

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Wednesday, 23rd June, 2010**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

Report on the development of small hydro-power generation plants in western Kenya.

*(By the Assistant Minister, Ministry of State for Special Programmes (Mr. M.M. Ali) on behalf of the Minister for Energy)*

Report of the Departmental Committee on Defence and Foreign Relations on the agreements between Kenya international partners on combating pirates in the Indian Ocean.

*(By Mr. Keynan)*

Annual Report and Financial Statement of Kenya Wine Agencies Ltd for the year ended 30<sup>th</sup> June, 2008/2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki) on behalf of the Minister for Industrialization)*

Financial Statement of the Kenya Accountants and Secretaries National Examination Board for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki) on behalf of the Minister for Higher Education, Science and Technology)*

Abstracts of accounts of the City Council of Nairobi for the year ended 30<sup>th</sup> June, 2004 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki)  
on behalf of the Deputy Prime Minister and Minister for Local Government)*

Financial Statement of Kenya Ferry Services Limited for the year ended 30<sup>th</sup> June, 2009, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki)  
on behalf of the Minister for Transport)*

Financial Statement of the Nyayo Tea Zones Development Corporation for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki))  
On behalf of the Minister for Agriculture)*

Financial Statement for the National Campaign Against Drug Abuse Authority for the year ended 30<sup>th</sup> June, 2009, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki) on behalf  
of the Minister of State for Provincial Administration and Internal Security)*

Financial Statement of Kisii University College for the year ended 30<sup>th</sup> June, 2009, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki) on behalf  
of the Minister for Higher Education, Science and Technology)*

Financial Statement for the Keya Railways Corporation for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki)  
on behalf of the Minister for Transport)*

Abstracts of accounts for the County Council of Malindi for the year ended 30<sup>th</sup> June, 2007 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki) on behalf of the  
Deputy Prime Minister and Minister for Local Government)*

Annual Report and Financial Statement of New Kenya Co-operative Creameries Limited for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture (Mr. Ndambuki)  
on behalf of the Minister for Co-operative Development and Marketing)*

## NOTICE OF MOTION

### AGREEMENT BETWEEN KENYA AND INTERNATIONAL PARTNERS IN COMBATING PIRACY IN THE INDIAN OCEAN

**Mr. Keynan:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the agreements between Kenya and international partners on combating pirates in the Indian Ocean.

## QUESTIONS BY PRIVATE NOTICE

### DEATH OF VILLANCE LUKHABI LIBOSHO

**Mr. Kizito:** Mr. Speaker, Sir, I beg to ask the Minister for Co-operative Development and Marketing the following Question by Private Notice.

- (a) What were the circumstances surrounding the death of Ms. Villance Lukhabi Libosho, a fourth year student at Moi University who was taking a degree course in Bachelor of Science (Production Engineering) while on attachment at the New KCC, Miritini Facility?
- (b) What measures has the Minister taken to ensure that the next-of-kin are compensated?

**The Minister for Co-operative Development and Marketing (Mr. J. Nyagah):** Mr. Speaker, Sir, I beg to reply.

But before I reply, I would like to convey my condolences to the family of the young lady who passed away while working as an intern at the New KCC under very sad circumstances.

- (a) The late Villance Lukhabi Libosho was a student at Moi University undertaking a Bachelors Degree in Production Engineering. In February, 2010, under the recommendation of the university and on her own application, she sought to be allowed to undertake an industrial attachment at the New KCC Miritini Factory in Mombasa. She reported at the factory on 12<sup>th</sup> April, 2010 and proceeded on well with her attachment. However, on 4<sup>th</sup> June, 2010, at about 2.00 p.m. while in the company of other members of the engineering team, an ex-Nyahururu pasteurizer machine that was being moved accidentally slipped and fell towards her direction. Unfortunately, she was not able to escape in good time. The machine fell on her and she was seriously injured. She was immediately rushed to Coast General Hospital where she was pronounced death on arrival. The incident was immediately reported at the Changamwe Police Station vide OB No.36/4/6/10 and the police visited and duly took photographs of the scene of accident.

The matter was later reported to the New KCC Headquarters who, in turn, informed Moi University and contacted the family.

- (b) Students undertaking industrial attachment from Moi University are covered under a group insurance scheme taken on their behalf by the university. It is also a requirement of the Directorate of Industrial Training, Ministry of Labour that all industrial attachees be comprehensively insured during the period of their attachments. Ms. Lukhabi was not an employee of New KCC. Having been under an insurance cover provided by the university, it is expected that Moi University will take up the issue of compensation with the insurance company providing the cover. The New KCC, through my Ministry, expresses its sadness at the loss of a young and promising Kenyan.

**Mr. Kizito:** Mr. Speaker, Sir, the Minister has tried to answer the Question. However, I am not satisfied with the answer. This is an act of negligence on part of the New KCC. These were students who were still undergoing training. The fact that they were in that company operating a machine, they should have been accompanied by a supervisor, at least, to take care of any accident.

As we were searching for information, we realized that there might have been some bad blood between the manager of this factory and the girl. From the complaints that we got from her face book, she was pushed and moved from one machine to another, yet she was still a learner. I observe negligence on the part of the company and tend to think that it should have been the responsibility of the company to take care of this girl. Moreso, there was no information given after she died. The management of the company did not, at all, express any condolences or even console the bereaved family. They never sent any representative---

**Mr. Speaker:** Order, Member for Shinyalu! I have given you a lot of indulgence because, of course, I note that you have not had a lot of opportunities to ask Questions. But can you quickly move to the Question then?

**Mr. Kizito:** Mr. Speaker, Sir, I would like the Minister to address the issue of compensation. He should also address the issue of negligence on the part of the company as well as give us reasons why the company did not even send a representative to the funeral to express their condolences.

**Mr. J. Nyagah:** Mr. Speaker, Sir, as I said from the beginning, it is regrettable that a situation like this should arise, especially for a young promising future engineer like this young lady. I want to confirm that part of her training internship was to be exposed to the entire engineering sector. So, it is true that she was moved from machine to machine. In the short period she was going to be with the company, we were expected to give her maximum exposure in terms of the range of machines that she would deal with. In fact, on this particular day, she was working on a building that is under construction. When this machine was moved around, many staff members came to the site where this was going on. It is very unfortunate that the girl was on the other side of the machine, which was sloppy and it slipped and smashed her. That is basically what happened. It is very regrettable.

In an emergency of this kind, the first thing was to get her out to hospital. The next thing was to alert the police immediately. It took some time for them to scroll her phone book and identify possible telephone numbers of people who appeared to have been called several times. At about 8.00 p.m. in the evening, they caught up with the father in Kakamega. We informed him about this unfortunate incident. Probably, other

people could have got the information before him. We wanted to break the news in a manner that the family could handle. In fact, the management sent some money through M-Pesa to the father and asked him to go to their offices the next morning. He did not seem to know where the child was, which was part of the problem. It was very unfortunate. We paid travel expenses for the father to come the next day all the way to Mombasa.

I regret that we were not represented at the funeral, but wish to confirm that the staff immediately collected some money which is ready to be sent to the family. In fact, we are making arrangements for that, plus a token contribution from the company. There is no legal requirement for us to do so, but due to the fact that she was an intern in our organization, a decision has been made for the staff to make contributions as well as the company. This contribution will be sent to the family in Kakamega. We contacted Prof. Some, who is in charge of this at the university and discussions with regard to insurance covers were held. I am confident that the insurance scheme will be making the legal compensation. Again, it is with great regret that this incident happened. I sent my condolences to the Member of Parliament, the family and the people of that community.

**Mr. Odhiambo:** Mr. Speaker, Sir, loss of life is something that should not be taken lightly. A factory like this one should put in place devices that can be used by trainees without endangering their lives. What measures is the Minister taking to ensure that such factories have done the necessary, so that trainees and other workers are not endangered while rendering services in the factories?

**Mr. J. Nyagah:** Mr. Speaker, Sir, I held discussions with the Chief Executive this morning and one of the things that we have agreed is that any intern working in the company, whether in the engineering or any other active area, will, as much as possible, be kept away from that kind of situation. They will try to put them in offices. However, in engineering and production areas, there is a limit as to what we can do. The Managing Director has undertaken to discuss the issue internally and see how best to protect lives in the company, especially of interns, who are not familiar with the workings of machines and facilities that we have. There are many machines moving all over the place. That is the discussion that I had with the Chief Executive this morning. She undertook to go and see how they can improve the systems of communication with interns.

**Mr. Were:** Mr. Speaker, Sir, this girl was in those premises legally. She was not an intruder. I am surprised to hear the Minister saying that the New KCC has no liability. It is up to the New KCC to ensure that whoever is in the premises legally is protected. Maybe just an advice to the family members, they have a claim from the New KCC. Did the company have a public liability policy which covers the members of the public who enter those premises legally?

**Mr. J. Nyagah:** Mr. Speaker, Sir, one of the conditions of interns coming to the New KCC is that a student will not be eligible for remuneration. Secondly, when an intern is involved in an accident while on duty, the company will not be held responsible. They should be insured against this by their universities. Thirdly, the student will have to abide by the company rules and regulations. Those are the guidelines that we operate under as universities send students to us.

**Mr. Nyamweya:** On a point of order, Mr. Speaker, Sir. In respect of the last aspect of the Minister's answer, there is, of course, the policy of occupier's viability, which does not even require a policy as such. If you are on the premises lawfully, it does

not matter whether you have a policy or not. You have a duty of care to persons who are lawfully on all those premises. So, I do not think it is a question of whether there was a policy or not. He is admitting that this took place, and that the New KCC Limited is liable to compensate that person.

**Mr. Speaker:** That is fine, Mr. Nyamweya. A good opinion! It helps the Minister. Last question, Mr. Kizito!

**Mr. Kizito:** Mr. Speaker, Sir, I think the Minister is not serious in handling this issue. This is the life of a young Kenya – a Shinyalu person – from a very poor family. I would like the Minister to accept negligence on the part of the New KCC Limited because the students who were there were not wearing helmets. The particular student was crashed. So, I would like---

**Mr. Speaker:** Order! Order, Member of Parliament for Shinyalu! It is Question Time! Ask the last question!

**Mr. Kizito:** Mr. Speaker, Sir, I have two questions. I would like the Minister to accept liability and also accept negligence, on the part of the New KCC and accept to pay for the compensation of this child.

**Mr. J. Nyagah:** Mr. Speaker, Sir, because of the arrangement under which an intern comes to the New KCC Limited, which I have explained, I am not in a position to accept liability or negligence. I am very serious in trying to do whatever I can to help this young lady's family along the lines I have described. I will be very happy to follow up on the leads that hon. Nyamweya has given me to find out if there is a way in which we can help. However, at the moment, I cannot accept liability or negligence. I am prepared to follow up the matter on the basis of the advice that I have been given by hon. Nyamweya. Once again, I am sorry to the family of this young lady.

**Mr. Speaker:** Next Question, Member of Parliament for Naivasha!

REPORTS BY PRICEWATERHOUSECOOPERS/  
EMU/CID ON MAIZE AND FOOD SECURITY

**Mr. Mututho:** Mr. Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Finance the following Question by Private Notice.

(a) Could the Deputy Prime Minister and Minister for Finance provide the reports by PricewaterhouseCoopers, the Efficiency Monitoring Unit (EMU) and the Criminal Investigation Department (CID), and all related documents and annexures thereon touching on maize and food security?

(b) Could he indicate and give details of all the waivers on maize importation during the 2009/2010 Financial Year?

(c) Could he also give details of all pending approvals awaiting deliveries?

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Speaker, Sir, I beg to reply.

(a) The report by PricewaterhouseCoopers was submitted to the KACC for further investigations and possible prosecution of suspects. I am not aware of any report by the EMU and the CID touching on maize and food security.

(b) Importation of maize on duty-free basis was undertaken between 1<sup>st</sup> July, 2009 and 16<sup>th</sup> January, 2010 during the 2009/2010 Financial Year. The total duty foregone as a result of this waiver amounts to Kshs17, 696,940,139.

(c) There are no pending approvals or waivers awaiting any deliveries.

Thank you.

**Mr. Mututho:** Mr. Speaker, Sir, you have heard the Deputy Prime Minister and Minister for Finance admit that the report exists, and that he has given waivers equivalent to Kshs80 million per constituency in this maize scam. You have heard him make a very dangerous remark – that we are subordinate to the KACC. If, indeed, this House can ask for a report and the KACC---

**Mr. Speaker:** Order! Order, Mr. Mututho! This is Question Time. Do not repeat the answer which the Minister has given. Just ask questions.

**Mr. Mututho:** Mr. Speaker, Sir, is he in order to imply that this House is subordinate to the KACC, who are the recipient or custodians of the report that the House is asking for?

**Mr. Kenyatta:** Mr. Speaker, Sir, I am not saying that this House will play second fiddle to the KACC. I am just saying that this report was handed over to the KACC. So, the appropriate body that is now in control of that report is the KACC.

**Mr. Abdirahman:** Mr. Speaker, Sir, under part “b” of the Question, the Deputy Prime Minister and Minister for Finance is expected to give details. He said that he gave waivers amounting to Kshs17 billion. I would like to know the details of these transactions. Who are the people who were given the waivers of Kshs17 billion?

**Mr. Kenyatta:** Mr. Speaker, Sir, I do not have the list but if this House requests, I can provide it.

**Mr. Speaker:** Fair enough!

Mr. Mungatana!

**Mr. Mungatana:** Mr. Speaker, Sir, could the Deputy Prime Minister and Minister for Finance confirm or deny that in fact, the Ministry paid Kshs25 million to PricewaterhouseCoopers to produce this forensic report on behalf of the public, and in view of the fact that public money was utilised, explain why he finds it difficult to table that report for consumption by Parliament?

**Mr. Speaker:** Order! Order, Member of Parliament for Garsen! You are allowed to ask one question at a time. You have already asked two questions. So, which one do you want answered?

**Mr. Mungatana:** Both of them, Mr. Speaker, Sir.

**Mr. Speaker:** Deputy Prime Minister and Minister for Finance, could you proceed and answer?

**Mr. Kenyatta:** Mr. Speaker, Sir, indeed, we commissioned PricewaterhouseCoopers to do this report. We did this on behalf of the Government and the public, and I have no difficulty in tabling this report but, as I said, this report is now in the hands of the KACC. If directed by the Chair, I will table the report.

