

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 22nd May, 2012

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

POINT OF ORDER

REQUEST FOR EXTENSION OF TIME TO TABLE COMMITTEE REPORT ON NHIF

Dr. Monda: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: On the Papers?

Dr. Monda: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: What is your point of order?

Dr. Monda: Mr. Deputy Speaker, Sir, I thank you. I rise on a point of order to seek your direction and the indulgence of the House on the matter which you gave direction on last week concerning the Report on the alleged irregularities in the NHIF. In your direction, you directed that we table the Report today. We have put a lot of effort into making the Report ready. However, the time we have had ever since has not been enough and we are seeking the indulgence of the House to have the time extended, so that we bring the Report to the House by the first week of June.

I thank you, Mr. Deputy Speaker.

Mr. Deputy Speaker: Are you seeking an extension for one week or an extension beyond one week?

Dr. Monda: Mr. Deputy Speaker, Sir, I am seeking extension of two weeks.

Mr. Deputy Speaker: But you realize the sensitivity of the matter and the need for the Parliamentary Committee to do a thorough job on this. Two weeks is absolutely on the upper limit of what the Speaker thought was sufficient time for you to--- One week should be essentially adequate, but not two weeks.

The Chair directs that you be given one more week and that is it. You have an extension of one more week and it does not matter whether or not you work day and night or you burn the midnight oil. You had better get this report ready by Tuesday next week.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. We realize the interest that this matter has generated. It is of immense importance and urgency. However, even currently we have most of our Members out of the country on parliamentary duties. For us to endorse the report we require more than the majority of the Members. That is why we are seeking extension of time. We will be in a position to table the report latest Tuesday of the other week and not next week.

Mr. Chairman, Sir, we owe it to the House that we table a report that is---

Mr. Deputy Speaker: Order, Dr. Nuh! It is not “Chairman” in the first place; nonetheless you have to have this report ready earlier than in two weeks. You realize that there are all sorts of interest in it by Members of Parliament. Ideally, the role of a Committee is to enhance, enrich and improve the quality of debate on the Floor by bringing a report that brings out a lot of issues. You have kept on asking for more time when there are hon. Members who are restive, and who have tried to file a Motion for Adjournment, or sought Ministerial Statements, or filed Questions on the same; all these avenues seeking an opportunity to debate this matter have more or less been put on hold because of the realization that the Committee is going to do a good job. It has to be a timely and good job. In any case, you need a majority of the Members to approve the Report, but you do not need the majority of the Members to--- A quorum is just three Members; any three of you can interrogate this matter exhaustively. You only need to make sure that you have the requisite number of Members to approve the report.

Dr. Monda: Mr. Deputy Speaker, Sir, taking into account your direction, I will plead for the indulgence of the House that we table the report on--- I want to request that this be done after Tuesday next week, so that we do not hurry---

Mr. Deputy Speaker: Fair enough. The Chair will give you the upper limit of next week; this means that you table the report on Thursday morning next week.

Dr. Monda: I thank you, indeed, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: It is so directed.

PAPERS LAID

The following Papers were laid on the Table of the House:-

Report of the Departmental Committee on Defence and Foreign Relations on the scrutiny of the Annual Estimates of 2012/2013 for the following votes:-

Vote 104: Ministry of Foreign Affairs;
Vote 108: Ministry of State for Defence;
Vote 124: Ministry of East African Community; and
Vote 145: National Security Intelligence Service.

(By Mr. Keynan)

Report of the Departmental Committee on Education, Research and Technology on the examination of the Financial Estimates for the year 2012/2013 for the following Votes:-

Vote 131: Ministry of Education;
Vote 143: Ministry of Higher Education, Science and Technology; and
Vote 201: Teachers Service Commission.

(By Dr. Otichilo)

Report of the Departmental Committee on Labour, Housing and Social Welfare on the examination of the Financial Estimates for the year 2012/2013 for the following Votes:-

Vote 115: Ministry of Labour;
Vote 118: Ministry of Gender, Children and Social Development;
Vote 135: Ministry of State for Special Programmes;
Vote 141: Ministry of State for National Heritage and Culture;
Vote 142: Ministry of Youth Affairs and Sports; and
Vote 224: National Gender and Equality Commission.

(By Mrs. Noor)

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. I really do not understand the constitutionality of what the Chairs of various Departmental Committees are doing. This is because the Constitution in Article 221 is very clear on how the Estimates are supposed to be considered. Article 221 (3) states thus:

“The National Assembly shall consider Estimates submitted under Clause (1) together with Estimates submitted by the Parliamentary Service Commission---”

Article 221(4) states thus:

“Before the National Assembly considers the Estimates of Revenue and Expenditure a Committee of the Assembly shall discuss and review the Estimates and make recommendations to the Assembly.”

I take “a Committee of the Assembly” to mean the Budget Committee.

Mr. Deputy Speaker, Sir, therefore, all these reports are supposed to go through the Budget Committee which should submit them as one report to the House. When each Committee submits its report to the House, I think we are using the old way of doing things.

Mr. Deputy Speaker: Order, Mr. Mbadi! Are you sure “A Committee of the House” means “the Committee of the House”?

Proceed and lay your Paper, hon. Kapondi!

The Report of the Departmental Committee on Administration and National Security on the examination of the 2012/2013 Printed Estimates for the following Votes:-

Vote 101: Ministry of State for Provincial Administration and Internal Security;
Vote 105: Office of the Vice-President and Ministry of Home Affairs;
Vote 123: Cabinet Office;
Vote 140: Ministry of State for Immigration and Registration of Persons;
Vote 148: Office of the Prime Minister;
Vote 207: Public Service Commission (PSC);
Vote 102: State House; and
Vote 103: Ministry of State for Public Service.

(By Mr. Kapondi)

The Ethics and Anti-Corruption Commission First Quarterly Report for the year 2012 covering the period 3rd January, 2012 to 31st March, 2012.

(By the Attorney-General)

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. I want to follow on what hon. Mbadi has just said and I want also to invite your ruling.

Mr. Deputy Speaker: Order! Take time and try to understand this. Look at everything in its entirety. Do not just look at one Article in the Constitution selectively.

Mr. Ogindo: Mr. Deputy Speaker, Sir, it is on the constitutionality.

Mr. Deputy Speaker: Order!

Next Order!

QUESTION BY PRIVATE NOTICE

ASSAULT OF 13-YEAR-OLD BOY BY MWEA EAST DC

(Mr. Gitau) to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Could the Minister confirm that Ms Kula Hache, a District Commissioner, in Mwea East District assaulted a 13-year-old boy on 18th April, 2012?

(b) What action has been taken against her?

(c) Is the Minister also aware that over 800 people demonstrated and called for her removal from office and, if so, what measures has the Minister taken to address the public outcry?

Mr. Deputy Speaker: Hon. Members, I am made to understand that the Member for Mwea has travelled out of the country. This Question is deferred to a time when he will be around.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1403

DELAY IN CONSTRUCTION OF FRESH PRODUCE MARKET AT IKUTHA

Mr. I. Muoki asked the Minister for Local Government:

(a) If he is aware that the Fresh Produce Market project funded under the *Economic Stimulus Programme* at Ikutha stalled at the foundation stage; and,

(b) what measures he will take to ensure that the project is completed.

Mr. Deputy Speaker, Sir, as you have correctly remarked, this Question has appeared on the Order Paper four times and the Minister has not been able to dispose of the matter. I am appealing to you that if the Minister is not in – I cannot see him – you compel him to conclude this matter.

Mr. Deputy Speaker: Where is the Minister for Local Government?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I beg for the indulgence of the Chair to

allow this Question to be asked as a routine in the second round while I look for the substantive Minister.

Mr. I. Muoki: On a point of order, Mr. Deputy Speaker, Sir. When this issue was raised, there were supplementary questions to the effect that these markets had not been done the way they should have been done. If you look at the Order Paper, there is a Question by hon. Member for Nyakach which is also on the same issue. We had asked him to bring that report and answer this Question, so that we get through this matter.

Mr. Deputy Speaker: Mr. Ojode, you better look for your colleague before the Chair passes some sanctions because I am persuaded by the arguments by Mr. I. Muoki that, indeed, the Minister is not taking this Question very seriously. By the time we come back to the second round to prosecute it or answer it, then we will take appropriate steps.

Question 1477

STATUS OF CONSTITUTIONAL BILLS

Dr. Nuh asked the Minister for Justice, National Cohesion and Constitutional Affairs:-

a) whether he could explain the respective status of the Constitutional Bills scheduled to be enacted by 27th August, 2012 in line with the Fifth Schedule of the Constitution; and,

(b) when each of the said Bills will be published.

Mr. Deputy Speaker, Sir, I also want to bring to your attention that when the Assistant Minister was here he intimated that the answer given was not sufficient enough and he needed to amend the answer. I have not yet received an amended answer. If he wants to proceed with the old answer, I am comfortable. But if he has amended the answer, I will be glad, especially if I am offered the answer before I start interrogating the issue.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Deputy Speaker, Sir, Mr. Cheptumo had asked for a little time to come and answer this Question, but unfortunately, he is unable to make it today. With the permission of the Chair, I would ask for further indulgence of the hon. Member to have us answer this Question, perhaps on Thursday, when Mr. Cheptumo would be here. Thank you, Mr. Deputy Speaker, Sir.

Dr. Nuh: Mr. Deputy Speaker, Sir, there are issues we have raised in this House before. As the Minister asks for extension of time, you may need to give guidance. This issue was raised to the Ministry on 29th February, 2012. Three months down the line, the Ministry is unable to furnish this House with an answer. I want to take you to two other Questions which were asked. One of them was a question asked by Mr. Affey on 12th October, 2011. Last week, the Ministry of State for Immigration and Registration of Persons was asked to give an answer, they asked for the indulgence of the House for them to be given ample time to be able to sufficiently address the Question. Another Question was asked by the hon. Member for Juja, Mr. Kabogo, on 3rd May, 2012 about two Kenyan children who were held up in some foreign country and were unable to come back to the country because they were unable to be provided with fare to come back was not sufficiently addressed. The Question was raised in January. The answer which was given to Mr. Kabogo came two days before the Question was listed on the Order Paper. Rules of procedure of this House dictate that when Questions come up, the Ministries are supposed to provide answers to the House---

(Dr. Nuh paused to attract the attention of the Chair)

Mr. Deputy Speaker, Sir, I want you as the Chair to address this matter and give guidance to the House. When Questions are addressed to Ministries for them to respond, they are supposed to sufficiently provide a written answer even before the oral answer comes to the House after ten days. This is because the Question is deemed to mature in ten days' time. There are so many Questions lined by hon. Members but they are unable to find themselves on the Order Paper in ample time. Sometimes we have to wait for close to three, four or five months before a Question is listed on the Order Paper. Sometimes, even the Questions are overtaken by events because of the delays in Ministries. They are unable to provide sufficient answers.

I think this House should give guidance in terms of how Questions should be responded to by Ministries because we do not ask them for fun. We ask Questions because we want action to be taken by the Executive side of the Government on specific issues that we raise.

So, when a Question is posed to a Ministry on two Kenyan children who were unable to come back from a foreign land and were toiling to even make ends meet, but the Ministry only responds because it is a Question listed on the Order Paper. Are we doing justice to Questions we ask as the Back Bench?

Even as Mr. Wamalwa requests for some more time, I think it is an issue that has now become a cancer that the Executive arm is unable to address themselves to questions and Ministerial Statements sought by hon. Members. We need further guidance as to how we should proceed.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. The Question by Dr. Nuh is a very serious issue. It is about constitutional timelines. The Vice-President and Minister for Home Affairs himself was here about a week ago assuring us that the Government is serious about implementation. Sometimes, Parliament gives indulgence for Ministers to look for answers because they have to be found in far flung areas from Nairobi. So, what is the logic of asking for more time and yet the answer to this Question is within Nairobi? In fact, it is between the Ministry of Justice, National Cohesion and Constitution Affairs, The Attorney-General and Commission on Implementation of the Constitution (CIC). All these departments are within Nairobi. It is a matter of phone calls and they get this answer in a day. The Government is not serious because we expect them to have a matrix because this date is just the next day.

Although my friend, Mr. Wamalwa, joined the Government recently, I want to tell him that we cannot give him a long time in honeymoon to enjoy that office. He now has to pull up his socks.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Many times, the main reason why Back-benchers ask Questions in this House is because of failure by the Executive to perform. If the Executive was doing its work properly, there would be no reason for Questions. Mr. Wamalwa was very effective when he was in the Back Bench. I really do not know what happens to hon. Members when they cross over to the Government side. I want to remind him that as effective as he was when he was this side, we would request him to be effective the other side. Last week when his Assistant Minister was requesting us to give him one more week, many of us did not see the reasons why he needed that time because the constitutional amendment Bills are clearly specified in the Sixth Schedule of the Constitution. Where they are is only a phone call away or he just needs a round table meeting with the Attorney-General, CIC and all the relevant Ministries. So, I do not understand why a very efficient legislature who has become a

Minister and someone who is very knowledgeable in law like Mr. Wamalwa could not just take this opportunity and take ten minutes to address this Question and we dispose of it.

So, I urge him to just address this Question today because he is capable.

Mr. Deputy Speaker: You have made your point. The last point of order, Mr. Ethuro!

Mr. Ethuro: Mr. Deputy Speaker, Sir, I think the Standing Orders are very clear on the definition of a “Minister”. If the assistant to Mr. Wamalwa is not available, he can answer it because the answer is not his personal property. If anything the substantive Minister is the one who usually signs the answer. He has not told us why he is unable to answer the question. The Question that Dr. Nuh is asking is so fundamental in terms of implementation of the Constitution which has provided actions that will follow if that implementation timetable is not followed. Now that one of those actions is the dissolution of Parliament, could you make it very clear that it is not only dissolution of Parliament, but also dissolution of the Government because it has failed to implement the Constitution?

Mr. Deputy Speaker: Mr. Minister, confine yourself to why you are unable to answer this Question today in terms of collective responsibility.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Deputy Speaker, Sir, I indicated that Dr. Nuh had talked to Mr. Cheptumo and required further information or an amended answer. But due to the security situation in Baringo, he is unable to be in the House today. He had prepared to answer this Question. I was telling Dr. Nuh that he will be here on Thursday. If you will indulge him, he will be here to answer this Question.

Otherwise, I am prepared to proceed and answer the Question as it is.

Mr. Deputy Speaker: Mr. Minister, ordinarily, this because I have not seen an exception to the rule, answers are signed by the substantive Minister and not Assistant Ministers.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker---

Mr. Deputy Speaker: Mr. Ojode, could you hold your silence?

Much as Mr. Cheptumo might have participated in the preparation of the answer, could you tell us whether he has signed that answer or not? Is the answer ready?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Deputy Speaker, Sir, I have indicated that Dr. Nuh had a discussion with Mr. Cheptumo who is not here. But I have the answer and I can proceed to deal with it. I did not say that I was unable. If there were further issues that they had discussed, I am not privy to them. That is my position. With your permission, I can proceed to answer as it is.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. The request by Dr. Nuh in his submission is that he has the old answer. If, indeed, the Minister has a new answer, it is only fair that he gives Dr. Nuh the answer in advance. If he has no new answer, then he has no business answering this Question.

Mr. Deputy Speaker: The Chair recollects vividly that, indeed, your Assistant Minister said that he is not satisfied with the answer that he had. He promised to bring an answer that was going to be more comprehensive than the one he had. Do you want to tell me now that the answer he had given to Dr. Nuh is actually the old answer and not the improved one?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Deputy Speaker, Sir, that is why I am asking for deferment because there have been discussions between my colleague and Dr. Nuh.

Mr. Deputy Speaker: Could you proceed and do something?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): I could deliver it as it is.

Mr. Deputy Speaker: Order! While the Chair proceeds and disposes of the other Questions before we come back to your Question, could you use this moment or opportunity however short it may be to sit down with Dr. Nuh and educate yourself whether, indeed, the answer that you are supposed to give now is the old answer and not the improved one?

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order!

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, Mr. Kabogo! When the Chair says "Order", you maintain order

Next Question by the Member for Nyakach!

Question No.1499

DELAY IN CONSTRUCTION OF KATITO MARKET

Mr. Ochieng asked the Minister for Local Government:-

(a) why the construction of Katito Market under the *Economic Stimulus Programme* has stalled and how much money has been paid to the contractor so far;

(b) why the tender for the construction works was awarded to the second highest bidder contrary to the procurement procedure; and,

(c) when the construction works will be completed and handed over to the traders in Nyakach Constituency.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, you did direct me that I look for my colleague. I have since talked to one of my colleagues, the Minister. Both the Minister and Assistant Minister are in Mombasa on official duties and they indicated that they wrote a letter to the Speaker indicating that they will not be in Parliament to answer Questions up to Thursday. I have also ordered for that letter to be brought here, so that you can share it with the House.

