovered that he was even purporting that he was an employee of the Barclays Bank, while he was not. The matter was reported to the Banking Fraud Department, a department that works under the Central Bank of Kenya. He was charged in court. Subsequently, that person went and stole documents from the Charterhouse Bank purporting that the bank was involved in violation of the Banking Act. After doing that, he was paid by the Central Bank of Kenya and was employed. At the same time, he decided to take bank's documents to the Kenya Revenue Authority purporting that he was disclosing non-taxpayers and he was paid a reward. This particular person again went to the American Embassy and was given asylum.

After going to the USA, he has sued the Kenyan Government for Kshs2.5 billion. In the pleadings that he has filed in the USA - the Minister for Finance confirmed this last time - he states that the Kenya National Human Rights Commission waived the immunity of the country, so that the USA Government could give him asylum to go to the USA. Looking at all these facts, this is a big conspiracy either by a foreign government or other people. This matter requires special attention, because many people have suffered because of this particular criminal. I seek your direction.

Mr. Deputy Speaker: Mr. Ogindo, you want to help the Chair in the direction?

Mr. Ogindo: Mr. Deputy Speaker, Sir, I just want to reiterate the point that you have just made that the Government has a collective responsibility. It has a duty to do background consultation and come out with a comprehensive response to this issue. The security docket is under the Office of the President where there is central co-ordination of other Ministries. The Assistant Minister should come out clear and say that he is unable to handle this Question, because of its sensitivity, but he cannot say that he does not have information that is in other departments. He is required by collective responsibility to bring an answer to this House.

Mr. Ruto: Mr. Deputy Speaker, Sir, the matter around this individual, the Charterhouse Bank and the Central Bank of Kenya requires more investigations even by a Parliamentary Committee. We are aware that the Governor of the Central Bank of Kenya, or whoever it is, has also been reluctant to even obey what is passed in Parliament. He seems to be compounding this situation. We would like to know whether there is a lot more that is being hidden from us by the Central Bank of Kenya. We are already aware that the Minister for Finance had said that he is powerless to instruct the Central Bank of Kenya and it can act in impunity. Who, in particular, is this individual in the Central Bank of Kenya, who is guarding criminals and sabotaging Kenyan indigenous investments? Apparently, there is a lot of impunity in this situation. Ministers are also incoherent; one Ministry is talking about something and the other is talking about something else. An individual is running amok around the entire Government. What exactly is going on? I think a Parliamentary Committee should tell us more about this.

Mr. Deputy Speaker: Parliamentary Committees have investigated this issue, not quite this, but related matters in the Charterhouse Bank and have come up with reports. So, there is also just so much that a Parliamentary Committee can do. I agree with you that there are too many things; for example, some of the questions which have been asked right now, more precisely the employment of one Peter Odhiambo, at the Central Bank of Kenya. There are still other areas that basically are related to it, and which again end up in Charter House.

(Hon. Mbadi stood up in his place)

Hon. John Mbadi, are you sure you are not forgetting that you are an Assistant Minister?

The Assistant Minister, Office of the Prime Minister (Mr. Mbadi): Mr. Deputy Speaker, Sir, I am not forgetting that I am an Assistant Minister, because I have been an Assistant Minister for a while now. To me, I think the time of this House is not supposed to be taken for granted. Since we passed a report in this House, it would be important to put this matter to rest by Mr. Speaker ordering or asking the Committee on Implementation to report to this House within a specific timeline why the recommendations of this House have not been implemented by the Central Bank of Kenya (CBK). I think that will settle this matter, so that we may know if the foreign forces that are behind this issue are not interfering. If they are so powerful that we cannot, as a House, implement our own report, then we should know, so that this matter is put to rest. Those who are going through a lot of stress should know they will continue with their stress for a while. Thank you.

Mr. Deputy Speaker: Yes, I think I am not sure whether the Committee on Implementation will just not end up hitting a brick wall the same way the other committees have done. However, as the hon. Isaac Ruto puts it, we need to bring this matter to a closure. The only thing is that the Chief Executive Officer (CEO) of the Republic of Kenya and one of the principals, His Excellency the President, himself cannot come here from his office and answer questions; in line with the collective responsibility and coalition spirit where they are sharing power with the Prime Minister, I was thinking maybe it was fair--- Because of the multi-sectoral and multiplicity of the players involved in this thing, including foreigners as you put it, it is for the Prime Minister to come to the House and put to a closure to this matter and its related matters too.

Mr. Ruto: Mr. Deputy Speaker, Sir, maybe we should censure the Minister for Finance.

Mr. Deputy Speaker: How do you censure the Minister for Finance? He does not have the powers. He is here crying and telling you that he wants to do something but his hands are tied, primarily because of the Constitution that you passed. There are certain offices--- The Governor of the CBK does not defer to the Minister for Finance.

Mr. Ruto: Mr. Deputy Speaker, Sir, then we should deal with the Governor of the CBK because he is an impediment himself. He is taking Parliament round in circles.

Mr. Deputy Speaker: Order, hon. Isaac Ruto! You tend to take this thing in isolation. There are too many players involved. The current Governor of the CBK was not there as the Governor of the CBK when these things happened. You have to understand this. There is a history to this thing too; the only way the history can be revisited is by the Government telling us what we do not know, and at no level other than that of the President and the Prime Minister. I think we have taken a lot of valuable time of this House on this matter and its related matters – Charterhouse and related matters like the Question we have today here. I think under the circumstances, the Chair will have no option but to direct the Prime Minister in this case that due to collective responsibility and as the supervisor and co-ordinator of Government Business in the House and outside the House, he handles this matter and brings it to closure in its multiplicity of phases. It has so many facets; let us have this matter put to rest once and for all. I think two weeks is enough time for the Prime Minister to do that. I am directing that this matter be dealt with next Wednesday by the Prime Minister himself. Thank you.

Next Question.

(Mr. Deputy Speaker consulted with the Clerk-at-the-Table)

Mr. Deputy Speaker: Because we are saying that there are many related issues that will always come to this House to do with Charterhouse Bank and the CBK for that matter; there are all these other issues that are concerned with it, including the claims of money laundering and everything else; it has to be done in a manner that--- Essentially the Prime Minister cannot answer this Question. He has to do it in a much better way. So, I think it is upon you, the Members of the Back Bench here to ask that Question for the Prime Minister's Question Time one week from today; that is not this week but the next week; put it in a manner that is going to encapsulate all the concerns that have taken a lot of the valuable time of this House; we will approve that Question and the Prime Minister will deal with it.

(Question deferred)

Mr. Deputy Speaker: Next Question by hon. Shakeel.

Question No.1683

REHABILITATION OF KISUMU-MUHORONI-MIWANI-CHEMELIL ROAD

Mr. Shakeel asked the Minister for Roads:-

(a) whether he is aware that the road from Kisumu to Muhoroni via Miwani and Chemelil (C34) is in a bad state;

(b) how much money the Ministry has spent on repairing the road using gravel and what the cost of repairing the same road would have been using bitumen over the same period; and,

(c) when the road will be retarmacked.

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

(a) I am aware that road C34 is in a bad state and, therefore, is in need of urgent repair.

(b) My Ministry has not used gravel to repair the road. However, various sugar companies have been repairing the road at their own cost using gravel. The cost of rehabilitation of the road will be approximately Kshs3.6 billion.

(c) My Ministry, through the Kenya National Highways Authority (KeNHA), has awarded a contract for design for rehabilitation of the road after which we will source funds for its rehabilitation.

Mr. Shakeel: Mr. Deputy Speaker, Sir, the answer given is not detailed in the way I requested. However, the Assistant Minister has said that he has awarded a contract for design. Is he aware that this is one of the key roads that had been already promised to open the corridor serving the sugar belt and the by-pass to Kisumu? It was meant to be one of the priority projects! He does not seem to tell us whether this is a priority project, or is just one of those projects which they are funding.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, we recognize this road as a priority road; indeed, even in the classification it is a "C" road; as we all know, we categorise our roads in depending on their importance and also usage. Therefore, I want to assure the hon. Member that we take the road very seriously.

Secondly, we have also awarded a contract for design to Messi Consulting Engineers at a total sum of Kshs27,397,000, and we are expecting that we will have the final design by March of next year upon which we undertake to give sufficient funding to be able to start the road.

Mr. Ochieng: Mr. Deputy Speaker, Sir, I am really shocked at the Assistant Minister's answer because in August I brought a similar Question, and the Ministry responded by saying that the road had already been awarded for repairs at a cost of about Kshs38 million; again they had already awarded another firm a contract to do a design at a cost of about Kshs48 million and the Assistant Minister said that the repairs on this road would start in the second quarter of this financial year. We are now approaching December. The last quarter is almost ending. How come that he has now come back with a different answer? Is it in order?