**Mr. Speaker:** You have not answered the first part of the question. Confirm whether or not you paid Kshs25 million to PricewaterhouseCoopers.

**Mr. Kenyatta:** Mr. Speaker, Sir, I do not have the exact figure, but we did make a payment. I can confirm that figure.

**Mr. Abdirahman:** Mr. Speaker, Sir, the question on maize keeps on coming to this House months and years on end, and it remains unresolved. We know that it cuts across Ministries, and that it has reached the highest level but, to date, it has not been resolved.

Nevertheless, let me ask my question. Based on the information given by the Deputy Prime Minister and Minister for Finance, which is of great interest to Kenya in general, could he confirm, now that he has not tabled the report, that the best way of handling this matter is referring it back to the Committee on Agriculture, Livestock and Co-operatives or himself providing appropriate information, so that we can, once and for all, resolve this issue, which haunts the minds of Kenyans all the time?

**Mr. Kenyatta:** Mr. Speaker, Sir, as I said we commissioned the report which called for further investigations. We handed over the report to the investigative authorities. If I am directed I can avail the report. However, it is now with the Kenya Anti-Corruption Commission (KACC).

**Mr. Speaker:** Ask the last Question the Member for Naivasha!

**Mr. Mututho:** Mr. Speaker, Sir, now that it is in the public domain that all the officers mentioned and all Permanent Secretaries in that report have been reinstated, it means that the KACC has nothing to do with it. Could the Deputy Prime Minister and Minister for Finance be compelled to lay on the Table that report immediately so that we can have a look at it?

**Mr. Speaker:** Order! Mr. Deputy Prime Minister and Minister for Finance, I have been asked whether or not I can compel you to table the report. I am not about to do that because this matter is under investigation by the KACC. I would rather that it completes its investigations so that they are not prejudiced or an excuse given by the KACC that they could not complete the investigations because they were compelled to table the report in the House. Mr. Deputy Prime Minister and Minister for Finance you can indicate how long those investigations will take so that the House has an idea.

**Mr. Kenyatta:** Mr. Speaker, Sir, I do not have the authority or capacity to direct the KACC. Maybe that Question can be handled by the Ministry of Justice, National Cohesion and Constitutional Affairs or by the relevant Departmental Committee which the KACC reports to.

**Mr. Speaker:** Mr. Deputy Prime Minister and Minister for Finance, we expect investigations to be expedited or to be carried out quickly by all investigative organs whether it is KACC, the Criminal Investigation Department (CID) or the National Security Intelligence Service (NSIS). So, I will defer this Question to Tuesday, next week for you to do only one thing; come and indicate when the KACC will complete their investigations. They cannot go on forever. Certainly not!

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

**Mr. Speaker:** Order, Mr. Mungatana! This matter must rest there. Sometimes, matters must rest at reasonable a point.

**Mr. Kenyatta:** Mr. Speaker, Sir, I would be more than happy to oblige but I do not have the authority to direct the KACC. So, I can request but that does not necessarily mean that the KACC is bound to give me any information. That is why I was saying that there are other arms of the Government which can perform that function.

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

**Mr. Speaker:** Order, the Member for Naivasha! I Have directed the Deputy Prime Minister and Minister for Finance to get an indication from the KACC. It is not for you to compel the KACC to give you an indication. Get the indication and come and inform the House on Tuesday at 2.30 p.m. The KACC is accountable to this House!

**Mr. Kenyatta:** I will do as directed Mr. Speaker, Sir.



**Mr. Speaker:** Thank you.

Let us move on to the next Question by the Member for Migori!

**Mr. Pesa:** Mr. Speaker, Sir, I seek the indulgence of the Chair because I have received a copy of the written answer but it still pleads for *sub judice* which is against the ruling you gave when I asked the Question on 13<sup>th</sup> April, 2010. However, I beg to ask the Question.

*Question No.135*

NON-PAYMENT OF DUES TO RETIRED  
TEACHERS BETWEEN 1997 AND 2007

**Mr. Pesa** asked the Minister for Education:-

(a) what the Ministry's position is on the dues of thousands of teachers who retired between 1997 and 2007 and are yet to receive money running into millions as was ordered by the High Court two years ago,

(b) why the Teachers Service Commission (TSC) has deliberately refused to implement court orders issued by the High Court sitting in Nakuru in 1997 soon after the negotiated salary deal between the Government and the Kenya Union of Teachers (KNUT); and,

(c) whether he could state the position of the Pensions Department and the Treasury on the matter and also indicate how much interest will be paid on these monies considering that the affected teachers have incurred a lot of expenses in the hope of being paid by the Government.

**Mr. Speaker:** Fair enough! Minister for Education!

**The Minister for Education** (Prof. Onger): Mr. Speaker, Sir, I beg to reply.

When this Question was put before the House for answering, there were some facts that were not laid before this House on the question of the *sub judice* rule concerning this matter. With your indulgence, I intend to lay on the Table of this House the relevant documents indicating and substantiating that the rule of *sub judice* would still apply on this matter.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. In view of what has been said by the hon. Member for Migori, if it is the view of the Minister that the order given by the Chair should be reversed, then he must comply strictly with the provision of Standing Order No.79(2) which says:-

"It shall be out of order to introduce an argument on any specific question upon which the House has taken a decision during the same Session, except upon a Motion to rescind that decision made with the permission of the Speaker."

So, is it in order for the Minister to proceed to request that the decision be rescinded without making a formal application to the Chair?

**Mr. Speaker:** Order, Mr. Olago! This is a matter that can be resolved easily. As a matter of fact, hon. Members, the Minister had drawn my attention to this matter. The only problem that the Minister has got into is that he appears to be asking the Chair to revisit the ruling that I had earlier made but that is not the indication the Minister made to me. The indication that the Minister made to me is that he wants to make a fresh claim for the *sub judice* rule to apply in which case you will be able to distinguish that from

Standing Order No.79. It is a new claim, Mr. Olago. From the communication I have received, he wants to make that claim on a different basis. His Assistant Minister made the claim on the basis that there was a High Court case, but the Minister is making the claim on the basis that there is a Court of Appeal case. So, it will be a different claim.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. I do not want to appear like I am arguing with the Chair but my understanding of the Standing Orders is that if it is the view of the Minister to raise this issue again, then he is substantively contradicting what the Chair had ruled. So, to that extent he must comply with Standing Order No.79.

**Mr. Speaker:** Order, the hon. Member for Kisumu Town West. You do not appear to have taken notice of what I said. That ruling was on the basis of a claim for *sub judice* premise on the High Court Case. This is a new claim that there is in fact a Court of Appeal case and not a High Court case. My finding that the matter was not *sub judice* was on the basis of the facts that were laid on the Table of the House by the Assistant Minister. The only document that he laid before the House was a judgement of the High Court. If you have a judgement in a case, it means that the case is finalized. However, now the claim is on the basis of a new case which is in the Court of Appeal. It may be related to the High Court case but the pleadings relating to the Court of Appeal would not necessarily be the same as the High Court case and in this case, the judgement that was laid on the Table by the Assistant Minister.

**Mr. Olago:** I am guided, Mr. Speaker, Sir.

**Mr. Speaker:** Thank you. It is good to explain to lawyers so that they know where they are.

Mr. Minister, you may then proceed on that basis.

**The Minister for Education** (Prof. Ongeru): Mr. Speaker, Sir, I may now invite the hon. Members to look at Standing Order No.80 (2) which says:-

“A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.”

Standing Order No.80 (3) (c) says:-

“Civil proceedings shall be deemed to be active when arrangements for hearing such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance.”

Standing Order No.80 (3) (d) says:-

“appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance.”

I wish to inform this House that indeed there was a civil suit which was brought against the Teachers’ Service Commission in the High Court in Nakuru. It was adjudicated up and a verdict given. Because of the adverse effects that the TSC stood to reap out of that court proceeding and the court judgment, it was, therefore, necessary for the TSC through the Attorney- General to make an appeal in the Court of Appeal. That appeal was launched in the Court of Appeal and the matter has been laid down for hearing on 29<sup>th</sup> September and 1<sup>st</sup> October, 2010. I will lay all the papers on the Table. If I proceed to answer this Question, it will definitely be prejudicial to the TSC because there are many issues that are tied up to that court ruling that will obviously auger very

badly for that until this matter is fully heard and determined by the appellate court. Thank you, Mr. Speaker, Sir.

**Mr. Mungatana:** On a point of order, Mr. Speaker, Sir. First, I want to appreciate the preparedness of the Minister. We appreciate that as a House. But still on the same Standing Order 80(5), it says: “Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the House or a Committee.” The point of order I am drawing here is that there are thousands of teachers who were affected by this. In a way, the Government can make pronouncements in terms of policy not necessarily delving into the matters that are pending before the court. We want to know what the Ministry’s position is on the thousands of teachers who retired between 1997 and 2007. It is a policy issue. So I was requesting if you can revoke your powers under Standing Order No.80(5) to allow the Minister to speak on the policy matters so that the teachers who have retired including those from very many parts of the country can know what their fate is. It would help us move one step forward. This Question has drawn a lot of interest from all of us. That is why we want the Minister to say something on policy.

**Mr. Speaker:** Mr. Minister, do you want to react to that at all before I give my direction on the matter?

**The Minister for Education** (Prof. Ongeru): Mr. Speaker, Sir, given the dimension of this problem, it would not add value at this stage in time. The matter before the Court of Appeal is very weighty and has far reaching implications on both the pronounced policy and the level at which this matter was renegotiated. Therefore, there are grey areas that do need the court of appeal to determine the direction. In as far as the policy issue is concerned, we thought the matter had been put to rest until this issue came up in the Court of Appeal. They raised issues that were far reaching in terms of cost to the Government. The Government went back through the TSC, through the Office of the Attorney-General to appeal against this ruling. I think in fairness to both parties, it is only fair that the Court of Appeal is given the opportunity to look at the pros and cons of these matters and be able to adjudicate on the matter. Then thereafter if there are any other issues arising, then we will be able to deal with them as policy issues as a Government. So my indulgence to the Chair this afternoon is to request that, indeed, this matter is *sub judice* and it is before the court of appeal. It may be information that may not have been availed to the Speaker at the time of making the ruling under Standing Order Number 79-

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**Mr. Speaker:** Order, Mr. Minister! Do not revisit that issue. This is a new claim.

**The Minister for Education** (Prof. Ongeru): Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** I will deal with it as such. So I order that this Question be deferred to Thursday next week at 2.30 p.m. It will appear on the Order Paper and I will give my finding on claim.

*(Question deferred)*

Order, hon. Members! I am afraid the next Questions, because this is an allotted day, will have to be deferred because we must move to the next business not later than 3.30 p.m. So we are not doing very well.

*Question No.163*

STATUS OF FIBRE OPTIC CABLE PROJECT

*(Question deferred)*

*Question No.196*

DETAILS OF FUEL LEVY FUNDS ALLOCATION

*(Question deferred)*

*Question No.224*

PROGRESS OF DISCUSSIONS ON USE OF COAL IN DRYING TEA LEAVES

*(Question deferred)*

*Question No.243*

MIXING OF HERBAL MEDICINE WITH  
CONVENTIONAL MEDICINE

*(Question deferred)*

**PRIME MINISTER'S TIME**

*Question No. QPM/005*

REINSTATEMENT OF SUSPENDED CIVIL SERVANTS  
INVOLVED IN FPE/MAIZE SCANDALS

**Dr. Khalwale** asked the Prime Minister what informed the Government's decision to reinstate the civil servants who had been suspended on suspicion of involvement in the free primary education and maize scandals.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, this particular Question has actually been referred to me by the Prime Minister so that I can answer it.

Mr. Speaker, Sir, I beg to answer---

*(Dr Khalwale stood in his place)*

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

**Dr. Khalwale:** On a point of Order, Mr. Speaker, Sir. When the Office of the Speaker approved this Question and sent it to the Prime Minister, it was because of the realization that this was a matter that cuts across very many many Ministries including Office of the President, Ministry of Agriculture, Treasury and so on. If the Prime

Minister for whatever reason might have lost his voice, he is not able to answer, the best he could have done is probably to pick one of his deputies instead of asking the Minister of State for Provincial Administration and Internal Security, who I am sure will not be capable of discharging his duties on this Question.

**Mr. Speaker:** Order, Member for Ikolomani! Hon. Members, as a matter of fact, we have given directions on situations such as this or circumstances such as are prevailing now and those directions are on record. They are clear that the Prime Minister has liberty to delegate any questions that may be directed to him to other Ministers as long as they are competent to provide the necessary answers and as long as they belong to the Cabinet. So we have given direction on this matter before and that is on record.

Proceed, Mr. Minister!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Thank you very much, indeed, Mr. Speaker, Sir. I beg to answer.

The Coalition Government directed that investigations be conducted by the PricewaterhouseCoopers on the management of subsidized maize imported in 2008 and 2009. The report of PricewaterhouseCoopers dated 2009, recommended that further investigations be conducted by the Kenya Anti-Corruption Commission and other Government agencies. The report also acknowledged that the findings of the investigations were inconclusive and there was no need therefore for further evidence before concluding the matter. KACC has completed the investigations and arrived at the following conclusions:

(a) that the structures, systems and procedures at the National Cereals and Produce Board for the sale and distribution of the subsidized and Strategic Grain Reserve maize are outdated and weak and require urgent review and strengthening.

(b) that there was no evidence of criminal culpability on the part of any of the civil servants suspended over maize saga.

(c) that while undeserving businessmen were able to buy and sell subsidized maize from the NCPB, this act in itself did not amount in law to a criminal act. Indeed, the available evidence does not disclose any criminal offence.

(d) the very importation of the subsidized maize was done above board in compliance with the law and on the advice of the Public Procurement Oversight Authority (PPOA); and,

(e) the disciplinary administration action should be taken against some civil servants who appear to have been less judicious in discharging their duties. These disciplinary measures include transfers, reprimand, suspension, *etc.*

Mr. Speaker, Sir, as regards the free primary education saga, audits by the Internal Audit Department of the Ministry of Finance and by the Kenya National Audit Office reveals that imprest in the sum of Kshs103 million appears not to have been supported by genuine expenditure returns. There appears also to be instances of funds being allocated to some undeserving schools. These civil servants who have failed to account for their imprests have been arraigned in court. In the case of the Permanent Secretary in the Ministry of Education at the time, no evidence of criminal culpability has been established against him. The Government has further directed officials in the Ministry of Finance and the Ministry of Education to co-operate fully with the donors who are involved in the audit of the Free Primary Education Programme. The civil servants were

suspended for three months to allow impartial investigations by the Kenya Anti-Corruption Commission (KACC) and other Government agencies.