Mr. Deputy Speaker: The rule of thumb in the House is that when the House is in session, both the Minister and Assistant Minister cannot be out of the House. That is the simple tradition that this House has had. Why should the Minister and Assistant Minister be in the same function?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, they will be asked that very question when they are here.

Mr. Ochieng: On a point of order, Mr. Deputy Speaker. The Question by hon. I. Muoki and my Question are similar. The Assistant Minister was here last week and he promised that he will come and respond to these Questions today. How come the Questions are listed on the Order Paper and they are not here?

Mr. Deputy Speaker, Sir, let me tell you something. There is a rip-off in these markets and that is why the Ministry keeps on going round. Nearly 85 per cent of the markets have not been put up, yet the Treasury has released the money to the Ministry of Local Government. Can

you allow the Committee on Local Government and Funds Accounts to investigate the scam which involves these particular markets?

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. If you recollect, a few weeks ago, the Assistant Minister for Local Government, hon. Nguyai, did undertake to the House to bring a comprehensive report on these markets, because these Questions keep on coming. As you can see in the Order Paper, Question No.1403 and Question No.1499 are about these markets. These two spaces taken by these Questions would have gone to other Questions. Really, are we doing what we ought to do as a House? Is the Government serious on these matters? Why is it that Questions on the Economic Stimulus Programme do not get a Minister to answer? We know that the new Minister is an active Minister who has been in the Government for long and so, why is it that we are not able to get answers on these issues? We are wasting public time.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. There is a tendency by Ministers to write letters to your office everytime they have Questions to answer stating that they have some Executive business, which is more serious than Parliamentary business. They have been very lucky because they have been getting away with the Chair. I wish to ask you to rule that, that should never be accepted - in any case, every Ministry has not less than three Ministers – so that the business of Parliament is not second to that of the Executive.

Mr. I. Muoki: On a point of order, Mr. Deputy Speaker, Sir. First of all, I want to say that my Question has appeared four times and the Minister has been going round. Secondly, I am the Vice-Chairman of the Departmental Committee on Transport, Public Works and Housing. We have gone round the country and found out that in most constituencies, projects under the Economic Stimulus Programme, under Ministry of Local Government, have not been done. There is a rip-off because, for example, in my case where they have only done the foundation, they say that they have paid 45 per cent of the cost. So, this is a serious matter. Last week, the Assistant Minister promised to come and table the Report today and he is not here. So, we need to treat this matter seriously.

Mr. Mwangi: On a point of order, Mr. Deputy Speaker, Sir. I recall last year, the Deputy Prime Minister, who was the Minister in the same Ministry until the other day, gave a list of those markets that had stalled. It is not only these two markets. There is a market in Kiharu Constituency which stalled and he read it out here. This does not even require the Minister to answer only these two Questions. I request that a report or record of what the former Minister gave be laid on the Table, because none of those markets that he referred to has been constructed.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. The Economic Stimulus Programme was not only under the Ministry of Local Government. But it is serious that this Ministry is the only one where we have serious problems with the Economic Stimulus projects. I had to go to the Ministry about five times to get the market in my constituency continue. So, I think that this Minister is deliberately avoiding answering Questions regarding Economic Stimulus projects for markets, and our constituents only know the Members of Parliament. They do not know that it is the Ministers and Ministries which are not implementing these projects efficiently. The money for markets was just Kshs10 million, yet the implementation of the Kshs30 million for schools has very few hiccups. How come that this Ministry has these problems? So, I would urge you to take action against this Ministry. Kindly, use the Standing Orders to discipline this Ministry.

Mr. Deputy Speaker: Order! Hon. Members, indeed, the Chair recognizes the fact that there has been quite a bit of a joke here on these Questions. This is because you cannot have a

Question appearing on the Order Paper four times. You cannot have a Question that was listed a good number of months; five or six months back. In any case, the Assistant Minister did make a very firm undertaking that he was going to answer this Question comprehensively and exhaustively today. A situation in which a Minister is not in a position to answer, unless it is an unavoidable circumstance like somebody going to hospital on a serious issue which everybody would appreciate, the Minister is supposed to seek leave from the Speaker or Chair for that matter. This is because when you make an undertaking, it is a firm undertaking and the spirit of the Standing Orders is in line with that. Standing Order No.46 says:

“It shall be disorderly conduct for a Member to fail to ask or for a Minister to fail to ask a Question listed on the Order Paper without the leave of the Speaker.”

So, even in this case, if the Minister and Assistant Minister were both going to be out of Nairobi, the prudent thing to do was for them to come and engage the Speaker and tell him that they were not able to answer the Question because of compelling circumstances. Only when the Speaker gives leave is when the Minister can fail to be here to answer that Question.

Under the circumstances, I think the Chair’s hands are tied in dealing with Ministers. This is because a casual look at the Front Bench here tells you with an exception of the Attorney-General that there is no other Minister---

Hon. Members: There is one!

Mr. Deputy Speaker: Order! Order! There is also the Minister for Forestry and Wildlife, Dr. Noah Wekesa. There is not a single Cabinet Minister who is here other than Dr. Noah Wekesa and the *ex-Officio* Member of the House who is the Attorney-General.

Hon. Members: Mr. Ojode is here!

Mr. Deputy Speaker: Indeed, the Chair has just noticed that hon. ole Ntimama is also in the House.

An hon. Member: Even Eugene Wamalwa!

Mr. Deputy Speaker: Where is Eugene Wamalwa? But he is not seated at the Front Bench. Under the circumstances, due to the failure by the Minister for Local Government to answer this Question which is not only listed on the Order Paper because it is routine to list Questions on the Order Paper but it is listed on the Order Paper because it was a specific date and day requested by the Minister, the Chair has no alternative but to sanction the Minister. The Minister will not transact any business on the Floor of this House which essentially is the only thing that the Chair can do. Anything beyond that--- If a Minister is not taking his business serious, it is upon the House itself, the Members and precisely, the Backbenchers to move and bring other relevant avenues or Motions in the House to discipline that Minister. However, under the circumstances, I will direct that this Minister will not transact any business until he is able to satisfy the Chair why he is not able to answer this Question today. That should be a lesson for the other Ministers. Parliamentary business in any democracy is serious. A Government is only a Government worth its name if it can be adequately defended by Members of the Front Bench on the Floor of the House, and more so, in the full glare of Kenyans right now.

(Question deferred)

Next Question!

The Minister for Forestry and Wildlife (Dr. Wekesa): On a point of order, Mr. Deputy Speaker, Sir. With due respect to your ruling, our rules in this House define a Minister as---

Mr. Deputy Speaker: Precisely. It is understandable. The definition of a Minister is known by the House and all of you are Ministers but you and hon. ole Ntimama are the only ones who are Cabinet Ministers.

The Minister for Forestry and Wildlife (Dr. Wekesa): But you did say that we do not have enough Ministers in the House! My colleagues are sitting here!

Mr. Deputy Speaker: Order! Go and refer to the HANSARD and see how the Chair has qualified this.

An hon. Member: What about hon. Ojode?

Mr. Deputy Speaker: Hon. Ojode is not a Member of the Cabinet!

The Minister of State for National Heritage and Culture (Mr. ole Ntimama): On a point of order, Mr. Deputy Speaker, Sir. I respect your ruling, but I wanted to say that the new Minister for Local Government is holding a very important conference in Mombasa together with his deputy. I would like to request for a reprieve on that one.

Mr. Ochieng: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: On the same?

Mr. Ochieng: On the same, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: The Chair has already ruled on this!

Mr. Ochieng: Mr. Deputy Speaker, Sir, I had made a request which you did not respond to.

Mr. Deputy Speaker: Order! That will be responded to at an appropriate time.

Mr. Ochieng: I had requested that the relevant Committee should be seized of the matter so that it can investigate it.

(Mr. Ojode stood up in his place)

Mr. Deputy Speaker: Order, hon. Ojode! You do not have the Floor!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Thank you, Mr. Deputy Speaker, Sir. You directed me to look for the Minister!

Mr. Deputy Speaker: And you could not find him!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, but I have a letter here!

Mr. Deputy Speaker: The Chair also got that letter and if you listened to the direction of the Chair, the Chair indicated that a letter is in place.

Let us move on to Question No.1306 by hon. David Koech!

Question No.1306

CONSTRUCTION OF DAM ON
KIPKARREN RIVER

Mr. Deputy Speaker: The hon. David Koech is also out of the country. He is listed as being out of the Chamber today on official parliamentary business. That is the communication that the Chair has. The Question will be listed on the Order Paper at an appropriate moment.

(Question deferred)

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a point of order, Mr. Deputy Speaker, Sir. Question No.1306 was directed to our Ministry by mistake because the project was undertaken by the Ministry of Regional Development Authorities.

Mr. Deputy Speaker: You know the rules!

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker: Yes, we have directed the Question to the Ministry of State for Regional Development Authorities.

Mr. Deputy Speaker: Proceed and do that!

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, we have already done that and we have written a letter.

Mr. Deputy Speaker: Then you should communicate with the Clerk's Chamber. Let us move on to Question No.1457 by hon. Omondi Anyanga!

Question No.1457

ILLEGAL ENTRY OF TANZANIAN
VEHICLES INTO NYATIKE DISTRICT

Mr. Anyanga asked the Minister of State for Immigration and Registration of Persons:-

(a) whether he is aware that motor vehicles from Tanzania are using illegal routes into Nyatike District;

(b) whether he could provide details and tracking movements of the vehicles using the illegal entries; and,

(c) what measures the Government is taking to ensure that immigration rules are not flouted at border points, particularly in Nyatike district, and also ensure that revenue collected benefits the local community.

Mr. Deputy Speaker: Where is the Minister for State for Immigration and Registration of Persons?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, again, I seek the indulgence of the Chair to allow Ojode to look for his colleague and then report to you before you conclude Question Time.

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. You have heard the Assistant Minister, Mr. Ojode, request you to allow him to go and look for a Minister and yet it is 3.20 p.m. and Ministers know that they are supposed to be in the House. Is it not a joke that hon. Ojode will be requesting the Chair to give him time on every Question that misses a Minister to go and look for the Minister? Is the business of this House being taken seriously by the Front Bench?

Mr. Anyanga: Mr. Deputy Speaker, Sir, I would like to bring it to your attention that this Question came up some two weeks back and the Speaker himself directed that this Question comes up today. It is true that the Minister was aware that the Question was to come up today. I need your serious direction on this.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, indeed, hon. Anyanga is right. When

the Question was filed last week, hon. Anyanga was out of the country. He was in Russia. The Speaker ordered that the Question should appear---

Mr. Anyanga: Mr. Deputy Speaker, Sir that is not true. When this Question came up, I was in this country. That is another Question that the Assistant Minister is talking about. Please, let him be clear before he answers.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, allow me to look for the Minister to come and answer this Question.

Mr. Deputy Speaker: Where is he?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, give me five minutes to look for the Minister.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Looking at this Question, I fail to understand why it is directed to the Ministry of State for Immigration and Registration of Persons because it talks about vehicles coming into Nyatike. I do not know what this means. Are the vehicles migrating? The third part of the Question has to do with revenue. This is a matter for the Minister of State for Provincial Administration and Internal Security which the Assistant Minister can easily answer. I can see that this Question has very little to do with the Ministry of State for Immigration and Registration of Persons unless it implies that there are people inside the vehicles. However, the Question says: "Vehicles are coming into Nyatike."

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. I would have agreed with hon. Isaac Ruto but there is an element of immigration in this because all the border points are manned by immigration officers. There is also an element of security. Those of us who come from constituencies which border other countries, the illegal immigration or entry of vehicles into Kenya is a cause of concern. Hon. Ojode requested for five minutes but I can still see him seated here. Hon. Ojode needs to get the Minister to come and answer this Question.

Mr. Deputy Speaker: Order! The Chair directs that this Question be listed on the Order Paper tomorrow afternoon. You had better get the Minister with the answer!

(Question deferred)

Question No.1526

NON-PAYMENT OF BENEFITS TO
ALICE WAMBUI KABUGI

Mr. Kabogo asked the Minister for Education:-

(a) whether he is aware that Ms Alice Wambui Kabugi, a retired primary school teacher (TSC No.73615) has been following up on her benefits since June 2007, without any success; and,

(b) when she will be paid.

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I would like to seek the indulgence of the House and indeed the Chair that the answer supplied to the hon. Member is missing critical information which I have and which I would wish to include in my answer but has not been supplied to the hon. Member. If he is ready to listen beyond the answer that has been supplied to him, I will be happy to proceed.

Mr. Deputy Speaker: Hon. Assistant Minister, given that the answer you have is insufficient in your view--- Is that what you said?

The Assistant Minister for Education (Mr. Mwatela): No, Mr. Deputy Speaker, Sir. I have evidence or information which is very pertinent to this Question which is an addition to what has been supplied to the hon. Member.

Mr. Deputy Speaker: Are you prepared now?

The Assistant Minister for Education (Mr. Mwatela): Yes, I am prepared, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Then proceed and answer!

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, may I begin by, first of all, being very apologetic to the lady, Alice Wambui Kabugi who retired on 1st of September 2008 for the delayed remuneration because I think in all fairness, our citizens should be remunerated soon after they have retired.

I beg to reply.

(a) Yes, I am aware that Alice Wambui Kabugi, a teacher who retired on September 1st, 2008 has been following up on her benefits since June 2007 without any success. The Ministry forwarded Kabugi's Personal File TSC No.73615 to the Treasury, that is the Directorate of Pensions on 4th of March, 2010 for payment of benefits.

The additional information I have which is not supplied to the hon. Member is as follows: That the lady, Alice Wambui Kabugi, was awarded committed pension gratuity of Kshs823,530 and a monthly pension of Kshs10, 294. However, upon processing of the payment voucher and release of her dues to her account No.005000736100 at Metropolitan Teachers Society Limited, Kiambu, which was earlier known as Kiambu Teachers Sacco, it was soon after discovered that Alice Wambui Kabugi had been paid a committed pension gratuity of Kshs1,823,530 which amounted to an overpayment of Kshs1 million. The Pensions Department took immediate action that led to the stoppage of the payment before any withdrawals were made.

The matter was referred along other similar payments made through the Metropolitan Teachers Sacco to the Banking Fraud Investigation Unit at Central Bank of Kenya (CBK) for necessary investigations. Four officers who are serving or previously served at the Pensions Department were arraigned in court on 11th of May, which is just the other day, 2012 in connection with this matter.

(b) Once the Banking Fraud Investigation Unit gives clearance indicating that the pensioners were not involved in the fraudulent payments and releases Mrs. Kabugi's file back to the Department of Pensions, the payments will be made.

Mr. Kabogo: Mr. Deputy Speaker, Sir, you have heard a long story about thieves within the Pensions Fund Scheme but my second question is: When will this lady be paid? Why does she have to wait for three years for the Government to sort out thieves who are stealing from the pensioner's fund? Can the Assistant Minister give an undertaking when he will pay this lady so that she can enjoy her retirement and in any case, how many others are suffering out there waiting for Members of Parliament to bring Questions to the House only for the Assistant Minister to come and comfortably and luxuriously tell the House that people were arraigned in court because they stole? So what if members of---

Mr. Deputy Speaker: Order! Is it a question you are asking or you want to debate? You have asked a question and this is a question and answer session.

Mr. Kabogo: Mr. Deputy Speaker, Sir, if you do not anticipate what I want to say, I would have finished in a second. I am asking: When will this lady be paid and many others like her?

Mr. Deputy Speaker: Order! I have done it from the beginning. If you refer to the HANSARD, you have just repeated yourself.

Proceed, Assistant Minister!

Mr. Mwatela: Mr. Deputy Speaker, Sir, if the hon. Member cared to listen, this matter is in court and it is important to note that the extra million shillings which belong to the taxpayers of this country was credited to the account of the pensioner and it is important for the Banking Fraud Investigation Unit to establish that the pensioner was not involved in the fraud.

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. You heard the Assistant Minister making allegations from the Table of the House and first accuse me for not being attentive. I am very attentive. He is saying that money was deposited in this lady's account. What proof has he offered to the House that indeed Wambui Kabugi was paid? She has never been paid and that is why we are following the money today. He alleges that Wambui's account was credited and yet he has not offered any proof. Wambui would have said to her Member of Parliament: "Yes, indeed money was brought into my account but I have never been able to access it." Can he table documents that show us that Wambui is under investigation for having received the extra million shillings? If you remember his opening remarks were that he wanted me to allow him time to go and bring this information into the answer and I said I was ready to proceed.

So, is it in order for the Assistant Minister to insinuate that Wambui was paid and extra money was put in her account and now she is under investigation and yet he has not produced any evidence?

Mr. Mwatela: Mr. Deputy Speaker, Sir, the credit of Kshs1,823,530, which was in excess by Kshs1 million---

An hon. Member: When?

Mr. Mwatela: Please, listen, hon. Members.

An hon. Member: When?

Mr. Deputy Speaker: Order! Order!

