

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 16th August, 2012

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Sessional Paper No.3 of 2012 on Population Policy for National Development.

*(By the Minister of State for Planning,  
National Development and Vision 2030)*

**Mr. Speaker:** Mr. Minister, do you have another Paper?

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, I have a Notice of Motion.

**Mr. Speaker:** Then wait!

Next order!

NOTICE OF MOTION

ADOPTION OF SESSIONAL PAPER NO.3 OF 2012 ON  
POPULATION POLICY FOR NATIONAL DEVELOPMENT

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts Sessional Paper No.3 of 2012 on Population for National Development laid on the Table of the House on Thursday 16<sup>th</sup> August, 2012.

**Mr. Speaker:** Next Order!

QUESTIONS BY PRIVATE NOTICE

KILLING OF MR. TILAM LERESH BY BRITISH ARMY SOLDIER

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

(a) In what circumstances was Tilam Leresh (ID 26535835) killed by the British Army on 9<sup>th</sup> June, 2012 at Lolkanjau area outside the gazetted military training area near Archers Post in Samburu East?

(b) What happened to the body and was the next of kin informed of his death?

(c) Was the British Army soldier responsible for the killing arrested and prosecuted in our courts?

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Speaker, Sir, I beg to reply.

(a) According to the Memorandum of Understanding between the Government of the Republic of Kenya and the British Government, British troops conduct training within the areas allocated to the Kenyan Defence Forces (KDF) in Archers Post and Lolkanjau area. According to the statement by the British Army on 10<sup>th</sup> June, 2012, the British Military were conducting range clearance exercise in the general area of Lolkanjau (Ref. No.670987) with both the ground and aerial teams conducting clearance prior to commencing the live firing training.

Mr. Speaker, Sir, the ground troops and aerial teams were mopping up the area with a view to clear the area of any human presence and animals. While conducting aerial surveillance, the British air crew sighted a group of six morans on the training area and they alerted the ground troops. Among the six, one was armed while the others were unarmed.

The armed man, who turned out to be Mr. Tilam Leresh, ran towards the troops and after being given a warning signal to stop and surrender, he instead threatened to shoot by aiming the rifle at the soldiers. At this point, the British soldiers shot Mr. Leresh. Thereafter, they conducted first aid to the victim but in the process, he succumbed to the injuries. A G3 rifle and three loaded magazines were retrieved from the deceased. The soldier who shot the deceased is Sgt. Madison George at Archers Post training area. That is the information we have.

b) The body of the deceased is still at the Isiolo District Hospital mortuary. The postmortem was performed jointly by the Kenyan and the British pathologists, Dr. Kiluva of Isiolo Hospital, on 12<sup>th</sup> June between 9.00 hours and 1.00 hours, in which it was established that the deceased succumbed to severe haemorrhage from penetrative chest injury as a result of the bullet injury.

(c) Sergeant Madison was arrested by the British military police and is still held at Nanyuki Barracks awaiting prosecution. The case is being handled at this point by the Kenya police and the Director of Public Prosecutions (DPP).

According to Section 6 of the Memorandum of Understanding between the Government of Kenya and the United Kingdom, the Kenyan authorities have the primary right to exercise jurisdiction with respect to alleged offences committed in Kenya and punishable by Kenya laws. I wish, therefore, to take this opportunity to warn all members of the visiting forces, including members of the British Army training in Kenya, that the Government of Kenya will deal firmly with any members who breaks the laws of this country.

**Mr. Letimalo:** Mr. Speaker, Sir, I am really disturbed by the behavior of this Government. On 6<sup>th</sup> August, 2010, a 12-year old school girl was knocked down by a British army truck, killing her on the spot and the driver never stopped. The body was just collected by the police and buried. In this particular incident, these are morans who were just on their own errands outside the gazetted military training area. For how long will the Government continue allowing the British Army to kill Kenyans, especially the pastoralists, on their own land just like guinea pigs and no action is taken?

**Mr. Speaker:** Order! This is Question Time.

**Mr. Musila:** Mr. Speaker, Sir, this is a very grave matter and I can understand the reason why the hon. Member has said the things he has said. Indeed, I want to confirm that even last year, I answered a similar Question from the same hon. Member involving another moran who was killed. The circumstances explained by the British Army were similar to the ones that I have explained. I want to confirm to this House that following this incident, the Ministry of State for Defence has taken this matter seriously. Indeed, we are of the view that the police must conduct a proper inquest as is required by law, and if it is found that the man acted irresponsibly, he should be taken to court. The memorandum of understanding is very clear on this matter, that visiting forces will respect the laws of this country. Therefore, I want to assure the hon. Member that we are in communication with the Commissioner of Police and he is going to conduct an inquest through the Director of Public Prosecution (DPP) and the necessary legal measures will be taken against this person, if he is found to have committed an offence.

**Mr. Speaker:** Hon. Njenga.

**Mr. Mututho:** Thank you, Mr. Speaker, Sir, more particularly, for calling me Mr. Njenga because at one time, I was sacked from a board by one Minister because I called myself Michael Njenga!

That aside, Mr. Assistant Minister, now you have established that this moran was shot outside the normal practice area, and that the bullet landed on the chest. It was not supposed to immobilize the moran because he was shot in the chest. Could you review the engagement or the contract we have with the British Army, so that such murderous acts will not recur?

**Mr. Musila:** Mr. Speaker, Sir, first, I want to correct the impression that the deceased was shot outside the training area. I have a map, which I will make available to the hon. Member, showing exactly where the deceased was shot. This is a normal training area for the Kenya Defence Forces. That is where the unfortunate incident took place. I have also said that we are in communication with the Commission of Police. We have forwarded to the Commissioner of Police a copy of the memorandum of understanding, so that he may see clearly that this matter falls under his purview. Therefore, he has to deal with the matter according to the law.

**Mr. Lekuton:** Mr. Speaker, Sir, the Memorandum of Understanding with the British Army is a Government policy, and we do not have an argument over it. What I am asking is why six British soldiers would shoot to kill one moran. Did they have to shoot him on the chest?

**Mr. Musila:** Mr. Speaker, Sir, I do not know where the hon. Member got the figure of six. It was six morans and not six soldiers! I do agree with him and that is why I am emphasizing the issue of an inquest being undertaken to establish the truth. Ordinarily, the shooting should have been to immobilize and not to kill. I have a copy of the postmortem report which shows clearly that the soldier did not shoot to immobilize, but to kill. That is why I am clearly on the side of the hon. Member and in sympathy with the deceased and the entire community. This conduct cannot be condoned and I will stand with the family until this matter is concluded legally.

**Mrs. Leshoomo:** Bw. Spika, ningependa kumuuliza Naibu Waziri swali kwa sababu hawa wanajeshi wa Uingereza wameleta shida katika sehemu hiyo. Kila wakati, maswali yanaulizwa hapa lakini hatujaona yakifuatiliwa. Maswali haya yanajibiwa kikamilifu ama ni kwa kujibu tu? Kuna sheria lakini hao wanajeshi ni kama wanatawala sehemu hiyo. Hakuna mtu ambaye anapita karibu hapo! Kuna mambo mengi yanayotendeka kama ubakaji na mengineyo. Kwa hivyo, ni kama sisi hatuna haki katika nchi hii yetu! Kwa hivyo, ningependa Naibu Waziri aseme na kutenda! Hakuna haja ya kusema bila vitendo!

**Mr. Speaker:** Proceed, Mr. Musila.

*(Mr. Musila took a while to log in)*

It is your fault because I gave you the Floor! I have taken you off now! So, could you request once again? Press the button marked “MIC” if you have already logged in and entered your PIN.

*(Mr. Musila to log in again)*

Order, Mr. Musila! I can now see the request. If you went off, it was because you pressed “MIC” or “INT” at the wrong time and you went off and that meant that your “MIC” area was jumbled. So, you begin again!

*(Mr. Musila logged in successfully)*

Proceed now!

**Mr. Musila:** Bw. Spika, itakumbukwa kwamba Swali hili lilikuja Jumanne na nikaomba ruhusa nisijibu kwa sababu sikuridhika na majibu ambayo yalikuwa yameandikwa. Kwa hivyo, ningependa kumhakikishia mhe Leshoomo na Bunge hili kwamba siwezi kujibu tu kwa sababu nimeliletewa jibu. Hii ndio sababu nilikataa kujibu siku ya Jumanne; sikukubaliana na yale ambayo yalikuwa yameandikwa. Hili ni jambo ambalo tumelizungumzia kikamilifu katika Wizara. Hii ndio sababu nilisema kwamba mwaka jana nilijibu swali ambalo lilikuwa na maelezo kama haya. Kwa hivyo, tumesema sasa hatua ichukuliwe. Niko na barua hapa ya kuonyesha kwamba tumechukua hatua kamilifu tukiwa na Kamishina wa Polisi. Kutoka leo, mambo haya yako kwa Director of Public Prosecution (DPP) na Commissioner of Police. Kwa hivyo, sisi tumepeana mambo haya ili sheria ichukue mlengo wake.

**Mr. Letimalo:** Mr. Speaker, Sir, I appreciate the action taken by the Assistant Minister but while we are still waiting for the findings from the inquest, where we disagree is where the late Lieresh was killed because the DC, area councilor and the police visited the scene and it was outside the gazetted military training area. While the Assistant Minister is carrying out the inquest, could he set a date that he and I and others concerned will visit the scene and determine whether this incident took place outside the gazetted area?

**Mr. Musila:** Mr. Speaker, Sir, you know the issue of the gazetted area is not the reason why the deceased was killed. It is because he had a rifle and I have evidence of the rifle number that he had. It is because he threatened – according to information – to shoot and that is why he was shot. However, the issue of gazettelement of training areas in Samburu is a matter---

**Mr. Letimalo:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead the House and say that the late was killed because he was carrying a rifle? Is that what the rule of law says? Is it not necessary to arrest that fellow if he had an illegal gun instead of shooting him?

**Mr. Musila:** Mr. Speaker, Sir, I was very particular about the rifle and that is why I went and saw the serial number of the rifle that the deceased was carrying. Be that as it may, we agree that the solution is not to shoot particularly when it happened last year in the same manner. So we agree that the force that was used was probably more than necessary but that is for the inquest to determine after which the law will take its course.

IMMINENT EVICTION OF MPEKETONI  
FARMERS BY EGERTON UNIVERSITY

**Mr. Speaker:** Hon. Members, this Question by Ms. Shakila Abdalla is deferred because she is unable to be here for a good reason.

(**Ms. Shakila Abdalla**) to ask the Minister for Lands, the following Question by Private Notice.

(a) Is the Minister aware that about 50 farmers and their families are about to be evicted from land they have occupied for close to 15 years by Egerton University in Mpeketoni, Lamu?

(b) How did the University acquire the land and from who?

(c) Could the Minister provide copies of ownership documents by the University?

