

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 12th April, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Abstracts of Accounts for the Municipal Council of Voi for the year ended 30th June, 2005 and a Certificate thereon by the Controller and Auditor-General.

Financial Statements for the Municipal Council of Kitui for the year ended 30th June, 2008 and a Certificate thereon by the Controller and Auditor-General.

Abstracts of Accounts for the County Council of Migori for the year ended 30th June, 2007 and a Certificate thereon by the Controller and Auditor-General

Abstracts of Accounts for the Town Council of Masimba for the year ended 30th June, 2007 and a Certificate thereon by the Controller and Auditor-General

Abstracts of Accounts for the Town Council of Rongo for the year ended 30th June, 2007 and a Certificate thereon by the Controller and Auditor-General

Financial Statement for the Town Council of Nyamira for the year ended 30th June, 2008 and a Certificate thereon by the Controller and Auditor-General

Financial Statements for the County Council of Malindi for the year ended 30th June, 2009 and a Certificate thereon by the Controller and Auditor-General.

Financial Statements for the Town Council of Malava for the year ended 30th June, 2009 and a Certificate thereon by the Controller and Auditor-General

Financial Statements for the County Council of Kwale for the year ended 30th June, 2008 and a Certificate thereon by the Controller and Auditor-General.

Financial Statement for the County Council of Kilifi for the year ended 30th June, 2008 and 2009 and a Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for Provincial
Administration and Internal Security (Mr. Lesrima) on behalf of the
Deputy Prime Minister and Minister for Local Government)*

QUESTION BY PRIVATE

PLIGHT OF FAMILIES EVICTED FROM
ELAND DOWN FARM

Mr. Letimalo: Mr. Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) What is the condition of the families evicted by the police from Eland Down Farm on 23rd November 2010, how many of the children have died out of opportunistic infections and why has the Ministry not provided them with relief food and medication?

(b) What is the Government doing to stop further suffering of the evicted families?

The Assistant Minister, Ministry of State for Special Programmes (Mr. M.M. Ali): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware of any families that were evicted by the police from the Eland Down Farm on 23rd November, 2010.

(b) Since there were no evicted families, no action is required from the Government at all.

Mr. Letimalo: Mr. Speaker, Sir, you will recall that during the last Session, there was a Parliamentary Question concerning eviction of families from Eland Down Farm in disregard of a court order. You will recall that the matter dragged because we were looking for the necessary documents. However, the Departmental Committee on Administration and National Security visited these families in the presence of the District Security Committee (DSC) of Laikipia East and found out that the conditions under which these people were living were terrible. The Committee reported that children had died of opportunistic diseases.

Why would the Assistant Minister deny that these people have actually been evicted by the Government and they are living under such conditions?

Mr. M.M. Ali: Mr. Speaker, Sir, you recall that towards the end of last year, the hon. Member asked the Ministry of State for Provincial Administration and Internal Security the same Question, which denied any invasion by the police. We rely on information given to us by the District Commissioners (DCs) present on the ground. The information from the said DC is that there are no persons registered as Internally Displaced Persons (IDPs) therein. The situation is that there is a parcel of land owned by a private person who sold it to African Wildlife Foundation (AWF). This Foundation converted the same parcel of land into a conservancy. The neighbouring communities accepted the conservancy. However, a section of them were against it and, therefore, took the matter to court. They lost that civil case and so the Government does not recognize any IDPs present in the area.

Mr. Mwangi: Mr. Speaker, Sir, maybe, the Assistant Minister could tell the House the truth. They may not be IDPs, but they may be Kenyans who have been moved from one settlement scheme to another. Could he tell us whether the responsibility of feeding these Kenyans is the Government's or not? Are they hungry IDPs or squatters? Are their children catered for? Whose responsibility is it to cater for these Kenyans?

Mr. M.M. Ali: Mr. Speaker, Sir, whether those people are IDPs, squatters or otherwise, it is the responsibility of the Government to feed its people. In this particular case, we are not aware of any section of that group which secluded itself, but the Government has provided relief food to people in all parts of the country according to the available resources so that they can share whatever is there.

Mr. M.H. Ali: Mr. Speaker, Sir, I am a Member of the Departmental Committee on Administration and National Security. I admit that we visited the place and we saw

these Kenyans. Indeed, they are really suffering. Their children do not go to school and they are not given any food. This is regardless of whether they actually own the land or not. I think it is the responsibility of the Government to take care of these Kenyans. What is the Ministry doing for these Kenyans? Before this matter is settled by the court, what is the Ministry doing to ensure that these Kenyans do not suffer any more?

Mr. M.M. Ali: Mr. Speaker, Sir, with regard to what the hon. Member is talking about, I am not in custody of the said Report by the Departmental Committee on Administration and National Security. If there are, indeed, Kenyans in that particular place or anywhere else who need our attention, we shall definitely provide the food that is required. With regard to this case, we could liaise with the area Member of Parliament to tell us where they are exactly. We will also liaise with the DC---

Mr. Kigen: On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister say that if these people really exist, then he could rely on the area Member of Parliament to tell him exactly where they are. This is the Government speaking to us and it has machinery to verify whether or not these Kenyans exist. Is it in order for the Assistant Minister to continue saying that he does not know and yet he has the machinery to verify that?

Mr. M.M. Ali: Mr. Speaker, Sir, we do have machinery as a Government and the machinery we have indicates that there are no IDPs there.

Mr. Njuguna: Mr. Speaker, Sir, with the new revelation and information laid on the Table by various speakers, could the Assistant Minister consider interim measures to assist the evictees who are said to be located in that area?

Mr. M.M. Ali: Mr. Speaker, Sir, before I was interrupted by the hon. Member for Rongai, I was about to say that if the hon. Member can, indeed, liaise with the security team on the ground and the DC, we will be able to know what we do not know now and we shall definitely do what is required; give them food.

Mr. Affey: Mr. Speaker, Sir, you will appreciate that this Question has come back the second time. Already we have confirmation from the relevant Departmental Committee that this group actually exists. Could the Assistant Minister tell us and, in fact, pledge that he together with the area Member of Parliament will tour this place as soon as possible in order to establish the facts on the ground? Could he pledge here that he will go to the site to console and comfort those Kenyans and, in fact, give them food and medicine?

Mr. M.M. Ali: Mr. Speaker, Sir, I appreciate what hon. Affey has said. It is the same thing I said that we shall liaise with the area Member of Parliament. If, indeed, it is true that there are some people suffering somewhere, it is very sad and we shall take any appropriate action to ensure that those Kenyans are catered for.

Mr. Letimalo: Mr. Speaker, Sir, given that my colleague Mr. M.M. Ali was in the Committee that visited the affected families and has confirmed the same and we also know that they are still there to date, could he give us the date when we could accompany him to visit those people?

Mr. M.M. Ali: Mr. Speaker, Sir, , I cannot say the precise date that the hon. Member wants, but we shall liaise with him as required and do what is necessary to ensure that Kenyans do not suffer.

ORAL ANSWERS TO QUESTIONS

Question No.536

POSTING OF DOS TO MBALAMBALA/BANGALE DIVISIONS

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

(a) whether he is aware that Mbalambala and Bangale divisions in Bura District have no District Officers; and,

(b) when the Government will post District Officers to the said divisions.

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

(a) Yes, I am aware.

(b) The District Officer will be posted to Mbalambala Division once a suitable officer has been identified. However, due to the shortage of District Officers, the Ministry is not likely to post officers to all vacant stations including Bangale which will continue to be manned by the District Officer (DO), Madogo Division until a new recruitment is done. The Ministry is seeking for funds from Treasury to conduct a fresh recruitment of District Officers.

Dr. Nuh: Mr. Speaker, Sir, in his answer the Assistant Minister says that a District Officer will be posted once a suitable person is established. Does it mean that the Ministry is unable to locate suitable people because I have suitable candidates who can serve in that position?

Mr. Lesrima: Mr. Speaker, Sir, I did not quite get the hon. Member's supplementary question.

Dr. Nuh: Mr. Speaker, Sir, the Assistant Minister, in his answer affirms that a DO will be posted in Mbalambala Division once a suitable officer is identified. Is the Ministry finding it difficult to identify a suitable officer? I have one, if they are unable to do so.

Mr. Lesrima: Mr. Speaker, Sir, the question of suitability arises because of the challenges present in that particular part of the district; not just any officer can work there. We have female District Officers available but I do not think that they will be able to cope there. I will be willing to look at the candidate that you are talking about provided that you are not taking away from your neighbour or from another district because the shortage is affecting all the districts in Kenya.

Mr. Mureithi: Mr. Speaker, Sir, I would like to say that this problem of District Officers is not confined to Bura alone. If there are challenges in Bura, I really wonder what really happens to areas like Ol Kalou where we have three districts and there have been only three District Officers posted there. What is the Assistant Minister doing to make sure that the services for which these divisions were created are provided, in order to serve the local community?

Mr. Lesrima: Mr. Speaker, Sir, I can only say that there have been phenomenal growth of the districts from 70 districts in 2008 to 386 districts as of today. This necessitated the promotion of a number of District Officers in acting capacities to man

those districts. Therefore, the problem continues. In fact, we are short of 600 District Officers in the country. The last time we recruited District Officers was in 2008 when we recruited 200 officers. So, in terms of providing services, you just have to continue sharing with the neighbouring District Commissioners (DCs) and DOs.

Mr. Ochieng: Mr. Speaker, Sir, I do have a similar problem. Six months ago the Government created West Nyakach Division and North Nyakach Division and up to now, the Government has not been able to post two DOs. Could the Assistant Minister tell us what tangible programme they have to fill in these vacant positions?

Mr. Lesrima: Mr. Speaker, Sir, as I said earlier, we have asked for money from Treasury and once we get the funds, we shall recruit.

Dr. Nuh: Mr. Speaker, Sir, before Mbalambala Division was created early last year, there were two DOs, one serving in Bangale Division which is about ten years old and one serving in Madogo Division. What is happening to the extent that it is only one DO now serving the two divisions which were there ten years ago and now on top of it there is one more division that has been curved? That puts one DO serving three divisions with an expanse of about 8,000 kilometres square. For----

Mr. Speaker: Order, Mr. Nuh!

Mr. Lesrima: Mr. Speaker, Sir, probably he has gone to become a DO somewhere else. Since DOs are deployed at the Provincial Commissioners (PC) level, I have discussed with the PC to keep on searching for a DO to post to Mbalambala. I do sympathize with the situation there. All of us in this House including myself are facing those shortages. I think you deserve more than most areas because of the conditions prevailing there in terms of insecurity and the terrain there. So, rest assured that we will continue to search internally within the province. I would like to look at that candidate and establish whether you are taking a DO from my constituency.

Question No.785

PRESENCE OF MONEY LAUNDERING FRAUDSTERS IN KENYA

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

(a) whether he is aware of the existence of fraudsters involved in money laundering in Kenya and how much the country has lost annually as a result of the crime since 2003;

(b) whether he could state how many persons have been charged with the offence, indicating the status of the cases and the names of the suspects; and,

(c) whether he could state the measures the Government has taken to ensure crimes of this nature are curbed.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, you will recall that I had already answered this Question and he was supposed to go through the list that was tabled here and then ask questions.

Mr. Speaker: Very well! Mr. Waibara, you have now had time to go through the list. Do you have supplementary questions?

Mr. Waibara: Mr. Speaker, Sir, what I wanted is an explanation on money laundering as stated in part “b” and not the list of those who engaged in money laundering previously.

Mr. Speaker: So, what is the question now?

Mr. Waibara: Could the Assistant Minister tell this House whether printing of fake money is a criminal offence in Kenya?

Mr. Ojode: Mr. Speaker, Sir, yes, indeed it is a criminal offence in Kenya and nobody should attempt to print any money because he will be arrested.

Mr. Njuguna: Mr. Speaker, Sir, could the Assistant Minister give a full disclosure of the fraudsters involved in this serious scam?

Mr. Speaker: Order! The hon. Member for Lari is asking whether you could give full disclosure of persons involved in these activities.

Mr. Ojode: Mr. Speaker, Sir, the Question is very clear; he has asked me to give the names of those involved in money laundering, those who have been arrested and the monies which we have recovered. I gave a full list and that is what I tabled here. So, I do not understand what the hon. Member means by full disclosure other than what I disclosed here the other time. What the hon. Member should have done is peruse the list and then ask me questions. That is the list which I know of and which we have authenticated.

Mr. Olago: Mr. Speaker, Sir, the Question by Mr. Waibara was basically why nobody has been charged under the Proceeds of Crime and Anti-Money Laundering Act, Act No.9 of 2009. The answer to this Question by the Assistant Minister is that nobody can be charged with this offence because the Minister for Finance has not gazetted the commencement date. If this Act resulted from a Government Bill, why has the Minister not gazetted the commencement date up to now?

Mr. Ojode: Mr. Speaker, Sir, you are aware that we have already based the Bill on money laundering. The commencement date is supposed to be gazetted by the Minister in charge of finance. We have already asked the Minister for Finance to fix a date for commencement through a *Kenya Gazette* Notice and he promised that he would do exactly that. Once the commencement date is approved, we will take action.

Mr. Olago: On a point of order, Mr. Speaker, Sir. In bringing this answer to the House the Assistant Minister must have consulted very extensively with the Minister for Finance; my question still remains unanswered. Is it in order for the Assistant Minister to say that they are going to consult while my question was why the Minister has not gazetted the rules?

Mr. Ojode: Mr. Speaker, Sir, I mentioned here that we consulted with the Minister in charge of the matters related to finance, and he has said that he is going to do a Gazette Notice for the commencement date. Until that commencement date is gazetted I cannot do anything. In the meantime, he has said that he is going to do a Gazette Notice.

Mr. Mbadi: Mr. Speaker, Sir, many times we have heard of sporadic cases of arrest of these fraudsters. I believe the Government has the machinery in the form of the national intelligence network to know where these crimes are being committed. Why have we not heard of a major crackdown on this particular crime to discourage future commission of the same?

Mr. Ojode: Mr. Speaker, Sir, we rely heavily on the banks to report such matters. If the matter has not been reported to the police, there is nothing I can do because it has to

be brought to our attention. When we are told of incidents, we normally rush, arrest the fellows and arraign them in court. So far, we have recovered about Kshs17 billion from those trying to do money laundering. The total amount was Kshs18 billion, but we have recovered Kshs17 billion so far. When the commencement date is gazette, we will go ahead and do everything that is required by the law.

Mr. Speaker: Last question, Mr. Waibara!

Mr. Waibara: Mr. Speaker, Sir, will the Assistant Minister ensure that the Government of Kenya puts in place special money laundering courts similar to the anti-corruption courts for speedy trial of offenders?

Mr. Ojode: Mr. Speaker, Sir, those are some of the areas we are going to explore. For example, the Office of the Vice-President and Ministry of Home Affairs has constituted a committee on gambling at casinos and what have you. Within four months, they will report to the Minister which laws they need to retain, which ones they need to rewrite and which ones they need to do away with. Those are some of the areas we need to explore.

Mr. Speaker: Next Question by the Member for Naivasha!

Question No.709

OWNERSHIPS OF LAICO REGENCY HOTEL

Mr. Mututho asked the Deputy Prime Minister and Minister for Finance:-

(a) whether he could reveal the names of personalities, both from Kenya and abroad, who own the Laico Regency Hotel (formerly Grand Regency Hotel);

(b) who the shareholders and directors of the holding companies and their subsidiary companies are; and,

(c) whether he could table copies of the due diligence reports, as well as the shareholders and directors as at the time of execution of the sale and confirm or deny that relatives of owners of the former Grand Regency are among the owners of the hotel.

Mr. Speaker, Sir, this Question was partially answered and he was supposed just to come and confirm the directorship of the company named here.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Speaker, Sir, I wish to bring to the attention of hon. Members that the answer to this Question was presented to this House by the Assistant Minister in the Office of the Deputy Prime Minister and Ministry of Local Government, Mr. Nguyai, on Thursday 24th March 2011. Hon. Members, however, sought more information on part “b” of the Question. Specifically, we undertook to provide more information regarding the ownership and registration details of the Libyan African Investment Company.

Mr. Speaker, Sir, accordingly I wish to state that on the basis of the Registrar of Companies records, Libyan African Investment Company is not registered in Kenya, but has its address in Tripoli, Libya. The Registrar of Companies does not keep records of companies registered outside Kenya, unless they fall within the provisions of Part X, Sections 365 to 372 of the Companies Act, Cap.486, Laws of Kenya. The Libyan African

Investment Company, being a foreign company that holds shares in a local company does not fall within the category of companies required to be registered in Kenya under the provisions of this Act. Details of a company registered outside Kenya can only be obtained from the registration jurisdiction.

