

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 9<sup>th</sup> December, 2009

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

Abstract of accounts of the County Council of Nakuru for the year ended 30<sup>th</sup> June, 2003 and the certificate thereon by the Controller and Auditor-General.

Abstract of accounts of Mwingi Town Council for the year ended 30<sup>th</sup> June, 2007 and the certificate thereon by the Controller and Auditor-General.

Abstract of accounts of the Municipal Council of Kisumu for year ended 30<sup>th</sup> June, 2004 and the certificate thereon by the Controller and Auditor-General.

Abstract of accounts of the Municipal Council of Kisumu for the year ended 30<sup>th</sup> June, 2005 and the certificate thereon by the Controller and Auditor-General.

Abstract of accounts of the Municipal Council of Kisumu for the year ended 30<sup>th</sup> June, 2006 and the certificate thereon by the Controller and Auditor-General.

Abstract of accounts of the Municipal Council of Kisumu for the year ended 30<sup>th</sup> June, 2007 and the certificate thereon by the Controller and Auditor-General.

Abstract of accounts of the Municipal Council of Bungoma for the year ended 30<sup>th</sup> June, 2004 and the certificate thereon by the Controller and Auditor-General.

Abstract of accounts of the Town Council of Kilifi for the year ended 30<sup>th</sup> June, 2007 and the certificate thereon by the Controller and Auditor-General.

Abstract of accounts of the Town Council of Chogoria for the year ended 30<sup>th</sup> June, 2008 and the certificate thereon by the Controller and Auditor-General.

Abstract of accounts of the County Council of Lamu for the year ended 30<sup>th</sup> June, 2004 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Roads (Dr. Machage)  
on behalf of the Deputy Minister  
and Minister for Local Government)*

### NOTICES OF MOTIONS

LICENSING OF PRIVATE MANUFACTURERS TO PRODUCE  
MOTOR VEHICLE REGISTRATION NUMBER PLATES

**Mr. Wamalwa:** Mr. Speaker, Sir, I beg to give notice of the following Motions:-

THAT, being aware of the limited capacity of the Government in the manufacture of motor vehicles registration number plates, owing to the manual and outdated means used presently; considering the high demand for number plates and the delay in the supply of the same; due to the slow process in manufacturing, appreciating the advancement of technology elsewhere in the world and the need for the Government to embrace the same so as to facilitate expeditious manufacturing of normal as well as private or customized plates and enhancement of security features to prevent use of fake plates; this House urges the Government to consider licensing of private manufacturers to make normal registration number plates as well as private or customised plates using modern technology so as to avoid the delay in making and issuance of registration number plates to enhance security features and to raise revenue.

FORMULATING OF COMPREHENSIVE POLICY  
FOR *BODA BODA* SECTOR

THAT, being aware of the important role played by the *boda boda* sector in Kenya today in providing both motorised and non-motorised means of transport and as well as employment for many Kenyans hence contributing greatly to the economy; noting with concern that lack of a comprehensive policy and a legal framework to regulate and address the problems facing the *boda boda* operators, and the challenge raised by this vital and fast growing sector of our society, this House urges the Government to urgently put in place a comprehensive *boda boda* policy to address the challenges facing the sector and to set up a special fund to empower and alleviate the suffering of the *boda boda* operators.

QUESTION BY PRIVATE NOTICE

FATAL SHOOTING OF MESSRS. J.O. OCHOL  
AND C. GATHOGO

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

(a) What are the circumstances surrounding the fatal shooting of Messrs. Jeremiah Otieno Ochol and Christopher Gathogo on 13<sup>th</sup> June, 2009?

(b) Could the Minister confirm that the two were removed from a Mombasa-bound minibus and shot at point-blank range by police officers at Konza in Machakos?

(c) What action has the Government taken to apprehend the suspects?

(d) When will the bodies of the victims be released to their next of kin for burial?

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

(a) On the 13<sup>th</sup> June, 2009, the Criminal Investigations Department (CID) officers from Nairobi Special Crime Prevention Unit (SCPU), acting on a tip off that armed

robbers were travelling in a Mombasa-bound bus trailed it and intercepted it at the Konza area of Machakos District. When the bus stopped, two young men jumped out of it while shooting at the officers. An exchange of fire ensued. In the melee, the two suspects were shot dead and the following were recovered from them:

- (i) Two barrette pistols serial no.52007580 and FBI800.
- (ii) Twenty rounds of ammunition of nine millimetres calibre.
- (iii) Fifteen rounds of ammunition of 22 millimetres calibre
- (iv) Three magazines

(b) It is not true that the two suspects were removed from the bus and were shot at point-blank range. The two were shot down while engaging the police in an exchange of fire.

(c) In view of the circumstances mentioned, it is incorrect to term the officers involved as suspects. They were performing their lawful duties at the time and considering that these were armed criminals, they engaged them in a shootout, the need for self-defence was not negotiable.

That notwithstanding, the Government has opened a police inquest file No.6/09 which was forwarded to the Attorney-General for advice.

(d) The two families have since identified the bodies, post-mortem has been performed and the bodies have already been collected for burial.

**Mr. Olago:** Mr. Speaker, Sir, when you look at the circumstances surrounding the case, I think the Assistant Minister was misled by his officers. It was a clear case of execution of the suspects by the police instead of apprehending them to face the law. If that was not so, how come that the postmortem report on Jeremiah Otieno indicated that he was shot from behind and not from the front?

**Mr. Ojode:** Mr. Speaker, Sir, it is very sad to come to this House and start protecting criminals. It is equally sad when the same criminals attack MPs and innocent Kenyans.

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. I do not know whether you heard what the hon. Assistant Minister has said. He is saying that by asking a question here, the hon. Member is supporting criminals. What is in question here is extra judicial killing by the police.

**Mr. Speaker:** Mr. Ojode, if you said that, unfortunately, I did not hear you. I was consulting with the Member for Kuresoi on an important matter. But if you said that, that is tantamount to imputing improper motive on the part of the hon. Member for Kisumu West. Could you just clarify if that is what you said?

**Mr. Ojode:** Mr. Speaker, Sir, I said that--- You know very well that the Nairobi-Mombasa Road had many criminals who used to block the road. Those are some of the criminals who were causing havoc on that particular road. We got intelligence reports that there were two criminals who were just about to stop a bus, ransack the passengers and loot their items. Upon receipt of the same message, we sent our police officers to that area to block the bus by using logs. Indeed, they complied. When the bus stopped, those two criminals came out of the bus firing at the police officers. The Police Act, Cap 28 says that they must also defend themselves if they are in problems. Since the two criminals were killed along the Nairobi-Mombasa Road, we have never had any problems. I have a copy of the postmortem report here. He can go through it. I also have an exhibit demo---

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. The issue does not require Mr. Ojode to repeat the answer. The issue was that he referred to me as protecting criminals?

**Mr. Ojode:** Mr. Speaker, Sir, I have known the gentleman for a long time. He has never protected any criminals and I do not think he will protect any criminals. He will be supporting us to do away with the criminals. I know hon. Olago very well. I want to share with hon. Olago---

**Mr. Speaker:** Order! Are you saying that you did not make the statement that has been ascribed to you by hon. C. Kilonzo?

**Mr. Ojode:** Mr. Speaker, Sir, I did not make that kind of statement. If I made it in the course of answering this Question, then I apologize. I want to lay on the Table some evidence here. I have evidence of two barretta pistols that were recovered and a large number of ammunitions to show that those fellows were actually criminals. I also received a postmortem report. Maybe, the one who was shot at the back was trying to run away from the police officers. We cannot rule out that. I wish to lay on the Table the document for the purpose of Mr. Olago to refer to what happened.

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

**Mr. Letimalo:** Mr. Speaker, Sir, could the Assistant Minister explain whether it was necessary to shoot with the intention of killing those suspects, instead of immobilizing them?

**Mr. Ojode:** Mr. Speaker, Sir, under ordinary circumstances, we do not shoot to kill. We shoot to maim and to disarm.

**Mr. Olago:** Mr. Speaker, Sir, if an inquest file was opened on this incident that took place in June, and if the statements from all the witnesses were recorded, how far has that case reached?

**Mr. Ojode:** Mr. Speaker, Sir, under normal circumstances, we normally wait for the advice from the Attorney-General. To date, I have not received anything from the Attorney-General. However, I will try and ask him to fast-track the exercise.

## ORAL ANSWERS TO QUESTIONS

### *Question No.350*

#### TARMAC KING OF WITU-MOKOWE SECTION OF MOMBASA-LAMU ROAD

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

- (a) how much money the Ministry has allocated for the tarmacking of the 80 kilometer Wito-Mokowe section of Mombasa-Lamu Road; and,
- (b) when the work will commence.

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

Let me clarify that Witu-Mokowe Road is not part of the Nairobi-Mombasa Road. The information I have is that the road is classified as C112 and links Lamu Island with

the rest of the Coast Province via Mokowe and Witu. If we are talking about the same road with the hon. Member, I beg to reply.

(a) The Ministry has not allocated funds to tarmac that road during this financial year. We have, however set aside Kshs12 million for routine maintenance of the same road.

(b) I may not be able to say now, with certainty, when the tarmacking of the road will commence. However, my Ministry is finalizing a road sector investment plan which is not only expected to prioritize maintenance and construction of that road, but all other roads in this country.

**Mr. Yakub:** Thank you, Mr. Speaker, Sir. I wish to thank the Assistant Minister for Roads, my very respected friend. However, I do not know where he read that, that road is part of Nairobi-Mombasa Road. That is because in my Question, and I think every hon. Member has a copy, Question No.350 refers to a section of the Mombasa-Lamu Road. I do not know where he got the Nairobi-Mombasa Road.

According to part (b) of the answer, the Assistant Minister has admitted that he cannot be able to say when the tarmacking of that road will commence. My question to the Assistant Minister is: Is he aware that the local roads office has been informing the leaders that the survey has been done on the road and they are in the process of tendering? Could the Assistant Minister confirm or deny that the survey has been done and that the process of tendering is in progress?

**Dr. Machage:** Mr. Speaker, Sir, the Question we received in the Ministry indicated Nairobi-Mombasa Road but the Order Paper of today has made the correction. Therefore, I accept the sentiments by the hon. Member.

It is true that we have done some work on this road. Actually, the design has been carried out in two lots with respective estimated cost of construction as follows. Lot 1 which is C112 – Nyongoro-Witu-Lamu otherwise known as “Mokowe”, which is approximately 80-kilometres is rated to cost about Kshs4.8 billion to be built whereas the Hindi-Milimani-Mangai and Kiunga which is D568, which is approximately 150-kilometres will cost about Kshs6.7 billion. A total of about Kshs11.5 billion is necessary for this road. I have set out to look for good friends to fund the construction of this road.

**Mr. Yakub:** Mr. Speaker, Sir, it is good to hear that some action is about to be taken but I would like to inform the Assistant Minister that the 80-kilometre road, besides giving problems to the private transporters, lorries and buses, is also used by the Government. It is the only road to Lamu and many of the Government Ministries use the same road. Could the Assistant Minister arrange to allocate proper funds for this road in the next financial year?

**Dr. Machage:** Mr. Speaker, Sir, I totally agree with the sentiments of the hon. Member. Indeed, my Ministry will request this House to approve the funds. If this House approves the funds, I will construct the road.

*Question No.419*

NON-COMPLETION OF STORAGE DAM UNDER  
NDIRITI AGUTHI WATER PROJECT

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

- (a) why the construction of the Gathiuru Forest-Mugeria Blocks 90-day storage dam at the Ndiriti Aguthi Water Project was halted; and,  
(b) when the construction will resume and what the projected date of completion is.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Mr. Speaker, Sir, I beg to reply.

The project has faced numerous problems which include a dispute between the Kenya Wildlife Services (KWS) and the National Environment Management Authority (NEMA) over environmental audit, impact assessment issues, re-design and re-routing of pipelines that have been unprofessionally laid by the community and adverse weather conditions, among others. This has delayed completion of this project.

Mr. Speaker, Sir, construction of the dam can only commence after the Kenya Forest Services grants permission for the dam to be constructed at the identified site within Gathiuru Forest.

**Mr. Warugongo:** Mr. Speaker, Sir, while I thank the Assistant Minister for answering my Question, there are several questions arising out of his answer. First of all, this work was done without the knowledge of the leaders and the community on the ground. The people who did the work went into the forest, did shoddy work, came out and disappeared without uttering a word to the Member of Parliament, the District Commissioner, the District Officer, the councillor or members of the public. Secondly, we are told that the work was done to completion. Could the Assistant Minister tell us how much money was spent on this project?

**Mr. Kiunjuri:** Mr. Speaker, Sir, it is important that when hon. Members ask Questions, they follow them up so that their communities can benefit. I was very clear in my answer. I have said that there is a reason why this project was stopped, and that is what we should pursue and not whether the local people are involved because that is not the issue. This project was started after the local community gave all the approvals. They had the approval from the water appointment Board, the Chief Conservator of Forests and the EI License Registration Office. However, a junior officer, the District Forest Officer of Nyeri, wrote a letter and terminated the project. That is what surprises us. As a Ministry, we cannot continue with the work until that issue is resolved. The District Forest Officer should tell the community why he stopped that project because it was not his concern. Those are the issues that we are trying to address. We had only spent Kshs1.5 million of the first allocation which was about Kshs4 million. However, last year, I asked the Ministry officials to go and re-design that dam. That was done and the dam will cost over Kshs200 million for it to be of proper use. That is why we are saying that everything was done in a very shoddy manner. The question is whether the community and the Member of Parliament are ready to go and pursue the Kenya Forest Services so that we can be allowed to continue with our work.

**Mr. Lessonet:** Mr. Speaker, Sir, the Assistant Minister has indicated that the Kenya Forest Service, which is a Government agency just like his Ministry--- I was wondering whose role it is to convince the Kenya Forest Service to grant the authority to do the dam in the forest. This is between the Kenya Forest Service and the Ministry of Water and Irrigation. Why should the Assistant Minister refer the matter back to the hon. Member?

**Mr. Kiunjuri:** Mr. Speaker, Sir, the Government has a responsibility and the community has its responsibility. We had to get authority from the NEMA, the Chief Conservator and any other licenses that are required. So, it is now upon the hon. Member of Parliament to find out why the Kenya Forest Service has stopped the work.

**Mr. Ochieng:** On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister repeat the same thing. If there is an issue between the two Ministries, why can the two Ministries not engage instead of involving a Member of Parliament? What is their responsibility in terms of collective responsibility? Is the Assistant Minister in order to mislead the House?

**Mr. Kiunjuri:** Mr. Speaker, Sir, we have all the relevant authorities. Therefore, this Question should be directed to the Ministry of Forestry and Wildlife so that they can tell us why they have stopped the work. Otherwise, we can come in if the Member of Parliament wants us to assist him. We can provide him with copies of the authorities so that he can ask questions.

