

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 9th January, 2013

The House met at 9.00 a.m.

*[Mr. Deputy Speaker in the Chair]*

PRAYERS

PAPERS LAID

The following Paper was laid on the Table:-

The Report of the Departmental Committee on Defence and Foreign Relations on the appointment of the diplomatic service.

*(By Mr. Keynan)*

NOTICE OF MOTION

**Mr. Deputy Speaker:** Mr. Keynan, it is my presumption that you want to give notice of the same Motion.

ADOPTION OF REPORT ON DIPLOMATIC SERVICE

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

THAT, this House adopts the report of the Departmental Committee on Defence and Foreign Relations on appointment of diplomatic service as laid on the Table of the House.

QUESTION BY PRIVATE NOTICE

PROVISION OF OFFICE/ACCOMMODATION  
FOR COUNTY GOVERNMENT OFFICIALS

**(Eng. Gumbo)** to ask the Minister for Public Works:-

(a) What is the extent of preparedness in terms of provision of office and accommodation to officials of the County Governments immediately after the general elections due in two months time?

(b) Could the Minister confirm that all County Governments officials will have offices/accommodation by March, 2013?

Is Eng. Gumbo not here? We will leave this Question until the end.

## ORAL ANSWERS TO QUESTIONS

### *Question No.1844*

ASSAULT ON MS. CAROLINE CHEMUTATI/MR. PAUL KIBET BY APS

**Mr. Deputy Speaker:** Is Mr. Ruto not here? We will come back to the Question at the end.

### *Question 1836*

DELAYED PAYMENT OF DUES TO UNICEF  
SUPPORTED PROGRAMME EMPLOYEES

**Mr. Deputy Speaker:** Is the hon. Member for Molo not here? We will come back to the Question later.

### *Question No.1455*

RE-ALLOCATION OF PLOT NO.147 JABALI SFT

**Mr. Deputy Speaker:** Is Mr. Kaino not here yet? We will revisit the Question later.

### *Question No.1880*

PREPAREDNESS OF JUDICIARY TO HANDLE ELECTION PETITIONS

**Mr. Deputy Speaker:** Is Mr. Nyamai not here? We will revisit the Question at the end.

### *Question No.1700*

NON-FORMULATION OF VEHICLE EXHAUST  
EMISSION STANDARDS REGULATIONS

**Dr. Otichilo** asked the Minister for Environment and Natural Resources:-

(a) whether he is aware that many vehicles on Kenyan roads particularly diesel powered lorries and buses are emitting deadly fumes that are dangerous to human health and, if so, what the Minister is doing to curb the menace;

(b) if he could clarify whether NEMA has formulated and gazetted vehicle exhaust emission standards regulations and if so, whether he could table them; and,

(c) what mechanisms the Ministry has instituted for the enforcement of the regulations.

Mr. Deputy Speaker, Sir, I have not received a written answer.

**Mr. Deputy Speaker:** Do you wish to proceed and prosecute this Question?

**Dr. Otichilo:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Is the Minister for Environment and Mineral Resources not here? We will come back to that Question in the second round.

*Question No.1871*

NON-DEPLOYMENT OF OFFICERS TO ELLE BON/BARDAN REVO AP CAMPS

**Mr. Deputy Speaker:** Is Mr. M.M. Ali not here? We will revisit that Question later.

*Question No.1838*

BUDGETARY ALLOCATION FOR DESILTING OF MIANI (KAMBI MAWE) DAM

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

(a) whether she is aware that Miani (Kambi Mawe) earth dam has completely dried up causing shortage of water to the local residents including Kambi Mawe Secondary School;

(b) what measures she is taking to alleviate the grave situation on the ground; and,

(c) how much money has been set aside for desilting the dam in the 2012/2013 financial year.

Mr. Deputy Speaker, Sir, I wish to note that the Minister has not supplied me with a written answer but I am prepared to proceed.

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

It is true and I have just talked to him and realized that the answers we brought had not reached him but I have shared my copy with him. I am sorry he will get his copy.

**Mr. Deputy Speaker:** Mr. Kiilu, do you wish to proceed and prosecute the Question?

**Mr. Kiilu:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Proceed, Minister and answer the Question.

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

(a) Yes, I am aware that Miani Camp Mawe Earth Dam, a pan, actually had completely dried up and has silt causing shortage of water to the local residents including Camp Mawe Secondary School.

(b) My Ministry through the National Water Conservation and Pipeline Corporation had plans to desilt the dam. However, desilting could not commence due to rains which quickly filled the pan making it impossible for machines to work. My Ministry is therefore doing an additional dam downstream to supplement Miani Dam. My Ministry is sending a team of engineers to prepare a proper design for the additional dam to be ready by the end of this month.

(c) My Ministry through the National Water Conservation Pipeline Corporation has set aside Kshs6 million to desilt this pan in the current financial year.

**Mr. Kiilu:** Mr. Deputy Speaker, Sir. I raised this Question when this dam was completely dry and yet it is a major source of water for Kambi Mawe Secondary School and

there are other five greenhouses which are also drying up making it impossible for the youth who had made this a livelihood. I was wondering why the Minister does not have plans to desilt this dam in good time. The rains have started and she is saying that she will be doing something at the end of this month. Could she tell us how much money she is spending on desilting this dam including the additional dam that she has promised to construct so that these people can have a permanent source of water?

**Mrs. Ngilu:** Mr. Deputy Speaker, Sir, I have said that we could not do it when we should have done it and now it has water, so we cannot do it right now. However, our engineers have sighted a different place where they are now going to do another pan costing Kshs6 million this financial year because we still cannot drain this pan. Therefore, I hope the youth in that area can use the water that is available now and then they can get additional pan but in 2013/2014, we shall desilt the available pan.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, is it not possible for the Ministry of Water and Irrigation to borrow from the Ministry of Roads. The Ministry of Roads has a permanent programme of maintaining roads annually. Is it possible for this Ministry to consider desilting dams even if it is for a period of five years and know that it is automatic and should be desilted after this period and during the dry spell? This should be a programme that should be known for all the dams and it will ensure that we do not have issues of siltation.

**Mrs. Ngilu:** Mr. Deputy Speaker, Sir, I do appreciate that but the greatest challenge that the Ministry of Water and Irrigation has is environmental degradation. It does not matter how much we do, there is so much degradation. There is a lot of siltation and, therefore, desiltation has to go on continuously. In fact, we have to do major works of ensuring that we deal with environmental degradation and soil filling our pans wherever we do them.

**Mr. Deputy Speaker:** Does that quite answer the question? The question is more in line with whether you can have a programme similar to the one in the Ministry of Roads where you have a predetermined programme in every constituency. Is that the way you wanted, Mr. C. Kilonzo?

**Mr. C. Kilonzo:** Exactly.

**Mr. Deputy Speaker:** Minister, you better answer the question that he asked.

**Mrs. Ngilu:** Mr. Deputy Speaker, Sir, yes we can have those programmes but sometimes we are not able to do them as and when we actually should do them. Sometimes, we do not have the right contractors with the right equipment at the right time. Therefore, we have these programmes but when we are caught, we become late. However, we will ensure that the Ministry streamlines that.

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, the Minister has given a firm commitment to complete the second dam by the end of this month. What interim measures is the Ministry taking to make sure that these people have some water as they wait for the completion of the project?

**Mr. Deputy Speaker:** We shall just say that the dam already holds water although it might not be as much as it could have if desilting had been done. I thought she had answered that.

**Mrs. Ngilu:** Mr. Deputy Speaker, Sir, yes, that is what I have already said.

**Mr. Kiilu:** Mr. Deputy Speaker, Sir, while thanking the Minister for making arrangements for a second dam, I want to go back to the question that Mr. C. Kilonzo had asked; whether the Minister has a way of making sure that there are plans for desilting these dams.

I am saying this because when I went to the ground and raised this question, the District Water Officer (DWO) for Makueni had indicated to the project committee and the community

that Kshs3 million had been set aside for desilting this dam. The Minister is now shifting the desilting of this dam to the next financial year. What happened to the commitment that the Minister had given to the local community? If these rains continue in the next one month or so, the water in that dam will be completely depleted if it is not de-silted. Is she going to make other plans before this other dam is done so that the Kambi Mawe School does not close down and the youths who are using this water for irrigation purposes get some water to make sure their crops do not die?

**Mrs. Ngilu:** Mr. Deputy Speaker, Sir, I have actually just shared the photographs of that same pan with the hon. Member to show that at the moment the dam has some water. Therefore, we will be checking to see that if that water is used up and the long rains are not here yet, then we will be able to desilt it because there is still Kshs3 million that is set aside for that particular dam. We would then prepare ourselves to make the other one ready so that they can have two pans. That is how we are going to help his youths.

**Mr. Deputy Speaker:** Capt. Wambugu, what is your point of order?

**Mr. Wambugu:** Mr. Deputy Speaker, Sir, my point of order is that the Minister is indicating that she is going to provide another water pan in that area. From the figures that we have especially for the people of around the slopes of the Aberdares, there are some water programmes which were started back in the 1960s to cater for populations which were lower than 30,000 people. The populations have now grown to about 100,000 people. Could the Minister indicate what plans she has to rehabilitate a programme like the Gatamathi Water Project which serves Mathioya? Of course, now the programme cannot serve the over 90,000 people living in that area.

**Mrs. Ngilu:** Mr. Deputy Speaker, Sir, what he has said is true. We recently commissioned a Kenya Water Master Plan so that they can study all these challenges that we are faced with. It is true that the population of Kenya has grown; the water towers are nearly depleted. We want to see what action we take. I am waiting for that report from the people we commissioned and it will, therefore, be acted upon and be implemented.

**Mr. Deputy Speaker:** Mr. Kiilu, do you still wish to have a final question?

**Mr. Kiilu:** Mr. Deputy Speaker, Sir, I just want the Minister to confirm to this House that she will be in a position to desilt this dam in addition to making sure that another water pan is constructed by the end of this month so that when the rains come in February, there will be collection of water to help alleviate the problem in Kambi ya Mawe area.

**Mrs. Ngilu:** Mr. Deputy Speaker, Sir, I said that the design of the additional pan will be ready by January. I have resources for it which means then that once the designs are ready and we will just commission a contractor to do it. That is all I can say. It can only collect water when the rains come in March.

**Mr. Deputy Speaker:** Did you say “by January” or “before the end of January”?

**Mrs. Ngilu:** Mr. Deputy Speaker, Sir, by end of January. The designs will be ready and we have the money. Therefore, it is just to go and do the work. I think that is what I have told the hon. Member.

**Mr. Deputy Speaker:** You have given a firm commitment that actual amount of money to the tune of Kshs3 million is available for desilting this dam. You are just waiting for the time the dam is going to be empty. My presumption is that you have given a firm undertaking on that.

Next Question by Mr. Olago Aluoch!

*Question No.1873*

DELAYED REVOCATION OF TITLE NO. KISUMU  
MUNICIPALITY/BLOCK 9/169

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

(a) whether he could confirm that PDP No. N9/84/18 was approved in favour of Kisumu Union Primary School, Kisumu Municipality;

(b) under what circumstances title No. Kisumu Municipality/Block 9/169 was subsequently issued in favour of Alloys Obby Annam to hive off part of Kisumu Union Primary School land;

(c) why the Ministry has not revoked the title issued to Alloys Obby Annam as recommended by the Kisumu District Lands officer in her letter dated 3rd August, 2007.

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

(a) It is true that PDP No. N9/84/18 of 14<sup>th</sup> August 1984 was approved in favour of Kisumu Union Primary School, Kisumu Municipality.

(b) Title for Kisumu Municipality/Block 9/169 in favour of St. Alloys Obby Annam, doing business in the names of Annat Technical Services was issued based on the PDP No. N9/95/6 of 8<sup>th</sup> February 1995.

According to the Kisumu Development Plan No.9/69/41 of 11<sup>th</sup> March 1971, it is not true that this parcel of land under reference was hived off from Kisumu Union Primary School.

(c) The Commissioner of Lands has received building plan in accordance with development special conditions attached to the land. The plot has not been developed by Mr. Alloys Annan since it was allocated to him in 1995.

It is in public interest that the school gets the land. In view of the above circumstances, I have instructed that a notice of cancellation to Mr. Alloy Annan be done and the same allocated to the school after the necessary formalities are done.

Thank you.

**Mr. Olago:** Mr. Deputy Speaker, Sir, the issue of land grabbing in Kisumu particularly land belonging to schools has reached alarming proportions. However, I am glad that in the last five years, this Ministry has taken action to ensure that corrections are done and this does not take place any more. I appreciate what the Ministry has done.

Mr. Deputy Speaker, Sir, I am particularly happy with the last part of the answer in which the Assistant Minister says that he has instructed that a notice of cancellation of the allocation to Mr. Alloys Annan be done and the allocation be done to the school after the necessary formalities are done. The problem that we had is that the Ministry says this in the House but it takes so long before these formalities are done. Could the Assistant Minister tell the House exactly what formalities he intends to do and how long it takes?

**Mr. Rai:** Mr. Deputy Speaker, Sir, in normal practice when a cancellation is supposed to be effected, there always has to be a notice to be given. Since this has already been done by the Commissioner of lands, I believe it is just a question of time. I can assure the hon. Member that within the next 45 days from today, he will have this land to the school.

**Mr. Olago:** Mr. Deputy Speaker, Sir, in that case, I will take the Assistant Minister's word; 45 days from now allocation cancelled---

**Mr. Deputy Speaker:** It is 25 days, why do you want to make it 45 days?

**Mr. Olago:** That is even better, Mr. Deputy Speaker, Sir.

I thank you. I am satisfied.

