

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 3rd January, 2013

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

Mr. Speaker: Hon. Members, I have two Communications to make this afternoon.

DELEGATION FROM THE NATIONAL ASSEMBLY OF THE REPUBLIC OF KOREA IN THE SPEAKER'S ROW

First, hon. Members, I wish to introduce to you and welcome a delegation of Members of the National Assembly of the Republic of Korea who are seated at the Speaker's row. They are:-

- (1) The Hon. Kim Hack Yong – Head of Delegation;
- (2) The Hon. Choi Jae Sung;
- (3) The Hon. Kim Sung Tae; and,
- (4) The Hon. Hong YounPyo.

They are accompanied by Mr. Jung Sanghoon, an official with the Government of the Republic of Korea; His Excellency Chan-Woo Kim, the Korean Ambassador to Kenya and Ms. Yu Ri Park, the First Secretary at the Korean Embassy in Kenya. They are in the country for bi-lateral meetings with Members of the Kenya-Korea Parliamentarians' Friendship Group and the Ministry of Youth Affairs and Sports.

On behalf of the House and on my own behalf, I wish the delegation a fruitful and happy stay in Kenya.

Thank you.

Hon. Members, the second Communication will be made a little later on. It relates to the matter that has severally been spoken to by the Member for Kilome. It will be coming in a short while.

Next Order!

Mr. Speaker: What is it, Member for Nyakach?

Mr. Ochieng': Mr. Speaker, Sir, I am actually waiting to lay some Report on the Table. I do not have anything to raise for now.

Mr. Speaker: Why are you asking for the Floor too early?

Mr. Ochieng: Mr. Speaker, Sir, I was just testing my equipment.

Mr. Speaker: You do not test the practice of this House, Member for Nyakach.

Mr. Ochieng: I am most obliged, Mr. Speaker, Sir.

Mr. Speaker: Very well.
Next Order!

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Select Committee on Delegated Legislation on the Petition of the Kenya National Union of Teachers on the Legal Status of Legal Notice No.16 of 2003

(By Mr. K. Kilonzo)

The Second Report of the Local Authorities and Funds Accounts Committee on the Accounts of Local Authorities and Funds Accounts (Volume I) and the three City Councils of Nairobi, Mombasa and Kisumu (Volume II).

(By Mr. Ochieng')

Mr. Speaker: Next Order.

NOTICES OF MOTIONS

ADOPTION OF REPORT ON LEGALITY OF LEGAL NOTICE NO.16 OF 2003

Mr. K. Kilonzo: Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, this House adopts the Report of the Select Committee on Delegated Legislation on the Petition by the Kenya National Union of Teachers on the legal status of Legal Notice No.16 of 2003, laid on the Table of the House today, Thursday, 3rd January, 2013.

ADOPTION OF THE SECOND REPORT OF LAFAC

Mr. Ochieng: Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, this House adopts the Second Report of the Local Authorities and Funds Accounts Committee on the Accounts of Local Authorities and Funds Accounts (Volume I) and the three City Councils of Nairobi, Mombasa and Kisumu (Volume II).

Mr. Speaker: Very well.
Next Order!

QUESTIONS BY PRIVATE NOTICE

TRACING WHEREABOUTS OF MR. JULIUS O. JUMA

Mr. Ochieng: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Is the Minister aware that Mr. Julius Onyango Juma went missing after his saloon car was involved in an accident with a tractor at Nzoia River Bridge between Mayani and Shibale along Mumias-Bungoma road on 4th November, 2012?

(b) What measures has the Government taken to trace the whereabouts of the said person?

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

(a) I am aware that on 4th November, 2012 at about 6.30 p.m., Julius Onyango Juma, an employee of the Standard Group, Kisumu, lost his arm in Mayani Village, Koyonzo Location in Matungu District from Kisumu, while driving his car Reg. No. KAY 991G Mitsubishi Saloon; red in colour. Along the Mumias–Bungoma Road, between Mayani and Shivale, he was involved in an accident with a tractor Reg. No.KAM 883G, make; New Holland, belonging to the Small Scale Transporters driven by Zachaus Okoth Akinyi, Driving Licence C of C No.0885410 (8013).

After the accident, it is alleged that Mr. Julius Onyango Juma came out of his car which was extensively damaged on the right side and informed the driver of the tractor that he was not injured. Since it was raining, Mr. Juma went back to his car to await the arrival of the police. However, after a short while, Mr. Juma came out of the car and disappeared.

Mr. Speaker, Sir, the police arrived at the scene shortly thereafter and commenced investigations, while the car and the tractor were towed to Mumias Police Station pending inspection. A non-injury accident case file No.NIAR1/20/12 was opened and is pending investigations.

(b) Efforts to trace Mr. Julius Onyango Juma have been made, including visits to several health facilities within Western and Nyanza regions, while a report of a missing person was entered in the OB.No.13/7/11/2012. Further, on 5th November, 2012, the Standard Group was contacted and requested to make a public appeal for information on the missing person through their media houses, which was published on the Standard Newspaper on 15th November, 2012 on page 38.

A signal was also circulated to all police stations in Kenya to help trace Mr. Juma. Efforts to trace him are still being made with the help of the family and friends. An inquiry File No.2/2012 was opened and is pending under investigations.

Thank you.

Mr. Ochieng: Mr. Speaker, Sir, that was a non-injury accident which involved a tractor and a saloon car where the owner, Mr. Juma, walked out. Could the Assistant Minister tell us how long it took the police to arrive there? What he is mentioning in his answer is that they arrived “shortly”. How shortly? What length of time did it take before the police arrived there in order to find out where Juma went?

Mr. Khang’ati: Mr. Speaker, Sir, I have no information regarding the time or the period that was taken by the police to arrive at the scene. In any case, nobody was there reasonable enough to maintain such a record.

Mr. Njuguna: Mr. Speaker, Sir, missing or disappearance of persons has been very rampant in this country. It is terrible and agonizing. What is the Government doing to control this new threat directed at the society?

Mr. Khang'ati: Mr. Speaker, Sir, I agree that this is a new thing in Kenya. A number of citizens disappear. From the Government side, we are trying everything possible to trace them and return them to their families. As I have already stated here, substantial effort has been made. We have a situation where signals have been circulated in the whole Republic of Kenya; and we have sought the support of his employer, the Standard Media Group. They agreed and published a notice of a missing person. So, those are unfortunate situations that occur and I want to assure Members that, in every situation, reasonable effort is made.

Mr. Gitari: Mr. Speaker, Sir, in his answer, the Assistant Minister has said that they advertised the missing person in the Standard Newspaper. What formed the basis of him going to the Standard Newspaper rather than go to all the media houses, including the local ones?

Mr. Khang'ati: Mr. Speaker, Sir, I stated that Mr. Juma was an employee of the Standard Newspaper. Therefore, that was a complementary that was offered courtesy of the employer to help in tracing the employee.

Mr. Ochieng': Mr. Speaker, Sir, could the Assistant Minister tell us whether they are going to put more efforts in tracing Mr. Juma? He has not even mentioned whether they have tried to comb the sugar-cane plantations around to find out whether Juma was injured and finally succumbed to his injuries within the plantations.

Mr. Khang'ati: Mr. Speaker, Sir, yes, I mentioned that efforts to trace Mr. Juma are still ongoing. I also mentioned that this was being done with the help of his family and friends. It is not only something that is being done by the security agencies. We are determined to do everything possible to make sure that we establish the whereabouts of Mr. Juma, whether dead or arrive. Indeed, the sugar-cane plantations and surrounding areas have already been searched.

Mr. Speaker: Next Question by Mrs. Shebesh!

REDUCING EXPLOSIONS IN EASTLEIGH ESTATE

Mrs. Shebesh: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Could the Minister explain the circumstances surrounding the explosion at Hidayah Mosque in Eastleigh Estate, Nairobi on 7th December, 2012 in which several people died and others injured, including the Kamukunji Member of Parliament?

(b) How many suspect(s) have been arrested in connection with the incident?

(c) What measures is the Government taking to contain the rising cases of explosions in Eastleigh area?

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

(a) On 7th December, 2012, at about 7.30 p.m. members of the Muslim faith who included hon. Yusuf Hassan, the Member of Parliament for Kamukunji, were leaving Hidayah Mosque after Friday evening prayers when unknown attackers threw an object which was later confirmed to be a hand grenade at the entrance of the mosque. The

grenade landed in the midst of the crowd and exploded, thereby, injuring several people. Those injured were rushed to different hospitals where they were treated and discharged while some were admitted, including the Member of Parliament hon. Yusuf Hassan, who was later flown to South Africa for specialized treatment.

(b) After the incident, investigations were commenced by Anti-Terrorists Police Unit (ATPU) vide their inquiry File No.21/2012 and are ongoing. So far, no arrests have been made.

(c) The following measures have been taken to contain the rising cases of explosions in Eastleigh. A team comprising security agencies, relevant line Ministries, the business community, religious leaders, youth and women representatives, Nairobi City Council and the transport sector has been constituted to develop strategies that will address the security threat in Eastleigh. The police are currently conducting operations to have all illegal aliens and asylum seekers who have found their way into Eastleigh and other parts of the country taken back to refugee camps.

Also road blocks are being erected randomly to inspect motor vehicles entering and leaving Eastleigh to check on the people who are likely to sneak explosives out of or into the area. Patrols with sniffer dogs have been enhanced to ensure that Eastleigh and its environs are safe. Plans are underway to establish a police post within the area to contain the rising insecurity.

Mrs. Shebesh: Mr. Speaker, Sir, you have heard the answer from the Assistant Minister; it obviously speaks to only one issue that the Government is actually relying on Kenyans themselves to come up with strategies to deal with insecurity. Since the hon. Member once asked about the establishment of a police post, how in a crowded area like Eastleigh - unless the Assistant Minister does not know where Eastleigh is – could he tell us how a grenade was thrown into a mosque where the hon. Member even had his own security personnel around? This is Eastleigh that is heavily guarded; how is it that up to now there are no arrests, unless, of course, the security agencies have no intention of really investigating this matter?

Mr. Khang'ati: Mr. Speaker, Sir, first of all, I want to inform the hon. Member that I know where Eastleigh is. I have been there several times. I agree it is a crowded area; however, I want to deny the fact that the Government is only relying on the community. Issues of security, not only in Eastleigh, but even in areas like Mombasa where we have had the problem of Mombasa Republican Council (MRC) and Tana River where we have had people killing each other, you need the co-operation of the people living in the area. They are the ones who are likely to know the strangers, the good people and the bad people. Therefore, when we constitute security teams, we involve them. In other areas, this has been very helpful. It does not mean at all that the Government has abandoned its responsibility of providing security to communities.

I want also to assure the hon. Member that every effort is being made to ensure that these evil-minded people, who go into crowded areas, especially areas of worship - we have seen this in Garissa where churches have been attacked, and now it has happened in Eastleigh involving a mosque - are apprehended and this threat eliminated.

Mr. Imanyara: Mr. Speaker, Sir, my sympathies and I am sure the sympathies of every Member of this House to Mr. Hassan, and condolences to those who succumbed to the injuries on that day. I seem to recall the Prime Minister setting up a task force

specifically targeting Eastleigh. Could the Assistant Minister tell us the terms of that task force and when the results of the investigation by the task force will be made public?

Mr. Khang'ati: Mr. Speaker, Sir, the task force which the Prime Minister set up was done by his office and not by our office, which is in charge of internal security. I regret that I do not have the information; the particulars pertaining to that task force---

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Did you hear the Assistant Minister say that the task force set up by the Prime Minister had nothing to do with his office, yet he is the Prime Minister who co-ordinates and supervises Government responsibilities? Is it in order for a Government Assistant Minister to say that the task force was set up by the Prime Minister's office and it has nothing to do with his Ministry?

Mr. Speaker: Mr. Assistant Minister, did you say that? Obviously, that would be frightening, if you said it. But let me hear you.

Mr. Khang'ati: My response is that I do not have the specific information which Mr. Imanyara is seeking from me. That is what I intended to say.

Mr. Speaker: Will you, therefore, withdraw the earlier part that whatever Mr. Imanyara has recited was unintended, and then withdraw and apologize for that unintended part? Otherwise, it will be scary to send very wrong signals.

Mr. Khang'ati: Mr. Speaker, Sir, I am not aware of the anomaly in question, because I was just very specific---

Mr. Speaker: Order, Mr. Assistant Minister. You do not even remember what you said. Is that the position?

Mr. Khang'ati: No, I remember it. That is why I have made the response.

Mr. Speaker: Very well. I will give you the benefit of doubt for the moment but I will revisit the HANSARD. If I find that you used those words, then, I am afraid, you will be verging on possible sanctions.

Mr. M.H. Ali: Mr. Speaker, Sir, the Assistant Minister said that almost a month after this attack, no arrests have been made. It is also well-known that criminals thrive where there is no government. Is the Assistant Minister confirming that there is lack of Government presence in Eastleigh? If the Government is there, why has no arrest been made one month after this attack was staged on a Member of Parliament, other civilians and several places where people also lost their lives?

Mr. Khang'ati: Mr. Speaker, Sir, I want the hon. Member to recall that right from the beginning, I have said that the Government has intensified patrols in the area. Road blocks have been erected on roads entering and leaving Eastleigh to search vehicles and ensure that unwanted arms do not enter or leave the area. Above all, it has constituted a committee to address this issue. So, if the hon. Member was listening properly, then he would not be referring to the lack of Government presence.

On the issue of arrests, obviously, if we get suspects, we will arrest them. But we cannot just go on arresting everybody for the purposes of satisfying the logic that we are working. That is why I have also said here that we are continuing with investigations---

Mr. M.H. Ali: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to continue insisting that the Government is serious, and that some work has been done when he is saying that they are working with the civilians? We are saying a crime was committed one month ago despite the co-operation from the public. What has the

Government, particularly his Ministry, done to ensure that these criminals are actually arrested?

Mr. Speaker: Order. Mr. Ali, that is not a valid point of order. It is a matter of argument. You are stating a different view from that held by the Assistant Minister.

Mr. Letimalo: Mr. Speaker, Sir, in his answer, the Assistant Minister said that the Government is conducting security operations to flush out aliens, more specifically those ones who are not registered as refugees. Could he tell the House how many such aliens have been arrested and what action the Government has taken so far?

Mr. Khang'ati: Mr. Speaker, Sir, at the moment, I do not have the number of the aliens or asylum seekers who have been arrested and deported or taken to the camps. But I said that this is one of the measures that are being undertaken.

Mrs. Shebesh: Mr. Speaker, Sir, the Assistant Minister needs to give Nairobians, especially the people of Eastleigh, some reassurance because there have been over five grenade attacks---

Mr. Speaker: Order, hon. Shebesh! It is Question Time.

Mrs. Shebesh: Mr. Speaker, Sir, I am going to the question. Since there have been five grenade attacks in Eastleigh in the last six months, whose investigations have not been completed, could the Assistant Minister assure the people of Eastleigh that the Government has not decided that they are not worth their effort and, therefore, does not take the work of policing Eastleigh seriously, hence, the reason they have not even up to date put up a police post that has been requested for even by the Member of Parliament who is now injured?

Mr. Khang'ati: Mr. Speaker, Sir, I agree that the security of the people of Nairobi is very important. However, it is not only the security of the people of Nairobi that is important. We want the City of Nairobi to be safe and secure so that even the people who visit this city are taken care of. Those are the measures that I have mentioned among other measures. So, I want the Member of Parliament to note that, that assurance and commitment on the part of the Government is there. What has happened are just unfortunate situations and the terrorists who commit these acts do not expose themselves. They make very detailed arrangements to cause destruction and escape as quickly as possible. Those are the measures that we have put in place to make sure that we catch up with them and stop them.

Mr. Speaker: Order, Mr. Assistant Minister! Hon. Shebesh has expressly asked you why the Government would not put up a police station in Eastleigh. What is your answer?

Mr. Khang'ati: Mr. Speaker, Sir, in my answer, I said that the Government is putting up a police station in Eastleigh. It is there and she has it.

Mr. Speaker: Very well, Mr. Assistant Minister! When will it be completed?

Mr. Khang'ati: Mr. Speaker, Sir, it is at the planning stage. Within the next six months, it will be completed.

(Laughter)

Mr. Speaker: Mr. Assistant Minister, the insecurity in Eastleigh is a very urgent matter. So, please, try and address it, at most, within the next 60 days. Do everything you can.

Mr. Khang'ati: Most obliged, Mr. Speaker, Sir.

SHORTAGE OF WATER IN LELAN LOCATION

Mr. Kaino: Mr. Speaker, Sir, I beg to ask the Minister for Water and Irrigation the following Question by Private Notice.

(a) Is the Minister aware that the catchment area of the Murung Dam under construction receives most of its water from Lelan Location, Marakwet West Constituency?

(b) Is the Minister further aware that residents of Marakwet West Constituency living near the catchment area of the dam have been left out of the water supply arrangements?

(c) What plans does the Ministry have to supply water to the affected residents and what environmental management does the Minister intend to take to ensure that the dam is protected?

Mr. Speaker: Hon. Kaino and Members, just as we commenced this sitting a call came through to my office to the effect that the Minister for Water and Irrigation is caught in circumstances beyond her control and she is, therefore, not able to be in the House this afternoon. I do not know what those circumstances are. I will, therefore, defer this Question to Tuesday afternoon and hope that the Minister will come and be able to give a full account to the House that we will find acceptable. I want to charge the Minister for Education with the responsibility to let the Minister know that.

Hon. Mutula Kilonzo, will you convey this to the Minister?

The Minister for Education (Mr. M. Kilonzo): Mr. Speaker, Sir, I certainly will do so.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1845

REARING OF MONKEYS IN PRIVATE
RESIDENCE IN NG'ETHU VILLAGE

Mr. Speaker: Is the Member for Gatundu North not here?
The Question is dropped.

(Question dropped)

Question No.1825

APPOINTMENT OF MR. MELVINE SMITH AS PRINCIPAL FORENSIC
AUDITOR TO INVESTIGATE CHARTERHOUSE BANK

Mr. Mwau asked the Minister for Finance:-

(a) whether he could clarify whether the Central Bank of Kenya hired Mr. Melvine Smith as the Principal Forensic Auditor to investigate Charterhouse Bank;

(b) whether he could provide a copy of the job application letter, curriculum vitae, letter of offer of appointment and indicate his terms of employment, job description and the salary scale;

(c) whether the recruitment of Mr. Smith was done through advertisement or through single sourcing; and,

(d) whether he could avail and table a copy of the report on the findings by the said investigator.

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, I had answered 99 per cent of this Question. The one per cent that was left was to table the report of the investigation which I will table as soon as I answer any supplementary question from the hon. Member. I have given him a copy of the report.

Mr. Speaker: Fair enough! The Member for Kilome, do you have any supplementary question?

Mr. Mwau: Mr. Speaker, Sir, I really thank the Minister for the effort that he has put into getting this report. However, this report was actually sent to the Central Bank of Kenya on 15th December, 2004. We have been asking for it for a long time and nobody wanted to release it. However, I would like the Minister to confirm specifically whether Charterhouse Bank was investigated for economic crimes in 2004 and if so, was it found to have committed any offence?

Secondly---

Mr. Speaker: Order! The Member for Kilome, it is one question at a time. Let the Minister answer that and you will have the last opportunity if there is no other interest.

Mr. Githae: Mr. Speaker, Sir, Charterhouse Bank was not being investigated for economic crimes but it is the customers who were being investigated for economic crimes.

Mr. Speaker: Last question, the Member for Kilome!

Mr. Mwau: Mr. Speaker, Sir, I would like the Minister to confirm whether Charterhouse Bank was investigated for money laundering and tax evasion. If it was, what was the finding in 2004?

Mr. Githae: Mr. Speaker, Sir, I think it is in the public domain that in 2004, we had no Anti-money Laundering Act in place. Therefore, in 2004, it was not a crime in Kenya because there was no Act against it. Obviously, the bank could not have been investigated for a non-existent crime because according to our Constitution and Criminal Procedure Code, you can only be investigated and charged for an offence which is written and found in an Act of law, and this was not. So, Charterhouse Bank was not investigated for economic crimes but it is the customers who were being investigated for tax evasion.

Mr. Speaker: Order, Mr. Minister! The last question is whether or not Charterhouse Bank was investigated for money laundering. That is the one that you should answer now.

Mr. Githae: Mr. Speaker, Sir, I have said that there was no crime in 2004 of money laundering, because we had not Act against it. So, there was nothing to

investigate. You cannot investigate an offence which does not exist in law. The Attorney-General is here and he can confirm that in 2004, we had no Anti-money Laundering law.

Mr. Speaker: Fair enough! I think that, that should rest the matter.

What is it, hon. Imanyara?

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. I seek your guidance on this issue because the same matter that the hon. Member has raised was referred to the Committee on Implementation. The Committee has sat and made recommendations. We were expecting the Chair of that Committee to table that report today and I can see him in the House. Perhaps, he can give us some guidance on why the report is not being tabled after we have completed it.

Mr. Speaker: Yes, the Chair of the Committee on Implementation!

Mr. Mwiru: Mr. Speaker, Sir, this matter also came to this House yesterday and it was raised by a Member of your panel who is also a Member of your Committee. This is a matter that we have been following very closely. We have done a report and the only thing that is remaining is the adoption. We thought we would do it in the morning but it looks like the clerks delayed with the report. We have been shuttling from the office of the Clerk to the other but I think this is a matter that I should be able to table on Tuesday next week.

Mr. Speaker: Fair enough. You will table the report on Tuesday, Chairman.

Question No.1875

DELAYED PAYMENT OF DUES TO MR. JEREMIAH OBWOMA

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

(a) whether he is aware that Mr. Jeremiah Obwoma (P/No. 82108957), a chief from Kiogoro Location in Kisii Central District was retired in public interest and subsequently reinstated after he successfully appealed the decision; and,

(b) whether he is also aware that the said officer has not been paid his dues for the period the appeal was being considered.

(c) when he will be paid his dues and whether he could confirm that the dues will include interest for the period they remained unpaid.

The Assistant Minister for Provincial Administration and Internal Security (Mr. Khang'ati): Mr. Speaker, Sir, this matter has been before this House before and, indeed, more than 70 per cent of the Question was answered. There was further information that was required and I was directed that I should seek that information. The information required had to do with the financial entitlement of Mr. Obwoma and why he could not be paid. I indicated that I was going to get guidance from the Public Service Commission because this is the body that dealt with the appeal. I received a submission from the Public Service Commission which was not any different from what had been stated. Their position is that Mr. Obwoma had not been on duty for the period that he wants to be paid. There is no salary earned for work which has not been done. Since this position was not any different from the previous position, and after consultations with the

human resource people in my Ministry, we have decided to write to the Attorney-General so that he could guide us on how we should proceed further.

I wish to table a copy of a letter addressed to the Attorney-General seeking his legal guidance on this matter.

Dr. Monda: Mr. Speaker, Sir, I believe you heard what the Assistant Minister has said. Mr. Jeremiah Obwoma, the Chief, Kiogoro, was given a show cause letter why he should not be sent on retirement. There was no letter sacking or retiring him. It is after hearing his appeal that the Ministry decided to have him continue serving in the Government. What is the Ministry doing to ensure that this delay in attending to the matter affecting the chief is sorted out and he is paid for the service he rendered because he is still a chief in the Government of Kenya? What is the Ministry doing to ensure that he has been paid for the period between 2002 and 2009 when---

Mr. Speaker: Order, Dr. Monda! There is a point of order.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. I remember very well the circumstances because I was on the Chair. The reason the Assistant Minister is referring to the Attorney-General for advice is because clearly this chief was returned to work as a result of a successful appeal. The Public Service Commission decided that they will pay part of it as if there was no appeal. The reason why the Assistant Minister is referring the matter to the Attorney-General is so that they can get a legal opinion as to whether the Public Service Commission is valid. In these circumstances, would it be in order that he awaits the advice from the chief legal advisor of the Government before he comes to answer the Question conclusively because a lot would depend on the advice that he gets from the Attorney-General?

Mr. Speaker: Yes, indeed, that would be valid. That is a genuine point of order. Assistant Minister, do you have any reaction to that?

Mr. Khang'ati: Mr. Speaker, Sir, that is the position. He has explained the way that we are moving. This matter has been with us and involves money. The case was heard by the Public Service Commission which is an independent organ and so, we cannot commit any money to the outstanding salaries of Mr. Obwoma until we have complete certification to that.

Mr. Speaker: Fair enough, if that is the clear position, then it would be that the matter is still alive until you receive the advice of the Attorney-General.

Mr. Khang'ati: Yes, Mr. Speaker, Sir.

Mr. Speaker: Dr. Monda, any other question at all in those circumstances?

Dr. Monda: Mr. Speaker, Sir, considering that the Attorney-General is in the House and this matter has been repeatedly coming up and the answers have not been forthcoming, would I be in order to request that you direct that the Attorney-General undertakes to give this answer on Tuesday next week?

Mr. Speaker: Order! The Attorney-General has heard what has transpired in the House but it would be out of order to ambush him. I know that he does not carry all the files or facts relating to thousands of cases that may transit through his office every other afternoon. So, we will place this matter on the Order Paper at the earliest opportunity as the House will meet.

Very well, that must rest there now.

Next Question, the hon. Member for Chepalungu.

Question No.1847

DELAYED RESETTLEMENT OF MAU FOREST EVICTEES

Is Mr. Ruto not here? I thought I saw him somewhere in the precincts of Parliament today. That Question is dropped.

(Question dropped)

Question No.1669

PLANS FOR CONSTRUCTION OF TRAIN SUBWAYS IN NAIROBI

Mr. C. Kilonzo asked the Minister for transport what plans are there to build train subways in Nairobi and its environ.

Mr. Speaker: Before you proceed, I see that the Minister of State for Special Programmes wants to rise on a point of order. Minister, what is it?

The Minister of State for Special Programmes (Ms. Murugi Mathenge): Mr. Speaker, Sir, yesterday Mr. Ruto said that I was in the Indian Ocean and when this Question was here last week, I was there but he was not here. I suggest that this Question be dropped.

Mr. Speaker: Indeed, I have directed that the Question is dropped.

The Minister of State for Special Programmes (Ms. Mathenge Murugi): And I was not in the Indian Ocean!

Mr. Speaker: If you had been in the Indian Ocean, you would not be here this afternoon.

(Laughter)

We want to call upon the Minister for Transport to answer the Question by the hon. Member for Yatta.

Is the Minister not here? We would revisit the Question just a few minutes from now. Yesterday, the Minister came up after we had called this Question on the day before and he indicated that he had made every effort to get here and somewhere he got here after we passed the Question. So, we want to accord him the opportunity to perhaps make greater efforts this afternoon.

Next Question, the hon. Member for Vihiga.

Question No.1874

DELAYED ISSUANCE OF TITLE DEED
TO HAMUYUNDI PRIMARY SCHOOL

Mr. Chanzu asked the Minister for Lands:-

(a) whether he is aware that Hamuyundi Primary School in Vihiga County is yet to acquire a title deed/lease for the parcel of land it stands on;

(b) when the school will be issued with a title deed/lease; and,

(c) whether he is also aware that many schools in the county are in the same predicament.

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I am not ready with the answer to this Question because it was originally directed to the Ministry of Local Government and only came to our Ministry on 31st December, 2012 at 1.45 p.m. So, it has not been possible for me to prepare a proper answer. So, I need time to prepare a proper answer to this Question. I would pray that I am given a day or two to have an appropriate answer to this Question. I have evidence to show what time and day the Question reached the Ministry.

Mr. Speaker: Mr. Chanzu, will you extend that indulgence to the Minister up to Tuesday?

Mr. Chanzu: Mr. Speaker, Sir, that is okay. Tuesday afternoon will be fine.

Mr. Speaker: It is so directed!

(Question deferred)

Mr. Speaker: Hon. Members, we have one more Question that we said we will revisit. This is Question No.1669.

Question No.1669

PLANS FOR CONSTRUCTION OF TRAIN SUBWAYS IN NAIROBI

Mr. C. Kilonzo asked the Minister for Transport what plans there are to build train subways in Nairobi and its environs.

Mr. Speaker: Where is the Minister for Transport? Hon. M. Kilonzo, what is happening or not happening to your Minister for Transport?

The Minister for Education (Mr. M. Kilonzo): Mr. Speaker, Sir, may I request my friend, the Member who is asking this Question, to agree that it be deferred to Tuesday partly because I am sure the Minister for Transport will not do this casually. He must have a reason for being delayed.

(Mr. Speaker consulted hon. Githae)

Mr. Speaker: Hon. Members, I have some unusual pressure from Mr. Ruto and there are certain things we can do and things that we cannot do, but I will give him the Floor, maybe just to apologize after we finish or before we close Order No.6. So, with respect to Question No.1669, I had asked the good Minister for Education to, perhaps, try and give us an account.

The Minister for Education (Mr. M. Kilonzo): Mr. Speaker, Sir, I had already indicated that I have no doubt that the Minister for Transport is not ignoring the House. There must be a reason for his delay. I, therefore, request that the Question be deferred to

Tuesday. That is the second time I am saying so. I respect the Minister for Finance, but he is interrupting your wonderful ears. So, could hon. C. Kilonzo grant me that indulgence?

Mr. Speaker: Hon. C. Kilonzo, do you accept that position? Maybe then we can have the Question on the Order Paper on Tuesday afternoon.

Mr. C. Kilonzo: It is okay, Mr. Speaker, Sir.