**Mr. Warugongo:** Mr. Speaker, Sir, who is more powerful between the District Forest Officer and the Assistant Minister? How can an officer stop such a project that will benefit members of the public? In fact, it is a big joke to hear that the District Forest Officer can stop such a project which has been funded to benefit the community.

**Mr. Kiunjuri:** Mr. Speaker, Sir, to solve this matter, it is important that we follow it up, all of us. We are ready to get back to work immediately we get this authority. We are also ready to assist the Member of Parliament so that we solve this problem so that the people of Gathiuru can benefit. I know the area very well because I am interested in it. Therefore, we shall pursue the matter and re-allocate the funds once again.

**Mr. Speaker:** Hon. Members, Question No.530 is deferred to Wednesday, next week because the hon. Member for Butula is away in Egypt on parliamentary business. That then brings us to the end of Question Time and gets us into the Prime Minister's Time.

*Question No.530*

INTRODUCTION OF LEGISLATION TO COMPEL  
DEVELOPERS TO DISCLOSE CONSTRUCTION COSTS

*(Question deferred)*

**Mr. Speaker:** Any statement from the Prime Minister?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Speaker, Sir, you are aware that the Prime Minister is out of the country. He is in Copenhagen----

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

Hold on! Mr. Speaker, Sir, could you, please, protect me?

**Mr. Speaker:** Order! Order, Assistant Minister!

What is it, Mr. Ethuro!

**Mr. Ethuro:** Mr. Speaker, Sir, I rise under Standing Order No.40 on Prime Minister's Time. It provides that "there shall be time, to be designated the Prime Minister's time, commencing at 3.00 p.m., every Wednesday." The word "shall" is mandatory; it is not optional. I wish to underline the word "Shall" and "every Wednesday."

2(a) says:-

(a) the Prime Minister may make a Statement, or

(b) questions may be put to the Prime Minister.

Mr. Speaker, Sir, if you look at this Order Paper it has no provision for the Prime Minister's Question Time. I think that is a contradiction to the Standing Orders.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, Parliament, in its wisdom, knew that at one time the Prime Minister might be on official duties elsewhere. Standing Order No.40(3) says:-

"In the absence of the Prime Minister, a Deputy Prime Minister designated by the Prime Minister may make a statement or answer questions under this part."

Mr. Speaker, Sir, if this is allowed to continue, it would be a tendency of the office of the Prime Minister to take leave at his own convenience to avoid this House. We know things have been very hot for that office.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Speaker, Sir, it is true that Wednesday, at 3.00 p.m. is designated the Prime Minister's Time to make a statement or answer Questions. But when you look at today's Order Paper, there is nothing which demands that he either makes a statement or answer a Question. It is very important for the hon. Members to follow what is on the Order Paper.

**Mr. Mungatana:** Mr. Speaker, Sir, further to what hon. C. Kilonzo said, if you look at the structure of Government today, the Principals, in their wisdom, created not two offices of a Vice-President, but two offices of Deputy Prime Minister. In the event that the Prime Minister has had to travel for State duties, he has two people to choose from.

Mr. Speaker, Sir, we have filed Questions which have not been reflected on the Order Paper ostensibly because the Prime Minister is not around. We would want to know where the other two Deputy Prime Ministers are.

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, hon. Ethuro! You have done your part; we must now hear the Minister holding brief for the Prime Minister.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, it is, indeed, true that today the Prime Minister was allocated time. But going by the Order Paper, all those editorial arguments coming from our friends would have matured if the Question was placed for the Prime Minister, but there was nobody to reply to him.

Mr. Speaker, Sir, you and I know that the Order Paper is what dictates to the House its business. There is no Standing Order which has been contravened by the Prime Minister. *Hakuna!* If there is, let us get the Standing Order which the Prime Minister has contravened. There was no Question which was filed for him. So, why should we vilify or bash the Prime Minister's Office? If we have to go by the traditions of this House, what gives us the Order of the day is what is in the Order Paper. That question actually should have been asked to the Clerk's office; that I did file a Question, but it is not



appearing on the Order Paper. It is an exercise in futility because we do not have any Question directed to the Prime Minister's office. If there is, let us know where the Question is.

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

### CONSIDERED RULING

#### PRIME MINISTER'S TIME IS MANDATORY AS PER THE STANDING ORDERS

**Mr. Speaker:** Order! Order, hon. Members this matter must rest. I have heard enough presentation and I will give directions now.

Hon. Members, I have heard the presentations made by the five hon. Members present in the House this afternoon led by hon. Ethuro. I have heard the response on behalf of the Prime Minister by the hon. Orwa Ojode. My directions are as follows: - First, the business of this House and conduct thereof is governed and regulated by the Standing Orders. The Order Paper is simply one of the products that emanate from the application of the Standing Orders. In which case, then, if there is a conflict between the Order Paper and the Standing Order, then the Standing Orders will prevail. The Standing Orders provide under Standing Order No.40 for there being Prime Minister's Time provided to be at 3.00 p.m. on every Wednesday. It is actually in mandatory terms that; "There shall be Prime Minister Time "on every Wednesday at 3.00 p.m." So, the expectation which is implicit if not expressed from this provision is that the Prime Minister will be present to take his time and discharge the responsibilities expected of him at 3.00 p.m. on every Wednesday. In his absence, one of the two deputies will hold brief and take responsibility on behalf of the Prime Minister.

It is for that reason that I took cognisance of the fact that we must move on to Prime Minister's Time at 3.00 p.m., which we did. I know that the Prime Minister is not here because he notified the Office of the Speaker that he will be away and he was granted leave to be away from Parliament. However, the two Deputy Prime Ministers have not been given leave to be away. So, it is actually disorderly conduct for the two of them to be away. They are away on a presumption that no matter will arise pertaining to the Prime Minister's Office which may call for a reaction or response from the Prime Minister. So, that is disorderly.

What would have been expected of them and I so direct is that they will be present in the House and when this order is called as has been called, they will then have an account which they will give to the House and, for example, state that the Prime Minister has no statement to issue or the Prime Minister has no question to answer or he is not ready to answer those Questions which Mr. Speaker, may have approved.

That is how we will conduct business this time. So, I will expect that the two Deputy Prime Ministers will have an explanation to offer to the House when they show up as to why they were not here this afternoon. This House does not operate on presumptions; this House operates on the basis of law as set out in the Constitution, other statutes and the Standing Orders. Those are my directions.

*(Applause)*

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

**Mr. Speaker:** Order! This matter must rest. I believe my directions are very clear. I have been categorical and unequivocal. I demand that this matter rests there.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Dr. Khalwale, you will be treading on a bit of dangerous ground unless you are raising something new. You can make an attempt. What is your point of order?

**Dr. Khalwale:** Thank you, Mr. Speaker, Sir, for allowing me to attempt. I was just inviting the Chair, having deliberated on the strength of Standing Order No.40, to also find that hon. Uhuru Kenyatta and hon. Musalia Mudavadi have also breached Standing Order No.97(1)(e) which provides that they have been grossly out of order by way of abusing their privileges. So, I wanted to invite you that under Standing Order No.97, you apply the power which you enjoy under Standing Order No.97 (2)(b).

**Mr. Speaker:** Order, hon. Members! I appreciate the point of order which has been raised by the Member for Ikolomani and its weight. However, I am of the view that I have adequately addressed this matter, more so, given that this is a first breach by the Office of the Prime Minister. So, we will go forward from there. I will expect an explanation from the two Deputy Prime Ministers when they show up.

Next Order!

Order, hon. Members! We have a number of Ministerial Statements which are due this afternoon beginning with the one relating to the national cholera epidemic .

## MINISTERIAL STATEMENTS

### OUTBREAK OF ACUTE WATERY DIARRHOEA/CHOLERA IN THE COUNTRY

**The Assistant Minister for Public Health and Sanitation (Dr. Gesami):** Thank you, Mr. Speaker, Sir. I wish to give a Ministerial Statement on the acute watery diarrhoea/cholera outbreak in the country as at 7<sup>th</sup> December, 2009. This Statement was sought by hon. Ekwe Ethuro last Thursday.

Mr. Speaker, Sir, the country has been experiencing outbreaks of acute watery diarrhoea, including cholera since December 2008. So far, 50 districts across the country have been affected, with a total of 11,370 cases and 259 deaths reported. Out of these, a total of 753 cases have been confirmed as cholera. In the last one month, a total of 4,842 acute watery diarrhoea cases with 131 deaths have been reported. During the last one week, 11 districts, namely Turkana South, Turkana Central, Turkana North and East Pokot in the Rift Valley Province, Kamukunji, Kasarani and Starehe in Nairobi, Ruiru in Central Province, Chalbi in Eastern Province and Lamu and Msambweni in Coast Province have reported 245 new cases of acute watery diarrhoea; 39 laboratory confirmed cases and 119 deaths. Currently, a total of 59 people are admitted in health facilities across the country.

Mr. Speaker, Sir, the continued outbreaks are primarily linked to insufficient access to safe water and proper sanitation and the following factors have contributed to the continued outbreaks:-

- (i) scarcity of safe and clean drinking water due to prolonged drought;
- (ii) use of highly contaminated water from riverbeds and other water points;
- (iii) poor human waste disposal due to low latrine coverage which is as low as 4 per cent in some arid northern districts and informal settlements;
- (iv) poor hygiene practices while handling foods; and,
- (v) contact with infected persons and;
- (vi) limited access to healthcare due to long distances to health facilities.

Mr. Speaker, Sir, cholera is an extremely deadly disease that affects both children and adults. If untreated and no control measures are put in place, it can kill up to 50 per cent of those infected. My Ministry has, therefore, been undertaking emergency response measures to immediately control any reported outbreaks. In the process, we have been able to contain outbreaks in 34 districts since December 2008. Eleven districts continue to report new cases of cholera.

Mr. Speaker, Sir, the measures which my Ministry, together with the Ministry of Water and Irrigation, has been implementing include:-

- (i) provision of water tankers to the affected populations in those affected areas: The Ministry of Water and Irrigation has also sunk boreholes in needy areas to address the epidemic; on this score, Laisamis benefitted from one of the new boreholes recently;
- (ii) provision of chlorine tablets for the treatment of water points and also for household water;
- (iii) we have issued cholera alerts to all health workers and provided training on proper case management;
- (iv) we have pre-positioned medical supplies for case management in all of the 50 affected districts;
- (v) we have also enhanced hygiene and food safety practices by closing up unsanitary eating places and banning of food hawking in some areas;
- (vi) We have also conducted public health education aimed at behaviour change related to personal hygiene and food preparation in all the affected districts; and,
- (vii) We have also supported district response teams to implement the emergency response measures through provision of vehicles, fuel and deployment of additional health workers.

Mr. Speaker, Sir, since January this year, my Ministry, in collaboration with stakeholders in the health sector, has spent approximately Kshs150 million to control this epidemic. We have provided over 450,000 chlorine tablets and closed over 4,000 unhygienic food premises and supplied drugs and other medical supplies worth approximately Kshs480 million.

Mr. Speaker, Sir, my Ministry has encountered various challenges in its efforts to prevent further spread of this outbreak.

The major challenges are as follows:-

(1) Inadequate financial resources to respond to emergencies. This year, my Ministry has had to deal with emergency situations relating to cholera, influenza H1N1; that is swine flu, polio and measles.

(2) Some of the districts are relatively new and are facing shortage of staff.

(3) Lack of adequate transport.

(4) Inaccessibility by road of certain rural areas and; finally,

(5) Most of the districts reporting cholera outbreak in Eastern and Rift Valley provinces have been experiencing prolonged droughts and are using water from shallow, unprotected wells which often get contaminated. Provision of safe and clean water to the community is a major challenge in these areas.

Mr. Speaker, Sir, a multi-sectoral and coordinated approach is paramount in order to efficiently and effectively control this outbreak. The following Ministries and departments have been identified and are playing a key role in these efforts: Ministry of Water and Irrigation, Ministry of Agriculture, Ministry of Fisheries Development, Ministry of Education, Ministry of Medical Services, Ministry of State for Special Programmes and the Ministry of State for Provincial Administration and Internal Security.

On 2<sup>nd</sup> December, 2009, a multi-sectoral committee under the chairmanship of the Minister of State for Provincial Administration and Internal Security met to consider the national response to the cholera epidemic. As a result, a technical committee was, thereafter, mandated to come up with a budget proposal on the implementation of key activities to stem the further spread of this disease. The team identified the arid districts of northern Kenya and the informal settlements in urban areas to be at most risk.

Mr. Speaker, Sir, the Committee recommended the urgent implementation of the following interventions in the identified areas:-

- (1) Provision of safe and clean water for domestic use.
- (2) Promotion of hygiene, including enforcement of hygiene and food safety measures.
- (3) Safe waste disposal.
- (4) Strengthening of diseases surveillance and response at district level.
- (5) Strengthening of case management through provision of adequate medicines and other supplies.
- (6) Provision of food and food supplements to the affected communities; and, finally
- (7) Logistical support to the district teams.

My Ministry is currently seeking additional resources to the tune of Kshs991 million to implement the identified interventions in collaboration with the key Ministries that I have already mentioned.

Mr. Speaker, Sir, let me finally remind the hon. Members of Parliament and the entire country that cholera is transmitted through faecal contamination of water or food. Outbreaks will occur anywhere where water supply, sanitation, food safety and hygiene are inadequate. My Ministry recommends that measures be put in place to ensure marked improvement in water supply and sanitation across the country. This is the most effective and sustainable intervention against cholera and other water-borne diarrheal diseases. This House should vote for the provision of adequate resources to address these problems, both in the short term as well as in the long term.

Thank you.

**Mr. Speaker:** Hon. Members, do you have any requests for clarifications?

Yes, hon. Ethuro?

**Mr. Ethuro:** Mr. Speaker, Sir, I want to thank the Assistant Minister for the limited response to a very serious outbreak of cholera in the region.

The Assistant Minister talked about 50 affected districts with eleven that have cholera recurring. Given that he has given quite a number of what he called “urgent interventions”, which include case management through provision of adequate medicines and other supplies, including surveillance of disease, how many personnel in terms of doctors and nurses has he deployed in each of the 11 districts and, in particular, Turkana Central where this problem seems to have been recurring for the last one year?

Secondly, when you look at the districts the Assistant Minister has mentioned, they are districts all over the country. Is that not sufficient for the Government, since he is asking for additional resources to the tune of Kshs991 million, to declare cholera a national epidemic so that the Government can mobilize all its resources towards eliminating this serious problem?

**Mr. Ngugi:** Mr. Speaker, Sir, the Assistant Minister has explained that they have closed thousands of businesses, eating places and other businesses that have been found to be unhygienic. This Ministry is supposed to be proactive and preventive, not only acting when such diseases as cholera occur. This Ministry has a number of health officers in all the locations in the smallest of towns and yet, when you go to these towns, you cannot even get a place to wash. The eating places and other businesses are very unhygienic.