Mr. Mwatela: Mr. Deputy Speaker, Sir, the credit was done to Account No.005000736100 at Metropolitan Teachers Society Limited, Kiambu – an account which belongs to the pensioner. The discovery was immediate and this money was stopped from being withdrawn.

Mr. Olago: Mr. Deputy Speaker, Sir, it is important to note in the answer given by the Assistant Minister that the pensioner is not one of the persons who are accused in court. The Pensions Department in this country has become a punishing den for pensioners. In many countries in the world, pensioners are honourably referred to as "senior citizens" and they enjoy privileges. In Kenya, they are the suffering lot. When they go to the Pensions Department, they never get paid. Note that the Ministry of Education took three years before they forwarded the file. Why did have to take that long? If this person is not one of the accused persons, why has she not been paid? If she was an accused person, they can say that she was a culprit like the others and, therefore, she should not be paid. So, what reason is there for not paying her what is due to her as the Ministry pursues the thieves?

Mr. Mwatela: Mr. Deputy Speaker, Sir, first of all, I appreciate the fact that pensioners are senior citizens. If hon. Members heard my opening remarks, I said that it is regrettable that

this amount of money due to the pensioner stayed for so long without being paid. We will only pay when it has been established that there was no collusion between the pensioner and the Pensions Department.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: The hon. Assistant Minister, the Chair heard you say that the money had been wired into her account and then you froze the account. How long does it take for one to be either cleared or to become a suspect in such a matter?

Mr. Mwatela: Mr. Deputy Speaker, Sir, as you realise this is a matter that came to our notice only on 11th May, 2012. Today is 22nd May, 2012. So, that is merely 20 days ago.

Mr. Deputy Speaker, Sir, please, let us have enough time, so that we can establish the truth. Taxpayers' money is involved in this case.

Mr. Deputy Speaker: Assistant Minister, did you have to wait until a Question was brought to Parliament for you to conclude the investigations on the matter or clear the pensioner or pay her rather than freeze her account?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. The Government is not being fair. Is the Assistant Minister in order to punish an innocent hardworking retired teacher? The lady was expecting her pension dues but because of corrupt individuals who are working under the same Government, the Assistant Minister is telling us that she can only be paid after investigations are complete. We know that the Government has never finished investigating the Anglo Leasing Scandal, the Kazi Kwa Vijana (KKV) Programme scam and the Triton oil scandal. The Government has never finished investigating anything. So, is he in order? He should pay the lady and then deal with his criminals within his Government.

Mr. Mwatela: Mr. Deputy Speaker, Sir, I agree but I hope you note that the money was wired into an account belonging to the pensioner. If you want us to bring evidence to that effect, we will do so. I do not have the evidence here with me but I will bring it.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. We have been belabouring the point as if we do not know what should be done. If the police have carried out investigations and charged those against whom they have evidence, and this pensioner is not one of them; the only conclusion is that she is innocent. If she was not innocent, she would have been charged with the others. Under these circumstances, is it in order for the Assistant Minister to insist that this pensioner must wait for the case to end before she can be paid?

Mr. Deputy Speaker: The hon. Assistant Minister, even if we make the wild assumption that the pensioner has a role in this fraud, her pension is her own right. Why do you not pay her pension and then if you find her being part of a conspiracy to defraud the pension scheme more money, you proceed and charge her accordingly? In any case, somebody who is on pension is somebody who is elderly and, definitely, is in deed of medication and many other things.

Mr. Ethuro: On a point or order, Mr. Deputy Speaker, Sir. I want to agree with the Assistant Minister for his sympathy but this House and this country expects services from Ministers, and not sympathy. In addition to what my colleagues have said, the law is very clear. We made an amendment to the Pensions Act, popularly referred to as the "hon. Musila Act", to the effect that the Government should continue paying somebody who is due for retirement until they release that person. So, in addition to the Ministry paying the pension due to this lady, can they also pay this pensioner for the period she has been waiting to be paid, in accordance with the law?

Mr. Mwatela: Mr. Deputy Speaker, Sir, I am aware of the amendment that the hon. Member has talked about but such payments will be eating into the same pensioner's emoluments.

The question of whether the Pensions Department can proceed to pay the pension of lady Alice while the matter is being investigated is a matter that I would like to consult further and probably give an answer tomorrow.

(Mr. Mungatana stood up in his place)

Mr. Deputy Speaker: Hon. Mungatana, this Question has taken a long time. Proceed, please.

Mr. Mungatana: Mr. Deputy Speaker, Sir, the Attorney-General was seated there. He could have just cleared the matter for the Assistant Minister.

Secondly, as the Assistant Minister consults, he should note that the issue is not about the Kshs800,000. The issue is the extra Kshs1 million. Please, have mercy. Pay her the Kshs800,000. The Kshs1 million is the one that has issues in court. You should pay. You should not wait for tomorrow.

Mr. Deputy Speaker: Hon. Members, the Assistant Minister has actually given an undertaking that promises to take this into account.

Assistant Minister, the Chair directs that this Question be listed on the Order Paper tomorrow afternoon. You have answered the bulk of the issues but come back and say how soon you are going to pay the lady her dues. Is that point taken?

Mr. Mwatela: Mr. Deputy Speaker, Sir, the point is taken.

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. I agree with your stand on this matter but in addition, let the Assistant Minister produce the information that he has given to the House orally to support his allegation that the money was posted into the lady's account. In the documents that I tabled here, the account is shown to be an Equity Bank account, and not the Akiba programme that he has stated. So, let him bring information to the House as to where this money was, whose account it was and how it was transferred.

(Question deferred)

Question No.1574

VIOLATION OF KENYA NATIONAL FLAG

Mr. Deputy Speaker: Hon. Members, hon. M'Mithiaru is out of the country on official parliamentary business. So, the Question is deferred to a date when he will be around

(Question deferred)

Question No.1413

DISBURSEMENT OF LOANS TO NEEDY STUDENTS BY HELB

Mr. Deputy Speaker: Hon. Members, hon. Washiali is also held up somewhere. He has communicated to the Chair. Therefore, this Question is also deferred to a date when he will be around.

(Question deferred)

Mr. Deputy Speaker: Next Question, hon. Waibara!

Question No.1368

REHABILITATION OF THIKA-KAMWANGI
HIGHWAY TO CURB ACCIDENTS

Mr. Waibara asked the Minister for Roads:-

(a) how many fatal accidents occurred along the Thika-Kamwangi-Flyover highway during its reconstruction, and whether he can provide the names of the victims;

(b) what measures the Government has taken to ensure that visible road signs are mounted in appropriate areas along the highway and at sharp bends, especially at the area after Karure Trading Centre (Muthiro Wa Itonga); and,

(c) whether there are plans to put a rough layer on the highway after its completion and, if so, when.

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

(a) According to the data obtained from the police, there are 11 fatal accidents that have occurred on the mentioned road in the course of its rehabilitation.

I would like to table a list of 15 victims, of which 11 were fatal.

(Dr. Machage laid the document on the Table)

(b) The contractor has been instructed to install visible temporary road signs at appropriate locations and continue to maintain the same throughout the construction period. Once the works are completed, the contractor will install permanent road furniture and road markings as provided for in the contract.

I would like to add that vandalism of road furniture and signs is now a menace needing concerted efforts to handle. It has become a costly matter to the taxpayers and it exposes road users to risks and road crashes, some of which are fatal. I, therefore, want to appeal to the leaders including Members of this House and members of the public to join hands with my Ministry to combat vandalism on our roads.

(c) The current contract did not include the provision for surface dressing of the rough road due to the funding constraints. However, my Ministry, through the Kenya National Highways Authority (KeNHA) plans to apply surface dressing in the 2013/14 Financial Year.

Mr. Waibara: Mr. Deputy Speaker, Sir, the answer that I was given by the Assistant Minister for Roads is not sufficient. This is because one, he cannot recall on 11th May, 2007, there was an accident at the same black spot which led to the loss of about five lives. The dead included Dorcas Nduta and her daughter, Teresia Wambui and Mr. Chiga.

Contrary to the answer given by the Assistant Minister, there are no temporary measures taken by the said contractor to install road signs in the same location. Could the Assistant Minister consider having guardrails and bumps installed near the primary school and all the black spots along this highway?

Dr. Machage: Mr. Deputy Speaker, Sir, I am not aware of the five cases the hon. Member has referred to because I rely on police information but I will also investigate that matter. I have heard the hon. Member's request and I will pass this information to the contractor to consider as he finishes the road.

Mr. M.H. Ali: Mr. Deputy Speaker, Sir, I would like to ask the Assistant Minister whether he is aware that between South C and South B, along the Mombasa Road, there are quite a number of people who cross this road and there is no flyover. Because of the high speed at which vehicles cruise along the highway, quite a number of people lose their lives as a result of accidents. If the Assistant Minister is aware of this, what will he do to ensure that these Kenyans are safe when they cross that road?

Dr. Machage: Mr. Deputy Speaker, Sir, although that is a completely different question, I am aware of the fatalities that we have noticed along Mombasa Road. The Ministry is not only considering building flyovers but also expanding the size of the road to accommodate traffic and also consider pedestrians.

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I can see the Assistant Minister has indicated a list of about 15 people. Unfortunately, I have not seen the name of the young man, I think his name is Mugo, a university student who died at the same place and was buried last week in Molo. Now that the responsibility is on the Ministry for failing to take safety measures, what will the Assistant Minister do to compensate the family of this young man who lost his life while at the university?

Dr. Machage: Mr. Deputy Speaker, Sir, I have not owned up to the fact that the accidents were all due to the road status. Indeed, we know that 95 per cent of accidents on our roads are caused by human error by the drivers. However, as I sympathize with the families, the Ministry has no insurance policy to cover that cost for compensation.

Mr. Njuguna: Mr. Deputy Speaker, Sir, unfortunately, you will notice that nine men and six women have already perished on this road. When will the Assistant Minister mount road signs to prevent further loss of human lives on this road?

Dr. Machage: Mr. Deputy Speaker, Sir, if the hon. Member was listening keenly, I said I have instructed the contractor immediately to do exactly what he has requested for.

Mr. Waibara: Mr. Deputy Speaker, Sir, you will recall last time when the Minister was asked a question about this road, the Ministry through him promised to ensure the supervision of this highway during its emergency reconstruction. But the Assistant Minister is not aware that even before its completion, it has developed potholes. What will he do to avert this?

Dr. Machage: Mr. Deputy Speaker, Sir, as the contractor finishes his contractual obligations, there is a period within which we observe that road - the period is usually six months - before we accept that the work is complete. The contractor is still on site and he is still obligated to correct any other default that the road may entail him to do. But I have noticed and I accept the hon. Member's concern. I will look into it.

Mr. Deputy Speaker: Question No.1387 by Mr. Mwadeghu!

Mr. Mwadeghu: Mr. Deputy Speaker, Sir, I wanted to ask Question No.1387 on the Order Paper, but I have discussed the same with the Minister and he feels he would like to come back and give a more comprehensive answer.

Mr. Deputy Speaker: Order! You just ask the Question. Let the Minister speak for himself!

Mr. Mwachugu: I take the guidance, Mr. Deputy Speaker, Sir.

Question No.1387

PROJECTS UNDERTAKEN BY KWS IN
WUNDANYI CONSTITUENCY

Mr. Mwachugu asked the Minister for Forestry and Wildlife:-

(a) whether he could provide details of projects which have been undertaken by the Kenya Wildlife Service (KWS) in Wundanyi Constituency since 2006 and indicate the respective cost of each project; and,

(b) why the KWS has not undertaken the fencing of Tsavo West National Park as planned and when the corporation will undertake the project.

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, I have read through this answer but it does not cover some of the issues that I know will arise. In view of that, we discussed with my colleague that he should give me two days and I will have a comprehensive answer that will help this House.

Mr. Deputy Speaker: When do you want it to be listed on the Order Paper?

The Minister for Forestry and Wildlife (Dr. Wekesa): Next Tuesday.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. It has become a practice for Ministers to come and read answers from their Ministries on the Floor of the House. Is the Minister, who is in charge of that Ministry in order to come and give an excuse while he is the originator of the answer and he should have done that in his office?

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. A while ago, I asked for your guidance on an issue that I think this House needs to pronounce itself on adequately. I want to take you to Standing Order No.42 (5) which states:-

“When the Speaker directs that a Question is in order, the Clerk shall as soon as possible forward the Question to the Minister to whom it is directed and the Minister shall, within five days of receipt of the Question, submit a written reply to the Clerk”.

Mr. Deputy Speaker, Sir, paragraph (8) of the same Standing Order says:-

“Upon receiving a Question for oral reply, the Minister shall within the period specified in paragraph (5) submit to the Clerk, fifteen copies of the reply and shall be required to appear in the House to reply on the designated day”.

Mr. Deputy Speaker, Sir, I think, as a Backbench, we are fed up with the way the Government wants to take Question Time. It has become a habit that Ministers supply written answers to Members of Parliament in the Chamber just before they start asking the Questions. The Standing Orders are very explicit that within five days after a Minister receives a Question, he is supposed to comply with the Standing Orders by submitting a written reply.

This shows that Ministers only look at specific Questions when they are listed on the Order Paper. Questions are listed on the Order Paper because many Members raise Questions almost five months or six months before. The action we are asking the Executive to take only materializes upon the Executive realizing that a Question has been listed on the Order Paper. It should not be so. Immediately a Question is posed by the Backbench, the Executive is supposed to act on that Question immediately and give a reply in five days.

Mr. Deputy Speaker, Sir, if we take question time casually, then the question is; do we have any basis for asking the Questions? Do we expect the Executive to do justice to Questions we ask?

Just a while ago, I raised the issue of Mr. Kabogo asking about two Kenyans who were held up in Mozambique. Upon realizing the Question was listed on the Order Paper, the Ministry ran up and down looking for visas and travel documents for the kids who were affected. I think the House should give guidance as to how the Executive are supposed to proceed.

If the Executive has been exempted from complying with the Standing Order, then let us be informed, so that we do not continue asking that people should comply when in essence, maybe, this House has given them an exemption.

Mr. Deputy Speaker, Sir, give us direction.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. On the same point of order I would like to draw your attention to Standing Order No.41 (2) which says:-

“A Question shall be of a genuinely interrogative character and its purpose shall be limited to seeking information or pressing for action”

Mr. Deputy Speaker, Sir, if a Member of Parliament is asking a Question so as to press for action in a specific period of time and then the Question pends in the Ministry--- For example, if it was requesting that a patient be taken to hospital and the patient has since died, what then would be the use of the Question being asked? I request that you make this ruling, so that once we have the written Questions--- Even if the Question comes after three months and I have already seen the proper action has been taken, I can even tell the Clerk that this matter has since been settled.

Mr. Deputy Speaker, Sir, the Government must take us seriously.

Mr. Chanzu: On a point of order, Mr. Deputy Speaker, Sir. As you give guidance on these issues, you should also look into the fact that we spend more time on Questions than we should. This is because of the delays in providing information; you saw the exchanges we had here about the Ministry of Justice, National Cohesion and Constitutional Affairs. Therefore, there is poor utilization of time in this respect; we spend one hour and a half to answer only two Questions or two and a half Questions.

Mr. Deputy Speaker: Fair enough.

Mr. Mwadeghu, are you comfortable with Tuesday next week?

Mr. Mwadeghu: Mr. Deputy Speaker, Sir, we can proceed, but as far as I am concerned, the answer is inadequate.

Mr. Deputy Speaker: But that is what the Minister said. He is not happy with the answer and he is coming up with an answer that will, in his opinion, be adequate.

Mr. Mwadeghu: I oblige, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Minister, I am sure you have heard the passionate sentiments of Members of the Backbench; you are not taking your House business seriously. In any functioning democracy worth something, the Frontbench must be there to answer the Questions raised by the people’s representatives. That is the clear separation of powers; the Executive brings the answers and the Legislature holds the Government accountable. In this case, the Executive resides in the Legislature. There is no point in coming with an answer five months after the issues have been overtaken by events, and even then you ask for more time.

I think if you follow the Standing Orders to the letter, within five days of receiving Questions you must answer them and send 15 copies of the answers to the Clerk’s office, so that they are given to the Members and the rest of them kept in the relevant institutional files.

(Question deferred)

The Assistant Minister, Ministry of State for Special Programmes (Mr. Gabbow): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: On the same?

The Assistant Minister, Ministry of State for Special Programmes (Mr. Gabbow): Yes.

Mr. Deputy Speaker: What is your point of order?

The Assistant Minister, Ministry of State for Special Programmes (Mr. Gabbow): Mr. Deputy Speaker, Sir, who is supposed to ensure that? I thought it is the Speaker who is supposed to ensure that the answers are provided immediately and not the Member of Parliament or the Minister. Somebody must be in charge of that.

Mr. Deputy Speaker: Order, Mr. Gabbow! Read your Standing Orders. Acquaint yourself with your Standing Orders adequately. It is the responsibility of the Ministers to take these answers to the Clerk's office.

