

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 12<sup>th</sup> September, 2012

The House met at 9.00 a.m.

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

### PRAYERS

### NOTICE OF MOTION

#### APPROVAL OF DEPLOYMENT OF KENYA DEFENCE FORCES TO TANA DELTA

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

THAT, following the unrest and instability in the Tana Delta for the past few weeks, this House approves the deployment of the Kenya Defence Forces (KDF) to the Tana Delta and its environs to restore peace and order in keeping with the provisions of Article 241(3)(c) of the Constitution.

### QUESTION BY PRIVATE NOTICE

#### RELUCTANCE BY ELECTRICITY REGULATORY COMMISSION TO LOWER COST OF ELECTRICITY

**(Mr. Ochieng)** to ask the Minister for Energy:-

(a) Why has the Energy Regulatory Commission (ERC) not lowered the cost of electricity in the country considering that the cost of fuel was reduced two months ago?

(b) When will the cost of electricity go down?

(c) Could the Government consider refunding consumers the overcharged fuel costs for the last two months?

**The Temporary Deputy Speaker** (Mr. Ethuro): Minister for Energy! Let us go through the next Questions. I will revisit this particular Question.

### ORAL ANSWERS TO QUESTIONS

*Question No. 1712*

DELAY IN COMPENSATING MR. WESTON A. HAMILTON

**The Temporary Deputy Speaker** (Mr. Ethuro): Member for Subukia! He is not yet in. Member for Ol Kalou!

*Question No.1541*

IRREGULAR ALLOCATION OF LAND LR.No.NYANDARUA/  
OL JOROROK SALIENT/1886

**Mr. Mureithi** asked the Minister for Lands:-

- (a) if he is aware that public land, LR. No. Nyandarua/Ol Jororok Salient/1886, has been irregularly allocated to an individual;
- (b) if he is also aware that representatives of the community appeared before the local land tribunal and won the case; and
- (c) what measures he will take to ensure that the plot reverts to the public immediately.

**The Assistant Minister for Lands** (Mr. Rai): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware that LR.No. Nyandarua/Ol Jororok Salient/1886 was allocated to an individual. The said allocation was done under Ol Jororok Salient Settlement Scheme on 1<sup>st</sup> July, 2002.

(b) I am also aware that the representatives of the local community appeared before the local land tribunal and won the case.

(c) I have established that the judgment by the local tribunal is awaiting endorsement at the Magistrate's Court, Nyahururu. In the meantime, I have instructed the District Land Registrar to put a caution on the parcel of land in question.

**Mr. Mureithi:** Mr. Temporary Deputy Speaker, Sir, I would like to thank the Assistant Minister for his answer. However, I would like to draw his attention to the fact that the land that was given not only serves as a place where people draw water from, but it is also the source of a stream which feeds into a river that the community draws water from. How soon will we get a solution to this problem so that the owner does not get into this land and then interfere with the wetland that distributes water around that area?

**Mr. Rai:** Mr. Temporary Deputy Speaker, Sir, once the endorsement has been done by the Magistrate's Court, Nyahururu, I will just proceed to do the needful. In the meantime we are awaiting the endorsement by the Magistrate's Court, Nyahururu.

**Dr. Otichilo:** Mr. Temporary Deputy Speaker, Sir, what action is the Assistant Minister taking to ensure that the wetlands around this river are protected for the benefit of the people in future?

**Mr. Rai:** Mr. Temporary Deputy Speaker, Sir, those issues were raised when this matter came before the tribunal (*technical hitch*)

**The Temporary Deputy Speaker** (Mr. Ethuro): Last question, hon. Mureithi! Before that, hon. Kioni!

**Mr. Kioni:** Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister give us a more comprehensive answer dealing with the whole of Nyandarua because this is something that has been done over and over? A lot of land that was left for public use, say, water pans, has been

allocated to people illegally and there is hue and cry in the whole county. What is the Ministry doing about it?

**Mr. Rai:** Mr. Temporary Deputy Speaker, Sir, I will seek the indulgence of the Questioner that he draws my attention to the areas that he thinks have been affected because of this settlement scheme. We will actually do the needful.

**Mr. Mureithi:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. Whereas I accept the point raised by the Minister that the matter is awaiting endorsement by the court, I wish to know at the moment whether the Minister can give evidence to me with regard to this caution so that I tell the community that their land is secure. Otherwise, as it is now, we are not sure whether the Registrar, who has been aware of what has been happening in Nyandarua, has really endorsed the caution from the Ministry to avoid this wetland from being destroyed.

**Mr. Rai:** Mr. Temporary Deputy Speaker, Sir, to remove doubt, I will ask the Member to confirm that the caution has been registered with the Registry because that is just a title deed. If that has not been done, I can confirm to him that a caution has been registered with the Registry.

*Question No.1721*

IRREGULAR ALLOCATION OF LAND TO  
CHURCH BY NAIROBI CITY COUNCIL

**Ms. Karua** asked the Minister for Local Government:-

- (a) whether he is aware that the Nairobi City Council irregularly allocated Block 107, Plot No. 384 in Umoja II earmarked for a social hall to a church; and,
- (b) what he is doing to ensure that both the law and City planning regulations are followed.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, there is a request by the Minister that they will not be available to answer the Question today.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, this is a Question that was deferred and the only point was to address the cancellation of the title that had irregularly been issued. The Minister's request will have the effect of denying me a chance to ask another Question the next day. So, I really do not understand why the Minister should request not to answer the Question today.

**The Temporary Deputy Speaker** (Mr. Ethuro): Just confirm with the Chair that when the Question was deferred to another day, it was with the consent of both parties so, the Minister was aware that the Question was coming up today.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, we were not given the exact date but it was with the consent of both parties.

**The Temporary Deputy Speaker** (Mr. Ethuro): Under the circumstances, I order that this Question comes up tomorrow afternoon. It should be the first Ordinary Question on the Order Paper.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, since there is the issue of cancellation of title deed and the Minister had substantially answered and agreed that it is a public utility, I plead that tomorrow a fresh Question appears so that this Question does not obstruct my other Questions that are queuing. It can come up in two weeks and I will engage the Minister to make sure that he does his work.

**The Temporary Deputy Speaker** (Mr. Ethuro): So, you will be happy if we defer it for another two weeks?

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, it should be deferred for another two weeks because it had been substantially answered.

**The Temporary Deputy Speaker** (Mr. Ethuro): Alternatively, the Minister can always send you a copy of the written answer if that will serve the purpose.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, the pressure of answering when everyone is watching does help. Let the Question be on the Order Paper.

**The Temporary Deputy Speaker** (Mr. Ethuro): The Question is deferred to a fortnight!

*(Question deferred)*

*Question No. 1604*

IRREGULAR ALLOCATION OF KMC  
LAND TO PRIVATE DEVELOPERS

**The Temporary Deputy Speaker** (Mr. Ethuro): The next Question by the Member for Dujis is also deferred to Thursday, next week.

*(Question deferred)*

*Question No.1717*

STALLING OF MAIELLA-NGONDI-KONGONI ROAD

**The Temporary Deputy Speaker** (Mr. Ethuro): Is hon. Mututho not here? We will revisit the Question!

The next Question is deferred to tomorrow afternoon for obvious reasons.

*Question No.1685*

IRREGULAR ALLOCATION OF NCPD LAND

*(Question deferred)*

*Question No.1734*

SHORTAGE OF CLEAN DRINKING  
WATER IN KARGI LOCATION

**The Temporary Deputy Speaker** (Mr. Ethuro): Let us move on to the Question by the Member for Gwassi!

**Mrs. Odhiambo-Mabona:** On a point of Order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): What is your point of order hon. Millie Grace Odhiambo?

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Speaker, Sir, if you look at the Order Paper, you will notice that I have asked Question No.1729. We were surprised this morning when we were comparing notes to notice that the Question that the hon. Member for Gwasssi is asking is the same one I am asking. So as to save the time of this House, I kindly request if I could be given time, as the hon. Member for Gwasssi has also requested, so that we consolidate our Questions.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Millie Odhiambo! You are an active Member of the House. Had you approached the Chair on that issue, he would have sorted it out.

Proceed, the Member for Gwasssi! I will allow the hon. Member as much latitude as you.

**Mr. Mbadi:** Thank you, Mr. Temporary Deputy Speaker, Sir. I am happy that you will give my sister enough indulgence to also prosecute this Question because it affects both of us. I beg to ask Question No.1754 on the Order Paper.

*Question No.1754*

EXPENDITURE ON CONSTRUCTION  
OF HOMA BAY-MBITA ROAD

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

(a) whether he could state the contract period, amount and reveal how much has been paid to the contractor for the ongoing construction of Homabay-Mbita Road;

(b) whether the contractor is on schedule; and,

(c) whether he could confirm that the quality of the work done on the road is up to standard.

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

I agree with hon. Millie Odhiambo that the two Questions are similar and that if I was to answer the two of them, I would be repeating myself. So, I want to seek your indulgence that we, indeed, as requested by the Member collapse the two Questions and what will not be answered in hon. Mbadi's Question, hon. Millie can raise it at the supplementary stage.

So, I seek your guidance, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Minister, you will save available time of the House if you cared to listen. I had already made that determination.

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The contract sum is Kshs3,388,340,990.50. The exact amount paid on certification is Kshs1.72 billion.

(b) The contractor had initially faced some delays which necessitated the need for an extension of time which was granted as it is allowed in the contract but so far, the works are ongoing.

(c) I would like to confirm to the House that the quality of the works done will be according to the contractual specifications as are in the contract between ourselves and the contractor.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, this is the road leading to the major beaches in Mbita Constituency and a section of Gwasssi Constituency, namely, Sindo. Mr. Temporary Deputy Speaker, Sir, the place between Kona Kodoyo and Ogongo is completely

impassable. The section of that road cannot be maintained now using the normal routine maintenance fund and yet the contractor has completely ignored it. Therefore, when it rains, it is a total nightmare to the motorists. What has the Minister done to ensure that when the contractor carries out the works, the sections which have not been done are repaired to motorable condition?

**Mr. Bett:** Thank you, Mr. Temporary Deputy Speaker, Sir. I must admit that is a very good question. In every contract on our roads, it is a requirement on the part of the contractor to maintain the section of the road he is working on to a motorable condition because it is part of the contract. So, I want to thank the Member for bringing to my attention that this particular contractor is not minding the section that he has been awarded for construction. After this, I will pursue the matter to make sure that is done. I have a similar case elsewhere and I am pursuing it. This is particularly the case in Eldoret Town. So, I will pursue all those to make sure that the contractors repair the roads or the diversions so that people can use them in a comfortable manner.

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Temporary Deputy Speaker, Sir. I thank the Minister for that response. I think the spirits connived so that hon. Mbadi and I would ask this Question at the same time. My father comes from Rusinga Island. So, I am a *Nyar Rusinga*, but settled in Lambwe Valley. Therefore, you can still refer to me as a *Chi Lambwe*.

Mr. Mbadi says this road is being done in portions. We are very much concerned about the issue of quality because this is the only place I have seen roads being done in that manner. We were with him when he launched the construction of that road with the Prime Minister. The bridge to Mbita was---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Mrs. Odhiambo-Mabona, we appreciate all your attributes, but it does not give you an advantage to speak more than necessary. Go straight to the Question.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Speaker, Sir, could the Minister clarify what the Ministry is actually doing to ensure that road is actually done to quality standard because the way it is being done now compromises those standards?

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, I must admit that Mrs. Odhiambo-Mabona spoke in a language which is similar to English or near English; or Suba or Dhuluo language. It must be one of those languages.

Mr. Temporary Deputy Speaker, Sir, every contract awarded, there is a quality assurance department or office within the construction site. Before any payment is made, the quality assurance section on the road must certify that they have tested the section of the road that has been constructed and that it is within the contractual agreement specifications. We cannot pay them unless the quality assurance department in my Ministry gives certification to say that section of the road has been done to the specifications. When my officer will be checking the section which has been done, I will ask him to ascertain whether the construction and specifications being given are in accordance with the agreement.

**Mr. Pesa:** Mr. Temporary Deputy Speaker, Sir, the Homa Bay-Mbita Road is very important for the fishermen around Lake Victoria. In fact, this is the road that will go round to Migori County where I come from. Many people in South Nyanza are very concerned about the construction of this road.

Mr. Temporary Deputy Speaker, Sir, the Minister has just told us that they have paid Kshs1.7 billion which is more than a half of the amount earmarked for this road. Apart from telling us that the quality assurance department makes sure that this road is constructed as per

specifications, could he tell us what amount of work has been done on this road so far as compared to the total work that they expect to be done on the road?

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, there is a lot of interest in the Question and it would help if you are very precise.

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, I must admit that I do not have the percentage of work done. But I agree that the levels are not the same because he has even asked for an extension of time.

Secondly, we have had to increase the scope of works. There are some access culverts which have been found to be necessary as we were continuing with the construction. Those are going to escalate the cost of the road even beyond the Kshs3.4 billion.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Minister! I just find it curious when you say that you do not know the status of the completion when the two Questions; the first one by Mr. Mbadia asks in part “b”:-

“(b) Is the contractor on schedule?”

The derived answer is that you should know how far he is. And, also, the one of Mrs. Odhiambo-Mabona:-

“(b) What has caused the undue delay in the completion of the road?”

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, there are two main reasons for the delay. One, there were heavy rains in the place and the contractor was not able to work in that kind of weather condition. Two, the scopes of work were increased to further improve the level of the road. Those are the two main reasons which necessitated the delay in completion of the road. The information I have here does not show the amount of work done and what is remaining to be done.