**Mr. Deputy Speaker:** We will now go back to the Question by Private Notice!

### **QUESTION BY PRIVATE NOTICE**

Eng. Gumbo is seeing a doctor. I direct that this Question be deferred to tomorrow!

#### **PROVISION OF OFFICE/ACCOMMODATION FOR COUNTY GOVERNMENT OFFICIALS**

**(Eng. Gumbo)** to ask the Minister for ask the Minister for Public Works:-

(a) What is the extent of preparedness in terms of provision of office and accommodation to officials of the County Governments immediately after the general elections due in two months time?

(b) Could the Minister confirm that all County Governments officials will have offices/accommodation by March, 2013?

*(Question deferred)*

### **ORAL ANSWERS TO QUESTIONS**

*Question No.1884*

#### **ASSAULT ON MS. CAROLINE CHEMUTATI/ MR. PAUL KIBET BY APS**

**Mr. Deputy Speaker:** Mr. Isaac Ruto is not here! The Question is dropped!

*(Question dropped)*

Next Question by Mr. Joseph Kiuna!

*Question No.1836*

#### **DELAYED PAYMENT OF DUES TO UNICEF SUPPORTED PROGRAMME EMPLOYEES**

**Mr. Kiuna** asked the Minister for Public Health and Sanitation:-

(a) whether she is aware that employees who were employed in 2008 under UNICEF supported program were not paid their dues from July 2009 to 2010;

(b) why they were not paid and when their dues will be settled.

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, I apologize for coming late.

**The Assistant Minister for Health and Sanitation (Dr. Gesami):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) They were not paid due to budgetary constraints as there was no financial provision in the budget. My Ministry is in consultation with the Ministry of Finance for funding to pay the remaining health workers who were not paid their terminal dues.

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, the Assistant Minister has said he is aware of part “b” but he has also said that they have not been given money by the Ministry of Finance. I have a letter confirming that these Kenyans were employed and there was an agreement from his Ministry that they were to be paid. They have been waiting for all that long yet they have never received even a single penny.

Mr. Deputy Speaker, Sir, I would request the Assistant Minister to state or tell this House--- These nurses have been suffering and waiting since 2008 yet they had sacrificed. When will they be paid their dues and if possible, with interest?

**Dr. Gesami:** Mr. Deputy Speaker, Sir, in 2009, UNICEF supported the recruitment of 284 health workers of various categories. They were engaged under a one-year contract commencing 1<sup>st</sup> July, 2008 to 30<sup>th</sup> June, 2009. Their contract expired on 30<sup>th</sup> June, 2009 and UNICEF paid all the salaries due to them up to the end of the contract. However, *in lieu* of the fact that the health workers were deployed in hard to reach areas and to avoid the crisis that would have arisen by withdrawing them from the health facilities, the two Ministries of Health extended their services for a further period of six months; that is, from 1<sup>st</sup> July, 2009 to 31<sup>st</sup> December, 2009 pending Government decision to absorb them into regular establishment which they were actually absorbed into.

Mr. Deputy Speaker, Sir, records held by the Ministry indicate that 109 UNICEF health workers were paid salaries amounting to Kshs12 million in respect of the extended period of six months from 1<sup>st</sup> July, 2009 to 31<sup>st</sup> December, 2009 and a further total of Kshs2 million being one month’s salary *in lieu* of notice was paid. The amount paid was made available from savings realized from personnel emoluments in the budget.

Due to budgetary constraints, however, the Treasury did not provide funding for 175 health workers whose salaries remain pending. The Ministry is in consultation with the Ministry of Finance in order to provide funds to pay for the remaining 175 health workers.

Thank you.

**Mr. Gaichuhie:** Thank you, Mr. Deputy Speaker, Sir. These employees were terminated in 2010 and we have passed two or three budgets during these financial years. Why has the Ministry of Public Health and Sanitation not considered including this allocation in the Budget so that they can pay these people who have been suffering for quite long?

**Dr. Gesami:** Mr. Deputy Speaker, Sir, we have included this budgetary constraint to Treasury as debts over the last two years but they have not allocated us the money. We will pay those workers as soon as they allocate us the money.

**Mr. Deputy Speaker:** That is an internal Government process and the Chair will not allow a situation in which one Minister says “when the other Minister avails the funds.” You have just one Government. The Minister for Finance is here and he is your colleague, can he confirm when this money will be available for these Kenyan workers who have families? It has taken you two years to organize for this money to be budgeted for!

Yes, the Minister for Finance?

**The Minister for Finance (Mr. Githae):** Thank you, Mr. Deputy Speaker, Sir. The



Minister for Finance does not carry money in a bag because the money is voted by this Parliament. That is the point I have been emphasizing that this Parliament is a budget making Parliament and it is not like the rubber stamp of the previous years.

Secondly, Mr. Deputy Speaker, Sir, every Ministry is allocated a budget and it is for them to prioritize issues. It just shows that, according to them, this issue is not a priority because there is more money than the money they are talking about. It is a question of priority. So, let them prioritize it. If it is number one, they should put it as the number one item on their list. It is as simple as that.

**Mr. Deputy Speaker:** How does that help Kenya Government workers? One Ministry has not done the right priority and the other one says they are waiting for money to be allocated by the other Ministry. We cannot turn this into a debate between Ministries themselves because they have collective responsibility as a Government and it is not fair.

Mr. Kiuna, what is your point of order?

**Mr. Kiuna:** Thank you, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that there was no contract between his Ministry and the Minister for Finance, and yet I have a copy here from the Provincial Director of Health and Sanitation stating: "These nurses should continue working and they will be paid all their dues."

Is the Assistant Minister in order to mislead the House?

**Dr. Gesami:** Mr. Deputy Speaker, Sir, I have not misled the House at all. I have said that those health workers were recruited by UNICEF and when their contract expired, the Ministry decided that they should continue working for a further six months, as per the request from the Provincial Director of Health and Sanitation. Those are the dues that we have not paid as a Ministry. Remember that they were employed by UNICEF and not by the Ministry, but because of the hard-to-reach areas, we agreed that these workers should continue working for six months, and this is what we have not been able to pay them.

So, as the Minister for Finance has said, we shall prioritize and ensure that we look at this issue afresh so that we pay these health workers.

**Mr. Deputy Speaker:** That is not good enough.

Hon. Kiuna, what is your point of order?

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, you have heard the Assistant Minister accept that those nurses have not been paid since 2008/2009. You have also heard that the Ministry further committed itself to engage those nurses on a contract basis for six months. We are now in 2013 and yet they have not been paid their dues. I request the Chair to order the Assistant Minister to ensure that these fellow Kenyans who are suffering and who have families depending on them---

**Mr. Deputy Speaker:** Hon. Kiuna, as much as the Chair recognizes the need and sympathizes with the workers, we still have that separation of power. That is an Executive role and the Minister for Finance said this is a budget approving Parliament. Members of Parliament do not sit and draw up a budget because budgets are drawn up by Government and the different Government Ministries. The only thing that Parliament does is that it has a little bit bigger role than it used to traditionally have, which is an element of give and take where there is a bit of discussion between the Minister for Finance and the relevant Committee on the minor shifting here and there on priorities. But the reality is that this is the work of the Government. So, I can only direct the Assistant Minister that this is not an adequate answer; this answer is not good enough. You cannot come back three years later on a commitment that was made by the Government to fellow Kenyans who are employees who have families to take care of and say that you will look for an opportune moment when that will be a priority. That should have been a

priority from the word go. In any case, we have just voted in the Supplementary Budget.

Can you go, make relevant consultations, come back and give us an adequate answer that has got a timeline? The Chair directs that this Question be listed on the Order Paper tomorrow afternoon and it is the assumption of the Chair that you would have come up with an adequate answer.

Next Question by the hon. Member for Marakwet, Mr. Boaz Kaino.

*Question No. 1455*

RE-ALLOCATION OF PLOT NO.147 JABALI SFT

**Mr. Deputy Speaker:** Is the hon. Member for Marakwet not here?  
The Question is dropped!

*(Question dropped)*

*Question No. 1880*

PREPAREDNESS OF JUDICIARY TO HANDLE ELECTION PETITIONS

**Mr. Deputy Speaker:** Is the hon. Charles Nyamai not here?  
That Question is dropped!

*(Question dropped)*

*Question No.1700*

NON-FORMULATION OF VEHICLE EXHAUST

EMISSION STANDARDS REGULATIONS

**Dr. Otichilo** asked the Minister for Environment and Mineral Resources:-

(a) whether he is aware that many vehicles on Kenyan roads, particularly diesel powered lorries and buses, are emitting deadly fumes that are dangerous to human health and if so, what he is doing to curb the menace

(b) whether he could clarify whether NEMA has formulated and gazetted vehicle exhaust emission standards regulations and if so, could the Minister table them; and

(c) what mechanisms the Ministry has instituted for the enforcement of the regulations?

**Mr. Deputy Speaker:** Where is the Minister for Environment and Mineral Resources?

Hon. Obure, where is your colleague from the Ministry of Environment and Mineral Resources?

**The Minister for Public Works** (Mr. Obure): Mr. Deputy Speaker, Sir, I know that is a very serious Minister. I am not very sure why he is not here this morning but I know he takes the Business of this House seriously. I will try and find out why he is not here.

**Mr. Deputy Speaker:** I direct that this Question be listed on the Order Paper tomorrow afternoon; and he had better be here to answer this Question failure in which the Chair will take an appropriate sanction. As much as we are into the wee days of this Parliament, that does not mean that the Business of the House can be taken lightly.

*(Question deferred)*

*Question No. 1871*

NON-DEPLOYMENT OF OFFICERS TO  
ELLE BON/BARDAN REVO AP CAMPS

**Mr. Deputy Speaker:** Where is the hon. Member for Moyale?  
The Question is dropped!

*(Question dropped)*

Next Order!

Do we have any Minister with a statement to issue or any hon. Member with a request for a statement?

Yes, Capt. Clement Muchiri Wambugu!

**POINT OF ORDER**

NON-ISSUANCE OF BURIAL PERMIT TO THE  
FAMILY OF LATE ESTHER M. NGAREGA

**Mr. Wambugu:** Thank you, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the failure by the family of the late Esther Muthoni Ngarega, who died in Saudi Arabia and subsequently the remains were brought back to Kenya. We want to know why the family has not been issued with a burial permit. In the Statement, the Minister should:-

1. state the reasons why the family of the late Esther Muthoni Ngarega has not been issued with a burial permit;
2. confirm that the inconsistency in the cause of death of the deceased is the reason behind the refusal by the Ministry to issue the burial permit to the family of the deceased;
3. indicate the actual cause of her death and when the family of the deceased will be issued with the burial permit for them to bury the body;
4. indicate who is going to meet the extra cost of the delay because the said deceased died in Saudi Arabia sometimes back in June and the body has been in the country for over one month now.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Which Ministry are you requesting the Statement from? Is it the Ministry of Foreign Affairs?

**Mr. Wambugu:** Mr. Deputy Speaker, Sir, I am directing this request to the Ministry of State for Provincial Administration and Internal Security. I also want you to note that the said

person, Muthoni Ngarega, comes from a place called “Gathunguru” in Mathioya, Njumbi Division.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Hon. Githae, would you wish to make an undertaking on behalf of your colleague from the Ministry of State for Provincial Administration and Internal Security?

**The Minister for Finance** (Mr. Githae): Yes, Mr. Deputy Speaker, Sir. I do not know why the Minister is not here---

*(Mr. Lesrima entered the Chamber)*

**Mr. Deputy Speaker:** Order! The Assistant Minister is here.

Yes, hon. Lesrima?

**The Assistant Minister for Provincial Administration and Internal Security** (Mr. Lesrima): Thank you, Mr. Deputy Speaker, Sir. I will issue a Statement tomorrow afternoon.

**Mr. Deputy Speaker:** It is so directed! The Chair directs that this Statement be issued tomorrow in the afternoon.

Next Order!

## PROCEDURAL MOTION

### EXEMPTION OF BUSINESS FROM PROVISIONS OF S.O. 38

**Mr. Deputy Speaker:** Minister Githae, it is the presumption of the Chair that you will move this Procedural Motion.

Proceed.

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

THAT, this House orders that the Business appearing in today’s Order Paper under Order Nos. 10 to 16 be exempted from the provisions of Standing Order No.38(1), being a Wednesday Morning, a day allocated for Private Members’ Motions.

Mr. Deputy Speaker, Sir, first of all, I would like to thank hon. Members of this august House who are here because they are really sacrificing their campaign for the sake of national duty and Kenyans and voters should be very grateful for that.

The main purpose for this Procedural Motion is to enable us to consider the other Bills, particularly the Finance Bills, which are very important. If we do not pass the Transition County Allocation of Revenue Bill, the Transition County Appropriation Bill, the Division of Revenue Bill, the County Allocation of Revenue Bill and even this afternoon, the Supplementary Appropriations Bill, then this Government will find itself in a difficult position. So, I request hon. Members to approve this Procedural Motion so that we can proceed on and discuss the other Motions.

*(Mr. Musyoka entered the Chamber)*

I thank you, Mr. Deputy Speaker, Sir. Now that the Vice-President and Minister for Home Affairs and Leader of Government Business is here, I request him to second this Motion.

