

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 22<sup>nd</sup> November, 2012

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PETITION

#### RESTRUCTURING OF THE PROVINCIAL ADMINISTRATION

**Mr. Njuguna:** Mr. Speaker, Sir, I have a petition that I have been requested by the nominated Member, hon. Musikari Kombo, who also happens to be the Co-President of the ACP-EU Joint Parliamentary Assembly to present on his behalf. He is currently in Suriname in the Caribbean.

Mr. Speaker, Sir, the petition is on assistant chiefs who serve under the Provincial Administration. The petition states as follows:-

“We, the undersigned, chiefs employed by the Government of Kenya and assigned to discharge our duties in the counties of Bungoma, Kakamega, Bomet, Murang’a, Nyamira, Narok, Nairobi and Kericho, on behalf of all the chiefs in the country raise the following issues:-

1. That the Government is in the process of publishing a Bill that seeks to restructure the system of administration commonly known as the Provincial Administration pursuant to Article 17 of the Sixth Schedule of the Constitution.

2. The proposed law needs to be prioritized and enacted at the earliest opportunity so as to formally address the uncertainties on the future of the position of the chiefs and other cadres of the Provincial Administration.

3. Chiefs are the officers of the national Government who often deal with communal matters, especially conflict resolutions and, therefore, ensure peace and stability and direction to the communities at the local levels. The chiefs are instrumental in ensuring that the policies of the national Government are implemented in addition to being the first point of call for the registration of services offered to the community, including registration of births and deaths.

4. The legislation to restructure the Provincial Administration should provide for the cadre of officers within the national Government administration structure to include District Officers, chiefs, assistant chiefs and village elders. These officers offer support and facilitate the work of administrative unit and are thus critical for the efficient operation of administration within the counties and districts.

Therefore, the petitioners pray that the Parliament of the Republic of Kenya ensures:-

(i) That the Bill, once published, be prioritized and considered and enacted during the current Tenth Parliament.

(ii) The provisions of the Chiefs Act, Cap.28 be retained with necessary amendments to accord with the Constitution as part of the laws of Kenya to complement the Bill proposed to address national administration and co-ordination and other related purposes.

(iii) That in the restructuring of the Provincial Administration the positions of assistant chief, chief and District Officer, be retained as part of the structures of the national administration to assist in the co-ordination of functions of the national Government and related functions. The position of village elders be institutionalized to be part of the administration.

(iv) That should the Government fail to publish a Bill addressing the said matters in good time, Parliament uses other appropriate means at its disposal to legislate on the matters as sought by the petitioners.

Your petitioners will ever pray, Mr. Speaker.”

The petition is signed by the petitioners.

Mr. Speaker, Sir, the names of the petitioners, their national identity card numbers, signatures and other details are herewith attached.

The assistant chiefs are key in the administration of justice in this country. They help solve broken marriages, administration of estates, land disputes and so on. They are the face of Government at the grassroots level.

I beg to table this petition.

**Mr. Speaker:** Member for Lari, who are you petitioning?

**Mr. Njuguna:** Mr. Speaker, Sir, we are petitioning the Parliament.

**Mr. Speaker:** Fine, you may proceed and table the petition.

After you table it, I would want to address you further.

*(Mr. Njuguna laid the document on the Table)*

*(Mr. Njuguna approached the Chair)*

Order, Member for Lari! Just resume your sit. You realize that we are in plenary. In plenary, if I want to address you I will do so from where you sit or stand.

The reason I asked you who you are petitioning is because I believe that you have acquainted yourself with the provisions of Standing Order No.210 which provides that a petition, upon presentation, may stand committed to a department of the Government or Minister or any other designated Minister or to a Committee of Parliament. So, I do not know what your choice is here. Where do you think that effective action will come from? You may now respond and I will then determine where to commit it to.

**Mr. Njuguna:** Thank you, Mr. Speaker, Sir, for that advice. I would suggest that this matter be committed to the relevant Ministry in charge of Provincial Administration.

**Mr. Speaker:** Is that your prayer?

**Mr. Njuguna:** That is the prayer of the petitioners.

**Mr. Speaker:** Very well. Is there any hon. Member who would want to input into this?

**Mr. K. Kilonzo:** Thank you, Mr. Speaker, Sir, for awarding me this opportunity. In fact, the hon. Member who spoke before me just took the action that I was about to take.

Chiefs in the country are living in a situation of uncertainty. They have children who go to school. They also want to be assured of their income. They do not know their fate. They have been talking to us and they have been saying that we need to petition Government. I, therefore, want to support the hon. Member. As a matter of urgency, now that we are going to the elections

period where chiefs will play a big role in terms of security and managing the areas they preside over in the locations, it will be prudent to move expeditiously and take this matter to the relevant Ministry. In that vein, we need also to include village elders and pay them an allowance to maintain them.

**Mr. Mureithi:** Mr. Speaker, Sir, I must commend hon. Musikari Kombo and also hon. David Njuguna for bringing a very pertinent issue. I come from Nyandarua County which is a settlement county. One of the biggest challenges that we have is with regard to land. The elders, chiefs, DOs, and DCs have been very much instrumental in sorting out some of the challenges. In fact, they averted a lot of crises. We all know land issues are very emotive issues. In some areas, they even cause death.

Therefore, I would like to plead with the Executive, particularly the relevant Ministry that we expedite this law that will guarantee the chiefs their positions, so that as we approach the elections, some of the challenges that we have faced are addressed. That way, we shall reduce the temperatures that are now being generated. For the first time in the history of Kenya we have seen even uniformed officers go to the streets to fight for their rights. Therefore, I pray through you that this must be expedited, so that the chiefs do not have the anxiety they are having at the moment. The whole of the Provincial Administration needs to know about its future.

**Mr. Koech:** Mr. Speaker, Sir, I would like to thank hon. Musikari Kombo and my good friend, the Member for Lari for bringing this petition. Recently, we saw chiefs demonstrating for the first time in the history of Kenya. Although the chiefs in Mosop Constituency have not demonstrated, they are living in a lot of fear. It is important for the Government to come out clear as it addresses this petition. The Government needs to assure chiefs and their assistants of their security of office because they are very important people who deal with simple disputes within the communities. They deal with reconciliation and so on. These people need to be protected.

I support.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, let me thank the two hon. Members for bringing this petition on behalf of the chiefs. Dealing with a Coalition Government the way we are doing and in particular the Executive which has very little regard for its own civil servants, we need a good law to protect them. In this particular case we are talking about chiefs. This is a Government which on many occasions on the Floor has given different interpretation in terms of restructuring of the Provincial Administration. On one side, they imply that in the new Constitution the positions of chiefs and the Provincial Administration will be scrapped. I think this is a law that has come at an opportune time. We are all in agreement that we need these officers as a necessity.

I am really pleading with the Government to bring this Bill as fast as possible to ensure that by the time we go to elections the chiefs are protected.

**Mr. Ogindo:** Mr. Speaker, Sir, I want to appreciate the petition by the hon. Member for Lari. However, I want to point out that the petition is founded on Article 17 of the transitional clauses which states that within five years of the effective date the national Government shall restructure the system of administration commonly known as the Provincial Administration to accord and to respect the system of devolved Government established under this Constitution.

Mr. Speaker, Sir, it is important to appreciate that the concern of the chiefs is legitimate given that there is bound to be restructuring. However, I want to point out that the Constitution brought in a new system of Government called devolved system of Government. The Constitution requires that this reform be made to accord with this new system. Presently, the

chiefs are employees of the national Government or the central Government as it were. Like any other civil servants who may find themselves under the devolved system of Government, it is imperative that the Government comes clear and asks members of the Civil Service which government they would want to serve. If you are a chief and you are keen in serving the central Government or the national Government you should be given the choice. If you want to serve the devolved Government, you should be given a choice.

However, we must not shy from saying that we are in a new dispensation of a devolved system of Government and an attempt must not be made to sneak back the Provincial Administration.

I thank you.

**Mr. Speaker:** Fair enough, Member for Rangwe!

**Mr. Nyammo:** Thank you, Mr. Speaker, Sir. It gives me pleasure to welcome the petition by hon. Musikari Kombo and as presented by hon. Njuguna.

Mr. Speaker, Sir, time has come for us to do a bit of soul searching. We must go back and ask ourselves: Do we understand the role of the chiefs, assistant chiefs and District Officers in the governance of this country? If we understand that role, is it our wish to abolish them or reshape them? What will replace what they have been doing? Have they done their job well if their role is well understood? If they have not done that job well, whose fault is it? Is the fault at the recruitment level? Is it at the training level? Is it at the equipping level? If they have not been equipped to do their jobs well, whose fault is it? So, if we must restructure, which I suspect we must do, let us take those things into account. But at the moment, everyone is in agreement that they do a great job.

**Mr. Speaker:** Order, hon. Members! We will take the next contribution. Hon. Member for Tetu, could you conclude?

**Mr. Nyammo:** Yes, Mr. Speaker, Sir. I am concluding by saying that I am of the opinion that every one of us is agreeable that they have been doing a great job. Let us assure them that their jobs are not in jeopardy.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Hon. Members, please, note that according to the Standing Orders, we only have five minutes for all hon. Members to contribute to a petition presented. We are at the 15<sup>th</sup> minute, but because I want to take the diversity of the hon. Members of the House, I will take the hon. Member for Vihiga and one more after that. That will be it.

*(Mr. Olago stood up in his place)*

Order, hon. Member for Kisumu Town West! I have already factored in the region that you come from!

*(Laughter)*

Proceed, hon. Chanzu.

**Mr. Chanzu:** Thank you, Mr. Speaker, Sir. I do not think the Constitution intended to punish anybody in this country or to make anybody a loser. So, that is the reason it is very important that the issue of chiefs, assistant chiefs and even the *ligurus* or the village elders that have been added on to the list should be handled very carefully by the Government. The tug-of-war in the intended county governments and the Executive should not be there.

*(Mr. Onyonka crossed the Floor without bowing to the Chair)*

*(Mr. Ogindo stood up in his place)*

**Mr. Speaker:** What is it, hon. Member for Rangwe?

**Mr. Ogindo:** Mr. Speaker, Sir, did you see the Assistant Minister for Foreign Affairs cross the Floor like he is in Nyaribari Chache, without bowing to the Chair?

**Mr. Speaker:** Hon. Onyonka, is that so?

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** Mr. Speaker, Sir, I am not from Nyaribari Chache.

*(Laughter)*

**Mr. Speaker:** That may be so, but there is only one Assistant Minister for Foreign Affairs now in the House. Are you in breach of our rules?

**Hon. Members:** He has not bowed to the Chair, Mr. Speaker, Sir!

**Mr. Speaker:** Very well! Could you go through the motion again?

*(Mr. Onyonka went back and bowed to the Chair)*

In the meantime, hon. Member for Vihiga, you may carry on.

**Mr. Chanzu:** Mr. Speaker, Sir, I was saying that the new Constitution did not intend to either punish anybody or make anybody lose in this country. Therefore, the issue of the chiefs, assistant chiefs should be addressed so that the anxiety that appears to be there is cleared.

Mr. Speaker, Sir, the anxiety is increased by some of the political utterances that we make when we go out there. We should leave the institutions which are charged with responsibilities in Government or in the country to deal with this rather than going to issue statements that I see some of us issuing out there; that some of them are going to be clerks or workers of others. That should not be there. So, I am saying that this issue should be addressed very quickly, so that they can know where they lie because we need them.

**Mr. M.M. Ali:** Thank you, Mr. Speaker, Sir. I want to sincerely thank hon. Njuguna and hon. Kombo for this very important petition. These ambiguities surrounding the Provincial Administration generally must be sorted out, once and for all. Specifically, the idea of chiefs and assistant chiefs not knowing their fate is a pity because they do play a great role in the maintenance of peace and harmony, especially in pastoral communities where cattle rustling is rampant. For example, they have been playing a very crucial role in tracking down criminals in Marsabit County. Marsabit County is one of the largest counties in the country. They also help the Government in maintenance of peace and order throughout the country. For them not to know their fate is a sorry state of affairs and we must address this issue urgently. Therefore, we must do all that it takes to ensure that ambiguity is sorted out.

Mr. Speaker, Sir, the question of restructuring or laying off some officers, based on whether they are performing or not, must not arise. This is because we have performance appraisals for all civil servants. That can be a continuous process which will be applied to all civil servants and not only to the chiefs and assistant chiefs. That must not be a basis of removing any chief from service.

With those few remarks, I beg to support this very important petition.

*(Several hon. Members stood up in their places)*

**Mr. Speaker:** Order, hon. Members! There is still a lot of interest in this matter, but I am satisfied that we have generally gathered the mood of the House on the matter. I, therefore, direct that the petition is committed to the Minister in the Office of the President in charge of Public Service, who should do what he ought to do – investigate into the matter and file a report in the House as well as a response to the petitioners within the next 21 days. I further direct that the relevant departmental Committee of Parliament, which is the Committee on Administration and National Security, monitors this matter to ensure that the requisite action is taken within the 21 days. Those are my directions.  
Next Order!

## NOTICE OF MOTION

### GRANTING OF SPONSORSHIP STATUS TO AIPCA

**Mr. Kioni:** Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion:-

THAT, given that the independence schools mainly within Central, Eastern and Rift Valley provinces were put up by the Local Native Council due to the shortage of mission schools then; aware that the councils were frustrated by the colonial Government giving birth to Kenya Independence Schools Association under the auspices of African Independent Pentecostal Church of Africa (AIPCA), which took over the construction and administration of the said schools; noting that in 1952, the schools were taken over by the District Education Boards (DEBs) and that some of the schools were given to mainstream churches during the State of Emergency; cognizant that the AIPCA were the original owners and founders of these schools and further aware that the said schools were identified in a memorandum prepared by the AIPCA to the taskforce on the alignment of education in line with the Constitution of Kenya and as provided for by Section 8 of the Education Act; this House urges the Government to accord the AIPCA sponsorship status as is the case with other churches for the said schools under the DEB as a way of recognizing the contribution made by the AIPCA in the fight for the liberation of the Republic of Kenya.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Sambu, table the Paper and then proceed to give notice of the Motion.

## PAPER LAID

The following Paper was laid on the Table:-

The Budget Committee Report on the Basis for Allocating Resources among the Counties for the Period 2012/2015.

*(By Mr. Sambu)*

## NOTICE OF MOTION

### ADOPTION OF BUDGET COMMITTEE REPORT ON ALLOCATION OF RESOURCES TO COUNTIES

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

THAT, this House adopts the Budget Committee Report on the Basis for Allocating Resources among the Counties for the Period 2012/2015 laid on the Table of the House today, Thursday, 22<sup>nd</sup> November, 2012.

**Mr. Speaker:** Very well! Next Order!

## QUESTION BY PRIVATE NOTICE

### EXPENDITURE ON MEDIA ADVERTISEMENTS BY NSSF

**Mr. Chanzu:** Mr. Speaker, Sir, I beg to ask the Minister for Labour the following Question by Private Notice.

(a) How much money is the National Social Security Fund spending on the on-going advertisements in the print and electronic media?

(b) Were these funds budgeted for and what tangible achievements does the Fund expect to realize from these advertisements?

(c) Could the Minister confirm that this unnecessary expenditure will reduce the intended benefits for members of the Fund?

**Mr. Speaker:** Minister for Labour? Where is the Minister for Labour? He does not seem to be in the House. Hon. Kajwang, what is happening to your colleague, the Minister for Labour?

**The Minister of State for Immigration and Registration of Persons** (Mr. Kajwang): Mr. Speaker, Sir, I saw him this morning and, in fact, part of this afternoon. But it seems like he has not arrived. Could I ask that we be given some time until the tail end of Question Time?

**Mr. Speaker:** Fair enough, Mr. Minister! We will revisit the Question a little later on, particularly bearing in mind the circumstances in which the Minister is operating at the moment.

We will take the hon. Member for Mosop to ask Question No.1663.

## ORAL ANSWERS TO QUESTIONS

### *Question No.1663*

### REHABILITATION OF LEMOOK/CHEPTARIT BRIDGES

**Mr. Koech** asked the Minister for Roads:-

(a) whether he is aware that Lemook and Cheptarit bridges which are on Kapkatembu-Lemook Road (D288) are in bad state with major cracks and can collapse any time thus posing danger to motorists; and,

(b) what urgent action he will take to have the two bridges repaired.

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

(a) I am aware that Lemook and Cheptarit bridges are in need of maintenance works.