**Dr. Nuh:** Mr. Temporary Deputy Speaker, Sir, every time contracts are given out for roads, especially for the reconstruction of roads, it happens that there are site engineers who are deployed by the Ministry. But many a times there is collusion between them and the contractors themselves. That is why poor work is usually done. I had even informed the Minister about this because it happened to a road in Bura last year. As I speak, the construction of the road between Garissa and Charidende is being done in a shoddy manner. I even raised this with the Kenya National Highways Authority (KeNHA), but they do not want to take any action. What has the Ministry done to ensure that the local leadership is engaged in the assessment to ensure that quality is not compromised?

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, yes, I agree that hitherto there were reports of our officers conniving with the contractors. That is the reason we then introduced the two pieces of legislation; the National Construction Authority Act and the Engineers Act. Those two Acts are supposed to attend to the professional performance of the contractors, including ethical behaviour by contractors.

Secondly, Mr. Temporary Deputy Speaker, Sir, there are regular audits by our office. Some of those regular audits are also snap audits. We do not tell the site engineer or the contractor when we are visiting them for those audits. We want to make sure that the rules are not being bungled to the disadvantage of the public.

Mr. Temporary Deputy Speaker, Sir, as regards giving a chance to the local leadership to participate in the assessment, that will be difficult because this is a professional thing and the contractor is only obligated to the Ministry. We have never refused at all to act to the complaints from members of the public through the Press, radio or through Questions in Parliament. We always take notice of all those complaints against this or that contractor.

**The Temporary Deputy Speaker** (Mr. Ethuro): The last two questions, Mrs. Odhiambo-Mabona, you have one and Mr. Mbadi has the last one. Hon. Members, I appreciate there is a lot of interest, but really we cannot dwell too much on one Question.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Speaker, Sir, Mbita does not actually have a lot of services and relies a lot on Homa Bay. So, a lot of women suffer when they have to get services in Homa Bay. I have heard the Minister indicate that the reason that there has been a delay is because of the heavy rains. Everybody who comes there including Ms. Karua who had a Question, knows that that is not a rainy area. So, rain cannot be a reason for the delay. Is the Minister willing to go with us on the ground, to accompany Mr. Mbadi and I? Ms. Karua and the area MP are also willing to accompany us. We can go there so that the Minister can actually attest to the problem that is on the ground. It is not the rains. We come from there. That is a very dry area.

**The Temporary Deputy Speaker** (Mr. Ethuro): You have made your point, Mrs. Odhiambo-Mabona.

Mr. Minister, now that Ms. Karua has been mentioned and for all the troubles of going around the country, I think this country can appreciate from her travels of late. Ms. Karua, maybe you need to chip in before the Minister responds.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, first, I want to declare myself “*Nyar Siaya*” from the neighbouring county and confirm that I was on this road recently and there is need to have it completed and improved. Does the Minister have mechanisms of punishing engineers who certify shoddy work by contractors or collude with them after they delay completion of contracts?

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, I am grateful to answer “*Nyar Siaya*”.

Yes, the same law passed by this House early in the year also has got a provision to deal with those contractors, as asked by the hon. Member. As to Mrs. Odhiambo-Mabona’s invitation to go and inspect the road, I would want to say, yes, so long as I will be able to take some *Mbuta* or *Omena* when I get down there. I am happy to go there because we have done a design of the causeway which we want to make into a bridge to allow the fish on one side of the causeway to do the natural thing that is done by a male and a female.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I would like to thank and congratulate the Minister. He is intending really to work on the causeway where Mrs. Odhiambo-Mabona sadly lost her father. I would like to ask the Minister to take keen interest in this road because the contractor is sub-contracting the works to sub-standard contractors. So, I think you need to take action. I hope this is not---

**Mr. Midiwo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I was just curious if you are catching our eye, because there are a lot of questions being asked by Mrs. Odhiambo-Mabona, Ms. Karua and Mbadi and we are affected by that road. So, I am only appealing to you.

**The Temporary Deputy Speaker** (Mr. Ethuro): Mr. Midiwo, I had already noted there was huge interest in this Question. The interest is not only from you but from Members across the country. I could recognize Mr. Kioni, Mr. Koech, Eng. Mureithi and of course literally everybody from that part of the country. But I said it is Question Time and we can only do this much.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, as I was saying, I hope this is not continued marginalization of that region by doing sub-standard works on the roads. Mr. Minister, given that I know you are my friend and by extension the friend of Suba, I hope you will make sure that that road is properly done. My question to the Minister is: When will this road be



completed so that we can use it because doing one section, leaving the section in-between and doing the other section is not very helpful to us and it is taking so many years now since the road construction started?

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, I notice the Chair has said this Question is generating a lot of interest; I appreciate that. I would want to encourage hon. Members that my office is open. I have instructed my Permanent Secretary and the Director-Generals of the authorities that they must see hon. Members as soon as they appear in their offices. If there is something they are not able to resolve with the hon. Member, they can resort to discussing the same with me. So, they are free to visit our office with no appointment. Just come; so long as you appear, we will want to see you because we would want to be working with you.

The revised completion date is 25<sup>th</sup> November, 2012.

*Question No.1757*

NON-RESETTLEMENT OF SQUATTERS  
IN KWA DREK/KASEKU

**Mr. Mbai** asked the Minister for Lands what measures he will take to ensure that all squatters in Masinga Constituency, particularly in Kwa Drek and Kaseku areas are resettled.

**The Assistant Minister for Lands (Mr. Rai):** Mr. Temporary Deputy Speaker, Sir, I wish to seek the indulgence of the House to answer this Question on Tuesday, next week. The matter is a subject of a court case and I want to get the proceedings so that at least I can satisfy the hon. Member that the matter is really in court. That is why there is a suspension of the resettlement exercise in settlement scheme.

**Mr. Mbai:** Mr. Temporary Deputy Speaker, Sir, these are two farms. I am aware that Kwa Drek Farm is the subject of a court case but Kaseku is not involved in a court case. What is he doing to address the issue in that farm and to settle those people?

**The Assistant Minister for Lands (Mr. Rai):** Mr. Temporary Deputy Speaker, Sir, the Question is one despite the fact that the farms are two. I actually sought the indulgence of the House because I will still not have actually answered the Question if I only answer the part regarding one farm. If I could just get time up to Tuesday, I could just clear the air and the Questioner will be happy to know what is actually happening as far as the settlement scheme is concerned.

**The Temporary Deputy Speaker (Mr. Ethuro):** I think that is a fair request by the Assistant Minister. Let us grant him next week.

**Mr. Mbai:** Thank you, Mr. Temporary Deputy Speaker, Sir. I will talk to him.

*(Question deferred)*

*Question No.1723*

DISAPPEARANCE OF REMAINS OF LATE SSGT  
SILAS BIWOT RUTO

**Mr. Kiptanui** asked the Minister of State for Defence:-

- (a) whether he is aware that SSGT Silas Biwot Ruto (SVC No.10428) went missing in February, 2001, and was later found dead,
  - (b) where his remains are and when the same will be released for burial;
- and,
- (c) when his final dues will be paid to the family.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Senior Sergeant Silas Biwot Ruto who had proceeded on leave was reported to be missing on 19<sup>th</sup> February, 2001, by his wife Grace Kalekye. She reported at the Kahawa Garrison on 17<sup>th</sup> March, 2001, where the serviceman used to work, stating that Senior Sergeant Silas Biwot Ruto went missing from their Olenguruone home and alleged that he left home on 19<sup>th</sup> February, 2001, to collect his pay from his bank in Nakuru but he never returned, nor did she find him at his place of work.

Mr. Temporary Deputy Speaker, Sir, after reporting the allegation, she was advised to make a formal report to the nearest police station and also to her area chief for a search to be conducted. The Senior Sergeant failed to resume his duty on 9<sup>th</sup> March 2001 after expiry of his annual leave. A board of inquiry was constituted to establish the circumstances under which he went missing. At the conclusion of its inquiry, the board of inquiry declared him illegally absent on 24<sup>th</sup> April 2001 and it was recommended that he be traced by both the military and the civil police.

Mr. Temporary Deputy Speaker, Sir, towards the end of July 2001, the Ministry received information alleging that the above serviceman was murdered due to some domestic affairs and that his wife, Grace Kalekye, who was a prime suspect, was arrested to help the Molo police with investigations. This information concurred with the findings of Molo police who are reported to have conducted a search in the missing servicemen's Olenguruone home backyard during 2001 July and discovered the decomposed and dismembered human skeleton to be that of the serviceman. The body was taken for forensic analysis at the City Mortuary and the Government Pathologist failed to identify the decomposed body and did not ascertain the cause of death. It was reported that Molo police released the prime suspect. The corpse is still in the City Mortuary.

Mr. Temporary Deputy Speaker, Sir, in the circumstances, it is not possible to conclude that the corpse found was that of Senior Sergeant Silas Biwott Ruto since it has not been authoritatively identified yet.

(b) My Ministry does not know where the remains of the serviceman are placed since the corpse has not yet been positively identified as his. On positive identification, the human remains will be handed over to the *bona fide* family members for a full military burial with honours.

Mr. Temporary Deputy Speaker, Sir, in April 2007, we recommended to his family to consider a positive identification of the human remains by DNA method as it is more accurate than that of postmortem determination but this has not yet been done. Because the family delayed to do the DNA test, my Ministry has now decided to take up the matter to fund the DNA testing in order to identify the human remains. In case, the remains are confirmed to be that of the serviceman, he will be accorded a military burial with honours.

(c) The serviceman has not yet been declared dead and, therefore, his death benefits cannot be paid. However, should the DNA return positive results as to identify the corpse as that of the missing serviceman, my Ministry will prepare and process his death benefits to be paid to his *bona fide* family members as provided by the military regulations.

**Mr. Kiptanui:** Mr. Temporary Deputy Speaker, Sir, I wish to thank the Assistant Minister for having decided as a Ministry to fund the DNA test for this deceased officer. Indeed, this issue of identification of the deceased's body has taken over ten years and the family has really suffered. Indeed, it has caused a lot of pain and agony to the family. Now that the Ministry is willing to fund the DNA test, my question to the Assistant Minister is: Once we avail a relative of the deceased, could he commit to ensure that the results of the DNA test are released as soon as possible?

**Maj-Gen. Nkaiserry:** Yes, Mr. Temporary Deputy Speaker, Sir. We will do exactly that.

**The Temporary Deputy Speaker** (Mr. Ethuro): Last question, hon. Kiptanui.

**Mr. Kiptanui:** Mr. Temporary Deputy Speaker, Sir, I thought there are hon. Members who are interested in interrogating this Question.

**The Temporary Deputy Speaker** (Mr. Ethuro): That is what you thought. The Chair thinks that all your questions have been answered. Last question, hon. Kiptanui.

**Mr. Kiptanui:** Mr. Temporary Deputy Speaker, Sir, I wish to thank the Assistant Minister and I want to tell him that by next week we shall avail a relative and I believe this issue will be sorted out once and for all. Thank you.

**The Temporary Deputy Speaker** (Mr. Ethuro): Next Question by hon. Kiilu.

*Question No.1675*

NON-COMMISSIONING OF MUTYAMBUA  
YOUTH EMPOWERMENT CENTRE

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

(a) whether he is aware that Mutyambua Youth Empowerment Centre has not been commissioned for use by youths, and if so, why; and,

(b) when it will be commissioned for use.

**The Minister for Youth Affairs and Sports** (Dr. Otuoma): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Mutyambua Youth Empowerment Centre has not been officially commissioned for use by the youths as the Ministry is in the process of delivering chairs and tables to the empowerment centre and also completion of the branding in readiness for the commissioning.

(b) The Youth Empowerment Centre will be commissioned for use on 29<sup>th</sup> September, 2012.

**Mr. Kiilu:** Mr. Temporary Deputy Speaker, Sir, I want to appreciate the answer by the Minister and particularly the decision that he wants to commission this facility on 29<sup>th</sup> of this month. A youth empowerment centre is ideally under Vision 2030. A shelter for---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Kiilu! He knows it. Just ask him a specific question.

**Mr. Kiilu:** Mr. Temporary Deputy Speaker, Sir, the Minister said what is delaying the opening of this centre is lack of chairs and tables. Among other things, this centre is supposed to provide information dealing with entrepreneurship and so forth, among the youth. Can the Minister confirm that Information and Communication Technology (ICT) services will also be provided in this centre as he comes to commission it?

**Dr. Otuoma:** Mr. Temporary Deputy Speaker, Sir, indeed, the hon. Member is right that provision of ICT facilities is one of the things but the budget that we have available for now up to 29<sup>th</sup> will be able to provide for the chairs but subsequently those are some of the items that we need to include in all these youth empowerment centres. The ICT, games and recreational facilities are part of the things that we need to provide and of course, even qualified personnel to help the youth in capacity building.

**Mr. D. Muoki:** Mr. Temporary Deputy Speaker, Sir, many other youth empowerment centres across the country are also idle including the one in Mwala. When will they be equipped and commissioned?

**Dr. Otuoma:** Mr. Temporary Deputy Speaker, Sir, indeed, we have a schedule for commissioning and equipping these youth empowerment centres right across the country. So far, we have only constructed 40 and we are in the process of finishing another 30, but we need to do 290. So, we will be availing the equipment as the funds are provided. I have not seen the schedule for when we will be able to do for the other hon. Members, but at least, for this one we have already scheduled for 29<sup>th</sup>.

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, arising from the answer given by the Minister, could he indicate to this House the policy of the Ministry in establishing the said centres in the other constituencies in the country, for instance, in Lari Constituency, where I have already availed land?