**Mr. Deputy Speaker:** Ordinarily, it is the reverse, but proceed!

*(Laughter)*

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka) seconded

*(Question proposed)*

*(Question put and agreed to)*

**Mr. Deputy Speaker:** Next Order! Mr. Koech, it is my presumption that you will do the Committee of the Whole House.

### **COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee Read)*

*[Mr. Deputy Speaker left the Chair]*

#### **IN THE COMMITTEE**

THE NATIONAL HONOURS BILL

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

**The Temporary Deputy Chairman** (Mr. Koech): Hon. Members, we are now in the Committee of the Whole House to consider the National Honours Bill, Bill No.49 of 2012.

*(Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 13, 14 and 15 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Mr. Keynan:** Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The National Honours Bill and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*(The Temporary Deputy Chairlady  
(Mrs. Odhiambo-Mabona) in the Chair)*

## **REPORT AND THIRD READING**

### THE NATIONAL HONOURS BILL

**Mr. Koech:** Madam Temporary Deputy Speaker, I beg to report that a Committee of the Whole House has considered The National Honours Bill and approved the same without amendment.

**Mr. Keynan:** 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)*

**Mr. Keynan:** Madam Temporary Deputy Speaker, I beg to move that The National Honours Bill be now read the Third Time.

**Mr. Kathuri** seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

## **BILLS**

### *Second Reading*

#### THE TRANSITION COUNTY ALLOCATION OF REVENUE BILL

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that The Transition County Allocation of Revenue Bill be now read a Second Time.

First, I need to thank hon. Members of this august House who are here. I know we should be campaigning but because of national duty, it is what is making us remain in this House. For that, I am grateful to hon. Members of this House who have put national duty above self interest. The main purpose of this Bill is to provide for allocation of wages, administration costs for county executives and county assemblies for the period of March to June 2012 and the various responsibilities for national and county governments. I will be very brief because we have basically agreed. Yesterday we met with the Budget Committee and we agreed on the amendments that I am going to bring. I have already signed the amendments and they have already been taken up by the Office of the Clerk. Therefore, they will be appearing during the Committee Stage of the Bill.

With this, I am requesting hon. Members to pass this Bill so that the county governments can perform from day one. We have now agreed on the formula and the amounts are going to increase from Kshs7 billion to Kshs9 billion and everybody is happy.

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

**Mr. Koech:** Madam Temporary Deputy Speaker, I stand to second this Bill which is very important. You will note the temperatures that were raised, especially when the Ministry tried to allocate Kshs6.7 billion, the rest of Kenyans felt they needed Kshs30.4 billion. That means our counties are ready to move and the only way they can move as from March to June is for us to pass this Bill so that the allocations are very clear and so that we are within the law.

With those few remarks, I beg to second.

*(Question proposed)*

**Mr. Gaichuhie:** Madam Temporary Deputy Speaker, I also rise to support this Bill, being a very important Bill that will now make counties operational. We discussed with the Ministry of Finance and we agreed that this is a Bill that is going to be the first Bill to use the Commission for Revenue Allocation (CRA) formula. Since we agreed that we are going to have amendments, I just rise to support the Bill.

**Mr. Kathuri:** Madam Temporary Deputy Speaker, I also stand to support this Bill and in supporting it, let me thank the Minister because of accepting to come and dialogue with the Budget Committee, where I am a Member and the CRA so that we could harmonize the differences that were there. The concerns were very genuine and we were even very concerned that the Minister is now aspiring to become the Kirinyaga Governor; we were wondering why he was shooting himself from behind. It is very good that we have all agreed on how to go about it and I want to support and encourage him to move in that direction.

**Mr. Keynan:** Madam Temporary Deputy Speaker, I also rise to support this Bill. This is a critical Bill because it attempts to seal a lacuna that will have been created from the month of March to 30<sup>th</sup> June, this financial year, 2012/2013. I think what the Minister has done is great. I am sure initially they did not foresee this but because we are moving from an established known administrative mechanism to an unknown administrative mechanism, I think it is fair that we do not gamble. I have had an opportunity to interact with a number of governors from the Republic of Nigeria and some of the challenges that they went through when they domesticated almost a similar administrative mechanism was not to have considered how some of these units are going to work in the interim. I think what the Minister has done is to seal this and it is a great thing. I hope and pray that when he is elected governor and I know he is going to be a very able one, he will not find himself in a very unfamiliar territory and yet he is the very person who is now in charge of this transitional mechanism.

I think it is fair to say that the Minister has done very well, belated though, because were it not for the courageous nature of the Members of the Tenth Parliament, I think we would have adjourned a long time ago and these Bills would have waited for the next Parliament. Therefore, we would have had a crisis at the county level immediately after the elections.

I thank the Minister and the Government, in particular, the Leader of Government Business in the House for having seen sense because sometimes you might drive the agenda of the Government in the House but Members of Parliament are also seasoned. They understand, they read, internalize and interact and represent the aspirations and wishes of the people of Kenya. So, I want to thank him for having listened, considered it and coming up with this Bill. I

remember last week there was a lot tension. I am also a Member of the Budget Committee. One of the things that we were cautious and wanted to know was not to gamble because Kenyans in their own wisdom decided to have a devolved government.

I will not be making an outrageous statement if I say that regions like the one I represent, the County of Wajir and others like Turkana, Kitui and so on--- I am talking about regions that have been marginalized over the years through elaborate and unfair bureaucratic driven mechanism. We have been denied part of the national share. The Constitution has addressed this inequality through elaborate Articles. What we, therefore, expect from this Government and the next one is the implementation of the Constitution to the letter. If that is done, then you will not hear a particular group struggling to say, "We want this as a privilege." That is what we have been doing over the years. Those things are gone and we want to get our rights as is stipulated in the Constitution. For that to happen, we must accept and operationalize the county system. That is where Kenyans are headed. Our hopes are in the county governments, that is, devolved government. Anybody who is pro-devolved government is going to be our person. That is where we are. I want to thank the Minister and the Government for bringing this Bill.

Thank you.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Yes, hon. Chrisantus Okemo!

**Mr. Okemo:** Madam Temporary Deputy Speaker, Sir, I rise to support this Bill. I want to thank the Minister for Finance for having come to interact with Members of the Budget Committee. In fact, that meeting really solved all the problems because prior to that, you remember a session had to be stopped because we raised some very serious objections particularly issues relating to the Constitution. However, after the long and very exhaustive exchange between the Minister, his team, the Budget Committee and the Commission on Revenue Allocation (CRA), we reached a common understanding which was based on the fact that we now use the correct formula for revenue allocation. For me, that was the most important thing. In other words, we have now complied with the constitutional provision that the criteria which had been approved by this House after being presented to us by the CRA were used in arriving at the allocation of the Kshs9.7 billion. So, I am glad that from the word go, we have complied.

Secondly, we had not seen the other picture because we were just talking about the money that goes directly to the counties. However, there is an allocation of monies that go to the national Government to perform certain functions on behalf of the counties. So, when you put the two together, there is no cause for worry.

I would, therefore, like to support this Bill and also to congratulate the Minister for being able to come and actually have consultations with us as well as with the CRA.

I support.

**Mr. Pesa:** Madam Temporary Deputy Speaker, I stand to support. In so doing, I want to applaud the Members of this august House for standing up to defend the Constitution of this country. On that day, I am very sure hon. Members felt that something was being omitted when the Minister moved the Bill. When he accepted to go and dialogue with the relevant Committee of this House, I think we are very happy that he has come back and he has promised--- Actually it is in the afternoon that we will have to talk about this Bill again and look at what he has proposed. In so doing, I want to thank the Minister for listening to us and accepting. Other Ministers should understand that this House is not asleep. We must make sure that we do things right.



**Mr. Ruteere:** Thank you, Madam Temporary Deputy Speaker for giving me an opportunity to also support this Bill. I want to echo the words of my colleagues who have thanked the Minister. I am sure he is one of the very honest Ministers that we have in this Tenth Parliament. This is because he listens to the voices of MPs and does what they want to hear.

Therefore, this Bill is what is being awaited so much at the county level because there are a lot of expectations by Kenyans with regard to what the county assemblies are going to offer Kenyans. Without a good foundation, then there will be faults and the Governor will not start properly.

On 5<sup>th</sup> March, 2013, we shall have Governors and County Assembly Members in place. The Governors will want to see that there is money at their disposal to do administrative duties. They also expect not to have members of staff who will be running to the streets singing: “*Haki yetu!*” for not getting their salaries at the end of the month.

I support the Bill. It is timely. I wish that it passes quickly.

**Mr. Midiwo:** Thank you, Madam Temporary Deputy Speaker. I think what the Minister has done he deserves a word of thank you. I wish all Ministers listened to Members of Parliament when it matters. Unfortunately he is going away to be a Governor somewhere. We will miss you, but we will come for tea in your office.

I support.

**Ms. Amina Abdalla:** Thank you, Madam Temporary Deputy Speaker. I wish to join my colleagues in congratulating the Minister for being a listening Minister. I also wish to support this Bill. The little hiccup that was there yesterday was an indication of how all of us Members of Parliament and Kenyans, irrespective of our political affiliations, are looking forward to devolved units. We are happy that we are able to get this Bill through. Since we want to conclude this business and we are all in agreement, I beg to support.

**Mrs. Leshomo:** Bi. Naibu Spika wa Muda ningependa kumwunga mkono Waziri wa Fedha na kumwambia ahsante kwa yale aliyoyafanya katika Mswada huu. Yeye ametulia na kuvumilia. Amesikia maoni ya Wabunge na kwa hivyo tunaunga mkono.

**Mr. Ethuro:** Madam Temporary Deputy Speaker I want to support this Bill. I appreciate the move by the Leader of Government Business who is also the Vice-President and Minister for Home Affairs to ask for closure. However, I want to tell him together with other Ministers that I came to this Parliament with a mission to transform the lives of the people where I come from in particular and Kenya generally.

Given the spirit of the Constitution, the wrangles that have been associated with this Bill should not have arisen in the first place if Government had demonstrated commitment to the implementation of the Constitution.

People are out there campaigning saying that they are committed to a reform agenda, and to the implementation of the new Constitution. You have an opportunity in this Parliament to demonstrate it. Do not go to *barazas*.

We passed a law here that says that a certain formula must be used to allocate resources. This Government could not apply that formula for the remaining quota. It took the intervention of this House and we lost man-hours and women hours if I may add, Madam Temporary Deputy Speaker, due to the respect of your good office for us to be where we are. As we speak now, the Commission on Revenue Allocation (CRA) is asking for Kshs30 billion while the Minister is giving us Kshs6.8 billion. We have negotiated this to Kshs9.7 billion and it is good that people are saying that the Minister listens. However, why should the Minister listen when he is literate, a lawyer and has the capacity and ability to read the Constitution and a formula? Did we come

here to expect favours from the generosity of Ministers or to demand certain responsibilities and actions?

I want to speak. This country must change. We have consolidated the change in the Constitution and Vision 2030. We have consolidated the reforms in certain formulations. It is not too much to ask from the Government because it is their responsibility to do what is right. If we do not agree in this Parliament, it means that people from the Coast will say that because they are losing in the formula that they were given, they are losing money. Do we want to entertain *Pwani si Kenya*? Do we want Turkana to keep losing Kshs2 billion and then we also say “Turkana is not Kenya”? This is what happens when we have certain actions like this one.

I am not used to praising people but my job is to praise you if you do a good job. If you do a shoddy job, we should tell you as much. I support but I hope that next time, Ministers of Government will take personal responsibility for disregarding constitutionalism; the rule of law and any other legal and institutional framework in this country.

I support.

**Mrs. Noor:** Thank you, Madam Temporary Deputy Speaker. I want to add my voice in supporting this particular Bill. In supporting this Bill, I want to say congratulations to the Tenth Parliament. I am proud to be part of this Parliament because it is a serious Parliament that wants to put systems and structures in place. It wants to look into real issues. I am also proud of being among those people who looked into this issue critically and told the Minister to stop and that we needed to go back and do things the right way. That is why I am proud of this Parliament. I want to say that we should give the Minister his due respect because he has listened to us. We moved together, we consulted and discussed this Bill. Congratulations, Mr. Minister, for that.

This Parliament and the Eleventh Parliament must appreciate that there are structures, systems and formula of allocation of resources. That is why people in this country have been fighting one another for the last 20 years. We have been fighting each other because we wanted fairness within the society. We wanted equal distribution of resources. We also wanted equal opportunities to be given to each individual Kenyan and that is what the Constitution says. It is only right for us to do the right thing. We are doing the right thing and it is good that we are doing it in the last minute. Doing the right thing however late it is, is the right thing to do.

Madam Temporary Deputy Speaker, Sir, the Budget Committee is a serious structure of this House. Since it is a serious structure of this House, they are the people to look at the budget that will be used in this country. That is why the Budget Committee, which I sit in, looked critically and objectively into what is happening in this country and in particular with regard to the Bills that are pending; the county related Bills. That is why the Budget Committee said that it wants things to be done the right way. Today, we are doing the right thing. I want to congratulate the Budget Committee which has tirelessly looked at issues and told this House that this is the right thing to do. I am happy that the Members of the Budget Committee have done their work. I want to tell them *hongera* because they have done the right thing in the interest of this country.

The CRA gave us a report which we have tabled in this House. The report critically shows how we will share resources in this country. I want to tell them that this is a constitutional commission.

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

**Mrs. Noor:** Madam Temporary Deputy Speaker, I know that Mr. Kaino cannot interrupt me because he is a good friend of mine. The CRA is a serious Commission in our Constitution. These are the reforms we have been looking for, for a long time. This Commission has tabled a report in this House. That report is ours today because it is a report for this country. The report

shows us the formula to be used in allocating resources in this country. I want to tell them that they have done good work so far. However, there are still grey areas within the formula and we need to look at those areas so that we can accommodate every Kenyan in resource allocation.