(b) My Ministry, through the Kenya Rural Roads Authority (KeRRA), will request the Constituency Roads Committee to prioritize maintenance of the two bridges in their work plan in order to facilitate urgent repair works as follows:-

(i) Reinstatement of missing marker posts and guardrails.

(ii) Clearing of side drains on the adjoining road to prevent accumulation of silt on the bridge deck.

(iii) Construction of the approach slabs on each side of the bridges to ease differential settlement between the road and bridge decks.

Thank you, Mr. Speaker, Sir.

**Mr. Koech:** Mr. Speaker, Sir, I thank the Assistant Minister for confirming that these two bridges are in very bad state. As I have indicated in the Question, these bridges can collapse any time and the cracks were discovered after the Constituency Roads Committee had already done the prioritization and the work plan approved for this financial year. What he is going to request is for next year which starts in June. Mr. Assistant Minister, aware that this is a very dangerous situation that cannot wait for six months, could you consider giving some emergency funds to ensure that these bridges do not collapse?

**Dr. Machage:** Mr. Speaker, Sir, a consultant, Maya and Partners were engaged in 2008 to carry out a detailed engineering design of Mosoriot-Chepterit-Kapkatembu-Kipkaren Road otherwise referred to as D289, 297 and D288 with a view of improving them to bitumen standard and the two bridges were part of his design. Phase I of the project which entails upgrading to bitumen standard the Mosoriot-Kaiboi Road, otherwise referred to as D289 totalling 22 kilometres has already commenced. The construction of these two bridges will be done in Phase II of the upgrading to bitumen standard of Kaiboi-Cheptarwai-Kipkaren Road, otherwise referred to as D297 and D288 roads. I have allocated Kshs38,829,318 for this work. Thank you.

**Mr. Pesa:** Mr. Speaker, Sir, the Assistant Minister has actually referred the hon. Member to the District Roads Board (DRB) and this can only be done if he knows the exact amount that is required to repair these two bridges. Could he inform the House how much money is required to repair these bridges?

**Dr. Machage:** Mr. Speaker, Sir, the total cost for the repair of these bridges is Kshs3 million and that is why I requested the hon. Member to prioritise these bridges through his committee so that we can do it as an emergency.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, we are in the rainy season and many bridges are in a sorry state like that of these two bridges. In Mutito Constituency, Thua Bridge is also in a bad state. What is the Assistant Minister doing to prioritise the bridges which are in such a state so that emergency money can be taken to repair these bridges particularly the Thua Bridge so that the people of Mutito are able to cross over when rains are plenty in Ukambani?

**Dr. Machage:** Mr. Speaker, Sir, the onus and indeed the responsibility for privatization is really on the hon. Member's committees – the CRCs where hon. Members are patrons. We really depend on your recommendations to make our priorities. If you have this need in your constituency, please let us know through writing and through proper channels.

**Mr. Koech:** Mr. Speaker, Sir, the road the Assistant Minister is referring to, Mosoriot-Kaiboi-Chepterwai-Kapkatembu-Kipkaren is a different road. These bridges are on Lemook-Kapkatembu Road and they were built by the colonialists before Independence. I am shocked at their estimates which the Assistant Minister is giving at Kshs3 million. That means one costs Kshs1.5 million each. The estimate is Kshs10 million per bridge and that is why I am requesting and pleading with the hon. Assistant Minister. Now that he could be having some little



emergency funds, could he consider as a matter of priority to at least settle aside the money and help us construct the Lemook Bridge? We can wait for the other one to prioritise in the next financial year.

**Dr. Machage:** Mr. Speaker, Sir, I also request the hon. Member through his committee to fast track that request to my office as he has put it on the Floor of the House so that I may consider it.

**Mr. Speaker:** Next Question by hon. Ethuro.

*Question No.1699*

DEVELOPMENT OF PETROLEUM MASTER PLAN

**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.

**The Assistant Minister for Energy** (Eng. M.M. Mahamud): Mr. Speaker, Sir, I beg to reply.

Let me start by explaining that oil exploration comprises of five phases namely; exploration, appraisal, development, production and abandonment. At this point in time, Tullow Oil Company that is exploring for oil in Turkana County is in the exploration phase. In this phase, Tullow is drilling exploration wells to conclusively determine the presence of oil.

The next phase will be appraisal drilling. Appraisal drilling of a discovery involves drilling further wells to determine the size, quantity and quality of the potential oil field. Based on the data gathered from appraisal wells, it is then possible to estimate the quantity of an oil field. This is a stage where oil will be declared commercial or not. If commercial, plans will be put in place to develop and produce the oil field. We estimate the two cases will take a minimum of three years to complete.

It is envisaged that when commerciality of oil in Kenya is declared that is when a more detailed development and production plan to produce oil from the field will be developed. The plan will show what kind of infrastructure will be required to produce and market the oil. This plan will include a petroleum infrastructure master plan.

**Mr. Ethuro:** Mr. Speaker, Sir, I am extremely disappointed with the way this Assistant Minister has answered my Question. My Question is very direct: "What is the Government doing to establish a Petroleum Master Plan for the country?" Then he starts by explaining stages of oil exploration starting by one being exploration itself but notwithstanding that my Question stands. You will appreciate he has now put on the second page these other components. That does not constitute a plan. I am aware that the National Oil Corporation of Kenya (NOCK) even tendered for this work to be done but the Ministry decided that they are going to do it instead of the NOCK. Now, he says he cannot do it.

**Mr. Speaker:** So, what is your question?

**Mr. Ethuro:** My question is: Why did the Ministry refuse the NOCK the opportunity to do the Petroleum Master Plan and now they are saying they cannot do it themselves?

**Mr. Speaker:** Fair enough. Yes, Minister!

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, as I said, we are now exploring for oil. We have not yet discovered whether the oil we have is commercially viable. We have not therefore done a master plan. The other activities that we need to do is to facilitate oil delivery like

installing the pipelines. For that, we must have a plan but in terms of exploration; commercial viability of oil, we have not done a master plan because we have not yet discovered the oil. We will only make a master plan when we know we have enough quantities.

**Mr. Speaker:** Order, Assistant Minister! Even from where I sit, I am not satisfied that you have answered the Question by hon. Ethuro. Why did you stop the NOCK from proceeding to prepare a master plan?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, I am not aware that the NOCK was actually preparing a master plan.

**Mr. Speaker:** Fair enough. What is your point of order, Member for Turkana?

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir. I sit in the Departmental Committee on Energy, Communication and Technology. The Assistant Minister, who is my good friend, knows that I am aware and he is now coming to mislead the House that he is not aware. It is on record that a tender was even in the process before the Minister asked the National Oil Corporation not to proceed. So how can he mislead the House?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, I have said we have not discovered enough oil quantities to commercially exploit. I do not see how NOCK or anybody is making a master plan for oil that has not been discovered. I am not aware of that master plan. I stand by that.

**Dr. Nuh:** Mr. Speaker, Sir, the Assistant Minister says that because they have not discovered enough petroleum to satisfy the commercial entities, they cannot have a master plan. I thought the master plan should be ready, in case we strike oil to the level that we can have commercial volumes. Why does he not think that it is time to have a master plan in case they discover the amounts of oil they are seeking? I know the master plan would even involve the quantum of sharing of resources. I think we are currently squabbling with companies. The other day, they were in the newspapers crying that they were denied some monies by some companies.

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, we are developing a revenue wage bill to align our laws, first with the Constitution and secondly to prepare for discovery in case we have enough oil. We are in the process of formulating energy policy. The hon. Member asked whether we have a master plan relating to the discovery of oil in Turkana. But we are putting in place the relevant laws on production of oil in the country.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister say repeatedly that they cannot prepare a master plan until they have sufficient amounts of oil discovered. But he is aware that as we speak in the House today, the Government is tendering the contracts with exploration companies. So, in those circumstances, is it in order for him to say that they are not going to have the master plan when, in fact, they have been preparing agreements?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, we have a master plan in the sense that we have divided our country into blocs where we are exploring for oil. That is there. The other master plan is the petroleum infrastructure in terms of production, delivery and refineries. That, in fact, is something which we are putting our laws together and we are going to do it.

**Mr. Kipatanui:** Mr. Speaker, Sir, I believe that this Assistant Minister has been doing very well in the energy sector. As much as he says that oil has not been discovered, I want to tell him that his other Minister the other day was very happy saying that oil has been discovered in this country, unless they are not serving in the same Government. My question is: What steps are they taking to ensure that in future we have a university in this county which will train students in the field of petroleum, gas and oil exploration?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, I am not in charge of developing universities. However, we are training our people in petroleum technology. These are what we refer to as geoscientists. In fact, with the petroleum training levy we are sending officers in the petroleum and energy sectors for studies to appraise themselves with the technology industry. But as for the universities, I think the time will come for it.

**Mr. Ethuro:** Mr. Speaker, Sir, I want to express my serious disappointment by this Assistant Minister. Failure to plan is planning to fail. This is what this Government is planning. It is planning to fail us in petroleum production, exploration and exploitation. How do you account the fact that we have Vision 2030 where we already have the Lamu Port-South Sudan-Ethiopia Transport Corridor Project (LAPSET)? If they can plan for Vision 2030, my good Assistant Minister for Energy cannot plan for a product that is going to be commercially viable in less than three years. Are you satisfied that this Government has any serious intention of supporting oil exploration in this country? When will they do a petroleum master plan that will take into account training, so that we can expect this thing in good time; that will ensure that revenue sharing arrangements have been made, so that we get to know these things early enough before even the commercial production takes place? This is what other countries have done; it is only in Kenya where we wait for the last minute as they always wait on that side of the House.

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, we are currently developing our Energy Bill and a national energy policy. This policy will take into account all the questions my good, Mr. Ethuro has asked including the master plan. The Bill is in the first stage---

**Mr. Speaker:** Order, Mr. Assistant Minister! Even as you leave because I notice that is your last response on this Question, what impression do you want to leave Kenyans with? Have we or have we not discovered oil? Commercial quantities may be a different matter, but just give us a straight answer so that Kenyans know what you are talking about.

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, yes, we have discovered oil, but going by the practice in the oil industry, we have to go through all the processes to be able to confirm its viability. We have discovered oil in Kenya.

*(Mr. Ogindo stood up in his place)*

**Mr. Speaker:** Order, Mr. Ogindo; look at the clock.  
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.

**The Minister for Local Government (Dr. Otuoma):** Mr. Speaker, Sir, I beg to reply.

(a) I wish to state that the City Council of Kisumu is under the ongoing Kisumu-Urban Project funded through the support of the French Development Agency to install floodlights in the city as shown in the appendix which I believe I have supplied to the hon. Member. The council, through its programme, has completed one floodlight mast in the main bus park and is building another one in Nyawita area near Obunga. The ongoing rehabilitation and construction of Nyamasaria-Kisian Road A1/B1 includes street lighting and will cover the following areas:- Nyamasaria, Obunga, Otongolo, Kondele, Kikomo and Kisian areas.

The street lighting will be funded with 40 million Euros under the Kisumu-Urban Project which is financed through the Agency Funds Development (AFD).

**Mr. Olago:** Mr. Speaker, Sir, it is good enough to hear the Minister say that 40 million Euros will be used in lighting up Otongolo and Kisian area. In concrete terms, how much money will be used - depending on the appendix which has been tabled - in Otongolo and Kisian areas?

**Mr. Otuoma:** Mr. Speaker, Sir, the overall cost for the project is 40 million Euros. I do not have the cost for Otongolo but to light up Nyalenda area, I have Kshs20 million Euros, Manyatta area Kshs20 million, Car Wash Kshs20 million, Nyamasaria Kshs5 million, Mamboleo Kshs5 million, Kiboswa Kshs5 million, Mamboleo Kshs5 million, Kiboswa Kshs5 million, Jua Kali Kshs20 million, Obunga area Kshs10 million and Kondele Kshs5 million.

**Mr. Olago:** Mr. Speaker, Sir, I insist and my question is very specific. He had read out the money allocated to other centres but in the answer he has made no reference to Otongolo and Kisian. How much was allocated to Otongolo and Kisian?

**Mr. Speaker:** You have made your point, hon. Member for Kisumu Town West. Minister, are you able to answer that or you need time.

**Mr. Otuoma:** Mr. Speaker, Sir, I do not have that breakdown for Otongolo. So, I will need time to check.

**Mr. Speaker:** You have carried Otongolo in your answer. Why did you run that risk if you did not have the information?

**Mr. Otuoma:** Mr. Speaker, Sir, from the Question---

**Mr. Speaker:** Order, Minister! Let us save time. I will defer the Question to Wednesday next week so that you come with that information.

*(Question deferred)*

*Question No.1818*

#### SUSPENSION OF PENSION FOR MR. JONES M. MUKAMBA BY TSC

**Mr. K. Kilonzo** asked the Minister for Education:-

(a) whether he is aware that Mr. Jones Muvengei Mukamba (TSC No.26438) was released by the Teachers Service Commission (TSC) to the Department of Defence with effect from 3rd September, 1979 and that upon his release, the TSC suspended his pension in respect to his teaching service and undertook to pay him upon his retirement from the Armed Forces;

(b) whether he is also aware that the said person has not been paid pension since his retirement from the Armed Forces on 28<sup>th</sup> September, 2007; and,

(c) how much pension he will be paid.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, I partly answered this Question two days ago. However, we have confirmed that we have the necessary papers from Mr. John Muvengei Mukamba that are needed to process his pension dues. We have also forwarded all the necessary papers to Treasury, Pensions Department so that Mukamba's pension can be processed.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, you realize this is the third time this Question is coming up. The last time it was deferred because I had been given the same answer which I had been given previously. Today, the Minister is saying that he partly answered that Question yet I do not remember him answering it and again the answer I have here is the same one that I have been given three times, dated 3<sup>rd</sup> October, 2012. What I have with me and what the Assistant Minister is reading are totally different. I ask for your direction.

**Mr. Speaker:** Prof. Olweny, I want to hear from you. Are you satisfied that you are giving all the information in your possession?

**Prof. Olweny:** Mr. Speaker, Sir, I can table this document from the Teachers Service Commission which says that the Commission processed and submitted the retirement benefits claims of Mr. John Muvengei Mukamba, TSC No.26438, to the Pensions Department, Treasury, on 16<sup>th</sup> November, 2012. An attachment as evidence is here. I can table it for the benefit of the hon. Member.

*(Prof. Olweny laid the document on the Table)*

**Mr. Speaker:** Hon. Member for Mutito, if that is so, then you are pushing for action. Is that so? Then it appears that action has been taken by the Ministry of Education.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, indeed, I would like to proceed with my supplementary question because if I go with what I have, it will not help me.

**Mr. Speaker:** Very well! Carry on.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, the third part of this Question is, and I will read it:-  
“(c) How much will be his pension and when will it be paid?”

So, could he tell us how much Mr. Mukamba is going to be paid and when he will be paid?

**Prof. Olweny:** Mr. Speaker, Sir, that will now be calculated by the Department of Pensions and not by the TSC and it will be available when the Department of Pensions has finished with his papers. I have done my part by forwarding the papers to the relevant department.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, you can see the frustrations which we are going through. I believe that the Government is one and the Assistant Minister is answering a Question. How can he tell us that it is the onus of the Questioner to go and ask the Minister for Finance how much he will be paid? I thought that teachers work under the Ministry of Education and it can also liaise with the Ministry of Finance to be able to tell this House how much Mr. Mukamba will be paid. This is another way of continuing to frustrate these retired teachers who have not been paid for over 15 years.

Could the Minister liaise with the Minister for Finance and bring to this House the amount and the date when he is going to be paid?

**Mr. Speaker:** Prof. Olweny, are you able to react to that? It should not be difficult.

**Prof. Olweny:** Mr. Speaker, Sir, the practice that we have is that once we transfer these things to the Pensions Department, they handle them. That applies to the whole Government and

not only our Ministry. The money will be paid to the gentleman when the Pensions Department has done its calculation.

**Mr. Speaker:** Last Question, hon. Member for Mutito.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, it is not a normal procedure for Questions to be brought to this House when teachers or other employees are going to be paid their pensions, not unless there is frustration. On the case of Mr. Mukamba, he has been waiting to be paid his money from 28<sup>th</sup> September, 2007 and up to this day he has been frustrated. It is only through the intervention of Parliament that his documents have been processed. Therefore, it would be unfair to ask a person who has waited for all those years to continue pursuing this matter yet as a representative of the people we are here asking the Minister to provide the House with the amount and the date. Through you, I seek that the Minister answers this Question and, he should tell us when this person is going to be paid.