**Dr. Otuoma:** Mr. Temporary Deputy Speaker, Sir, other than just confirmation of availability of land and title deed, we are also doing regional distribution. As I said, our aim is to give this to every constituency. Currently, we are trying to distribute the numbers that we have across the country. As I said, we have already completed 40, and are in the process of doing another 30, which will give us 70. As of now, our aim is to do them in 210 constituencies. As we continue to get funds from the Exchequer, we will continue to do them. Also, this programme expects the support of the Constituencies Development Fund (CDF), from the letter that was written to the hon. Members. Instead of just waiting for the Government to start, if you already have the plan and the template is there, you can start with the other portion, and then we will come in with the Government portion later, so that we accelerate this programme.

**Mr. Mwangi:** Mr. Temporary Deputy Speaker, Sir, if you listened to the Minister carefully, he is just going to provide desks, yet the centres are supposed to be empowerment centres; does he intend to provide desks and chairs to the youth just to sit around in those halls? An example is my constituency, where we have completed that centre at Kahuro District Headquarters. When will he be able to provide equipment and furniture? There is no need of telling us to start other phases while the first phase is not even being used by the youths. Could he be specific and tell us when he is going to commission these centres?

**Dr. Otuoma:** Mr. Temporary Deputy Speaker, Sir, as I said earlier, the provision of desks, chairs and other equipment was specifically for Mutiyambua in Makeni. As I said, we have a programme for provision and activation of all those youth empowerment centres across the country. We cannot avoid ICT; you remember that during the Economic Stimulus Programme, there was provision to try and give ICT centres to every constituency and district. We thought the youth empowerment centres would be domesticated. So, it is a programme that is still continuing. We should not just rely on the Ministry of Youth Affairs and Sports, but as leaders from those areas we should use any available funds to enhance this programme. The youth empowerment programme requires a lot of things and not just desks and chairs; more important is capacity building.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Minister! This is Question Time; instead of answering questions you are giving more information. Be specific to the question.

Last question, Mr. Kiilu.

**Mr. Kiilu:** Mr. Temporary Deputy Speaker, Sir, I would like to know from the Minister which stakeholders he is using in deciding the date of opening this facility; as the area Member of Parliament and a stakeholder, I am learning of the date of commissioning of this facility on the Floor of this House. Who else has he involved, for this information to be known to many people in the constituency?

**Dr. Otuoma:** Mr. Temporary Deputy Speaker, Sir, if the letter has not reached the hon. Member of Parliament, I am going to ensure that it reaches him. The hon. Member has been part of the Provincial Administration, and knows we use its mechanism to communicate to the various stakeholders. I will ensure that I deliver a letter directly to him.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, we will revisit earlier Questions and be done by ten.

Hon. Member for Nyakach.

### QUESTION BY PRIVATE NOTICE

#### RELUCTANCE BY ELECTRICITY REGULATORY COMMISSION TO LOWER COST OF ELECTRICITY

**Mr. Ochieng:** Mr. Temporary Deputy Speaker, Sir, I beg to ask the Minister for Energy the following Question by Private Notice.

(a) Why has the Energy Regulatory Commission (ERC) not lowered the cost of electricity in the country considering that the cost of fuel was reduced two months ago?

(b) When will the cost of electricity go down?

(c) Could the Government consider refunding consumers the overcharged fuel costs for the last two months?

**The Temporary Deputy Speaker** (Mr. Ethuro): Minister for Energy! Is he not here? Leader of Government Business!

**The Minister for Youth Affairs and Sports** (Dr. Otuoma): Mr. Temporary Deputy Speaker, Sir, I undertake to deliver the message that this Question has come up and I will find out where the Minister is.

**The Temporary Deputy Speaker** (Mr. Ethuro): Mr. Minister, it is not just enough to just find out. This is a Question by Private Notice, which means it is very urgent.

**The Minister for Youth Affairs and Sports** (Dr. Otuoma): Mr. Temporary Deputy Speaker, Sir, I apologize for that and I undertake to expedite this almost immediately.

**The Temporary Deputy Speaker** (Mr. Ethuro): This Question is deferred to tomorrow afternoon.

*(Question deferred)*

**The Temporary Deputy Speaker** (Mr. Ethuro): The next Question by the hon. Member for Subukia is deferred until next Thursday.

*Question No. 1712*

DELAY IN COMPENSATING MR. WESTON A. HAMILTON

*(Question deferred)*

*Question No.1721*

IRREGULAR ALLOCATION OF LAND TO CHURCH  
BY NAIROBI CITY COUNCIL

**Ms. Karua** asked the Minister for Local Government:-

- (a) whether he is aware that the Nairobi City Council irregularly allocated Block 107, Plot No. 384 in Umoja II earmarked for a social hall to a church; and
- (b) what he is doing to ensure that both the law and City planning regulations are followed.

**The Temporary Deputy Speaker** (Mr. Ethuro): Mr. Minister, there was just remaining a little bit that was unfinished. If you could just respond to that, you would save us a lot of time.

**The Assistant Minister for Local Government** (Mr. Nguyai): Mr. Temporary Deputy Speaker, Sir, you are correct. We had answered this Question earlier; the clarification is that the hon. Member for Gichugu tabled a title deed to show that this particular plot must have been fraudulently obtained. I do undertake to follow up the matter with the Minister for Lands, who is in the House right now and ensure that the title deed is revoked.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I am satisfied with that and I will follow the Minister on that undertaking.

*Question No.1717*

STALLING OF MAIELLA-NGONDI-KONGONI ROAD

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

- (a) whether he could confirm that the rehabilitation works on Maiella-Ngondi-Kongoni Road (D331/E445) have stalled, thereby greatly affecting Maiella residents who cannot transport their agricultural produce to the market;
- (b) whether he could also state the names of the two firms that were awarded the contract and explain how the contract was awarded; and,
- (c) when the works will resume and whether he could assure the House that sections that were shoddily done will be re-done, and further state when the works to upgrade the road from Suswa to Elementaita E445/D331/D322/E446) to bitumen standard will commence.

I apologize for coming late; we were on another Parliamentary assignment the other side.

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

I am aware that works on the rehabilitation of Ngondi-Maiella-Nkoriento-Suswa DEB Narok Road---

**Mr. Mututho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Two times now, you have ruled that the Question be answered as I had asked. In as many times, this Minister has avoided answering the critical part of the Question. According to the Standing Orders, you are not supposed to ask what is in public domain. We have gone even to the Registrar of Companies to find out about these companies; now could he comply with your two previous orders that he, indeed, answers the Question as asked? I have tabled it twice. All I am asking is: Who are the directors of this company? In essence, one of the files has been missing and the other one cannot even be traced at the Registry. Since they carried out evaluation---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Mututho! You are asking the Minister to be relevant and you are not practising it yourself. Minister, answer the Question as it appears on the Order Paper, and then he can raise his matter.

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, I am aware that works on the rehabilitation of Ngondi-Maella-Nkoriento-Suswa Road, E445 had temporarily stalled due to continuous rainfall which hindered progress of repair.

(b) Mr. Temporary Deputy Speaker, Sir, the two firms which were awarded the contract are M/s Willy (Kenya) Limited and M/s Decotec Enterprise. The procurement method used was open tendering and detailed as follows:-

(i) Bidders were invited by an advertisement posted on the Regional Manager's and Constituency Roads offices notice board on 7<sup>th</sup> July, 2011 in Naivasha;

(ii) Pre-tender site visit was carried out on 14<sup>th</sup> July, 2011. I wish to note that pre-tender visits are always mandatory.

(iii) Evaluation took place between 4<sup>th</sup> and 12<sup>th</sup> August, 2011 and the lowest bidders for these roads were awarded by the Constituency Tender Committee (CTC) on 2<sup>nd</sup> September, 2011 as per the recommendation of the evaluation committee.

(c) The works resumed after the weather conditions improved and were completed in early August, 2012. Reinstatement of sections damaged by the rains was first carried out to make the road motorable. Upgrading of roads E445, D331, D322 and E446 to bitumen standard will be done as may be prioritized by the Naivasha Constituency Roads Committee in their work plan.

**Mr. Mututho:** Mr. Temporary Deputy Speaker, Sir, I am tongue-tied because my suspicion is that the Ministry officials are the contractors in this particular section. How did you advertise locally, in your own notice boards, a contract worth Kshs400 million, in contrast with what is required in advertisements?

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, I am not aware that the companies' directors are members of staff of my Ministry. I want to indicate to the hon. Member that I do not run the companies' registry in the Solicitor-General's Office. So, I think that the hon. Member would do well to place the Question as to who the directors are to the relevant department of Government.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Order, Minister! On that one, you cannot get away. The Question has asked you about the names of the firms and it will be expected that there are directors to those firms. The Government has collective responsibility. You must seek out from even other Government agencies for any information that will help in answering a Question.

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, I would be very happy to answer or give the names of the directors on another Question. But on this particular Question, I was not asked to give the names of the directors. I would have actually done exactly what the Chair is saying, but I was not asked to give the names of those directors. I want to indicate also that the amount is

not Kshs400 million. Willys Construction Limited was awarded a contract of Kshs18.5 million, while Decotec Enterprise was awarded a contract worth Kshs14.9 million.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Mututho, could you not find the directors?

**Mr. Mututho:** Mr. Temporary Deputy Speaker, Sir, my Question was: How was the contract awarded and who are the directors of these companies? I have asked that Question consistently. I have even written to the Director of Companies and they have avoided answering that. At the point when they are evaluating the tender, one of the prerequisites is that they give the details of the companies which do that particular tender. Why is the Minister avoiding giving us exactly those details as per the tendering document – who these people are – and it is within his department?

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, the Question before me and the House is:-

“Could the Minister state the names of the two firms that were awarded the contract and explain how the contract was awarded?”

Mr. Temporary Deputy Speaker, Sir, I have complied. If the hon. Member wants me to answer who the directors are, that is another Question altogether, and I am prepared to receive that Question through the House and bring the names of those directors.

**Mr. Baiya:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister is being asked to name the particular companies in reference to the Question, about possible conflict of interest that may have arisen. We recently passed the Leadership and Integrity Bill which requires public officers to ensure that there is no conflict of interest between them and the offices that they hold. Is the Minister in order to dodge the question that is very relevant; as to whether there is integrity in the transaction in question?

**Mr. Bett:** Mr. Temporary Deputy Speaker, Sir, I would really want transparency to prevail at every moment. That has been my concern everytime in my public life. But I cannot speculate or imagine that other bit that the hon. Member is asking. I have not refused. I wish to be asked formally to give the names. What I have been asked---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Order, Minister! Let the Chair help you. To ask for the names of directors is a proper supplementary question. It does not have to be a separate Question. What you can do is plead for time; that maybe you have not brought the names. I will defer this Question for the remaining part of just the names of the directors of the two firms.

**Mr. Bett:** Much obliged, Mr. Temporary Deputy Speaker, Sir. But I would really want to underline that the hon. Member should have been more precise in his Question.

**The Temporary Deputy Speaker** (Mr. Ethuro): Actually, it is the understanding of the Chair that the hon. Member was precise. It is just because our Standing Orders also do not allow us to ask what is in the public domain. But apparently, the information is not in the public domain as would be expected. So, it can only come through the Government agencies.

Hon. Mututho, we will defer this Question to next Tuesday.

*(Question deferred)*

*Question No.1734*

SHORTAGE OF CLEAN DRINKING



## WATER IN KARGI LOCATION

**Mr. Lekuton** asked the Minister for Water and Irrigation:-

(a) whether she is aware that there is serious shortage of clean drinking water in Kargi Location in Loiyangalani district;

(b) whether she is further aware that the water used by the residents of Kargi Location is extremely saline; and,

(c) what urgent measures she will take to ensure that the residents of the area have access to clean drinking water.

**The Minister for Water and Irrigation** (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that there is shortage of clean water for drinking in Kargi Location in Loiyangalani District and shortage is mainly due to limited water resources and the erratic nature of the rainfall in this area.

(b) I am also aware that the ground water from boreholes in this region is very saline.

(c) My Ministry, through the National Water Conservation and Pipeline Corporation (NWCPC), will develop large size pans and dams in flood channels and drill more boreholes after conducting feasibility studies for ground water development away from the centre, at least 10 to 15 kilometers, towards the expected recharge zones as boreholes away from the centre have yielded water of good quality. Towards this end, my Ministry, through the Northern Water Services Board (NWSB), has set aside Kshs30 million for construction of two pans and drilling of two boreholes in this current financial year.

**Mr. Lekuton:** Mr. Temporary Deputy Speaker, Sir, the issue of water in Kargi is very serious. Just to give you more information, the Water Resource Management (WARMA) analyzed water in Kargi boreholes in 2009; a State corporation under the Ministry of Water and Irrigation. It is evident and I quote from what they said: "It is evident that parameters, namely conductivity, sodium chloride, nitrates and total dissolved solids are still above the World Health Organization (WHO) recommended values and pose human health risks if ingested. This report is from a Government agency and the February 2009 report recommends that the alternative use of sources of water for domestic purposes should be away from those boreholes. Is this Ministry aware of that report?"

**Mrs. Ngilu:** Mr. Temporary Deputy Speaker, Sir, yes, I am aware of that and that is why I said that water in that area is saline. Therefore, what we do when we have such cases is that we do not so much rely on boreholes but on rainwater. That is why I said that we are going to have pans and dams and we have set aside money for that. Once we have pans or dams, then we will treat the water to make it okay for consumption by the people.

**Mr. Lekuton:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister in her answer said that rainfall is erratic and she still insists on having water pans. How can that be possible?

**Mrs. Ngilu:** Mr. Temporary Deputy Speaker, Sir, I admitted and said that I know the water that we drill from boreholes is not right for consumption but we are lucky sometimes to drill a borehole and get clean water. It is just that you can see water underground but you do not know the quality until it is tested. However, in the meantime, we have said that we are going to put resources in place to do pans so that we can get water from the rain.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, it has been known for a while because this matter came to Parliament, I believe in 2004, and it was answered then that the water in

Kargi is not only saline but also previously has had toxic results and killed that took it in one of the areas. Since the Minister has said that there are boreholes that have yielded water far away, how far from Kargi are they? Is it possible to have this water piped to Kargi so that the residents of Kargi can have clean drinking water?