Mr. Deputy Speaker: Mr. Deputy Speaker, Sir, are you sure you are not giving different answers to the House on different occasions?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, the Question, as asked by the hon. Member in part "b", is: How much has the Ministry spent in repairing the road using gravel? This is not what we have designed. This is about the routine maintenance and the Kshs38 million that the hon. Member mentioned was not for gravel. So, the Question was very specific as to whether we had allocated any money for repairs in gravel. I indicated that it is the sugar companies that are doing that using gravel to repair a tarmacked road, which we do not allow. But in the meantime, we are in the process of giving a letter for the repair works to commence. They will include bush clearing, which is a big issue that is also hindering visibility, pothole patching and also cleaning of the drainage. However, the contract for the consulting firm has already commenced. It started on 14th March, 2011 and it covers the area that we have said that is approximately 60.25 kilometers.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. This is the main artery road between the sugar belt and the City of Kisumu. We are very much concerned about this road. Under the circumstances, I would like to request that we defer this Question again to next week, so that we can have an answer that will incorporate the issue that has been raised by Mr. Ochieng, which I am aware is the truth and which contradicts what the Assistant Minister has said.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, if the hon. Members feel that there is certain information that is lacking here, then I would consult further and reconfirm the accuracy of that. Thereafter, I will present a comprehensive report before this House.

Mr. Deputy Speaker: When would you want this Question to be listed on the Order Paper?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, next week on Thursday.

Mr. Deputy Speaker: Okay; it is so directed. Is that okay with you, Mr. Shakeel?

Mr. Shakeel: Mr. Deputy Speaker, Sir, yes, I am okay. But at the same time, if you do not mind, may I ask the Assistant Minister to come with a report in respect of why there are only five major roads to Kisumu City and they are all in bad state of affairs. Could he bring a status report on all of the five roads? There is the one from Kericho, Muhoroni, Kisii and the one to Kakamega. I think this is under the Kenya Highways Authority---

Mr. Deputy Speaker: Order, Mr. Shakeel! If you want to have all that information then file a Question. It is, therefore, so directed that the Question be listed on the Order Paper on Thursday, next week.

(Question deferred)

Question No.1690

DISBURSEMENT OF YOUTH ENTERPRISE
DEVELOPMENT FUND IN BOMET

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

(a) how much money the Youth Enterprise Development Fund (YEDF) has disbursed in Bomet County since it was established;

(b) why it takes too long to disburse funds to the county and why there has been no significant impact on youth empowerment; and,

(c) what the procedure of borrowing money from the Fund by individual youths is.

Mr. Deputy Speaker: Mr. Ruto, the Minister had indicated that he is out of the country and he would like to deal with this Question himself. He is coming back on 28th. I direct that this Question be listed on the Order Paper immediately he is back in the country.

(Question deferred)

Question No.1699

DEVELOPMENT OF PETROLEUM MASTER PLAN

Mr. Ethuro: Mr. Deputy Speaker, Sir, please, allow me to read it because it is so important. It is about oil discovery in the potentially rich county of Turkana.

Mr. Deputy Speaker: Proceed!

Mr. Ethuro asked the Minister for Energy what the Government is doing to establish a Petroleum Master Plan for the country in view of the discovery of oil in Turkana County.

Mr. Deputy Speaker: Where is the Minister for Energy? Mr. Githae, where is your colleague?

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I do not know what is happening because I cannot see the Leader or Deputy Leader of Government business here. Maybe you could defer the Question and then I will inform the Minister that he should be here whatever day that you decide.

Mr. Deputy Speaker: He should better be here because the life of this Parliament is coming increasingly to an end. I am sure Mr. Ethuro would want to have certain things on the issue of oil in the future of this country put to rest.

Mr. Ethuro, how about if I defer this Question to tomorrow afternoon?

Mr. Ethuro: Mr. Deputy Speaker, Sir, I just want to agree with you. However, note this point: Ministers are not available here to answer Questions, but this Government can arrest me when I am in my constituency. Why can they not work that efficiently? We had a Press Conference in the morning and the same afternoon they wanted to arrest me. Yet for a Question that has been before this House for so many months, the Ministers are not available to answer. How do you reconcile the two?

Mr. Deputy Speaker: Mr. Ethuro, the Chair could not agree more with you. Not only that, my own county is burning, you know that, I wish I could be on the other side with you there. Anyway, I am directing that the Minister for Energy be available tomorrow failing which the Chair will take sanctions.

An hon. Member: He is in the “Mbus”

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. This Question is very important and this Government is putting its energy in the wrong places. There is a potential of oil discovery in Block 12B in the Nyanza Gulf. The Government has been quick to sign agreements with these exploring firms, but when they are asked about the policy, they start dilly-dallying. In the same vein, I would like as the answer comes tomorrow, that the Minister incorporates his answer to include: What are the exploration terms in Block 12B that covers Nyanza Gulf?

Mr. Deputy Speaker: Order! You are complaining that the Government is sleeping on the job. You must also have been sleeping on the job yourself because there is an exploration going on in your backyard and you have not put in your Question. Put in that Question. This is a different Question.

Mr. Ogindo: It is policy.

Mr. Deputy Speaker: You can ask it as a policy framework later, but if you have to specifically talk about yours, then you will have to ask that Question. You can put it as a Question by Private Notice.

Mr. Ethuro: Mr. Deputy Speaker, Sir, in fact, I want to thank Mr. Ogindo, he is my friend, we went to the same school. But more importantly the Question is for the country. The discovery of oil in Turkana County is just a case study. We expect that when the Minister comes, he will have a petroleum master plan for the country. So, it should include Nyanza and many other places like the Coast. I come from Turkana; speaking for Kenya. That is Mr. Ethuro.

Mr. Deputy Speaker: You have put Turkana here not with any specification, but you have just said “considering there is a find of oil in Turkana County, what is the Government’s master plan?” That essentially is not dealing with Turkana in any sense as an isolated case. So if you want to have an isolated case of that in your backyard, then the Chair will be too happy to approve that Question.

Mr. Mureithi: On a point of order, Mr. Deputy Speaker, Sir. The first part of that Question talks about the petroleum master plan for the country but then he goes back to Turkana. So, what Mr. Ogindo is talking about is the master plan for the whole country. So, the Minister should bring the master plan for the whole country may be even in relation to minerals found in North Eastern Province.

Mr. Deputy Speaker: Fair enough! Definitely, the master plan should be included.
Next Question, Mr. Olago!

Question No.1776

LIGHTING OF STREETS IN KISUMU CITY

Mr. Olago asked the Minister for Local Government:-

(a) what steps the Ministry has taken to light all the streets and access roads to residential areas especially in and around Mamboleo, Kiboswa, Kisian

and Otonglo centres in view of the current rampant insecurity in Kisumu city; and,

(b) how much money has been allocated to the Ministry by the Government as well as from development partners for the lighting of streets in the city.

Mr. Deputy Speaker: Is the Minister for Local Government not here?

Mr. Githae, where is the Minister for Local Government?

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I am sorry the Minister for Local Government and the Assistant Minister are not here. I request that we defer it to tomorrow and I will make sure that I inform them to be here.

Mr. Deputy Speaker: The Chair directs the Question to be deferred to tomorrow and the Minister had better be here.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. I heard you say that this Question on insecurity and lighting in Kisumu should come up tomorrow but I think we are taking it very casually and yet issues of insecurity in Kisumu have gone to alarming levels and the matter should be taken very seriously. In fact, what Mr. Ethuro was saying about arrests being made and insecurity being neglected is just the same as this one. If this issue is not looked at very seriously, I think the Government is failing in its duty. Insecurity and lighting in Kisumu is very serious.

(Question deferred)

Mr. Deputy Speaker: The Question is not before the House. Are you comfortable with it being disposed off tomorrow afternoon or do you want it another day?

Mr. Olago: Tomorrow is okay, Sir.

Mr. Deputy Speaker: Fair enough! The Chair has already given direction on that.

The next Question No.1749 by Mr. C. Kilonzo is deferred because the Minister for Foreign Affairs has some engagements with the Head of State from a neighbouring country. We will put that Question to a time when both of them will be there.

Question No.1749

KILLING OF MR. NICODEMUS MWANZIA IN SOUTH SUDAN

(Question deferred)

Next Question by Mr. Washiali.

Question No.1770

PROTECTION OF SUGARCANE FACTORIES FROM POACHING

Mr. Washiali asked the Minister for Agriculture:-

(a) whether he could table a list of buying prices of sugarcane per tonne by the respective sugar factories;

(b) whether he is aware that the difference in buying prices is causing serious sugarcane “poaching” that could result in the closure of some factories; and,

(c) what steps the Minister is taking to safeguard the survival of such factories.

Mr. Deputy Speaker: Is the Minister for Agriculture not here? Mr. Githae, where is your counterpart from the Ministry of Agriculture?

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, again, I must apologize on behalf of my colleagues for not being here. I would embarrassingly ask that this Question be deferred to tomorrow and I will make sure that the Minister is informed.

Mr. Deputy Speaker: We have deferred too many Questions to tomorrow. It can only be deferred to Tuesday next week. Are you comfortable with that?

Mr. Washiali: On a point of order, Mr. Deputy Speaker, Sir. I think it is also in order for us as Parliament to stick to programmes. According to the weekly schedule, this Question had been slotted for tomorrow afternoon. I was also surprised this morning when I found that it had been put on the Order Paper this morning. I think it is unfair to the Minister and me.

Mr. Deputy Speaker: I agree with you; it is unfair. Mr. Githae what is your position?

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, in view of the urgency of this Question, I think tomorrow afternoon would be in order.

Mr. Deputy Speaker: We have put too many Questions for tomorrow, Mr. Githae.

The Minister for Finance (Mr. Githae): Whatever date is okay.

Mr. Pesa: On a point of order, Mr. Deputy Speaker, Sir. Some of us came here earlier than 9.00 a.m. You can see that there are quite a number of Ministers who have not reported to answer Questions. What sanctions are you going to take against Ministers who always do not come on time to answer Questions at the expense of Parliament?