*(Question deferred)*

MEASURES TO AVERT PLANNED STRIKE BY TEACHERS

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

(a) Is the Minister aware that the Kenya National Union of Teachers (KNUT) has called for a Special National Executive Council (NEC) meeting on 19th August, 2012 and an Advisory Council meeting on 29th August, 2012, intent on calling for a teachers' strike for lack of implementation of the provisions of Legal Notice No.531 of 1997?

(b) What measures is the Minister taking to avert the planned strike?

(c) What assurance is the Ministry giving to teachers on payment of allowances to guarantee smooth learning when schools re-open next term?

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

(a) I am not aware that KNUT has called for a special NEC on 19<sup>th</sup> August, 2012 and of an Advisory Council meeting on 29<sup>th</sup> August, 2012 for the purpose of calling a national teachers strike. I am also not aware of the stated Legal Notice No.531 of 1997.

(b) In view of my answer to part (a) above, I am not taking any measures unless the matter is brought to my attention.

(c) I am not giving any assurance on payment of allowances to teachers as both the Ministry of Education and the Teachers Service Commission (TSC) are not mandated to increase salaries or allowances. As we are all aware, the Constitution of Kenya, 2010, created the Salaries and Remuneration Commission (SRC) whose mandate is to deal with matters of salaries for civil servants and teachers.

**Mr. Gitari:** Mr. Speaker, Sir, I have letters written by KNUT and one of them is asking for a NEC meeting on 19<sup>th</sup> August and the other is asking for an Advisory Council meeting on Wednesday, 29<sup>th</sup> August. I would like to table these letters so that we can inform the Assistant Minister that the KNUT has called for these two meetings.

*(Mr. Gitari laid the documents on the Table)*

**Prof. Olweny:** Mr. Speaker, Sir, yes, I have seen the letters but I do not think the letters indicate that the KNUT is going to discuss issues pertaining to the strike. That is why I am saying that I am not aware.

**Mr. Pesa:** Mr. Speaker, Sir, I hope the Assistant Minister is a Kenyan and he understands what goes on in Kenya. This idea of a strike by the two unions has now been in our media and public knowledge for over two months. For the Assistant Minister to come here and allege that he is not aware, is he saying that he is not conversant with what goes on in the Ministry of Education?

**Prof. Olweny:** Mr. Speaker, Sir, these letters are not addressed to me, so I am not aware of the existence of the letters. The letters are addressed to NEC member of KNUT in the letter dated 8<sup>th</sup> August; to NEC members and national trustees of KNUT. The other one is addressed to all advisory council members and none of them is copied to the Assistant Minister. So how can I be aware of something that has not come to me? Furthermore---

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to suggest that he is not aware of the impending strike? His awareness is not predicated on a letter directed to him. His awareness can be through the media. Everybody in Kenya is aware that teachers have a problem with the issue of their salaries and so the Assistant Minister should be telling us what, as a Ministry, they are doing instead of saying he is not aware. Is he in order to mislead the House?

**Mr. Speaker:** That is a genuine challenge, respond!

**Prof. Olweny:** Mr. Speaker, Sir, I have not misled the House. I have stated the facts as they are but let me say that as regards the issue of the Legal Notice, we have never had Legal Notice No.531 of 1997. Instead, we have a Legal Notice No.534 of 1997 but that legal notice was revoked by Legal Notice No.162 of 24<sup>th</sup> September, 2002. So that Legal Notice No.534 is not operational since 2002. It was revoked and I have the documents here; if necessary, I can table them.

**Mr. Mbadi:** Mr. Speaker, Sir, it seems this Assistant Minister does not have any child either in primary or secondary school. If he has any, then they are learning in private schools and that is why he does not care what happens in public schools. You see the way he is casually answering this Question.

Mr. Speaker, Sir, sometimes teachers in this country are treated as beasts of burden. But even beasts of burden require some sympathy. The Government of Kenya made a commitment with the teachers in 1997, but it was varied in 2002. Could he tell this House and the country whether they lived to the promise they made to the teachers of the Republic of Kenya that they were going to increase their salaries and allowances? Have they implemented it fully?

**Prof. Olweny:** Mr. Speaker, Sir, the teachers salaries are properly negotiated by Kenya National Union of Teachers (KNUT), Teachers Service Commission (TSC) and the Ministry of Education through involvement of the Treasury. All the negotiations done involving all those parties have been implemented, including the latest one which was signed on 29<sup>th</sup> January, 2009. There is nothing that has been negotiated between the teachers, Ministry, TSC and Treasury that has not been fully implemented. If there is any, could it be tabled because all of them have been implemented to date?

**Mr. Koeh:** Mr. Speaker, Sir, the threat by the KNUT and KUPPET to go on strike in September is in the public domain. Therefore, I want the Minister for Education to take matters of education more seriously than ever before. We do not want to see our teachers on the streets because that will disrupt learning in schools. What urgent measures is he putting in place to

ensure that teachers do not go on strike? He says there are no issues. If there are now issues, could he call for a dialogue so that he is able to resolve these things amicably?

**Prof. Olweny:** Mr. Speaker, Sir, when teachers have problems, we always sit down with them and resolve their issues amicably. For example, recently, there was a threat by teachers, but the Minister went on foot from the Ministry headquarters to KNUT headquarters and discussed the issues.

Just a minute!

**Mr. Speaker:** Order, Mr. Assistant Minister! Address the House!

**Prof. Olweny:** Mr. Speaker, Sir, in case there is a threat, we will discuss with them.  
**Mr. Ruto:** On a point of order, Mr. Speaker, Sir.  
**Mr. Speaker:** Order! Order! Member for Chepalungu, what is your point of order?

**Mr. Ruto:** Mr. Speaker, Sir, the Assistant Minister appears not to be keen on giving honest answers to the House. It is not just enough---

**Mr. Speaker:** Order! Member for Chepalungu! You are on a point of order!

**Mr. Ruto:** Yes, Mr. Speaker, Sir. Is the Assistant Minister really in order!

**Mr. Speaker:** You are not supposed to ask a question, but raise the point of order. What is it that is the matter?

**Mr. Ruto:** Mr. Speaker, Sir, the Assistant Minister is misleading the House that he is not aware and yet it is in public domain! Will I be in order to request that he be given another week to go and research and, if possible, invite the Substantive Minister? I know he is busy promoting the issues of mini-skirts all over the country.

**Mr. Speaker:** Order! Member for Chepalungu! Stay relevant!

Prof. Olweny, do you want to make any response at all to that claim, although maybe, you do not have to, because you have properly answered really that you are not aware that KNUT has called for a special National Executive Council Meeting and Advisory Committee meeting with intent to call a strike? You are not aware! That is what you have said!

**Prof. Olweny:** Yes, Mr. Speaker, Sir.

Yes, Member for Kirinyaga Central!

**Mr. Gitari:** Mr. Speaker, Sir, I have tabled letters in this House showing that KNUT has called for two meetings on 19<sup>th</sup> August and 29<sup>th</sup> August, 2012, respectively. Now that the Assistant Minister is fully informed that the KNUT will convene these meetings to organize a countrywide strike by teachers, what measures has he put in place to make sure that our children in public schools will not be affected?

**Prof. Olweny:** Mr. Speaker, Sir, I said once they give us a strike notice, we will dialogue with them.

**Mr. Speaker:** Order! Mr. Assistant Minister, that one is not a satisfactory answer! You have been asked by the Member for Kirinyaga Central, now that you are aware that the KNUT has convened two meetings; one on 19<sup>th</sup> August and another one 29<sup>th</sup> August, 2012, respectively, what are you doing to see that you are on top of things even as these meeting take place?

**Prof. Olweny:** Mr. Speaker, Sir, let me give a commitment that we shall reach out to them!

**Mr. Speaker:** Exactly! That is a better answer!

Let us move to Oral Answers to Questions!

## ORAL ANSWERS TO QUESTIONS

**Mr. Speaker:** Member for Rarieda!

*Question No.1352*

PRESENTATION OF CELLULAR MOBILE  
PERFORMANCE ASSESSMENT REPORT

**Eng. Gumbo** asked the Minister for Information and Communications:-

(a) whether he could present and explain the latest (2010/2011) Cellular Mobile Quality of Service Performance Assessment Report for all the mobile phone operators in Kenya;

(b) whether he is satisfied that all the mobile phone operators in Kenya have achieved the minimum set targets for all the eight (8) Quality of Service (QoS) performance parameters as set out by the Communications Commission of Kenya (CCK), and,

(c) what the Ministry is doing to ensure that Kenyans, and all mobile phone users in Kenya get value for every cent spent on these networks.

**The Minister for Information and Communications** (Mr. Poghismo): Mr. Speaker, Sir, from the outset, I would like to apologize to the House for the times that this Question has gone unanswered and for whatever inconvenience was caused.

Mr. Speaker, Sir, the Ministry of Information and Communication has no intention at all of being on the wrong side of the House and, obviously, we want to be part and parcel of the compliance.

I seek your indulgence to answer this Question.

**Mr. Speaker:** Yes, Mr. Minister, I am satisfied that you are remorseful over the past. I confirm that you have engaged the Speaker's Office to explain your position even away from the House. So, you may proceed!

**The Minister for Information and Communications** (Mr. Poghismo): Mr. Speaker, Sir, I beg to reply.

(a) The latest 2010/2011 Cellular mobile quality of service performances assessment report for all the mobile operators in Kenya is available. I hereby table it.

*(Mr. Poghismo laid a document on the Table)*

(b) I am not satisfied with performance of the mobile phone operators in Kenya since most of them did not achieve the set target for the eight quality of service performance parameters as set out by the Communication Commission of Kenya (CCK ) as indicated in the report I have just tabled.

(c) The Communications Commission of Kenya (CCK) has taken the following actions against the operators who failed to meet the quality of service targets:-

(i) Issued all the mobile operators with a notice of non-compliance according to Section 83A of Kenya Information and Communications Act, CAP 411A, giving a period within which the contravention is to be rectified.

(ii) The Commission has also levied penalties to three mobile operators who did not achieve the quality of service target during the previous year, 2009/2010, and have continued to fall short of the targets during the 2010/2011 period. It is noted, however, that whereas all



operators failed to meet the quality of service performance targets, there was remarkable improvement in performance compared to the previous year, 2009/2010.

The above actions are expected to yield more improved results and ensure that Kenyans get value for their money.

**Eng. Gumbo:** Mr. Speaker, Sir, you will notice that the Minister has actually only answered part of the Question. The Question is very clear:-

“Could the Minister present and explain”---

Mr. Speaker, Sir, he has “presented” but not “explained”. But, nevertheless, mobile phone companies in Kenya continue to take consumers for a ride. The quality of service is very low and this concerns all the mobile phone service providers. Just indulge me for one minute to demonstrate. If you look at one of the most important quality of service parameters, which is speech quality, none of the four mobile service providers in Kenya has attained the required minimum in speech quality. The Minister has stated that notices have been issued by CCK and that the Commission has also levied penalties on three mobile operators. Could he give the names of the three mobile operators who have been issued with notices and whom the Commission has levied penalties; how much was levied and whether they have, indeed, paid?