**Mrs. Ngilu:** Mr. Temporary Deputy Speaker, Sir, yes, that is true. The water that we can bring to Kargi Location is about 15 kilometers away. The boreholes there have yielded clean water and we can pipe it. Therefore, the money that we have set aside in this financial year to do some other pans, maybe we can get it reallocated to pipe this water which is 15 kilometers away. I will also check whether it is possible to get some money and do the pans and dams that we planned to do.

**Mrs. Shebesh:** Mr. Temporary Deputy Speaker, Sir, I beg the Minister to tell me, because she has clearly stated that this water is saline and has even had some toxins, whether there could be a possibility of connecting the drinking of that water with the cancer that has spread within this area and affected 34 residents. Could she connect the drinking of that water to cancer that is suddenly being experienced by people in Kargi Location?

**Mrs. Ngilu:** Mr. Temporary Deputy Speaker, Sir, I would not be able to tell because the cancer disease has become too much in this country, not only in this area but many other areas. However, I think this is a case that I would like to get our technical people to go down and do thorough investigations and a study to know whether this may be a cause but it could be because of many other things.

**Dr. Otichilo:** Mr. Temporary Deputy Speaker, Sir, you heard the Minister say that the clean water is about 15 kilometers away from Kargi Location. My question is: Why can the Minister not use the Kshs30 million to bring the clean water to Kargi rather than use the money to make water pans and we know very well that in that area, rain is very erratic and unreliable?

**Mrs. Ngilu:** Mr. Temporary Deputy Speaker, Sir, I have just said that I am going to explore the possibility of using those resources that we have to bring this water. In fact, I think that is the right thing to do because it would be faster and it would get to the people much faster because we do not know when we will get the rains even if we did the dams and the pans. So this is a possibility that I am going to explore.

**Mr. Lekuton:** Mr. Temporary Deputy Speaker, Sir, I think the Minister has answered my Question well but since 2004 as Ms. Karua has said, these people have died and I want the Minister to understand where Kargi is in this country. Could they dedicate themselves to visit Kargi in the next two weeks and see how this issue affects these people and then decide how they will use that money as a matter of urgency?

**Mrs. Ngilu:** Mr. Temporary Deputy Speaker, Sir, the hon. Member is aware that I love too much visiting his place. I have been there before with him. I have seen for myself and now that I am on the campaign trail, I will have to come there again. Therefore in two weeks, I will be there.

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Ethuro): That is the end of Question Time!  
Next Order!

## POINTS OF ORDER

DELAY TO RELEASE CONSTITUENCY ROADS COMMITTEE  
FUNDS TO NYAKACH CONSTITUENCY

**Mr. Ochieng:** Mr. Temporary Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Roads. I request the Minister that in his Statement to confirm whether he is aware that several rural roads are impassable in Nyakach Constituency. Secondly, he should explain when the Ministry intends to release funds to the Constituency Roads Committees across the country. He should indicate how much each constituency will receive and when. Thirdly, he should provide details of all the roads which have been rehabilitated or repaired using the 10 per cent constituency allocations within Nyakach Constituency during the past three years.

I rest my case, Mr. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Mr. Ethuro): Minister for Roads! I thought hon. Franklin Bett was around. Is the Leader of Government Business present? Who is holding brief for the Government? Hon. Attorney-General, in your capacity as advisor of Government, is it also part of your work to advise Government to make hon. Members be present in the House?

**The Attorney-General** (Prof. Muigai): Indeed, Mr. Temporary Deputy Speaker, Sir, and I will convey your sentiments to the Minister and request that he provides an answer as soon as possible.

**The Temporary Deputy Speaker** (Mr. Ethuro): As soon as possible is not acceptable. Let us give some date.

**The Attorney-General** (Prof. Muigai): Next Tuesday, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): Next Tuesday!

**BILLS**

*First Readings*

THE CONSTITUTION OFFICE HOLDERS (SECURITY) BILL

THE EVICTIONS AND RESETTLEMENT PROCEDURES BILL

*(Orders for First Readings read – Read the First Time and ordered  
to be referred to the relevant Departmental Committees)*

**MOTION**

APPROVAL OF DEPLOYMENT OF KENYA DEFENCE FORCES TO TANA DELTA

**Mr. Mungatana:** Mr. Temporary Deputy Speaker, Sir, I beg to move:

THAT, following the unrest and instability in the Tana Delta for the past few weeks, this House approves the deployment of the Kenya Defence Forces (KDF) to the Tana Delta and its environs to restore peace and order in keeping with the provisions of Article 241(3)(c) of the Constitution.

Mr. Temporary Deputy Speaker, Sir, first of all, I want to thank you and all the Members of the House for the way they have shown support during this time we have gone through problems in the Tana Delta. The unrest and instability in the Tana Delta has become common knowledge and a matter of concern to every hon. Member in this House.

The history of the recent instability in this area was provoked because for several months, there have been problems between one community and another. The administration and Government presence has not been felt in that area. About eight months ago, there was an incident where a person from a certain community had his hand cut and his head chopped off. This happened in Kilelengwani, which is in Kipini Division in Tana Delta District. A few days later, because there was no police action, so nobody was arrested and no investigations were carried out on time; there was an assumption by the other community that that person must have been killed by the other community. Therefore, there was a retaliatory attack which took the same fashion as the first attack – the hand and head of the victim were chopped off.

Mr. Temporary Deputy Speaker, Sir, after that retaliation, again, there was no action from Government. Nothing happened. Reports were sent to the chief, but nothing happened. The police had information, but nothing happened. The CID too had information, but nothing happened. The assumption then by the other community was that it must have been a member of the other community who did this act. Because of this kind of attitude of lack of taking action which I call impunity on the part of the Government agencies there, this same thing spread to the communities there.

Animals have been left to graze on somebody's shamba and no action is taken. The assumption then is that this is a deliberate provocation. You find that somebody decides that he will kill those animals and, again, no action is taken. Therefore, slowly and over a period of time, the administration does not take action. The police do not take action also and from an incident caused by one person, it grows into a big thing – two cows, so many crops, several cows and so on. The situation has escalated to the point where now the whole nation woke up to realize that, indeed, there is a problem in the Tana Delta.

Peace efforts have been in place since this problem started simmering. We, the local leaders, have been very involved. I want to single out the District Commissioner who was very new, Mr. David Kiprop, for the work he has done together with the District Security Committee. These people have not been sleeping. They have done what they could possibly and humanly do. I want to commend the efforts of our Provincial Commissioner, Mr. Kilele, and the whole provincial security team. They have done what they could possibly do within their human capacities. We, the local leaders, including the District Peace Committees and all those people who have been moving around, have done what we could to try and restore peace. I want to single out hon. Dr. Nuh who comes from up there at Bura. He has been a good neighbor. He has been with us through and through. We have gone for several meetings and done a lot of work together. If there was a nobel peace prize around this place, I think I would nominate him because of being a very good neighbor to us in this time of need.

Mr. Temporary Deputy Speaker, Sir, we have had a problem because the District Security Committee makes resolutions. We sit down to discuss issues and we agree, as leaders, that this must be done. As peace building is continuing, we must have operations by the police, say, to mop up illegal guns in the area. There is no support from Nairobi. What do we do? We brought the provincial security team which listened to the resolution from the district which we adopted. However, for the police to move and do their work, they need support. They need funding, provisions, vehicles and all manner of things. Nairobi has not been as responsive as it ought to

be. When Nairobi responded finally, they sent police officers to Tana Delta. We appreciate the response that came because several officers came to the Tana Delta to try and contain the situation. However, to our surprise, this situation, in fact, escalated even with the presence of the police in the area.

Mr. Temporary Deputy Speaker, Sir, the fact that the last two attacks were witnessed at 9.00 a.m.; people were moving and attacking in the presence of the police; the police were overwhelmed and they took off--- The police were in Kilelengwani where an Orma Village was attacked in the last attack. In fact, they were overpowered and they took off. A lorry belonging to the police and a Land Rover belonging to the General Service Unit (GSU) were burnt down.

The police took off as these attackers were coming and many people were killed. After that, the attackers took off. We tried our best, and remember this was happening one day after we, the leaders, had sat in the Delta, discussed peace efforts and agreed on the way forward. This attack happened the following morning. We were then informed and assured that helicopters would come from Nairobi with police and things would change. The helicopters came but nothing happened. It appeared like there was reluctance, fear or whatever it was on the part of the police to try and pursue the attackers into the forest. Then a question arose. Were the police able to engage with the attackers?

As we were dealing with this issue, two days later, a Pokomo Village was attacked in Semikaro and again, people died. The police were there and they were looking. They tried to do what they could but nothing, again, happened. Even when the President gave an order for a curfew, we woke up yesterday to news, again, that three villages had been burnt down. This, mind you, was after we had heavy deployment of Administration Police, regular police and even the GSU. This also happened when we had a curfew that had been ordered by His Excellency the President. We had an attack during day time and people watched on televisions as locals were being asked what was happening.

I remember very sadly yesterday night, watching a local being asked what he had seen. He said that the bullets were being fired from the other side but the police were not going there. Instead, they were running towards their side. One of the police officers even said: "I have just graduated and I do not want to die."

*(Laughter)*

We are talking about a situation where the police felt that they could not engage at that point. The President gave a curfew order but the police could not enforce it. We had an attack on an Orma Village and two days later, we had an attack on a Pokomo Village. It seems as if there is a clearly organized militia on both sides which seems to operate outside the law and does not care about the police. The militia can approach the police during the day, without fearing guns, simply attack and then disappear into the forests. On the basis of that, we believe that it is now time for the President to deploy, through the Constitution, the Kenya Defence Forces (KDF) on the ground.

I request this, being very well advised, that our Defence Forces have special training when it comes to issues to do with forests, valleys and the terrain in that area. They are able and quite capable of dealing with that kind of situation unlike our regular police officers. We do not want people to die again. We also do not want bandits and the militia from whichever tribe to rule the area again. These people must be pursued into the forest; these people must be arrested and these people must be dealt with with all the force of the law.

If you look at this Motion, you will see that all we are asking now is for the President to be given a blank cheque to come in with the military as and when he thinks is necessary because from our own civilian perspective, the police have failed to contain the situation. In the previous Constitution, the President could deploy the military when he thought it was necessary. However, in the new dispensation or Constitution, for purposes of restoring peace in any part of the country, the President requires, under Article 241(3), to get parliamentary approval.

Mr. Temporary Deputy Speaker, Sir, this Motion is only saying that let the President get that approval right there. He is the Commander-in-Chief and we are not the Commander-in-Chief. Parliament is not the Commander-in-Chief but it is doing its part. We are responding to the request by the people. We are also responding to what we have seen the police go through. We are saying that let this issue concerning going to the forest, looking for arms in those areas and following the militia be dealt with by the people who are best suited to deal with that. The police are not being over-turned all together because once those people are arrested, the Defence Forces will not deal with them. Those people will be taken to the police and investigations will be carried out. I am completely convinced that you cannot have 200 or 300 people living in a forest, eating, drinking and dressing in uniform without having a sponsor or a warlord behind them.

I believe that these people must have a story to tell about who is behind and the motive. So, once the KDF has secured and pacified the area and arrested these people, they should be interrogated and dealt with severely. We need to find who in this part of the world, at this time and with the new Constitution, can be behind activities that can create instability in a whole county. Therefore, I urge that we give this blank cheque to his Excellency the President so that there may never be any reason for him to come and say that they did not have parliamentary approval and as a result, they could not go in to protect life and property.

Mr. Temporary Deputy Speaker, Sir, I am urging this House to move with haste to approve this Motion because we have been so badly hit. The main economic activities are farming, cattle keeping, fishing and trading. These activities are badly affected when we have any form of instability. The people are poor and they have become Internally Displaced Persons (IDPs) in their own land. I want to thank Lamu and Kilifi counties for accommodating us during this time. You cannot live in places which do not belong to you for a long time because you will not be welcomed forever.

As we allow the military to intervene, we want their mandate to include humanitarian activities. Since 1948 whenever peace efforts are being carried out in various parts of the world by the United Nations (UN), the military does not just go and pacify an area. They also have a wider mandate to help in terms of providing medication and infrastructure reconstruction. All of us know that when the military is called in, in an emergency, particularly when we have flooding, they are able to put up bridges within a matter of days.

Mr. Temporary Deputy Speaker, Sir, in this region, many houses, dispensaries or medical facilities have been destroyed in the course of this conflict. As the military is doing their work, I would urge them to involve themselves in reconstruction efforts. I also urge them to divide themselves into various groups so that each group may have a specific mandate. For example, they could have those who will pursue these attackers in the forest. The rest can be combing the area for illegal arms. Others can involve themselves in providing medication and infrastructure reconstruction. At the same time, normalcy must be returned and restore order in that part of the country.

Mr. Temporary Deputy Speaker, Sir, the crisis is big. In fact, more than 100 people have died. Those who have remained there, in fact, no one wants to stay there. Everyone wants to go away because they have felt that the Government has left the Tana Delta to their own devices. I am urging a very strong statement be made from here in this Parliament, not just for peace efforts, but strong arms of Government to be felt in that area. We are urging the Commander-in-Chief to deploy military in that area so that the whole nation can see that we will not tolerate a few people who want to destabilize this country.