Next Question by Dr. Nuh; Question No.1477.

Question No.1477

STATUS OF CONSTITUTIONAL BILLS

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Deputy Speaker, Sir, I have consulted with the Member and there were certain issues he had raised with Mr. Cheptumo. We have agreed that we will have an amended answer to be delivered on Wednesday afternoon next week.

Mr. Deputy Speaker: Dr. Nuh, you are comfortable with that?

Dr. Nuh: Mr. Deputy Speaker, Sir, yes.

Mr. Deputy Speaker: When next week; Wednesday morning or afternoon?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): On Wednesday afternoon?

Mr. Deputy Speaker: The Chair directs that this Question be listed on the Order Paper on Wednesday afternoon, next week.

(Question deferred)

Next order!

COMMUNICATION FROM THE CHAIR

MEMBERS WORKSHOP ON WAYS OF HOLDING PEACEFUL ELECTIONS

Mr. Deputy Speaker: Hon. Members, the Chair has a Communication to give. It is a Statement that cannot be interrogated.

Hon. Members, the Minister for Justice, National Cohesion and Constitutional Affairs has organized a workshop for all Members of Parliament to deliberate on ways of holding peaceful

elections and activities that will be undertaken in the counties in the run up to the national conference on free, fair and peaceful elections scheduled for August, 2012. The workshop will be held on the 8th and 9th June 2012 in Mombasa. I request all Members of Parliament who wish to attend the workshop to register with the Sergeant-at-Arms at the main reception in Parliament Buildings. I appeal to all Members of Parliament to attend this very important workshop, given that we will be going for elections either this year or very early next year.

Thank you, hon. Members.

Dr. Otuoma, please, proceed!

MINISTERIAL STATEMENT

STATUS OF THE YOUTH ENTERPRISE DEVELOPMENT FUND

The Minister for Youth Affairs and Sports (Dr. Otuoma): Mr. Deputy Speaker, Sir, I stand to make a Ministerial Statement on the status of the Youth Enterprise Development Fund (YEDF).

Over the last three months, a lot of misinformation touching on the YEDF has been circulating. Some of it has found space in the media in recent weeks. Some of the documents being circulated are fictitious and have painted a very negative picture of the operations of the Fund. I have, therefore, deemed it necessary to issue this Statement in order to reassure the House, the taxpayers and the youth of this country.

Mr. Deputy Speaker, Sir, the YEDF was conceived by the Government in June 2006 as one of the strategies to address youth unemployment. It was gazetted on 8th December, 2006 and officially launched on 1st February, 2007. The Fund is one of the flagship projects in the social pillar of Vision 2030. In the year 2009, the Fund experienced serious leadership challenges which then inhibited its capacity to deliver on its core mandate. The Fund now has a different leadership both in the board and at the management level.

Just to refresh the hon. Members of this House on the objectives of the Fund, as to why it was established: It was established in order to provide for loans for onward lending to youth enterprises, attract and facilitate investment in micro, small and medium enterprises, youth oriented commercial infrastructure that will be beneficial to the youth enterprises, to support the youth oriented micro and small and medium enterprises and develop linkages with large enterprises. It was also meant to facilitate marketing of products of services of youth enterprises both in domestic and international markets, provide business development services for youth enterprises and facilitate employment of youths in international labour markets.

Mr. Deputy Speaker, Sir, so far, the Treasury has allocated Kshs3.8 billion to this enterprise since it was founded in 2006, to date. The modes of disbursement for the funds have been through the constituency based development committees and through financial intermediaries. One of the key achievements of the Fund to date through the constituency based loans, Kshs735 million has been given out to over 18,000 youth enterprises and through financial intermediaries, Kshs4.6 billion has been given out to 129,000 youth enterprises. In total to date, over Kshs147, 000 youth groups or youth enterprises have benefited from the Fund with Kshs5.3 billion being disbursed out. As you can see, the Government has put in Kshs3.8 billion so far but the Fund has been able to disburse Kshs5.3 billion, of course, this coming from leveraging from financial institutions as it was envisaged.

Mr. Deputy Speaker, Sir, some of the other achievements of the Fund so far since its inception is that it has supported over 1,800 youth enterprises to market their products abroad in very many different countries in the Common Market for Eastern and Southern Africa (COMESA) region, Egypt, Tanzania, Burundi and Rwanda. The Fund has also signed MoUs with several local authorities including the City Council of Nairobi, Murang'a and Meru county councils to come up with commercial infrastructure developments that are targeting youth enterprises. The Fund has also partnered with Kenyatta University (KU) at the Chandaria Business and Incubation Center. The Fund will provide loans for entrepreneurship training to those involved in business incubating.

One of the core mandates of the Fund was also to train young people in entrepreneurship and, so far, over 200,000 youths have been trained in entrepreneurial skills. The Fund has also partnered with the Ministry of Co-operative Development to assist the youth to form savings and credit societies (SACCOs). So far, the Fund has facilitated 24 youth SACCOs to be formed. The Fund has also supported two business plan competitions where over 10,000 youth have participated.

The issue of labour migration in this country has also been in the media, especially the issue of Kenyan migrant workers being mistreated in other countries. The Fund has also developed a labour migration framework to guide young labour migration process and it is currently developing a Sessional Paper on youth employment scheme abroad to be approved by Parliament. Over 6,000 youth have benefited already from this endeavour to get jobs abroad.

Mr. Deputy Speaker, Sir, some of the new initiatives that have been put in place by the Fund include sector specific financing. This focuses on funding youth interested in doing business in specific sectors of the economy. The Fund is also partnering with experienced players in such fields by providing funds and financial support to identify players. Here, we have been collaborating with financial institutions, for instance, Equity Bank and others, to train youth in financial literacy and there is a target to train 1.3 million Kenyans in financial literacy through these kinds of programmes.

There is also a direct funding programme that has been developed to enable youth to access big loans because the youth who already started with the enterprise have already built up their core enterprises and they need bigger financing than what was initially envisaged. Another such initiative is the credit guarantee scheme. We all know a lot of youth do not have collateral or land title deeds and the YEDF is partnering with financial institutions to provide that guarantee for the loan, of course, with products being developed. Another scheme that has been developed is partnership with the communities to be able to give information to the youths in the rural areas because we have also found that communication or information has not been reaching quite a number of youth in some of our rural areas. We have embarked on recruiting youth interns in every constituency to be able to give information to the youth and they are working together with the youth officers to reach out to our rural youth.

Mr. Deputy Speaker, Sir, despite all this, we have also faced a lot of challenges and one of them has been insufficient policy and legislative framework to support the growth of the youth enterprises and fund sustainability in conformity with the scale and complexity of the youth unemployment problem. The capital investment in providing non-credit services to the youth entrepreneurs is very heavy as we speak now. It is not just an issue of giving out loans. We must also put mechanisms in place to disburse these loans and to enable the youth to access markets. Another major challenge has been inadequate disbursement and repayment infrastructures in

some parts of the country, particularly in remote areas which pose a major challenge to disbursement and loan repayment.

I also want to highlight that one of the major partners that we have partnered with is the Kenya Union of Savings and Credit Cooperatives (KUSCO). The KUSCO is an umbrella body of very many SACCOs and because the Fund did not have the infrastructure to reach out all over the country, it was very important that we leverage with financial intermediaries that are able to reach out and one of them was KUSCO who applied to partner up with the YEDF and they succeeded by fulfilling all the requirements that were given. On that note, Kshs150 million was advanced to KUSCO---

Mr. Deputy Speaker: Finish up, Dr. Otuoma!

The Minister for Youth Affairs and Sports (Dr. Otuoma): I am almost finishing, Mr. Deputy Speaker, Sir, just give me one minute. On that note, over Kshs150 million was disbursed to KUSCO out of which more than 95 per cent has already been disbursed out to the youth.

I also want to tell the House that so far, we have over 37 financial intermediaries that we are dealing with. They are all on the youth website and they can be accessed.

Mr. Deputy Speaker, Sir, as one of the ways forward towards achieving or overcoming some of these challenges, my Ministry is in the process of developing the Youth Fund Policy and the Sessional Paper to anchor the Fund into the law. We are also reviewing the Fund's mandate. We have also embarked on the process of re-drawing a new strategic plan. We have also instituted financial and managerial systems to make sure that the Fund, despite the challenges, is able to deliver. I want to conclude by reassuring this House, the taxpayers and the youths of this country that the Youth Development Fund is safe and despite the many challenges, it is carrying out its mandate. I am sure we are going to mitigate in some of the challenges that are facing the youth.

On that note, I also want to end by thanking the Attorney-General. He has just informed me that the Sports Bill, which is also addressing some of the challenges that are facing our youths, is ready for publication. You have already heard that some of our sportsmen have challenges to even participate in carrying out their national duties. The Attorney-General has just assured me that by Friday, the Bill will be published and I am sure we will be able to address some of the challenges that our sportsmen and women have been facing because of lack of a legislative framework to help them out when they are faced with these challenges.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I want to thank the Minister for coming to speak openly about this and I have even seen him talking about it in the Press. I would like to get some clarifications from him. Unfortunately for us, in this Coalition Government, there seems to be too many changes within the Ministries. Could he clearly state whether he is aware or he knows that the biggest scandal that has hit the Youth Fund happened during the working relationship between the Ministry and a firm called Enablis? Was that issue ever sorted out to the satisfaction of the stakeholders who are the young people? That scandal is the reason why, continuously, you will keep hearing that the people are not happy with the Youth Fund. From that particular time when we all sought answers on that issue, we never got satisfactory answers.

He should also tell us how much money, so far, has been added in terms of facilitation. When you use intermediaries, they give you extra money to give to the youth. The question has been: Why use intermediaries? Why use financial institutions which have private gain? Why give the Government's money to a private institution to make money to loan out? Could he give us a clear indication as to why he must use intermediaries? Has the Government not been able to use institutions that do not seem to make money out of public money?

Mr. Mututho: Mr. Deputy Speaker, Sir, does the Minister intend in his wisdom to create venture capital? This is money set aside for young people who are innovative, have good ideas, but lack funds, to get into joint ventures with the Government. Ultimately, the Government surrenders the venture to the original inventor. Does he intend to create venture capital for the youth?

Dr. Khalwale: Mr. Deputy Speaker, Sir, using Funyula, Ikolomani, Naivasha and Vihiga as examples, where we have been doing consultations, when you go to these three constituencies, you actually see CDF projects visible and its impact is felt. Is the Minister satisfied that the Youth Enterprise Fund has a similar impact especially in Funyula, Ikolomani and the other constituencies? Finally, on the allegations of embezzlement of the funds at some of the intermediary institutions that he is using with KUSCO as an example, could he confirm that he is on top of things? What is he doing to ensure that the corruption that is currently going on in this on-lending institution comes to an end?

Mr. Chanzu: Mr. Deputy Speaker, Sir, the other problem which we have is that the Government talks about a lot of money that has been disbursed, for example, Kshs3.6 billion and 5.4 billion, but we do not see it. Could the Minister consider increasing this amount? One of the reasons why we have not seen better results out of this is because of the small amount of money that is given, namely, Kshs50,000. The Government came up with this in 2006, which is a long time ago and this was some kind of an experimental scheme out of the elections of 2002. Could he consider increasing this amount? This will have better results.

Mr. Njuguna: Mr. Deputy Speaker, Sir, the Minister has indicated to this House that this Statement was triggered by the very serious misleading information peddled by the media. What is he doing about the media? Finally, he has also added that KUSCO was given Kshs150 million and to date, it has lent about Kshs95 million. What action is he taking to ensure that the balance reaches the youth in order to create employment for them?

The Minister for Youth Affairs and Sports (Dr. Otuoma): Mr. Deputy Speaker, Sir, hon. Shebesh wanted to know about the Enablis issue. This issue came up when the Fund had just been established. The Enablis was a Canadian firm that came up with a proposal to leverage with the Government that whatever shilling that the Government was putting into lending youth programmes, Enablis was going to put in another shilling. We must also realize that, that was just when the Fund was being established and setting up its systems. In the process of negotiation, the deal did not go through. This issue was brought to this House and it was addressed both by the Auditor-General and the Attorney-General and I can table the reports of their findings to this House, if you so order, which show that no money was lost through that process. That is what the audit report and the report from the Attorney-General's office stated.

On the issue as to why the Government should give funds to the Youth Fund and the Youth Fund uses financial intermediaries, as we are calling it, they are financial intermediaries because of the infrastructural capacity to disburse. The Fund did not have offices all over the country. That meant that they must leverage on some of these funds with the infrastructure that could reach out to the various youths in this country. Still, this is part of our challenges to build up our ability to have the infrastructure in every constituency, so that we can reach the youths. We have done this, at least, by addressing the human resource aspect of it. We have opened up regional offices. We have started with ten, but the most important thing is that we want to have offices in every county. So far, we have started with ten regional offices and as we continue to build capacity, that is the way we should go and even transform ourselves into a youth bank.

Hon. Mututho has talked about venture capital. This is one of the additional products that we need to bring in because you cannot talk about entrepreneurship without venture capital. One of the things that kill a lot of entrepreneurship in any society is lack of capital; that you can trust that what you are starting up is going to make money. If we look at the technology industry, all the mobile phones and all these things that we are currently using, most of them have been funded through venture capital in other countries. This is a product that we are thinking about.

Hon. Khalwale has talked about the impact of the Youth Enterprise Fund in various constituencies. Despite the little funds that we are getting, for example, I have talked about a total of Kshs5.3 billion that has been disbursed and the Government putting in Kshs4.6 billion, I can table in this House how each constituency and each county has performed. Different constituencies and counties have performed very differently. Other than the uniform amount of Kshs735 million which is being given to every constituency, there are certain constituencies whose capacity to borrow, utilize and work together with the financial intermediaries has been very low. That is why we embarked on a sensitization programme in some of those areas.

I am urging my colleagues, Members of Parliament, to sensitize some areas and inform their people that they cannot continue to thrive on enterprise without taking loans. There are certain areas - especially where hon. Khalwale has just mentioned - and I happen to come from one of those areas - where the issue of taking loans has really been mystified by people who think that when you do not have a loan, you are doing very well. Yet, they have no capacity unless they inherit some money. You can only enterprise when you borrow. If you look at it analytically, the borrowing of loans in various regions differs from one place to another. So, we have embarked on disseminating information through the Youth Empowerment Centres. We want to give youth in those particular areas information. We want to target them. We want to show them that they can do a business instead of being employed for Kshs3000. They can start their own business and employ somebody for Kshs10,000. Those are some of the challenges that we have learnt as we go out there. Sometimes, you cannot have a uniform product for the whole country. It does not work. You will find that in other areas, it is doing very well. In fact, they are even going to other areas to borrow money because the money that has been sent there is lying idle. Nobody is borrowing it. So, those are the challenges that we are trying to address.

Mr. Deputy Speaker, Sir, on issue of allegations, which I mentioned about the Kenya Union of Savings and Credits Co-operatives (KUSCO), as I have said, I can table--- I happen to have that document here. I can table all the procedures that were followed by KUSCO when they applied for the loan, just like any other entity. We have got 37 financial intermediaries that have done that. I think KUSCO, being an umbrella body, is one of the best that is currently doing very well in trying to address that.

(Dr. Otuoma laid the document on the Table)

So, there is no scandal there. There is no issue there and I think as one of the hon. Members said, maybe, the Fund needs to seek redress on some of these issues.

Hon. Chanzu, you are right. Initially, the Fund was given Kshs1 billion to start off with. It was envisaged that, that will continue at the rate of Kshs1 billion, and also continue to be enhanced by other development partners. But what has happened is that the Government reduced that amount to almost half. I have been arguing with my Parliamentary Committee that we need to work on how to go back even to the Kshs1 billion funding. That is because in six years now, we should be at the level of Kshs6 billion. But you could see from my presentation that we are at

the level of Kshs3.6 billion. That is because the Kshs1 billion was given and then, subsequently, it was reduced to half a billion. Of course, that hampers service delivery. So, it is an item that I have already presented to our Parliamentary Committee to help us with the budgeting of that.

Hon. Njuguna, I think I touched on what you said. You asked about what triggered that misinformation. I just want to say that the Youth Enterprise Fund, being a financial institution, what has been happening to it is very unfair. People are just talking without verifying with the relevant bodies on what is exactly happening. I had a team of people purporting to be the National Youth Council, while we all know that the National Youth Council elections have not been done because we were taken to court. So, we could not continue to finish the process. We stopped at the district level and we are waiting for the court outcome to be able to have the National Youth Council, where the youth themselves can be able to advocate for issues that affect them. I am leaving whatever measures that needs to be taken to either the Youth Fund itself or KUSCO. If they need to seek legal redress, that is up to them.

Thank you.

Mr. Deputy Speaker: Next Order!