Mr. Deputy Speaker: The only sanction is to bar them from transacting business on the Floor of the House and, from experience, they are too happy to have those kinds of sanctions. It gives them leave because they do not want to be here. So, there is nothing the Chair can do unless you change the rules yourself.

I am directing that this Question be listed on the Order Paper Tuesday next week.

(Question deferred)

Next Question by Mr. ole Lankas!

Is Mr. ole Lankas not here? Is he out of the country or out of the country on any official Parliamentary business?

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Whereas I do not know where Mr. ole Lankas is, this Question is very important because it affects very many people.

Mr. Deputy Speaker: Find out where he is and if he has a good and valid reason for not being here, I will reinstate it and if not, he will have to look for another mechanism.

Question No.1775

MEASURES TO RESOLVE ESCALATING HUMAN-WILDLIFE
CONFLICT IN KAJIADO/NAROK/SAMBURU COUNTIES

(Question dropped)

Question No.1813

STALLING OF WORKS ON MWIRUA-JAMBO BWANA ROAD

Mr. Mwangi asked the Minister for Roads:-

(a) whether he has plans to rehabilitate Mwirua-Jambo Bwana Road (E1595) in Gatari Ward, Kiharu Constituency and how much has been allocated for rehabilitation in 2012/13 Financial Year;

(b) whether he is aware that the bridge near the road D428 which connects Road E1595 stalled due to inadequate funding; and,

(c) how much money the Ministry has allocated to complete the stalled bridge and construct the other two bridges earmarked for construction on the same road in the 2012/2013 Financial Year.

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

(a) Mwirua-Jambo Bwana Road, E1595 is under the purview of the Kiharu Constituency Roads Committee and as such, I would urge that they prioritize it under their work plan for rehabilitation. A total of Kshs341,000 has been allocated in the Financial Year 2012/2013.

(b) I am aware that they require urgent funding.

(c) As stated above, the road in question falls under the Kiharu Constituency Roads Committee and, therefore, we urge them to prioritize it to ensure that the bridge is reinstated.

Mr. Mwangi: Mr. Deputy Speaker, Sir, I want to appreciate the answer by the Assistant Minister but I would like him to observe that when this bridge broke down, it is the Ministry that went and removed the rails. The amount of money that the Minister is allocating is insufficient and that is the reason the Ministry did not rehabilitate the bridge. Could he commit himself or commit the Ministry to fund the reconstruction or replacement of the bridge through adequate funding?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, first, Mwirua Bridge is located on Road E1593 at the junction of D428. The bridge is approximately ten metres and construction was undertaken by the Ministry of Roads in 2008 at a cost of Kshs1,000,000. However, the works stalled due to lack of funds and, therefore, I want to agree with the hon. Member. In our Budget this year, we will try to ensure that there is funding to be able to rehabilitate the bridge.

Mr. Gaichuhie: Mr. Deputy Speaker, Sir, this year, the whole of Kenya has been blessed with a lot of rain and so many roads and bridges have been damaged. What is the Ministry planning to do to mitigate these measures?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, indeed, it is true that every time sections of this country enjoy heavy rains, we have the problem on our roads especially the murrum roads becoming inaccessible. We have not received a comprehensive report especially on the areas where it has been raining. This is also the case in the North Rift and other areas which have experienced heavy rains. As soon as we get that report, we will make a report to Treasury upon which we will be able to undertake repairs. There are indications right now that we will be able to have some little money that they can put on those roads especially those which connect the rural areas where food comes from and the markets. That is, indeed, our priority area.

Mr. Kiptanui: Mr. Deputy Speaker, Sir, in answering part “b” of the Question, the Assistant Minister has said that in 2008 the bridge was done and at that time it cost Kshs1 million, which was not sufficient. From 2008 to date, it is close to five years. The Assistant Minister has an emergency funds Kitty which he allocates to some roads in the country. Could he consider funding this bridge this financial year using the emergency funds kitty? He should also consider other roads in the constituency which are in deplorable state.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, indeed, we should consider this road under emergency funding. I also want to remind the hon. Member that the requests we get are normally ten times what we get. Therefore, we can only do what we consider extreme emergencies. I also want to remind the hon. Member that in 2008, the mode of distribution of funds for road maintenance was different. After we amended the Roads Act in that year, we said that every constituency will get the same amount. Now it is the Constituency Roads Committee to prioritize the roads to be repaired. However, that was not the procedure before 2008. That may explain why it has taken a bit longer. However, I will follow up on it.

Mr. Mwangi: Thank you, Mr. Deputy Speaker, Sir. I would like to inform the Assistant Minister that the bridge was not rehabilitated in 2008. His officers removed the rails and did not do any construction. I request the Assistant Minister to indicate how much the bridge will cost and how much he is ready to commit for its rehabilitation. This is because those officers removed the rails and did not do anything on the site.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I do not have the exact estimate of this bridge. However, we have three bridges on Mwirua River and they will all cost Kshs50 million. Clearly, we may not be able to do all of them but on the basis of priority, we will pick on one. I would also like to say that as soon as I get the exact estimates for this bridge, I will furnish the hon. Member.

Mr. Deputy Speaker: With regard to Question No.1 by Private Notice, Capt. Wambugu, the hon. Minister for Foreign Affairs is engaged with a Head of State from a neighbouring country and this Question will be listed on the Order Paper on Tuesday, next week.

QUESTIONS BY PRIVATE NOTICE

REPATRIATION OF MS. LILIAN NYAMBURA FROM SAUDI ARABIA

(**Mr. Wambugu**) to ask the Minister for Foreign Affairs:-

(Question deferred)

Mr. Deputy Speaker: Let us move on to Dr. Otichilo’s Question!

Dr. Otichilo: Mr. Deputy Speaker, Sir, for the second time, I beg to ask Question No.2 by Private Notice.

FAILURE TO ADHERE TO LAID DOWN CRITERIA FOR RECRUITMENT OF DIRECTOR OF KWS

Dr. Otichilo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) Under what circumstances did the former Director of Kenya Wildlife Service (KWS), Mr. Julius Kipng'etich resign?

(b) Why was a competitive process not used in the recruitment of the new director as per the proposal to the Office of the President by KWS Management Board?

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, I would like to apologize for not being in the House at the time the Question was raised. I was involved in a Cabinet Sub-committee. I am happy that you have given me an opportunity to answer this Question.

(a) The resignation of the former KWS Director, Dr. Julius Kipng'etich was a personal decision.

(b) According to the Wildlife Conservation and Management Act, CAP 376 Section 3C(2) the Director of the KWS is appointed by the President. This is what happened.

Dr. Otichilo: Thank you, Mr. Deputy Speaker, Sir. I thank the Minister for the answer. However, as much as I agree with the Minister that it is the President who eventually appoints the Director, due process must be followed. I would like to know from the Minister whether due process was followed and whether the Kenya Wildlife Board was involved in competitively sourcing for the people and presenting three names to the President before he made a decision on who to appoint as the Director or the KWS.

Dr. Wekesa: Mr. Deputy Speaker, Sir, going through the Act as it is now, I do not see where it says that the appointment must go through the process of short-listing. I think that the President has the prerogative, through that Act, to appoint as he wishes.

Dr. Otichilo: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to say that the President had the prerogative to choose whoever he wanted to choose when the Constitution is very clear that due process must be followed in hiring senior public officers?

Dr. Wekesa: Mr. Deputy Speaker, Sir, we are all aware that the KWS is an armed force. There is no time that a position such as that of the Director of the KWS can remain vacant for long. In that regard, the President saw it fit to appoint this officer to fill the gap in view of the fact that it is an armed force.

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to deliberately avoid to respond to the Question raised by hon. Dr. Otichilo that the President can only appoint after due process has been observed? Is it in order for the Minister to avoid this?

Dr. Wekesa: Mr. Deputy Speaker, Sir, I am not avoiding it. All I am saying is that the President, in his wisdom, decided to appoint this officer so that there is no gap in the administration of officers who carry guns and have to be commanded. However, because of the Constitution, if Parliament so wishes, we can go through that process. However, as far as I am aware, this appointment was necessary to fill the gap I have referred to.

Dr. Otichilo: Mr. Deputy Speaker, Sir, I really plead with you to defer this Question because we have a lot of interest in it.

Mr. Deputy Speaker: Could you ask your question or questions, hon. Dr. Otichilo? You have the Floor.

Dr. Otichilo: Mr. Deputy Speaker, Sir, as much as I am constrained I want to hear from the Minister, what the qualifications are of the person who has been appointed to be the Director of the Kenya Wildlife Service (KWS).

Dr. Wekesa: Mr. Deputy Speaker, Sir, this officer is an experienced administrator. He started as a District Officer and he has risen to the rank of District Commissioner, and recently he was one of the people who were appointed as a County Commissioner. He has exemplary

history of being a first class officer. We have no doubt whatsoever that he will be able to discharge his duties.

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. The Minister is not answering the question. The Minister and a clique of people who have been involved in the cutting down of Mt. Kenya Forest are the ones who forced this person to resign. I know this personally because the Director himself has named the officer.

Mr. Deputy Speaker: Order, order! It is not a point of order.

What is your point of order, Mr. Mureithi?