**Mr. Poghiso:** Mr. Speaker, Sir, if you look at the results that I have tabled carefully, they are not just figures but explanations as well. So, I am hoping that the explanations are within the results.

Mr. Speaker, Sir, on the issue of the penalties, the three as indicated for each of those are Safaricom, Yu Mobile and Orange Mobile. They did not achieve the targets in the years before. For each, a letter was written and penalties of up to Kshs500,000 have been levied. My information is that CCK has been paid by the companies that did not comply.

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, the hon. Minister has indicated that the penalties they levied amounted to Kshs500,000. The other day, I gave an example where I was ripped of Kshs1,000. I loaded from Safaricom and, immediately, the Kshs1,000 was gone. If that is done to every Kenyan, it is way above Kshs500,000. Are you dealing with the ripping off of Kenyans by those mobile providers or, otherwise, why are you not meting out stiffer penalties for ripping off Kenyans for services that they are not providing?

**Mr. Poghiso:** Mr. Speaker, Sir, of course, if the hon. Member is addressing the Chair, those accusations should be coming to the Chair and not me. But in case they are coming to me, I would say that I am not part of the ripping off. The regulator is a product of this House, created by an Act of Parliament. The regulator has set a limit for those who do not comply with the quality of service. The quality of service did not include the ripping off. The quality of service parameters are the ones given in my report. It has nothing to do with the extra-curricular or things that they go ahead to do. If they go ahead and rip you off or there is a complaint, there is a place where you can complain. You can call Safaricom and complain. I do not want us to get into the different things that are not part of the Question. The Question is about quality of service and the parameters are very clear. If the quality of service parameters are contravened, as given here, then I would like to know which one has been contravened.

**Mr. Bahari:** Mr. Speaker, Sir, while I agree with Eng. Gumbo that the quality of service is substandard, I want to know from the Minister what he is doing to ensure that the remote parts of this country actually enjoy those services, since over 70 per cent of the remote parts of this country do not have access to those services?

**Mr. Poghiso:** Mr. Speaker, Sir, that question is very pertinent. The hon. Member is asking a very---

*(Mr. Oyongo Nyamweya crossed the Floor without proceeding to the Bar and bowing to the Chair)*

**The Assistant Minister for Education** (Prof. Olweny): On a point of order, Mr. Speaker, Sir. Hon. Nyamweya has just crossed the Floor from this side to the other side without going to Bar and bowing to Chair!

**Mr. Speaker:** Order! He is, definitely, out of order if he did that! Hon. Nyamweya, will you, please, go back to the Bar, bow and walk to the side that you choose properly?

*(Mr. Oyongo Nyamweya consulted with hon. M.H. Ali)*

Order, hon. Nyamweya! Any other contact apart from compliance with the directions given will attract sanctions!

*(Mr. Oyongo Nyamweya walked to the Bar and bowed to the Chair)*

Proceed, Mr. Minister!

**Mr. Poghiso:** Mr. Speaker, Sir, I was responding to the question about---

*(Mr. George Nyamweya stood up in his place)*

**Mr. Speaker:** Order! Order, George Nyamweya! I know that there are two Nyamweyas and the right one has already complied!

Proceed, Minister!

**Mr. Poghiso:** Mr. Speaker, Sir, I was answering a question by the Member for Isiolo South. The question is pertinent and has to do with coverage. Part of the failures of those mobile operators, apart from the service provided in those areas where they are covered, is the failure to extend their services to areas far from our main cities. These issues are being debated everyday. We have just formed the universal service fund, which is going to charge these operators a certain percentage of their income, so that for areas where they cannot reach, that fund will now be used to expand services on their behalf, so that they are covered. That is a new thing and we hope that, that will now attract them to go there and do it themselves.

**Mr. Speaker:** Last question, Eng. Gumbo!

**Eng. Gumbo:** Mr. Speaker, Sir, the contention among most Kenyans, including myself, and from the answer that the Minister has given, I think it is clear that some of the cellular service providers in Kenya have become actually too big for the Ministry and the regulator. When the Minister comes here to say that a company like Safaricom is being charged Kshs500,000 for the violations which actually negate the terms of the licences that they have been given, I think it is very unfortunate. Yet, at the same time, they are diverting from their core duties. Safaricom, for example, is now like a bank. It is more concerned with M-Pesa than giving the services. What is the Ministry doing to identify those deficiencies and improve on the penalties, so that the operators can be made to comply and Kenyans do not continue to suffer?

**Mr. Poghiso:** Mr. Speaker, Sir, as a consumer and as part of the regulatory framework in the Ministry, we are going to begin to address these issues with the individual companies. They are supposed to be giving us a report on the improvements they have made. So, if there are any improvements made, we will probably bring amendments to the Act, so that we can have stiffer penalties for those who do not comply. I agree with the Members that these operators make money on the basis that the people expect better quality of services. So, because of our consumer behavior, a Member like Eng. Gumbo who has asked this Question is very aware that we raise issues of such nature. I would like to congratulate him because he makes us aware of our consumer behavior. We consume things without sometimes questioning how we are treated in the process of consumption. So we are going to be very particular and keen on these things. The next report is going to come out and I hope that it will be possible to bring it to the House again, so that we know that the people are represented in this House and when they seek quality service, they get it. On our part, we are going to be stricter with the operators than you have seen before.

*Question No.1645*

STALLING OF *JUA KALI* SHEDS PROJECT IN KAIBOI TOWN

**Mr. Koech** asked Minister for Industrialization:-

- (a) whether he is aware that the construction of *Jua Kali* sheds at Kaiboi Town, Mosop Constituency, has stalled since 2010; and,
- (b) what action he will take to have the project completed.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the construction of the *jua kali* sheds also known as Constituency Industrial Development Centres (CIDCs) at Kaiboi Town, Mosop Constituency has stalled since 2010.

(b) The CIDCs including the one in Mosop were part of the Economic Stimulus Programme. Each of these CIDCs was allocated Kshs2.5 million. So far, Kaiboi utilized Kshs463,000. At the end of the Financial Year 2009/2010, the balance of the money unutilized was surrendered for re-voting to the Treasury. Once these funds are made available, my Ministry will immediately resume construction of this CIDC at Kaiboi Town.

**Mr. Koech:** Mr. Speaker, Sir, I am very disappointed by the Assistant Minister's answer. This programme was meant to construct *Jua Kali* sheds in all constituencies in Kenya to benefit the youth of the Republic of Kenya. Since they returned the money, we have had the Budgets of 2010/2011, 2011/2012 and now we have 2012/2013. Could he assure the residents of Mosop that the money is factored in the 2012/2013 Financial Year? When is he going to release this money?

**Mr. Muriithi:** Mr. Speaker, Sir, the Member is right that the construction of the CIDCs was to be done in all the 210 constituencies. In fact, we embarked on that work. This specific CIDC had several challenges. The land on which this facility is being built did not become available until February, 2010. Thereafter, we signed a contract with the contractor in March, 2010. The Government procedure is that we cannot prepay. So, the contractors are expected to undertake the work and present certificates to show that this work has been done and the Government pays thereafter. Those were the reasons why this CIDC stalled.

**Mr. Speaker:** Order, Assistant Minister! Sometimes you give answers that are too long.

**Dr. Otichilo:** Mr. Speaker, Sir, I wish to know from the Assistant Minister what has happened to those *Jua Kali* sheds that were completed. For example, the one in Emuhaya at Luanda was completed early last year and up to this moment, nothing has happened. We have written several times to the Ministry and we have got no response. What was the purpose of building these sheds?

**Mr. Muriithi:** Mr. Speaker, Sir, the purpose was as stated, namely, to provide facilities for small informal businesses to work from. This year, we are moving on to equip these facilities including the one that the Member has mentioned. We have Kshs200 million to do so.

**Mr. Koech:** Mr. Speaker, Sir, I asked this Question for the benefit of the people of Mosop. You stopped the Assistant Minister before he actually answered the simple question as to when he is going to consider this centre.

**Mr. Speaker:** Order, Member for Mosop. That is not the way we do business here. I follow what transpires in this House and I chose, indeed, as the Standing Orders allow me and, indeed, as I have discretion, when to stop a Minister or any other Member from going beyond a certain point. Assistant Minister, you may want to respond to that.

**Mr. Muriithi:** Mr. Speaker, Sir, as I have indicated, in this year's Budget, we have Kshs200 million to continue with this programme, so that we can complete these facilities.

*Question No.1548*

CRITERIA FOR ALLOCATION OF KENHA FUNDING TO COUNTIES

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

(a) how the Development Budget of over Kshs24 billion has been used in the last three years in the 47 Counties and what criteria is used in allocating money to counties;

(b) whether he could provide a per constituency list showing how the allocation of 10 per cent of the development funds was spent by both the Kenya Rural Roads Authority (KERRA) and the Kenya National Highways Authority (KenHA) in the last three years; and,

(c) whether he could consider allocating enough money to repair the road from Abakore to Habaswein, which serves both Wajir and Mandera counties.

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

(a) Funds from the Development Budget have been utilized mainly for rehabilitation and re-construction of the key road transport corridors, which had largely collapsed due to lack of maintenance. A portion of the funds have also been utilized to provide counterpart funding for donor funded programmes such as the Roads 2000 Programme as well as undertake urgent maintenance of important road links. The Ministry of Roads has now developed the Roads Sector Investment Programme in consultation with stakeholders that outlines the Ministry's key priorities over the next five years. It is a programme of 15 years and we are undertaking it in blocks of five years.

(b) First, I wish to clarify that there is no 10 per cent portion of allocation on development funds. What we have under the Kenya Roads Board Act is 10 per cent on the Road Maintenance Levy Fund administered by KERRA and allocated equally to all constituencies. A portion of 10 per cent administered by KRB is also within the Act to mind emergencies.

I wish to table a list showing how the allocation of 10 per cent of the Road Maintenance Levy administered by the Kenya Roads Board (KRB) was spent by both the Kenya Rural Roads Authority (KERRA) and the Kenya National Highways Authority (KenHA) in the last three financial years.

**Mr. Speaker:** Mr. Minister, have you concluded?

**The Minister for Roads** (Mr. Bett): Not yet, Mr. Speaker, Sir. I was only organizing to get one of my colleagues to table the papers.

*(Mr. Bett laid the documents on the Table)*

(c) My Ministry will consider allocating funds to repair this road as may be prioritized by the Wajir South Constituency Roads Committee in their work plan. This is a Class E Road and it is within the purview of the Constituency Roads Committee.

Thank you, Mr. Speaker, Sir.

**Mr. Sirat:** Thank you, Mr. Speaker, Sir. I asked this Question last Wednesday and the Assistant Minister said that the answer he had was not adequate. That is why the Question was postponed to today. However, the answer I have got today is the same answer the Assistant Minister had last Wednesday. This is a national Question and the Minister has not supplied me with the list. Upon my request, he said that he would table it through you. I invite hon. Members to look at the list. I would like, therefore, to request the Chair to postpone this Question until hon. Members and I have looked at the list as per constituency.