MOTION

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the Vetting of Nominees to the National Police Service Commission laid on the Table of the House on Tuesday 15th May, 2012.

(Mr. Kapondi on 17.5.2012)

(Resumption of Debate interrupted on 17.5.2012)

Mr. Deputy Speaker: The hon. Kapondi had over 59 minutes. Move your Motion.

Mr. Kapondi: Mr. Deputy Speaker, Sir, before I was interrupted, I was in the process of moving the Motion. I was going into the details of the Motion.

Mr. Deputy Speaker, Sir, I want to give a chronology of events of what really transpired. Pursuant to Section 6(3) of the National Police Service Act, it is important to note that the Selection Panel advertised for the positions of the Chairperson and members of the National Police Service Commission in the print media somewhere in December, 25th of 2011. A total of 21 applications were received for the position of Chairperson. The position of retired senior police officers attracted a total of 15 applicants. The positions of other members received a total of 207 applications.

Mr. Deputy Speaker, Sir, the Selection Panel conducted public interviews of shortlisted candidates on 1st, 2nd, 6th and 16th December, 2011, respectively, at the Kenyatta International Conference Centre.

Mr. Deputy Speaker, Sir, for the position of the Chair, the following persons were shortlisted: Mr. Johnston M. Kavuludi, Mr. Murshid A. Mohamed and Ms. Amina R. Masoud. For the positions of members, eight persons were shortlisted. They are: Mr. Lawrence Sinyale, Esther Chui-Colombini, Mr. Ronald L. Musendi, James A. Atema, Benard M. Mbai, Major (Rtd) Billow Khalid, Dr. Major (Rtd) Muia Mutia and Ms. Mary A. Owuor.

Mr. Deputy Speaker, Sir, on 22nd February, 2012, the Selection Panel then forwarded the names of the shortlisted applicants to His Excellency the President and the Rt. Hon. Prime Minister for consultation and nomination.

Mr. Deputy Speaker, Sir, in accordance with Section 6(5) of the National Police Act, the President is required to select the Chairperson and members of the National Police Service Commission from the list of qualified persons forwarded to him by the Selection Panel under Sub-section 4G of the Act and, subsequently, forward the names of the persons so selected as Chairperson and members to the National Assembly for approval.

Mr. Deputy Speaker, Sir, in a letter reference OP/CAP/3/77A dated 7th March, 2012, from the Permanent Secretary, Secretary to the Cabinet and Acting Head of the Civil Service, the National Assembly was informed that His Excellency the President in consultation with the Rt. Hon. Prime Minister had made the following nominations for the positions stated here under: For the position of Chairperson, Amina R. Masoud. For members: Esther Chui-Colombini, Ronald L. Musengi, James A. Atema, Dr. Major Muia Shadrack Mutia and Mary Auma Owuor.

Mr. Deputy Speaker, Sir, the hon. Speaker directed the Departmental Committee on Administration and National Security to conduct interviews of the nominees and table its report for consideration prior to approval by the House on or before Thursday. That was 29th March, 2012. However, Parliament went on Recess shortly after and the Committee was to continue with the vetting exercise between April, 17th and May, 7th, 2012.

Mr. Deputy Speaker, Sir, pursuant to the provisions of Article 118(1) and Sub-clause 2 of the Constitution and Standing Order No.180(a)(b), which allows the public access to Committee Sittings and in line with Article 73(2)(d) of the Constitution, which provides for accountability to the public for decisions made and actions taken, the Committee placed advertisements in the mainstream daily newspapers on 18th and 19th April, 2012, inviting members of the public to present memoranda or any information they might have on the nominees.

Mr. Deputy Speaker, Sir, the Committee received submissions from three institutions. These are the Women Political Alliance of Kenya (WPAK); the Law Society of Kenya (LSK) and the Office of the Prime Minister.

From the submission of the WPAK to the Committee, it made it very clear that the manner in which the Selection Panel shortlisted qualified applicants for the position of chairperson and members of the National Police Service Commission (NPSC) was discriminatory on the grounds of gender, ethnic and/or social origin, language and regional balance. This in effect violated Article 27 of the Constitution. This was also contrary to the letter and spirit of Articles 232 and 249 of the Constitution and disadvantaged persons who merited to be nominated for positions they applied for.

Mr. Deputy Speaker, Sir, according to the WPAK, the process used in the final selection of qualified applicants for the said positions lacked a systematic, just, fair analysis and methodology and, in essence, it defeated the very objective of ensuring fair competition and transparency in short-listing qualified candidates.

Mr. Deputy Speaker, Sir, according to the WPAK, the National Gender and Equality Commission panelist was not accorded a fair and reasonable opportunity to participate in the short listing process. Subsequently, the names forwarded were not guided by the principles of fair competition and transparency. Further, the principles of impartiality, gender equality, inclusiveness, freedom from discrimination and the rule of natural justice were not adhered to.

Mr. Deputy Speaker, Sir, the WPAK further alluded that the selection and approval processes for the position of chairperson and members of the Commission failed to observe the

principles that promote rule of law and constitutionalism. They reiterated the need for ensuring effective institutional policy and legal reforms which, if not observed, would drastically erode the gains made towards genuine constitutional change. As a result, there is a great concern that the NPSC and the National Police Service (NPS) are likely to suffer credibility crisis if the changes in the top leadership of the NPS are perceived to be merely cosmetic.

Mr. Deputy Speaker, Sir, from the Office of the Prime Minister, the Prime Minister had written to the Speaker of the National Assembly before placement of these adverts to the media on 9th of March, 2012, objecting to the names submitted by the Office of the President for approval by Parliament because there was no prior consultation on the said list. The Speaker wrote back to the Prime Minister on 9th of March, 2012, informing him that the Speaker would await further communication from the Prime Minister on the matter.

Mr. Deputy Speaker, Sir, this further explains why the period which was accorded to the Committee to finalize its work was extended. Because of these special circumstances, it could not meet the deadline as required. After presentation by the Legal Advisor to the Prime Minister, the Committee had a number of concerns; that what we sought to know as a Committee from the Office of the Prime Minister's Legal Adviser is that why it took so long for the Prime Minister to raise the matter with the Office of the President after he realized that the list forwarded to Parliament did not have the names mutually agreed upon. The advisor informed the Committee that there were ongoing consultations between the two offices although he was no privy to what exactly had transpired. The Prime Minister did write to Parliament objecting to the list "as this was deemed to be the most urgent thing to do," that is according to the Legal Advisor. However, the Committee noted that there was no letter that was written from the Right Hon. Prime Minister to the Office of the President objecting to the names sent to Parliament. In fact, what came to the Committee came much later after two weeks.

So, Mr. Deputy Speaker, Sir, taking into considerations the concerns by the WPAK and those by the Office of the Prime Minister, the Committee went into the vetting process of the ten persons who were interviewed by the panelists for the position of the chair plus the five members who were forwarded to Parliament by the Office of the President via a letter that was written by the Acting Head of the Civil Service and the Secretary to the Cabinet.

Mr. Deputy Speaker, Sir, having undertaken interviews on the ten candidates shortlisted by the Selection Panel for the position of the Chairperson for the NPSC, the Committee was in agreement, on the suitability of the three best candidates for the Chair, namely Ms. Jean Njeri Kamau, Mr. Murshid A. Muhammed and Mr. Johnson M. Kavuludi.

The list forwarded to Parliament, indeed, did not have any of the nominees who had requisite qualifications for the appointment as a High Court Judge. Out of all the seven names that were forwarded, none had the qualifications to be appointed as a High Court Judge. So, on that basis, as per the provisions of Articles 246(2) (a)(i) and 166(2) of the Constitution. The Committee observed that none of the nominees held a degree in law. That explains why none would qualify; none met the basic requirement for consideration as a High Court Judge under Article 166(2) of the Constitution. Therefore, the list sent to Parliament, as at that stage, was not within the context of Article 246(2) and 166(2) of the Constitution.

Mr. Deputy Speaker, Sir, the performance by Ms. Amina Masoud during the Committee vetting process was not satisfactory. Therefore, the Committee concluded that even if she met the requisite minimum requirement, she was not the appropriate candidate for the appointment as the Chairperson of the NPSC.

Mr. Deputy Speaker, Sir, the Committee further would not conclusively establish why the selection panel could not recommend for nomination one of the lawyers who had been shortlisted and ranked highly during the interview by the panel.

Mr. Deputy Speaker, Sir, according to Article 246(2) and 166(2) of the Constitution, it was mandatory that because of the quasi-judicial functions of the position of Chair, at least, one of the lawyers should have been recommended for appointment. These lawyers who impressed the Committee during the vetting exercise were: Jean N. Kamau, Murshid A. Mohammed, Ms. Margaret K. Cheboyo, Mr. Ben Mwangi Mbai and Mr. Byram Ongaya. These are the lawyers who appeared before the panelists and were ranked accordingly. Out of the five lawyers, the one who emerged top was Jean N. Kamau followed by Murshid A. Mohammed. The Committee could not understand why none of these very qualified lawyers was forwarded to the appointing authority for nomination and subsequent forwarding to Parliament.

Mr. Deputy Speaker, Sir, the assessment and subsequent awarding of marks and ranking by the selection panel – and this is something that, again, really caught our attention – was very inconsistent, varied and skewed. For instance, it was difficult to ascertain why one panelist awarded 58 per cent score, while another one awarded 96 per cent over the same person. The Committee, thus, resolved to carry out an inquiry on the ten shortlisted persons for the post of Chairperson, in order to establish whether there was credibility and objectivity in the selection process.

Mr. Deputy Speaker, Sir, it is important to note that the list that was forwarded to Parliament had two inadequacies. One is political and the other is constitutional. The political angle was that the Office of the Prime Minister averred that there was no proper consultation between the President and the Prime Minister on the names that were presented to the House, while the constitutional dimension revolved around the assertion that none of the persons met the requirement to be appointed as a High Court Judge, in accordance with Article 246(2) and 166(2) of the Constitution.

Mr. Deputy Speaker, Sir, having considered memoranda and representation from the various groups, we interviewed the shortlisted persons and, after deliberating extensively on the nominations to the National Police Service Commission, the Committee made the following recommendations:-

The nomination of the six persons to the National Police Service Commission was not within the context of Article 246(2)(a)(i) and 166(2) of the Constitution. Pursuant to Section 69 of the National Police Service Commission Act 2011, the Committee recommended that names of the six be referred back to the President to submit fresh nominations.

Mr. Deputy Speaker, Sir, considering the fact that this entire process started sometime in October, 2011 and the entire country is awaiting with bated breath for the reform process to run its course, the Committee recommended that His Excellency the President may consider nominating the Chairperson of the National Police Service Commission. That person should have a sound legal background, given the mandate of the Commission as quasi-judicial. He may nominate the Chairperson from one of the three persons named hereunder, who have been duly interviewed, vetted by the Committee and met the requirements of Chapter 6 of the Constitution; that is, on Integrity.

- (i) Ms. Jean Njeri Kamau;
- (ii) Mr. Murshid A. Mohammed; and,
- (iii) Mr. Johnston M. Kavuludi.

Mr. Deputy Speaker, Sir, the Committee further recommended that His Excellency the President may consider nominating the five nominees to the National Police Service Commission as vetted by the Committee and also meet the requirements of Section 5 of the National Police Service Commission Act, 2011, which give further effect to Article 246(2)(a)(ii) and (iii) of the Constitution. These persons are:-

- (i) Esther Chui-Colombini;
- (ii) Ronald L. Musengi;
- (iii) James A. Atema;
- (iv) Dr. (Maj.) Muia Mutia; and,
- (v) Mary Auma Owuor.

Mr. Deputy Speaker, Sir, the police reform process is something that has been awaited for a long time. The circumstances surrounding this issue are so extraordinary that this reform process should be moved forward. The only way to move it forward is to consider the adoption of this Committee's Report.

Mr. Deputy Speaker, Sir, I beg to move and ask hon. Kiilu to second.

Mr. Kiilu: Mr. Deputy Speaker, Sir, I beg to second.

(Question proposed)

The Minister for Trade (Mr. Wetangula): On a point of order, Mr. Deputy Speaker, Sir.

An hon. Member: It has been seconded!

The Minister for Trade (Mr. Wetangula): Okay!

Mr. Deputy Speaker: Hon. Wetangula and hon. Eugene Wamalwa, you must have been engrossed in New FORD(K) or FORD(K) politics. It was seconded!

(Laughter)

Hon. Namwamba!

POINT OF ORDER

CONSTITUTIONALITY OF MOTION ON ADOPTION OF REPORT ON VETTING OF NOMINEES TO NATIONAL POLICE SERVICE COMMISSION

Mr. Namwamba: Mr. Deputy Speaker, Sir, matters of presidential candidates are weighty and they can take your attention from the business of the House. When you have two Presidential contenders sitting side by side, we can only understand.

Mr. Deputy Speaker, Sir, I rise on a point of order to raise a question of procedure, that I believe does touch on the very character of the Report that the Chair of the House Committee has moved so eloquently and with so much conviction. I rise under Standing Order No.47(3)(b) which reads:

“If the Speaker is of the opinion that any proposed Motion is contrary to the Constitution without expressly proposing appropriate amendment of the Constitution, the Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve.”

Mr. Deputy Speaker, Sir, I rose last Thursday when the Committee Chair first sought to move this Motion and you advised that I hold my horse until after the Motion has been moved and seconded. In law, we say that procedure is the handmaiden of substance and the manner in which a process is undertaken is as of much significance as the final product of that process.

Therefore, I would like to raise three questions that purely touch on procedure with the intention of inviting the Chair to indulge me with some clarification or a ruling. The first question is whether the Committee of the House acted beyond its mandate, *ultra-vires*, as we say in law, by going beyond the list of names submitted to this House through the Clerk of the House from the Office of his Excellency the President vide a letter dated 7th March, 2012.

I raised that matter specifically with regard to an admission by the Committee that it did decide to invite all persons that the panel had an opportunity to interview during the vetting process. Allow me without belabouring the point to refer you to page 5 of the Report of the Committee that says:-

“Mr. Speaker, Sir, having considered the memorandum from the various groups on the suitability of the nominees to the National Police Service Commission, the Committee in its 27th sitting held on Wednesday, 2nd May, 2012, resolved to invite all the persons shortlisted for the position of Chairperson of the Commission.”

The Committee goes further to indicate that further:-

“The Committee sought to establish whether the selection panel had conducted a fair interview based on merit to select the best candidate.”

This Committee was exercising a statutory mandate. That mandate is clearly set forth in Section 6 of the National Police Service Commission Act of 2011. Allow me just for the record to indicate the procedure that the law expects in the whole process. Section 6(3) of the law that was enacted by this House last year says as follows:-

“The Selection Panel shall within seven days of its convening, vide an advertisement in, at least, two newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the Chairperson and Members of the Commission under Article 246(2) (a) of the Constitution and this Act.”

The law then goes ahead to provide the detailed procedure of how the panel is to undertake its mandate, and the panel is required to shortlist three qualified applicants for the position of Chairperson, shortlist eight qualified applicants for the positions of the Members of the Commission and forward the names of the qualified persons under paragraph (e) and (f) to the President.

In exercise of that mandate, the panel did conduct its mandate. In a letter dated 22nd February, 2012, which I will proceed to table for the record, the panel did, in fulfillment of the requirement of Section 6(3)(e) and (f), forwarded a list of three names for the position of Chairperson. Mr. Deputy Speaker, Sir, allow me to read those three names for the record. The names are Mr. Johnston M. Kavuludi, Mr. Murshid Mohammed and Ms. Amina Masoud. The panel also did forward the following eight names for members of the Commission. They are Lawrence Sinyale, Esther Chui-Colombini, Ronald L. Musengi, James Atema, Bernard Mbai, Maj. (Rtd) Billow Khalid, Dr. Maj. Muia Mutia and Mary Owuor.

This letter which I table is the communication from the panel forwarding the three shortlisted names for the position of Chairperson and the eight shortlisted names for the position of members in accordance with section 6(3)(e) and (f) of the law. The law is clear. Upon receipt of those names, the law says as follows in Section 6(5):-

“The President shall, if he approves, within 14 days of receipt of the names of successful applicants forwarded under Sub-Section 4(g) select the Chairperson and members of the Commission and forward the names of the persons who are selected to the National Assembly for approval.”

In fulfillment of that mandate and in strict adherence to that provision of the law, in a letter dated 7th March, 2012 from the Office of the President addressed to the Clerk of the National Assembly, the President forwarded the following names. For the position of the Chairperson, the President forwarded the name of Amina Masoud. For the position of Members, the President forwarded the names of Esther Chui-Colombini, Ronald L. Musengi, James Atema, Dr. Maj. Mui Shadrack Mutia, EBS and Ms. MaryAuma Owuor. This letter which I also table is in tandem with the authority given to the President by Section 6(5) of the National Police Service Commission Act.

