

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 10th 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:-

The half yearly Report by the Departmental Committee on Transport, Public Works and Housing for the period between June and December, 2009.

(By Mr. I. Muoki)

A six month progress Report by the Committee on Implementation.

(By Mr. Mwiru)

The half yearly Report by the Departmental Committee on Defence and Foreign Relations.

The Report of the Departmental Committee on Defence and Foreign Relations on the study tour to Turkey, Republic of Ireland and the United Kingdom between 22nd November to 7th December, 2009.

(By Mr. Keynan)

The Report of the Kenyan Delegation to the 121st Assembly of the Inter-Parliamentary Union (IPU) held in Geneva, Switzerland between 19th to 21st October, 2009.

(By Mr. Mungatana)

The half yearly Report by the House Broadcasting Committee for the period between June and December, 2009.

(By Mr. Wambugu)

NOTICES OF MOTIONS

ADOPTION OF 121ST IPU ASSEMBLY REPORT

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

THAT, this House adopts the Report of the Kenyan Delegation to the 121st Assembly of the Inter-Parliamentary Union (IPU) held in Geneva, Switzerland, between 19th to 21st October, 2009 laid on the Table of the House on 11th December, 2009.

ADOPTION OF HALF-EARLY PROGRESS REPORT
ON IMPLEMENTATION COMMITTEE

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

THAT, this House adopts the six months progress report of the Committee on Implementation laid on the Table of the House on 11th December, 2009.

QUESTIONS BY PRIVATE NOTICE

STATUS OF GENERAL RELIEF FOOD DISTRIBUTION
UNDER MOP/PRRO

Mr. Ethuro: Mr. Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) What is the status of the general relief food distribution under the MOP/PRRO in the famine affected districts in Kenya?

(b) What are the respective roles of the District Steering Group, Kenya Food Security Steering Committee and Kenya Food Security Steering meetings in general food distribution?

(c) Could he provide (i) agreements between the World Food Programme and the Government of Kenya on general food distribution and school feeding programme; (ii) agreement between the WFP and respective lead agencies, Kenya Food Security Steering Meeting in general food distribution and (iii) details of the affected districts in the months of January and June, 2009, indicating the lead agency, general population, number of beneficiaries, percentage of beneficiaries to the general population, total food allocation, actual food disbursed per month in tonnage and bags since January, 2009?

(d) Under what circumstances did the District Steering Groups change their respective lead agencies, particularly in the larger Pokot, East Pokot, Turkana Central and Kwale districts?

The Assistant Minister, Ministry of State for Special Programmes (Mr. M.M. Ali): Mr. Speaker, Sir, I beg to reply.

(a) The Emergency Operations Programmes (EMOP) now called Protracted Relief and Recovery Operation (PRRO) is jointly being implemented by the Government and the World Food Programme (WFP) and has been running for several years now. The current phase of the programme which began in October, 2009 and is expected to end in February 2010 is benefiting about 4,700,000 Kenyans in 28 districts of our country. The breakdown of that figure is as follows:-

The General Food Distribution/Food for Assets Programme got Kshs3.8 million. Expanded School Feeding Programme got Kshs655,000. Mother and Child Health Programme got Kshs40,000. Supplementary Feeding Programme got Kshs275,000 and Orphans and Vulnerable Children Programme got Kshs5,500.

(b) The Kenya Food Security Meeting (KFSM), the Kenya Food Security Steering Group (KFSSG) and the District Steering Group (DSG) are structures that were put in place to coordinate the management of food security in the country. The KFSM and the KFSSG are national structures based at the headquarters, while the District Steering Group is based at the districts. Their main purpose is to bring together various stakeholders, Government, UN Agencies and Non-Governmental Organizations (NGOs) with a view to responding to the needs of food-insecure populations by identifying who and where they are, their needs and mobilizing the resources needed. The Kenya Food Security Steering Group (KFSSG) is the technical arm of the Kenya Food Security Meeting (KFSM). It is, therefore, charged with the responsibility of, among others, planning and carrying out food security assessment in the country to establish the food security situation and recommending the necessary intervention measures. These structures have no direct role in the actual distribution of food to the needy people as this is the role played by the lead agencies appointed to manage the distribution in each district benefiting from the programme. The District Steering Group (DSGs) recommends organizations that are qualified as per the stipulated guidelines to appoint the lead agencies.

Mr. Speaker, Sir, I beg your indulgence because the response is very detailed and long. I would like to answer the entire Question.

(c) (i) For every phase of the EMOP, the Government usually signs a letter of understanding between itself and the World Food Programme (WFP) that provides guidelines on the obligations and duties of each party. The school feeding programme is covered under the country programme that will run from 2009 to 2013. I will now lay on the Table of the House a copy of a sample agreement between the Government and the WFP.

Mr. Speaker, Sir, for the current phase which began in October, this year and which will run up to 2013, it is still in the negotiation stage and is yet to be signed. Parties are still discussing the draft of the said agreement which is also hereby tabled.

(ii) The agreement between the WFP and the lead agencies is only available with the parties to the agreement since it is an internal document of the WFP and, therefore, I cannot table it today.

(iii) Details of beneficiary districts under the current EMOP, as asked by the hon. Member is contained in the following tables and I lay them on the Table of the House.

(Mr. M.M. Ali laid the documents on the Table)

(d) The lead agencies are changed whenever they fail to perform their duties as expected. In all these districts mentioned by the hon. Member, there have been complaints on the performance of the lead agencies in the respective districts thus necessitating investigations and their eventual change as recommended by the DSGs. However, it is worth noting that in the case of Turkana Central District, the recommendation of the DSG for a change of lead agency from World Vision to Kenya

Red Cross Society was not endorsed by the Ministry because the guidelines of appointment had not been followed as required. The process of appointment was politicized and in the end the DSG voted in selection of the lead agency instead of ranking the prospective organizations according to their technical capacity. Due to this shortcoming, the Ministry had to intervene and a neutral organization was identified to be the lead agency in the mean time as investigations are being undertaken. Until those investigations reveal what the true status is, the neutral body will lead the programme in Turkana Central.

Mr. Ethuro: Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer he has given. I am a bit constrained because the issues are about relations. There is an agreement between the WFP and Kenya. There is also an issue between the WFP and the partner agencies which will outline the duties and obligations by each party implementing the food relief distribution. That notwithstanding, the Assistant Minister has said that Kshs4.7 million is under the programme while we know that the Kenya Government declared a state of emergency on famine affecting 10 million people. Which programme is covering the other half that is not being covered by the current relief programme?

Mr. M.M. Ali: Mr. Speaker, Sir, the hon. Member says that I claimed that there are some agreements between the WFP and the lead parties. This is not a claim but a fact. These agreements with the lead agencies are purely the WFP initiative, and the Government is just there to facilitate. The Government is not party to that agreement. The hon. Member is an old Member of this House and he should know that very well.

With regard to the deficiency of the Kenyan population affected by drought, the Government of Kenya takes care of the balance of the population affected. This is restricted only to emergency programmes by the WFP. However, it is worth noting that this programme relies mostly on donor-funding and the donors have been seriously constrained. In fact, in the current programme, the Government had to chip in by providing a total of 28,000 metric tonnes so that the programme can go on smoothly as planned. As the Government struggles to solicit for more funds, hon. Members should understand and co-operate so that we can help our people.

Mr. Ethuro: Mr. Speaker, Sir, you have heard the Assistant Minister confirm that food is not being distributed the way it is supposed to be. It is not enough for him to say that the Government is supporting. The responsibility to the citizenry of Kenya is not to the donors but the Government. What will the Government do to ensure that there are reliable supplies of relief food on a monthly basis to the beneficiaries that he has already identified?

Mr. M.M. Ali: Mr. Speaker, Sir, I expect the hon. Member for Turkana to appreciate the efforts because he is the largest beneficiary as far as relief food is concerned in the country.

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. I am trying to be nice to the Assistant Ministry but he is deliberately provoking me. Is he doing me a favour when the Government statistics indicate that Turkana Central is the poorest district in the country? Inevitably, there would be more poor people than anywhere else in the republic.

Mr. M.M. Ali: Mr. Speaker, Sir, I am not doing a favour to the hon. Member. Actually, it is our duty, as a Government, to ensure that all Kenyans are fed. I was only observing the figures that we have in the Government records that Turkana Central is the

largest single beneficiary in the country. That is the case. As to how we shall make sure that Kenya is food sufficient, various Ministries are co-ordinating the exercise. These Ministries are the Ministry of Northern Kenya and other Arid Areas, Ministry of Water and Irrigation and the Ministry of Agriculture. They are co-ordinating so that we can irrigate our land and stop relying on rain-fed agriculture. This will also make our population not to rely on relief food. In fact, I expect to get a lot of support in this initiative. I look forward to a situation whereby relief food will be stopped and all our people will be self-sufficient. We will encourage our people to farm and be self-reliant and not on hand outs.

DETAILS OF MILITARY WEAPONRY
INTERCEPTED IN NAROK TOWN

Mr. ole Lankas: Mr. Speaker, Sir, I beg to ask the Minister for Provincial Administration and Internal Security the following Question by Private Notice:-

(a) Could the Minister provide the details of the cache of assorted military weaponry intercepted in Narok Town on 8th December, 2009 and,

(b) What is the source, the intended destination and use of the weapons?

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

(a) On 7th December, 2009, the police, acting on a tip off, intercepted a Mr. Munir Haroon Ismail and his wife Nahid Tabbasum Sumar at Embakasi Village. Upon search, he was found in possession of a pistol SIG, 9mm---

Mr. Olago: On a point of order, Mr. Speaker, Sir. I wish to seek your direction. The subject of hon. Assistant Minister's answer will come under a Ministerial Statement that we are waiting for very eagerly. I wonder if it will not be in order for this to come under the Statement to be given by him, so that we can deal with them together without duplicity.

Mr. Speaker: Hon. Assistant Minister, are you ready with the Ministerial Statement.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, if you look at the Order Paper, there is a Question which I am answering. So, I thought that the Question has now superseded the Ministerial Statement.

Mr. Speaker: It cannot! It cannot!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): But it is basically the same thing.

Mr. Speaker: Are you ready with the Ministerial Statement?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, there is no Ministerial Statement because I am answering this Question. However, if you want me to do both I can do so, but it is the same thing.

Mr. Speaker: Could you do both by way of Ministerial Statement then you will take interventions at that point. So, you may resume your seat for the moment.

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

Mr. Speaker: Next Question by the Member for Igembe North!

CAUSE OF CRISIS AT KPCU

Mr. M'Mithiaru: Mr. Speaker, Sir, I beg to ask the Minister for Co-operative Development and Marketing the following Question by Private Notice.

(a) What has led to the crisis at the Kenya Planters Co-operative Union (KPCU) which has been placed under receivership by the Kenya Commercial Bank?

(b) What is the Government doing to ensure that the KPCU is not liquidated and that the interest of coffee farmers is taken care of?

The Minister for Co-operative Development and Marketing (Mr. Nyagah): Mr. Speaker, Sir, I beg to reply.

(a) The crisis at the Kenya Planters Co-operative Union (KPCU) has been precipitated by factors which include gross mismanagement, failure to respond to the effects of liberalization, taking undue advantage of dual registration to evade accountability and heavy indebtedness. The lead creditor is Kenya Commercial Bank (KCB) which is owed about Kshs634 million; a sum which has not been serviced regularly. Consequently, the bank decided to place KPCU under receivership to recover its debts.

(b) There have been wide consultations within the Government and KCB to seek a rescue type of receivership which fully safeguards the interest of coffee farmers, hence avoid liquidation.

Other proposed measures include; implementation of the KPCU restructuring study report and rescue plan to take an Uchumi type approach.

Mr. M'Mithiaru: Mr. Speaker, Sir, I thank the Minister for that brief answer to my Question.

However, it is coming out clearly from him that the problems at the KPCU are because of gross mismanagement and nonpayment of debts. Gross mismanagement includes cases where the KPCU has given loans to its directors and managers. In his answer, he has not said what action he will take against those directors or managers who already owe KPCU loans. The amount that KPCU has not paid is not only for the KCB. Farmers who have supplied coffee to KPCU have not been paid. He has not mentioned the action he will take to ensure that these farmers are paid.

What action will he take to ensure that those who owe KPCU money, including managers and directors repay their debts? Secondly, how will the farmers who have already supplied their coffee to KPCU be paid?

Mr. Nyagah: Mr. Speaker, Sir, once upon a time, KPCU handled about 130,000 tonnes of coffee. As at the time the KCB took it to receivership, it was handling approximately 3,000 to 4,000 tonnes a year. Therefore, KPCU could not operate and meet its obligations. In fact, it ran into danger of small creditors getting court orders and selling the assets in piecemeal. That is why I keep saying, I thank KCB for protecting the assets, so that farmers can feel secure as the Government and KCB try to rescue it, so that it can go back to where it used to be.

Mr. Speaker, Sir, it is true that there has been massive mismanagement and corruption over many years. In addition, the management did not understand that the business model has changed after liberation. The past directors and managers have been

very responsible for part of those problems. The company was, therefore, left with almost no income. What action am I taking? After KCB put receivers in place in order to protect the assets from being grabbed by many creditors, the directors have totally refused to leave the facility. We are looking at how best that can be done because we do need them out, so that we can restructure the company jointly with the receivers.

Finally, farmers are owed approximately Kshs150 million. Some cheques issued to famers who supplied the company with coffee have bounced. That is why it is critical that directors leave immediately, so that the Government and the KCB can structure this company. It is possible to restructure this company. We have heard of a farmers' organization called the Kenya Co-operative Coffee Exporters (KCCE). Farmers have already supplied it with 20,000 tonnes of coffee which we are selling overseas on their behalf. Yesterday, we paid farmers Kshs20 a kilo which they have been receiving for the last one year.

Mr. Magerer: Mr. Speaker, Sir, the Minister has attempted to tell us how one of the farmers' associations has been facing problems due to gross mismanagement. It is now a common phenomenon that many farmers' organizations under his Ministry are facing similar problems. They have been allowed to borrow loans from banks. But over time, they are unable to service these loans. Is there any policy in place regarding borrowing loans by these organisations from the banks to safeguard the interest of farmers? For example, the Kenya Farmers Association (KFA) has a similar problem.

Mr. Nyagah: Mr. Speaker, Sir, the problem we have had with the KPCU is that when it is convenient to the directors, it becomes a Co-operative Society Union or a company. In the last two years, efforts by the Ministry and the Government to restructure it have been frustrated by the directors who go to court claiming that theirs is a company. It is that impunity by the directors of having dual registration of this company that makes it difficult for us to move in. That is why I keep on thanking the KCB.

With regard to the KFA, I would like to say it does not fall under my docket. However, in the spirit of collective responsibility, let me explain what happened. Initially, KFA had the same problems as KPCU and we all know its history.

Mr. Speaker, Sir, in the case of the KCC, which is a parastatal, I do have authority to recommend to the Treasury approval for bank loans when they want to expand or to borrow from banks. But in these farmers organizations such as the KPCU, it is difficult because if you have an irresponsible board and management, then it becomes difficult. When you step in with an inquiry, as a Government, after we have spent a lot of money to save it, they refuse and hide in the High Court under the pretext that they are not a co-operative. That is what we have been trying to solve and that is why I keep thanking the Kenya Commercial Bank (KCB) for having helped me.

Mr. Wambugu: Mr. Speaker, Sir, one of the co-operative societies that suffered seriously; Waikamba Co-operative Society is from my constituency. It is owed over Kshs3 million and it is almost coming to a halt because it does not have finances to run its operations. What is the Minister doing to make sure that Waikamba Co-operative Society is paid its money through the KPCU or any other means by the Government?

Mr. Nyagah: Mr. Speaker, Sir, it is difficult for the Government to pay, but let me confirm that, that society is one of those that are owed money amounting to Kshs150 million and some of the cheques have bounced. In that particular case, the cheque bounced after it was issued. The receiver is a major helper to us. We created a second co-

operative company called KCCE. Now, it is in the process of receiving 20,000 tons of coffee, which is equivalent to 45 per cent of all Kenyan coffee this year. Yesterday, I personally paid farmers an advance of Kshs20 per kilo in Komothai- Kiambu. It means that the farmer will have more money in order to meet those obligations.

Mr. Speaker, Sir, if the KPCU directors were to get out today, I am able to link them to the KCCE to pay some of those debts. Already the KCCE has been paying some of the amounts due on behalf of farmers to the KPCU directly to the receivers.

Mr. M'Mithiaru: Mr. Speaker, Sir, could the Minister tell this House what strategy he has for the institutions under his Ministry that have dual registration in order to ensure that farmers are not unduly inconvenienced? I have in mind the KPCU or the New KCC, where the small farmer suffers because the institution enjoys company status and co-operative status. What is the Minister doing to ensure that the farmers are properly protected under these institutions that have dual registration?

Lastly, Mr. Speaker, Sir---

Mr. Speaker: Order! Order, hon. M'Mithiaru! You are allowed one supplementary question. More so, the last question.

Mr. Nyagah: Mr. Speaker, Sir, the court case in the case of KPCU specifically addresses that issue and we are hoping that soon, the courts will make a decision. Although the case has been pending for over two years, we hope a decision will be made on that particular issue of dual registration.

Mr. Speaker, Sir, KPCU will find it very difficult to survive this crisis in its present form. So, the New KPCU that will possibly emerge out of this will be a stronger one and will probably not have dual registration. That is why I want hon. Members to help me because those directors have refused to allow receivers to move in. I hope Parliament and Kenyan farmers will help me so that they can be removed and we can start restructuring this company.

Mr. James Maina Kamau: On a point of order, Mr. Speaker, Sir. The Minister is telling us that the directors have refused to leave office. Is he really in order to tell us that he is not able to remove them, knowing the powers he has as a Minister and we know that he is a vibrant Minister?

Mr. Speaker: That does not amount to a point of order!

Mr. Nyagah: Mr. Speaker, Sir, I will use those powers to remove them. I am confident that this House and Kenyan farmers who have been mistreated and misused by those directors will support me fully.

REHABILITATION OF ROADS IN SUGAR-CANE GROWING ZONES

Mr. Shakeel: Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Why have roads in sugarcane growing zones not been improved, given the substantial funds designated for infrastructure improvement in the sugar industry?

(b) Could the Minister provide a breakdown of Roads Levy and Sugar Development Levy allocations and utilization by Sugar factories for the period 2007/2008 and 2008/2009?

(c) Could the Minister also explain why the sugarcane farmers are still levied cess and yet through the Licensing Law (Amendments & Repeal) Act 2006 which became operational in May 2007, farmers are exempted from paying cess?

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Speaker, Sir, I have informed the hon. Member that by the time we came to the House, I had not received all the information from the Kenya Sugar Board (KSB) and we have agreed that the Question be deferred.

Mr. Speaker: Mr. Shakeel, are you willing to accommodate the Assistant Minister?

Mr. Shakeel: Yes, Mr. Speaker, Sir.

Mr. Speaker: The Question is deferred to Thursday, next week!

(Question deferred)

Next Question by the hon. Member for Maragua!

GOVERNMENT STAND ON HIV/AIDS
EPIDEMIC AS NATIONAL DISASTER

Mr. Mbau: Mr. Speaker, Sir, I beg to ask the Minister for Public Health and Sanitation the following Question by Private Notice.

(a) Does the Government still consider the AIDs epidemic a national disaster, given that the declaration was made almost ten years ago?

(b) Is the Minister aware of the success of the Prevention of Mother to Child Transmission (PMCP) Programme that is being administered only in select hospitals in Central Province and, if so, what is the Ministry doing to extend the service to other hospitals?

(c) Has the Minister considered seeking a tax waiver of Kshs10,000 per child to HIV positive mothers so that the programme can benefit many, considering that the programme is using Kshs30,000 per child to provide replacement milk feeding for the first nine months?

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): Mr. Speaker, Sir, I wish to ask for the indulgence of the House and particularly the hon. Member for Maragua because I have not received the answer from one of my officers. I intend to take severe disciplinary action against that officer.

I beg to answer that Question next time.

Mr. Speaker: Mr. Mbau, what is your reaction to that request?

Mr. Mbau: Mr. Speaker, Sir, I will oblige, but at the same time, plead with the Assistant Minister that given that this Question pertains to December 1st which is the World Aids Day any prolongation of the Question will mean that it will lose relevance.

Mr. Speaker: Mr. Assistant Minister, could you, please, ensure that you take some action in the meantime, so as to contain the situation?

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): I oblige, Mr. Speaker, Sir.

Mr. Speaker: That is fair enough! The Question is deferred to Tuesday, next week.

(Question deferred)

DEATH OF GEORGINA SOPHIE NYASI
FOLLOWING CORPORAL PUNISHMENT

(Mr. Mwakulegwa) to ask the Minister for Education:-

(a) Is the Minister aware that a student Georgina Sophie Nyasi, of Mwanyambo Primary School in Voi Constituency was subjected to Corporal punishment by a teacher resulting in her death?

(b) Has the Ministry conducted an internal investigation over the death and, if so, what were the findings?

(c) What action has the Minister taken against the teacher for the loss of the student's life, in view of the fact that corporal punishment has been outlawed in schools?

Mr. Speaker: Is the hon. Member for Voi not here?

The Question is dropped!