Mr. Speaker: Very well!

(Question deferred)

Hon. Ruto, you have caught my eye now to perhaps give an account as to why you were not here to ask Question No.1847.

Mr. Ruto: Mr. Speaker, Sir, I wish to apologize profusely for coming late. We were caught up in some other Parliamentary business with the Transitional Authority and other issues that were disturbing us in the morning. I seek your indulgence, considering the import of this Question especially at this time, to exercise lenience that is within your power, so that certain Kenyans can understand their fate during this period, especially as we face the General Election. I seek your indulgence that I ask Question No.1847.

Mr. Speaker: Fair enough! Hon. Ruto, you have made your point. Just resume your seat. I know that this Question is important and in my view, you similarly ought to have known that this Question is important. If you arranged your priorities properly, then you would have skipped that other meeting that you were attending to come and ask this Question. Our rules of procedure and even the practice of this House inclusive of the traditions of the House are such that a Question cannot be dropped and reinstated in the same sitting regardless of how plausible an explanation a Member may have or even how sensitive the matter is including touching our own feelings as human beings.

Of course, we are all very sympathetic with the situation in which IDPs may be finding themselves. I, therefore, cannot reinstate the Question for you to ask it this afternoon. So, general reinstatement, I will need to be persuaded beyond just the reasons you have given. One of the things that may persuade me to consider reinstatement, even in the future, will be perhaps concurrence from the Minister. The Minister is now here. I am prepared to take into account what she says as I weigh whether or not to have the Question reinstated for the future. So, hon. Murugi-Mathenge, I will want to hear you if you are in sympathy with the Member. If you are not, then, of course, I will exercise my discretion as I should.

The Minister of State for Special Programmes (Ms. Murugi-Mathenge): Mr. Speaker, Sir, I would like the Question reinstated next week. I would also demand an apology from the Member because yesterday I was sorting out the issue of IDPs. Last week, the same Question was on the Order Paper and the Questioner was not present in the House.

Mr. Speaker: Fair enough! Mr. Ruto, the Minister is prepared to extend an olive branch, but on condition that you apologize for the aspersions you cast against her yesterday.

Mr. Ruto: Mr. Speaker, Sir, I am willing to apologize for any misdemeanors that she may have faced.

Mr. Speaker: You are willing or you are apologizing?

Mr. Ruto: Mr. Speaker, Sir, I am willing and I apologize to the good lady and hon. Minister. I am sure she is really concerned.

Mr. Speaker: Order, Mr. Ruto! That will then rest the matter. Hon. Members, before we come to the end of Order No.6, I had undertaken to make one more Communication this afternoon and it is as follows:-

COMMUNICATION FROM THE CHAIR

OUTSTANDING REQUEST BY HON. MWAU TO EXPUNGE SOME DOCUMENTS FROM HANSARD RECORDS

Hon. Members, this is in relation to a request made to Mr. Speaker yesterday by the Member for Kilome, hon. Mwau. Hon. Mwau claimed that a request he had made on 23rd March, 2012, that certain documents be expunged from the records of the House and in respect of which a ruling was promised, was outstanding. At the outset, it is important for the benefit of all of us that accurate records are kept to clarify that this House was not in Session and did not sit on 23rd March, 2012. Accordingly, no ruling could have been sought from the Chair in the House on that day and none would have been promised. It would seem, however, that hon. Mwau was referring to the proceedings of the House on 13th March, 2012, when he made a request of the same import as he did yesterday. The HANSARD record on that occasion, however, does not indicate that the Speaker promised a ruling. That notwithstanding as hon. Mwau has severally canvassed this matter in the House, it is apt that I make this ruling.

Hon. Members, the matter that has culminated in the request by hon. Mwau for the expunging of a document from the records of the House has a long history.

It began with a Personal Statement made in the House on 21st December, 2010 by hon. Gideon Mbuvi also known as Sonko, the Member for Makadara, in relation to an alleged raid at his house in Buru Buru and reported forceful entry into his office at Parliament in Continental House by the police. The following day, 22nd December, 2010, the Minister of State for Provincial Administration and Internal Security, the late hon. Prof. George Saitoti, in explaining by a Ministerial Statement the forceful police access to hon. Mbuvi's office at Parliament, stated that he had information from the Commissioner of Police that hon. Mbuvi was one of the Members of Parliament who had been mentioned in connection with allegations of drug trafficking. The Minister was then challenged by the Member for Gichugu and the Member for Yatta to name the other Members of Parliament who were under police investigation as suspects of drug trafficking, now that he had named the Member for Makadara.

The late hon. Prof. George Saitoti then stated that it was not his pleasure to do so, but that he would do it because it had been demanded by Members. He then stated that he had been informed that the Members suspected of drug trafficking were hon. Mbuvi, hon. Joho, hon. Mwau, and hon. Kabogo. He explained that those names were given to him by the police as the Members of Parliament who were being investigated. He emphasized that he had given those names only because Members had demanded it and also stated:-

“Although these names have been mentioned, I think we must take the view that each of them is innocent until proven guilty. That is the position. I repeat that the matter is being investigated and none of the persons mentioned is guilty.”

He then promised that the investigations will be concluded in about a month. Subsequently, on 3rd March, 2011, hon. Kabogo sought a Ministerial Statement on, among other things, the delay in tabling the report on the investigation of hon. Members allegedly suspected to be involved in drug trafficking which, on 3rd February, 2011, the Minister had promised would be concluded within a month. The Speaker had then directed that the Statement be availed on 10th February, 2011. On 17th February, 2011 hon. Prof. Saitoti gave a Ministerial Statement conceding that he had, on 22nd December, 2010, promised speedy investigations and conclusion of the matter within a month. He stated that he had then directed the Commissioner of Police to conduct urgent and thorough investigations but, due to the complexity of the matter, the police could not conclude investigations within that period.

However, the Commissioner of Police had provided a progress report as investigations continued. The hon. late Minister asserted that, that far, no evidence had been found linking any of the four Members of Parliament to drug trafficking. He added that what was presented was an interim report and that further investigations which will culminate into a comprehensive report were ongoing. Hon. Mwau, however, sought to have the matter brought to an end by the Minister immediately, stating that the four Members of Parliament thus far had been exonerated. Ultimately, on Tuesday 13th March, 2012, as the House was discussing whether a document claimed to be a dossier by the British Government - which document had been tabled on 8th March, 2012 by the Member for Yatta, should be expunged from the records - hon. Mwau asserted that the Standing Orders should be applied without discrimination. He referred to his own adverse naming with three other Members on 22nd December, 2010 as being investigated by police on suspicion of drug trafficking. He claimed that this was contrary to the Standing Orders as it was done without a substantive Motion.

He claimed that the late Saitoti had gone further and tabled a document similarly adversely naming Members of Parliament among, them himself. As a matter of fact, on 22nd December, 2010, the late hon. Prof. Saitoti did not table any document. The only document tabled on that day was by the hon. Member for Juja.

Hon. Members, what the late hon. Prof. Saitoti tabled on 17th February, 2011 were two documents namely:

- (a) Interim Report on Drug Trafficking Investigations.
- (b) A further document consisting of a letter from the USA Ambassador attaching additional information concerning the activities of alleged traffickers.

Hon. Members, I will pause for a moment to let those at the door to walk in.

(Hon. Members at the entrance walked into the Chamber)

Hon. Members, the Member for Kilome then demanded that if the Speaker were to rule that the document tabled by hon. Kilonzo be expunged, the same would have to apply to the further document tabled by the late Minister. The Speaker declined the demand and informed the Member of Kilome that, that amounted to intimidating or threatening the Chair and required the Member for Kilome to withdraw the remark. The Member obliged, withdrew and apologized.

The Speaker did not on this occasion undertake as alleged by the hon. Member to give a ruling on whether or not the document he is aggrieved over should be expunged. I have,

in fact, carefully perused all the HANSARD reports on this matter, and do not find that at any point the Speaker made a promise to rule on whether or not the document complained of should be expunged from the records of the House. That notwithstanding, I have found it important to deal substantively with the request of the hon. Member for Kilome because of the weighty questions it raises.

The hon. Member argues in his request and in correspondence by a letter to my office that following the precedent set on 20th November, 2012, when the Speaker ordered the allegations of criminal conduct made against the Kenya Defence Forces (KDF) without evidence be expunged from the request for a Ministerial Statement, the document he complains of should similarly be expunged. He also cites the order made by the Speaker on 26th April, 2012 directing, belatedly, that all allegations which had been made by the Member for Bondo, hon. Oburu Odinga, imputing improper motive against hon. K. Kilonzo without a substantive Motion be expunged from the records of the House as they contravened the Standing Orders.

Hon. Members, from the chronology of events, two issues arise for determination namely:-

(i) Whether false allegations were made against the Member for Kilome in contravention of the Standing Orders.

(ii) Whether the Speaker may order the allegations and the documents in which they are contained to be expunged from the records of the House.

Standing Order No.79 makes provision on the content of speeches and, in particular, places some restrictions on the same. Under Standing Order No.79(4), it is prohibited for a Member to impute improper motive to any other Member except upon a specific substantive Motion, of which, at least, three days notice has been given calling in question the conduct of that Member. This is important because it avoids the situation where the House becomes the arena for expletives and name calling. It shields the proceedings of the House from being poisoned by personal attacks. In my considered opinion, I do not find that Standing Order No.79, or any other Standing Order, for that matter, prevents a Minister from informing the House about the progress of police investigations in any instance, and if information is sought, the identity of the person being investigated, even if these happened to be Members of Parliament. Because of the well settled principle that a person including a suspect is presumed to be innocent until proven guilty, such a report to the House by a Minister does not amount to imputing improper motive on a Member.

By the time of his demise, the late Minister had tabled an interim report of the investigations and promised a final and comprehensive report. Indeed, the late Minister did make it clear that the fact of investigations being undertaken against certain persons could not establish a presumption of guilt. He also stated categorically when tabling the interim report that up to that point no evidence had been brought nor found to link the honourable Member for Kilome or any other Member of this House with the offence of drug trafficking.

From the foregoing perspective, I am not able to find that the interim report forwarded to the late Minister vide a letter from the Office of the Commissioner of Police Ref. No. Sec. Pol. 2/2/1/9/Vol.XXXIII(69) dated 4th February, 2011 and tabled by the late Minister on 17th February, 2011, is in any violation of the Standing Orders.

On the second issue of the letter by the American Ambassador, the rules on admissibility of documents in this House are well settled. Once a document meets the requisite threshold, among them, that it is duly signed and dated, it is admitted by the Speaker. Admission of a document does not signify the veracity of any claim made in it. A document is not admitted because its contents have been found by the Speaker to be true or correct. It does not signify any view as to its contents by the Speaker or by the House. In fact, it may well be the case that a document is tabled to establish the falsehoods in it. The admission by the Speaker of a document to be tabled is only evidence that the Speaker is satisfied that there is an authentic document that has been uttered and that can be drawn to the attention of the House.

As a result of the foregoing, once a document has been admitted and tabled the fact that the contents of the document are later found to be either correct or false does not affect its status as a tabled document in the records of the House and cannot, without more, lead to its being expunged from the records. What the House does with an admitted document is a matter for the House itself, using the mechanisms by which the House expresses itself and makes its decisions. If on the other hand it were to be found that the document was a forgery, different considerations would, of course, apply because then there would really be no document before the House in the first place and the Speaker would merely be declaring as much.

Arising from these circumstances, I now find and rule as follows:- One, that no case has been made to warrant the expunging of the document requested by the Member for Kilome from the records of the House. As a matter of fact, no purpose would be served by the Speaker pronouncing himself, at all, on the document complained of, as the manner in which it came before the House and its status in the House, has no adverse legal effect on the honourable Member or any other Member or any other person. The only thing that can be said of the document is that the House is seized of the fact that the document was uttered and that the House has custody of the document. No more, no less.

Two, the operational position, as far as this House is concerned, in respect of the matter complained of by the honourable Member remains as set out in the Interim Report on Drug Trafficking Investigations tabled by the late Minister of State for Provincial Administration and Internal Security, to wit, that no evidence has been brought nor found to link the Member for Kilome to drug trafficking.

I thank you.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. In the same light of the communication that you have given, I just wanted to remind the Chair that I am not sure of the actual date but I brought to the attention of the Chair at some point - if the date is required I will provide it - the matter under Article 35(2), on the fact that when a matter has been incorrectly given, one is entitled to a correction.

Various communications brought to the House have found that the so-called dossier was an erroneous and incorrect document and that information is well within the information available in the House. At some point, I requested the Chair to make a ruling as far as Article 35(2) of the Constitution is concerned where one is entitled to a correction where incorrect information has been given. As far as I am concerned, we are yet to receive, with due respect, that communication from the Chair.

Mr. Speaker: The Member for Juja, I have heard you. However, in the light of the communication I have made, following the request by the Member for Kilome, do

you really want me to make further communication? If you want me to, I will. However, as I understand the position, after very careful consideration, it would be my view that any further communication would be superfluous. If you listened to me carefully, at the last paragraph of that communication, I said and I will repeat it for your benefit; “the operational position as far as this House is concerned, in respect of the matter complained of by the hon. Member for Kilome – we may very well substitute that with the Member for Juja – remains as set out in the Interim Report on Drug Trafficking Investigations tabled by the late Minister of State for Provincial Administration and Internal Security, to wit, no evidence has been brought nor found to link the Member for Kilome – we could very well substitute this with the Member for Juja – to drug trafficking”. So, unless you want me to specifically speak to Article 35, I think it would be superfluous.

Mr. Kabogo: Mr. Speaker, Sir, I may take advantage of your legal knowledge but all I was following and I stand corrected by you is the fact that within the precincts of Parliament, it is an incorrect manufactured document and as a Kenyan, I feel that it is entitled to correction. Sub-section 2 says:-

“Every person has the right to the correction or deletion of untrue or misleading information that affects that person.”

Mr. Speaker, Sir, I heard it in your words that this is a very weighty matter for me and I believe for other hon. Members who are mentioned in the document. An example is that it is stated that I am married to the daughter of Mr. Harun Mwau.

Mr. Speaker: Order, Mr. Kabogo! That is not helpful. For you to repeat what you are describing as falsehoods does not help anything.

Mr. Kabogo: Thank you, Mr. Speaker, Sir. I was trying to bring back your memory on exactly what untruths are available to you today but if you think that you have covered it in terms of comforting me, I will say I will stand---

Mr. Speaker: I may be prepared to go the extra mile but I can assure you it will be superfluous. In fact, it will not be helpful at all. I have been so categorical in this communication that anything more will be belabouring the point. You will be flogging a dead horse.

Mr. Kabogo: Thank you, Mr. Speaker, Sir. I rest my case.

Mr. Speaker: Please do. Hon. Mwau, do you wish to say anything more?

Mr. Mwau: Thank you very much, Mr. Speaker, Sir, for your ruling. I just wish to point out that the dates that were mentioned in the letter were just a typographical error. Otherwise, I am grateful.

Mr. Speaker: Very well, hon. Mwau. We will let the matter rest there.

MISREPORTING BY NEWSPAPERS

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. It is on a different matter.

Mr. Speaker: Very well.

Mr. Kabogo: Mr. Speaker, Sir, two days ago, I raised an issue with you about a communication that I expected in reference to reporting of a certain newspaper and you promised to look into it and you said that your office was notified. So, really I would like to know about it since we have a few days to go.

Mr. Speaker: Yes, and indeed, my office has taken advantage of that and we will deliver that communication. We undertake to do so before we go.

Mr. Kabogo: Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well, Minister for Finance, hon. Githae!

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, this is a request that you allow me to table two Papers on Order No.4 so that it is part of the record of this House, I wish to---

Mr. Speaker: Order, hon. Minister! That permission is not granted. You have made the request and I have to give direction. In view of the prevailing circumstances, the point at which we are in the parliamentary calendar of the Tenth Parliament, it is necessary to make that exception and I do direct that Order No. 4 be revisited.

Next Order!

PAPERS LAID

The following Papers were laid on the Table:-

Explanatory Memorandum for the following Bills:-

- (i) The Division of Revenue Bill, 2012
- (ii) The County Allocation of Revenue Bill, 2012
- (iii) The Transition to County Allocation of Revenue Bill, 2012
- (iv) The Pre-Election Economic and Fiscal Update

(By the Minister for Finance)

Mr. Speaker: Order, Minister! I hope your Papers are not accompanied by a Motion.

The Minister for Finance (Mr. Githae): They are not, Mr. Speaker, Sir.

Mr. Speaker: Very well. So, we may go back to Order No. 7.

MINISERIAL STATEMENTS

DISPUTE OVER OWNERSHIP OF SHREE VISA OSHWAL PRIMARY SCHOOL

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I first want to apologise for the late delivery of one of the Ministerial Statements that I am going to make and the justification was that when the request was made I was not in the House and I did not get notice of that request until sometime yesterday. But I am sorry I was not in the House when the Ministerial Statement was requested.

Mr. Speaker, Sir, the first Ministerial Statement that I want to make is in relation to Shree Visa Oshwal Primary School which has attracted some controversy and the Minister for Education has had some comments to make on this but this is the Ministerial Statement.

There has been a dispute between the parents and the local community on one hand and the management of the Shree Visa Oshwal Primary School on the other hand based on the allegations that the school has been converted from a public institution to a private commercial entity. Records served by the Ministry show that the land on which

the school is constructed was granted by the Government to Bamal Rajshi Shah, Veshi Mepal Shah and Kashaplal Fulchand Shah as trustees of the Shree Visa Oshwal Community of Nairobi for a term of 99 years with effect from 1st January 1954 at an annual rent of Kshs72. The parcel of land is approximately 4.4 acres. The grant which was registered as LR No.18152/1 of 17th April 1961 is subject to some special conditions enumerated therein. In this respect, it is important to note the following conditions and among others:-

The first is under special condition number three; the land shall only be used for the erection of a school and for one house for the accommodation of the principal employed in connection therewith. Condition number four says that if the school erected on the land shall cease to function as such under the provisions of the Education Act, then the term hereby created in the grant shall *ipso facto* also be determined and the land shall be deemed automatically to have reverted to the Government as from the date of such cession without necessity of any formal surrender thereof.

Special conditions number five and six prohibit the proprietor from subdividing, selling, sub-letting, charging or in any manner parting with the possession of the land. Special condition number 12 concludes by saying that notwithstanding anything to the contrary or contained in the said Government Lands Act which has since been repealed, the guarantee shall on receipt of six months notice in writing in that behalf, surrender all or any part of the land required for public purposes without payment of any compensation save in respect of such of the approved buildings as may have to be evacuated or demolished.

Mr. Speaker, Sir, on the 11th of June 1965, the original trustees were incorporated under the Land Perpetual Succession Act, that is Chapter 286 and registered as Perpetual Succession No.270/1 of 15th June 1964.

The land known as Land Reference No.209/5996, among others, was vested in the newly incorporated Trust and an entry to that effect entered in the title as L.R.No.18152/2 of 24th July, 1965. The Ministry has also noted that the school is classified as a public school and registered as such by the Ministry of Education. Under the Education Act Cap.2 (1) (1), “public school” means, and this is important, “a school maintained or assisted out of public funds” as opposed to private or unaided school which does not receive grants out of public funds. Since its inception, the school has been serving students of all races without discrimination. Being a public school, it is also under public duty to promote affordable education to qualified pupils without prejudice or discrimination. It is not supposed to operate as a private commercial institution. It is for this reason that the annual rent is at a highly discounted rate of only Kshs72 per annum.

[Mr. Speaker left the Chair]

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

Under the circumstances, therefore, the reported action by the management of converting the school from a public to a private is both ill advised and without justification. In this respect and considering the terms under which the land is held by the Trust, I have directed the Commissioner of Lands to invoke Special Condition No.12 by

giving six months notice to the registered proprietor to surrender the land by way of ensuring that the school remains a public school.

(Applause)

This is, however, subject to and without prejudice to the ongoing court cases. Having made these propositions, I have reason to believe that both the Ministry of Education and the Ministry of Local Government have sufficient tools and mechanisms to ensure that the school operates on the basis of its original foundation.

(Applause)

Mr. Speaker, Sir, for completeness of record, I would want to table the title document of the land where the school is which enumerates the conditions, the deed instruments and the certificate of registration of schools from the Ministry of Education. Indeed, if they did not want to operate as such, they should not have accepted this certificate of registration. So, they cannot say that they are a public and a private school at the same time. That is the Statement that I wish to make in regard to Visa Oshwal. I do not know whether I should proceed to make the next Statement.

The Temporary Deputy Speaker (Mr. Imanyara): Unless there are any clarifications that are being sought. Are there any? Hon. Kiuna, are you seeking a clarification on that issue? I only want to take requests for clarification on the Statement by the Minister. Hon. Waititu, you are on a point of order.

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir. First, I want to commend the Minister for such a good Statement on the Visa Oshwal Primary School. The correct position on the ground is that the school has been closed using a very big chain yet Monday will be school opening day. Could the Minister ask the Nairobi Provincial Police Officer to order the people who have closed the gate to open it for the pupils on Monday?

The Temporary Deputy Speaker (Mr. Imanyara): The Minister has made it clear that both the Minister for Education and the Minister for Local Government have sufficient tools with regard to what you are requesting. But, hon. Minister, in case you want to make further comments to assure hon. Waititu, you may do so. Hon. Orengo, do you want to give him further assurances?

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, the only assurance that I can give to him is that I am sitting next to the Minister for Education.

The Minister for Education (Mr. Kilonzo): Exactly!

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, I also want to thank the Minister for calming a situation that was going to get out of control in Nairobi. Most importantly, I want to ask him to consider, because he is sitting next to the Minister for Education, whether that can be a directive given to all schools that are at such risk especially those owned by churches. There are also some churches which want to revert schools from public to private.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, that question would probably be dealt with more appropriately by the Minister for Education. But I have had occasion to look at the Education Act, which makes it clear that a public

school is any school that receives assistance, not just complete funds, but even so long as they are benefitting from the public coffers or from the largesse of the Minister for Finance. That school falls under the category of public schools. In this particular instance, I have even seen from the court records that they get teachers from the Teachers Service Commission (TSC). The City Council of Nairobi has also been giving funds and support. So, it clearly falls under that category.

Therefore, those who sponsor schools and wish to benefit from public funds should know that they cannot attract public funds and consider themselves to be private entities. All public funds are subject to public audit and accountability.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, initially, I am the person who requested for this Statement from the Ministry of Education. Although I appreciate the comprehensive answer by the Minister, my only worry is that the Shree Visa Oshwal Community went to court and obtained a High Court order vide Case No.1474 of 2005. I have perused the proceedings and it seems that there is a conspiracy to defeat justice either jointly by the two Ministries concerned.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order, Mr. Mbuvi! You heard the Minister very clearly saying this is “subject to pending court proceedings”. If you are making references to those pending court proceedings, then you clearly know that it is improper.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, it is not improper because the matter has already been concluded and a ruling was delivered. So, I am making my comments based on the ruling that was delivered. I have a problem with the Ministry of Local Government, in which the City Council of Nairobi falls, and the Ministry of Education. A matter was filed in court vide Case No.1475 of 2005 by the trustees of this school, the Shree Visa Oshwal Community, about seven years ago. This is a public school and there was no representation from both Ministries. The Ministry of Local Government and the Ministry of Education never sent representation. I have a copy of the ruling, which I wish to table, which was delivered by Justice Nambuye. On page 3 of the ruling there is a remark, which I request you to allow me to read. The defendants, who are the City Council of Nairobi, filed a replying affidavit to that application, but they did not attend the inter parties hearing. The court, being satisfied that they had due notice, allowed the plaintiffs to proceed with *ex parte* hearing.

The clarification I am seeking from both Ministries is that we want to have an assurance that such things will not arise again in future. We want to know what action the Government is going to take against corrupt education officers in the legal departments of these two Ministries, because they failed to send representatives to court to defend this public school. That is an explanation we want; we want the Government to explain that before this House, because these Ministers are just used to giving us verbal promises.

The Temporary Deputy Speaker (Mr. Imanyara): Order! You have made your point. The Minister has heard you and I am sure he is going to respond.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, I have not finished. Just the last point, which I wish to give---

The Temporary Deputy Speaker (Mr. Imanyara): If you become repetitive, then it is my---

Mr. Mbuvi: Thank you, Mr. Temporary Deputy Speaker, Sir; much obliged.

The Temporary Deputy Speaker (Mr. Imanyara): Minister, do you want to comment on that?

Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, there are two senior counsel who sit next to each other on this side, and we are consulting. I have a copy of these proceedings. Any suit against the Kenya Government is normally instituted against the Attorney-General. So, these were not proceedings against the Government as I understand it under the civil procedure rules, or the Government Proceedings Act.

Now looking at the judgement, also the Ministry of Lands and the Ministry of Education were not parties to these particular proceedings. So, entry into those cases may not have been appropriate. Thirdly, the orders in this case--- I think they were judgements or orders in *personam* and not in *rem*; this means they only bind the parties. So, the hon. Member for Makadara will know that I am acting knowing very well what the legal status is; the Government and Ministry of Education are not bound because the orders were against the defendants, as far as I understand.

Mr. Temporary Deputy Speaker, Sir, finally it is not quite on record that those parents or applicants who went to court consulted the appropriate arms of Government to ensure that, when they went to court, they filed the appropriate proceedings. I normally find a lot of problems in this. Somebody goes to court, and when the court proceedings have gone so far, then they suddenly realize that there is a Ministry of Education or a Ministry of Lands at the tail end of the proceedings. But I want to assure the hon. Member for Makadara that the directions I have given are in accordance with the Constitution, and that the Commissioner of Lands is going to give the appropriate orders under the grant; the Ministry of Education is going to proceed and ensure that this school is opened to the members of the public. So, do not dwell on history and lamenting; dwell on the fact that now we have a solution, and on Monday these innocent kids should be in school.

Mr. Kioni: Mr. Temporary Deputy Speaker, Sir, allow me to bring to the attention of the Minister that Aga Khan Primary School within Parklands area is undergoing a similar fate. The gates have not been closed but officers in his Ministry attempted to transfer the school to Aga Khan Foundation. There is a case in court; could the Minister give an undertaking to this House that he will investigate the case and try to come to the rescue of the parents and the kids. The Aga Khan Primary School is next to the Aga Khan University Hospital.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Kioni, that is not directly related to the issue but I am sure the Minister has heard you.

(Mr. Mbuvi stood up in his place)

Hon. Mbuvi, what is it?

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, Article 27 (1) of our new Constitution says that every person is equal before the law and has the right to equal protection and benefit of the law.

Mr. Temporary Deputy Speaker, Sir, the grabbers have a court order. We want the Minister for Lands or the Ministries concerned, to send the Attorney-General to court to set aside this order which the land grabbers are enjoying. Besides that the grabbers abused the court process. Initially they went to court vide case No.655 of 2003, where

they sued the parents, headmaster and the Director of City Education. But before this matter was concluded the grabbers went to court again; this time they sued the City Council of Nairobi. The City Council of Nairobi never went to court. This is a clear indication that there was a conspiracy between the City Council of Nairobi and the grabbers to grab this school. So, we want an assurance from the Government through the Attorney-General. They have to go to court and set aside this order in case No.14----

The Temporary Deputy Speaker (Mr. Imanyara): Order, now! I think I have given you sufficient indulgence. You have heard the Minister assure this House very solemnly, as the Minister for Lands, that these innocent children will be able to go to school next week. That is the issue that was really before us; the matters that you are raising are not really entirely within the scope of the statement that was sought. So, please, limit yourself to the statement that the Minister issued and seek clarifications regarding the opening of the school or not opening of the school. The Minister has been clear and he has told you he is sitting next to the Minister for Education. He has given the assurance that this school will be opened, and that the steps being taken are in accordance with the law. Therefore, you can rest assured that these children will not lose their school.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, I agree with you and I have limited myself to the clarifications and statement which the Minister has delivered.

Mr. Temporary Deputy Speaker, Sir, my only worry is that the grabbers have a court order in their favour and any time they will go with the police officers and take control of the school. So, we want an assurance, not a verbal assurance, from these Ministers. They always tell lies---

The Temporary Deputy Speaker (Mr. Imanyara): Order! Now you are overstepping---

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, I withdraw.

The Temporary Deputy Speaker (Mr. Imanyara): Very well; the hon. Member stood up as a Government Minister. He has assured you of the steps he has taken. He has gone further to tell you that the Minister for Local Government and the Minister for Education are in the House and they have heard him, and the school is going to open. Surely, you cannot go beyond that under the statement that was requested, hon. "Sonko".

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, much obliged. But could the Minister give a further undertaking that next week pupils in this school are going to resume their normal studies?

The Temporary Deputy Speaker (Mr. Imanyara): He needs not do that because he has already done it. He has already done that. Hon. Njuguna, is it on the same matter?

Mr. Njuguna: No, Mr. Temporary Deputy Speaker, Sir. Mine is thanking the Minister for issuing a very timely statement on the fate of this school. Could he, in the same breath, assure this House that schools will not lose their land during the transitional period?

The Temporary Deputy Speaker (Mr. Imanyara): Minister, I do not know whether that is completely relevant but do you want to say anything? He is asking you to assure Kenyans that schools will not lose land during the transition period.