Mr. Temporary Deputy Speaker, Sir, I have said before and I will say it again; that today this is happening in Tana Delta, but we do not know about tomorrow. The Swahili people say that:-

*“Ukiona mwenzako akinyolewa, tia kichwa chako maji”*

It is not a matter of “an issue of Tana Delta” the way Nairobi is treating it. It is not an issue of a tribal thing. This is an issue that is threatening the stability of the whole country. There are many Kenyans out there who have very good will for our people. There are also a few who are not planning well for the next general election. While ordinary Kenyans who have goodwill are doing their campaigns in peace and are promising to do this or that, there are other people who are not planning well for this country. So, if they see there is laxity in the Tana Delta; that the militia can hover around and nothing happens to them, then that attitude might spread to other parts of the country. We are heading to a dangerous time of the general election. If we cannot stamp out this problem in Tana Delta, my fear is that it might spread off to other areas.

So, Mr. Temporary Deputy Speaker, Sir, I move this Motion and ask the entire country and all our hon. Members who have been very supportive up to now to support this Motion, so that should it escalate further than this, we can have the Kenya Defence Forces (KDF) coming in.

Mr. Temporary Deputy Speaker, Sir, I beg to move and request the hon. Member for Bura, Dr. Nuh, who is our neighbour in the Tana River County, to second this Motion.

Thank you, Mr. Temporary Deputy Speaker, Sir.

*(Applause)*

**Dr. Nuh:** Mr. Temporary Deputy Speaker, Sir, first and foremost, I want to appreciate the goodwill that Kenyans have for the people of Tana River, specifically Tana Delta. The compassion that was shown by hon. Members of Parliament wherever we meet and the messages of condolence and goodwill that are pouring in from across the country. I want to appreciate and thank all Kenyans for standing with us at these trying moments.

Secondly, Mr. Temporary Deputy Speaker, Sir, I also want to appreciate and thank the Kenya Red Cross for having stood firm in this conflict, even when issues are tough and rough. They have not left the scenes where orgy and violence have taken place to ensure that, at least, for those who have been left behind, they have a shoulder to lean on.

Finally, Mr. Temporary Deputy Speaker, Sir, I also want to appreciate the local leadership of elders, the youth and the women who have stood with us all through the meetings and the peace missions, urging our people that the bloodletting, killings and massacres will not bring a long-term solution and that you can never exterminate a community, whatever you use. I want to thank the local leaders and specifically the Chairman of the Peace Committee in Tana Delta, Mr. Ijema. This is an old man who, although he comes from one of the communities in the

conflict, has stood in the middle to urge both communities to exercise some restraint and to ensure that normalcy returns.

Having said that, Mr. Temporary Deputy Speaker, Sir, in any conflict and in any situation of war, the first casualty happens to be the truth. Even in the case of the Tana Delta, it becomes hard to trace where issues really started. It becomes the issue of the egg and the chicken; which came first? Even if you went there today, everybody will tell you that the other party started the conflict; but I do not want to dwell on that. But the truth that both sides of the feuding community will tell you is that because of inaction by the police; because of the law not being enforced; because of justice not being done--- I mean that when little skirmishes of one or two people who fight over crops or over animals, and nothing is done, things have reached where we are now.

I want to give a very good example. When issues went out of hand and the massacre in Riketa happened, three days later, a man was hacked with a panga, but not killed. He was hacked by a person in a village near Garsen Town. This man was herding his cattle, around five or six cows to the market when someone just came with a panga and hacked him without any provocation. Things almost flared up and the whole of Garsen was almost burning to the brink.

When the local chief and the elders turned in the person who committed the crime, and it happened to be someone who was even under the influence of drugs, everything calmed down. The tempers cooled, people went to their houses and normalcy returned. That is the power of justice. That is when people have confidence that when someone commits a crime, he will be committed to the law and the punishment he deserves will be meted on him as per the Constitution that governs this country. But when a person or persons are killed and it is not attended to in the right procedure by the arm that is supposed to execute the issue, then those who are injured will think that now they have to mete the justice themselves and that is where issues of revenge come in.

Mr. Temporary Deputy Speaker, Sir, why should the Government not act when issues are still small? Why should the Government wait until people think of revenge because the Government cannot revenge for them in terms of ensuring that justice happens?

The scale of destruction that happened in Tana Delta is unparalleled. I think it can only be compared to some extent to the Turbi Massacre. Most disturbing is even within the African culture when communities fight, it is men who are engaged in violence and fight and kill one another. But in the case of Tana Delta, women and children who have no part whatsoever to play in a conflict; who cannot lift an arm who later on were the victims of violence and they cannot even defend themselves, have been the greatest casualties in this conflict. We are talking to the tune of more 100 lives lost in a span of three weeks.

When we call upon the Kenya Defence Forces to be deployed to the Tana Delta, we ourselves have our concerns. The Defence Forces have not been good friends when they are deployed to areas to go and restore normalcy. They have committed atrocities in the past when they were deployed to Mt. Elgon. We know that! We are concerned that even after they are deployed to Tana Delta, are they going to do what they have been urged and deployed to do or they are going to turn to the innocent women and children again? We are concerned!

Mr. Temporary Deputy Speaker, Sir, when we are talking of more than 100 lives lost in a span of three weeks, the regular police, Administration Police and the General Service Unit (GSU) are there in their numbers and they are unable to control the situation. Shall we say because we are afraid that the Kenya Defence Forces are going to commit some atrocities, we let



our people kill one another as the police watch? Shall we say because we are afraid the Kenya Defence Forces may rape our ladies---

**The Temporary Deputy Speaker** (Mr. Ethuro): Dr. Nuh, you have two minutes.

**Dr. Nuh:** Mr. Temporary Deputy Speaker, that we will not deploy them even amidst the concern? We want again to urge the Government that even as they deploy the Kenya Defence Forces, they have to know that they are doing it under the new Constitution when even approval is being sought from Parliament. We are watching and we are sending the Kenya Defence Forces to go and pursue the killers and not to rape ladies.

We are asking for the deployment of the Kenya Defence Forces not to terrorize the innocent who are already traumatized but to restore normalcy and ensure that the killers are apprehended.

Mr. Temporary Deputy Speaker, Sir, I want to tell you that when the massacre in Riketa happened, I reached out to the Police Commissioner myself. We gave the Police Commissioner the intelligence of where the people who carried out the massacre in Riketa were holed up in a thicket near Kipini. We asked for the deployment of a helicopter to go and fish out these people. Funny enough, a police chopper was sent eight days later. Some old men were carried in the chopper and they were told to peep from the window and see whether there is some military activity down in the thicket. Is that what we called for?

Helicopters have been ferrying in dignitaries, the Prime Minister, Provincial Commissioners, Provincial Police Officers and the Police Commissioner to go and survey the area. Then they come back to Nairobi and do nothing. Is that what military choppers or helicopters are supposed to do or they are supposed to parachute military officers into the thicket and fish out the people who are meting violence on our people?

Mr. Temporary Deputy Speaker, Sir, I want to urge that even as it is very painful to ask for the Kenya Defence Forces to come down to Tana Delta, it seems to us as the local leadership-

--

**The Temporary Deputy Speaker** (Mr. Ethuro): Dr. Nuh, your time is up.

*(Question proposed)*

**Mr. Cheruiyot:** Thank you, Mr. Temporary Deputy Speaker, Sir, for allowing me to contribute to this very important subject. From the onset, I would like to condemn the inability of the Government to protect its citizens particularly having sworn in the Constitution that they will uphold and take care of the rights of Kenyans. It is a very serious issue coming at this time when we have a very well-equipped police force and a large number of security officers who have been recruited over some time now.

I must say as I am contributing I am cognisance of the fact that I have been away for the last 10 years but my knowledge of this country, very few can challenge it really because I know it intimately. This is a matter which should have been handled from the onset from the political leadership. We should have had direction from the political leadership of this country whether it is the principals or the Ministers who are involved in the security of this country.

It is a serious issue when we hear of civillians being killed and even worse when security officers are just murdered and nothing happens without them even firing a shot. What is happening to the command and control which is the cardinal principle among security forces? Who is not issuing the command? Who is not controlling the work of these particular officers? I want to say we have got enough police officers. We have got Administration Police officers who

are supposed to watch on these things. We have got the last frontier in these things; the GSU. I know that that so many of these GSU officers, particularly the elite forces like the Recce, are very busy guarding VIPs in Nairobi or in their homes instead of taking care of *wananchi*. It is a very serious concern that nothing is being done in Tana Delta. We have got helicopters now which have been bought. What is happening with these helicopters? Why are we now saying we want to call the Army to come in? Why are we allowing desperation to come into the country? Why are we allowing Kenyans to just die? Are some Kenyans of less quality than others? If this thing had happened somewhere within Nyeri and God forbid, or within Nakuru, we would have seen everybody rushing there condemning particular groups of people and here nothing is happening. Is it because of their religion, level of education, their poverty levels, or what is happening? Are they nobodies in this country?

Having said that, I want to say armies all over the world are trained to deal with an external threat to a country. When they move into a situation, they do not go to pacify. They go to exterminate the enemy.

Mr. Temporary Deputy Speaker, Sir, if we are asking the Army to move to Tana River, who is the enemy? This is because the Army will not go and say: "This is the aggressor and this is the aggressed." It is a very dangerous thing. I am sorry to say that I do not support this Motion because it is very dangerous. Our Army must deal with external threats to our country. They can only come into a situation where they provide support to civilian authority but they cannot really go and do the job themselves. Their job is to remove the enemy from the scene and in fact, it is very difficult for the Army to reorient itself and say: "We are now moving in to sort out the situation." Personally, I want to say that I sympathise with the situation but it is dangerous to send the Army into a situation where they have to take over from civilian authority. I do not support this issue of sending the Army down there. The Army can only go and show the flag while the national forces move and sought out the situation.

With those few remarks, I do not support.

**Ms. Karua:** Thank you, Mr. Temporary Deputy Speaker, Sir. I do not want to leave any doubt. I rise in full support of this very noble Motion. I want to begin by sending my condolences to those who have lost their loved ones in Tana River and also the injured and affected. It is very sad that our security forces are displaying a high level of ineptitude and that the situation has not been properly taken care of since it arose.

I want to begin by saying that our Constitution as cited in the Motion, Article 241(3)(c) clearly says:

"The Defence Forces may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly."

This is contrary to what my colleague who has just sat down said. There is nothing dangerous about deploying the Army. It is something permitted by our Constitution and they are being deployed to act within the law. They are not being deployed to exterminate. It is to restore peace and order, and they are not being deployed to the exclusion of the police. Nothing stops the police from continuing with their normal operations but the Army should go there and help them contain the situation.

Mr. Temporary Deputy Speaker, Sir, our Defence Forces have shown professionalism and serious prowess in their Operation *Linda Nchi*. This is the sort of professionalism and seriousness we need in the Tana Delta. I rise to support this Motion and to urge that Parliament approves it and that when the Army gets deployed, let them go there as friends of the people. Let them only deal with those who are breaking peace in the area. Let them have police back-up so

that the police can arrest and prosecute those who are endangering our security. Let them garner local support the same way they have had local support in Operation *Linda Nchi* because they have gone about it in a humane manner.

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

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

Madam Temporary Deputy Speaker, let us not always doubt ourselves. Yes, the Armed Forces, like all of us, have been guilty of misdemeanours or even atrocities in the past but we are all moving forward with reforms in mind and our defence forces have shown their reform mood in the Operation *Linda Nchi*. So, I have no qualms in supporting this Motion and I know that they will go there with professionalism and they will respect our Constitution.

Madam Temporary Deputy Speaker, I would like to say that the intervention of the Army does not stop peace building efforts which must be intensified between the communities living in the area. It is not also a substitute for normal police work – for the work that the National Security Intelligence Service (NSIS) should do. Where are the intelligence reports which should help the police in detecting and deterring crime? I also want to call upon the Executive to speed up police reforms. I know now the names are in Parliament, and I know Parliament will do its duty.

I want to talk about police reforms because I have heard several leaders say that we should not have police reforms until after the general elections. These are people who are mistaken and who seem to think that police reforms begin and end with the hiring of the top most officer in the police force. Police reforms include equipping the police force sufficiently. They include use and acquiring and use of technology and right now, if our police were using satellite for surveillance, they would have a very easy time tracking the criminals who are upsetting peace in the Tana Delta. They would also be able to see what is happening on the ground and not to be surprised by attacks. Failing to prioritise and accelerate police reforms means that we will continue endangering the lives of our officers and citizens and not just in Tana Delta but in many parts of the country. We have seen attacks in Garissa, flare-ups in Wajir, Mandera, Moyale and Isiolo. We know there is insecurity in parts of Turkana and Pokot, and I am wondering whether the careless handling of this situation by the Executive is a political tool so that they can later tell us that it is not possible to continue with elections.

Madam Temporary Deputy Speaker, that is why I want to applaud the Mover of the Motion and this institution of Parliament. We must do our duty to make sure that peace is restored in all parts of the country so that we can go on with our daily lives and we can also be able to have free and fair elections. Life is sacred. We have already lost over 100 people in the Tana Delta. We have lost more in other parts of the country. How many must we lose for us to act? As Parliament, we are part of the Government. The Government has three arms – Parliament, the Executive and the Judiciary. When the Executive is not acting, Parliament is enjoined to act. It is not Parliament that will deploy the Army but we are clearing the way and telling the Executive: “We expect you to do something extraordinary.” We are giving you the green light to deploy the Army to back up the rest of the security process but we must ensure that they are well co-ordinated and that is the work of the Commander-in-Chief because he

commands all the security forces in this country to ensure that there is proper co-ordination between the Army, police and the intelligence so that we can provide peace in this country.

I want to urge Parliament to support this Motion so that we do not only engage in blame games blaming the Executive without providing them with support. By supporting this Motion, we are executing our duties as Members of the National Assembly and clearing the way for the Executive and telling them loud and clear: “Deploy the Army now. Co-ordinate between the various security agencies and let us have peace in Tana Delta.” It is wrong that the Kenya Defence Forces (KDF) are capable of helping in Operation *Linda Nchi* in the region but are disabled from helping at home. That is why Article 241 exists. Let us open the doors. Let the professionalism exhibited by our defence forces be now displayed at home and let the police force wake up and have the same professionalism, and let us, as Parliament, speed up the police reforms to ensure this.