**Mr. Speaker:** Mr. Minister, you tabled a list this afternoon? Did you not, as I followed your answer?

**Mr. Bett:** Mr. Speaker, Sir, yes, I have done exactly what I was asked to do; that is to table the list.

**Mr. Speaker:** Very well! Am I hearing, the Member for Wajir South, that you require time to acquaint yourself with the list before you ask any supplementary question?

**Mr. Sirat:** Mr. Speaker, Sir, I will request your desk to supply a copy to all Members.

**Mr. Speaker:** Order, the Member for Wajir South! You have not answered my question. Do you require more time to acquaint yourself with the contents of the list?

**Mr. Sirat:** Yes, Mr. Speaker, Sir. Thank you.

**Mr. Speaker:** Very well! I defer the Question to Wednesday, next week in the morning. Mr. Minister, please note. Be here on Wednesday morning to take supplementary questions.

Hon. Members, that brings us to the end of Order No.6 and we want to move to the next Order.

## MINISTERIAL STATEMENTS

**Mr. Speaker:** Are there Ministers with Statements to deliver this afternoon? I think I have information that the Minister for Transport has a Statement, and maybe the Minister of State for Planning, National Development and Vision 2030. However, we will begin with the Leader of Government Business if he is in the House.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Speaker, Sir, with your permission, may I on behalf of the Leader of Government Business make the following Statement?

**Mr. Speaker:** Proceed.

HOUSE BUSINESS FOR THE WEEK COMMENCING  
TUESDAY 21<sup>ST</sup> AUGUST, 2012

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Speaker, Sir, I wish to take this opportunity to make the following Statement with regard to the House Business for next week. Next week is especially critical for Members because we will be debating five very crucial Bills on the implementation of our Constitution because of the 27<sup>th</sup> August deadline. These Bills include the Kenya Defence Forces Bill, Bill No.35 of 2012 which is slotted for First Reading today and also the following Bills currently at the Second Reading stage. They are the National Intelligence Service Bill, Bill No.31 of 2012, the National Security Council Bill, Bill No.32 of 2012, the Leadership and Integrity Bill, Bill No.33 of 2012 and the Petitions to Parliament (Procedure) Bill, Bill No.34 of 2012. With only four ordinary sitting to reach the deadline, the House Business Committee will consider arranging the order of business to give priority to those Bills and to enable Members have quality time to debate and deliver quality legislation.

Finally, the House Business Committee will be meeting on Tuesday 21<sup>st</sup> August, at the rise of the House to consider business for the rest of the week.

Thank you, Mr. Speaker, Sir.

**Mr. Linturi:** On a point of order, Mr. Speaker, Sir. This is with regard to a Statement that I sought last week from the Minister for Foreign Affairs which he committed to deliver in this House this afternoon. This is with regard to a couple that is feared to have died in the ferry accident that recently took place in Zanzibar. I have not heard you--- I seek your guidance on this Statement.

**Mr. Speaker:** Order! I have followed you. The Minister for Foreign Affairs is under sanctions at the moment. So, he is unable to have audience in the House or even be present in the precincts of Parliament, not until Tuesday, next week. So, you will expect your Statement to come then or soon thereafter.

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, I want to issue a Ministerial Statement.

**Mr. Speaker:** How long will you take, Mr. Minister?

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, maybe, five minutes.

**Mr. Speaker:** Please, live within those five minutes because we are pressed for time.

RATING OF MPS/CDF COMMITTEES BY NATIONAL TAX ASSOCIATION

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, I am issuing the Ministerial Statement requested by Dr. Bonny Khalwale on the Report on performance rating of Members of Parliament and the implementation of projects under the Constituency Development Fund (CDF) in all constituencies by a body called the "National Tax Association (NTA)". He wanted me to address the issue of records released by the Association regarding the performance rating of Members of Parliament and their CDF Committees in the management of the funds and the implementation of projects under the CDF Programme in those constituencies. He wanted me to state the official Government position of this Association and indicate whether the Association is discharging a

delegated responsibility for the Government. He also wanted me to clarify whether the Association makes any reference whatsoever to the audited accounts by the Auditor-General.

He further wanted me to clarify what I will do to protect the reputation of those Members of Parliament who sit in this House and have been adversely mentioned in this Report by this Association which, in my view is, libelous.

Mr. Speaker, according to the web site and the information I have, the NTA is an independent non-partisan organization focused on promoting good governance in Kenya through strengthening citizens to Government accountability and citizen to citizen accountability through conduct of social audits. It is a voluntary based organization established to improve delivery of services and management of devolved funds for the benefit of Kenyans. The Association was established in April, 2006 by a coalition of leaders from the civil society, private and public sectors and is registered as a society under Section 10 of the Societies Act. I do not get copies of their ratings of Members of Parliament and their CDF Committees in their management of funds and implementation of projects. I, therefore, do not know the basis of their ratings. To the best of my knowledge and according to records that can be obtained from the website, the NTA will notify the concerned Members of Parliament and only forward a copy of their notification to the CEO of the CDF Board prior to conducting the audit.

Mr. Speaker, Sir, the NTA also ensures that the draft report is shared with the Member of Parliament concerned before publishing. Apart from what I have just stated, I am not aware of any communication from the NTA seeking approval either from any arm of Government to undertake the audit. Therefore, the activities that the association is engaged in are not delegated responsibilities from the Government. The Ministry is, therefore, not aware whether the NTA uses audited accounts from the Auditor-General or not.

Mr. Speaker, Sir, official reports of CDF performance including audited reports can only emanate from the CDF Board or the Auditor-General. I will be ready at all times to release these reports and answer any queries related to constituencies' performance, based on facts whenever called upon. For the NTA reports, I wish to state that it is not within my purview to issue responses or rejoinders to such an informal report. Members of Parliament are at liberty to challenge these reports either as individuals or through any other channel.

Given my Ministry's position as stated earlier with regard to the official Government position on the NTA reports, I am not in a position to provide the profile of the technical auditors which the association has been relying on and their qualifications.

I would like to further state categorically that I am not privy to the workings or standards of the operations of the NTA.

**Dr. Khalwale:** Mr. Speaker, Sir, I am glad the Minister has confirmed that this is not an organ that is carrying out delegated responsibilities from the Government. Having said that, could the Minister direct that this association only restricts itself to issues that have been flagged out by the auditor so that they are guided by actual Government audited accounts?

It might not have escaped the Minister's attention but this association continues rating his Assistant Minister as the most performing and his own constituency as performing equally well. Is this a coincidence or are the Minister and his Assistant Minister attempting to use this amorphous institution to score political points either in their own favour or to fix their possible opponents in the forthcoming general elections?

**Mr. Lessonet:** Mr. Speaker, Sir, while the Minister was responding he did make a statement that this is an independent institution. I do not know whether the Minister is using the

word “independent” just to equate it to the commissions which we have in this country which we know constitutionally are independent.

What has the Minister put into consideration to come out with such a statement that the NTA is independent?

**Mr. Nyammo:** Mr. Speaker, Sir, I am a Member of the Constituency Development Committee, a select committee of Parliament. I would say that we have had occasion to summon the NTA before the Committee. One of the things we questioned was their competence. Some of the things they talked about are what we have developed or constituencies have put up; classrooms, health centres and so on and so forth. They do not have engineers as their staff. They have no people with the capability to pronounce whether a building is complete, well built or not.

Again we wondered as to who their paymasters are because the normal thing is to heed the paymaster’s voice. Their credibility is really doubtful. It would be probably appropriate for the Kenya Government to protect Members of this House from condemnation by people who have no competence to pretend that they are evaluating projects or the works done in the constituency. It is well known that---

**Mr. Speaker:** Order, Member for Tetu! Seek a clarification. Your point on the other issues is already made.

**Mr. Nyammo:** Mr. Speaker, Sir, I think what the Minister should be telling this House is what the way forward is. Do we allow them to continue scandalizing Members of this House when it is a well know fact that the Constituency Development Fund has opened rural Kenya to the satisfaction of all Kenyans?

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, as I have said, I am not aware of the operations of this particular institution. As a Minister, I have made efforts to try and meet the management of this particular association but they have been very unco-operative.

In fact, I did write a letter to them to come and meet me so that we are able to agree on which areas they are supposed to be looking at and what standards they are supposed to follow because in auditing there are standards to be followed. But unfortunately, they have not been able to respond.

In fact, it has taken me time to respond to this Ministerial Statement because I was making all efforts to make sure that I engage them so that when I come here I have all the answers.

On the issue of rating, I have said clearly that I am not aware which criteria they used to rate these constituencies. I can categorically say here that we are not using these ratings in the Ministry to score political issues. This is not true.

**Mr. Gitari:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to tell this House that he has tried to look for the NTA instead of summoning them? Where are we heading to?

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, I have said clearly that I have written to them and I even have a copy of a letter which I have written to them. I have tried to call them but they have not been able to respond. I have no powers to force someone to come and see me; but this House has the powers. So, I would request that the Committee on CDF should use their powers to summon them and I will be happy to meet them when Parliament summons them.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to claim that he does not know how the NTA does their rating yet his Assistant Minister is on record for



using this report to campaign all over the country that he is the best in the management of CDF funds without any other authentic rating standards from anybody else; such as the Kenya National Audit Office or even CDF management Board?

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, he has said clearly that it was my Assistant Minister. I am not the Assistant Minister. You have said that the Assistant Minister has used that information; I have not used that information, for your information. So, that question should go to my Assistant Minister as an individual because he has used that information in his own constituency. He has not used that particular information in other constituencies.

On the independence of the institution, I said clearly that this is the information that I have picked on the website. If you go to their website they say they are independent and they could not define what “independent” is. I said clearly at the beginning of my Ministerial Statement that this is an independent non-partisan institution. So, Mr. Lessonet, I have just picked this particular information from the website.

Mr. Speaker, Sir, I also indicated clearly that if you are scandalised, as a Member of Parliament, you are free to take this institution to court for redress.

**Mr. Speaker:** Order! Hon. Members, we must move on to the next Ministerial Statement. We do not have much time.

Yes, Minister for Transport.

#### CANCELLATION OF TENDER AWARD FOR CONSTRUCTION OF NEW AIRPORT TERMINAL AT JKIA

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I wish to make a Ministerial Statement on the purported cancellation of a tender that was awarded to---

**Mr. Speaker:** How long are you going to be, Mr. Minister?

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I could do it in five minutes.

**Mr. Speaker:** Please, do it within five minutes.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I wish to make a Ministerial Statement on the purported cancellation of a tender awarded to Anhui Construction Engineering Group Company Limited, in joint venture with China Aero-Technology International Engineering Corporation, as requested by hon. Keter on 14<sup>th</sup> August, 2012.

Mr. Speaker, Sir, it is the policy of this Government to provide the necessary connectivity facilities for Kenyans and the international community. We are also desirous of developing Nairobi as the aviation hub for the region, built around our anchor airline, Kenya Airways and its Sky Team partners. Consequently, after assessing our current facilities and the projected air traffic in the future, we decided to develop a new terminal as we continue development the existing one. The new terminal is what is being referred to as the “Greenfield Terminal”.