Mr. Speaker, Sir, with the investigations completed, the Government has reinstated the officers against whom there was no evidence of criminal culpability. The Government is also in the process of re-engineering the operations of the National Cereals and Produce Board (NCPB) to avoid a repeat of the unfortunate events by unscrupulous businessmen buying and selling subsidized maize at exorbitant prices.

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. We are at a loss and we would really want your guidance on this issue. Your earlier ruling was that the Prime Minister, indeed, can delegate or can refer Questions to other Ministers, which we have no issue with. But according to the Standing Orders, that can only be done outside the Prime Minister's Question Time, which means it is in order for the Prime Minister to refer the Question to hon. Saitoti, but that Question should not be answered during the Prime Minister's Question Time. The Standing Orders are very clear. In his absence, the Prime Minister can delegate his business to his deputy.

So, Mr. Speaker, Sir, I wish to seek your guidance on that issue.

**Mr. Speaker:** What Standing Order are you referring to?

**Mr. C. Kilonzo:** Mr. Speaker, Sir, it is Standing Order No.40 (3). With your permission, I may read it out for the benefit of hon. Members.

**Mr. Speaker:** Proceed!

**Mr. C. Kilonzo:** Standing Order No. 40 (3) reads:

"In the absence of the Prime Minister, a Deputy Prime Minister designated by the Prime Minister may make a Statement or answer Questions under this Part."

Mr. Speaker, Sir, our good friend, Prof. Saitoti, is not a Deputy Prime Minister.

*(Applause)*

He would have answered the Question, but not during the Prime Minister's Question Time.

**Mr. Speaker:** Order, hon. Members! Hon. Members, as I conceive and understand Standing Order No. 40, I find that the directions I previously have given will cover this situation, that the Prime Minister is at liberty to delegate the answering of a Question or issuance of a Statement to a Minister other than the Deputy Prime Minister, or anyone of them for that matter. If you look at the wording of Standing Order No. 40, none of the provisions referred to by the hon. Member for Yatta, with utmost respect, is mandatory. None! That, therefore, gives discretion to the principal holder of the office. I am afraid that has to be so. If it was mandatory, it would be a different situation.

I thank you.

Are there any requests for clarification? Yes, Dr. Khalwale?

**Dr. Khalwale:** Mr. Speaker, Sir, there are two arms to this Question that will require clarification; one is the maize scandal and the other one is the education scandal. I would like to beg your indulgence to seek two clarifications each under the maize and under the education issues.

**Mr. Speaker:** Yes, you have the accommodation; proceed!

**Dr. Khalwale:** Thank you, Mr. Speaker, Sir. Could the Minister tell us why the Government ignored recommendations made by the KACC and the Inspectorate of State

Corporations contained on pages 4, 5, 6 and 8 of the probe report that the following officers be subjected to disciplinary action: Romano Kiome, Ali Mohamed and Joseph Kinyua, three of them Permanent Secretaries; senior officers include Dr. Songa, Mr. Mariga, Mr. Maalim and then under the NCPB, Prof. Gideon Miso, Robert Langat and James Boit?

The second clarification under the maize scandal is: could the Minister clarify what action he is going to take or he is contemplating taking against the then Minister for Agriculture, hon. William Ruto, who presided over the irregular distribution of maize, and which this probe report indicates that he ignored a Cabinet directive to sell the maize only to millers, and ended up enriching private business people?

Mr. Speaker, Sir, under the free primary education, I have two questions. One, what recommendations were made on Prof. Karega Mutahi and senior officers in the Ministry of Education over the deliberate under-funding of the free primary education that led to a loss of Kshs5.524 billion over the following years: 2004, Kshs622,500,000; 2005, Kshs1.162 billion; 2006, Kshs2.95 billion; 2007, Kshs415 million and 2008, Kshs420 million? Could the Minister table the probe report for the free primary education, because I have been unable to get it but I have these figures.

Finally on this one, why did the Acting Director of the KACC flout Sections 35 and 36 of the Anti-Corruption and Economic Crimes Act, which provide that these kind of reports must be routed through the Attorney-General, the Attorney-General forms an opinion and then he advises the Government for it to act? Why did they lock him out and ended up making these kind of dangerous decisions?

I thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Minister, please, keep notes!

**Mr. Abdirahman:** Mr. Speaker, Sir, you have just given directions in relation to maize under Question No.2 by Private Notice. We have just heard the Minister of State for Provincial Administration and Internal Security, representing the Prime Minister on this Question say that the Kenya Anti-Corruption Commission (KACC) has concluded investigations. The issues they have come up with include weakness in institutional structures of the National Cereals and Produce Board (NCPB). There was no evidence of criminal nature. Who is telling the truth to this House and Kenyans on the status of maize investigations?

**Mr. Mungatana:** Mr. Speaker, Sir, there is a clarification I would like to get from the Minister. The scheme that was introduced in 2008 was supposed to benefit the consumers who are the common *wananchi* at home. The Government was supposed to deal with the rising prices of maize at that time. This is how the Strategic Grain Reserve (SGR) stocks were involved in a process through the NCPB to try and stabilize the prices for common *wananchi*. Instead of that policy achieving that purpose, what happened is what the Minister for Finance told us. There was a loss of Kshs17.6 billion in terms of taxes. This is money that went to the waters. Now we are told that the officers who were suspended ostensibly because of some reasons are completely innocent of criminal charges.

Mr. Speaker, Sir, Kenyan people are asking what happened and how they will recover that money? Is it not possible for the Minister to surcharge the officers who show negligence? The collective actions of the trustees of SGR, Ministry of Agriculture and the specially created *ad hoc* committees were substantially to blame for the loss that the

people of Kenya suffered through this maize scandal. Could the Minister tell this House who is to bear this burden? Who is going to be surcharged if in the opinion of the President these people should be reinstated to their official positions? Who should bear the surcharge? Who is going to pay for this?

**Mr. Speaker:** Order, Member for Garsen! You are tending to be repetitive now!

**Mr. Lessonet:** Mr. Speaker, Sir, now that it looks like there was no criminal act by all those who had been suspended, when is Dr. Misoi and the team at the NCPB going to be reinstated?

**Dr. Monda:** Mr. Speakers, Sir, as a result of the new findings, as presented by the Minister, donor funding for the free primary education was suspended during the scandals, could the Prime Minister tell the House the current status on donor funding to the education sector?

**Mr. Speaker:** Okay! Prof. Saitoti, you may now respond to all those requests for clarifications.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I think a great deal of what has been asked can be covered fully in the Report by the KACC.

In its own Report to the Office of the President, Head of the Civil Service and Secretary to the Cabinet, if I went case by case, it would become fairly clear the basis or rationale which led to the reinstatement of these civil servants to their positions. Some of them, of course, have been placed elsewhere.

It was reported by KACC on the 10<sup>th</sup> of June 2010 and the subject was: Investigation of the Senior Officers under Suspension. As is well known they were as follows:-

- |                      |   |  |
|----------------------|---|--|
| 1. Dr. Ramano Kiome  | - | The permanent Secretary Ministry of Agriculture.                   |
| 2. Mr. Ali Mohammed  | - | The Permanent Secretary, Ministry of State for Special Programmes. |
| 3. Mr. Joseph Kinyua | - | The Permanent Secretary, Treasury                                  |
| 4. Mr. Caroli Omondi | - | Chief of Staff, Office of the Prime Minister.                      |

Then we have the following officials of the NCPB:-

- |                        |   |   |
|------------------------|---|---|
| 1. Prof. Gideon Misoi  | - | The Managing Director.                      |
| 2. Mr. Robert Langat   | - | General Manager.                            |
| 3. Mr. James Boi       | - | The Sales Manager.                          |
| 4. Mrs. Anne Kamau     |   |   |
| 5. Mr. Cornel Gelechi  |   |   |
| 6. Hon. Bare Shil      | - | Former Member of Parliament                 |
| 7. Prof. Karega Mutahi | - | Permanent Secretary, Ministry of Education. |

The Report says that the Commissioner has been carrying out investigation into the various allegations against senior Government officials who had been suspended and allegations of various impropriety shown below:-

(i)Allegations of irregular sales and distribution of the SGR maize, including the importation of maize to mitigate food shortage.



(ii) Allegation of misappropriation of funds at the Kenya Education Sector Support Project (KESSUP).

(iii) Allegation of irregular fraudulent disbursement of the exchange gain through double allocations to certain schools and to undeserving citizens.

Mr. Speaker, Sir, the Commission consequently instituted inquiries into these areas--- I am begging your indulgence to quote what the Report says because it is extremely important. This is an independent body. We have to rely on an independent body to get the next step the Government has to take. That is why the institution is there.

**Mr. Speaker:** Order, Minister! You may proceed but note that this is taken under the Prime Minister's Time. The Right hon. Prime Minister may also want to--- So, accommodate the House!

**The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti):** Mr. Speaker, Sir, I agree. I will move as quickly as I can.

However, on the matter of the SGR, the investigation is a State case by case. In the case of Dr. Romano Kiome, he was suspended after he was adversely mentioned in the forensic audit report of the PricewaterHouseCoopers on the sale and distribution of the SGR. The Report faulted the SGR trustees for their failure to effectively supervise as trustees, the efficient distribution of maize release under the authority of the NCPB who were agents. The SGR trustees comprise of the Permanent Secretaries of the following Ministries; Ministry of State for Special Programmes, Ministry of Agriculture and the Treasury. Dr. Kiome was further faulted in the said Report for failure as the Permanent Secretary for the Ministry of Agriculture to appropriately advise the Government on the food situation in the country and also failure to effectively supervise the NCPB which falls under his Ministry. Dr. Kiome had earlier been interviewed by the Commissioner on the allegation that he authored a note to the NCPB Managing Director seeking favour on behalf of his friends on the allocation of maize. The investigation was pursuant to the allegation that senior Government officials wrote notes to the NCPB Managing Director seeking to influence the allocation of maize.

The Commissioner has revealed the evidence collected in the course of his investigation, including the PriceWaterHouse Report and has found no evidence of criminal culpability against Dr. Kiome.

Mr. Speaker, Sir, the Commission is, however, in the process of taking action against the trustees for their failure to effectively supervise the distribution of the Strategic Grain Reserve (SGR). What was, therefore, recommended to the Attorney-General was to carry out disciplinary measures. It turned out that the disciplinary action can only be carried out in the Office of the Prime Minister because he is the one who supervises and also by the Head of the Civil Service. It is conceived that some action was taken on those people because they were suspended for four months with half pay. That is what is concerned to have been the disciplinary action. Mr. Mohamed, Permanent Secretary, Ministry of State for Special Programmes, by virtue of being---

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I have patiently been watching the Minister reading and he is reading from some piece of paper here and yet, if he must bind this House to the findings of that probe, he should be reading from the report on the probe. I have a copy of that probe report with me here and what he is reading has nothing to do with the recommendations in the report. That is because in that

probe, there are only three people who had been cleared. On page 10, the recommendation is as follows:-

“That in view of the foregoing observations, it is recommended that the appointing authority may consider reviewing the administrative action already taken against Dr. Mohamed Isahakia, Mr. Caroli Omondi and a Mrs. Ngenich. For the rest of the Permanent Secretaries they are recommending - one after another - that action should be taken against them.

*(Applause)*

So, why does he not table this report in the House since he has refused to allow the Attorney-General to do the tabling, so that we can cross check him? I table this one so that he can be---

**Mr. Speaker:** Dr. Khalwale, what report are you referring to?

**Dr. Khalwale:** Mr. Speaker, Sir, I am referring to the report by the Kenya Anti-Corruption Commission (KACC) together with the Inspectorate of State Corporations that was ordered by the President. The findings were made public---

**Mr. Speaker:** Order! Is that report authenticated? Is it signed?

**Dr. Khalwale:** Yes, Mr. Speaker, Sir, I can pass it over to you.

**Mr. Speaker:** Can I have an opportunity to look at it? Then I will decide whether I want it to be admitted.

*(Dr. Khalwale handed the report to the Speaker)*

Order! Dr. Khalwale, I do not see any signatures on this report unless there is a page missing. Maybe, you will want to approach the Chair.

*(Dr. Khalwale approached the Chair)*

Order, hon. Members! I am not satisfied that this report is signed. But I want to ask the Minister: Are you aware of this report?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I am not aware of that!

**Hon. Members:** Ah!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I am not aware of a report which is not signed! Dr. Khalwale has said that I was reading from a piece of paper. Of course, a paper is a paper but the point of the matter is that---

**Mr. Mungatana:** On a point of order, Mr. Speaker, Sir. Clearly, when the Minister was answering, he said the KACC has done investigations and it has concluded. So, will I be in order, therefore, to request the Chair to ask the Minister to table that report? Then we can compare whether it is in fact the same that he is referring to or he is talking about a different thing!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I have here a communication!

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

The assumption is that, since I did not table the report here, then what I am reading may very well be misleading. I want to inform this House that here is a clear letter---

**An hon. Member:** From where?

**The Minister of State for Provincial Administration and Internal Security**

(Prof. Saitoti): It is a report!

**Mr. Speaker:** Order, Prof. Saitoti! Address Mr. Speaker or the House!

**The Minister of State for Provincial Administration and Internal Security**

(Prof. Saitoti): Mr. Speaker, Sir, you are the one I am addressing. I said here that this is a statement that is properly written to Amb. Muthaura, Head of the Public Service and Secretary to the Cabinet, Office of the President, dated 10<sup>th</sup> June, 2010. The subject is: Investigation of Senior Government Officials.

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

**Mr. Speaker:** Order, Prof. Saitoti! Before you read through that, will you please dispel this anxiety by answering this question? Is there a report prepared by KACC on this matter? Is there a report?