Mr. Mureithi: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to tell Parliament that because it is an armed organization it cannot stay without a head, yet the Commandant of the Administration Police retired to go and campaign? There was an acting head who has now been interviewed through due process. Is he in order to mislead this House, considering that there is a precedent already created in the Administration Police wing, which is also an armed wing of the armed forces?

Dr. Wekesa: Mr. Deputy Speaker, Sir, I have nothing to say.

Mr. Deputy Speaker: Question No.1756, the hon. Peter Kiilu.

ORAL ANSWER TO QUESTION

QUESTION NO. 1756

DELAYED COMPENSATION TO FAMILY OF LATE KEVIN M. MUTUA

Mr. Kiilu asked the Minister for Finance:-

(a) why the injury benefits amounting to Kshs187,1520 for Mr. Kelvin Mutuku Mutua (P/F No.20060559976) a former Administration Police Officer, who died while on duty on 2/8/2000, have not been paid to his next of kin; and,

(b) when the next of kin will be paid.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I am sorry I was a few seconds late when the Question was asked.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Ministry of Finance paid injury compensation of Kshs705,000 to the late Kelvin Mutuku Mutua's next of kin on 5th October, 2010 through the Administrator General, Public Trustee. This was the only amount owed to him as per the Group Personal Insurance Scheme.

(b) In view of the answer to part "a" above part "b" does not arise.

Mr. Kiilu: Mr. Deputy Speaker, Sir, while appreciating the answer given by the Minister, the family of the late Kevin Mutuku Mutua had been given this figure which I requested to be told when it is going to be paid - Kshs1,871,520 - by his previous employer. This was the money due to him; it was worked out by the Ministry of Labour. The family would like to know at what stage this figure changed from Kshs1,871,520 to Kshs705,000.

Mr. Githae: Mr. Deputy Speaker, Sir, the figure has never changed. The amount is determined by the insurance company and is based on the claimant's basic salary at the time of the accident. The final computation of the amount is arrived at by taking the claimant's basic salary, which was Kshs11,750 per month and multiplying it by 100 per cent for five years, which is 60 months, and you will get Kshs705,000.

Mr. Deputy Speaker, Sir, I think the mistake that was done was that they just calculated-- - They assumed because it is 100 per cent--- The basic salary was Kshs11,750 and they just multiplied it by 100 per cent, which comes to Kshs1,175,000; this does not take into account the period. So, when you take the period into account then you get Kshs705,000.

Mr. Njuguna: Mr. Deputy Speaker, Sir, noting the good answer that has been given by the Minister, could he indicate to this House clear measures the Ministry is taking in processing and paying of benefits to retirees to avoid unnecessary delays in future.

Mr. Githae: Mr. Deputy Speaker, Sir, I think I must point out that the Treasury only pays after all the documents have been received from the original Ministries. For example, in the case of the late Kelvin Mutuku Mutua--- I must, on behalf of Government, send out condolences to the family of this very hardworking officer, who passed away through an accident. The accident occurred on 2nd August 2008; it was not until one year later, this was on 15th December, 2009, that it was reported to us by the employer, the Office of the President. So, you can see there was one year delay before the Office of the President presented documents to the Ministry of Finance. So, the Ministry of Finance is sometimes blamed really when it is not to blame. Unless we are informed, we have no way of knowing whether somebody has passed away or somebody had an accident. You can see that in this case there was a delay of one year before the matter was reported to us.

I would request the Ministries, please take the welfare of the employees seriously. When an employee passes away, please present documents to the Ministry of Finance immediately to avoid some pain being caused to families.

Mr. Deputy Speaker: Last supplementary question, hon. Kiilu.

Mr. Kiilu: Mr. Deputy Speaker, Sir, I would like to know from the Minister when he is going to release the service gratuity due to this officer; he never paid it!

Mr. Githae: Mr. Deputy Speaker, Sir, service gratuity has already been released to the estate. It was Kshs220,178.40, and it was paid on 5th January, 2011, again, to the administrator. So, the money is actually with the Public Trustee, Machakos; it is Kshs220,178.40. I would ask the Member of Parliament to confirm that the family has been paid, and if it has not been paid then he can take up the matter with me and we find out what the reason is. But the money is with the Public Trustee, Machakos.

Mr. Deputy Speaker: Fair enough, hon. Kiilu, the Minister has already invited you to deal with him on this. Do you wish to say something, hon. Kiilu?

Mr. Kiilu: Mr. Deputy Speaker, Sir, I would like to thank the Minister for this information.

Mr. Deputy Speaker: Great; next Order!

POINTS OF ORDER

KDF OPERATION IN GARISSA TOWN

Mr. Kapondi: On a point of order Mr. Deputy Speaker, Sir. I am rising on a point of order in view of what is happening in Garissa. Due to the chaotic situation that we saw on the television yesterday, I think it is important--- I do not know if I am in order to seek the direction of the Chair. As we await the two Committees, the Departmental Committee on Administration and National Security and the Departmental Committee on Defence and Foreign Relations to look into the matter, would I be in order to seek the direction of the Chair over this matter?

Mr. Ethuro: Mr. Deputy Speaker, Sir, I was to support him, but I noticed that the only surviving Minister; the Minister for Finance, has just walked out.

Hon. Members: They are two here!

Mr. Deputy Speaker: Proceed, Mr. Ekwe Ethuro!

Mr. Ethuro: Mr. Deputy Speaker, Sir, I want more serious Ministers than the ones I can see here. This is because these are, indeed, very weighty matters.

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for me to ask whether hon. Kapondi could be a bit clearer? I do not know which directions he is seeking from you. What is it that he is asking for? It is not clear to me and others.

Mr. Deputy Speaker: Mr. Kapondi, are you saying that in order to put more weight to the Committee we need the Chairs' support in this matter? Did I get that right?

Mr. Kapondi: Basically, Mr. Deputy Speaker, Sir, that is what I was implying and I thought that hon. Shebesh, being an experienced Member of the House, ought to have got that very easily.

Mr. Njuguna: Mr. Deputy Speaker, Sir, on this issue, I recall that yesterday the Speaker requested the Minister in charge of internal security to issue a Statement this afternoon. I think the ground---

Mr. Deputy Speaker: The Speaker does not request; it is a demand made from the Floor. Again, it is not today, but go on.

Mr. Njuguna: On Thursday, Mr. Deputy Speaker, Sir.

Dr. Nuh: Mr. Deputy Speaker, Sir, I rise to ask for a Ministerial Statement.

Mr. Deputy Speaker: Order! We have not disposed of the one that was sought by somebody else.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Deputy Speaker, Sir, I would like to know the meaning of a "serious Minister" because that is what hon. Ethuro said.

Mr. Deputy Speaker: A serious Minister is hon. Jebii Kilimo.

Hon. Ekwe Ethuro, we want to dispose of the request by hon. Kapondi!

Mr. Ethuro: Mr. Deputy Speaker, Sir, I want hon. Kapondi to make the request to the House which I am willing to support. For now he has not given the request which we can support. Why can he not do so?

For the sake of my sister, she knows that I have utmost respect for her as an Assistant Minister. However, you will realize that of late she has created another forum of minorities, small entities and the marginalized. Obviously, she has an answer to what I mean by being "not that serious".

Mr. Deputy Speaker: My understanding of hon. Kapondi is that he wants the Chair to support him for a joint committee of the Departmental Committee on Defence and Foreign Relations and the Departmental Committee on Administration and National Security, so that they move with speed and investigate those matters. Is that not what you meant, Mr. Kapondi?

Mr. Kapondi: That is correct, Mr. Deputy Speaker, Sir.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I had actually petitioned you that I needed to put the same request that the Departmental Committee moves with speed and makes sure that the issues in Garissa and the issue of deployment of Kenya Defence Forces (KDF) in Baragoi, Turkana, are addressed. In fact, the Member for Turkana Central should not be in court. This should be appreciated by this House.

When we called a Press conference last Thursday, we were concerned that the KDF had been deployed to Turkana County even when the incident that they were referring to was in Samburu County, about 500 kilometres away. They took them to Turkana instead of Samburu County. The Member for Samburu County is here and he knows that we have been asking questions. Even during early Independence in Samburu, every time forces were deployed you could hear of violation of human rights. You will hear of women being raped. In 2009, a Committee of this House on Cattle Rustling made a recommendation that 4,000 cows that had been taken away by security forces from the Samburu be returned. We have been trying to avoid these issues.

Mr. Deputy Speaker, Sir, more fundamentally is the issue of the rule of law and constitutionalism. Section 241(3) (c) states, and I have the benefit of the fresh mentor hon. Aughostino Neto as my counsel, that the Defence Forces may be deployed to restore peace in any part of Kenya affected by unrest or instability only--- The framers of this Constitution who include most of us here have used the words which are still alive and fresh in our mind. It states thus: “---only with approval of the National Assembly.” When the Executive does not include the National Assembly, it has breached the Constitution!

When we raise a basic matter such as that one, the Executive is intimidating and persecuting hon. Members, so that we do not speak on behalf of our own people. What business do we come to do in this House then if not to represent and talk for our people or to say that the KDF cannot be used to kill our own citizens like it has happened in Garissa? You want the Member for Turkana Central to come here and apply the same and say that he has abandoned his duty and obligation to the people of this Republic.