I want the Assistant Minister to clarify what the work of these officers is throughout the year. Why close these businesses only when an outbreak of cholera occurs and not check these businesses and eating places, on a continuous basis, to ensure that they are kept in hygienic conditions?

**Mr. Chachu:** Mr. Speaker, Sir, the Assistant Minister did mention Chalbi in Marsabit North, as one of the areas affected by cholera. As of now, we have lost 12 people and seven people have been admitted to Ires Health Centre as of today. How does this Assistant Minister expect to contain cholera in Marsabit North without a single medical doctor or a single nurse hired by the Government and working in that district? There is not a single vehicle or even a motorcycle provided by the Ministry in that region. How does he expect the people of North Horr or Marsabit to contain cholera?

**Dr. Nuh:** Mr. Speaker, Sir, since the Ministry of Public Health is supposed to attach more importance to preventive healthcare rather than curative healthcare and since the affected areas or the high risk populations are said to be in the north in the Arid and Semi-Arid Lands (ASALS) zones; and since these people use water for consumption from dams as well as for their livestock, does the Ministry have the capacity, in terms of personnel and lab testing, for the officers in the field to continue doing lab analysis of the water that is used for consumption by these people?

**Mr. Speaker:** Mr. Assistant Minister, you may now make your responses!

**The Assistant Minister for Public Health and Sanitation (Dr. Gesami):** Mr. Speaker, Sir, this is the second Statement I am making about Cholera in this House. I have indicated to this House before that one of the most critical challenges that we have in the public health is the issue of financing in terms of adequate funding to carry out our mandate. We have done that by presenting our budget to the House.

We are also faced with the challenge of lack of human resource, that is, doctors, nurses and clinical officers. We have been able to train a few members of staff. We have about 32,000 nurses in the country at the moment; 16,000 are in the public sector and

another 16,000 in the private sector. We need double that number to carry out our mandate. We need to consider funding the public health sector more.

Mr. Speaker, Sir, as far as the number of staff we have posted to Turkana South District is concerned, we posted six nurses, seven public health officers, two laboratory technicians and, three clinical officers. In Turkana Central District we have four Government nurses, 16 public health officers and 11 community health workers.

This epidemic has been moving from one district to another. It started somewhere in Isiolo and then moved to Laisamis. Now, it has moved to Turkana. We have, however, worked extremely hard to ensure that we have been able to control the spread of cholera in other districts. The most critical issues that we have are those of finances and human resource.

As far as surveillance is concerned, we are doing it in all districts. We have very well trained teams which are doing the surveillance. I have already indicated to hon. Members that without safe water, even if we get all the resources that we want, we will not be able to prevent an outbreak of Cholera. This is really a water borne disease and yet we have had a shortage of water. We have had a long spell of drought and this has exposed our people to this disease. Nevertheless, we have tried to control cholera in the 50 districts. In fact, 34 districts are now free of this disease. We are now focusing on Turkana with a multi-sectoral approach.

The Minister of State for Provincial Administration and Internal Security chaired one of our meetings and we are now mobilizing the Army, the Red Cross and others to ensure that the people of Turkana get the actual treatment that they deserve.

**Mr. Speaker:** Hon. Members, we will take two Statements from the Office of the Deputy Prime Minister and Ministry of Finance.

FREEZING OF GOK ACCOUNTS AT CROWN  
AGENCY BANK IN LONDON

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance** (Dr. Oburu): Mr. Speaker, Sir, on 12<sup>th</sup> November, 2009, hon. Affey sought a Ministerial Statement on the circumstances surrounding the freezing of bank accounts at the Crown Agency Bank Limited in London on 23<sup>rd</sup> October, 2009 following a court order. He specifically sought to know:-

- (a) how much money is held in the bank accounts.
- (b) for what purposes the Government put the money there.
- (c) which companies have taken the Government to court.
- (d) why they found it necessary to go to court.
- (e) an assurance that the Kenya High Commission in London will not be threatened by any such court actions emanating from these cases.

Mr. Speaker, Sir, accordingly, I wish to make the following Statement:

In April 1998, the Government of Kenya, acting through the Ministry of Finance, contracted M/s SWIPO-SA to verify imports into Kenya and also to verify work which was being undertaken by Pre-shipment inspection companies. This responsibility was later transferred from SWIPO-SA to Inspection Control Services (ICS), a company incorporated in England and Wales through a Novation Agreement signed in May, 1999.

Following this agreement, ICS Limited rendered some services namely; import verification, data capture and paper trail audit and submitted invoices to claim payment. However, not all claims could be paid before verification had been made and, therefore, many invoices remained outstanding awaiting this verification.

Mr. Speaker, Sir, in the year 2000, the Ministry of Finance analyzed the services rendered by ICS Company Limited against contractual obligations for the Novation Agreement. The analysis unearthed a number of inconsistencies, notably that:

- (a) The ICS Company had invoiced the Ministry of Finance using Customs clean report of findings that were not in the PSI data base.
- (b) ICS Company was not able to conduct the paper trail audit as specified in the contract since they were not able to obtain data from PSI.
- (c) The ICS had prepared paper trail audit reports for other remaining months based on different data and not on the data from PSI after expiring of the contract and submitted invoices to the Kenya Government for payment.

Mr. Speaker, Sir, the above-mentioned inconsistencies led to the rejection of the paper trail audit reports including CCRFs by the Government since they were invoiced outside the contractual obligation. The Government and ICS mutually agreed to verify the invoices for the entire contract period and accordingly reduced the amounts claimable and payable. Consistent with this, the parties also agreed that invoices for December, 2000 and January 2001 would also be subjected to similar verifications.

Mr. Speaker, Sir, afterwards, ICS accused the Government of failing to facilitate the verification activities as per the contract obligations and consequently failing to pay ICS for services allegedly rendered under the contract. ICS subsequently presented the matter for arbitration in accordance with the clauses in the Novation Agreement. The Attorney-General identified counsels who represented the Government at the arbitration tribunal. Witnesses were also called, one officer each from the Economic Affairs Department at the Treasury, the Kenya Revenue Authority (KRA) and the Kenya National Audit Office (KENAO) who prepared the audit report that led to the stoppage of payments. Both parties were given ample time and opportunity to prepare and make submissions to the arbitration tribunal in Case No.14444/EBS/VRO at the International Chamber of Commerce, International Court of Arbitration, ICC involving Inspection and Control Services Limited, UK; versus the Ministry of Finance of the Government of Kenya.

The Arbitration Tribunal, after full hearing of the dispute on 4<sup>th</sup> September, 2008, dismissed the defence of the Ministry of Finance and decided the case in favor of ICS. The Government was ordered to pay ICS a sum of US \$6.9 million (approximately Kshs538 million) as fees due for services rendered under the contract agreement plus interest of 4.65 per cent compounded annually from 28<sup>th</sup> June, 2006.

Mr. Speaker, Sir, the Government was also ordered to pay to ICS a further sum of US\$2,259,943.71 (approximately Kshs176 million) as cost to cover arbitration and related legal fees.

I wish to summarize the facts of the issue at hand as follows:-

The award against the Ministry of Finance was based on alleged breaches of a contract dated 3<sup>rd</sup> September, 1998.

As I have explained, the contract was for the verification of imports into Kenya between the Ministry of Finance and SWIPCO-SA. of Switzerland and the Novation

Agreement between SWIPCO-SA and Inspection and Control Services ICS (incorporated under the Laws of England and Wales).

(2) The Attorney-General informed the Ministry of the award and advised the Ministry to settle the award expeditiously. However, the Ministry has not been able to settle the award as scheduled due to budgetary constraints occasioned by high priority competing demands on the national Budget.

(3) The claimants became impatient with the delay in settlement and on 23<sup>rd</sup> October, 2009, obtained an *ex- parte* order from the High Court in London, freezing an account titled “Kenya Government Account” at the Crown Agents Bank Limited in London.

(4) The Ministry of Finance has instructed the Attorney-General to seek indulgence of the claimant’s lawyers with a view of resolving the matter within the current budgetary constraints, and is preparing to meet with the claimant’s lawyers at the earliest opportunity and agree on a schedule for the settlement of the award.

(5) The amount of money that has been frozen in the Crown Agents Bank Limited is US\$10,383,852.74, which is the equivalent of about Kshs809,940,000. These are both donor funds aid from bilateral and multilateral sources and also Government funds used to pay pensioners in the United Kingdom (UK).

In the meantime, Crown Agents Bank Limited has also moved to the High Court of Justice to challenge the manner in which the ICS obtained the *ex- parte* order and their application is pending in court.

Mr. Speaker, Sir, finally, I wish to assure this House that the *ex- parte* order obtained by ICS is not in any way directed towards the attachment of the Kenya High Commission in London. The Kenya Government does not have an account with the Crown Agents Bank Limited. The Government uses Crown Agents, who has an account with the bank, to pay its pensioners in the UK. The frozen account, therefore, is a Crown Agents account with the bank titled “Kenya Government Account.”

The order was served upon the Kenya High Commission, this being the representative of the Government of the Republic of Kenya in the UK.

Thank you, Mr. Speaker, Sir.

**Mr. Affey:** Mr. Speaker, Sir, the Assistant Minister has confirmed very clearly that, indeed, the Government has made commitments that were legally binding. The Government has, in fact, moved to the level of arbitration, following which the Attorney-General of Kenya advised the Minister for Finance to meet his obligation resulting from the arbitration. It is, however, very clear that the Ministry of Finance ignored the advice of the Attorney-General of the Republic of Kenya. It is also clear that over US\$6 million is now being frozen. It is also clear that interest continues to accrue even as the Government dilly-dallies in settling this matter.

Mr. Speaker, Sir, why did the Government find itself in such an embarrassing situation by, first of all, subjecting itself to the process of arbitration and defying the advice of the Attorney-General of the Republic of Kenya, who asked the Government to meet its obligation?

**Mr. Speaker:** Is there anybody else who is interested?

**Mr. Shakeel:** Mr. Speaker, Sir, the explanation given by the Assistant Minister defies logic in simple minds like mine. If the services were not provided, why did the Government enter into arbitration? If arbitration was offered, why did we not take it?



What is the case number that we are talking about at the High Court in London, so that we can make our own inquiries and give him the facts that he is not aware of?

**Mr. Speaker:** Mr. Assistant Minister, can you give your responses?

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance** (Dr. Oburu): Mr. Speaker, Sir, what hon. Affey wants to know is why we ignored the advice of the Attorney-General. We did not ignore that advice. Our position, as Government, and as Ministry of Finance, was that we would have appealed against the ruling of the arbitration court. The Attorney-General had advised us that our case would be a little weak even though we had what we believed was genuine concern about the performance of the company.

As I have stated, we were budgeting for settlement of this particular case every year, but because of budgetary constraints and some urgent matters that arose, particularly last year, when we had drought that forced us to divert a lot of resources that were meant for things that were normally budgeted for, we were not in a position to pay. We are, however, making arrangements to sort out this matter in a manner that will not affect our normal budgetary issues.

Mr. Speaker, Sir, I read out the case number here. I wonder how come Mr. Shakeel did not get it. It is Case No.14444/EBS/VRO at the International Chamber of Commerce International Court of Arbitration. It is a simple issue. So, it should not bother your mind. It should not be mind boggling!

**Mr. Speaker:** Order, Mr. Assistant Minister! Can you now issue the second Ministerial Statement?

#### REFUND OF MONEY TO ANGLO LEASING SUSPECT

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance** (Dr. Oburu): Mr. Speaker, Sir, on Thursday, 3<sup>rd</sup> December, 2009, the Member of Parliament for Imenti Central, Mr. Gitobu Imanyara, sought a Ministerial Statement from the Deputy Prime Minister and Minister for Finance on how much money was refunded by one of the suspects in the Anglo Leasing Scandal. He particularly sought to know the amount involved, from what bank, when it was received in Kenya, the bank account into which the money went and the name of the suspect. Accordingly, I wish to make the following Ministerial Statement.

On 16<sup>th</sup> August, 2001, the Government of Kenya signed a contract with Anglo Leasing and Finance Company Limited of UK to install and commission a forensic laboratory facility for the Criminal Investigations Department (CID). The contract sum was US\$75,749,999.99, which is the equivalent of Kshs4,368,000,000. Subsequently, the Government made payments to Anglo Leasing and Finance Company Limited as follows:-

<u>Date</u>	<u>Amount (US\$)</u>	<u>Paying Ministry</u>
05.09. 2001	900,000	Office of the President
18.11.2003	1,922,222.22	Ministry of Finance
04.02.2004	<u>1,922,222.22</u>	Ministry of Finance
Total	<u>4,744,444.44</u>	

Therefore, a total of US\$4,744,444.44 was paid to Anglo Leasing and Finance Company Limited, through their US Dollar Account held with Schroeder & Company Bank AG, Zurich.

Mr. Speaker, Sir, on 7<sup>th</sup> June, 2004, the Central Bank of Kenya's US Dollar Account held with City Bank NA New York was credited with US\$4,744,444.44.

The credit message from Citibank, N.A, New York to the Central Bank of Kenya (CBK) stated that the credit was made by Order Schroder and Company Bank, AG, Zurich as per instructions received from their client Anglo Leasing and Finance Company Limited, being refund related to the Forensics Laboratory Project. Further the instructions were that the amount should be credited to the Ministry of Finance, Nairobi, Kenya.

Upon re-confirmation of credit of funds amounting to US\$4,744,444.44 in their account at Citibank, N.A New York, on 14<sup>th</sup> June 2004, the CBK credited the Consolidated Fund Services Account R50 of public debt with the equivalent of Kshs375, 285,555.20 at the exchange rate of about Kshs80 per dollar and advised the Ministry of Finance.

Mr. Speaker, Sir, Anglo Leasing and Finance Company Ltd. also made another refund in respect of contract Immigration Security and Documents Control Project. The contract signed on 4<sup>th</sup> December 2003 between the Government of Kenya and Anglo Leasing and Finance Company Ltd. had a contract sum of Euro31.9 million, equivalent to Kshs3.3 billion. Under this contract, the Government, through the Office of the Vice-President and Ministry of Home Affairs made one payment of Euro956, 900 to Anglo Leasing and Finance Company Ltd.

Mr. Speaker, Sir, on 14<sup>th</sup> May 2004, the CBK's Euro Account held with ABN AMRO Bank, N.V, Amsterdam was credited with Euro956, 900. The credit message from ABN AMRO Bank N.V, Amsterdam to the CBK stated that the credit was made by Order Shrowder and Company Bank, AG, Zurich as per instructions received from their client Anglo Leasing and Finance Company Ltd. being refund related to Kenya's Immigration and Security Document and Border contract. Further, the instructs were that the amount should be credited to the Office of the Vice-President and Ministry of Home Affairs.

Upon re-confirmation of credit of funds amounting to Euro956, 900 in their account at ABN AMRO Bank, N.V, Amsterdam on 18<sup>th</sup> May 2004, the CBK credited the Paymaster General Account, R-005, that is, Recurrent Expenditure Account of the Ministry of Home Affairs with the equivalent amount of Kshs93, 370,954.25. The CBK advised the Office of the Vice-President and Ministry of Home Affairs of the credit.