Mr. Speaker: I hope you have listened carefully, Member for Naivasha. Now, raise questions.

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

Mr. Speaker: Order, Member for Naivasha! What is your supplementary question from the information given by the Assistant Minister?

Mr. Mututho: Mr. Speaker, Sir, I would like to ask a supplementary question, but I seek your indulgence in the sense that what he is reading and what I have are different. Can I have what he is reading, so that I can ask my supplementary question?

Mr. Speaker: Are you saying you have a different answer from the answer that the Assistant Minister is reading to the House?

Mr. Mututho: Yes.

Dr. Oburu: Mr. Speaker, Sir, the answer which he has is that which was read here by Mr. Nguyai on 24th March 2011. The record is in the HANSARD. He was not here, but the Question was asked on his behalf.

Mr. Speaker: Order, Assistant Minister! Now you have additional information apparently with respect to part “b” of the Question. Have you shared that information with the hon. Member for Naivasha?

Dr. Oburu: Mr. Speaker, Sir, that is done through the Office of the Clerk of the National Assembly. I am not sure whether the information reached the Clerk’s office. This is, however, the answer I was given in the office.

Mr. Speaker: Mr. Mututho, are you able to interrogate that further information?

Mr. Mututho: No, I need to see what is in his possession.

Mr. Speaker: I understand your difficulties, Mr. Mututho; therefore, I will defer this Question to Thursday afternoon. Assistant Minister, please, be ready for the supplementary questions. The additional information will be given to the hon. Member because it is in the custody of the Clerk of the National Assembly.

Dr. Oburu: Mr. Speaker, Sir, I would like to request your indulgence so that the Question is brought on Tuesday afternoon.

Mr. Speaker: Tuesday next week?

Dr. Oburu: Yes, Mr. Speaker, Sir.

Mr. Speaker: Do you have any objection, Mr. Mututho?

Mr. Mututho: No, Mr. Speaker, Sir.

Mr. Speaker: You are comfortable. It is so directed!

(Question deferred)

Next Question by the Member for Yatta!

Question No.747

FATE OF “PYRAMID SCHEMES” MONEY HELD BY BANKS

Mr. C. Kilonzo asked the Deputy Prime Minister and Minister for Finance:-

(a) what became of the approximately Kshs.5 billion held by the Central Bank of Kenya and other commercial banks in “frozen” accounts belonging to “pyramid schemes”;

(b) when the “pyramid scheme” victims will be refunded their money; and,

(c) why the Government has failed to institute criminal proceedings against the directors/proprietors/officials of the schemes.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Speaker, Sir, I beg to reply.

(a) The Central Bank of Kenya is not holding any money belonging to the pyramid schemes. As for the amount held by commercial banks, the Central Bank had information on only Kshs11,039,687.50.

(b) Since the pyramid schemes were illegal, there is currently no money held in any form to refund victims of this scheme. Therefore, I am not in a position to say when the victims will be refunded their money.

(c) All complaints received from members of the public were channeled to the Banking Fraud Investigations Department for investigations. After investigations, the Banking Fraud Investigations Department forwarded its report to the Attorney-General for review and advice on prosecution. In this regard, I am aware that several individuals have been arrested and arraigned in court with various offences relating to pyramid schemes.

Mr. C. Kilonzo: Mr. Speaker, Sir, the issue of pyramid schemes is a case of the Government abandoning its people. When the Assistant Minister says that this matter is with the Attorney-General--- The Task Force Report did note that the Banking Fraud Investigations Department did make applications in court for the suspension of some of these bank accounts and those orders were granted by the court. The same Government, through the Attorney-General, went to court and sought to have those orders lifted. Thereafter, the people who conned Kenyans money were able to withdraw the money. If the Attorney-General is protecting the pyramid schemes, how do you expect him to take them to court? If he is the one who went to court to have the orders which had “frozen” the accounts lifted, how can he be the same person we will rely on to take these people to court?

Dr. Oburu: Mr. Speaker, Sir, I am absolutely unaware of any case where the Attorney-General went to court to have orders lifted or failed to have these people punished. I have two cases here. One was the Banking Fraud Investigations Unit application versus George Odinga Donde. In this case, there was an order given by Mrs. T. N. Ngugi. This was not from the Attorney-General but it was an order given by the court. It reads:-

“The notice of motion application dated 21st December, 2006 brought under Section 118 and 121 (1) of the CPC and Section 180 of the Evidence Act coming up for hearing before hon. T.N. Ngugi, Mrs. S.R.M. on 30th January, 2007, in the presence of S.P. Koywer for the applicant and Mr. Onyango and Mr. Odongo for the respondent. Upon hearing both S.P. Koywer and Mr. Onyango, it is hereby ordered:-

1. That the application is hereby dismissed with no orders as to costs.

2. That the respondent is hereby allowed to continue operating his account No.0150118918000 in the name of George Odinga Donde, personal Standard Chartered Bank Account on this order of 21st February, 2007.”

Mr. Speaker, Sir, I have another similar one for a different client. These two are the ones I know were taken and both of them were dismissed but not with the intervention of the Attorney-General. These cases were heard fully and determined by competent magistrates and decisions made. If there is any other information where the Attorney-General went to appeal, I am not aware of it.

Mr. Imanyara: Mr. Speaker, Sir, I am a bit surprised by the answer by the Assistant Minister. This is because he has taken Kshs11,039,687.50 from the Report that was tabled in this House by the Minister for Co-operative Development and Marketing arising from the Report of the Task Force on Pyramid Schemes chaired by hon. Francis Nyenze, a former Member of Parliament. According to that Task Force Report which was tabled in this House, apart from the Kshs11 million that is mentioned in the Assistant Minister’s answer, there are further sums of Kshs25 million, Kshs80 million and Kshs34 million. There is an entry here to the effect that these sums of money were released to the owners arising from the entry of *nolle prosequi* by the Attorney-General. The Attorney-General withdrew the cases under Section 87A of the Criminal Procedure Code and these fraudsters were able to withdraw this money that had been “frozen” by the High Court. Is it, therefore, in order in these circumstances for us to accept an answer that contradicts a report that was tabled before this House, that confirms in writing that the cases were withdrawn by the Attorney-General and the amounts involved are colossal and not just Kshs11 million? There is a report, if the Assistant Minister wants to see it.

Dr. Oburu: Mr. Speaker, Sir, I have said that it was the Kshs11 million which was established by the Fraud Investigations Department of the Central Bank of Kenya, which is under the purview of the Ministry. I did not say that, that is the only amount involved. I was only speaking about the amounts which were investigated fully by the department which fall under our jurisdiction, and which we submitted to the Attorney-General for further investigations with a view to prosecute. We are not saying that there are no other reports, but we are saying that there are no monies which are held by the Central Bank of Kenya in that respect. Several banks held different amounts of money which could have been investigated by that committee. However, the ones I was speaking about were investigated by the Fraud Investigations Department of the Central Bank of Kenya.

Mr. Njuguna: Mr. Speaker, Sir, it is in public domain that some members of the families that were swindled money through these pyramid schemes have committed suicide and their families are suffering. Could the Assistant Minister, therefore, consider putting in place interim measures to support the families that are already affected, because they have to feed, clothe and educate their children?

Dr. Oburu: Mr. Speaker, Sir, the pyramid schemes were criminal activities. The Government does not have provisions for losses incurred in fraudulent investments. The Government has established a task force and one of its objectives is to educate people so that they can desist from investing in fraudulent schemes like the pyramid schemes. We do not have any provisions to pay any affected Kenyan. It is sad but we do not have any provision to support them.

Mr. Mbadi: Mr. Speaker, Sir, from the Task Force Report which was brought before this House, it is very clear that the figure that the Assistant Minister has given us of Kshs11 million was only the amount that was in Equity Bank, Kimathi Avenue. There are other branches. Standard Chartered Bank, Moi Avenue Branch had Kshs25 million while K-Rep Bank had Kshs8 million. It is very clear that the Assistant Minister has not addressed himself fully to this issue. He has only picked on the amount that was held in one branch. Has the Government acted on the Task Force Report which was actually produced by the same Government?

Dr. Oburu: Mr. Speaker, Sir, the Report was in the Department of Co-operative Development. As I said, our Banking Fraud Investigations Department has investigated several cases and has also advised banks to report to the Central Bank of Kenya any suspicious accounts, whose behaviour reflects some kind of inclination to have pyramid scheme type of investments coming in, so that further investigations can be done to establish whether really they are pyramid schemes with a view to punishing the culprits.

Mr. C. Kilonzo: Mr. Speaker, Sir, the recommendations by the Nyenze Commission on Pyramid Schemes was meant to assist the Government to take action. One of the recommendations, with your permission, I wish to quote, was criminal prosecution. It says:-

“The Attorney-General, under the existing legal system, institutes immediate criminal prosecution of all directors, proprietors and officials who are engaged in pyramid schemes.”

Mr. Speaker, Sir, that was very straight forward. The people are known. The Report was tabled in the House and the Government was told who the directors of those pyramid schemes were. This Government promised, during campaign time, that it was going to take action on all those who swindled people’s money through pyramid schemes.

Mr. Speaker, Sir, could the Assistant Minister table the Report which was forwarded to the Attorney-General’s office by the Banking Fraud Investigations Department for review and advice on prosecution? Obviously, we are aware that there were former Members of Parliament. There were wives of Members of Parliament and senior politicians who were involved. So, if the Attorney-General is not able to take action, could he table the Report?

Mr. Speaker: Order, Member for Yatta!

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. You have just heard the hon. C. Kilonzo allege that a wife or wives of Sitting Members of Parliament were involved. Would it be in order for me to ask the Member to substantiate such serious allegations and mention who these wives are because we are now all suspects?

Mr. Speaker: Very well, that is valid.

Mr. C. Kilonzo: Mr. Speaker, Sir, that is not an allegation. It is something contained in the Report which was tabled in the House.

Mr. Speaker: Order, Member for Yatta! You are asked to substantiate. You have made a sweeping statement to the effect that wives of Sitting Members of Parliament were involved.

Mr. C. Kilonzo: Mr. Speaker, Sir, it is true that I am wrong. A wife of a Sitting Member was involved. That should have been the right word. It is contained in the

Report which was forwarded to the Attorney-General's office. Could he now table the Report which was forwarded to the Attorney-General's office?

Dr. Oburu: Mr. Speaker, Sir, what I said is that there were recommendations for the Attorney-General to make further investigations in certain cases which the Fraud Investigations Department had thought there was tangible evidence to show that they could be involved in some criminal activity. But the decision to prosecute or not is purely the decision of the Attorney-General. It is a continuous process of investigating these companies. So, for us to start coming to table names of people who have not been fully investigated by the Attorney-General, I do not know---

Mr. Ochieng: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to continue telling this House that these cases are still being investigated, when there is a Report that is complete with all the names of those people who are involved?

Dr. Oburu: Mr. Speaker, Sir, this is not an investigation report. You know, when you are investigating something of a criminal nature, the Government arm gives the final word. Even the recommendation says the Government should go further with investigations with a view to prosecuting those people. They cannot conclusively say that those people should be prosecuted it is the Attorney-General, by law---

(Mr. Mututho stood up in his place)

Mr. Speaker: Order Member for Naivasha! Order, Assistant Minister! There is a point of order.

Mr. Mututho: Mr. Speaker, Sir, is the Assistant Minister in order to continuously refer to prosecutions when the Report that was tabled before this House clearly says under part "XIV" that unless we have amended the penal code, we will not go anywhere on the matter at hand?

Is he in order to continue misleading this House that there is any prosecution pending or awaiting even with these recommendations, unless he complies, in the first instance, with the recommendations of this Report?

Dr. Oburu: Mr. Speaker, Sir, I have already read two prosecutions which were taken to court. I do not have any record of any other report which has been undertaken. I know there were recommendations to the Attorney-General to investigate with a view to prosecuting more cases---

Mr. Speaker: Order, Order! Assistant Minister, you seem to have missed the point of order raised by the hon. Member.

Dr. Oburu: Maybe, yes, Mr. Speaker, Sir.

Mr. Speaker: Just resume your seat! I will bring you up to speed!

(Dr. Oburu resumed his seat)

The Member for Naivasha, in that point of order, claimed that according to that Report, you will not get anywhere with prosecution or preferring charges unless the Penal Code is amended in material respect. So, the expected response from you is on what steps have been taken to amend the penal code as the Report recommends.

Dr. Oburu: Mr. Speaker, Sir, that is in the domain of the Attorney-General. I am not aware of any steps he has taken. Therefore, I cannot---

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. It is very apparent that this Government has no intention of helping victims of pyramid schemes. We know very well that as an Assistant Minister, he can generate amendments. Anybody can. He is being asked why he cannot generate amendments. My question to him was to table the Report, but not to explain. All I wanted was for him to table the Report from his Banking Fraud Investigations Department which he forwarded to the Attorney-General. As far as we are concerned, we will not get any help from the Attorney-General.

Dr. Oburu: Mr. Speaker, Sir, I said we do not have any specific report. What we forwarded were the recommendations in form of small reports. They were not in one report. We have forwarded several small reports to the Attorney-General with the names which have not been fully investigated expecting recommendations.

Mr. Imanyara: Mr. Speaker, Sir, we do not know what we are supposed take out of the answers that are given to the House. This is because the Assistant Minister, in his written answer, says:-

“After investigations, the Banking Fraud Investigations Department (BFID) forwarded its reports to the Attorney-General for review and advice on prosecution.”

The point of order from hon. C. Kilonzo is: Could he table those reports that were forwarded? We have information from the taskforce that the Attorney-General has refused to prosecute? Where he has prosecuted, he has entered *nolle prosequi* and let free those recommended for prosecution. That is what we are asking. It is in his answer to the Question.

Dr. Oburu: Mr. Speaker, Sir, he had asked for a report. However, I said it was not a report, but reports. Even my answer says reports.

Mr. Speaker, Speaker, Sir, I have pleaded with you to give me guidance, whether it is proper for me to bring these reports with names, which have not been fully investigated by the Attorney-General.

(Mr. Imanyara stood up in his place)

Mr. Speaker, Sir, let me finish. He is interfering with me.

Mr. Speaker: Order, Assistant Minister! Please, resume your seat!

Dr. Oburu: Mr. Speaker, Sir, I wanted to know whether we can release the names of people---

Mr. Speaker: Order, Assistant Minister! Please, resume your seat for a moment. I will guide you.

(Dr. Oburu resumed his seat)

The point of order which is being raised here by the Member for Yatta and pursued further by the Member for Central Imenti is that they are asking you, in accordance with your answer, to table the reports which were forwarded to the Attorney-General. Are you able to do so?

Dr. Oburu: Mr. Speaker, Sir, if you so order, I will do it.

Mr. Speaker: I do not have to order it. It is for you to decide whether or not, you should table the reports.

Dr. Oburu: Mr. Speaker, Sir, I was unwilling to table them. However, if you order me, I will do so.

Mr. Speaker: Why are you unwilling to table that?

Dr. Oburu: Mr. Speaker, Sir, I do not want to float names of people, whose investigations are incomplete. They are still with the Attorney-General. I do not know whether it will prejudice investigations.

Mr. Speaker: Order, Assistant Minister! I will help you then in this manner; you will liaise with the Attorney-General, let him as the principal advisor to the Government advise you whether or not you can table these reports in the House. I will revisit the matter two weeks hereafter. It will appear on the Order Paper, and you will be expected to make an indication to the House, having taken the advice of the Attorney-General.

(Question deferred)

Question No.795

RECRUITMENT OF MANAGEMENT TRAINEES BY MSC

Mr. Washiali asked the Minister for Labour:-

(a) how many management trainees were recruited in the recent exercise by Mumias Sugar Company and how many of them are from the Mumias Sugar Zone;

(b) what criteria the company used in identifying the trainees; and,

(c) what steps he will take to ensure that the company considers the locals for such opportunities.

Mr. Speaker: Where is the Minister for Labour? Is he not around? We may have to revisit the Question a little bit later, if we have time. That is because the Minister for Labour was here. He wanted to seek more information from his office and, therefore, I allowed him to go and get it.

Question No.697

PROGRESS REPORT ON REHABILITATION OF VOI RIVER

Mr. Speaker: Where is the Member for Voi? He is not here? That Question is dropped!

(Question dropped)

Question No.778

REPAIR OF MALINDI-GARSEN ROAD

Mr. Mungatana asked the Minister for Roads:-

(a) whether he is aware that the main Malindi–Garsen tarmac road is in a state of serious disrepair;

(b) how much money has been budgeted for the repair of the road and when the repair works will commence; and,

(c) when the Government will undertake repair works on the section of the road between Marereni area (in Magarini Constituency) and Garsen Town.