**The Minister of State for Provincial Administration and Internal Security**

(Prof. Saitoti): Mr. Speaker, Sir, that report must have been prepared. This is the report of that particular report and it is signed---

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

Can I be given the Floor! I would like to answer---

**Mr. Speaker:** Hon. Members! Let us hear the Minister!

**The Minister of State for Provincial Administration and Internal Security**

(Prof. Saitoti): Mr. Speaker, Sir, here is a statement in the form of writing addressed to the Head of the Civil Service who is also in charge of those Government officials. It is on the investigations of senior Government officials and---

**Hon. Members:** No!

**The Minister of State for Provincial Administration and Internal Security**

(Prof. Saitoti): Mr. Speaker, Sir, I think I should be allowed to answer!

**Mr. Speaker:** Order, hon. Members! Please relax!

**The Minister of State for Provincial Administration and Internal Security**

(Prof. Saitoti): Mr. Speaker, Sir, I need your protection because this particular thing here treats the case of every one of the officials, what the official was being accused of, what the findings were and why recommendations were made. This statement – which I am going to table – is signed by Dr. J. Mutonyi, MBS, Acting Director and Chief Executive of KACC.

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

**Mr. Speaker:** Hon. Members, I find the letter which has been referred to by the Minister dated 10<sup>th</sup> June, 2010 admissible, because it complies with the provisions of our

Standing Orders. But that notwithstanding, given that the Minister admits that KACC, in fact, carried out a report, I direct that the Minister tables the full report. Mr. Minister, if you do not have that report in the House now, I direct that you will table it on Wednesday, next week. You have admitted that KACC prepared a report. So, please table the report in the House so that hon. Members have the benefit of perusing that report against the answers that you have given and against the contents of this letter. It is only fair to do so, so that we have the full picture.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I have no aversion to that one, because there is no way an investigation could have been carried out and a report not be out. In essence, this is a very clear manifestation of what is in the report; it is there. I will look for it and table it on Wednesday. I am very happy that you have agreed that this particular letter conforms to the Standing Orders. So, this is not a piece of paper as Dr. Khalwale had alleged.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I want to thank you for that directive. Because we do not want to give any opportunity to the Executive to flout the law, and find this Parliament a route of escape, I request that you have a look at the Anti-Corruption and Economic Crimes Act, which provides in Sections 35 and 36 on what should be done with reports. It is very clear that the report should go to the Attorney-General. The Attorney-General is then supposed, under Section 36, to table it in this Parliament. So, whereas we want to thank you for asking him to table it - we will use it - we want you to make a decision.

Why should the Government be side stepping the office of the Attorney-General when the matter is hot? You will remember that when the Cockar Commission made its report on matters touching on the then Minister for Finance, the report was never taken to the Attorney-General. All we saw was that the Executive brought back the Minister in a new portfolio. So, maybe this Parliament is being misused.

**Mr. Speaker:** Hon. Members, I will bear in mind those observations on the point of order by the Member for Ikolomani and as and when on Tuesday next week--- I said that on Wednesday next week the Minister of State for Provincial Administration and Internal Security Prof. Saitoti will table the report. I will make further findings on what the law provides with respect to what the fate of the report of KACC ought to be. If the procedure is in the law, obviously as a legislative organ, we are bound to comply with the law. The Chair will ensure that we and the Minister do so.

Hon. Members, that takes care of Questions. Fifty per cent of the Questions which have not been answered are deferred to tomorrow. I am advised by the Clerk-at-the-Table that the schedule for tomorrow is crowded. So, the questions are deferred to Tuesday afternoon at 2.30 p.m. They will take priority over Questions which will otherwise have come on Tuesday, next week.

## STATEMENT

### PRIME MINISTER'S STATEMENT ON FREE AND FAIR REFERENDUM

**Mr. Speaker:** Hon. Members, this time, we would have taken the Prime Minister's Statement. As you will notice, we have already overshot our time on the Prime

Minister's business. So, we will defer the Right Hon. Prime Minister's Statement to Wednesday next week at the due time.

*(Statement deferred)*

Next order!

## **POINTS OF ORDER**

### **MIX UP IN EVIDENCE ON DEATH OF WILLIAM ONYANGO AND ISHMAEL CHACHA**

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. I wish to seek a Ministerial Statement from the Attorney-General on the circumstances surrounding the mix up in the evidence of the ballistics experts on matching the guns and bullets that killed William Onyango and Ishmael Chacha, resulting in the acquittal of police Constable Edward Kirui of their murders.

In the statement that I am seeking I wish to ask the Attorney-General to address his mind to: What are the circumstances that surrounded the presentation by police investigators to the ballistics experts of the mixed up bullets and gun that failed to match? Two, is it possible that the police investigators could have set out on a deliberate route to frustrate investigations, so as to protect one of their own? Three, in view of the evidence that was adduced before the High Court, and the judgment that was delivered, could the Attorney-General consider applying for a retrial of police constable Edward Kirui or file an appeal to the Court of Appeal?

Lastly, looking at the judgment of the court and the evidence that was adduced, what is the impact of that judgment on the view held by the International Criminal Court Prosecutor that Kenya lacks the capacity and the will to investigate and successfully prosecute perpetrators of post election violence? In seeking this Statement, I do not wish for a moment to be imputing any improper motive on the part of the Judge who heard the case, because cases are decided on the evidence that is presented. If the police offered evidence that lacked basis, the court could have been justified. But whatever errors that were made by the police should be corrected. That is all.

**Mr. Speaker:** Hon. Members, before we move to the next Order, note that we will have to continue our business until 6.59 p.m. because we have come to this order 29 minutes late.

Mr. Olago, your statement is ordered to be availed.

Minister for Provincial Administration and Internal Security, could you please do so on Tuesday next week?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I did not hear your orders. Could you please repeat it for me?

**Mr. Speaker:** There is a request for a statement on the acquittal of the officer who---

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I thought he was seeking for a

Ministerial Statement from the Attorney-General and not the Minister of State for Provincial Administration and Internal Security. That is what I heard. I am very clear.

**Mr. Speaker:** Okay, can you hold brief for the Attorney-General?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I will definitely inform the Attorney-General in order for him to make a statement on Tuesday, next week.

## COMMITTEE OF SUPPLY

*(Order for the Committee read)*

## MOTION

### VOTE ON ACCOUNT

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Speaker, Sir, I beg to move:-

THAT, in accordance with Section 101 of the Constitution of Kenya, the withdrawal of Kenya Shillings 319,762,623,324 representing one-half of the total net estimates of Recurrent and Development Expenditure made up in the manner set out in the Vote on Account Schedules laid in the House, be authorized for the purpose of meeting expenditure necessary to carry on the services of the Government of Kenya during the year ending on the 30th June, 2011 until such time as the Appropriation Act for the year comes into operation.

*(His Excellency the President has given consent to this Motion)*

## VOTE ON ACCOUNT SCHEDULE (RECURRENT) FINANCIAL YEAR 2010/2011

Estimates Showing The Several Services For Which A Vote On Account is Required for the Year Ending 30 <sup>th</sup> June, 2011			
Vote No.	Services	Total Net Estimates 2010/2011 Kshs	Vote on Account 2010/2011 Kshs
R01	Ministry of State for Provincial Administration and Internal Security	41,702,179,390	20,851,089,695
R02	State House	814,000,000	407,000,000
R03	Ministry of State for Public Service	1,234,152,700	671,076,350
R04	Ministry of Foreign Affairs	7,013,869,860	3,506,934,930
R05	Office of the Vice-President and Ministry of Home Affairs	10,101,223,000	5,050,611,500
R06	Ministry of Planning, National Development and Vision 2030	2,071,945,700	1,035,972,850
R07	Office of the Deputy Prime Minister	31,152,255,000	15,576,127,500

	and Ministry of Finance		
R08	Ministry of State for Defence	46,546,676,100	23,273,338,050
R09	Ministry of Regional Development Authorities	818,576,470	409,288,235
R10	Ministry of Agriculture	8,019,374,200	4,009,687,100
R11	Ministry of Medical Services	21,806,000,000	10,903,000,000
R12	Office of the Deputy Prime Minister and Ministry of Local Government	901,466,890	450,733,445
R13	Ministry of Roads	2,080,745,100	1,040,372,550
R14	Ministry of Transport	1,223,011,700	611,505,850
R15	Ministry of Labour	1,144,370,100	572,185,050
R16	Ministry of Trade	1,469,648,000	734,824,000
R17	Ministry of Justice, National Cohesion and Constitutional Affairs	2,196,025,000	1,098,012,500
R18	Ministry of Gender, Children and Social Development	2,682,003,600	1,341,001,800
R19	Ministry of Livestock Development	3,557,288,600	1,778,644,300
R20	Ministry of Water and Irrigation	3,779,939,100	1,889,969,550
R21	Ministry of Environment and Mineral Resources	2,259,716,110	1,129,858,055
R22	Ministry of Cooperative Development and Marketing	980,460,520	490,230,260
R23	Cabinet Office	808,940,000	404,470,000
R24	Ministry of East African Community	897,586,800	448,793,400
R25	State Law Office	933,637,240	466,818,620
R26	Judicial Department	2,170,891,070	1,085,445,535
R27	Public Service Commission	397,129,000	198,564,500
R28	Kenya National Audit Office	1,397,345,100	698,672,550
R29	National Assembly	7,079,109,900	3,539,554,950
R30	Ministry of Energy	2,079,311,200	1,039,655,600
R31	Ministry of Education	128,584,000,000	64,292,000,000
R32	Ministry of Information and Communications	1,481,557,800	740,778,900
R33	Interim Independent Electoral Commission	5,345,500,000	2,672,750,000
R34	Kenya Anti-Corruption Commission	1,411,000,000	705,500,000
R35	Ministry of State for Special Programmes	4,042,776,366	2,021,388,183
R36	Ministry of Lands	1,675,420,300	837,710,150
R40	Ministry of State for Immigration and Registration of Persons	335,213,500	167,606,750
R41	Ministry of State for National Heritage and Culture	1,691,998,700	845,999,350
R42	Ministry of Youth Affairs and Sports	5,376,000,000	2,688,000,000
R43	Ministry of Higher Education, Science	26,037,262,500	13,018,631,250

	and Technology		
R44	Ministry of Housing	526,773,900	263,386,950
R45	National Security Intelligence Service	9,716,000,000	4,858,000,000
R46	Ministry of Tourism	1,378,510,900	689,255,450
R48	Office of the Prime Minister	1,692,043,500	846,021,750
R49	Ministry of Public Health and Sanitation	9,535,202,800	4,767,601,400
R55	Ministry of Forestry and Wildlife	3,937,788,000	1,968,894,000
R56	Ministry of Fisheries Development	947,891,100	473,945,550
R57	Ministry of Nairobi Metropolitan Development	319,269,000	159,634,500
R58	Ministry of Development of Northern Kenya and Other Arid Lands	261,031,000	130,515,500
R59	Ministry of Public Works	1,453,065,900	726,532,950
R60	Ministry of Industrialization	1,439,100,700	719,550,350
R61	Interim Independent Boundaries Review Commission	380,966,000	190,483,000
<b>SUB TOTAL</b>		<b>Kshs 416,887,249,416</b>	<b>208,443,624,708</b>

**VOTE ON ACCOUNT SCHEDULE (DEVELOPMENT) FINANCIAL YEAR  
2010/2011**

ESTIMATES showing The Several Services For Which A Vote On Account is Required for the Year Ending 30 <sup>th</sup> June, 2011			
<b>Vote No.</b>	<b>Services</b>	<b>Total Net Estimates 2010/2011 Kshs</b>	<b>Vote on Account 2010/2011 Kshs</b>
D01	Ministry of State for Provincial Administration and Internal Security	3,929,474,000	1,964,737,000
D02	State House	266,400,000	133,200,000
D03	Ministry of State for Public Service	343,520,000	171,760,000
D04	Ministry of Foreign Affairs	516,400,000	258,200,000
D05	Office of the Vice-President and Ministry of Home Affairs	1,848,000,000	924,000,000
D06	Ministry of Planning, National Development and Vision 2030	16,567,929,620	8,283,964,810
D07	Office of the Deputy Prime Minister and Ministry of Finance	20,919,302,200	10,459,651,100
D09	Ministry of Regional Development Authorities	5,373,920,930	2,686,960,465
D10	Ministry of Agriculture	8,381,263,140	4,190,631,570
D11	Ministry of Medical Services	2,311,067,170	1,155,533,585



D12	Office of the Deputy Prime Minister and Ministry of Local Government	4,356,275,000	2,178,137,500
D13	Ministry of Roads	42,768,420,000	21,384,210,000
D14	Ministry of Transport	4,220,000,000	2,110,000,000
D15	Ministry of Labour	416,411,000	208,205,500
D16	Ministry of Trade	522,300,000	261,150,000
D17	Ministry of Justice, National Cohesion and Constitutional Affairs	146,680,000	73,340,000
D18	Ministry of Gender, Children and Social Development	2,269,702,300	1,134,851,150
D19	Ministry of Livestock Development	2,955,348,632	1,477,674,316
D20	Ministry of Water and Irrigation	20,102,793,800	10,051,396,900
D21	Ministry of Environment and Mineral Resources	4,199,462,810	2,099,731,405
D22	Ministry of Cooperative Development and Marketing	171,540,000	85,770,000
D23	Cabinet Office	187,400,000	93,700,000
D24	Ministry of East African Community	129,400,000	64,700,000
D25	State Law Office	37,800,000	18,900,000
D26	Judicial Department	588,550,000	294,275,000
D30	Ministry of Energy	17,750,084,890	8,875,042,445
D31	Ministry of Education	7,309,939,270	3,654,969,635
D32	Ministry of Information and Communications	5,337,420,000	2,668,710,000
D34	Kenya Anti-Corruption Commission	150,000,000	75,000,000
D35	Ministry of State for Special Programmes	3,359,253,550	1,679,626,775
D36	Ministry of Lands	2,276,037,400	1,138,018,700
D40	Ministry of State for Immigration and Registration of Persons	1,993,596,800	996,798,400
D41	Ministry of State for National Heritage and Culture	401,020,000	200,510,000
D42	Ministry of Youth Affairs and Sports	3,793,403,600	1,896,701,800
D43	Ministry of Higher Education, Science and Technology	7,602,000,000	3,801,000,000
D44	Ministry of Housing	2,477,000,000	1,238,500,000
D46	Ministry of Tourism	1,000,000,000	500,000,000
D48	Office of the Prime Minister	446,855,000	223,427,500
D49	Ministry of Public Health and Sanitation	7,848,892,540	3,924,446,270
D55	Ministry of Forestry and Wildlife	1,983,955,420	991,977,710
D56	Ministry of Fisheries Development	3,225,900,400	1,612,950,200
D57	Ministry of Nairobi Metropolitan Development	1,157,600,000	578,800,000
D58	Ministry of Development of Northern	3,099,523,760	1,549,761,880

	Kenya and Other Arid Lands		
D59	Ministry of Public Works	5,051,550,000	2,525,775,000
D60	Ministry of Industrialization	2,844,604,000	1,422,302,000
<b>SUB TOTAL</b>		<b>Kshs 222,637,997,232</b>	<b>111,318,998,616</b>
<b>GRAND TOTAL</b>		<b>Kshs 639,525,246,648</b>	<b>319,762,623,324</b>

Mr. Speaker, Sir, on the 10<sup>th</sup> of June, 2010, I did table before this House, the Budget Estimates for the Financial Year, 2010/2011. The Estimates that amounted to Kshs996.8 billion are made up of the following. Total Recurrent Expenditure is Kshs487.9 billion of which Appropriations In Aid (A-in-A) is Kshs71 billion. Total Development Expenditure is Kshs321.2 billion of which A-in-A is Kshs98.6 billion; Consolidated Fund Services of Kshs187.7 billion.