With those few remarks, I want to tell this House that we have done good work. Congratulations!

**Mr. Ogindo:** Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to support this Bill. I think this country has come a long way from the days of a single party to the days of a central Government and now we are transiting to a devolved system of Government. It is important for every Kenyan and institution to appreciate that there is the need and that we must change with the times.

I want to thank the Minister for Finance for having appreciated the position of this House on its determination to ensure that devolved Government takes off and takes off well. We went through a negotiation and we agreed that the revenue allocation to the counties be enhanced and we took cognizance of the fact that in as much as the overall budget framework was done under a central Government, it was clear that at some point in the financial year this Government was going to be dual in terms of the national Government and the county Government.

Madam Temporary Deputy Speaker, it is important that this reality is lived so as to see county governments take off and, to that extent, it is important that we allocate the county governments adequate resources that will ensure that they take off not only in terms of salary payment but also in terms of their functions. We appreciate that it is an un-travelled path but it is the responsibility of the existing Government and institutions, namely, the central Government and institutions like Parliament to midwife the birth of county governments.

To that extent, I want to support this Bill and I want to urge the Minister to take the necessary steps to ensure that not only do the county governments have these allocations -I can see below that we have the Appropriation Bill. Without anticipating debate, we want Treasury to go ahead and ensure that it is not only money in paper but also that their bank accounts are available so that money shall be transferred into their accounts to await their signatories.

Madam Temporary Deputy Speaker, I want to emphasise that the county governments are not enhanced county councils or municipal councils. These are governments that have a responsibility to their people and have a mandate to deliver on their promise and it is important that as we sit in the capital here, we facilitate these governments so that hitherto marginalized areas like Turkana, Mandera, Suba, Migori, Samburu and Isiolo can now sit down with resources available to them and plan their programmes in a manner that addresses their unique problems. It is important that every corner of this country begins to feel that they are part and parcel of this country called Kenya and that taxes can come to Nairobi and go back to them.

It is important that we safeguard the county governments by observing constitutionalism. The Constitution is explicit and it is for the first time that we are doing this – we are tolerating negotiations. Thereon, we will expect strict adherence to the Constitution. The Constitution says that at least 15 per cent of the revenue shall be allocated to the county governments. This is according to the latest ruling by the Auditor-General. That requirement, should it go beyond 15 per cent need not be celebrated because the spirit of the Constitution is that every fund should ordinarily be revamped save to the extent that we make provisions to deal with the national agenda.

Madam Temporary Deputy Speaker, the second thing is that we need to respect the rule of law. Timelines have been set out in the law and this must be observed. We do not want to see a situation whereby governors are going to roam the streets of Nairobi looking for their monies.

To that extent, we want to see Treasury observe the timelines in terms of disbursement of these funds. It is also important that there is respect for independent institutions that are designed to safeguard the existence of county governments. There are institutions that are supposed to have input into the whole process of revenue division and allocation and it is important that their opinions are respected because these independent commissions operate from an impartial position.

Last but not least, this Parliament has hitherto changed from a budget approving Parliament to a budget making Parliament and we will want to see much more engagement at the preparatory stage of these budget instruments and at the committee levels so that the plenary can be used to do what it is meant to. I also want to say that in the same breath, we want to see the operationalisation of the Equalisation Fund. That Equalisation Fund was put there for a purpose and this country has developed at different levels and that Equalisation Fund is meant to bridge the gaps and it is important that as we go to this dual system of Government, this Equalisation Fund is also operationalised. I look forward to seeing instruments operationalising the Equalisation Fund sooner rather than later so that this financial year does not end without the Equalisation Fund being distributed.

Madam Temporary Deputy Speaker, it is important that we take off on the right footing because if we create a bad precedent, it will be exploited in future by having the same institution quote the mistakes that we have done in the past.

With those remarks, I want to support this Bill and urge the rest of the House to support it so that we can operationalise the county governments.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): I will give hon. Najib Balala and just for the information of hon. Members, if you see the next item on the Order Paper, I think we can still raise the same issues that are of interest to us. So, I give hon. Najib Balala then I will call on the Mover to respond.

**Mr. Balala:** Thank you very much, Madam Temporary Deputy Speaker. I stand here to support this Bill and congratulate the Minister for at least taking the country forward with this structure of devolution. We have struggled as a nation since the 1960s. We came to a formula of *majimboism* where devolution was key in our independent Constitution. Unfortunately, due to greed and power hungry politicians, *majimboism* was killed especially by starving some regions and today we are back to a modern way of devolution. I want to say that this is the right way to help this country to spread its development programmes all over instead of centralizing in the capital.

Madam Temporary Deputy Speaker, those days of centralizing power economically and politically are gone. We are in a new era. If you see all the developed countries, you will realize that they have a devolved system in one way or another so that these resources trickle to the grassroots and develop their people.

Madam Temporary Deputy Speaker, Sir, what has happened today is that we are going to transfer some money that is going to help up to the next financial year, so that we do not starve these counties any more. Let us not imagine that the current county council or mayors or chairmen of the county councils will be the same as governors of counties. The governors are not going to be like mayors, with some little resources; counties will be governments on their own on the ground. That is why we have to appreciate that there will be a central Government and a county government. These will be separate governments. But there will be a way of working together, so that we are able to complement what the central Government will be doing.

Madam Temporary Deputy Speaker, Sir, it is very important for us to provide all possible means to help these county governments to have capacity for financial management. We have seen most of the county councils that will be replaced by county governments have liabilities. They have mismanaged their systems. We need to help them. There will be teething problems but this is the right way to go.

Madam Temporary Deputy Speaker, Sir, I have observed of late, in the last one year, that some of the leaders in these county councils have been disposing of assets of the county councils. I want to say here that we give them notice. We will follow them if they do things in the wrong way; we cannot allow leaders on their exit to sell property of the Government, so that they enrich themselves and kill the whole concept of devolution and helping people on the ground. We cannot allow leaders who have grabbed, leaders who have played games in disposing of assets, particularly land and buildings to enrich themselves at their time of exit. That, I think, we need to take action on.

Madam Temporary Deputy Speaker, Sir, recently, I saw an advertisement for staffing of the county governments. Whatever institution or transition authority is working on staffing of county governments should remember that there will be a governor and a county assembly to endorse and approve those appointments. If the appointments are done without the authority of the governor, when he comes in, we will revoke them. We are not going to entertain imposition of staff or policies from above. That era is gone. This is a short-cut, or under the table way of bringing staff to counties; the qualification required is for applicants to have worked before in the county governments, or local authorities. I ask where did they get the experience in mismanagement which they want to transfer to the new county government? These are the questions we need to ask.

I want to say here that everyone in the county or municipal councils that are going to be inherited by county governments should undergo fresh vetting; counties will base their recruitment on integrity, performance and merit and not on political expediency. We cannot allow inheritance of dead wood; we are going to develop a new and vibrant county government system. We are going to be very vigilant on these issues.

I am running for a senate seat. I am going to be very vigilant on this aspect of monitoring my county of Mombasa, and also other counties in this country. If we believe in the spirit of devolution and spreading the economic social development to the people then let us make sure that we have the right capacity to manage it and the right political will to support it.

Madam Temporarily Deputy Speaker, Sir, these are very important and fundamental issues that need to be considered, so that we can have proper and effective county governments.

Madam Temporary Deputy Speaker, Sir, with those remarks, I know my colleagues want to speak and this is important. We are at the end of our tenure here; I want to support.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): I now call on the Minister to reply.

**Minister for Finance** (Mr. Githae): Madam Temporary Deputy Speaker, let me thank my colleagues, really, for giving support to this country. I just want to assure this House and Kenyans, that the Treasury supports devolution. The Treasury will give the county governments all the necessary support. The success of this country depends on successful implementation of devolution. Therefore, as Treasury we are going to support it.

Madam Temporary Deputy Speaker, I do not know where the impression came from that the Treasury is not supporting devolution. We are going to support it. In fact, we will give counties even more resources than what the Constitution requires, so long as they have the

capacity to use them. What we are saying is that the moment the Transition Authority gazettes and says that this function can be performed by the county government, resources will flow.

With those words, I thank my colleagues and 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 Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Hon. Members, before I call the next Order, I wish to bring to the attention of the House that following consultations with the Minister and the relevant Committee, Order Nos.12 and 13 shall come at the end of the Order Paper. So, the Order Paper shall be re-organized so that Order Nos.12 and 13 shall come at the end to facilitate further consultation between the Minister and the Committee.

*Second Reading*

#### THE TRANSITION COUNTY APPROPRIATION BILL

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that The Transition County Appropriation Bill, Bill No.91 of 2012, be now read a Second Time.

Madam Temporary Deputy Speaker, this basically follows from what we have just done to enable the Controller of Budget to approve funds from the Consolidated Fund to the counties. That is why we require the Appropriations Bill. In fact, I am saying that I have already amended the Appropriation Bill to take into account what was agreed upon yesterday with the Budget Committee.

I am, therefore, asking Members to approve this Bill, so that the Controller of Budget has authority to approve funds to the counties, so that come 5<sup>th</sup> March, the governor will have adequate funds to not only employ staff but also to authorize to incur other expenses. That amendment is also there, so that he can do some little development before the end of the current financial year.

I beg to move and ask hon. Kapondi to second.

**Mr. Kapondi:** Madam Temporary Deputy Speaker, I rise to second the Bill.

*(Question proposed)*

**Mr. Onyancha:** Madam Temporary Deputy Speaker, I rise to support the Bill and thank the Minister for preparing it at short notice.

Madam Temporary Deputy Speaker, the county governments are the future of this country. We have passed the Constitution, longing for devolution. This is part of the process of enabling the counties to be independent, within the limitations of the Constitution. My disappointment is that we did not start this process immediately after the passage of the Constitution.

It is a pity that many of the counties do not have infrastructure in place as we go to election and, therefore, into the dispensation that actually makes the counties functional. I hope

that, in the very near future, the Government will look into the issue of infrastructure and other issues related to county running, especially capacity building because this has not been done.

Madam Temporary Deputy Speaker, I have just noted that the county government appropriation numbering is from 501, Baringo County; to 547, West Pokot. I would have asked the Minister, if possible, to retain the county numbering as contained in the Constitution such that Nairobi County, which is County No.47, comes last and Kisii County becomes County No.46. This is for the future since it is very easy to change it.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Yes, hon. Peter Munya.

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

Let me also start by thanking the Minister for bringing the Bill and all the other Bills that are required for operationalisation of the county governments. We are now happy. We now know that the county governments will be operational because you can have them on paper but if there are no resources allocated to them, they cannot operate. Therefore, the Minister needs to be thanked for working very hard and making sure that the Bills are here.

Madam Temporary Deputy Speaker, I want to correct two key misconceptions about devolution. One of them is the idea that counties are supposed to receive 15 per cent of the national revenue. It is important to make it very clear that 15 per cent is the minimum that they are supposed to receive. You cannot go below 15 per cent. So, if you go above 15 per cent, you are not giving the counties any favours. It is the Constitution which says that below 15 per cent is unacceptable. So, the allocation to counties must be 15 per cent and above of the national revenue.

So, when we hear people insisting that they have given counties more than 15 per cent, it reminds us of that old thinking; that whatever you are giving to the counties is a favour. Indeed, you are not even giving. Nobody is giving anybody anything. The Constitution apportions resources between the national Government and the county governments. It is the Commission on Revenue Allocation (CRA) which is empowered by the Constitution to divide national revenue between the national Government and the county governments. It is not the Treasury.

Therefore, the Treasury's attitude needs to change. The assumption by Treasury that they are the ones who keep the Government's money and that they are the ones to give or not to give must start changing because the Constitution is very straightforward. It is written in black and white that it is the CRA which is supposed to look at the national revenue and see what goes to the counties and what remains with the national Government. So, nobody is allocating anybody anything. Nobody is doing anybody a favour. That is the first thing I wanted to say.

Madam Temporary Deputy Speaker, the second thing I want to say is that when you arrive at the exact amounts of what goes to the counties and what remains with the national Government, you look at the functions that the county governments are supposed to carry out and the functions that the national Government is supposed to carry out. You then allocate the money on the basis of functions. There should be functional analysis. So, it is not you to determine arbitrarily and say that today you want to give the counties 20 per cent or 26 per cent or 30 per cent. The allocation will depend on what functions the county governments are going to carry out.

The money is supposed to follow the functions and it is the CRA which is supposed to do the work of ensuring that the money follows the functions. We cannot trust anybody else to do it.

In any case, it is unconstitutional to allow anybody else to attempt to do that work. Of course the Commission can be assisted with technical advice from other Government bodies. After all, this is a co-operative Government. The structure of our Constitution is such that it encourages co-operation between the various Government organs and institutions, so that we are able to deliver the services that we are supposed to deliver to the people of Kenya. So, there should be functional analysis, on which allocation of resources should be based.

Therefore, we have to be convinced when we are being told what has been given to the counties; how that allocation has been arrived at, on the basis of the functions that the county governments are going to carry out. We should be informed of the functions that have been transferred to the county governments at that particular time. Of course, I do not think the county governments will be able to carry out all public functions within the first year of devolution. So, as we keep transferring the functions to the counties, the resources being transferred to the counties should keep increasing.

Madam Temporary Deputy Speaker, another key issue is that there are certain functions which even though they are national functions, they would better be run by the county governments. The Constitution, again, makes it very clear. The national Government can transfer certain functions to the counties so that, because county governments are closer to the people, they can implement policies better and carry out supervision.