(Mr. Namwamba laid the documents on the Table)

Mr. Deputy Speaker, Sir, the law then goes ahead to define the mandate of the National Assembly in Section 66. It says:-

“The National Assembly shall within 21 days of the day that it next seats after receipt of the names of the applicants under Sub-Section 5 vet and consider all the applicants and may approve or reject any or all of them.”

This then raises my first question. The Committee says in its own words on page five of the Report:-

“The Committee in its 27th sitting held on Wednesday, 2nd May, 2012 resolved to invite all the persons shortlisted to the position of Chairperson of the Commission.”

In fact, as proof of that, the Committee has attached details of all the persons that it went ahead to invite and interview. My question is; did the Committee violate Section 6 of the National Police Service Commission Act by going beyond the list submitted both by the panel and the President to this House? That is my first question.

The second question is whether the action of the Committee to raise ---- and I raise this question out of the following statement made by the Committee on page five. It says:-

“The Committee sought to establish whether the Selection Panel had conducted a fair interview based on merit to select the best candidate who possessed the relevant knowledge and experience needed to transform the current police force.”

The Committee then goes further to make the following statement on page 20.

“The committee observed, for instance, that Ms. Jean Njeri Kamau who scored the highest marks was ranked top amongst the lawyers interviewed and had the requisite qualifications for the appointment as set out in the Constitution and yet she was not nominated as the Chairperson of the National Police Service Commission.”

There are several other instances where the committee seems to be going beyond the mandate clearly set in Section 66 which states clearly that:-

“The responsibility of the National Assembly is to vet and consider the applicants and may approve or reject any of them”.

By undertaking to interrogate the process by which the panel conducted its affairs, I ask the question; whether, in fact, the committee did not engage in re-interview or whether the committee did not engage in what amounts to an audit of the work of the panel and even served as an appellate tribunal for the candidate that had been interviewed by the committee.

Mr. Deputy Speaker, Sir, in fact, I want to state that in my humble interpretation of the law, to vet is not the same thing as to interview. The responsibility to interview in law is handed to the panel. Parliament is given the responsibility to vet and I submit that it would be a violation of the law for Parliament to attempt to re-interview candidates already interviewed by the panel.

My final question is that the committee has proceeded to make a very curious recommendation. When you look at the list of recommendations by the committee on page 22, among the recommendations that it makes and I quote recommendation No.2:-

“His Excellency the President may consider nominating the chairperson of the National Police Service Commission who should have a sound legal background given that the mandate of the commission has *quasi* judicial functions, from one of the three persons named hereunder who have been duly interviewed by the committee”.

The committee actually admits that it has gone beyond the statutory mandate of vetting and actually conducted interviews. That is the language of the committee itself. Who meets the requirements of Chapter Six of the Constitution? It is Jean Njeri Kamau, Mr. Murshid M. Mohammed and Mr. Johnstone M. Kavuludi? Of course, that recommendation in itself does confirm that the committee overstepped its vetting mandate and engaged in interview – a role that is specific to the panel. It also raises the fundamental question as to whether the committee can go beyond the mandate specified in Section 66 which says:-

“The National Assembly shall within 21 days of the day it next sits after receipt of the names of the applicants under Subsection 5, vet and consider all the applicants and may approve or reject any or all of them.”

Mr. Deputy Speaker, Sir, the responsibility of the committee which by extension is the responsibility of this House is to endorse or reject and nominate. For the committee to purport to direct the President in terms of who he may or he may not appoint is contrary to the law and it is an attempt by the committee to influence a process where they have no mandate. In fact, the law is very clear that where the National Assembly rejects any nomination, the Speaker shall within three days communicate his decision to the President and request the President to submit fresh nominations. Where a nominee is rejected by the National Assembly under sub-section 9, the President shall within seven days submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under sub-section 5.

Mr. Deputy Speaker, Sir, the law is so clear. The sequence is so succinct. Names come to the House. The House vets. The House adopts or rejects. If the House rejects, the Speaker communicates that decision to the President. The President then has the mandate to nominate any other person from the shortlist that has already been recommended to the President by the interviewing panel. What the committee is purporting to do here by recommending to the President who he may or may not nominate as a replacement for the names that have purportedly been rejected does not flow in sync with this law.

Mr. Deputy Speaker, Sir, because this is one of the laws that has been passed by the House in part of the implementation of the Constitution and, therefore, in accordance with our Standing Order No.47 (3), I submit that for this report to be considered by this House in its current form with those gross procedural anomalies would not only be an illegality but it would be grossly unconstitutional and, therefore, a violation not only of the Constitution but of the integrity of this House.

Mr. Deputy Speaker, Sir, let me conclude by addressing myself to the question as to whether the Chair has the mandate to consider the question I am raising. Allow me first of all to table this for the record. For the avoidance of doubt, I want to say that on record.

(Mr. Namwamba laid the document on the Table)

I conclude this point by making reference to a ruling of the Chair that had opportunity to address the question of jurisdiction; whether the Chair can be invited to rule on a matter of legality or constitutionality.

Mr. Deputy Speaker, Sir, on Thursday, the third day of February 2011, this House had opportunity to receive a ruling from the Chair on whether the Chair can be invited to rule on the legality or constitutionality of a motion or a report brought to this House. That was with regard to a Question raised by hon. Gitobu Imanyara who sought from the Chair to rule on what hon. Members of the National Assembly should do where instances of gross violation of the Constitution occur instigated by either hon. Members of this House, the Executive or the Judiciary.

As part of the ruling, the Chair in that particular instance had this to say. Allow me to quote this for the record as a precedent:-

“Hon. Members, I wish to begin by pronouncing myself on the matter of the jurisdiction of the Speaker to determine the question raised as the answer to this question is a prerequisite to proceeding with the other issues raised. Hon. Members will recall that I indicated on Tuesday, 1st February 2011 in promising to give this ruling that I had no doubt in my mind that the Speaker has the jurisdiction to rule on this matter. Indeed, I have had the pleasure to rule on various occasions that it is a subtle law in the Commonwealth and beyond that every independent legislature is the sole judge as to how it shall conduct its own affairs.”

Mr. Deputy Speaker, Sir, the Chair went on to say:-

“The Speaker as the leader of the House and the manifestation of the authority of the House is mandated and obligated to safeguard, and jealously, its sovereignty within Government to determine what it shall and shall not do and when and in what manner it shall do those things without interference from any other person or authority. Hon. Members, this position is recognized in parliamentary practice and traditions and in both the former and the present Constitution.”

This is what the Constitution means when it vests the legislative authority of the Republic in Parliament and provides that Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty. This is also the essence of the separation of powers that I have every so often pronounced myself upon from this position. The view that it can fall to another organ, whether the Executive or the Judiciary, to determine for Parliament a matter before Parliament is, to my mind, constitutional heresy; which I would urge that every person in this country and more so, in this House, completely purges and disabuses themselves of.

This disposes also of the question of whether or not the Speaker can properly interpret the Constitution or that this function belongs to the Judiciary. The answer, of course, is that in so far as a constitutional question arises before the House, within the conduct of the business of the House, it is the constitutional duty of the Speaker to interpret the Constitution to that extent and for that purpose alone, so as to enable the House to proceed with its constitutional functions.

I emphasize the following, hon. Members. It is not fathomable and it would be a grave negation of the Constitution that the House should adjourn or otherwise suspend its business and seek the directions of another body or organ before it can proceed. I want all of us to note that

emphasis. I think that it is time to debunk and demystify, for all time, the question of the interpretation of the Constitution.”

Mr. Deputy Speaker, Sir, in that ruling, we have landmark precedence where the Chair has confirmed that indeed the Chair bears the authority to address itself to the questions of legality and constitutionality. Therefore, I believe that I am properly within the jurisdiction of the Chair to seek the guidance of the Chair on this matter.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Namwamba, can you table a copy of that ruling?

Mr. Namwamba: Mr. Deputy Speaker, Sir, I do hereby table a copy of the ruling of the Chair, dated Thursday, 3rd February, 2011.

(Mr. Namwamba laid the document on the Table)

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I also wish to rise on a point of order to lend a hand to what hon. Namwamba has said. In so doing, I wish to draw the attention of hon. Members to Standing Order No.47(3), which says:-

“47(3) If the Speaker is of the opinion that any proposed Motion-

(b) is contrary to the Constitution, without expressly proposing appropriate amendment of the Constitution, the Speaker may direct that the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve.”

Mr. Deputy Speaker, Sir, having read out that provision of the Standing Orders, I will now go to Recommendation No.1 of the Committee which says that the nomination of the six persons of the National Police Service Commission was unconstitutional within the context of Article 246(2)(a)(i). So, without even making reference to The National Police Service Commission Act, and going by the Committee Report alone, this Report should not actually be debated in this House because even the Committee acknowledges that it is unconstitutional.

Mr. Deputy Speaker, Sir, having said so, I would like to draw the attention of hon. Members to a matter which was before the Committee on Justice and Legal Affairs; namely, consideration of the list of persons nominated for appointment to The Political Parties Tribunal. When the names of the persons that were submitted to Parliament for approval were not considered appropriate by the Committee, we attempted to ask for other names, as a Committee but the Speaker told us then that when we are given names to scrutinise, our mandate is to either approve or reject those names. We could not go beyond either approving or rejecting the names.

Therefore, on the same vein, on the one ambit I am indicating that the nomination was unconstitutional and on the other ambit I am saying that what the Committee has done is *ultra vires* because they have gone beyond their mandate. A Committee of Parliament cannot purport to add names which were not forwarded to Parliament. I have due respect and great admiration---

Mr. Kapondi: On a point of order, Mr. Deputy Speaker, Sir.

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I am on a point of order.

I have great admiration for some of the persons whose names have been proposed by the Committee. Indeed, one of the persons whose name has been proposed was my executive director for many years. So, I am not in doubt about their competences but the law is the law. It must be followed. So, I am not raising issues of competences because most of the people whose names have been proposed are extremely competent. One of them was actually my junior at Limuru Girls School. So, they are people whose competences I know. What I would want is that we must be clear about the law and about the procedure.

Mr. Deputy Speaker, Sir, I am almost agreeable to the Committee in all its recommendations, except that it seems to be contradictory. In the first recommendation, the Committee says that the nomination of these persons is unconstitutional and, in the third recommendation, the same Committee is asking us to accept other names which were not forwarded to Parliament. The Committee is directing the two principals on what to do.

Looking at the Constitution, the Sixth Schedule, Section 29(2), on new appointments, it says:-

“29(2) Unless this Schedule prescribes otherwise, when this Constitution requires an appointment to be made by the President with the approval of the National Assembly, until after the first elections under this Constitution, the President shall, subject to the National Accord and Reconciliation Act, appoint a person after consultation with the Prime Minister and with the approval of the National Assembly.”

Mr. Deputy Speaker, Sir, this House dealt with the cases of the appointment of the Attorney-General, the Chief Justice and the Director of Public Prosecutions. The House was held to ransom for very long and the Speaker gave a ruling on the matter to the effect that where there is no consultation, a matter cannot go forward. This is a similar situation. The Committee has actually indicated, in its Report, that the Office of the Prime Minister indicated that two of the names they agreed to were not the names that have actually been presented to Parliament.

The Committee has further indicated that the letter came to them two weeks later but nonetheless it came. They said that it did not go to the President because the Committee was dealing with it. Even the complaint that the Prime Minister gave last time came to the House. It did not go to the President because it was the House which was dealing with the matter.

Mr. Deputy Speaker, Sir, with those remarks, I would also want to add my voice that the Speaker should rule whether, indeed, this Report is constitutionally before Parliament, and if not, that it should not be submitted to further debate.

Thank you.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: What is your point of order, hon. Kapondi?

Mr. Kapondi: Mr. Deputy Speaker, Sir, I rise on a point of order, in response to what hon. Namwamba has eloquently exposed here; to the effect that the Committee went beyond its mandate.

I want to make it very clear that Article 118 of the Constitution, sub-articles 1 and 2, and Standing Order No.180 (a) and (b), allow the public to access Committee proceedings. Article 73(2)(d) of the Constitution also provides for accountability to the public by Parliament for decisions made and actions taken.

Mr. Deputy Speaker, Sir, it is on that basis that the Committee received public memoranda. One serious observation that is important for the Chair to note is that the Women Political Alliance, in its submissions to the Committee, made it very clear that the manner in which the selection panel shortlisted its qualified applicants for the positions of chairperson and members of the National Police Service Commission was discriminatory on the grounds of gender, ethnicity and/or social origin; language and regional balance.

This in effect violates Article 27. We are talking about the Constitution in this case. This was also contrary to the letter and spirit of Articles 232 and 249 of the Constitution and disadvantaged persons who merited to be nominated for positions they applied for.

Mr. Deputy Speaker, Sir, that alone explains that, as a Committee, we had the law with us to look into what the panelists had done. The panel, in forwarding the names never gave any reason whatsoever as to why a lady who was ranked number two, her name was not forwarded to the President. That alone again violated the Constitution. It is on that basis that, as a Committee, after consulting legal minds in this House and consulting the Speaker of the Kenya National Assembly--- It is important to bear in mind that even for the Speaker of the Kenya National Assembly to give approval to the notice of Motion, it meant very clearly that this Report is properly before the House and there is nothing that violates the Constitution in this case.

As I end my submission---

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. On the same point of order by Mr. Namwamba I urge you with all due respect to find that all that Mr. Namwamba has been doing is to express in legal terms his rejection of the Report of the Committee.

To purport to request the Chair to rule that this Report cannot be debated, in my view, would be proceeding on the assumption that parliamentary committees operate on the basis of jungle law. You know very well that parliamentary committees work with the support of the clerical arm of Parliament based in the office of the Clerk which has got immense institutional memory.

Mr. Deputy Speaker, Sir, you also know that parliamentary committees work in full consultation with the Legal Department of Parliament. Nothing that we bring here as committees is brought without the express concurrence by the Justice and Legal Affairs Committee that we are proceeding within the provisions of the law.

Thirdly, you should find that the argument by Mr. Namwamba assumes that it is unconstitutional which to me means that actually the hon. Member is doubting the---

Mr. Deputy Speaker: Order! Do not discuss individuals; discuss the content. Give explanations as to why you think this Report is validly before the House. Cite the Constitution, the laws and the Standing Orders. Do not delve into semantics that is personal!

Dr. Khalwale: Mr. Deputy Speaker, Sir, if you keep your cool that is exactly what I am doing.

Mr. Deputy Speaker: Order! Dr. Khalwale, you have absolutely no business in determining how cool or how less cool the Chair is. The Chair is there to determine and make sure that you debate and contribute within the Standing Orders, the law and the Constitution. There are issues there which are being discussed. Mr. Namwamba has advanced his own; advance your own. Do not get personal or do not get anything else. This is a matter that is of a legal and constitutional nature. You are a lawmaker. You will do a lot of service to yourself by debating these things and citing the Constitution and the statutes of the country.

Dr. Khalwale: Most obliged, Mr. Deputy Speaker, Sir. The third point that I was citing was that the very fact that this Motion has received the Speaker's assent, it means that in accordance with the Standing Orders the Speaker found the Motion constitutional.

Mr. Deputy Speaker, Sir, the hon. Member would like us to fail to debate this matter because he believes that the Committee did not---

Mr. Deputy Speaker: Everybody has heard what he believes! We want to hear what you believe in.

Dr. Khalwale: Yes, Mr. Deputy Speaker, Sir. This is what I believe in; to purport that the Committee went beyond vetting and actually interviewed these people, for us to believe that there must be evidence. In the Report the only evidence for interviewing is an annexure of the scores that these people got when they appeared before the panel. The Committee itself has not

given us any scores showing that after they interviewed them this is how those people scored. So, all that they are telling us is that they vetted them and found merit as per the Report.

Finally, to attempt to make recommendations on the ideal names to the President, as the Committee has attempted in this Report, I do not see how it is offensive. If we have rejected the recommendations by the President and then the President probably wants to find out how Parliament was thinking about that, surely he will look at the HANSARD. In that HANSARD there will be a record of reasons of why we were rejecting the names. Many of us shall say that we want the results of the interviewing panel to be respected. In so doing we will end up listing one, two and three, which will agree with the findings of the Committee.

Mr. Deputy Speaker, Sir, if the Committee, therefore, has done the same, it is not arm-twisting the President but it is just helping the President to understand how the Committee was viewing the meritography of the names that found their way into the list.

Thank you.

Mr. Mbadi: Mr. Deputy Speaker, Sir, first of all, I want to address myself to whether, if a Motion has already been moved in the House, that Motion cannot be ruled as an unconstitutional. There is precedent. I remember when the Justice and Legal Affairs Committee brought a report to this House on the nominations of the Chief Justice, Deputy Chief Justice, the Director of Prosecutions (DPP) and the Attorney-General, this House could not proceed to process those names because matters of constitutionality were raised. So, what Mr. Namwamba has raised with regard to the constitutionality of the Motion is valid and it is not a matter that we are handling for the first time.