Mr. Speaker, Sir, I am sure hon. Members have already received their Budget Estimate books for the Financial Year, 2010/2011 and copies of the Vote of Account Schedules of the above estimates, which is the subject of this Motion.

Mr. Speaker, Sir, in compliance with the law, the Government of Kenya would close the financial books relating to the 2009/2010 Financial Year on 30<sup>th</sup> June, 2010. The authority that was granted by this House to withdraw funds from the Consolidated Fund and apply them towards the provisions of goods and services, therefore, would accordingly expire.

Mr. Speaker, Sir, it is for this reason that I am requesting Parliament to authorise the withdrawal from the Consolidated Fund of monies not exceeding one half of the total net sums included in the estimates of Recurrent and Development Expenditure for the Financial Year, 2010/2011. This is to facilitate the Government to continue offering services uninterrupted until such time that the Appropriations Act is enacted by Parliament and becomes operational.

Mr. Speaker Sir, the net estimates of the Recurrent Expenditure amounts to Kshs416,887,249,416 for which I am requesting for the approval of monies not exceeding Kshs208,443,624,708 were those for net Development Expenditure amount to Kshs222,637,997,232 for which I am requesting for the approval of monies not exceeding Kshs111,318,998,616.

Mr. Speaker, Sir, the funds sought will be used for payment of salaries for public servants and to meet operational maintenance expenses under Recurrent Vote and those sought under the Development Votes and are to be used to implement development programmes, including economic recovery, poverty alleviation and regional development programmes.

Mr. Speaker, Sir, I wish to assure hon. Members that funds shall be utilized efficiently to achieve the purposes and to provide services for which this House has approved. Financial discipline and economy will be our guiding principles in order to achieve macro-economic stability and to facilitate the achievement of our development goals as articulated in Vision 2030.

Mr. Speaker, Sir, included in this amount is the full allocation of Kshs5.1 billion for police reforms as requested by the Ministry. This, indeed, is a Procedural Motion and I, therefore, call upon hon. Members to pass it to enable Treasury to release the funds to line Ministries at the commencement of the new Financial Year on July 1, 2010.

Mr. Speaker, Sir, finally, I want to take this opportunity once again to thank hon. Members for their valuable contributions that informed the 2010/2011 Budget Speech and their continued support.

With those few remarks, I beg to move and ask the hon. Ojode to second.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, initially, I did not want to speak. But now I have to speak with some authority.

Mr. Speaker, Sir, the Minister has ably put in a Kshs5.1 billion for the police reforms. This has been disturbing us as a Ministry when he did not include the Kshs5.1 billion which was request for in his Budget Speech. I would want to request the Minister to move with speed in order for us to implement and enforce the police reforms.

With those few remarks, I beg to second.

*(Question proposed)*

**Mr. Okemo:** Thank you, Mr. Speaker, Sir.

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

**Mr. Speaker:** What is your point of order, Member for Rangwe!

**Mr. Ogindo:** Mr. Speaker, Sir, I rise to propose an amendment to this Motion.

**Mr. Speaker:** Order, Member for Rangwe! That is not the procedure that we follow. If you look at the Standing Orders, you are out of order.

**Mr. Okemo:** Mr. Speaker, Sir, I have looked at the Motion here by the Deputy prime Minister and Minister for Finance, and I would like to make the same comments as I made last year and quite a number of Members of Parliament made here. Year in, year out, we cannot have a linear extrapolation of 12 months divided by two.

We did demand and I think it is in the HANSARD, that the Minister must come here with the justification for why it is one-half. The Constitution does not say half. It says not more than half, which means it could be less. But year in, year out, through traditions, Ministers have come and they have actually asked for 50 per cent and they have got it automatically. But we did demand and I think the Minister promised last year that he would come here with an expenditure outturn to show how much he has spent before the Appropriations Act have been approved.

The Deputy Prime Minister and Minister for Finance has not come up with any figures here. I would like to oppose this Motion. He should show us how he will account for the 50 per cent? In fact, he has made his work very easy because he has itemized vote by vote. He has shown all the Ministries with the Printed Estimates. He has divided that by two to arrive at what he is requesting for. I would like him to itemise for each Ministry what they will require between now and the time the Appropriation Act is approved. The Deputy Prime Minister and Minister for Finance should not take us for granted. We should not just give him a 50 per cent blanket approval without justifying how the money is spent.

This time, as a House, we must insist that the Deputy Prime Minister and Minister for Finance justifies the Vote on Account; whether it is 30 per cent or 40 per cent. How much did he spend last year between the time we approved the Vote on Account and the time the Appropriation Act was approved? You may find that it was more than 20 per

cent or 30 per cent but less than 50 per cent. So, why do we need to approve more money than is necessary?

**Mr. Speaker, Sir,** I would like to get a clarification. When I look at the Printed Estimates, besides the Ministerial Votes, we have what we call “expenditure of Consolidated Funds Services (CFS)”. If we do not give approval how will the Ministry pay public debt between now and the time the Appropriation Act is approved? How will we pay pensions and things like that? This is because the approval here is very specific. The Deputy Prime Minister and Minister for Finance has already said what he wants approved. How will we handle the activities of the CFS? If this Parliament does not approve them, how will he spend them without that approval? That is the question I had in mind. If he had not itemized, maybe, it would be a question of arithmetic and he would get away with it. However, you can see that each Ministry is itemized both for the Recurrent Expenditure and the Development Expenditure. When I look at the table that summarizes all these expenditures, what happens to CFS activities? I need the Deputy Prime Minister and Minister for Finance to clarify that.

**Mr. Speaker, Sir,** on an ending note, I think he should show us his expenditure out-turn between the time he had the Appropriation Act approved and---

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** On a point of order, Mr. Speaker, Sir. We are talking about the Vote on Account and the CFS is not part of it.

**Mr. Okemo:** That is precisely my point, Mr. Speaker, Sir. Will the Ministry spend this money without parliamentary approval? How is it covered? It is not included in the Vote on Account. So, where does the Ministry derive the approval to spend money from the CFS?

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Mr. Speaker, Sir, the CFS and debt payment are above the line. Those are statutory commitments of the Government of Kenya. Pensions are included in that. Those ones do not come before this House. We present and give a full account of what they are. What we are looking for is the expenditure for line Ministries through the Vote on Account and that is what requires parliamentary approval.

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

**Mr. Speaker:** Order, Mr. Okemo! You have not caught the Speaker’s eye and so you cannot approach the microphone.

**Mr. Okemo:** I was continuing---

**Mr. Speaker:** Order, Mr. Okemo! Member for Rangwe!

**Mr. Ogindo:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead this House that the Ministry is free to spend money under the CFS without the approval of this House?

**Mr. Speaker:** Mr. Deputy Prime Minister and Minister for Finance, did you say that? I did not hear you say that.

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Mr. Speaker, Sir, what I precisely said is that what we are passing here is the Vote on Account. The CFS are commitments of the Kenyan Government which are captured in the Estimates. Parliament is informed what our debt is and what we need to pay. Those payments, with or without parliamentary approval, must and will be made. This has already been tabled before this House, for example, the 12 per cent is in the law. The

CDF money, for example, comes directly above the line. Parliament does not approve that percentage because it is already approved by this House.

**Mr. Speaker:** I believe that I understand the Minister. He is looking for authorization from Parliament on the Vote on Account and he wants 50 per cent of the Budget that this House has approved so that he can begin to spend that. He is not looking for authority on what is statutory because that already is passed and enacted by this Parliament. So, I am clear on this one.

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

Order, Mr. Okemo! I understand the Minister clearly. Is there anybody else who is interested?

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, I want to thank the Deputy Prime Minister and Minister for Finance for moving this Motion on time, so that we can provide funds for the Government so that its activities do not come to a standstill by 31<sup>st</sup> June, 2010.

Mr. Speaker, Sir, I am fairly amused by the intervention by the former Minister for Finance who served in another era altogether, when it was never mandatory to give us the breakdowns. Those days, it was only 50 per cent. Times have since changed.

**Mr. Okemo:** On a point of order, Mr. Speaker, Sir. Is the Prime Minister in order to mislead this House that during the time I served as the Minister for Finance, we did not give the breakdown of items on Vote on Account? By the way, he was part of that Government.

**Mr. Speaker:** The Right hon. Prime Minister, do you have a response to that point?

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, I was trying to basically confirm what the Deputy Prime Minister and Minister for Finance has said. He has said that the first charge goes to the CFS which are statutory requirements. These are commitments already made by the Government and must be paid, unless the Government is seen to be insolvent internationally. All that I was trying to say is that what we are doing here is not something that is strange. It has always been the practice that Vote on Account is usually 50 per cent of the total Budget. That, therefore, allows Parliament to go into greater details on the Budget for the remaining 50 per cent. This is because if there was any mistake, then there will be 50 per cent which will not be spend without the Minister coming before Parliament to account for it. We have even gone further these days because we also have a Budget Committee of the House which was not there before. That Committee goes into minute details with the Deputy Prime Minister and Minister for Finance on each and every Vote Head. This was not the case in the past. These days, Parliament is involved in greater details in budgetary preparation before the figures are brought before the House. This is not the time when Parliament should try to deny the Government allocation of 50 per cent as Vote on Account unless you just want to play politics.

*[Mr. Speaker left the Chair]*

*[The Temporary Deputy Speaker]*

*(Prof. Kaloki) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, having said that, I want to go further and elaborate on what I said yesterday to Members of Parliament at a consultative meeting regarding the relationship between Parliament and the Executive. The Executive cannot spend money unless it is approved by Parliament. This budgetary process is not a ritual. It is a very important function of Parliament and the Executive. Without Parliament approving allocation to the line Ministries, they will not be functional. But we do provide these funds so that the Executive can provide services to the people. These funds will ensure that medicine can be provided to our hospitals, our teachers can be paid properly, roads can be constructed and electricity provided. If they do not work in tandem so that the Executive is unable to function and spend the money which has been allocated to it by Parliament, we give with one hand and then deny through another hand. That is the point that I was trying to make yesterday; that once funds have been made available, the Executive should not be hampered in expenditure. But Parliament has a very important oversight role to ensure that those funds are spent for the purposes for which they were voted by Parliament. No one is denying that. We all accept that, that is the oversight function of Parliament; to ensure that those monies are not diverted into some other activities or private people's pockets.

Mr. Temporary Deputy Speaker, Sir, in some isolated cases, Parliament has acted in vain. This has tended to hamper the implementation of projects. We have had cases here, and hon. Members are aware, where questions are raised here regarding procurement; whether it is purchase of equipment or award of contracts or tenders. The losing contractor in a tender would go behind the scenes to contract services of Members of Parliament to come and raise Questions here that there is some kind of corruption or money has changed hands and, therefore, the Government runs the risk of losing a lot of money. I say this because once that happens, then investigations begin and the Kenya Anti-Corruption Commission (KACC) is involved. The Procurement Oversight Authority moves in and the contract is cancelled. By the time the investigations are over, six months will have been lost. When the retendering process starts, the costs will have gone up, so that the contract will be implemented at a highly inflated price. Most of the time, we close the financial year with the Ministries not spending even half the money which was allocated by Parliament. So, I was just sounding a warning to the House that it is incumbent upon Members of the House to carry out their own internal audit.

Mr. Temporary Deputy Speaker, Sir, I have also said that the Office of the Prime Minister is prepared to co-operate fully with the House and provide full information and disclosure on issues which the House sometimes spends more time investigating. This is because to investigate such complicated contracts like procurement of the highly technical items, award of tenders and so on, it would require Parliament to duplicate the expertise which is available in the Ministries. That is why I said that Parliament does not on its own, have proper expertise to carry out professional investigations. I stand to be contradicted if Parliament has got the capacity to investigate technical award of tenders, for example, for road and housing construction and procurement of medicines. I would like to repeat what I said that Parliament must actually benefit from the technical expertise available elsewhere. That is why I have offered the services of the Efficiency Monitoring Unit (EMU), Inspectorate of State Corporations----

**Mr. Mungatana:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I have been listening carefully to the hon. Prime Minister. While I take the point he is making, is he not aware of the Standing Orders that clearly stipulate that when Parliament requires the services of any experts to assist it in its investigation or carrying out inquiry into any matter, they can, in fact, call upon those experts to come and assist Members of Parliament?

**The Prime Minister** (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, I was talking about practical cases, where we have seen Members of Parliament moving around to investigate. I know, for example, that there is a Committee of Parliament that wants to travel to Japan to investigate about the procurement of a house in Japan. What would laymen be going to do in Japan if they have got expertise that they can hire to carry out those kinds of investigations? We have seen Members of Parliament mounting ships in Mombasa, supposedly inspecting the quality of imported maize. We have also seen Members of Parliament---

**The Temporary Deputy Speaker** (Prof. Kaloki): Your time is up!

**The Prime Minister** (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

**The Assistant Minister for Regional Development Authorities** (Mr. Ole Metito): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to also contribute in support of this Motion.