For instance, I do not see why the national Government would still want to continue building classrooms for primary schools and attempting or pretending that it can supervise the construction of a classroom in every primary school. Even though that may be a national Government function, it would be better carried out by the county governments, which are closer to the people. County government officials can visit each and every primary school and make sure that the infrastructure that is supposed to be built in the counties is done.

So, those are the issues I wanted to raise but overall, I thank the Government, the Minister and members of staff in the Ministry for working very hard to make sure that things work, so that once the elections are done, the counties can start functioning to ensure that delivery of service is better done. Devolution was brought because the national Government was not able to take care of the people at the grassroots level. Resources were being allocated every year but most of it would be spent at the centre. So, people became poorer in the regions and at the grassroots level. So, devolution was intended to empower people in the rural areas, economically.

However, you realise that you cannot empower the people without resources being sent there. Neither can you empower them when you continue macro-managing them at the national level. So, you must devolve the structures of governance to the bottom and devolve the resources as well. If you devolve the structures without devolving the resources, you will continue starving them of resources and there will be no development at the grassroots level. So, our Constitution is very good in this area. We are happy that this is happening. We are happy that this Government, which is friendly to devolution, is in place to do this; because this attempt was made before without success.

With those remarks, I support.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Yes, hon. Martin Ogindo.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, I rise to support the Bill.

I want to say from the outset that we had a negotiation with the Minister and I hope that he is going to live up to our agreement by bringing an amendment during the Committee Stage of this Bill, so that we have the enhanced figure of Kshs9.8 billion.



Madam Temporary Deputy Speaker, Kenyans' hopes are in devolution. This hope must never be dashed by anybody. I want to take the commitment given by the Minister for Finance, who is representing the Treasury here, very seriously. I want to go a step further and ask the Minister when he is called upon to move, so that---

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Mr. Ethuro, what is your intervention?

**Mr. Ethuro:** On a point of order, Madam Temporary Deputy Speaker. I associate myself with the sentiments by Mr. Ogindo, but I was just thinking whether, in view of the business pending before us, the Mover should not be called upon to reply; some of these arguments are similar to the ones which we presented during debate on the previous Order.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): I do not know if that is the feeling of the House. Is that the general feeling of the House?

**Hon. Members:** Yes!

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Then I will let Mr. Ogindo finish and then I call on the Mover to reply.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, I want to thank the House for that indulgence.

I want to bring out something little. As we engaged the Minister, it emerged that the inclusion of this proposed appropriation, which will be an authority to withdraw money from the Consolidated Fund, was in doubt as to whether it was included in the overall Budget framework. As we speak today there is a shortfall in the revenue target. There was a gap in the financing of this Budget right from day one. Now we are going to ask for an additional Kshs9.8 billion. It is important that as we create the expenditure side of this Budget there is a corresponding financing side.

Madam Temporary Deputy Speaker, there has been serious borrowing in this country; at some point I would expect the Minister to shed some light on this. We would be willing to support the Minister because we are all keen in seeing the implementation, or the operationalisation, of county governments. We must be clear in our minds on the overall Budget framework that underpins it.

With those few remarks, I want to support this Bill.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Hon. Members, I will now call on the Mover to reply.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Speaker, today is a historic occasion in the sense that with the approval of this Bill we can comfortably say that devolution and allocation of resources to county governments have started.

I wish to take this opportunity to thank my colleagues for sacrificing their personal interests - I know you should be campaigning - for the sake national duty. I am sure the voters are watching and they know that you have put the interests of the country before your own interests.

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 Temporary Deputy Chairlady** (Mrs. Odhiambo-Mabona): Hon. Members, let us move on to the next Order, which is Order No. 14.

**Mr. Ethuro:** On a point of order, Madam Temporary Deputy Speaker. I realize you have taken us to Order No.14 and you have the powers to do so, but I wanted to know the fate of Order Nos.12 and 13.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Perhaps I will just say, for the benefit of the hon. Members who were not in when I gave direction, that the hon. Minister said that there were further consultations with the relevant committee. Therefore, the two Orders will come after Order No.18 to enable the committee and the Minister to consult within this time. My hope and belief is that while we are continuing with the other business of the House, you will be consulting with the Minister, so that we can finalize with those two issues at the end. I had given that direction earlier.

So, we can proceed to the next Order.

**Mr. Ethuro:** Madam Temporary Deputy Speaker, yesterday we adjourned the House for purposes of allowing the Minister and the Budget Committee, of which I am a Member, to deliberate on these issues. We have consulted and deliberated and it was the feeling and the resolution of the committee that these Bills have no sense of urgency, given the amount of work we have; they can be dealt with by the next Parliament. It is extremely important to note that we cannot even discuss these other Bills before the Budget Policy Statement has been discussed. We are going to be rushed through issues and we are just wondering on what basis we are doing this.

Secondly, the Division of Revenue Bill will be based on audited accounts. The current formulation is on the 2011/12 accounts. If we allow a bit of time, by the next Parliament we will be using the most recent audited accounts, which, from our knowledge, will have dealt with more resources than the previous audit.

So, while I appreciate the sense of the Government to do things in good time, surely given the tight programme--- We suspect some mischief can be undertaken in these circumstances; let us just forget these two Orders as we had agreed with the committee and then we move to the current business at Order No.14. We just want that statement to be made very clearly; at least we want this on record. I will stand guided by your decision, Madam Chairlady, but I think it is important for the House to be seized of the same information.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): I will take the points of order and I will ask Members to be brief. When I was raising this issue I know some of the Members of the committee were in the House; so they should have raised this matter at that point. But I will take Mr. Ogindo.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, I want to say that, indeed, I am a Member of the Budget Committee. I was privileged to chair the session yesterday and the Minister was in attendance. The meeting resolved that we defer these two Orders to the next Parliament. The first person to have suggested that was the Minister. We expect that the Minister will continue to demonstrate goodwill and faithfulness to devolution.

Madam Temporary Deputy Speaker, there are about three things that are compelling us to make this decision. We really need to apply our minds to the Budget Policy Statement which is the foundation of these two Bills. Secondly, it is required that the latest audited accounts be used. The latest today, as I speak, is 2010/2011. We expect the accounts for 2011/2012 to be ready by the time the next Parliament is here. Thirdly, once we pass these Bills they are going to be applicable for the next three years. We do not want to do this in a manner that is going to starve the county governments.

Madam Temporary Deputy Speaker, I want to plead with the Minister, who is also an aspiring Governor to secure his own resources when he is still here, by ensuring that the county governments are allocated more resources based on the latest audited accounts, which are going to come later this year. So, I want to persuade the House that in the spirit of give and take, obeying negotiated agreements and respecting the Budget Committee's resolution, these two Orders be deferred to the next Parliament.

Thank you, Madam Temporary Deputy Speaker.

**Mr. Koech:** Madam Temporary Deputy Speaker, indeed, I was in the House when you gave that directive, but you actually did not give the clarifications.

Madam Temporary Deputy Speaker, now that you have given the clarifications, I want to state as follows: I am a Member of the Budget Committee and if, indeed, there are negotiations that are supposed to be going on, I am not aware this far. That means, therefore, that I am not foreseeing any negotiations taking place before 12.30 p.m. If we allow these two Bills in the Order Paper, all that we are doing is actually congesting the afternoon Sitting. Indeed, the hon. Minister is aware and has even made it very clear that everybody is campaigning down there and we are here to transact business. We accepted to transact the business that is very important and urgent for this nation. Based on that then, I would wish to ask the Minister to categorically withdraw the two Orders, so that we are very clear on how we are moving from here.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Minister, perhaps, we could benefit from your opinion and views.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Speaker, I agree with the way you have conducted the business of the House. You have deferred business under Order Nos.12 and 13 until the end. My intention was that as the House deliberates on the other Motions, I was going to call the hon. Members, because I have my team here, and see whether they have changed their mind. If they have not changed their mind, then that is it. So, the way you have ruled is right; that they be considered last, to give us time to see whether there has been any change in the Committee.

Madam Temporary Deputy Speaker, you are right that we proceed the way you have directed.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Hon. Members, let me give directions so that we do not spend a lot of time on this, since we are trying to redeem time for today.

The hon. Minister has requested for further time and called for back-up. Perhaps, they have new ideas that he did not share with you. So, I would encourage that while we are continuing with the other business, please, consult with the Minister. Before we rise for the morning Sitting, we want a very conclusive resolution by the Minister and the Committee. As the hon. Member has indicated, many hon. Members are already campaigning and it is because you are committed that you are in the House. Let us use this time properly and appropriately.

Minister and the Committee, please, deal appropriately.

The Order was called out and so, I call upon the Chairman of the Committee to move.

## MOTIONS

### ADOPTION OF REPORT ON NOMINATION OF PSC MEMBERS

**Mr. Kapondi:** Madam Temporary Deputy Speaker, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the Consideration of Nomination of Chairperson, Vice-Chairperson and Members of the Public Service Commission laid on the Table of the House on Tuesday, 8th January, 2013.

Madam Temporary Deputy Speaker, I will be brief in the interest of time. After deliberations on submissions received from the Office of the President and Office of the Prime Minister, the Committee made the following observations:-

1. The persons proposed in the list before the House are qualified and have the requisite experience to manage activities and programmes of the Public Service Commission.

2. The Committee noted that the team comprises of persons who have served for long periods in the Civil Service and whose vast experience can be tapped to spearhead a vibrant Public Service.

3. The Committee further noted that adequate consultations had been done by the time of tabling the Report in this House and, therefore, there was a concurrence on the list of the nominees to the Public Service Commission which was forwarded to Parliament by the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service on 19<sup>th</sup> December, 2012.

Madam Temporary Deputy Speaker, having considered memoranda and representations from the Office of the President and Office of the Prime Minister and vetted and deliberated on the nine nominees to the Public Service Commission, the Committee made the following recommendations:-

1. That Parliament approves the nomination of Prof. Margaret Kobia, PhD, CBS, for appointment as chairperson of the Public Service Commission.

2. That Parliament approves the nomination of Amb. Peter ole Nkuraiya, CBS, for appointment as the vice-chairperson of the Public Service Commission.

3. That the House approves the following nominees for appointment as Members of the Public Service Commission:-

- (i) Prof. Micheal N. Lokuruka;
- (ii) Mr. Patrick G. Gichohi;
- (iii) Mr. Lawrence Nyalle;
- (iv) Ms. Veronica Chematia Birgen;
- (v) Ms. Catherine Raini Omweno;
- (vi) Dr. Judith Emboyi Bwonya; and,
- (vii) Mr. Titus Ndambuki.

Madam Temporary Deputy Speaker, having said that and reading the mood of the House, I wish to move and ask hon. Ochieng to second.

**Mr. Ochieng:** Madam Temporary Deputy Speaker, I want to agree with my Chair. We really deliberated on these names, as required by the Standing Orders of this House and after looking into each and every person's Curriculum Vitae (CV), we realized that they are qualified to perform their duties as Commissioners in the Public Service Commission.

Madam Temporary Deputy Speaker, I beg to second the list.

*(Question proposed)*

**Mr. Midiwo:** Madam Temporary Deputy Speaker, I rise to support this Report and in so doing, I want to say one thing; that, the list as presented by Mr. Kapondi is a list of good Kenyans. I want to particularly say what I said here when we bid farewell to the former Clerk, Mr. Gichohi. I said that Mr. Gichohi's mind could have been a terrible mind to go to waste by going into retirement and going into farming somewhere. I am particularly delighted that he is moving from this House to be used further in the Public Service Commission. I think this country will benefit more. I also want to say that I know Mr. Titus Ndambuki as an astute public servant and I know they are going to do their work diligently.

I support.

**The Assistant Minister for East African Community** (Mr. Munya): Madam Temporary Deputy Speaker, thank you for giving me an opportunity and by calling out our full names. That is a new style that we quite like. I also want to take a very short time. These are competent Kenyans who have served in the public service for many years. They also reflect the diversity of the Kenyan nation and that is a requirement in the Constitution. The panel undertook the interviews quite well and they also met the gender requirement. If you look at two or three of them; like Mr. Titus Ndambuki has served as Permanent Secretary for several years and has done a very able job in running that Ministry that Houses that particular commission. So, his experience would be invaluable in helping the Commission to transform and set standards for the new public service under the new Constitution.

Madam Temporary Deputy Speaker, Prof. Margaret Kobia is also a long standing public servant who has also transformed the Kenya Institute of Administration (KIA) now Kenya School of Government, into one of the very well performing institutions in the Government. When I mention those two, I do not mean that the others are not able public servants. I know Mr. Peter ole Nkuraiya as a long serving and respected public servant. So, this is a very able team that has been given a very heavy responsibility but I know they are capable of carrying the responsibility of creating a vibrant public service. Therefore, we all whole heartedly support. There is no controversy over these names like there was in the Teachers Service Commission (TSC) when certain things were not done right. All the steps were followed. The Committee scrutinized properly and found that all the steps required were followed. Therefore, what is left is for us to give a stamp of approval to the nomination of these names so that they can be able to start their work that is already cut out for them.

**Dr. Monda:** Madam Temporary Deputy Speaker, I also rise to support the Report. The names read before the House are big names and we have the history of all of them. The challenge we have here is the level of the public service. Even when this House approves a budget and there are vacancies for employment, we spend years to have the same done due to sluggishness in the Public Service Commission. So, the challenge for these big names is to ensure that they do their business in good time so that the young Kenyans who qualify for jobs are given the opportunity in good time. This will make sure that service does not suffer. Sometimes we have resources but people are not hired because of the way things are done at the Public Service Commission. Therefore, as we wish them well by approving the names, they should know they have a challenge and must ensure that they do things at the right time.