Mr. Deputy Speaker, Sir, this House must rise to the occasion and condemn the atrocities visited on Kenyans by our own security organs. Article 239(3) says: “In performing their functions and exercising their powers, the national security organs and every member of the national security organs shall not-

- (a) act in a partisan manner;
- (b) further any interest of political party or course; or
- (c) prejudice a political interest or political cause that is legitimate under this Constitution.”

There are more fundamental issues in the situation of Baragoi.

Mr. Deputy Speaker, Sir, I wish to submit that some elements that are fomenting trouble are doing so for the purpose of ensuring that certain communities are gotten rid off in certain areas. Even within the Turkana County which is homogeneous, whenever we have an operation, it remains a fundamental right of the people to register as voters, but this is being violated. How else do you explain a rigged election? Rigging election does not mean stealing votes at the ballot box or at the polling booth. Rigging of elections starts at the process of preparing for those elections.

We call upon you with due humility and require that you defend the Constitution, the lives and property of Kenyans, and especially against this discriminatory bias against the people of northern Kenya. I thought we had become independent. During the colonial time we were part of the Northern Frontier District (NFD). You needed special permits to go to northern Kenya. Now, 50 years down the road it is as if we are operating in the same way. It is only the House that can come to the defence of Kenyans. We plead with you that the request by hon. Kapondi is acceded to.

Mr. Deputy Speaker: Very well put, hon. Ekwe Ethuro.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, now that I understand clearly what hon. Kapondi is asking for, I also want to add my voice. The issues that have been canvassed by hon. Ethuro are about the incident in Baragoi. However, there is also the incident that happened in Eastleigh. It would be a shame for the KDF to imagine that they could deploy forces because security lapses have happened and the work of the police has failed. They should not imagine that they can send the KDF to Eastleigh. That one, I want to say on the Floor, that they should not even dare. This is because we have raised on the Floor numerous times the issue of grenade attacks that have been happening.

Mr. Deputy Speaker, Sir, three weeks ago, there was a show of might by the police where they exposed houses from which grenades were being manufactured and kept – so they said. Two weeks later, a grenade was thrown in a *matatu* and women and children were killed. This is the day that the Police Commissioner should have resigned or even yesterday. It would be a shame for us to even discuss this matter or even the Committee to start its work without the Police Commissioner having resigned and taken responsibility because how many Kenyans have to die for us to understand that the Police Commissioner and the intelligence services of this country have failed us? I want to support that these two committees work with speed and utilize all parliamentary powers at their disposal because nobody else has to die because two people in this country have failed to do their work.

Mr. Oyugi: Mr. Deputy Speaker, Sir, I rise to support the Motion by Mr. Kapondi. The reason people elect governments is so that they have life, liberty and pursue happiness. If at all things are going to happen in the manner they are happening in Kenya and the Executive is abdicating its role, I really think then we, as a people, have no business being in the Government.

I have looked at the flagrant disregard of the Constitution by the Government; with due disregard of the Constitution, the Government did violate sections of the Constitution by deploying forces to Garrissa. It behoves us as a House to wonder then, why we swear to protect a Constitution that we do not believe in.

Mr. Deputy Speaker, Sir, the rate at which insecurity is rising in Kenya shows that there could be more interests than meet the eye because; what is the level of our security preparedness with regard to these attacks? No one has been apprehended. There is no number of people who have been arrested and arraigned in court. So, we cannot say that the Government is up to anything because no particular issues are coming up clearly.

I really think that the best we want to do as a Parliament is to insist that the Executive does perform its duties and roles. That can only be done by assuring us, for example, that these things that are coming up are not an attempt to start rigging the elections or anything else to do with the elections. If you cannot quell a problem in a small section like Eastleigh, what then happens when you have small problems happening all over the country towards the next general elections?

As we move towards this, unless someone somewhere is not telling us anything else, all these incidents cannot be attributed to the Al Shabaab. There must be a hidden underhand. If we do not get to the bottom of this matter we do not really think then that there is reason that the next elections will be free and fair.

Dr. Nuh: Mr. Deputy Speaker, Sir, I also want to lend my support to Mr. Kapondi's request. More importantly, a few months back when things went out of hand in Tana River and specifically Tana Delta, we thought that the regular police, the administration police and the GSU were unable to deal with the problems in Tana Delta effectively. We as Members of Parliament from that region requested for the deployment of the military but the Executive arm

of this Government turned our request down and said that they are in a position to deal with the situation without calling in the military. It called for a problem of a higher calibre for them to be able to deploy the military and they declined. This was a request which was put forward by this House which was almost supported unanimously that the military be deployed.

Mr. Deputy Speaker, Sir, I want to ask which type of government would turn down the request of a whole House on a position maybe that they can deal with, then from the blues, they unleash the terror of the military on innocent citizens in Garissa, Eastleigh and now in Baragoi. This Government has to tell us whether as a House we have no voice; whether as the representatives duly elected by the public out there - and our term has not yet expired - this Government has to know that the Executive cannot act on its own volition and will; the way they desire and when they desire.

Mr. Deputy Speaker, Sir, the reason as to why we should ask the committees to investigate this matter is because the Executive wants to move with speed and cover up the situations that are happening in Eastleigh and Garrissa in a purported investigation that they want to carry out. You cannot entrust the same people who unleashed terror on citizens to conduct investigations on their own actions and report that. We cannot do that.

What has happened in Garissa and Eastleigh is too weighty to be left to the arm of Government that has no regard for the law and has breached the Constitution. They could do a cover-up. I call upon the Chair to direct that these committees move with speed and we bar any investigation from the Executive side because we know they do not have good intentions so that we get to the root cause of the matter and at least we have an amicable solution so that we do not have flagrant disregard of the Constitution.

Mr. Koech: Thank you, Mr. Deputy Speaker Sir, for giving me this opportunity. First I would like to sincerely thank Mr. Kapondi for this request. This is our country. As Kenyans, we must rise up to the occasion to protect our own country. Currently, what we are witnessing in Kenya is a situation whereby Kenya is likely to be seen as an unsafe destination for any person all over the world. It is our role as Parliament to ensure that we secure our country.

Mr. Deputy Speaker, Sir, it really disturbs all of us to note that while we are talking of peace, aware of what happened in 2007/2008, the areas that did not have any problem are the areas where we are now witnessing all this violence. As a country, we must rise up to the occasion.

I want to make a humble request. Aware that we are in our ultimate session; aware that we must get this report within the shortest time possible, that the two committees may not have the capacity to go round within one week and come back with the report so that this House adopts, we want to get information from Tana River. We want to get information from Baragoi, Turkana, Eastleigh and Garissa.

I want to plead with you that we allow the committee to co-opt further Members of this hon. House so that they can move out within the shortest time possible and bring us the report so that as a House we make the ultimate decision that is very important.

I support.

Mr. Midiwo: Mr. Deputy Speaker, Sir, let me thank Mr. Kapondi. This is a very weighty matter. We interrogated this matter yesterday in the House Business Committee in the light of the directions given by the substantive Speaker yesterday afternoon. If anybody thinks the violence in January 2008 was anything, what somebody is doing here is a test run for the violence next year. What somebody is doing by using the military against the Constitution is

trying to legitimize that somebody somewhere can sit without the authority of Parliament and order the military to go on the streets and make this country a military State.

We are creating a Rwanda, Somalia, DRC, Uganda and Ethiopia. We are making this country a military State as we watch. I am just from meeting my lawyers; I am going to court because I can see what they are trying to do and what they have been planning to do for the last one week. It is a test run that this Parliament that is composed of representatives of the people cannot let happen.

Mr. Deputy Speaker, Sir, Article 241(3)(b) in which the Minister of State for Provincial Administration and Internal Security purported to want to come here to make a Statement does not deal with the situation in Garissa. It does not deal with the situation in Eastleigh or Baragoi. It does not deal and never dealt with the situation in the Tana Delta. It deals with emergency and disaster. According to every lawyer, it presupposes the existence of a flood, earthquake where the Executive can ask the military---

In fact, it says that the military can come out and support other Government agencies in humanitarian activities and then appraise Parliament. But part "c" of that particular Article says that the Military can restore peace, but only with the authority and approval of Parliament. The word is "only." If three Army officers are killed by terrorists or bandits in Garissa, the Army can only go to the police. They cannot say that they are killing and burning houses in self-defence. Who are they defending themselves against? This is not a small matter. We cannot sit back and let somebody politicize the military, because that is what they are purporting to do.

Mr. Deputy Speaker, Sir, I am aware that hon. Ethuro and hon. Nanok were to be arrested on Saturday. Actually, hon. Nanok was arrested on Friday. I received a phone call from the Prime Minister saying: "I am aware that one of my Ministers has been arrested and it is irregular." He told me that he had spoken to the Acting Head of Public Service, Mr. Kimemia about the matter. I called the Minister of State for Provincial Administration and Internal Security on Saturday morning and he told me that he was not aware that police officers were arresting Ministers and Members of Parliament. How many Governments do we have in this country?

(Applause)

We are lucky that the Bill that creates the Office of the Director of Public Prosecutions (DPP) will be here next week. This House must be present so that we say how Kenyans are treated by police in law.

Mr. Deputy Speaker, Sir, as the Kapondi Committee is established, I want to agree with Dr. Koech that we should make this thing an issue of Parliament, give it three or four days and facilitate it, so that we can stop anybody who thinks that they will retain the *status quo* at whatever cost, because this is what it is. That is why they are disrupting voter registration, killing women and children and burning houses in Garissa. All of us must stop these people because they do not want change and we must force them.