**Mr. Speaker:** Very well, hon. Member for Mutito. I have heard your sentiments, your concerns and even your pleas. I am satisfied that the Minister has availed to the House all the information that he has in his possession. Therefore, I will direct that the hon. Member for Mutito should obtain copies of these documents, which demonstrates that the requisite documentation has been forwarded to the Pensions Department for settlement, then get your constituent to follow up this payment. You now have adequate information. You are equipped with an official Government position so it should be possible to expedite payment.

So, please, just pass this on to your constituent. At least some action has been taken, hon. Member for Mutito and you should be happy with that. Even your constituent will see that you actually pushed this case to the highest level.

*Question No.1730*

LIST OF ROADS TENDERED FOR UNDER  
BURA CONSTITUENCY KERRA

**Dr. Nuh** asked the Minister for Roads:-

(a) which roads were tendered for under Bura Constituency KeRRA in the 2011/2012 Financial Year;

(b) whether he could provide the names and addresses of the companies which bid for each of the roads and provide the evaluation report showing the scores of each of the companies under each road; and,

(c) the status of works on each of the roads.

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

I replied to this Question yesterday and gave the hon. Member the list and tabled appendices “a” and “b” of the evaluation scores. The hon. Member was supposed to study it and raise questions today. However, may I pray that the Member declares his interest in this matter.

**Mr. Speaker:** Order, hon. Assistant Minister! Is that really good use of parliamentary time? This is the Member for Bura. So, what other interests can he disclose? Honestly, Mr. Assistant Minister, proceed.

**Dr. Machage:** Mr. Speaker, Sir, hear me out because it is important. The Member has interest on the contracting companies on these roads. Therefore, he has to declare his interest.

**Dr. Nuh:** Mr. Speaker, Sir, the Assistant Minister has to know that although I am the Member for Bura and a Member of the CRC I have an oversight role to play on Government

expenditure. So, when things go wrong with his engineers, I am here to subject him to the test. So, I have no further interest other than to ensure that the Kenya Government spends taxpayers' money in the right way, bidders are given their rightful scores and that companies which rightfully should have been given work are given. So, that is my oversight duty. However, to add on to that---

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister impute improper motive on the Member for Bura by saying that he has an interest in a particular contract. You know our Standing Orders do not allow that unless he substantiates what he means.

**Mr. Speaker:** Order, Member for Turkana Central! I have heard you and you must now hear me after you have raised a point of order. In my assessment, there is nothing wrong in what the Assistant Minister said. The Assistant Minister claimed that the Member for Bura has an interest in a company. Having an interest in a company does not impute improper motive. That is it. He has not said that your company, if you have interest in it, has been in breach of any law or whatever. There is nothing. That is an innocuous statement as far as I am concerned.

Mr. Assistant Minister, do you want to respond to the Member for Bura?

**Dr. Machage:** Mr. Speaker, your supplementary information was still necessary but I think I will accept the Member's statement in good faith.

**Mr. Kioni:** Mr. Speaker, Sir, I want to commend this Assistant Minister because he listened and paid a visit to Ndaragwa and saw the pathetic state of roads in that area. The roads that he saw were designed but to date, none of them has been advertized while others have jumped the queue. Can the Assistant Minister tell us why that happens in the Ministry?

**Dr. Machage:** Mr. Speaker, Sir, it is true that I visited Ndaragwa and saw the pathetic roads. Some of the roads, especially Maili Nne to Maili Kumi already had funds allocated and I am disturbed by the information that the hon. Member has raised on the Floor of the House. I will follow to see why they have not taken action and why they have not obeyed my orders. They have to explain where they have taken that money. Roads must be built, especially when the Government and Parliament have allocated funds.

**Dr. Nuh:** Mr. Speaker, Sir, you will realize that I have not asked my first question.

**Mr. Speaker:** Honestly, the Member for Bura---

**Dr. Nuh:** Mr. Speaker, Sir, having looked at the documents I requested for, I have not seen the evaluation report which I requested for which is the gist of my Question. Therefore, unless the Assistant Minister provides me with the evaluation report which I have requested, I am unable to prosecute this Question. I have gone through the annexes he has given and intimated to him that he has not given me the evaluation report.

**Mr. Speaker:** Mr. Assistant Minister that is a genuine concern.

**Dr. Machage:** Mr. Speaker, Sir, in appendix "b", I have clearly given the Member the bidder's evaluation or the engineer's estimates in terms of percentage and how the companies were rated from No.1 to the last and the company that was awarded the contract. What more does the Member need?

**Dr. Nuh:** Mr. Speaker, Sir, the contractual sums against the engineer's estimate is not an evaluation report. In part "b" he gives an evaluation report as a preliminary evaluation, a detailed evaluation and a financial evaluation. Since we are all learned and Dr. Machage is not an engineer – and I will forgive him for that – I raised this issue with his brother, the Assistant Minister, hon. Lee Kinyanjui, who told me that he has not been given the evaluation report. So, unless the same Assistant Minister wants to conceal the dealings of his officers let him be honest

to this House and give us the evaluation report of the roads which were tendered for by the CRC which he has been given.

**Dr. Machage:** Mr. Speaker, Sir, surely, how can I dream of private conversations between hon. Nuh and my fellow Assistant Minister?

**Mr. Speaker:** Order, Mr. Assistant Minister! You are moving in a dangerous direction. As I see it, Question No.1730, as it appears on the Order Paper, among other things part “b” asks you to provide the evaluation report showing the scores of each of the companies under each road. So, it is a genuine Question and you have had time to find that evaluation report. So, it is straightforward.

**Dr. Machage:** Mr. Speaker, Sir, indeed. I have done exactly that. I tabled the document. I have a copy if you may look at it and see whether I am treading on the wrong ground. I think what I have given him is the document that he wants.

*(Dr. Machage laid the document on the Table)*

**Mr. Speaker:** Mr. Assistant Minister, have you tabled an evaluation report showing the scores of each company?

**Dr. Machage:** Mr. Speaker, Sir, I have.

**Mr. Speaker:** I will look at that and see whether it has been tabled. The Member for Bura, *prima facie*, this document seems to address your areas of concern. Unless you satisfy me otherwise, on my part, I am satisfied that he has answered part “b” of the Question.

**Dr. Nuh:** Mr. Speaker, Sir, it does not and what the Assistant Minister has given me is only how close the estimates of the contractors were to the engineer’s estimates. All of us in this House know that there is a technical score and financial score on those evaluations and many other scores, which add up to what is the detailed evaluation report, which the Assistant Minister does not seem to want to give.

**Mr. Speaker:** Assistant Minister, perhaps, I will take your reaction and then we will have to close this matter.

**Dr. Machage:** Mr. Speaker, Sir, in any committee, there is usually what we call raw data, which usually summarises quantitative values that can be tabled, as I have done. That is exactly what I have done. If the Member wants raw data on a meeting that actually he was a Member of, then it will take time for me to be able to put that on the Floor of the House. I think I have done my best.

**Mr. Speaker:** Member for Bura, I am satisfied, as the Speaker, that the Assistant Minister has dealt with Question No.1730 satisfactorily, because I see this document tabled headed “Appendix B, Bidders Evaluation”, and then it goes on to give information such as you have correctly alluded to, engineers estimates, then the ranking of the bidders; then it goes on to tell you which company is responsive and which is not responsive. So, as far as I am concerned, I am satisfied that the Question is adequately answered.

If, however, there are other concerns such as wrong doing, or may be a company that was awarded on the basis of favouritism, then that will be a different matter altogether. I believe away from this Question, you will have to frame a specific Question to interrogate that particular aspect. But for the moment, I am satisfied that this Question is adequately answered.

**Dr. Nuh:** Mr. Speaker, Sir, I will go by your guidance, but will point out to you that in part “b” of the answer by the Assistant Minister, this is what he says. That is why I suspect that the Assistant Minister does not want to give the full information. In “b” he says:



“I wish to clarify that the procedure for evaluation of road works tenders does not involve award of scores”.

That is the Assistant Minister’s answer; “Does not involve award of scores.” The percentages as they near to the engineer’s estimates is not the award of scores that the Assistant Minister is refusing to provide, which is a score of 1 to 10 or 1 to 5; it has the technical part, financial part and many other aspects. In fact, the Assistant Minister, who works with him, confirmed to me that I have not been given that evaluation report.

**Mr. Speaker:** Assistant Minister, is there anything sinister about this? Otherwise we are going nowhere. It is like going round in circles.

**Dr. Machage:** Mr. Speaker, Sir, my conscience is very clear on this. As you have instructed, if the Member has a specific question or doubts on any of the contractors, actually most of whom have finished construction work on the road, except one who is yet to finish the work, I will be ready to answer it.

**Mr. Speaker:** Fair enough, we will conclude this matter this way, Assistant Minister you will be the convener of a meeting to take place at your office between you, your colleague, hon. Lee Kinyanjui, and the Member for Bura within the next 14 days, and report to Mr. Speaker that this matter has been resolved satisfactorily. That goes on the HANSARD, and, please, comply.

**Dr. Machage:** Mr. Speaker, Sir, much obliged.

*Question No.1281*

RULE ON PACKAGING OF POTATOES  
IN 110-KILOGRAMME BAGS

**Mr. Kioni** asked the Minister for Local Government:-

- (a) when the Ministry will effect the 110 kg bag rule on all the potatoes bought from farmers, and,
- (b) what measures he is taking to ensure farmers benefit from this rule.

**The Minister for Local Government** (Dr. Otuoma): Mr. Speaker, Sir, indeed, this Question has been on the Floor of this House; we have consulted with the hon. Member of Parliament. The consultations with the stakeholders that are still going on are not concluded for me to be able to fully execute this Question. So, I am requesting for more time.

**Mr. Speaker:** How much more time.

**The Minister for Local Government** (Dr. Otuoma): Mr. Speaker, Sir, two weeks.

**Mr. Speaker:** Member for Ndaragwa are you fine with 14 days from today?

**Mr. Kioni:** Mr. Speaker, Sir, when we did consult with the Minister, he sounded more comfortable with an answer next week. I would be happy with seven days, just as he had promised.

**Mr. Speaker:** Let us meet in between; it is ten days from today, and it is so directed. Minister, try and live within those ten days.

*(Question deferred)*

*Question No. 1837*

CONFIRMATION OF FENCE ATTENDANTS BY KWS

*(Mr. Mureithi sought an intervention)*

**Mr. Speaker:** What is it Member for Olkalou?

**Mr. Mureithi:** Mr. Speaker, Sir, having been also involved in asking this Question in the past as the Minister---

**Mr. Speaker:** Order! which Question?

**Mr. Mureithi:** The one on potatoes.

**Mr. Speaker:** No, that is spent, I am afraid.

**Mr. Mureithi:** Mr. Speaker, Sir---

**Mr. Speaker:** Order, Member for Olkalou. That will not happen. That will be in breach of the Standing Orders.

Member for Lari, proceed.

**Mr. Njuguna** asked the Minister for Forestry and Wildlife:-

(a) why the Fence Attendants recruited by the Kenya Wildlife Service (KWS) to guard the Aberdare National Park are still on contract;

(b) when they will be confirmed and placed on permanent and pensionable terms since they perform their duties under difficult and risky environment; and,

(c) whether the Government could consider providing basic benefits such as medical and insurance cover, accommodation and working gear to the officers.

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Speaker, Sir, I have looked at the answer that we were meant to provide to this Question and I have informed my colleague, Member for Lari, that there is more information that will be required from our side and from my officers; I am asking the House if it can defer this Question to Thursday next week; I have already agreed with the Member.

**Mr. Speaker:** Member for Lari do I have your concurrence? Then, I defer it to Thursday next week.

**Mr. Njuguna:** Mr. Speaker, Sir, looking at the answer availed by the Assistant Minister, it is largely inadequate. I, therefore, consent to the request that we have the response on Thursday.

**Mr. Speaker:** I direct accordingly.

*(Question deferred)*

*Question No. 1812*

#### VIOLATION OF CBK GUIDELINES/REGULATIONS BY BANKS

**Mr. Mwau** asked the Minister for Finance:-

(a) whether he could confirm that the remedial measures for violations of Sections 10, 11, 13 and 50 of the Banking Act, CBK Prudential Guidelines and/or Regulations is closure or cancellation of a Banking licence;

(b) whether any bank has violated the said sections of the Act, the CBK Guidelines/Regulations from 1990 to July, 2012 and give a full list of the banks and the dates when they violated them.

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

(a) I confirm that a number of remedial measures for violations of Sections 10, 11, 30 and 50 of the Banking Act, CBK Prudential Guidelines/ Regulations are employed and among them is closure of a bank or cancellation of a banking licence.

(b) I further wish to confirm that we have had violations of the said sections of the Act and of the CBK Guidelines/ Regulations by commercial banks over the stated period. However, I am unable to divulge specific details in respect of any particular institution as the information is privileged and protected under Section 32 of the Banking Act; any disclosure of this information to third parties is not permitted by law, as per Section 32 of the Banking Act.

**Mr. Mwau:** Mr. Speaker, Sir, this is becoming a serious matter, and your ruling and intervention is required. My Question, especially part “b” is very specific: “Has any bank violated the said sections of the Act, the CBK Guidelines/Regulations from 1990 to 2012, and give a full list of the banks and dates when they violated them?”

The Minister is saying that the violations, which amount to offences, are confidential and they cannot be disclosed to a third party.

Mr. Speaker, Sir, Parliament, or the National Assembly, is not a third party. It is the oversight authority; the Governor of the CBK is a creature of a statute, which statute was actually legislated by this House. That is why the House has the oversight authority over the Executive and the Governor. So, the Minister should not say the violations are confidential. The violation, which amount to offences, are actually subject to court proceedings and cannot be confidential at all. So, he is only trying to refuse to answer the Question; he is trying to protect certain banks which have been violating these regulations for a long time to the detriment of the local depositors. On this, your direction is necessary.

Mr. Speaker, Sir, this Question was actually deferred for the Minister to go and bring that information. He and the Governor have no respect for this House. This House is the third arm of the Government. It is not a crippled arm. It is an arm that is live and that is functional; it should be able to flex its muscle.

**Mr. Speaker:** Minister, I just want to hear your response to those assertions by the Member for Kilome because, indeed, I may have to give directions on the matter.

**Mr. Githae:** Mr. Speaker, Sir, I think it would be important for the benefit of this House that I read this Section 32(c).

It states as follows:-

“All information obtained in the course of the inspection shall be treated as confidential and be used solely for the purposes of this Act, which is the Banking Act and the Central Bank of Kenya Act.”

Mr. Speaker, Sir, I know that Parliament is not included here. What I am saying is that, I have already confirmed that certain banks have violated Sections 10, 12 and 50 of the Banking Act. That violation may not be confirmed but by revealing that information, the Central Bank of Kenya feels very strongly that it will have adverse implications on the viability and good repute of those banks if they are mentioned.

What normally happens is that, when the CBK comes across a bank that has committed these violations, they normally fine them. They have even been given powers to fine. They fine the bank, the bank pays and the matter is left there. The bank promises not to repeat those violations again. This is to protect the banks because you do not know how this condition may be treated. I stand to be guided.

**Mr. Speaker:** Minister, in which case you are contending that the law shields you from disclosing that information? In a nutshell, that is your contention. Let me hear a few more hon. Members and be brief, please.

**Mr. Midiwo:** Mr. Speaker, Sir, you have to save this country. What the Minister has read and what the Governor of CBK is purporting to do, is against the Freedom of Information Act; it is against the Constitution. It even violates the mandate of Parliament.

Mr. Speaker, Sir, I have sat in the Finance, Planning and Trade Committee for the last 10 years. The very same CBK Governor who is still in office now - I believe more or less illegally - has provided constantly that information to the Finance, Planning and Trade Committee which is Parliament. When we began investigating Charterhouse Bank, he gave us a list of banks which had committed the same violations and had been fined Kshs1 million and they were continuing to function. That is why the Charterhouse Bank saga is a mystery to many of us.

Mr. Speaker, Sir, I want to urge you not to let the Minister set a bad precedent. I want to urge you to force the Governor and the Minister to provide that information to this House within the next few hours because that information belongs to us and that information cannot be hidden from the people's watchdog.