Madam Temporary Deputy Speaker, we know there are vested political interests that are also a security threat in the Tana Delta and in many other areas. Let all those with criminal intent and those who go ahead execute their criminal intent be arrested and prosecuted. It is impunity that is making these things happen. People have killed time and again and have not been prosecuted. People have maimed others and have destroyed property but are going scot free. That is why lawlessness is spreading in this country. It is time that this Parliament put its stamp of authority on this area and deployed our defence forces to deal with the situation internally. We have enough personnel to help in the neighbouring countries and to be deployed at home. Let us do it now, and let us not doubt our defence forces. Let us urge them to act within the law and protect life, property and human rights of all as they execute this mission.

I strongly support.

**The Attorney-General** (Prof. Muigai): Madam Temporary Deputy Speaker, first of all, I want to acknowledge that we are dealing with a very grave problem of national security within this country. I want to appreciate the strength of opinion and emotion around this question.

Having done so, I want us to remind ourselves of the nature of Constitutional authority around the question of the deployment of our armed forces. Parliament has authority to supervise how the Executive deploys the armed forces. Parliament has no authority itself to deploy armed forces. We have separation of powers. The powers of the Executive include the powers to preserve law and order and to make a judgment as to when it is necessary to use Kenyan Defence Forces overseas and when it is necessary to use Kenyan Defence Forces to support civilian authorities within Kenya.

Madam Temporary Deputy Speaker, because we have a new Constitution, the question of precedent, or the precedent we set, is very important. You will recall that when the war in Somalia commenced, the Executive came to this House and asked it to authorize the deployment of our forces and this House was pleased to give it. That war has proceeded on a firm constitutional basis. The question of when and how the military can be deployed in support of civilian authorities is an important one. The Constitution, in its wisdom, has created three key organs: One is the presidency itself. The President is the Commander-in-chief of the Defence Forces of the Republic of Kenya. By virtue of that office, the authority to declare war is an authority that is vested in the President of the Republic of Kenya as, indeed, is the authority to declare a state of emergency subject to the supervision of Parliament.

Further, the Constitution in, its wisdom, has created the National Security Council. This is an organ that brings together all the key national security personnel. This body has the technical knowhow to otherwise make assessment as to the desirability, or otherwise, of the

deployment of the defence forces of the Republic of Kenya. Finally, the Constitution, in its wisdom has created a National Defence Council. This again brings together the service commanders of the three key defence forces of the Republic of Kenya.

Madam Temporary Deputy Speaker, the role of Parliament is oversight. Our job is to oversee what the Executive is doing in its constitutional mandate of ensuring a stable and peaceful society. This Motion, as drafted, has put the cart before the horse. Parliament is not responding to a request by the Executive. Parliament is making a decision and telling the Executive to implement it. In my own view, that is not what the Constitution anticipated. The Constitution anticipated that the Executive would make a decision about when it is necessary to defend the Republic of Kenya, and then Parliament will assess and approve or fail to approve such a decision. We are told by the Acting Minister of State for Provincial Administration and Internal Security that 1,500 General Service Unit (GSU) officers will be deployed over the next 72 hours. We must, in my view, allow the Acting Minister of State for Provincial Administration and Internal Security, his police commanders and others to make an assessment, because that is their work; then when they come back to the House, we can respond to their assessment. I would want to discourage the House from taking over the responsibility that the Constitution has donated to another organ of Government.

Therefore, I would oppose this Motion in the way it is drafted at the moment.

**Mr. Bahari:** Madam Temporary Deputy Speaker, I want to join my colleagues in condemning the brutality that we have seen in Tana River. It is a saddening occurrence and we do regret these inhuman acts, where human lives have been reduced to being equal to firewood, and the hands, legs and the head are chopped off. These are very unfortunate and unexpected circumstances.

There are security offices in Tana River and the whole of Coast Province. There is the intelligence service officer, the Criminal Investigation Officers (CIDs), the general duty officers, the District Commissioner (DC) and others, but all these incidents have happened when they are there. This means that they slept on the job. It is only the chiefs who have been sacked. The Government needs to take action. It is already evident that they have failed to prevent the clashes. Some of these incidents are happening in broad daylight. It is important that these people are removed and replaced, because people in Tana River have lost lives. They should be replaced with others who can make a fresh start, and carry out their operations. I support the operation to disarm, I support the operation to deal with the people who are in forests, but I want to ask, who is feeding these people in the forest? Who is organizing them? There must be something because human beings cannot stay for several hours without being fed. Who provided them with food to last them this long? I am told that there were only 14 police officers on duty when they were killed by 300 bandits. This is because the Government has not acted, and it is only now that they are promising to act.

It is important that we give the police a chance. I do not agree that the military be sent. Remember what happened in Mt. Elgon. I have heard hon. Members raising their own reservations on how the military may act, but they are wishing that they act in a civil manner. But that is just a mere wish. Let us deploy enough police officers to all these areas. If they are supported and resourced appropriately, they should be able to act. Some of us suffered the brunt of the military in 1963 when there was the *shifita* movement and up to now, we have not recovered from that. That is why you see a depleted population in parts of Isiolo, Marsabit and all these other areas. You know what happened in Mt. Elgon. I do not think that, that is the right way to go. What message are we sending also on the issue of the police? If we say that they are

not capable, then everytime there will be a small issue, the police will say that they are not capable and the military--- Why do we need the police then?

*(Loud consultations)*

**The Temporary Deputy Speaker** (Dr. Laboso): Order, hon. Members! Allow the hon. Member to finish!

**Mr. Bahari:** Madam Temporary Deputy Speaker, sack those who looked the other side when our people were being massacred.

Madam Temporary Deputy Speaker, finally, so that I give the other hon. Members also time, let us start the process of reconstructing those houses. I want to commend what hon. Elmi did in Wajir the other day. He moved in, mobilized the civil society and made sure that the Government reconstructed people's houses which were burnt. Can we do the same? At the same time, could the President order for a fund to be set aside to help the bereaved families and children who are left?

Thank you, Madam Temporary Deputy Speaker.

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): Madam Temporary Deputy Speaker, I stand here to very much support this Motion, but with a small amendment.

Madam Temporary Deputy Speaker, I want to thank hon. Mungatana and Dr. Nuh for their effort in bringing the two warring communities together. They have worked tirelessly and I would really like this House to support them in their efforts, to ensure that they bring peace between their communities. This House has all along been supportive since this conflict started. It is high time we stood up to this.

Madam Temporary Deputy Speaker, I would like to clearly explain the circumstances under which our Defence Forces can be deployed within the country, so that we understand clearly. The Army can be deployed in the country in two scenarios. One, where there is insurgency in the country and where people are actually fighting the Government or the Kenyan nation. That is now an internal security problem and our Defence Forces can be deployed, just like when they are actually fighting an external enemy. But there is what we call "Aid to Civil Authority". This is where our Defence Forces do not work as though they are fighting an external enemy. They work under the local civilian authority. When they are deployed, limited numbers are taken to those areas and they are brought under the control of the security organs at the district level. The Commander who is supposed to be commanding that contingent is supposed to be taking instructions and orders from the civil security authority in that particular area. It is not that they are deployed anyhow and they go there to fight anybody they find and do all sorts of things that they want. Actually, they work with the police---

*(Loud consultations)*

**The Temporary Deputy Speaker** (Dr. Laboso): Order! Order, hon. Members! The level of consultations is too high. Let us listen to the hon. Member.

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): Madam Temporary Deputy Speaker, they work with the police and local administration and leadership to ensure that all that is required is an increase of a force that is capable of containing the situation. Where there is a militia, definitely, our police whose services are required across the country, are

ill-prepared actually to handle that situation. I urge the hon. Members to understand this clearly and give our security forces confidence. This is because they have already shown their professionalism outside this country. Give them the confidence they need to be able to do the same in this country. Let us not dismiss and just say: "If we deploy them, they are going to A, B, C and D atrocities or whatever will be committed." How much more do you expect our security forces or Army to commit really, if we have already lost over 100 people to militias? Surely, I think it is not a situation that we can continue talking about the police and start pointing accusing fingers at their failure. Yes, failure has taken place, but do we continue allowing our people to die, when some of our Kenya Defence Force (KDF) security apparatus are still in their barracks here? I think that it is very important that we understand and give opportunity at this time of reforms to our KDF to prove themselves that they can also equally measure up to the task and do a professional job inside the country.

Madam Temporary Deputy Speaker, I have concern over utterances by some leadership. I am very much disappointed by the clergy. Yesterday, there were comments by sections of the clergy actually commenting that some senior personalities in this Government should be sacked; echoing the same sentiments expressed by the same people that we highly suspect are actually behind these atrocities that are taking place in that area. It is very unfortunate. We have been trying our best to contain sectarian violence in this country. We have gone out of our way, as leaders in this House, to ensure that any semblance of atrocity that takes place anywhere is not interpreted to be sectarian fighting in this country. But clearly, when some membership in this House and sections of the clergy come out in support of each other; saying that certain personalities in the country should be sacked, I think it is clear---

**Mr. C. Kilonzo:** On a point of order, Madam Temporary Deputy Speaker. This is a House of honourable Members. The hon. Member has said that there is some membership or Members in this House who are actually involved in a very serious matter; where women, kids and men are being butchered. Is he in order to impute that the hon. Members of this House are actually involved? If, indeed, they are, could he, as a man, mention their names without hesitating?

**The Temporary Deputy Speaker (Dr. Laboso):** Hon. Member, please, do not insinuate if you are not willing to bring out exactly whom you are referring to.

**The Assistant Minister, Ministry of State for Public Service (Maj. Sugow):** Madam Temporary Deputy Speaker, I am torn between the Standing Orders and the truth. I think I will go for the truth. The truth of the matter is that there is a Member in this House who went to the Press and said clearly that so long as hon. Haji is not sacked, atrocities will continue, and surely, the following day, there was a major atrocity. How do we interpret that? It is hon. Dhadho Godhana. I want to say the truth. That has happened and that same sentiment has been expressed. In the light of those utterances, Canon Karanja yesterday said that the Acting Minister should also be sacked. He was echoing the same sentiments, thereby taking sides in the conflict.

**Mrs. Odhiambo-Mabona:** On a point of order, Madam Temporary Deputy Speaker. I know that we are dealing with very emotive issues and would want to urge that we use the Standing Orders to enable us depersonalize, so that we can seek solutions. Is it in order for the hon. Member to be discussing another hon. Member without a substantive Motion being moved?

**The Temporary Deputy Speaker (Dr. Laboso):** Hon. Members, you would need to have a substantive Motion in the House for us to discuss the hon. Member you have named.

**Mrs. Shebesh:** Madam Temporary Deputy Speaker, much as I agree that we must do that, there is already precedence in this House. When we started discussing this issue, the

Minister himself mentioned the name of Mr. Godhana and many of us mentioned him. We finished that discussion with no question of whether we should bring a Motion or not and this is the continuation of the same. So that we do not push for double standards and what the hon. Member is saying is true, names have been mentioned in this issue. It has been politicized and the names are with this House. We have already discussed Mr. Godhana and so if we want to discuss another hon. Member on this issue in particular because it has been brought to the Floor and we are talking about the Kenya Defence Forces (KDF) going there, please, look at the Standing Orders but let us also look at precedence; whether it was also wrong because we discussed Mr. Godhana in this House for more than 20 minutes.

**Mr. Kabogo:** On a point of order, Madam Temporary Deputy Speaker. The matter we are dealing with is a very sensitive matter in the Republic of Kenya, but that notwithstanding, we have rules in this House and we are governed by the Standing Orders of this House. It is clear in our Standing Orders that you cannot impute improper motive on another hon. Member without a substantive Motion.

*(Applause)*

I am not the advocate of Mr. Godhana but these are rules that we have made ourselves in the House and if any hon. Member, I included, would wish to bring the name of Mr. Godhana, it is simple: Just move a substantive Motion on the hon. Member. It is as simple as that. I am not his advocate; I hate what is going on in Tana River but we have rules in this House.

**The Temporary Deputy Speaker (Dr. Laboso):** Thank you, Mr. Kabogo. I think we will rest that matter. The Minister mentioned the name; not that we sat here and discussed the hon. Member. The Minister who is the substantive holder of the Office mentioned the hon. Member but we cannot say that he debated on the hon. Member on that day. Therefore, let us refrain from further discussions.

*(Loud consultations)*

Order, hon. Members! If any of you would want to discuss Mr. Godhana, the same way we have had this Motion on the Tana Delta, you have all the time and Standing Orders give you permission and opportunity to do a substantive Motion on Mr. Godhana and you can have the time and discuss him here in the House but not to come in on a different Motion and bring it in as a part of this Motion.

*(Applause)*

Let us let that matter rest until we get that substantive Motion. Maj. Sugow, continue and conclude.

**The Assistant Minister, Ministry of State for Public Service (Maj. Sugow):** Madam Temporary Deputy Speaker, I will follow your instructions but as far this debate is concerned and this Motion, where I felt that there was the need to say the truth, I have said and I stand by it.