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, there is nothing more I can say because I have already said that the Commissioner of Lands is going to serve a notice for the recovery of that land, unless we are assured by

this community that they are not going to change the classification of the school. So, he can rest assured that, that will not happen.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, let it be on record also that yesterday, when the petitioners appeared before Parliament, the Rt. Hon. Prime Minister assured them that the Minister for Lands would be addressing the issue. The Minister has, indeed, addressed the issue in the same terms the Rt. Hon. Prime Minister did promise the petitioners yesterday. So, this issue is sufficiently addressed.

Mr. Orenge, you had two Ministerial Statements. I think the second one was sought by hon. Shabesh. You may go on.

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, the Ministerial Statement was requested by the Member for Gichugu, and I have tendered my apology for not giving it at the appropriate time. It is in regard to the appointment of members of the National Land Commission.

The Temporary Deputy Speaker (Mr. Imanyara): Very well.

NON-GAZETTEMET OF THE NATIONAL LAND COMMISSION

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, I rise to make a Ministerial Statement on the non-gazettement of the National Land Commission, as directed by this House yesterday.

Mr. Temporary Deputy Speaker, Sir, the National Land Commission is established by the Constitution of Kenya under the provisions of Article 67(1). The functions of the Commission are provided for under the same Article. Under Article 250 of the Constitution, the compositions, appointment and terms of the office of the Commissioners and independent officers are outlined. Therefore, I do not think I need to enumerate those functions in the Ministerial Statement because they are quite a number.

In order to operationalise the Commission, Parliament enacted The National Land Commission Act, 2012. The Act provided a detailed procedure of appointment of the chairperson and members of the Commission in the First Schedule of the Act. In keeping with the provisions of the procedures set out in this Schedule, His Excellency the President, in consultation with the Rt. Hon. Prime Minister constituted a selection panel, which invited applications from Kenyans for short-listing and interviewing.

The selection panel completed its task of interviewing and identifying suitable candidates for appointment as chairperson and members of the Commission and submitted its recommendations of the qualified persons to the President on 21st June, 2012. By a letter dated 4th July, 2012, the National Assembly was informed that the President, in consultation with the Prime Minister, had nominated the following persons to be considered for appointment:-

- (1) Dr. Mohammed Swazuri - Chairman
- (2) Dr. Tomiik Mboya Konyimbih
- (3) Mr. Silas Kinoti Muriithi
- (4) Dr. Rose Mumbua Musyoka
- (5) Dr. Samuel Kipng'etich Tororei
- (6) Ms. Abigail Mbagaya
- (7) Ms. Emma Muthoni Njogu
- (8) Mr. Clement Isaiah Lenachuru

(9) Mr. Abdulkadir Adan Khalif

The nominations by the President were forwarded to the Departmental Committee on Lands and Natural Resources, which considered the nominees, taking into account public representations and other considerations and eventually recommended them for approval for appointment as per their Report dated 14th August, 2012.

Mr. Temporary Deputy Speaker, Sir, the National Assembly dully approved the nominees as recommended. The approval was dully communicated to the President for execution. However, just before the appointment could be gazetted by the President, the High Court issued a conservatory order, restraining the President from appointing and swearing-in the Commissioners, following a petition filed under High Court Petition No.266 of 2012.

In addition to High Court Petition No.266 of 2012, two other petitions, namely, Nairobi High Court Petition No.373 of 2012 and Nairobi High Court Petition No.426 of 2012 were filed by different parties, challenging the appointment of the chairperson and members of the Commission.

Mr. Temporary Deputy Speaker, Sir, it should be noted that Nairobi High Court Petition No.266 was later withdrawn by the petitioners while Nairobi High Court Petition No.373 of 2012 and Nairobi High Court Petition No.426 of 2012 were heard and dismissed by the High Court. Consequently, the conservatory orders were discharged.

I am aware that the petitioners of Nairobi High Court Petition No.373 moved to the Court of Appeal and filed Civil Application No.264 of 2012, seeking an injunction against the judgement and order of the High Court but the Court of Appeal declined to issue any injunctive orders.

Mr. Temporary Deputy Speaker, Sir, I may just add for completeness that I talked to the Attorney-General this morning and he confirmed to me that he is not aware of any other cases. So, as I stand here, I am not aware of the existence of any other court cases that may bar the gazettement of the chairperson and members of the National Land Commission.

Thank you.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, hon. Martha Karua.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, in view of that, could the Minister undertake to have the members gazetted immediately and in any event, within the next three days?

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, I would have been happy if I was made the appointing authority. So, I cannot pretend to assume the powers of a higher office but, for the record, I want to assure hon. Karua that I will take up this matter. This is not the first time I am being interrogated on this issue. The Committee on Lands and Natural Resources did interrogate me on this matter. Therefore, I want to assure hon. Members that I can revert back to the House within seven days if I find any difficulties on this matter.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, hon. Martha Karua.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, while I am happy with the later statement of the Minister, although he is not the appointing authority, I know very well that it is the Minister in charge of the docket who helps in the preparation of gazette notices and who pushes for the gazettement. It is his duty to remind the appointing authority. So, is he in order to try and move away from his responsibility although he has

now admitted that he will do it? So, what I am seeking from him is an undertaking that he will ensure that the process is complete.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, the appointing authority is an organ that does not work under the Minister. It is appointed by the President, in consultation with the Prime Minister. I am not an advisor. The advisor is the Attorney-General. I can tell you, as a matter of record; in the appointments of constitutional Commissions, no Ministry has prepared gazette notices for making the necessary appointments. However, I am glad to give an undertaking to hon. Karua that I will follow up this matter to its conclusion because I understand the concerns she has.

Even my colleague here, the Member for Matuga, has similar concerns for very good reasons. So, I will rally the support of my colleague from Matuga and the Minister for Education, who is always available; the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs, to follow up the matter. If we fail, since hon. Karua has been in some of those corridors, I will take her a long to Harambee House, which she is very familiar with, to get this done.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Millie Odhiambo, is it on the same issue?

Mrs. Odhiambo-Mabona: Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Proceed, please.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, would I be in order now that the Attorney-General is present to ask that he then gives some undertaking because he is the advisor? While giving that undertaking, could he also take up the ones relating to the Kenya National Commission on Human Rights (KNCHR) that now has only one Commissioner.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I think I can seek the assistance of the Attorney-General but on this matter, the Attorney-General's position is neither here nor there. It is just like a lot of matters which go to the President ---

Mrs. Odhiambo-Mabona: (*Off record*).

The Minister for Lands (Mr. Orengo): No. I have said I will seek the assistance. But I did not say that he can give an undertaking. In fact, an undertaking from me is more valuable than an undertaking from the Attorney-General. So, Mrs. Millie Odhiambo-Mabona, just face me perpendicularly.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Eugene Wamalwa, please, proceed!

MANDATE OF COMMISSION ON ADMINISTRATIVE JUSTICE

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, perhaps, Mr. Orengo should have thanked me. I was in Kwale and I took a lot of heat over Swazuri's appointment. I am happy that the matter is being attended to.

There was a request from Mrs. Rachel Shebesh on 18th of December regarding a matter that relates to a recommendation made by the Chairman of the Commission on Administrative Justice that the Members of Parliament for Embakasi and Makadara constituencies should not contest for any post in the next general elections.

Specifically the hon. Member sought for the following:-

(i) To indicate the mandate of the Commission and to clarify whether or not the Commission is the right organ to determine the integrity question of the two Members of Parliament.

(ii) To clarify whether the declaration by the Chairman does not infringe on the constitutional rights of the two Members to contest for public office.

(iii) To clarify whether barring the two Members from contesting the general election does not violate the constitutional rights of the voters in Nairobi from electing their leaders.

Mr. Temporary Deputy Speaker, Sir, I beg to reply as follows:

At the outset, I wish to clarify that the Commission falls under the jurisdiction of the Ministry of State for Public Service. But because the issue of eligibility and suitability of the candidates for elections falls under my docket, I wish to address the matter as follows:-

On the mandate of the Commission on Administrative Justice and whether or not it is the right organ to determine the integrity question of Mr. Waititu and Mr. Mbuvi, who are my very good friends, the Commission is mandated to act in accordance with the values and principle in Article 10 of the Constitution of Kenya, 2010. It has to observe and respect *inter alia* the diversity of the people of Kenya, impartiality, gender equity and rules of natural justice. The specific functions of the Commission are set out in Section 8 of the Commission on Administrative Justice Act (2011) and those roles are very specific. I wish not to enumerate them because the Act is very clear as to the roles and mandate of the Commission and particularly the Chairman.

Mr. Temporary Deputy Speaker, Sir, for the avoidance of doubt, the Commission is not the absolute determinant of the integrity question of Mr. Waititu and Mr. Mbuvi. Leadership and integrity issues are addressed by the following organs: The Ethics and Anti-Corruption Commission (EACC), the Independent Electoral and Boundaries Commission (IEBC) and the Registrar of Political Parties under the Political Parties Act.

The Leadership and Integrity Act also provides for procedures and mechanisms for effective administration of Chapter 6 of the Constitution on matters of leadership and integrity.

On whether the declaration by the Chairman of the Commission on Administrative Justice infringes on the constitutional rights of the two Members of Parliament to contest for public office, the two Members of Parliament have their basic and fundamental rights protected under the Bill of Rights in the Constitution of Kenya, which provides for equality and freedom from discrimination in Article 27, and political rights empowering them to make political choices under Article 38. Their rights can only be impeded through due process of the law. The alleged declaration by the chairman is not a judicial pronouncement or an order of the court and, therefore, does not have the force of law or does not in any way infringe on the constitutional rights of the said Members to contest for public office.

Mr. Temporary Deputy Speaker, Sir, as to whether barring the two from contesting the general election does not violate the constitutional rights of the voters in Nairobi from electing their leaders - and this afternoon we saw Mr. Mbuvi and Mr. Waititu fight very hard for the Visa Oshwal Community and the children to access the school - I would say that the voters are also protected from discrimination and the

exercise of their political rights. In the circumstances, there has been no judicial pronouncement, order or decree alienating their rights.

In conclusion, I wish to state that the pronouncement by the Chairman of the Commission on Administrative Justice was to highlight a letter the Commission had written to the Chairman of the IEBC that the two Members be found unsuitable to hold office. It was not a determination. It was a recommendation and a view from the chairman. As I have said, the Chairman did not have that authority to determine. The authority to make the determination, as I have stated, lies with the IEBC and the other Commissions.

Thank you.

The Temporary Deputy Speaker (Mr. Imanyara): In the interest of natural justice, Mr. Waititu and then Mr. Sonko I will give you an opportunity to ask for clarifications.

Mr. Waititu: Mr. Speaker, Sir, first, I want to thank the Minister for making it very clear that the Commission on Administrative Justice has no powers whatsoever to recommend that Mr. Sonko and I should be barred from contesting. My only question is this: Could the Minister order the Commission to publish on the daily newspapers and all the media houses that what they did was wrong so that they can put the records straight? Right now, some of the voters in Nairobi are actually confused and are in doubt on whether we are going to contest the seats that we want in the coming elections.

The Temporary Deputy Speaker (Mr. Imanyara): Minister, just listen and then you can respond to all of them.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, I appreciate the Minister for his comprehensive Statement. However, I want the Minister to clarify why the Ombudsman, Mr. Otiende Amollo, decided to take the law in his own hands and decided to convict us even before we have undergone any trial? I believe that guy had his own ill motives. That is because his blood sister and a colleague are vying for the senatorial seat in Nairobi---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Sonko! You may seek clarifications arising out of the Statement that the Minister has given. I will not permit you to drag matters that are not---

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, why did the Ombudsman decide to leave out the other aspirants and candidates who had similar allegations like mine and Mr. Waititu's?

There is one Member from Kasarani who is vying for the senatorial seat. I was accused of assaulting the Attorney-General in the House---

The Temporary Deputy Speaker (Mr. Imanyara): Order now! I have already given you the way forward. Please, do not go beyond matters that arise out of the Ministerial Statement given by the Minister, which was in response to specific requests by Mrs. Shebesh. If you do that, then I will rule you out of order.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, let me then just seek a simple clarification from the hon. Minister. Is the Minister aware that the same ombudsman, who has accused us, is not fit to hold a public office? There are very serious allegations against him and I want to table some clips---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Mbuvi! Please, do not challenge the Chair. You have asked the Minister whether he is aware that the ombudsman is not fit for public office. Let him respond to that.

Before he responds, Mrs. Shebesh you have the Floor.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister, and kindly request him to say what he has said in a simple language, and not in very complicated legal jargon that he has used. I would like the Minister to just clarify, especially for the voters of Nairobi, that Mr. Gideon Mbuvi and Mr. Waititu can vie for the post of governor and senator, and that the letter that was taken to the Independent Electoral and Boundaries Commission is not an indication that they cannot vie, but some form of request that they should not vie. That needs to come out clearly because of the perception that has already been created that they have actually been barred from vying for these positions.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, for the avoidance of doubt, nothing stops Mr. Waititu and Mr. Mbuvi from vying for office. The recommendation of the ombudsman cannot form a legal basis for them to be barred from running for office. I will also give the assurance to Mr. Waititu, who asked for an apology from the ombudsman--- I think we are saying that it is the IEBC which is the commission responsible and mandated to carry out elections and deal with issues of eligibility. For the avoidance of doubt, I will ask that commission to make it very clear that they are the ones who will make that determination and not my good friend, Mr. Otiende Amollo.

The Temporary Deputy Speaker (Mr. Imanyara): There was the question as to whether you are aware that he is not fit for office?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Otiende Amollo is my colleague at the Bar. I know he is a very able lawyer. I have known him for many years. We have practised law together. I know he is a brilliant lawyer. I am not aware of anything that makes him unfit to hold office, unless the hon. Member has any information that I do not have.

The Temporary Deputy Speaker (Mr. Imanyara): Are there any other hon. Members with requests? Mr. Duale, what is your request?

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I have a clarification to seek on this.

The Temporary Deputy Speaker (Mr. Imanyara): We were allowed exactly half an hour. We have gone way beyond the half hour that was available for this business. I am only going to recognize those who are seeking Ministerial Statements.

Mr. Waititu: On a point of order, Mr. Temporary Deputy Speaker, Sir. For future consideration, we were not summoned at all by the Commission on Administrative Justice. Could the Minister investigate this commission and find out whether it is operating as per the law? You cannot convict anybody without hearing their side of the story?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): I will concur with Mr. Waititu that rules of natural justice require that one should not be condemned unheard. As I have said, that recommendation, or the report, cannot form a basis for barring the hon. Members. I will be communicating with the IEBC on the matter, and I give hon. Members that assurance.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I had sought an urgent Ministerial Statement which was supposed to be delivered today and the Minister is very ready with it and it is a very short one.

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Temporary Deputy Speaker, Sir, I have actually made a request; I wanted to alert you that I am ready with that Statement.

The Temporary Deputy Speaker (Mr. Imanyara): How long is it?

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Temporary Deputy Speaker, Sir, it will take three or two minutes.

The Temporary Deputy Speaker (Mr. Imanyara): Very well.

HIVING OFF OF LAMBWE WEST DIVISION

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Temporary Deputy Speaker, Sir, on Wednesday 2nd January, 2013, Mrs. Odhiambo-Mabona, nominated Member of Parliament, while standing on a point of order sought a Ministerial Statement on an alleged hiving off of Lambwe West to either Ndhiwa or Gwassi Constituency. In the interest of time, I will not go to the details of what she asked for; I just want to reply as follows:-

There are no plans to hive off parts of Lambwe West Division and annex it to either Ndhiwa or Gwassi. Therefore, the question of consultation with affected people of Lambwe does not, therefore, arise as there are no such plans to hive off parts of Lambwe West Division.

Finally, I wish to reassure the people of Lambwe West that my Ministry has no reason to undermine their unity by hiving off parts of their division and request the hon. Member to pass this message to them.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I am very happy with that response. All that I needed is assurance that nobody is going to hive off that division, because in the past parts of that division have been hived off without following the law. I am satisfied with the answer.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, arising from that, could the Minister direct the DC to hold a *baraza* so as to reassure the residents of their unity and lack of such intentions?

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Yes, Mr. Temporary Deputy Speaker, Sir. I will do that.

BUSINESS FOR THE WEEK COMMENCING 8TH JANUARY, 2013

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, pursuant to Standing Order No.36(4), I would like to make this Statement with regard to business for next week.

As hon. Members will have noted, next week is our final week in this Parliament, hence we have limited time. We will be attempting to complete all the work that is pending before the House before the close of next week. On the Order Paper for today, we have identified all the urgent Bills that need to be completed before we go. Basically, whatever is not completed today is what will continue into next week.

Just to highlight without anticipating debate, we will be asking the House to sit next Tuesday in the morning and in the afternoon which is a normal sitting. During those two days we hope to clear all the devolution-related Bills, which are appearing for First

Reading today. The committees will be looking at them over the weekend and then they will be ready for this House to sort them out by Tuesday morning; hopefully in the afternoon we will take them through the Committee Stage. We will then know that we will have anchored devolution in the statutes by the time we leave. That will then open the door for the Supplementary Estimates, which will crown the whole of the devolution issue; we will link devolution and Supplementary Estimates.

Basically business for next week is completion of what will not have been completed on the Order Paper today; all the Bills that will have gone through Second Reading. We will recognize the work that will have been done by the committees and ensure that it will not go to waste. We will complete all that and then move the Motion for Adjournment at an appropriate point, and then go to our constituencies and seek fresh mandates.

So, that in a nutshell, clarifies the business for next week. If we do not go on Tuesday then we will be meeting again to discuss business for Wednesday and Thursday. But all indications are that hon. Members would like to clear business by Tuesday next week, depending on how fast we can transact business between now and Tuesday.

Mr. Koech: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to thank the Deputy Leader of Government Business for trying to give us what is ahead of us. But it will do us better if he was to specifically indicate what is still pending, so that all of us can allay fears that certain Bills are not likely to be passed. We are prepared in the Committee of the whole House to look at The Technical and Vocational Education and Training (TVET) Bill and The Science, Technology and Innovation (ST and I) Bill. However, I note that, that has been removed in the Supplementary Order Paper. I want confirmation that this will come the earliest.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, indeed, when I talk of the business on the Order Paper, I am looking at the two Order Papers. We have the original Order Paper and the Supplementary Order Paper. Any business that appears on those is what we have identified must be completed. We have The Constituencies Development Fund (CDF) Bill, for example, which was supposed to be done yesterday, but hon. Ethuro was not here. The ST and I, TVET and all those Bills that have gone through the Second Reading must go through the Third Reading.

Obviously, I am very happy to see that hon. Ethuro is now back. We know the challenges that he had on transportation. I want to assure him that his CDF Bill would have been done yesterday, but we were waiting to see him physically. So, we can do it. It will be there among the Bills that we have to clear before we leave this House because we recognize the need for them.

So, the assurance to the House is that we will take any Bill that has gone through Second Reading through the Third Reading. We will not be introducing anything else in the Second Reading unless it is now on the Order Paper. It is just to make sure that we can, at least, complete something before we go home.

Mr. Ethuro: Thank you, Mr. Temporary Deputy Speaker, Sir. I want to appreciate the recognition of my presence by hon. Kimunya. But he is also creating the impression that I had not intimated to the Chair that my business should be available on Thursday afternoon. So, when he decided to bring it earlier, he created his own crisis.

But the most important issue is what hon. Koech has asked and I want to follow. That is why I wanted to intervene immediately. What has been bogging down business is

failure by the Leader of Government Business and the House Business Committee (HBC) to prioritize the real business that this House must go through. So, he needs as requested by hon. Koech to ensure that as he communicates to us, he has actually told us, instead of just pinpointing a few individuals when he is planning to bring the rest of the business, so that we do what is critically important. Not all the business on the Order Paper is even necessary for this particular Parliament. I think that, that is what the House is expecting; that we can now deal with the matters that are critical, necessary and urgent and then the rest of the Bills can wait for the next Parliament.

The Temporary Deputy Speaker (Mr. Imanyara): Is there any that is not in the two versions of the Order Paper that you want to bring to his attention? The Minister has made it clear that all the business listed both in the Supplementary and in the original Order Paper is what constitutes the remaining business of the House. Is there anything that he has left out, so that he can respond to that?

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, in fact, in the Supplementary Order Paper, do we really need the Bills under Order Nos.18, 19, 20 and 21? I just did not want to be specific, but I have also another matter with the Attorney-General which you can allow me afterwards. I am glad that he has come.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Kimunya, do you want to respond to that?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I think that any Bill that is in the Order Paper is as important as any other. This is because we have looked at all those Bills and we believe that with some amount of dedication, this House should be able to complete all of them. If we cannot, then it is a point of saying: Which one do we leave out? But at this point, I am not quite convinced that we do not have the time and the energy to go through these Bills. Some are very simple and may take even 20 minutes. Some of them are just about domestication of a protocol and do not require a lot of debate. It is how we manage the time available to us that should determine whether we can finish everything. Most of these Bills have gone through the Committees which have done a lot of work. It will be unfair to then throw them all or leave them to another House and we do not know what will happen. We are cognizant of the energy and the time that has been put by the Committees and the fact that it is time that we gave Kenyans these Bills. For example---

The Temporary Deputy Speaker (Mr. Imanyara): I think you have said enough. Hon. Ethuro, you may now direct your question to the Attorney-General.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, my issue to the Attorney-General concerns the gazetting of the IDP Bill. He needs to confirm this to the House because he made promises that the Bill has been gazetted. If so, where are the instruments for doing so which he had promised as well.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Attorney-General, I think he means the Statutory Instruments Bill.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I am happy to confirm that, that is one of the eight Bills that His Excellency the President has already assented to. A published version of the Act should be out this week.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Attorney-General, the issue is why it took more than two weeks. For example, some of the Bills that the Speaker read out yesterday as having been assented to, were enacted by this House as

way back as September, last year. Given the clear language of the Constitution with regard to timelines, why were the timelines set out in the Constitution not followed? I think that is the issue that the hon. Members were expecting you to address.

(Mr. Ethuro stood up in his place)

Hon. Ethuro, if it is on that issue, so that the Attorney General can respond comprehensively, yes, you may.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I am just wondering in the event like the timelines were exceeded, would the Attorney-General of the Republic find it prudent and dignified to make the necessary apologies to the House?

The Temporary Deputy Speaker (Mr. Imanyara): Are there any other points of order specifically on that issue?

Yes, hon. Baiya!

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I would also like the Attorney-General to talk about the Statutory Instruments Bill which was also passed a long time ago. Parliament says that it was passed over to the Attorney-General, but it has not been presented to the President for signing. We would like to hear him because this is a very important Bill relating to the legislative work of Parliament.

The Temporary Deputy Speaker (Mr. Imanyara): You are clear and I think I had mentioned to him.

Yes, hon. Ruto!

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I am sure that we are still on the Deputy Leader of Government Business's time.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Ruto, are you addressing the issues that are being addressed to the Attorney-General, so that he can respond to all of them?

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, you shifted to the Attorney-General when we were dealing with hon. Kimunya. I believe that we are still dealing with hon. Kimunya.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! We are dealing with the hon. Attorney-General.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I would like to come back to hon. Kimunya.

The Temporary Deputy Speaker (Mr. Imanyara): Then you are out of order to stand at this particular moment. This is because we are now asking the Attorney-General to clarify a number of issues. I asked whether the points of order relate to that issue.

Hon. Mututho, it had better be on the issue that the Attorney-General is addressing.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, over one-and-a-half years ago we did The Labour Bill. The Attorney-General persuaded the hon. Member that the best way was to hold so that he could organize a mechanism in which he was going to gazette the new basic salaries for the workers of the flower farms. We made another attempt under The Statutes (Miscellaneous Amendment) Bill. Again, between the Attorney-General and I, agreed that, that small bit that was appearing in the Labour Bill and was going to be part of The Statutes (Miscellaneous Amendment) Bill. Now that we

are purging out everything, except anything to do with elections, will be included before we close the business. I am alarmed to hear now that there is no other business other than what is already published will appear in the Order Paper. The import of this---

The Temporary Deputy Speaker (Mr. Imanyara): Order! I think that you have made your point.

Yes, hon. Attorney-General!

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, I want to apologize to hon. Members to the extent that it is the responsibility of the Executive to have Bills published on time and brought back to this House as Acts of the House. Personally, however, it is very difficult for me to supervise the Government Printer. The Government Printer is not under my office. He does not answer to me, but he is the person who publishes the vellums. He does so, on a priority list that we always urge him to follow. However, we have no means of ensuring that he follows that list.

I am as anxious as Members are that Bills we have already passed be assented to by the President timeously in accordance with the constitutional timelines. I spend a lot of time on the telephone and writing letters precisely on this point with the Government Printer. I do not wish to say more because I do not wish that there should appear to be any loss of confidence in that office. All I can say is that we are pushing all the Bills we can from the Government Printer because we can only present to the President the vellums that have been printed. Sometimes the delay is in Parliament itself. This is not a time to apportion blame because the final version of the Bills must be certified by the Clerk. Sometimes the delay is in my office because we must then reconsider a whole raft of Bills with very small staff. Sometimes the main delay is with the Printer because, not only is the Printer printing new Bills, but he is printing the vellums of the Bills already enacted. We shall do everything humanly possible to bring this to a timeous close.

As regards to what Mr. Mututho, hon. Member for Naivasha raise, he knows how hard I have tried to be of assistance to him and to his constituent flower farm workers on this issue. As late as last week, we tried to resolve this problem under Statute Law (Miscellaneous) Amendments Bill. We all know why we had to drop all those other amendments to facilitate an expeditious disposal of the business in that Bill. I will do everything I can before this House constitutionally ceases to exist to ensure that the Ministry of Labour supports us on that initiative.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Attorney-General, are you suggesting to the House that where the Constitution sets straight timelines within which a certain matter must be done, you can ignore those timelines, particularly when you look at Articles 115, 116 and 117? I raise this issue because even with regard to elections there are timelines. Are you suggesting to this House that the Government Printer is going to hold the country to ransom even in the clear language of the Constitution which sets deadlines when laws must be gazetted?

I think it is important for Kenyans to know that the Government claims that its hands are tied when it comes to enforcing the provisions of the Constitution with regard to its clear language on timelines. If that is not a matter for your department, which department is supposed to ensure that these mandatory provisions of the Constitution are followed to the letter, because I would like to give directive for that person to come to this House tomorrow and give the House and the country clear undertakings that where

the Constitution demands certain timelines, every executive officer in the Government must comply with them.

If it is not in your department, let me know which Ministry so that we can give clear guidelines and expect that Minister to come to the House either tomorrow or at a day that the Chair would specify to undertake and assure the Kenyan nation that where the Constitution sets deadlines, the Government will act within those guidelines.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I think we have covered this territory before. We have, in this House discussed whether the provisions you have cited are in force now or are part of the suspended provisions of the current Constitution. I have advised in the past that my reading of the new Constitution is that those provisions are suspended. However, the provisions of the old Constitution relating to the timeous assent of Bills are in force and you would be right to say that the Presidency is obligated where there is no veto to sign the Bills within the period specified for preferring a veto. We have made this position very well known to the Printer. On more than one occasion, I have communication under my hands explaining that position.

Mr. Temporary Deputy Speaker, Sir, the answer I have received from the Printer several times is that they are overwhelmed by Government business because not only is the Printer working on Bills from the House or vellums relating to the Acts that we have passed or the Acts themselves, but also other Government printing work. I would not attribute bad faith to the Printer myself, but I can confirm that the Printer is an officer in the Ministry of State for Provincial Administration and Internal Security. So, any further orders directed at the Minister would be directed to the Ministry of State for Provincial Administration and Internal Security.

The Temporary Deputy Speaker (Mr. Imanyara): I do not want to pursue this because the Attorney-General has been clear.

Mr. Ruto: On a point of order, Mr. Temporary Deputy Speaker, Sir. Still on the Leader of Government Business, last week we had agreed that we will only deal with Bills that relate to the transition period and elections. If we have to go by this Order Paper all the way up to Order No.29, I do not really know whether he is keen on all of us working the whole night. It is not practical. Most of the time if you check, even now, the Cabinet is absent, but they expect the back-bench to sit here non-stop. We are really trying to work, but we beg the Leader of Government Business to be realistic and give us a few of these things, so that we can know how to pass them. I want to request that we should not go beyond Tuesday. We will try to pass all these Bills. None of us will be elected to any seat because our opponents are already on the ground continuing while we are sitting here thinking we are doing a good job when we are actually doing nothing, but walking your way out of your office, including Mr. Kimunya, and I want to sympathize with him.

The Temporary Deputy Speaker (Mr. Imanyara): Order! You will be practical and realistic if, for example, you asked the Chair to rearrange the business on the Order Paper in a way that prioritizes what you are asking the Government to do. I am going to suggest to you that you go sit with him and agree on what constitutes the most important transition Bills in the two Order Papers. Once you agree, you can persuade me to rearrange the order of business in that form. So, you may go and sit with Mr. Kimunya.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, as soon as I leave the precincts of this sitting, my powers desist. The powers of the Back-Bench are limited to this sitting.

But anyway since I will be proceeding with your goodwill and Mr. Kimunya being a good gentleman, I am sure he is willing to sit with the Back-Bench and rearrange these things.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, let me also add along the line talked to by hon. Ruto. Something unusual is happening and we have to use your Chair to stop it. We have had two resolutions in the House Business Committee (HBC) that in the time remaining, we shall only deal with Bills that have a bearing on elections or the implementation of the Constitution.