**Mr.C. Kilonzo:** Mr. Speaker, Sir, it is amazing that the Minister would refer to an Act of Parliament while he knows very well that there is a new Constitution which is very specific. If the Minister can bother to look at Article 35 of the Constitution which is very clear and for his information, it reads as follows:-

“Every citizen has the right of access to:-

(a) Information held by the State”

We are not even talking about who is the Government. This is the National Assembly. We are asking one arm which is the Executive to give information to the other arm which is the Legislature. So, I want you to find the Minister really to have misunderstood the law, although he is a lawyer, by trying to purport that he cannot give information to the National Assembly.

Finally, he also needs to know the role of the National Assembly.

Article 95(b) states as follows:-

“The National Assembly exercises oversight of State organs.”

So, when the Minister cannot tell us the evils which are being done by the financial institutions, then how does he expect the National Assembly or the Legislature to oversight?

**Mr. Kabogo:** Mr. Speaker, Sir, I am gifted in seeing frustrated Ministers. The Minister has come to this House on this matter of Charterhouse Bank and the Banking Act several times. He has even thrown the matter to the Speaker and said; let the Speaker rule. I am sure if he was to stand there and tell the House the truth, he would say he is equally frustrated.

This is a Minister who wants to tell the House things as they are. But for some reason because of the big brother syndrome that is the problem in CBK, he is not able to tell the House that we will not give you this information because it is a shame in as far as Charterhouse Bank is concerned. So, really, you must find this Minister in contempt of various rulings of your Chair where you have asked him to bring information to the House. This is not a House of kangaroos; this is a House of the Republic of Kenya. We are asking for information from the State. As you have said, Section 35 guarantees a Kenyan, not the Kenyan Parliament, but a citizen's right to information.

Mr. Speaker, Sir, this is the time to bite. This Minister ought to go back and bring this information to the House and tell us the real truth why Charterhouse Bank is closed because that is the bone of contention. This is the issue they do not want to bring to the public. If you were

looking at him a few minutes ago, you would have seen the Minister who caused the problem in Charterhouse giving him information, trying to guide him on how he would deal with this matter.

So, let us call a spade a spade. Mr. Githae finds himself in a tight situation. Could the Chair help him get out of this problem?

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I want to request that you find the Minister in breach of the Standing Orders to this extent, that Committees of this House are part of the House. When the same Minister appeared before the Public Accounts Committee when we were investigating the issue of the contract of De La Rue, he gave us the same story and when we referred to the Constitution, the Minister conceded and actually allowed the Auditor-General to access the CBK. That then gave us the result of the report by the Controller and Auditor-General which had helped us to make the determination. The same Minister who conceded in the Committee is now on the Floor of this House saying that he cannot release the information.

Mr. Speaker, Sir, secondly, if the Minister cares to look at Section 35(1) and not Section 35(a) referred to by Mr. C. Kilonzo, it says that information held by another person - in this case, the other person is you, because you have had an opportunity to look at the list of those banks - you are forced under this connection to exercise or protect the right of another individual, the Constitution requires that you release it.

The other individual we are talking about who wants to exercise his rights and be protected are the owners of Charterhouse Bank. So, by refusing to release that information you must find that the Minister is breaching the Constitution at the expense of the fundamental rights of the owners of Charterhouse Bank who want to have that access.

**Mr. Speaker:** Order. Hon. Members! I have heard enough submissions on this matter. I will want to reserve my ruling until Thursday. I can see the Member for Kilome is asking for the Floor.

Member for Kilome, I heard you first and so, I am reluctant to give you a second bite at the cherry. If I do, then you must restrain yourself. Emotional as you may be over this matter, you must restrain yourself. If you go beyond what I consider reasonable, then I am afraid I will stop you.

Proceed, Member for Kilome.

**Mr. Mwau:** Thank you, Mr. Speaker, Sir. I am very obliged for the opportunity. I will be very brief. The Minister has quoted a provision of Section 32 of the Act. The Minister is a lawyer and the Governor of Central Bank of Kenya (CBK) is actually a professor and he has a fully-fledged Legal Department. A violation is an offence. The Minister and the Governor of CBK have never had the opportunity of reading Section 49 of the Banking Act which states:-

“Penalties for offences.

Where any institution or other person contravenes any of the provisions of this Act, if it is a body corporate, it shall be guilty of an offence and be liable for a fine not exceeding Kshs100,000.”

Mr. Speaker, Sir, the violation constitutes an offence and an offence is then subject to a penalty. It cannot then be confidential. It is a matter of public interest. Secondly, Section 32 which the Minister has read, clearly states that this is for the person who inspects a bank. But on the final word of the person inspecting the bank it says that in the opinion of the person making the inspection, will create a remedial measure or further investigation. So, it has nothing to do with failure to disclose the information.

Thank you very much, Mr. Speaker, Sir.

**Mr. Speaker:** Fair enough! I will give my ruling on this matter on Thursday, next week at 2.30 p.m.

Hon. Members, that then has to bring us to the end of Order No.6 which is Questions. As I say that, I notice that the Minister for Labour is not yet in the House. I know that he has been going through fairly difficult times. So, we understand that and we will defer the Question by Private Notice by the Member for Vihiga to Tuesday, next week. The Minister for Finance, ensure that the Minister is notified so that he is here to answer the Question.

## QUESTION BY PRIVATE NOTICE

### EXPENDITURE ON MEDIA ADVERTISEMENTS BY NSSF

**(Mr. Chanzu)** to ask the Minister for Labour:-

(a) How much money is the National Social Security Fund spending on the on-going advertisements in the print and electronic media?

(b) Were these funds budgeted for and what tangible achievements does the Fund expect to realize from these advertisements?

(c) Could the Minister confirm that this unnecessary expenditure will reduce the intended benefits for members of the Fund?

*(Question deferred)*

**Mr. Speaker:** The balance of the Questions on the Order Paper, beginning with the one for the Member for North Horr and finishing with that of the Member for Mumias will be deferred - the first half - to Tuesday, next week and the second half to Wednesday morning. So, you will divide those into two and they are deferred accordingly.

## ORAL ANSWERS TO QUESTIONS

*Question No.1810*

### NON-ISSUANCE OF IDENTITY CARDS TO YOUTHS IN ILLERET LOCATION

*(Question deferred)*

*Question No.1811*

### DELAYED ISSUANCE OF DRIVING LICENCES

*(Question deferred)*

*Question No.1809*

### ACTIVITIES FUNDED BY FPE MONEY

*(Question deferred)*

*Question No.1803*

EXPENDITURE ON DROUGHT  
MITIGATION IN WAJIR DISTRICT

*(Question deferred)*

*Question No.1785*

WITHHOLDING OF KCSE RESULTS  
OF MR. HASSAN O. MAKOKHA

*(Question deferred)*

**Mr. Speaker:** Before we take the next Order, hon. Nanok, I think you had a matter which I had permitted you to do.

**PERSONAL STATEMENT**

INSECURITY IN TURKANA/SAMBURU COUNTIES

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Thank you, Mr. Speaker, Sir. I wish to make a personal statement under Standing Order No.76 regarding the ongoing insecurity in Turkana and Samburu Counties, and circumstances surrounding my recent arrest and arraignment in court.

Mr. Speaker, Sir, as you are aware, I am the current Member of Parliament for Turkana South Constituency and an Assistant Minister in the ruling Coalition Government, from the ODM part of the Coalition. I am constantly aware of my role as a Member for Parliament, which, though it has many facets, maybe be summarized as legislation, oversight and representation.

I represent the interests of the people of Turkana South Constituency and that of the Kenyan people at large. It was within my role as the people's representative in mind that on Thursday 15<sup>th</sup> November, 2012, at 11.30 a.m., I together with my colleagues, hon. John Munyes, Member for Turkana North and Minister for Labour and hon. Ekwe Ethuro, Member for Turkana Central, released a Press statement at Parliament Press Centre on the ongoing insecurity in Turkana and Samburu Counties as well as the deployment of Kenya Defence Forces to Lodwar Town on 14<sup>th</sup> November, 2012.

In the statement, we sent our heartfelt condolences to the families of the fallen police officers and other civilians who were butchered in Baragoi area. We condemned this and other previous acts of impunity and demanded the arrest of all criminals involved. We further urged that a public inquiry be instituted to investigate the insecurity situation in the region. We also wondered why over 200 soldiers and eight aircraft were being deployed to Lodwar Town that Wednesday, a distance of over 400 kilometres from Suguta Valley.

Mr. Speaker, Sir, that evening, at about 9.30 p.m., following the Press statement, I received a telephone call from Mr. Mohamed Amin, the Deputy Director in charge of Serious

Crimes Unit at the CID. He asked me to appear at CID Headquarters the next day at 8.00 a.m. He refused to disclose the reasons for summoning me. As my lawyer was not available the next day, Mr. Amin agreed to my proposal to appear at the CID Headquarters on Monday, 19<sup>th</sup> November, this year. Despite this agreement, I was surprised to be arrested outside Nation Centre on Friday 16<sup>th</sup> November, at 10.45 p.m. A strong contingent of about 50 police officers was used to arrest me. The manner of arrest they inflicted on me can only be compared to that which will be appropriate when arresting a dangerous criminal. The car that I was bundled into even had an accident as it rushed to take me to Kileleshwa Police Station. My treatment at the station was also horrific, as I was kept in a cell full of mosquitoes that stunk of urine and faeces. The police infringed on the following rights:-

1. The police summoned me orally, contrary to Section 52(1) of the National Police Service Act, which provides that a police officer should issue summons in writing.
2. I was not promptly informed of the reason for my arrest.
3. I was denied proper access to my lawyer.
4. The police refused to grant me cash bail and bond me to appear in court. This is despite the alleged charge being bailable and my being a Member of this honourable House and, therefore, a person most unlikely to fail to appear in court.

Mr. Speaker, Sir, on the next day, 17<sup>th</sup> November, my rights were further abused as I kept being moved from office to office at the C.I.D Headquarters. It took three hours before I was informed the reason for my arrest. The police then tried to force me to sign a pre-written statement, which would have incriminated me. Even after one of my lawyers arrived at the C.I.D Headquarters, I was not allowed to freely communicate with him. The police officers also frustrated my lawyer's efforts to assist me. All these are a violation of my constitutional rights as set out under Article 49 of the Constitution, which protects arrested persons. The Constitution gives arrested persons the right to be informed promptly of the reasons for their arrest and further gives the person the right to remain silent and communicate with an advocate and other persons whose assistance is necessary. I was eventually charged in court on Monday 19<sup>th</sup> November when, together with my colleagues, I protested the charges. The magistrate acquitted us of the charges on Wednesday 21<sup>st</sup> November.

Mr. Speaker, Sir, I am, however, apprehensive that the police may re-arrest me and frame further charges against me. The following issues are now of particular concern to me:-

1. Why would the police arrest and charge me for making a statement in the course of my constitutional duty as a Member of Parliament, particularly when the statement was made within the precincts of Parliament? Is there no respect for the freedom of speech in Parliament, the constitutional mandate of Members of Parliament and the Powers and Privileges of this House?
2. Do the police routinely breach the constitutional rights of arrested persons? If I, an Assistant Minister and Member of Parliament was treated so shabbily with no regard for constitutional provisions, what about the ordinary mwananchi?
3. Why was I denied a police bond? Is it because I am a Member of ODM? A Member of Parliament from the PNU in similar circumstances was granted a police bond within hours. Why the discrimination and yet we are all Kenyans?
4. The Press has also extensively reported on the matter.

On some occasion, the Press misrepresented facts and even branded the entire Turkana Community cattle rustlers. In another instance, the Press misquoted and said that I had stated that we shall go to the ICC to press our case. This was not true at all. I wonder why the Press behaves so irresponsibly when dealing with very sensitive national security matters. These are questions



that continue to worry me and I think that the questions also weigh heavily on this House, the Executive and the public. I urge this House, the Executive and the public to seek answers to these questions and provide solutions.

I now table this comprehensive and brief personal Statement on this matter.

*(Mr. Nanok laid the document on the Table)*

*(Mr. Ogindo sought an intervention)*

**Mr. Speaker:** Order, Member for Rangwe! Do you know that is given pursuant to the Standing Order No.76?

**Mr. Ogindo:** On a point of order, Mr. Speaker, Sir. While I appreciate the good work that was done by hon. Mike “Sonko” in Mombasa to the MRC group, I rise on a point of order to seek your guidance as to whether picketing is allowed in the Chamber. On his head, there is a big banner with inscriptions that are abbreviations of something that I cannot discern. Is he in order to picket in the House?

**Mr. Speaker:** Order, hon. Members! Let us just see the Member for Makadara. Member for Makadara, what is on your head? Just restrict yourself to telling me what is on your head.

**Mr. Mbuvi:** Mr. Speaker, Sir, there is a message on my head. I am trying to preach peace. Of late, we have been experiencing a lot of bloodshed around the country.

**Mr. Speaker:** Order, first, Member for Makadara! What is the word on your head? Kindly limit yourself to that.

**Mr. Mbuvi:** Mr. Speaker, Sir, it is the word “peace”.

**Mr. Speaker:** I do not find that to be out of order. So, you may resume your seat, Member for Makadara. I see no breach in that.

## MINISTERIAL STATEMENTS

### STATUS OF CDF

**The Minister for Finance** (Mr. Githae): Mr. Speaker, Sir, yesterday, hon. Ethuro sought a Ministerial Statement on the status of the CDF. I just wish to say the following.

The Printed Estimates were of Kshs21,763,000,000. The half year allocation as at December should be Kshs10,881,500,000. We have made Exchequer releases as follows. On 14<sup>th</sup> August, we released Kshs7 million, which was the amount that the Members had requested and had been approved by the Board. This amount has been exhausted. Yesterday, 21<sup>st</sup> November, I released another Kshs1.5 billion again to take care of all the requests that the Members have made. I wish to confirm the gentleman’s agreement that we had and we will try to release even more than the amounts required as per the law, namely, the quarterly amounts, to enable the Members to complete all the projects that they have started.

It is just because of the cash-flow constraints that we are releasing what meets the actual applications. So, the moment this Kshs1.5 billion is over, we are going to release another one, so that we keep pace with the requests.

**Mr. Speaker:** Fair enough. I will just allow three requests for clarifications beginning with the Member for Turkana Central. Hon. Minister, please take notes, so that you will deal with the requests together.

**Mr. Ethuro:** Mr. Speaker, Sir, first I want to thank hon. Githae for being prompt. Yesterday he released another Kshs1.5 billion. However, there are three things here. One is the gentleman's agreement which he has referred to. The second one is the law and the third one is the timing. The law requires that at the beginning of every quarter, he must release, at least, 25 per cent. We are in two-thirds of the second quarter. So, we expected the Kshs10 billion that he has talked about to have been released two months ago. He is now talking about Kshs8.5 billion and he thinks we should be happy. He is breaching the law itself.

Secondly, he has breached the gentleman's agreement which stated that given the nature of the timing, which is towards the general election, all of this money must be disbursed, so that we can implement projects in good time. This is a commitment, and not only a gentleman's agreement, that he gave on the Floor of the House. It is in the HANSARD. It is official and it is a pronouncement by a senior Cabinet Minister, although he is very junior in terms of appointment. But he spoke as a senior Minister controlling the kitty of the entire Republic of Kenya. When is he going to release the rest of the money? We have no war to wage against the Minister. There is enough outside there. He should just assure this House and this country; the desire is to complete all the projects that have been proposed in good time.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I know the Minister comes from a party which is not known for keeping gentleman's agreements; so, I know my brother is asking for too much. Nevertheless, we have been waiting for the amended Bill from the Government. As he comments on that, he should also tell us when we should expect it. I am aware that this Ministry, from time immemorial, has been against the existence of the CDF.

**Dr. Khalwale:** Mr. Speaker, Sir, the people of Ikolomani are in a state of shock from the way this Government is treating them. In July this year, the CDF submitted to the Board their projects and it was constituency No.11 to do so in the whole country. The Board approved those projects. However, as I speak all other constituencies have already received 50 per cent, but Ikolomani has not received a single cent.

Could the Minister confirm or deny that the people of Ikolomani are being frustrated by his Ministry, because of the work that I carry out in overseeing the misuse of funds by the Ministry of Finance? If that is not the case, could he apologize to the people of Ikolomani, even if he does not want to apologize to me, and go further and direct, as a sign of good will, that the money that he has released, Ikolomani be given 100 per cent of its share to show that there is no fight between me and his Ministry?