Thank you and I support.

**Mr. Onyancha:** Madam Temporary Deputy Speaker, I rise to support this list and also thank the Committee for a job well done as usual. These are very distinguished Kenyans who have served in the public service and elsewhere and we would not wish to prolong this debate. I am especially happy that this Commission is going to be headed by a lady and it is gender and

regionally balanced. I know some of them as very able people. I know Madam Catherine Raini who is a very prominent person in the society, as well as former Permanent Secretary, Mr. Ndambuki. I sincerely hope that the hon. Members will approve the names.

I support.

**Mr. Ethuro:** Madam Temporary Deputy Speaker, I agree with Mr. Munya. You are telling the Republic all our names. They did not know I even have a Christian name known as David.

I rise to support this Report and congratulate the Chairman of the Committee. He has the most difficult task, I believe. The names that we have before us are some of the refined and distinguished Kenyans who have already demonstrated their competence and experience in the rest of the public sector. I think the appointment to serve in this Commission will give them the opportunity to bring that kind of experience to ensure that the public service in the Republic of Kenya is the best. So far, it is good because we are getting United Nations (UN). We are actually dealing with other countries like Sierra Leone but it is still not good enough, according to the Kenyan standards.

I have always argued that Kenyans like electing leaders and sending them home but until you reform two places; the public service and the police service, we will be electing and taking leaders away from Parliament or from the Government and there will be no changes. Therefore, these Commissioners have a responsibility to ensure that the standards set in the Constitution and in the Public Service Commission are actually employed. In particular, I want to single out two individuals I know; one is Mr. Patrick Gichohi, who has done a splendid job in trying to make this particular institution to be where it is. We can speak of all other contributions but the office of the Clerk made a direct intervention in the way we conducted business. I remember when we were looking at the Standing Orders for this particular Parliament, Mr. Gichohi went out of his way to accommodate some interests that were not politically correct because he wanted the best for the nation. These are the kind of principles that we want to see in our public service.

The second individual that I want to single out is Prof. Michael Lokuruka. I am particularly pleased that this one comes from the great County of Turkana. This is the first time his name is appearing in the commissions and it is extremely important. He is an academic individual of long standing and he has demonstrated excellence in academia and in helping the community. I think he is going to bring us a special sense in terms of public service at the university level, to this kind of gathering. More importantly, the Constitution now demands that we have ethnic and regional balance. You are on record, for moving amendments, even yesterday and you have done it before, that most of these appointments to the commissions or to the boards, must reflect regional, ethnic and gender balance. We are starting to see the fruits and benefits of a new Constitution. We sat down with the Commission for the Implementation of the Constitution (CIC) and we analyzed the regional, ethnic and gender composition of the commission and we found that some of these things were lacking. So, it is good to see some of these names. We wish the commission well. We need to approve them immediately so that they can start the job that we have appointed them to do.

**Eng. Gumbo:** Madam Temporary Deputy Speaker, I stand to contribute on this Motion. I want to be on record that I am strongly opposed to some of these names; not all of them. I think it is known here that I am one of those people in this Parliament who does not believe that popular opinion is always the right opinion.

Madam Temporary Deputy Speaker, when someone has served in the Civil Service for 40 years, there has to be a time to rest. These accolades we are saying that so-and-so did what,

societies that believe that some individuals are indispensable always go wrong. No one of us in this world is indispensable; you have served for 40 years, you still want to serve another ten years, what about the other Kenyans? These people are going to have huge salaries that can be used to employ as many as 50 youths yet we keep on recycling old people. Even myself, when the time comes, I have to go. To say that, "So-and-so helped in restructuring Parliament" if he was not there would there not have been Parliament? These people have served their time and even if I belong to the minority, I am strongly opposed.

It is not just this; we are creating artificial avenues for youth unemployment in Kenya. You find so many boards, the wife is a chair of a parastatal and the husband is a member of a board. In the 11<sup>th</sup> Parliament, we must surely bring laws that bar people from the same family holding appointing positions in Government at the same time.

Madam Temporary Deputy Speaker, let us forget about this notion that some people are so important that when they are not there, nothing can move in Kenya.

I strongly oppose and even if I am going to be the only dissenting voice, I think some of the names are okay but to include someone who has served in the Civil Service and has gone on retirement--- Retirement means you have served your country, go and rest. Why do we keep on bringing these people and denying other Kenyans a chance to also serve?

Madam Temporary Deputy Speaker, these attitudes are pervasive even in private organizations. I had a time to visit one of the most advanced countries in the world and I was shown the founders of leading companies. When they were sitting in the Chief Executive Officer's (CEO) seat, they gave the impression that nothing would happen without them; they died as we all must, they went to the next world and those companies are doing even better.

I want it to go on record that I am totally opposed to re-appointing people who have retired after serving for 40 years. If they did not manage their lives well, who tells you that they are going to manage it better in the next ten years they are going to serve in this Commission?

I strongly oppose and urge my colleagues even those who have supported this list to change their minds and we kick out some of these fellows. They are not the only ones. Kenya has over 40 million people! So many youths are unemployed; you take someone who has worked for 40 years, give him a salary of Kshs800,000 per month and you see nothing wrong with that?

I completely oppose, Madam Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): What is your point of intervention, Mr. Njuguna?

**Mr. Njuguna:** Madam Temporary Deputy Speaker, now that the Member has just concluded his contribution, I find it not necessary to intervene.

**Mr. M' Muthiaru:** Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to support this Motion on the appointment of the chairman and members of the Public Service Commission.

First, I would like to congratulate the selection panel because they did a good job. I would also like to congratulate the Committee on Administration and National Security for forwarding these names and upholding the views of the selection panel.

Madam Temporary Deputy Speaker, the PSC is one Commission that requires people who are performers and people who are experienced. You cannot just have people who do not have experience being in the PSC.

I would like to congratulate the panel and Committee also for recognizing the gender issue. I know the lady who has been nominated to be Chair has already turned around the Kenya

Institute of Administration (KIA) which is now the Kenya School of Government. It is the time we gave accolades to our ladies especially those performing well.

Madam Temporary Deputy Speaker, if you even move around the country and see what is happening at Kenyatta University where we have Prof. Mugenda who is doing a stunning job; it is time we gave ladies in particular time to show what they can do for Kenyans.

Mine is just to support the appointment and nomination of the Chair and Members of the PSC.

I support.

*[The Temporary Deputy Speaker  
(Mrs. Odhiambo-Mabona) left the Chair]*

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

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, because of a lot of interest, can we reduce our submission time to two minutes only?

**Mr. Keynan:** Mr. Temporary Deputy Speaker, Sir, I hope that should not apply to me; maybe it applies to subsequent contributors.

I want to appreciate the good work my good brother, Kapondi, has always done on behalf of the Tenth Parliament. However, we must be prepared to say the truth. This is because what will save this country is the truth.

This country has just promulgated a new Constitution and we are trying to domesticate a very comprehensive constitutional dispensation. That Constitution clearly talks about the issue of regional, ethnic diversity and gender. As much as we accept that some of the individuals in this list are individuals who have made immense contribution to the public service, what we are about to do is to authorize an entity that is going to oversee the running of the public service.

Mr. Temporary Deputy Speaker, Sir, these must be individuals--- I wonder whether the chairman has found out the relationship both professional and individual of some of the individuals who are in this Commission. This is why I am saying that this list does not meet the constitutional threshold of regional and ethnic diversity which the Constitution clearly talks about.

What informed the establishment of nine commissioners was; one would come from each of the recognized regions and the ninth from anywhere. As this list clearly spells out--- There are regions and that has been the tradition. Mr. Nanok, I think I have the right to be heard.

Mr. Temporary Deputy Speaker, Sir, I appreciate and I will be the last person to oppose something brought by Mr. Kapondi, however, this list that we are about to pass unfortunately does not meet the constitutional threshold of regional balance. If at any given time we will be recycling some of the individuals who have retired, what are we telling the youth who constitute 50 per cent plus of the Republic of Kenya? They also need to be somewhere. We need to prepare them.

As much as I appreciate and we say some of the individuals have done very well, what am I going to tell my daughter who wants to be a commissioner and she has just finished university? Do I tell her to wait until she retires after another 30 years? These are the facts that we must appreciate. Tell me who is going to represent the youth in this list. That is a very important constituency of the Republic of Kenya; almost over 60 per cent. Where are they



represented in this list? There are those who are going to be recruited in the public service; they are not these old men and women.

This list lacks youth representation. It also lacks regional diversity and representation. We are bringing back individuals who are already retired. They should be somewhere holidaying and attending to their grandchildren. Since these are some of the last things we are doing as our term comes to an end, I want to plead with hon. Members that we do something that is good for our country. I appreciate and I know a region like Turkana, which might not have had many people, I have heard that for the first time, they have a professor and that is unique. But we must also look in our own country and see what this list can contribute to the well being of every Kenyan.

Mr. Temporary Deputy Speaker, Sir, I know there is an attempt to hurry some of these things when our term is coming to an end. You know that for the last one week we have been floating rules simply because on 20<sup>th</sup>, we were supposed to have gone home and now it is here. I want to plead with hon. Members that we send this list back to the Executive, so that they look at it in totality. We want them to give us a list that has a representative of the youth, a representative of the other regions that are missing here taking into account a region like Turkana has never been represented in other Commissions. They should retain that as much as we want them to give us the face of Kenya.

I know this might not have come to the attention of the Chair that some of the individuals in this list have their personalized relationships. I do not want to mention names, but I wonder whether we will not be risking to have three individuals with similar social backgrounds, same clubs and with vested business interests serving in PSC. I know I would have given this information in camera. I do not want to mention individuals. But I am not sure whether it will add any value to have these three gentlemen serving in PSC. I wonder what kind of public service they will offer because they will transfer their business interests to the public service club. I do not want to mention names, but we can also say and even produce facts. This is the reality.

Mr. Temporary Deputy Speaker, Sir, I want to plead with my colleagues to reject this list. Maybe our term will come to an end today before 14<sup>th</sup> of January, 2013, but I want to plead with hon. Members to reject it. If it pass the way it is, we will dent our image. One day, for those of us who will be there, we will question the integrity of some of the individuals and the collective thinking that they will be transferring to the PSC, taking into account the constitutional nature of the Commission.

Therefore, I want to stand here and vehemently oppose this list. It is unconstitutional. It does not represent the youth and does not represent the face of Kenya. It is meant to serve a partisan interest. It is a pity this House will be used just to rubber stamp it. Let us send this list back to the appointing authority, so that we get better names than the ones given here.

Thank you, Mr. Temporary Deputy Speaker, Sir. I beg to oppose.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Members! I allowed hon. Keynan to speak for that long because he was already on his feet when I made the ruling of restricting debate to two minutes.

But before we proceed, I have a communication to make from the Chair, which is quite urgent.

### COMMUNICATION FROM THE CHAIR

FRESH NOMINEES FOR APPOINTMENT FOR  
CHAIRMAN AND MEMBERS TO THE TSC

**The Temporary Deputy Speaker** (Mr. Ethuro): Following the rejection of the regional list of nominees of appointment of chairperson and members to the Teachers Service Commission (TSC) by the National Assembly on 3<sup>rd</sup> January, 2013, a fresh list of nominees has been forwarded to the House for approval pursuant to Section 8(11) of the Teachers Service Commission Act No. 20 of 2012, which *inter alia* reads:-

“Where the National Assembly rejects any nominee, the Speaker shall, within five days, communicate this decision and request the President to submit fresh nominations from amongst the persons shortlisted and forwarded by the selection panel under Sub- Section 6.”

Hon. Members, in his letter dated 8<sup>th</sup> January, 2013, Reference No.OP/CAB17/99A to the Clerk of the National Assembly, the Permanent Secretary, Secretary to the Cabinet and Head of Civil Service has advised that his Excellency the President, in consultations with the Right Hon. Prime Minister, has nominated the following persons to serve in the TSC for the positions stated hereunder.

Chairperson: Mr. Kiragu wa Magoshi.

Members:

1. Mr. Cleophas Tirop
2. Mr. Fredrick Haga Ochieng’
3. Mr. Adan Sheikh Abdullahi.

I, therefore, direct that the names of the nominees and their accompanying *curriculum vitae* be forwarded to the Departmental Committee on Education, Research and Technology for consideration prior to approval by the House. The Committee is directed to table the report in the House today, 9<sup>th</sup> January, 2013, during the afternoon sitting.

Thank you.

Order, hon. Members! The rest of you will have strictly two minutes.

Yes, hon. Nyambati.

**Mr. Nyambati:** Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support this list. I know my colleagues have presented a very strong argument that there are some retirees in this list who have been appointed. But if you look at the list, especially the chairperson, she is very competent. These are people who are credible; people who have served this country and people who have a good track record. I have interacted with her when we were doing the work of the Parliamentary Service Commission (PSC). She is extremely competent. She really did a lot of good work for the Commission.

Mr. Temporary Deputy Speaker, Sir, if you look at this list, you will also find that they are not all retirees. There are young people on the list. It is a mix, which is good because we need some people who have experience to work in the PSC, so that it can give flavor and justice to this country.

I am impressed to note that there are quite a number of women who have been appointed to this Commission. We have, at least, four women out of nine members who form this Commission.