Mr. Temporary Deputy Speaker, Sir, I would also wish to appeal to Parliament to grant the Deputy Prime Minister and Minister for Finance 50 per cent of the monies in the Budget as requested. However, I would like these funds to be spent as follows: First, we have just finished the registration of voters by the Interim Independent Electoral Commission (IIEC). Now we are on the verification of the voter register. As much as I would like to applaud the IIEC for a job well done for the very short time it has been in existence, I would also wish to mention that in the just ended registration of voters, it has really come out as a very big mix. There is a total mix-up when you look at the registers which have gone to the constituencies. For example, in Loitokitok Constituency which I represent, we are missing not less than 3,000 registered voters in the computer final list which has come out. We are finding even people from as far as outside Rift Valley Province, where my constituency is, coming up in the voter register of Loitokitok Constituency. So, it is a mix-up and I would like to see the IIEC facilitated to actually clean up that exercise as quickly as possible in order not to deny legitimate voters a chance to vote in the forthcoming Referendum.

Mr. Temporary Deputy Speaker, Sir, again, I would like to appeal to Parliament to approve this Motion, so that we use the money which has been approved to purchase maize from farmers who had a bumper harvest. We are lucky that we have a bumper harvest. So, it is time that we released money in order for that maize to be bought from the farms.

On that note, I would like to appeal to the Government, as the Deputy Prime Minister and Minister for Finance said in his Budget Speech, that we should try to control post-harvest losses. The Kshs1,500 that they are paying for a 90-kilogramme bag of maize is actually very little. The Government should think about paying a minimum of, at least, Kshs2,000 per bag. With regard to the maize that is said to be contaminated with

aflatoxin, let us think about raising the price from Kshs1,000 to Kshs1,500 so that we can save farmers who have just come from hard times after a prolonged drought.

I would also like to ask the Deputy Prime Minister and Minister for Finance to note that in my constituency – and also in other constituencies in the country - there are some empty bags that the Government took from farmers. That was about four years ago. In my constituency, farmers are still waiting to be given back their 36,000 bags or the Government pays for them. The Ministry should note that and make sure that as we give them those funds, they settle such debts that are owed to farmers because they are long overdue.

Again, we had a national census a year ago. There are so many people who worked during that exercise and yet, they have not been paid a year later. I wish to urge Parliament that, as we debate this Motion, the Ministry should expedite the payment of the personnel who did that job.

The issue about the payment of teachers has been mentioned here. I want to applaud the Minister for Education for what he talked about yesterday; the issue of releasing funds to interns. That was in last year's Budget. We need to look for ways and means that can complement the number of teachers in our primary and secondary schools. The proposal stipulating that they should be paid through the BOGs or PTAs, in my opinion, is not a bad proposal. Currently, we have so many teachers that are being paid by parents. I think that is a move that will be welcomed by parents. That is because the Government will release money to BOGs and PTAs to pay those teachers. I hope that is included in the Vote on Account that we are debating now.

With regard to roads, I would like to thank the Government for tarmacking the Emali-Loitokitok Road. It is almost at the end. I am also aware that of late, the contractors have downed their tools on claims that they are owed a lot of money. One reason why I want to see this Vote on Account Motion to go through is because I am aware that money for that road is included in it. I am sure they are going to be paid and work will continue until completion.

We have many electricity projects under Rural Electrification Authority (REA) that are “still hanging” and are due to end by the end of this month. I wish to plead with the Ministry concerned that, as we pass this Vote on Account, such projects should be given priority so that new projects can start from 1<sup>st</sup> July and are implemented on time.

Finally, I would like to request the Deputy Prime Minister and Minister for Finance to honour his pledge during Budget Day that there is going to be smooth and timely release of funds for all the projects to be undertaken. There is the Economic Stimulus Programme (ESP), CDF, LATF and other devolved Funds. That will ensure timely implementation of projects.

With those remarks, I beg to support.

**The Temporary Deputy Speaker** (Prof. Kaloki): Let us give this chance to Mr. Nyamweya. He is a new Member of Parliament.

*(Applause)*

**The Member for South Mugirango** (Mr. Manson Nyamweya): Thank you, Mr. Temporary Deputy Speaker, Sir for giving me this opportunity to introduce myself as the new Member of Parliament for South Mugirango Constituency.



First and foremost, I want to thank the people of South Mugirango for giving me overwhelming support. The voter turnout in that by-election was 81 per cent. That shows the determination of the people of South Mugirango to make their own independent decision against the big parties which came to campaign for their candidates. The first thing I want to say is that the candidates who vied did not have a problem. The problem we have in South Mugirango is the way the Coalition Government is treating us in terms of resource allocation. However, before I say that, let me make a point here on an incident that we experienced during the counting of the votes.

The exercise was disrupted. *Mheshimiwa* Orengo is here. He raised an issue which may have been legal or illegal. I do not know about that. However, he knows about the issue that he raised. It is, indeed, a major issue affecting our elections, even as we go for the forthcoming referendum. If you show people the results and you change your mind and stop it midway, it will bring misunderstanding and confusion. So, if there is an issue to be changed--- I ask *Mheshimiwa* Orengo, the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs to amend that. So, as we go for the referendum and any other future elections, they will be fair, free and transparent. We will have a system that this nation trusts.

What happened there is that the Interim Independent Electoral Commission (IIEC) officials were intimidated by some Ministers who were there. They stopped the exercise. I do not blame them for doing so. The Commission is interim and the officials want their jobs back after two years. Hon. Members are the ones to employ them. It is an issue which we should all look at. It should be addressed in this Parliament before we go for any other election, so that it is free and fair for everybody to see.

My other point is that I have seen the development expenditure estimates. I have looked through it. This House is approving Kshs222,637,997,232. In South Mugirango, where I come from, they have allocated Kshs5 million for construction under the Office of the President. The money that was allocated for roads has been removed in this financial year. In the next financial year, that money is there. I am glad that the Right Honourable Prime Minister is here. When he was in South Mugirango, he saw the roads that we have. I plead with the Government - and the Deputy Prime Minister and Minister for Finance is here - to know that it will not matter to the people of South Mugirango whether this Budget is passed or not. That is because they will not be affected. They are getting nothing from the central Government.

When you look at the allocations in terms of roads--- In terms of water, we got Kshs10 million. I have gone through the estimates in the Budget. So, clearly, there is bias in resource allocation. I ask the people concerned to take the necessary steps and be fair in allocating resources to all the regions. Where I come from, the roads are very bad and yet the place is very fertile. During the campaigns, some people came using helicopters. They did not use the roads. Farmers there are hard working but they need support from the Coalition Government in terms of allocation of funds. What they did was against the Coalition Government and not against any individual party. The Coalition Government is not giving us services. We have been marginalized. That is all we are asking; that we be part of this country. We pay taxes and this is embarrassing. I want you to look at the estimates for South Mugirango and go through them.

Finally, hon. Members, I am a new person here. I do not understand how the Minister for Roads could give no money to South Mugirango. We have been promised

roads by senior Government officials while the Prime Minister and the Vice-President were present. You cannot believe what we are doing as a Government. I will urge the concerned parties to take the Gusii people seriously. The message is very clear to everyone. We want to be on our own and we want to be respected as a community. We want to be understood so that we are not taken for granted.

As I have said, the Government has tried in the allocation for the recurrent expenditure. However, for capital expenditure, I will not support this because I do not see a reason why I should do so. I do not know where the money is going. I represent the people of South Mugirango. I cannot support this. On recurrent expenditure, that is fine. It is in order. The Government must run. The Ministers must buy ink and drive their cars. However, on development, I beg to oppose.

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Normally, in the House, you cannot interfere with a maiden speech of any Member of Parliament. Therefore, I could not rise on a point of order, when the hon. Member for South Mugirango was on his feet.

However, I just want to put as a matter of record that at the end of counting of votes at the South Mugirango, I was, probably, one of the first persons to go and shake his hands in recognition of his victory. Secondly, I was objecting to the fact that the officials were posting---

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

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I am on a point of order.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Orengo, make it very fast!

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I just want to put the record straight. That is why the HANSARD is there. As a matter of record, the election officials were posting not the votes as counted, but the provisional votes. They did agree with me that what they were supposed to post were the actual results, but not the provisional results. I just wanted to make that observation as a matter of record.

**Mr. Ogindo:** Thank you, Mr. Temporary Deputy Speaker, Sir. On the Motion that is before the House, I want to concur with the Chairman of the Finance, Planning and Trade Committee. To that end, I beg to move that the Motion be amended as follows:-

By deleting the words “one-half” appearing immediately after the word “representing” and inserting the word “one-quarter” in the place thereof.

By deleting the amount “Kshs319,762,623,324” appearing in the second line and inserting a figure of “Kshs159,881,311,662” in place thereof.

Inserting the following words at the end “and the schedules laid be amended to reflect the above”.

First of all, I want to congratulate this House for having passed the Fiscal Management Act. In passing the Fiscal Management Act, this House sought to reform the Budgeting process and the time taken to approve the Budget. The President assented to this Act. Today, this Act is operational. If you allow me to read, Section 9(1) of this Act, says:-

“The Minister shall, not later than 20<sup>th</sup> June of each year, lay before the National Assembly, the annual estimate of revenue and expenditure for the succeeding financial year”.

Section 10(1) says:-

“Upon being laid before the National Assembly, the annual estimates shall stand committed to the respective departmental committees according to their jurisdictions.”

(2) Each departmental Committee shall consider, discuss and review the estimates apportioned to it in subsection (1) and submit its report thereon to the National Assembly within twenty-one days after the estimates were first laid before the national Assembly.

(3) A departmental committee shall, in considering the departmental votes assigned to it under this section, consult with the Minister responsible for the Vote under consideration by the departmental committee.”

Section 11 says:-

“Without prejudice to the generality of section 10, in preparing the final estimates of revenue and expenditure referred to in sub-section 9(1), the Minister shall take into consideration comments and recommendations of the relevant committee as submitted to the National Assembly under section 10(2).”

Mr. Temporary Deputy Speaker, Sir, having said that, we are aware that the Budget as presented on 10<sup>th</sup> June is now with the departmental Committees. The departmental Committees are scrutinizing those votes and by law, they are required to bring their recommendations within 21 days from 10<sup>th</sup> June. That takes you to next week around 30<sup>th</sup> June or 1<sup>st</sup> July. Thereafter, the Minister shall be free to bring his Motion on the Appropriation Bill. Today, he has brought the Vote on Account asking for 50 per cent of the expenditure. In my amendment, I want to persuade this House to authorize him not to spend more than a quarter. The reason is that it will not take more than one month before we give the Minister the full Vote. Secondly, it is the Government policy to release their Exchequer on a quarterly basis. They will not release more than a quarter even if we give them the 50 per cent.

The other reason is that as the Treasury seeks to spend, it collects its money. The collection of revenue is spread over the year. We will not be able to collect 50 per cent of our projected revenue in the next one or two months. It is important that this House pass laws with purposes. The purpose of this law is to instill fiscal discipline in the Executive. It would be irresponsible of this Parliament if it is going to pass laws and not see to it that they are implemented. We are seeking to reform the way things are done. It would be negligence on the part of this House to continue doing business as usual. Otherwise, it would be in order for us to pass even a Budget for two years and just sit back.

With those remarks, I beg to move and ask hon. Mungatana to second the amendment.

**Mr. Mungatana:** Thank you, Mr. Temporary Deputy Speaker, Sir. I want to second this very nice amendment. I want to congratulate hon. Ogindo for coming up with this amendment which seeks to amend the Minister’s request, so that he gets only a quarter of the Vote on Account.

I want to explain it very simply. First, we have a lot of respect for him, but he must put his foot down with the Treasury officials. I am glad they are here listening.

Traditionally, we have approved 50 per cent of the Vote on Account for the simple reason that the Budgeting process would go all the way to November. This means

that the Government requires from June to November, a time of about six months or half the year, money to operate. I would agree with the Minister sincerely, if it was last year and he says: I need money to operate the Government for six months up to November, because that is when the Appropriation Bill would be passed and that is when he will have the full Vote to run the Government. Therefore, he needed 50 per cent of the money for six months.

He needs to tell the Treasury that we have passed the Fiscal Management Act. This Act says that the entire period for making the Budget and the whole Budget process will be two months and not six months any more. He needs to tell the Treasury that they do not do business as usual. It is no longer the six months. We do not need to vote 50 per cent.

Mr. Temporary Deputy Speaker, Sir, it makes no sense for us to approve one half of the Budget, which is for six months, and yet the Appropriation Bill must be passed by this House within a period of two months. So, let us talk about the two months. This point must be made. The Deputy Prime Minister and Minister for Finance, personally, said in this House today that the Consolidated Fund Services (CFS) is going to be paid automatically. He said that these are above the statutory deductions. So, nothing is going to stop. What the Chairman of the Committee on Finance raised was very valid. The Deputy Prime Minister and Minister for Finance said this is not going to stop. Statutory deductions will continue.

What we are saying is that, there is no Ministry that is going to collapse in these two months. The Deputy Prime Minister and Minister for Finance should be telling us that he needs money to operate the Government for two months. That is what needs to come out in his application. We are very disappointed that he has allowed the---

**The Prime Minister** (Mr. Raila): On a point of information, Mr. Temporary Deputy Speaker, Sir. I want to draw the hon. Member's attention to Vote R33, Interim Independent Electoral Commission (IIEC). Provided for the IIEC is Kshs5.3 billion, half of which is Kshs2.67 billion. That money has to be spent by 4<sup>th</sup> August, 2010. We are talking of two months, which will be 25<sup>th</sup> August. The most important activity this financial year is the referendum, which must be conducted. If we deny the IIEC this money, it means that we are not going to be able to carry out a successful referendum.

**Mr. Mungatana:** Mr. Speaker, Sir, I thank the Prime Minister for pointing out that fact, but with regard to the amount of money that will be required by the IIEC, that is a Vote which can be separated and looked at separately, and he knows. The point I am making is that there has got to be a change of attitude at Treasury. While he might be very correct on that particular Vote, if you look at all the other Votes, you will see that the Government does not need a half of the Budget. I am starting with Vote R1, Ministry of State for Provincial Administration and Internal Security.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): On a point of order, Mr. Temporary Deputy Speaker, Sir. I thought that the hon. Member was going to exempt that particular Ministry, because it deals with security.