**The Minister for Finance (Mr. Githae):** Mr. Speaker, Sir, there are still a few gentlemen left in this world and I am one of them. I gave my word and I intend to keep it. Prudent cash management dictates that there will be no point of allocating funds to the Board for those funds to lie idle when there are other departments that require money. So, I am assuring this House that there will be no CDF application that will be unmet. The moment the applications are there and we know the amount, we will provide the exact amount, so that no application will be unmet. Once it is approved by the Board, it will be fully funded.

Concerning the amendment Bill, this is being done by my colleague, the Minister of State for Planning, National Development and Vision 2030, hon. Oparanya. I am told the Bill may be coming to this House any time. Let me again assure hon. C. Kilonzo that the Treasury has never been against devolved funds. On the contrary, it has supported the CDF and will continue supporting it.

Mr. Speaker, Sir, to my good friend, hon. Dr. Bonny Khalwale, I do not know what the problem is. That really is a problem of the Board. Once we give the funds to the Board, it is for it to disburse. So, I think you need to find out since there might be a problem with your application.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I am not joking. This is not only limited to the Ministry of Planning, National Development and Vision 2030 that oversights the Constituencies Development Fund (CDF). Also, in my constituency, a road connecting---

**Mr. Speaker:** Order, hon. Dr. Khalwale! You know you have stood on a point of order. A point of order speaks to a breach to the rules committed in the face of the House. So, it has to relate to something that the Minister has done even as he made his answer that is out of order.

**Dr. Khalwale:** Yes, Mr. Speaker, Sir. I want to prove that.

**Mr. Speaker:** Carry on.

**Dr. Khalwale:** Mr. Speaker, Sir, the road that connects Sigalagala junction to Butere Town that serves my constituency again has been stopped. I went and visited the contractor and he told me that Treasury has told him that there were no funds and, therefore, he should hold. Is the Minister in order to refuse to respond to my fears and simply tell me that I should go and find out from the Ministry concerned when, in fact, this is also happening directly from his Ministry? It is a serious matter. I speak on behalf of my people.

**Mr. Speaker:** Order, hon. Dr. Khalwale! The example you have cited – the road from Sigalagala to Butere: What has that got to do with CDF funding?

*(Laughter)*

**Dr. Khalwale:** Mr. Speaker, Sir, the connection I was making if you heard me at the beginning, I was saying I am worried that the Government is not treating my people favourably because of the pressure as the Chairman of the Public Accounts Committee (PAC) I have been putting in. So, I gave the example of the Ministry of Planning, National Development and Vision 2030. So, when he dismissed me that I should go and find out, I made it broader by now bringing in the issue of the other Ministry. It is serious and protect the people of Ikolomani.

**Mr. Speaker:** That is strange but let me hear the Minister for Finance.

**The Minister for Finance (Mr. Githae):** Mr. Speaker, Sir, Treasury does not construct roads. We fund the Ministry of Roads. We do not deal with the contractors. We have no idea who the contractor is. We have no idea about the condition of the road is, and I beg my friend to refer the issue to the Minister for Roads. Maybe he would give a reason why they would suspend but there is no project that has been budgeted for that has been suspended.

**Mr. Speaker:** Minister, could you please tell the House whether or not the Government and in particular the Executive has anything against hon. Dr. Khalwale personally or even the people of Ikolomani?

**The Minister for Finance (Mr. Githae):** Mr. Speaker, Sir, I would like to assure the hon. Member that the Government is impressed by the work that he is doing in the PAC and he needs to be commended because he is doing the proper work of a PAC; to supervise and oversee the performance of Government. Please, continue doing so, so that all the Ministries use funds in the right, prudent and efficient manner. Please, continue since we are impressed and, in fact, you should be favoured and not discriminated against.

*(Laughter)*

**Mr. Speaker:** Leader of Government Business, hon. Kimunya.

BUSINESS FOR THE WEEK COMMENCING  
27<sup>TH</sup> TO 29<sup>TH</sup> NOVEMBER, 2012

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I wish to take this opportunity to make the following statement with regard to business for next week. Concerning the business for next week, the House Business Committee (HBC) agreed to consider among other things following the presidential memorandum on the Finance Bill of 2012, a First Reading of all the Bills that have been published and matured including also the Committee Stage of all the Bills that have passed the Second Reading stage.

Mr. Speaker, Sir, in the course of next week we shall also consider a Motion on the formula of allocation of funds to the county governments among others. Priority will also be given to the business that will not have been concluded today and Tuesday.

Finally, the HBC will be meeting on Tuesday, the 27<sup>th</sup> of November to consider business for the rest of the week.

**Mr. Speaker:** We will now take the Minister of State for Defence.

DEPLOYMENT OF KDF IN GARISSA TOWN

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Thank you, Mr. Speaker, Sir. I stand to make a Ministerial Statement. On the 20<sup>th</sup> of November 2012, the hon. Member for Lagdera, hon. Farah Maalim, who is also our distinguished Deputy Speaker, on a point of order, sought a Ministerial Statement from the Minister of State for Defence regarding deployment of Kenya Defence Forces (KDF) in Garissa Town.

Mr. Speaker, Sir, in his request for the Ministerial Statement, the hon. Member sought clarification on the following:

(i) The reasons for the deployment and whether the Government had exhausted the capacity of the Kenya Police Service which has the constitutional mandate under the law to maintain law and order within our borders.

(ii) Whether in deploying KDF in that area, the Government followed the respective laws and respected the provisions of Article 241 (3)(c) of the Constitution.

(iii) Who gave the orders for the operation in Garissa.

(iv) In addition to the three KDF forces who were gunned down by terrorists, how many other Kenyans were killed.

(v) How many business premises were robbed by members of the security forces and subsequently torched.

(vi) The hon. Member wanted to know whether the Government will compensate the amount in excess of Kshs1.5 billion to Kshs2 billion robbed from the citizens of Garissa and lastly,

(vii) The hon. Member wanted to know whether the culprits responsible for the carnage will be brought to book to face the courts of this country.

Mr. Speaker, Sir, I want to respond as follows: On Monday 19<sup>th</sup> November at around 1230 hours---

**Mr. Speaker:** Order, hon. Musila! Even as you respond, there is an item there which was varied. The part where you said how many businesses were robbed, we left it at “robbed” because of the Standing Orders.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Speaker, Sir, I am aware that you directed that certain portions of that be expunged from the records.

**Mr. Speaker:** But it is just that portion that I have mentioned.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Speaker, Sir, I was guided by the HANSARD which I was reading and I would like to leave that – that is No.7 where the hon. Member wanted to know--- Sorry, Mr. Speaker, Sir. No (7) is where the hon. Member wanted to know whether the Government will compensate the amount in excess of Kshs1.5 million. So, I leave the word “robbed”.

**Mr. Speaker:** No, that is still valid as it is. Number 5?

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Speaker, Sir, No.5 – How many business premises were robbed? That is what the HANSARD says.

**Mr. Speaker:** Yes. How many business premises were robbed. The words “by KDF” is what we expunged.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Thank you, Mr. Speaker, Sir. The HANSARD report has---

**Mr. Speaker;** Unless you now want to say so.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** No, Mr. Speaker, Sir, but the HANSARD Reporters did not expunge as per your instructions because I got the HANSARD the following morning and that is what it says.

**Mr. Speaker:** Somebody has to answer for that.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Yes, Mr. Speaker, Sir. With your permission, I would like to carry on and state as follows:

On Monday, 19<sup>th</sup> of November, 2012, at around 1235 hours, five KDF soldiers were attacked by a group of unknown gunmen at a tyre repair point. The five were part of the KDF contingent at the Garissa Military Camp on transit to Sector II in Somalia for African Mission in Somalia (AMISOM) duties. The gunmen attacked the soldiers while they were in the process of unbolting the punctured tyre, shooting three dead. The other two could not fight back to avoid collateral damage since the people had started gathering in the area.

I take this opportunity to convey our deep condolences to the families of the departed soldiers who were serving this nation selflessly and performing AMISOM duties in Somalia. I ask the House to join me in sending our heartfelt condolences to the family, friends and relatives of these gallant soldiers who died innocently at the hands of unknown assailants.

Mr. Speaker, Sir, during this period, information was received from the locals that the assailants who had gunned down these soldiers had fled into a village called Bula Mzuri necessitating a joint operation between the Kenya Police, the Kenya Defence Forces (KDF) in pursuit of the fleeing criminals.

It is important for this House and the country at large to know that the military has been deployed in Garissa and other locations in this Republic since Independence. So in essence, no military was deployed in Garissa. The military has a camp in Garissa just like they have one in Langata, Nanyuki, Eldoret and other parts of the Republic. So, there was no deployment of the military in Garissa. The KDF was, therefore, not deployed in Garissa on that day of the incident. They were already there and they continue to be there even today.

(ii) As I have already stated, there was no deployment of KDF soldiers in Garissa and, therefore, the clarification that has been sought by the hon. Member whether the deployment was inconsistent with Article 241(3) of the Constitution, does not arise here.

(iii) As to the issue of who gave the orders, there were no orders given. This was a spontaneous reaction by the KDF soldiers when their three colleagues were gunned down in cold blood by unknown assailants. The soldiers went back to the vehicle to collect dead bodies and the Kenya Police and others went into pursuit of the assailants, as I have already said.

(iv) On the issue of how many people died thereafter, the Ministry of State for Defence is not aware of other Kenyans killed or injured. However, the relevant Government organs have launched investigations into the matter. The details of this investigation as to who or what happened will be known soon. I also understand that Committees of this House will be conducting their own investigations into this unfortunate matter. The KDF regrets any loss of life and property---

**Mr. Duale:** On a point of order, Mr. Speaker, Sir. I am happy that the Prime Minister of the Republic of Kenya is here. On Tuesday, the Minister of State for Defence visited Garissa and met me there and confirmed in his presence that one lady died in hospital when he was in Garissa. The Assistant Minister says the Ministry of State for Defence can confirm that nobody has died. His own Minister on Tuesday at 11.00 a.m. confirmed it and saw it in the ward that one person died. Is he in order to mislead the nation?

**Mr. Speaker:** Mr. Assistant Minister, you may want to respond to that.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Speaker, Sir, I would like to request Mr. Duale to relax on this matter. It is a serious matter. I never said that no one died in Garissa. First and foremost, three innocent gallant KDF soldiers were gunned down. Those are human beings. Subsequently, what I am saying is that the Ministry of State for Defence is not responsible for getting this information. I said and I want to repeat: However, the relevant organs of the Government have launched investigations into the matter and details will be known. The details of who died and how many died will be released by the relevant authorities. I never said and I want to repeat, I never said that no one died. I just said these are very emotive issues. I would like to ask that the House treats these matters as such. Let us be patient and wait for the results of investigations.

I was going to say that the KDF regrets any loss of life - when the hon. member interrupted me - and property that was destroyed during this unfortunate incident. However, the Ministry wishes to deny in the strongest terms possible that our soldiers were involved in robbing and destroying any property.

The Ministry of State for Defence and this is on the issue of compensation is not competent to state anything on the issue of compensation. I have already stated elsewhere in this Statement that investigations are being carried out by competent organs of the State. We, as this House --- I appeal for patience as we await the results of these investigations.

The question as to when people will be sent to court, again, this point will be better handled by relevant organs after conclusive investigations are made. The incident, as the House would appreciate, occurred in an environment of mayhem. Therefore, it cannot just be determined at the moment.

In conclusion, I want to state very clearly that the KDF has always operated in Garissa and in other counties of this Republic. Our soldiers are known all over the world as professionals who have maintained very high discipline, both in Kenya and abroad where they have served the UN peace keeping missions. It is, therefore, unfortunate for our soldiers to be accused of rape,

torture, looting, killing of women and children and burning business and essential properties in our own country. Such accusations can only be termed as malicious and are meant to be pursued, for the purpose of tarnishing the very good name of the KDF. This House has in many occasions risen to salute the professionalism of the KDF. I hope this unfortunate incident will not change the position of the House as regards their sons and daughters who are serving in uniform.

The KDF remain committed to their core values of remaining apolitical, being subordinate to civil authority and remaining patriotic and loyal to this country. They will continue to deliver their service to this nation selflessly based on the highest professional standards possible.

Thank you.

**Mr. Speaker:** We will start with Mr. Farah. Mr. Assistant Minister, keep notes; we will take these interventions in batches of five. I will restrict it to two batches at the most. I will not go beyond ten.

**Mr. Farah:** Mr. Speaker, Sir, as a matter of fact, I was a very sad man yesterday and the last couple of days. I am even sadder now because what is being done now and the manner in which this Statement has been handled by the Government reminds me exactly of the way the Government handled the Wagalla Incident in 1984. To straightaway look us in the eyes and mislead the nation---. Not only did the KDF kill, maim, torture, rob, pillage and burn the people of Garissa Town, but now it is even worse when the very leadership is coming out here and saying that these things did not happen. In the clarifications, the Assistant Minister is trying to hide behind semantics. The KDF is deployed in Kenya because it exists within our Constitution. So, when I talk about deployment, I am talking about the operations that they undertook in Garissa last time. The reasons they undertook that operation which was for the police alone---

Mr. Speaker, Sir, what exactly does the Constitution say? The Constitution is express in Section 22(41), that you cannot use the Kenya Defence Forces (KDF) except through Parliament's approval. I do not know whether this was respected, because you have already admitted that they were out there in a joint operation with the police, which the Minister yesterday denied by saying that they had no role in that, either through the Provincial or District Security committees.

Where is Bulamzuri? This is not the Central Business of Garissa. The places that were torched are in the Central Business District of Garissa. That is the high rise structure called Halgan Building owned by M.K. Robley. The main market itself which had 3,000 stalls is in the centre of town. The posho mill that you saw being televised is at the centre. That is not Bulamzuri because Bulamzuri is quite a distance. So, why are you misleading Parliament and the people of Kenya on this particular issue?

The County Commissioner has equally said that they had no role in this. So, where does the "joint" come in? Was the "joint" a spontaneous thing just like demonstrations here in Nairobi that just pick up people on the way? The military lead the way, then the regular police decide to be in solidarity with them and then the Administration Police join them? This is not a failed state! These are not militias! Even if they have to do something in hot pursuit, there must have been an order somewhere. Who gave those orders?

Could you clarify those three things? We are not objecting, but you should not try to whip our emotions and bring in the issue of our sons and boys in the military. We all have sons and daughters in the military. We are all proud of what they did in Somalia and Jubaland. We are talking about what was done in Garissa in the last couple of days. We want you to face us

straight and tell the information as it is. Garissa probably had more boys in KDF in Jubaland than any other county in Kenya.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, there is a tendency by the current Government that every time there is a problem, there is the temptation to rush and use the military. We will give you free advice. The more you do it, the more they will find out that the civil authority is not able and will remove you from those offices and take over. This is not Congo.

I think there is something very wrong with the Government because this is the first Government where, when policemen are killed, a Minister who sits in the Cabinet will call a press conference and justify it. The Minister, Mr. Haji, said that there was no authority given by the civilian authority for the military to take action and the Assistant Minister has confirmed. Mine is very simple; that this should never have been allowed. That temptation of acting on anger by the military, in as much as you want to take action, is wrong. We want to know which officers and what action you are taking on those officers who decided that there is no rule of law in this country and took the law into their hands and failed to follow the law as provided for in the Constitution.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Speaker, Sir, first of all, I want to agree with the Assistant Minister that our KDF have done an excellent job in the past and that is why we cannot allow them to do any shoddy work now. Therefore, I would want to ask the Assistant Minister to clarify the issue where it is indicated, that there was no deployment of the military. If I read from the Wikipedia, “deployment” means to position troupes in readiness for combat. The other definition is to bring forces into action. So, if you bring forces into action, that is deployment. So, deployment does not mean you order them from Nairobi to where they are. If you bring them into action wherever they are, it is deployment. If, indeed, they were not asked to go into action, the Assistant Minister is, therefore, confirming that there was a mutiny. That is what I want him to confirm so that it ties in what Mr. C. Kilonzo is saying; if there was a mutiny, what are you doing so that we know we are under military attack as a country?

**Mr. Kapondi:** Mr. Speaker, Sir, the Ministerial Statement by the Assistant Minister is full of contradiction. He has made it very clear that there was no order given but it was a spontaneous reaction. He then goes further to say that it is a well-known fact that the KDF is a very professional and disciplined force. Those two statements do not agree. My question is; soldiers without any---

*(Prof. Kaloki entered the Chamber  
without bowing to the Chair)*

**Mr. Speaker:** Order, hon. Member for Kibwezi. I am afraid you will have to go through the motions again.

*(Prof. Kaloki went to the  
Bar and bowed to the Chair)*

Proceed, hon. Member for Mt. Elgon.