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

(a) I am aware that the Malindi- Garsen Road is in need for urgent repair.

(b) My Ministry, through the Ministry of Kenya National Highways Authority (KeNHA), has set aside Kshs17 million for the repair of that road. The works are under procurement and the successful contractor will be expected to commence works by May, 2011.

(c) The repair works mentioned above will cover the entire Malindi-Kokani-Garsen stretch of Road B8.

Mr. Mungatana: Mr. Speaker, Sir, I do not know whether the Assistant Minister is aware that, that is the same road that serves the entire Lamu District. It is a road that is entirely utilized by not only the tourists, but to transport all the food crops from the entire Tana Delta. I want the assurance that the works will commence on May, 2011. That is because, sometimes, the Assistant Minister talks but what he says is not carried to the end. I want his assurance and then I will be satisfied.

Mr. Kinyanjui: Mr. Speaker, Sir, I want to remind the hon. Member that, indeed, we advertized for the tender for that road in January this year. However, we were not able to get enough respondents for the tender. Subsequently, we re-advertized it on 22nd February and currently, we are doing the evaluation. My Ministry is very serious and committed to the repair of that road. I would like to make an appeal to the hon. Member; one of the concerns that we have been having on that section of the road is the overloading of trucks. It will be remembered that, sometime last year, one of the bridges collapsed because of heavy trucks that were carrying relief food to the upper part of the country. My Ministry will ensure that weigh-bridge is controlled so that we can reduce damage on that road. My assurance to the hon. Member is that, indeed, the road will be done in record time.

Mr. Mwangi: Mr. Speaker, Sir, while we appreciate the answer given by the Assistant Minister, that road cuts through Mombasa all the way to Garissa in northern Kenya. Could the Assistant Minister consider getting more funding because Kshs17 million will not complete the project? Does he have any intention to factor that project under the current financial year so that the road is motorable all the way from Mombasa to Garissa?

(Messrs. Samoei and Wamalwa were applauded as they entered the Chamber)

Mr. Speaker: Proceed, Mr. Assistant Minister!

Mr. Kinyanjui: Mr. Speaker, Sir, I want to concur with the hon. Member. For a road to be classified B8, it must be one of the key roads. My Ministry will, indeed, ensure that we factor it in the coming financial year. However, I would like to voice our concern

and frustration as a Ministry. We are one of the Ministries whose budget is likely to face a cut. Therefore, we may not be able to meet our expected infrastructure budget.

Mr. Konchella: Mr. Speaker, Sir, I would like to ask the Assistant Minister how he will control contractors who have been awarded contracts to build new roads. That is because some of them, when they are given the jobs, they do very shoddy work. In actual fact, there is no value for money. The Ministry is failing. I would like to cite a case of C17 in my constituency. The contractor was given a job by KeNHA, but he has done a very shoddy job. Could I ask the Assistant Minister to send the officers who are concerned, to go and see what those people are doing? It is a waste of public funds?

Mr. Kinyanjui: Mr. Speaker, Sir, I have heard the concerns of the hon. Member. I want to assure him that we will send our officers to inspect the road. If there is any evidence of wrong-doing on the side of the contractor, we will take appropriate measures. I would like to remind hon. Members that we will introduce the National Construction Bill that will streamline the construction industry. That is because we have various Ministries dealing with general infrastructure sector. We have contractors who have done bad jobs in one Ministry or sector and moved on to other Ministries like the Ministry of Energy, Ministry of Water and Irrigation and Ministry of Public Works. We do not have a proper mechanism to vet the work that has been done by the contractors. I hope that when the Bill comes here, hon. Members will give their valuable contribution to streamline that important sector.

Question No.730

BLOCKING OF PUBLIC ACCESS TO LAKE VICTORIA BEACHES

Mr. Olago asked the Minister for Lands:-

(a) whether he is aware that Nyanza Golf Club has blocked the public from accessing the beaches of Lake Victoria, thereby denying the residents of Kanyamony and Kanyamedha water and creating a state of tension and insecurity between the club and local residents; and,

(b) what measures he will take to address the above matter.

Mr. Speaker, Sir, allow me to say that this morning, hon. Orengo called me and said that he would be away. He said that he will inform the Speaker. He, kindly, requested, with your permission, that this matter be stood over to Tuesday next week.

Mr. Speaker: That may be so. However, Member for Kisumu Town West, you cannot speak for the Ministry of Lands when the Assistant Minister is in the House or not even in at all.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, I wanted to request the indulgence of the House. The hon. Minister talked to the Member and myself. We need more time.

Mr. Speaker: When do you want it to come back?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, next week.

Mr. Speaker: I direct that this Question appears on the Order Paper on Wednesday morning.

(Question deferred)

Mr. Speaker: Member for Isiolo South!

Question No.762

NUMBER OF DIPLOMA ADULT EDUCATION TEACHERS IN KENYA

Mr. Bahari asked the Minister for Education:-

(a) how many teachers have graduated with Diploma in Adult Education from Kenyan universities to date; and,

(b) what measures the Ministry has taken to place those teachers appropriately.

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

(a) A total of 203 teachers have graduated with Diploma in Adult Education from Kenyan Universities to date as per the attached list which I have given to the hon. Member.

(b) The Ministry of Education has prepared a revised scheme of service for Adult Education Teachers and presented it to the Minister of State for Public Service for consideration and approval. The implementation of the scheme will place respective teachers in the appropriate grades in accordance to their qualifications.

Mr. Bahari: Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer. You would know that adult education is very important in this country, and that it has been neglected for a long time. What are these “appropriate” grades that the Assistant Minister is talking about?

Prof. Olweny: Mr. Speaker, Sir, I cannot give the details of the grades because they are in the scheme of service that has been submitted to the Ministry of State for Public Service. I will be in a position to give the details of the grades once the scheme of service is approved.

Mr. Speaker: Last question, Member for Isiolo South.

Mr. Bahari: Mr. Speaker, Sir, I have no other question.

Mr. Speaker: Very well. Next Question, Member for Mumias.

Question No.795

RECRUITMENT OF MANAGEMENT TRAINEES BY MSC

Mr. Washiali asked the Minister for Labour:-

(a) how many management trainees were recruited in the recent exercise by Mumias Sugar Company, and how many of them are from Mumias Sugar Zone;

(b) what criteria the company used in identifying the trainees; and,

(c) what steps the Minister will take to ensure that the company considers the locals for such opportunities.

(Mrs. Kilimo consulted other hon. Members while standing)

Mr. Speaker: Order, hon. Kilimo! You are not supposed to hold a *baraza* in the passageways of the House! According to the Standing Orders, that is not permitted. So, please, restrain yourself from that.

Is the Minister for Labour not here? Minister for Education, can you hold brief for your colleague?

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, I am quite sure that he has not got the answer. Earlier on, this afternoon, he reported to you that he was going to look for a satisfactory answer to the Question. Now that he is unavailable, it means he has not got the satisfactory answer. So, I will endeavour to inform him that a satisfactory answer is required. I do not know when you would like to direct that he comes with the answer, so that we can communicate with him appropriately.

Mr. Speaker: I direct that the Question appears on the Order Paper on Tuesday next week, at 2.30 p.m.

Mr. Washiali: I am much obliged, Mr. Speaker, Sir.

Mr. Speaker: Order, Member for Mumias! You did not follow proceedings earlier on. The Minister went to seek further information, which would, perhaps, satisfy your Question. So, it is in your interest that he is accorded more time to find that information. So, the Question is deferred to Tuesday next week, at 2.30 p.m.

(Question deferred)

Hon. Members, that brings us to the end of Question Time.
Next Order!

MINISTERIAL STATEMENTS

STATE OF AFFAIRS AT TEACHERS SERVICE COMMISSION

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, I wish to respond to a request for a Ministerial Statement by the Member of Parliament for Migori, hon. John Pesa, on the state of affairs at Teachers Service Commission (TSC).

First, I would like to agree with the hon. Member on the first query he raised in his request as to whether there was a go-slow at the TSC. I want to confirm that there was a go-slow strike by staff members at the TSC between Wednesday, 6th April, 2011 and Thursday, 7th April, 2011.

Secondly, the hon. Member sought to know why there was such a go-slow strike, and I would like to respond that the go-slow was caused by the following factors:-

(a) The decision by the top management of TSC to promote and increase the salaries of five senior offices, in line with recommendations by the Ministry of State for Public Service vide their letters dated 11th June, 2010 and 4th October, 2010. This action prompted other officers, led by the Kenya Civil Servants Union (KCSU) (TSC Chapter), to demand that the TSC implements the upgrading of all the employees in posts with immediate effect.

(b) The interdiction of six members of the KCSU (TSC Chapter) officials for professional misconduct. The officials were interdicted for contravening the TSC Code of

Regulations by diverting Kshs467, 529, being the members' dues to the KCSU (TSC Chapter), between September, 2010 and February, 2011. This followed a complaint by the KCSU to TSC vide their letter dated 31st March, 2011. Consequently, the interdicted officers mobilised the rest of the TSC staff to support them, demanding that the TSC withdraws the interdiction letters unconditionally.

(c) Members of staff in the Human Resources Department, who are currently occupying an open-conference hall, complained of a poor working environment.

(d) The unsuccessful quest by the KUCS (TSC Chapter) to have its welfare group manage the Teachers' Restaurant, which had been outsourced to a private company, through an open tendering process.

Thirdly, the hon. Member sought to know what measures the Ministry is taking to resolve the issue behind the strike, and I would like to respond as follows:-

(a) The Ministry has requested Kshs246 million, through the Supplementary Budget, to cater for upgrading of other TSC staff members who had been left out after the five senior officers were promoted, as per the recommendation of the Ministry of State for Public Service vide their letter dated 3rd November, 2011.

(b) The Ministry has requested additional Kshs60 million from the Treasury for the purpose of improving the working environment by partitioning offices to settle the Human Resources Officers, vide a letter dated 3rd November, 2010.

(c) The TSC successfully negotiated with the KCSU for a return-to-work formula where those interdicted will face disciplinary action, in line with the TSC Code of Regulations.

Mr. Speaker, Sir, the one day strike did not affect the services rendered by the TSC to the teachers and other stakeholders. I wish to assure the House that the Ministry is making every effort to address all the issues raised by the TSC staff.

Thank you, Mr. Speaker, Sir.

Mr. Pesa: Mr. Speaker, Sir, I would like to thank the Minister for his elaborate response, noting that, according to the ruling by the Chair last week, I expected this Ministerial Statement to come tomorrow afternoon. So, it is good that he has worked even harder to bring it today.

The Minister has said that the strike was mainly because the top five members of the TSC staff were paid some upgrading salaries, while the rest of the staff members were not paid anything. How come that when we had the problem of TSC employees complaining that they were not being paid the right salary, the said workers were also interdicted? If the letters had been written much earlier, why did they have to wait until there was "a go-down" at the TSC before they interdicted these people?

Mr. Speaker: Member for Migori, who took the "go-down" there?

Yes, Member for Lari! Minister, please, take notes.

Mr. Njuguna: Mr. Speaker, Sir, I thank you for giving me the opportunity to seek one clarification from the Minister. It is clear that one of the concerns that were raised by members of staff at the TSC Headquarters was the issue of incomplete offices. What is the Ministry and the TSC doing to make sure that those offices are not a health hazard to workers?

Mr. Speaker: Next will be the Member for Gwassu, and that will be the last one.

Mr. Mbadi: Mr. Speaker, Sir, I am just concerned about the kind of coincidence between the fact that union officials and the staff in general were complaining about

discrimination in salary increment and other working conditions and the discipline that the TSC is meting out on the union officials for gross professional misconduct. Could the Minister clarify whether this was not a ploy by the management of the TSC to discipline the union officials who were genuinely concerned about discrimination and poor working conditions at the TSC?

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, I will start with the last query on the discrimination at the place of work. When the TSC moved its headquarters from its previous place along Moi Avenue to Upper Hill, these offices were incomplete. Indeed, the Ministry of Public Works, my Ministry and the Treasury did an inventory of the items that were not completed. The Human Resource Department has ten sections. The bulk of these sections have already been settled in various offices except the other remaining five that were temporarily made to occupy the current conference hall, which was required for use as a conference facility. It so happens that this conference hall is carpeted. It is quite expected with the human traffic, the kind of traffic you expect on a carpet; that was the status symbol for which they should have said thank you and enjoyed, but unfortunately, it caused some problems with them because of the flux from the carpet injuring their health, which I quite agree with. Therefore, we have taken a pre-emptive action. This carpet is being vacuumed every weekend, so that when the workers come back to the hall, they breathe fresh air and this improves the environment. They will stay there until such a time when we are able to shift them to the new facility and therefore, the conference hall will remain strictly for conference purposes.

On the question of discrimination, which was also the same question raised by hon. Pesa, you have to separate two items here. The interdiction of the six officers relates to an act that they did which was contrary to their rules of engagement at the place of work. In effect, they broke the code of conduct relating to the way they conduct their businesses at the TSC. There is the mother union, the overall hatching body of the civil servants union. The current local union chapter at the TSC has not been registered. It has been there for the last few months and all the deductions of the Union dues to the mother union are sent directly. These six officers diverted that money to their local account. When the TSC wrote to us requiring that the subscriptions should be transmitted there, they were found to be guilty and in breach of the code of conduct. They should not have diverted money which did not belong to them to their account. That is the basis upon which they were interdicted and disciplinary action taken against them.

Mr. Pesa: On a point of order, Mr. Speaker, Sir. The Minister has said very clearly that the money that is deducted from the workers is directly remitted to the mother Union. At the same time, he has stated that the six interdicted workers diverted this money for their own use. I do not understand the two. Is he in order to mislead the House?

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, in no way, have I any intention of misleading the House. There are two levels, namely; the civil servants union, which is the TSC, and the umbrella body. The collective bargaining agreement is signed with the mother union, the civil servants union, the overall union. When they formed the local chapter at the TSC, they were not entitled to any deductions directly to their union. Any deductions had to be transmitted directly to the mother union. The six of them, who are under interdiction, colluded and diverted the money instead of transmitting

it to the mother union, they directed the money to their local union, the amount of which I have already stated here. The TSC did not know about this until the mother union raised the issue. Under normal circumstances, this can be considered as theft of money, but they were being disciplined under the TSC Code of Conduct. They are still facing disciplinary action whose outcome I cannot determine at this stage.

Mr. Speaker: Very well! That rests the matter of the TSC.

MEASURES TO AVERT DEATHS IN QUARRIES IN JUJA

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, I have a Ministerial Statement which was requested by hon. Kabogo on an incident where four members of a family were buried alive. I am ready to deliver it although I do not see the Member in the House.

Mr. Speaker: Yes, Assistant Minister, resume your seat for a moment. This Statement, apparently, was programmed for delivery last week. So, it is quite possible that the Member for Juja is not aware that the Statement will come today. We want, therefore, to give him the benefit and programme that, that Statement be delivered tomorrow at 9.00 a.m., so that the Member for Juja has an opportunity to be present.

Member for Imenti Central!

POINTS OF ORDER

ADVERTISEMENT OF SENIOR POSITIONS BY PUBLIC COMPLAINTS COMMISSION

Mr. Imanyara: Mr. Speaker, Sir, I was expecting a Statement from the Minister for Justice, National Cohesion and Constitutional Affairs regarding the Public Complaints Standing Commission Secretariat advertisement. It was due last week, but it was not given. It was directed that it be given this afternoon. When that was done, the Minister was in the House. So, I am wondering when this Statement will be given.

Mr. Speaker: If he was in the House, it does not make sense that he is not here today. Minister for Education, will you hold brief for the Minister for Justice, National Cohesion and Constitutional Affairs that this Statement be delivered on Thursday afternoon?

The Minister for Education (Prof. Onger): Yes, Mr. Speaker, Sir. I will transmit that information to the Minister for Justice, National Cohesion and Constitutional Affairs.

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

Mr. Speaker: Order, Member for Imenti Central! Allow the Minister to make an undertaking.

The Minister for Education (Prof. Onger): Mr. Speaker, Sir, I will definitely communicate with the Minister for Justice, National Cohesion and Constitutional Affairs to do it on Thursday afternoon as you have directed.

Mr. Speaker: Mr. Imanyara, you do not seem to be comfortable with that!

Mr. Imanyara: Mr. Speaker, Sir, on Thursday, I will be out of Nairobi on parliamentary business and I am requesting if the Statement could be delivered on Tuesday next week rather than on Thursday this week.

Mr. Speaker: Very well! Minister!

The Minister for Education (Prof. Onger): Mr. Speaker, Sir, I oblige.