Further to that, businesses appearing on the Supplementary Order Paper from No.18 to No.21 have never been discussed in the HBC. So, somebody is busy trying to commit an illegality and we are not going to allow it. I sincerely without casting aspersion, see what somebody is trying to do. If you look at businesses on Order No.25 to No.27, they deal with money. This is serious. We had an argument. In fact, just to inform the House, the Chairman of the HBC was chairing the HBC and when he attempted to put Order No.27 on the Order Paper, we had an exchange and he even walked out of that meeting.

These are heavy commitments that we are trying to put on the Government as we go for elections. It is very important to note that this House cannot deal with business which has not been deliberated upon by the HBC. What is the urgency? Why can we not follow our own rules and our Standing Orders once we say that we will only deal with Bills which have a bearing on the implementation of the Constitution or the upcoming Elections? I beg you to prevail upon the Deputy Leader of Government Business to do the right thing, so that this House can avoid lawlessness.

The Temporary Deputy Speaker (Mr. Imanyara): Order, hon. Midiwo! The Chair is prepared to be of assistance to re-organize the business on the Order Paper. The Chair cannot sit as the HBC, but the Chair has powers under the Standing Orders to rearrange the business that is appearing on the Order Paper in such a way as to facilitate debate on what is considered to be the most crucial Bills relating to transition. The Joint Chief Whip together with Mr. Ruto, between now and the time we conclude the Orders under Procedural Motions, you can let me know what constitutes, in your view, business that is crucial to the transition and then I will determine whether I can exercise my discretion to re-arrange business in that order. But we need to go to Procedural Motions and when we come to substantive business, you can let me know whether you have agreed with the Deputy Leader of Government Business what constitutes the most urgent business relating to transition. Then we can proceed from there.

Eng. Maina: On a point of order, Mr. Temporary Deputy Speaker, Sir. Mine is a general remark regarding what the Deputy Leader of Government Business has said. It is obvious that this House has worked tirelessly and covered voluminous amount of work within very limited time. I would like it to go on record that there is appreciation for this House. This is one House that has sat beyond the set out times.

Secondly, with all the hurry that this House has been pushed through because of the set timelines, we must also appreciate and record that nobody in the history of this country in the future should come and say that this House did not do something or did not look at something accurately. Truly, Kenyans have seen that we have worked beyond expectations. Therefore, I want to put that on record.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Strictly speaking, that is not a point of order although I have allowed it.

Mr. Ogindo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to pick from where hon. Ruto left. I want to start by thanking the Deputy Leader of Government Business for having done a good job. But looking at the Order Paper, one is left wondering whether the priority is right. I want to point to you that it is bordering on lack of procedure to have the Division of Revenue Bill and the County Allocation Revenue Bill in the Order Paper before we dispose the Budget Policy Statement. In fact, the Budget Policy Statement is going to contain the audited revenue which should form the basis of this Bill.

Secondly, I have seen this Bill that has been named The Transition County Allocation Revenue Bill. I do not know what mongrel this is. The reality of this dispensation is that as from 5th March, 2013, we will have two levels of government.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Ogindo, that is a substantive issue which you can raise under that Order. We have not even reached the Order. So, you are really anticipating debate. It is a valid point that you can raise when we reach that particular Order. You can see it is business under Order No.10 and we are nowhere near there.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, I agree with you. But my point is that even as we are in the last hours of our stay here, it is important that we do the right thing. What would have been helpful would have been to raise the Revenue Division Bill for the remainder of the period under Revenue Allocation Bill for the remainder of the period. What we are doing is a shortcut that is going to be un-procedural.

Eng. Gumbo: Mr. Temporary Deputy Speaker, Sir, still on the Deputy Leader of Government Business, last week I spoke to the Chairman of the Constituencies Development Fund (CDF) Committee, hon. Ethuro, who is sitting right here behind me. What I was trying to intimate to him and which has been said before, in those areas where we come from, party nominations are the elections. I told him that the major interest that I have in what is going on is the CDF Bill. We agreed that, that Bill would come yesterday. We left our campaigns in the constituencies and we came here. Yesterday, we were told that hon. Ethuro was stranded. I had invited him to come and live in Rarieda where we have good roads and he chooses to live up there.

Anyway, what I am concerned about is that without explanation at all, today we extended an extra day to come and complete the Committee of the Whole House on the CDF Bill. It is not in the Supplementary Order Paper and no explanation, whatsoever, has been given. I have engaged both hon. Ethuro, the Chairman and the Minister as to why it was removed, but they are shifting blame. Hon. Ethuro is blaming the Minister and the Minister is blaming him. They are saying "it was not me" like the musician. The main thing in the country now is elections and we cannot pretend about it. If we are to leave the campaigns and come here, it has to be for good reasons, but to come here for two days when the Bill that we are interested in is being shifted left, right and centre and nobody thinks it is even important to offer an explanation, with all due respect, that is an attempt to undermine other Members in this House.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kimunya, that is an issue that you can respond to right away.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, indeed, I am not insulated from the pressures of the elections myself. I have been in this House literally every day for the last three years. I should be feeling the pressure more than hon. Members who have all the time to get out there and come back. However, we have business to transact. Your voters will elect you for doing business in the House and not necessarily being on the election campaign trail. That is because you are being paid for doing business in the House.

Mr. Temporary Deputy Speaker, Sir, we have looked at all the Bills that need to be dealt with. Yesterday, we brought the CDF Bill so that it could be cleared. We were prevailed upon by the Chair to shift it. As of this morning, I was looking for hon. Ekwe Ethuro to confirm that he has physically come to Nairobi before putting it on the Supplementary Order Paper.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kimunya I would have been quite happy if you would have reminded hon. Gumbo that you had actually addressed that issue when you were on your feet. That is what I expected you to do so that we can move quickly.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I was only repeating it for purposes of getting the matter to sink.

The Temporary Deputy Speaker (Mr. Imanyara): Well, let it sink now. Let us come to real business.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir. In terms of all the business appearing on the Order Paper, I want to appeal to hon. Members that we should not belittle any of the business because we have gone through it. There is none that is not necessary for this country between now and March and between now and the time the next Parliament sits to pass any law. Let us make progress. Let us see what we can do. If we can do all, so be it. If we cannot do all, then we will still have done---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kimunya, I think you have explained it to the satisfaction of the Chair; that it is the intention of the House Business Committee that all matters on both Order Papers be dealt with between now and the time we close on Tuesday, next week. I think that is sufficient explanation. Hon. Members, from henceforth, we are on the Supplementary Order Paper.

What is your point of order, Mr. Ethuro?

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, you are the only one who can allow or disallow. I do not know why the hon. Member---

The Temporary Deputy Speaker (Mr. Imanyara): Please, proceed!

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, we are paid to do this job. I am not even commenting on the issue that he thinks I will. That matter is rested hon. Kimunya and I am satisfied with your answer. You know I appreciate your work. However, the point I want to raise to the Leader of Government Business is that when he was talking about the remainder business--- I want to remind him something about the business that is provided by the Constitution in terms of the Equalization Fund. Article 204(2) states that the national Government shall use the Equalization Fund only to provide basic services, including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far, as possible.

Mr. Temporary Deputy Speaker, Sir, Article 216 (4) states thus: “The Commission – the Commission on Revenue Allocation – shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of Article 204(2).”

This criteria needs to be in place. I know the good Minister for Finance, hon. Githae, who almost lost my friendship, but he has since worked very hard to resume it, has done his bit in terms of allocating money for the last two financial years. However, until the marginalized areas are defined, that money cannot be put to any meaningful use. I thought it would be good for the Leader of Government Business to tell us exactly when he is bringing all these things before we go home.

The Temporary Deputy Speaker (Mr. Imanyara): Except that the business now before us is what is on the Order Paper and what arises out of the Statement he made. That was not part of it.

Next Order!

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

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

THAT, notwithstanding the provisions of Standing Order

No.20(2), this House orders that today’s sitting be extended until 8.30 p.m.

Mr. Temporary Deputy Speaker, Sir, as Members will notice, it is now almost 5.30 p.m. and we only have one hour of our scheduled regular time for House business. We have a lot of work to do. As hon. Members have expressed, yes, there is anxiety, but we are going to finish everything. We are pleading with the House that---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kimunya, it is self-explanatory.

The Minister for Transport (Mr. Kimunya): We need two hours for this. I beg to move and ask the Attorney-General to second.

The Attorney-General (Prof. Muigai): I do so, Mr. Temporary Deputy Speaker, Sir.

(Question proposed)

(Question put and agreed to)

PROCEDURAL MOTION

RESOLUTION TO HOLD SITTING ON 8TH JANUARY, 2012

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

THAT, notwithstanding the provisions of Standing Order No.20(3), this House resolves to hold a Sitting on Tuesday 8th January, 2013 commencing from 9.00 a.m. to 12.30 p.m.

Mr. Temporary Deputy Speaker, Sir, this will facilitate the business of clearing the devolution Bills for them to be sorted out at the Committee Stage in the afternoon.

I beg to move and ask the Attorney-General to second.

The Attorney-General (Prof. Muigai): I do so, Mr. Temporary Deputy Speaker, Sir.

(Question proposed)

(Question put and agreed to)

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF BILLS

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

THAT, notwithstanding the provisions of Standing Order No.107, this House orders that the publication period of:

(i) The Transition County Allocation of Revenue Bill (Bill No.90 of 2012)

(ii) The Division of Revenue Bill (Bill No.88 of 2012)

(iii) The County Allocation of Revenue Bill (Bill No.89 of 2012)

(iv) The Transition County Appropriation Bill (Bill No.91 of 2012)

be reduced from 14 days to 3 days.

Mr. Temporary Deputy Speaker, Sir, this is to facilitate the First Reading of those Bills this afternoon, so that the relevant Departmental Committees can look at them from today through the weekend and then we can dispose of them next week.

With those few remarks, I beg to move and ask the Attorney-General to second.

The Attorney-General (Prof. Muigai): I do so, Mr. Temporary Deputy Speaker, Sir.

(Question proposed)

(Question put and agreed to)

BILLS

First Readings

THE TRANSITION COUNTY ALLOCATION OF REVENUE BILL

THE DIVISION OF REVENUE BILL

THE COUNTY ALLOCATION OF REVENUE BILL

THE TRANSITION COUNTY APPROPRIATION BILL

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

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF:

- (1) THE TRANSITION COUNTY ALLOCATION OF REVENUE BILL
- (2) THE DIVISION OF REVENUE BILL
- (3) THE COUNTY ALLOCATION REVENUE BILL
- (4) THE TRANSITION COUNTY APPROPRIATION BILL

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

THAT, notwithstanding the provisions of Standing Order No.111, this House resolves to reduce the referral period of the following Bills.

(i) The Transition County Allocation of Revenue Bill (Bill No.90 of 2012)

(ii) The Division of Revenue Bill (Bill No.88 of 2012)

(iii) The County Allocation of Revenue Bill (Bill No.89 of 2012)

(iv) The Transition County Appropriation Bill (Bill No.91 of 2012) to the relevant Departmental Committees from 10 to five days.

This is to facilitate the introduction of the Second Reading as earlier agreed.

I beg to move and ask the Minister for Finance to second.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I second.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

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

IN THE COMMITTEE

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

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We are now in the Committee of the whole House. Unless advised otherwise, we will consider three Bills.

The first one is The County Governments Public Finance Management Transition Bill, Bill No.84 of 2012. The second one is the Office of the Director of Public Prosecutions Bill, Bill No.69 of 2012 and the third one is the Kenya Medical Supplies Authority Bill, Bill No.20 of 2012.

We will start with the first one.

THE COUNTY GOVERNMENTS PUBLIC FINANCE
MANAGEMENT TRANSITION BILL

*(Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23,
24, 25, 26, 27, 28 and 29 agreed to)*

Clause 30

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Clause 30 of the Bill be amended by deleting the words “at the end of the transition period” and substituting therefor the words “with effect from the 30th September, 2013”.

This basically takes into account my good friend, Isaac Ruto’s concern. He said that he wants a clause that allows the Bill to lapse automatically after 30th September.

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 30 as amended agreed to)

New Clause 22A

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause 22A-
Charges and

rates **22A.** For avoidance of doubt, until a new law relating to imposition of rates and charges is enacted, county governments, urban areas and cities may, with necessary modifications, continue to impose rates and charges under the law for the time being in force in relation thereto.

Again, this is to avoid doubt so that there is a provision for whatever the local authorities have been charging---

(Question of the new clause proposed)

(New Clause read the First Time)

*(Question, that the new clause be read
a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Minister, you may now move.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The County Governments Public Finance Management Transition Bill and its approval thereof with amendments.

The Temporary Deputy Chairman (Mr. Ethuro): I wish to commend the Minister for being prompt. In fact, the Clerks are a bit too slow for your speed. Congratulations!

(Laughter)

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We will move on to the next item which is The Office of The Director of Public Prosecutions Bill, Bill No.69 of 2012.

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS BILL

The Temporary Deputy Chairman (Mr. Ethuro): Is hon. Baiya not here? Hon. Isaac Ruto, you are a member of the Justice and Legal Affairs Committee.

Mr. Ruto: Yes, Mr. Temporary Deputy Chairman, Sir. But I wish I could get the details because we had agreed on all these things. Hon. Baiya is not here. Hon. Odhiambo-Mabona is on her way and sometimes she acts as our Vice-Chairlady.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! I accept that hon. Isaac Ruto and the rest may not necessarily agree, but on this one, the hon. Chairman has just come in. Hon. Attorney-General, what is it?

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I want to make the work of the House as easy as possible by confirming that as usual, we have had discussions with---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Attorney-General!

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, you are amending my Bill and I want to be on record---

The Temporary Deputy Chairman (Mr. Ethuro): The Bill is not on the Floor. It is a procedural matter, hon. Attorney-General. The Chair will grant you your wish at the appropriate moment. For now, it is hon. Baiya.

Clause 2

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended by deleting the definition of “police officer” and substituting therefor the following new definition-

“Police officer” has the meaning assigned to it under the National Police Service Act, 2011”.

Mr. Temporary Deputy Chairman, Sir, the essence of this amendment is simply to polish this definition of police officer to be in line with the National Police Service Act.

(Question of the amendment proposed)

Mrs. Noor: Mr. Temporary Deputy Chairman, Sir, we had agreed with the Attorney-General in detail on this. Would I be in order to say that we had agreed on all the amendments so that we save on time?

*(The Attorney-General (Prof. Muigai)
stood up in his place)*

The Temporary Deputy Chairman (Mr. Ethuro): Order, Attorney-General! There is some orderly way in which we conduct business. The mentioning of your name does not automatically require you to respond. Everybody addresses the Chair. So, the Chair must dispose of the matter before the next item.

Hon. Noor, the Chair would love to save as much time as possible, but there are procedures we must pursue, especially at the Committee of the Whole House stage because that is how we dispose of the business. Once the amendment is already on the Order Paper, you do not need to read it because every hon. Member is expected to have the Order Paper. When there is no indication of the request, the Chair will always proceed to put the Question. So, that is the way in which we can save time, but the amendments must be moved.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

(Clauses 3 and 4 agreed to)

Clause 5

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 5 be deleted.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 5 deleted)

(Clauses 6, 7, 8, 9, 10, 11, 12 and 13 agreed to)

Clause 14

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 14(2) be amended by deleting the expression
“pursuant to Article 252(1) (c) of the Constitution”.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 14 as amended agreed to)

(Clauses 15, 16 and 17 agreed to)

Clause 18

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 18(2) be amended by inserting the words “upon advice of the Salaries and Remuneration Commission” immediately after the word “approve”.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 18 as amended agreed to)

(Clauses 19, 20 and 21 agreed to)

Clause 22

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 22 be amended by deleting the words “and any other legal officer” appearing immediately after the words “prosecution counsel”.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Clause 22 as amended agreed to)

(Clauses 23 and 24 agreed to)

Clause 25

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 25(1) be amended by inserting the words “Subject to the Constitution” at the beginning of the sentence.

(Question of the amendment proposed)

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, could the Chairman explain the motivation to this amendment?

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, this amendment is only confining the Director of Public Prosecutions (DPP) to exercise the power to take over criminal proceedings as stipulated in the Constitution. He must abide by the various provisions of the Constitution.

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 25 as amended agreed to)

(Clauses 26 and 27 agreed to)

Clause 28

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 28(1) be amended by deleting the words “at all times” appearing immediately before the word “cooperate”.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 28 as amended agreed to)

(Clauses 29 and 30 agreed to)

Clause 31

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 31(2) be amended by deleting the words “Government procurement regulations” and substituting therefor the words “relevant public procurement law and regulations”.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 31 as amended agreed to)

(Clause 32 agreed to)

Clause 33

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 33.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 33 deleted)

Clause 34

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 34.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 34 deleted)

The Temporary Deputy Chairman (Mr. Ethuro): What is it, Dr. Monda?

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I am reading the Order Paper and it does not seem to agree with the Order Paper that the Attorney-General is reading from. Which Order Paper are we following?

The Temporary Deputy Chairman (Mr. Ethuro): Order, Dr. Monda! We are on the Supplementary Order Paper. The Chair had ruled that from Order No.8, we will be using the Supplementary Order Paper as usual. Are you satisfied now?

Dr. Monda: I am satisfied, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Excellent.

*(Clauses 35, 36, 37, 38, 39, 40, 41, 42, 43,
44, 45, 46, 47 and 48 agreed to)*

Clause 49

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 49(1) be amended by inserting the words "Subject to the Constitution" at the beginning of the sentence.

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 49 as amended agreed to)

(Clauses 50, 51, 52, 53, 54, 55, 56 and 57 agreed to)

Clause 58

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 58(1) be amended by inserting the words “Subject to the Constitution” at the beginning of the sentence.

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 58 as amended agreed to)

(Clause 59 agreed to)

Clause 60

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 60(2)(a) be deleted.

(Question of the amendment proposed)

The Minister for Transport (Mr. Kimunya): *Off record*

The Temporary Deputy Chairman (Mr. Ethuro): Thank you, hon. Kimunya, at least, for being helpful. It is the way the Clerks had done it, but the Order Paper is very clear.

*(Question, that the words to be left out
be left out, put and agreed to)*

Hon. Members, it is part of the clause that is deleted. The rest of the clause is still intact. So, we still have to put the final question.

(Clause 60 as amended agreed to)

(Clause 61 agreed to)

Long Title

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the long title be deleted and replaced with the following new long title—

“AN ACT of Parliament to give effect to Articles 157 and 158 of the Constitution and for connected purposes”.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in
place thereof, put and agreed to)*

(Long Title as amended agreed to)

(Short title agreed to)

(Clause 1 agreed to)

The Attorney General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I beg move that the Committee doth report to the House its consideration of The Office of the Director of Public Prosecutions Bill, Bill No.69 of 2012, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members, we are making a good progress. We will now move on to the final Bill in the Committee of the Whole House; that is The Kenya Medical Supplies Authority Bill, Bill No.20 of 2012.

THE KENYA MEDICAL SUPPLIES AUTHORITY BILL

Clause 2

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended-

(a) in the definition of “medical supplies” by deleting the words “medical technologies, laboratory reagents” and substituting therefor the words “health technologies, laboratory supplies and reagents”;

(b) by inserting the following new definition in its proper alphabetical sequence-

“strategic reserve stock” means at least six months stocks of a list of prescribed medical supplies to be identified and updated as and when required by the Cabinet Secretary in consultation with the Authority”

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Question, that the words to be inserted in

place thereof be inserted, put and agreed to)

(Clause 2 as amended agreed to)

(Clause 3 agreed to)

Clause 4

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 be amended as follows-

(a) by inserting the word “stock” immediately before the word “reserve” appearing in paragraph (a);

(b) by deleting paragraph (d);

(c) by deleting paragraph (e) and substituting therefor the following new paragraph-

(e) Collect information and provide regular reports to national and county governments on status and cost-effectiveness of procurement, the distribution and value of prescribed essential medical supplies delivered to health facilities, stock status and on any other aspects of supply system status and performance which may be required by stakeholders

(d) by deleting subparagraph (g);

(e) by renumbering the existing provision as sub clause (1) and inserting a new sub clause (2) as follows-

(2) The Cabinet Secretary shall, in consultation with the Authority, and the appropriate county governments organs, determine the requirement of drugs and medical supplies in public health facilities.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 4 as amended agreed to)

Clause 5

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended -

(a) in sub clause (1) by inserting the following new paragraph immediately after paragraph (c)-

(cc) the Principal Secretary for the time being responsible for matters related to devolved government or a representative designated in writing by the Principal Secretary;

(b) in sub clause (2) by deleting the words “Cabinet Secretary” and substituting therefor the word “President”;

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 5 as amended agreed to)

Clause 6

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 be amended in sub clause (2)-

(a) by deleting paragraph (g) and substituting therefor the following new paragraph-

(g) incorporate, develop and operate a division or subsidiary of the Authority for the procurement, storage and supply of medical supplies to health facilities and institutions on a competitive and commercial basis but such commercial service shall be conducted without prejudice to the ordinary non-commercial supply system to public facilities;

(b) by deleting paragraph (h);

(Question of the amendment proposed)

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, could the Chairman of this Committee explain the intended motivation of this amendment?

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Mwaura, you need also to tell us why you need explanation.

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, according to the indication that is given by the Chairman, the amendment is broad and we need deeper clarity.

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, we are trying to explain the responsibility of the Kenya Medical Supplies Authority. We have given the details on what the Authority will be doing. That is the essence of this amendment.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 6 as amended agreed to)

(Clause 7 agreed to)

Clause 8

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 be amended-

(a) by deleting sub clause (2), and substituting with the following-

(2) A person shall be qualified for appointment under subsection

(1) if the person-

(a) holds a minimum of a first degree in pharmacy;

(b) holds a postgraduate degree in business management or postgraduate training in supplies management;

(c) posses at least five years experience in senior management;

(d) satisfies the requirement of chapter six of the Constitution;

(b) in sub clause (3)-

(i) by deleting the word “ex-official” appearing in paragraph (a) and substituting therefor the word “ex-officio”;

(ii) by deleting paragraph (c) and substituting therefor the following new paragraph-

(c) subject to the directions of the Board, be responsible for-

(i) day-to-day running and operation of the Authority;

(ii) administration, organization and control of staff of the Authority;

(iii) management of funds, property and affairs of the Authority;

(iv) implementation of policies and programmes of the Authority and reporting thereon on the Board;

(v) development of operational plans for achieving the objectives of the Authority;

(vi) performance of any other function necessary for implementation of this Act, as may be determined by the Board.

(iii) by deleting paragraph (d)

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

(Clause 8 as amended agreed to)

(Clauses 9, 10, 11 and 12 agreed to)

Clause 13

The Temporary Deputy Chairman (Mr. Ethuro): There are two proposed amendments. We will take the one by the Minister first. Hon. Minister for Medical Services proceed.

Leader of Government business or the Minister for Finance.

Proposed amendment under part III – Financial Provisions

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section (13)(1)(a) be amended by deleting all words from “such” to “subsection (2)” and replacing them with the following 13(a).

“Such monies as may be appropriated by Parliament through a budget line to the authority for purposes of carrying out the functions of the Authority”

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof, put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Monda, you also have an amendment, but you have two parts; your part (d) has been taken care of by the Minister’s amendment. So, you may move (e). You withdraw (d) and then move (e)

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I beg to move that subclause 1(e) be amended as per the Order Paper.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Member; the Order Paper has (d) and (e) and we are telling you that (d) has been taken care of. So, you cannot move it. So, you withdraw (d) and move (e).

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I thought I did so. I will repeat. I beg to move:-

THAT, Clause 13 be amended in subclause (1) by inserting the following new paragraph immediately after paragraph (c):-

(e) such monies as may be payable to the Authority pursuant to this Act or any other written law.

The Temporary Deputy Chairman (Mr. Ethuro): I think, I have understood you. You will see it in my proposal.

(Question of the amendment proposed)

(Question, that the words to be inserted)

be inserted, put and agreed to)

(Clause 13 as amended agreed to)

(Clauses 14, 15, 16 and 17 agreed to)

Clause 18

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 18 be amended by inserting the following new paragraphs after paragraph (h)-

- (i) a feedback mechanism to its consumers;
- (j) an effective monitoring and evaluation mechanism;
- (k) availability of information relating to its operations.

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 18 as amended agreed to)

(Clauses 19, 20, 21 and 22 agreed to)

New Clause 8A

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the following new Clause 8A be inserted-
Removal of
Chief Executive

8A. The Board may remove the Chief Executive Officer in accordance with his or her terms and conditions of service for-

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty; or,
- (d) any other ground that would lawfully justify removal from office under the terms and conditions of service.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be
read a Second Time, proposed)*

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, this new clause is intended to show at what point the Chief Executive Officer of the Board of the Authority can be removed from office. So, we are introducing the conditions under which he or she can be removed from office.

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added
to the Bill, put and agreed to)*

(Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

Dr. Monda: Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Kenya Medical Supplies Authority Bill, 2012 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE COUNTY GOVERNMENT PUBLIC FINANCE MANAGEMENT TRANSITION BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered The County Government Public Finance Management Transition Bill (Bill No.84 of 2012) and approved the same with amendments.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Attorney-General (Prof. Muigai) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that The County Government Public Finance Management Transition Bill (Bill No.84 of 2012) be now read a Third Time.

The Attorney-General (Prof. Muigai) seconded.

(Question proposed)

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

THE OFFICE OF THE DIRECTOR OF
PUBLIC PROSECUTIONS BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered The Office of the Director of Public Prosecutions Bill (Bill No.69 of 2012) and approved the same with amendments.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Finance (Mr. Githae) seconded.

(Question proposed)

(Question put and agreed to)

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Speaker, I beg to move that The Office of the Director of Public Prosecutions Bill (Bill No.69 of 2012) be now read the Third Time.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

THE KENYA MEDICAL SUPPLIES AUTHORITY BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered The Kenya Medical Supplies Authority Bill (Bill No.20 of 2012) and approved the same with amendments.

Dr. Monda: Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Mr. Imanyara seconded.

(Question proposed)

(Question put and agreed to)

Dr. Monda: Madam Temporary Deputy Speaker, I beg to move that The Kenya Medical Supplies Authority Bill (Bill No.20 of 2012) be now read the Third Time.

Mr. Koech seconded.

(Question proposed)

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

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

Second Reading

THE NATIONAL GOVERNMENT CO-ORDINATION BILL

*(The Minister of State for Provincial Administration
and Internal Security on 2.1.2013)*

(Resumption of Debate interrupted on 2.1.2013)

The Temporary Deputy Speaker (Dr. Laboso): Last time we were listening to contributions by Members on this Bill.

Mr. Munya, please, proceed!

The Assistant Minister for East African Community (Mr. Munya): Madam Temporary Deputy Speaker, thank you for giving me the opportunity to say a few words about this---

The Temporary Deputy Speaker (Dr. Laboso): Order, Mr. Munya! Apparently Mr. David Koech was on the Floor and he had a balance of two minutes.

Mr. Koech: Madam Temporary Deputy Speaker, indeed, I was actually interrupted when I was still making my contribution.

Madam Temporary Deputy Speaker, I want to repeat what I said. I want to thank the Government for the first time for making it very clear that our chiefs and assistant chiefs are not going home and that their jobs are protected. That is because those people play a very critical role in this Republic.

There is one group of people that is always forgotten. These are village elders. For avoidance of doubt, knowing and aware of the important role that they play, I want to propose that they are recognized in the amendment. I know they will be recognized at the

county level, but there is nothing wrong if we put it in this Bill. That way, Kenyans will trust and respect them. I hope the Government will recognize the role that they play and ensure that they get something for what they do.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Dr. Laboso): Mr. Munya, please, proceed!

The Assistant Minister for East African Community (Mr. Munya): Bi. Naibu Spika wa Muda, mimi pia nataka kuunga Mswada huu mkono kwa dhati. Afisi ya chifu ni muhimu sana katika utekelezaji wa majukumu ya Serikali mashinani.

Katiba ya Kenya ambayo ilipitishwa na wananchi wa Kenya haikupiga marufuku ofisi ya chifu. Ilisema marekebisho yafanywe katika ofisi ya chifu na ya mkuu wa wilaya ili zifanye kazi sambamba na serikali ya kaunti. Kwa hivyo, Mswada huu unaidhinisha msimamo wa Katiba ya Kenya juu ya ofisi hizi.

Machifu na wenzao wanaofanya kazi katika Serikali ya Wilaya wasiwe na wasiwasi wowote. Kazi yao imejikita katika Katiba ya nchi hii. Wataendelea kutekeleza majukumu yao na kupata mishahara na marupurupu mengine. Huduma zao ni muhimu kwa wananchi wote. Ofisi hizi ni nguzo muhimu katika utawala wa nchi hii. Lakini ya muhimu ni kwamba maafisa wa kaunti watakaokuwa wakifanyia wananchi kazi uko mashinani watafanya pamoja na machifu na viongozi wengine wa kimkoa. Hakutakuwa na vita baina yao. La muhimu kwetu ni kuhakikisha wananchi wanapata huduma. Sisi sote tukifanya kazi pamoja, tutaweza kuwahudumia wananchi wote.

Kwa hivyo, yangu ni kuunga mkono na kama kuna marekebisho, yatafanywa kidogo ili kuhakikisha sheria hii iko sawa zaidi.

Kwa hayo machache, ninaunga mkono.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Madam Temporary Deputy Speaker, thank you for---

The Temporary Deputy Speaker (Dr. Laboso): Order! I see an intervention from Mrs. Millie Odhiambo-Mabona.