The tender process began with an advertisement on 23<sup>rd</sup> June, 2011 and bids were finally opened on 17<sup>th</sup> November, 2011. On 14<sup>th</sup> November, 2011, the Office of the Prime Minister, in writing, asked the Kenya Airports Authority (KAA) to immediately stop the procurement process of the proposed Greenfield Terminal and commence the process of seeking Cabinet approval for the same through a Cabinet Memorandum.

Mr. Speaker, Sir, in disregard of the letter from the Office of the Prime Minister, the tendering went on, and the bid evaluation was hurriedly concluded on 14<sup>th</sup> December, 2011. A

tender committee meeting was held on 15<sup>th</sup> December, 2011, and a notification of award sent out on 16<sup>th</sup> December, 2011, even before the Minutes of the Tender Committee had been confirmed.

Surprisingly, the Chinese firm that was supposed to have been communicated to received the notification in China, considered it, accepted the award and sent a letter on 19<sup>th</sup> December, 2011, which was received in Kenya on the same day. On learning of this development, the Ministry sought clarification and re-emphasised the need not to commit the KAA on the project until the Cabinet is briefed. This was communicated by the Permanent Secretary (PS) on 10<sup>th</sup> January, 2012 and, subsequently, on 10<sup>th</sup> February, 2012. The matter is still being processed through the Cabinet structures.

Mr. Speaker, Sir, I will table the three letters that have been referred to in the Media and everywhere else for hon. Members to see their contents and where the purported cancellation has been addressed.

In its meeting of 21<sup>st</sup> February, 2012, the KAA Board sought for and received information on the notification of tender award for the first time. The Board considered the issues surrounding the process of the tender, noted discrepancies in the tender process and resolved that the KAA Management should terminate the procurement process. The Board also noted that the project cost had moved from the estimated maximum of US\$500 million to a new figure of US\$653,782,814.57, despite the fact that no approval had been sought from the Board.

Mr. Speaker, Sir, the notification of award that had been sent out was conditional to successful negotiations and signing of a loan agreement with the project financier. Therefore, so far, there is no agreement that has been entered into between the KAA and M/s Anhui Construction Engineering Group Company Limited. Since there exists no signed contract, we do not anticipate the Government to incur any monetary loss as a result of the purported cancellation of the tender.

Indeed, Section 68(3) of the Public Procurement and Disposal Act, 2005, which was passed by this Parliament, states as follows:-

“68(3) No contract is formed between the person submitting the successful tender and the procuring entity until the written contract is entered into.”

Mr. Speaker, Sir, I have no personal interest in this matter, except to ensure that public funds under my oversight are safeguarded and Kenyans obtain value for money.

Thank you.

**Mr. Speaker:** Yes, Member for Belgut.

**Mr. Keter:** Mr. Speaker, Sir, I wish to seek further clarification from the Minister.

**Mr. Speaker:** I want to restrict you to two clarifications.

**Mr. Keter:** Mr. Speaker, Sir, there is an opinion from the Attorney-General, dated 22<sup>nd</sup> February, 2012, which, partly, reads:-

“---By seeking to terminate the procurement process after notification and acceptance of award of contract, the Authority will not only be contravening the provision of Clause 327(3) of the Request for Proposal but also acting in bad faith, thereby undermining the integrity and fairness of the procurement process---“

Mr. Speaker, Sir, this is a letter written by the Attorney-General, who is the legal advisor to the Government. I will table the document.

Also, the Minister has said that it is a “purported” cancellation. There are Minutes to that effect, which are dated 26<sup>th</sup> July, 2012. Whereas the Cabinet Sub-Committee on Infrastructure is dealing with the case, after some of the Directors of the Board were retired---

Out of the nine Directors of the KAA Board, seven come from one region of this country. After some of them were retired, the Board was forced to cancel the tender. I have with me here, Minutes of the Board meeting that cancelled the tender. The Managing Director did not sign the Minutes. He said that the Attorney-General had given an opinion he did not want to go against.

I hereby table the documents.

*(Mr. Keter laid the documents on the Table)*

Mr. Speaker, Sir, tender procurements are run by Tender Boards Committees. The Board has no say in the process, unless some rules have been flouted in the process. So, I want him to come out clearly and say whether he has any interest in a company called “China Construction Engineering State Corporation”. I want him to indicate clearly whether he has any interest in that company, declare what relationship he has with one Janice Gachoka, the Chairperson of the Procurement Appeals Board, and state whether he has talked to him concerning this case.

**Mr. Speaker:** Very well.

Yes, Member for Kinangop.

**Mr. Ngugi:** Mr. Speaker, Sir, I want to thank the Minister for the Ministerial Statement. I would like to seek clarification because it appears that the KAA Management hurried the processes of this tender of a very large amount, which is improper. I would like him to tell the House whether, as the Minister in charge, he has taken any action against the management of KAA or has investigated any other malpractices that the management of the Authority may have engaged in.

Thank you, Mr. Speaker, Sir.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I want to know something from the Minister. He has been given advice from six different offices. There is the Office of the Attorney-General which has given him three letters which are very clear. You cannot terminate when you have awarded according to the law on procurement and he has quoted the relevant section. He has rejected the advice also from the Permanent Secretary (PS), Office of the Prime Minister on the same. He has rejected advice from Ethics and Anti-Corruption Commission that this process should not be stopped. He has rejected advice from the Public Procurement and Oversight Authority (PPOA). He has rejected advice even from Mr. Kimemia, the Permanent Secretary and Secretary to the Cabinet. I wish to quote as follows: There is a Committee where the Minister sits. It is the Sub-Committee on Infrastructure in the Office of the Prime Minister where he sits. This is what the committee said:-

“It was agreed that even when the Committee wanted to think differently, the legal opinion of the Attorney-General as the Constitutional Chief Legal Advisor is material to making a decision on the way forward, hence could not be ignored. Even though the Minister for Transport insisted on the tender award being cancelled against the advice of the Attorney-General, the Committee advised that going against the legal opinion of the Attorney-General, who is the Government Chief Legal Advisor is, in itself, unconstitutional under the new constitutional order.”

Mr. Speaker, Sir, for the benefit of this House, I want to refer to Article 156 of the new Constitution which is very clear. It states:-

“The Attorney-General is the Principal Legal Advisor to the Government; and,

(ii) Shall represent the national Government in court or in any other legal proceedings on which the national Government is a party, other than the criminal proceedings.

Most important, it says that the Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.”

Could the Minister clarify the following? Is he of a better legal position than the person who this House and this nation has bestowed those powers?

**Mr. Duale:** Mr. Speaker, Sir, I want to be very categorical. I want to table the following documents. I want to start with the legal opinion by the Attorney-General of the Republic of Kenya concerning this contract and his position. I want to table the opinion of PPOA over that contract, which the Minister has disregarded, dated June 2012.

Mr. Speaker, Sir, I want to table the acceptance letter by the Chinese company after an award was given to them by the Kenya Airports Authority. I want to table both the award and the acceptance.

Mr. Speaker, Sir, finally, I want to table the report of the Infrastructure Sub-committee led by the Minister for Public Works, hon. Chris Obure, in which the Minister sits. Among the Ministers who were there was hon. James Orengo, where the Minister was told – and it is in the minutes - that the Constitution does not allow what he purports to do. This Minister must come out very clearly and tell this nation his interest in the said Kshs55 billion project. I table the document.

*(Mr. Duale laid the documents on the Table)*

**Mr. Linturi:** Mr. Speaker, Sir, I really sympathise with the Minister because he is always stuck in circles of controversy.

*(Laughter)*

**Mr. Speaker:** Order, hon. Linturi! Move to the clarification that you want.

**Mr. Linturi:** Mr. Speaker, Sir, the clarification is this: Why is the Minister always finding himself in those kind of scenarios wherever he is executing his duties as a Minister?

*(Laughter)*

Secondly, is he prepared to foot all the costs of legal suits that are likely to arise out of this particular contract which he has decided not to honour?

**Mr. Speaker:** Order, hon. Linturi! Hon. Keynan what is your point of order?

**Mr. Keynan:** Sorry, Mr. Speaker, Sir. I switched on the button by mistake.

**Mr. Speaker:** Is that by error?

**Mr. Keynan:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Okay. Hon. Linturi, please, continue.

**Mr. Linturi:** Mr. Speaker, Sir, the last clarification is this: Is the Minister preparing himself now to refund the Kenyan public any costs that arise out of the mistakes that he has done while in the Government? That is because the burdened taxpayer will not continue meeting those expenses because of his negligence and recklessness in the performance of the duties of his office.

**Mr. Baiya:** Mr. Speaker, Sir, I would want the Minister particularly to clarify what prompted the Prime Minister to write the letter that he wrote, and which apparently triggered the apparent fast-tracking of the process. Why, indeed, he has actually deemed it wrong merely because the process was fast-tracked? Why did he deem that to be a basis for stopping that contract and, more so, when actually all the due process and all the representatives of the due process appeared to have actually given the whole process a clean bill of health? It is particularly important for the Minister to also clarify the following: Development is actually an entitlement for the country. Why does the Minister deem it necessary to delay and deny the Kenyan people their entitlement to have a modern airport?

**Mr. Speaker:** Order, Minister! Before you respond, all the documents tabled by both hon. Keter - and I have not seen all of them, Mr. Keter. You better forward them to the Clerks-at-the-Table. For the time being, the documents so far received at the Clerk's Table are admissible except for two, which are the following: The document headed "Secret; Public Procurement Oversight Authority (PPOA)" on the grounds that this document is un-dated. It has no date other than saying that it is June 2012. There is no day in the month of June and so it is un-dated to that extent. The document has no signature. It is, therefore, difficult to authenticate it or trace it back to any particular source.

The next document that is not admissible is headed "Republic of Kenya, Office of the Prime Minister" This document is supposed to have been authored and signed by hon. Chris Obure as Minister for Public Works. Although it states on page 13 "signed", there is no signature appearing thereat. So, for those reasons, the two documents are excluded from parliamentary records. The rest are admitted because they pass the test for admissibility.

Minister, you may now want to respond.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I know the matter is complex and I may not be able to exhaust all the answers here. I must congratulate the Members for the effort they put into gathering all this information from different sources. I could have provided it to you, I have it.

However, going by Mr. Keter on the opinion of the Attorney-General, he is quoting one opinion selectively. In fact, the Attorney-General has given three opinions. The latest opinion is what we go by which was to say that the Public Procurement Oversight Authority (PPOA) is the legally established body to provide advice on this matter. Consequently, we wrote to the PPOA giving them all the information. We started an inquiry and we are yet to report. As the Minister, I reported to them---

**Mr. Speaker:** Order, Minister! There is a point of order by the Member for Belgut.

**Mr. Keter:** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Minister not to table that latest legal opinion by the Attorney-General? Let us see it so that we get to know. The people who went to the PPOA are the people who were concerned and not you as a Ministry. So, if you have the two letters, you can table them.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I am speaking on the authority of the Ministry. I am confirming to this House that we received advice from the Attorney-General, and communicated with the PPOA. I am still waiting for the response from the PPOA to then report back to the Cabinet sub-committee. As I said in my Statement, the matter is still being processed through the Cabinet structures. The Cabinet has not finalized on this matter.