(Question dropped)

ORAL ANSWERS TO QUESTIONS

Question No.339

SETTING UP OF CCTVS/METROPOLITAN
POLICE DEPARTMENT IN NAIROBI CITY

Mr. Mungatana asked the Minister for Nairobi Metropolitan Development:-

(a) when and at what cost he will set up the Closed Circuit Television cameras (CCTVs) in the city; and,

(b) whether he could also consider setting up a Metropolitan Police Department to increase patrols and beef up security in the city and, if so, at what cost.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry plans to install the closed circuit television cameras (CCTVs) in Nairobi metropolitan area in several phases. The most immediate, which is Phase I, is the installation of CCTV in the enlarged Central Business District plus the major corridors. Phase II will be in the estates and the other urban centres in the metropolitan region. We sourced for funds from the Treasury in the 2009/2010 Financial Year but no funds were allocated for this project.

However, we have incorporated this project in our funds application for the 2010/2011 Financial Year. The cost of implementing Phase I of the above project is in excess of Kshs1.5 billion. My Ministry expects to go to tender on this project towards the end of this financial year while waiting for the actual funding.

(b) The Ministry is considering setting up a Metropolitan Police Department within the metropolitan region. This, however, will only be done when the Metropolitan Bill is enacted by this august House.

Mr. Mungatana: Mr. Speaker, Sir, I am very disappointed by the reason the Minister has given. He requested for funds in the financial year 2009/2010 and no money was availed to this Ministry with regard to the CCTV Project. We know for a fact that Nairobi alone contributes 60 per cent of all revenues collected in form of taxes to the Treasury. What was the reason that was given for not allocating funds for this project and yet we know that this is a security matter?

Mr. Githae: Mr. Speaker, Sir, I must also join the hon. Member in expressing disappointment. We are also disappointed that we were not allocated these funds. This was a Treasury function. We were allocated funds to install street lights on some specific and strategic areas in an effort to reduce crime. I can give an example of Kapenguria Road which is the boundary between Nairobi and Kikuyu. We recently installed street lights there and the crime rate has gone down by more than 90 per cent. However, we have been assured that we will be allocated funds during the next financial year. The Treasury has also requested us to apply for funding this year from a loan which has been sourced after an agreement between Kenya and Spain. We are in the process of doing that so that we can benefit from that loan. So, all is not lost.

In the Central Business District (CBD), we have CCTVs, but they were installed on pilot basis. Indeed, they are working and it is just a question of extending them to the larger central business area. All is not lost. We agree that this is a very important phase that must be done if we are going to reduce crime.

Lastly, I agree that the Nairobi region is a very important area as far the economy of this country is concerned. Nairobi contributes more than 60 per cent of the total GDP. Therefore, this cow must be fed enough grass so that it can produce milk for the owner, the neighbor and *sambaza* a little of it to other regions.

Mr. Affey: Mr. Speaker, Sir, there was a very strong reason why this Ministry was established. City residents celebrated after the establishment of this Ministry because that showed the strong commitment of the Government. I sought a Ministerial Statement early enough from the Minister regarding why traffic in the City of Nairobi is still such a difficult menace. What is the Minister doing to decongest traffic in the city? Why have they failed to bring to this House the necessary Bills that should have operationalized the authorities that are working under the Ministry?

Mr. Githae: Mr. Speaker, Sir, I will start with the latter part of his question. We have not failed to bring the Bill here. In fact, it is being discussed by a Cabinet Sub-committee. It has gone there once; certain issues were raised and we have replied to them. We are just waiting for it to be given an agenda and then it will be approved by the Cabinet Sub-committee. Thereafter, it will come to this House. So, that is being done.

On decongestion of the City, it is true that we had intended to do it immediately. We know what we want. We have had a working group. However, there were some teething problems because we did not get the co-operation of the Nairobi City Council in this particular respect. You will appreciate that until we get our Metropolitan Bill, we depend on the goodwill of the other Ministries. For instance, we depend on the goodwill of the Office of the Deputy Prime Minister and Ministry of Local Government; the Ministry of Roads and the Ministry of Transport.

However, I am pleased to say that the matter of decongestion of the city was referred to the Prime Minister and he directed that the Ministry of Nairobi Metropolitan Development embarks on the decongestion steps. That is what we are doing. We have already appointed a consultant to prepare tender documents. We intend, within the next three months, to actualize this. The programme will entail conversion of many streets into one way streets, for example, Harambee Avenue from Uhuru Highway; Moi Avenue from the Railway Station; Tom Mboya Street from the Fire Station; River Road from the former OTC; Kirinyaga Road from Globe Cinema. That is all about the first phase.

Secondly, we are also doing the missing links in the city. We are also doing the missing bridges that connect one estate to another. We have already done one on Mombasa Road that will connect Mombasa Road to Likoni Road. We are also reducing the size of roundabouts. There is one at the City Mortuary that has been reduced already. An extra lane has been added so that if one is coming from town heading towards Mbagathi, he does not have to wait for traffic to clear. We are confident that with these steps we are taking, we will be able to decongest the traffic. Ultimately, we will do away with roundabouts. We have also sought money from the Treasury to do away with the roundabouts.

On Thika Road, from Thika Town to Museum Hill, there will be no roundabout there. If you look at today's Order Paper, you will see a Motion by the Ministry of Roads seeking parliamentary approval to franchise the road from Machakos Turnoff to Limuru. If Parliament approves that, it will be another way of decongesting the traffic.

Mr. Mungatana: Mr. Speaker, Sir, the Minister has told us that he is not able to set up a metropolitan police because he does not have the Metropolitan Bill yet enacted. He has also told us before that he cannot divide the metropolis into boroughs. There are many other projects that he has said he is unable to do because of the absence of this Bill. When will he bring this Bill to this House? We need to organize this city.

Mr. Githae: Mr. Speaker, Sir, I have been assured by the Prime Minister's Office that it will be given topmost priority when the Committee next meets.

Concerning the metropolitan police, it is important that we have this police because the nature of crime in this metropolis is different from that in other areas. In this area, we have new crimes of kidnappings, extortion through SMSs and other unique crimes. So, we really need this. Under the Police Act, we can get a compromise. The Commissioner of Police has powers to create a police division – not metropolitan police, but a police division. The previous Commissioner of Police was against it. I intend to go and see the new Commissioner of Police, to see whether he can create a Metropolitan Police Division as an interim measure under the Police Act. Indeed, he has those powers.

Question No.512

POSTING OF MEDICAL DOCTOR TO
MARSABIT NORTH DISTRICT

Mr. Chachu asked the Minister for Medical Services:-

(a) whether he is aware that the Ministry has not posted a medical doctor to Marsabit North District Hospital; and,

(b) what immediate action he will take to ensure that a medical doctor is posted to Marsabit North District.

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): Mr. Speaker, Sir, this Question should have been directed to the Ministry of Public Health and Sanitation. I have already undertaken to get him a Medical Officer of Health (MOH) in the next three weeks.

Mr. Speaker: Order! Hon. Members, this Question would actually have been answered by the Minister for Medical Services, Prof. Anyang'-Nyong'o, who, unfortunately, does not, up to today, have an Assistant Minister because he has not identified somebody as good as the Member for Garsen Constituency, who resigned.

(Applause)

So, the circumstances are understandable. Dr. Gesami, could you, please, in the principle of collective responsibility, prepare to answer this Question on Wednesday, next week?

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): I am most obliged, Mr. Speaker, Sir.

Mr. Speaker: It is so directed!

(Question deferred)

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

Mr. Speaker: Order, Dr. Khalwale! I have already disposed of that matter. Next Question, hon. Sophia Noor!

Question No.544

COMPLETION OF STALLED PROJECTS
IN MASALANI DISTRICT HOSPITAL

Mr. Chachu, on behalf of **Mrs. Noor**, asked the Minister for Medical Services:-

(a) when the Ministry will complete stalled projects initiated by the Government at Masalani District Hospital, particularly the construction of a laboratory and provision of X-ray machine; and,

(b) whether he could also indicate when the Government will construct separate wards for male and female patients at the hospital, considering that patients of both sexes share a ward currently.

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): Mr. Speaker, Sir, I undertake to answer this Question in the next sitting.

Mr. Speaker: What is your response, Mr. Chachu?

Mr. Chachu: Mr. Speaker, Sir, this Question is also addressed to the Minister for Medical Services. I asked the same Question yesterday. So, for the second consecutive day, it has been on the Order Paper, but the Minister is not here to address these problems. I am pleading for your guidance. I have lost 12 people to cholera in North Hor

Constituency, in the last one month. Seven people are admitted to Ilaret Health Centre, without any necessary support. Kenyans are dying, and I need your guidance.

Mr. Speaker: Mr. Chachu, I have already addressed Question No.512 and given direction that Dr. Gesami, who comes from the Ministry of Public Health and Sanitation, answers it on Wednesday, next week. The same direction, therefore, applies to Question No.544. So, Dr. Gesami, please, prepare for Question No.544 as well.

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): I am most obliged, Mr. Speaker, Sir.

(Question deferred)

Next Question, Mr. Peter Gitau!

Question No.488

IRREGULAR ALLOCATION OF LAND INTENDED
FOR DISTRICT HEADQUARTERS

Mr. Gitau asked the Minister for Lands:-

(a) whether he is aware that a private developer is putting up a hotel on a plot where the Mwea DC's offices and Mwea CDF offices currently stand;

(b) under what circumstances the private developer was allocated the public land intended for the construction of the district headquarters by the Kirinyaga South District Commissioner; and,

(c) what steps the Ministry is taking to stop this illegal activity

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

(a) I am aware that a private developer is putting up a structure next to the existing Administration Police Canteen.

(b) The Ministry has not allocated land meant for the district headquarters to any private developer.

(c) My Ministry will liaise with the Ministry of Local Government, and the Provincial Administration, so as to stop any illegal activity on the plot in question.

Thank you, Mr. Speaker, Sir.

Mr. Gitau: Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer, especially for realising that it is an illegal activity that has been going on. This has been going on under the supervision of the Provincial Administration. He says he is liaising with the Ministry of State for Provincial Administration and Internal Security to stop this illegality. What disciplinary action will he take against whoever is supervising the construction?

Mr. Rai: Mr. Speaker, Sir, since my Ministry has already raised the matter with the Ministry of Local Government, and the Provincial Administration, I believe that this private developer will be stopped and any necessary action taken against him.

Mr. M'Mithiaru: Mr. Speaker, Sir, could the Assistant Minister tell this House what plans he has to protect public land? Grabbers of school land and playgrounds. What

plans does the Ministry have to ensure that public land is protected by issuance of title deeds?

Mr. Rai: Mr. Speaker, Sir, I believe that, with the passage of the National Land Policy (NLP), all this will be history. A lot of things will happen after this policy is turned into law.

Mr. Langat: Mr. Speaker, Sir, the Assistant Minister is trying to shift the blame from the Ministry of Lands to the Ministry of Local Government, and the Provincial Administration. Could he state the respective roles of the Ministry of Lands, the Ministry of Local Government, and the Ministry of State for Provincial Administration and Internal Security, with regard to allocation of land to public and private developers?

Mr. Rai: Mr. Speaker, Sir, that is a different Question. However, my position is that the land we are talking about was actually planned for Government offices. Therefore, we have already requested the Provincial Administration, and the Ministry of Local Government, to ensure that this development is stopped.

Mr. Gitau: Mr. Speaker, Sir, it is my humble request that, in order to protect that land from further grabbing by any other person in the future, the Assistant Minister commits himself to issuing documents for the same.

Mr. Rai: Mr. Speaker, Sir, as it is, this land cannot be taken away without the recommendations of the local authority and the Minister for Local Government. That is actually a fact. So, if any transactions take place in the Ministry of Local Government, I will not be in a position to do anything. However, if we are informed, we will intervene.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Next Question, Mr. Thuo!

Question No.514

SETTLEMENT OF KILIMAMBOGO SQUATTERS
SCHEME RESIDENTS

Mr. Thuo asked the Minister for Lands:-

(a) to confirm whether Kilimambogo Squatters Scheme exists in the map of Kenya, under the Physical Planning Act, Cap.286, Laws of Kenya, and if so, state who is responsible for demarcating the scheme and settling the Kilimambogo squatters;

(b) whether he is aware that since 1997, the scheme has not been fully surveyed despite the locals having been registered severally by the local administration; and,

(c) what steps he is taking to ensure that the demarcation is completed and residents issued with valid title deeds to enable them settle and develop their plots.

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

(a) Kilimambogo Squatters Scheme does not exist in the map of Kenya, under the Physical Planning Act, Cap.286, Laws of Kenya.

(b) I am aware that since 1997, Kilimambogo Squatter Scheme has never been surveyed despite the locals having been registered by the local administration with promises of allotment.

(c) My Ministry, through the Department of Physical Planning, is in the process of preparing a part development plan for the three areas occupied by squatters, namely, Central Business District (CBD) area, Wendano area and Mukunike area. Once the development plans are completed and approved by the Minister, they will be used as the basis of legalising the settlement scheme.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Yes, Mr. Thuo!

Mr. Thuo: Mr. Speaker, Sir, I am, indeed, grateful to the Assistant Minister for clarifying that they are in the process of preparing development plans for the area. I would like to know whether he has a timeframe by which this process will be completed and when we can expect the squatters to be legally settled.

Mr. Rai: Mr. Speaker, Sir, I had actually intimated to the hon. Questioner that by the end of March, 2009, the development plan will be ready, so that it can, at least, be approved by the Minister.

Mr. Speaker: Last Question, Mr. Thuo!

Mr. Thuo: Mr. Speaker, Sir, mine is not a question, but rather to give my gratitude to the Ministry for acting in accordance with our wishes.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Mr. Assistant Minister, you are complimented.

Next Question, Mr. Joseph Lekuton!

Question No.494

EFFECTS OF GREENHOUSE GAS EMISSIONS
ON ENVIRONMENT

Mr. Lekuton asked the Minister for Environment and Mineral Resources:-

(a) whether he could indicate to what extent the emission of greenhouse gases is causing climate change and increase in temperature;

(b) whether he could confirm or deny that Mount Kenya glacier is shrinking every year due to increase in temperatures; and,

(c) whether the Government, in collaboration with the other developed nations, could adopt necessary measures to check emission of greenhouse gases.

The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): Mr. Speaker, Sir, I beg to reply.

(a) The extent to which emissions of greenhouse gasses cause climate change and increase in temperature has been established by the sample time service analysis of both maximum and minimum temperatures. These trends are mainly attributed to the greenhouse gasses emitted into the atmosphere, especially carbon dioxide.

(b) I wish to confirm to this House that the Mount Kenya glacier is shrinking every year due to increase in temperatures. Significant evidence of this is clearly indicated by span shots of the Louis glacier from 1914 to the current year, which show that it is actually shrinking in size.

(c) The Government, through my Ministry, is collaborating with other developed and developing nations in adopting necessary measures to check emission of greenhouse gasses as long as those measures do not jeopardise Kenya's national socio-economic development priorities.

Mr. Speaker, Sir, it is worth noting that the developed countries are the main contributors to the green house gas emissions.

Mr. Lekuton: Mr. Speaker, Sir, climate change is a very serious issue in the world. As a country, we have heavy losses in every sector I look at. Every Kenyan needs to be sensitized on the effects of climate change. What is the Ministry doing to make sure that every Kenyan knows what is happening? What procedures are put in place to make sure every single household preserves water, electricity and many other resources?

Mr. Kajembe: Mr. Speaker, Sir, we have appointed Environmental District Officers (DEOs) in every district. We have told them what kind of awareness they will give to the people in every district. There are a few districts where we have not appointed these officers, however, within the coming financial year we will be able to employ more. I appreciate that the Ministry of Finance has been supporting my Ministry. Whenever we want to employ DEOs we get funds and we have been able to give awareness. This is a broad subject. We have been doing this and will continue doing it to the satisfaction of the people. They should know what environment concerns are all about.

Mr. Olago: Mr. Speaker, Sir, the efforts of the Government in preserving water towers is appreciated. However, the effect of the action of the Government at this stage will not be felt for several generations to come. As Mt. Kenya ice melts, what action is the Ministry putting in place to ensure that the people surviving on the water from Mt. Kenya will not suffer drought?

Mr. Kajembe: Mr. Speaker, Sir, this is something that is very technical. I am saying it is technical because from 1914 to date, the ice on Mt. Kenya has been shrinking. For the rest of the life of the earth, it will continue shrinking. However, we are joining other countries in the world; developed and developing countries--- Researchers are working on something which will be applied to all countries. It is something very technical: Our prayers as a Ministry are to wait and see if there will be a shortcut to this.

However, Mt. Kenya is not like other water towers. Conservation and afforestation in Mt. Kenya is on.

Mr. Speaker: Last question, Member for Laisamis!

Mr. Lekuton: Mr. Speaker, Sir, in today's environment, there is something called Carbon Credit Points (CCP). Most countries in the world that live to the climate's global warming benefit from that. This country has only one company that benefits from CCP; Mumias Sugar. What is this Ministry doing to make sure that most companies in this country end up getting CCP in international world?

Mr. Kajembe: Mr. Speaker, Sir, in this country today, no developer, whether a company or any kind of developer can put up even roads without obtaining environment assessment from the National Environmental Management Authority (NEMA). I want to praise NEMA because they are doing a very good job.

The Ministry of Environment and Mineral Resources cannot do these things, especially application of other policies of environment without coming together as a globe. That is why today there is a meeting at Copenhagen. All the countries of the world

are represented there. We are saying that the main polluters of the environment are the developed countries. They must, therefore, be liable to pay. We are doing everything---

Mr. Speaker: Order, Assistant Minister! You are giving a very long story against a question which I thought was very clear, simple and straightforward. What steps are you taking to ensure that many Kenyan companies benefit from the CCP against the present situation where only one company benefits? Simple!

Mr. Kajembe: Mr. Speaker, Sir, yes, some have applied for this. The Ministry will take action through NEMA---

Mr. Speaker: Order, Assistant Minister! Are you saying that so far the Ministry has taken no action? What steps have you taken and if you have not, what steps do you plan to take?

Mr. Kajembe: Mr. Speaker, Sir, this is at the planning stage. I will not commit myself and say that we are fully operational.

Mr. Olago: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Assistant Minister to go on and on and on but avoid CCP as if he does not appreciate what it is?

Mr. Speaker: I think the Assistant Minister has answered the question to the best of his ability, which perhaps may not be good enough for the Members concerned. He has said that the Ministry has so far not taken any steps. However, the Ministry is on the drawing board and sooner rather than later, the Assistant Minister will come and inform the House what plans they have made and what action they are taking. Is that not so?

Mr. Kajembe: Mr. Speaker, Sir, you are very right. In fact, that is what I meant.

(Laughter)

Mr. Speaker: Order, hon. Members! Member for Laisamis, that matter must rest there.

Next Question by Member for Manyatta!

Question No.510

NUMBER OF POLICE ROADBLOCKS/TRAFFIC POLICE
CHECKPOINTS ON NAIROBI-EMBU ROAD

Mr. Kathuri asked the Minister of State for Provincial Administration and Internal Security:-

(a) to confirm how many Police road blocks and Traffic Police check-points there are on the Nairobi-Embu Road and indicate their exact locations; and,

(b) whether he could state how many highway patrol cars are deployed on the same section of the road and indicate their specific duties.

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

(a) There are seven roadblocks mounted between Nairobi and Embu. Their locations are as follows: Next to Safari Park Hotel and Moi Sports Centre Kasarani; next

to Clay works in Ruiru, Juja; next to Castle Breweries in Thika; Makuyu Junction; near Makutano Junction and next to the Sewage Works in Embu.

There are 14 traffic police checks from Nairobi to Embu which are mounted during the day. They are located at the following spots; Allsops, Kenyatta University, Ruiru, Juja, near Castle Breweries in Thika, junction to Thika Town, junction out of Thika, Kenol Trading Centre, Makuyu, Kabati, Kambiti area, near Makutano, Samson Corner and next to Sewerage Works in Embu.

(b) There are two highway patrol cars deployed in the same section of the road. The duties of the highway patrol officers include, among others, normal highway patrol for crime prevention, crime detection along the highway, mounting of impromptu searches on vehicles to check on suspected stolen motor vehicles and armed robberies, or suspects or those conveying illicit goods like drugs, attend to serious crimes scenes or accidents along the highway, to attend to or assist motorists in distress and to attend to any other crime matters along the highway.

Mr. Kathuri: Thank you, Mr. Speaker, Sir. The Assistant Minister has given a good answer, but I would also want to say that he has omitted some three road blocks which are there permanently. One is at Kabati, the other at Mwea, and another one just after Makutano. They are permanent because they are always mounted there, whether there is a crime in the area or not. At the same time, it is good to let the Assistant Minister know that even the GSU is also on that road. That brings the total number of police checks and road blocks to 27 within a distance of 130 kilometres. After every other four kilometers, you have to be subjected to a police check. This makes flow of traffic, specifically commercial and PSV vehicles very slow, which hinders business.

Mr. Speaker: Come to the question, Member for Manyatta!

Mr. Kathuri: This is not an area which borders any other area which has an insecurity problem. This is not a road that is busier than the Nairobi/Mombasa, or the Nairobi/Nakuru highway, yet we find it is as if the number of road blocks and checks by the traffic police ---

Mr. Speaker: Order, Member for Manyatta! I have heard you. Ask the question!

Mr. Kathuri: Could the Assistant Minister undertake to reduce the number of police checks to improve the flow of traffic in that area?