QUORUM

Mrs. Odhiambo-Mabona: On a point of order Madam Temporary Deputy Speaker, there is no quorum in the House.

The Temporary Deputy Speaker (Dr. Laboso): Just confirm. I think there is quorum. You may continue, Maj. Sugow. We now have a quorum.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Madam Temporary Deputy Speaker, I would like to congratulate the Minister for bringing this very important Bill to this House. Offices of the Provincial Administration, the chief, the DCs, DOs and County Commissioners are very important to the national Government. Kenya is a unitary State. It is very important that the national Government services are co-ordinated and exist at the grassroots level.

Many people who believe that the Provincial Administration should have gone live in the old days when this particular service was, probably, misused because of the political situation that prevailed then in this country.

Currently as it is, there are challenges. The institution needs reform just like any other to conform to the new dispensation in this country. But that does not necessarily negate the existence of this particular institution. There are quite a number of problems

that this institution faces. Quite a number of the officers actually carry out their services in very deplorable conditions. Many do not have the necessary infrastructure, accommodation and transport. They provide services under very hard conditions.

I am very happy today that this Bill is getting very good support from this House. The Provincial Administration will start providing better and more efficient services than they have been doing in the last one year or so, when they were not very certain about their future as far as their profession is concerned.

I beg support.

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Members! Remember there was an agreement yesterday on three minutes. I think we will maintain what we had agreed on.

Dr. Monda: Madam Temporary Deputy Speaker, I rise to support this Bill. The Provincial Administration has all the through the history of this country been the symbol of Government presence in our villages. It starts with the assistant chiefs and then has chiefs, DOs, DCs and PCs.

Madam Temporary Deputy Speaker, it will be difficult for those of us who have been in politics and who will be in politics to be able to, for instance, have an elected governor to be the centre of authority. It will be impossible for some of us to act impartially throughout to my supporters or those opposed to me as a politician. I want to strongly support that the entire Provincial Administration continue in office as they are now and be linked to the national Government.

Madam Temporary Deputy Speaker, the absence of these officers will mean we shall have our courts clogged with cases that normally they handle at their level. Currently, we are improving our courts. We have reformed the courts and we want to improve them further to reduce congestion. We shall have a worse scenario if we do not have the offices of the chiefs, Dos or DCs. We directly pass their functions to those of us in elective positions.

Once this Bill becomes a law, then the Ministry of State for Provincial Administration and Internal Security needs to look at the way these officers work, the kind of remuneration they are paid and facilities they use. It is so disappointing to see our DOs riding on motorcycles in uniform. They are carried by motorcycle riders. But when you look at the District Officer who is in uniform and is being carried without security, it is worrying. One motorcycle cannot carry more than one person. When this happens, we see the Government in a very awkward position.

As we make this law we are asking, therefore, that this be looked at and the remuneration---

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

Prof. Kaloki: Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to support the Bill which will provide the much needed comfort to the Provincial Administration.

Of late, we have been having the chiefs and assistant chiefs demonstrating. They have been demanding that this Bill be brought before the House, so that we enact it. I sincerely thank the Minister of State for Provincial Administration and Internal Security for bringing it to this House.

The chiefs, assistant chiefs, DOs and DCs play an important role in dispute resolution on the ground. They provide security on the ground. They also make sure that

they promote Government policies on the ground. This cannot go unnoticed. That is why this Bill will now address particular issues.

I would like to urge the Government to make sure that it provides the much needed equipment and training to these officers of the Government. The Government should provide them with motor vehicles and motorcycles, especially the assistant chiefs and chiefs. It should provide vehicles for the DOs and DCs, so that Government policies can be translated and transacted on the ground.

It would be good for the Government to recognize their good performance and the role played by the village elders. This particular group should be recognized and paid.

I sincerely support this Bill and say the Provincial Administration should be retained.

Mr. Keynan: Madam Temporary Deputy Speaker, I would like also to support this Bill. For those of us who come from disadvantaged regions or marginalized areas, we do appreciate and understand the unique role and function of a chief. Those of us who remember the history of this country need to look back. One of the principles that the colonialists used was direct administration that took into account the presence and the functions of village elders. This is what we have domesticated in our current statutes. I cannot imagine life in our villages without chiefs.

Let us look at the Kenyan society and put it within Maslow Hierarchy of Needs. The Kenyan society is stratified in such a way that we have sections that are at the lowest level. We require social security. We have other sections that need self-actualization. Until we reach the egalitarian society where all Kenyan societies are equal---

I want to thank the Government and the Minister because this is a very important Bill. The chiefs will provide a local connection. The chiefs provide security vetting. The chiefs provide an avenue for conflict resolution on cattle rustling and all other criminal activities. Also, we need to appreciate that Kenya is not a federal State; Kenya is not a confederation. Kenya is a unitary State and therefore, the functions of the national Government must be seen at the grassroots level. This is why this Bill is critical. We hope that the Government will put in place deliberate mechanisms to improve the terms of service of our chiefs. In this way, they will be more effective, useful, deliver better services, and provide security assistance to other Government security agencies.

Madam Temporary Deputy Speaker, finally, the domestication of the new Constitution does not mean that we do away with all the values and institutions that we have had over the years. What we need to do and this Constitution attempts to achieve, is for us to improve and strengthen the functions and roles of already existing institutions. The institution of chiefs is one that we need to strengthen until we have a highly developed society and do not have unemployment; underemployment and the incidents of crime are either completely reduced or minimized. That is the time we can say that we need to professionalize the functions of this particular group.

Madam Temporary Deputy Speaker, I want to thank the Minister and Government, belatedly though. He should have brought this I think one year ago so that by now---

The Temporary Deputy Speaker (Dr. Laboso): Your time is up!
Yes, hon. Ngugi!

Mr. Ngugi: Madam Temporary Deputy Speaker, I would also like to add my voice in thanking the Minister for bringing The National Government Coordination Bill No.74 to settle the anxiety that the Provincial administrators have had.

Madam Temporary Deputy Speaker, even as we went into devolved Government there are some functions of the Central Government that were not devolved. Those functions need to be coordinated even at the village level. The chiefs, DOs and DCs have been doing this. Having participated in the making of The County Government Bill, I see no conflict between what the chiefs will do and what the governors and other administrators will do. So, this Bill is properly before us and it will help alleviate the anxiety that these administrators have had.

Madam Temporary Deputy Speaker, what we may need, just like any other institutions of Government that we are reforming, in line with the new dispensation, is that the chiefs, DCs and other administrators are also trained and properly educated. They need to conform to the new dispensation. This is because the intention of passing the new Constitution was to improve things and not to cause any conflict between the Central Government and the county governments. So, the passing of this Bill will make those officers settle. They will do their work knowing that their jobs are secure, protected and will not be interfered with.

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

Ms. Noor: Madam Temporary Deputy Speaker, from the outset, I want to support The National Government Coordination Bill. I want to congratulate the Minister for bringing this very important Bill to this House. This is because I come from a region and place where the chiefs are the only people who represent the Government. That is what I have known from childhood until as late as seven years ago, when I was able to see a policeman or an Administration Policeman visit those villages. Before then it was only the chiefs who were there. They are the people who have been instrumental in conducting the affairs of the society by creating mediation, solving all conflicts and everything. So, these are institutions that we really need to look at and improve. We need to build their capacity.

Madam Temporary Deputy Speaker, it is important to note that we are leaving 85 per cent of our resources with the National Government. When this money is left at the national level; who is going to coordinate those resources at the grassroots level, if we do not have a coordination system within the Government? The coordination system that we knew and we now know is the Provincial Administration. Our Constitution tells us to restructure the Provincial Administration. Restructuring the Provincial Administration means improving the current system and strengthening what we have, so that we can move from the known to the unknown. The national Government and county government functions are very clear. If you critically look at the county government functions, you will find that those are exactly what our local governments perform currently. That is what our county governments will perform. Now, all the other functions are left to the National Government. Therefore, we must have a strong coordination body.

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

Yes, Dr. Mwiria!

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to also support The National Government Coordination Bill.

I want to agree with the hon. Members who have spoken before me that chiefs have a role to play, but also appreciate that some of them are very talented. These days we have chiefs who have bachelor and masters degrees. They have been extremely useful as role models for our people. It is important to acknowledge that. But at the same time, we should ask questions about their terms and conditions of service. That is one area that is always never clear. Sometimes politicians and others interfere with their recruitment, so that we do not always get the best people on the basis of merit.

Secondly, Madam Temporary Deputy Speaker, I just want to say that the biggest problem is that of not working together. It is important to see how we can coordinate that through training to see to it that with the new county governments, the chiefs will have been trained to fit in the system. There are those who are afraid of politicians interfering with the running of public administration. This is because the politicians have always interfered. In fact, I can quote examples in Meru County where politicians treat DCs like domestic servants. Whenever the politicians are not there, they are the ones who represent them and will go by whatever the politician says, irrespective of whether or not it is correct. So, we need to protect the chiefs and DCs from politicians like those who want to misuse and make them their own property as opposed to serving the whole community.

Madam Temporary Deputy Speaker, I support and insist that as we bring them together, let us coordinate their functions and train them to ensure that they fit in the new system. But also, let us protect them from politicians who may want to misuse and get them to work for them as opposed to the whole constituency.

Mr. Kaino: Madam Temporary Deputy Speaker, let me join my colleagues in supporting this Bill.

Most of the hon. Members in this House know exactly the role of these chiefs. Some of the functions of these chiefs are very silent. These chiefs act sometimes act as judges. If their positions are scrapped from our society, you will see chaos even in the courts. There are very many cases that these chiefs settle. They settle very small disputes that would have ended up in courts.

Madam Temporary Deputy Speaker, I support my colleagues who have said that the functions of the chiefs must be set properly and they must be protected from politicians. These chiefs act as education officers and even agricultural extension officers. They do a lot of work for 24 hours and get very little money. These chiefs are very important. I tend to believe that we are misleading ourselves if we think that the role of chiefs will be replaced by other people like the governors.

From the beginning, the governor should not have been an elective post because if they are elected. They will not be neutral. If they are ODM or TNA, then they will never be neutral. We need neutral people like the DCs or chiefs. They cannot be partisan or take sides as politicians. It was a mistake made in the Constitution. They should have been appointed as civil servants.

With those few words, I support this Bill. We should strengthen the chiefs and the assistant chiefs because they are very important.

Mr. Konchelah: Madam Temporary Deputy Speaker, I stand to support this Bill. First, I would like to thank the Minister for bringing it in the House because it is very important. We all come from different cultural backgrounds with different values. Those from the pastoral communities know that a chief is actually the father of that community.

That is why most disputes in our communities are sorted out by chiefs and they work day and night as my colleagues have said. These are people who are able to settle family matters. When a man quarrels with his wife, they do not go to the magistrate, but to the chief. So, 70 per cent of the cases in our community are sorted out by chiefs and elders.

I believe that one of the most important persons today who is happy with this Bill is the Chief Justice, Mr. Mutunga because he is a man who believes in natural justice. He is the man we have come to love because he knows that the people are able to sort out their own problems, so that the country can move forward. This will enable this country to develop.

The most important and crucial thing is security which starts from the ground, the community or village. Once we have security in the village, people are able to develop, farm and be able to sort out their disputes without going to court. The court process leads to loss of money from the people and they also lose wealth and revenue. So, we want the Minister to ensure that this Act is implemented immediately and also look at the welfare of these officers. The chiefs and assistant chiefs should be properly paid. Each one should be given a motor bike because they go through different terrains to reach the people and to sort out problems. They should also be given offices. So, the Minister should allocate money next year so that they can build offices in every location for chiefs to enable them handle community problems. People must know that when they go to the chiefs there is security. So, we would like the Minister to allocate a minimum of six Administration Police officers to every chief's camp, so that they are able to sort out problems of security which is crucial.

Why do we have security problems in Tana River and other places? It is because the chiefs have not been empowered and properly coordinated to be able to take care of security in those areas. We have the Equalization Fund for the next 20 years to take off marginalized communities left behind. Therefore, we need chiefs in those communities for the next 100 years.

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

Mr. Ombui: Madam Temporary Deputy Speaker, thank you for allowing me to add my voice to this very important Bill. This Bill is more important at this time because we are going to the elections. It is very important in the sense that these individuals in the Ministry of State for Provincial Administration and Internal Security are the ones concerned with the security of the people. More importantly, we must realize that different Ministries have deployed people to the grassroots level. I do not see the reason for indicating that this specific department is not so important because we have no close substitutes as far as county governments are concerned.

When we look at the county governments, the person at the helm of leadership is the governor and below him we have the county representatives. These individuals cannot offer the services at the location level or sub-locations. Below all these officers we have the village elders. These people are important because they look at security matters and can also identify the criminal activities in the community. They can indicate where any criminal is found and also give accurate report on those individuals.

The Governors are elected by different parties. If you find that the President is of a different party, there is no way a governor from a specific party can give the president accurate information if he comes from a different party. The Ministry of State for Provincial Administration and Internal Security must ensure that people get services they

want. The mission of this specific department in the Constitution indicates the importance of the department. At the same time when you look at the Constitution, you will see how information is supposed to be relayed from above to the grassroots level. Therefore, I request the Minister of State for Provincial Administration and Internal Security to put down the rules and regulations considering Article 21 and be more specific, so that we may not give the chiefs and sub-chiefs a leeway where they may be tempted to commit criminal activities while hiding behind the Act.

With those few remarks, I support the Bill.

Mr. Chepkitony: Madam Temporary Deputy Speaker, Sir, thank you for giving me an opportunity to join my colleagues who have contributed in support of this Bill. I would like to say that this Bill is very important because we still need a kind of provincial administration as it was called in the past. The national Government should be reflected at the county level because at the national level we have the President and other officers. This should be reflected also in the county governments. When you look at a country like Tanzania, they do not have national identity cards like in Kenya, but have a system of government which can recognize its citizens. There is nothing wrong for Kenya to retain a system which has assisted it to keep stability in the governance of the country. I believe that this national government coordination body will assist in promoting good governance and stability in the country. There should be no conflict between the national Government and the county government coordinators. They instead should complement each other. Each one will have its own role as defined by the Constitution. The chiefs are very important on matter like identity cards, birth and death registrations and communication from the village or sub-locational level. The chiefs play a very important role.

In the past, the Provincial Administration's reputation was damaged due to their involvement in politics along public collection of funds. This will no longer be possible. They are no longer going to play the role of supervising development because this will now be done by the Governor and other government bodies. This Bill has come at the right time and we all need to support it.

With those few remarks, I beg to support.

Mr. Godhana: Asante, Bi. Naibu Spika wa Muda kwa fursa hii. Mwanzo ninataka kuunga mkono Mswada huu ambao umeletwa na Waziri. Kinyume na tetesi, hofu, uvumi na propaganda ambazo zilikuwepo hapo mbeleni kwamba itakapopitishwa kazi za machifu zitakuwa hazina maana kamwe na watafutwa waende nyumbani. Mswada huu umethibitisha wazi kwamba hiyo ilikuwa siasa na propaganda na wala haikuwa ukweli. Mswada huu unathibitisha mawazo ambayo Serikali pamoja na viongozi wamekuwa wakitoa kwamba kamwe machifu hawatafutwa kazi. Mswada huu unaonyesha wazi kuwa kazi ya machifu, naibu wao na hata wazee wa vijiji imetambulika na wanasiasa wote na Bunge hili. Kazi hii imepitishwa rasmi kupitia Mswada huu na tunasema kazi yao iendelee.

Naibu Spika wa Muda, ingawaje tunapitisha Mswada huu, ningetaka kumwambia Waziri kwamba tungependelea maisha ya machifu na naibu wao yaangaliwe siku sijazo ili waweze kutenda kazi wakiwa na motisha zaidi. Hii ni kama vile kupewa marupurupu ya nyumba. Tungetaka kuwaona machifu wakiwa na mikakati ya kuwawezeshe kununua magari. Wapewe risk allowances ambazo zitawatia motisha zaidi ili waweze kufanya kazi kwa urahisi na kufurahia maisha yao ya kazi ya uchifu.

Kusema ukweli, sisi ambao tunawajua machifu na tumefanya kazi nao, ingawaje wanafanya kazi kwa kujitolea, kuna mambo mengi ambayo yanahitajika ili kuwatia motisha ili waweze kutenda kazi yao kwa bidii zaidi.

Kwa hayo machache, ningependa kuunga mkono na kumpongeza Waziri kwa sababu ya Mswada huu.

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Speaker, I beg to support the Bill. If we pass this Bill, we will remove the anxiety that chiefs, DCs and DOs have been having about their positions. They will be assured that they are still in their positions as civil servants in this country.

We are going into a new system, namely, the devolved system. We are going to have county governments. This is a system that we have not perfected yet. It is new to us. We are yet to know how good it will be. So, in that regard, we cannot remove certain functions of the Government, particularly those relating to the security of this country. The Provincial Administration, from the time we had a government system in this country, has been in charge of security. We know how bad it can be if we did not have someone responsible or somebody well trained to take care of the security system.

In that case, it will be unfair to this country if we did away with the current Provincial Administration. This particular Bill helps in maintaining it, at least, for some time, before the county government system is perfected by us.

A time will come when we shall be in a position totally to replace the current Provincial Administration system. This is when it will have been absorbed into the new county government system, which will then, with time, take over the responsibility of security within the counties, sub-counties and villages. Otherwise, the chiefs and assistant chiefs are playing a very important role in regard to security, bringing peace among individuals and reconciling families.

At this point in time, we need to enhance their work by providing the DCs and the DOs with vehicles. They do not have any means of traveling. Chiefs need motorcycles, so that they can move from one place to another. That is one thing which we should have brought up and I wish the Minister thought of it. All chiefs and assistant chiefs should be given motorcycles.

The Temporary Deputy Speaker (Dr. Laboso): Sorry, your time is up, Prof. Olweny!

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Speaker, I support.

Mr. Lagat: Madam Temporary Deputy Speaker, thank you for giving me time to also contribute and support this Bill. We know the work of the chiefs and the DCs and the issues that they handle. Most of the issues cannot be handled by politicians because we will lose votes. Chiefs have nothing to lose and that is why they can handle most of the issues in the villages or at the locational level.

Mr. Kiuna: On a point of order, Madam Temporary Deputy Speaker. Judging by the mood of the House, would I be in order to request that the Mover be called upon to reply?

(Loud consultations)

Hon. Members: No! No!

The Temporary Deputy Speaker (Dr. Laboso): There is just another four hon. Members. So, allow them a chance. Reduce your contributions with a minute each then we can finish.

Mr. Lagat: Madam Temporary Deputy Speaker, as I have said, we cannot handle most of the things as politicians, but the chiefs can handle them in a better way. We know that the chiefs are always close to the people and handle most of the issues in the villages. At the moment, there is a high crime rate because of the hard living conditions, but the chiefs are the ones who control this crime. We are also aware that chiefs have Administration Police officers attached to them. These are the people who assist in the community. Life will be so difficult without chiefs. At the moment, land is becoming scarce. There are a lot of land disputes, but the chiefs are the ones who handle all these matters. It is also the DCs and the DOs who handle all the other cases. Working without these people, life will not be the same. That is why I support that the chiefs should be there.

I support this Bill, so that we can continue having the Provincial Administration.

Mr. C. Kilonzo: Madam Temporary Deputy Speaker, let me say, from the outset, that the Provincial Administration, although it is going to be restructured as required under the new Constitution, is and was a very popular system within the general public. Were it not so, we would not be having the likes of hon. Musila, hon. Y. Haji, hon. Kamama and many others who have gone through the Provincial Administration, served this country in this a great way, joined politics and got elected.

This system of administration which under the new Constitution is under the National Government Coordination Bill, its officers will be referred to as the National Government Administrative Officers. This Bill is very crucial.

I want to give an example of how governors will behave in a number of cases. In the last Parliament, I was a Member of the Constituencies Development Fund (CDF) Committee. We had very many cases of governance through the political arm or the Member of Parliament. A good example was somewhere in the Rift Valley - no names - where the area Member of Parliament felt that a particular community should not benefit from the CDF. For that reason, no money, at all, was allocated to areas where there were members of the Maasai Community. Imagine if that county had such a governor and that governor---

An hon. Member: Like Mr. Ruto!

Mr. C. Kilonzo: Madam Temporary Deputy Speaker, not like Mr. Ruto. If the national Government is not there to monitor the activities of such a governor, then you can see what would happen. In Nairobi, we had another case where two Members could not see eye to eye. One of them was the Chairman of the District Projects Committee and was required to sign for all the projects in all the other constituencies in Nairobi for approval and onward transmission to Parliament. That particular Member said, "Since I do not agree with this man I will never sign anything." So, you can imagine a situation where we have governors of that nature. So, we need those officers to serve as a unifying factor and ensure that the national Government does not lose grip. County governments should not mean the death of the system known as the Provincial Administration. It should mean that we have a more unified country where services are easily available to the common public.

With those few remarks, I beg to support.

Mr. Magwanga: Thank you Madam Temporary Deputy Speaker. I rise to support this Bill. Allow me to congratulate the Minister for bringing this very important Bill. I, as Magwanga, would like to rise and support it.

The Provincial Administration is very critical for us in terms of maintaining law and order. Without law and order, we cannot go very far. Most developed countries exist without chiefs because they trust one another. There is a lot of trust amongst the people unlike the developing countries where people have to be supervised and guarded 24 hours. On that note, I strongly feel that chiefs are very close to the people. They are likely to know them, including suspicious characters. That way, they are able to give information to the authorities.

Madam Temporary Deputy Speaker, many chiefs have initiated a lot of development in their areas. That has stood tall in every place that you may visit. For example, in Gem, the level of literacy there is so high compared to other areas in Nyanza Province. It is because of a chief who was once there and he instilled some discipline in the people of Gem.

I want to support the Provincial Administration---

Mr. Gaichuhie: Thank you very much Madam Temporary Deputy Speaker, for allowing me to support this Bill. I am one of those who believe in the Provincial Administration. I have worked in the Provincial Administration. I believe that it is going to be a link between the national Government and the county governments.

I would like to ask the Minister to also consider the chiefs. That is because they work under very hard conditions. I remember one time the late Michuki, may God rest his soul in peace, had assured the chiefs that they will have enough policemen, motorbikes and bicycles, so that they could do their work harmoniously. I support and ask the Minister to make sure that he facilitates all the chiefs, DOs and DCs to do their work effectively. At times we see our DCs, not even DOs, walk to *barazas* because of lack of means of transport. I also would urge the Minister to make sure that these people are facilitated to carry on their duties. There are many duties that politicians cannot handle and they pass them on to the chiefs.

I support and ask the Minister to fast-track everything, so that the chiefs, DOs and DCs are comfortable.

Mr. Mututho: Madam Temporary Deputy Speaker, during the infamous 9/11 in the USA, they formed what they call the Homeland Security. Extraordinary events require extraordinary things. The Kenyan situation is such that we require strong chiefs to manage our affairs. Even if they did not exist, under this Constitution, we can still create chiefs or their like, so that they are strong enough. The governors should feel safe. If they are doing it right, they require chiefs to maintain security. The more agents we have, the better for us.

I support.

Mr. Kathuri: Madam Temporary Deputy Speaker, let me also support this Bill. It is timely and it is good. It is going to quell the anxiety that has been in the minds of many of the civil servants who work under the Provincial Administration, that is, the chiefs and the assistant chiefs. It is very important for us to ensure that they feel appreciated. There are no two ways of doing that. It is just by passing this National Government Co-ordination Bill. By doing so, we shall be ensuring that they serve while knowing clearly that we appreciate what they do.

We cannot take for granted issues to do with eradication of local brews which they really work on. There is the issue of night patrols which cannot be done adequately by the uniformed police officers. Some of those duties are performed by those officers without any extra pay. They are on guard 24 hours. So, they do a lot.

It is also good to tell the Ministry to review the policy on how they can assist the chiefs and the assistant chiefs with regard to movement in their areas. The Ministry should even facilitate them so that they can have their own motor bikes which should be subsidized by the Government in terms of fuel and maintenance, so that, at least, convenience is there. We do not have to really talk about budgeting for money to buy the motorbikes to facilitate them do their work. I am sure they will appreciate it more if they own the motorbikes. After all, it will make their movement convenient and they will achieve whatever they want within the stipulated time lines.

Madam Temporary Deputy Speaker, there are many ways in which we can support them. We need to fast-track this, so that they can feel that they are working for people who appreciate what they are doing.

I beg to support.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): Bi Naibu Spika wa Muda, ningependa kuchukua nafasi hii kuunga mkono Mswada huu wa utawala wa mikoa. Tunahitaji utawala wa mikoa ili tuweze kuhakikisha kwamba kuna usalama wa kutosha mashinani. Vile vile, tunahitaji utawala kama huu kwa sababu majirani wetu, kwa mfano, huko Uganda wana watu wanaoitwa *Resident Commissioners*. Kuna watu kama hawa wa utawala katika Zimbabwe. Ufaransa kuna utaratibu ambao unaitwa *prefecture*. Kwa hivyo, ni vizuri sisi kama viongozi wa nchi hii kuunga mkono huu Mswada.

Sisi sote tunajua kwamba machifu wanafanya kazi nzuri kuhakikisha kwamba kuna usalama katika vijiji vyote nchini. Wanafanya kazi ambazo polisi wa kawaida hawawezi kufanya. Kuna mizozo ambayo hutokea mashinani ambayo hutatuliwa na machifu na manaibu wao.

Kwa vile Waziri yuko hapa na kwa sababu mimi pia zamani nilifanya kazi katika utawala wa mikoa, ningependa kutaja vifaa vinavyohitajika. Kwa mfano, machifu wanahitaji pikipiki. Mimi mwenyewe, kupitia CDF, nilipatiana pikipiki kumi katika eneo langu. Ikiwa inawezekana, ningependa kila chifu na mdogo wa kata wapatiwe pikipiki ili waweze kutekeleza kazi yao inavyotakikana.

Kwa hayo machache, naunga mkono kwa nguvu zote.

Mr. K. Kilonzo: Madam Temporary Deputy Speaker, from the outset, I want to say that the Provincial Administration has been doing a good job more so in terms of gathering intelligence.

Mr. K. Kilonzo: Madam Temporary Deputy Speaker, Sir, Members of Parliament and other Kenyans sometimes take for granted the work done these gallant Kenyans do. In the areas we come from, we have seen chiefs being able to ensure that security, law and order are maintained. They do this under very difficult circumstances. My colleagues, the Members of Parliament, have said that they need to have means of transport. In Mutitu where I come from, you will realize that some of the locations are as big as divisions in urban centres. So, I want to call upon the Minister, as we support him, to make sure that the motor bikes which are being distributed by his Ministry are distributed fairly across the country.

Sometime, you will find that one province or one part of the country is being favoured more than the other part of the country when it comes to distribution of tools of trade.

As I support the fact that the Provincial Administration officers' welfare need to be looked into; among other considerations, we must recognize them as silent heroes because they have done a lot for this country.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Speaker, I also rise to support this Bill.

I had received a petition from chiefs across the country at my Ministry. They were raising concerns about their future and the implementation of the Constitution. In their petition, they were wondering whether this Constitution will abolish their offices and what kind of restructuring would take place. I was very grateful that hon. Musikari Kombo took up this petition. This House approved the petition and I want to congratulate my colleague, the Minister, Katoo ole Metito, for bringing this Bill to this House.

This Bill is one way of answering that petition because through this legislation, we will assure the chiefs that they will have their role to play as officers of the National Government. This does not necessarily mean that they will undermine the concept of having a devolved system of governance.

Through this Bill, they will be accommodated. We want them to go back to work, especially this time when we are going into elections. We know the role they play. We know what assistant chiefs, including village elders, do for our country. They played a very important role when we were carrying out our population census. However, when it came to the registration of voters, we had problems because at that time, chiefs and assistant chiefs were feeling insecure and village elders were not helping us in the mobilization of registration of voters.

Mr. Washiali: Madam Temporary Deputy Speaker, I also want to add my voice to those Members who have supported this Bill. I want to support by saying that chiefs and assistant chiefs are the most demoralized civil servants from the date we enacted the new Constitution because it was supposed to do away with their positions. However, we are happy that the Government has come up with this Bill, so that they can relook into their activities and support what the chiefs were putting in place.

I also want to add that the administration police who were answerable to the police, the police sector that was supporting their work, from the time they started earning more than the chiefs and the assistant chiefs, they stopped listening to the chiefs. Definitely, they appeared more superior than the chiefs. So, we will request that the Salaries and Remuneration Commission relooks into this and adjust the salaries of these administrators for that matter, so that they can become effective as they used to be.

I support.

The Minister for Higher Education, Science and Technology (Prof. Kamar): Madam Temporary Deputy Speaker, I thank you for allowing me to join my colleagues in stressing the importance of retaining this arm of Government called the "Provincial Administration".

I want to support and say that an orderly Government must distribute duties properly and ensure that every sector is covered. When it comes to the Provincial Administration, there are issues that cannot be sorted out even by those us who want to

become Governors like me. Security of a nation is a national matter. We should not compromise it and put it in an area where it can be compromised.

Secondly, it is very important for us to note that in some Articles of the Constitution, including the one that talks about land, communities have been empowered to use community laws. There is nobody else who will organize the communities and their elders other than the chiefs. Therefore, we need the chiefs and the DCs. We need them in whatever way even if we give them a different name at a later stage. I think the step that the Minister has taken is very important.

I truly support that we retain this arm of Government for good cohesion, administration and governance of the nation.