**Mr. Speaker:** Order, Minister! There is a point of order by the Member for Gwassi.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to evade addressing a legitimate challenge to him to explain and give us documentary evidence that the Attorney-General gave him the advice to seek advice from the PPOA? What we have are three letters from the Attorney-General with the same opinion. We have a letter which I can also table from the Ethics and Anti-Corruption Commission (EACC). The letter reads:-

“The preliminary investigation has not returned any findings to warrant delay in implementation of the project. You may proceed with the project as planned and ensure maximum integrity during implementation phases”

This is not procurement. Procurement is assumed to be completed. Could the Minister proceed---

**Mr. Speaker:** Order, Member for Gwass! Member for Gwass, what you are saying is all very nice, but you know you caught my eye on a point of order. So a point of order, even if you retrace your steps - go and look at the HANSARD again - you prosecute it so that it fits within the parameters of a point of order. You are a very seasoned parliamentarian and you will know that what I have given you now by way of direction is well grounded.

However, you have a very valid point. From where I sit I would do it easily, but I have given you adequate guidance and leadership in the past, and you are supposed to now be very able on your own.

Minister, will you kindly proceed?

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, as I was saying, the Attorney-General gave us guidance and this is the process that has been going on in Cabinet meetings. The latest was to seek information from the PPOA and then brief the Cabinet. I am still waiting for the report of the PPOA to then take it to the Cabinet, so that we can resolve this matter.

Mr. Speaker, Sir, the next item is the minutes of the Board that were said to be of the meeting of 22<sup>nd</sup> of July.

**Mr. Speaker:** What is it Member for Yatta? Minister, there is a point of order. I am afraid there are too many of them, but that may be just due to the magnitude of the matter.

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. With due respect to the Minister, is he in order to mislead the House that the matter is being awaited at the Cabinet while there is already a complaint from the Cabinet and there is one letter from none other than Mr. Francis Kimemia, the Secretary to the Cabinet, complaining about your Ministry? It is addressed to the Attorney-General and seeks further advice. He says:-

“In my opinion, it is in bad taste and disrespectful to the Cabinet to attempt to compel the Managing Director to undertake such action behind the Cabinet Committee and Cabinet itself”.

It even goes further to say:-

“I am rather concerned because this advice was given to the Permanent Secretary, Ministry of Transport, personally in a meeting of 24<sup>th</sup> July”.

In response to the same letter, the Attorney-General says as follows:-

“If a matter is pending for deliberations before the Cabinet, it would be imprudent to initiate a parallel process as it could potentially create conflicting outcomes which could expose the Government and the Authority to legal liability.”

The parallel process is where they have started to terminate the tender.

Mr. Speaker, Sir, the complaint from all the persons concerned, the Prime Minister’s Office, the President’s Office and the Cabinet is that the Minister has become totally allergic to any advice from any quarter within the Government.

The final letter from the Attorney-General shows that the Minister is misleading the House--- This now even touches on the appointing authority.

Mr. Speaker, Sir, I table the two letters.

*(Mr. C. Kilonzo laid the documents on the Table)*

Mr. Speaker, Sir, this one talks about ground breaking. This is addressed to the Permanent Secretary and the Managing Director. This is from the Secretary to the Cabinet. It says:-

“It is imperative that ground breaking be held on 30<sup>th</sup> November 2012 at the latest”

This is the Cabinet saying that, yet the Minister has been in public saying that there would rather be no ground breaking even if it takes how long. He needs to come out very clearly because we have shown you seven different offices which have advised your Ministry and yourself. It is only you who is not a lawyer who has other legal opinions, which nobody seems to understand, including your own committee on which you sit. Are you in order?

**Mr. Speaker:** Minister, will you kindly respond to the balance of the questions raised for clarification? Begin with the point of order by the Member for Yatta, which obviously is immediate.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, indeed, the issue raised by the Member for Yatta just confirms what I said, that the matter is still being processed in the Cabinet. The letters from the Head of Public Service and the Attorney-General are on a totally different matter related to this contract in terms of other actions, and they say:-

“Until the matter is resolved by the Cabinet, no further action can be taken”.

It just proves the matter is still in Cabinet. Therefore, thank you for supporting my argument.

Mr. Speaker, Sir, the other issue is in terms of the minutes of the Board. As I said in my Statement, the Board did meet in February to discuss this matter. There is a whole scope of so many things. For those who tabled the minutes I do not know whether you have been given the minutes of 22<sup>nd</sup> February, when the crux of the matter was discussed. The minutes of 27<sup>th</sup> July were just re-emphasizing what the Board decided in February, and were asking why no action had been taken since the issue had been resolved in February. There is much more that you have not been given. You have been given selectively what is suitable for the contractor but not what is suitable for the wider public.

The other issue I just want to mention here is that the so-called company--- The China company, to the best of my understanding, actually says it is a State corporation owned by the Government of China. Therefore, I would have no interest in a company owned by the Government of China. I am not even sure who they are or what their exact names are. I have no interest at all in it. I do not know them. I have not met them; if the Member has been sent by them to me, then he can give me further details on exactly what they want.

Mr. Speaker, Sir, in relation to Mr. James Gachoka, I know him as Mwaniki Gachoka, the Chairman of the Public Procurement---

**Mr. Speaker:** Order, Minister! There is persistence from the Member for Gwasssi on a point of order; let us hear him.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. The only document that the Minister is relying on for holding this process is the purported communication from the Attorney-General's office. I think it would be in order for this House to get a copy of this letter from the Attorney-General, telling the Minister specifically to refer this matter to PPOA. This House is

entitled to the truth and facts. I request that the Minister is compelled to table the communication from the Attorney-General's office because we do not have it.

**Mr. Speaker:** Order, Member for Gwassi! You point is made.

Minister, that is genuine challenge. Your response?

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I had not anticipated that but I would be very happy to provide that information.

**Mr. Speaker:** Proceed, Mr. Minister. Let us move to conclude because we are out of time.

**The Minister for Transport** (Mr. Kimunya): Thank you, Mr. Speaker, Sir. As I was saying, I know Mr. Mwaniki Gachoka, the Chairman of the Public Procurement and Administrative Review Board at a personal level, but I have not discussed with him any of these matters because our relationship is personal and is not based on his work at the PPRA Board. In any case, I am still waiting for an opinion from PPOA and not from the review board. He is the chairman of the review board and not the chairman of PPOA. Those two are totally different.

Regarding the question by Mr. Ngugi about the action by the Board, what has triggered the flurry of all this information going to the media is because the Board has started acting. The meeting of 22<sup>nd</sup> July, 2012 was basically asking the management what they had done since the issue was resolved. The management had not acted; they started going round and seeking assistance from all offices to protect themselves from the Board's action. The Board obviously will be taking action in accordance with the Act and their mandate; I will then brief the relevant committee in terms of where we go from here.

The issue by Mr. C. Kilonzo and the Attorney-General's advice are all intertwined with the earlier case. The most important thing to note is that if you read the opinions of the Attorney-General, they are very clear; they were sought by the Kenya Airports Authority (KAA) on specific matters and he addressed them. We also sought his advice and he gave it to us. Therefore, the answer you get depends on what was the request, and not the generic advice on procurement. So, I would want to look at it from a reserved point of view. At this point, we may not be able to interrogate all these documents and I will be proposing something at the end.

The other thing that I want to mention is that hon. Baiya raised the issue of what triggered---

**Mr. Speaker:** Order, Minister! There is a point of order from the hon. Member for Gem.

**Mr. Midiwo:** On a point of order, Mr. Speaker, Sir. I rise on a point of order just to seek your guidance. This matter is not small. Even the media reports say that when the President was in the investment conference in London, one of the biggest problems that Kenya was facing as an investment destination is our airport. Therefore, it is amazing that Mr. Kimunya today is trying to protect something for the good of Kenyans for once, and I thank him for that. I want to plead that this matter be taken to an investigative parliamentary committee, because it is not a small matter. We are talking about Kshs55 billion which is preventing Kenya from being a better investment destination. Even countries like Rwanda are now said to have a modern airport. These are small countries, yet they have bigger infrastructure than Kenya. I want to plead with you that you order that this matter be taken over by the relevant Parliamentary Committee because there is more to what the Minister is telling this House than meets the eye.

**Mr. Speaker:** fair enough; you have made your point. Minister, will you respond to the balance of concerns.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, regarding the issues raised by Mr. Baiya, it is important that I read one paragraph. A letter was written and it



triggered all these processes; on 14<sup>th</sup> November, 2011, three days before the closing of the tender, a letter from the Office of the Prime Minister stated:-

“The project as structured does require mobilization of massive resources with approvals by various arms of the Government and consequently Cabinet approval is required for the implementation of the project to protect public interests. It is the view of this office that the ongoing procurement process may not achieve the desired results without going through the Cabinet approval as required under the new Constitution. The purpose of this letter is, therefore, to recommend that the ongoing procurement process stops immediately, and that you commence the mechanism of seeking Cabinet approval for the same by way of a Cabinet memorandum.”

This letter was addressed to my Permanent Secretary and was copied to the Treasury, the KAA and to the Office of the President. Pursuant to that, we started the whole process of reviewing what was happening. Instead, the KAA abided by what the Prime Minister had directed, that they fast-track the procurement process and the evaluation at a speed that has never been seen. Everything was completed within three days; communication was done and a notification given. At that point we realized that there was something that was not right. There was something that was not going on well. Out of 120 bidders only one was deemed to have succeeded. So, it was fast-tracked and the letters were being taken to China, signed and returned within a day.

**Mr. Speaker:** Order, Mr. Minister! Just move to conclude because I can sense that you are beginning to repeat things that you had stated earlier.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, just to re-emphasize the matter of development, we are not delaying the development of the airport. When I went to the Ministry, the only development that was taking place at the airport was just the reconfiguration of the existing terminal. I do recall that during the opening of one of the sessions of Parliament, you challenged us yourself that we needed to do something at the airport. I took that airport and we said that we needed to look beyond the reconfiguration. Therefore, we decided that we should do a brand new terminal. Therefore, I am at the heart of ensuring that we actually get the best terminal for this country; but the way it was being handled, people took that as an opportunity to short-circuit the procurement process to achieve a totally different outcome from what we wanted.

Since this matter is huge and I have much more documentation than is here, I would rather we deal with it through the Committee on Transport, Public Works and Housing. I would be happy to work with them or whatever other committee would want to look at it so that Kenyans would eventually know the truth. I can tell you that we are committed to ensuring that the development of the Nairobi airport is undertaken. We have started the process of ensuring that we break the ground before the end of this year, notwithstanding this process. That is the assurance I want to give to the House. We cannot be held to ransom by one contractor when we want to make progress in the development of the airport. We have already put in place measures to ensure that the airport is developed and a new terminal comes up. Grand breaking takes place before the end of the year at a better value than what was tabled here.