Mr. Ojode: Mr. Speaker, Sir, you will agree with me that there is an upsurge of insecurity in that area. That is the reason why we mount road blocks, and have police checks. The hon. Member should have commended the work of the police, because a number of criminal activities occur around that area. If there is any case which he can prove to us--- I know there are those who are involved in *matatu* business, and those who are using unroadworthy vehicles; if there is a case which he would want me to attend to, I will do exactly that. As of now, the level of crime has gone down, and we are very happy that my police officers are doing a commendable job.

Dr. Nuh: It will be noted that most of the roads in arid and semi arid areas of this country are under police. Since every four kilometers checks seem to be a nuisance by the police; could the Assistant Minister consider re-deploying these officers and their road blocks to far flung villages so that they reduce cattle rustling in those areas?

Mr. Ojode: Yes, if I am convinced that insecurity has gone down in that particular area. I will do exactly that.

Mr. Bahari: Thank you Mr. Speaker, Sir. I appreciate the efforts of the police in ensuring security on that road, but I remember the Assistant Minister saying that road blocks are not supposed to be permanent. I use that road so frequently and most of these road blocks he has mentioned are permanently in one position. Does that not undermine the preventive aspect of insecurity, which insecurity the Assistant Minister wants to eradicate?

Mr. Ojode: Indeed, we agreed that we should not have permanent road blocks. We have ordered the Police Commissioner that we should not have permanent road blocks mounted at one particular place. A road block is supposed to last at one particular area three hours. If there is any road block which has been mounted permanently I will take action immediately.

Mr. Kathuri: I would want to let the Assistant Minister know that it is not true that, that area is more prone to crime than all the other areas in the Republic of Kenya. Could he confirm that he is going to reduce the number of police checks on that road as soon as possible to create a free flow of traffic?

Mr. Ojode: Mr. Speaker, Sir, I want to confirm to this House that if the need arises, if there is no insecurity, or it has scaled down, I will be in a position to reduce road checks, but as of now I will not reduce the police patrols, neither will I reduce the police checks.

Question No.554

BAN ON TRANSPORTATION OF SCRAP METAL
FROM MANDERA EAST

Mr. Speaker: Member for Mandera East! Mr. Hussein Ali! Question dropped.

(Question dropped)

Member for Eldama Ravine!

Question No.559

DETAILS OF DISTRIBUTION OF SURPLUS COLLECTIONS/INTEREST
INCOME OF FUEL LEVY FUND

Mr. Lessonet asked the Minister for Roads:-

(a) to table the details of distribution of surplus collections and interest income of the Fuel Levy Fund for the years 2006/2007, 2007/2008, 2008/2009 per Constituency and District; and

(b) whether he could clarify if the above distribution conforms with the requirements of the Kenya Roads Board Act.

The Assistant Minister for Roads (Dr. Machage): Mr. Speaker, Sir, I have looked at the information I have for the answer to the hon. Member and I find it wanting. I beg the indulgence of the House and the Member himself, whom I have talked to and compared notes with, for more time to look for more information for this Question.

Mr. Lessonet: I agree to give the Assistant Minister more time to bring in better information.

Mr. Speaker: I order that the Question be placed on the order Paper on Thursday next week.

(Question Deferred)

Hon. Members, that brings us to the end of Questions, and I commend all of you for doing very well. We have gone through 15 questions.

Next Order

Mr. Speaker: We will take a Ministerial Statement first from the Minister in charge of internal security.

MINISTERIAL STATEMENTS

SEIZURE OF MILITARY WEAPONRY IN NAROK

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, on 9th December, 2009 Mr. ole Lankas, the Member for Narok South Constituency, stood on a point of order to seek a Ministerial Statement on circumstances surrounding the seized weaponry in Narok.

On 7th December, 2009, the police, acting on a tip-off, intercepted a Mr. Munir Ahmed Ishmail and his wife Nahid Tabasum Sumar, at Embakasi Village. Upon search, he was found in possession of a pistol, make SID 9mm, serial number U746797, and an assortment of ammunition. On further search of his godown situated along Nanyuki Road, Industrial Area, the following items were also found:- three lorry batteries, thirteen military green steel jerry cans, six military fatigue tankers, five pairs of military boots and assorted motor vehicle parts. At his Parklands home, a pistol, make SIG 9mm, serial number 0735732, with 5000 rounds of ammunition and a pair of military uniform, were also recovered.

Mr. Speaker, Sir, the suspect led the police to his Parklands and Narok residences where the following items were also found and taken by the police. Over 80,000 rounds of assorted ammunition; a shotgun, serial No.A052195; a 308 rifle, serial No.A171444; a 3006 rifle, serial No.40909; four rolls of flannel clothes; ten military canvas chairs; military food rations; assorted motor vehicle spares; 11 lorry tyres; cash money to the tune of Kshs429,000 and 14 motor vehicle logbooks. The items have since been seized by the police and investigations into their source of origin, their intended destination and use have been launched. So far, three persons have been arrested as at yesterday. Last night, we also managed to arrest one more fellow. More people are bound to be arrested and charged jointly with the suspects. The suspects have already appeared before court vide case No.File152/580/09 and court file No.2217/09.

Mr. Speaker: Are there hon. Members who want to seek clarifications? I will begin with ole Lankas. Please, restrict yourself to two clarifications as the originator of this matter.

Mr. ole Lankas: Mr. Speaker, Sir, first of all, I thank the Assistant Minister for attempting to give a Ministerial Statement which is balanced. However, I intentionally

requested for this Statement yesterday because of the importance of this matter not only to the residents of where that cache was found but to the whole nation. In seeking the Statement yesterday, I wanted the Assistant Minister to clarify or bring to the attention of Kenyans, who are waiting out there eagerly to know the source of that weaponry and the destination. However, in his Statement, the Assistant Minister has technically avoided naming the source and the destination.

Mr. Speaker: Seek the last clarification!

Mr. ole Lankas: Mr. Speaker, Sir, there is a lot of talk and speculation out there about the source and the destination of that cache and the intended use. The amount of weaponry discovered is very large and it has caused fear among Kenyans out there. So, I still insist that we know the source and destination because what we are getting out there is---

Mr. Speaker: Order, Mr. ole Lankas! You are supposed to seek a clarification! You have said that the Assistant Minister has not indicated the source and destination of the weapons. That is one. Which is the second clarification?

Mr. ole Lankas: Mr. Speaker, Sir, the second clarification is on the intended usage of that ammunition.

Mr. Speaker: Fair enough!

Dr. Khalwale: Mr. Speaker, Sir, suspicions are high that it is the Administration Police Armoury that was raided in this particular incident. Could the Assistant Minister today table before this House the accountability records which in military parlance is called "the Arms Movement Register" which will show the issuance and receipt of arms within the Administration Police? This will enable us to know who issued those arms, who received them and for what purpose they were being used. The House should know that the armoury is controlled by two keys. One of the keys is held by the College Commandant by the name of Mr. Omar Shure and the other key by Superintendent Joseph Maritim who is the force armourer. Could the Assistant Minister tell us why he has only arrested Superintendent Joseph Maritim and left Omar Shure? What action will he take against Mr. Mbugua who gives authority before arms leave the armoury?

Mr. Linturi: Mr. Speaker, Sir, I want to thank the Assistant Minister and the police for whatever they are doing to get rid of the illegal firearms and ammunition that are in the hands of criminals in this country. This country has lost many innocent Kenyans because of arms being in the wrong hands. Does the Assistant Minister have any intentions of making amendments to Cap.41(14) of the Firearms Act to make it a capital offence for anyone found with illegal arms?

Mr. Konchella: Mr. Speaker, Sir, the issue that worries Kenyans is that military uniforms and an assortment of arms were in possession of those people. It, therefore, means that those things were not intended for any use outside the country but for the development of a militia in this country. We know the batch and lot numbers of those arms. Therefore, we can know the source of either their sale or purchase. Could the Assistant Minister give to this House all the sales and issues of ammunitions from the factory in Eldoret for the last one year? We want to know who purchased them and their destination. This will enable us know whether a lot of ammunition is in the country to cause havoc in future.

Mr. Lesonnet: Mr. Speaker, Sir, the Assistant Minister has indicated to this House that Kenyans are insecure if more than 100,000 bullets can be in the hands of a

civilian. What corrective measures has he put in place so that such an amount of ammunition is not moved by private individuals all over the country?

Mr. Olago: Mr. Speaker, Sir, when those suspects are charged in court, most likely the offences for which they will be charged will include being in possession of Government stores or being in possession of firearms without licence. That will not give the country the background about this case. In the recent past, we have heard stories in the country about arming of private militias, particularly in Rift Valley Province. There have been cases of Mungiki being armed. Could the Assistant Minister confirm to this House that the investigations that are being undertaken will include angles into arming of private militias in Rift Valley Province, the Mungiki or Taliban?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, let me say that I am very happy with my colleagues' concerns. Let me start with Dr. Khalwale's clarification with regard to the issuance and receipt of the ammunition. The hon. Member has alleged that we will just arrest one person. The truth of the matter is that we have, so far, arrested six people from the Administration Police camp for interrogation purposes.

Mr. Speaker, Sir, the armoury officer, Mr. Maritim has so far been charged together with Munir and his wife. The charge sheet is here. I hereby table it.

(Mr. Ojode laid the document on the Table)

I do not want to go onto speculation. This is a security matter. I would also ask my colleagues to let us interrogate and investigate these people, so that we can know the destiny and origin of these firearms. As I speak now, I have engaged the ballistic expert to tell us whether those firearms are from Kenya. If that is the case, we would like to know from where in Kenya.

I want to assure this House that I will update Kenyans on what has already been found out because this is a very serious and sensitive matter. Mr. Lessonet asked what we will do---

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to avoid answering my question? Thank you very much for arresting Superintendent Joseph Maritim. But the keys to the armoury are two. Before the armoury is opened, there is a written authority by the Commandant, Mr. Mbugua. So, why has he chosen to selectively arrest Mr. Joseph Maritim and yet he has done nothing about Omar Shule and the commandant?

Mr. Speaker: Mr. Assistant Minister, I think you have dealt with that concern by Dr. Khalwale adequately as the law permits. Any further disclosures at this point in time when investigations are still ongoing, will be prejudicial and will obviously not be helpful, or even serve the interests of this country. So, Mr. Ojode, you need not respond to that point of order. You are actually protected by the provisions of the Standing Orders.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, it looks like we are reading from the same script.

(Laughter)

That is exactly what I was going to say.

Mr. Speaker: Order, Mr. Assistant Minister. That is what the Standing Orders say. If we were reading from exactly the same script, you would have said it in the manner that I said it clearly and categorically. Respond to the others.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I will respond to the question of Mr. Lessonet. He asked the Minister what he will do to these people. I want to assure this House and the country that those who are involved in these criminal acts will face the full force of the law.

I want to repeat that if you are involved in these particular kinds of criminal acts, you will face the full force of the law. Period!

Mr. Speaker, Sir, the Government will ensure that the security of its citizens and their property is safeguarded at all times. Due to security reasons, I would not like to release some of the security documents which I have. I would plead with my colleagues that we are continuing with the arrests as we interrogate. We will arrest them and take them to court.

I will also be updating the country at large on what we have so far done and what we will do next.

Mr. Linturi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to cleverly not answer my question? I remember very well asking---

Mr. Speaker: What was your question, Mr. Linturi?

Mr. Linturi: Mr. Speaker, Sir, my question was this: Since very many Kenyans have lost their lives because of arms being in the hands of the wrong people, does the Assistant Minister have any intentions of making amendments to the Firearms Act to make it a capital offence for those people who are found with these arms?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, we are doing exactly the same. We have engaged our lawyer to propose amendments in order for us to levy a capital offence on those who misuse firearms.

I have said in the House and outside that those who are holding guns illegally must surrender them to the police. We will carry out forceful disarmament. If you know that you have an illegal gun without a licence, you should surrender it to the police, chief or assistant chief immediately.

Mr. Olago: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Mr. Olago, you must keep it brief. We have already spent 15 minutes on this matter.

Mr. Olago: Mr. Speaker, Sir, is it in order for the hon. Assistant Minister to avoid giving the clarification that I sought on whether the investigations underway will go as far as looking at arming of militia groups like *Mungiki* and others?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, that is the work of the security team. We will do so.

Let me also take this opportunity to commend the police officers who arrested this particular man. I want to thank the police officers for doing a good job for which they deserve a promotion. We will do something for the officers.

Mr. Speaker: Hon. Members, we will take one more Ministerial Statement from the Minister for Lands and that will be it.

PUBLIC OUTCRY OVER JOMO KENYATTA
PUBLIC BEACH

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, there has been a public outcry about some land in Mombasa which is popularly known as the Jomo Kenyatta Public Beach in respect of which I want to make the following Statement.

The pieces of land described as LR.Nos.MN/11916 and MN/11917 which was originally LR.No.MN1/9314 in Bamburi within the municipality of Mombasa which comprised what is popularly known as the Kenyatta Public Beach was allocated to Mombasa Municipal Council in 1960 for recreational purposes. That is a public car park, changing rooms and storage for fishermen gears.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, in 1995 the council was issued with a leasehold title for the land under LR.No.MN1/9314 measuring 3.756 hectares for 99 years with effect from 1st December, 1980. The user remained the same, that is, for public recreational purposes.

However in 1996, the plot was irregularly subdivided into two plots that is No.1916 and No.1917, respectively measuring 1.5111 hectares and 1.856 hectares, wherein the user for parcel No.M11916 was changed to residential. Considering that, that is the only public beach along the entire Kenyan coastline accessible to the public and that is within the Mombasa municipality and on the grounds that the Mombasa Municipal Council was holding the land in trust for the public, the subdivision and change of user was illegal.

Mr. Deputy Speaker, Sir, the council further compounded the illegality by subletting the said land LR.1/9916 to Sambu Limited for a period of 99 years from 1st December, 1980, again for residential use. In this respect the Ministry is aware that were it not for the fear of public outrage, Sambu Limited would have turned the recreational park into a concrete jungle by developing residential houses thereon.

Mr. Deputy Speaker, Sir, I am also aware of the ongoing campaign by the Directors of Tsavo Limited that they be allowed to develop the land. It is also apparent from the Ministry's records that the decision to sub-divide the land and sub-let a portion thereof was influenced by the Executive in a manner that undermined and compromised the overriding public interest. Under the circumstances and in order to safeguard public interest and protect the Jomo Kenyatta Public Beach from land grabbers, I have directed the Commissioner of Lands to revoke the title issued to the Mombasa Municipal Council and issue one title to the Permanent Secretary, the Treasury, to hold this vital piece of land in trust for the public.

Finally, I wish to point out that the Ministry of Lands does not receive directives and orders from the President, the Vice-President or the Prime Minister in any form or shape that may lead to unjustified illegal or irregular allocations of public land as was the

practice in the previous Government. I, therefore, give my assurance that this kind of abuse of trust will not happen in future.

Mr. Deputy Speaker: Fair enough! Nobody is seeking any clarification on the Statement? Hon. Dalmas Otieno, you want to give a Ministerial Statement?

The Minister of State for Public Service (Mr. Otieno): Yes!

Mr. Deputy Speaker: Certainly, you will not because the information I have is that, that was going to be the last one with an exception of one by the Deputy Prime Minister and Minister for Local Government.

ABSENCE OF DEPUTY PRIME MINISTERS DURING PRIME MINISTER'S TIME

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Thank you, Mr. Deputy Speaker, Sir. I just want to make a very short Statement regarding the issue of the Prime Minister's Time yesterday. The House rightly raised its concern about my colleague, hon. Kenyatta, and I not being present during the Prime Minister's Time. Let me just make a very brief explanation while at the same time acknowledging that the position taken by the House in raising the concern was valid.

In the House Business Committee on Tuesday, there was no indication whatsoever that there was going to be any business relating to the Prime Minister's Time. Indeed, the subsequent Order Paper that came out did not indicate at all that there was any issue that had been raised or required the response from any Member. However, since the Standing Orders indicate that there shall always be the Prime Minister's Time whether there is an issue or not, I wish, on behalf of my colleague, hon. Kenyatta, to state that we seek the indulgence of the House. We shall always be available to deal with any issue that may arise, whether it appears on the Order Paper or not.

COMMUNICATION FROM THE CHAIR

MEMBERS RETREAT TO FAMILIARIZE WITH DRAFT CONSTITUTION

Mr. Deputy Speaker: Hon. Members, the Chair has the following Communication to make. You will recall that the harmonized Draft Constitution of Kenya was published by the Committee of Experts on Constitutional Review on 17th November, 2009, pursuant to Section 32(1)(a)(i) of the Constitution of Kenya Review Act, 2008. The National Assembly has organized a two-day non-residential retreat for all Members of Parliament at the Hotel La Mada along Thika Road on 11th and 14th December, 2009.

This retreat had been scheduled to be held initially at the last weekend, but was postponed to this weekend. The retreat is intended to familiarize Members of Parliament with the Draft Constitution, so as to achieve a better understanding of the proposals contained in the Draft and enable Members to build consensus on the contentious issues from an informed perspective. The retreat will be facilitated by the Parliamentary Caucus for Reforms and is a follow up to the one held in Naivasha between 19th and 22nd November, 2009. All Members are invited to attend.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir. I would wish to draw the attention of the Chair to the fact that the way some of these functions or workshops are organized is wanting. Some of us would really have wanted to attend that retreat, but when we are being given notice a day to the date of the retreat, it is not the kind of thing that you want to do with the hon. Members of Parliament. Our calendars normally are arranged quite in advance. Could the Office of the Chair and the Clerk try to do a little bit better than that? Even in a primary school, they would organize themselves a little bit better. They know when the school opens and when it closes, so that they plan when to read and when not to read.

Mr. Deputy Speaker: Is the Chairman of the Committee on the Parliamentary Caucus for Reforms here? Any hon. Member? Dr. Khalwale!

Dr. Khalwale: Mr. Deputy Speaker, Sir, I am a Member of the Committee. Our convener is hon. Mungatana and he is currently consulting with the Minister for Roads. This is because of the pressure of time. We wanted to take a harmonized position out of those consultations, so that we can present to the Committee of Experts in time before the expiry of the 30 day period. We have calculated and found that if we hold the retreat tomorrow, any backlog that will remain, we can thrush it out on Monday, so that on Tuesday and Wednesday, we can then go and make our presentations to the Committee of Experts.

Mr. Deputy Speaker: Why did you not make this request to the Chair for the Communication to be done in time? The position is that you brought this request very late.

Dr. Khalwale: Mr. Deputy Speaker, Sir, we are very sorry. It is because we are actually very informal. We do not have that robust enjoyment of the *locus standi*. When you lack that, you do not know sometimes how to move and so you are hesitant. That is the reason.

Mr. Deputy Speaker: You all have a *locus standi*. Every Member of Parliament, as a matter of fact, every Kenyan, has a *locus standi* in the Constitution. Nonetheless, hon. Orengo, extra-ordinary times call for extra-ordinary actions. Essentially, this is purely because of the constraints of time. As you realize, this retreat was supposed to have been there over the last weekend. We could not do it last weekend because of other very pressing urgent and important issues. So, take this in your stride. The Constitution making process right now and the manner in which the timetable is drawn does not give us the laxity and the luxury of so much notice.

Next Order!

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Mr. Thuo: Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 20(2), this House resolves that the adjournment time of today's Sitting be extended from 6.30 p.m. until the business appearing on the Order paper is concluded.

Mr. Deputy Speaker, Sir, as hon. Orengo noted, even primary schools have a closing date. The purpose of this is to allow us to move the Motion for adjournment of the House later. The Motions after Order No.10 are not necessarily time sensitive. That is why I am moving this Motion so that we can continue up to the end of the business appearing as Order No.10 on the Order Paper.

Mr. Midiwo seconded.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING BILL

The Temporary Deputy Chairman (Mr. Mungatana): Hon. Members, we are now in the Committee of the whole House to consider the Proceeds of Crime and Anti-Money Laundering Bill, clause by clause.

Clause 2

The Temporary Deputy Chairman (Mr. Mungatana): There is an amendment by hon. Abdikadir.

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

THAT, Clause 2 of the Bill be amended:-

(a) in the definition of the expression “affected gift”, by—
(i) deleting paragraph (a);

(ii) deleting the expression “whether any such gift was made before or after the commencement of this Act;”and substituting therefor the following new expression:

“provided any such gift was made on or after the commencement of this Act;”

(b) in the definition of the expression “designated non-financial businesses or professions”, by—

- (i) deleting the words “legal professionals and” appearing in paragraph (e);
- (ii) inserting the following new paragraph immediately after paragraph (e)—
“(f) non-governmental organizations;”
- (iii) renumbering paragraph (f) as paragraph (g);
- “(c) in the definition of the expression “monetary instruments”, by deleting paragraphs (b) and (c);
- (d) in the definition of the expression “proceeds of crime”, by deleting the expression “and irrespective of whether committed before the commencement of this Act” appearing immediately after the word “offender” in the fourth line.

Mr. Temporary Deputy Chairman, Sir, laws in this country, generally speaking, ought not to have retrospective, retroactive or look-back powers. In other words, when a criminal offence is set, it ought to be a criminal offence going forward and not backwards. In this respect, we propose that amendment to Clause 2.

(Question of the amendment proposed)

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, it is true that under our Constitution, laws cannot be passed retroactively. So, I support this amendment.

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

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

(Clause 2 as amended agreed to)

Clause 3

The Temporary Deputy Chairman (Mr. Mungatana): There is an amendment by hon. Abdikadir.