MEASURES TO PROTECT KENYANS FROM EXPOSURE TO RADIATION

Mr. Olago: Mr. Speaker, Sir, last week, for the second time, I asked for a Ministerial Statement from the Minister for Energy on the safety concerns arising from the release to the environment probable radioactive materials in Japan. I do not know whether the Statement is ready, but the Minister is here.

Mr. Speaker: Minister, how about this thing on Japan?

The Minister for Energy (Mr. Murungi): Mr. Speaker, Sir, could I be given time to Thursday next week, because this is a complex matter?

Mr. Speaker: Yes, indeed. This is a fairly complex matter. Member for Kisumu Town West, are you comfortable with Thursday next week?

Mr. Olago: Mr. Speaker, Sir, I do agree that the matter is complex, but it has been pending for two weeks now. The longer we delay, the higher the risk in my mind of these materials coming towards Kenya. There is some urgency involved. However, despite that, may I kindly request that we have the Statement either on Tuesday or Wednesday next week because I will be away on Thursday.

Mr. Speaker: Mr. Minister, could you do it a day less?

The Minister for Energy (Mr. Murungi): Mr. Speaker, Sir, in that event, I can do it on Wednesday afternoon.

Mr. Speaker: Very well, Wednesday at 2.30 p.m.

Next Order!

MOTION

APPROVAL OF REPORT ON SCRUTINY OF ENERGY REGULATIONS

Ms. A. Abdalla: Mr. Speaker, Sir, I beg to move:-

THAT, this House approves the Report of the Select Committee on Delegated Legislation and the Departmental Committee on Energy, Communication and Information on the scrutiny of the Energy (Importation of petroleum products) (quota allocations) Regulations, 2010, laid on the Table of the House on 1st March, 2011.

Mr. Speaker, Sir, the Select Committee on Delegated Legislation received a complaint with respect to the energy importation of petroleum products (quota allocations) Regulations, 2010 which was gazzeted by the Minister of Energy on 11th June, 2010 as Legal Notice No.96 to the effect that the said regulations are in breach of Section 116 of the Energy Act in so far as they confer upon the National Oil Corporation of Kenya unfair advantage over other players in the sector.

Mr. Speaker, Sir, the Committee then requested the Ministry of Energy to fill in an explanatory memorandum developed by the Committee to explain the purpose for which the regulations were enacted.

The Minister, accordingly, did fill the form and we had four meetings with five oil marketing companies. He further received other submissions from the different stakeholders.

Mr. Speaker, Sir, in the course of the hearings, the Committee noted that the regulations also involved questions of policy which under our Standing Orders are the sole exclusive mandate of the Departmental Committee on Energy, Communication and Information. Therefore, we chose to invite the Departmental Committee on Energy, Information and Communication to participate in the scrutiny of the said regulation.

The Committee on Delegated Legislation is established under Standing Order No.197 to, among, other functions, ensure that statutory instruments are laid before the House as may be provided under any written law and scrutinize such instruments to ensure they are consistent with current statutes.

Two, unless otherwise provided for, either expressly or by implication under any written law, all subsidiary legislation shall be tabled before the House upon publication in the Kenya Gazette.

Three, the Committee may recommend that the House resolves that any particular subsidiary legislation be allowed.

Mr. Speaker, Sir, the Departmental Committee on Energy, Communication and Information was constituted at the beginning of the 10th Parliament and executes its mandate according to the provisions of Standing Order No.193(3) which is a long list.

Schedule 2 of the Standing Orders provides that the Departmental Committee will deal with the following subjects:

1. Development, production, maintenance and regulation of energy.
2. Communication.
3. Information.
4. Broadcasting and information communication technology development.

Mr. Speaker, Sir, the membership of the joint Committees was as follows:

Hon. Amina Abdalla, MP
Hon. Eng. James Rege, MP
Hon. James Maina Kamau, MP
Hon. Ababu Namwamba, MP
Hon. Gitobu Imanyara, MP
Dr. (Hon.) Julius Kones, MP
Hon. John Olago, MP
Hon. Barnabas Muturi Mwangi, MP
Hon. Njoroge Baiya, MP
Hon. Kiema Kilonzo, MP
Hon. Fahim Twaha, MP
Hon. Danson Mwakulegwa Mwazo, MP
Hon. Joshua Kutuny, MP
Hon. Adan Keynan, MP
Eng. (Hon.) Nicholas Gumbo, MP
Hon. Edwin Yinda, MP
Hon. Emilio Kathuri, MP
Hon. Ekwee Ethuro, MP
Prof. (Hon.) Philip Kaloki, MP

Hon. Cyprian Omollo, MP

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, in examining the matter, the joint Committee sought to answer the following questions:

1. whether the energy importation of petroleum products (quota allocations) Regulations, 2010 are consistent with the provisions of the Energy Act, No.12 of 2006,
2. whether the regulations are discriminatory and therefore, contrary to Section 116 of the Energy Act,
3. whether there is a provision under the Energy Act permitting the Minister to allocate quotas; and,
4. whether there was some policy consideration that informed the enactment of the said regulation.

The Committee held a total of four meetings with five oil marketing companies, namely; Total Kenya, Libya Oil Kenya, Kenya Shell and Gulf Energy and the Minister for Energy, and also examined additional information submitted before it. The findings of the joint Committee are contained in this Report.

The Committee wishes to thank the Office of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

Mr. Temporary Deputy Speaker, Sir, it is our pleasant duty, on behalf of the two Committees, to present the Committee Report and recommend this Report for the House to adopt.

On 18th June, 2010, the Minister of Energy vide legal Notice No.96 of 2010 enacted the Energy Importation of Petroleum (Quota Allocation) Regulations, 2010 hereafter referred to as the regulation purporting to exercise powers conferred by Section 102 of the Energy Act, No.12 of 2006. Rule No.3 of the said regulations provide that there is one established portion of the import requirement to be known as the petroleum product quota allocation.

Two, the petroleum quota allocations shall be imported by the National Oil Corporation of Kenya and three, the petroleum quota allocation shall be set out in the schedule thereon.

It was the contention of the oil market marketers that the said regulation had the effect of reserving 30 per cent quota of oil importation of crude oil, jet fuel and automotive gasoline to the National Oil Corporation of Kenya, therefore, was in breach of Section 116 of the Energy Act in so far as it conferred upon the National Oil Corporation of Kenya unfair advantage over other players in the industry.

The Committee subsequently heard the submission of the oil marketers and their complaints were divided into two. There were five legal issues raised and two supply of practical related issues raised.

Under the legal issues, it was the contention of the oil marketers that the Energy Importation of Petroleum Regulation (quota allocation) was discriminatory to them contrary to Section 116 which reads as follows:-

“When discharging its functions and exercising its power under the Act, the Commission shall ensure that no particular person is given undue preference subject to any undue advantage.”

It was their contention that the National Oil Corporation of Kenya is a limited liability company incorporated under the Companies Act, Cap.481 of the Laws of Kenya and was, therefore, being given unfair or undue advantage as a particular person has mentioned in Article 116.

Two, it was their contention that the regulations were *ultra vires* to the Energy Act in so far as they provided a system of importation of petroleum that is not through an open tendering system. We went ahead and mentioned that the 30 per cent quota would be providing for a separate importation process outside the Open Tendering System (OTS).

Mr. Temporary Deputy Speaker, Sir, third, it was their contention that it was contrary to the Public Procurement and Disposal Act, especially Sections 2,4,5 and 74. It was their view that the Public Procurement and Disposal Act would not have allowed the National Oil Corporation of Kenya (NOCK) to be given that special treatment.

Mr. Temporary Deputy Speaker, Sir, their fourth contention was that the regulations were contrary to Section 30 of the Public Procurement and Disposal Act in so far as its structured procurement into two procurement processes again.

Fifth, it was their contention that the regulations were contrary to Section 38 of the Public Procurement and Disposal Act as it limits participation of eligible companies from participating in procurement of the imported petroleum.

Mr. Temporary Deputy Speaker, Sir, on the issues that are supply-related, it was the contention of the marketers that they were being forced or there was compulsion from NOCK even though they may not have been competitive. Secondly, they also felt that NOCK could not give any guarantee that they could obtain lower prices than those in the OTS. The Ministry of Energy replied to the allegations made by the oil marketers and said the following:-

“The regulations are not undue and are informed by public interest objectives of cushioning consumers against predatory fuel prices and secure supply of petroleum.”

Mr. Temporary Deputy Speaker, Sir, much of the arguments provided by the Ministry of Energy were policy-related and will be expounded by the Chair of the Departmental Committee on Energy, Communication and Information. What was most informative in this process was that the Ministry of Energy had all along had these powers to protect the members of the public and had not exercised the said powers even with examples from countries such as India, Malaysia and Korea, where the national oil corporations of those countries were importing even 100 per cent of the national requirements.

Mr. Temporary Deputy Speaker, Sir, the following are the observations of the Committee:-

One, that, there were sufficient policy and public interest justifications for the enactment of the said regulations. Specifically, on the legal issues, it was the view of the Committee that the regulations were not contrary to Section 116 of the Energy Act

because whereas it speaks of undue preference or disadvantage, it was the view of the Committee that, given the public interest requirements of the regulations, there was no undue preference because there was room provided by the parent Act for the Minister to give advantage if was not undue.

Mr. Temporary Deputy Speaker, Sir, the Committee further notes that whereas NOCK had purchased their fuel at US\$782.23 per metric tonne and OTS purchased theirs at a cheaper price of US\$755, in the end, the NOCK fuel prices at the pump stations were still lower than those of the OTS provided at a lower prices. So, we did not see the justification for that.

Then, there was the argument as to whether the Energy Act allowed the Minister to allocate quotas. In this regard, the Committee found out that the regulations were made under Section 102(b) of the Energy Act which authorizes the Minister to make regulations providing for the importation of petroleum, conditions of licensing to import and any other matter incidental thereto.

Mr. Temporary Deputy Speaker, Sir, the Committee further noted that the provisions of the sub-section are open-ended and, as such, it cannot be argued that Parliament only intended the Minister to make regulations for importation of petroleum through the OTS.

The third question was with regard to whether the regulations were consistent with the provisions of the Energy Act. Act No.12. Having found out that the Minister had the powers to use sub-section 102(b), then it was also found that he was acting within the Act.

Mr. Temporary Deputy Speaker, Sir, thirdly, on the issue of whether the regulations were contrary to the statute in relation to the Public Procurement and Disposal Act, the Committee noted the strong submissions made by the oil marketing companies but noted that the mandate of the Committee on delegated legislation is limited by Standing Order No.197(2) to only deal with the instruments to make sure that they were consistent with the parent Act. In this case, the parent Act was the Energy Act and not the Public Procurement and Disposal Act. Although the policy related issues were later able to justify that the Ministry of Energy had not flouted procurement laws because the regulations, by their very nature, were an instrument facilitating procurement - which was then done by NOCK- would then have to follow the Public Procurement and Disposal Act.

As I have said before, the last justification was in relation to policy considerations which will be elaborated by Eng. Rege. But the most important element to note is that we observed that the regulations were necessary for purposes of better prices for the consumer. Finally, we established that the regulations were published in draft form and none of the oil marketers had the courtesy to comment on the draft before the final regulations were published.

Mr. Temporary Deputy Speaker, Sir, the Committee, therefore, concludes that the Legal Notice No.96 of 2010, the Energy Importation of Petroleum Products (Quota allocation) Regulations are not discriminatory and, therefore, not contrary to Section 116 of the Energy Act. Two, that the regulations were enacted pursuant to the provisions of Section 102(b) of the Energy Act. Three, that the Committee had no mandate to scrutinize Legal Notice No.96 in relation to the provisions of the Public Procurement and Disposal Act. Nevertheless, the Committee acknowledges that NOCK, being a public

entity, needs to be transparent in its procurement. Four, the enactment of the Legal Notice No.96 of 2010 was founded upon sound Government policy considerations geared at achieving public interest objectives of cushioning consumers against increased fuel prices.

The Committee, therefore, recommends:-

One, that the Energy Importation of Petroleum Products (Quota Allocation) Regulations 2010 are not contrary to the Energy Act, No12 of 2006. Two, that in light of the 30 per cent quota given to NOCK by the Energy Importation of Petroleum (Quota Allocation) Regulations of 2010, there be established by the Ministry of Energy a transparent real time public scrutiny tool to monitor the pricing mechanism and public benefits of the quota allocations.

With those many remarks, I beg to move.

Eng. Rege: Mr. Temporary Deputy Speaker, Sir, I beg to second the Motion from the policy point of view.

The mandate of the Departmental Committee on Energy, Communication and Information as provided for under the Standing Order No.198(3) is, amongst others, to study the programme and policy objectives on Ministries and departments and the effectiveness of their implementation. It is with these objectives in mind that the Committee approached and scrutinized the Importation of Petroleum Products (Quarter Allocation) Regulations 2010 from the policy point of view.

Consistent with the mandate of our Committee, we are of the firm view that the enactment of the Legal Notice No.96 of 2010 that the Importation of Petroleum Products (Quarter Allocation) Regulations 2010 was founded upon sound Government policy consideration geared at achieving public interest objectives of cushioning consumers against ever increasing fuel prices.

This view is informed by the following points as contained in our Report:-

(i) The objectives of the regulations were to safeguard both the consumers interest, particularly against the predatory fuel pricing and to guarantee security of supply of petroleum in this country. A strong national oil corporation which is 100 per cent state owned is good for the economy. It is such national oil companies that immensely contribute to the economies of their countries just to mention a few; the Malaysian Petronus contributes over 40 per cent of the revenue of the Malaysian Government; Brazilian Petro-Bras accounts for 5 per cent of the Brazilian Gross Domestic Product (GDP), the Indian IRC and South African Petroza accounts for a huge chunk of the country's GDP. In fact, it is through such strengthening of the national oil companies that such companies have managed to outgrow some of the traditional multinational oil companies and are currently challenging their dominance in the world's petroleum operations.

Mr. Speaker, Sir, under this new regime, NOCK will be able to offer petroleum products at competitive prices compared to oil marketing companies whose main aim is profit-making. These regulations would strengthen the role of NOCK in its ability to moderate pump prices and mitigate against potential threats to security of supply of petroleum products.

Further, energy importation of petroleum products quarter allocation regulations is not unique to this country. In India, for example, oil marketing companies including Indian Oil Corporation, Hindustan Petroleum Corporation Limited, Bharat Petroleum

Corporation and Oil Natural Gas Company are government owned. Effectively, the Government imports 100 per cent of the entire petroleum imports. In Indonesia, under the Petroleum and Natural Gas Act, No.22 of 2001, the Government owned Corporation Patamina, imports 100 per cent of the entire petroleum imports. In South Korea, the state owned Korea National Oil Company imports 10 per cent of petroleum imports. In the United States of America (USA), on 30th November, 1962, President John F. Kennedy vide Presidential Proclamation No.3509 modified adjusting imports of petroleum and petroleum products, allocated the maximum level of petroleum imports that could be undertaken by each district to secure national supply of the product.

Finally, the oil industry is facing many challenges, including congestion at the port and inefficiencies of the Kenya Petroleum Refineries Limited and the Kenya Pipeline Company, which are translated to high prices for the consumer and these issues need to be urgently addressed by the Minister in order to ultimately lower the fuel prices and realize economic growth.

With those few remarks, I beg to second.

(Question proposed)

Eng. Gumbo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to support this important Motion. From the outset, I would like to thank the two chairs; the Chair on Delegated Legislation and the Chair of the Departmental Committee on Energy, Communication and Information for the deliberations that we had on this matter. As it was very ably elaborated by the Chairperson on Delegated Legislation, this matter came to us after some of the leading oil marketing companies in Kenya expressed their concerns or doubts as to whether or not the Minister has powers to allocate quotas to any oil marketing company in Kenya and in this case, it was the National Oil Corporation of Kenya (NOCK).

Mr. Temporary Deputy Speaker, Sir, I want to contexture that the Minister is well within the law to give 30 per cent quota to NOCK but this will only make sense if it is done in the interest of the public. If you look at page 18 of the Report where the justification as to whether or not deliberations are due, the first one highlights on the need to ensure adequate, reliable and secure supply of competitively priced petroleum fuel to achieve meaningful economic growth in line with Section 4.21(b), paragraph 14 of the Sessional Paper No.4 of 2004 on Energy.