**The Temporary Deputy Speaker** (Prof. Kaloki): What is your point of order?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, my point of order is that hon. Mungatana is misleading this House, because that is where we are going to

draw our security money from. Without security, even hon. Mungatana will not be able to go home.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Mungatana, can you proceed?

**Mr. Mungatana:** Mr. Temporary Deputy Speaker, Sir, I want hon. Ojode to take this matter very seriously, because he is not from Treasury. What we are saying is that the Deputy Prime Minister and Minister for Finance is requesting Kshs20 billion for six months for his Ministry. What we are saying is that the correct thing, so that there can be discipline even in the Ministry of State for Provincial Administration and Internal Security, is to be given money for two months.

Within those two months, the Minister will have appeared before the relevant Parliamentary Departmental Committee and, in accordance with the Fiscal Management Act, defended the Vote. If we think that the Minister has requested for money that they do not need, and that it should go into hiring of teachers, we would say “this line should not be there”. These are the things that the Deputy Prime Minister and Minister for Minister should then table before this House.

Mr. Temporary Deputy Speaker, Sir, hon. Ogindo is requesting this House to fundamentally change the way we have been doing business in this House. I am requesting that we should not just vote for the sake of voting because the Deputy Prime Minister and Minister for Finance has requested for 50 per cent of the Budget. Let us not allow that to happen. This financial year will come to an end on 30<sup>th</sup> June, 2010. That means we are still around. If there is any emergency, the Deputy Prime Minister and Minister for Finance can quickly come to us.

So, there is no justification whatsoever for him to request us to give the Ministries 50 per cent of their budgets. What shall we be asking the Ministers in the Departmental Committees if they already have 50 per cent of their budgets? There is reason for what we are saying. I am pleading with the House that we are here to support the Government, as Parliament, but our role is oversight. We must make sure that there is discipline in the Ministries as they do their work.

Mr. Temporary Deputy Speaker, Sir, that is why we are saying there is no problem. Let the Minister get the 25 per cent of the Budget. In fact, if you ask me, 50 per cent was traditionally for the six months. We should just be approving a third of the Budget because, in my opinion, 25 per cent goes beyond the two months that is supposed to be operationalising the Government. However, because the Motion is for 25 per cent, I am begging my colleagues to see this point; that we need to put in some discipline in Government. The Government needs to look at what Parliament is suggesting. We need to do the correct thing, which is the oversight business that our side is supposed to be undertaking

For example, this is what the Deputy Prime Minister and Minister for Finance tabled here as the Financial Estimates. I am going again to the same Ministry of State for Provincial Administration and Internal Security since it is supplied by Vote R01, and State House, which is supplied by Vote R02. If you look at the Estimates that were tabled here, you will see that the Total Approved Gross Expenditure was Kshs42 billion. The amount he would have wanted approved, as contained in this Motion, differs from what he tabled. What he tabled in this Motion under Vote R01 comes to Kshs41,702,179,390. In the Approved Estimates, the Gross Expenditure for the year was Kshs42,247,328,471.

Mr. Temporary Deputy Speaker, Sir, I sit in the National Budget Security Committee. I would want to know where the difference went. This is what he tabled before Parliament. He is asking for a half of that amount, but the amount he is asking for in the Motion he has tabled in Parliament is not a half of that amount. In fact, what we are saying is that there are tabulation errors. So, how do we approve 50 per cent of tabulation errors? I can go down the entire list of these figures. They differ materially from what has been tabled as the Approved Estimates. We are in the business of looking after people's money. After the money that got lost, after things went wrong---

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member, whom I respect very much, in order to mislead the House that we have misrepresented the numbers? What he has referred to is the Gross Expenditure, which is inclusive of Appropriations-In-Aid (A-In-A) and yet what we are seeking approval for is net expenditure. If you look at the Schedule, you will see that the numbers are identical to those in the books.

**Mr. Mungatana:** Mr. Speaker, Sir, I have a lot of respect for the Deputy Prime Minister and Minister for Finance, who is also my friend. However, I need to point out, unless I am reading from a different book; that the net Approved Expenditure for 2009 that was tabled in this House was Kshs41,653,800,000. The one that he has brought here under total net Estimates for 2010/2011 is Kshs41,702,179,390. What I am saying---

**The Temporary Deputy Speaker** (Prof. Kaloki): I think the Deputy Prime Minister and Minister for Finance should respond to that.

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, with due respect to my brother, he is referring to the net approved expenditure for the financial year that is coming to an end. That is 2009/2010. What we are referring to are the Estimates for 2010/2011. Is the hon. Member in order to mislead the House that the figures are, once again, wrong?

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Mungatana, do you want to proceed and not dwell on that too much?

**Mr. Mungatana:** Mr. Temporary Deputy Speaker, Sir, this is the point that we are making---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Mungatana, your time is up.

**Mr. Mungatana:** Mr. Temporary Deputy Speaker, Sir, I second.

*(Question of the first part of the amendment, that  
the words to be left out be left out, proposed)*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to oppose this amendment, primarily, for the reasons expounded by Mr. Mungatana. First and foremost, the key word that the hon. Member used is "oversight". That Parliament's primary responsibility is oversight. That is a responsibility that I fully respect. At the same time, the primary role of the Government is to execute its policies through the Budget. Parliament continues, and must maintain its oversight role. The Government expenditure proceeding does not in any way whatsoever, take away from this House, its oversight role. That continues. However, Government programmes have start dates and different priorities.

Mr. Temporary Deputy Speaker, Sir, as the Right Hon. Prime Minister has just pointed out, if we take, for example, the Interim Independent Electoral Commission (IIEC), they require that money in order to conduct and continue to do the business that they are supposed to do. Within this Budget, we have different priorities. For example, we had an agreement with teachers on their new salary increment and we had a formula which we had agreed on. There is also an increment of 40 per cent that is supposed to be paid this year as part of the general agreement that we had reached. That is required. I agree that there may be some Ministries that may not require the entire 50 per cent. May be, as we perfect and detail these figures in future, we will be in a position to go through some of those items and get that breakdown. That is why even in my own Budget Statement, I referred to use of information technology to be able to analyze these things much faster but we are not yet there. We are moving in accordance with the new Act but Rome was not built in a day. For us to say that we can fulfill the necessary details in one day, might be asking a little bit too much. This is so and yet we are not recognizing the progress we have made, given the fact that the Fiscal Management Act that is being referred to was only approved last year.

The process of change is not overnight. Therefore, I plead with hon. Members that the Government has to continue. There may be issues like the ones you have raised but we will refine them. However, we cannot expect everything to happen in one year. Reform is a process and not something that will happen overnight. When we request for some of these things, it is not because we want to have indiscipline in the Government. No, that is why we say that we respect the oversight role played by Parliament and approving this money does not in any way remove that role from this House. However, the Government has also set out some priorities which it wants to know whether they can continue. Ministries must also begin to plan and programme themselves. There are those that will be required to make advance payments for certain things. For example, there are those who need to pay university lecturers in accordance with the agreement that was reached.

We also have police reforms. This very same House is the one that put me on my toes by asking me where the money for the Committee of Experts (CoE) is, but now it says that it will not approve it.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, I beg to oppose the amendment and plead with hon. Members that let us walk this path together. There will come a time when we will get those details. Maybe then, we would have arrived but we are not yet there.

I beg to oppose.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I would like to support the amendment to this Motion. A few days ago, the Chair reprimanded the membership of this House for taking our job casually by not taking a keen interest in the Budget. We were reminded, and rightly so, that it is a very important responsibility that we should not play around with. I fully agree with that reprimand.

As we approve any money to the Ministries, we should be sure of what we are doing.

We are in the same position we were last year because last year, we reprimanded the Deputy Prime Minister and Minister for Finance. We told him that it was unacceptable to just come up with a straight line arithmetic by dividing the budgeted amount by two and asking us for approval. We felt then that this is laziness on the part of the Treasury. We told the Treasury that that was the last time that we were doing that and that next time, we would want a more detailed approach to this request on Vote on Account.

Mr. Temporary Deputy Speaker, Sir, the Minister had just vindicated and validated our argument by saying that some Ministries probably need more, some need less. Why did the Treasury not come up with line by line items? Some, they could even ask us to approve a 100 percent, like the money that is needed for referendum, we may need to give it in total. That is why I anticipate that some amendments may be proposed to give money to the Interim Independent Electoral Commission (IIEC) fully, but there are lines that do not need the approval of 50 percent. It is my considered opinion that the Office of the Deputy Prime Minister and Ministry of Finance is taking this House for granted, it is taking things for granted. If they feel that just because it has been a tradition and the Prime Minister said that the practice has been that we give 50 percent. I do not agree with the Prime Minister. If the practice is bad, we do not continue with it. The practice of 50 percent has been because the budgets for the different Ministries are normally approved around November, December. But this time round, according to the law, we are going to approve the Ministerial budgets by, latest, 31<sup>st</sup> August. Why should we give you 50 percent? You only need money for two months and actually even a quarter is generosity on the part of this House. We should have given you a maximum of two months equivalent of expenditure.

Mr. Temporary Deputy Speaker, Sir, I remember the Budget Committee has a problem with the budget in terms of what was in the policy statement and what was presented before this House. We still expect, as a Committee, an explanation from the Ministry of Finance why there was that variance of Kshs59 billion.

Mr. Temporary Deputy Speaker, Sir, can you protect me from the shouting and harassment from the Deputy Prime Minister and Minister for Finance. He is a senior Member of this House. I feel intimidated!

**Mr. Temporary Deputy Speaker** (Prof. Kaloki): Hon. Mbadi, proceed on!

**Mr. Mbadi:** Thank you, Mr. Temporary Deputy Speaker, Sir. With that assurance, I proceed.

We want to be preventive and not curative. We want to handle things before they happen. Before this explanation of Kshs59 billion is given, we cannot approve 50 percent. We need to be cautious because in accounts, there is a law we call prudence. We have to be prudent and give only the bare minimum we could. Actually, we have been very generous to give you a quarter of the expenditure.

So, Mr. Minister, please, be comfortable with our 25 percent but next time, we plead with you, that when you are presenting the Vote on Account, please, give us a detailed analysis on each and every line item, how much you anticipate to spend in two months, some could be more, some could be less. This is why when the Minister presented quarterly reports to us, you find some Ministries having spent a 100 percent and you still have half a year remaining and some have spent 10 percent. It is because there is no discipline in expenditure and this House is contributing to this by just



generously giving money to the Minister, as and when he wants. This time round, I plead with this House that we condition this Ministry to start thinking and behaving the way and in the spirit of the Fiscal Management Act. If we do not do that, then this Act will be in vain. I do not want the law that we passed in this House to be in vain.

My parting shot, as I conclude, is that the Minister should reconsider and support our proposal to amend. We are not saying that we will not give you money; we are giving you one month more than you need because we are giving you three months equivalent of expenditure. So I am confident that the Government is going to run effectively and efficiently with three months equivalent of expenditure.

Mr. Temporary Deputy Speaker, Sir, I also want to allay some fears. There is a difference between budget approval and cash disbursement. This is totally different. Actually this money we approve, we may not even get it until November. Most of these expenditures, even the CDF that they talked about, will come in October or November. So, why should we tie up cash flow with the appropriations?

I beg to support.

**Ms. Karua:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support the Motion to amend but, with an amendment. Pursuant to Standing Order No.53, I beg to move an amendment to the amendment so that to amend the figures sought to be withdrawn to read Kshs161,217,686,662 and also to amend the word “representing” to say representing slightly above one quarter of the estimates of Recurrent and Development Expenditure.

I am, therefore, proposing we delete the word “one quarter” and replace it with the words “a figure slightly above one quarter with the exception of vote R33” after the word “thereof” in the first paragraph. That will allow us to exempt the IIEC which needs its money immediately. I also propose to amend the figure as I have already indicated and substitute the figure which is slightly above one quarter. I have already read it but I will repeat; Kshs161,217,686,662.

I want to agree with the Deputy Prime Minister and Minister for Finance that we need the money for the IIEC immediately. But I do not agree with him or any other Member who suggests that giving one quarter of the estimates will jeopardize the operations of any Ministry. Let the Deputy Prime Minister and Minister for Finance not rely on the sympathy by mentioning either the police reforms or the teachers’ increment. After all, we have been asking this Government to get on with police reforms. It has been resisting. The amount we propose to pass will enable the Government to get on with the reforms. That amount is sufficient for three months yet this Parliament is required to pass the entire budget within the next one month. Therefore, the Government will not be jeopardized.

I am asking the Deputy Prime Minister and Minister for Finance to presently shock this Parliament by seconding this amendment to the amendment because it represents the correct position as opposed to what he has proposed.

Mr. Temporary Deputy Speaker, Sir, my colleagues have already indicated that the Government releases money in quarterly cycles. It is, therefore, not logical to ask this Parliament to pass one half when we are expected to pass the Budget within the shortest time possible. I want the Minister for Finance and the Government to understand that we are conscious of our duty to Kenyans; we would not want to paralyze any service, and that is why the amendment to the amendment is proposed; we want the monies required

for the referendum made available. That is why we are proposing passing one quarter, so that all Government departments, including the ones that need to get on with reforms will have sufficient money.

Mr. Temporary Deputy Speaker, Sir, it is time the Ministry of Finance and the entire Government followed the law. The Estimates, as proposed by the Minister, actually contravene the law because they go beyond the time expected for the passing of the entire Budget; he is ignoring the fact that the law has since changed; he is still in the mood of business as usual. Albert Einstein once said that: "Insanity is doing things the same way over and over again and expecting different results". Let us do things differently if we are expecting reforms to get on in this country. I, therefore, urge the Minister for Finance to take leadership by acquiescing to us passing just slightly above a quarter to accommodate the Interim Independent Electoral Commission (IIEC) and to give the Government money for the next quarter. Let the young soldier not reflect an aged mind, which is resistant to reforms. It will, otherwise, embarrass those who are young and in a reform mood.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, I want to persuade my colleague to show that he can move when convinced that things should be done in the proper way. With the Temporary Deputy Speaker's leave, I would like the amendment to the amendment to be seconded by none other than the Mover.

**The Temporary Deputy Speaker** (Prof. Kaloki): Actually it is not necessary. Let me propose---

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, if it is not necessary, then it is okay. I beg to move this amendment to the amendment.