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

THAT, Clause 3 of the Bill be amended—

- (a) by deleting the expression “which has or is likely to have the effect of” appearing immediately after paragraph (b) and substituting therefor the expression “whose effect is to”;
- (b) in subparagraph (i), by—
 - (i) deleting the word “concealing” and substituting therefor the word “conceal”;
 - (ii) deleting the word “disguising” and substituting therefor the word “disguise”;
- (c) in subparagraph (ii), by—
 - (i) deleting the word “enabling” and substituting therefor the word “enable”;
 - (ii) deleting the word “assisting” and substituting therefor the word “assist”;
- (d) in subparagraph (iii), by—
 - (i) deleting the word “removing” and substituting therefor the word “remove”;
 - (ii) deleting the word “diminishing” and substituting therefor the word “diminish”.

Mr. Temporary Deputy Chairman, Sir, again, this Bill has criminal responsibility and effect. In essence, it is part of our criminal law. When you say, as indicated by “a”, which is the proposal for amendment, by deleting “which has or is likely to have the effect of” and replacing that with “whose effect is to”, you make it specific. Criminal offences ought to be specific and not general. Therefore, we propose this amendment.

Thereafter, then because we have said “whose effect is to” all the other words will be substituted as follows: to “conceal” instead of “concealing”, “disguise” instead of “disguising”, “enable” instead of “enabling”, “assist” instead of “assisting”, “remove” instead of “removing” and “diminish” instead of “diminishing” so that we make it more specific.

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

Clause 4

The Temporary Deputy Chairman (Mr. Mungatana): Again, hon. Abdikadir has an amendment.

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

THAT, Clause 4 of the Bill be deleted.

Mr. Temporary Deputy Chairman, Sir, the reason for the deletion is that Clause 4 deals with exactly what Clause 3 deals with. It is not even understandable. That clause says:-

“A person who knows or ought reasonably to have known that another person has obtained the proceeds of crime, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby---” It is very superfluous. In any event, it deals exactly with the same issues as Clause 3. “A person who knows or who ought reasonably to have known that property is or forms part of proceeds of crime and--- “ is guilty of a crime---” In other words, these two clauses deal with the same thing. Clause 3 deals with it in a far much better way.

Mr. Temporary Deputy Chairman, Sir, finally, “property” is defined in the Act. It is defined not only as real property, but as everything else that the Act deals with. In other words, all proceeds of crime or money-laundering are property as per the definition in Clause 2. So, I propose the amendment as it appears on the Order Paper.

(Question of the amendment proposed)

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

(Clause 4 deleted)

*(Clauses 5, 6, 7, 8, 9, 10, 11, 12,
13, 14, 15 and 16 agreed to)*

Clauses 13 and 17

The Temporary Deputy Chairman (Mr. Mungatana): Hon. Abdikadir, you have an amendment!

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

THAT, Clause 17 of the Bill be amended by deleting Subclause (4) and substituting therefor the following new Subclause—

“(4) A person who contravenes the provisions of Section 13(3) shall, on conviction, be liable to a fine which shall not be more than 10 per cent of the amount of the monetary instruments involved in the offence.”

Mr. Temporary Deputy Chairman, Sir, under Clause 17, we did agree with the Minister that the issue here is the reporting of the offence. There is an offence under that Clause where if you were to go across the national border with money or property in form of cheques and so on, you ought to report. In the event that you do not report, you are guilty of an offence. It is a reporting offence. That offence is created under Clause 13(3) which reads:-

“A person who willfully fails to report the conveyance of monetary instruments into or out of Kenya, or materially misrepresents the amount of monetary instruments reported in accordance with the requirements of subsection (1), commits an offence.”

This is the requirement to report. In the event that you do not report, the offence is created by that Clause, but the punishment is created by Clause 17. My proposal, and we did agree with the Deputy Prime Minister and Minister for Finance, is to make the amendment indicated on the Order Paper but, unfortunately, misdirected to Clause 17, to come immediately after Clause 13 to read:-

“(4) A person who contravenes the provisions of section 13(3) shall, on conviction, be liable to a fine which shall not be more than 10 per cent of the amount of the monetary instruments involved in the offence.”

Mr. Temporary Deputy Chairman, Sir, I need to point out that Clause 17 deals with several offences and we are only interested in the reporting offence.

Mr. Temporary Deputy Chairman, Sir, if you look at Clause 17(2), it says:-

“A person who contravenes any part of the provisions of sections 6, 9, 13 (3) or 14---“

We are only interested in Clause 13(3) and we are interested in the punishment under Clause 13 (3): That, if you contravene a reporting offence, you ought to be fined 10 per cent of the funds you are carrying. The assumption being that you are not guilty of any other offence. In other words, the funds are lawfully yours.

The other offences indicated in Clause 17 remain. We need to find out exactly how we will place that, but I think you need to consult with the Clerk-at-the-Table.

The Temporary Deputy Chairman (Mr. Mungatana): Mr. Abdikadir, are you now amending Clause 13 or are you amending Clause 17?

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, because the punishment is in Clause 17, clause 13 just creates the offence. I have no problem with Clause 13 and we have already moved away from Clause 13.

I am interested in the punishment and it is indicated in Clause 17(2). If the Minister agrees- and this is when we can move- can we then say that Clause 17(2) is amended by removing Clause 13 (3) and then a new Clause 17(2) (c) is indicated?: The clause will read: With respect to sub-clause (13) (3):

“A person who contravenes the provisions of section 13 (3), shall, on conviction, be liable to a fine which shall be not more than ten percent of the amount of the monetary instruments involved in the offence?”

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, indeed, we agree with hon. Abdikadir and we adopt that proposed amendment to Clause 17. So, we are in agreement.

The Temporary Deputy Chairman (Mr. Mungatana): Mr. Abdikadir, could you come again and just be clear on what we are talking about, so that we can capture it properly in terms of drafting?

Mr. Abdikadir: Thank you, Mr. Temporary Deputy Chairman, Sir. Let me say that Clause 13(3) creates an offence called a “reporting offence”. Clause 13(2) gives the punishment for several offences. We are interested in Clause 17(2) in amending Clause 13(3). In other words, delete Clause 13(3) as indicated in Clause 17(2). It will read as follows:-

Clause 13(3) says:-

“A person who willfully fails to report the conveyance of monetary instruments into or out of Kenya, or materially misrepresents the amount of monetary instruments reported in accordance with the requirements of Subsection (1) commits an offence.”

Clause 17(2) says:

“A person who contravenes any of the provisions of sections 6, 9, (13)(3) or 14 shall, on conviction be liable-

(a) in the case of a natural person, to imprisonment for a term not exceeding seven years, or a fine not exceeding two million, five hundred thousand shillings, or to both; and,

(b) In the case of a body corporate, to a fine not exceeding ten million shillings or the amount of the value of the property involved in the offence, whichever is the higher”

I am proposing through the Minister – because this was not on the notice – that Clause 13(3) be removed from that list and a new Clause (c) be inserted, which would read:

Clause (c):

“A person who contravenes the provisions of section 13 (3) shall, on conviction, be liable to a fine which shall not be more than ten percent of the amount of monetary instruments involved in the offence.”

The Temporary Deputy Chairman (Mr. Mungatana): Hon. Minister!

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I would like to propose that Clause 17(2) be amended by deleting Clause 13(3) and inserting a new Clause that says:

“ A person who contravenes the provisions of Clause 13(3) shall, on conviction, be liable to a fine which shall not be more than ten per cent of the amount of the monetary instruments involved in the offence.”

(Question of the amendment proposed)

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I support that amendment. In fact, I would like to commend the Committee for putting a hold on this clause because what would have happened is that, if for example, you forget to declare what you have and which is not proceeds of crime, it would mean that you would have committed an offence. So, at least, this is corrected so that we protect innocent people who may not concede to this.

Mr. Temporary Deputy Chairman, Sir, I was thinking that, once you remove Clause 17(2), then what really is left is more of cleaning it up, and I think the Attorney-General has powers to clean it up so that they become consistent.

(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)

(Clauses 17 as amended agreed to)

(Clause 18 agreed to)

Clause 19

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

THAT, Clause 19 be amended in Sub-Clause (4), by deleting the proviso appearing immediately after the expression “breach of Subsection (2)”.

Mr. Temporary Deputy Chairman, I propose the deletion of that proviso because it is word for word almost, a repetition of clause 134 of the Evidence Act. There is no need of repeating laws once they are in the books. Indeed, the clause is more appropriate in that Act, than in this Bill.

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

(Clauses 20, 21, 22, 23, and 24 agreed to)

Clause 25

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

THAT, Clause 25 of the Bill be amended—

(a) in paragraph (b), by deleting the expression “any intelligence agency”;

(b) in paragraph (d), by deleting the expression “intelligence agency”;

(c) in paragraph (m), by inserting the words “including an undertaking that it will not be used as evidence in any proceedings” immediately after the word “information” appearing in subparagraph (ii).

Mr. Temporary Deputy Chairman, Sir, we are proposing the deletion of the expression “any intelligence agency”.

Clause 25 deals with the center reporting to the other entities. There is a reason for reporting to all the other entities except the intelligence agencies.

I will read for you Section 25(b) in part: “Shall send reports received under this Act to the appropriate law enforcement authorities.” That is okay.

The clause talks about “any intelligence agency”. Is it talking about the Intelligence Agency in Uganda or any other country and why? If you need to share reports with law enforcement agencies, you can go ahead. It is already catered for when the clause says:- “Shall send reports received under this Act to the appropriate law enforcement authorities. “Any intelligence agency” is an unbelievably wide term, especially because of the fear of the terrorism law and code being sneaked in from the back door; we do not see any value of sharing any information directly by law with the intelligence agencies. Those agencies can share the information in any other way. There is also a requirement to share it with appropriate law enforcement agencies. We do not see the value for intelligence agencies both there and in the following section. Therefore, I propose amendments to that extent as indicated in the Order Paper.

(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 be inserted, put and agreed to)

(Clause 25 as amended agreed to)

Clause 26

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

THAT, Clause 26 of the Bill be deleted and replaced with the following new

Clause—

Director
and
Deputy
Director.

26. (1) There shall be a Director and Deputy Director of the Centre.

(2) The Director and Deputy Director shall be fit, competent and proper persons, recommended by the Board and approved by the National

Assembly for appointment to their respective positions.

(3) On approval of a person by the National Assembly, the Minister shall appoint the person concerned to the office in respect of which the approval was given.

(4) A person shall not be appointed as a Director or Deputy Director unless such person—

(a) holds a degree in law, economics or finance from a recognized institution;

(b) has at least seven years work experience in the relevant field;

(c) meets such other requirements as the Board may prescribe;

(5) The persons appointed as the Director and Deputy Director shall hold office—

(a) for a term of four and three years, respectively, subject to renewal for one further term of four and three years, respectively;

(b) on such terms and conditions as may be determined by the Board and set out in the instrument of appointment which shall include specific and measurable performance targets.

(4) The provisions of subsection (3) shall apply *mutatis mutandis* to the renewal of appointment under subsection (5) (a).

This clause deals with the appointment of Director and Deputy Director of that body. The Minister shall, on the advice of the Anti-Money Laundering Advisory Board, appoint fit, competent and proper persons to the post of Director and Deputy Director of the Centre. Therefore, we propose an amendment to replace Clause 26 with what is in the Order Paper. This is essentially to adopt a process that takes the process through Parliament for vetting and for input from the National Assembly, instead of being a function that is carried out by the Executive arm of the Government. Let me also point out that either here or later, we will deal with the lacuna which the Executive saw very well when we dealt with the issue of Ringera. We indicated that the reappointment must follow the same process. The issue is to put the process through Parliament.

(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)*

(Question 26 as amended agreed to)

*(Clauses 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40,
41, 42, 43, 44, 45, 46, 47 and 48 agreed to)*

Clause 49

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

THAT, Clause 49 of the Bill be amended by deleting the words “legal persons or arrangements.”

In view of the fact that the legal profession has now been removed, I would want to make a proposal that Clause 49 be amended by deleting the words “legal persons and legal professions.”

(Question of the amendment proposed)

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

(Clause 49 as amended agreed to)

Clause 50

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

THAT, Clause 50 of the Bill be amended—

(a) in Subclause (1), by deleting paragraphs (a) to (i) and substituting therefor the following new paragraphs—

(a) the Chairman, who shall be appointed by the Minister from among the members of the Board falling under paragraphs (e) to (h);

(b) the Permanent Secretary in the Ministry for the time being responsible for finance

(c) the Attorney-General;

(d) the Governor of the Central Bank of Kenya;

(e) the Chairman, Kenya Bankers’ Association;

(f) the Chairman, Law Society of Kenya

(g) the Chief Executive Officer, Institute of Certified Public Accountants of Kenya;

(h) two other persons appointed by the Minister from the private sector who shall have knowledge and expertise in matters relating to money laundering;

(i) the Director, who shall be the Secretary.”;

(b) in subclause (2), by deleting the expression “(h)” and substituting therefor the expression “(g)”.

Mr. Temporary Deputy Chairman, Sir, Clause 50 deals with Anti-Money Laundering Advisory Board. Our proposal was to reorganize that list for two reasons. One is to give more independent members of that Board as opposed to more Executive functionaries and secondly, propose that the Chair be one of the independent members so that we will have the Chairman who will be appointed by the Minister from among Members of the Board under paragraphs “e” to “h” on the Order Paper and remove the Permanent Secretary for Provincial Administration and Internal Security.

This is to delink the Anti Money-Laundering law from security functions. The Central Bank of Kenya does a lot of work that, that entity does. So, we have removed the Provincial Administration and Internal Security PS and KRA and replaced them with the

Kenya Bankers Association and two more private sector individuals. The appointment of the Chair is still to be done by the Minister, but this time round, from one of the independent Board members.

(Question of the amendment proposed)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I want to move a further amendment to the Clause because the Chairman of the Law Society of Kenya (LSK) no longer has any standing, given the fact that lawyers are no longer part of the whole Bill. We should remove the Chairman of the LSK and replace him with somebody from the Office of the President because we will still require input from the police in terms of investigations and so on. So, they should be represented on this Board. My plea is to remove the Chairman of the LSK of Kenya since his profession is no longer party to this Bill and replace him with somebody from the office of the President.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I agree that the Chairman of the LSK does not need to be there now that the lawyers are not--- I have a lot of respect for the Deputy Prime Minister and Minister for Finance, we have worked very collaboratively on this matter and I am most grateful to him, but one of the problems many people have with this law is the fear that it will be utilized, and it is important that this goes on record, for targeting certain individuals from not necessarily financial point of view but from security point of view. While I have a lot of regard for the Office of the President, the internal security function can be done directly by the Deputy Prime Minister and Minister for Finance. I will be more than happy if the Deputy Prime Minister and Minister for Finance finds somebody else to do that. However, I agree with him that we should remove the Chairman of the LSK now that they have no further role.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I also agree with my fellow Chairman that we are trying to balance between the Executive arm of the Government and the private sector in order to introduce some element of independence and autonomy to this Board. So, my proposal is that we do not replace the Chairman of the LSK with another Government appointed person but instead we leave it. Instead of one other person being appointed by the Minister, we make it two other persons.

The Temporary Deputy Chairman (Mr. Mungatana): Mr. Okemo, there are already two other persons.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, then we should make it three because we are trying to reduce too much Executive influence on the Board and let as much of the private sector be part of it. So, I propose that the position goes to another person so that they are three.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I fully appreciate the proposals that the two Chairmen have put forward but in line with what has happened in other countries like Zambia, Namibia, Mauritius, South Africa and Tanzania, there is, indeed, a representative of the security agencies. Whereas I fully appreciate, from the point of view that he was referring to before, that he does not want the national intelligence involved because of the fears that he put forth, at least, there needs to be some representation from the police who are the ones in charge of prosecutions. It will not hurt us in any way to allay their fears

because it is not to be used to prosecute. The way he has re-arranged, the Board is largely private and finance sector driven. So, the additional person cannot be the one who will make a difference to a whole Board. I appeal to the two Chairmen to allow us to have a representative of the security forces. This time, the one who is more relevant is the one who is charged with prosecutions of issues related to any financial crimes. We should leave out, as we had earlier agreed, the other ones that may have to do with national security in order to allay the fears of hon. Members. I plead that they accept that we include the Office of the President. That is the only bit that we have a problem with.

The Temporary Deputy Chairman (Mr. Mungatana): Hon. Members, we need to dispose of this. I will hear Mr. Okemo before we proceed.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, as a middle ground and to accommodate what the Deputy Prime Minister and Minister for Finance has proposed, we would like it to be specific that it will be the Commissioner of Police.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I support the proposal.

The Temporary Deputy Chairman (Mr. Mungatana): Hon. Members, Clause 50 if further amended by deleting the words “the Chairman of the Law Society of Kenya” and replacing the same with “the Commissioner of Police”.

The Chair is concerned that a new office of Inspector-General or something is created instead of the Commissioner of Police. Could we get better wording?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I do not think that will be an issue because if, indeed, that position were to change, it would automatically reflect in all the legislation.

*(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 50 as further amended agreed to)

(Clauses 51, 52 and 53 agreed to)

Clause 54

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

THAT, Clause 54 be amended in Subclause (3) by deleting the word “fifteen” appearing in paragraph (b) and substituting therefor the word “seven”.

Mr. Temporary Deputy Chairman, Sir, we want the young people in this country to have access these jobs. There is a requirement that the person who is to be appointed Director must have 15 years of experience. I do not think the extra number of years necessarily means extra wisdom.

(Question of the amendment proposed)

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

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

(Clause 54 as amended agreed to)

*(Clauses 55, 56,57,58,59,
60 and 61 agreed to)*

Clause 62.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 62 be amended—

(a) in Subclause (2), by deleting the words “might be realized” appearing in the second line of paragraph (b) and substituting therefor the words “is just”;

(b) by inserting the following new subsection immediately after subsection (5)—

“(6) The amount ordered to be paid under a confiscation order shall be paid on the making of the order, subject to the following provisions—

(a) if the defendant indicates to the court that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period;

(b) the period specified in paragraph (a) in which to make payment shall not exceed eighteen months from the date the confiscation order is made.”

Mr. Temporary Deputy Chairman, Sir, I beg to move the amendment, except for paragraph 6(b) at the end of the page on the Order Paper. I am withdrawing amendment to part (b) which reads as follows: “the period specified in (a) in which to make payment shall not exceed eighteen months from the date the confiscation order is made.” However, the other proposed amendment to Clause 62 remains as indicated on the Order Paper.

The Temporary Deputy Chairman (Mr. Mungatana): Hon. Abdikadir, are you suggesting that the last paragraph is, therefore, withdrawn from your proposed amendment?

Mr. Abdikadir: Indeed, Mr. Temporary Deputy Chairman, Sir. The last paragraph on page 550 which starts with “(b), the period....” I am withdrawing that part.

(Paragraph 6 (b) withdrawn)

(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)

(Subsection 6(b) withdrawn)

(Clause 62 as amended agreed to)

Clause 63

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 63 be amended by deleting the words “whether before or” appearing immediately before the words “after the commencement” in Subclause (1).

(Question of the amendment proposed)

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

(Clause 63 as amended agreed to)

Clause 64

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I beg to move
THAT, Clause 64 be amended in Subclause (2) by inserting the following new paragraph immediately after paragraph (b)—
“(c) such amount as the court believes is just.”

(Question of the amendment proposed)

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

(Clause 64 as amended agreed to)

(Clause 65 agreed to)

Clause 66

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 66 be amended—
(a) in Subclause (1), by deleting the expression “or since the beginning of a period of seven years before the fixed date” appearing immediately before the words “have legitimate sources”;
(b) in Subclause (2), by deleting the expression “65 (6)” and substituting therefor the expression “65 (5)”;

(c) in Subclause (3), by deleting paragraph (b).

(Question of the amendment proposed)

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

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

(Clause 66 as amended agreed to)

(Clauses 67 and 68 agreed to)

Clause 69

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

THAT, Clause 69 be amended—

(a) in Subclause (3), by inserting the following expression immediately after the word “order”—

“if the court is satisfied that—

(a) a criminal investigation has been started in Kenya with regard to an offence;

(b) there is reasonable cause to believe that a person leads a criminal lifestyle and has benefited from his criminal conduct.”;

(b) in Subclause (5), by inserting the following new paragraph immediately after paragraph (b)—

“(c) provision for the purpose of enabling any person to carry on any trade, business, profession or occupation provided that the court may place conditions as it believes appropriate for the purpose of ensuring that the restraint order is effective.”

(Question of the amendment proposed)

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

(Clause 69 as amended agreed to)

*[The Temporary Deputy Chairman
(Mr. Mugatana) left Chair]*

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

(Clauses 70, 71 ,72 ,73, 74, 75, 76,77, 78, 79, 80,

81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96,
97, 98, 99, 100, 101, 102 and 103 agreed to)

Clause 104

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 104 be amended by deleting Subclause (4).

Mr. Temporary Deputy Chairman, Sir, with you permission, let me read Subclause 4:-

“A person is not entitled to refuse to produce documents ordered to be produced under this section on the ground that:

(a) the document might tend to incriminate him or make him liable to a penalty; or

(b) the production of the document would be in breach of an obligation---”

Mr. Temporary Deputy Chairman, Sir, in criminal law, you have a right not to incriminate yourself. In other words, if you went to court in a criminal case and you decided to keep quiet, it is up to whoever is alleging that you are a criminal to prove that you are a criminal. It is the right under our Constitution to be presumed innocent until proven guilty and it is based on the fact that the State has all the resources and that you are entitled to protection under the Constitution.