Mr. Speaker, Sir, the Anglo Leasing and Finance Company Ltd. contract is a subject under investigations by the Kenya Anti-Corruption Commission (KACC). Records show that at the time of the transactions, the directors of Anglo Leasing and Finance Company Ltd. were Mr. Colyn Flynn, Ms. Ludmila Katuschenko and Dr. Merlyn Kettering.

In conclusion, I wish to state that all payments made by the Government to Anglo Leasing and Finance Company Ltd. have been returned. The total amount received by the Government in respect of these two contracts is Kshs468, 656,509.45.

**Mr. Speaker:** Are there any Members interested in clarifications? That then should rest the matter. We will take a Statement now from the Minister for Lands so as to reduce pending Statements.

ILLEGAL ACQUISITION OF PLOT  
LR. NAIROBI/BLOCK 93/1418

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, on 3<sup>rd</sup> December 2009, the Member for Ikolomani, Dr. Bonny Khalwale, sought a Ministerial Statement concerning the illegal acquisition of a plot known as Nairobi Block 93/1418 which the hon. Member stated was on an environmental carbon – zinc and buffer zone against noise. This plot is situated between Plainsview Estate and the busy Mombasa Highway. The Member further said that the plot belonged to the Government and that it had allegedly been grabbed.

In my answer to the Question raised by the hon. Member on 15<sup>th</sup> September 2009, I informed the House that investigations had been initiated to ascertain the circumstances under which the plot may have been allocated to a private developer. The Ministry conducted thorough investigations and established the following:

(i) This is public utility land.

(ii) The plot number Nairobi Block 93/1418 with an area of 0.6450 hectares is a buffer zone between Mombasa Road and the Plainsview Estate in Nairobi.

(iii) There is no correspondence file or parcel file for the plot which is an indication or confirmation that the plot has not been allocated to any individual.

(iv) However, there is a Green Card purportedly opened in respect of the plot indicating that it was leased to Moca Africa Ltd. for a term of 99 years from the 1<sup>st</sup> February 1996. On the face of it, the Green Card appears to be a forgery and the Ministry has referred it to the Director of Criminal Investigations for appropriate action.

The construction that is ongoing has been stopped since the plot is a buffer zone and should remain as such. However, if further construction will be carried out, it will be nothing but an unauthorized structure and will be demolished in accordance with the appropriate laws.

I have undertaken to go with Dr. Khalwale to check the physical status of this plot and to confirm what the hon. Member is saying.

**Dr. Khalwale:** Mr. Speaker, Sir, I wish to thank the Minister for undertaking to come with me. However, could he indicate whether it is possible for us to be there this Friday? For the information of the Minister even this morning this private developer was still having workers on site. He has *askaris* who work for him on site. Could the Minister enforce the directive he has made?

**Mr. Olago:** Mr. Speaker, Sir, we must thank the Minister for taking this proactive action in respect of this plot that was to be grabbed. What is the Ministry's policy concerning public utility plots which have been so called "allocated"? There are so many of such plots in the country.

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, I would want to have some discussion with Dr. Khalwale. I would want to go on the ground with appropriate officers. I would want to make sure they are available because if I go there without them, probably my physical inspection may not be very useful. We can discuss that.

I have indicated that whatever constructions that are going on are an exercise in futility. I will be requiring the Director of Physical Planning, under the Physical Planning

Act to issue a notice to the Town Clerk of the Nairobi City that whatever construction that is going on there is unauthorized construction.

To answer Mr. Olago's question, I have been making a point that any land which is allocated that is not available for alienation; the Commissioner of Lands can only alienate land that is available. I agree with the hon. Members that there are many pieces of land countrywide that have been allocated but which were reservations for infrastructure like roads and the like. I have indicated that in the coming week, we will be revoking or cancelling so many of these titles because they are slowing down Government plans to construct roads and infrastructure. I want to give that assurance that this is a matter that we are considering.

He is correct that many plots which were allocated in the past were not, in fact, available for alienation.

### POINTS OF ORDER

#### NON-ISSUANCE OF DELEGATED LEGISLATION ON DONOR FUNDING TO GJLOS PROGRAMME

**Mr. Olago:** Mr. Speaker, Sir, last week I had asked for two Statements from the Ministry of Justice, National Cohesion and Constitutional Affairs and they gave the undertaking that they would deliver them this afternoon. I believe that Mr. Cheptumo is in the House and will be able to say something about the Statements.

**Mr. Speaker:** Order, Mr. Olago! Indeed, the Assistant Minister for Justice, National Cohesion and Constitutional Affairs has already appraised the Chair on his position, and this statement will be allotted time tomorrow afternoon. So, Mr. Cheptumo, you need not make any further response.

**The Assistant Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Cheptumo): It is true I will be able to give the statement tomorrow in the afternoon.

**Mr. Speaker:** I have said that already.

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

**Mr. Speaker:** What is it hon. Member for Turkana?

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir. I am the Member for Turkana Central.

**Mr. Speaker:** I am giving you a bigger constituency!

**Mr. Ethuro:** I hope the Members of the Committee of Experts are listening to you so that they give me the three constituencies.

#### IRREGULAR RECRUITMENT OF CLERKS/DRIVERS

But I rise on a point of order to find out where my Ministerial Statement is. The Minister of State for Provincial Administration and Internal Security had given an undertaking that this afternoon he would issue a statement on the recruitment of drivers and clerical officers.

**Mr. Speaker:** Anybody holding brief for the Minister? Minister for Energy, will you please hold brief for your counterpart?

**The Minister for Energy** (Mr. Murungi): Mr. Speaker Sir, on the basis of the doctrine of collective responsibility, I will hold brief for the Minister of State for Provincial Administration and Internal Security only to communicate to him the concern raised by the House.

**Mr. Speaker:** Minister, as much as possible, can you make your colleague know that if it is ready, he can deliver that statement tomorrow afternoon?

**The Minister for Energy** (Mr. Murungi): I will pass the message.

**Mr. Speaker:** Thank you; that settles the matter!

Hon. Members from now henceforth you will be guided by the Supplementary Order Paper, which reflects the business that we will deal with.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

#### IN THE COMMITTEE

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

#### THE NATIONAL YOUTH COUNCIL BILL

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members we are now in Committee of the whole House to deal with the National Youth Council Bill, (Bill No. 6).

#### *Clause 2*

**Mrs. Noor:** Thank you, Mr. Temporary Deputy Chairman, Sir. I, on behalf of the Committee on Labour and Social Welfare, to which this Bill was committed, would like to move:-

THAT, Clause 2 be amended in the definition of the term “youth”, by deleting the words “fifteen” and “thirty” and substituting therefor the words “eighteen” and “thirty-five” respectively.

This amendment seeks to increase the minimum and maximum age of those to be deemed youth.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Noor, what you are saying is already on Order Paper. So, the hon. Members have copies of the Order Paper. They can refer to it because it is already there.

*(Question of the amendment proposed)*

Any other contributions? Alright!

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I do not want to appear to be going against the decision of the Committee which sat to look at the necessity of this amendment. But, in my own mind, we are creating a facility that is supposed to help the youth. When you now expand this to include people who are 35 years old, it simply means that we have started playing politics, because it is only in political parties where you find that the national youth leader in some of our political parties is 40 or 65 years old and that kind of thing. We must accept that, once you are over 30 years of age, you are no longer a small boy or a small girl. Had you not gone to school, probably, you would be about to become a grandmother or a grandfather. We do not want to allow old people to enjoy the privileges of the youth. That is why I oppose the amendment.

**The Minister for Nairobi Metropolitan Development (Mr. Githae):** Mr. Temporary Deputy Chairman, Sir, I rise to support this amendment. This amendment is simply trying to incorporate into the Bill the international definition of a “youth”. The international definition of a “youth” is the age of 18 to 35 years of age. It is simply that! It has nothing to do with whether you are a grandfather or grandmother, or whether you went to school or not. It is important, so that the definitions of youth in all our laws are the same instead of having different definitions. To me, this is a very simple and innocent amendment. I support the amendment.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I rise to oppose this particular amendment. I think we should be serious about the definition of youth. You will find that in this country someone who has two wives still considers himself a youth. I think it is high time we brought this to a stop. Let us address the real “youth” in this country. Otherwise, you will find people who are approaching fifty years of age campaigning on the platform of youth. This is because the definition of “youth” is amorphous. When we want to restrict the youth to the relevant age, some people still want to extend it to more than 30 years.

Secondly, I also oppose raising the minimum age from 15 to 18 years. This is because if you look at our children nowadays, you will see that they mature too early. So, the age at which you were starting school and the age at which you were completing Form Four--- Today, the youth complete Form Four at a lower age and we need to consider them. We need to lower the age bracket for the youth.

I want to remind the Minister, who has just spoken, that even the definition in the Constitution provides that for one to contest for the presidency they have to attain the age of 35 years, so that even when you are aged 18 years you cannot contest for the presidency.

A serious attempt is being made to remove that requirement so that if you are even 18 years old, you can still contest for the presidency! So, if you wanted uniformity, then it is already done away with.

Mr. Temporary Deputy Chairman, Sir, with those few remarks, I beg to oppose.

**The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya):** Mr. Temporary Deputy Chairman, Sir, I stand here to support this amendment. According to the international standards, it is well defined that a youth is between 18 years old and 35 years old. According to Vision 2030, which we have all agreed to implement, it is clearly shown that a youth is between 18 years old and 35 years

old. Unless we approve this, we will be at variance with the documents that we have already approved!

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I just wanted to remind the Minister of State for Planning, National Development and Vision 2030 that Vision 2030 was not brought to this House for approval. I think the Government has just been implementing it. It is an Executive tool and therefore, it should not be referred to in this House. Is the Minister in order to refer to a document which was not brought to this House?

**The Temporary Deputy Chairman** (Prof. Kaloki): Mr. Minister, is that really a Government tool?

**The Minister of State for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Temporary Deputy Chairman, Sir, that document was approved by the last Parliament before Mr. Mbadi came into this Parliament!

*(Laughter)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Madam Minister, do you have a comment on that amendment?

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Temporary Deputy Chairman, Sir, I would like to confirm that we held extensive consultations and the age of between 18 and 35 was agreed. Fifteen years is very young. These are primary school leavers. I confirm here that we discussed this with the relevant Departmental Committee and came to an agreement that this is the accepted age bracket.

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

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

*(Clause 2 as amended agreed)*

*(Clause 3 agreed to)*

*Clause 4*

**Mrs. Noor:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 4 be amended by—

- (a) deleting paragraph (a) and substituting therefor the following new paragraph—  
“(a) regulate and co-ordinate activities and initiatives relating to the youth being undertaken by youth groups, youth focused community-based organizations, non-governmental organizations, civil society movements and other organizations;”;
- (b) inserting the following new paragraphs immediately after paragraph (l)—

“(m) promote the inclusion of youth agenda in the formulation of policy by public institutions and organisations;

“(n) promote the inclusion of youths in decision-making bodies, boards, agencies and other public institutions and organisations;

“(o) promote and popularize the Youth Enterprise Development Fund and such other devolved funds targeting the youth as may be established from time to time;”;

(c) renumbering paragraph (m) as paragraph (p).

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

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

*(Clause 4 as amended agreed to)*

#### Clause 5

**Mrs. Noor:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 5 be amended—

(a) in Subclause (1), by—

(i) inserting the words “nominated by the Council and” immediately after the word “Chairperson” in paragraph (a);

(ii) inserting the words “or his or her representative appointed in writing” immediately after the word “affairs” in paragraph (b);

(iii) inserting the words “or his or her representative appointed in writing” immediately after the word “finance” in paragraph (c);

(iv) inserting the words “or his or her representative appointed in writing” at the end of paragraph (d);

(v) deleting paragraphs (e) and (f) and inserting the following new paragraphs immediately after paragraph (d)—

“(e) the Permanent Secretary in the Ministry for the time being responsible for finance or his or her representative appointed in writing;

(f) the Permanent Secretary in the Ministry for the time being responsible for education or his or her representative appointed in writing;

(g) the Permanent Secretary in the Ministry for the time being responsible for internal security and provincial administration or his or her representative appointed in writing;

(h) eight youths elected by the youth in such manner as may be prescribed, and appointed by the Minister;

(i) not more than eight other youths, of whom at least three shall be of the female gender and one shall be a youth with disability, nominated by the National Youth Congress in such manner as may be prescribed and appointed by the Minister;



- (j) the Secretary, appointed under section 10.”
- (b) in subclause (2), by—
- (i) deleting paragraph (b) and substituting therefor the following new paragraph—  
“(b) has at least three years experience in youth development matters gained locally or internationally;”;
- (ii) inserting the following new paragraph immediately after paragraph (d)—  
“(e) is of high integrity, ethical and responsive to the needs and aspirations of the youth.”;
- (c) in Subclause (3), by deleting the expression “Subsection (1) (a) and (e)” and substituting therefor the expression “Subsection (1) (a), (h) and (i)”

*(Question of the amendment proposed)*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I have a further amendment.

**The Temporary Deputy Chairman** (Prof. Kaloki): Let us dispose of the first part of the amendment.

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

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

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5(2) of the Bill be amended by inserting a new Subclause (e) immediately after Subclause (d) as follows:-

(e) is a youth as defined under this Act.

The reason is that the chairman must be a youth and none other than a youth!

*(Question of the further amendment proposed)*

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I support that particular amendment. Let the chair be the real youth and not the ones that we think are youths and are not youths!

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

*(Clause 5 as further amended agreed to)*

Clause 6

**Mrs. Noor:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 be amended in Subclause (1) by inserting the following new paragraph immediately after paragraph (e)—

“(f) create branches from the Sublocation to the national level and such other branches as it may deem necessary or desirable for the promotion of youth empowerment and development.”

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

*(Clause 6 as amended agreed to)*

*(Clauses 7, 8 and 9 agreed to)*

*Clause 10*

**Mrs. Noor:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 10 of the Bill be amended—

- (a) in Subclause (1), by inserting the words “a youth” immediately after the words “who shall be”;
- (b) by deleting Subclause (2) and substituting therefor the following new Subclause—

“(2) The Secretary shall hold office for a period not exceeding five years, or until he or she attains the age of thirty-five years, whichever is earlier, on such terms and conditions of service as the Council may, from time to time, determine.”

*(Question of the amendment proposed)*

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I support this amendment. I think this is a very good amendment. We have put the word “youth” here to do away with the pretenders to the throne; people who were in Youth for KANU 92 and 20 years later, they still think they are the youth!

Thank you, Mr. Temporary Deputy Chairman, Sir.