I also wanted to address myself to the fact that we are not against the fact that the Committee probably found some nominees unsuitable. But what we are saying is that the report in itself is unconstitutional. I want to just touch on two issues. The first one is with regard to the recommendations. On the second recommendation by the Committee, the Committee is trying to imagine that the law that we passed in this House did say that it is the Chair who is supposed to be a lawyer. I want to disagree with that and just take ourselves to the National Police Service Commission Act. It says under Section 5 that the person for the chair should have qualifications stated and there is no legal requirement. But one of the commissioners must be a lawyer. So, out of the six, one should be a lawyer and it does not have to be the chair. So, when the Committee puts it in their report by recommending that the Chair must just be picked from among the lawyers, I think that is being unfair to other qualified Kenyans because it is based on wrong interpretation of the law.

Mr. Deputy Speaker, Sir, if you look at the second recommendation on page 22 of this Report, you will realise that it says:-

“His Excellency the President may consider nominating the chairperson of the National Police Service Commission who should have a sound legal background given that the mandate of the Commission has *quasi-judicial* functions, from one of the three persons named hereunder who have been duly interviewed by the Committee and who meet the requirements of Chapter 6 of the Constitution.”

This is creating a law; when we created the National Police Service Commission Act, if we wanted the Chair to be a lawyer we should have said so in the law. What we did say, as a House, is that one of the Commissioners should be a lawyer. If the Committee was rejecting the names on the basis that none of them was a lawyer that would be perfect. Reject all the names and ask the President to appoint six Commissioners, one of whom must be a lawyer.

Mr. Deputy Speaker, Sir, the beauty of this Constitution is that it separates powers of the Executive from that of the Legislature. Ours is to vet nominees. We cannot reverse the roles the way the Committee is purporting to do by trying to nominate for the President to vet and bring back to Parliament. We are not saying that the Report should be thrown out, but the Report as it is should be withdrawn, refined to be in line with the Constitution and the statute that provides for the National Police Service Commission, so that we can debate a report which, if we take a vote on, we would not be violating the Constitution.

Mr. Deputy Speaker, Sir, I want to conclude by saying it would be wrong for us, as a House, to debate a Report that has provisions which violate the law. What if we take a vote and the vote is carried with the provisions against the law? Therefore, I would urge our colleagues who are resisting to see the sense that what we are questioning is not what the Committee is saying. Probably we are in agreement; we are asking them to do it in a way that will not violate the Constitution and the National Police Service Act.

Thank you.

Mr. Deputy Speaker: Let us have Mrs. Shebesh then I will ask the Attorney-General to-

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Mrs. Shebesh: Mr. Deputy Speaker, Sir, in adding to what Mr. Namwamba and Mrs Odhiambo-Mabona have said, I want us to just remember what we always forget in this House; we are live, things are on the HANSARD and we will always be held to account. We cannot have double standards all the time and think that we are going to get away with it.

What the Committee has done in its recommendations is that first, they have stated a very simple fact, which, if they could prove, this argument would be in futility. The Committee has clearly stated that they sought guidance from the Speaker. When I say the Speaker I am assuming it was the office of the Speaker. The Committee says that they went ahead and did what they did with clear indications, goodwill and support of the Speaker. If that is the truth, why are we asking for a ruling? Why do we not just get a copy of that recommendation in which the Speaker said, "Yes"?

Mr. Deputy Speaker: Hon. Members, time and again in the past the Speaker or the Deputy Speaker have approved Motions. When Motions are approved and they come to the Floor of the House, Members rise and question the validity of the Motions because of serious constitutional issues. If that happens and the Standing Orders tell you that any Motion can be moved; there is no Motion that can be moved on the Floor of the House without being approved by the Speaker. However, the approval by the Speaker is not a presumption that the Motion itself is constitutional. It could be constitutional or occasionally not be constitutional. That is upon the House to debate and bring out the constitutionality or lack of constitutionality of a Motion itself. Therefore, saying the Speaker allowed or did not allow something is neither here nor there.

Can you proceed and just debate on the merits and demerits of this particular Motion and its constitutionality or unconstitutionality?

Mrs. Shebesh: I stand guided, Mr. Deputy Speaker, Sir. However, I take what the Chair says in this House very seriously. I take what the Chair says as final. Even if we do not have to belabour that point it would be preferable to see the legal recommendations that were given by the House.

Nevertheless, the contradiction that I see is that the Committee dismisses the name that was presented in the list for Chair, a Ms. Amina Masoud. In dismissing the name the Committee says that they found her not appropriate. However, they did not go on to tell us what was

inappropriate about her candidature. They then accuse the vetting panel of not being clear as to why the name of Jean Kamau was left out.

Mr. Deputy Speaker, Sir, I am tired of women being used as baits to settle political scores. If you are blaming the panel for not giving you clear reasons as to why the name of Jean Kamau did not come, also tell us clearly why the name of Amina who was recommended is not suitable. In this way, we will not be seen to use women to fight a war. I heard the Committee say that there are two issues here, political and constitutional. I believe there is no political issue here. If it was a political issue, we would not have the section in the Constitution which is very clear in the Sixth Schedule. Section 29(2) clearly states the issue of consultation. It is a constitutional issue and not just a political issue.

Therefore, Mr. Deputy Speaker, Sir, in your ruling, please, give us guidance on Section 29(2) of the Sixth Schedule in terms of consultation. This is because it has been said before but seems to be ignored. Give us guidance on the recommendation of removing one person's name and on the same basis bringing in the name of another; lastly, if Mr. Kavuludi is not a lawyer and they have clearly stated that they were giving the President a choice of three names, why did they not give the name of Mr. Mbai, who is the other lawyer, rather than the name of a person who is not a lawyer? Their argument is that they were giving the President the best lawyers; I want us to desist from using the name of a woman today on the Floor of this House to try and draw emotions. This is because we will do what we have done to very many chairs through the debates we have here, and end up destroying people's careers for no reason. Let us discuss facts and procedure; did the Committee follow procedure?

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, unfortunately this is a case where a well intentioned Committee, apparently acting in good faith, has exceeded its legal authority and mandate. On a plain reading of the law, it is quite clear that the power to make a nomination where there is a rejection of any or all of the nominees resides with the President of the Republic. The option open to this Committee when it developed any reservations about any aspect of the nomination was to reject either an individual person or all the persons and refer this decision back to the President. The President would have been obliged to make a fresh nomination in terms of the short list already created by the panel.

Mr. Deputy Speaker, Sir, this is the law; in so stating the law obviously, I make no personal finding about the suitability of any or all of the parties that were nominated.

CONSIDERED RULING

MOTION ON ADOPTION OF REPORT ON VETTING OF NOMINEES TO NATIONAL POLICE SERVICE COMMISSION IS UNCONSTITUTIONAL

Mr. Deputy Speaker: Hon. Members, we have a duty to protect the law. The National Police Service Commission Act, 2011, Section 6(1) says:-

“ The President shall, within fourteen days, after the commencement of this Act, constitute a selection panel comprising one person from each of the following bodies respectively-

- “(a) the Office of the President;
- (b) the Office of the Prime Minister;
- (c) the Judicial Service Commission (JSC);
- (d) the Commission for the time being responsible for matters relating to anti-Corruption.

- (e) the Kenya National Commission on Human Rights (KNCHR);
 - (f) the Commission for the time being responsible for matters relating to gender; and,
 - (g) the Association of Professional Societies in East Africa.
- (2) The Public Service Commission (PSC) shall -
- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; and
 - (b) provide the selection panel with such facilities and other support as it may require for discharge of its functions.
- (3) The selection panel shall, within seven days of its convening by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of chairperson and members of the Commission under Article 246(2)(a) of the Constitution and this Act.
- (4) The selection panel shall -
- (a) consider applications received under subsection (3) to determine their compliance with the provisions of the Constitution and this Act;
 - (b) shortlist the applicants;
 - (c) publish the names of the shortlisted applicants and qualified applicants in at least two daily newspapers of national circulation; and
 - (d) conduct public interviews of the shortlisted persons,
 - (e) shortlist three qualified applicants for the position of chairperson,
 - (f) shortlist eight qualified applicants for the position of the member of the Commission; and
 - (g) forward the names of the qualified persons under paragraph (e) and (f) to the President.
- (5) The President shall, if he approves, within fourteen days of receipt of the names of successful applicants forwarded under Section 4(g), select the chairperson and members of the Commission and forward the names of the persons so selected to the National Assembly for approval.
- (6) The National Assembly shall, within twenty one days of the day it next sits after receipt of the names of the applicants under sub-section 5, vet and consider all the applicants and may approve or reject any or all of them.
- (7) Where the National Assembly approves of the applicants, the Speaker of the National Assembly shall forward the names of the approved applicants to the President for appointment.
- (8) The President shall, within seven days of receipt of the approved applicants from the National Assembly by notice in the Gazette, appoint the chairperson and members approved by the National Assembly.
- (9) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit fresh nominations.
- (10) Where a nominee is rejected by the National Assembly under sub-section (9), the President shall within seven days submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under sub-section (5).
- (11) If the National Assembly rejects any or all of the subsequent nominees submitted by the President for approval under sub-section (10), the provisions of sub-sections (1) to (6) shall apply.”

Hon. Members, what this in essence means is that you repeat the process all over again. Provisions of sub-sections (1) to (6) provide for that. You shall start where it starts and end where it ends. So, you can see the law. I have noticed that I would have, under normal circumstances, allowed more time to give a Communication but because of the urgency of the matters we have before us and the need for us to transact a lot of business, it is important that we dispose of this business, more so, when issues are just straightforward. So, I want to rule that, indeed, the Committee exceeded its mandate.

(Applause)

It exceeded its powers and consequently this Motion before us right now is inadmissible and the Committee will have to go back and redo its work.

With regard to the other issues that were cited, I want to observe that, indeed, it does not say anywhere the qualifications or rather the express qualifications of somebody who has to be appointed. Somebody can be qualified to be appointed as a High Court judge and be the chairman. Article 246 (2) of the Constitution says:-

“The Commission consists of -

(a) the following persons, each appointed by the President –

- (i) a person who is qualified to be appointed as a High Court;
- (ii) two retired senior police officers; and
- (iii) three persons of integrity who have served the public with distinction.”

Under the circumstances, this Motion itself is inadmissible and debate cannot continue on the same. From then on, I think the Committee will have to do the needful. Go back, redo its own report and bring it in line with the statute and in line with the Constitution and only then can the House be validly seized of transacting that business.

(Applause)

Mr. Kapondi: On a point of order, Mr. Deputy Speaker, Sir. I think it is important to give us proper guidance as a Committee, now that you have given a ruling that we go back. It is important to understand under what Standing Orders we are going to redo the work and within what period we are supposed to re-submit the list. It is important for us to be guided on that.

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. In addition, I respect your ruling but some things need to be a little bit clearer because the sections that you have read to the House pertain to Parliament approving or rejecting and the question that comes into my mind is whether Parliament has rejected or approved any without the process of this Motion. So, probably you need to clarify that because all that you have read pertains to rejection and approval which says that the President can only do certain things once Parliament has approved or rejected. Has Parliament approved or rejected?

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. I thank you for your ruling and my concern is just a little similar to Mr. Kapondi's with a little divergence. The concern is that we raised issues of unconstitutionality. You have reference to the law. When a Motion before the House is unconstitutional and it is ruled unconstitutional, then my understanding based on the rulings that have been made by this House is that it should automatically go back to the principals to re-nominate otherwise you are giving the Committee--- That is if, indeed, the ruling that Mr. Namwamba relied on found exactly the same. So, because it

is going to be a little confusing even to the Committee because they already did their finding and---

Mr. Deputy Speaker: Order! The Chair has stated categorically the status of that report which is before us. The report which is before us does not conform to the law and by extension when it does not conform to the law, it does not conform to the Constitution; it is unconstitutional. Having said that, the Chair is going to give further communication on the roadmap and that will be done on Thursday afternoon.

(Applause)

BILLS

Second Reading

THE JUDICATURE (AMENDMENT) BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Deputy Speaker, Sir, I beg to move:-

That The Judicature (Amendment Bill), Bill No.60 of 2011 be read a Second Time.

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mrs. Shebesh) took the Chair]*

Madam Temporary Deputy Speaker, the Judicature (Amendment) Bill has the object of amending the Judicature Act, Cap.8 of the Laws of Kenya in order to increase the number of Court of Appeal judges currently standing at 14 up to 30. Article 164 of the Constitution of Kenya states that the Court of Appeal shall consist of the number of judges, not fewer than 12. To increase the number of High Court judges and we increase the Court of Appeal ones up to 30, we need that amendment.

Secondly, to increase the number of High Court judges up to 150, Article 165 provides that the High Court shall consist of the number of judges to be prescribed by an Act of Parliament.

The Judicature Act provides in Section 7 that the High Court judges should not exceed 70. This Bill proposes therefore an amendment of Section 7 to increase the number of judges up to 30 in the Court of Appeal and the number of judges up to 150 in the High Court. The proposed amendment for increasing the number of judges is to assist in reducing the backlog of cases in our courts as per the recommendation of the taskforce on judicial reforms that was appointed by the Government on 29th May, 2009. One of the biggest concerns is the serious backlog of cases that has built over the years and the shortage of judges that currently exists in our judicial system. Currently, with a population of 38 million Kenyans, the ratio of judges to Kenyans is two judges per one million Kenyans. The shortage is that high making one of the highest in the region and in the world. Compared to other countries in the world, like in the USA, we have a ratio of 100 per one million people. Ours is two judges per one million Kenyans. It is a

huge disparity. If you were to go to Australia, you would find that we have a ratio of 41 judges per one million people.

Therefore, the Kenyan situation is serious. The shortage of judges is acute and as a lawyer who has practised law for the last 17 years, I know the frustration that we go through in our practice in the High Court and the Court of Appeal. The delay in the disposal of cases is equally frustrating for litigants who go to our courts. It is equally frustrating to investors who come to do business in our country and cannot have disputes resolved and disposed of as quickly as they desire. This is costing our country. I believe in the maxim that “justice delayed is justice denied”. In our courts, we know of cases that have been pending for over 20 years. This is a very serious situation and we know that with the new Constitution in place it is, indeed, a violation of the fundamental rights and freedoms as enshrined in our Constitution. The new Constitution entitles every Kenyan, under Article 48 to the right of access to justice. In Article 50, every person has a right to a fair trial which includes the right to have a trial begin and be concluded without inordinate delay. So, every time we have delayed our cases in our courts, it is now under the new Constitution a clear violation. Something needs to be done and done urgently to ensure that we address the problem of shortage of judges and the problem of the backlog of cases.

As I speak, our nation is undergoing fundamental judicial reforms. Today, as a country, we have done what other countries have not done. After passing the new Constitution, we have put in place a law that allows the vetting of judges and magistrates. Recently, we saw what had never been seen in this country when judges of the Court of Appeal, nine of them, went through the vetting process. The result of that vetting process of judges and magistrates saw a very high number of casualties. Out of nine very prominent judges, we had four of them sent home. That is almost fifty per cent. We know that after completion of the vetting of the Court of Appeal judges, the next phase that the Sharad Rao Commission is now undertaking is to move to the High Court where we will be having 44 High Court judges facing the board and going through the vetting process. If we are going to experience the same number of casualties as we did in the Court of Appeal, it will be that the High Court will also perhaps lose an equal high number of judges as the Court of Appeal. This, therefore, makes it even more urgent than before that we put in place the necessary amendment of the law to allow for an increment of judges both in the High Court and in the Court of Appeal.

Apart from the reforms going on in terms of the vetting and cleaning up of our Judiciary, we know that there are other infrastructural developments in the Judiciary that are currently ongoing. As I speak, we have just about 17 High Court stations in our country. As the nation embraces devolution, it is necessary that in future, we have enough courts in all our counties for Kenyans to enjoy the fruits of this Constitution, particularly, the access to justice as provided in Article 48. It will be necessary for this country to have High Courts constructed in every county. If we have 17 right now, it will mean that we will in future have to put up about 30 High Court stations across the country for each county to have its own High Court. It will mean that we will need more judges to man the existing High Courts that are under-manned as well as have more judges in the High Courts that we will be constructing in line with the devolved system of Government that this country is now entering into.

*[The Temporary Deputy Speaker
(Mrs. Shebesh) left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, we also know that every constituency, as we passed hon. Kaino's Motion, should be a district now. With the existing courts, just about 111 of them, we are expecting that in future, we will need to have more courts in all the districts, so that the issue of personnel must be addressed to ensure that we are able to dispense justice in an expeditious and just manner. It will also be necessary as we move forward not just to talk about infrastructural development and personnel, but we will also require to equip our courts. As we go through the Budget process, the Judiciary remains a key institution in our national development. We will require to allocate more resources to ensure that in future we have our judicial process, not just expedited, but also well equipped to deliver world class justice.