Nevertheless, allocation of quotas to anybody will not make sense if it does not lead to stabilization of supplies and prices. What we have heard in the Kenyan market is that, prices and even supplies have tended to be very unstable and those who lose in the process are the consumers. I contend that a very well run NOCK is both good in ensuring availability and stability of supplies. In this regard, I want to thank the Minister for Energy. When we met the first time, I was one of the people who raised objections why the NOCK did not have a substantive Chief Executive Officer (CEO) for nine months. We thank the Minister because clearly when the Committee talks and he responds, then it means that he values what we tell him. I want to thank the Minister, for not just appointing a CEO but also realizing that in all the parastatals in the Ministry up to the time he appointed Ms. Sumayya Athmani, all of them were led by men both at the chair level and at the managing director level. So, thank you very much. We raised this matter

because we were realizing that without a substantive CEO, NOCK was being opened up and being made an easy target for speculators and those who like to arm-twist to get their way. So, we thank you and we hope that in future this trend will continue.

Mr. Temporary Deputy Speaker, Sir, as I have said, a well run NOCK will not only ensure availability and stability but will also contribute greatly to the GDP as has been said by my able colleague, Eng. Rege. It is known that it will also help to cushion against undesirable practices by the oil marketing companies. In fact, one of the key undesirable practices that we have identified as a Committee, and this country knows, is that actions of major oil marketing companies always lead to predatory pricing and unpredictability in pricing. Therefore, if we can have the NOCK being able to guarantee a certain quota, then this can be avoided.

The role of petroleum in the economy cannot be gainsaid. If you look at the inflation figures for March 2011; the month on month average inflation for March was 9.19 per cent as compared to about 6.5 per cent in February. Even though the contribution by oil and petroleum products were just over 3 per cent, the incidental and direct effect of petrol is known because where petrol is not available, prices of commodities go up, transportation goes up, bus fares go up and so on. These indirect consequences, is what hurts the economy and above all, is what hurts the common person in the streets of Kenya. We have said before, and we want to say it again, that our country must be sensitive to the plight of the poor. I have said it in many fora that it is almost unthinkable that we should let the price of paraffin, a poor man's commodity, to, at any one time, go beyond Kshs40 per litre. That then starts to speak of recklessness and insensitivity on the part of the policy makers.

Mr. Temporary Deputy Speaker, Sir, by whatever means, this country must set a ceiling price for paraffin. I want to inform the Minister for Energy that a majority of the people who vote for us use paraffin. Maybe you and I, because of the privileges we have in life, can go a step higher. It does not look right when the Government appears not to care about the plight of the people in Kibera, Mathare, Korogocho and Kawangware, for whom the main fuel is paraffin. The Government must find ways to make the price of paraffin affordable.

In that regard, I want to laud the action the Central Bank of Kenya (CBK) took to increase the base lending rates. While in the short-term, it is going to help to stabilize the exchange rate of the shilling against the dollar and all the other major currencies, what it has done is to make credit unaffordable to most of us. Credit will just be available to fewer Kenyans, hence increase the cost of living. We must see the CBK action as only short-term.

I have said it before, and the Minister is listening, that in the short to medium-term we have to find a way to address the tendency by major oil marketing companies to adopt predatory and unpredictable pricing of fuel. I cannot think of anyone in this country who does not stand to benefit from a well stabilized petroleum market.

Mr. Temporary Deputy Speaker, Sir, as I run to conclude - and the Minister is aware of these things. What we have talked about, even in the Report, are short-term measures. The Minister knows where the real problems lie. For example, right now in Mombasa, there is only one jetty. That is a major handicap. For the major ships to offload, if they come more than one, one has to wait at the high seas at very great cost. The issue of a second jetty in Mombasa has to be looked at.

There is also the problem of not only inadequate but outdated technology at the refinery. These are things the Minister knows about. In fact, sometimes I begin to wonder why we say we are inviting Uganda to refine their petroleum products in Mombasa when they start mining oil. Are we really proposing a gimmick or a reality?

Mr. Temporary Deputy Speaker, Sir, then there is the storage at Mombasa; it is not adequate. You know the problems with the pipeline between Nairobi and Mombasa. Not only is it inadequate but two years ago, an attempt to double its capacity failed. This is something that we know. These are the constrictions that make the price of fuel expensive for our people.

This is something that I think the Minister can enforce; all the major oil marketing companies have depots in Nairobi, Nakuru and Eldoret. What are those depots for if they cannot be used to efficiently evacuate the pipeline, so that more supply can be released? I think if we can look at that in totality, it will help. Then, of course, we have to look at the long-term also. I do not believe that our strategic fuel reserves are adequate to supply certain upheavals in prices and address uncertainty in fuel pricing.

Mr. Minister, we have to look at our strategic fuel reserves, so that this country may be able, when we are facing uncertainties, to supply people for, say, a month or so. You know it, and we have discussed it in the Committee; we need a Petroleum Fuel Stabilization Fund, so that we are able to take price shocks. That is extremely important. Then, like all countries of the world, let us get into long-term---

Mr. Temporary Deputy Speaker, Sir, through you, I want to address the Minister. Through the Chair, Mr. Minister, let us get into long-term contracts. There are countries in this world which sign ten to 20-year long-term, supply contracts of fuel at a price of, say, US\$65 per barrel. What the long-term contracts do is to safeguard you. I just read in the newspapers that the price of fuel per barrel is climbing to about US\$126. If we had long-term contracts which were signed may be in the 1990s, that would not affect us. So we have to look at this.

Finally and fundamentally, all these things will be in vain if the Kenyan economy does not grow. We must do everything that we can to make sure the economy grows. Most importantly, it is not just the percentage figures of economic growth. When His Excellency the President was delivering the Special Address here, he mentioned to us that the economy grew by about 5.6 per cent last year. Those are figures. To us, the real indicators of economic growth will be the number of youths that are taken into employment and the number of Kenyans who have moved from desperation to being able to feed their families. So, as we work towards achieving higher economic growth, let us also be given figures on how economic growth has translated into a better life for the people of Kenya.

With those remarks, I thank you and beg to support.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir for giving me this chance to contribute on this joint Report.

First, let me thank the two Committees for the good job they have done. You will note that these two Committees have worked very harmoniously to generate this Report that has been tabled in this House.

Mr. Temporary Deputy Speaker, Sir, you note that fuel consumers in this nation have been affected by the spiraling of prices. It is the responsibility of the Ministry to make sure that prices are stabilized, so that the economy of the country is maintained.

When prices go that high, industrialization of our country will be badly affected, joblessness will be noted and the rate of crime will go up. The more industries we have in this country - some of them consume diesel - more opportunities will be created for the ever increasing number of school leavers. Therefore, it is important that more attention is given to this sector.

You also note that there is a lot of congestion at the port of Mombasa. This trend has been on since 1963, and it is high time the Government addressed this issue. More funds must be set aside to expand the port, so that more products and crude oil can be received at the Port of Mombasa in good time and get processed for upcountry consumers.

According to this Report, we also note that there is a lot of inefficiency at the Kenya Petroleum Refineries (KPR). It is high time that those who have been managing the oil refineries were overhauled. Those who are not serving the interest of the refinery or the interests of enhanced performance of the refineries must be warned. It is my view that overhauling the management would be in the interest of this country.

Mr. Temporary Deputy Speaker, Sir, you realize that other refineries that have been constructed recently in neighbouring countries like Tanzania are performing better than our own refineries. We should not allow this and the Ministry concerned should make an effort to make sure that the administration at the KPR is improved.

Capacity at the Kenya Pipeline Company has not been expanded, and products have not been received in good time. You also note that at times there has been theft of petroleum products at the pipeline. It is, therefore, important that the Ministry should enhance security along the pipeline, so that products are not interfered with.

Mr. Temporary Deputy Speaker, Sir, stock-outs in our petrol stations time and again has affected transport of children to schools, motorists and even Members of Parliament. We end up looking for fuel, particularly diesel, from one petrol station to another for a week. This is because the engines of our vehicles are diesel-driven. This is an issue that is critical in our country today. The oil marketers must wake up to the reality and make sure that the unnecessary stock-outs are not there. If this sector is not addressed properly, the country will not realise its objectives in terms of clearing external debts.

Oil imports must also be diverted to the neighbouring countries. We have cheaper crude oil in Uganda and Sudan. Why should we continue to import crude oil far away from our region? Piracy has also affected the shipping industry and, therefore, importation of crude oil has continued to be impeded. We hope that if the recommendations that have been reflected in this Report are properly implemented, the cross sector will grow and improve in terms of performance and guarantee economic growth for our country.

Currently, we have seen motorists carrying jerry cans during traffic jams and yet the vehicles they drive are new. The vehicles are stationary because that commodity has become very expensive. Therefore, I call upon the Minister to make sure that the prices for this commodity are properly stabilized. Our schools will also be affected because they have buses. If students in secondary schools are not taken for drama festivals and other activities which are very important, they are likely to demonstrate. This should not happen. Therefore, it is important that the Ministry of Energy fully implements the recommendations contained in this very important Report.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I fully support the Report.

Mr. Muthama: Ahsante, Bw. Naibu Spika wa Muda. Ninashukuru kwa nafasi hii ili niweze kuchangia Hoja hii ambayo ni ya maana sana.

Ningependa kushukuru Kamati ya mhe. Rege na Waziri kwa kukutana na kuongea mambo muhimu sana. Haya ni maswala makubwa yanayohusu nchi yetu. Wizara ya Kawi inategemewa sana na wananchi wa Kenya kwa mambo mengi. Vile vile, ningependa kumshukuru Waziri kwa kazi na bidii yake ya kusambaza umeme katika nchi yetu ya Kenya na kuhakikisha kwamba kila pembe ya nchi inapata umeme.

Bw. Naibu Spika wa Muda, kama vile wenzangu waliozungumza mbele yangu wamesema, ingawa pesa zilizotakikana zilipitishwa na mamlaka ya Waziri yemepeanwa kuhusu mafuta yakiwemo ya taa--- Mafuta ya magari ni petroli na diseli na hayana shida sana. Ni jukumu la Waziri kuona kwamba sisi tumehifadhi mafuta ya kutosheleza mahitaji yetu. Pia, inafaa alinde kampuni za hapa nchini zisivurugwe na kampuni za kutoka nje. Kama Shirika letu halitapewa pesa za kutosha ili liagize mafuta, bila shaka tunaweza kudhulumwa na kampuni za hapa nchini hazitafanya kazi.

Wenzangu wamezungumzia kuhusu mafuta ya taa. Ninawaunga mkono kwa kusema kwamba wengi wa watu wanaotupigia kura au wengi wa watu tunaowaongoza – bali na kumshukuru Waziri kwa kusambaza stima - wanategemea mafuta ya taa. Mafuta ya taa ni muhimu sana. Mbali na kuwemo kwa soko huru katika kila sekta ya nchi hii, kuna sekta zingine zinazomhusisha mwananchi wa kawaida moja kwa moja. Mafuta ya taa ni bidhaa moja ambayo inamhusu mwananchi wa kawaida. Ningemwomba Waziri afanye vyovyote iwezekanavyo, hata kama ni kuleta Hoja hapa Bungeni, ailete na tuiptishe ili bei ya mafuta ithibitiwe na Wizara ya Kawi. Kati ya asilimia 70 na 80 ya Wakenya ni watu ambao wanahitaji stima, lakini kulingana na kadiri ya mapato yao, hawawezi kamwe kulipa ada ya stima. Kwa hivyo, wataendelea kutumia mafuta ya taa na ni jukumu la Waziri kuhakikisha kwamba bei ya mafuta ya taa imethibitiwa. Vile vile, iwekwe bei ambayo wanaweza kumudu ili waendeleo na maisha yao. Wanafunzi wengi wanaosomea nyumbani wanatumia taa zinazotumia mafuta ya taa.

Bw. Naibu Spika wa Muda, vile vile, ningependa kumshukuru Waziri kwa kumteua Mkurugenzi wa National Oil Corporation of Kenya (NOCK). Kulikuwa na mtafaruku kuhusu uteuzi huo na Waziri amechukua hatua hiyo na sasa hivi tuna Mkurugenzi katika Shirika la NOCK. Wizara ya Kawi inatajikana ihakikishe kwamba inasaidia miradi ya stima katika kila sehemu ya uwakilishi bunge kwa sababu ina uwezo wa kufanya hivyo. Kama ni mambo ya elimu, inafaa yasiachiwe Wizara ya Elimu pekee. KenGen inapata pesa nyingi kutoka kwa wananchi. Kwa hivyo, shirika hili linaweza kujenga vyuo, vituo vya matibabu au shule hata kama ni ya nasari.

Bw. Naibu Spika wa Muda, kwa hayo machache, ninaunga mkono Hoja hii.

Mr. Oyongo Nyamweya: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute to this Motion.

However, I will oppose the Motion for the following reasons. First, the Minister has given 30 per cent allocation for the importation of petroleum products. What is the capacity and capability of NOCK in terms of storage and petrol stations, so that they are able to reach the consumer? The main reason NOCK was formed, if my memory is correct, was to reach the remote areas, where the multinational companies could not take petroleum products. It was formed to contribute to areas where the big firms which have

profit motives cannot go. So, if we have to support NOCK, then it must be properly funded to be able to store petroleum products and hold the national strategic reserve. Yes, America does that, for security reasons. However, the National Oil Corporation of Kenya (NOCK) is trading like other oil marketers in this country. They have no manpower and capability to distribute 30 per cent of the share in the country.

The Minister is here and he should tell us whether NOCK was not contributing to crisis last month and this month, because of their inability to supply fuel. The Procurement Act is very clear. It has not been changed. He has no powers to disregard the provisions of the Procurement Act. It is very clear that there should be no discrimination. The Energy Act is also very clear. It provides for importation of petroleum through open tendering system. Therefore, if NOCK will remain in the market, it will contribute like other marketers. It should be able to contribute competitively like other oil marketers. It should not be given 30 per cent to distribute because it has no capacity to do so. They do not have enough storage facilities. They do not even have enough petrol stations spread out in the country. So, how do you give an oil firm a 30 per cent share to import and distribute petroleum products when it does not have the capacity? Why do we deny more established firms a chance to bring their products in the market? We are in a free economy.

I do not mind if the Minister is coming up with a policy for NOCK to hold stock for six months or a year, for the strategic reasons for the nation. However, it is wrong for the Minister to use his position to allow a company which is competing for the market like any other company to import oil.

Ms. A. Abdalla: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to mislead the House that the 30 per cent that NOCK is importing could have been imported by the multinational oil marketers, yet they have not been able under the OTS to import more than the 70 per cent and they circumvent the OTS system to use proxies to import the other 30 per cent? Is he in order to do so?

Mr. Oyongo Nyamweya: Mr. Temporary Deputy Speaker, Sir, I am not talking about oil marketers.

I am not saying oil marketers have failed to meet what the nation requires. As far I am concerned, they are doing so. However, the issue here is price stability. The issue here is national storage for the products. The main reason why NOCK was formed was to provide petroleum products in remote areas of this country where marketers were not able to reach. That is why we have a crisis sometimes. If the Government wants NOCK to import 30 per cent of the fuel, I think there will be a crisis because they do not have the capacity to do so.

Even the procurement process---

Mr. Muthama: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to continue misleading the House when we know the report which was tabled here by the Chairman of Energy, Communication and Information showed that NOCK had capacity to import 30 per cent of the fuel if they were provided with funds?

Mr. Oyongo Nyamweya: Mr. Temporary Deputy Speaker, Sir, I am against that Report. It is my right to express what I think is correct.

I am telling the House that we are in free economy. We have the Public Procurement Act which should be followed to the letter. It is very clear. It gives rules on how procurement should be done.

If this was done on national strategic reasons, I fully support. If they were to import and put it in strategic storage for them to serve the nation in time of crisis, I fully support. However, there is no crisis. Why should individuals be given a preference to import fuel?

We all know that NOCK has not demonstrated that it is able to procure oil from the international market at a competitive price. I do not mind NOCK being there, but it must be funded. You do not give it 30 per cent without funding it. Currently, they do not have capacity to handle the capacity it has been given. It has no capacity to distribute it. That is why, at the end of the day, this country finds itself in problems; that is why we find ourselves in scandals in terms of oil importation; that is why the Kenya Pipeline Company (KPC) had crisis due to lack of storage of facilities.

We need a nation which can survive on its own. We want to see a situation when the price goes beyond more US\$100 per a barrel, we, as nation, are able to get it. That is the kind of nation we want. Today, when the prices increase, NOCK does not cause price stability. That is the purpose of NOCK. When oil marketers increase their price, everybody, including NOCK, increase their pump prices. What is the advantage of giving this company a privilege? It is given protection in the market - At any rate, we need to promote efficiency and business confidence. The only way we can do so, is by allowing free market without violating the Energy Act and the Public Procurement Act.

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

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I wish to support this Motion.