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

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

*(Clause 10 as amended agreed to)*

*(Clauses 11, 12, 13, 14 and 15 agreed to)*

*Clause 16*

**Mrs. Noor:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 16 of the Bill be amended in Subclause (2)—

- (a) by deleting paragraph (c) and substituting therefor the following new paragraph—  
“(c) eight youths nominated by the Council and appointed by the Minister”;
- (b) by inserting the following new subparagraphs immediately after subparagraph (ix) of paragraph (d)—  
“(x) the Kenya Scouts Association;  
(xi) the Kenya Girl Guides Association;  
(xii) the National Agency for Campaign Against Drug Abuse Authority”.

*(Question of the amendment proposed)*

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

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

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, a new proviso be inserted immediately after Clause 16(d)

(ix) as follows:-

“Provided that, at least, one-third of the persons appointed under paragraph (d) shall be of either gender.”

*(Question of the further amendment proposed)*

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

*(Clause 16 as further amended agreed to)*

*(Clauses 17, 18, 19, 20, 21, 22, 23 and 24 agreed to)*

*(First Schedule agreed to)*

*Second Schedule*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Paragraph 1 of the Second Schedule be amended by inserting the words “in the same manner as provided for under this Act for first appointments” immediately after the words “but shall be eligible for reappointment.”

We do not want uncertainties as we saw in the Ringera case. So, the subsequent appointment should be in the same manner as the first appointment.

*(Question of the amendment proposed)*

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mrs. Odhiambo-Mabona, do not be worried! I am not standing to oppose the amendment! I am actually standing to support it! This actually confirms that this provision was lacking in the Anti-Corruption and Economic Crimes Act. This means that what the President did was actually correct. So, it is good that we have clarified this situation!

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the Minister in order to revive a case that this House debated and passed? Is he not contradicting the resolution of the House without coming up with a Motion in a proper way?

**The Temporary Deputy Chairman** (Prof. Kaloki): Mr. Githae, do you want to take us back?

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): I am not taking you back, Mr. Temporary Deputy Chairman, Sir. I am just commending Mrs. Odhiambo-Mabona for her wisdom in bringing this amendment, so that it removes any uncertainty in the issue!

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well! If there are no further contributions, Mrs. Odhiambo-Mabona, do you have any other additional information?

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I agree with the Minister, save that, that is not the reason why I moved this amendment. As lawyers, we always want to be certain. So, where we have seen mischief in the past, we correct the mischief. So, it is not that I agree that, that was the correct position.

**The Temporary Deputy Chairman** (Prof. Kaloki): But the Minister was trying to support you, after all that.

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

*(Second Schedule as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its

consideration of the National Youth Council Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

THE OFFICE OF MINISTERS BILL

*(Clause 2 agreed to)*

*Clause 3*

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

THAT Clause 3 of the Bill be amended-

- (a) by inserting the words “a Prime Minister, two Deputy Prime Ministers and” immediately after the words “shall be” appearing in Subclause (1);
- (b) by inserting the words “including the offices of Prime Minister and the two Deputy Prime Ministers shall not be less than fifteen nor” immediately after the word “section” appearing in Subclause (3);
- (c) by inserting the following new Subclauses immediately after Subclause (4) as follows-
  - (5) The ministerial portfolio of the Prime Minister shall be as assigned by the Constitution.
  - (6) The President shall appoint each Deputy Prime Minister to be a Minister in charge of one of the offices of Minister specified in the Schedule or established under Subsection (2), as the case may be.

Mr. Temporary Deputy Chairman, Sir, with your permission, I just want to explain the rationale. This is really making it a bit neat. We have made sure that some offices that do not necessarily have to have the specific portfolio except for the position of the Prime Minister which has a portfolio given as per the Constitution, for instance the two Deputy Prime Ministers and the Vice-President shall already be Ministers of the Government. We have put that in the body so that it will help with the further amendments to the Schedule.

*(Question of the amendment proposed)*

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

*(Clause 3 as amended agreed to)*

*Clause 4*

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

THAT, Clause 4 of the Bill be amended in Subclause (1) by inserting a new paragraph as follows-

“(d) has not been convicted of corruption or an economic crime within the meaning of the Anti-Corruption and Economic Crimes Act, 2003.”

*(Question of the amendment proposed)*

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I want to support this amendment because it qualifies what “integrity” means. In the past, we have seen people who have even been convicted of criminal offences holding Ministerial positions. It is high time we put a stop to this by making it very clear that somebody who has been convicted of corruption or an economic crime within the meaning of the Anti-Corruption and Economic Crimes Act, should not be allowed to hold such a position.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I rise to support this amendment but I wish hon. Kapondi could have been more courageous and instead of just saying “convicted”, going further. By the time one is convicted, people are going to constitutional courts and the cases are getting delayed. The ones that were filed in the year 2002 have still not been heard! I wish he could have said “where allegations have been made”. That would have been neater!

**Mr. Ethuro:** Mr. Temporary Deputy Chairman, Sir, I wish to support the amendment by my friend, hon. Kapondi. Again, this is just an opportunity to raise the bar of integrity. I do not think that the Chair would entertain the contribution by the Minister for Nairobi Metropolitan Development. Being a lawyer, every Kenyan has a right to appeal if he feels that the law did not dispense justice to the person. So, if you exhaust the options available to you legally, then we can talk about a full conviction.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Githae, do you want to battle that or we just move on?

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, as I said, I am supporting this amendment, but I wish the hon. Member could have raised the bar even higher!

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

*(Clause 4 as amended agreed to)*

*Clause 5*

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

THAT, Clause 5 of the Bill be amended by inserting a new paragraph as follows-

(e) all matters, administrative or financial, pertaining to the Ministry.

**Mr. Ethuro:** Mr. Temporary Deputy Chairman, Sir, let him explain the rationale of the amendment.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Kapondi, there is a request that you explain the rationale behind your amendment.

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, accountability matters cannot just be left like that. We said that this clause should be amended by inserting a new paragraph because we felt that something was missing. For one to be asked to account when he or she is not in charge of the administrative and financial matters pertaining to the Ministry, it will not be fair. That is why we felt that it is critical to include this amendment.

*(Question of the amendment proposed)*

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I wish to oppose this amendment. That is because this amendment attempts to give the impression that the Minister will be both the Minister and also the Permanent Secretary. The Minister cannot be loaded with all these matters that are of financial and administrative in nature. Let the Minister be responsible for the policy aspect of running the Ministry and then the Permanent Secretary can do all the housekeeping matters.

I beg to oppose.

**Mr. Ethuro:** Mr. Temporary Deputy Chairman, Sir, I am constrained to oppose this amendment by my good friend; a man I respect and the Chairman of the Committee, for one simple reason. The responsibility of a Minister of Government, even constitutionally, is to advise the President as a Cabinet. This amendment is trying to make a Minister of Government to be a Permanent Secretary or Accounting Officer. I do not think, in the way we arrange our business, we should entertain that as Parliament.

So, I humbly and respectfully wish to oppose this amendment.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I also rise to oppose this amendment. If we effect this amendment, then it will make Ministers become civil servants. They will be in charge of all administrative matters. Ministers are not in charge of administrative and financial matters. A Minister gives policy guidelines to the Ministry. So, we should not confuse Ministers with civil servants. I do not want to be a civil servant! I want to be a Minister!

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I also want to add my voice in opposing this particular amendment. That is because, really, if you are giving the Ministers responsibility, you should do so if you know that they have the capacity to execute that responsibility. As it stands now, it is not possible for the Minister to have the capacity to deal with administrative and financial matters.

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, I wish to make it very categorical that, in the past, this House has censured Ministers because of failing in their respective Ministries. It is very unfair to come here, allude to mismanagement in Ministries and point a finger at a Minister. The Committee felt that because a Minister takes overall responsibility, that alone calls for this amendment to be put in place. That is why we felt that it is very critical that this amendment be introduced.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Kapondi, sensing the mood of the House, do you want to withdraw or proceed and we vote?

**An hon. Member:** You will fight another day!

**Mr. Kapondi:** Mr. Temporary Deputy Chairman, Sir, I may live to fight another day but, on behalf of the Committee, I will still stick to it and be defeated.

*(Laughter)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Okay! I will now proceed to put the Question!

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

*(Clause 5 agreed to)*

*(Clauses 6, 7 and 8 agreed to)*

### *Schedule*

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

THAT, the Schedule to the Bill be amended-

- (a) by deleting paragraph 1;
- (b) by deleting paragraph 2;
- (c) by deleting paragraph 3;
- (d) by deleting the words “Defence, Provincial Administration and Internal Security” appearing in paragraph 5 and substituting therefor the words “Provincial Administration and National Security”;
- (e) by inserting the word “Children” immediately after the word “Gender” appearing in paragraph 12;
- (f) by deleting the word “and” appearing immediately after the word “Transport” in paragraph 13;
- (g) by deleting the words “Metropolitan Development” appearing in paragraph 16 and substituting therefor the words “Development of Metropolis”
- (h) by deleting the word “One” appearing in paragraph 24 and substituting therefor the word “Three”.

Mr. Temporary Deputy Chairman, Sir, the amendment that I am proposing to the Schedule by deleting paragraphs 1, 2, and 3 is consistent with the amendments that I moved earlier in terms of bringing those Constitutional positions to the body of the Act.

Mr. Temporary Deputy Chairman, Sir, the other amendments are really more to do with cleaning-up and wording; where instead of a longer name of “Defence, Provincial Administration and Internal Security” we have just made it “Provincial Administration and National Security” where “National Security” will involve both internal and external security which is usually defence.

Mr. Temporary Deputy Chairman, Sir, on “e” which is the Ministry of Gender and Children Affairs, we have added “children”. I am glad because this Bill is coming to



the Committee Stage together with the one of the youth, where we are very clear about “youth” and “children.” So, we want the issue of the children to be equally paramount in that Ministry.

Mr. Temporary Deputy Chairman, Sir, maybe, for the benefit of hon. Githae, instead of just “Nairobi Metropolitan” we have combined this with the Ministry of Local Government and the development of other metropolis, so that it is not just one metropolis only in Nairobi. This Ministry can actually have metropolis in Mombasa, Nakuru and, indeed, Kisumu City.

Mr. Temporary Deputy Chairman, Sir, in the last proposal, you will see that I have increased the discretion of the President, because I am extremely mindful of his appointing authority, from one to three. That is because, already, we have accorded by deleting the first three--- So, we have transferred the same to give him leeway to have more Ministries. But he has to assign the same Deputy Prime Ministers to already established Ministries.

Thank you.

*(Question of the amendment proposed)*

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Temporary Deputy Chairman, Sir. I wish to support the amendment, especially on Clause 3 which has to do with inclusion of children. I know it was forgotten. Even earlier today in the House, we had a situation where a Minister was actually alluding to children as being an appendage to adults. We know that children in their tender years need support and guidance but they are still human beings in their own rights. Therefore, whenever we create Ministries, we must acknowledge children as children and gender concerns to take care of women issues.

I support the amendment.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I also wish to support the amendment to the Schedule and, in particular, I want to address the issue of development of metropolis. It is true that the Ministry that I am heading is the Nairobi Metropolitan Development, but under the Vision 2030, there are supposed to be six more metropolis; that is, Kisumu, Mombasa, Eldoret, Isiolo, Mwingi and Garissa. It is important that this is recognized in the Offices of Minister Bill so that when the President appoints, then he can develop these metropolis.

Mr. Temporary Deputy Chairman, Sir, I support.

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

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

*(Schedule as amended agreed to)*

*(Title agreed to)*

*(Clause I agreed to)*

**Mr. Ethuro:** Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of The Offices of Minister Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

#### THE NATIONAL YOUTH COUNCIL BILL

**Prof. Kaloki:** Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered The National Youth Council Bill and approved the same with amendments.

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae) seconded.

*(Question proposed)*

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, we have come to a very nice end on the question of Offices of the Minister Bill. As we pass this law---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Khalwale! We are dealing with the National Youth Council Bill. You will still have the opportunity. Let us have hon. Millie Odhiambo!

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Temporary Deputy Speaker, Sir. I just want to congratulate the Minister for such a good Bill. I am also happy that she is taking issues of the youth seriously. I want to say particularly that I am very happy the Minister has been very categorical about who the youth is and I would want to agree with hon. Mbadi that there are many pretenders to the throne of youthfulness. I, for instance---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Odhiambo! It is not a debate! Please, conclude!

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Speaker, Sir, I conclude by saying that I laud the Minister for a good Bill and for defining very categorically who a youth is, so that "Youth for KANU 1992" is no longer youth!

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir I also wish, first of all, to commend the Minister but even more so, the Committee that superintends this Ministry.

Mr. Temporary Deputy Speaker, Sir, you have seen where the Minister consults the Committee, the business of this House is facilitated and it is easy. Therefore, I would request my colleagues that, before they bring any issue to be passed before this House, to consult the Departmental Committees that represent their Ministries. It makes the life of this Parliament much easier.

**Mr. Wamalwa:** Mr. Temporary Deputy Speaker, Sir, I also want to thank the Minister for finally having this Bill come to the House and go through. I will only urge her to move with speed to ensure that we have clear rules for the election of the office bearers to the Council and let it be democratic. I thought it would have been a Schedule in this Bill, but she has the power to do that. Please, do so in order for democracy to prevail right from the sub-locations all the way to the national level.

**Mrs. Noor:** Thank you, Mr. Temporary Deputy Speaker, Sir. I want also to congratulate the Minister because this Bill will transform the youth of this country. I am proud to be part of the Bill today.

Thank you.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Temporary Deputy Speaker, Sir, I beg to move that the National Youth Council Bill be now read the Third Time.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae) seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

#### THE OFFICES OF MINISTER BILL

**Mr. Kapondi:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Offices of Minister Bill and has approved with Amendments. I, therefore, beg to move that the House do agree with the Committee in the said Report.

**The Minister for Roads** (Mr. Bett) seconded.

**Prof. Kaloki:** Mr. Temporary Deputy Speaker, Sir, is it in order for hon. Kapondi to respond on behalf of the Government?

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Temporary Deputy Chairman! I appreciate your concern. However, you will appreciate that there were two

Bills. One was a Government Bill where the Minister moved it, while the other one was a Private Member's Bill. For purposes of that, I had nominated hon. Kapondi. Therefore, he has all the privilege to act as a Minister in this particular situation. However, it is limited for now.

*(Question proposed)*

Hon. Members, remember that this is not the Third Reading.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I just want to take this opportunity to congratulate the Mover of this Bill, hon. Ethuro, for having done what all successive Parliaments, since 1963, have not done. The Constitution gave this job to Parliament to create offices of Ministers which all other Parliaments have not done, until now. So, I wish to thank the Mover for this wonderful Bill.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, as I thank the Mover of this Motion, I am doing it in full knowledge that today, we have a very confused country in terms of leadership where we have a bloated Government which has not served much purpose in this country. Now that we have made it good and tidy, my only regret is that this law will not take effect tomorrow. We shall have to wait until the next Parliament. However, all the same, never again will our country be found with a bloated Cabinet.