Mr. Temporary Deputy Chairman, Sir, when you tell me in this Act that you cannot refuse to give me things that will incriminate you, what you are essentially saying is that the provision that you are innocent until proven guilty is turned upside down. These are criminal offences that we are talking about. Therefore, we propose the deletion because one is presumed innocent until proven guilty.

Secondly, the production of the documents would be in breach of an obligation. We are thinking of the lawyers. A lawyer is entitled to keep in trust documentation and information belonging to his or her client. If you were to force them to produce these documents because they will no longer be entitled to this defence, then you will be breaching the law in many other areas. Our criminal system is an entire system; it is not just anti-money laundering. This is just one facet of an entire *corpus*.

Mr. Temporary Deputy Chairman, Sir, we would propose the deletion of those two sections.

(Question of the amendment proposed)

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

(Clause 104 as amended agreed to)

(Clauses 105 and 106 agreed to)

Clause 107

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

THAT, Clause 107 be amended—

(a) by numbering the current provision as Subclause (1);

(b) by inserting the following new sub clause immediately after the newly numbered Subclause (1)—

“(2) Any authority or officer exercising powers under this Act or any regulations made thereunder who, without reasons recorded in writing—

(a) searches or cause to be searched any building or place; or

(b) detains or searches or arrests any person,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years, or a fine not exceeding one million shillings, or both.”

Mr. Temporary Deputy Chairman, Sir, this Act gives extreme powers to law enforcement agencies. While we understand the necessity for giving some of those powers, this amendment proposes to ask them or forces them to write down reasons for use of some of those powers, especially such powers as detention and arrest; essentially just to put them down in writing.

Mr. Temporary Deputy Chairman, Sir, this law, where it works, ought to work with a whole load of other laws dealing with privacy, consumer rights and safeguarding the rights of the individuals that this law deals with. We do not have many of those laws – we do not have the Freedom of Information Law so that you would have access to information – but to ensure that records are kept when one is arrested; when one is searched or when one’s house is searched. We are making it a criminal offence for the police not to keep those records so that somebody does not just come to your house and later on deny. Any searches, arrests and everything done must be recorded. It is just a recording requirement; it is not any other requirement.

So, Mr. Temporary Deputy Chairman, Sir, I propose amendments in Section 107, as indicated on the Order Paper.

(Question of the amendment proposed)

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I want to thank the Chairman of the Committee. I am seeing some practical difficulties in this amendment. I have no problem with the intention, but there are some practical difficulties. For example, at what point is it recorded? Because I am seeing a problem where a police or a law enforcement agent is to reveal that a crime may be committed or that somebody committed a crime. According to this, before searching or detaining such persons, he first says: “Can you, please, wait here? I first want to record the reasons why I want to arrest you.” That, to me, is not practical. It is going to make it actually impotent. It is not practical that before you detain or search, you first of all record the reasons. I think this is adequately covered in our law that states that you must obtain a search warrant where you have reasons to believe that an offence has been committed.

Mr. Temporary Deputy Chairman, Sir, really, at what point do you do the recording? How do you, before you detain or search a person, first of all record the reason? How practical is it? Will that person you want to detain or search stand still as you tell him: “I want to detain you” or “I want to arrest you and therefore, first of all stand still so that I can look for a piece of paper and a pen so that I can record the reasons

why I want to detain or search you”? This is not practical! We have heard of cases in Tanzania where before a policeman arrests you, he says: “Naomba nikushike.” So, this cannot work; it is not practical!

(Laughter)

The Temporary Deputy Chairman (Prof. Kaloki): So, hon. Githae, are you opposing the proposal? Could you state that?

The Minister for Nairobi Metropolitan Development (Mr. Githae): First of all, Mr. Temporary Deputy Chairman, Sir, I am appealing to the Chairman to see the practical needs of his proposal. If he does not, then, I will oppose it because it is not practical!

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Githae, you have to take a side!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I am opposing because it is not practical!

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I appreciate what the hon. Minister has said. Clause 104 deals with production orders. It states:-

“Where a person has been charged with or convicted of an offence (the charge has already happened and he has already been convicted) and police officer has reasonable grounds for suspecting that any person has possession or control of---“

It goes ahead to state: “---that the police officer ought to apply on a *ex parte* basis.”

Mr. Temporary Deputy Chairman, Sir, that means that the police officer alone goes to court to seek “a,” “b,” “c,” “d”. The problem is that when those orders are being given, the police officer is alone. The police officer goes to court alone. It is not what is referred to as “hot pursuit”. In other words, the police officer is not chasing a thief and then he says that he does not have time to record. This is a different scenario; it is a point where we are in court; where the police officer is searching for a production order. That is where Subclause 4 comes in. Our concern is that we want police officers to put it in writing and make it a criminal offence so that if they do not put it in writing and more important, if they falsify information, we want it to attract a penalty. This is because we have given a lot of powers to the police under this. We have also made it extremely difficult for anybody who does not follow these laws. We want fairness on the other side so that this is not used for rent-seeking. This law should not be utilized as law enforcement for harassing people, rent-seeking and bribe-seeking. Really, this is the issue. It is not to curtail a police officer who is on an emergency mission.

Probably, I would be willing to make it tighter so that we just make it deal with Clause 107. I am willing to hear the proposal from the Minister. Clause 107 is about powers to search for and seize documents relevant to locating property. If the Minister is willing to make it tighter so that we deal with those powers of search and seizure of documents relevant to locating property as opposed to an officer who is searching for a thief who is running away and who does not have time. We are dealing with documents and seizure of documentation and powers to search in relation to the seizure of documentation in locating property. In other words, where somebody is trying to hide documentation, we are asking the police officers to record.

(Question of the amendment proposed)

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

(Clause 107 as amended agreed to)

*(Clauses 108, 109, 110, 111, 112, 113, 114,
115, 116, 117, 118, 119, 120, 121, 122, 123,
124, 125, 126, 127, 128, 129, 130,
131, 132, 133, and 134 agreed to)*

First Schedule

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

THAT, the First Schedule be amended by deleting items (f), (g), (i), and (j).

We are proposing amendment of the First Schedule essentially to remove a number of entries which had been removed in the earlier Bill. We do not see why the Law Society of Kenya (LSK) should be a supervisory body. In (g), with regard to the Board of Registration of Architects and Quantity Surveyors, we do not see any reference being made to the architects. Maybe I should read the First Schedule. It states:

“The following institutions are supervisory bodies referred to in section 2:

- (a) Central Bank of Kenya;
- (b) The Insurance Regulatory Body;
- (c) Betting and Licensing Control Board;
- (d) Capital Markets Authority;
- (e) Institute of certified Public Accountants of Kenya;
- (f) The Law Society of Kenya;
- (g) the Board of Registration of Architects and Quantity Surveyors;
- (h) Estate Agents Registration Board;
- (i) The Kenya Roads Board;
- (j) Non-Governmental Organizations Co-ordination Board;
- (k) The Retirement Benefits Authority.”

Mr. Temporary Deputy Chairman, Sir, you will realize almost all of the institutions listed have good reasons for being supervisory bodies because they deal with the issues we are talking about. But for (f), the LSK; (g) the Board of Registration of Architects and Quantity Surveyors; and (i), the Kenya Roads Board, – These are Government institutions and if the Minister wanted them to report even without laws, he could order them to report to him section (j) refers to, the NGOs. In an earlier proposal, we had brought in the NGOs. I am willing to remove that amendment. So, can I propose the following amendment, Mr. Temporary Deputy Chairman, Sir?

I beg to move:-

THAT, the First Schedule be amended by deleting items (f), (g) and (i).

In this amendment to the amendment, we propose to leave the NGOs Co-ordination Board.

(Question of the amendment proposed)

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

(Amendment to subsection "j" withdrawn)

(First Schedule as amended agreed to)

(Second Schedule agreed to)

(Third Schedule agreed to)

(Fourth Schedule agreed to)

(Fifth Schedule agreed to)

(Sixth Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the The Proceeds of Crime and Anti-Money Laundering Bill, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING BILL

Prof. Kaloki: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Proceeds of Crime and Anti-Money Laundering Bill, and has reported the same to the House with amendments.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Education (Prof. Ongeru) seconded.

(Question proposed)

(Question put and agreed to)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Deputy Speaker, Sir, I beg to move that The Proceeds of Crime and Anti-Money Laundering Bill be now read the Third Time.

The Minister for Education (Prof. Ongeru) seconded.

(Question proposed)

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Deputy Speaker, Sir, today is, indeed, a historic occasion. We have been looking at this Bill for a very long time. It has come to the Floor of Parliament once or twice. However, it is to the credit of the Tenth Parliament that we now have an Anti-money Laundering Bill. Yes, it has been diluted a little bit, but I think a bone is better than nothing.

Thank you, Mr. Deputy Speaker, Sir.

(Question put and agreed to)

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

MOTIONS

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

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, 8th December, 2009, together with the Concession Agreement and Tolling Regime annexed thereto.

(The Minister for Roads on 9.12.2009)

(Resumption of Debate interrupted on 9.12.2009)

MOTION

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

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Thank you for giving me this opportunity. I want to raise a point of order under Standing Order No.36 and move:- THAT, the debate be now adjourned. I ask you to use your discretion to postpone this debate to a later date, maybe in the next Session for the following reasons:

One, if you actually look at what we have before us, it has the potential of being another Anglo-Leasing scam. I am not saying that the Minister is up to anything bad. The Minister is a very good friend of mine, but if you actually calculate the amounts involved in the proposed scheme, you will realise that they are astronomical. For example, at a very conservative estimate, if you talk about a traffic flow of 10,000 vehicles per day, which is a very conservative estimate, then he will be making Kshs97 million per day. At a less conservative estimate, he will be making Kshs974 million a day. This means that there will be absolutely no money that will even be put into investment. This proposed company will be basically reaping benefits without putting in anything. It will be making about Kshs29 billion per month.

If you look at some of the things at page 11 - the Minister has done a good thing by giving us some sort of highlights into the contract - the contract itself is very voluminous, and the wordings that we were given are very vague. For instance; for example it says: "The concessionaire will maintain the road and expand it whenever necessary". We do not know what "whenever necessary" means. He could expand it on the 29th year and he will have 30 years. So, I would urge that the House postpones this debate to a later date when we have looked at it properly, so that if there is a problem, we fix it before we give our approval.

Mr. Deputy Speaker: Order! Hon. Millie Odhiambo, whereas the Chair sees the seriousness of the issue you are raising, you cannot raise it under Standing Order No.36. If you have to raise a matter like that one, you can only do so under Standing Order No.25. So, you are out of order as far as Standing Order No.36 is concerned.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. I wish to raise a point of order under Standing Order No.25. I am requesting the House to put off the debate on this Motion to a later date in order to give us time to look at it. The amounts that are involved here are astronomical. As I have indicated, you will actually find figures that represent profits of Kshs29 billion per month; we are talking of billions in a day. Our maths may not be so good because of the short time, but that is actually the position. So, until we go through this voluminous contract and engage people who can do a cost benefit analysis for us to properly understand it, we would be treading on dangerous grounds.

With those few remarks, I beg to move.

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

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

Mr. Nyamweya: Mr. Deputy Speaker, Sir, I stand to support the Motion moved by Ms. Odhiambo under this particular Standing Order. I have all the literature that we are required to have gone through, since yesterday, and approve. I would love to approve it, but I have to go through the document and understand the consequences of approving it; to both the country and the people I represent. So, we need time to study these

documents properly. Maybe, the Minister can organise a retreat or session to take us through these documents before we proceed with this debate.

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

Mr. Deputy Speaker: What is it, Mr. Midiwo?

Mr. Midiwo: Mr. Deputy Speaker, Sir, I rise to oppose the suggestion by Ms. Odhiambo to adjourn this debate to a later date. As you will recall, yesterday, there were issues raised. We have had this document for 48 hours. So, the suggestion by hon. Nyamweya that we need a retreat to read what is before us is not acceptable. I think we are trying to create a mountain out of an anthill.

Thank you, Mr. Deputy Speaker, Sir.

(Question, proposed)

Mr. Deputy Speaker: Hon. Members, you can now contribute and give the pros and cons.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Deputy Speaker, Sir, the Joint Chief Whip has said that we have had this document for more than 48 hours. What I am holding right now is Annex 1. It would be interesting if the Joint Chief Whip could tell us what is in this document. What is on page 91 of this document? Clearly, he has read it in the 48 hours that we have had. The main Concession Contract, before you get to the annexures, is the document that I am holding. Of course, the document has been available to Members of Parliament since yesterday. It would be interesting if, perhaps, you could tell us what is on page 110 of this contract.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Order, hon. Members! The hon. Member is contributing to the Motion.

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

Mr. Deputy Speaker: What is it, Mr. Githae?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Deputy Speaker, Sir, you realise that this Motion was brought here by Government Minister. When he was moving debate yesterday, he said that the Government wanted this Motion to be passed, so that the other things can begin, so that we can begin decongesting our city. I am surprised that my good friend, Mr. Muriithi, who is an Assistant Minister, is actually opposing a Government Motion that has been approved by the Cabinet. Is he in order?

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Deputy Speaker, Sir, I am sure that the HANSARD will bear me witness. I have not opposed any Motion. The Motion before us is whether the debate should be adjourned to continue on another date. I am in agreement that we continue with this debate on another date; to give ourselves a chance to look through the documents and do Kenya justice.

The Motion before us has one other technical challenge. If you look at the Order Paper, you will see that the Motion is for this House to approve Sessional Paper No.4 on the Nairobi Urban Toll Road Concession Project, laid on the Table of the House on

Tuesday, 8th December, 2009. The Order Paper says that we are resuming debate interrupted on Wednesday, 9th December, 2009. From yesterday, the Order Paper has been talking about the House approving the road concession agreement and the tolling regime between the Government of Kenya and Messrs Strabag/HCH Joint Venture, and so on. I invite your ruling: Are we resuming debate or is this a different Motion?

Mr. Lessonet: Mr. Deputy Speaker, Sir, I stand here to support the Motion on the concession agreement.

Mr. Deputy Speaker: Order! What is before the House now is the Motion moved by Ms. Odhiambo.

Mr. Lessonet: Mr. Deputy Speaker, Sir, I beg to oppose the Motion as proposed by Ms. Odhiambo. As you are aware, we have been waiting for so long---

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for my good friend and able Deputy Chairman of the Constituencies Development Committee (CDF) to talk of a Motion brought by Ms. Odhiambo? The Motion before the House was proposed by the Chair, and it reads "Debate be now adjourned." Now you are supposed to either support or oppose it.

Mr. Deputy Speaker: Are you sure you know what you are talking about, Mr. Ethuro?

(Laughter)

Mr. Lessonet: Mr. Deputy Speaker, Sir, of course, I stand to oppose the Adjournment Motion. I am doing this for the very simple reasons that we have been waiting for good roads for so long in this country. If this House today does not pass the concession agreement, some of us, who are now in our 40 years-plus, will be 80 years old before we see good roads.

We want to switch from driving four-wheel-drive vehicles to Ferrari cars. The only way we can drive Ferrari, Jaguar, BMW and Mercedes Benz cars is to have good roads. Even the VW Passat vehicles that we have just received cannot move on the current roads that we have.

Mr. Deputy Speaker, Sir, another issue I want to inform hon. Members on is that there is no much financial obligation by the Government of Kenya in this concession. These are people who want to invest their money. Furthermore, it is not mandatory for anybody to use that road. It is not mandatory for anybody to pay to use that road, because the Ministry has created bypasses. If you are coming from Nakuru, you can access Nairobi without paying toll charges by using Limuru Road. If you are coming from Mombasa, you can avoid paying toll charges by entering Nairobi through Outering Road or the Southern and Eastern bypasses.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I rise to oppose the Motion on adjournment of this debate. I am not seeing hon. Bett smiling. This is a very critical intervention. I oppose the Motion because the Minister did put across his arguments yesterday. We had similar concerns, but we have since established that this is really an opportunity for the Government to go back to the financiers of the concession, so that they can start this important facility. The House may recall that it was demanded of the Attorney-General before the next general elections, to come with draft regulations, which

we usually approve in principle for him to effect. This House has been able to do it. To me, that is the same spirit in which the Ministry has brought this contract.

Finally, if you look at the Concession Agreement, Chapter 4 has given an input for us as Parliament in which we can be part and parcel of this process so that the Letter of Agreement that will finally come through will have to be laid before this House. It has also made it very categorically clear that the Minister cannot enter into an agreement that has not been approved by the House. If he does so, it is null and void. That is contained in the Concession Agreement.

With those remarks, I oppose the adjournment.

Mr. Deputy Speaker: Order, Mr. Ethuro! This is debate on adjournment of debate on the Motion. Hon. Members are not opposing the Motion. However, they do not want the Motion to be debated now. You have to understand exactly what they are contributing to. Under Standing Order No.25, you have a right, without opposing a Motion, to say that debate on a Motion be adjourned. This essentially means the Motion is deferred to another day. That is the point.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I wish to oppose the Motion that debate on this Motion be deferred to another day. It is a very wrong impression for somebody to say that this document cannot be read within 48 hours. That gives a wrong impression. This House has very educated people. If an outsider heard that Members of Parliament from Kenya cannot read this document, they will wonder what kind of Members of Parliament we are.

This issue is not coming to the House for the first time. It has been to the relevant Departmental Committee. That committee has basically approved it. It is shocking that after the Government spends so much money to send Ministers and Assistant Ministers to seminars, they come to bring their differences here. Who does not know the seriousness of traffic jams? I was once accosted along Mombasa Road yet I am not a Minister. It took us two hours---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to insinuate that I am an Assistant Minister and I am bringing those differences to this House?

Mr. C. Kilonzo: You are definitely not and there is no chance of you being one.

(Laughter)

Mr. Deputy Speaker, Sir, I was once accosted along Mombasa Road because it took us almost two hours from the airport to Nyayo Stadium. These fellows apparently just saw me and asked a simple question: "You cannot do something about this jam?" Time is of essence. We need to move like lightening. By the time I hit my 46th birthday, I want to see these flyovers. I beg that this Motion is not deferred to another date.

The Assistant Minister for Roads (Dr. Machage): On a point of order, Mr. Deputy Speaker, Sir. The mood of the House is such that this Motion for adjourning debate on the Motion is defeated. Would I, therefore, be in order to ask that you put the question?

Mr. Deputy Speaker: Order, Dr. Machage! You are out of order!

Given the sensitivity of the issue in question, Members of Parliament have a right to ventilate their positions on this.

Please, proceed, Mr. I. Muoki!

Mr. I. Muoki: Mr. Deputy Speaker, Sir, I would like to oppose the Motion of adjournment of debate on this Motion.

I am the Vice-Chairman of the Departmental Committee on Transport, Public Works and Housing and since the Chairman is not here, I am acting on his behalf. This issue has come before our committee. We have had a half a day meeting with the Minister and his officials. We raised issues of concern. We discussed and have seen that the issues are valid.

The only issue that was of concern as of yesterday was the registration of a company at the local level. I am sure those issues have been tackled, as the Minister will confirm. Therefore, it is necessary that we move on with the Motion on the Sessional Paper so that we can have proper road network in the country.

With those remarks, I beg to oppose.

Mr. Nyamweya: On a point of order, Mr. Deputy Speaker, Sir. The Vice-Chairman hardly tabled their report on whatever meetings they had. Can we just take it from his word that they have a report which we have not seen?

Mr. Deputy Speaker: Vice-Chairman of the committee, did you have time for your own committee to report on the Sessional Paper as well as the---

Mr. I. Muoki: Mr. Deputy Speaker, Sir, we held a half-a-day retreat here in Parliament so that we could discuss with the Minister and for the committee to be adequately briefed to ensure that this document is valid. This is contained in the minutes of our committee meetings.

Mrs. Noor: On a point of order, Mr. Deputy Speaker, Sir. Half-a-day is not adequate for a committee to look at a document critically and bring the report. Is the hon. Member in order not to give us the report to look at and adopt it?

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): On a point of order, Mr. Deputy Speaker, Sir. Would I be in order if I asked the Chair to dispose of this Motion?

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Mr. Deputy Speaker, Sir. I did rise and invite your ruling on which Motion we are debating to defer to another day. This is because today's Order Paper says we are resuming debate on a Motion that was before us yesterday. However, it would appear to me that the Motion as is in front of this House is different from the Motion that was there yesterday. I request that you make a ruling on this issue.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. It is a little bit disappointing because most of us will spend a lot of time here. If the hon. Member is not aware, there was a Supplementary Order Paper yesterday. Is he in order to waste the time of this House by alleging that this is not the same Motion that we debated yesterday, while there was a Supplementary Order Paper with this Motion?

An hon. Member: Name him?

Mr. C. Kilonzo: We will name you!

Mr. Deputy Speaker: While the Chair is verifying that, can we have Mr. Okemo!

Mr. Okemo: Mr. Deputy Speaker, Sir, I think we have to be fair to everybody. If there are those who have not read the report and they do not understand it, surely they must be given a fair chance to read it and understand it. If there are those who have read and understood it, that is good. They can even help to tell those who have not read what

they have read and understood. I believe that the spirit by which we are saying that this Motion has to be debated is because of anticipation that the House is going on recess today. I think that is the anticipation.

If I am sure that the House is going on recess today, then I would go for debate on this Motion to take place today. But if the recess will come after today, then surely you can give Members extra time to read the document and understand it. A Sessional Paper is a very important thing.