We know that all these reforms are necessary and as we move forward, we will be asking for the support of this House. We will be asking that we have these amendments effected, so that we have the judges increased both in the High Court and in the Court of Appeal. When you look at the Act, in line with the new Constitution, we are doing away with the old archaic provisions that we inherited from the colonial times where we have puisne judges. We will be asking that we amend our Act to ensure that we do away with the description of judges, so that we are in accord with the new provisions of our Constitution. So, those are some of the proposals we have put in place. It is a very short Bill. We have set out the clear objectives that we seek to achieve through these amendments.

Mr. Temporary Deputy Speaker, Sir, we are asking that we be allowed by the House, through this Bill, to amend Section 2 of the Judicature Act so as to delete the words "puisne judge" provided in that section. We are also asking for deletion in Sections 61 and 64 and substituting the expressions in Articles 1665 and 1664, respectively. That will enable us bring in line the Judicature Act with the new provisions of our Constitution, apart from, of course, mainly amending Section 7 to allow the increment of the judges.

So, those are the only amendments we are proposing to this Act and I do urge that the House supports and approves this Bill to allow for these amendments. Also, we will be urging that the House does support the ongoing judicial reforms. We will also be asking that judicial reforms alone are not enough. Judicial reforms without reforming the police are a half done job. It will be a half baked job. We must, as we carry out judicial reforms, move with speed to ensure that police reforms are equally carried out. That is necessary. Apart from judicial reforms and police reforms, we also need to reform our prisons, so that the entire system of administration of justice right from the arrest of the suspect to the investigations, to the prosecution and to the adjudication of the cases, the sentencing and eventually the carrying out of that sentence through our corrective institutions - the entire system of administration of justice - is reformed. So, those are some of the areas we will be coming back to this House to seek your support. For today, I do move that these amendments be allowed. I move and ask the hon. Attorney General to second.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I rise to second.

Mr. Temporary Deputy Speaker, Sir, judicial reforms are very important pillars of the constitutional changes that we are making in this country in order to restore public confidence in the administration of justice. Already, the hon. Chief Justice and the Judicial Service Commission have made very wide ranging changes in the manner in which the Judiciary is organized and operates. We must support that initiative as Parliament, because it is not only

important to have quality judges, as the hon. Chief Justice is trying to do, but it is also important that we should have the requisite number of judges. As we devolve towards the counties - and the county government is an important pillar of our evolving democracy - we must provide sufficient judicial capacity and expertise. The ongoing recruitment in the Judiciary--- I am happy to confirm to this House that only starting next week and for the next three weeks, the Judicial Service Commission will be recruiting new judges for the Environmental Court and Industrial Court, in particular. Thereafter, there will be recruitment for the ordinary High Court.

Mr. Temporary Deputy Speaker, Sir, it is, therefore, important that we support the increase of the number of judges starting from the Court of Appeal as the hon. Minister has stated, and the 150 in the High Court. This will enable us to develop the jurisprudence we require to support the expectations of the Kenyan people about how soon and how competent the justice they receive is.

With those few remarks, I beg to second.

(Question proposed)

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Speaker, I thank you for allowing me to contribute. I support the Bill.

Mr. Temporary Deputy Speaker, Sir, I support the Bill because access to justice in this country has had tremendous bottlenecks and hindrances. Among the many difficulties Kenyans face in accessing justice is the inadequacy of good judicial personnel. I support the move to increase the number of judges. I support the need to increase the number of courts in the country, so that we can be able to clear the backlog of cases.

Mr. Temporary Deputy Speaker, Sir, it is not just about the clearance of backlog of cases. That is because you may clear the backlog of cases and occasion serious miscarriages of justice. I know that there have been cases where judges have been sent to particular stations with a detail to clear the backlog. So, what they do is sit every morning and dismiss 100 cases; the next day, dismiss another 100; third day, dismiss another 100 and then walk away and say they have cleared the backlog. That is not justice. Under many similar examples---

Mr. Temporary Deputy Speaker, Sir, what we want is that the Ministry of Justice, National Cohesion and Constitutional Affairs and the Attorney General in liaison with the Chief Justice ensure that the reforms going on in the Judiciary; the laying off of some judges after the vetting process, the hiring of new judges that is coming and, indeed, the increased number that is sought to be given - and must be given by this House - are done well. We must make sure that we get men and women of integrity, in adequate numbers, with adequate qualification, with the capacity and zeal to work and with the ability to give Kenyans justice as and when they need it.

Mr. Temporary Deputy Speaker, Sir, I agree that it will be desirable to have, at least, a minimum of a High Court establishment in every county to make justice accessible and to make justice easier for the people of this country. You may recall - or you may be too young to know - that we have had in the past cases where the only place people used to go for justice was the High Court in Nairobi. We have come a long way. We opened a High Court in Mombasa, followed by Nakuru, Kisumu and, eventually, Eldoret followed. Now, we have High Courts in places like Busia and Malindi. But every time you go to those courts--- Busia was opened, for example, as an annex to Bungoma High Court. Within three years, there were more cases being filed at the annex than in the main court. That created another backlog. The judge was an Assize Judge visiting. He was never there to give citizens urgent orders. Some marauding auctioneer

wants to grab somebody's property and you want a quick court order to stop him. You will have to wait for a judge who will come next week as a visiting judge. Justice is denied and injustices are occasioned.

Mr. Temporary Deputy Speaker, Sir, you come from one of the most marginalized counties in this country. A citizen in Lodwar or Lokitaung, whose rights have been trampled and must get an injunction within six hours, where do you go? You have no capacity to fly. If you take road transport, the nearest High Court is in Kitale. How long does it take you to reach there?

Mr. Temporary Deputy Speaker, Sir, we must access justice to all. To access justice to all this Parliament has to vote for money to build judicial establishments in decent forms; not fabulous things that cost millions of shillings. We need decent structures as court rooms. We also need decent structures for judges to live in. If we expect the best from judges, then we need to put up decent structures for them. I do not believe that we should send judges out there to live in rented houses even if we will give them allowances to pay rent. Sometimes under pressure, like everybody else, he may end up not paying rent on time and then the next day, the landlord is appearing before him and he has a duty to dispense justice. The Government must build residential houses for judges, so that they do not find themselves in those predicaments. So, as we increase the numbers, we must increase the facilities. We must also improve the working conditions.

Mr. Temporary Deputy Speaker, Sir, I heard the Minister for Justice, National Cohesion and Constitutional Affairs mention having a High Court per county. He must go beyond that. There are certain areas like Lodwar or Turkana where a High Court establishment in Lodwar may not be helpful to a citizen in Lokitaung. So, we need to find a way of how to give, at least, minimum dispensation of justice for the citizens. For example, you have a High Court in Kakamega. If its jurisdiction is to serve Kakamega County, unless you send there up to five or six judges, you will not serve them adequately. So, as we expand the Judicature Act, we need to give more judges. We also need to rationalize the number of judges who are being posted to stations. Apart from now leaving the old High Court as Supreme Court, Court of Appeal and the seat of the Chief Justice for administration, we need several High Court establishments in Nairobi. We have a High Court in Milimani. We need a High Court in Makadara, Kiambu, Ngong, Athi River, Thika and Kikuyu. That is the only way we will be able to serve this huge population in Nairobi and its environs.

In Mombasa, for example, we have the central High Court. But we need a High Court in Mtwapa, Ukunda, Likoni and Changamwe. This is the only way we can decongest the High Court in Mombasa. This will make it easy for those who practise law to practise law; for the judges and magistrates who dispense justice to do so and for the police to do their work within the confines of fewer crowds. We have seen cases where you go to court and, sometimes, accused persons *wanaponyoka kutoka mikononi mwa polisi* and join the crowd. They disappear because of the sheer crowds that we have within the courts. We need to make it easy for everybody to work.

Mr. Temporary Deputy Speaker, Sir, Kisumu High Court is always crowded. The Ministry and the Judicial Service Commission should consider having a High Court in Majengo, Maseno, Sondu and Ahero. This is the only way we can dispense justice and decongest the High Court in Kisumu. It can be quite easy once we have these establishments set up. This country has immensely qualified lawyers. Some of them are under-employed, others are idle while others are doing absolutely nothing and yet they can dispense justice to all to the satisfaction of the people of this country.

Mr. Temporary Deputy Speaker, Sir, as I come to the end of my brief submission, I also want to urge that the ongoing process of vetting of judges and magistrates to be faster, fair and to avoid causing unnecessary humiliation and agony. I have seen known conmen - I say this very guardedly because I have practised law in this country for a long time - who mill around the courts of law day and night. They are the ones now turning up, labeling judges that they are this or that. But the vetting body has no capacity to scrutinize the character of the complainants as much as they are scrutinizing the character of the judge. They need to be empowered to scrutinize those characters who are complaining about judges. We know once you are in a position of authority, there are so many people out there who may just hate your looks. There are people out there, just because you made an honest and just decision, but because it did not favour them, they think you are wrong and you are bad. These crooks have no shame. They will swear an affidavit and place it before a panel, labeling a judge whatever name they want to label him. But when you scrutinize it, you will find that it has no substance. So, I would want to suggest that the vetting panel, for the integrity of the people they are vetting, should also have a private session to scrutinize the evidence before they expose it to the public to protect some reputation. Because at the end of the day, when a judge who has served this country, whatever the quality of the service for the last 30 years, leaves that Bench, he still has a family, friends and a society to live in. I know one judge who has been sent away from the Court of Appeal, I can swear by the Bible that judge has never been accused of taking a bribe. Not even once. I have practised law here for the last over 30 years. We know who is on the take and we know who is not. But some crooks just come and say "the judge did this or that" because the judge made a ruling that was against him. We need to find a way of balancing this, so that we can protect reputations. Without the bad apples, there is no doubt that when you make it a free-for-all, then you know very well that you are using wrong therapies to cure the malady.

Mr. Temporary Deputy Speaker, Sir, I hope the Minister has made a request in the coming Budget for more allocations to expand judicial services. In the new Constitution, we have said something I do not agree with; that the Government has a duty to pay legal fees for litigants. I find this awkward, but it is in the Constitution. If we have that, then make it possible for people to access fair justice, quick justice and justice that will satisfy all.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir. Let me start by thanking the new Minister for Justice, National Cohesion and Constitutional Affairs. I urge him to continue untiringly performing his duties with zeal the way he is known to have been performing in this House.

Mr. Temporary Deputy Speaker, Sir, I fully support this Bill and hope that the new Chief Justice who was brought in on the platform of reforms will see to it that there are fundamental reforms in the Judiciary. Kenyans expect to see these reforms. The dispensation of justice in this country must be faster. We have seen cases dragging on for decades in this country, particularly the murder cases. Sometimes the suspects stay in remand for many years before their cases are determined. Some stay for more than 20 or 30 years without their cases being heard. It is important that with the reformed Judiciary, those cases will be heard and those convicted jailed or hanged.

Mr. Temporary Deputy Speaker, Sir, the vice of corruption in the Judiciary will be addressed by an expanded Judiciary. Currently, the Judiciary is very narrow and has no capacity to address the various cases that are being presented to the courts.

Mr. Temporary Deputy Speaker, Sir, increasing the number of Court of Appeal Judges from 30 to 40 is a move in the right direction because better services will be rendered to Kenyans.

High courts should be established in those areas that have been marginalized for many years. Therefore, raising the number of judges from 70 to 150 is a very timely move.

Mr. Temporary Deputy Speaker, Sir, the vetting of judges is a very desirable move and we support it. Misfits and unsuitable judges must be removed from the Judiciary. The Judiciary, as a vehicle for justice in this country, must be allocated sufficient funds, so that courts can be established in all constituencies in the country. I recall the former Minister had pledged to establish a court of law in Lari Constituency and up to now, it has not been done. I am confident and hopeful that the new Minister will make this a reality. I also hope that the people of my constituency are keen and listening to this desire.

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

The Minister for Gender, Children and Social Development (Dr. Shaban): Mr. Temporary Deputy Speaker, Sir, I rise to support the Bill which has been presented by the Minister for Justice, National Cohesion and Constitutional Affairs, hon. Wamalwa, to amend the Judicature Act.

Mr. Temporary Deputy Speaker, Sir, it is important not only to look at it from the point of having several High Courts surrounding one place, but also, at least, to have a High Court in each of the counties. That way we should be able to deal with the many cases which are now in court. Even so, following the new Constitutional dispensation, everybody has faith in our court system and is rushing to court. You can see how our High Courts are really overwhelmed.

Mr. Temporary Deputy Speaker, Sir, we have been complaining of a backlog of cases and cases pending for so many years, because we did not have enough judges. This amendment Bill is coming just at the right time, so that it can boost the work that is being done by our reformed Judiciary. We want to see a situation where people are able to go to the High Court and have their cases heard and go back home to do their business. When people are sent all the way from Taveta to Mombasa, because you have to go to a High Court in Mombasa, honestly it is such a costly affair and turns up to be torture, instead of people getting justice for their issues.

Mr. Temporary Deputy Speaker, Sir, as the saying goes, justice delayed is justice denied. Kenyans have really had to suffer over the years. This Bill has been moved here at the right time, so that we can carry out our mandate and also, for the Judiciary to be able to carry out its mandate. It was not good enough for us to have given the Chief Justice the powers to be able to reform the Judiciary, yet we had not given him the mandate to be able to get enough judges.

Mr. Temporary Deputy Speaker, Sir, I beg to support and congratulate, once again, the Minister for Justice, National Cohesion and Constitutional Affairs.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir, for this opportunity to support this very important Bill that aims to enhance the capacity of our Judiciary, to respond to the challenges of the past as well as the present, in terms of the case load and the expectations of the Kenyan people.

Mr. Temporary Deputy Speaker, Sir, I am very encouraged by what is happening. As I congratulate the Minister and, indeed, the hon. Chief Justice for the reforms that are taking place, I just want to put on record that, indeed, Nyandarua County cannot be served from Laikipia County. This is because I do believe that when we presented our case for justice systems for the Nyandarua people, somebody made the mistake of assuming that Nyahururu is in Nyandarua. Nyahururu is in Laikipia County and so, the courts in Nyahururu cannot serve the people of

Nyandarua. So, the people of Nyandarua are basically then saying: “We now need a system within Nyandarua County to respond to the issues at whatever level.” It need not be a High Court, but even at the lowest level, for people to stop feeling that they are going to the neighbouring county to seek justice, when the court that was designed for them by historical mistake, ended up being put in Nyahururu, which serves Laikipia County instead of Nyandarua County.

Mr. Temporary Deputy Speaker, Sir, I just wanted to have it on record that, indeed, there is a distinction between the two counties. Laikipia has two courts while Nyandarua has none. We hope that will be sorted out as we increase the number of judges and the number of courts to serve people better. I believe that this is a very straightforward matter and we do not need to belabour the point.

I support.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, I will just to speak for one minute. I just did not want you not to have somebody from the Back Bench because it would have been unfair since I am the only one sitting here. As you bring this Bill, which I support 100 per cent, I do not think it will be unheard of because you are young and new and you believe in a new way of doing things to ask women to apply once you do the advertisements for people to apply. You should say that women and people with disabilities are encouraged to apply. Do things in a different way like we saw you doing this weekend.

I support.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, since there are no more contributors, I will call upon the Mover to reply.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Thank you, Mr. Temporary Deputy Speaker, Sir. I just want to thank all the Members for contributing and to assure hon. Shebesh that we already have very able women. For example, we have Lady Mumbi who is living with Albinism and there are many more very able women who will be joining.

With those few remarks, I beg to move.

(Question put and agreed to)

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

THE KENYA SCHOOL OF LAW BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Kenya School of Law Bill be now read a Second Time.

I wish to thank all those who have contributed to this Bill, particularly my predecessor who went through the process of preparing this Bill. I would like to thank Mr. Kulundu who is currently heading the School of Law. He is a very able man and a man as brilliant as his late brother Dr. Kulundu who was a very able Minister and a good friend. May the good Lord rest his soul in eternal peace!

As we move forward in this year of reforms, even as we reform the Judiciary, vet the judges and magistrates and clean up the Judiciary, we will not have completed the process unless

we also look at the quality of lawyers; that is the men and women who will appear before the judges and the magistrates that we are vetting. Those are the lawyers that we are training. The quality of training is a very vital part of ensuring that we deliver services; world class justice to Kenyans in the new constitutional dispensation. This is possible if we maintain high standards of training. For a long time, the University of Nairobi was the only one that had the Law Faculty in this country.

I do recall that my late brother, Mike, was a lecturer at the university in the 1970s. He told me that among the most brilliant students he taught was one James Aggrey Bob Orengo. Riaga Omollo was also his student at the university and he believed that some of the best lawyers ever trained were Kenyans. But with time---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Hon. Minister, you have a balance of 27 minutes to proceed next time the matter appears on the Order Paper.

Hon. Members, we have come to the end of today's sitting. Therefore, the House stands adjourned until tomorrow morning, Wednesday, 23rd May, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.