Secondly, I appeal to the appointing authority of that time that this law has fallen short of providing for gender issues. When we shall be constituting the Government at that time, we hope that the appointing authority will make sure that, at least, 50 per cent of the Cabinet will be of either gender.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Mrs. Odhiambo-Mabona, now that we are on gender!

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Temporary Deputy Speaker, Sir. I really did not want to contribute on gender, but I want to support the Mover and thank hon. Dr. Khalwale for the vote of confidence on women. I wish he had actualized it and moved an amendment that 50 per cent be women. Apart from that, I want to congratulate the Mover of this Motion. This is a very momentous time, for us as a country. Kenyans have been calling for a lean Cabinet and we have provided that.

**Mr. Wamalwa:** Thank you, Mr. Temporary Deputy Speaker, Sir. I also wanted to join my colleagues in congratulating you. This is, indeed, a historical Bill. We have made history. History will say that it was the son of a peasant from Turkana who brought what had not been done for 46 years. Indeed, it is historical. I want to urge that we should not wait for the next Government. We do not have to wait for the next appointing authority. We are appealing to the two Principals. When the bloated Cabinet was formed, it was a necessary evil. We must, as Kenyans, ask whether it is necessary to continue living with this evil. It was a negotiated agreement. The two Principals can negotiate again and say: "Fine! Let them go home. I will keep ten and you can keep ten. Let us start this show right now.

*(Question put and agreed to)*

**Mr. Kapondi:** Mr. Temporary Deputy Speaker, Sir, I beg to move that the Offices of Minister Bill be now read the Third Time.

**Dr. Khalwale** seconded.

*(Question proposed)*

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity to very sincerely thank Members of the House Committee led by Mrs. Noor and the Legal Department of this House for the work that they have done. Hon. Members, I truly appreciate your support.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Minister! Although you are relevant, you are tied to yours!

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Temporary Deputy Speaker, Sir, I needed to say that.

**Mr. Kapondi:** Mr. Temporary Deputy Speaker I take this opportunity to thank hon. Members for the very informative contribution that they have made to this Bill. This Bill, once it is enacted into law, will take this country towards the right direction.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir. What we have done today in this House is historical. I only wish that the Mover could have been more courageous and put a clause that says that Ministers should be appointed from outside Parliament. That is what Kenyans are saying. They want Ministers to be appointed from outside Parliament so that, when we are in this House, we are just legislators.

*(Question put and agreed to)*

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

## MOTION

### APPROVAL OF SESSIONAL PAPER NO.4 OF 2009 ON NAIROBI URBAN TOLL ROAD CONCESSION PROJECT

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, I beg move the following Motion.

THAT, pursuant to Section 4A of the Public Roads Toll Act (Cap. 407 of the Laws of Kenya), this House approves Sessional Paper No.4 of 2009 on the Nairobi Urban Toll Road Concession Project laid on the Table of the House on Tuesday, 8<sup>th</sup> December, 2009, together with the Concession Agreement and Tolling Regime annexed thereto.

Mr. Temporary Deputy Speaker, Sir, I have read that because it is an amended version of the Motion which we moved yesterday. So, I wanted it to go on record of the House that it has been---

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Dr. Khalwale! Let me hear the Minister! Mr. Minister, are you moving an amended Motion or the Motion on the Order Paper?

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, on the Supplementary Order Paper, the Motion was duly amended and approved by the Speaker. So, I have to read it so that it is on the record of the House.

**The Temporary Deputy Speaker** (Mr. Ethuro): The procedure is that when you move a Motion, you read the entire Motion.

**The Minister for Roads** (Mr. Bett): I can read it again, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): Please, do it for the benefit of the Chair.

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion.

THAT, pursuant to Section 4A of the Public Roads Toll Act (Cap. 407 of the Laws of Kenya); this House approves Sessional Paper No.4 of 2009 on the Nairobi Urban Toll Road Concession Project laid on the Table of the House on Tuesday, 8<sup>th</sup> December, 2009 together with the Concession Agreement and Tolling Regime annexed thereto.

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order hon. Members! I want the Minister to move the Motion so that it is properly before the House and then I attend to your point of order.

Continue, Mr. Minister!

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, I am pleased to brief Parliament today on the proposed development of a section of Mombasa--

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very important Motion which will move this country closer to Vision 2030. Therefore, it is on the strength of that that I would like to appeal to our brother from the Government side to take advantage of Standing Order No.51 so that he can move this Motion at a later date. I am saying this because this Sessional Paper was laid before this House only yesterday in the afternoon. Hon. Members did not have an opportunity to look at the Sessional Paper until this afternoon when we went to our respective pigeon holes and found this voluminous document. Now that we are about to contribute on this Motion, how on earth are we expected to make an informed contribution if we have not enjoyed the benefit of going through this? This is a massive project in which we shall commit this country to the concessionaire for 30 years. Therefore, it is not an issue that we can afford to rush through. I have a strong feeling that if we are given time, we will ask the Minister to clarify specific issues. For example, a quick bird's eye view on this document has shown us that the company which has won this opportunity---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Dr. Khalwale! You rose on a point of order and we want to know the Standing Order which is being breached and you have stated it. You are attempting to give reasons why you do not want the Motion to continue when the Minister has not even moved it. Let the Minister move this Motion and then I will give you the opportunity to raise your issues. That way, the Motion will be properly before the House. All is not lost, Dr. Khalwale.

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, we are prepared to take all the concerns that will be raised on the Floor of this House because we want a project that is above board and on top of a table. So, I am prepared to listen to the concerns and come back. That being the case, I wish to brief the House.

**The Temporary Deputy Speaker** (Mr. Ethuro): Mr. Minister, if you consider Standing Order No.51, the hon. Member is asking you to withdraw the Notice of the Motion that you gave yesterday. In terms of sequence of events, if you agree with the hon. Member, then the easier thing is to withdraw the Notice of the Motion which you gave so that you do not have to go further to move the Motion. That Standing Order gives you the earliest opportunity after you have agreed to come back with the same notice.

Mr. Githae, I hope you will support me because you have said that if the Government side agreed with the Back Bench, the operations of the House are very smooth.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Indeed, Mr. Temporary Deputy Speaker, Sir. I just want to seek your guidance on this issue under our Standing Orders. This is a Motion and not a Bill. Therefore, it has no maturity period. We know that Bills have a maturity period and not Motions. Our Standing Orders do not specify or state after how long a Sessional Paper should be discussed after it has been laid on the Table of the House. We have had cases where a Sessional Paper is laid on the Table of the House in the morning and we discuss it in the afternoon. We have had cases where a Sessional Paper has been laid on the Table of the House and after Question Time it is debated. So, there is nothing barring this House from proceeding with this debate.

Secondly, time is of essence on this issue as we are meant to understand that the House might go on recess tomorrow. Therefore, since there is nothing barring this House from discussing this Motion--- Hon. Members will have the opportunity to read this voluminous report as we debate this Motion.

I beg that we proceed with the Motion.

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

The road in question is a section of Mombasa-Malaba Road which is commonly known as the "Northern Corridor". It runs from Machakos turn-off on to Mombasa Road, Uhuru Highway, Waiyaki Way and ends at Rironi. It is a distance of 75 kilometres. That section of the road will be done by the concessionaire to its completion and will be managed by the concessionaire for a period of 30 years. I would like to indicate that there is a termination clause in the contract. There is also an independent engineer and the Government will be monitoring the progress of the project.

Mr. Temporary Deputy Speaker, Sir, the 2030 Vision provides the overall national policy framework and Sessional Paper No.5 of 2006 on Development and Management of the Road Sector provided that the sector be developed and be able to carry forward the Vision 2030 principles for public roads. One objective of the Sessional Paper is that it will increase the involvement of stakeholders and private sector in road management and financing in the country. That is the gist of Sessional Paper No.5 of 2005. The project we are addressing today falls within that category of private sector participation in road maintenance and management.

Mr. Temporary Deputy Speaker, Sir, the condition of existing roads in the country today could be improved and are being improved but there is a major challenge. That is

the challenge of congestion and traffic jams. This challenge is taking a lot of our time, contributing to pollution and other factors associated with it. Traffic congestion arises when the number of vehicles plying on a road exceeds the design capacity of that road. Hon. Members will have witnessed that on the city highways in Kenya, fast moving vehicles are unable to find opportunities to overtake and must follow behind the slowest vehicles. In urban areas, severe delays are notable during peak hours and even during non-peak periods and weekends.

The solution is to expand the capacity of existing roads by adding lanes as we have done on Mombasa Road. We are also upgrading Thika Road and improvement of intersection is quite crucial to improve on the public mass transit system in urban areas. This problem has been faced, not only in Kenya, but also elsewhere. It has been faced in India, Malaysia, Brazil, Mexico and near us, in South Africa and many other developed countries.

Mr. Temporary Deputy Speaker, Sir, the most successful solutions adapted in those countries to resolve this problem of congestion which I have mentioned is the Toll Road Concept (TRC). In the TRC, the necessary road investment is frequently raised from the private sector, thus relieving the Government of the burden of raising funds. I am sure hon. Members of Parliament will be able to get more funds when we get support from outside. In return, the investor is allowed to levy a toll upon the road users. I want to indicate that the toll has been discussed and negotiated. In future, it cannot be increased without the authority of the Minister. The levy paid by the road user is typically less than the benefit gained in time and vehicle operating cost. The toll road system is implemented as a concession typically over a period of over 20 years to 35 years. We are proposing ours to be 30 years. If I may remind the Members and the country, the Nyali Bridge, the Fantoon which was connecting Mombasa Island to the Mainland was there as a concession for 50 years. When we were building the Nyali Bridge it was when that concession period was expiring. So, it is not a strange thing that we are introducing. It has happened and it has been used in this country.

Mr. Temporary Deputy Speaker, Sir, a Cabinet Memorandum on Concessioning of Roads in Kenya was approved. The Government constituted an inter-Ministerial committee on road concessioning to provide oversight and management. In 2006, through advertisement in the newspapers, international bidders were invited to tender for the Nairobi Road Concession. Three parties expressed interest, but only one bidder came forward. The bidder is a joint venture M/s A Way Strabag and HCH which have styled themselves Nairobi Motor Way Group. Nairobi Motor Way Group has not been registered. They are waiting for this House to approve this request and then they would go in to register if they are allowed by the House. The Government evaluated the bid with technical assistance provided by the World Bank through an international consultant with experience in toll road project development. The evaluation concluded that the sole bid received were suitable as a basis for negotiation of available concession contract.

Mr. Temporary Deputy Speaker, Sir, what does the concession entail? I have already indicated the roads that would be covered. I want now to go to a few of what they would do. The concessionaire will construct an elevated road way on A104 between Nyayo Stadium and Museum Hill.

*(Loud consultations)*



Mr. Temporary Deputy Speaker, Sir, I wish to seek your indulgence because I want to request Members to listen to me, so that when they raise their concerns, I would be ready to answer them.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order Members! The Minister shall be listened to.

Mr. Minister, I hope that the consultations are not obstructing you from talking.

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, they were more or less obstructing me. But thank you for your protection.

I want to again indicate that the concessioner would construct an elevated road way on A104 between Nyayo Stadium and to be more specific from the Flyover before the Nyayo Stadium coming from Mombasa side, all the way to the Museum Hill up to the roundabout at Westlands. So, there is going to be a road on top of Uhuru High Way up to Westlands. I want to indicate that along the way, there will be intersections with interchanges to assist smooth flow of traffic.

The Government with World Bank support will improve the Machakos Turn-off – Athi River of A109 to dual carriage way. Also, the Government with the World Bank will build the Southern by-pass which is part of this package. Once these two have been developed by the Government, they will be handed over to the concessionaire for purposes of management and maintenance for the rest of the period. The concessionaire will also erect toll stations. This will be easy responsibility. The concession is programmed for 30 years. I want to believe that 30 years is adequate because it is estimated that the project will cost US\$900 million. That is the investment by this particular joint venture. They will look after the property for 30 years. If there is excess traffic, on their cost, they will increase the number of lanes, so that it covers our people. Each booth or toll station will employ a good number of our youths. We are estimating between 60 and 100. There will be about five toll stations.

Mr. Temporary Deputy Speaker, Sir, I now want to touch on the tolling regime. The tolling regime will be taking into account Class A vehicles which are light vehicles, including the Passats which are now being used by the Ministers. Class two will be medium heavy vehicles including PSV ones, running from eight to 14 seaters. Class three will be larger heavy vehicles comprising Lorries and minibuses. Class four will be the extra heavy large vehicles comprising trucks and those of more axles. The toll charges for Class two, three and four vehicles will be two times, three times, eight times the toll charges levied on one. I will be indicating what it means in actual figures immediately after now.

Once this agreement is approved by the House, the concessionaire will take six months to conclude financial arrangement with their various financiers. So, if we approve today, it means, we will be signing agreements conclusively somewhere in July next year. I am worried about any further delay for the simple reason that the financial landscape is changing across the world and they are going to be asking for money from banks outside this country. So, if we say today we do not pass this Motion, it means three months plus six months which is almost another one year. I want to plead with hon. Members to appreciate that this is intended to reduce on congestion, time taken by people to work, time taken by goods to reach factories and time taken by goods from factories to reach their stations for trading. That will boost economic development.

Mr. Temporary Deputy Speaker, Sir, the tolling regime is as follows: Just to give you an example, there will be a main line at the Athi River Junction and there will be another one on Uhuru Highway. That will be on Enterprise Road. There will be another one at Westlands. The last one will be at Rironi. There are all four in number. If one person is travelling from Machakos Turn-Off and heading for Western Kenya, you will be required to pay Kshs572 on a Class "A" motor vehicle. If you are on a Class "B" motor vehicle, you will be paying Kshs1,147. If you are on Class "C" motor vehicle, it will be Kshs3,440. If you are on a Class "D" motor vehicle, it will be Kshs4,586. You will realise the two times, four times, eight times formula applies to that list.

Mr. Temporary Deputy Speaker, Sir, the time taken today to move from Machakos Turn-Off to Rironi is close to three hours on average. If this is allowed and this construction takes place, we estimate that the time to be taken will be 45 minutes. That saves us two hours and fifteen minutes of economic time. That is what we are looking at. That is the benefit we will derive as a country. The *matatus* will also be having rates that will be unique to them, people who will use toll roads more frequently. They are called special rates.

One would want to ask: Why pay all the time? The answer is that you are using a road with no traffic jam and congestion. So, the turn around time for a *matatu* operator will be much more compared to going into a traffic congestion that will take you a long time. So, we are seeing that the cost will be covered by the turn around time; it will be faster for the *matatu* operators.

Mr. Temporary Deputy Speaker, Sir, I know a question has been raised as to why road users should be required to pay tolls when they already pay fuel levy for road maintenance. The reason is that the toll is a charge to enable investment in measures to relieve congestion and save motorists time, fuel, wear, uncertainty and anxiety brought about by traffic jams. By contrast, the fuel levy is only used to repair and maintain existing roads, regardless of the congestion on the roads.