Mrs. Odhiambo-Mabona: Thank you, Mr. Deputy Speaker, Sir. I want to support the application by hon. Kapondi, but request that we add either the Committee on Equal Opportunities or the Departmental Committee on Justice and Legal Affairs because of the issues of discrimination and ethnic profiling that have been indicated.

Mr. Deputy Speaker, Sir, indeed, this morning I was with hon. Ethuro and hon. Nanok in court when the charge was declared by the court as defective and I found it very curious.

(Applause)

If you heard what the magistrate said, you will find that it attests to the things that we are saying here. If you look at what was actually said in court and what the charge sheet reads--- Indeed, it is unfortunate that we had our police officers killed and really, I want to send my condolences to the families, but the law must be followed. We care for our policemen but we also care for other Kenyans. The fact that the police were killed is not an excuse to disobey the law and not follow the Constitution.

Mr. Deputy Speaker, Sir, I want to thank hon. Midiwo who has actually put forward very clearly the issues that I wanted to raise as a matter concern. You cannot unleash the military on the people of Kenya in Garissa because it is unconstitutional. The Constitution is very clear that if you have to do that, you have to do it with the permission of Parliament. What does it say about our Police Service? It is an indictment of our Police Service. What are we saying? That we have an ineffective Police Service and Kenyans are no longer safe. Indeed, Parliament must come in and let us know why the situation happened the way it is. We do not want the security services fueling ethnic animosity between Kenyans. This is because by their own actions, they make people start feeling that their community is being targeted. You will hear hon. Members asking here: “Why is this Member of Parliament and not the other MP being arrested,” when maybe the other Member of Parliament has no problem. It is the way our security forces are behaving that will fuel animosity.

Mr. Deputy Speaker, Sir, I just want to read the charge sheet so that you can see that our police officers are not even behaving very carefully about these issues that are very grave in this country.

Mr. Deputy Speaker: Hon. Odhiambo-Mabona, whereas the Chair has all the sympathy, but then we are now talking about two Committees going out there to carry out an investigation. I do not see how much relevance that charge sheet has on it, or are you worried that they also could be charged by the police?

Mrs. Odhiambo-Mabona: Yes, Mr. Deputy Speaker, Sir. I am worried that they might charge the Members of the Committee when they are doing their work. I am actually asking for a third Committee that will advise the police on issues of discrimination.

Mr. Ethuro: That is correct! Yes!

Mr. Deputy Speaker, Sir, the charge sheet is very short and I will be brief. It reads: -
“Incitement to violence contrary to Section 96A of the Penal Code.

1. Josephat Koli Nanok
2. David Ekwe Ethuro

On the 15th day of November, 2012, in Nairobi, within Nairobi County (not in Parliament so that they can evade the Privileges Act) jointly with others not before court, without lawful excuse uttered words namely “if you do not want to disarm the Pokot and Samburu, it is only the Turkanas you want to disarm.”

Mr. Deputy Speaker, Sir, even the magistrate wondered what is inciteful about that. You are just saying; “disarm everyone.” Is it inciteful to tell you to disarm everybody that is armed?

The charge sheet further reads:-

“You come in the night to shell a village. They decided that they better face them out in the valley. That is what happened in the valley. It is harsh, hot, caved and you cannot fight there if you have not fought there.”

Mr. Deputy Speaker, Sir, I will tell anybody that if you deploy the military to Suba, Rusinga or Mbita Point and they cannot swim, they will drown. There is nothing inciteful about that. It is a mere statement of fact. So, if you take me to a hot place, I will burn. I am not used to that terrain. So, I do not know who is fueling this with an aim to stop elections. We know it and are watching you. Stop the games because you are killing Kenyans and life is valuable.

Mr. Deputy Speaker, Sir, I support and request that we add the Departmental Committee on Justice and Legal Affairs or the Committee on Equal Opportunities or both.

Mr. Hassan: Mr. Deputy Speaker, Sir, I support the move to investigate and discuss this issue at the Committee level.

We have a crisis of law and order in our country and there is urgent need for us to develop measures and arrest the growing crisis. I witnessed how fragile our society is in my constituency in the last few days where there was a tragedy - a *matatu* bomb blast in which we lost ten people. It was followed by a rampage that left a trail of death and destruction in that neighbourhood. This is a micro case of what would happen in the larger part of Kenya unless we are able to deal with these issues in a very clear way. One of the things that came out was the complete lack of preparedness on the part of security forces in terms of equipment and vehicles. They were not able to get there on time and did not have the means to deal with the crisis, although it was on a very small-scale. This was a group of not more than 200 youngsters who caused mayhem and were able to close down a whole commercial hub and major roads in and out of Nairobi. If this is happening in our capital City, I fear what might happen if we do not take the necessary steps to be prepared and take action.

Mr. Deputy Speaker, Sir, secondly, we must also look at the crisis of youth unemployment. Many of the problems that we are facing in some parts of Nairobi and other cities are due to the fact that we have a very large youthful population. We cannot just deal with the social and economic problems that we have in our society through use of security forces. Talking about the Kenya Defence Force (KDF), is our country falling apart? Are we in a state of war? I do not know of any normal country which will use its military forces at a time of peace. Therefore, is it justified for us to deploy our military forces? Look at the reputation of our military forces in the eyes of the Kenyan public. Thousands of people are fleeing from Suguta Valley and Baragoi in advance of our national defence force. That is the reputation that our Defence Force has inside our country. Our Defence Force also needs to work on its reputation as a national force. Is it a national force that is defending the territorial borders of Kenya, peace and security or will it be used to settle ethnic problems in some parts of our country?

Mr. Deputy Speaker: I will take just two more speakers before I put the Question.

Proceed, Mrs. Kilimo.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Thank you, Mr. Deputy Speaker, Sir. I have really waited patiently for this chance to contribute. I would like to urge the House to facilitate these two Departmental Committees on Administration and Security and on Defence and Foreign Relations to do their work. In fact, they should move with speed once they are given the mandate to investigate this matter. Today we would be listening to their report if we had taken these issues more seriously.

Mr. Deputy Speaker, Sir, I want to talk on behalf of the women whose voices no one wants to listen to because they are the ones who do petty businesses in order to support their families. Last night I could not sleep properly when I saw a woman crying in Garissa because she had lost all what she had. She was crying because the security personnel had destroyed where she used to display her wares and she had nowhere to go. We could see her house which

had been destroyed by the security forces. Her children could not believe what they were seeing. Women feed their children and their husbands. So, when their source of income is destroyed, are we serious?

Mr. Deputy Speaker, Sir, I support that these two Committees should be facilitated just like they treat emergencies. The Government should have already called these Committees and told them: “Here, go and use these emergency funds” so that they can come back with a report on the two issues of Garissa and Baragoi.

Mr. Deputy Speaker, Sir, you have seen what the so-called ‘cattle rustlers’ are using to shelter themselves with. They are using women and children as human shields. These are people who do not know where the next meal will come from. Animals are scattered all over in Baragoi. They cannot get even one animal to draw blood to feed the children. Are we concerned about the plight of women and children in this country? Since we care about women and children in this country, I support the proposal by hon. Kapondi that these joint Committees move with speed and compile the report to debate in this House.

Mr. Deputy Speaker: We will now have hon. Ruto and then hon. Ethuro. We will then proceed from there.

Mr. Ruto: Mr. Deputy Speaker, Sir, it is a sad moment in this country where we are now witnessing confusion and insecurity. While I empathize with the families of those who have lost their loved ones in the police force, in the Kenya Defense Force (KDF) and, indeed, in the other security agencies; while I agree that their terms of service should be improved, including medical care, we cannot use this situation to deny Kenyans their civil rights. It cannot be allowed.

(Applause)

It is not allowable for those in charge of the security apparatus to use the instruments of terror against innocent Kenyans. It is not believable that they can be allowed to react wildly to the extent that they can ‘damage’ innocent citizens. Indeed, they are criminals, and criminals are all over the place. We have given the KDF, Kenya Police and the National Intelligence Security (NIS) the responsibility to guard Kenyans. Is the NIS not working together with the police? What is their job? They should be able to identify who these criminals are. But you cannot visit mayhem on innocent people who are asleep.

Mr. Deputy Speaker, Sir, the Kenya Government has to rethink. In fact, I suspect they are using all this to roll back the gains Kenyans have got over the last few years.

(Applause)

We are hearing that the Kenya Government and, in fact, the provincial administration – the District Commissioners (DCs) and the Provincial Commissioners (PCs) – have been asking the chiefs to demonstrate, so that their jobs are secure. They are asking them to demonstrate so that we can retain the *status quo*; they want to bring back the Chiefs Act; they want to roll back the gains. They have no idea what Kenyans fought for in the last 20 years to change a tyrant over themselves.

Mr. Deputy Speaker, Sir, there is a plot to, in fact, derail devolution and to derail all other gains in the guise of securing insecurity.

(Applause)

Mr. Deputy Speaker, Sir, I think Parliament must move with speed to check this situation. There is, in fact, even an attempt to intimidate Parliament by arresting hon. Members all over the place. I, myself, was arrested on trumped up charges that I beat up somebody, which no one saw. Fortunately, they withdrew the case. What is the police force up to? What is the security apparatus up to? What are they trying to do? Are they having a vendetta against Kenyans? Are they intimidating this House, so that we cannot speak up?