I am supporting this Motion, especially coming after the speaker before me having opposed it. This country can recall those days, when both the Minister for Energy and his Permanent Secretary would be crying that their hands are tied and that there is nothing they can do. We told them: "You can do something because you are the Government."

For the first time, the Government has been trying to do something. The Government has a responsibility to ensure that the energy sector and cost of living is brought down, so that Kenyans can afford and enjoy. It cannot be that we can continue all these years supplying water from Lake Victoria to Egypt and then Egypt has a competitive edge over Kenya because it has lower tariffs. The role of NOCK is extremely critical. It is only allocated only 30 per cent. It is not a major player in the market. The 70 per cent is still out there for the other competitors to play with. Even if my colleague, hon. Oyongo- Nyamweya opposed the Motion on the basis that NOCK has no capacity, we need it when we have an emergency. How else do you develop that capacity to be ready for that emergency when and if it occurs?

Mr. Temporary Deputy Speaker, Sir, some of us believe that NOCK is being undermined. The good intentions of the Government, through NOCK, are not being realized. The Government itself is not giving NOCK sufficient capacity and support to deliver more products to the market. In America, where they preach freedom, liberation and free market--- Free market has certain conditions in which it can perform. There must be free entry and exit. Information should be available to all players in the market. Even in America, the Government pays farmers to produce in order to sustain a particular

income to the households of the farming community. How about a third world country; a country where the major source of energy is kerosene and wood fuel?

Mr. Temporary Deputy Speaker, Sir, this House should give the Minister unqualified support. We still have a problem with the Minister in many other parameters. However, in this regard, we need to support him and ensure that petroleum prices come down. When the international petroleum prices go up, our own outlets increase the prices immediately. However, when the prices come down, you do not see the commensurate reduction in the pump prices as per the reduction that has taken place. That is because there is a lot of monopoly. There are a few players in the market who are dictating the prices and the terms.

I serve in the Departmental Committee on Energy, Communication and Information and they even dared to come to us to try to convince us on why they think National Oil Corporation of Kenya (NOCK) should not have a role to play. The role of Parliament and the Ministry is to ensure that public interest has been catered for. That must be supported.

Having supported this Report, I am happy that the Minister is here. The issue of high prices of petroleum must be reined in. We want to stabilize them. My colleagues, Eng. Rege and Eng. Gumbo, have talked about a stabilization fund. We can cushion the volatility in the pricing so that the consumers can have particular prices. That is the role that NOCK is supposed to play, and which it has not done properly.

I also want to encourage the Minister by telling him that we should also look at other sources of energy. In the County of Turkana, Kenya Private Sector Alliance (KEPSA) was telling me--- I thought they had an agreement with the Ministry of Energy. A few Ministries have had arrangements with KEPSA. Through the public/private partnership, they are supposed to look at the potential of solar in Turkana. The potential of solar in Turkana is 24,000 gigawatts. However, the Minister is not exploiting that. He is just happy that Turkana County is the poorest in the country when we can produce enough power through solar to sustain even the factories in Meru.

The other source which we can provide as a county is the wind power. The other one is geothermal. The Government needs to give more value to the Geothermal Development Company so that, even if God did not give us something on the surface, we have to realize that he does not forget people. He has actually put something below the surface. All that the Minister needs to do is to approach the Geothermal Development Company to do more work. In the Kapado area, we have a potential of 5,000 megawatts of power that can be produced through geothermal power development.

With those remarks, I support.

Mr. Kathuri: Thank you Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make my remarks. From the outset, I would like to say that I support the Report laid on the Table of this House by the Committee on Energy, Communications and Information.

I am a member of the Committee Energy, Communication and Information. It is true that this issue has attracted a lot of attention from all angles. We had a chance of meeting with the stakeholders. One of the many surprising issues is that there appears to be senior personalities within the system who are working closely with the multi-nationals to try and frustrate the efforts of our good Minister when he is try to revamp NOCK so that it can give us good services. It is even more surprising, considering that

many of us, hon. Members, have travelled far and wide and seen how countries like China address some of their strategic businesses. The governments have a big input and they control a lot of activities that take place in some of the strategic investments in the counties. NOCK is one of them. Without fuel for a few seconds, this country could be completely grounded. When we see 30 per cent of the fuel capacity being controlled by NOCK; that, to me, is not good enough. It should be big enough to make us worried. The multi-nationals are still controlling 70 per cent which is good enough to make them do business and survive comfortably. As my colleague has said, they operate as an oligopoly to an extent where it becomes pure monopoly. When that happens, the ordinary mwananchi is left at the whims of the multi-nationals. It becomes difficult to dictate prices and even if the Minister wanted to control them, he would not be able to do it. There are no two ways to do it other than to fund NOCK adequately so that it can take care of such shortcomings which are likely to arise as a result of multi-nationals teaming up together to frustrate his efforts.

Mr. Temporary Deputy Speaker, Sir, at one time, I had proposed that we should revert back to price controls. That is a scenario where the Minister can dictate the market prices. When we look at the prices, you will see that, definitely, Kenyans are being short changed. If you see what is happening at the Geothermal Development Company (GDC), you will expect the Minister to allocate them more funds. However, we are concerned that KenGen is still doing what GDC is supposed to do. I wish the Ministry could separate the two properly so that we do not see the duties of a Government parastatal being duplicated by another parastatal which has the same shareholding as if they are competing for the same market. It is very important for us to have clear roles of GDC and KenGen, so that we can maximize our opportunities when it comes to energy production.

With those few remarks, I beg to support.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, the main purpose of this Bill is to address consumer protection. I want to commend the Minister for publishing the price regulations. I am happy that the Minister is listening to this. What has been lacking is regular information to Kenyans about what is happening. When we first heard that the prices would be fixed--- The prices had gone up to Kshs104 - the people expected that, that would last. We then heard that the prices were going up. Kenyans do not understand that the pricing is also affected, for example, by what is happening internationally. What convinces me is that if we allocate the 30 per cent or more for the purpose of protecting the consumer locally, then, in the long-term, it will be a worthwhile idea.

Mr. Temporary Deputy Speaker, Sir, there are a lot of recommendations here, one of which is for the National Oil Corporation of Kenya (NOCK) to have outlets countrywide. That will help a lot. This means the Ministry now has to work very hard, in terms of regulation and supervision, to ensure that there is adequate efficiency; not like what we have occasionally seen with the Kenya Pipeline Corporation. If the Government can also cut down on overhead costs and operate efficiently at the NOCK, in a business manner – and not in the way some state corporations have operated in the past – then it is a worthwhile idea.

What people are apprehensive about in this country is corruption. The moment you talk about something, because there has been so much corruption in very many sectors, the people get worried that they are going to see a price increase due to corruption. So, if it is to cost us slightly more now in order for us to improve on

efficiency in future, then it is a worthwhile idea. We are saying that the price of kerosene should be reduced, because kerosene is used by most Kenyans. So, it is good that we are working towards that end. However, the best alternative would be, as has happened in other sectors, to get rid of the cost of more than Kshs35,000 that Kenyans have to pay through the Rural Electrification Programme (REP), so that more Kenyans can access electricity and avoid the inconvenience of the hazards we incur with the use of kerosene.

Mr. Temporary Deputy Speaker, Sir, I also want to commend the Minister, generally, for the reforms that have taken place in this sector. In the recent past, we could not talk about electricity in our rural areas but, five to seven years later, we can talk about electricity in rural areas, through the REP. However, we need to improve on efficiency in those areas. What I have noticed is that the Rural Electrification Authority (REA) has not recruited adequate staff. Some of the officers the REA uses are not intended for running the Authority's programmes. Sometimes you find that there is no proper information because contractors are the ones who give information on what they are doing in the field, and not the officers themselves.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): Yes, Minister!

The Minister for Energy (Mr. Murungi): Mr. Temporary Deputy Speaker, Sir, I also rise to support this Motion. In doing so, I want to sincerely thank the Members of the two Committees, including our very able Chairman, Eng. Rege, of the Departmental Committee on Energy, Communication and Information, for their detailed and very thorough Report. I also want to thank hon. Members for their very useful contributions and especially those who have continually spoken about the need for us to create a petroleum stabilisation fund to cushion ourselves against the erratic international oil prices.

Mr. Temporary Deputy Speaker, Sir, as the Committee has correctly recommended, the Petroleum Products Quota Allocation Regulations of the year 2010 are not in breach of the Energy Act. Indeed, they are based on very sound policy considerations. I want to disagree with the Member for Voi on the reason as to why the NOCK was created. What the hon. Member said is only part of the reason. The main reason as to why the NOCK was created in the year 1981 was price stabilisation. Indeed, during that period, there was the international oil price shock, and one of the methods by which the Government responded was to create national oil companies. That was the primary reason as to why the NOCK was established in this country. However, if you look at its terms of reference, you will also see that what the hon. Member said was, indeed, correct. The NOCK was also intended to make sure that there are outlets for supply of petroleum products across the country.

The reason as to why we passed these Regulations was to not only ensure that there was security of supply of petroleum products in this country but also to cushion Kenyans against exploitation through predatory pricing of petroleum products by oil marketing companies. This is not new. The biggest challenge we have been facing in this country is high energy prices. I am talking about high electricity prices and high petroleum products prices. The reason for the high petroleum products prices that we frequently experience in the country is that we are not totally in control of the upstream side of that industry. The country is captive to international crude oil prices and the geopolitics that affect them.

Mr. Temporary Deputy Speaker, one year ago, for instance, nobody knew that governments which looked so stable, like Egypt, Tunisia and Libya, and others in the Middle East, would be gone in a matter of a few weeks. Nobody can foretell how long the piracy crisis on the Somali Coast is going to last. This piracy menace is also increasing petroleum prices by increasing insurance costs and freight costs, because some ships are avoiding the shorter routes and going through Madagascar, and others going all the way to Cape Town, to bring oil products to the East African ports. So, there is an international dimension to the issue of oil prices we are not in control of.

The other structural constraint we have, and which we cannot deal with at the snap of our fingers, is the inefficiency in the oil refinery plant due to its dilapidated technology of the 1970s. We are trying to modernise the oil refinery. It requires a lot of money, and it will take some time. It is true that we do not have sufficient importation capacity because we have only one oil jetty, which the Committee Members have noticed, but we are addressing the issue through the NOCK, who have asked for expression of interest but, again, they have to work with the Kenya Ports Authority, and this will take some time to sort out.

Mr. Temporary Deputy Speaker, Sir, we are encouraging private sector players to set up storage facilities across the country because the Government's budgetary resources are not sufficient. There is a lot of competition for Government budgetary resources. The Internally Displaced Persons (IDPs) need budgetary support. Without rains, more money will be required for the importation of foodstuffs. We cannot compete effectively for budgetary resources. So, we are encouraging private sector players to come in and invest in petroleum storage facilities.

I am painfully aware that the price of kerosene is hurting the ordinary men and women of this country, especially the poor. I have requested the Energy Regulatory Commission (ERC) to address this issue, because it is now reviewing oil prices. They normally review oil prices after every three months, but we have asked them to be doing so on a monthly basis, so that we can capture the actual market dynamics. So, this coming Friday, the ERC will release the new prices of petroleum products in the country.

Mr. Temporary Deputy Speaker, Sir, we have requested the ERC to consult all the stakeholders in the oil sector. We have asked them to sit down with the oil marketing companies, because they have said that they are making losses. We have asked them to sit down with the Confederation of Trade Unions (COTU), who represent workers, as well as with *matatu* owners and leaders because high petroleum prices also affect the transportation costs for all Kenyans and lead to a rise in the cost of living. So, we have asked them to undertake very broad consultations, so that we can come up with prices that are affordable to the people, especially kerosene prices.

So, the price regulation formula that was introduced is not strictly intended for price control. It is just a formula for tracking fuel prices to ensure that Kenyans pay the correct prices for the oil products that are imported into this country. So, if the international oil prices rise, the formula will show that there is a rise at the international oil market. If the transportation costs rise, that will also be captured in the formula.

Mr. Temporary Deputy Speaker, Sir, there was a margin that we allowed of Kshs6, so that those companies can remain in business. Many companies are saying that they are not even making Kshs6. We want to follow them up to see whether they are actually making Kshs6 or they are making losses. If not, then some adjustments have to

be made. So, I am not going to promise, because I will be telling a lie to Kenyans that come Friday, the petroleum prices are going to come down. Because of what has happened, there could very well be a further price increase in the prices of petroleum products, but whatever price it is, we are monitoring it to ensure that the oil marketing companies are not exploiting Kenyans and that when prices are supposed to come down, they come down and when they are supposed to go up, they reasonably go up. That is what we are doing.

There has been a lot of inadequacies in infrastructure in this country. I think the reason is that there was some deregulation of the petroleum sub-sector for a long time. Then we have been living from hand to mouth as far as petroleum products are concerned. So, that is why there is talk about having strategic stock for the country. The reason why we are calling for a master-plan for the petroleum industry in this country is that we can project what is going to happen 10, 20 years down the line and we encourage investments in accordance with that national master-plan. That is the way to go. These kneejerk reforms are not going to help this country. We would like to request our Committee on Energy to continue working with us the way we have done. Let us share the pains together, but also let us share the ideas that could be incorporated into the petroleum industry master-plan, so that we can look into the future and deliver petroleum products, not only in Kenya, but throughout the region, on a more sustainable and affordable basis.

With those remarks, I support.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Members! There is no other contribution and I will call the Mover to reply.

Ms. A. Abdalla: Mr. Temporary Deputy Speaker, Sir, I wish to begin by thanking all the Members who have stood in support of this Motion. For us, our observations had been that the OTS has been acting as a cartel that has even blinded the Ministry of Energy not to appreciate the powers that the Energy Act gave it. We were glad that the Ministry of Energy has finally been able to exercise its powers to protect consumers.

Secondly, I would like to congratulate the Ministry of Energy for its able and quality response that it gave to the allegations made by the oil marketing companies. Thirdly, I would like to thank the Legal Department in Parliament for its able analysis and the Research Department for the research it did in this work. The issues that were raised by the sole Member who opposed the Motion have been dealt with by different presenters. I mainly want to mention that in the report, we mentioned that NOCK still needs to act within the provisions of the Public Disposal and Procurement Act and it was not the Ministry of Energy which was the procurement agency. It is the concern of all those who have spoken that they have raised the fear of the 30 per cent being attacked by corruption and the need to have a system that would monitor that.

Finally, with regard to the issue of the Stabilization Fund, I must say that this is an issue that the Departmental Committee on Energy must follow up, so that we can make the cost of living more affordable for Kenyans.

With those few remarks, I beg to move.

(Question put and agreed to)

BILL

Second Reading

THE PROHIBITION OF FEMALE GENITAL MUTILATION BILL

Mr. Kapondi: Mr. Temporary Deputy Speaker, Sir, I beg to move that The Prohibition of Female Genital Mutilation Bill, Bill No.24 of 2011, be now read a Second Time.

This Bill seeks to prohibit the practice of Female Genital Mutilation (FGM) in all its manifestations. The Bill is divided into three parts. Part One provides for preliminary matters. It is important to understand the background of FGM, which is a deeply rooted traditional practice that is found in a number of countries around the world. More so, this vice is very prevalent in a number of African countries. According to the World Health Organization (WHO), FGM is practiced in 28 out of 52 countries in Sub-Saharan Africa, where national prevalence ranges from 5 per cent in the Democratic Republic of Congo and 98 per cent in Somalia. The FGM is also practiced in a few countries in the Middle East and Asia and by migrant populations in Europe, North America and Australia.

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

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

It is estimated that 3 million women and girls are at risk of FGM each year and about 140 million women have undergone some form of FGM. The age at which the procedure is carried out varies from zero to 20 years or as late as just before marriage or after the first pregnancy. The FGM is usually performed by societies in which women have been traditional practitioners. Looking at the impact of the FGM in a number of African countries that practice it, particularly in Kenya, research that has been undertaken by the WHO and UNICEF shows that the dangers FGM poses on the victim outweighs its cultural benefits. The studies reveal that there is severe pain and bleeding. The bleeding can be protracted and result in long-term anemia as well as reduced urinary retention.

Mr. Temporary Deputy Speaker, Sir, the studies also reveal long-term adverse effects which include painful cysts and keloids which can cause problems during pregnancy and child birth.

The other complications associated with FGM include infertility and hymenococpus, that is, the accumulation of menstrual fluid in the vagina.

The psychological effects can include anxiety prior to operation, trauma, sense of humiliation, sense of betrayal by parents, severe depression, loss of sleep, nightmares, post traumatic stress syndrome and interference with women's sexuality.