Mr. Temporary Deputy Speaker, Sir, this project will also release funds which are normally used to fund maintenance on roads. That money will then be available to me to subvent other activities in the country, be it for our rural, urban roads or highways. It will be available to be used.

Mr. Temporary Deputy Speaker, Sir, another area is that the concessionaire will maintain the highway in a clean and proper condition and place all the necessary road signs. As and when they are destroyed, they will place them back. They will do the marking of the roads. They will fill any pot holes themselves for the period of 30 years.

Mr. Temporary Deputy Speaker, Sir, I have also indicated that in case traffic increases, they will have the responsibility of increasing the number of lanes at their own cost. The person taking the greatest risk is the concessionaire, and that is why he will be given the opportunity to toll on that road.

Mr. Temporary Deputy Speaker, Sir, that is my story. I want to request this House to consider allowing this, so that we may save ourselves time waste, congestion, pollution and get our economy moving faster with the introduction of such roads. This has happened elsewhere in the world. Let us make use of the opportunity. I beg to indicate that we have taken two years plus in this exercise, and I would not wish to see the country waiting any longer as more vehicles come on board. This is because as the economy grows, more vehicles are coming on board.

Mr. Temporary Deputy Speaker, Sir, I beg to move and request hon. Njeru Githae to second this Motion.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I rise to second this very important Motion. Hon. Members will recall that before the amendment of the Toll Charges Act, the requirement for Parliament to approve toll charges was not there; this was done by the Government so as to enable Members of Parliament to scrutinise toll concessionnaires.

Mr. Temporary Deputy Speaker, Sir, I support this very important Motion because of the things I know it is going to do to Nairobi metropolitan. Previously, we used to have traffic jams only in the morning. Then, we had them during mid day, then in the afternoon, and now we have them throughout the day. The construction of this overhead route is going to eliminate these traffic jams.

Mr. Temporary Deputy Speaker, Sir, you also have realized that whenever we have any small happening on the roads like a very small accident or rain, it causes traffic jams. Since this will be an express highway, the issue of traffic jams will be a thing of the past. The Government has no risk in this undertaking. Everything is upon the concessionaire. He is the one to look for or borrow the money and construct the road. The only thing the Government will do is to give him a piece of land where he can construct an overhead road.

Mr. Temporary Deputy Speaker, Sir, the reason why it was found necessary to construct an overhead road is because of the land grabbers. They have grabbed land where an alternative road could have been done. Now, the only place available is the area between the two roads, the one going towards Mombasa and the one going towards Nairobi.

This is one of the many interventions that the Government is undertaking. We have the northern and southern bypasses which have started. When all these interventions are done as a whole, the traffic jam problem will be a thing of the past. I would urge this House to approve this Motion, so that this concessionaire can start working.

I would also like to take this opportunity to ask other investors who have identified a road where they can put up a toll station, to approach the Ministry of Lands who will give you the concession. Even on railways, if you want to construct a railway, please approach us. We will give that concession. Even if you want to construct a tram, approach us and we will give you the concession. If you want to construct helipaths, approach us and we will give you that concession. So, this should not just be looked at as a one-off thing; it is really something for the future. Even if you want to construct a Bus Rapid Transit (BRT), approach us and we will give you the concession.

Mr. Temporary Deputy Speaker, Sir, I support this Motion because the two recommendations that the Ministry of Nairobi Metropolitan Development put forward have been taken care of. One is that there will be an alternative, so that if you do not want to use the road that has been concessionaire, then you can use the ordinary road. So, you will not be forced to use it. Second, there should be a method of charging, so that we do not leave it to the concessionaire to charge whatever amounts that he will want to charge. That has been taken care of. In case of an increase, again, we wanted there to be a condition that the Minister will approve new charges that have been taken care of.

Mr. Temporary Deputy Speaker, Sir, the other recommendation was that there should not be a uniform charge for a person who is travelling from Machakos all the way

to Limuru. But there should be different charges so that if you are only travelling from Machakos up to Nyayo National Stadium Roundabout, you pay a different amount. If you go to the other roundabout, you pay a different amount. If you go to Westlands, you pay a different amount. If you go all the way to Rironi in Limuru, then you pay a different charge. That has been taken care of.

So, Mr. Temporary Deputy Speaker, Sir, I am really requesting this House to approve this Motion so that we can have predictability going to the airport. The worst thing is, as of now, if you are going towards the Jomo Kenyatta International Airport, you have no idea whether it is going to take you ten minutes, 30 minutes, two hours or sometimes even three hours, as I have been told it has happened.

So, Mr. Temporary Deputy Speaker, Sir, as of the moment, we are losing more than Kshs24 billion in wasted fuel. If you look at the opportunity cost, that is another Kshs20 billion. So, we are losing almost Kshs50 billion on traffic jams per year. This will go a long way in ameliorating and sorting out this problem. I urge this House to approve this Motion. The Minister has given his assurance that if there are any issues that hon. Members will raise, they will be taken care of as the concessionaire looks for finance.

With those few remarks, Mr. Temporary Deputy Speaker, Sir, I beg to second.

*(Question proposed)*

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

**Mr. Linturi:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): Proceed, Mr. Mbugua!

**Mr. Mbugua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. There is no quorum in the House.

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Mbugua! Hon. Mbugua, you stood as if you were about to contribute; I gave you the chance.

**Mr. Mbugua:** And I still want to contribute, Mr. Temporary Deputy Speaker, Sir. Thank you for giving me this chance, Mr. Temporary Deputy Speaker, Sir---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Mbugua! Order!

*(Laughter)*

The rules of the House are very clear; you either rise on a point of order, then I know it is a point of order; like hon. Linturi's. But you just stood and I thought you wanted to contribute. So, I gave you the opportunity. You cannot now change that opportunity from contributing to a point of order. The rules of the House are very clear; my job is very simple – just to enforce them.

Proceed, hon. C. Kilonzo!

**Mr. C. Kilonzo:** Thank you, Mr. Temporary Deputy Speaker, Sir. We have no issue on the idea, but what the Government is asking the House to do is like committing suicide. If you look at the Motion, they have brought the Concession Agreement in which

there are companies which are not legal entities and they do not exist. We understand your position, but there is nowhere in the world somebody will give you approval of a company which is not a legal entity. Supposing, tomorrow, it turns out that, that company is owned by dubious characters, then the general public will never trust Parliament! So, as the Government, you need to understand the position of the House. The idea is acceptable, but you are not telling us why should you commit citizens there – not the Government now – because they are the ones paying directly for 30 years and yet you have not given us the information of these unregistered companies. Who are the people behind these companies? I did take time, myself, this afternoon to go to the Registrar of Companies and it is true that they are not registered. But it is you who is looking for the approval and, so, you should have come with more details. But the issue of this House giving you a blank cheque will actually be out of question! This is like going to the bank to ask for a loan, you are given the money and the bank does not know the legal entity of that person.

Mr. Temporary Deputy Speaker, Sir, I have looked at the document again. The articles--- What you are proposing to us, in case there is a dispute, this company does not want to recognize the arbitration laws of this country. So, these are very touchy issues! Why would you want to deal with a company, part of which we suspect is Kenyan and part is foreigners, and they do not want to respect our laws here?

Mr. Temporary Deputy Speaker, Sir, in any procurement, there are mandatory requirements. Going by this, one can easily qualify this company as a briefcase company because it has no postal address, it has no physical address and it is not tax compliant! What I would have really pleaded to the Minister is for him to go back and look into these issues afresh, because I find it very hard, as an hon. Member of Parliament and as a House, to approve it. Supposing tomorrow it turns out that this company is owned by one of the people who were involved in previous scandals, then what will people think of this House?

On that basis, I beg to oppose.

**Mr. Linturi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this Motion.

Mr. Temporary Deputy Speaker, Sir, while I really appreciate the Minister's efforts to decongest Nairobi and save us, especially on economic time as he said when he was moving this Motion, I feel completely not able to reconcile with my conscience in giving him the leeway of going to execute the Concession Agreement with the Nairobi Motorway Group as he is trying to propose to us.

The reasons that I would advance in this matter is that, as my colleague has said, we have a serious problem with the legality of this company. If there is a serious problem with the legality of a company, then, in my little understanding, you cannot go into a serious agreement with a company that is not-existent!

Mr. Temporary Deputy Speaker, Sir, the Nairobi Motorway Group that is supposed to have participated in the expression of interest that was floated some time back--- I even wonder how they were able to pass the evaluation criteria by the team that was doing this evaluation because the very basic requirements that are provided for by the Public Procurement and Disposal Act were not in place; they were not registered and they do not have a tax compliance certificate. We are talking of a concession agreement that will run to US\$900 million; this is not little money!

Mr. Temporary Deputy Speaker, Sir, even going by what the Minister has told this House, I am personally not satisfied because when I look at the kind of money that motorists will be paying, it is not little money! If a truck has to pay Kshs6,000 to get to its destination and back, that is not little money. In any case, unless corrected, these trucks are also consuming fuel and the tax is accommodated in the price of fuel. This will amount to double taxation. We have not had a proper statistical data presented to this House by the Minister to show that within this and that period, we expect this and that number of vehicles to ply through these routes and this is the amount of money we expect to raise within this period and that in our view we would have paid the US\$3 million. There will also be surplus which shall be shared between the concessionaire and the Government of Kenya for the benefit of the taxpayers. Let it not appear that because the taxpayers are not putting in any little money, then there is nothing else they are contributing.

Mr. Temporary Deputy Speaker, Sir, we are mortgaging our resource for 30 years. We must be convinced as leaders or as the Back Bench, which has a duty to check the Executive, so that what is done is for the good of this country. Mr. Minister, I appreciate what you do, but, please, convince us because we are willing to do it. However, in the circumstances, I personally feel constrained to support this Motion.

I oppose.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Speaker, Sir, this is a very brilliant idea from the Ministry of Roads. There are several advantages with regard to this proposal of decongesting the city and also reduction of time spent on our roads. However, there are very glaring shortcomings in this Paper.

This is just like a single sourcing. We have been talking about transparency and accountability. When you look at a situation like this one to which you are going to commit a country, you have to look at the future. When you look at this case, you just see a single company. That is single sourcing!

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): What is it, Mr. Githae? Be mindful that you could be contradicting a fellow Minister.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I am actually shocked that Maj-Gen. Nkaisserry, who is a member of Government is actually opposing a very important Motion of the Government. He has said that he has serious misgivings. Is it in order?

**The Temporary Deputy Speaker** (Mr. Ethuro): Mr. Githae, I think Maj-Gen. Nkaisserry is also a Member of the House and he is expressing his views. We have not yet voted for you to say whether he is opposing the Motion or not.

**Mr. Mbugua:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): What is it, Mr. Mbugua, now that you got it properly?

**Mr. Mbugua:** Mr. Temporary Deputy Speaker, Sir, Mr. Githae should not bring the problems of the Cabinet here. Maj-Gen. Nkaisserry has his own views as a Member of Parliament. So, I think he should continue; if he wants to support the Motion or not, well and good.

**The Temporary Deputy Speaker** (Mr. Ethuro): Proceed, Maj-Gen. Nkaisserry. The Chair had already disposed of that matter.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Speaker, Sir, I am elected by the people of Kajiado to represent them with regard to the resources of this country.

I have not even said that I am opposing this Motion. I just said that there are glaring shortcomings in this Paper. There was no proper tendering and that is a fact, unless we were shown the companies that applied for the tender and the winner.

According to information which has just come out, this company is not registered in this country. That is another shortcoming. We have not been shown the agreement between the Kenya Government and this company. I have not seen that myself. Because of the issue of commitment, transparency and accountability, despite all the advantages of this project, I think it is not acceptable and I oppose.

**Eng. Gumbo:** Mr. Temporary Deputy Speaker, Sir, I want to start by joining my colleagues in agreeing that concessioning is an idea whose time has come. We have serious problems on our roads and we need to find a solution. Concessioning is one of the solutions.

I have briefly looked at Sessional Paper No.4 because we only got it this afternoon and I noticed that the Minister has stated that from a technical viewpoint, we need additional financial investment and a functional high capacity transport system. I think the Minister should also acknowledge that part of the problems that are hampering the development of roads in the country is serious under-capacity in the Ministry and the country as a whole. As we speak now, and I am sure the Minister is aware because he is the custodian of the list of Engineers in the country, we only have just under 1,000 registered engineers and just over 200 registered consulting engineers. Out of those, perhaps, just about 10 per cent to 15 per cent are road engineers. So, the issue of under-capacity in the supply of engineers is a serious one. This county has to address it if we have to cope with a country like Angola which does between 2,000 to 4,000 kilometres of highway annually.

Mr. Temporary Deputy Speaker, Sir, I find it difficult to support this Sessional Paper because of the inadequacy of the information provided. First of all, I think it will be reckless on our part, as Members of Parliament, to support an agreement between the Government of Kenya and an entity which in law does not exist.

Having said that, I notice that on page 7 of the Sessional Paper, it is said that the World Bank granted assistance under the Public/Private Infrastructure Advisory Facility and a technical study was commissioned to evaluate economic, financial and technical viability of introducing concessioning in Kenya. I have discussed this matter with the Chairman of the Departmental Committee on Transport, Public Works and Housing and I told him that if that study was really done, then it has to be assumed that the economic and financial viability can show that levy to be paid by road users is less than the accruing benefits. This is not demonstrated in the Report.

On page 8 of the Sessional Paper, the last paragraph states:

“In 2006, the Government invited international bidders to tender for the Nairobi Road Concession (the parties are stated therein). The Government evaluated the bid that only one bidder from Austria, Messrs Straburg/HCH submitted a bid which the Government then evaluated with technical assistance provided by the World Bank.”

Mr. Temporary Deputy Speaker, Sir, this is a clear pointer to single sourcing. How was the suitability of this single bidder assessed? Was it through technical competence, previous experience or price in the absence of other bidders? Was it merely because the World Bank was of the opinion that this bidder could do the concessioning work?

In page 9 of the Sessional Paper No.4, it is stated that the concessioning will be for 30 years. In 30 years time, most of us sitting in this House will either be too old or will no longer be here. It also states that in that period of 30 years, he will be fully responsible for the maintenance of the road at stipulated high standards. Penalties are specified in the concession contract in the event of failure.

Mr. Temporary Deputy Speaker, Sir, looking at the penalties being talked about, for example; if the concessionaires fail to adhere to the traffic management, their penalty will be 2.5 per cent. I want to know how that percentage was arrived at. We are also told that if the concessionaires fail to report electronic problems, the penalty will be 2 per cent. How was this arrived at?

In the agreement, there are certain aspects that are vague. For example, the agreement says: "For any failure to keep the roadside and toll facility in good order and state of cleanliness---" "How would you measure "good order" and "state of cleanliness"? These are vague provisions, which, to me, cannot support the request for approval of this Sessional Paper by Parliament.

Mr. Temporary Deputy Speaker, Sir, on page 11, the Sessional Paper says: "--- subject to approval by the National Assembly of the concession contract, the concession contract will be signed." However, if you look at the draft that we have been given, you will see that all the pages are already initialised. Who signed this agreement before the National Assembly approved it?