Mr. M. H. Ali: Thank you, Madam Temporary Deputy Speaker. I wish to join my colleagues in supporting this Bill for one reason. In my area and particularly the northern parts of this country, life without chiefs is quite unimaginable. In most parts of that area, there are no policemen or policewomen. It is only the chiefs who represent the Government. When there are disputes and conflict, it is the chiefs who become the link between the Government and the public. Quite often in those areas because of the harsh terrain there are always conflicts between clans and communities for one reason or another. For example, it can be because of cattle rustling or something else. It can even be about family disputes. It is the chiefs who handle this because you will hardly find magistrates' courts in those parts of the country. It is the chiefs who are mandated to do that work and they do it very well.

Owing to the limited facilities we have in this country, were it not for the chiefs, we would have had a number of people being in courts and would be sentenced to serve in prison. However, where will we take them because our prisons, right now, are full beyond capacity? It is the chiefs who have been providing dispute resolutions and we need them.

The other reason is that the county governments are yet to be tested. We do not know whether the county governments will function and whether they will be accepted by all the communities.

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

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Madam Temporary Deputy Speaker, first of all, I want to thank the 55 Members of this House who have contributed to this Bill. I know them very well. I am being asked how I have known them, but I have been following the debate very keenly. This Bill has attracted a lot of attention. The Members who spoke yesterday were 28 and today they are 27. So, in total, they are 55. I know that this was because of time otherwise all of them would have contributed.

I just want to say that all of them talked about very pertinent issues, especially provision of transport for the Provincial Administration at the lower level like the chiefs, their welfare and the addition of village elders. All these things amount to costs. That is why I would like to convince this House that due to these huge costs, we will take this as a national Government service. The whole of these costs will be met by the national Government and not by the county governments. This will help the county governments utilize the funds they have for development projects at the county level and I promise that we will look into this. I urge hon. Members that they support the Bill at the Third

Reading. If they approve, I think it is going to be milestone in the reorganisation of Government services in this country.

I beg to move.

(Question put and agreed to)

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

BILL

Second Reading

THE INTERNATIONAL INTERESTS IN AIRCRAFT EQUIPMENT BILL

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I beg to move that The International Interests in Aircraft Equipment Bill be now read a Second Time.

Kenya is a signatory to the Convention on International Interests in Mobile Equipment otherwise referred to as the Cape Town Convention and the Protocol to the Convention of International Interests in Mobile Equipment on matters that are specific to aircraft equipment. The country has also ratified both the instruments which were deposited with the International Institute for the Unification of Private Law (UNIDROT) which is the designated depository on 13th October 2006.

Madam Temporary Deputy Speaker, the main objective of the Convention is to facilitate asset based financing and leasing of high value mobile equipment and this Convention and Protocol establishes a commercially oriented comprehensive international legal framework relating to the creation, protection and enforcement of security and leasing interests in aircraft equipment. The Convention also establishes an electronic international registry of these mobile assets which will enable stakeholders to secure the interests in the assets they finance.

The main purpose of this Bill is to domesticate the Convention on International Interests in Mobile Equipment and the Protocol on the Convention of International Interests in Mobile Equipment on matters that are specific to aircraft equipment that was signed by Kenya at Cape Town on 16th November 2001 and to basically give the Convention and Protocol legal effect within Kenya. It is a very straightforward Bill. Indeed, it is a one page Bill with the Protocol being attached. A protocol that Kenya has already signed has been deposited but we now needed to actually get it domesticated and the advantage of this is that the Bill will now basically include the requirement of registration of charges of aircraft objects that will be created after commencement of the Act because the same have already been registered at the international registry. So, it does not have to be registered and charged again.

Madam Temporary Deputy Speaker, in addition, it also excludes from the requirement of registration of our instruments under the Shuttles Transfer Air Act aircraft objects created after commencement of the Act. The Bill further grants our High Court, the High Court of Kenya and the Court of Appeal the jurisdiction to determine matters under the Convention and Aircraft Protocol and any amendments which are binding on

Kenya made on the Convention will be published in the *Kenya Gazette* as they take effect.

Madam Temporary Deputy Speaker, this domestication of the Cape Town Convention will now enable Kenyan airlines to gain from reduced aircraft acquisition costs and Kenya Airways, for example, estimates that with the passage of this Bill, we could actually have aircraft financing reduced by approximately US\$2 million per aircraft because of the process that has hitherto been adhered to. The international aircraft financiers have also confirmed that the domestication of the Cape Town Convention by Kenya will result in reduction of exposure fee of the aircraft financing for Kenya Airways and other airlines. So, it is a very straightforward issue. Our Constitution requires that all the laws become legally binding on Kenya but for good order, we also need them to be domesticated so that they take effect within Kenya and most importantly for all these legal issues to be handled within Kenya.

Madam Temporary Deputy Speaker, I really do not want to belabor the point. It is a very straightforward Bill. It is a one page Bill complete with the attachment that has already been signed and we are bringing it for good order.

I want to move and ask the Attorney-General to second.

The Attorney-General (Prof. Muigai): Madam Temporary Speaker, Sir, I rise to second this Bill. This Bill represents yet another step in Kenya meeting its international obligations and domesticating international standards. It is an important step in establishing Kenya as a leader in the region and, indeed, on the continent in compliance with international law and international standards. I would hope that as soon as this Bill has been enacted into law, Kenya will become yet another example of the sort of steps that should be taken in this region and on our continent to make us competitive and to benchmark our standards internationally.

I beg to second.

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

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

(Question proposed)

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I will be very brief. With the passage of this Bill, this means that we can now establish aircraft leasing or aircraft financing companies so that if you want to purchase an aircraft, you can do it. We have already done that for the ships under the Merchant Shipping Act that has been done, and I am now appealing to Kenyans not just to think of buying *matatus*. They can now buy ships and aeroplanes because now that is where the business is.

With those few words, I support.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I thank you for giving me this opportunity. I wish to thank the Minister for bringing this Bill and I wish to say that I will reserve my support on the opposition, if at all there is any.

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

*[The Temporary Deputy Speaker
(Prof. Kaloki) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, the reason why I am saying this is because if you actually look at the Convention that the Minister is talking about, it has 78 articles and he is not only talking about the Convention but he is talking about the Convention together with the Protocol. So, if you actually add the Convention and the Protocol, it is a very technical Convention and we actually passed a law – The Treaty Making Ratification and Domestication Act and what it provides is a very specific way of making, ratifying and domesticating treaties. The reason we have done that is because of this process that the Minister is undertaking.

If you actually look at what we are undertaking, even though the Bill that the Minister has introduced is very simple, by domesticating this, we are really dealing with 78 plus articles. So, it is not really as simple as the Minister is putting it. In real terms, what we are doing is that we are passing a law whose content we have no knowledge or information about. I, therefore, reserve my support or opposition.

The Temporary Deputy Speaker (Prof. Kaloki): All right, since there is no other hon. Member who is willing to contribute, I will call upon the Minister for Transport to reply.

Proceed, Minister!

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I wish to thank the hon. Members for these interventions, especially Mrs. Odhiambo-Mabona, whom I want to recognize for her efforts in bringing the Bill, which helped in terms of the process of domestication. I want to confirm that we have consulted heavily on this with the State Law Office, and I am very happy that what we are doing conforms to the law. If there is anything that has not been done right, we will be happy to correct it as we move forward.

With those few remarks, Mr. Temporary Deputy Speaker, Sir, 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 NAIROBI CENTRE FOR INTERNATIONAL ARBITRATION BILL

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Nairobi Centre for International Arbitration Bill, Bill No.65 be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, it gives me great pleasure to present this Bill for a Second Reading. We have endeavored to make Kenya a leading centre for doing business in the East African region, within the Common Market for Eastern and Southern Africa (COMESA) and within the continent. Dispute resolution represents a major

business risk because many times, people coming to invest in our region feel that our processes are very slow and that our courts need the expertise. We have brought this Bill to improve the competitiveness.

I move, therefore, that the Nairobi Centre for International Arbitration Bill, Bill No.65 of 2012 be now read a Second Time.

The Temporary Deputy Speaker (Prof. Kaloki): All right, can we have somebody to second the Attorney-General?

Order! Attorney-General, could you call your seconder by name?

The Attorney-General (Prof. Muigai): Yes; I stand guided by you. I wish to call upon the Minister for Finance to second the Bill.

The Minister for Finance (Mr. Githae): Indeed, Mr. Temporary Deputy Speaker, Sir, it gives me much pleasure to second this Bill.

Mr. Temporary Deputy Speaker, Sir, during my time at Treasury, I have been trying to create what I am calling a 'financial centre' in Nairobi for finance; we have been trying to create Jomo Kenyatta International Airport as a transport hub and now if we have Nairobi as an international arbitration centre, this is going to work very well for our economy.

Mr. Temporary Deputy Speaker, Sir, I beg to second.

(Question proposed)

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I want to thank the Attorney-General because Nairobi's bid to become a global financial services hub has to get a boost with the Cabinet approval that this law and this arbitration centre must be established.

But, Mr. Temporary Deputy Speaker, Sir, international firms doing business in this country go to London and Mauritius for these services. We cannot allow that. If Kenya has to implement Vision 2030, we have to make the best regional hub in terms of business and in terms of finances. This is a big boost; this is a present to the business sector and to the multinationals that this law is in place.

I beg to support.

Mr. C. Onyancha: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support this Bill mainly because of the reason that we have positioned ourselves as a future financial centre and as a future hub for transport as well. But what worries me is the cost of doing business in this country. These great ideas can become a reality if we can cut the cost of doing business by curbing corruption.

Mr. Temporary Deputy Speaker, Sir, I have watched for the last few years how corruption has actually been increasing in this country and the voice against corruption has been silenced to a large extent. So, it is my pleasure, to support this Bill and urge the Attorney-General – as one of the people who can actually make a difference in fighting corruption – to ensure that, that bad habit goes away as these other ideas prosper.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir. Let me begin by thanking the Attorney-General for this Bill. Secondly, I remember that peace in Sudan and Somalia was negotiated in Nairobi and this is one of the key responsibilities that was done in our country. This role must continue.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

Mrs. Noor: Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support the Bill and to congratulate the Attorney-General for bringing this very important Bill. I believe in a situation where we need to promote our country, and this is one of the Bills which will put our country squarely on the world map and promote our country in a big way. We need a framework like this which can create an enabling environment which will help us attract investors and put our country on the forefront.

Looking at the functions of the Nairobi Centre for International Arbitration Bill, they are key because they will co-ordinate and put together affairs that will promote the image of this country and also help to implement our Constitution. If you look at the Bill of Rights in our Constitution, people from all over the world are yearning for such a Bill of Rights. It is important that we take the first step in this part of the world in this direction.

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

The Temporary Deputy Speaker (Prof. Kaloki): Very well, since there is no other hon. Member who is willing to contribute, I will now call upon the Mover, the Attorney-General, to reply.

Proceed, Attorney-General, and reply.

The Attorney General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I want to thank hon. Members for their support to this very important Bill. I think the commitment by the House should expand to the professions of lawyers, accountants, engineers, architects and all the people involved in the arbitration world. We hope, therefore, that Kenya will stand tall as a result of this extra legal framework that we have created.

With those few remarks, I beg to move.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

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

THE CIVIL AVIATION BILL

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Civil Aviation Bill, Bill No.81 of 2011, be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, the Kenya Civil Aviation Authority was formed through the Civil Aviation (Amendment) Act of 2002, which Act was an amendment of the Civil Aviation Act of 1977, which had formed a semi-autonomous civil aviation authority to regulate the safe and secure conduct of the aviation sector in the country. The Authority has been regulating our aviation sector since it was formed in 2003. Although it has had its own challenges, these have been addressed administratively

through approval for re-categorization and restructuring of the Authority by the Government, which is currently being implemented.

Mr. Temporary Deputy Speaker, Sir, the International Civil Aviation Organization (ICAO) Universal Safety Oversight Audit Programme and the universal security audit programme findings of 2008 indicated that the legal framework for regulation of the aviation sector, especially the Civil Aviation (Amendment) Act of 2002 required some amendment to provide for continuous surveillance of aviation matters and operations in the country. This followed some of the incidents we had in terms of aircraft accidents in West Africa and all that. The audit said there are some things that needed to be put in our laws. The process of revising the Act began at that time and has culminated in several revisions--- With the advice of the Office of the Attorney General, we said instead of bringing them as miscellaneous amendments, or as amendments to the Act, it was good to have the whole Act revised and also to bring it in tandem with the new Constitution, because several references may have changed.

Mr. Temporary Deputy Speaker, Sir, the Bill seeks broadly to ensure that it is in line with the Constitution, to discharge our international obligations to the State as set out under Article 12 of the Chicago Convention on International Aviation that was signed in Chicago in 1944, to which Kenya is party. It also seeks to ensure State compliance with Chicago Convention by integrating ICAO standards and recommended practices, international legislation and also to address some of the issues that came out of the audit that was conducted in 2008.

Most importantly, it also seeks to establish an aviation tribunal and to provide for compounding offences under the Act with a view to providing expedient dispute resolution mechanism and enforcement within aviation matters.

We are also looking at enhancing some applicable fines and penalties to persons who are found guilty of offences under the Act to make them more deterrent , as well as enhancing the regulation of the aviation security, empowering the Director-General to have some limited powers to issue exemptions on operational matters; mainly in order for Kenya to achieve progress in the re-certification process for the international aviation safety assessment, Category one, the country has to demonstrate progress made in respect to the legislative framework. This is very important. We have been talking about direct flights from Kenya to the United States, unless we get a Category One status, re-categorization, we will not be able to make those flights and that will not be achieved unless we demonstrate that we have revised our law to be in tandem with what ICAO requires. So, again, there are some typographical errors that had to be removed and to address some of the potential conflict of interest within the Authority and the Board as it is currently under the Act that was passed in 2002.

So, this is cleaning up and also updating the law to ensure that it is in line with the new Constitution, in response to the current challenges and ICAO regulations and demonstrate to the world that Kenya is ready to become aviation hub for this region. We are already there but our legislation has been left behind.

So, I will call upon the Members to pass this Bill, so that we can give our aviation industry the push it requires and for it to be the pride of Africa as it should be.

Mr. Temporary Deputy Speaker, Sir, I beg to move and invite my good friend, hon. Ogindo, to second.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, I rise to second this Bill but I must express my disappointment with the Chair. I stayed in this House so that I can contribute. I do not stay in this House to provide quorum---

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Ogindo. Hon. Ogindo, you were invited to second the Bill. Do you have the ability to do that?

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, I have the ability unlike those Members who sit on the Chair.

Mr. Temporary Deputy Speaker, Sir, I want to second this Bill. This country needs a revised civil aviation Act. This country is pursuing Vision 2030. There are lot of infrastructural developments that are taking place. We need to comply with the international civil aviation requirements, so that this country can exploit the air industry. That is going to boost this economy. I want to support this Bill because in my constituency, I have an airstrip, and I think this is going to create a framework that is going to exploit that airstrip. That will go a long way in boosting the economy of my county, which is part of this country.

Mr. Temporary Deputy Speaker, Sir, you realize that today Kenya has no direct flights to other destination because of weak legal framework in the aviation sector. This Bill goes a long way to address this and the country at large stands to gain from the enactment of this Bill.

With those few remarks, I beg to second.

(Question proposed)

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to support this Bill. I want to thank the hon. Minister for bringing this Bill.

Mr. Temporary Deputy Speaker, Sir, Kenya is destination in Africa and it is absurd to note that some countries do not allow our direct flight from Kenya. I was in Israel in 2010 and they raised serious concerns about our airports. They said that the exit and passengers coming in mix without vetting or checking. Therefore, the issue of security, I believe, is going to be addressed.

Therefore, I support.

Mr. C. Onyancha: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill and thank the Minister for bringing it. It is the high time we had such a law.

Mr. Temporary Deputy Speaker, Sir, aligning our laws to ICAO requirements is really something which should have been done long ago. It will address issues of safety, especially now that we are having increased air transport both internal and external. I think it is high time that this came into force as soon as possible. We have seen examples of helicopters being purchased by our Government without manuals, at wrong prices and without parts, or with the wrong parts. These are some of the issues which this Bill will seek to address.

The seconder of this Motion is my neighbour and my airstrip was the oldest in the region. As I finish supporting the Minister and the Bill, I wish to also urge him to look at it first, especially considering the correspondence that we have been having. But I do fully support the Bill.

The Temporary Deputy Speaker (Prof. Kaloki): Yes, hon. Duale.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I will be very brief. The civil aviation industry is growing very fast in the world. It is growing in both the technical and social aspects of it and it is prudent that our civil aviation laws address these developments.

I was a Member of the Committee that investigated the avionic interference of airlines by FM radio stations, and our Report was tabled in Parliament. I want the Minister for Transport to look at that Report, having brought to this House an up-to-date legislation. Why has he done so? In my opinion, this Bill will address public and aviation security. It will also address the issues of accidents and incidents investigation within the aviation industry.

Mr. Temporary Deputy Speaker, Sir, I want the Minister to be kind to the country and make sure that the issue of local FM radio stations opening their frequencies to pilots as they land at the Jomo Kenyatta International Airport (JKIA) does not happen again, and that he will protect the safety of our passengers.

With those remarks, I support.

The Temporary Deputy Speaker (Prof. Kaloki): Yes, hon. Mututho.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I stand to support this Bill.

In supporting it, I want to remind the Minister to even look where the Government has investment, like in the Kenya Airways. The issue of procuring those jets popularly known as “umbria” and ignoring what the rest of the world is doing in terms of going for good equipment such as Boeing or Airbus is in itself retrogressive. It is retrogressive because there are reasons as to why Boeing is Boeing and Airbus is Airbus.

Mr. Temporary Deputy Speaker, Sir, we should allow our own carriers like Jetlink, if it is truly a Kenyan company; the Government should have stepped in to make sure that the company is not grounded. The Minister for Finance should have helped to, at least, keep it in the air because it helped the whole ambience in terms of air travel.

Finally, I would like to speak about the workers. The biggest resource in any industry is human resource. I am addressing myself to the plight of the Kenya Airways workers who were retrenched. I tabled a petition here on their behalf. I am glad that the management became wise and returned them to work in compliance with a court order. Some of the stories will never be told but the bottom line is that they are completely messed up by their terms of service. The way the local staff are treated as compared to foreigners is totally different.

Our national career should carry our national dignity. We have just got good news that Nairobi Stock Exchange has beaten the stock exchange in Dubai. That is something we should celebrate about. We should also be celebrating the way forward in terms of proceeding to beat Dubai as a free port. Kenya is in a better position and the way forward is to have our own carrier. The Kenya Airways, just like The Emirates, should propel Kenya to the next decade.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Prof. Kaloki): Yes, hon. Sofia Abdi.

Mrs. Noor: Mr. Temporary Deputy Speaker, Sir, I want to pick from where hon. John Mututho left. The petition he was talking about was forwarded to the Committee that I chair. We have already tabled our Report on the matter. When we investigated the matter, we came across very sad goings on within our aviation industry. We found that there was rampant mismanagement and corruption. A lot of human rights violations were

going on. That is clearly indicated in our Report. I am happy that the Minister has brought this Bill so that we can look into all the issues and loopholes that exist. There are a lot of loopholes and problems within our systems. It is good that now we have a Bill that will look critically into safety, security, mismanagement, human rights and human resource within the aviation industry.

Mr. Temporary Deputy Speaker, Sir, as Mr. John Mututho has said, human resource is the biggest resource that one can have in any company that exists anywhere. Once human resource is available, motivated and is able to run and manage a company properly, it will be able to move that company to the next level. It is only important that we look critically into all those issues.

The principle objective of this Bill is to amend the current Act which has gaps. Always when you put a law into place, it is a law that will strengthen and build good values into any existing Act of Parliament. This Bill addresses those existing gaps.

Mr. Temporary Deputy Speaker, Sir, if you look at the Report that we tabled in this House - which is now a property of this House - you will see that the current management of our national carrier, Kenya Airways, has had a lot of problem. You will see a company called Samburu. There are many other companies that we do not know. All those companies have even risked the safety and security of our people. You will see people purchasing an aircraft and insist that it is new. But if you critically look into the details, you will find that the same aircraft has been used somewhere else in the world. It is important that we get such kind of Bills so that we close those loopholes. We should not have people buying second hand aircraft and pretend that they are new, thus risking the lives of Kenyans and the international community. We should be the pride of Africa. This Bill is going to close those loopholes.

Mr. Temporary Deputy Speaker, Sir, our safety is the most important thing in this country. The security of our airports is the other thing that is very important. I want this Bill to look critically into our safety and security at our airports and the security of Kenyans and other people.

Finally, once we pass this Bill, the human resource aspect must be looked into properly, and particularly Kenyans who are serving in this industry. Kenyans who have served in this industry have suffered in the past. What we are looking for in the future is that they do not suffer like they have suffered in the past, particularly women who work in this industry. Women have cried before the Committee. They have come before us and cried. They told us the kind of suffering they go through when they are being employed in this industry.

Mr. Temporary Deputy Speaker, Sir, I hope that when this Bill goes through, the women in that industry will never suffer again.

Thank you. I support.

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Temporary Deputy Speaker, Sir, let me thank the hon. Members of the House for supporting this Bill and emphasizing issues of security, standards and proper management in the airline industry.

Having said that, I want to address two aspects of the aviation industry which are extremely important in this country. If you look at the growth of the aviation industry in this country, over the last 10 years, it has been tremendous. In 2004 when we met the Netherlands Airports Authority at the Imperial Hotel in Kisumu when they were giving

us the plans for expanding the Kisumu Airport, there were three scenarios for what we were going to do. As Mr. Kimunya will remember, these scenarios were based on projections of the passenger capacity in that airport over the next 10 years. The original presumption was that the passenger capacity or the destination would only grow at about maybe 10,000 passengers per year. The passengers grew exponentially beyond even the conception of specialists in the airline industry. This showed that, if there are proper facilities, travel by air in Kenya can increase exponentially not just to Kisumu but to other destinations like Kitale, Eldoret, Kisii, Moyale and so on.

One of the reasons why the Ethiopian Airline grew so fast was because they had products of air travel to very small towns. I lived there in the 1980s and I could not believe that you could go to a number of destinations in Ethiopia using Ethiopian Airline.

What I am saying is that we must aim at growing our aviation industry as a popular industry. In other words, air transport should not be confined to the elite or to very expensive tickets. We should have budget prices for example in travelling by train. We should have also various commodities that the airline industry gives people. This must always be spearheaded by a flag carrier.

When I lived in Mexico, Mexico and Mexicana Davision were the two airlines that spearheaded various commodities that the airline was giving. For example, there was one called "ticket with all other things paid". You would go buy a ticket and pay something and travel across Mexico for three weeks. In every airport that you went to, you could get a taxi ready and then they would take you to a hotel and so on. This really increased internal tourism in Mexico. But that cannot happen if you do not have safe airfields and security in those airfields and so on.

Therefore, this issue must be looked at holistically. Why do we want security at our airports? It is because we want to improve travel by air. It is because we want to improve internal tourism in Kenya. It is because we want our people to travel by air.

When I first went to Nigeria and I was boarding a plane with women carrying big sufurias with food in them and going from one market to another other, I was shocked that even women with big sufurias could sit next to me and bumped their babies on my lap. This was because for them if you sat next to her, you must be a kind human being who had to carry babies, anyway. So, they did not ask you. They just came with a sufuria, and put the baby on your lap. That was because it was what they did in buses, anyway. So, travel by air was demystified.

I think, from what my sister Sophia has been saying, the use of air transport by passengers should be Kenyanized and popularized. We should have many more destinations. It should not just be that planes only go to Kisumu, Mombasa, Nairobi, Eldoret and maybe to Qatar occasionally. We should have airfields in Isiolo and Nanyuki so that it becomes a new mode of transport that is popular and that will increase wealth.

The last point I want to make is that investment in the air industry, once we have increased air transport in this country, we will also improve the possibility of Kenya being a first rate service destination for airlines to come and be serviced here, which is happening at the moment. We should also do it like Brazil. The way the Umbria plane started in Brazil in the 1980s was very simple. It was connected both to the military and to popular transport. Now we are buying planes from Brazil in just about 20 years. Although Brazil is a much bigger country than Kenya, the principle is the same. The

Kenyan economy in this region can be compared to the Brazilian economy in Latin America because of the size of the economies in Latin America.

I really think that with the Numerical Machining Complex here and the kind of standards that we have at the Kenya Bureau of Standards, we have a making for having a growing airline industry, where we could easily begin making planes in the not too distant future in line with Vision 2030. So, I think that this Bill is very timely because, first, you must begin by making sure that there is security and safety when you travel and that there is order in our airports. I am glad that the Jomo Kenyatta International Airport is now improving and that it will conform to international standards and that we shall begin building airports using modern technology, which is very cheap, fast and guarantees more security. When we build these airports; small and big, we will rely on the cutting of the edge technology rather than just doing cheap things because we are opening the airport. Usually, cheap is not that cheap. Cheap ends up to be very expensive. So, we are in a position where we can expand our airline industry using modern technology, giving our people the chance to begin making spare parts for planes and in the event, even making planes. I think that the initiative that the former President Moi started in those days of Nyayo Pioneer Car was just poorly managed, but it was a very good idea. I think that, that idea of manufacturing at the high level of technology is one that Kenyans must embrace. In fact, when I was the Minister for Planning and National Development, I really encouraged the reopening of the Numerical Machining Complex. I even encouraged that we should make our own cranes from the Numerical Machining Complex in Mombasa, but I was shot down because people thought that I was colluding with some industrialists to do this and stop them from importing these cranes from overseas. This was crazy because a crane is just a mass of metal. You can import gears from abroad, but you should not import the whole huge metal from abroad. Steel and iron is available locally and we have the capacity to do these things.

Mr. Temporary Deputy Speaker, Sir, this is a very good Bill laying the framework for expanding the airline industry. We must in the final analysis understand that lawmaking does two things; it organizes human relations in capitalist society and also encourages capitalism to grow by better profit making and higher productivity, not forgetting the fact that Parliament looks after the social welfare of the people, as we have higher productivity and profit making in our commercial and industrial sectors.

Mr. Temporary Deputy Speaker, Sir, I beg to support this Bill very strongly and urge my colleagues to pass it.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. In supporting this Bill, I want to congratulate the Minister for bringing it to this House. I see a connection between this Bill and the international interest in Aircraft Equipment Bill, because the two Bills make reference to the international interest in mobile equipment conventions and protocols and the Chicago Conventions.

Mr. Temporary Deputy Speaker, Sir, one of the things that is very clear in the earlier convention on the internal interest is to ensure asset based financing and leasing of airplanes, which is basically what the earlier Bill was seeking; which is to provide for asset financing for purposes of either leasing or buying aircraft. The Civil Aviation Bill is then to provide the framework for management. What I would want to say is that it is true that we need to secure our airspace and I do not want to go into details of what other hon. Members have said. The only thing I want to say as a show of goodwill from the

Minister--- But before that, I would want to give a comment on the long title which says: “An Act of Parliament to repeal and re-enact the Civil Aviation Act”. We cannot be providing for a Bill to re-enact another Act. In terms of drafting, that is wrong. I would want to encourage one amendment which is the date of coming into effect of these two Bills. We are just going into an election year and if you want to bring these Bills which have to do with purchasing of aircraft and providing space for managing of aircraft at a time when we are going to an election year, some antennae become completely alert. So, I would want to suggest that even in the earlier Bill instead of putting the effective date as 14 days within passing of the Bill, it should come into effect after 4th March.

With those few remarks, I support.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, very briefly, let me make two observations. One, this is a very enterprising Bill which will enable the national carrier, Kenya Airways, to acquire the modern aircraft allowing the airline to reach various destinations in the whole world. It will also create more jobs for our tarmacking youths in this country. The manufacturers of the aircraft will also have a market in the East African region based in Nairobi and this can also be very attractive because the neighbouring countries will also be acquiring their parts from our country, therefore, giving the very best image of this country and allowing more investment.

Therefore, this is a very important Bill because it will also allow our pilots to be well remunerated unlike now. I hope that with the passage of this Bill, the image of this country will tremendously improve.

With those few remarks, I beg to support.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I will be very brief. We take our time passing Bills but this is one of the most critical ones. I happen to have developed some interest in the aviation industry and the kind of lawlessness with which we are treated by the industry requires that the Minister does more as he is doing. As you know, we are in a scenario where this country has airstrips or airports like the one in Malindi, which are accessed by foreigners without even reporting to our Government. This is a serious thing. For example, the one in Lewa is a notorious one. These people come from Europe, they transit or land directly in Lewa, enjoy their holiday but nobody knows how they got here. Nobody is checking and there are no sanctions. I want to urge the Minister to do more so that we can have an industry that we all have confidence in.

The Temporary Deputy Speaker (Prof. Kaloki): Since we do not have any other hon. Member willing to contribute, I will now call upon the Minister for Transport to respond.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I want to thank the Members for their contributions. I want to assure them that the reason that we are bringing this Bill to the House is to ensure that the Kenya Civil Aviation Authority has the teeth to better regulate this industry, and I want to thank them because the support has been overwhelming. The industry is growing and we are going to be the hub for Africa. We want to be the real players within the aviation industry, but without a super regulator, we could end up even having *matatus* in the air and then it would become a challenge. With a super regulator having these powers, we are going to regulate this sector. I want to thank the House and assure the Members that we will use the Bill to bring to fruition all the wishes that Kenyans have in terms of being the real

pride for Africa given our geographical location as we ensure connectivity to the rest of the world.