I want to tell you, Mr. Deputy Speaker, Sir, and them that we are ready to defend the rights that Kenyans have got so far. In fact, we are going to move ahead. As hon. Members of Parliament, it is our responsibility to represent Kenyans. Our other responsibility is to provide oversight over Government. We are not going to allow the Government to run amok. This Government should not use insecurity to interfere with the election process or with the implementation of the Constitution. We want the Constitution to be implemented to the letter. In fact, I believe we did not gain enough; there were compromises in that Constitution. We need to move ahead and give all rights to citizens to determine some of these things. We have seen them attempt to pass laws which have not gone through public participation, yet it is clear that laws must involve public participation. I know they want to rush a lot of Bills through Parliament in the next 10 days, so that we do not scrutinize them and then they can get away with it and by the time we realize it, we are in mess. A case in point is the Transitional Authority where, apparently, there are so many Permanent Secretaries now managing the transition stage instead of an independent commission.

Mr. Deputy Speaker, Sir, there is chaos in this Republic. Where are we heading to? I rest my case.

(Applause)

Mr. Deputy Speaker: We will hear hon. Njuguna and then hon. Ethuro.

Mr. Njuguna: Thank you, Mr. Deputy Speaker, Sir. Very briefly, let me recall that yesterday, Garissa was really in turmoil and suffering. There is a very serious degree of insecurity in this area. Life is almost shattered. To restore sanity in Garissa and other areas, we need an urgent recall of the Military back to the barracks because it has come out clearly from the Minister of State for Defense that he was not privy to the decision of sending the KDF to Garissa.

The other issue that needs to be addressed by the same Committee is the anarchy that we saw in Kiambu County, where fierce fighting took place. Some innocent members of a community suffered broken legs and arms. We want the same Committee to ensure that no more bloodshed will take place in this country. Therefore, it is important to recognize the rights and security of individuals in this country. Let us restore peace and security to the suffering community in Garissa so that they too can enjoy the way the other Kenyans are enjoying.

Mr. Deputy Speaker, Sir, I fully support the spirit of this Motion.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I just want to support the further amendment to include the other two Committees; the Committee on Equal Opportunity and the Committee on Justice and Legal Affairs, and also to make this case. The media should not entertain and persecute us. This fight is not about one community against another. Our struggle as hon. Members of Parliament is to ensure that each community is protected by the State. Just because I

happen to be a Somali-looking person, then you think that Al-Qaeda must be finding residence in Eastleigh and you can go to Eastleigh because you think there is an infiltration by Somalis there. The Somalis are all over in this Republic. It is one of the ethnic groups of the Republic of Kenya.

Mr. Deputy Speaker, Sir, the Member for Dujis, hon. Duale, is on record saying that you cannot deploy the military at the Garissa Provincial Hospital. You cannot have the kind of attacks that have been taking place in Garissa, Wajir and Mandera and there is no serious emergency unit on standby in northern Kenya. That is why we find it discriminatory when it happens in other areas like where my good friend, the Whip, comes from, except that then I realised that he is not whipping enough. There are operators in this Government who can disregard a communication from the Prime Minister or some basic things. Putting hon. Nanok, the Assistant Minister, in prison for all that time is a shame. We are not interested in the business of police accommodation. Even they do not have their own accommodation. Why do they want to accommodate us? We are serious citizens of the Republic of Kenya.

Let the media get these issues right. I am the National Chairman of AMANI Forum and I practise what I preach. I do not do things in a different way. We are not sure that the IDPs in this country could have solved the post-election violence problem. This Government is now creating more IDPs even before we have started on an election. We come from that kind of background, and we cannot allow any more situations to arise. If hon. Kapondi thinks that there is enough---. That is why he thinks that the Police Commissioner should not go home. He must go home. We have said that all the people must take responsibility. A story was aired on BBC the other day about a man who died many years but the head of the BBC resigned. The CIA Director-General has taken responsibility and resigned over an illicit affair, which had nothing to do with the job he was doing. But here we can sit straight and say that we are going to do something.

I want hon. Kapondi's Committee and others to investigate the following. In the case of Garissa, even the members of the Kenya Red Cross Society - one of those organizations in the country that still come out to help our people - were locked up in the compound and were denied a chance to go out and help the people. What was the intention? The intention was to inflict harm, destroy and kill. They should also investigate what there is in Turkana that they are getting its leaders. Is it because we have discovered oil and so they do not want a leadership that is telling them that these things must be shared to benefit the local community? So, they want to create their own kind of things; is this a situation similar to what happened between American and Panama? Why should this government arrest the people that it likes running to, namely a chief and a councillor? It arrests them always. The communities of northern Kenya raid each other. So, why do you pick councillors and chiefs from one community and not from others? I am not saying that others should also be picked. Nobody should be picked. Do further investigations and then arrest the real people that you know you are dealing with.

I hope that what the security forces are doing is not an exercise to divert out attention. We still demand answers about what happened to the botched operation in Baragoi that made our police to lose 42 lives at a go. I cannot fathom. I cannot believe that it can even happen in that harsh environment. There is a problem. The Police spokesperson himself has admitted that it was a tactful error and when we say the same, we are taken to court. We demand answers from the police. You must protect your officers. You cannot have bodies in the valley for four five days and nobody has found them. This is still the Republic of Kenya and every corner of the Republic must be accounted for. We demand development in northern Kenya and our police officers and the members of our communities will not be losing their lives. That is the solution. That is what we demand.

Mr. Deputy Speaker: Ordinarily, that would have been the end of it, but I can see the only Minister who is with us. He wants to say something.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I wanted to say something, but I was trying to feel the mood of the House. Nonetheless, my dear friend, hon. Ethuro, is right to talk very passionately about this issue. It is an issue of national importance. It is an issue that should be attended to very urgently. Mistakes have been made and I believe that all of us, as Kenyans, must pull together and ensure that we guarantee security and peace in our nation.

I do not believe in a blame game because I do not believe that blame games will help anybody. I believe that the right course of action needs to be taken and anybody who has committed a mistake should be held to account. The responsibility of the Government, the existence of any State, the legitimacy of any State to exist, is first and foremost to guarantee peace and security to its people, especially those who live at its borders, whether they are citizens or not. As my dear friend, hon. Ethuro, has been saying, we know that historically there have been problems in the northern part of Kenya. These are problems that are structural and historical. The fact that there are structural and historical problems does not create any excuse whatsoever for these problems to be perpetuated. Therefore, any action taken by the Government must be to solve problems and not to exacerbate them. As a Minister, I think it is the concern of the Cabinet and I believe the concern of the Head of State to ensure that such problems are addressed constructively and effectively, so that peace and security are guaranteed in our nation.

I hope that as we discuss this in this august House, that should be our objective and goal. I want to say, as a Secretary-General of a very important party in this nation, that my party too is concerned about peace and security. As we draw near the elections, it is very important that Kenyans get convinced that we are serious about peace and security. Without peace and security, the registration of voters cannot go on properly, nomination of candidates in political parties will not be carried out properly and the normal economic, industrial, commercial, social and cultural activities of our people will be interfered with. Therefore, legitimacy of governance will also be put into question. Therefore, in whatever quarters these issues are discussed, the sentiments of this House, the feelings and the sufferings of Kenyans must also be taken very seriously. I believe that the Ministry of State for Provincial Administration and Internal Security, in whose docket this matter lies, will listen carefully to the concerns of the House and respond to them positively.

I beg to support the sentiments of the House.

Mr. Deputy Speaker: Ordinarily, as I had indicated before, I would have just given a direction but hon. Duale, who has just come from the destruction zone and who almost lost his life in Garissa, is here. I will give him a moment. Take two to three minutes, hon. Duale. There is a request to two committees – that is a combined committee on Administration and Internal Security and Defence and Foreign Relations to co-opt other hon. Members and go out there and investigate this matter with speed. So, could you say something?

Mr. Duale: Thank you, Mr. Deputy Speaker, Sir. First and foremost, I want to thank you and this House for at least standing with the people of Garissa yesterday. I want to make it very clear that I was in my constituency on Friday. On Monday morning at 11 O'clock I registered myself as a voter at the Township Ward at the Kenya National Library Services (KNLS) headquarters in Garissa. At One O'clock on Friday, two police officers were killed; in the last one month, nine police officers have been killed; unfortunately we condemn in the strongest terms possible that three Kenya Defence Forces (KDF) officers were shot dead by unknown

gunmen at the outskirts of Garissa Town as they were changing their tyres. One hour later, the KDF, in their thousands, left the military camp without due diligence as the law provides. They never consulted the Provincial Security Committee as the law provides. They never consulted the District Security Committee. They came to the streets. They were burning, looting, raping; above all, as I drove from my constituency, 15 people were injured. They are in hospital and some are in theatre. Forty five of them are a testimony to what happened during the dark days when Rev. Njoya and others were beaten. This was done to the women, children and elders of that town.

Mr. Deputy Speaker, Sir, I went there and the Officer Commanding the force, Capt. Mureithi said: "We did this in Kismayu. We are going to do this in Garissa." That is what he told a Member of Parliament. I want the Minister for Defence to come out very clearly. I want to thank him since he came to Garissa yesterday and he could not believe what he saw. He counted the dead, injured and the property looted. Shopping malls were put on fire. A whole market with over 30,000 poor women, the biggest market, was razed down by the KDF contrary to Article 241 that spells out their mandate; this Parliament has not sanctioned that operation.