We all have responsibility as leaders to ensure that if a section of this country is burning and there are those of us who have a problem or feel that those responsible are involved and the debate comes to the Floor of this House, we must have the freedom to mention where the truth is. What is taking place is sort of “scorched earth policy”. What I wonder is the root cause of this



problem. As we urge the Government to deploy our KDF, we must also find out the root cause of this problem. We must approach it from a multipronged perspective because the Tana Delta has a history. These communities have lived together for centuries. Why now? Why this scale of violence? Does it have any connection with the plan that was there to create the sugar project in that area, which the pastoralists were opposed to while the farmers were in support? Is it that? What is the background? Why do these farmers and pastoralists fight at this point in time, centuries after living together? We must, therefore, find the root cause of the problem besides getting out there to contain the situation. The Military can only go there and create an atmosphere peaceful enough for further investigations into the conflict but it is not an end in itself. Therefore, we must get to the root cause of the problem and we urge the local leadership to help authorities to get to the bottom of this problem.

For those of us who are the local leadership and who are involved, I urge, please, spilling blood will not necessarily sustain their leadership. Desist from that! With that I support with amendments. The Attorney-General indicated that Parliament cannot in itself initiate deployment of our forces and that is why I felt that, probably, we need to have the Motion amended to read that: "Following the unrest and instability of the Tana Delta for the past few weeks, this House urges the deployment of the KDF." This is so that it is not seen that it is the House that is initiating deployment but rather that the House is urging so that the Executive can now formally ask for its authority or approval to deploy.

With those few remarks, I support the amendment.

**The Temporary Deputy Speaker** (Dr. Laboso): Is somebody seconding your amendment?

**Hon. Members:** No one! What?

**The Temporary Deputy Speaker** (Dr. Laboso): The amendment is changing the word "approves" to "urges". Are you supporting or you were just moving this amendment?

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): Madam Temporary Deputy Speaker, I urge Ms. Ndeti to second.

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): Thank you, Madam Temporary Deputy Speaker. I stand to support this Motion with the amendment asking "to urge" instead of "approving". I stand here deeply saddened by what is happening in this country. If you look at the coastal area---

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

**The Temporary Deputy Speaker** (Dr. Laboso): Ms. Ndeti, Mr. Linturi has a point of order.

**Mr. Linturi:** Madam Temporary Deputy Speaker, I am sorry I put this thing on at the intervention even before the amendment was moved. So, I will be willing to contribute after she seconds the amendment.

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): Madam Temporary Deputy Speaker, if we look at the Tana Delta, the people of Tana River have lived there for many years together and if you look at history, this is a cycle.

**Mr. Duale:** On a point of order, Madam Temporary Deputy Speaker. I need your guidance on this amendment. This is a constitutional amendment; it is supposed to give the Head of State as the Commander in Chief of the KDF an approval. I do not think whether--- in terms of the language, you do not urge unless the hon. Member wants to substitute that word. What is

“urging”? The House approves and based on a constitutional provision, you either approve or reject. The element of “in between” and I am sure that there are many people who as we approach the elections, they want to be “in between”; they want to use the word “urge”. Could you give directions?

*(Laughter)*

**The Temporary Deputy Speaker** (Dr. Laboso): Can you, please, allow the hon. Member to second the Motion so that we propose it? You will then decide whether or not it is the right word.

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): Madam Temporary Deputy Speaker, when there is a conflict the people who suffer most are women and children. In yesterday’s news on television we saw children run helter skelter. There has been history of this fighting coming up and going all the time. We need to look at the underlying factor of the problem in River Tana. Is it about pasture or water? Is it about clans? Is it political? We will then deal with these issues. It is so sad to have chiefs and sub-chiefs being sacked. What is being done about the senior officers?

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Wavinya Ndeti, please, remember that you are seconding the amendment of “approval” versus “urges”. We need to dispose of that before you give your contribution.

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): Madam Temporary Deputy Speaker, I second, but I would like the Commissioner of Police to tell us what he is doing about this. He can afford to send 200 or 300 police officers to Syokimau and yet when people are fighting in Tana River he cannot send police officers and dogs there. The Commissioner of Police should take his job seriously and ensure that the fighting in the Tana is stopped. I know they could be overstretched because our police officers are all over the country given what is happening in Somalia. However, if he needs help, he should urge the Government to give him help from the army so that he curbs the problem in Tana Delta.

Madam Temporary Deputy Speaker, I second the Motion with the amendment.

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

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): Madam Temporary Deputy Speaker, I would like to clarify an issue raised by hon. Duale, that is, “approval” versus “urge”. First of all it is a concern that the hon. Member, when he wants to raise an issue regarding contribution by a Member, he tends to put some improper motive on the individual. He said that there are those who sit in between – an indication of indecisiveness. There is one thing I would like to clear about “approval” and “urging”. The hon. Attorney-General raised that concern that this Parliament cannot in itself initiate deployment. Approval is what the Executive, with regard to exercising that authority, brings to the House for approval.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Maj. Sugow, you are on a point of order, but you are now clarifying. Hon. Members, let us dispense with the amendment and then we can continue with the debate.

**Mr. Namwamba:** Madam Temporary Deputy Speaker, the original Motion comes under Article 241(3) (c): “The KDF may be deployed to restore peace in any part of Kenya affected by unrest or instability only with approval of the National Assembly”.

I want to invite the House to look at that Article with regard to the authority and functions of the President under Articles 131 and 132. Article 131(1)(c) is emphatic that the President is the Commander-in-Chief of the Kenya Defence Forces. We know what exactly it means when you speak of a Commander-in –Chief of the Kenya Defence Forces. He holds the whole; the prerogative of command. The Kenya Defence Forces cannot be commanded by or under any other authority other than the command bestowed upon the President by Article 131(1)(c) of the Constitution.

Article 132(4)(e) even speaks to the declaration of war. It is clear that the President with the approval of Parliament may declare war. The reason why I put these articles on record is so that we understand that the initiation, and I agree absolutely with the Attorney-General, of any action or command with regard to the Kenya Defence Forces is an Executive prerogative exclusively vested in the presidency. No other authority has the constitutional mandate, authority or wherewithal to command the Kenya Defence Forces. The approval contemplated in Article 243 (3)(c) presupposes that the President has already made a decision to command the Kenya Defence Forces and comes to this House for approval so that the President makes a decision, for instance, that the KDF be deployed to the Tana Delta and seeks this House to approve his decision.

This House cannot, must not, has got no constitutional authority to purport to approve, command, initiate or move the President or the Government to act in a manner that presupposes to command the Kenya Defence Forces.

**Mr. Namwamba:** Madam Temporary Deputy Speaker, I wish to plead with the House that we use the right language that is in line with the letter and spirit of the Constitution.

I support the amendment, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, we want to hear one or two others before we put the Question on the amendment. I have a long list of hon. Members waiting but I do not know whether it is on the debate or on the amendment.

Hon. Beth Mugo, contribute on the amendment!

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Thank you, Madam Temporary Deputy Speaker. I rise to support the amendment. I support very much what the hon. Member who spoke before me said because that is exactly what I intended to say when I put in my request. It is very important that we, as leaders of this country, do things the right way, correctly or with order. We are very concerned and saddened by what is happening in the Tana Delta. To see women and innocent children being killed in big numbers is barbaric, sad and it reflects badly on our nation. The concern of this House must be registered; that we are very concerned.

I urge my colleagues, hon. Members, to adopt the amendment because we can only approve what has been asked. One can only approve what has been requested and you cannot just approve something that you have imagined. Even the leadership of this country is, definitely, concerned with what is going on. All we can do is to support the amendment to urge the leadership to act the way they find necessary. They have felt the feeling of the House which is to sort out the problem whether it is by deploying the Army or whichever way but leave it to the right arm of the Government. We cannot approve something but we can urge. This is also the United Nations (UN) language. Let us act in a civilized manner.

I thank you, Madam Temporary Deputy Speaker and support the amendment.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, in the interest of moving forward, can we just put the Question?

**Hon. Members:** Yes!

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

*(Question of the second part of the amendment,  
that the word to be inserted in place thereof  
be inserted, proposed)*

*(Question of the second part of the amendment,  
that the word to be inserted in place thereof  
be inserted, put and agreed)*

*(Question of the Motion as amended proposed)*

**The Temporary Deputy Speaker** (Dr. Laboso): You may continue to debate the Motion as amended.

Hon. Members, I would like to give hon. Eugene Wamalwa a chance to move a further amendment. The Minister has a further amendment. We want to dispense with the amendment so that we can know what we are dealing with.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Madam Temporary Deputy Speaker, I had an amendment which I had discussed with the hon. Member, hon. Mungatana and the hon. Attorney-General. However, having listened to the amendment by hon. Maj. Sugow, which has been carried, I wish to withdraw my amendment because it amounts to giving the same effect to the amendment that has been carried. But, with your permission, Madam Temporary Deputy Speaker, I wish to thank hon. Mungatana for bringing this Motion and for giving hon. Members the opportunity to speak about what has been going on in Tana River.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, hon. Wamalwa is on the Floor! He has clearly said that he has withdrawn his amendment and is, therefore, contributing to the amended Motion.

**Hon. Members:** No!

*(Loud consultations)*

**The Temporary Deputy Speaker** (Dr. Laboso): Order, hon. Members! This is not a market place!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Madam Temporary Deputy Speaker, I want to thank you for giving me the opportunity to contribute. Hon. Members will each have a chance. I believe that we have made

the right decision as a House because approving this Motion as originally set would have set a precedent, where in future, anything happening or arising would have necessitated perhaps a resolution of the House of its own Motion. Remaining faithful to the Constitution particularly to the Articles touching on the security of this nation is a very important issue. We also want to say that the measures that have been put in place so far, the spirit of this Motion by hon. Mungatana, was to tell the nation that no effort should be spared in ensuring the safety of the residents of the Tana Delta Region and that is why as we contribute to this Motion, we want to say that everything must be done to ensure that those who are responsible for the atrocities being committed are held to account. The violence that is mushrooming in this country is worrying.

**Mr. Namwamba:** On a point of order, Madam Temporary Deputy Speaker. I have always believed that a point of order is part of the orderliness of the House because it helps the House to operate in an orderly manner. Would I be in order to seek further clarifications and advice from the hon. Attorney-General although I notice that he has stepped out, but the very able Minister for Justice, National Cohesion and Constitutional Affairs is in the House--- I am saying this, aware that I have just made a contribution to the amendment to the Motion that changed the terminology from “approval” to “urging”. My conscience and reading of the Constitution disturbs me as to whether this action that still touches on activities of our armed forces should not be initiated by the Government side and whether, in fact, this House should not be discussing a request for approval submitted and tabled in this House by the Executive. I am simply saying this from the understanding of separation of powers and the fact that there are certain responsibilities, especially those that touch on security and deployment of our armed forces that fall properly and correctly within the province of the Executive. Is this a matter that the Back-bench can initiate and purport to push through this House?

Therefore, Madam Temporary Deputy Speaker, this House would have benefitted greatly from an advisory either from the Attorney-General or even the Minister for Justice, National Cohesion and Constitutional Affairs who is in the House or even guidance from the Chair. We want to know whether what we are prosecuting falls squarely and properly within the confines of the letter and spirit of the Constitution.

Madam Temporary Speaker, give us some guidance.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, let us hear the Mover of the Motion, hon. Mungatana.

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

Order, Mr. Duale! I have given the opportunity to Mr. Mungatana.

**Mr. Mungatana:** Thank you, Madam Temporary Deputy Speaker, Sir. I just want to respond to the point of order raised by Mr. Namwamba. I am very happy with the amendment as it is now because it is urging the Government. I do not know why Mr. Namwamba would have an issue with that because if it is the Ministry of Health or the Ministry of Water and Irrigation, we, as a House, are always urging the Government to do something. So, we are on very firm ground now even for those who are having issues that, maybe, we are trying to enter into a different area. We are on very firm ground now when we urge the Government to take a certain action because that is part of what Parliament does. So, I want to assuage the conscience of Mr. Namwamba that urging Government is never commanding. So, I think we are on safe ground; the way the Motion as amended stands now, we should pass it.

Thank you, Madam Temporary Deputy Speaker.

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

**The Temporary Deputy Speaker** (Dr. Laboso): Order, hon. Members!

Yes, hon. Ekwee.

**Mr. Ethuro:** Madam Temporary Deputy Speaker, I want to convince my good brother, Mr. Namwamba, that this House, as it stands now, has got both the Back Bench and the Cabinet. So, any side of this House can actually propose a Bill.

*(Applause)*

The provisions of the Constitution do not necessarily set who should be bringing these Bills. In any case and more fundamentally, what hon. Mungatana and his good friend, Dr. Nuh are proposing--- It is the shoe wearer who knows where the shoe pinches. This Government does not wear the shoes of the poor people of this country and that is why they are taking long.

*(Applause)*

In any case, even this “urging” that hon. Mungatana is happy about, I am completely unhappy, but I accept that an amendment has been carried. Because Article 241(3) (c) says:-

“(3) The Defence Forces—

(c) may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly.”

So, if we have urged the Government, have we approved anything?

**An hon. Member:** No!

**The Temporary Deputy Speaker** (Dr. Laboso): Order! Order, hon. Members! Allow hon. Wamalwa to complete his contribution.

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

Order! Order, hon. Members!

**Mr. Duale:** On a point of procedure, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Dr. Laboso): Order! There is nothing un-procedural in him making his contribution.

*(Loud consultations)*

Order, hon. Members! Order!

Hon. Members, because of the interest in this Motion, I want to ask whether hon. Members would like us to reduce each contribution from 10 minutes to three minutes.

*(Question, that the contribution time be reduced from 10 minutes to three minutes, put and agreed to)*

Therefore, Mr. Minister, please continue to conclude what you had to say. Just finish.

*(Loud consultations)*

Order, hon. Members, let us listen to each other. We are all adults. We all want to be heard.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Thank you, Madam Temporary Deputy Speaker, for the opportunity. I just want to thank, once again, Mr. Mungatana for bringing this Motion and to assure Mr. Namwamba that Mr. Mungatana is in order; being a leader from the affected region, expressing the concern of the people of the Tana Delta and asking this Government to do whatever needs to be done including using the ultimate force of the law through its military is in order.