Mr. Deputy Speaker, Sir, the road sector is very important. We know that our infrastructure needs to be improved. I think this is a good effort and we need to support the Government to implement this part. It is in the good intention of improving economic development in Kenya. Do we want to carry everybody on board or do we just want to do it for a small section of people who say “yes” or “no”? I propose that if we are adjourning today, then we should stop further debate on whether we should adjourn or not and get on to business. The Ministry must give an undertaking to the House that it will bring us on board as it proceeds with the concession so that hon. Members are appraised of the progress from time to time. That way, those who have not had the opportunity to read the concession document will bring themselves to page. So, the Minister should give an undertaking that he will make sure that he will keep Parliament appraised from time to time as he proceeds with the operationalisation of the concession.

Prof. Kaloki: On a point of order, Mr. Deputy Speaker, Sir. Mr. ole Metito has already requested the Chair to direct whether we should vote on the Motion as it is or not.

Mr. Deputy Speaker: Order! Do not direct the Chair! The Chair will use his discretion and allow everybody to ventilate on the same.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I stand to oppose the proposed adjournment by Ms. Odhiambo. I want to use this opportunity to educate Mr. Okemo on his assumption that if some hon. Members do not make time within 48 hours to read, then they should hold the country back until they have read at their own pleasure.

Mr. Okemo: On a point of order, Mr. Deputy Speaker, Sir. There is a big difference between “reading” and “reading and understanding”. I think what Dr. Khalwale is referring to is flipping through pages. I am talking about “reading and understanding” the content of the document and many of us who read and understand know that you need time to do that.

Dr. Khalwale: Mr. Deputy Speaker, Sir, the views of Mr. Okemo are most welcome. I take pleasure from the fact that he is a renown professional but as he knows very well, I am also a renown professional in my own right and professionals do not peruse crucial documents. Professionals read, understand and then take positions.

Mr. Onyancha: On a point of order, Mr. Deputy Speaker, Sir. Is Dr. Khalwale in order to mislead this House that he is a professional like Mr. Okemo, when we know that he is a medical doctor who does not understand figures?

(Laughter)

Dr. Khalwale: Mr. Deputy Speaker, Sir, I think the point of order by Mr. Onyancha is purely to serve comic relief. He knows that during our days, and he went through the same system like me, to qualify for Medicine, you had to prove beyond

reasonable doubt that you were competent in Mathematics. I was taught by that Professor who can attest this.

To come to a firmer ground, the fears of hon. Members are already taken care of in Bullet No.5 of the Sessional Paper to be approved which reads:-

“That any agreement entered into by the Minister or a roads agency pursuant to Sub-Section (1) without the approval of the National Assembly, shall be null and void.”

Therefore, there is no way this Minister can run away from us. So, if we give him this leeway and do not hold the country backwards, he will still have time to come back to us, report on progress and we will agree or disagree.

I oppose the adjournment.

Mr. Nyambati: Mr. Deputy Speaker, Sir, I want to say that I am also a Member of the Departmental Committee on Transport, Public Works and Housing. I would like to say that it is extremely important for this House to understand the problem of congestion that we have on our roads. I expect the hon. Members to be the first to support the Minister in his endeavour to get rid of all the problems that we have in this country.

An hon. Member: Especially, Ministers!

Mr. Nyamweya: Mr. Deputy Speaker, Sir, let us make it abundantly clear that nobody is opposing the Motion by the Minister. We are only saying that we want time to study, understand and support it.

Mr. Deputy Speaker: You are the one who is now opposing the Motion of adjournment.

Proceed, Mr. Nyambati!

Mr. Nyambati: Mr. Deputy Speaker, Sir, it for this House to help the Minister move forward. It is not the work of this House to pull down the Minister.

(Applause)

So, we must do what we can to ensure that he moves forward. This country has refused to develop because of this.

The Assistant Minister for Public Works (Mr. Wathika): On a point of order, Mr. Deputy Speaker, Sir. The way the debate is going, it is like we are debating the Motion of---

Mr. Deputy Speaker: It is a Motion of Adjournment on this Motion. That is what we are debating.

The Assistant Minister for Public Works (Mr. Wathika): Mr. Deputy Speaker, Sir, it is like we are repeating ourselves and debating the Paper. I think we need your guidance on this matter.

Mr. Deputy Speaker: Mr. Wathika, I will give you guidance if you just sit a bit. The Chair will give you guidance. This is almost exhausted. Let Mr. Nyambati finish and then the Chair will put the Question!

Mr. Nyambati: Mr. Deputy Speaker, Sir, I want to conclude because I do not want to belabour this point. I strongly oppose the Motion for Adjournment. We must move forward and conclude this. We must have the concession. The contract is okay!

(Applause)

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, under normal circumstances, the issue of road congestion would have come to the Floor of this House under an issue of national concern or a national emergency requiring an immediate action and fixing. I believe this is the spirit behind this Motion. We should not adjourn. Considering the cries of the public in as far as road congestion is concerned, and the number of hours spent on the road by students to reach their schools, this should be treated as a matter of national importance and urgency and we dispose it of. Now that we have a comfort zone on the contract, we shall have an opportunity to interrogate and question areas that we feel uncomfortable about.

Mr. Wambugu: Mr. Deputy Speaker, Sir, I rise to oppose the Adjournment Motion. I am standing here as a Member of the Departmental Committee on Transport, Public Works and Housing. If you understand clearly what has been happening in the last few days, most hon. Members have been coming late with excuses of traffic jams in this City. Unless we move forward and start working to clear the traffic jams that we have in this City, we will not go anywhere. I propose that we continue with this Motion and dispose it of so that we can have this portion of the road done once and for all.

Mr. Chachu: Mr. Deputy Speaker, Sir, I rise to oppose this Motion of Adjournment. From the outset I am biased when it comes to issues of roads under President Mwai Kibaki. We have done miracles in this country in the last seven years. I never thought in my lifetime that I would drive on a tarmac road from Isiolo to Marsabit all the way to Moyale but it is a reality today. There is no reason for us to procrastinate on making critical decisions. Time is money! Our Parliamentary Committee has perused this document and given its approval. Let us not waste time. Let us give the Minister the necessary support he needs and let us turn this country around. It is time Nairobi became an urban city just like New York or Washington.

Mr. Jamleck I. Kamau: Mr. Deputy Speaker, Sir, I also do rise to oppose this Motion of Adjournment. If I look around, I can clearly see that hon. Members who are opposing the Motion are more than those who are supporting the Motion. Maybe, only one is supporting the Motion. So, my only advice---

Ms. Odhiambo: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead the House that it is only one hon. Member who is supporting the Adjournment Motion? He is not in order.

Mr. Deputy Speaker: Mr. Jamleck Kamau, say what you have to say in opposing the Adjournment Motion.

Mr. Jamleck I. Kamau: Mr. Deputy Speaker, Sir, I think it is clear that we have had serious problems in this country. We experience traffic jams and stuff like that. That is exactly what all hon. Members are standing here to talk about. We are actually wasting time, standing up and debating on whether to proceed with the Motion or not. My only advice to my colleagues who are opposing debate on this Motion is that we should sit down. The two people who are for the adjournment of this Motion can stand up. Nobody else will be standing up. We will go on with the Motion.

Mrs. Odhiambo: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead the House by saying that one hon. Member is supporting the Adjournment Motion? He is out of order.

Mr. Deputy Speaker: Yes, he is out of order. Mr. Mbadi.

Mr. Mbadi: Mr. Deputy Speaker, Sir, I also stand here to oppose the Adjournment Motion. I would like to request the two Members of Parliament plus the Assistant Minister who forgot that he was in the Government, to back down and allow us to proceed.

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Mr. Deputy Speaker, Sir. I am sure the reason why we are referred to as hon. Members is that we conduct ourselves with honour and dignity. So, is it really in order for Mr. Mbadi to purport to see inside my memory and understand what is going on there? Does he have a meter for my brain?

Mr. Deputy Speaker: Mr. Mbadi, you are opposing the Motion of Adjournment. Can you confine your contributions to that?

Mr. Mbadi: Mr. Deputy Speaker, Sir, I know it is very hard for an accountant to do exactly what he is saying. You need to be a doctor or a psychologist to do that. Let me go to my point. Our rules of debate had envisaged that not all of us would be able to read the documents and that is why we have parliamentary committees. If the relevant parliamentary committee of the House has assured us through three hon. Members that they have had time to look at this concession and they feel it should proceed, I think it would only be perfect that we oppose the Motion of Adjournment and let the earlier Motion proceed.

I oppose.

Mr. Konchella: Mr. Deputy Speaker, Sir, I stand to support the Adjournment Motion. For the last 20 years, this country has experienced nothing but Anglo Leasing, Goldenberg and now it is experiencing unnatural roads.

The Minister for Roads (Mr. Bett): On a point of order, Mr. Deputy Speaker, Sir. You have heard the hon. Member say that my Ministry is involved in Anglo Leasing and that we are preparing to be in it. I want to give an assurance to the House that my Ministry is not in any way--- I want to ask him to substantiate.

Mr. Konchella: Mr. Deputy Speaker, Sir, I did not mention that. The Minister is my friend and he is the most experienced person in this country and we respect him.

Mr. Deputy Speaker: Anglo Leasing has got nothing to do with this Motion.

Mr. Konchella: Mr. Deputy Speaker, Sir. I agree with you.

Mr. Deputy Speaker: Hon. Members, it is the cardinal principle of democracy and parliamentary practice that the wish of the majority is going to be held, but the right of the minority to express itself is a constitutional right. Proceed, Mr. Konchella.

Mr. Konchella: Mr. Speaker, Sir, the document is supposed to tell us how long it will take the concessionaire to recoup his funds and how much Kenyans will pay for the next 30 years. What will happen is that we will exploit the people of Kenya to the extent that they will not be able to drive their cars on the road because the concessionaire will put, with a few clique of people in power, any rate that he or she wants and make Kenyans pay through their noses.

Mr. Deputy Speaker: Mr. Ogindo, allow Mr. Konchella to contribute.

Mr. Konchella: Mr. Deputy Speaker, Sir, the request by Ms. Odhiambo is to enable Kenyans to give us their views. We are not the only stakeholders. There are many stakeholders all over the country and they are the ones who will calculate the figures and tell us how it will go. So, when we come here to debate, we will know how much--- We

can give that figure to the Minister and it will be useful in future when he will be preparing the Bill.

Hon. Members: Put the question!

(Question put and negatived)

(Debate on Road Concession Project Resumed)

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity---

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. At the point of departure yesterday, I was actually on the Floor.

Mr. Deputy Speaker: Under the circumstances, you can continue. In the same breath, you can move your amendment which has been approved. Proceed.

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to speak. I want to use this opportunity to move straight to the amendment which I intended to move yesterday. I wish to note that the events of yesterday were such that the Office of the Clerk allowed the clerks to create a lot of confusion in the House on an issue that was fairly straightforward.

Therefore, I wish to move the following amendment. I want to amend the Motion by inserting the word “proposed” between the words “the” and “concession” on the second last line of the Motion---

Mr. Nyamweya: On a point of order, Mr. Deputy Speaker, Sir. I was also present yesterday and the Chair ruled that you could not amend this Motion or the Sessional Paper itself. That ruling has not been vacated. So, how is my good friend purporting to amend the Motion when there is a clear ruling that you cannot amend this Motion?

Dr. Khalwale: Mr. Deputy Speaker, Sir, there was no ruling. What happened yesterday is that as we were ventilating on the point he is raising, time was up. So, I have been informed in writing by the Clerk that I go ahead with my contribution because we were right, those of us who attempted to amend this Motion.

The point of departure was that the clerks informed the Speaker that we were amending the Sessional Paper. But after consultations, it occurred very clearly that we were not amending the Sessional Paper which is not allowed under the Standing Orders. However, we were merely amending the Motion that is attempting to pass this Sessional Paper in the House. So, please, allow me to proceed.

Mr. Thuo: On a point of order, Mr. Deputy Speaker, Sir. I tend to agree with the point that was raised by hon. Nyamweya. Indeed, if it is true that having been determined in this House that, that happened, I was party to it and I even asked the Speaker under which particular Standing Order it was being raised. I was referred to Standing Order No.1. If, indeed, it is true that subsequent discussions took place and, therefore, that was vacated, it is necessary, if we were to keep within the procedures of this House, that the vacating of that decision be done here publicly and be pronounced by the Chair from his Chair. Otherwise, we cannot then purport to move on the basis of a write-up between a Member and the Clerk.

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir. Relax, hon. Thuo. I know you have been balancing a lot of speakers figures about the City Hopper.

Mr. Deputy Speaker: Order, Dr. Khalwale! The current Chair has to do a lot of consultations, because he was out of the country at the time.

Mr. Thuo: The Chair is always there!

Mr. Deputy Speaker: The Chair is always here, but the current Chair was not privy to this information. Nonetheless, the Chair is consulting. The Chair never changes. It is always the Chair, regardless of who is on the Chair. So, the Chair is consulting and I am made to understand, through the institutional memory of the Clerks at-the-Table, that this matter was not conclusively ruled on by the Speaker. So, proceed, Dr. Khalwale!

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir. I hope my time will be taken care of. The amendment I am proposing is that after inserting the word “proposed”, the Motion will therefore read as follows:-

“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 8th December, 2009, together with the proposed concession agreement and tolling regime annexed thereto”.

I am proposing this amendment because from yesterday, and even today, it is quite clear that the entire House would like the concession process to take off. The only worry, which is shared on both sides of the House is, might we be creating a window for possible corruption in this big project? So, by introducing this particular amendment, we are taking care of this because we are now bringing the Motion directly in congruence with Section 4A of the Public Roads Toll Act, Cap.4, Bullet No. 3. This bullet says a proposed agreement for the purpose of this section shall be before the National Assembly approval for prior signature. The current Motion, which I am amending, does not bring a proposed agreement. It actually attempts to bring an agreement. So, now that this Motion is recognizing that particular document merely as a proposal, it, therefore, makes it congruent with the Sessional Paper.

Mr. Deputy Speaker, Sir, the third reason why I am proposing this amendment is that we are now having the benefit of hindsight, in the sense that in the past, similar opportunities were used by previous Governments to fleece the taxpayer. Members of this House will remember that when Safaricom was being launched, there was a clever way in which this House was used as a rubber stamp; then a shadowy company called “Mobitelea” was sneaked in and as Safaricom has grown, people have remained very angry with the kind of unfair profits that Mobitelea continues to make. Also, when we privatized Telkom (K) under the current Government, seven days before the privatization process, a company was actually registered in Dubai by the name of Al Kazar Capital. This offshore company, because of the clever way of doing things away from the watchful eye of Parliament, ended up owning a whopping 11 per cent of the shares in Telkom (K) Limited. So, we want to be cleverer, and ensure that as we pass this Sessional Paper, we are not giving people a blank cheque.

Having given those reasons, I would like to use this opportunity to condemn the attempt by the Minister for Roads to use this Parliament as a rubber stamp. This must never be done again in this country. Parliament must be respected by the Executive. There must be no attempt to convert us into a mere rubber stamp. Had the Minister not incurred the watchful eye of the un-official opposition, then the following questions would not have arisen. There are important questions which he must answer, which

include: Who is this company called Strabag? Who is Nairobi Motorways, as we find in this big book? When was Nairobi Motorways registered? We would like to know who owns the Nairobi Motorways Company. It is important for this House to proceed with the full knowledge of who are the directors and the shareholders of these companies. The final question that this House would have liked answered, and I am sure, in his contribution the Minister will respond to this question, is: Are we satisfied that the Nairobi Motorways Company, which is now in this big book that a few Members are yet to read, is suitably qualified as required by Section 4A of the Public Toll Act, Cap.407?

Mr. Deputy Speaker, Sir, look at what they did. Just give me a minute and you will see what they did in attempting to make us a rubber stamp. They were attempting to bring this book under Article 14, notices. They were attempting to have us pass this voluminous book without giving us an opportunity to realize that on the addresses, 14.2 is Strabag, and the only thing that you know about Strabag is that it is a company on a street called Strabe Nine A 1220 in Vienna, Australia. The area where you are supposed to be told who the directors are, they have written there "Mr". and left it blank. In the area of email, they have written there "email" and left it blank. The area of facts, they have written there "facts" and left it blank. This was an attempt to use Parliament as a rubber stamp. Be a gentleman and apologize for this, so that we can move forward. We do not want to hold the country back.

Also, Strabag, which is a fairly well known international company, has gone into partnership to create Nairobi Motorways with a company called "Housing and Construction Company Limited". There is nothing you know about this company. The only thing they have written here is that it is a company from Israel, which is registered at a street called Three Sharlam Street. Hon. Members, you must remember that during the last Parliament, when hon. Kenyatta was the Chairman of the Public Accounts Committee, and he tried to follow some of the Anglo Leasing fellows, he found that it was just some address in Liverpool. When the Members went there, they found an old woman next to the door at the address they were talking about. We want to avoid this kind of thing.

The other thing which speaks volumes about the Grand Coalition Government is that actually, the Permanent Secretary, Mr. Kamau, did the right thing. He presented this document from Strabag to the office of the Attorney-General, and the Attorney-General purported to go through it. Mr. Wanjuki Muchemi, the Solicitor-General, wrote a letter--- Just to read out what he told the Permanent Secretary, he said:

"We have studied your clarification and are satisfied with the responses. In view of the clarification, we find the contract to be in order from a legal stand point view".

How could the Solicitor-General say that this agreement was legal, when, in the first place, the questions that I have asked were begging? It should have been for the Solicitor-General to tell the Permanent Secretary: "Please, do not go to Parliament with these begging questions because Parliament is going to spot them". It leaves a very big question mark on the head of the Solicitor-General. One of these days, when Parliament will become angry, it might move substantially against the Solicitor-General and the Attorney-General of Kenya. Maybe, we do not want to waste too much time on the Attorney-General, because his fate is almost sealed.

Mr. Deputy Speaker, Sir, with those many remarks, I wish to move this amendment and request, for purposes of moving with speed, the hon. Minister for Roads to consider seconding it.

The Minister for Roads (Mr. Bett): Thank you, Mr. Deputy Speaker, Sir. I beg to---

Mr. Deputy Speaker: Hon. Minister, the Chair is a little bit lost with these voluminous contracts here. Whereas there is an amendment being moved, I do see some initials on the contract itself. Has this contract been signed? Can you just clarify for the benefit of the House?

The Minister for Roads (Mr. Bett): Mr. Deputy Speaker, Sir, first of all, I want to assure the Chair that the initialing of the pages was only intended to protect the content of that page because the negotiations were done so many times and there were several alterations on the pages. So, in order to protect what was agreed per every page, it was agreed to initial every page. Otherwise, the final page embodying the document has not been signed. I want to agree with hon. Dr. Khalwale. He has read it so well; that in the Public Roads Toll Act, it says, "the proposed concession agreement." That means that there is no conclusion as yet on the contents of the various pages. So, those areas which are appearing blank would have to be dealt with at the date when the document will now be finally signed.

Mr. Deputy Speaker, Sir, as I second the amendment, I also note that the hon. Member has asked that several issues be clarified. I want to indicate that the lawyer of the concessionaire was advised that it would not be necessary to register the company until the National Assembly---

(Loud consultations)

Mr. Deputy Speaker: Order! Hon. Thuo, could you allow the hon. Minister to be heard in silence?

Mr. Thuo: Mr. Deputy Speaker, Sir, I have allowed him.

The Minister for Roads (Mr. Thuo): Thank you, hon. Thuo!

Mr. Deputy Speaker, Sir, I was saying that the lawyer of the company – and I have checked with him - was advised that the document would need to be approved by Parliament first, before the company is registered. I am aware that he was instructed to register the company on 13th July, 2009, but he held on because of that advice. There was no bad faith or intention. Since then, we have asked him to move with speed and do the right thing. I am happy today to say that Nairobi Motorway Company Limited is now duly registered. I wish to lay on the Table of this House the relevant documents.

(Mr. Bett laid the documents on the Table)

Mr. Deputy Speaker, Sir, for the avoidance of doubt, I also want to table the names of the directors of the company.

An hon. Member: Read them!

The Minister for Roads (Mr. Bett): Mr. Deputy Speaker, Sir, I will read them. They are very complicated names. They are: Gerhard Outhowitz from Austria, a businessman and an adult; Wolfgang Somapau, Austrian, a businessman, and an adult,

Amid Segev, an Israeli businessman an adult and the last director is Yehuda Elmelek, an Israeli businessman and an adult. They have all been certified from the Office of the Registrar of Companies.

(Mr. Bett laid the document on the Table)

Mr. Deputy Speaker, Sir, I want to believe that I have answered the clarifications which were sought by my colleague.

I, therefore, beg to second the amendment.

(Question, that the words to be added be added, proposed)

Ms. Odhiambo: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I want to support the Motion as amended. The reason why I am supporting this Motion is because in my understanding, the Minister will bring back all the agreements before this House. Therefore, we will have time to look at the documents which some of us did not have an opportunity to look at.

Mr. Deputy Speaker, Sir, even as I am supporting this Motion, I would be mad not to support a system that helps this country in easing transportation problems. I have come late once to this House because of the congestion on the roads, even when you start pretty early. However, I would want to say that I am a little concerned by insinuations that, once a Committee looks at a document then, as Members, we merely rubberstamp. That is very far from the truth because then, we do not need to sit here today until 6.30 p.m. That is because the Committee would have just sat here and told us that since they agreed, we say hallelujah, go home and have a great Christmas.