Mr. Temporary Deputy Speaker, Sir, the PSC---

**The Temporary Deputy Speaker** (Mr. Ethuro): You have 15 seconds, hon. Nyambati!

**Mr. Nyambati:** Mr. Temporary Deputy Speaker, Sir, the PSC should be revitalized now to do the good work. We do not want a PSC which---

**The Temporary Deputy Speaker** (Mr. Ethuro): Your time is up, hon. Nyambati! Proceed, hon. Chanzu.

**Mr. Chanzu:** Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support the report and congratulate the Committee for the work done. Previously, the PSC has been composed of people who had just been handpicked by the Executive. They were involved in interviewing and recruiting public servants. But this time, the process has been reversed. The Commissioners have had to undergo a process they will subject others. That is recruitment through interviews and now vetting.

Mr. Temporary Deputy Speaker, Sir, some hon. Members are talking about young people. I would like to encourage these Commissioners when they take office to ensure that the positions they fill, they will take into account what the Constitution spells out. That is the issue of gender, youth, regional balancing or diversity and so on. I think that will suffice. I think all the individuals are credible men and women going through their names. For example, if we look at the chair, you will find that she is somebody who has headed the institution that has been involved in training civil servants or public servants. That is the Kenya Institute of Administration (KIA). That means that she has now gathered enough experience in how to handle recruitment and training in the public service.

Mr. Temporary Deputy Speaker, Sir, there are also experienced people on that list. We have Mr. Gichohi. I was not here when we were talking about him when he was retiring. That is somebody who has served---

**The Temporary Deputy Speaker** (Mr. Ethuro): Your time is up, hon. Chanzu! Proceed, hon. Mwaura.

**Mr. Njuguna:** Thank you, Mr. Temporary Deputy Speaker, Sir. Let me start by thanking the Chairman of the Committee and his Members for doing a sterling job. This is a new broom composed of well experienced and distinguished Kenyans. It is a team that will bring a new image and vision to the PSC. Mr. Gichohi who is one of the members to be appointed, is an asset to this very important Commission. I think this Commission will serve Kenyans better now that Mr. Gichohi and other Commissioners will work together with the very highly qualified Chairperson, Margaret Kobia.

Mr. Temporary Deputy Speaker, Sir, we also encourage all qualified Kenyans to appear and be considered for the vacancies at the Commission.

With those few remarks, I beg to support.

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Temporary Deputy Speaker, Sir, judging the mood of the House, could the Mover be called upon to reply?

*(Question, that the Mover be called upon to reply, put and agreed to)*

**Mr. Kapondi:** Mr. Temporary Deputy Speaker, Sir, I want to thank hon. Members for their overwhelming support and those ones who have given dissent over this. I also want to inform them that the public service requires the expertise of people who have had a lot of experience. Our Constitution demands that senior appointments experience be considered. We cannot waste people who have a lot of experience at the altar of other considerations like the

youth. The youth should start from someone as an entry level before they later graduate in later years to institutions like the PSC.

So, with those few remarks, I wish to thank hon. Members and urge them to support.

*(Question put and agreed to)*

## MOTION

### ADOPTION OF REPORT ON PRIVATIZATION OF SUGAR COMPANIES, KTDC/KWAL

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

THAT, this House adopts the Report of the Departmental Committee on Finance Planning and Trade on the Privatization Proposals of the Five Public sector owned/Controlled Sugar Companies, three Kenya Tourist Development Corporation (KTDC) owned Hotels and Kenya Wine Agencies Limited (KWAL) laid on the Table of the House on Thursday 20th December, 2012.

The report from the Minister for Finance was first presented to the Committee in January 2011 with the privatization proposals. However, at that time, we could not proceed because the Privatization Commission had expired and, therefore, the Committee rejected the proposals until the Privatization Commission had been constituted. As you remember, the Privatization Commission was approved by this House in September 2012 and, subsequently, gazetted by the Minister in November 2012. Therefore, this allowed the Committee to have the opportunity to look at the privatization proposals presented by the Minister for Finance. I will be very brief. There are several privatization proposals that have been presented to the Committee. These are five sugar companies; Nzoia Sugar Company (NSC), South Nyanza Sugar Company (Sony Sugar), Chemelil Sugar Company (CSC), Miwani Sugar Company and Muhoroni Sugar Company (MUSCO).

In the hotel industry, three hotels have been earmarked for privatization. These are the International Hotels Kenya Ltd which owns the Intercontinental Hotel, the Kenya Hotel Properties which owns the Hilton and the Mountain Lodge Ltd. Finally, we have KWAL. These are the State owned corporations that have been presented for privatization.

In view of the legislation that has been ongoing to try and restructure the sugar sector and in view of the fact that in order to do reasonable privatization, it was proposed that we restructure the debt of the sugar companies. Since this has not been done because it is a prerequisite before privatization that all the debts owed by these companies should, first of all, be written off in order to prepare them and make their balance sheets attractive in order to attract buyers.

It is, therefore, recommended by the Committee that as far as the sugar companies are concerned, this should be postponed because this is contained in Sessional Paper No.12 which has yet to be debated and approved by this House. That is the Sessional Paper that contains all the proposals for writing off the debts amounting to almost Kshs41 billion. If this is not done, it will not be sensible to privatize these outfits.

It is also felt strongly that the county governments coming into effect soon may have an interest in acquiring shares in some of these sugar factories. Therefore, we felt that this be postponed until the next Parliament by which time the county governments will be in place and they can have an opportunity to participate in these privatizations. Therefore, one of our

recommendations is that we postpone the privatization of the five sugar factories that have been proposed.

As far as the three hotels are concerned, we feel that this is long overdue because many of them have run down. So, they are not attracting the level and quality of tourists that we would want to have in order to improve tourism proceeds for the Kenyan economy. So, the Government of Kenya (GoK) is not prepared to inject any more money in these hotels in order to maintain its shareholding. This is because if they were to go ahead and modernize these hotels, then this would considerably dilute the shareholding of the GoK. Therefore, it is proposed that we privatize them now and get them now to have the opportunity to inject in more capital to improve them, so that they can offer quality services to tourists coming to Kenya.

Mr. Temporary Deputy Speaker, Sir, as far as KWAL is concerned, it has really been run down. On the other hand KWAL depends heavily on a company called Distell which is a South African Company which basically supplies all its requirements for the manufacture of wine. Therefore, it is believed that if we do not do something about privatization the KWAL at this point and getting into a long term supply arrangement with Distell, the company might wind up because it has serious cash flow problems, it has been run down and Distell is thinking of changing and entering into a fresh supply agreement with others. So, we propose that KWAL should be privatized and give a chance to Distell among others to be able to acquire shares there so that they can secure the supply of raw materials for the manufacture of wine.

I would like to end by requesting this House to approve this Report. I also want to mention that the privatization programme is about three years behind schedule. This is because for a long time, the Privatization Commission had expired. After expiry, it took a long time to form new Privatization Commission which we just approved last month.

So, in order to save on time and to ensure that these institutions do not collapse, I would like to seek the approval of this House of the Report by the Departmental Committee on Finance, Planning and Trade. I would like to request hon. M'Mithiaru to second.

**Mr. M'Mithiaru:** Thank you, Mr. Temporary Deputy Speaker, Sir, for this opportunity to second the Motion by the Departmental Committee on Finance, Planning and Trade on the privatization proposals of the five public sector owned and controlled sugar companies, the Kenya Tourist Development Corporation owned hotels and the Kenya Wine Agencies Limited (KWAL).

I am a Member of this Committee. We deliberated on these proposals and came up with this Report and its recommendations. It is true, what my Chairman has said, that this privatization programme is far behind schedule. I am sure that with the appointment of the Privatization Committee, it will be in a position to fast-track the programme, so that Kenyans enjoy the fruits of privatization.

We also dwelt on the issue of the sugar companies. We reckoned that with devolved government there could be issues that arise at that level. This is because we know that most of the communities would wish to participate in and own those sugar companies in terms of shares. So, we all agreed that, that particular sector can hold until the next Parliament which will adequately look at the issues at hand and then arrive at the conclusions.

As of now, we recommended that the hotels that are public owned should be privatized and be given a new lease of life of efficiency so that they can properly serve Kenyans. It is the same case with the KWAL. It requires a new lease to ensure that it is effectively managed and the performance stepped up to ensure that its production lines, development and growth, employment creation and all that are the fruits of privatization.

Our recommendations before the House are properly considered and we urge the House to approve them as they are.

I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Members! Because of the business that we have, I will restrict the subsequent contributions to a maximum of two minutes per person.

Hon. Githae, if you had not requested that's fine.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I had requested, but I wanted to reply. Maybe you could give an opportunity to one or more persons.

**The Temporary Deputy Speaker** (Mr. Ethuro): You requested to early.

**Mr. C. Onyancha:** Mr. Temporary Deputy Speaker, Sir, I would like to support this Report, but not wholly in its full presentation.

The Committee's recommendations on the sugar companies are very welcome. It is very good that we have Parliament in session when we are selling our assets as Government. That is why, for the hotels, I would also have hoped that this happens when Parliament is in session. As for KWAL, because it is in ICU, it is, probably, the only one I would recommend strongly that it is sold at present as soon as possible.

In all these, we would like to demand a transparent process. We need Kenyans to participate and it should be fully opened. As I said before, we need to do this when *Bunge* is in session to exercise its oversight role.

I, therefore, support with those reservations.

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, let me start by thanking the Chairman of this Committee. I note with disappointment the colossal loss of money that has been incurred by these entities. Therefore, it is important, noting that these are public finances that thorough investigations must be carried out to make sure that no individuals make themselves millionaires or billionaires from the public coffers.

Secondly, it is important that we encourage private/public partnerships in this country so that we create job opportunities for our youth. This activity will entail acceleration of economic growth in this country.

I support the recommendations of the Committee.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Githae, you are not replying. You can only respond.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I want to thank the Chairman of the Departmental Committee on Finance, Planning and Trade and his team. We were unable to unlock the deadlock that had been there. Since then, they have worked tirelessly. They have gone through the proposed privatization. With this one now, even when Parliament ceases to exist, the technical committee can now proceed with negotiations so that we are able to have this.

Our South African partners have been threatening to stop supporting KWAL because of the delay. However, if they are now listening, they should know that it is possible for them to get the shares they have been asking for.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, thank you for this time to support this Motion and to support the work of the Committee. I want to take

this opportunity to thank the Committee for the time they put in this matter. Members will recall that the law was changed in 2005. It took effect from 2007 detailing how privatization should take place. Indeed, if this takes place then this may well be the first privatization to take place since 2008. It basically tells us how laborious these things can be. I want to thank the Committee for having spearheaded the process.

I ask of the new Privatization Commission which is now in place that it expedites the process of looking through all the other bodies that need to be sorted out in terms of public/private participation and to enhance the efficiency, therefore, tapping in the private sector money that will help in terms of rejuvenating and revitalizing them so that we can move forward in achieving Vision 2030.

With those words, I beg to support.

**Mr. Okemo:** Mr. Temporary Deputy Speaker, Sir, I want to thank hon. Members for their contributions. I want to allay the fears of hon. C. Onyancha that the privatization process is a long one and it is highly unlikely that it will be done and completed before the next Parliament because there are quite a number of steps that one has to go through before the privatization is complete. One of the requirements in Section 24 of the Privatization Act is that the financial position of the asset must be made clear. The recommended method of privatization and timetable for implementation must also be made clear.

The laws that need to be amended must be made clear before the process happens. There must also be assurance that Kenyans will be encouraged to participate in the transaction. So, this is the process that will begin once we give the approval and it will take time. By the time the Eleventh Parliament is in place, it is unlikely that any of this will have happened or completed.

I would like to thank all hon. Members and hope that we will approve the Report of the Committee.

*(Question put and agreed to)*

ADOPTION OF REPORT ON NOMINATION OF  
MR. FRANCIS W. KARIUKI

**Mr. Okemo:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. This is will be a brief one and I will not take a lot of time.

I beg to move:-

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the Approval of Francis Wang'ombe Kariuki for appointment as the Director-General of the Competition Authority of Kenya laid on the Table of the House on Thursday 20th December, 2012.

The Competition Authority Act is very clear. It says that the appointment of the Director-General of the Competition Authority will be appointed by the Board of the Competition Authority and approved by Parliament. In saying that it will be appointed, due recognition must be given to the process of recruitment. The job was advertized for in the dailies, people applied, they were shortlisted and they went through a competitive process. Mr. Kariuki was the best candidate. We looked at the papers that were presented to the Committee and we were quite satisfied. Looking at his background, he grew up in the organization. Previous to the Competition Authority being in place it was called the "Monopolies and Restrictive Practices Authority". He was among the first employees and has risen through the ranks to get to the

position where he is. Therefore, he is qualified and the law was complied with. Public participation happened through the position being advertised, people applied, they were shortlisted and he finally emerged the best candidate.

I, therefore, request the House to approve the recommendation of our Committee. I will request hon. M' Mithiaru to second.

**Mr. M' Mithiaru:** Mr. Temporary Deputy Speaker, Sir, I rise to second this Motion of the Finance, Trade and Planning Committee on the approval of Francis Wang'ombe Kariuki for appointment as Director-General of the Competition Authority of Kenya.

We did the vetting of Mr. Kariuki and the appointing panel in the Board went through the due process. We also looked at the rating method that was used by the Board and we were satisfied with the process that they took. We saw that they picked on Kariuki after using a rating a process that rated him the best of all the other applicants. We are all aware that the Competition Act is a successor of the Monopolies Act that was there before. We know that there were many loopholes in the previous law, especially where they were not giving opportunities for small businesses to grow. However, the new law gives an impetus and an opportunity for everybody to properly compete fairly without fear or favour. We are sure that Mr. Kariuki will oversee that process and ensure that the Authority does its job as required.