Mr. Temporary Deputy Speaker, Sir, FGM also has a social economic impact. I will cite a case where I come from. FGM has been a major factor in under-development, particularly where it concerns the girl child. FGM has rendered the education of the girl child in danger in areas where it is heavily practised. This is because, at the age of 12 or 13 when that serious basic foundation is laid for the future academic prospects of the girl

child, that is when the practice is effected and immediately thereafter, marriage follows suit.

As you know, in our rural economies, the women play a very critical role in terms of facilitating the economy of the family unit. With many teenagers who have not developed their capacity, who have not mustered the muscle, to bring up their families, most of the homes end up being completely destroyed. In the process, the economies of the family units cannot stand.

Mr. Temporary Deputy Speaker, Sir, Part Two of the Bill contains provisions on offences relating to various aspects of FGM in particular Clause 3, which makes it an offence for a person to perform FGM on another person. It has happened in this country. There was a public interest case which was filed by FIDA a few years ago whereby a woman was subjected to FGM while delivering at Nairobi Hospital without her consent. This case is still pending in the court. It has delayed due to lack of adequate legislation and is yet, to be concluded.

That is the reason why it is critical that this Bill passes through so that we have adequate legislation that will be very comprehensive to cater for the loopholes that we have currently that are making it very difficult to enforce and ensure that this vice is done away with.

Mr. Temporary Deputy Speaker, Sir, while Clause 4 outlaws aiding and abetting of FGM, it also makes it an offence for a person's premises to be used in the performance of FGM and also for a person to possess tools or equipment for performing that act.

Clause 8 makes it an offence for a person to fail to report the commission of the offence of FGM to the law enforcement officers. As it is, in as much as some courts, for instance, have attempted to punish the offenders, it has been minimal and the sentences are not deterrent enough. The only express law currently outlawing FGM is the Children Act, Section 14. It only protects the children. Women are not protected and yet they are also subjected to the cut.

Furthermore, the police and chiefs have not been given express powers within the Kenyan Penal Code to intervene in instances of FGM. The few who undertake arrests do so, after being trained on the dangers and effects of FGM. What we require is a proper legislation. I believe that this Bill is coming up with that.

Mr. Temporary Deputy Speaker, Sir, Part 3 of the Bill contains miscellaneous provisions. Clause 9 empowers a law enforcement officer to enter into any premise without a warrant in order to ascertain whether there has been violation of the Bill. Clause 10 requires the Government to put in place some measures aimed at bringing to an end the practice of FGM. Clause 12 sets out the general penalties for various offences provided for in the Bill.

Mr. Temporary Deputy Speaker, Sir, it is important to note at this juncture that the enactment of this Bill shall not occasion any additional expenditure of public funds.

In conclusion, the Kenyan Constitution outlaws subjecting one to harmful traditional practices. There is hence a need to have a more comprehensive law that expressly prohibits FGM and protects both women and children from this harmful traditional practice.

Mr. Temporary Deputy Speaker, Sir, with those very brief remarks, I wish to move and ask Mr. Ethuro to second.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I beg to second this Bill; a Bill for an Act of Parliament to prohibit the practice of FGM to safeguard against violation of a person's mental or physical integrity through the practice of FGM and for connected purposes.

There are 22 women MPs in this House. They have formed an association known as the Kenya Women Parliamentarians Association (KEWOPA). In this association, Mr. Ekwee Ethuro and Mr. Fred Kapondi are members of KEWOPA. We became members even before the Constitution demanded that a third of every entity must be of either gender.

I want to make an appeal to Mr. Duale, Mr. Balala and all other men to stand and be counted as men who support the causes of women in this country. It is a constitutional obligation. We have no choice.

Mr. Temporary Deputy Speaker, Sir, anybody who still believes in the days of the other Constitution must realize that those days are not only numbered, but they have expired.

*[The Temporary Deputy Speaker
(Mr. Mututho) left the Chair]*

*[The Temporary Deputy Speaker
(Dr. Laboso) took the Chair]*

The requirements of the new Constitution that is in operation now prohibit gender discrimination and all harmful cultural practices that are not consistent with human dignity.

Madam Temporary Deputy Speaker, I want to thank the Mover of this Motion, hon. Kapondi, for being man enough to bring this issue before the Floor of the House. We ask our other Members of the Kenya Women Parliamentarians Association (KEWOPA) because they are *bona fide* members, not to bring this because we do not want it to be seen like a women affair. We do not want it to be seen as a gender issue.

Madam Temporary Deputy Speaker, I want to tell you about the pain that our girls undergo when they go through that practice. Even before I do that, I want to put my credentials on the Floor. I wish I could actually be laid on the Table for examination. It says that:

“The ethnic groups that do not practice Female Genital Mutilation (FGM) include the Luo, Luhya, Turkana, Teso and Pokomo.”

In fact, for us, we do not even practice male mutilation. But because of health considerations, we are now encouraging it. There is a serious drive in Lodwar Hospital as we speak. Our males are being “cut” now. That is critical.

Madam Temporary Deputy Speaker, I want to ask my good friend, hon. Duale and all other friends of mine in Samburu--- That is because I always speak for the pastoralist child. When you look at the communities that--- It is nearly universal for certain ethnic groups such as the Somali, Abagusii, Kuria and Maasai to practise FGM. Those groups are purely pastoralists. What that practice has been encouraging is those traditional attitudes where we think the female is less of a human being. We want to come out of that attitude. We want this country to appreciate that each and every child of

this nation is a *bona fide* citizen and must be given all the opportunities that this country and the world can offer.

Indeed, if you look at the legal framework that the Government must offer - and I am glad the Minister for Gender, Children and Social Development is here--- The current Constitution which I have quoted, the Children Act, 2001, the Kenya Vision 2030, the National Policy for the Abandonment of FGM--- We have that policy in place but the practice still continues. What we have done with that Act is to ensure that the Government is under obligation. If you look at Article 10, it compels the Government and I read:-

“The Government shall take necessary steps within its available resources (in fact, I will bring an amendment of “our available resources”). It will look for the necessary and sufficient resources to ensure that, that is done.

(a) To protect women and girls from FGM.

(b) To provide support services for victims of FGM. Then (c) is the most important. It should not be like the Children’s Act where we want every child to go to school and we still allow our parents to keep children in their homes. The Minister for Gender, Children and Social Development is a good Minister. She knows the plight of our children. We are helping her with this Bill to ensure that the law is backing her initiatives and we are expecting nothing but action.

Madam, Temporary Deputy Speaker, part (c) says:-

“Undertake public education and sensitise the people of Kenya on the dangers and adverse effects of FGM”. On that part, KEWOPA, through Parliament, has actually been engaging Members of Parliament and those of us who are members of the Pastoralists Parliamentary Group (PPG). That is because we are a target group. We have been appealing to hon. Members of this House and from those communities that we have a historical moment to ensure that, that practice that has destroyed lives and made our children suffer for so long will come to an end now and not tomorrow.

Madam Temporary Deputy Speaker, already, we are losing 7,000 lives every year when our mothers are giving birth. We have 48,000 out of 100,000 live births that we are still losing in this country. The practice has been the one making some of those statistics even worse. The moment we deal with that problem as provided for in this law, we are going to see more of our women surviving at birth. We are going to see more women living healthy lives.

Madam Temporary Deputy Speaker, only yesterday, I talked about the distances that some of our women in the rural areas travel in search of water and other basic things. Do we want to burden them with things that are not necessary completely – things that we can do away with?

Madam Temporary Deputy Speaker, in fact, the greatest advocate against FGM is a man from Northern Kenya. He is a doctor. For those who would like to see the pictures, you cannot believe that you can do this to humanity. You cannot be proud that you are talking about the Wagalla Massacre. We cannot be proud that we are talking about the post-independence Internally Displaced Persons (IDPs). We are still continuing with such practices that are just as bad as the Wagalla Massacre, IDPs and the people who were injured and killed. That practice has continued to kill our people and our girls, in particular.

Madam Temporary Deputy Speaker, this House has an opportunity to demonstrate to the whole country the leadership that is required in terms of policy formulation. This House has an opportunity to congratulate hon. Linah Kilimo. That Assistant Minister has single-handedly been the crusader of that particular problem where she comes from in Marakwet. This House can only come to the aid of a Member who has demonstrated that there is a problem. This House can come to the aid of our female Members of Parliament who have actually decided that they know there is a shoe wearer who knows where the shoe pinches most.

Madam Temporary Deputy Speaker, I am glad that my Vice-Chairman of the PPG, the hon. Nkaissery, is here in person. My other great official, the hon. Aden Duale, is also here in person. I am hoping that by the time we pass this Bill, those of us who come from areas where it is considered a universal practice will, at least, have done something for the people who brought us to this Parliament. With those remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Dr. Laboso): Let me give Mr. Mututho a chance because of the good work that he has done

Mr. Mututho: Madam Temporary Speaker, thank you for the compliments because hon. Members are able to get home in good time and meet a whole women; a woman with all the parts of the body and be able to socialize to an extent that they are able to come here smiling like they did today.

Madam Temporary Deputy Speaker, when God created man, He did it as a total design. There was no provision of *Jua Kali* artisans coming to do their things. Least of all, if it has to be done, not at the nerve end centre. All the sensitive and erotic nerves of a lady end up at that particular point. That is the point that somebody wants to cut, so that just like a very effective aerial, no signals are received.

In the first instance, this Bill should have come here in 1963 when we recognized the freedoms of the people of Kenya. I really salute the women of Kenya. As the Chair of the Committee on Agriculture, Livestock and Cooperatives, I know better than anyone else that they contribute 62 per cent of the total labour force. About 62 per cent of the entire labour force in the agricultural industry is by these ladies. Never mind that in this Budget and the previous ones, they only get 0.07 per cent of the entire Budget allocation of the Gross Domestic Product (GDP). We cannot continue these unfair moves down to the bedrooms and to their privacy and for that matter, the most private part.

(Loud consultations)

The Temporary Deputy Speaker (Dr. Laboso): Order, Maj-Gen. Nkaisserry and company! Please consult silently so that we can give Mr. Mututho a chance to be heard.

Mr. Mututho: Madam Temporary Deputy Speaker, I want to visit biology and persuade communities not to cry because a Member of Parliament cannot cry but sympathize with ladies who come from communities where they do not only do Female Genital Mutilation (FGM) but chop off everything. Truly, even from the anatomical point of view, forget about the physiology, when you chop off all those organs now, the two

lips to the left and to the right--- I am limited for words because I am on the Floor of this House but I am here to persuade my colleagues that anybody with even a small dream that they can oppose this particular Motion to just for a moment imagine the effects of this practice. We look at women's beauty right from their hair down to their feet. But the epitome of it all and the centre of that beauty is expressed right there where we are cutting; at the nerve end centre.

I stand to support this with all my heart and my whole body. Now that the Alcohol Bill has gone through with the support of these hon. Members, I want these husbands to get home in good time and meet whole ladies.

The Temporary Deputy Speaker (Dr. Laboso): Members of KEWOPA can allow men to support, then you will come in a little bit later.

The Assistant Minister for Livestock Development (Mr. Duale): Madam Temporary Deputy Speaker, I know many people are looking at me because they want to know my position and today, my position is very clear. I stand here to support this Bill.

I want to tell Mr. Mututho that some of us do not drink and so we can go home any time of the night to see our wives.

Madam Temporary Deputy Speaker, I want to talk about the position of the Muslim religion *vis-à-vis* FGM. I want to make it very clear that Islam in its own wisdom has never supported FGM, both in terms of its scriptures and the teachings of the Holy Prophet. FGM, which is sometimes called female circumcision is practiced by both Muslims and non-Muslims across the world and mainly in sub-Saharan Africa. The countries that lead are Egypt, Somalia, Ethiopia, Kenya and so on. Again, the degree of mutilation varies depending on the cultural practices. The effects are so fundamental because it affects child birth. I am sure men go out and use a lot of other drugs to arouse themselves sexually. You do not need Viagra. The cause of that is FGM. FGM is affecting sexual intercourse. FGM is also affecting infertility and bringing psychological trauma to women. FGM also creates a lot of sexual dysfunction among women and men. It also affects the menstrual lifestyle of women. It also affects both medical and emotional well-being of women in the world. There is no connection between Islam and FGM.

Madam Temporary Deputy Speaker, there is no relationship between Islam and FGM. I want to say here today that the history of FGM--- People might not know that the first person to start this "animal" called FGM was an Egyptian pharaoh in the first century. I know that in a pastoral community, as Mr. Ekwe Ethuro said, all the beautiful women we have--- Our biggest undoing has been the FGM. That is why the women of our friends from the highlands and the lakes are doing better than ours. We see a lot of pastoralists marrying them.

(Laughter)

Madam Temporary Deputy Speaker, I want to quote from the Quran. Today I want to become a preacher. Chapter 40 (64) says:-

"It is Allah who has made you the earth as a resting place and the sky as a canopy and has given you the shape and made your shape beautiful."

So, whatever God has created, why do you want to mutilate it? Why do you want to improve it?

An hon. Member: What about men?

The Assistant Minister for Livestock Development (Mr. Duale): Madam Temporary Deputy Speaker, today we are discussing FGM; on another day we are going to discuss those men who do not circumcise. A Bill will come to Parliament. Today we are talking about female mutilation. I am sure there is a lot about male mutilation and we are going to discuss it.

Madam Temporary Deputy Speaker, I want to talk to people who think women have an inferior position in Islam. Islam is a religion that guarantees the integrity of the human being both in body and spirit. So, you must preserve the integrity of the women. Genital cutting violates that integrity of the body. That, according to Islam is insulting the creator, whose creation does not need any improvement. God creates; why do you improve by cutting? God's creation does not need any improvement.

With those remarks, I support.

Mr. Shakeel: Madam Temporary Deputy Speaker, I stand to support this very timely Bill. It is an offence to women kind. It is a sin to God who created the body. The Sheikh has talked about the Quran and I will not talk about much more.

The traditional society has always wanted to subdue the woman either in form of slavery or via the FGM. The FGM is a form of slavery. The FGM has no place in any society, whether modern or traditional. Any human being who allows this sort of thing, and denies a woman the wholeness of her body needs crushing. It is unhealthy and involves possibility of HIV infection.

The culture of the nomadic tribes, as Mr. Duale has just told us, was probably picked up from Egypt. We know there are many developments that we got from there, but we also know that there are very many problems we have inherited. So, as a historic wrong that has occurred, it is very important for Kenya now, especially for the North Eastern Province and our nomadic tribes--- I stand as an adopted member of the Maasai community, and I have seen how women have had to suffer the pain of the FGM. I know a number of girls whom we have actually had to go and rescue from this practice. However, when you do that, they are then thrown out of the society. That is another problem that we have. Once you pass this Bill, we must have an education programme to make cultural change part and parcel of its implementation.

Madam Temporary Deputy Speaker, the Luo community which I represent was one of those which were vehemently opposition to circumcision. They said it is not in their culture and there is nothing they can do. However, when leaders and the general society put it in a mild manner and showed the benefits, even the Luo, as difficult as they are when it comes to culture, have agreed to be circumcised. We do not need any European to come and tell us about Female Genital Mutilation (FGM). We know its bad effects, and we must move forward, inform and help change society.

Madam Temporary Deputy Speaker, with those few remarks, I support the Bill wholeheartedly.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Madam Temporary Deputy Speaker, I rise to support this Bill. There is a saying that: "If you see somebody without a smile, give him yours." This is the opportunity for us to give a smile to girls.

Madam Temporary Deputy Speaker, the integrity of this House will be measured greatly if we pass this Bill. This is because FGM is not of any value. As a military man

who took people through very rigorous training, we never saw the difference between a circumcised and an uncircumcised woman. Really, there is no need for women circumcision. Since I became a Member of this House, I have always advocated for the stopping of FGM. If we pass this Bill and it becomes law, we will be in a position to arrest those who will break the law. At the moment we cannot arrest them because they peg it on culture. There is no culture when you are damaging a human body.

Since I can see that it is an obvious thing and a law which we have been needing for a very long time, I want to stop there so that we can pass this Bill immediately.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, if we are in agreement, each hon. Member can take three minutes to contribute to this Bill so that more hon. Members, particularly those who are affected very severely by the practice can speak. Hon. Members, are we in agreement?

Hon. Members: Yes, Madam Temporary Deputy Speaker.

Mr. Baiya: Madam Temporary Deputy Speaker, I also rise to support this Bill. It cannot be gainsaid that the practice of FGM is clearly outdated in the 21st Century. Its foundation actually is hinged upon the mentality that the woman cannot control her sexual drive, a right which we all acknowledge men are entitled to. So by outlawing this practice, we are enshrining within our laws and cultural practices, that women have a right to control their own bodies.