As Members of the Cabinet who are here today, we want to inform Mr. Mungatana that this Motion as framed, the intent and what you have said today, the Government will respond to.

**Mr. Duale:** On a point of order, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Dr. Laboso): Mr. Duale, what is your point of order?

**The Minister of State for Public Service** (Mr. Otieno): Madam Temporary Deputy Speaker, you have given me a chance to speak. I have the Floor.

**The Temporary Deputy Speaker** (Dr. Laboso): We have a problem with the microphones. Please be patient. I have not given you the Floor. I have given the Floor to Mr. Duale.

**Mr. Duale:** Madam Temporary Deputy Speaker, I want you to hear me out; that we are Members of Parliament whose mandate is to carry out the legislative and oversight role. We play by the rules of this House, the Standing Orders and the Constitution. There is a clear demarcation between the role of the Executive and the role of Parliament. This House has set a precedent where even Motions were brought to the Floor debated, moved and seconded but the Speaker gave a direction that those Motions were unconstitutional.

Madam Temporary Deputy Speaker, you must give us the chance to prove to this House that this Motion, as much as we want to support it, stand with the people of Tana Delta and stop the killing, we must not pass a Motion that is unconstitutional.

If you look at Article 241, it says there is established the Kenya Defence Forces consisting of the army, police, airforce and navy. If you go to Article 241(3)(c) the Head of State who is the Commander in Chief of the defence forces is at liberty under this Constitution to do what this Motion is urging him to do, but he needs to get the consent of Parliament. Who sits for the Head of State in this august House? It is the Minister of State for Defence. It is not Mr. Mungatana or Mr. Duale. No Back Bencher can purport to move a Motion on behalf of the Executive and more so, on behalf of the Minister of State for Defence. That is why we are saying, on procedure, we have no problem with approval, we have no problem with urging but for the Army to go to Tana River, that approval must come from the Executive and from the Minister of State for Defence.

**Hon. Members:** No!

**The Temporary Deputy Speaker** (Dr. Laboso): Order, hon. Members! I think hon. Mungatana made the point very clearly, that the Motion as it stands now is quite constitutional and on the question of Parliament urging, we all know that we urge the Government all the time to do several things. So, I think, really, what hon. Duale is saying is that we have been urging Government to do a lot of things, and this is one of the very many things. We are urging them to go ahead and do it and then now come back for approval from Parliament. I think that is really the position at the moment. Hon. Sophia Abdi, you are contributing now.

**Mrs. Noor:** Thank you, Madam Temporary Deputy Speaker, for giving me this chance to contribute to this very sad issue that we are discussing today.

It is sad for this country that when women and children are killed, then we say as a Parliament that we have no responsibility. I think that is not the point. We have a responsibility as leaders of this country. If this Parliament does not have a responsibility to urge the Government, what is our oversight role? We should urge the Government and tell them that they have a responsibility to safeguard the security of the people and their properties, lives and livelihoods. That is why the President, the Executive and us, as Parliament, have sworn through the Constitution to stand firm to safeguard the Constitution. What does our Constitution tell us? That everybody has a right to life. That the security of this country is guaranteed 100 per cent and that we have a responsibility as a Parliament to do that oversight role.

Madam Temporary Deputy Speaker, what is our oversight role today? It is to tell the Government and urge them that they must stop the problems we are having in Tana River in all ways; and all possible ways and means must be made to reach the Tana River people. We will not allow as leaders of this country to watch when Tana Delta women and children are killed. We cannot get an excuse and say that our armed forces are irresponsible and they will rape women. That is not the case. It is to safeguard that place. People are dying, houses are being burnt, our people are being killed like animals and we cannot allow it anymore and a leader cannot tell us that it is unconstitutional. When I am doing my oversight role, it is not unconstitutional. We must take our responsibility.

I want to support hon. Mungatana and Dr. Nuh. They have gone out of their way. They are defending their people and we must support them as a House.

*(Loud Applause)*

**The Temporary Deputy Speaker** (Dr. Laboso): Order, hon. Members! I know you are approving what Sofia is saying but reduce the approval.

*(Laughter)*

**Mrs. Noor:** Thank you, Madam Temporary Deputy Speaker. I am a bit emotional because of the issues that we are discussing. It is not right for leaders to stand here at this critical moment---

**The Temporary Deputy Speaker** (Dr. Laboso): Order, hon. Noor! Your time is up. Hon. James Maina Kamau.

**Mr. James Maina Kamau:** Thank you, Madam Temporary Speaker, for giving me this chance. First, I take this opportunity to send my condolences on my own behalf and also on behalf of Kandara to the people of the Tana Delta for the loss of lives that is continuing to happen in that area.

As you have heard, this is a very emotional issue and I am personally very annoyed that this should continue to happen in our Republic. Remember in 2007/2008, Kenyans lost their lives and I am sure if the Government was doing its work rightly, people could not have lost their lives at that time. So, I do not know why the Government should continue dilly dallying on this issue when people are losing their lives in the Tana Delta. We are told that over 100 people have lost their lives and I am wondering what number of lives the Government wants to be lost so that they can wake up.



Madam Temporary Deputy Speaker, we know that we have a trained armed force in the name of the General Service Unit (GSU). This is rightly the job of the GSU. We are wondering why the Government is not deploying them in that area. This is basically the work of the General Service Unit (GSU) of this Republic, and we are wondering why the Government is not sending them there. We should be able to find out why the police are not doing their job when they are sent to the ground. I would urge the Government to send in troops like yesterday, so that they quell the mayhem in Tana Delta. So, it is time that the Government sent its troops to deal with this mayhem in the Tana Delta. We know that the Kenya Defence Forces have mobility and are properly trained. They have all the ammunition that they require to quell the mayhem in the Tana Delta. I am also not happy that the Government has done nothing when people continue losing their lives. When such things happen, it is the children, the women and the vulnerable who suffer most. For that reason, I would urge the Government to send the armed forces there to make sure that those people are stopped once for all.

We also know that there is the National Security Intelligence Service (NSIS). We have been passing budgets here giving them huge amounts of money. What reports do they give? They should give a report saying who is causing these problems. If they are militias then they should be confronted and removed.

Lastly, I would urge the government to help in the resettlement---

**Mr. Mbadi:** Point of information, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Dr. Laboso): Do you want to be informed, Mr. James Maina Kamau?

**Mr. James Maina Kamau:** I do not mind.

**Mr. Mbadi:** I have just heard the hon. Member, and a good friend of mine, say that the NSIS is not doing a good job, yet we have been allocating them money. I just wanted to inform him that this money is going to politics. It is assisting presidential candidates like the UDF presidential candidate.

**The Temporary Deputy Speaker** (Dr. Laboso): That is information that is not relevant to what we are discussing.

**Mr. James Maina Kamau:** Madam Temporary Deputy Speaker, that is information from my brother Mbadi.

As I was saying, I would like to urge the Government to assist in resettlement. In this kind of war, there are those who have lost their children, their loved ones and their settlements. Therefore, I would urge the Government to help in resettlement of such people.

**The Temporary Deputy Speaker** (Dr. Laboso): Your time is up!

Yes, Mrs. Shebesh.

**Mrs. Shebesh:** Madam Temporary Deputy Speaker, let me take my three minutes to say what I want to say very quickly. First, I do not agree with this House urging, approving and initiating anything that has to do with deployment of the army to an area of this country that has not been invaded by outsiders. I do not agree or support. Earlier on, the Attorney-General said that legally, what we are trying to do here is wrong. He even said that he does not agree with this Motion. So, who are we urging to act if the legal advisor to the Government has already said on record that whatever we are doing is not right?

Let me be clear that we, as Kenyans and the Members of Parliament in this House, are very sensitive to the issues that are happening in Tana Delta. So, let Members of Parliament from that area not try to make us feel guilty for rejecting this Motion, or in the guise that we are not supporting them. What I want to ask specifically is whether we have a President and a Prime

Minister in this country. Do we have an Executive in this country? If we are saying that the defence forces have to go to Tana River, we are simply saying that the police have failed.

**Eng. Gumbo:** On a point of order, Madam Temporary Deputy Speaker. This House is a house of representatives of the people of Kenya. Even school children can urge the Government to provide toilets. What is wrong with representatives urging? Is the hon. Member in order to say that it is not the duty of the representatives of the people of Kenya to urge the Government to stop the killings? Is she in order?

**Mrs. Shebesh:** Madam Temporary Deputy Speaker, I hope that my minutes have not been taken away by that. I will not be intimidated by issues of school children asking for toilets. We are asking for the security of Kenyans, and for women and children to stop dying. We are asking that if there is politics behind this issue, it should be dealt with. We are asking that if there are people who need to be arrested, they should be arrested. We are asking: Does the Police Force in Kenya still exist?

Madam Temporary Deputy Speaker, in Nairobi today, Members of Parliament are arrested by the police in the morning if they even dare do anything legal. The Officer Commanding Police Division (OCPD), Buruburu can arrest the Member for Makadara, the Member for Embakasi and the Member for Starehe. Nobody has ever stopped them. What is it that is making the Police unable to arrest the killers on the ground, who are known? Do you want to tell me that Intelligence cannot tell you who is doing this? If you look at the televisions, these people that we are sending the Army to are poor Kenyans, whose houses are grass-thatched and have no capacity to fight even the regular Police. When you send the Army, you are sending a message that, one, the Police Commissioner has failed and, two, you are believing---

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Shebesh, your time is up!  
Hon. Midiwo!

**Mr. Midiwo:** Madam Temporary Deputy Speaker, it is unfortunate that Kenyans are dying. We have an opportunity to talk about issues, but we are talking semantics.

Madam Temporary Deputy Speaker, no army of 100 people can work without a command. So, somebody is, definitely, organizing these people to kill. In that Delta, rich Kenyans have bought large tracts of land and are keeping cattle there. There is an attempt to exterminate those people, so that the rich can own that land. Let us face it!

Madam Temporary Deputy Speaker, last week, nine policemen were killed. Seven of them are from one constituency. How can seven policemen be from one tribe in a small area? Let us face it. Somebody is involved. Why is it that so many months after the death of Saitoti, the President has refused to give us a Minister of State for Provincial Administration and Internal Security? What is the motive? The Acting Minister comes from around that area and so, how come somebody else cannot be brought to sort out the mess? I am scared that Kenyans are going to war. Last week, four people died in Mt. Elgon. In Rongai there is already a simmering war because of bad Government policy. In Mombasa, just two weeks ago, you saw ordinary people killing policemen. If you cannot have the military do it--- What we care about is the lives of Kenyans.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Midiwo, I am afraid I will have to stop you there because I need to give the Assistant Minister three minutes and hon. Mungatana three minutes. We need to conclude this debate.

**Mr. Midiwo:** Madam Temporary Deputy Speaker, I support.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): Madam Temporary Deputy Speaker, let me begin by passing my condolences to the families affected and also the families of the nine policemen.

Madam Temporary Deputy Speaker, because of time and since Statements have been issued here before, let me just update the House on what action is being taken. Three General Service Unit (GSU) platoons, 148 Administration Police (AP) offices and 127 Regular Police have been deployed to the area. So far, 265 policemen have been sent there. Today, 1,000 GSU officers will be deployed to reinforce the ongoing operation.

Madam Temporary Deputy Speaker, three Land Rovers have already been allocated to the Provincial Administration (PC), nine lorries, two Land Cruisers, Pick-Ups and a police helicopter has been allocated within the Coast Province to deal with this matter. The Director of the Criminal Investigations Department (CID) has established a special team to spearhead investigations into the murder cases; movements and gatherings of all persons in groups has been restricted, the curfew will be enforced swiftly and politicians who issue incitement statements will be arrested and arraigned in court. There will also be operations to mob up illicit arms in place---

**An. hon. Member:** On a point of information!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): I do not want your information.

Madam Temporary Deputy Speaker, the disarmament exercise will target firearms and ammunition and crude weapons---

*(Loud consultations)*

**The Temporary Deputy Speaker** (Dr. Laboso): Order, hon. Members, allow the Assistant Minister to speak.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): Madam Temporary Deputy Speaker, the Government is taking action and I want to thank the House. I thank Mr. Mungatana for appreciating the efforts of the Provincial Administration. I also thank the House for urging us to come to the House and for your participation in an effort to bring peace.

Finally, this problem is also political and I urge the politicians--- I want to see the three hon. Members working together, making peace together---

**Hon. Members:** Ah!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): This is what I urge them to do and this matter will come to an end.

**The Temporary Deputy Speaker** (Dr. Laboso): Mr. Mungatana, please take two minutes then we will put the Question.

**Mr. Mungatana:** Madam Temporary Deputy Speaker, I want to thank the House and Maj. Sugow, the mover of the amendment and the amendment Motion. I want to thank the Government for supporting this Motion and I want to thank every person and all of you who have shown concern for this Motion. I had wanted to donate my two minutes but there is no time, so please excuse me.

With those few remarks, I thank you and I beg to move.

**The Temporary Deputy Speaker** (Dr. Laboso): Thank you, Mr. Mungatana. I know this is emotional and I have a whole list here but, unfortunately, hon. Members, it is a timed Motion that was to take exactly two hours and those two hours are over now.

*(Question put and agreed to)*

*Resolved accordingly:*

THAT, following the unrest and instability in the Tana Delta for the past few weeks, this House urges the deployment of the Kenya Defence Forces to the Tana Delta and its environs to restore peace and order in keeping with the provisions of Article 241 (3) (c) of the Constitution.

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, it is now time to adjourn the business of the House and the House stands adjourned until this afternoon, Wednesday, 12<sup>th</sup> September, 2012, at 2.30 p.m.

The House rose at 12.30 p.m.