Mr. Deputy Speaker, Sir, I would also want to encourage the House that we must continue with our culture of ensuring accountability and transparency in every transaction. Therefore, I want to agree with hon. Dr. Khalwale that in future, the Minister must table the documents in time and we must be able to peruse those documents. I mean, looking at them thoroughly. Interrogating means looking at them thoroughly. I am a student of English!

Mr. Deputy Speaker, Sir, actually, I want to put the Minister to account on one issue; that, the company was not incorporated. Actually, the Minister is right in law. So, on *prima facie* basis, I want to give the Minister my full support based on the backing of the law. Cap.2 of the laws of this country defines what a person is. The Minister is allowed to enter into a contract with a person. A person means a company corporate or incorporate. Therefore, what the Minister did was correct. You did not have need to have the company incorporated yesterday. But it is good that you have gone over and above that. That is the kind of culture we are encouraging.

Mr. Deputy Speaker, Sir, finally, in my support, I would like say that my concern is on the issue of costs. I want to urge the Minister that once the documents come back here, I would want to be sure that Kenyans are not going to be paying Kshs300 billion a month when we have so many of them living below the poverty line. So, I want to be assured by the Minister that those people will get back the money they have put in and will make reasonable profit.

Mr. Deputy Speaker, Sir, finally, even though we are being told that the document was availed in 48 hours, I am very studious. Yesterday, by the time we left here, I looked for the document and it was not available. I got it today at 11.00 a.m. That is not 48 hours.

I beg to support.

Mr. Nyamweya: Mr. Deputy Speaker, Sir, I also stand to support the amendment as proposed by Dr. Khalwale, simply because, indeed, that now takes care of the interest of Kenyans that, we are not signing a blank cheque to any Minister or any Government. With that proposed amendment, I will go further and urge the Minister, in the spirit of what we have achieved since yesterday through to today, to actually table the agreement, once it is signed, so that it is not one of those things which slips away and becomes part of the bureaucracy.

With those very few remarks, I beg to support.

The Minister for Nairobi Metropolitan Development (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. It is very clear from the mood of the House that, in view of the---

Mr. Deputy Speaker: Order! Order, Minister! You are out of order, Mr. Githae! Maj-Gen. Nkaisserry, you have the Floor!

The Assistant Minister, Ministry of State for Defence (Maj.Gen. Nkaisserry): Thank you, Mr. Deputy Speaker, Sir. Yesterday I opposed this Motion, but since it has been amended, I now support it. We just need transparency and accountability.

Thank you.

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

(Question of the Motion as amended proposed)

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

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, 8th December, 2009, together with the proposed Concession Agreement and Tolling Regime annexed thereto.

Mr. Deputy Speaker: Next Order!

MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE HOUSE SINE DIE

Mr. Thuo: Mr. Deputy Speaker, Sir, I stand to move a Motion for Adjournment of the House to a day other than the normal sitting day.

Mr. Deputy Speaker, Sir, you would appreciate that we have had a very busy Session during which we have done a lot of service for this great nation of Kenya. You will witness a day like today when we have done the Committee Stage for the Proceeds of Crime and Anti-Money Laundering Bill. Today, we have passed a unique and first in our life-time Sessional Paper No.4 of 2009 on Nairobi Urban and Toll Road Concession Project. Hon. Members have done a fantastic job, and obviously, like anybody else, they also deserve a break to rest, recover and work for the people from the ground.

I now invite my colleague, the co-Leader of Government Business, Jakoyo Midiwo, to second the Motion.

With those many remarks, I beg to support.

Mr. Midiwo: Thank you, Mr. Deputy Speaker, Sir. I rise to second the Motion of the Adjournment---

Mr. Deputy Speaker: Order! Order, hon. Jakoyo Midiwo! Mr. Thuo, did you read the Motion in full as it is in the Order Paper?

Mr. Thuo: Yes, I did, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Are you sure?

Mr. Thuo: Yes!

Mr. Deputy Speaker: The HANSARD will bear you out.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I rise to second the Motion of Adjournment. You will see the excitement we have because we want to go home for Christmas. This has been a very difficult year and I bet hon. Members need the break.

With those very many remarks, I want to say that we need to go home and debate the issues of the Constitution and those other important issues with our constituents for the next so many weeks and months, so that we can have a better country.

I beg to second.

Mr. Deputy Speaker: Hon. George Thuo, do you insist that you read out the terms of the Motion?

Mr. Thuo: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: You do not have to do it again.

(Question proposed)

The Minister for Nairobi Metropolitan Development (Mr. Githae): Put the question!

Mr. Deputy Speaker: Order! Hon. Githae, would you want to give me the pleasure of being the first Minister being sent out of this House?

The Minister for Nairobi Metropolitan Development (Mr. Githae): I apologize, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Yes. Proceed, hon. ole Metito!

Mr. ole Metito: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support this Motion of Adjournment. I agree with my colleagues that we need to break and go to our constituencies. As we go to our constituencies, I would kindly wish to appeal to my colleagues that this is the time that we are going to talk about the Harmonized Draft Constitution. It will be very good if we do it in a very orderly manner and in an approach that will unite the people of this country. As we express our

views there, let us do it in a very sober way. Let us give opinions and let us not really go the way we went in 2005.

Again, as we go out there, I would kindly ask the Minister in charge of the Constituency Development Fund (CDF) to ensure that those funds are released to the constituencies so that we can have time and resources to implement the projects that we proposed from the ground.

Finally, Mr. Deputy Speaker, Sir, because I can see my colleagues really want to contribute also is the issue of the Economic Stimulus Package. That was one way we saw in this year's Budget, when resources are being devolved to the constituencies. As we speak, a lot needs to be done. It is still about putting structures in place. The Deputy Prime Minister and Minister for Finance, my good friend, hon. Uhuru, really needs to move with speed to see whether we can operationalize those structures and those proposed devolved funds during this recess.

With those few remarks, I beg to support.

Mr. Yinda: Thank you, Mr. Deputy Speaker, Sir. I would like also to support the Motion of Adjournment. From what the first contributor to this Motion has said and the proposers to the Motion, the House has done a lot and we are fatigued and would have been at home like yesterday. But I would like to appeal to hon. Members that, as we go home, I want to support the fact that, we should ask our constituents to discuss the Harmonized Draft of the Constitution with a lot of caution because we have to understand that this country is for all of us, and everything that we do which can divide this country, will be bad and every one of us will suffer. So, I would like us to come back with sober minds to enable us to ensure that this country has a Constitution that we can leave to our children and our great grand children.

Finally, I would like to wish all hon. Members and their families a very Merry Christmas and a prosperous New Year.

I beg to support.

Mr. Affey: Thank you very much, Mr. Deputy Speaker, for giving me this opportunity to support this Motion. As we go and join other Kenyans for the constitutional review process, it is important that, this time round, we get it right. It must be done in an environment of sobriety because political parties and politicians are the greatest threat to the realisation of the new Constitution. They have always used it as a political tool and to gain political mileage. It has been seen for the last twenty years what the constitutional review process does. Therefore, it is very important that this time round we resolve all of us that we go out of our way to narrow the differences. Whatever that divides us, I do not think that it is so fundamental. It is something that we need to listen to each other and narrow down the difference so that we can get the document that can stand the test of time, not a document that we will prepare in order to satisfy our political interests or party interests.

Mr. Deputy Speaker, Sir, as we do this, it is also important that we maintain security. The security for this country is very critical, particularly during the festivity period. The Somalia situation has become a very difficult problem for this country. It is an area that we really need to focus on because the more refugees we get, the more the country becomes vulnerable. As we do this, let us be very careful particularly – I was a little disturbed by the statement from the Office of the President when the Permanent Secretary said that, they will carry out an audit of those foreigners who have invested in

this country in order to know their assets. You do not need to announce and issue that fundamental statement. We know how the foreigners come. They cannot be able to operate in the country if they are not registered, first of all, from the Ministry of State for Immigration and Registration of Persons, and secondly, from the Nairobi City Council, and thirdly from all the licences that they require.

Mr. Deputy Speaker, Sir, to announce publicly is to send a message of intimidation and every time the Office of the President announces a matter like this, the community that lives in the Eastleigh, Nairobi, have always fallen victim of victimization. There has been a tendency to collectively punish, threaten and intimidate these people. We want the Government to do its job because it has access to intelligence information. But to announce to security organs that in the next couple of weeks, they are going to take a certain action is, in my view, to intimidate investors. In any case, investors who come in are registered by the Kenya Government through the Ministry of State for Immigration and Registration of Persons and, therefore, the facts are known. You do not have to announce that you are going to conduct a census. So, I just wanted to alert to Office of the President to stop issuing those alarming statements because as we go into the New Year, it is important that we encourage more of investment into this country; investment that we know will help Kenyans.

Finally, we, as a Committee on Equal Opportunities, are a bit concerned about the threat to the albinos society. Members of the Kenyan society perceived to have albinism suffer. Therefore, we want the Minister for Planning, National Development and Vision 2030 to use the forum, before we resume again, to establish how many they are in the country, so that we can protect them. Foreigners are coming in and they seem to be people who are in great danger.

With those few remarks I support this motion.

The Assistant Minister, Ministry of State for Defence (Maj. Gen. Nkaisserry): Thank you Mr. Deputy Speaker, Sir, for giving me an opportunity to contribute to this very important motion. This recess is well deserved. This House has performed, and it is the right time for us to go to our constituencies to ensure that what we actually decide in this House is implemented.

I just want to make very important remarks on four issues. The first issue is about security; this country is under threat if organized crime is allowed to take root. I am so happy that this House passed a Bill on money laundering. It is important, as it is part of security. On criminal gangs, we want to commend the police for doing a good job. It is because of this that this department is supported. The issue of cattle rustling is eating into the resources of this country, and it is important that the Ministry involved should support the disarmament efforts, or rather should actually put into motion a disarmament process so that we provide security for the people.

The second point which I want to mention is the issue of development. The Minister for Finance, in the Budget speech, mentioned economic stimulus. So far, we are running almost to the third quarter of the year. This package has not been released. It would have been very beneficial for Members of this House to go and manage in their own constituencies, this money and initiate the projects that it is meant for.

The other one is the issue of CDF. If the money can be released, this is the right time for the MPs to go and supervise CDF projects.

The issue of Kazi Kwa Vijana (KKV), is very important. On the Ministry of Northern Kenya and other Arid Lands, if this Ministry is to make an impact to the pastoralists, it should be funded to the tune of 15 percent of the national Budget. You should realize that pastoralists occupy 80 percent of the land mass of this country. This is also the most marginalized area in this country. So, for the this Ministry to function, it requires a lot of money.

On the Constitution, it is very important that we use the Draft as the pillar for us to push forward the constitution issue. The issue of truth, justice, equity and fairness, if Members of Parliament can drive his agenda, we will succeed.

The last one is the environment. As hon. Members, we should actually advance the issue of the environment; in particular, the issue of the water towers like the Mau. We know our brothers should be treated humanely. The Government should look for the best way to settle these people. Those with title deeds need to be compensated. Those without them, the Government must be bold enough to stand by its decision.

The other day, we mentioned the issue of the drought. People are suffering because there is no rain yet. We need food. Our people need food. They need restocking; they also need the writing off of AFC loans. It is very important that the Government takes into consideration all these suggestions.

With those few remarks, I support.

The Assistant Minister for Roads (Dr. Machage): On a point of order, Mr. Deputy Speaker Sir. With all due respect, would I be in order to request you, considering that many hon. Members are very fatigued and contributions are just repetitive, to call upon the Mover to respond?

Mr. Deputy Speaker: With all your humility and humbleness, you are out of order!

The Minister for Public Works (Mr. Obure): Thank you, Mr. Deputy Speaker, Sir. In this country, we have expressed our desire to achieve rapid and high rate of growth. We have talked about equal opportunities for everybody. We have talked about equity in distribution of national resources. We have also talked about improving the quality of life of our people. All that will come to nothing, unless we sit down and agree on a new Constitution that gives us a guarantee on all those aspects of our lives. If we do not pass it, we will not achieve what we desire to achieve. It is for that reason that I want to appeal to hon. Members, as we go on recess, to engage our constituents in discussions over the Constitution so that, when we come back, we take the lead in spearheading the process and, in the spirit of give and take, we come up with a document that is agreeable or acceptable to majority of Kenyans. That is very important and fundamental.

Secondly, I want to say something about the Economic Stimulus Project. The Ministry of Public Works happens to be at the centre of the implementation of that project. I know that a lot of work has gone into it. The delay that we see today is due to lengthy and cumbersome procurement processes. However, we are now very close to hitting the ground. As Members proceed on recess, I appeal to them to assist in their respective constituencies and make sure that the projects which have been identified in those areas are implemented in the course of the next six months before the end of the financial year. I believe that is very important. The intention is to stimulate the economy so that it can be resuscitated again. We rely on hon. Members and all the leaders everywhere to support that programme.

In conclusion, I want to congratulate hon. Members. They have been very lively and wonderful. They have interrogated all the programmes that have been brought to this House. In my stay in this House over the last few years, I must say that this particular Parliament has a far better quality of hon. Members than any other before, and I congratulate them.

I support.

Mr. Deputy Speaker: Ms. Odhiambo! The Chair has to be gender sensitive!

Mrs. Odhiambo-Mabona: Thank you, Mr. Deputy Speaker, Sir for being gender sensitive. I want to say that this Motion has come at a very timely moment. Today is the International Human Rights Day. Secondly, it is the last day of the 16 days of activism on gender-based violence. I am, therefore, happy to contribute and say that taking stock of what has happened in this Session, hon. Members have been very sensitive. If you look at most of the amendments that have come before the Floor of the House, we have been true to the one-third directive and wherever possible, we have included it. I want to congratulate hon. Members on that. However, when I take stock, my encouragement comes from the Back Bench. If I take stock on the Government side, I would like to encourage that a lot more has to be done to equalize opportunities, especially for those who are marginalized, persons living with HIV/AIDS, older persons and persons with disabilities.

We should see more action in the Session. We would like to see equal opportunities from a gender perspective. As we go home, many of us are saying that we should go and talk to our constituents about the Constitution. That is good. We should do that and engage our constituents for up to 30 days. After the 30 days, I believe that we, hon. Members, were brought here by the good Lord at such a time for a purpose. We should take time for introspection. We should be the persons to give Kenyans hope instead of raising tempers in this country and dividing it along ethnic lines. Let us take time for introspection and let us bring sense to this country. Let us bring hope, reconciliation and healing.

With those few remarks, I wish all hon. Members a merry Christmas and a happy New Year.

Mr. Deputy Speaker: Yes, Mr. Nyambati!

(Mr. Nyambati approached the Dispatch Box)

Order! When did you become a Minister, Mr. Nyambati?

Mr. Nyambati: Mr. Deputy Speaker, Sir, thank you for allowing me to speak my piece. First of all, I want to congratulate hon. Members for having done a wonderful job. I join my colleagues in wishing them and the entire country a merry Christmas and God's blessings. I would also like to say that even as we go home, it is extremely important, as leaders, to ensure that we engage our constituents in the constitution-making process. It is important to ensure that Kenyans understand what the Constitution is, so that they make informed decisions when it comes to the referendum. I also urge the Deputy Prime Minister and Minister for Finance to ensure that he releases the funds for the economic stimulus so that Members of Parliament can ensure that the money is utilized in the right way while they are at home. Same should apply with the Constituencies Development

Fund (CDF). It will be wrong if he does not release part of the monies required for the first quarter.

Mr. Deputy Speaker, Sir, I urge the Government not to create more Internally Displaced People (IDPs) in the country like in the case of the Mau. As much as we support that people must move out of Mau Forest, the Government must be humane in the way it conducts things. Those are Kenyans and must be catered for. They belong to this country and they are poor. We must take care of our people. People in leadership are not just known simply because of the positions they hold but simply because of the services they offer to their people. I urge the Government to ensure that it takes care of or gets rid of the IDPs. It is a big shame in this country and we cannot allow it to continue.

Mr. Deputy Speaker, Sir, I conclude by thanking you for giving me this opportunity to speak. I wish everybody merry Christmas.

Eng. Gumbo: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support the Motion of Adjournment. I join my colleagues in asserting that the recess is well deserved. As we go out there, let all of us be Kenyans in the way that is expected of our positions in leadership.

Mr. Deputy Speaker, Sir, I also want to take this opportunity to call on my colleagues and fellow Kenyans to, at all time, put our country before self, before various communities and even political parties that have brought us to this parliament. I know a number of my brothers and sisters have already expressed their wish to lead our country which is okay and within their constitutional rights. Indeed, leading this country is a unique privilege. But we, as Kenyans, must say that it should not be at any cost. Some of us who believe in this country get extremely alarmed, when less than 18 months after we had the worst crisis in our country, some leaders can actually stand up and propose balkanisation of our country into tribal groupings. I think this is something that we have to condemn as Kenyans of goodwill because our country at all times must be bigger than any grouping of tribal communities.

I also wish to call upon our religious leaders to do more. I am not convinced that our religious leaders have done enough in fighting the scourge of ethnicity and tribalism in Kenya. More than 100 years ago, the Italians, Dutch and Germans came to this country to mainly spread Christianity. Those people could not speak our languages, but they settled among our people. Today, what you see is that Luo bishops are serving Luoland, Kamba bishops are serving in Kamba land and Kikuyu bishops are serving in Kikuyuland. The excuse being given is that it is easier for them to work there. We want to see a bold step from our religious leaders in fighting ethnicity. I want to start seeing Luo bishops serving in Kambaland, Kamba bishops serving in Luoland, and Luyia bishops serving in the Coast, so that it can be demonstrated that we are, indeed, very serious about fighting the scourge of ethnicity. It cannot be business as usual when we, politicians on Saturday call for tribal balkanization of our country and Sunday, we go to churches with big cheques and all that the leaders of the churches can say is that it is blessed to give than to receive. We must get out of this.

Finally, we are embarking on making a Constitution for our country. But as a person, I do believe that the real reforms that Kenya needs is not to be written in our Constitution, but it has to be written in our hearts and minds. Some of the greatest democracies in the world have Constitutions which are only four pages long. In fact, the Constitution of the United States of America is shorter than the index page of our

proposed Constitution. But it has served them well for over 220 years. It, therefore, means that no matter how we write in our Constitution, if we do not find it in our hearts, and minds, to regard and recognise and treat every Kenyan equally, if we do not find it in our hearts to accept that every Kenyan must have equal opportunities to live in this country, then whatever we put in writing may not come to match.

With those few remarks, I beg to support.

Mr. Deputy Speaker: Hon. Member for Shinyalu. Is this your maiden Speech?

Mr. Kizito: Mr. Deputy Speaker, Sir, I have made my Maiden Speech.

Mr. Deputy Speaker, Sir, I would also like to support the Motion by saying that the Recess is actually called for after doing a good job here. For some of us who are still new, it is a good time for us to go down the villages to see our people and talk them. We can also use the same opportunity to look at a few pages of the remaining part of the Standing Orders of the House.

I want also to commend my colleagues for supporting me very well and encouraging me to go through the Standing Orders. I now feel that I am in a proper position to go ahead and contribute.

Secondly, as we go home, we may also look at the Constitution. I would like to urge my colleagues as we go down there, to really allow the public to look at the Constitution, read it and actually give their own independent exigencies, so that we do not block their thinking. As we help them to go through, I would like to say that the Constitution must be for the posterity of this nation, so that we move forward.

I would like to encourage my colleagues to visit Shinyalu Constituency and assist in development projects because those people are really lagging behind. We all know that since the inception of this Parliament, our Member of Parliament became sick and it became difficult for him to initiate any development project in Shinyalu. Also, we shall be having a grand cultural day at a place called Isolu. I would like to invite all my colleagues to come down and see how we do our things in a proper way.

With those few remarks, I would like to wish all hon. Members of Parliament, my people of Shinyalu and the Speaker a Merry Christmas.

The Member for Bomachoge (Mr. Ogari): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support the Motion and also to make my maiden contribution.

(Applause)

Mr. Deputy Speaker: You shall not be interrupted at all, under the circumstances,

Proceed!

The Member for Bomachoge (Mr. Ogari): Mr. Deputy Speaker, Sir, I wish I had talked earlier; maybe, I would have had so much to talk about, but I have been listening. First of all, I would like to take this opportunity, obviously this being my first time, to thank the people of Bomachoge for giving me this opportunity to be in this honorable House and to rub shoulders with these hon. Members and colleagues. I also take the opportunity to thank all the hon. Members very, very much because when I came in, the kind of fight we had in the by-election, I expected it to continue up to the House but when I came here, I found that it was a different ball game; everybody is a friend and I

am so grateful to all hon. Members from across the divide because they have been very friendly and helpful to me. In fact, most of the time, I feel “over-babied”.

Mr. Deputy Speaker, Sir, as we all know, we are going on a working holiday. I am very sure that we are not going to relax because it happens at the time when we have two major national projects which, I think, most of my colleagues have talked about; one of them being the Constitution review. We have a major role to play in the review of the Constitution. I subscribe to the idea that, as much as possible, let us give the people a chance to look at the Draft Constitution and to read it. We might guide them when they are reading it, and then let them feed us because, I am sure, we shall have our own chance to discuss it ourselves. What I noted from home is that people know that we are changing the Constitution. I think through what we have gone through before, most people do not understand what they are reviewing. Some of them ask me: “*Mheshimiwa*, you are saying this is okay, but what was the old Constitution saying?” Maybe we should have noticed this earlier and, maybe, also printed copies of the current Constitution so that *wananchi* know when they are talking about the amendments, they know the old one used to say this and now we are changing it to this. I am sure those of us who know a bit of it will come in handy to guide them.