With those few remarks, I beg to move.

(Question put and agreed to)

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

PROCEDURAL MOTION

FURTHER EXTENSION OF TODAY'S SITTING

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise on a point of order to move the following Procedural Motion:-

THAT, notwithstanding the resolution of the House made today 3rd January, 2013, under Order No.8, that this House resolves to further extend the sitting of the House until conclusion of business appearing under Order No.24 in today's Order Paper.

It is evident that we are making very good progress and we could sacrifice an extra half-an-hour and we conclude three more items.

Hon. Members: No! Tuesday!

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, we will then carry forward the rest of the business to Tuesday morning. I will ask the Members that having made so much progress and sacrifice, an extra half-an-hour would help us, at least, to have an anti-corruption chief by the time we go for the weekend and other appointments, so that we can reserve Tuesday morning for the Finance Bills. I want to plead with the Members that we grant just this half-an-hour and do some business.

With those few remarks, I beg to move and ask Mr. Midiwo to second.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I second the Motion. I want to plead with the Members because I can see that they are getting a bit restless. If you heard what the Minister said, we want to reserve Tuesday morning for the Finance Bills, which are very important to us. I think it cannot hurt to stay here for a few more minutes.

(Question proposed)

The Temporary Deputy Speaker (Prof. Kaloki): Please, let us take a minute each.

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Temporary Deputy Speaker, Sir, I just want to support the Motion, but also say that in this Kenya Law Reform Commission Bill, I plead with the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs that the common man is suffering because when lawyers are paid money on behalf of their clients, more often than not, they do not pay the clients. I have very sad cases in my village. So, this thing must be looked at and discipline must be instilled.

Hon. Members: Enough!

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, I support. Let us extend time.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, I want to support this. I want to plead with my colleagues that we give extra 30 minutes. I can see that these are straightforward Motions that have no mischief in them. So, I support.

(Question put and agreed to)

THE KENYA LAW REFORM COMMISSION BILL

(Mr. Wamalwa stood in his place)

The Temporary Deputy Speaker (Prof. Kaloki): Is it not the Attorney-General who is supposed to be moving the Kenya Law Reform Commission Bill?

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, we are actually partners and the Minister has the brief on this one. I will second him. It is actually his Bill.

The Temporary Deputy Speaker (Prof. Kaloki): Order! I need to get some clarification here because it appears on the Order Paper that it is the Attorney-General to move it.

(Prof. Kaloki consulted with the Clerks-at-the-Table)

All right, the Minister can move it. Proceed, Minister!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Kenya Law Reform Commission Bill, Bill No.67 of 2012, be read a Second Time.

This Bill is very important particularly because of the important and central role played by the Kenya Law Reform Commission in the implementation process of our Constitution. Under Section 5(6) of the Sixth Schedule, it is very clear that the Commission for the Implementation of the Constitution (CIC) works very closely with the Kenya Law Reform Commission and the Office of the Attorney-General in co-ordinating and preparing for tabling in Parliament the legislation required to implement this Constitution. They have done very well.

I was very privileged, as the Minister in charge of constitutional affairs, to work with Kathurima M'Inoti, a very able man, together with the Attorney-General and Mr. Nyachae of CIC. We have done very well while we worked together. As we move forward, we have already done our part in ensuring that we met the two year deadline of 27th August, 2012. We still have three years to go. The Kenya Law Reform Commission, under the new Constitution has an expanded role and the purpose of this Bill is to reconstitute and incorporate the Kenya Law Reform Commission in order to have it discharge its expanded mandate under the new Constitution. We are asking Members to support it so that we can have that very critical Commission play its role in accordance with the new constitutional dispensation.

With those few remarks, I beg to move and ask the hon. Attorney-General to second.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I rise to second this Bill. It is the most important Bill for the reasons outlined by the Minister, but more important from where I sit, we are trying to reconstitute this body because currently, its former Chairman has been appointed to the Court of Appeal. He is a very able Chairman who led it for a very long time. We want to bring fresh blood to bring impetus to the constitutional reform generally and law reform specifically.

I beg to second.

(Question proposed)

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I stand to support this very important Commission. I only have one comment to put across to the Minister. They need also to expand the mandate of the Kenya Law Reform Commission to also assist the counties as they prepare their Bills. It is important because of the now expanded role. Please, put an amendment to also include county governments. They require a lot of help in drafting their Bills.

I support.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I also rise to support this Bill. For a long time, the Kenya Law Reform Commission was an institution that was basically without much results to show mainly because the country was not willing to adopt some reforms.

In this era, when the country is undertaking many changes to the laws and the regulatory framework, it is very important that we have a strong reformed Commission which can undertake research and give the country the best possible laws that can form the basis for carrying out the policies that the Government is pursuing. We should ensure that its capacity is continuously enhanced and expanded so that it can guide the country and help the other institutions to acquire that capacity to generate the necessary reforms to our laws.

With those remarks, I beg to support.

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Temporary Deputy Speaker, Sir, I am sorry I jumped the gun earlier on because I was very enthusiastic about the point I wanted to make about the legal profession in this country.

I hope that the Kenya Law Reform Commission will reform the laws and regulations regarding discipline in the profession. Try as they may call each other "my learned friend" and all that, when it comes to regard to the common man, there is absolute indiscipline in the legal profession. The common man does not have an avenue for addressing the legal profession when they are injured, either in terms of poor service or failure to honour obligations particularly when a poor fellow has won a case in court and damages have been paid, which are due to this person. Lawyers take the lion share of everything and there is a body called the "Disciplinary Committee" of the Legal Profession. The committee is very partisan to the people in the profession. I think this is something that the Minister for Justice, National Cohesion and Constitutional Affairs and the Attorney-General if, indeed, they are serious about reforms and that we will have a Law Reform Commission, should be addressed expeditiously.

I am talking as an MP who has received very many cases of poor Kenyans. One woman in my village whose leg was amputated as a result of a *matatu* accident was given

a tremendous reward by the courts. However, she has never seen a cent since 1974. Therefore, I hope that in this process of reforms, discipline and professional conduct and behavior among lawyers will be addressed by the Law Reform Commission so that it becomes part and parcel of the good culture of practicing law in this era when reforms are taken seriously, human rights are on the forefront and democracy is utmost in whatever we do.

I beg to support.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I will be very brief in supporting this Bill.

First, I would like to bring it to the attention of the Minister for Finance that one of the functions of the Commission is to advise and support both the national and the county governments. So, the function of the Kenya Law Reform Commission is to support county governments in an argument of law. But above all, one of the main functions of the Kenya Law Reform Commission is to observe respect for international treaties that this Government has done.

Last week, the Kenyan Government which has ratified the Vienna Convention on Refugees decided to sit one morning and say that all refugees in urban centres who are staying there legally should go back to the refugee camps and yet the infrastructure and security in the refugee camps are not provided for.

Therefore, we hope that new Kenya Law Reform Commission will make sure that the treaties that we sign, as a country, by virtue of Article 2(5) and (6) of the Constitution are adhered to and followed in the future.

I support.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. I will not go into the importance of the Kenya Law Reform Commission but I guess it should be obvious. All I want to do is to ask the Minister to look at certain areas of the Bill that may require amendment because we may not have time to look at them.

Number one is Clause 10(2). We have a tendency to demonise politicians. I would suggest that that be deleted. You have done a very good job in mainstreaming persons with disabilities and women but you need to mainstream young people because it is a constitutional requirement. In Clause 15, you have given authority to two officers on issues of removal of officers; that is the presidency and the Cabinet Secretary. To avoid confusion, you need to remove that.

The financial year of the Commission should be clear and should follow the financial year that is followed by any other Government body. Then Clause 33 on the independence of the Commission, I am not too sure about what you mean there. I do not know if they have that sort of independence unless it is constitutional.

Mr. Temporary Deputy Speaker, Sir, under the code of conduct, it is good that you have provided for issues of sexual harassment but because you have only made few references to the definition of sexual harassment and the Sexual Offences Act, it is more comprehensive in relation to that. I wish you could also make reference to the Sexual Offences Act.

I support.

Mr. C. Onyancha: Mr. Temporary Deputy Speaker, Sir, I also support this Bill wholeheartedly. I would like to ask the Minister to bring into alignment the issue of law reform and the issue of legal education specifically with the new developments in the

economy. The breaking point is just the Bills we have passed in relation to the Civil Aviation and leasing and also maybe to develop a special cadre who may not necessarily be lawyers but legal technicians because those are in short supply in the market.

Further, maybe you could also look into the issue of the complaints that hon. Anyang'-Nyong'o raised by strengthening the Complaints Tribunal and also encouraging the Law Society of Kenya (LSK) to be self-regulating. I am proud to say that my profession and that of hon. Kimunya does self-regulation.

I support.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I just want to pick from where Minister Anyang-Nyong'o left and tell the Minister for Justice, National Cohesion and Constitutional Affairs, the Attorney-General and the current judicial system, that the way some of those learned friends run the affairs of their clients is particularly appalling. I have personally been a victim not once, twice or thrice. At one point, a huge amount of money is deposited and then what you get is a negative fee note after everything has now been deposited. I see them every day in court and as we vet the judges and magistrates, it was wrong - I repeat it was completely wrong - for us to have omitted vetting of the lawyers because without them being disciplined and sticking to their own code of conduct, these learned friends will be the most interesting learned roadblocks to justice this time in this country. I would urge the Attorney-General to find ways and means so that at least we have good learned friends.

I support.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, in supporting this Bill, I would like the Attorney-General to remember that we need to address the way some of our courts are being managed by magistrates. At times, we have seen lawyers declining to go to these courts because of the bad attitudes demonstrated by the magistrates. Why would we allow magistrates who are not performing their duties to continue denying Kenyans justice? Kenyans should not suffer in their own courts. This is not necessary. It is important, therefore, that serious reforms are effected in our judicial systems, so that Kenyans will not labour for justice.

With those few remarks, I beg to support.

Mrs. Noor: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this chance. I also wish to support this very important Bill, which is core to all our reforms. I want to congratulate the Attorney-General and the Minister for bringing the Bill. The role of the Commission and its functions are very important and key. One of the functions is to facilitate public facilitation which is a key principle and value in our Constitution. I would like the Minister to look critically into paralegal issues to ensure that we have paralegals all over who can create awareness and provide civic education. This is particularly with regard to any law that is being proposed, so that Kenyans can follow them up. We should have paralegal officers in the grassroots to conduct advocacy and educate the people. This is because the participation of the people is key in our reforms. Public participation being key in our reforms, then we need to carry all Kenyans on board.

The Kenya Law Reform Commission is very key and is at the heart of all reforms in this country. Therefore, it is important that they have some units below to carry out some of the functions particularly when it comes to issues of creating awareness and civic education. This is something which I did not see in the Bill, which is very crucial. I know

that it has touched on all the other issues, particularly on the systematic development in line with the values, principles and the spirit of the Constitution. These are issues that have been taken on board. The issues of paralegals, civic education and awareness creation are issues that even the developed world has put in place in terms of reforming all their laws. So, when the Minister is looking at the final draft, those are issues that he needs to carry on board.

With those few remarks, I beg to support.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, I stand to support the Bill. The Minister, together with the Attorney-General, needs to find a framework whereby legal education can be expended onto the general public.

You will appreciate that the new Constitution has necessitated the generation of many laws that members of the public are ignorant about. One of the dictums of justice is that ignorance of the law is no defense. We want to obey the law, but to the extent that we do not know them, it becomes hard. So, a framework needs to be created whereby the public is educated.

Secondly, now that there is going to be requirement of many laws in this country following the enactment of the new Constitution, the appointment of commissioners to this Commission should be done in a manner that inspires public confidence. To that end, I want to suggest that, maybe, unless something else forbids, an amendment could be brought, so that the chairman and the commissioners are subject to parliamentary approval.

Lastly, I want to second the intended amendment by hon. Odhiambo-Mabona to the extent that Clause 10(2) be deleted. I think this marks drafting by the civil society who have perpetually demonized Members of Parliament. People retire from the Executive to come and join politics; people retire from the Judiciary to come and join politics. A Member of Parliament retires and subsection wants him to wait for ten years before he can join the Commission, even if he is such a distinguished lawyer like the ones we have in this House.

With those remarks, I beg to support.

Mr. Kathuri: Mr. Temporary Deputy Speaker, Sir, let me also take this opportunity to support this Bill. It is timely. We have suffered in the hands of lawyers. I think the earlier this Bill becomes law the better. I cannot fail to comment about the number of times--- I do not want to mention the name of the specific lawyer, but there was a lawyer in Ukambani, whose vehicle never used to have insurance cover, because he believed that the he was law unto himself. I remember there were a number of claims he raised with insurance companies, most specifically the United Insurance Company because I happened to have been dealing a lot with United Insurance Company. Fifty per cent of those claims were generally fake. After the United Insurance Company went under, the lawyer also went under. He was not able to survive because he survived on the income from the United Insurance Company. This income never used to be forwarded to the claimants. Just like my colleague, hon. Mututho, mentioned, at the end of the day, he only received a bill, even if he had paid a deposit, all the money was justified by fictitious expenses; you find that the claimant ended up with nothing.

I remember there was even an advocate who was a tenant in one of the co-operative buildings within Embu. He had stayed there for over 15 years. Unfortunately, he was acting on behalf of the client who was the landlord. He ended up with really

inflated bills. He used to stay there without paying any rent. Some of these issues are very disturbing.

I hope the Attorney-General will ensure that all these matters are captured, so that this Commission will deal with lawyers who take advantage of the inability of the clients to meet litigation expenses and get away with it.

With those few words, I beg to support.

The Temporary Deputy Speaker (Prof. Kaloki): Now, I call upon hon. Wamalwa 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 hon. Members for supporting the Bill and for their very valuable contributions. We welcome the amendments but I just want to assure them that the other day as we paid tribute to the 10th Parliament, indeed, we should have paid tribute to Kathurima and his team. The quality Bills that came to this House, the credit we have been given as a House for passing very good laws, and the Bills that came also came from the Kenya Law Reform Commission; people who went beyond the call of duty to give us those Bills. We do hope that once we have passed this Bill, we will be able to another leader for this Commission as able as Kathurima. We wish him well at the Court of Appeal where he will be serving.

We want to assure hon. Members that we will take on board all the suggestions they have made. We also want to assure them that this Commission will play a very critical role in advising the county governments so that whatever legislation we will be having from there will also be quality and we can maintain standards in all the 47 counties from very highly professionally qualified Kenyans who will be serving this Commission.

With those few remarks, I beg to move.

The Minister for Transport (Mr. Kimunya) seconded.

(Question put and agreed to)

The Temporary Deputy Speaker (Prof. Kaloki): Next Order!

MOTIONS

ADOPTION OF REPORT ON REPLACEMENT OF OUTGOING MEMBERS (NON-CITIZENS) TO JMVB

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on replacement of outgoing Members (Non-Citizens) to the Judges and Magistrates Vetting Board laid on the Table of the House on Wednesday, 2nd January, 2013.

The proposed members of the Judges and Magistrates Vetting Board were brought to the Committee but the Committee was not able to make a positive decision about them for the reason that the non-citizen members of the Board are still serving and it is hoped that by the time their term lapses, the Eleventh Parliament will be in place.

The Committee felt that the absence of even a single member of the Board would not affect the ongoing operations of the Board. It was also felt that there were also issues being raised in terms of the way they were appointed.

As a Committee, therefore, we feel that we should keep this matter pending until the Eleventh Parliament comes into place. It is the feeling of the Committee that there is an attempt to overload the Committees at this time, and we are not having a lot of opportunities to scrutinize the matters that come before us. So, we will still have time next time, when we will be looking at the matter. I am, therefore, assuring the House that there is no gap that is going to be left, and that the process of vetting the judges and magistrates will still continue. The Board has already completed the process of vetting the judges. It is now about to embark on the vetting of magistrates. Everything is in place. Therefore, I urge the House to adopt the Report.

I will ask my colleague, hon. Millie Odhiambo, to second the Motion.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I second.

(Question proposed)

The Temporary Deputy Speaker (Prof. Kaloki): Yes, hon. Onyancha.

Mr. Onyancha: Mr. Temporary Deputy Speaker, Sir, I rise to support the Motion and also commend the Committee because it has had a lot of problems in the past year. It is good to see that they are now working in cohesion. I wish they could have done that previously to save the House a lot of hustle.

I support.

The Temporary Deputy Speaker (Prof. Kaloki): Committee Chair, since there are no more hon. Members willing to contribute, you can proceed and reply.

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

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Baiya, you have done well. The Chair notes the good work that you and your Committee Members have done.

(Question put and agreed to)

The Temporary Deputy Speaker (Prof. Kaloki): Next Order!

ADOPTION OF REPORT ON NOMINATION OF MR.
HALAKHE D. WAQO AS SECRETARY/CEO OF EACC

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion.

THAT, this House adopts the Report on the Departmental Committee on Justice and Legal Affairs on the Nomination of Mr. Halakhe Dida Waqo as Secretary/Chief Executive Officer to the Ethics and Anti-Corruption Commission (EACC) laid on the Table of the House on Wednesday, 2nd January, 2013.

Mr. Temporary Deputy Speaker, Sir, the Report relate to the nomination of Mr. Halakhe as the Secretary and Chief Executive Officer of the EACC. The Committee interviewed the candidate and was satisfied about his suitability for the position. He has

already served in another Commission for which he was interviewed and went through the process of vetting through the same Committee. The Committee is satisfied that he will be suitable and he will perform his duties in the Ethics and Anti-Corruption Commission (EACC).

This is a Commission which has been affected because there was a previous appointment which did not go through. It is very important that Commission which is very relevant to the efforts to combat corruption is put underway. This appointment is, therefore, very important to ensure that this Commission becomes operational.

I beg to move and request Mrs. Millie Odhiambo-Mabona to second.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I second.

(Question proposed)

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I stand to support this Report on the nomination of one Halakhe Waqo.

Section 16 of the EACC Act (No.22 of 2011) provides for the process of appointment of a Commission Secretary. The Act stipulates that this must be done through open, transparent and competitive process. I want to commend the Commission because it has done that.

Finally, Mr. Halakhe Waqo is a Kenyan. He has worked both in the private and public sector. Mr. Halakhe Waqo is an academician. He has written many papers. Mr. Halakhe Waqo has a curriculum vitae (CV) that is required for this kind of position. Above all, Mr. Halakhe Waqo represents the marginal community of this country.

For the last four years, I have been a Member of Parliament who has been agitating for an Anti-Corruption Authority that is not rhetoric; that is not playing to the public galley. I think that under the leadership of Mr. Halakhe Waqo, we will have a vibrant EACC in this country. I support the appointment of Mr. Halakhe Dida Waqo, a Kenyan from the pastoral community.

I support this Report, Mr. Temporary Deputy Speaker, Sir.

Mr. Gaichuhie: Mr. Temporary Deputy Speaker, Sir, I also want to support this Motion and thank the Committee for bringing this name. Mr. Halakhe is a reknown citizen of Kenya. He is somebody who is well-educated and versed in his kind of work. We also want to hope that Halakhe Waqo will steer the Ethics and Anti-Corruption Commission to greater heights. We do not want populists. We want people who will really fight corruption because that is one vice that is really hurting Kenya.

With those few remarks, I support the Report.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): First of all, I really wish to say that we need professionals who are above board to actually be in charge of this particular organization.

I want to confirm that Halakhe Dida Waqo is a very capable professional, who can actually steer this organization to what we want. For this country to attain Vision 2030, we actually have to have zero tolerance towards corruption.

I support this appointment and I am sure he will do a superb job.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support the appointment of Mr. Halakhe Waqo. I have read about the CEO for that organization for seven years. Kenyans have been treated to lies that John Mututho faces economic crimes.

I want to tell you that John Mututho has never faced any of those. It appears even in reports in this Parliament. But because I believed in oranges when Kikuyus were supposed to believe in bananas I still pay a price. Those are the kind of people who have headed the anti-corruption body.

It is a shame that even now with modern technology, somebody like John Mututho is being accused of not paying taxes to KRA; they cannot find out whether the KRA are demanding any taxes from John Mututho. Nevertheless, the matter is in court and we will leave it at that.

Mr. Halakhe does not need to come from the marginalized groups; he needs to be a human being to note that the utterances and the kind of things that you do and he does using his powers--- Abuse of his powers will truly affect the lives of so many people. I have lived from the year 2005 with that nasty image of the EACC, KACC and nobody is good enough to come and clarify to the nation what the story is. May Halakhe do us proud! He should get all the corrupt people who are taking 30 per cent of our national Budget in corrupt deals and take them to court but not sit there as a political tool and fix at will those people who are of divergent views.

I support.

Mr. Keynan: Mr. Temporary Deputy Speaker, Sir, I also want to commend the Chairperson of the Committee on Justice and Legal Affairs and other hon. Members for the commendable work they have done over the years. I would like to say that the appointment of Halakhe Dida Waqo, though it has delayed for some time for reasons that we, of course, all appreciate, actually comes at a time when this country requires a functioning Ethics and Anti-Corruption Commission. A very important organization like this one cannot function without a CEO.

I know that Mr. Halakhe is a highly educated person, a go-getter and somebody who will work very hard and meet the expectations of the 40 million Kenyans, and other people who live in this country and wish this country well.

Mr. Temporary Deputy Speaker, Sir, it is critical that as a country we invest in the strengthening of institutions. It is only working institutions that can save this country. The era of one-man-driven institution is long gone. Therefore, if we have working institutions then we will not be worried, because it is the institutions that will be held accountable and will make sure that the rule of law is followed. Therefore, what we are doing right now is to further ensure that the different institutions that are tasked with managing public affairs work according to the laws of the Republic of Kenya.

Mr. Temporary Deputy Speaker, Sir, finally, we need to demystify the fight against corruption. Every Kenyan talks about corruption, but at times when you talk about corruption then the definition is not very clear. We have now a commission in place. In the next few days, God willing, we will have the Chief Executive Officer (CEO) in place. Therefore, once we have a fully functional and operational Ethics and Anti-Corruption Commission, Kenyans will have the right to define the parameters of corruption and corrupt activities, and ensure that Kenya remains or becomes a corrupt-free society.

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

Mr. Onyancha: Mr. Temporary Deputy Speaker, Sir, I want to support the candidature and the recommendation of the Committee on this appointment. Of course, I

have to raise an issue and concern about the lack of a chairman of this very important institution. I hope that this can be brought to a closure soon.

Mr. Temporary Deputy Speaker, Sir, I want to make a rather controversial point, that is, with regard to the Committee on the Implementation of the Constitution. We serve in the Committee with the Chairman and Vice-Chairlady of the Departmental Committee on Justice and Legal Affairs, hon. Baiya and hon. Millie Odhiambo respectively. We commissioned a report on all the senior commission appointments. I have studied that report and most unfortunately, the Chairman of the Departmental Committee on Justice and Legal Affairs comes from Central Province while the Vice-Chairlady comes from Nyanza Province. I want to state here that we are tending towards a situation where these two communities have started to be marginalized now because they have the President and the Prime Minister. I want to urge Parliament and the Committees to be brave enough to recommend able people from those communities, because as much as they are the majority in population, they are facing a situation where they are discriminated against due to past performance.

Mr. Temporary Deputy Speaker, Sir, I support.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, let me start by thanking the Chairman of the Departmental Committee on Justice and Legal Affairs, hon. Baiya, the Vice-Chair, hon. Millie Odhiambo and the Members of this Committee for a job well done.

Mr. Temporary Deputy Speaker, Sir, I note that Halakhe Dida is well lettered with very high qualifications and with a lot of experience. This is a Kenyan who will bring a lot of vibrancy and drive to the Commission, so that the required services from this Commission will be realized for the betterment of good services in this country.

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

Mr. Koech: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support this Report. I do not know Mr. Halakhe in person, but looking at his credentials, I think that this is a man who is very qualified and I believe that he will save this country.

We are aware of what is going on in the Commission. They do not have an active chairman as we speak today. Without a CEO also, the operations are paralyzed. This country can only be saved by this Commission because what is biting our country is corruption. We really want a very credible body that will serve this country. I want to use this opportunity to request the Commission to really act actively and firmly, so that this country can be saved in order for us to be able to move forward.

Mr. Temporary Deputy Speaker, Sir, I support.

Mr. M'Mithiaru: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this chance to support the appointment of Mr. Halakhe Waqo. I know Waqo as a Kenyan of good credentials and definitely he is going to do a good job. All I am saying is that the Ethics and Anti-Corruption Commission is a serious commission that staying without a substantive Chief Executive Officer (CEO) is actually a disservice to Kenya because we know what the commission is supposed to do. What I would like to say is that we support the nomination of candidates but when they occupy their offices they grow some other horns. I have not known Waqo in this respect and so I am sure he is going to do a fantastic job to fight corruption in Kenya without fear or favour and especially since he comes from the pastoralist areas. I am sure he is going to handle Kenyans without fear or

favour and without saying that he is after big fish or small fish. So, we wish him well and I am sure he is going to clean up that place.

Mr. Magwanga: Mr. Temporary Deputy Speaker, Sir, I rise to support the candidature and I want to say that I do not know Halakhe Dida personally but I will only support the recommendation by the Justice and Legal Affairs Committee.

Mr. Temporary Deputy Speaker, Sir, corruption in this country is so alarming and it is crippling the country. I also want to state that if you look at the way this country is run on a daily basis, what is being misused or mismanaged is more than what is being spent. Unless we get somebody who is thorough in his work, we are likely to go nowhere. I want to support the candidate on condition that the gentleman acts by not applying the law selectively.

A number of times we appoint and approve candidates but once they assume office, they behave as if they are angels. They do less and talk more. Time has come for the people we are appointing in these positions to act tough and be equal to the task. I want to wish him well in his new appointment and we want to see the big fish being netted and brought to book. Unless that is done, then we will be doing nothing in this country.

With those few remarks, I support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I want to thank the Committee for their recommendation for the appointment of Halakhe Dida Waqo, a highly qualified Kenyan and an individual whose credentials are unquestionable. In my Ministry we have had the pleasure of dealing with him before in another commission which is under our Ministry, NCIC. When we forwarded his name to this House, we knew that he had gone through a very competitive process. From the initial list of 28 applicants, he made it to the top five and when the Committee recommended that he be appointed, it is another feather in our cap as a House for having given Kenyans some of the most highly qualified people to serve in different commissions. This House has gone down in history as one that has done quite a lot in terms of ensuring this country gets the second Prime Minister after Jomo Kenyatta through the National Accord, the first President of the Supreme Court and the first Inspector-General of Police whom we approved the other day. When it comes to the fight against corruption, this House also has a record of being the slayer of the dragon right from Ringera to my very good friend PLO Lumumba, to Matemu and now Halakhe. This is something that must be appreciated and it comes at a time when the war against corruption is faltering because of the paralysis that had set into this Commission. As a Ministry, we have recommended the appointment of the CEO. It is going to be very key in ensuring the operations of this critical Commission. We hope that after passing this test, Mr. Halakhe will be equal to the task. We know he is very able and can get things back on track. We also hope that the ongoing litigation will be finalized, so that we can have this Commission fully constituted to discharge its mandate.

With those few remarks, I want to thank the Committee and support this Motion.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I would like to thank all the Members for the support they have given. I would also like to assure this Committee that Mr. Halakhe is quite an experienced public servant. I believe he is also privy to what has happened to this institution. The most important thing will be for the country to give him support as he embarks on this work, so that we can help the institution to perform the

mandate that it has been given. I am sure he will live to prove to the country that, as has been observed by the Members, the most important thing is not about persons, but institutions. I believe Mr. Halakhe is going to make a difference. I believe he is also going to be given space especially by this House. The way it has treated the rest, let us, for once, make a break and allow this institution to function.

With those few remarks, I beg to move.

(Question put and agreed to)

ADOPTION OF REPORT ON NOMINATION OF
CHAIRPERSON/MEMBERS OF TSC

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the report of the Departmental Committee on Education, Research and Technology on the consideration of the nomination of the chairperson and members of the Teachers Service Commission (TSC) laid on the Table of the House on Wednesday, 2nd January, 2013.

The TSC is a very important Commission, being an independent Commission under the new Constitution. It deals with issues on the management of teachers who ensure and assure quality. Therefore, it is a very important Commission for this country. Under the new Teacher Service Commission Act, the number of commissioners has been reduced from 24 to eight plus the chair, bringing all of them to nine. It is this new Act that has enabled us to now appoint commissioners competitively through a panel. As I bring this report and the results, the panel that interviewed the chairperson and the commissioners was chaired by a very eminent educationist, Dr. James Kamunge. I believe all of us know him. They advertised the position of the chairperson and that of three commissioners because we still have five commissioners who are still serving up to end of June.

After the advertisement, it was very competitive in the sense that there were 29 eminent Kenyans who applied for the position of chairperson and five persons were shortlisted for the interview. For the position of commissioners, there were 209 Kenyans who applied and the panel shortlisted 16 persons for the interview.

In our Committee, I want to state here categorically that we had issues that were raised by Kenyans and we sat down to address those issues and concerns. After looking at them, we took a vote. The vote was whether or not we should continue to interview the people whose names were tabled in this honourable House. When we took the vote, we had four Members for and one Member dissenting. For the first time, I want to make it very clear that, as the Chairman of the Committee, I dissented. However, in the spirit of the minority having the say and the majority having their way, that is what we did. We moved on to interview the people who had been shortlisted for the position of the chairperson and those for the position of members.