With those few remarks, I support.

*(Question proposed)*

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, let me start very briefly, by thanking the Committee for a job well done. I would like to indicate that this is a candidate who will bring the necessary administrative and managerial skills to lay the required foundation in the Competition Authority of Kenya.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Mr. Ethuro): I now call upon the Mover to reply because there are no other requests.

**Mr. Okemo:** Mr. Temporary Deputy Speaker, Sir, mine is to thank hon. Members for their contributions. I hope that they will find it necessary to approve the Report because the Competition Authority is a very important institution. If we have the right person in place, and we believe that Mr. Kariuki is the right person, the Authority will play its rightful role in the economic development of Kenya.

*(Question put and agreed to)*

ADOPTION OF REPORT ON APPOINTMENT OF M/S BAKER MERALLY'S CPA TO AUDIT  
ACCOUNTS OF THE AUDITOR-GENERAL

**Mr. Keynan:** Mr. Temporary Deputy Speaker, Sir, on behalf of the Parliamentary Service Commission (PSC), I beg to move:-

THAT, pursuant to the provisions of Article 226(4) of the Constitution, this House approves the appointment of the Audit Firm of M/S BAKER TILLY MERALI'S CPA, to audit and report on the Accounts of the Auditor-General for the years 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2016/2017.



This is a procedural constitutional issue. The PSC is a constitutional Commission established under Section 45(b) of the former Constitution of Kenya. It is also established under Article 127 of the new Constitution. The constitutional responsibilities of the PSC include provision of such services and facilities necessary to ensure efficient and effective functioning of Parliament.

Further, Article 248(3)(a) of the Constitution of Kenya establishes the Office of the Auditor-General as an independent office. The Office of the Auditor-General is a body with a perpetual succession in a seal and is capable of being sued and also suing.

The Constitution provides that Parliament shall allocate adequate funds to enable the office perform its functions and its budget shall be a separate vote.

It is because of this that the Parliamentary Service Commission (PSC) also in consultation with the Auditor-General sought to recruit a firm to audit the accounts of the PSC.

I want to clarify one issue which hon. C. Onyancha picked up with me and I also saw his amendment. We consulted the PSC before even trying to get the service of this firm or other firms who competed. We sought the advice of the office of the Auditor-General. I want to table a letter dated 5<sup>th</sup> January 2012 and I want to read it, so that hon. C. Onyancha is aware of what actually informed the PSC to come up with this formula.

This is now the Auditor-General actually writing to the Clerk of the National Assembly. The letter reads:-

“As you are aware, the Constitution of Kenya provides that the accounts of the office of the Auditor-General shall be audited and reported on by a professionally qualified accountant appointed by the National Assembly as per Article 246(4).

Accordingly, we should appreciate if the process of appointing an auditor is commenced and concluded in time so as to afford the appointing auditor an opportunity to carry out the interim and final audit for the financial year ending 30<sup>th</sup> June, 2012. We recommend that the audit engagement becomes effective from 10<sup>th</sup> June, 2012 for the financial year ending 30<sup>th</sup> June, 2012 for a period of five years. The contract shall then be evaluated annually and rendered at the end of the five year period.”

*(Mr. Keynan laid the document on the Table)*

Mr. Temporary Deputy Speaker, Sir, it is because of this that the PSC sought the services and tendered for this particular service and a number of firms applied and this particular firm was rated the best. This is what the PSC has settled for and, therefore, as the PSC we recommend that the National Assembly pursuant to the provisions of Article 224(6) of the Constitution approves and appoints the audit firm BakerTilly Merali’s CPA audit firm to report on the accounts of the Kenya National Assembly for the years that I have mentioned.

Mr. Temporary Deputy Speaker, Sir, this is because again the process that the PSC actually used was one that has taken into account the Public Procurement and Disposal Act of 2005 and all other legal mechanisms that take into account prudence, transparency and accountability. Therefore, we believe this firm which the PSC has identified is going to be up to the task and ensure that our accounts are up to date and give us value for money.

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

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

Madam Temporary Deputy Speaker, with these few words, I beg to move and request hon. Chris Okemo who is also a commissioner to second.

**Mr. Okemo:** Thank you very much, indeed, Madam Temporary Deputy Speaker. I would like to second this Motion. First and foremost, the office of the Auditor-General is a constitutional office which is financed and funded by public money. Therefore, like any other body that uses public money, it has to be audited. Although they are the ones who audit the rest of the public bodies, they too must be audited. In selecting this audit firm, we went through a competitive selection process in accordance with the Public Procurement and Disposal Act. So, we believe that this is the best firm. At least it was the best firm among the ones that applied and were considered.

I would, therefore, like to second the Motion and say that the firm be approved by Parliament.

*(Question proposed)*

**Prof. Kaloki:** Madam Temporary Deputy Speaker, thank you for this opportunity for me to support the appointment of the audit firm M/S Baker Tilly Merali's CPA to carry out the audit of the Auditor-General's accounts for the years listed herein; this a period of five years.

Madam Temporary Deputy Speaker, this is a reputable firm which has audited many accounts both public and private. Their reputation is the best in this country.

Madam Temporary Deputy Speaker, this particular firm, Baker Tilly Mirali's CPA, have been rated as one of the best in this country. Now with the extended mandate of the National Assembly and the Senate, we need a reputable firm to deal with the extra accounts that will be generated to make sure that the accounts of Parliament and other State bodies will be well audited. The reputation of the firm doing the work is of important. We want this firm to be approved today, so that the accounts and their credibility are reliable.

I support strongly the appointment of this particular firm.

**Mr. C. Onyancha:** Madam Temporary Deputy Speaker, I beg to move an amendment to this Motion by deleting the figures after 2014/2015.

Madam Temporary Deputy Speaker, the reason for this is generally international practice; also as recommended by our institution, the ICPAK, auditors should be appointed annually. In any event, they cannot be re-appointed after four years in keeping with the practice that you should not get too used to your auditor.

Madam Temporary Deputy Speaker, I wish to ask hon. Kimunya, who is a fellow accountant, to second.

**Minister for Transport (Mr. Kimunya):** Madam Temporary Deputy Speaker, I rise to second the amendment. In seconding this amendment, I wish to state here that this has nothing to do with the auditor. I believe the audit firm is competent and good enough. Indeed, any firm that is practicing in Kenya and has been authorized under the Accountants Act has no issue. But the practice is usually in companies; the practice is that auditors are appointed on an annual basis, so that the shareholders have the opportunity at the end of the year to receive the report and then pass a resolution to re-appoint the auditors.

Now, we are the shareholders for the purpose of auditing the Auditor-General accounts. But instead of having to do it on an annual basis, we want to do it on a three-year basis so as to also to coincide with the way we do our departmental committees work. Let us do it for three years and then after that, depending on the performance and what will happen, the auditor can be re-appointed. I think that gives audit firm a better standing. We should not also be seen to have closed the door to any other audit firm that may want to have the opportunity to compete for work in the next five years.

Madam Temporary Deputy Speaker, I think on that basis, the auditors will do a good job and merit re-appointment in the second session, after their first three-year stint. So, if that becomes the practice, auditors will be appointed on a three-year cycle.

With those words, I beg to second and ask that we support the amendment for the purpose of creating a situation for the future. That has nothing to do with any doubts as to the work of the Committee or the quality of the auditors.

Thank you.

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

*(Question of the Motion as amended proposed)*

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, you will now debate the Motion as amended.

Yes, hon. David Njuguna.

**Mr. Njuguna:** Madam Temporary Deputy Speaker, very briefly, let me start by thanking the Vice-Chairman of the Parliamentary Service Commission (PSC) for this Report.

Secondly, I wish to congratulate M/s Baker Tilly Merali's CPA for getting the appointment. I hope that they will be able to look at the accounts for the period that is already specified. Being a dealer of transparency and accountability, this firm is competent enough to deliver the required services.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Dr. Laboso): Yes, hon. Charles Onyancha.

**Mr. Onyancha:** Madam Temporary Deputy Speaker, I also wish to rise in support of the Motion and thank the Committee for a job well done. I sit as a Commissioner in the Kenya National Audit (KENAO). There is something in process about amending the Public Audit Act. We will be able to incorporate these changes in the new proposed Bill.

With those remarks, I beg to support.

**The Temporary Deputy Speaker** (Dr. Laboso): Yes, hon. Martin Ogindo.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, I rise to support the Motion.

It is important that even as Parliament does the oversight role, let the watchdog also be watched. This will go a long way in instilling public confidence in the manner in which this institution carries out its business. This is unprecedented and will go a long way, particularly at this point when we are going to have the county governments.

We are going to have county assemblies. We want to create a precedence of having auditors even at the county level auditing the county assemblies, which will oversight the county governments. This is a positive departure from the past. It will go a long way in ensuring that this country becomes more and more transparent in its utilisation of public resources.

Madam Temporary Deputy Speaker, this is good practice. I want to believe that due diligence was done in coming up with this firm. I want to trust that the audit firm will do a good job during their first term. I wish that they prove themselves, so that they can be re-appointed.

With those remarks, I beg to support.

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

**Mr. Keynan:** Madam Temporary Deputy Speaker, I appreciate the sentiments of hon. Members. Basically, I always say I hold the view that the PSC is a specialized Commission in the sense that it represents parliamentarians. Therefore, in essence, we can also say that it is a political Commission. This is why the Members have always a right to exercise. This is why I grudgingly accepted the amendment by Mr. Onyancha; they are the consumers of our services.

I remember with nostalgia what happened in 1999. To date I reflect on the landmark achievements of the Commission; it is something that I am very proud of. I hope the next Commission in the next Parliament will do even better. We want to be the best example, the best Commission in the Republic of Kenya. We want to lead by example. I serve one arm of Government and is also an independent Commission.

This is why every action of the Commission has been fairly transparent. Even the procuring of this specialized audit firm was arrived at after a very thorough procurement process. We hope we will get value for our money. Going by the records, this particular firm is a competent audit firm.

Madam Temporary Deputy Speaker, I want to thank hon. Members for their continued support. I know I may not get an opportunity to thank all of you as your Commissioner. I am an appointee of the whole House. In particular I want to thank the Back Bench for their support. I believe by the time our term legally comes to an end on 14<sup>th</sup> January, or before then, if we decide to go *sine die* we will reflect on some of the achievements by the current PSC. I am sure that we will leave something that the current hon. Members will appreciate. This is something that will also add value to the lives and activities of hon. Members of the future parliaments.

Finally, I want to thank my fellow Commissioners headed by the Speaker, who is also the Chairman of the Commission. I also thank the entire staff of the PSC for their dedication and support. Any parliament is a specialized institution. It is not an institution where you can just employ somebody and expect that person to perform. These Clerks-at-the-Table have had many years of training at the institutional level and even outside. Therefore, this is a unique institution that requires expertise. This is why as a Commission, we have decided as a policy to make the best use of the staff that we have here in order to raise their morale and also ensure that we capitalize on their expertise. I want to thank all of them for their support and dedication.

I want to also thank all hon. Members and wish them well in their re-election efforts. Those who want to be governors, those who want to pursue different political ambitions, those who still want to come back as Members of Parliament, I wish you well and hope I will meet as many of you as possible after 5<sup>th</sup> March.

I beg to move.

*Resolved Accordingly:*

THAT, pursuant to the provisions of Article 226(4) of the Constitution, this House approves the appointment of the Audit Firm of M/S BAKER TILLY MERALI'S CPA, to audit and report on the Accounts of the Auditor-General for the years 2012/2013, 2013/2014 and 2014/2015.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, the next Order has been deferred to this afternoon. I will now call upon the Minister for Finance to report on the fate of Order No. 11 and Order No.12.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Speaker, I wish to report on the conclusion of our discussions with Members of the Budget Committee on Order Nos.12 and 13; The Division of Revenue Bill (Bill No.88 of 2012) and The County Allocation of Revenue Bill (Bill No.89 of 2012).

Madam Temporary Deputy Speaker, these Bills were really for the next Financial Year. The Treasury was only trying to be efficient to do as much work as possible to assist the incoming Government and Parliament. That is why even for the BPS, which was not due in 15<sup>th</sup> February, we did it in December. It was in this spirit that we were doing it. But since then, the Members of the Committee feel that as of today the audited accounts that we have are for 2010/2011. Those are the audit accounts that we have been using as a basis for revenue allocation. The hon. Members feel that if it proceeds then counties may be shortchanged.

Madam Temporary Deputy Speaker, there is also the other issue of the fact that before the Supplementary Estimates are tabled in this House, they are based on the Budget Policy Statement, which I tabled I think three weeks ago. But, again, the Committee has said that it does not have the time now to go round the country seeking the views of members, because that is a requirement that they must go round and seek the views of stakeholders. The Committee has said that in view of the short time remaining of the Parliament term, they will not have the time.

Madam Temporary Deputy Speaker, in view of that, we have agreed that we defer The Division of Revenue Bill (Bill No.88 of 2012) and The County Allocation of Revenue Bill (Bill No.89 of 2012) to the next Parliament. But in the meantime, Treasury will continue with budgetary provisions under administrative instructions and so will be the county treasuries. They will continue preparing their plans and budgets awaiting the elections of county assemblies. The National Assembly and Senate will be awaiting the election of Members of Parliament and Members of the Senate.

Madam Temporary Deputy Speaker, that was the conclusion of our discussions.

## **ADJOURNMENT**

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, there being no further business on the Order Paper, this House stands adjourned until this afternoon, at 2.30 p.m.

The House rose at 12.28 p.m.