**Mr. Kapondi:** Mr. Speaker, Sir, my question is very simple; a situation where there was no order given and the soldiers came to the village out of emotions to burn down sections of Garissa, does such an act which was very conspicuous warrant an investigation before some action is taken?



**Mr. Sirat:** Mr. Speaker, Sir, this illegal and shameful operation reminds us of what happened in Wagalla, Malkamari and even in Garissa in the 1980s. If the military were in pursuit of the assailants towards Bulamzuri, why did they burn over 3,000 stalls in the central business district?

**Mr. Speaker:** Order, hon. Member for Wajir South! I do not want to interrupt you, particularly on a matter that is so emotive such as this but up to where you are and where you started, you repeated what the hon. Member for Lagdera had said and now where you have proceeded to, you have repeated his concerns. Can you try and go to new ground?

**Mr. Sirat:** Thank you, Mr. Speaker, Sir. I was just saying that because of the weight those two issues have, could he tell us about the compensation issue? If the military is able to build 3,000 stalls that were burnt down, could he then confirm how many people have died in the hands of KDF?

**Mr. Speaker:** Minister, you may make responses to those five and we will do another five and that would be it.

**The Assistant Minister for Defence (Mr. Musila):** Mr. Speaker, Sir, I want to say how sorry I feel to stand before this House and respond to these issues. I know how hon. Members feel and I want to plead with them to listen to me and know that I am part of them and I feel how they are feeling. Mr. Farah is asking me to clarify certain things which actually relate to the other issues that were raised by other hon. Members.

Let us look at this incident and see how it happened. I have said in my statement that it was a spontaneous reaction. Soldiers were killed and their colleagues reacted spontaneously. There was no order. I want to inform this House that the Provincial Security and Intelligence Committee, in the report, state as follows---

**Mr. Farah:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Maalim. I have heard you and I can see your name on the screen but I will allow your point of order at a suitable point. So, do not press too hard, so that the Assistant Minister can say a few things before you intervene.

Mr. Assistant Minister, proceed.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Speaker, Sir, this was a spontaneous reaction. Members of the military were shot and their colleagues were there. What would we have expected them to do under normal circumstances? When this happened, the soldiers retreated immediately to the barracks.

**Mr. Speaker:** Order, Mr. Assistant Minister! Let us take the point of order from the Member for Lagdera.

*(Mrs. Odhiambo-Mabona uttered something)*

Hon. Odhiambo-Mabona, contain yourself! I know this is a hot matter!

Proceed, Mr. Farah!

**Mr. Farah:** Mr. Speaker, Sir, our forces in Somalia lost about 30 lives, some of them in combat. However, they never went out there to go and kill the innocent civilians of Somalia. They looked for the terrorists. Just because they are emotive and their colleagues were killed, does not mean that they should kill any other person unless they have decided to do so.

Is the Assistant Minister in order, on one hand, to say that the two officers who did not die on the spot did not want to fight back because they were avoiding collateral damage and on the other hand say that 2,000 of them left the barracks to do collateral damage? Is he in order?

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Speaker, Sir, when I said that it was a spontaneous response, I did not mean that it involved destruction. Immediately thereafter, the Provincial Security Intelligence Committee is the one which was in charge of the operation. I want to make it very clear that it was the security organ of the province---

**Hon. Members:** On a point of order, Mr. Speaker, Sir.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Speaker, Sir, could you protect me so that I can finish my point?

**Mr. Speaker:** Order, Mr. Assistant Minister! Let us take the point of order by the Member for Turkana Central.

**Mr. Ethuro:** On a point of order Mr. Speaker, Sir. Ordinarily, I would not like to challenge the man known as David Musila. He says that he is one of us. However, today, he is the "Minister for Defence".

**An hon. Member:** He is not one of us!

**Mr. Ethuro:** Mr. Speaker, Sir, he is not one of us. Is he in order to say that the subsequent operation – of course he has not answered the contradiction raised by the Deputy Speaker – was authorized by the provincial security team or the district security team when only yesterday - 24 hours ago, on the Floor of this House and from where he is seated, hon. Katoo ole Metito made it very clear that neither the provincial security team nor the district security team was involved in the operation. We are not children. We speak for our people and we have ears to hear!

**Mr. Speaker:** Fair enough! Mr. Assistant Minister, do you want to respond to that point of order?

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Speaker, Sir, I am quite in order and I want to restate on the Floor of this House what I said, that the organ that was responsible for the operation in Garissa after the mayhem or after the killings was none other than the Provincial Security and Intelligence Committee. I have a report here which states as follows.

This report is signed by none other than the Provincial Commissioner for North Eastern Province.

It reads as follows:-

"The alarm was raised (after the incidence) and a contingent of military officers from Garissa KDF camp, the Kenya Police and the Administration Police were immediately deployed to hunt down the killers believed to be sympathizers of the Al Shabaab organization. Because of the anxiety created by the fracas, the security forces were deployed in several parts of the town in search of an operation to prevent the culprits from escaping and to restore law and order."

That is my justification for making that statement.

**Dr. Nuh:** On a point of order, Mr. Speaker, Sir. You should save us from the contradictions by the Assistant Minister. This is because he does not seem to have his facts correct today and maybe in order. A few minutes ago, he said that the KDF forces were not deployed. He has now read to us a letter from his Provincial Commissioner saying that the KDF, the police and a contingent of cohorts were deployed to several parts of Garissa. But more importantly, the Assistant Minister has said that three officers of the KDF were gunned down and asked us, as a House and as a nation what we expect. He is trying to justify that out of outrage the KDF soldiers can get into the villages and cause damage. Is the Assistant Minister in order to justify that?

**Mr. Speaker:** Order, the Member for Bura! You have stood on a point of order. I would like you to be systematic. I want you to prosecute one point of order, first, I take a response from the Assistant Minister then you can move on to the next one. So, do the first one and as I have heard you, you are talking about deployment. Do it properly. Let the Assistant Minister respond and I will take the next point of order.

Carry on, the Member for Bura.

**Dr. Nuh:** Thank you, Mr. Speaker, Sir. I stand to be guided. I only asked hon. Musila whether he is in order to contradict himself barely, five minutes into his statement telling the House, at one time, that the KDF forces were not deployed and the second minute reading to us a statement or letter from the Provincial Commissioner alluding to the fact that the KDF soldiers were deployed to Garissa.

**Mr. Speaker:** Fair enough! That is a genuine challenge.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Speaker, Sir, I first want to correct the impression that when I said that it was spontaneous, I never in any way implied that whatever happened after the burning that is alleged to have taken place was justified or spontaneously done. I have said that immediately, thereafter, the soldiers went back to the barracks because those were the orders given after the incident that happened; the killing of their colleagues. But then, the civil authority namely the Provincial Administration took charge of the operation and I have already said that what I have read is what the Provincial Security and Intelligence Committee reported to have done. On the issue of contradiction of deployment, when I made reference to the deployment, it is like the military took soldiers to Garissa to go and perform an operation. I said that our soldiers are stationed in Garissa. Therefore, the issue of deploying soldiers to go and carry out an operation there did not arise.

Mr. Speaker, Sir, can I proceed and respond to other clarifications?

**Mr. Speaker:** Order, hon. Members. I see that there is a request from the Floor by your colleague. Major-General, I do not see the request on my screen though. You have disappeared. You are on and I do not see you.

**The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):** Mr. Speaker, Sir, I just want to help my colleague.

Mr. Speaker, Sir, as you realize, this is a very serious matter touching on national security and the Kenya Defence Forces (KDF). Because there are so many issues, which we would like to bring out, I would propose or request that we discuss these things in *camera*. We are talking of national security organs, and it is unpatriotic for this House to condemn the last resort in the defence of this nation instead of sympathising. These soldiers were attacked by terrorists and they responded.

I said we give our condolences for what happened. I will tell you something, gentlemen. Let me say that we want to discuss this populism by the hon. Members. To try to condemn the national security organ is unacceptable. So, I propose that we discuss these things in camera. This is a populist circus.

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Just accord me sometime to be up to speed on where we should be.

Hon. Nkaisserry, you seem to have mixed up matters. You are giving a hoch-potch that is completely unnecessary. Major-General, I want to take you back to Standing Order No.214. Do you have your red book?

Major-General Nkaisserry, you caught my eye because, I believe, that being from the Ministry of State for Defence, you were concerned about the matters that are being transacted now at this point in response to the issues raised by the Member for Lagdera. What I then expected you to do was to strictly live within the provisions of Standing Order No.214. So that all Members get to know what I am alluding to, I want to read this out in *extenso*. The provision is as follows:-

“Withdrawal of strangers from the Chamber.

If at any sitting of the House or in Committee of the whole House any Member shall move that strangers be ordered to withdraw, the Speaker or Chairperson shall forthwith put the question, no amendment, adjournment or debate being allowed and upon such question being resolved in the affirmative, all strangers shall be ordered to withdraw from the Chamber”.

Major-General Nkaisserry, you are seeking to do this but you are doing it in a manner that is so amorphous that I cannot take the necessary steps as the Standing Order permits. So, maybe, you want to retrace your steps and enable me to, perhaps, take action. Otherwise, I am afraid the way you have prosecuted it so far does not give me that option. Are you clear, Major-General?

**The Assistant Minister, Ministry of State for Defence** (Major-General Nkaisserry): Yes, Mr. Speaker, Sir; I follow your order, that I request---

**Mr. Speaker:** Do not follow my order! What are you trying to do?

**The Assistant Minister, Ministry of State for Defence** (Major-General Nkaisserry): Mr. Speaker, Sir, because this is a very weighty matter, in line with Standing Order No.214, I propose that we discuss this issue without strangers in the House.

**Mr. Speaker:** Not good enough still, Major-General Nkaisserry. I have said you have to move. That is what the Standing Order says.

**The Assistant Minister, Ministry of State for Defence** (Major General Nkaisserry): Mr. Speaker, Sir, I beg to move that strangers be ordered out of the Chamber in line with Standing Order No.214.

**Mr. Speaker:** Fair enough. Hon. Members, in compliance with the provisions of Standing Order No.214, I put the question that strangers be ordered to withdraw, as the House deliberates on this matter.

*(Question, that all strangers be ordered to withdraw  
from the Chamber, put and negatived)*

I am afraid we will have to continue.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): I have gone through the points of clarification that have been sought by the hon. Members; hon. Maalim himself, hon. Charles Kilonzo, hon. Millie Odhiambo-Mabona, hon. Kapondi and hon. Sirat.

Mr. Speaker, Sir, the answer to all these clarifications lies in the paragraph that I read. Investigation into this unfortunate matter is going on. This House only yesterday mandated its Committees to go and investigate these matters.

Mr. Speaker, Sir, would it not be right to ask the House to be patient and to allow these investigations to be concluded? I am sure all the points of clarifications that the Members are seeking will come out very clearly.

I am at your disposal, hon. Members, to answer these questions as much you want. I want to tell you that I am very competent to answer them. If I am not, I do not know who else would be.

**Mr. Farah:** On a point of order, Mr. Speaker, Sir. Unfortunately my predecessor in the Office of the Deputy Speaker is acting in a manner that I have never thought he would act.

Is it in order, hon. Musila, for you on one hand to say that there was no authorisation given to the deployment for this operation and on the other hand come say that the Provincial Security Intelligence Committee did sit, as the civilian body, and decided that this was an operation which had to be undertaken? Could he also table the letter from the Provincial Security Intelligence Committee here for the records of the House?

**Mr. Speaker:** Order, hon. Members. Hon. Members, I realize that this matter is very emotive. I am also awake to the fact that this matter pertains to the security of this nation. This matter, therefore, goes to the very foundation of the Kenyan nation and discussing it as we are doing runs the risk of literally rocking the boat, the boat being the Kenyan nation. Given that this matter was ordered yesterday to be referred to a joint committee of the House, I will find that it is appropriate that all these issues are addressed in the investigation that will be conducted by that joint committee of the House, and that after the report is prepared, it will then be brought before this House and Members will be at liberty to adopt or not adopt the report of the Committee, and that that report, I believe, will address all the concerns of Members. Where it will not, when it comes for debate, Members may then input their sentiments into that report. So, for the moment, I will direct that the Minister will furnish no further information because that information, it is anticipated, will be made in the Committee.

But I will do the following - because I did indicate in my earlier ruling that I will take five requests for clarification in the first batch and that I will take another five - I will take the next set of clarifications, because we have heard the Member for Lagdera who called for the Statement and that effort has been supplemented by requests for other clarifications by four other Members. A number of Members have also stood on points of order and supplemented the areas that Members need clarification on.

So, I will now want to take the next batch of five which will help inform the inquiry of the Committee. Please, hon. Members, refrain from debate because it will be helpful if you reserve the information that you have to appear before the Committee that will investigate this matter and give as much information as you can. Those will be my directions and I will take the next five for the purpose of providing parameters to the Committee that is investigating this matter.

I want to start with the Member for Dujis as the first among the five. Minister, please, take notes because it will be necessary that you address these matters as you appear before the Committee.

**Mr. Duale:** Mr. Speaker, Sir, yesterday, I said it is you and Parliament that will save the people of Kenya. It is also very shameful that on Tuesday, the Minister of State for Defence went to Garissa, saw two dead bodies killed by Kenya Defence Forces, 15 injured, property looted, women raped and business burnt by KDF. It is shameful today that a Minister of Government under the new Constitution can stand in front of this House and give a Statement similar to the one given last night by Col. Oguna.

After the Minister's visit on Tuesday, tomorrow, the same Government is sending a delegation to Garissa led by none other than the Prime Minister. I do not know what the Prime Minister is going to do in Garissa if his own Minister can stand before this House and say that nobody was killed, no property was destroyed and no houses were burnt. Yesterday the same Minister was recorded in the HANSARD as saying that the Provincial Security Intelligence Committee and the District Security Intelligence Committee never gave instructions. The same Minister is saying that Kenya Defence Forces is a professional disciplined force. On the other hand, the same KDF acts spontaneously; that when one of their own is killed, they go amok and kill and loot.

Mr. Speaker, Sir, I want to bring to the attention of this House that I am a living testimony of what happened in Garissa. The only other living testimony is the Minister of State for Defence who went there on Tuesday morning.

Five days ago before the incident, seven Administration and police officers were killed. No spontaneous reaction took place. This massacre, I said it yesterday and I will say today, under the new Constitution--- A number of times you rise to the occasion on the blood and property of the people of Garissa. I want to go on record! I want the Chief of Defence Forces and the Chief Justice to hear me; that under the new Constitution, Kenyans' property has been destroyed; innocent Kenyans have been killed, women have been raped and property has been looted by the Kenya Defence Forces under the leadership of this Minister.

I want this Assistant Minister to confirm to the country whether his boss, the Minister of State for Defence, sent by the President, went to Garissa on Tuesday. I was with him. He shed tears when he saw the killing and the destruction of property. Tomorrow, a Parliamentary committee was supposed to visit that area but the same Government is sending a delegation led by the Prime Minister to go and do a cover up; to go and intimidate---

**Mr. Speaker:** Order, Member for Dujis! Stay within the rules. I have said you indicate areas that you want clarification on which will help the Committee to put its finger on the issues that they must report on. So, just restrict yourself to that for the moment. I have already allowed you a lot of indulgence out of necessity but now restrict yourself to one more area that you want clarification on.

**Mr. Duale:** Mr. Speaker, Sir, I want to go on record in the HANSARD as the Member for Dujis in the Tenth Parliament, that during my leadership, during the leadership of this Tenth Parliament, the KDF forces massacred, looted, raped---

**Mr. Speaker:** Order, Member for Dujis! If you are not going to operate within the rules, even the directions I have given, then I am afraid I will cut you short. I will take the other four. I understand your emotions. I am not lost to them.

**Mr. Keter:** Mr. Speaker, Sir, I just want a simple clarification from the Minister. When the three KDF soldiers were killed, you have mentioned the word "spontaneous". Are you saying immediately those three soldiers were killed, the other soldiers went on rampage because they were annoyed that their colleagues had been killed? At what point did the District Security Committee order the redeployment of the other *askaris*? Was it after the burning and looting of property that the Provincial Security Intelligence Committee sat down and ordered that security be restored when all this mess had been done? Could you clarify the meaning of "spontaneous"? Are you saying that there was a reaction immediately or after some hours or days?