Mr. Deputy Speaker, Sir, the other item which has been talked about here a lot is about the Economic Stimulus Program (ESP). I am a professional in this line of infrastructure and I have already tried to give my submissions. But the way I am seeing it, it might not even work because we have problems of implementation, especially when we talk about--- *Waziri* Obure has just spoken about his Ministry being central in the whole programme. We know very well the capacity of the Ministry of Public Works in handling these kinds of projects. Even without the ESP, already the Ministry of Public Works was overstretched. Now, we are expecting the engineers, architects and the quantity surveyors to design and supervise all those works. I think it is going to be very, very difficult. Coming from that line myself, I would propose that we should be allowed either to outsource the services of these invaluable professionals. Whatever is happening now and even whatever has been designed from the Ministry of Public Works headquarters, I am very sure it is not applicable in many constituencies. We are having designs and bills of quantities for new schools and dispensaries and yet we are meant to renovate and update the ones which are in existence.

So, I think we should look at the possibility of outsourcing consultants from the private sector and if possible, from within the constituencies. I am sure most constituencies have got the engineers, the architects and quantity engineers in the private sector. These people are invaluable needed in this kind of project.

Lastly, I would like to take this opportunity to wish all of us a Merry Christmas and Happy New Year.

Mr. Lessonet: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion of Adjournment. I want to speak, first of all, as the Vice-Chairman of the CDF Committee of Parliament. I would like to inform hon. Members that our CDF Board sat today and we were surprised that over 100 constituencies still have not submitted their proposals for the 2009/2010 Financial Year. This will go a long way in delaying the implementation of the various CDF funded projects.

I wish the Deputy Prime Minister and Minister for Finance was here, because the CDF Act requires that at this time of the year, we are supposed to have remitted 50 per cent of the Kshs12.3 billion to the CDF Board. However, the Minister succeeded today to remit only Kshs5.3 billion out of the expected Kshs6.15 billion. We still want to congratulate him because he is performing better than us in terms of remittances. Certainly, the 100 constituencies that have submitted their proposals can now access their 50 per cent or more of their requirement.

Mr. Deputy Speaker, Sir, with regard to the Economic Stimulus Package (ESP), we participated in coming up with the rules of implementation. I wish to take note of the fact that the implementation is really going to be difficult. I was hoping the Minister would give us some flexibility in the implementation of this ESP. We are aware that in terms of the model school, they intend to give us Kshs30 million. However, the situation is different in every constituency. We thought that the Minister would be flexible enough and allow the local ESP committees formed in every constituency to be the implementing agencies. We wanted the Treasury to trust them with the money and the implementation remains the work of the local committee, whether it is for the dispensaries, the schools or the *jua kali* shades.

Finally, we really need a new Constitution as a country. I want to call on all of us who own political parties in this House to go slow on the subject of the Constitution. We do not want extremely hard positions by the owners of political parties. We hope that at this time when we are going for recess, we will not see another “Tononoka” or “Chepalungu” because that only serves to harden positions. We hope that when we come back in February, 2010, we will be able to perform our role as Parliament in terms of delivering a new Constitution for this country.

Mr. Deputy Speaker, Sir, while I close my remarks, I would like to thank the Government, especially those people in Government who the Constitution has given them dictatorial tendencies – for going slow in, at least, ensuring that the people of Mau have been allowed to stay by the roadside. We are aware that those with the dictatorial tendencies at one time wanted to throw tear gas at the people so that they vacate the roadside.

With those few remarks, I beg to support.

Mr. Mwathi: Mr. Deputy Speaker, Sir. I was so sure that if I am on this side you would see me and I thank you for the chance. I stand to support this Motion of Adjournment and briefly state that it is very necessary for all of us to have time to go and look into our Constituencies Development Fund (CDF) projects, which we have initiated. Due to the business that we have had in this House, some of us have not been able to visit these projects, and it is very necessary that we go and visit them. I will call upon the hon. Members to ensure that they personally visit the projects so that they can acquaint themselves with their status.

Mr. Deputy Speaker, Sir, secondly, I would like to speak on the issue of the Draft Constitution. It is critical that we are commenting on the Constitution, but I would urge Members to make sure that they do not polarise the country as we saw in the referendum of 2005. This is because there maybe some utterances that maybe coming from our political leaders that might just start whipping up ethnic sentiments and, therefore, creating rifts among people.

On the Constitution again, and I wish the Minister for Justice, National Cohesion and Constitutional Affairs was here, we are unable to distribute the 500 copies given to every constituency. You do not know who to give priority when giving them out. Once you give them out, it becomes actually more of a problem than when you have not given them out; this is because those whom you do not give keep on complaining. We have tried with our own resources, which I think was very unfortunate, to do copies of the same so that we could distribute copies to all our people. However, all said and done, it might be one of the factors that will make the people of this country not really participate very well on the issue of the constitution-making. Some of them might just not support it, not because it is bad but because they have not had the chance to read the same. Sometimes, people want to read first hand and do not depend on what we tell them.

Mr. Deputy Speaker, Sir, the third point goes to the Ministry of Medical Services and the Ministry of Public Health and Sanitation; this is with regard to the recruitment of the 20 nurses. I have done that in my constituency, but it was evident that there was a shortage of the Kenya Enrolled Community Health Nurses (KECHN), because it is one cadre where there is only one job group and they stagnate. The Government is actually trying to phase out this cadre and replace it with the Kenya Registered Community Health Nurses (KRCHN), who have gone up to the diploma level. So, when they gave us the 15 KECHNs positions against five, who were the registered ones, I think it was unfortunate; it should have been the other way. I hope it was a typing error; I think we should check in our constituencies so that we can give recommendations to the Minister for Public Health and Sanitation information to enable her change those figures to read the other way round.

Mr. Deputy Speaker, Sir, the other point is with regard to teachers. We have heard none other than the Prime Minister of this country talk about facilitating the employment of the 50 primary school teachers and the ten secondary school teachers, because there was a stalemate in the Teachers Service Commission (TSC). I fully support that, because we really need these teachers, so that they can come and ease the problems that we are having at the constituency level.

Mr. Deputy Speaker, Sir, on the issue of roads, it is time for us to go and form the Constituencies Roads Committees (CRCs), so that they are able to utilise the funds that will come and at the same time open the accounts that are required.

Mr. Deputy Speaker, Sir, finally, on internal security, today we heard about the ammunition cache that was discovered somewhere in this country. If left loose, that kind of ammunition can go with very many lives of this nation. So, it is necessary for the Minister of State for Provincial Administration and Internal Security to bring to book those who were involved in that exercise. At the same time, he must assure our people of their security.

With those many remarks, I beg to support.

Mr. I. Muoki: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. On the onset, I would like to thank Members of the Tenth Parliament for a job-well done. If you look at the performance of the Tenth Parliament, you will find that we have transacted much more business than any other Parliament within such a short time. That is quite commendable.

It will also be recalled that we were called earlier to come and transact essential business. We readily came and continued serving this country very faithfully. Therefore,

it is only good that we support the Motion for Adjournment, so that we can have our short recess and come back more energised, to continue with the work of legislation.

It is unfortunate that the Minister for Roads left immediately we passed the Motion on the Sessional Paper. As we go home, most hon. Members have roads that are impassable. We have impassable roads in the North Eastern Province and Ukambani, where I come from. I hope the Ministers who are here will convey this message to him.

We have areas in this country that are really disadvantaged, especially my constituency and those who come from areas such as North Horr and others. Since the concession project that we have just passed would have spent money from the Consolidated Fund, I want to urge the Ministry to address the issue of impassable roads in ASAL areas, so that this country can develop at the same pace.

Finally, I want to address the issue of discipline of our leaders. If you visit most parts of our country, you will find that our people are very friendly. Early in early 2008, some leaders could not visit some areas in this country. However, now they can visit any part of this country. They can go to Nyanza or Coast or the North Eastern provinces. However, as we approach the election time, those aspiring for national leadership go round the country, poisoning people's minds by uttering words indicating that a certain tribe should take leadership of this country. As a result of that kind of incitement, they breed hatred amongst our people.

Therefore, as we go home, I appeal to those leaders with national leadership ambition to check their tongues. They should preach peace. We should measure our leaders by the peace and unity that they preach in our country, so that if we are to elect somebody, we should elect anybody from anywhere. Even if he is from the smallest tribe or province, if he is a good Kenyan who can perform, we could elect him or her. Therefore, as we go home, we should preach peace. We should also visit other areas across the country and preach peace, so that we can heal this nation. The problems we have in this country are not from the people, but from the leadership of this country.

In fact, we should learn from a country like the United States of America (USA), where you can go and vie for the post of senator in one state as your brother or wife goes to vie for similar seat in other states. If you are Kenyan, you should be free to go to Nyanza and contest for a civic or parliamentary seat. Somebody from Nyanza should be able to go to North Eastern, contest for a Parliamentary seat and get elected if he or she is good. Therefore, as we go, the message we should take to our people is that we should have peace, be one and kill tribalism by working together and preaching that accord.

With those few remarks, I beg to support.

The Assistant Minister, Ministry of State for Special Programmes (Mr. M.M. Ali): Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. I stand to support this Motion. As I support, I want to join my colleagues in urging all Members that as we go out there, we preach peace and encourage our people to live in harmony.

As everybody recalls, we had a big problem last year because of the Post-Election Violence. This is a very good opportunity for us to preach peace across the communities so that Kenya can prosper and be the Kenya it has been for many years.

Mr. Deputy Speaker, Sir, we are handling a delicate process of Constitution review. This process has been long outstanding. We are committed to having a new Constitution. However, I want to urge my colleagues that as we go out there and interact with our people, we must be sober. The Constitution we come up with must be acceptable

to all. It must take into account that this country is for small communities, large tribes and people of different backgrounds such as farmers, pastoralists and the rest. I also want us to be sober and know that what is good for you may not necessarily be good for another person. Therefore, we must strike a balance.

I have read the Harmonized Draft Constitution myself. I want to emphasize the issue of administrative areas. The draft talks about eight regions. However, I wish to differ with the proposal. I come from Moyale Constituency which is part of the larger upper Eastern. For a person from Moyale or North Horr to get services from a Provincial Commissioner (PC), one has to travel as many as 900 kilometers. You will agree with me that in today's Kenya, this is not fair. It is a serious way of continuously marginalizing some of these communities. I want to urge my colleagues that we support the preposition of the Bomas Draft where eight regions are recognized.

That brings me to the issue of boundaries review. I want to thank the Interim Boundaries Review Commission (IBRC). They are going round the provinces and have promised that they will go down to constituencies. As we look at this very important exercise, we have had various views. Some people have advocated as radical a proposal as one man one vote. Others, from our own regions have proposed equally radical proposal of one kilometer one vote. This is where I want us to strike middle ground. The person talking about population is acceptable and the person talking about vastness of land is equally very important. What are we talking about here?

Mr. Deputy Speaker, Sir, we have to look for a middle ground. You can represent one million people in a small area where the means of communication is perfect better than represent 10,000 people spread over a large parcel of land. For example, when you talk of Mvita Constituency which is about 1.7 square kilometers and compare it with North Horr which is 38,000 square kilometers, each of them is represented by one Member. That is not fair! If you talk about population, North Horr will not get any additional constituency. If you only talk about geography, other seriously over-populated areas like Embakasi will not get additional constituencies because they do not qualify. So, we have to get a middle ground. All we are saying is that population is important and land mass is equally important.

Mr. Deputy Speaker, Sir, when you tell us that your population does not grow and research has shown that out of every 1,000 babies born in the marginalized areas, 300 of them do not survive--- The same research has shown that out of 1,000 babies born in the developed areas, only 3 of them die. You have kept us in a situation of under-development for many years through Sessional Paper No.10, and you tell us we are not populated enough. It is not our wish to do a lot of family planning. We need to be considered equally and follow our Constitution which says geography, population, community interest and means of communication must be considered.

Thank you very much.

Mr. Chachu: Thank you, Mr. Deputy Speaker, Sir for giving me the opportunity to contribute to this Motion. From the outset, I support the Motion of Adjournment. I think we need to go back and serve our constituents in our constituencies.

I agree with my colleagues that we are dealing with a very sensitive issue. We are dealing with an issue which will have a major impact on our lives and the lives of many generations to come. That is the Constitution. We should have a sober approach to this. We should all know as leaders that we have no choice but to deliver a Constitution that

will work for this country. That is not debatable! We have to be sober and think together. We should have an inherent strategy of give and take so that we can harmonise our thinking and at the end of the day, have a Constitution that will work for all Kenyans irrespective of where they live in our great nation.

I agree with what the hon. Member for Moyale has just said. As we look at the regions, the eight provinces we have had since Independence will not work for us 45 years later. I would rather be served by Nairobi than Embu. I come from North Horr and it takes me almost 800 kilometres to travel from North Horr to Embu. Maybe, it is even easier for me to come to Nairobi and be served from here. It is time we had our own province known as "Upper Eastern" that comprises of the larger Isiolo, Marsabit, Moyale as well as North Horr and Laisamis so that our people can be served well. It is on that basis that I strongly support the recommendation that we should have 14 regions in this country instead of the existing eight regions.

On the Interim Boundaries Review Commission, as we review our boundaries, each and every Kenyan must be represented. Representation does not only mean people living in a small area with opportunities which are natural, for example, favourable climate where they reproduce in large numbers. In North Horr, for example, and that is true for North Eastern and the upper Eastern, life is so harsh and difficult. Because of that, even the spacing that mothers have to go through before they give birth is an issue. However, that is not true for Kisii. This is just a natural phenomenon.

(Laughter)

That is true! Given the time, I can prove that that is true. As we review our boundaries, those Kenyans who are over-populated must be considered. We should do whatever it takes to ensure that they are well represented. Equally, those of us from sparsely populated areas like North Horr and Ijara should also be effectively represented. As leaders from that region, we are categorical on this matter.

Mr. Deputy Speaker, Sir, our people have been marginalized for too long and that is why today, when people from that part of the world leave for Nairobi, they say they are going to Kenya as if they live in Ethiopia or Somalia.

They have very solid reasons for thinking so because there are some people from my constituency who have never seen a hospital; the best they have seen is a dispensary. We are all Kenyans. Why should people in Nairobi have over 50 hospitals while the people of North Horr lack even a single one up to date? Nobody in my constituency has seen a tarmacked road. What crime have we committed?

Mr. Deputy Speaker, Sir, up to today, there is no single public transport which the people of larger Marsabit, Moyale and North Horr can use. This is such marginalization and we inherited this policy in Sessional Paper No.10 of 1965. It is time that those people were effectively represented. By doing that, we must have special facilities for those Kenyans.

Mr. Deputy Speaker, Sir, we might be few but the people of North Horr have secured 40 kilometers stretch of a border starting from Isiolo, Moyale, all the way to Lake Turkana without a single military officer being taken to those areas. It is our people who have been manning those borders since independence up to today. Not a single military base is located either in North Horr or Marsabit, yet our people have secured

those borders for the last 45 years since independence and have ensured the sovereignty of this nation. If anything, we should be applauded for that.

I strongly believe that, those constituencies that are sparsely populated should be divided into two. As I conclude, it is so critical as we go home that we become sober, unite Kenyans and ensure that we do whatever it takes to deliver a new Constitution to this country.

With those few remarks, I beg to support the Motion.

Mr. Bahari: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I want to join my colleagues in supporting this Motion of Adjournment. It is time we go to our constituencies and do the monitoring and evaluation of the projects that have been implemented. It is time we went and started planning and listening to our people and their problems so that when we come in the next Session, we will be able to address effectively, the problems of our people.

I want to speak on the issue of change in this country because change is a must. Even if you look around in this House, you will realize that a lot of Members of Parliament who were there during our time in the Eighth Parliament are hardly here. There has been a generational change in this country. So, it is obvious we cannot pretend that we will do the same work in the same manner that we used to do in the Eighth Parliament. Things have certainly changed and we must go with them.

Mr. Deputy Speaker, Sir, the environment has changed and it is only logical that once the environment changes, the way we do our assignments, administer and everything else should appropriately change to suit the changing environment.

It is in this context that I say the issue of constitutional change is a must. This Parliament has no choice other than to enact a new Constitution. One Act which is very popular in this country in the name of the CDF radically changed the development pattern in this country. It radically changed the opportunities in this country. If one Act made a difference, if we overhaul the Constitution, this will make a radical difference.

Mr. Deputy Speaker, Sir, I want to emphasize the issue of devolution in the Constitution. The Budget that has been read by the Minister for Finance is Kshs800 billion. How much of that is being utilized in your constituency and mine? If only 50 per cent of it which is Kshs2 billion went to each of the constituencies, I doubt whether you would even have a quorum in this House because you would be busy implementing projects in your constituency.

All the time, you will realize that there is all the money that can go to fraud. Talk about Goldenberg, Anglo Leasing and others which have not come out, perhaps very prominently. In all, the PIC and PAC reports which you are very familiar with, billions of money have gone into fraud. When it comes to my road of Isiolo-Modogashe, when it comes to yours of Garissa-Modogashe-Wajir, the money is not there.

When it comes to fraud in the name of Anglo Leasing, Goldenberg and others, the money is always available. That must be because the person or institutions that are responsible for ensuring that after 40 years of independence, those areas should have proper roads are not willing to do so. It is time, through devolution, we got out there to ensure that this is done right now because we have seen the piece of it in terms of the CDF funds. This is the time to bring in that change for the future generation.

In a related version, I want to talk about representation because it is a popularly read chapter in the new harmonized draft. What is representation for? At the end of the day, the end result of representation is to ensure that the people get goods and services.

Mr. Deputy Speaker, Sir, it is very difficult. In your constituency, Lagdera, from Liboi at the Somali border all the way to a centre very close to Garbatulla called Banane, which is almost at the centre of this country, and anybody accepts that to be one constituency with an effective representation, this is gross injustice on the part of the institutions of this country that have put that constituency like that. That must change. That is why, as an hon. Member has said, the infant mortality rate is very high. With all the restrictive and the punitive laws that have been there, people have been massacred in Wagalla, Markamali, Garbatulla and then somebody says that the population is small. Is it small when you are partly responsible for devastation in that place? You cannot eat your cake and have it.

I want to come to the issue of drought. This last drought has been very bad. Its effects have not been measured. I want to suggest that the Ministry of Planning, National Development and Vision 2030 puts in place a measure to see the effects of drought because the poverty index figures that hon. Ethuro uses are no longer valid.

With those few remarks, I beg to support.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Deputy Speaker, Sir, I want to take this opportunity, first to congratulate the Speaker, the Deputy Speaker, the Clerk and his staff for the way in which they have guided this House. As we go on this well deserved recess, I would like to wish all of you merry Christmas and a prosperous Year 2010.

With those few remarks, I beg to support.

Mr. Deputy Speaker: I now call upon the Mover to reply.

Mr. Thuo: Mr. Deputy Speaker, Sir, I wish to thank all the hon. Members for their many, nice and useful remarks and, indeed, in particular, Eng. Ogari for taking this opportunity to make his maiden speech.

A lot has been said and I do not want to repeat it. There has been a lot of talk about what we must do in the Constitution. However, there is an underlying theme in the Constitution that I must mention, which is that it is a compromise document. All constitutions on earth are functions of compromise. Therefore, we are called upon to make the necessary sacrifices. None of us will get a puritanical one from your point of view or exactly what he wants, but we must do what is in our best interest as a nation.

The Motion was that this House do adjourn *sine die*. It is still that this House do adjourn *sine die*. Therefore, I wish to take this opportunity to wish Members a merry Christmas, especially hon. Mwathi who has not had a good Christmas since the advent of the Internally Displaced Persons (IDPs). I wish all of you a merry Christmas and a very prosperous Year 2010.

With those many remarks, I beg to move.

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR

VOTE OF THANKS TO MEMBERS AND PSC STAFF

Mr. Deputy Speaker: Hon. Members, I wish to make a communication. Before we proceed on recess, I would like to thank each one of you for the tireless effort in contributing to the business of the House through Motions, asking Questions, demanding and issuing Ministerial Statements and through debates on Bills. All of you made the House very lively and the public out there came to appreciate the dynamic nature of Parliamentary business which you have handled with a lot of dedication and commitment.

I wish to commend hon. Members for seriously scrutinizing the annual Estimates in the Departmental Committees after they were referred to them. The scrutiny speeded up the passing of the various Votes during the Committee of Supply. There is no doubt that this procedure has not only enhanced the oversight role of Parliament, but has also increased the efficiency and the effectiveness of debate during the Committee of Supply.

While on recess, I would like to urge you to fully involve yourselves in the constitutional review process in order to facilitate a timely conclusion of this very important national exercise. I emphasize the need for political goodwill, leadership, transparent and open and frank dialogue with the people of Kenya on the Constitution.

Finally, as you appreciate the commitment of the staff and their dedication to duty, I wish to announce that all Committee meetings will be suspended until 5th January, 2010, in order to afford the staff time to take their annual leave and also re-energize for the forth-coming Forth Session. Any emergency Committee sittings shall be authorized by my office after consultation with the respective Chairs. Hon. Members, may I take this unique opportunity to wish you all a merry Christmas and happy New Year.

Thank you.

ADJOURNMENT

Hon. Members, that concludes our business. The House is, therefore, adjourned *sine die*.

The House rose at 7.50 p.m.