Mr. Deputy Speaker, Sir, the Commander-in-Chief of the Armed Forces of the Republic of Kenya, hon. Mwai Kibaki, cannot keep quiet. He cannot keep quiet. If he kept quiet when people died in Tana River and when 45 of his forces were killed in Baragoi--- The Head of State cannot keep quiet on what is happening in Garissa. The Minister for Defence assured us yesterday that he would fly to Nairobi and have a session with His Excellency the President to come out and tell the nation what has happened. This is the first day when the cameras and videos of the media crew in this country were confiscated by the military. They were beaten and they were part of the injured.

Mr. Deputy Speaker, Sir, a prominent businessman based in Nairobi, an old man known as M.K. Roble, whose shopping mall was put on fire--- He went to his site, he is in hospital now. His mall, which is one of the biggest building in Garissa Town was put on fire by the military. This House has come of age. This House has a mandatory oversight role and there is a committee called the "Departmental Committee on Defence and Foreign Relations". I want you to order that team to go to Garissa today. Today, Parliament should fly to Garissa. Today, Parliament should censure the Government. Today, this Parliament should not transact any business. If Members of Parliament today go to Garissa, they will find that there is no difference between Garissa and what is happening in Gaza Strip. In fact, the people in Gaza Strip are better off because they at least can throw a few shells at their enemies. Today, State terror has been directed at innocent people. Is this the legacy that the President wants to leave? He has four months to go. The choice is his. We are telling President Kibaki that the choice is his; whether he wants to leave a good legacy or whether he wants to leave the type of legacy his defence forces have created.

Mr. Deputy Speaker, Sir, this is the same Government that arrested our colleagues, just because they spoke for our people. We are ready to die. Some of us are ready to die for protecting the Constitution that we stand for. Some of us are ready to die for our communities. Our communities can be denied infrastructure, healthcare and education for 50 years, but our communities have the constitutional right to live in a peaceful Kenya.

(Applause)

Mr. Deputy Speaker, Sir, I want to inform you. I drove from Garissa at 5.00 a.m., and this House cannot transact any other business when I have the memory of what happened in Garissa.

I want to ask you finally that today, or latest tomorrow morning, a committee of Parliament must visit Garissa and see for themselves what the KDF have done.

Thank you.

Mr. Deputy Speaker: Hon. Members, indeed it is common knowledge that the events that took place in Garissa defy any description, and Parliament has a fundamental and sanctified role to protect the people of this country and to hold the Government responsible for its actions and inactions too. The fact that there is a serious unconstitutionality that was committed by the Government by committing the KDF to carry out what essentially was an internal operation without parliamentary approval, and the kind of damage that was inflicted on the people--- Indeed, I think this is a matter that probably should not only be dealt with by this Parliament within the borders of this country, but I am inclined to believe it might also have some effect outside this country.

I agree with you and the Chair has absolutely no reservations and concurs that the two committees – the Departmental Committee on Administration and Internal Security and the Departmental Committee on Defence and Foreign Relations – jointly should co-opt any other hon. Member from any of the other committees whose skills and specialty is a requirement in this case--- What comes to mind immediately is the Departmental Committee on Justice and Legal Affairs, the Departmental Committee on Equal Opportunity. They should be able to sort out the gender dimension in this thing because over 70 per cent of the people who use that market are women; they do business there.

So, the Chair directs that they move with speed and split themselves into the right numbers so that they can be in Garissa and also carry out investigations in Eastleigh, Baragoi and Turkana. They are to work as much as is possible and we have their report in a week.

(Applause)

My office is going to facilitate that as the Chairman of the Liaison Committee and the Chair of all committees. By this communication, I am directing the Clerk to immediately make all the facilitation available for the Members of Parliament to travel, whether it is by air or road, as soon as possible and carry out this investigation. I also call upon the joint whips to help the committees that I have mentioned, and the chairs of the committees, in picking the right hon. Members to be co-opted into this exercise. So, the Chair directs that.

Thank you, hon. Members.

Hon. Dr. Nuh, you have one Ministerial Statement you are seeking and then we can go to the substantive business.

(Applause)

Mr. Lessonet: On a point of order, Mr. Deputy Speaker, Sir. I also have a Ministerial Statement to seek.

Mr. Deputy Speaker: I do not have any notice of that.

Mr. Lessonet: Mr. Deputy Speaker, Sir, I came to you earlier.

Mr. Deputy Speaker: On what?

Mr. Lessonet: Mr. Deputy Speaker, Sir, maybe I can go to it. Tomorrow 22nd ---

Mr. Deputy Speaker: Oh, yes, but let Dr. Nuh do it and then you can do yours. The Chair recollects that.

ARRESTS OF MEMBERS OF PARLIAMENT BY SECURITY FORCES

Dr. Nuh: Mr. Deputy Speaker, Sir, I want to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security. He should give a Statement on the arrests and more specifically the procedures used and the processes that were undergone until arraignment in court of the following three Members of Parliament, Messrs. Yakub, Nanok and Ethuro. I want him to clarify in his Statement from the initial stages of how they contacted the Members of Parliament informing them or not of whether they needed to record statements and all the processes the three Members of Parliament each underwent until they were arraigned in court; and whether they were asked to appear before the CID and were asked to record the statements; which channel of communication was used to contact the Members of Parliament. This should be whether it was through a phone call, an SMS, an email, Facebook, Twitter or maybe it was a media event that summoned the Members of Parliament to record such statements. Which police cells they were accommodated, how many hours they spent in those police cells and where the questioning of the Members of Parliament happened? The Statement should also clarify whether the same procedures are used to arrest public officers and State officers are used for normal criminals and perceived criminals within our borders and whether adequate investigations were conducted before such arrests were done in respect to the hon. Members.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I will double up as the Government and---

Mr. Deputy Speaker: Order! There are Ministers here; you cannot double up as a Minister. If you want to add, proceed.

Mr. Midiwo: Mr. Deputy Speaker, Sir, with respect to the arrest of Minister Nanok, I would like the Minister also to clarify if the Head of the Executive, either the President or the Prime Minister, were asked for permission before his incarceration as is usually the case before a Minister is arrested. If this side of the Coalition or if the permission was given by the other side of the Coalition, or if his incarceration was ordered by an ordinary civil servant; I would like the Minister to clarify that.

Mr. Deputy Speaker: Assistant Minister Nkaisserry, when will you have this Ministerial Statement available on the arrest of hon. Members?

The Assistant Minister of State, Ministry of State for Defence (Maj-Gen. Nkaisserry): Which Statement, Mr. Deputy Speaker, Sir?

Hon. Members: Ah!

The Assistant Minister of State, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I have just walked in. Give me an opportunity to explain myself. First of all, I would like to send our very good respect to our brother, Mr. Duale, for what really happened in Garissa the other day. But I want to state very clearly that the Kenya Defence Forces---

Mr. Deputy Speaker: Order, Mr. Assistant Minister! We have passed that item. The last Ministerial Statement that was sought was sought by Dr. Nuh. He is seeking a date on which that Ministerial Statement will be available on the Floor of the House. Indeed being one of the key Ministers who is in the House now, all you needed to say is that you will communicate this to the relevant Minister and we will have the Statement available on such and such dates even if you do not hear the Ministry's name because you will read that in the HANSARD.

The Assistant Minister of State, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I will try to get my colleagues, so that they can deliver the Statement, because it is very urgent, this afternoon.

(Applause)

Mr. Deputy Speaker: Order, Maj-Gen. Nkaisserry!

The Assistant Minister of State, Ministry of State for Defence (Maj-Gen. Nkaisserry): I want to clear the KDF!

Mr. Deputy Speaker: Order! Clearly, there is something that is not quite right with you this morning.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Maybe we could listen to Maj-Gen. Nkaisserry. We might get an inclination into the arrogance this Government seems to be having because apparently he seems to be chest-thumping. Can we hear him? Maybe the Government has actually gone mad.

Mr. Deputy Speaker: Order! You cannot give a commitment for a Ministerial Statement to be delivered today in the afternoon if you heard exactly what the questions were or the areas of clarification were sought are.

QUORUM

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Indeed, the issues that we have raised over the last one hour or so are extremely weighty and the response we have heard – the preamble of the response that we have heard from the Assistant Minister – just shows how unserious the Government is. There is no serious Minister here as was indicated earlier. So it is even wrong for us, as Parliament, to be sitting here when there are serious issues, including the issues raised in Garissa. I am shocked that we are back to the dark ages. We need to adjourn immediately and go and do soul searching and come back in the afternoon because we do not even have a quorum.

We do not have a quorum in this House.

Mr. Deputy Speaker: Are you raising a quorum?

Mrs. Odhiambo-Mabona: Yes, Mr. Deputy Speaker, Sir. I am raising quorum; we need to go and do soul searching.

Mr. Deputy Speaker: Once the quorum issue is raised, it has to be established. It is only after then that you can transact any business. Indeed, I do not think we have adequate numbers of Members of Parliament here. Can you ring the Quorum Bell?

(The Division Bell was rung)

ADJOURNMENT

Mr. Deputy Speaker: Order, hon. Members! There being no quorum, the House, therefore, stands adjourned until today, Wednesday, 21st November, 2012, in the afternoon at 2.30 p.m.

The House rose at 11.43 p.m.