The same paragraph says that, within 48 months from the commencement of the works, the elevated road ways sections and grids separated inter-changes will be ready. It does not say what will happen if they are not ready within 48 months. As I said, we only got this document at 2.00 p.m. this afternoon. I have not looked at it in detail, but I have enough reasons to believe that it will be reckless and irresponsible of us, as Parliament, to approve this Sessional Paper as it is.

Mr. Temporary Deputy Speaker, Sir, we need more information from the Minister, so that we can make considered opinions. On the bases of those considered opinions, we will decide whether or not it is worth supporting.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**Mr. Konchella:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to debate on this Sessional Paper.

This idea has come at the right time for it to be implemented. This is because it is becoming impossible for Kenyans to move around Nairobi today. If you calculate the cost of fuel consumed in traffic jams, and the time wasted, you might find that it amounts to the cost of constructing a similar road. However, this is the first time I have seen somebody come up with an idea that is not practical anywhere else in the world. I would understand "concessioning" to mean the Ministry of Roads designing the road based on the traffic flow, and on the need for the next 30 years. We, as a country, are talking about Vision 2030, but in this case, we are talking about an Anglo-Leasing type contract. We are not talking about Vision 2030. Why am I saying this?



Mr. Temporary Deputy Speaker, Sir, we know how fast we would want traffic to flow in and out of Nairobi. We know how such a road is supposed to be designed. Therefore, the Ministry of Roads should design it, based on the traffic flow for the next 30 years, advertise so that any person willing to construct and manage it, in accordance with the design that the Ministry will have prepared. In this case, the Government will construct the road and get somebody to just make money out of it. How will Kenyans who own land next to the road be compensated by a company that is not even registered? How are people going to carry out litigation? It is the Government which is supposed to compensate such people, in accordance with the compulsory acquisition law in the public interest.

So, the issue of land acquisition can only be left to the Government, and not to a company. That is why the Government must design the road, acquire land and advertise the project with a view to getting somebody to build the road and then concession it for 30 years. That should be what should be acceptable. I find this to be a very awkward situation, where a Sessional Paper has been brought to Parliament, together with an agreement. For what purpose is the agreement? Is it for somebody to make money? They have even put a figure of US\$900 million. What is it for?

Even if they allow anybody to concession the road, there should be an issue of choice. Kenyans cannot be subjected to same things that have happened in this country in the last 40 years.

I can understand the concession of the road between the Jomo Kenyatta International Airport (JKIA) and Limuru. This is because Kenyans, who cannot afford, can go through Westlands and around and about. But, you cannot concession the road between here and Mombasa and subject everybody to pay the toll fees which will be charged. The person can sweet talk the Minister to increase the charges because they are making money.

Mr. Temporary Deputy Speaker, Sir, I can also understand concession between Nakuru and Eldoret because there will be by-passes. Kenyans can go through Eldama Ravine or even Kisumu to get to Eldoret or Malaba. So, these are the reasons concession can only be done under certain parameters and reasoning.

I do not agree that this House should allow something like this to happen; to use public funds to construct roads and then allowing somebody to make money from the roads.

I beg to oppose.

**The Assistant Minister for Higher Education, Science and Technology** (Mr. Kamama): Mr. Temporary Deputy Speaker, Sir, I wish to support this Motion from the very onset. As Parliament, we have always challenged the Minister for Roads to come up with practical measures of reducing traffic jams and making sure all our roads are motorable and making sure there is efficiency within our road system.

I think the Minister has done his best and through public – private partnership programme, he has come up with this brilliant idea of concessionnairing. The concept of road toll system has worked in many other countries. It has worked in a city called Bogota and many other countries you have visited as Parliamentarians or in your private capacities. I, therefore, think this is an idea whose time has come. We should support it because I know the kind of money involved. Members may be right by saying this project

may cost in the range of Kshs72 billion. A project of this nature needs a thorough debate. However, let us support the Minister on this so that we can get things rolling down.

Mr. Temporary Deputy Speaker, Sir, I only have problems with the cost. The Minister specified some amount depending on the type of vehicle. If the Minister makes these roads more expensive in using them, we may bring bicycles to town. People will keep their vehicles at home and bring bicycles to the road. Let us make sure that the tolls levied are affordable to the people.

When you look at Vision 2030, it is estimated that Nairobi will have 20 million people. If we do not take action now, by the year 2030, it is not going to be manageable to have roads within this city. So, the concept is brilliant and I want to appeal to hon. Members to support it. The Minister should also factor in the concerns of Members. Members have raised very pertinent issues which I think the Minister and the technical officers are able to work out and come up with the most acceptable rules, costs and programmes that will not be opposed.

Mr. Temporary Deputy Speaker, Sir, I do want us to experience what happened to the Rift Valley Railways. Members are worried that we did some concessionairing and the Rift Valley Railways was given a job. However, they did not do it to our expectations. I think we do not want to go that route and the Minister will rectify that.

Mr. Temporary Deputy Speaker, Sir, I would like to talk about the roundabouts that we have in this City. This House has requested our Minister to remove all of them because they are the ones which contribute a lot to the kind of traffic jam that we experience. This is something that can be done in two weeks. The Minister should mobilise those contractors and they can do that work at night. Why can this not be done? I plead with the Minister to, at least, ensure that his officers are very proactive so that when we decide something, action should be taken within respectable timeframe.

Lastly, we need action, not only in Nairobi but also in Mombasa where there is a problem. There is traffic congestion from Monday to Sunday in Mombasa. So, let us consider both cities because we want to develop Mombasa, Kisumu, Nairobi and Eldoret which is coming up in a big way.

With those few remarks, I beg to fully support this initiative so that we can have efficiency within our road networks within Nairobi.

**Mr. Were:** Thank you, Mr. Temporary Deputy Speaker, Sir for giving me this opportunity to voice my support for this Motion.

At the outset, I would like to say that I am the Chairman of the Departmental Committee on Transport, Public Works and Housing. Before this Sessional Paper came to the House, the Minister for Roads and his team sat with us twice and took us through it. Although I agree with what hon. Members have said that some pertinent issues could not have come out earlier, I still think and believe that what the Minister proposes is the way to go. We have realised that there is a lot of congestion on our roads and it takes a lot of time traveling from Athi River or Machakos to the City Centre or from Karen to the City Centre. It takes even up to three hours sometimes, to reach the City Centre. The only way we can get out of this problem is to come up with super highways. It is high time this country also moved in the same direction as Singapore, South Korea and the other developed countries which were at par with us in the last 40 years.

We have gone through this Sessional Paper with the Ministry of Roads and realised that although hon. Members have a problem with the cost of the project and the

way it was handled, I do not have any fear because this is build, operate and transfer. There will be no financial problems for the Government if at all this concessionaire does not deliver. It is to my understanding that the concessionaire or the bidders already have a bid bond with the Government to the tune of Kshs100 million such that if they sign and contract and fail to perform, the Government will acquire Kshs100 million from each of those bidders.

As much as we are saying that the cost of construction will be US\$900 million, we are made to understand that the concessionaire is negotiating with the IFC, the World Bank for the financing of this project. So, if at all they sign and they are unable to perform, the Government does not pay anything to them. It has also been said that because of the tolling regime, this project will be expensive, especially to the motorist but there is one aspect that has not been made clear. That is as and when this concessionaire collects the funds from the toll stations, the Ministry will be monitoring the movement of the funds. It has already been calculated that if the returns are about 23 per cent above the normal rate of returns, the Government will allow the concessionaire to keep that amount but any amount above 23 per cent to 27 per cent, the Government will share with the concessionaire. That is 25 per cent will go to the Government which means that the Government will start making money out of that concession.

If the amount goes beyond 27 per cent, then the Government will share 50-50 with the concessionaire. If it went above 30 per cent, then the Government will acquire 75 per cent of the money. So, the full amount will not go to the concessionaire because the amounts will come back to the Government.

Mr. Temporary Deputy Speaker, Sir, to me, this is a positive move. Looking at this, I do not see how we will be able to do this road. If this Motion does not go through, I foresee a situation where we will remain as we are and this road will not be constructed for another 50 years. If we project on the length and the way the traffic is building up, we require this road like yesterday.

Mr. Temporary Deputy Speaker, Sir, the Government also plans to build the eastern bypass. The southern bypass is part of this concession. Wherever these bypasses will be passing, they will open up the environment. If we do that, we will be opening up the business environment and create employment opportunities.

As much as there are issues that have been raised and which I believe the Ministry can sort them out, I am of the view that this House passes this Motion as moved by the Minister for Roads.

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

**Dr. Khalwale:** Thank you, Mr. Temporary Deputy Speaker, Sir. It is quite evident that both the supporters and opposers of the Motion are agreed on one thing that this is a welcome project. What is worrying us are the various gapping points that we would like see filled before we give out our word of approval for this.

I am, therefore, moving an amendment to see if we can bridge that gap. I wish to amend the Motion as follows:-

“I would like to amend by inserting the word ‘proposed’ in the second last sentence, between the words ‘the’ and ‘concession’ so that the Motion will read as follows:-

THAT, pursuant to Section 4(A) of the Public Roads Toll Act, (Cap. 407 of the Laws of Kenya), this House approves Sessional Paper No.4 of 2009 on the Nairobi Urban

Toll Road Concession Project laid on the Table of the House on Tuesday 8<sup>th</sup> December, 2009, together with the proposed Concession Agreement and Tolling Regime annexed thereto.

Mr. Temporary Deputy Speaker, Sir, the importance of adding the word “proposed” is that it immediately agrees with the Sessional Paper. If hon. Members will read page 11, there is a chapter on approval by Parliament. Part 3 talks about a proposed agreement. So, if we add the word “proposed” it means now we have also agreed with the actual Sessional Paper.

The second advantage of adding the word proposed is that this is not the first time such big business opportunities have arrived in this country. I want to disagree completely with Mr. Were. How can he say that since these people will build, operate and transfer to us, it will not cost us anything? The hon. Member knows that before they transfer, they will have recouped their investment. To do so, the taxpayer who will be using the upper decker will be paying. So, we will not be given this for free.

We want to make sure that we are paying for something which is actually costing the value it should have cost on the international market.

Mr. Temporary Deputy Speaker, Sir, we remember that when we privatized Safaricom, a company was born called Mobitelea and because at that time Parliament never interrogated this and trusted this, the cash cow that has come out of that particular mistake has left this country asking every year, month, week and day who is Mobitelea. If we do not put this safeguard of the proposed agreement, then it means that when you sign this agreement, there might be another Mobitelea like character, who will then go into the agreement and when the cash cow has been created and Kenyans are paying for the concessioned project, some shadowy Kenyans who will have created that company will be benefiting from it. We would like to give you the approval for proposed so that should we discover that some shadowy guys are coming in, we will smoke you out and say: “No, we told you. We gave you only the proposed and not the actual one”.

So that I am taken very seriously, I notice that this company is not yet registered. The documents that you have given to us indicate that this company called Nairobi Motor Ways, we have checked, does not exist at the Registrar of Companies. We have even gone through the computer this afternoon and it is not there. We are going to be creating the same opportunity the way we did during the privatization of Telkom (K). You know what happened? Somewhere in Dubai, seven days before the deal of privatization went through, a company was registered off shore in Dubai called Al Kazar Capital and they have made their money. But today, if we put this particular safeguard, it will mean that we will not have another Mobitelea or another Al Kazar without this House interrogating.

Mr. Temporary Deputy Speaker, Sir, I support this project because we have to move our country to the next level. What the Minister should be telling us when he is responding is how soon the projects will be completed. We would like to know because some of us, because we are mortal, also want to have an opportunity in our own life times to drive on these super highways. So, whereas the concession period is 30 years, how soon are these people going to complete the projects so that I can also enjoy driving on those particular roads.

With those many remarks, I want to move this amendment and request the hon. Minister for Foreign Affairs, Chairman of Ford (K) in waiting and President in waiting to second my amendment.

**The Minister for Foreign Affairs** (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Mr. Minister, there is a known order from the Chair that you should comply with if you know it. It requires compliance.

Dr. Khalwale, it has come to the notice of the Chair that you do not actually amend a Sessional Paper or even a Motion to that effect. So, you either take it as it is or you leave it.

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir. In medical school, there is one principle that we were taught that as soon as you qualify, you should appreciate that as you practice medicine, you do so with continuous learning. I have appreciated the learning and I want now, with that guidance, to mention that with all the remarks that I made through my amended Motion, I now oppose this particular Motion.

**Mr. C. Kilonzo:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): What is it Mr. C. Kilonzo?

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir. It is true that you cannot amend a Sessional Paper. But I have not amended the Sessional Paper. I amended Motion No.9. Hon. Wetangula, second my amended Motion. I amended the Motion and not the Sessional Paper!

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Dr. Khalwale, you can be sure that the Chair really enjoys your dramatic nature and would like a bit more. But, unfortunately, for now, the Chair is also advised according to the traditions and practices of the House. The Chair allowed you actually to make those contributions because it was equally agonizing along your lines. The Chair has considered all those possibilities and came to the considered opinion that you do not amend the Sessional Paper itself or the Motion. So, let the House be advised accordingly!

**Mr. Thuo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. As you have advised, would I be in order to request you that in addition to the customs, cultures and practices of the House, let us know which particular Standing Order was breached by this particular amendment?

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Members! I wish to advise hon. Thuo, who is also the Leader of Government Business that, one, you do not challenge the ruling of the Chair. You are completely out of order! If you need any Standing Order, then you can make reference to Standing Order No.1. Hon. C. Kilonzo!

**Mr. C. Kilonzo:** Mr. Temporary Deputy Speaker, Sir, I rise on a point of order to seek for a ruling from the Chair. We have a case where the Government or the Executive brought a document to Parliament in form of a Motion. The document is between the Republic of Kenya, represented by the Ministry of Roads and Nairobi Motorway Company Limited; a company which is not a legal entity and does not exist. Is it in order for the Government to bring a document that has an entity that does not exist legally?

**An hon. Member:** Time is up!

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Members! I appreciate that time is not really on our side. But I think there is an issue about that company. Mr. Minister, maybe, you could just make a comment on that, before I make a ruling. The hon. Member has said that the company is not registered. Is that correct?

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, there is no agreement that has been signed. The concessionaire says that he will register the company as soon as the National Assembly approves---

**Hon. Members:** No! Shame! Shame!

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

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Members! Order, Mrs. Odhiambo-Mabona! That Chair, at this point, does not wish to be informed. I do not think any other persons would like to be informed. But I think you have raised some issues that will require consideration by the Chair. Unfortunately, our time is up. So, there will be an opportunity tomorrow to revisit them.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, it is now time for the interruption of business. This House is, therefore, adjourned until tomorrow, Thursday 10<sup>th</sup> December, 2009, at 2.30 p.m.

The House rose at 6.30 p.m.