**Mr. Oyugi:** Mr. Speaker, Sir, I would like to state a couple of things. First, is to bring to the attention of the Assistant Minister of State for Defence, Article 241 of the Constitution that does establish the Kenya Defence Forces. We are a country that is governed by law. So, the KDF

consequently is established by law and Article 241 does ingrain its establishment. Amongst the things that I would like the Assistant Minister of State for Defence and the Committee consequently to report and relate to is the deployment of Kenya Defence Force (KDF) as anticipated by Article 241(b) and (c) of the Constitution and not the deployment in the manner that he is discussing. This is because the deployment that he is discussing is the definition that my learned senior, Millie Odhiambo, did allude to. But the Constitution that creates the KDF does anticipate the manner in which he can deploy the KDF. That is the definition that I would like him to stick to, in case he will make a response.

Mr. Speaker, Sir, the second thing that I would like the Committee and the Assistant Minister to respond to is: If there were spontaneous reaction by members of the KDF, my learned senior helped me and explained to me that then that will be called a “mutiny” in international humanitarian law terms. Does it mean that there was a mutiny in the barracks in Garissa? If there was, then what action did the Ministry of State for Defence take? Or, is it anticipated that members of a disciplined force in the name of the KDF can in a manner that they did, spontaneously react? If they did as much, where is the discipline?

Lastly, Article 241(b) does anticipate that the KDF can assist and cooperate with other authorities in situations of emergency and disaster. If they did assist or cooperate, who then does initiate the request for assistance? In this particular case, was there any request to initiate the assistance? This is because his colleague, the Minister of State for Provincial Administration and Internal Security stated that there was no request from the provincial security team. We would like to know from the Assistant Minister if at all there was a request and who made that request, so that the KDF responded according to Article 241(b) of the Constitution.

Mr. Speaker, Sir, those are my submissions because I really think that whereas we are talking about---

**Mr. Speaker:** Order, the Member for Ndhiwa! We are undergoing an exercise where you highlight areas that you want clarification on. It is not time for debate or for you to make your own presentation and put your thesis on the table! You have done well though.

Yes, the Member for Naivasha!

**Mr. Mututho:** Thank you, Mr. Speaker, Sir. About six times the Assistant Minister of State for Defence has said that this was a spontaneous reaction. The KDF store among other things arsenals including aircraft and tanks which are lethal to everybody. What mechanism exists within the KDF so that those soldiers who decide to react out of emotions do not get out of their barracks one day with their deadly arsenal and then attack helpless civilians?

Mr. Speaker, Sir, secondly, in the command structure of the KDF, did they trigger any mechanism that would have brought back these soldiers who apparently seemed were on mutiny to avoid such heavy damage?

**Mr. Ethuro:** Mr. Speaker, Sir, while I support your ruling, although halfheartedly, being the Speaker, I submit.

Mr. Speaker, Sir, I also want to send my condolences to the families of the three KDF personnel who were killed in Garissa. One of them is from my own county. I think Kenyans should start understanding now that when the three Members of Parliament from Turkana went public that you should not deploy KDF to any part of this Republic--- I think it is now becoming self-evident from the situation in Garissa.

I want to confine myself to the issues of the Constitution. We have talked about Articles 241 and 239. I want now to confine myself to Article 238(1) on the principles of national security which are to protect, freedom, property, peace and stability. But more importantly,

Article 238(2)(b) on demand of the national security organs, which include the KDF and police amongst others. National security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.

I agree with the Assistant Minister that the KDF do a good job when they are out of this country, as they ought to be. The KDF have no capacity to do a good job internally, because they are ill-suited for the job. I think that is the point that we want to make. So, at no time, whether they are deliberately deployed, which is, of course, what we are saying is unconstitutional until it comes to this Parliament, or when they react as it is being alleged, they should not be doing that business within the nation. They must allow the police to do that job.

Mr. Speaker, Sir, I want to make one appeal to the Assistant Minister. Knowing the kind of potential mess we have gone through--- Surely, hon. Elmi, the Minister of Development of Northern Kenya and Other Arid Lands has shed tears before the Truth, Justice and Reconciliation Commission (TJRC) on the Wagalla massacre. Are we saying as a country that we have not learnt anything from those things? Are we saying that we have not learnt anything from Operation Nyundo in Pokot in the early 1980s and that we want to engage more military operations? My plea to the Assistant Minister is that anything to do with the KDF operations should be put to a halt so that we can look at other ways of dealing with security issues, especially in pastoral areas.

I submit, Mr. Speaker, Sir.

**Mrs. Shebesh:** Mr. Speaker, Sir, in the intervention by the other Assistant Minister, Ministry of State for Defence, Maj-Gen. Nkaisserry, he mentioned something that would be my interest in clarification by the Committee and the Minister. He intimated that the KDF soldiers were killed by terrorists, meaning that there is an indication within the Ministry that we could have removed *Al Shabaab* from Kismayu and maybe to move them to Garissa. Could the Ministry be clear whether they have been overrun by *Al Shabaab* in Garissa and hence, the kind of response that was given by his colleague?

Mr. Speaker, Sir, the only other issue that I would like him to clarify is that when speaking about 2,000 KDF officers spontaneously reacting, does he understand the implication of those words? It means that those 2,000 officers have gone against the law and Constitution and are, therefore, not KDF anymore but criminals. Does he understand the import of the words that he used when he said that they spontaneously used force against civilians?

**Mr. Speaker:** Order, hon. Members! That really was like the last one, but I want to give the final opportunity to the Member for Lagdera, hon. Farah. Hon. Farah, you have had plenty of time already. Just try and contain yourself. I know that this matter goes to your heart, but try and contain yourself, even as you have the last opportunity.

**Mr. Farah:** Mr. Speaker, Sir, I actually have a problem in that the Assistant Minister has said one thing and then another thing. He talks of spontaneity and a letter from the Provincial Security Committee, which I hope he can table in the House. He has talked about the hot pursuit of the terrorists in Bula Mzuri and yet, Bula Mzuri is not inside the town but outside the town. I think it is a very open case. Did the officers manage to arrest, kill or maim any of those terrorists that they were in hot pursuit of? How did they lose them if they were in hot pursuit of those terrorist? Give us exactly the sequence of how the officers went about that.

**Mr. Speaker:** Order, hon. Members! Mr. Assistant Minister, you will now do two things. First, you will confirm that those areas of clarification in which Members have expressed interest and are concerned about will be covered, even as you appear before the Committee to make your



submissions. Secondly, you will indicate that you are going to cooperate with the Parliamentary Committee that is investigating this matter and make full disclosure.

Thirdly, the letter that you referred to this afternoon expressly before the House, you will produce before the Committee when you appear. If you make those confirmations, we will let this matter rest there. Assistant Minister, you have heard clearly the sentiments of the Members; you have followed how this matter has been very emotive, and I have indicated that this actually goes to the very foundation of this nation. As structured, a democratic nation that respects the rule of law, we are under threat. We are at risk and this matter must be taken very seriously, hon. Assistant Minister. You have the last word this afternoon.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Speaker, Sir, I have heard you very clearly. Perhaps, you will permit me to go on record and say very clearly, and I have stated in the Statement, that the Ministry of State for Defence regrets the loss of lives and property that occurred in Garissa. I never said that nobody was killed, because I know that three soldiers were killed. I said that about others who were killed, the Ministry of State for Defence may not be in the picture and may not be able to give the whole picture, because there are those who are responsible for that. I never said that---

**Mr. Speaker:** Order, Assistant Minister! Can you kindly live within my directions? Where you are going, you are not being helpful. Just give the confirmations that I have sought and rest the matter there. Where you are going into is definitely not going to be of any value as to where we are.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Speaker, Sir, indeed, I want to confirm, as I have pleaded with the Members of this House, that investigations are going on. I want to confirm that the Ministry of State for Defence will be available and will co-operate in the investigations that are being carried out. I also want to confirm that any information that the investigating Committee will require from the Ministry, including the letter that I have mentioned from the Provincial Security Intelligence Committee will be made available to the Committee.

**Mr. Speaker:** Hon. Members, we will now move to the next Order. Any other Statements will have to be taken next week, Tuesday. As at where we are, we have not transacted any other business as is on the Order Paper. Your Standing Orders will be telling you what is business and what is not.

So, next Order!

## MOTION

### ADOPTION OF REPORT ON NOMINATION OF MS. YATANI TO NGENC

**Mr. Keter:** Mr. Speaker, Sir, on behalf of the Chairman of the Labour and Social Welfare Committee, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on the nomination of Mrs. Gumato Ukur Yatani as a member to the National Gender and Equality Commission laid on the Table of the House on Thursday, 11th October, 2012.

The Committee deliberated on the Report of the selection panel, submissions made by the nominee, including her CV and her oral submissions during an interview at the sitting on 9<sup>th</sup> October, 2012. The Committee recommends, pursuant to the provisions of Article 252(b) of the

Constitution, that this House approves the appointment of the said person. We checked everything and it was okay. Therefore, I do not want to waste a lot of time. The National Gender and Equality Commission is vital and will benefit from her inclusion. She is a hard working person from North Horr, Marsabit, and she brings to the Commission a lot of experience in terms of gender. Her name was adopted with no reservations at all. Therefore, I call upon this House to adopt the nomination of Mrs. Gumato Ukur Yatani.

I ask my colleague, hon. Ochieng to second the Motion.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

**Mr. Ochieng:** Mr. Deputy Speaker, Sir, I wish to second.

*(Question proposed)*

**Mr. Ogindo:** Mr. Deputy Speaker, Sir, I rise to support this Motion. As I support the Motion, I want, first of all, to go on record that the action by the Executive to deploy the military to deal with internal instability is in contravention of the Constitution. It is important that action be taken immediately against the people who are contravening the Constitution; every KDF officer who has been deployed should be withdrawn and taken back to the barracks. It is important that there is obedience to the Constitution.

Having said that, I want to support that Mrs. Gumato Ukur Yatani be a member of the National Gender and Equality Commission. This will go a long way in strengthening this Commission. From the report, Mrs. Gumato is qualified and competent and has a wealth of experience to bring to this Commission.

I support.

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I also wish to support my good friend, hon. Keter and the Departmental Committee on Labour and Social Welfare on this particular Report and especially just to underscore the point that it is really nice and it feels good that this country can start appreciating especially the women from the pastoralist areas. Pastoralist women suffer double tragedy of being a woman and not being a man and being a pastoralist. So these kinds of opportunities are the ones that we have been lacking in this country for the last 50 years so that when our children go to school, they even do not know what a commissioner is or what is a commission. They do not know certain courses like doing law or medicine because where they come from, the best they can aspire is to be a teacher. In fact, there is a school in Buru Buru that says: "If you are an intelligent person born in Buru Buru, you can become a neurosurgeon if you excel in life but if you are an intelligent person born in Lake Turkana, the best you can do is to be a better swimmer than a crocodile." These kinds of appointments will help dismiss such notions.

I support.

**Mr. Njuguna:** Mr. Speaker, Sir, in supporting this Report, I wish to thank the interim chair of this Committee for the manner he has presented it. Secondly, I note that Mrs. Yatani is highly qualified and with a lot of experience. It is notable the experience already gained will enrich the operations of the Commission. I have no doubt in my mind that the young membership will strengthen the operations of the Commission.

With those few remarks, I support.

**Dr. Nuh:** Mr. Deputy Speaker, Sir, I also with to support the Motion by the Departmental Committee on Labour and Social Welfare that Mrs. Gumato Ukur Yatani be appointed as a member of the National Gender and Equality Commission.

Mr. Deputy Speaker, Sir, when hon. Ekwee Ethuro said that a woman from a pastoralist background suffers double tragedy, it seems some hon. Members of this House are amused and maybe it is because of the position the woman holds in a pastoral community of so much burden but maybe without much appreciation. However, even more importantly is that the people from the pastoralist communities or hardship areas have never been appreciated for a long time and thanks to the new Constitution. At least they can lift up their heads and start fighting for their rights even if they do not get them.

Mr. Deputy Speaker, Sir, the actions that have been happening for the past few days just shows that the mentality of some of our citizens and state or public officers has not yet tuned to the reality but the citizens have been accorded much more rights that they are much more aware. At least even if they do not get it, they have the platform to demand for whatever is their right. People from Northern Kenya should never be treated like they are lesser citizens of this country. They should never be treated as if they are an infringement and are part of this country that should never be desired. They should be appreciated for the role they play in building the society that we all are and we all appreciate to be Kenyans.

Mr. Deputy Speaker, Sir, such a Commission that will look at issues of gender and equality would never have a better person than Ukur Yatani who must have known and suffered what inequality, gender parity and gender discrimination is because she has come through all that.

With those few remarks, I support.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I was going to plead to the House that since this is an issue on which we are dealing with the Report of the Departmental Committee on Labour and Social Welfare, I do not think there is any disagreement with it. Why can we not just pass it now and let the Minister for Agriculture proceed with the next Motion?

**Mr. Deputy Speaker:** Order, hon. Anyang'-Nyong'o! Yes, hon. Prof. Kaloki.

**Prof. Kaloki:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity to support this very important Motion which will be able to make Mrs. Gumato Ukur Yatani a member of the National Gender and Equality Commission. Mrs. Yatani is a person that has been able to play so many roles in this country on the issues of governance and leadership and she has been able to hold many important positions in this country. So, Mrs. Yatani is qualified and I support this particular Motion so that this particular Commission can be able to pick up and be able to implement what is so much needed in the Constitution and make sure the gender parity is adhered to.

Thank you, Mr. Deputy Speaker, Sir.

**The Minister for Livestock Development** (Dr. Kuti): Thank you, Mr. Deputy Speaker, Sir, I also stand up to join my colleagues in supporting the appointment of Gumato who I personally know as a very competent person – a mother and a social activist and who participates very much in the development of a very difficult area in North Horr. I think her joining the Commission will go a long way in not only bringing equality but also bringing a role model to those girls in difficult areas that they also can achieve entry into high commissions like this one.

I support, Mr. Deputy Speaker, Sir.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I support the Motion and because people have lauded Mrs. Yatani, I will not add but I want to say that she has very impressive credentials. I also want to say that indeed I am happy that we are fulfilling the constitutional provision of inclusion of marginalised communities.

Mr. Deputy Speaker, Sir, the only thing I would want to urge is that the Government must act with speed to ensure that the Kenya National Commission on Human Rights (KNCHR) is operational because currently, I really doubt whether there is even any commissioner that has a term standing and if there is, there is probably one or two and knowing that we are about to go for elections and all that is happening, we need all our commissions that have to do with human rights running and operational.

I support.

**Mr. Deputy Speaker:** Can the Mover reply?

**Mr. Keter:** Thank you, Mr. Deputy Speaker, Sir. I wish to thank the hon. Members for supporting the nomination of Mrs. Ukur Yatani and I wish her all the best.

I beg to move.

*(Question put and agreed to)*

## **BILL**

### *Second Reading*

#### THE AGRICULTURE, LIVESTOCK, FISHERIES AND FOOD AUTHORITY BILL

*(The Minister for Agriculture on 21.11.2012)*

*(Resumption of Debate interrupted on 21.11.2012)*

**Mr. Deputy Speaker:** Madam Minister, you have 50 minutes left if you want to use it all.

**The Minister for Agriculture (Dr. Kosgei):** Mr. Deputy Speaker, Sir, I will use five minutes.

**Mr. Deputy Speaker:** That is good enough.

**The Minister for Agriculture (Dr. Kosgei):** Mr. Deputy Speaker, Sir, I was saying there has been need to reform the sector and change the laws for serious reasons. One that I gave yesterday is that the sector is burdened by laws which are no longer useful from the colonial times up to the 1940s. We want to change it to be in conformity with modern times.

Furthermore, over the years, many parastatals were formed because at that time, this was the way to drive the economy forward. However, there is now need to rationalize these parastatals because they no longer serve the purposes that they were intended to do.

In addition, after the liberalization, most of these parastatals lost some functions such as marketing and development of some of those private sector areas. The private sector took over and it is, therefore, not sensible to continue to have those laws. I will give you one or two examples. If you look at the Sisal Board, for example, it was once massive, but it has now got only 12 people working there. You find that replicated in a few of those crops. Each one of these

crops has its own law and, therefore, for these small areas to operate, it is too expensive. They cannot even pay for their audit facilities.