Regarding what Mr. Linturi said about why these things seem to be getting into trouble, when you speak the truth and defend public good, you step on so many toes and corruption has a way of fighting back. I can tell you that this is one typical case where people feel that what they expected is not coming their way; they are fighting back. They will continue fighting back but I will continue fighting them for the public good.

**Mr. Speaker:** Hon. Members, I recognize that there is still a lot of interest in this matter. I can recognize Mr. Chanzu, Mr. Ogindo, Mr. Keter, Mr. Duale, Mr. Mbadi, Mr. James Maina Kamau, Mr. Kiuna, Mr. Njuguna and Mr. Keynan. We cannot take all those in the time that we still have. It would actually take the rest of the day if we were to accommodate all those hon. Members. Given the strategic importance of this matter, and the quantum of it, at least measured in monetary terms, I will direct that it be referred for investigation to the joint committees on Transport, Public Works and Housing, Budget and Finance, Planning and Trade. The three of them should work together and inquire into this matter and file a report in this House within the next 14 days. It is actually an urgent matter as we are all aware. We are under threat by several other countries within the continent significantly, and there is no harm naming them. South Africa is bidding to be the hub of Africa and so is Ethiopia and Rwanda. As a country, we must actually move very quickly, otherwise, we will become irrelevant.

Hon. Members, that brings us to the end of Order No. 7; we want to take the next Order.

## **PROCEDURAL MOTION**

### **REDUCTION OF PUBLICATION PERIOD FOR THE KENYA DEFENCE FORCES BILL**

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I beg to move to the following Procedural Motion Motion:-

THAT, pursuant to the provisions of Standing Order 107, this House orders that the publication period of the Kenya Defence Forces Bill (Bill No. 35 of 2012) be reduced from 14 days to 11 days.

Again, this is a Procedural Motion; this Bill should have been moved together with the others but for some reason, it was left out. It is one of the Bills required within the new constitutional framework. Fortunately, hon. Members have had more time to look at it but we now need to have it reduced so that it can get to the committee and it can start looking at it. We do not need to belabor the point; the House was very magnanimous in terms of granting for all the others and I would wish that they do the same on this one.

With those few remarks, I beg to move and request Mr. Oparanya to second.

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, I second.

*(Question proposed)*

*(Question put and agreed to)*

## **BILL**

### *First Reading*

### **THE KENYA DEFENCE FORCES BILL**

*(Order for First Reading read – Read the  
First Time and ordered to be referred to*

*the relevant Departmental Committee)*

## COMMITTEE OF THE WHOLE HOUSE

THE LEGAL EDUCATION BILL

THE KENYA SCHOOL OF LAW BILL

**Mr. Speaker:** Hon. Members, I have the following Communication to make with respect to Order No.10. That the Committee which oversees the respective Government departments has not been able to complete fully its examination of the two Bills and that although they have prepared their various amendments, those amendments, as you will notice have not been circulated. The Committee has been able to conclude them but if they are not circulated then the process is not complete. So in those circumstances, I will defer Order No.10 until Tuesday next week. On Tuesday at 2.30 p.m. that Order will appear on the Order Paper at the appropriate position.

*(Committee of the whole House deferred)*

## BILLS

*Second Readings*

THE NATIONAL INTELLIGENCE SERVICE BILL

THE NATIONAL SECURITY COUNCIL BILL

**Mr. Speaker:** Where is the Minister of State for Provincial Administration and Internal Security? Mr. Wamalwa, I thought it was---

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, it appears that the Minister may have anticipated that we will be going to Committee first and since he is not here, if I could ask for your indulgence that we reorganize the order to have the Leadership and Integrity Bill coming before the security Bills while we get the Minister to come.

**Mr. Speaker:** Even then, look at the point at which we are in terms of time and you will notice that I have been pushing for us to get through Business. So, the Minister must have been conscious that even if we dealt with Order No.10 at this point, we would have been on Order No.11. That notwithstanding, I will defer it and instead take Order No.12 and it is the same Minister. So we will have to take Order No.13 for the convenience of the House but we will still call out those Orders later on.

*(Second Reading of Bills deferred)*

The Minister for Justice, National Cohesion and Constitutional Affairs!

*Second Reading*

THE LEADERSHIP AND INTEGRITY BILL

Maybe even as you proceed, you will want to clarify if you also anticipated that we would have to take the other Business first, so perhaps, you would not have been here.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. With all due respect, this confuses us because we used the Order of Business to prepare and so we are ill prepared and these are constitutional Bills.

**Mr. Speaker:** Order, Dr. Khalwale! Do not belabour the point! I have communicated; I have talked about those matters. You have heard the Minister for Transport holding brief for his colleagues and I know that as the Minister for Justice, National Cohesion and Constitutional Affairs commences to move business at Order No.14, all interested stakeholders will get up because as I have said previously and I have no hesitation to repeat that; all hon. Members serving in the Tenth Parliament are of above average intelligence. I know you will wake up; you will get up to that Business.

Please proceed, Mr. Wamalwa!

*(Mr. Imanyara, Mrs. Odhiambo-Mabona  
and Dr. Khalwale consulted loudly)*

Minister, Mr. Imanyara, Dr. Khalwale as well as Mrs. Odhiambo-Mabona are disputing that all Members serving in the Tenth Parliament are above average intelligence. They think Ministers are exception to that observation.

*(Laughter)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Speaker, Sir, I beg to disagree but let me proceed.

I beg to move that The Leadership and Integrity Bill be read a Second Time.

As a nation, we know that we have had a past where Kenyans have suffered because of bad governance and corruption. When Kenyans were fighting for the new Constitution, they were really aspiring for a new Kenya where we can raise standards of leadership, where we can have leaders of integrity and where we can embrace the new values as enshrined in Article 10 of our Constitution. Article 80 of our Constitution requires this House to develop a legislation that will give effect to the provisions of Chapter Six of our Constitution and the Leadership and Integrity Bill that was published in the *Kenya Gazette* on 6<sup>th</sup> August, 2012, is the Bill that we have taken time to develop pursuant to the provisions of Article 80 of our Constitution.

*[Mr. Speaker left the Chair]*

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

This Bill, in accordance with the timelines provided in the Fifth Schedule, is supposed to be enacted before 27<sup>th</sup> of August, 2012, within two years of promulgation of the Constitution of Kenya.

I want to thank Members for shortening the time of the period for publication. I also want to thank Members for this afternoon shortening the time within which the Committee will engage with this Bill and really going beyond the extra mile to be able to meet the deadline. I believe today as we move on to pass this Bill into law and to set new standards of leadership in our country, there are issues that we need to address.

Mr. Temporary Deputy Speaker, Sir, there is public outcry and concern out there that this Bill, perhaps, was watered down. There are some who have even had the audacity to accuse my Ministry of being responsible for such watering down of this Bill. I wish this afternoon, as I move this Bill, to dispel such rumours and to make it very clear to Kenyans that this Bill is one of the Bills that have gone through a very wide consultative process and has taken views of Kenyans onboard.

Mr. Speaker, Sir, my Ministry started developing this Bill as early as August, 2011. At all material times, my Ministry worked very closely with other stakeholders such as the Constitution Implementation Commission (CIC), Kenya Law Reform Commission, hon. Attorney-General's Office and all constitutional commissions. We have also worked with the civil society organizations. We have engaged with our development partners and international agencies. We have also been able to consult with all Kenyans who were concerned about bad governance in our country and poor leadership.

Mr. Temporary Deputy Speaker, Sir, this is one of the Bills that have received support. After concluding the Bill, as the originator of the Bill, we did, in April, 2012, forward it to the hon. Attorney-General's office and the Kenya Law Reform Commission. Subsequently, this Bill was forwarded from the Attorney General's Office to the CIC. The CIC did carry out further stakeholder consultation between June and July. Eventually, we did hold a round table that brought together all stakeholders on the 27<sup>th</sup> of July.

After the round table conference, it was then given back to the hon. Attorney-General for cleaning up. Subsequently, it was brought back to the Ministry. Eventually, we did table it before the Cabinet sub-committee on the Implementation of the Constitution, on 30<sup>th</sup> under the chairmanship of the Rt. Hon. Prime Minister. We did have a committee that went through it thoroughly. All stakeholders were involved. They participated in that meeting, including the Chairman of the CIC and Dr. Elizabeth Muli fully participated both in the meeting and resolution that finally approved it.

Mr. Temporary Deputy Speaker, Sir, the Bill as published originally had about 83 sections. But after going through the sub-committee meeting, the Bill that was approved subsequently and returned to my Ministry for publication had certain sections removed from it. It is important for Kenyans to understand the reasons some sections of the Bill were removed. We had a part that required the declaration of income, assets and liabilities. After going through it, those present found that, indeed, we still have the Public Officers Ethics Act, 2003, which still has provisions that require declaration of wealth. It looked like duplicity of certain requirements of the law. Subsequently, what was agreed was that the sections that were duplicating what was already provided and what was already law, through the said Act, be removed. This was by consensus and by resolution of all present, including the CIC. That is why that section was removed.

We have the Ethics and Anti Corruption Commission Act, also providing for ethics. It was agreed that the Office of the Attorney General, Law Reform Commission and the CIC should look for a way of consolidating all statutes touching on ethics together, so that we have one comprehensive Act that will address the issues of ethics. Therefore, whatever has been left out, whatever probably the public is complaining about, will be addressed during the consolidation of this Act.

Mr. Temporary Deputy Speaker, Sir, primarily, the Ethics and Anti Corruption Commission are given powers by this same Bill to be the implementing Commission. There was a requirement for vetting of all those aspiring to be elected to State offices in our country. It became an issue of whether it was practical to have the over 200,000 probably, candidates who may be interested in the six different slots; Presidential, parliamentary, county assembly, women representative, Governor--- It was estimated that if we were to go through the process originally proposed in the original Bill, we would have over 200,000 candidates lining up at the Ethics and Anti- Corruption Commission to be vetted and cleared. Within the remaining time, it will not be practical. That is why some changes were made to this Bill. It was discussed and agreed. Certain sections were removed. We still have the paralysis that the Ethics and Anti-Corruption Commission is still suffering from.

I want to thank Members for approving the names of the Commissioners. After approval of the names of the Commissioners, a court case was filed against the Commissioners. As I speak today, that Commission is not fully constituted. It is still not operational because the case is still pending. The Chairman and the two Commissioners are yet to be sworn in. We were optimistic that in the cause of September the case will be determined. We do hope that eventually these Commissioners will be sworn in. They will be able to take office and discharge their mandate.

But to avoid these bottlenecks that could further burden the electorate and the electoral process within the time constraints that we have, that is what was decided. These were some of the reasons that were considered by our Committee and all were involved. I am a little surprised my good friend, the Chairman of the CIC, Mr. Charles Nyachae, talking as if he was not in the sub-committee meeting that was chaired by the Rt. Hon. Prime Minister and heard the decisions that were arrived at in approving the Bill that I am now moving before the House.