Madam Temporary Speaker, where I come from, we know that this is a practice, which stopped quite a long ago. However, we have these practices emerging in some pockets of our land, here and there. It is, therefore, important for us to come up with a Bill like this one, to outlaw it. I would recommend that whoever engages in any one of these practices, meets the full force of the law.

So, I want to take this opportunity to thank the Mover of this Motion, hon. Kapondi. This is very timely. We also know that where most of these practices are prevalent, we also tend to see other very oppressive cultural practices against women. There is, therefore, a cultural belief associated with the FGM. It is very important that the State enforces the law in order to outlaw the practice all together.

We know that Kenyan girls are entitled to education and all other rights. Any practices that will hold them down should not be allowed to continue in the country.

With those remarks, I beg to support.

Mr. Letimalo: Madam Temporary Deputy Speaker, I stand to support this Bill, but with reservations.

I agree with the Mover and I am convinced that the communities that practise FGM have exposed our children, particularly girls to early marriages. I know that those girls who go through that practice, in some communities, are considered to be grown-ups because that is a stage in life and, therefore, exposed to marriage. Certainly, it weakens the family structure. I am really convinced.

Madam Temporary Deputy Speaker, my concern is that FGM is a cultural practice. A cultural practice cannot be eradicated in a day. It should be done gradually. If you look at Part 3 of the Bill under miscellaneous provisions, there are measures to be undertaken by the Government. I appreciate the steps taken by our women leaders, especially hon. Kilimo. Part C of the Bill says:-

“The Government should undertake public education and sensitize the people of Kenya on the dangers and adverse effects of FGM”.

That should be the main point. We should be able to create awareness among these communities on the dangers of this practice. My main concern is the penalty for this offence. It says:-

“Any person who commits an offence under this Act, is liable, on conviction, to imprisonment for a term not less than three years, but not more than seven years.”

So, we are talking about between three years and seven years, or a fine not less than Kshs100,000, but not more than Kshs500,000. What I know is that the fact that we are coming up with legislation, the communities involved in this cultural practice will still contravene legislation. For me, I see this to be very punitive. These people, first of all, need to be educated in order to understand the dangers associated with FGM. I wish that particular element is looked into.

Otherwise, I support the Bill, if my concerns are taken into consideration.

The Assistant Minister for Roads (Mr. Kinyanjui): Thank you, Madam Temporary Deputy Speaker. I want to take this opportunity to thank you for allowing me to contribute to this very important Motion. I also want to thank the Mover of the Motion, hon. Kapondi. We know him for his work in the Departmental Committee on Defence and Foreign Relations. We thank him for coming to the defence of innocent girls in this country who have, for many years, been victims of culture.

I want, from the onset to say that it is, indeed, true that women in this country and in this continent have for so many years been subjugated by culture and religion. Female Genital Mutilation (FGM) is just one example of that subjugation. It will be remembered by those of us who practice Christianity that even in the first Cabinet which had the 12 disciples of Jesus, it did not have the one-third that we now have in the current Constitution in Kenya. When you look at the Trinity in the Bible, it is about the Father, Son and the Holy Spirit. Indeed, the place of women, if you look at it from a religious point of view, even in Islam, the place of women has, for many years, been that of supporting their men. It will also be remembered that in the Bible, when you look at the birth of Jesus, there is very little documentation regarding who the mother of Jesus was. It mainly focuses on the womb and the womanhood that brought Jesus to birth and it ends there.

We also read the story of Jesus where, on the eighth day, he was circumcised as it was the tradition in those days. However, very little is said about women and what used to happen to them. Therefore, this is really one thing that goes back and has been said to us in many ways through tradition and religion. It has almost become accepted. I am happy that today, we are here to correct that malpractice. I also would like to remind this House that, over the years, many of our girls who undergo that operation, sometimes from a tender age of eight or ten years, it gives them a gateway to practice sex from that tender age. They can no longer be able to participate in their academic endeavours. Therefore, from the age of ten to 12, they are married off to go and start their families. That is not acceptable. As a House, I think this is one of the most important Bills that we will be passing today. I hope that we will follow up the passage of this Bill so that it does not become like many other Bills that have been passed, but have not been followed up with thorough action.

Lastly, we know that there are many communities today which continue to practice that particular vice. I think it is not important for us to come here and condemn it. We must go to the grassroots. Many times, when we enact laws, the practice goes underground, but it still continues. So, we need to go to the next level, which is the most important level, and talk to people and communities, sensitize them and ensure that the practice is eradicated.

I support.

Mrs. Odhiambo-Mabona: Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to support this Bill. I want to thank the Mover and the Secunder for being gender sensitive. They have lived true to their character. I want to thank the male Members for supporting this. This is about our girls, wives, mothers, aunties and our girl friends. Therefore, I would like to thank them for supporting this Bill.

With regard to prevalence rates, I would like to say that about 100,000 to about 140,000 girls are estimated by the World Health Organization to have undergone that practice. I will be moving an amendment because as I can see, we have put three classifications whereas the recognized classifications worldwide are four. The first one is *suna or clitoridectomy* which is a mild form that involves the removal of the prepuce and part of or the entire clitoris. There is also excision which involves removal of the clitoris and the inner lips which is the *labia minora*. There is also infibulation which involves the removal of the clitoris, some of or all of the *labia minora* are cut off and incisions are made in the inner lips to create raw surfaces. Those raw surfaces are either stitched together or kept in contact by tying legs together until they heal as hood of skin which covers the urethra and most of the vagina.

A tiny hole is left for the urine and menstruation after infibulations. As a result, an opening has often to be made before sexual intercourse and with each birth of a child. That is the severe form of female genital mutilation (FGM). The unclassified form of FGM includes pricking and piercing with tongs and scissors, and all manner of things, including razor blades. So, I would want to move that we include in the Bill unclassified form of FGM, following the World Health Organisation's (WHO) classification.

Madam Temporary Deputy Speaker, I would also want to say that I will be moving an amendment because the Bill seems to suggest that medicalisation of FGM is acceptable. The standards that the WHO passed even as late as 2008 outlaw medicalisation of FGM. The reasons that have been given for FGM are varied. Mainly, they are myths, which are cultural. For instance, many girls are told that the clitoris will grow and reach the ground. Some are told that it will be unsightly.

The origin of FGM has actually been associated with Africa, yet the origin of this practice is even traced to Europe and other countries, where it was used for the cure of hysteria and masturbation. Due to lack of time, I will not quote one of the doctors who started practising it in Europe. So, it is not just an African practice, but is actually a method of reproductive control. It is a human rights issue. It covers issues of discrimination, child rights, health and physical security of women, dignity, integrity, *et cetera*.

Madam Temporary Deputy Speaker, I want to briefly mention some of the complications associated with FGM. The short-term effects include severe pain, shock, haemorrhage, and tetanus, which is bacterial infection, urine retention and open sores. The long-term consequences of FGM include recurrent bladder and urinary tract

infections, cyst infection, infertility and an increase in child birth complications as well as newborn deaths, amongst others.

Therefore, due to these reasons, the enactment of this law is timely. The new Constitution actually outlaws all forms of harmful cultural practices against women and children. So, what we are doing is really part of implementation of the new Constitution.

With those few remarks, I beg to support.

Mr. Njuguna: Madam Temporary Deputy Speaker, let me, very quickly, thank the Mover of this Bill, hon. Kapondi, and its Secunder, hon. Ekwe Ethuro, for their very eloquent support. I note that our daughters have been brutalised for decades and centuries, and this has really stigmatised them throughout their lives.

I would also like to take this opportunity to thank the Protestant Churches, some of which are in the country, which have gallantly fought the practice of FGM. They have done a commendable job.

Madam Temporary Deputy Speaker, hon. Members must have noted that traditional circumcisers have messed up our girls. They have caused our girls to go through very painful times. Therefore, with the passage of this Bill, our girls will experience better lives, harmonious family life and regain their dignity. We will also be civilised in terms of the way our girls will be living. Our girls have experienced a lot of suffering and, sometimes, stress.

With the passage of this Bill, the Government will be forced to set aside some funds for civic education, which will literally eliminate the suffering that our girls go through. It is important because the passage of this Bill will guarantee some basic human rights for our traumatised girls in this country. This Bill is very timely and it will open a new chapter in the lives of our girls.

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

Mrs. Noor: Thank you, Madam Temporary Deputy Speaker. In the interest of time, I want to just support the Bill. Harmful practices are outlawed in our Constitution and if I may read, Article 53(1)(d) says that:-

“Every child has a right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.”

I am a living example of women who have undergone the FGM. I went through the FGM at a tender age of five years. I was circumcised by an old mother who had eyes problems. She mutilated me and I bled for three days. Fortunately, I was near a hospital and that is how I was saved, but many of my age mates who went through that practice are not with us today. During my weeding night, it was not something that I enjoyed. I cried. I was in tears because it was very painful. That gave me a psychological problem, and I was not comfortable in whatsoever I was doing. Then during my first delivery, I had a problem. It was complicated and I was in labour for five days. They had to remove the child with a vacuum. That is why immediately I graduated from college I started talking about the FGM because that gave me a problem. For 16 years, I was on the ground talking about the FGM. I did enough research into the issue of the FGM. My community thought that it was a religious obligation, but unfortunately, FGM is not a religious obligation. It is not even in our culture. People felt that it is a religious obligation. Now that the society knows that this is not a religious obligation, we have a responsibility to protect the women and the girls of this country.

Madam Temporary Deputy Speaker, I want to thank everybody who has contributed to this Bill. I want to break down and cry because of happiness. I thank them very much for their support.

Mrs. Shebesh: On a point of order, Madam Temporary Deputy Speaker. Due to the mood of the House that seems to support this Bill, would I be in order to ask that the Mover be called upon to reply?

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, there seems to be concurrence. I would ask the Government Minister to respond. If the Mover has a little bit of time, he can maybe, give each person a minute to say a word. That is in order.

The Minister for Gender, Children and Social Development (Dr. Shaban): Thank you very much, Madam Temporary Deputy Speaker. From the onset, I would like to congratulate hon. Kapondi, who has come out clearly to fight for the outlawing of the FGM. It is not easy, coming from the community he comes from and even the seconder, to have stuck out their necks that way. I want to congratulate them. All the Members who have contributed have pointed out the importance of conserving what God has given. God has created a woman, a very beautiful person and people have decided to go on and, as one of our colleagues has said, become *jua kali* artisans to dismember women.

Human rights are women rights and women rights are human rights. It is very important for us to go ahead now and pass this Bill, which has come out openly to make sure that women enjoy their rights as women and as human beings and in the best way that their anatomy has allowed them. It is true that women suffer a lot. First of all, they are denied the enjoyment that they are supposed to enjoy. As a Government, the Ministry of Gender, Children and Social Development has gone out and started sensitizing elders who have been behind some of these problems. The elders in some of the communities even have forced old women who given birth to big sons who can marry, to undergo this cultural practice. They are told they are not women enough to marry their girls off or even to allow their sons to marry.

Madam Temporary Deputy Speaker, the Bill will require a bit of fine-tuning to make it more acceptable. The issue of the medical practitioners and midwives should be addressed properly because when women are delivering babies, sometimes, they are subjected to a certain cut which is necessary to open the path for the babies to be able to come through.

My remarks are very few. Article 10 of Part 3 talks about the protection of women and girls from Female Genital Mutilation (FGM); (b) provides support services to victims of FGM and (c) to undertake public education and sensitize the people of Kenya on the dangers and adverse effects of FGM. This part (c) is very important.

We are working with the *Njuri Ncheke* to help us stop FGM where it is being practiced. The *Njuri Ncheke* has been very helpful in eradicating this vice. We are also working with Kuria elders. We are also working with other elders in other communities where this cultural practice has been going on in order to stop it.

Madam Temporary Deputy Speaker, I beg to support.

The Temporary Deputy Speaker (Dr. Laboso): I now call upon the Mover to respond.

Mr. Kapondi: Madam Temporary Deputy Speaker, this is a great day for me and I am so much overwhelmed. I want to donate two minutes to Mrs. Kilimo who has been a

gallant fighter of FGM. I will also donate one minute to Ms. Mbarire, a minute to my sister Dr. Kosgei and another minute to Mr. Boaz Kaino.

The Temporary Deputy Speaker (Dr. Laboso): One minute, please, each of you, including Mr. Lesrima who has been up standing to catch the Speaker's eye.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Thank you, Madam Temporary Deputy Speaker. I will not even take one minute. I am so grateful to my colleague who has moved this Bill and everybody who has supported it. Just as my sister and the vice-chairperson of KEWOPA, Sophia Noor said, I want to tell God thank you so much for today on the Floor of this House, my colleagues have helped me to slay the monster called FGM.

Thank you.

The Assistant Minister for Tourism (Ms. Mbarire): Madam Temporary Deputy Speaker, I rise to really thank the Mover of this Motion and thank every single hon. Member that has contributed to this very important Bill.

While listening to Mrs. Noor, I was moved by her courage to share her story. I want us to imagine how many more women out there, have had a similar story, but have not had a platform such as this to share it. I want to thank her for being that courageous. We must do beyond passing the Bill. We must make sure we sensitize the public and protect every single girl child in this country from going through what she went through.

With those few remarks, Madam Temporary Deputy Speaker, I beg to support.

The Minister for Agriculture (Dr. Kosgei): Madam Temporary Deputy Speaker, I thank Mr. Kapondi for donating that time. If we had time, those of us who come from societies with this practice, would have a lot to tell you.

As a young girl, I attended all the dancing ceremonies because they looked colourful. I always wondered why these girls were crying so much. I also witnessed women leaving children in their houses and going through this ceremony. The tears forced me even at that young age to ask myself what is going on.

We now know what the medical reasons are and the pain they must have gone through. In this modern day and age, we should stand up for them. All I want to tell Mr. Kapondi, the Mover of the Motion, is that we shall be fighting to make sure that those who still have this practice, no longer have it.

I beg to support.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Lesrima and then finally Mr. Kaino.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Thank you, Madam Temporary Deputy Speaker. I also want to join my colleagues in supporting this Bill. I also want to thank the ladies for supporting us because in my community, it is the ladies who perpetuate superstition that if blood is not spilt, there will be a problem in giving birth.

Finally, I know that the Children Act exists but it is not being implemented. I hope that when we talk about public education, we should also educate other law enforcement agencies and judicial service officers so that this law may come into effect.

Mr. Kaino: Thank you very much, Madam Temporary Deputy Speaker. Let me also join my colleagues to thank hon. Kapondi for bringing this Bill which is very important. I want to urge all men in this country to support and love their girls. It is very important that we take this one very seriously. It is the girls who have suffered

psychologically, socially, education-wise and biologically. As hon. Odhiambo-Mabona has stated, there is a biological setback for the girls. They will also miss out on education.

Madam Temporary Deputy Speaker, let me give one example of myself. My mother does not have a brother. She has four sisters. The way my grandfather was taken care of is comparable to those parents who have sons. I am telling you that girls are very important in this nation. If only these men could know that girls are very important--- Let us put all the children together but our priority should be on girls. They are very important.

I beg to support.

Mr. Kapondi: Madam Temporary Deputy Speaker, I want to take this opportunity to thank hon. Members and, particularly, Kenya Women Parliamentary Association (KEWOPA) members who took a lot of their time, led by hon. Kilimo, to come up with this Bill. I want to thank Members who have made very serious and positive contributions before the House. Today, we are seeing the liberation of the girl-child in this country.

Thank you.

(Question put and agreed to)

The Temporary Deputy Speaker (Dr. Laboso): Next Order!

THE NURSES (AMENDMENT) BILL

Second Reading

Mr. Mututho: Thank you, Madam Temporary Deputy Speaker. I beg to move that The Nurses (Amendment) Bill be now read a Second Time.

In moving this Bill, I am cognizant to the fact that the nurses have suffered from 1991 when the then Minister, in his wisdom, allowed them to undertake private practice. We have seen the situation with the FGM Bill today. Today, they run a council which is more or less like a public *baraza* with over 22 members and they rarely meet. The net effect of this has been that they do not meet and the registration of nurses is in backlog to an extent that we currently have under 50 per cent of the numbers that would be members. We still have many of them out there.

Madam Temporary Deputy Speaker, outside that, we have a situation where the penalties for quacks are so small that they are fined in the morning and in the afternoon, they are back again to their bad practice. This Bill will, among other things, demonstrate and show that they need stiffer penalties, recognize professionalism and appreciate the training of nurses. With nurses, I am not talking about only ladies but also men. This is a very important kind of staff and no hospital---

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Mututho! You are left with 58 minutes to move your Bill.

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, it is now time to interrupt the business of this House. This House, therefore, stands adjourned until tomorrow, Wednesday, the 13th of April, 2011 at 9.00 a.m.

The House rose at 6.30 p.m.