Thirdly, as you know, we are required by the new Constitution to align the laws that we have to serve efficiently the devolved Government. This is why we seek to have these new laws. In a nutshell, the purpose of these laws for this sector are to do away with outdated laws and make it possible for farming to be done as a business, to rationalize the State parastatals and be able to regulate them from one sector. For example, if you are in county B, you should not have to go to 10 or 12 different places to obtain licences to do what you are supposed to do. So this Bill seeks to harmonize what we have and make it up to date.

For purposes of clarity, I would say this again which I said yesterday and that is: Livestock is completely removed from this Bill. This was the view of the relevant Ministry and also a subject of intense lobbying and it is best the less said about it the better. For me and for the Ministry of Agriculture, we are very comfortable to get the laws for the Ministry of Agriculture to move forward in keeping with the Constitution. Alongside that, we also have discussed with the Committee on Agriculture, Livestock and Cooperatives and decided to remove the Dairy Board because that belongs to the Ministry of Livestock. In the Ministry of Agriculture, we have in the Committee removed the NCPB from this list mainly because that is under restructuring and it is already being privatized in keeping with the modern times. Our Bill will be known as AFFA and not ALFA.

The Chairman of the Departmental Committee on Agriculture, Livestock, my friend, Mr. Mututho, I am sure will confirm what I have said.

This Bill extensively covers all areas of crop production and marketing.

I beg to move and request my friend, Prof. Anyang' -Nyong'o, to second it.

**The Minister for Medical Services** (Prof. Anyang' -Nyong'o): Mr. Deputy Speaker, Sir, I beg to second this very important Bill. I only need to say two things in supporting it. Looking at one of the annexes in which certain boards that have been existing are addressed as former boards makes me feel very happy because these creates too many arenas for end seeking. Secondly, it increases inefficiency in the Government. There are too many bodies doing the same thing in various crop areas which could be done by one competent and efficient body.

Thirdly, something that both farmers and people in business complain about is what I will call bureaucratic nonsense. Bureaucracies are created when they do not really add value to productivity, that is an albatross around the neck of productivity.

So, this is a welcome Bill. I would like to congratulate the Minister for so doing, particularly those of us who are in the sugar industry who have been extremely uncomfortable in the manner in which the Sugar Board has operated throughout the years and its effect on sugar production, innovation and introduction of various value addition methods in the sugar industry. It has achieved literally zero. If anything, re-development and non-development has been the experience of many sugar cane farmers and those involved in the sugar industry.

The second and last point that I want to make is the point that relates to Section 22 of the Bill which addresses rules on preservation, utilization and development of agricultural land. One of the issues why Kenya has been going backwards in terms of agricultural production is the laxity with which we deal with agricultural land. There is apparent freedom that has been given to farmers to choose which crops to grow and when to grow them. This is due to the weakness we have developed over the years with the extension workers, that people involved in agriculture cannot improve agricultural methods and increase productivity because they are using the soil in a wrong way or where the soil is now tired and cannot grow certain crops, people were not being

involved in the rotation of crops, thus punishing the soil further. This particular section of the Bill, No. 22 (2), “a” up to “f” is perhaps one of the most innovative elements in this Bill that I would like to refer to.

If you look at No. 22(2) (d) it says:-

“Without prejudice to the generality of sub-section (1), rules made thereunder, may regulate the kinds of crops which may be grown on land.

(e) Provided for controlling the erection of buildings under the works on agricultural land”.

Mr. Deputy Speaker, Sir, just around Nairobi, you have seen how real estate has invaded high potential agricultural land going to Kiambu side thus depriving Kenyans of very valuable land for agricultural productivity. If there was regulation, Nairobi in terms of real estate should have developed towards Athi River or Magadi in much more marginal land in terms of agricultural productivity than we have experienced. Therefore, I want to congratulate the Minister and according to our order, finish my contribution.

I beg to support.

*(Question proposed)*

**Mr. Mututho:** Mr. Deputy Speaker, Sir, first of all, I want to congratulate the Minister for Agriculture for going through what many people may not be able to go through. It has been nine years of negotiations. That is nine years of trying to convert colonial laws that had a philosophy of commercializing African agriculture by protecting the supremacy of European agriculture. These statutes done in 1950s had nothing better to offer except trying to protect the Europeans and then gladly trying to introduce Africans to commercial farming. That was the essence of these laws. Therefore, it should not be surprising when you read Cap.347 which is about irrigation. Even if the National Irrigation Board attempted to follow even 50 per cent of that law, they would be killed by the recipient or their subjects. For instance, in part, it says that a person who is 18 years old cannot continue staying in Mwea Irrigation Scheme and so on and so forth. We will continue to talk about these bad laws until maybe another three months. However, critical among these issues and even among other players is a feeling and understanding that nobody meant well for the African farmer. For instance, on milk, according to the law, milk comes from cows only. Anything else is called “secretion”. Anything from the camels and goats are secretions. Seven of the most notorious laws in livestock diseases are not covered under notifiable diseases and are not scheduled.

Mr. Temporary Deputy Speaker, Sir, there are 331 reasons embedded in the statutes which would make us understand why we have all this mess in agriculture, driven by laws that were made by men in Parliament to oppress Africans up to death. My Departmental Committee on Agriculture, Livestock and Cooperatives has had many sittings with all the players. In my report, which I invite hon. Members to look through, I have cited several reports and we have also attended very many meetings, key among them is the one with the Ministry of Livestock Development.

The Ministry of Livestock Development has a very good reason. It is saying that Kenyan agriculture contributes 24 per cent of the national GDP. I see that one of the presidential candidates is in the House right now. We wish he notes these points. At 24 per cent, when you start creating Ministries then – and you will only have 22 Ministries - it is only rational that you create two slots for this contributor of a quarter of our GDP. In other words, if there were to be

four Ministries in the Republic of Kenya, one would be that of the Agriculture. Three would be other Ministries. Now that they are 24, they are not asking for six but for two. That presentation was done by the Ministry of Livestock Development and we concurred with them that as we make these laws and as we look at AFFA, we look at the organization of the Government like the command of the police.

For instance, we have the Administration Police and the regular police. Although both of them are in the law enforcement, they have found it necessary that the command of the fauna is done specifically by the fauna people. These are the wildlife officers and the command of the flora is done by the forestry officers. That position has been agreed upon and I persuade hon. Members to adopt that strategy. That strategy will allow animals to live on their own save for research and the Research Department will have two Deputy Director-Generals. This is a position we have also been able to agree upon with all the parties and this matter will stand resolved.

If you want to export any commodity today, for example, cabbages or any other vegetables, you will have to comply with 23 statutes and chances are that you will not fulfill any of them. This is because if you look at the whole legal framework, you will see that it is meant to oppress us, the Africans, who now rule. There is no reason, as it was mentioned by the Minister last night, why we should have things like Cap. 320 on the African Produce Rule, which clearly says that an African cannot sell eggs between 6.00 p.m. and 6.00 a.m., in Central Province and Nyanza Province. Those are the rules, you can enforce them and the police can arrest you for doing that.

The slow pace of evolution of agricultural laws has forced the Government through several initiatives among them Egerton University, Tegemeo Institute, to do thorough research. What we are having here today is so sweet, save for some little discomfort which is related to livestock. Nigeria has taken the whole Bill and implemented it word by word. Other nations are doing the same. The Crops Bill, which will come here shortly and we need not talk about it now-- Thank you, Minister for Agriculture for donating that one to other people.

With those remarks, I want to confirm that consultations on this Bill have been wider than all the other ones that we have known, including on the SACCO Bill. The feelings by the Ministry of Livestock Development have been taken care of and captured in a report by the Departmental Committee.

*(Mr. Mudavadi left the Chamber)*

We are pleading with hon. Mudavadi as he walks out that as he goes to campaign, please, remember, we need two Ministries in that area, a Ministry for Animal Resources and a Ministry for Agriculture. That should be the spirit. That is why these laws are being structured that way. He concurs.

I support.

**Prof. Kaloki:** Mr. Deputy Speaker, Sir, I rise to support this very important Bill on Agriculture, Livestock, Fisheries and Food Security.

Mr. Deputy Speaker, Sir, I am particularly impressed by this Bill because it is going to provide some solutions to semi-arid areas and generally much needed food security to these particular areas.

Mr. Deputy Speaker, Sir, as I welcome this particular Bill, there are some areas that we need to work on to make sure that we deal with semi-arid areas challenges facing many counties.

I was able to see that devolved systems of government are included here but I do not see specific provisions on how to deal with provision and construction of dams, and making sure that we can have irrigation programmes, although this particular department falls under another Ministry.

Mr. Deputy Speaker, Sir, irrigation deals squarely with production of food. So, we should move in that particular direction. This particular aspect should fall under the Ministry of Agriculture, because irrigation in essence is for providing food security, where there is no rain; irrigation programmes will help.

Mr. Deputy Speaker, Sir, in this particular Bill, there are no specific provisions showing how counties and semi-arid areas in areas such Kitui, Machakos and Makueni counties--- These are counties where you can do large scale farming, so as not to rely on the Government to feed people year in, year out. We need food security to achieve this. In these areas, the climate is good but what we lack is the goodwill from the Government to deal with food security.

The Ministry of State for Special Programmes spends billions of shillings each year to deal with lack of food situation in those areas. This Bill talks about better management and consolidation of agencies so as to move away from colonial programmes that were implemented in the past. One thing that we must appreciate from the colonial Government of the past is that it provided food security. At the moment, if you look at Kibwezi, we have many areas where the colonial Government implemented programmes that exist even today. People still depend on those programmes. As we implement this particular Bill, I would also like to urge the Ministry to be able to look at ways to deal with semi-arid areas such as Kitui County and the northern part of the country. We should make sure that these areas produce food and have some marketing programmes so that you can even have some factories dealing in horticulture so that we can be able to add some value in areas like fruit processing by having some factories established in these areas.

Otherwise, this is a good Bill but we need to strengthen it to make sure that we deal with the difficult areas which are faced by challenges such as drought and other difficult conditions.

I support.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I rise to support this Bill. In supporting, I will try to be very brief. I want to just thank the Minister for consolidating the law. As a lawyer, I know a lot of times it is very difficult when you are seeking to refer to laws and you find that you have 20 pieces of legislation dealing with one subject matter. So, I really want to thank the Minister. It is, indeed, a good trend that this House has taken in this Tenth Parliament.

*[Mr. Deputy Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Prof. Kaloki) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, I also want to thank the Minister for consolidating the different activities that relate to agriculture broadly defined. I only want to just raise some concerns in relation to the Bill.

One, if you look at the Constitution, the national Government has a policy mandate in relation to agriculture. If you look at the county governments, the functions and powers of the county governments are agriculture including crop and animal husbandry, livestock and county abattoirs, plant and animal disease control and fisheries.



Therefore, my concern is that if you actually look at the way the Bill is crafted, it gives the bigger role to the national Government on issues of agriculture when, indeed, this role should be the issue of county governments. If you do not look at it very carefully, it might be a cause of conflict.

I, therefore, would want to suggest that we have a voice of counties provided in the board so that you do not have a conflict because this body is for the national Government but it will be implemented by governors who will see themselves as semi-presidents and they might see that this is the national Government pushing issues down their throats where they have not participated.

So, even though transitionally you would consider that the county governments in a sense are involved, because we see it as both the Senate and the national Government, I would want to suggest that so that we avoid that conflict, you provide for the Board to have either a nominee of the governor's panel or find a way of providing representation of the county government.

I have heard the Minister speaking about the issues of livestock. I have heard the Chairman of the Agriculture, Livestock and Co-operatives Committee trying to convince us very unconvincingly why livestock has been removed. I would want to suggest that it be retained. If there is any need for lobbying, it should be Members of Parliament to be lobbied, but I have not been lobbied and I have not been convinced because the Chairman has not really given any tangible reasons as to why we should divorce livestock. Even if you look at the Constitution, even for the county governments, livestock is provided within agriculture.

Indeed, for me, the greater concern is that naturally livestock would occur most naturally with other forms of agriculture. The one that actually stands out almost like a sore thumb is fisheries. I was actually looking through even the votes that you are consolidating in the First Schedule and I did not see anything on fisheries. Fishing has not been taken very seriously even though it is provided as part of agriculture. You will find that even prioritization in the fishing industry has been done very poorly. For instance, if you look at what we are doing, which is very good, you will find that we have diversified fish farming to areas that are not traditionally fishing areas, and yet the traditional fishing areas are being choked by water hyacinth. So, you will find areas that are not traditionally fishing areas now better producers of fish than the normal fishing areas. Therefore, we are creating inequalities because the other areas can rely on crops. They can really rely on tea, coffee, maize or bananas, but the fishing areas do not have the luxury of relying on those. They are more or less semi-arid. So, if we had an authority that dealt specifically with fishing and then you amalgamate the others to deal with this, then it would be better for me. Nonetheless, if I am convinced to see why we should amalgamate all, including livestock for me, because I am not convinced why it should be out of this, I will support. I urge that we bring it as it is and let Members of Parliament decide whether we are retaining or removing livestock.

Mr. Temporary Deputy Speaker, Sir, on gender representation, I propose that we incorporate the issue of representation in the boards and other bodies.

*(Mr. Ruto walked into the Chamber)*

My good friend, hon. Isaac, has come and I know that he is very passionate about county governments, especially now that he wants to be a governor. I want to convince him that I have raised the issues of concern to him, because we have discussed this Bill with him, especially on issues of the roles of the National Government and County Governments. I think we do not

necessarily need to kill the Bill, but we can incorporate the concerns of the county governments. I will be moving appropriate amendments which will take into account the county government concerns, so that you do not kill devolution through a simple and innocent-looking Bill.

Mr. Temporary Deputy Speaker, Sir, I support.

**The Minister for Livestock Development (Dr. Kuti):** Mr. Temporary Deputy Speaker, Sir, I thank you for giving me this opportunity to contribute to this Bill which I support. It is a known fact that agriculture is the backbone of our economy. All the sectors have registered tremendous growth in the past ten years. We had registered good progress in the agricultural and animal or livestock sectors.

I would like to take this very short time to give the background that there was no major difference that we all needed updated laws in the agricultural sector. We all agree that the laws governing this sector are archaic. However, we wanted to come up with laws that also highlight and ring-fence certain gains that we have already made.

I would like to give a background of the livestock sector. In the 1980s, while previously the livestock sector had made a lot of progress, the Structural Adjustment Programmes (SAPs) brought about by the World Bank forced the Government to set aside livestock as an---

**The Minister for Agriculture (Dr. Kosgei):** On a point of order, Mr. Temporary Deputy Speaker, Sir. This Bill is about agriculture. The Bill on livestock is agreed by the Committee and ourselves and is going to come and we shall speak to it when it is here. I do not think this is the time to speak about livestock. We are speaking about agriculture. We have conceded the ground on that and we ask that we be given the chance to complete this Bill.

**The Minister for Livestock Development (Dr. Kuti):** Mr. Temporary Deputy Speaker, Sir, there was a comment by the Members asking why that issue of separation came up. I felt that, maybe, it was important to show that there were no controversial issues. It is just that we are all moving forward.

**The Temporary Deputy Speaker (Prof. Kaloki):** Hon. Kuti, I think the Mover of the Bill has guided us properly. I want to request you to stick to the Bill. The issues of livestock will come up later and then we will debate them.

**The Minister for Livestock Development (Dr. Kuti):** Mr. Temporary Deputy Speaker, Sir, I support The Agriculture, Livestock, Fisheries and Food Authority Bill. As stated earlier, this Authority, which will become a very powerful authority will be at the helm, and will need to allow the participation of the counties. It is very clear that the Constitution has provided that the agricultural sector is mainly a county function. The services in the agricultural sector have been devolved to the counties. We would also, therefore, like the counties to participate.

**Mr. Keter:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I have listened to the Members, especially the Chairman of the Committee, who has really given us the insight of the Bill. Will I be in order to request that the Mover be called upon to reply, so that we do not repeat issues?

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

**The Minister for Agriculture (Dr. Kosgei):** Mr. Temporary Deputy Speaker, Sir, I just want to assure the Members, especially on the points raised on food security, that we have food security in the Sessional Paper. That is where funding is allocated. We are very much aware of that. As of now, there is a Ministry responsible for northern Kenya. In any case, the whole point

of this Bill - I want to respond to hon. Odhiambo-Mabona's concerns - is to locate offices in all the counties to take care of all things.

With those few remarks, I beg to move.

*(Question put and agreed to)*

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

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, it is now time to interrupt the business of the House. The House, therefore, stands adjourned until Tuesday, 27<sup>th</sup> November, 2012, at 2.30 p.m.

The House rose at 6.30 p.m.