Mr. Temporary Deputy Speaker, Sir, we want to also thank the various bodies that were involved in the development of this Bill. It is a Bill that, in essence, will be carrying out or giving effect to the provisions of Chapter Six.

Mr. Temporary Deputy Speaker, Sir, the first part of this Bill is really the preliminary and it is setting out the guiding values, principles and requirements in accordance with the new Constitution.

Mr. Temporary Deputy Speaker, Sir, Part II of this Bill is the general leadership and integrity code. It is touching on all issues that have been required under Chapter Six, to be covered, to address the issues of how public or State officers will be able to conduct themselves in ensuring, as we require under Section 8, that we must at all times not abuse the public trust and know that we are holding office as a privilege. It is a Bill that seeks to create servant leadership and open, transparent and accountable leadership. It is a Bill that under Section 11, is seeking to promote professionalism in the performance of our duties as State officers. It is also a Bill, under Section 12, that requires our leaders to have financial integrity. So, Kenyans who are aspiring to lead this country have to put their house in order, as King Hezekiah was given time to put his house in order. We must all, as leaders aspiring to lead this country, put our financial matters in order.

Mr. Temporary Deputy Speaker, Sir, this Bill also sets the moral and ethical standards required of Chapter Six, under Section 13. It prohibits the issue of gifts. It is also making it very clear that for Kenyans holding accounts outside Kenya, from now on, this is going to be a thing of the past. We have had billions being siphoned from this country and stashed in secret accounts abroad. I was recently in Geneva and was very surprised that the Swiss Government is now publishing and showing who has stashed away millions and billions in secret Swiss accounts. Kenya is one of the countries that has people who have stashed hundreds of millions of shillings in secret accounts in Switzerland. I think anyone now aspiring to lead this country or hold a position of leadership will know that now, that will be a thing of the past.

Mr. Temporary Deputy Speaker, Sir, the Bill also requires political neutrality and impartiality. It makes specific provisions that have been listed under Chapter Six. Those who are fearing, perhaps, that this Bill does not satisfy the necessary threshold that Kenyans aspired for, we want to disabuse them of that notion. Right from Section 6 all the way to Section 36, we have a very clear code of integrity that we all must now satisfy in order to hold positions of leadership in this country.

Mr. Temporary Deputy Speaker, Sir, Part III of this Bill now gives the specific leadership and integrity codes. It is very clear what is required. Part IV of the Bill provides for the enforcement of the leadership and integrity code. There are those who have said that this Bill does not provide for enforcement. Right from Sections 40 to 45, it is very clear that, that is provided for.

Mr. Temporary Deputy Speaker, Sir, in Part V, we have provided for offences and penalties, where there is breach. Part VI of the Bill makes general provisions. It is very clear that there will be oversight over the Commissioners. That is because, at the end of the day, there has to be one who will guard the guard.

Mr. Temporary Deputy Speaker, Sir, Part VII goes on to give the transitional provisions. We have a schedule that has attracted an outcry. But, at the end of the day, this Bill requires every leader to be a leader of integrity. So, whatever you will be required to fill in the First Schedule, the Independent Electoral and Boundaries Commission (IEBC) will be able to check this. We do have the National Security Intelligence Service (NSIS) and our agencies that will do their work, even if they are not provided for here. As a matter of course, they will do their work and if anyone makes any false declaration, of course, the penalties are very clear. So, the Second Schedule gives the table for registerable interests.

Mr. Temporary Deputy Speaker, Sir, I want urge to Members to support this Bill. I want also to tell Kenyans that my Ministry did its best in originating this Bill by involving all stakeholders. We did submit a very comprehensive Bill of 83 sections. After we have done our part as the Ministry, State Law Office, Constitution Implementation Commission (CIC) and Kenya Law Reform Commission that is not to mean that whatever we present is really cast in stone. We do have the Cabinet that ultimately has the responsibility to approve every draft and legislation that has been drafted. After approval, we do now submit before this House these Bills. This House has the powers to approve it as it is, amend, improve and even subtract on it. Those are the powers that this Constitution has given this institution and it cannot be blamed on an individual or one institution. There was teamwork and we have done our best. We believe that what we are presenting before this House today is a good draft. It is a Bill that meets the requirements of Chapter Six. I do urge hon. Members to pass it and know that we have room to improve on it in future. We have room to consolidate all the Acts. We need to go this way so that

we do not have pieces of legislation scattered all over that could be consolidated to have a comprehensive statute dealing with all the issues.

Mr. Temporary Deputy Speaker, Sir, it is not only the integrity issues, ethics Bills or statutes that we are seeking to consolidate. We are also, as a country, consolidating all laws in the agricultural sector. We have also done very well in the country in consolidating land laws. As a senior lawyer, you do know that we have had different statutes touching on the land issues. What we are doing now is consolidating. So, we have a comprehensive law dealing with land. There is a comprehensive law that is coming before this House that will be dealing with the agricultural sector. In education, we are doing the same. For ethics and integrity, this is the Bill but there are other Bills that we will be consolidating with this in future.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to move and ask hon. Kimunya, who was with us in the Committee, to second.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I rise to second this very important Bill on leadership and integrity.

Mr. Temporary Deputy Speaker, Sir, I am surprised that the champions of integrity are not in the House today, when we are discussing integrity.

*(Mrs. Odhiambo-Mabona gestured  
at Mr. Kimunya)*

Mr. Temporary Deputy Speaker, Sir, I can see that the few champions are here.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to claim that the champions of integrity are not in the House? I do not know what he would describe me as. I am a champion of integrity. I do not know if they were being mischievous by putting this Bill as number three down the line and then they escape as the Government side, so that my other champions of integrity are not here. We had been dealing with the security Bills, for which we have very aptly prepared. I want to tell the Minister that nonetheless, the watchman of integrity is here. I am here. So, do not be misled that that there is no watchman of integrity.

**The Temporary Deputy Speaker** (Mr. Imanyara): Indeed, Mr. Kimunya, you ought to be fair to the Members because you are aware that we have had to by-pass three or four Orders in order to allow this debate. There may be many Members who genuinely believed that it would not be coming on. So, for you to cast aspersions on them simply because they are not in the House as a result of the Government's failure to prosecute Business on the Order Paper is not fair. It is not in order.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I did not cast aspersions. I would have expected many more here because this House is full of champions of integrity, but I have been assured that they are well represented. Hon. Odhiambo-Mabona and I, we are alumni of some training together at the Les Aspin Centre which is a promoter of integrity.

**Mr. Wambugu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am on a point of order because of the statement that was made by the Minister, that the champions of integrity are not in the House. I believe that we stand for high levels of integrity and I would request that you order him to withdraw that statement.

**The Temporary Deputy Speaker** (Mr. Imanyara): Capt. Wambugu, I ruled that he was out of order on that bit. I made a ruling that he is out of order.



**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, let us make some progress. I recognized that they are all here and the others who are outside will obviously be coming at some point.

We went through this Bill and I want to start by supporting the sentiments as expressed by the Minister for Justice, National Cohesion and Constitutional Affairs in terms of the malicious statements that have been made in the media. If you looked at the Editorial, especially on Monday in one of the newspapers, which I do not want to name, it was full of condemnation of this House. It stated that this is a rogue Parliament, nothing is expected of it and all we do is adulterate Bills. This is because of the incitement that is made that we have really messed up The Leadership and Integrity Bill. I want to confirm that we sat a whole day into the night looking through clause by clause in a meeting attended by no less than the Kenya Law Reform Commission, the CIC and all the stakeholders as technical advisors to the Cabinet sub-committee. We went through clause by clause and agreed. Then we were surprised to see a paid advert at public expense basically going back on what we had all agreed.

The important thing for the Members to note, because I have also heard some of the Members in their campaign rallies saying that they are going to come and oppose this Bill because it does not address the issues of leadership and integrity, is that the original Bill that was presented to the Cabinet for discussion contained provisions that we considered totally impractical. As the Minister has said, there is absolutely no way you are going to have over 200,000 candidates being vetted by the police, the Kenya Anti-Corruption Commission, then the KRA and all manner of people, so that they can be cleared, that it is in accordance with Chapter Six.

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very important Bill and there is no quorum. I think we should defer it!

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, Madam Assistant Minister! You are a Member of the Government!

**The Assistant Minister for Youth Affairs and Sports** (Ms. Ndeti): It does not matter!

**The Temporary Deputy Speaker** (Mr. Imanyara): You are totally out of order! You are a Member of the Government!

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I need indulgence from the front.

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Ms. Ndeti, that amounts to gross misconduct but I will let you off the hook on that one! Any other Member may raise that, but not an Assistant Minister!

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, this is a very important constitutional Bill. Thank you for protecting the dignity of this House.

In terms of the hurdles that were being presented by that Bill, that 200,000 candidates were going to appear to be vetted, it is simply not practical. I believe the civil society is getting it wrong when they believe that the same vetting that we saw for people applying for positions to be appointed should be subjected to all the people seeking public office. There is no better way of vetting in terms of people seeking public office through elections than through the campaigns that we all go through. It is through the campaigns stretch, through all those days when you appear before the people and convince them to vote for you, that is when they know the good from the bad. At the end of it all, it is up to the people to elect the leaders they believe are good enough to represent them. That cannot be denied through some technical processes that will

purport to provide for the people some leadership, that they believe this is the person you should vote for and not this one because they have got a certificate of good conduct.

On that basis, we believe that the best thing is for the voters themselves to determine who they should vote for. On all the other appointed offices, there is already a mechanism for the vetting, which is not being challenged by anyone.

## QUORUM

**Mr. Warugongo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This being a very important Bill, I note that we do not have a quorum!

**The Temporary Deputy Speaker** (Mr. Imanyara): That is a valid point of order! Clerk-at-the Table, please, establish whether we have a quorum.

Hon. Members, we only have 18 Members, so the Division Bell will be rung to see whether we can raise the necessary quorum. Ring the Division Bell.

*(The Division Bell was rung)*

## COMMUNICATION FROM THE CHAIR

### RETREAT ON TWO-THIRDS GENDER REQUIREMENT IN MOMBASA

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! Obviously, we will not make the quorum. However, before I adjourn the House, I have one Communication to make. The Minister for Justice, National Cohesion and Constitutional Affairs and the Minister for Gender, Children and Social Development have invited all Members of Parliament to a retreat in Mombasa from 24<sup>th</sup> to 25<sup>th</sup> August, 2012 to deliberate on Constitutional Amendment Bill on the realization of the two-thirds gender constitutional requirement.

Hon. Members are scheduled to leave for Mombasa on Thursday 23<sup>rd</sup> August, 2012 and depart back to Nairobi on Sunday 26<sup>th</sup> August, 2012.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, there being no quorum in the House, the proceedings are now adjourned to Tuesday, 21<sup>st</sup> August, 2012, at 2.30 p.m.

The House rose at 5.15 p.m.