*(Question of the amendment to the amendment proposed)*

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir. I stand here to strongly oppose the amendment to the amendment and even the amendment itself.

Mr. Temporary Deputy Speaker, Sir, I do not see why we should give priority to one Vote Head---

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

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Githae, can you proceed!

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir. I must say that this has been our tradition---

**Ms. Karua:** Tradition?

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): It is important that we continue our tradition. Things are going to change as we improve our systems. The Treasury has not yet gone to the extent where you can tell on a given day what your cash flow would be. So, let us give them time to improve their systems. If you look at the other jurisdictions, the ones that give two months or a quarter of the total Budget like in the US, the financial budget starts in September. So, the Treasury there has the time to analyze all---

**Mr. Ogindo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to mislead this House that the Treasury is not yet in a position to determine how much money it needs on a daily basis, or even on a monthly basis, when I know that the---

**The Temporary Deputy Speaker** (Prof. Kaloki): What is your point of order?

**Mr. Ogindo:** He is misleading the House. Is he in order?

**Hon. Members:** How?

**Mr. Ogindo:** Yes; he is misleading the House that the Treasury has no capacity to determine how much money it needs on a monthly basis, while I know that there is a monthly report filed by the Treasury on the demand of the Exchequer on a monthly basis?

**The Temporary Deputy Speaker** (Prof. Kaloki): Thank you, hon. Ogindo. Proceed, hon. Githae!

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir. That was really a point of argument.

Mr. Temporary Deputy Speaker, Sir, what I am saying is that such a time is going to come, but we are not yet there; we are soon going to be there, where it will really be possible, even on a daily basis, to determine the amounts required by the Ministry. This House should not be seen to be opposing the Government Budget, because we are required to give services to the citizens. Suppose we find, after reducing this amount, that we do not have money for salaries for the policemen? We will be blamed in this Parliament! We do not want to take that position. Suppose we reach a position where we are to stop building the district headquarters? It is this Parliament which is going to be blamed. The oversight role of Parliament will continue, but it does extend to figures---

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

**The Temporary Deputy Speaker** (Prof. Kaloki): What is your point of order, Mr. Ethuro?

**Mr. Ethuro:** Thank you, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to continue misleading the House that the amendment to the amendment will make the money for the police evaporate from the Budget?

*(Applause)*

We are talking about a quarterly period, just like they are proposing the half-year period. That is the only difference. The rest of the money and the Votes will be there as they are!

*(Applause)*

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, it is very clear that this amendment is being proposed to oppose the referendum. These are the people who do not want the Constitution. We want to give enough money for the proposed Constitution, so that we can continue with the referendum. The people who do not want the referendum are the ones who are trying to reduce the amount, and this is totally unacceptable!

Mr. Temporary Deputy Speaker, Sir, if teachers go on strike, it is this Parliament which is going to be blamed because they are not going to have their salaries!

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

**The Temporary Deputy Speaker** (Prof. Kaloki): Ms. Karua, what is your point of order?

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, it is obvious that the hon. Member must have been sleeping when the amendment to the amendment was being proposed. Is he in order to mislead the House that the referendum will be disrupted when the amendment to the amendment precisely gives money for the referendum?

*(Applause)*

Is he in order? Was he sleeping?

*(Laughter)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! Hon. Githae, that is a valid point of order. The amendment by Ms. Karua addresses that particular concern – the referendum!

*(Applause)*

Can you just proceed?

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, it is not possible to determine at this time 100 per cent the amount of money that the referendum process will require. It is not possible! To be on the safe side, let us allow 50 per cent---

**Mr. Muthama:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Members here to keep on insisting that the money should be allowed just for two months? If this money is given out for two months--- Is it in order for the hon. Members to be asking for the allocation to be given for two months when we know very well it is not enough?

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

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! Hon. Githae, can you proceed and conclude your remarks?

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, we need money for the Constituencies Development Fund (CDF). We need to build bridges. If we do not do so, it is this Parliament that is going to be disrupted. We cannot allow this. I am saying that if it were me, I would have gone for three-quarters of the total amount but 20 per cent is okay.

I stand to strongly oppose the further amendment to the amendment.

*(Question of the amendment to the amendment put and negatived)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, hon. Members! The further amendment by hon. Ms. Karua is defeated. So, let us go back to the amendment by hon. Ogindo. Let us proceed to contribute. Hon. Kabando wa Kabando!

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): Mr. Temporary Deputy Speaker, Sir. I rise to oppose this amendment. Listening to the contributors on the other side who are supporting this amendment, I see the need for us to be unconventional. I cannot even agree more.

**The Minister for Foreign Affairs** (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Speaker, Sir. I hate to interrupt my very good friend, hon. Kabando wa Kabando, but this amendment has been ventilated adequately by both sides of the House. I would wish to move that the Chair puts the Question so that we can vote on the amendment and go back to the main Motion.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! Hon. Kabando wa Kabando, proceed!

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): Thank you, Mr. Temporary Deputy Speaker, Sir, for the permission to continue. I was contributing in support of that amendment and oppose it with the same logic; that we need to think outside the box. We need to be unconventional and even unorthodox in order to obtain the required positive results.

My Ministry, for instance, is expecting very little amount of money out of the 50 per cent that is required here. Part of the focus of the Ministry of Youth Affairs and Sports is to staff the nearly 1,000 youth polytechnics constructed by Members of Parliament and their constituents using the CDF money. Many of these polytechnics are malfunctional and those that are in existence and having received on average, equipment worth Kshs0.5 million, remain without instructors and yet we have invested in them. We expect to staff them. This is a sector that needs a lot of empowerment.

Mr. Temporary Deputy Speaker, Sir, on the question of the youth and entrepreneurship, it may clear some discomfort for us to succeed in an amendment that can delay disbursement of some amount of money, but the constituency of the youth is hugely impatient. It is heavily restless. They need to be mainstreamed. For that simple reason, we need to do that which is necessary for us to release the over Kshs3 billion for the Small and Medium Size Enterprises (SMEs) so that the youth can be part of the change that we need. If there is a time that that money is required, it is now. It may be very warm for many others, but for the majority of the population, it is right.

Many young people also worked as census enumerators but they have not been paid their money. There are a lot of my constituents that I know who have not been paid because some monies have not been released. The Ministry of Planning, National Development and Vision 2030 is in charge of that. This money should be released quickly so that all their dues are settled.

Mr. Temporary Deputy Speaker, Sir, in conclusion, we need instant coffee. That instant coffee during this cold, for the young people is unconventional thinking that will bring desired quick results for them.

I oppose.

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I rise to support the amendment. I urge the side in front of me that the nature of parliamentary democracy is such that the minority will have their say and the majority will have their way. So, they

have already lobbied their numbers. They already know until my Bill comes into effect--- That is why they are not very eager to assent to it so that they can continue herding sheep into their house as they have done now.

Mr. Temporary Deputy Speaker, Sir, be that as it may, I think it is important that the issues we want as a Parliament must be recorded. We, as a Parliament last time stood and asked: What is the basis for giving Government 50 per cent of the allocation? No satisfactory explanation has been forthcoming. The Chairman of the Departmental Committee on Finance, Planning and Trade has each and every year, including this afternoon said that he is going to repeat what he said last year: "Is that a good statement to the Minister for Finance that he heard us last year? Is it a statement from the Government side that they have been listening to Parliament where the Government has a membership?"

Mr. Temporary Deputy Speaker, Sir, we do not want to act in vain. This is the supreme House and we want to act in a way that what we propose as a House is taken on board and into account. We want to bring this amendment because with the new Standing Orders - my good friend Mr. Orenge is here - we said that by 31<sup>st</sup> of August, we will do guillotine on all accounts. So already the quarter we are proposing will cover July, August and September. We will have enough money to cover the referendum and do what you need to do.

Mr. Temporary Deputy Speaker, Sir, we have heard from the Government side. Why does the Government not want to listen to us? Why do they want to behave like the famous story of the hyena talking to the stone quoted by Mr. Mwangale? We do not to be seen like a stumbling block to the referendum, and that is why we moved an amendment to the amendment.

The other fundamental issue I want to raise is this: Every week the Government allocates money. It is not even monthly. It is done every week. Whatever revenue they get is what is allocated on a weekly basis. The Treasury cannot come here to convince us. I speak from a point of authority because I used to be an Assistant Minister for Planning and National Development. The Treasury cannot come to convince us here that they need that much time. It is not true.

Secondly, I thank God for the Constituencies Development Fund (CDF) because it has exposed the weaknesses in centralized planning and centralized Government. I want to thank God because God spoke to men. He spoke to a man known as Eng. Karue.

Mr. Temporary Deputy Speaker, Sir, the CDF Act stipulates that the money must be released every quarter. While I appreciate the Deputy Prime Minister and Minister for Finance, I think of all Ministers, he is the first one who has released all the money within the year. However, he has never maintained that schedule of every quarter. Why does he need 50 per cent now?

Minister, start with small mercies and then we will grant you bigger things. That is what the Bible says in the parable of the talent.

Mr. Temporary Deputy Speaker, Sir, if he had already demonstrated that, I would have been the first person to support and trust him.

Finally, I do not want to give these people 50 per cent because---

**Hon. Members:** Which people? Which people?

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, this Government of people.

This Government cannot add up figures. They are presiding over an era of errors.

*(The hour clock was lit)*

Mr. Temporary Deputy Speaker, Sir, that is only a notice that I have another five minutes to continue talking.

According to the documents tabled by the Minister for Finance who is my good friend, the estimated ordinary revenue is Kshs609 billion. The CDF Act says not less than 2.5 per cent should be allocated to constituencies. Simple arithmetic of the level of standard three will tell you that, that should come to Kshs15.22 billion. What does my good Minister do? He gives us Kshs1.3 billion and makes all of you *felanga* good. The law is the law. A criminal is defined by the fact that they have committed a crime by not following the law.

Mr. Temporary Deputy Speaker, Sir, the Minister is a suspect. We suspect that a crime has been committed and we cannot trust all our money to be given when all the calculations are not properly done.

I support.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, there was an amendment by Mr. Ogindo on the Motion. I will put the Question.

*(Question of the first part of the amendment, that the words  
to be left out be left out, put and negated)*

*(Debate on the original Motion resumed)*

Hon. Members, we will now resume debate on the original Motion by the Deputy Prime Minister and Minister for Finance.

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Temporary Deputy Speaker, Sir. On the basis of the debate that has taken place on the amendment, and the amendment of the amendment, the argument for and against this particular amendment is exhausted. Will I be in order to ask you to call upon the mover to reply?

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Ogindo, do you want to continue to contribute? If there is no Member willing to contribute, I will call upon the mover to reply.

**Hon. Members:** He contributed! He contributed!

**Mr. Ogindo:** Mr. Temporary Deputy Speaker, Sir, thank you for protecting me--

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! Mr. Ogindo, you had already contributed and moved an amendment as a matter of fact.

Is there another Member willing to contribute?

**Mr. Njuguna:** Thank you Mr. Temporary Deputy Speaker, Sir, ---

**Mr. Ethuro:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Mine is more on the Standing Orders. For this kind of Motion, you cannot propose the Question as purported by Mr. Orengo. He should know better. He is just being mischievous. Even the same argument he is using cannot be sustained. An amendment to an amendment is a different set of Motion and a Member can contribute to the amendment to the amendment and then amendment to the original Motion. So, there were three Motions here and any

single Member of this House can make three contributions. Those are the Standing Orders.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Ethuro, I hear you.

Mr. Njuguna, please, proceed with your contribution.

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, thank you for giving me the opportunity to contribute on this Vote. First of all, let me thank the Deputy Prime Minister and Minister for Finance for ably presenting this Motion to us. As I make my contribution, I wish to note that it is important that we allow the Vote on Account because we need to improve security in this country. The kind of kidnappings we are experiencing in this country should stop. We need the Provincial Administration to acquire new vehicles. We also need to put up houses and other facilities in the newly created districts.

On the issue of resettlement of IDPs, we still have some IDPs in the camps. We need to approve money so that land can be acquired to settle these innocent people. That money must be allowed to come from this very important Vote.

We have also started the Economic Stimulus Programme (ESP) projects and we need to complete them. We have been talking about the road network in this country and it needs to be improved.

Finally, we cannot strangle the very heart of this nation; the Office of the President, which has been given some money. If we do not allow that Office to be operational, it will be too bad. We have also allowed in the Budget recruitment of nurses. We should not be an impediment to the recruitment of nurses and laboratories technicians.

With those few remarks, I very strongly support this Vote.

**Mr. Mungatana:** Mr. Temporary Deputy Speaker, Sir, I have got three quick points that I want to make. First of all, it should be understood that we are unhappy with the manner in which the Treasury wants to bulldoze this Budget through the House. In the Budget Committee, we passed the Budget Policy Statement and in it, this House, through the Budget Committee, set a limit the Minister or the Treasury to incur a public debt. The Treasury went and over-shot the limit we set in this House by Kshs59 billion. That means that they did not listen to the directives of this House.

Secondly, it appears that the House is not being given its proper place. This is my plea to the Minister. When these Budget Estimates were read here, they stood committed to the Committees for 21 days. We are requesting the Minister, because we still have an opportunity within those 21 days to make suggestions, to stop listening to what the Treasury officials tell him and listen to what the representatives of the people are saying. For example, the policy of last year, where the Treasury officials were talking about the computer buses, the representatives of the people were talking a different language. We could have used that money in a different way. My plea is that, although the Minister has the numbers today, please, let him listen to what we are saying in those 21 days. We are pleading that they inculcate into the budget-making process the opinions of the House. That is because if they had done that, today, we would not have an excess of the Budget deficit by Kshs59 billion. Therefore, I still stand here to say that I am not convinced that we should still give them the 50 per cent.

With those few remarks, I beg to oppose the Motion.



**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I thank all the contributors. I want to assure my good friend that we have taken note of that and we will continue to do so. I think Mr. Ethuro knows that from experience!

So with those few remarks, I beg to move.

*(Question put and agreed to)*

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Although hon. Mungatana is used to crocodiles, but the way hon. Ethuro is opening up his mouth when he is---

*(Laughter)*

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, that concludes the business on the Order Paper today. The House is, therefore, adjourned until tomorrow, Thursday, 24<sup>th</sup> June, 2010, at 2.30 p.m.

The House rose at 6.00 p.m.