For the purpose of record so that Kenyans understand why I dissented, it is not because I felt these people are not qualified. We did not have any issues with them. I want to indicate here three issues: On the position of the chairperson, there were five

Kenyans who were interviewed. Allow me to read out their names for the benefit of hon. Members. In position one, we had Dr. Lydia Nzomo who scored 80.3 per cent, second was Mr. Kiragu Wa Magochi who scored 73.3 per cent, third was Mr. Simon Kavisi with 70.1 per cent, fourth was Mr. Mbarak Said Twahir who scored 69.3 per cent and fifth was Mr. Ismael Bulu Hassan who scored 61 per cent.

In the report that was presented to the Committee, one Dr. Lydia Nzomo and Mr. Mbarak Said Twahir were not recommended or forwarded to the two Principals. The information that was given to the Committee is that they were under investigations by KACC. That is a report that we did not get so that, as a Committee, we would address the matter and understand the circumstances and reasons that led to their names not being forwarded.

Mr. Temporary Deputy Speaker, Sir, my feeling and understanding then was that if those were the reasons; that somebody is under investigations, for stopping those people then, we would be setting a bad precedence as a House. That, if one is under investigation, then that person is not fit to be appointed to any position. Take note that one Dr. Lydia Nzomo is the CEO of the Kenya Institute of Education which will soon change to Kenya Institute of Curriculum Development. That was one issue that I felt was not good. At the end of the day, among the five who were interviewed, the three names were forwarded to the two Principals.

The second issue that I felt required clarification - and which we unfortunately did not get - was that among the people who were shortlisted for interview for the positions of the five commissioners, in position one we had Mr. Cleopas Tirop with 81.4 per cent, position two was Dr. Salome Gichura with 78.7 per cent.

Number three, we have Julius Jwan with 71.8 per cent. Number four was Fredrick Haga Ochieng with 71.6 per cent and number five was one Adam Sheikh Abdullahi with 70.3 per cent. Number six was Sadia Abdi Kontoma with 69.7 per cent and Mr. Kahindi Ziro James at number seven with 68.6 per cent.

When the names came to this House, the first name that was read was that of the gentleman who was number seven followed by the gentleman who was number four and then the gentleman who was number five. That was the list that was forwarded to Parliament. The concern that I had then was that this is the Ministry of Education where we believe that meritocracy comes number one. Unfortunately, we did not get clear indications on the same on why the number one was dropped.

Two, if this had to do with regional balancing, then unfortunately, again the wider Rift Valley region will miss out being among the eight commissioners who will be serving in the Teachers Service Commission (TSC) up to June this year.

The third point is that I wondered whether there was allergy for the women in this Commission because the number one for the Chair was rejected. The number two among the Commissioners was also rejected; both of them being ladies. I just wanted to make that clarification so that we understand, as House, why for the first time the Chairman dissented on a principle that is not very clear. However, having said that, we interviewed the members.

The Temporary Deputy Speaker (Prof. Kaloki): Order! Mr. Koech, are you supporting that report?

Mr. Koech: I am coming there, Mr. Temporary Deputy Speaker. I was trying to explain why I dissented, in the first place, to interview those people. However, at the end

of the day, we carried out the interviews and our report recommends the Chair as indicated and the three members as indicated. I just wanted Kenyans to know why I dissented.

I beg to move and call my good friend, Mr. Njuguna, from Lari to second.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir, for the opportunity to second this very important Motion and not dwelling on many issues, I note that there were serious omissions done by the panel in getting the final list of the people to serve in the Commission.

I would, therefore, suggest that when the next replacement of this Commission is done sometimes in June this year, it will be prudent to consider membership from the Rift Valley and mainly Mr. Tirop who is highly qualified and who got very high marks.

Secondly, as I conclude, in all the commissions that have been formed in this country recently, Central Province has been ignored, neglected and marginalized. This is the only commission that we have a very experienced person who has been identified by the two Principals.

Finally, it is important to recognize that the five Kenyans are all qualified to serve at the TSC.

With those few remarks, I beg to second the Report.

(Question proposed)

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I support this report of course with the concerns of the chairman of the committee. From the outset, I want to be on record that very key stakeholders in the education sector have raised concern and I think the chairman did not put it right. The Kenya National Union of Teachers (KNUT) raised their concerns. The Kenya Union of Post Primary Education Teachers (KUPPET) raised their concerns. The Kenya Private Sector Alliance (KEPSA) raised their concerns and above all the Minister for Education raised his concerns on how these names were realized.

Mr. Temporary Deputy Speaker, Sir, we are not saying that Mr. Kiragu, Mr. Abdullahi, Mr. Fredrick Ochieng and James Kahindi Ziro are not qualified. I want to go on record that come June this year when the replacement of the five TSC Commissioners will be done, Kenyans who have been left out must be considered. We are concerned that the Committee of Parliament in its wisdom has recommended that these names be approved in Parliament. I wish the issues that were raised were considered so that we make sure that it is all inclusive; that anything that we do in this country should have public participation and stakeholders' participation. I am sure the coming up with three commissioners and one chairman with a score card which has been put here contradicts why these names were selected.

We are saying that we have five more vacancies left. The Ministry of Education should borrow a copy of the HANSARD so that for some of us who will come back to this House, when these names are brought back this year and more so under the Jubilee Government, regional balance and merit will be considered.

I support and urge my colleagues that we support the Report.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I rise to support. I do not know any of these guys but if the Committee says they are good,

who am I to say they are not good? However, we have a problem and I would like to ask the Attorney-General as soon as practically possible to set up a committee to look into our Constitution. Our Constitution requires certain amendments and the first one is that we made a mistake. We thought we are helping but we actually made a mistake when we said that all appointments should reflect regional and ethnic balance and many others. That is a recipe for chaos and that is exactly what is happening because it becomes difficult to justify why number one, two or three missed out and yet another person number four, five or seven is then appointed. That is the basic culprit. We thought we were helping by saying the above but the reason why the United States of America (USA) has done so well is because they consider merit and merit only. It does not matter whether all the top officials come from one sub-location, village or family but the issue is: Are they competent? Are they the best? That is what we need. We need meritocracy. That is what we need and not this issue that we put into the Constitution. We actually ethnicized our Constitution. We thought we were helping, but now it is coming to hit us back. This is not the first commission. We had one where number one, two and three were not picked on the basis of ethnic, regional, tribal and gender balance and so many other considerations. So, my request is that a time has come for the Attorney-General to set up a committee to look at some of these issues. If this country is to become a working nation, let us consider merit and merit and merit alone!

With those few remarks, I beg to support.

Mr. Gaichuhie: Mr. Temporary Deputy Speaker, Sir, I also want to support the report of the Committee. This is the first time that we are having the TSC anchored in the Constitution. I know these people were vetted. They got marks and the best got the positions although there are some who were denied positions because they were under investigation. Yes, it could be precedence, but if people are under investigation and we approve their names yet we say that Kenya should get rid of corruption, are we sincere? I want to support and say that for people who were vetted and found unfit, we should not be asking for anything less than that.

So, I support the report of the Committee.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I wish to oppose this report. In fact, the Chairman himself opposes the report.

(Applause)

I have a lot of regard for this gentleman called Dr. James Kamunge, who was the chair of the panel. There were nine panelists and they were marking individually. Dr. Lydia Nzomo, PhD, scored 84. Next was 77. What reason can we give? According to the report, they are saying that they could not pick her because there are some cases with the Ethics and Anti-Corruption Commission (EACC) which are going on, which even Dr. Lydia Nzomo does not know about. Do you have double standards? Ministers here are prosecuted by this House, reports are done by the House and when investigations are going on, they are reinstated to office. The same appointing authority which reinstates the Ministers is the same one that is listening to that story of "some investigations going on".

Secondly, I know of a very sad case. If you look at the case of Maria Nzomo in the Gender Commission, she was number one.

Mr. Ogindo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am

concerned with the manner in which the Member for Yatta is using his hand. He keeps pointing in the same direction. Is he in order?

The Temporary Deputy Speaker (Prof. Kaloki): And what direction is that, so that the Member can be clear?

Mr. Ogindo: Opposite where he is sitting!

The Temporary Deputy Speaker (Prof. Kaloki): All right! Hon. C. Kilonzo!

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I do not know whether he wants me to turn and point at him.

The Temporary Deputy Speaker (Prof. Kaloki): Proceed, hon. C. Kilonzo! I think that was on a light touch.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, if you look at the case of Maria Nzomo, the letter from the then Secretary to the Cabinet, Mr. Muthaura, was that they were dropping her because she is a Kikuyu. This was just an innocent woman who happened to have been a Kamba with a Kikuyu name. So, this business of telling people that “we are not going to give you this position when you are number one based on your tribe”, needs to stop. We need to be very clear. If we have decided that this particular community will not get this job, tell them:- “Please, if you are a Kikuyu, this slot is for other tribes. Do not apply. If you are a Kamba, this slot is for other tribes. Do not apply”. Why bother going for an interview where you become number one and you are not picked? I think Parliament has to come out very strongly and this report should be the first one to be sent back. Where women are concerned, in fact, I would have thought the two Principals would have said “since there was a woman concerned, go back and get other women as a substitute for this one.” They were very comfortable with getting their own; another man called them “mankind”. This is not acceptable.

Parliament has to come out very strongly and say we reject this. Let us forget. All the people who have been picked, we have no issues with them. But if number one cannot get a job, if number two cannot get a job, if number three cannot get the job, then what is the point of an interview.

Mr. Temporary Deputy Speaker, Sir, I wish to oppose.

Mr. Langat: Mr. Temporary Deputy Speaker, Sir, I also rise to oppose this Motion. I think everything should be done according to merit. If someone goes for interview, they are number one, but they are not taken, number two is not taken and number three is not taken, then it means there was a problem. There is also the issue of gender balance because all of them are men. You cannot say number one is not fit and then you start from number seven. I think this panel was not fair. To justify what you do, I think it is always better to take number one, number two and number three. It is like a competition. If today, you say you are not taking number one, number two and number three in athletics and then you want to take number seven, then you will not be forming any team; you will be forming a poor team. If you want to improve the quality of education--- Aristotle said that education is preparation for quality life; we have to get the best people to change education and improve life.

I oppose.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I rise to oppose this report. In opposing this report, I want to give different reasons. I do not agree with hon. Githae that we did a wrong thing by talking about balance. If you come from communities that have not been regarded in the past, that is the best thing we have done

in the Constitution; for once, we can hear the names of communities that we never heard in this country, because the five dominant tribes have been taking up all jobs and leaving minority communities without any jobs.

Mr. Temporary Deputy Speaker, Sir, we provided in the National Cohesion and Integration Act that once you reach the 30 per cent mark, then leave chances for other communities. Yes, we do appreciate that the big communities have numbers, but the small communities must also be represented. So, once you reach the 30 per cent mark, please have regard for others. Kenya belongs to all tribes. It is not for only a few tribes.

Mr. Temporary Deputy Speaker, Sir, therefore, we have to live with the fact that there is ethnicity, gender, disability, age and diversity in this country. The sooner we realized this, the better for us.

Mr. Temporary Deputy Speaker, Sir, unfortunately this is not the reason that I am talking about this report. If you look at the way they conducted the interviews, it was very easy for them to conform to the Constitution from a regional and gender perspective. But what this panel did was to turn a blind eye to all that. You find that there is a woman leading; absolutely for no reason, they leave her out on the basis of rumours. I want to talk of rumours because even in Parliament--- Even if they had a situation where somebody was saying that your name was before Ethics and Anti- Corruption Commission, you must be given chance. Even the rule of law requires that you must be given a chance to defend yourself. You cannot just wake up one day and say that we are not giving Millie a position because she stole someone's cow. Please, find out. There was a time when I was in Parliament and some auctioneers went to attach things in my house; it was just fortunate because I had tight security. When I came later to find out, they were attaching the property because some Millicent Odhiambo owed them money. My name is Millie and not Millicent. There are a thousand Millicent Odhiambos in this country. So, if you want to attach my property because of Millicent Odhiambo, I will never get anything. That is why everybody has a right to defend themselves. So, if you actually look at the reason they gave, it is the flimsiest of reasons I have ever heard. If as a Parliament we pass such a report, we will actually be a rubber stamp for the executive. We will have no integrity ourselves, because we will not have even done any proper interrogation.

Even if you look at it from a regional perspective, honestly, why would we, in such a big Commission, miss out a person from the Rift Valley? If you look at this report, you will see that there are areas we are repeating. I am Kenyan. I am speaking knowing that this report may not favour my region but we must try and become Kenyans. If you start discriminating against women---

I know you men. When you sit in the men's club, I am not Luo. I am, first, a woman to you before I am Luo. So, I will defend women before I defend my tribe. You always do this. That is why you can comfortably sit at the Supreme Court and decide that something which is very clearly constitutional is progressive. Now that this woman has become number one, you want to tell her "progressively" to wait for six months. Six months *kitu gani?* This is her right!

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Millie Odhiambo!

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, one day we will strip naked because you are frustrating us here.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Millie Odhiambo, which men are you talking about? You said “I know you men”. Which ones? We are Members of Parliament.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker---

An hon. Member: Proceed and strip now!

Mrs. Odhiambo-Mabona: I will strip if you start doing this to us. I stripped in the past and I will do it again.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Millie, just be objective, so that you can conclude your remarks.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I am trying but it is the wearer of the shoe who knows where it pinches. That is why you find that even though I am the front-running candidate, all the men are ganging against me and saying: “You would rather a man because---“

Mr. Temporary Deputy Speaker, Sir, let me relax. I will tell you about it some other day. As a woman I feel that if a woman is qualified, it does not matter whether she is Kamba or Kisii.

Mr. C. Kilonzo: On a point of information, Mr. Temporary Deputy Speaker, Sir.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I am willing to be informed by him because he is a gender sensitive man.

The Temporary Deputy Speaker (Prof. Kaloki): Proceed, hon. Kilonzo.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I wish to inform hon. Millie that what the men did when it came to picking the Commissioners, Dr. Salome W. Gichura was number two but the men went ahead and picked a man who was number four, another man who was number five and another man who was number seven. So, this shows you how the men in this country are very unkind to women.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I am glad that he has shown that because I was going to say that even if you want to be ethnic, we have Gichura. Surely, why pick another Kikuyu man? This is a Kikuyu woman, pick her. This has nothing to do with region. It is gender. That is why I am telling you that I will be, first, a woman before I am Luo or Suba because when it comes to this, you start looking at the gender issue before looking at where I come from. So, I am opposing this Motion.

Mr. Temporary Deputy Speaker, Sir, if you go on with this trend, women will be picketing. I am sorry; it is not you, Chair. It is only that when you sit there you represent--

With those remarks, I oppose.

(Laughter)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Millie Odhiambo, you were doing very well but in the last part where you said that when I sit here I represent--- Could you be kind to the Chair? Put your microphone on, so that I can allow you to be kind to the Chair.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I withdraw that bit especially because you are “corded” and you are taking the next Government, which will be sensitive to women.

The Temporary Deputy Speaker (Prof. Kaloki): Thank you, hon. Millie Odhiambo. You have really been passionate on gender issues. You have done well to bring out the issue of gender sensitivity.

Yes, hon. Sofia Abdi.

Mrs. Noor: Mr. Temporary Deputy Speaker, Sir, this is a very important Commission and I want to go on record. While in Naivasha, as the Parliamentary Select Committee, I was at the top of my voice trying to convince my colleagues to make the TSC a constitutional Commission. I am happy that today the TSC is a constitutional Commission.

Having said so, I want to take on board the frustration that the Chair of this Committee is suffering. It is the same frustration I went through, as the Chair of the Committee that was nominating Commissioners to the National Gender and Equality Commission at one time. When the name of Maria Nzomo came up as number one and people picked another person, it became a problem. So, I understand the frustration that the Chairman is going through. I know women have suffered. I know that because I have been a crusader in advocating for the two-third principle. I have gone all over this country talking about the two-third principle. I am very disappointed with the Supreme Court for the ruling it made.

Mr. Temporary Deputy Speaker, Sir, women of this country have suffered. But we have decided that we are going to send a strong message to this country come 5th March, 2013. We will have more than two-thirds women in this Parliament. That is the time we will make enabling laws for this country because women are sensitive to the needs of this country and will make those laws.

Having said that, I want to support the Motion.

Hon. Members: Oppose! Oppose!

Mrs. Noor: No. I am supporting.

Mr. M'Mithiaru: Mr. Temporary Deputy Speaker, Sir, I stand to oppose this report in the strongest words possible.

I think this House should not be put into a play of double speech. I have heard Mr. Githae talking about meritocracy. I have heard Mr. Duale talking about how even KUPPET, the Minister and KNUT complained. All the arms that support education complained. If we can only borrow a word from Mr. Langat, issues of education are like a race. You cannot balance somebody who is going for 100 meters and say that since you want to represent the whole of Kenya, then you get the fifth person to represent Kenya. Let us just look at the things the way they are. We want to reform the education system in Kenya. But here, we are rubbishing the Kamunge Report; a renowned educationist in this country and picking issues that are not based on merit.

Mr. Temporary Deputy Speaker, Sir, issues came up that somebody was under investigations. Investigations have been conducted in Kenya so many times. But I am told the lady called Nzomo is the Managing Director of the Kenya Institute of Education (KIE). Has she been told to step aside pending investigations? Who is that person who became the judge and proved somebody guilty even before the investigation are done, if there are any? Did the Committee also even summon the Ethics and Anti-Corruption Commission to find out what kinds of investigations are taking place?

Let us not bring issues that are far-fetched. I am surprised that even my colleague and friend, Mr. Duale says that since there are some other Commissioners to be appointed

in June, let us look at commissions. Again, we thought they were going to go through due process to get the right person. Region is not the issue here; the issue is who is qualified to steer the Commission that takes care of the educational standards in this country.

Mr. Temporary Deputy Speaker, Sir, let us find any other reason but---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. M'Muthiaru! Let us hear Mr. Duale first.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I want my very good friend and a number of colleagues to declare their interest as far as Nzomo is concerned. I want to say here very clearly that the Constitution that this House passed envisaged regional, ethnic and other factors when appointments are being made. It has been done in all the commissions that this House has passed. I do not want the Member to mislead the nation. We have mentioned a number of issues---

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Duale, I am trying to get your point of order.

Mr. Duale: My point of order is, is the hon. Member in order to say that ethnic and regional factors are within the Constitution? Is he in order to say that this supersedes the merit? Merit is there but other factors like region---

Mr. M'Mithiaru: Mr. Temporary Deputy Speaker, Sir, I am concluding but let me just say that although we look at the regional issues, when it comes to standards on education there is no compromise. It is just like a race, as I said.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. Duale has challenged hon. Members to declare their interest in relation to Prof. Nzomo. I want to declare my interest. It is good to be fair. She is a woman and I am a woman. That is my interest. I do not know her. She is a woman and I am a woman.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. M'Mithiaru, do you have any interest to declare?

Mr. M'Mithiaru: Yes, I have. I am a lover of education, good performance and From the qualifications that, that lady has, I can see she can take the Teachers Service Commission to the next level, and all the countries of the world will come here to emulate what Kenya will have done.

With those few remarks, I would like to conclude by saying that let us return merit as recommended by the Kamunge Committee.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, we have about six or seven of you willing to contribute. Let us take about three minutes to make our remarks, so that we can conclude this business.

Mr. Chepkitony: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to contribute. I do not support this Motion. I oppose it on the grounds that the Committee of this House did not do a good job. They just followed blindly what was recommended by the panel. They should have corrected the report before it was brought to this House.

If we are going to really follow merit, even when you look at the original balance, you get the best and maybe later you can see how to correct it and not to drop somebody who is number one; they should have taken those who were qualified to do a better job. I think there was no good job done in this. I think the Committee of this House needs to learn a lesson from this. We need to reject this report so that the Committee can do a better job in future. Although the gender rule has been suspended and we say it is

progressive, still it is time we started using it. Where we have women doing well in the interviews, they should be given opportunities. She should have been appointed as one of the nominees to this commission.

A shoddy job was done here and I think we have a duty to correct what was done wrong. It is our responsibility to do that.

With those few remarks, I oppose.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, initially I had difficulties understanding where the Chair was coming from, and where he was going to. But now I understand. I want to also disagree with Mr. Githae. The intent of the Constitution and the spirit of it is to bring all Kenyans on board, even those in far flung areas.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Ogindo, what---

Mr. Ogindo: I am opposing this Motion. Can I proceed?

The Temporary Deputy Speaker (Prof. Kaloki): I wanted you to clarify what exactly you meant when you said--- Now you understand the Chair, and where it is coming from.

Mr. Ogindo: And why he had difficulties in declaring whether he supported or not.

Mr. Temporary Deputy Speaker, Sir, you will appreciate that the teaching fraternity today is predominantly in the hands of women. It would be important that opportunity be accorded to women to a higher degree, up to about not less than 50 per cent, particularly in the management. But above all, it is very disheartening to see somebody who merits a position relegated or ignored completely. You want to put yourself in such shoes and it is regrettable.

Mr. Temporary Deputy Speaker, Sir, I also want to point out that I oppose this with a lot of difficulty, given that Parliament is just about to go on recess and we needed to constitute the Teachers Service Commission. I think that two months will send a strong message out there that we really need to work on merit.

Mr. Temporary Deputy Speaker, Sir, I oppose.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, the process and standards of appointing officers to these commissions have been set by the law. The standards once set are really to be followed and at the end of the process, the public has a legitimate expectation; that even if the process does not possibly produce what the public expected, at least, there is substantial satisfaction by the public. There could be issues that may be dividing or raising controversy but, at least, the majority should be satisfied. In a process like this, it does not really matter who the individuals involved are. But it leads to a process where we can see the kind of furore that is being raised. So, the essence of democracy is that there should be a gap between public expectations and what has really been brought about as a result. That gap should be narrowed.

Mr. Temporary Deputy Speaker, Sir, from what has transpired, number one has been left and then you go to number seven, and there is not even an attempt to give an explanation. It actually undermines the integrity of the whole process. The right thing is to reject this report outrightly. I am, therefore, opposing the report, so that we can ask this institution to uphold the law. It should know that the law has been enacted with a purpose and any other appointing officer – not just this Commission – when they are exercising power, should bear that in mind. If they really do not meet certain parameters and seem to

depart from the principle of merit, which they can do, they should come up also with an explanation which can go to assuage the public that the law was not just disregarded.

Mr. Temporary Deputy Speaker, Sir, I oppose the report.

Dr. Munyaka: Mr. Temporary Deputy Speaker, Sir, I rise to oppose this report.

Mr. Temporary Deputy Speaker, Sir, it is interesting to note that during this time and era some interview can be done in privacy in a boardroom, whereas we know that we are in a different era where the public needs to be involved.

Mr. Temporary Deputy Speaker, Sir, I have listened to the points that my colleagues have made and I do not wish to repeat them. I oppose the report for the basic reason that this interview was done in privacy and maybe due process was not undertaken.

Mr. Magwanga: Mr. Temporary Deputy Speaker, Sir, I rise to oppose this Motion in the strongest terms it deserves because I want to state here clearly that candidate number one was left under circumstances which are not clear. By only stating that he is actually under investigation that is not enough because no report was given at all. This very good lady is holding an office and this one is just a way of denying the right Kenyan an opportunity. The House should not be used as a rubber stamp.

Mr. Temporary Deputy Speaker, Sir, I want to state here very clearly that Mr. Julius Jwan, a visually impaired candidate, who ranked position three was left out under circumstances that are not known. In such a case, they are not actually sensitive to disability. So, they will continue to marginalize the disabled. How long will the people living with disabilities be denied job opportunities? I also want to say that the recruitment was gender biased because we left out women. Lastly, I want to state that regional balance is lacking. We have left out the entire Rift Valley without considering anybody. I know that Mr. Tirop is actually a very capable head and he served very well as the head of the union. In such a case, given the sensitivity of managing teachers in this country, I strongly oppose this. The Committee should actually consider their position and give us proper names.

With those few remarks, I oppose.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): Mr. Temporary Deputy Speaker, Sir, I support the report with a very heavy heart. I say “with a very heavy heart” because I happen to know this officer, Dr. Nzomo. At one time when I was an untrained teacher and we used to report to the Teachers Service Commission, this lady was known as one of the most efficient and very effective officers. That is why I am saying that I am supporting with a very heavy heart because I know she is a very capable person.

I want to reiterate what my colleague, Mr. Githae, said that meritocracy must never be sacrificed at the altar of ethnic or regional balancing. I will give you an example of what J. F. Kennedy did in 1963 when he became the president. He appointed his brother as an Attorney-General. When he was asked about it he said that his brother was the best and he could deliver. So, I think in future our Attorney-General should actually come up with rules that state or stipulate that at least the first three must never be altered or changed. When number one is not appointed then it is really a very sorry state of affairs.

I support women rights; I support rights of the disabled and children. Therefore, I support the Motion reluctantly and with a very heavy heart. We are sending a wrong message to the women of this country.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, looking at the candidate, Ms. Lydia Nzomo, you need to go through the history of personalities in Kenya to disqualify her. She has merit in her own way. She is a performer. This dragon called the Ethics and Anti-corruption Commission that has kept hon. Mututho himself as a suspect in court without ever taking him to court, cannot be a yardstick to making people miss positions that they have earned equitably. The power of a woman is now being felt in schools and students are now over 50 per cent. So, even without asking for any favours, over a very short time, within about ten years, these ladies are going to take over anyway. As long as you are taking a lot of beer for breakfast and avoiding *Mututho laws* and what you are supposed to be doing rightly, this will not work. It is not proper for people to keep on looking at regional balancing. I come from a place called Nakuru in the Republic of Kenya and I want to say, maybe for the last time in this Parliament, that from 1963 when they appointed one friend of the late Mr. Oginga Odinga as a Cabinet Minister, who was ably sacked by the father of my boss, namely Mzee Jomo Kenyatta in public, nobody has ever been appointed as a Cabinet Minister in Nakuru. Right now, we have registered about 700,000 voters, but I can tell you and I can swear with my shoe that nobody from Nakuru will ever be appointed to any substantive post or position because of this balancing thing. So, those who qualify by merit like hon. Mututho who got the Elder of the Order of the Burning Spear (EBS), not those who get it by chance, should be acknowledged. Much as would be expected, just like I did in 2005, when all the people from Central Kenya said that they must vote bananas and I stood with my bosses hon. Kenyatta, Raila and Ruto on the orange side and I was taken in.

Mr. C. Kilonzo: On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to inform my good friend that when it comes to regional balance, in as far as members who come from one community in Central Province is concerned, it does not include those members of that community who settled in the Rift Valley. It is a preserve for those members of that community who live within the Mt. Kenya region, in particular the Central Province who include hon. Kimunya and so on.

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. Are the two Members, hon. Mututho and hon. C. Kilonzo in order to give the impression in the House that the people of Nakuru have not been taken care of while the Chairman of the Transition Authority, Mr. Kinuthia Mwangi, is registered as having come from Nakuru County? The Head of Public Service himself has roots in Nakuru County. The immediate former AP Commandant is actually seeking office in Nakuru County and several others we could name, hence it is not true that the people of Nakuru have been marginalized. Perhaps, the Member may not be aware of his people in the county.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I sympathise with hon. Kimunya because he seems to have lost his geography. The Head of Civil Service does not even know where he comes from. He is from Nyandarua, *mara* he is from Central Province; he is not sure! He is either from Mirangine or Lari. You cannot say that he comes from Nakuru.

(Laughter)

If you want to know the home of the former Commandant of Administration Police, it is exactly one kilometre from the junction of Karen where he has two homes. Thanks, he has two wives. That is where he comes from. He grabbed a piece of land which is mentioned in the Ndung'u Report and it is 200 acres in Elburgon. If that makes him come from Nakuru, then that is it.

For TA, it explains why TA is just there by name. It does not have a budget because it comes from Nakuru. It was a mistake to have somebody from Nakuru to be in that particular--- We must support the No.1 candidate. We must support the one who got 83 per cent because that is by merit.

I oppose.

The Temporary Deputy Speaker (Prof. Kaloki): Let me call the Mover now, hon. Koech, to respond.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I want to start by thanking hon. Members for their contributions and, especially, those who now share my concerns.

My understanding and the implication of this - and that is why I really needed this House to tell us - is that Dr. Nzomo is the CEO of Kenya Institute of Education (KIE). My understanding is that by by-passing that, we would be actually saying that she is guilty of the offence and, therefore, she should actually step aside from wherever she is now.

With regard to Cleopas Tirop, for purposes of clarity, he is the current principal of Nairobi School. He is the Chairman of the Kenya Secondary Schools Heads Association. He has been the Chairman for the last four years. Before, then he was the Vice-Chairman of the same association for four years.

Thirdly, it is for us to note how the Teachers Service Commission operates. In this country, we have almost an equal number of male and female teachers. We have an almost equal number of male and female principals. Therefore, I would have really expected this Commission to have a gender ratio of 50:50.

However, having said that, I want to thank hon. Members for their concerns and I beg to move.

(Question put and negatived)

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, following the resolution of the House earlier today that the House sits until the conclusion of Order No.24, we have now come to the end of our business today. The House now stands adjourned until Tuesday, 8th January, 2013, at 9.00 a.m. Colleagues, I commend you for sitting for that long.

The House rose at 10.25 p.m.