

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 15th February, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:

Report of the Departmental Committee on Finance, Planning and Trade on the Nomination to the Office of Controller of Budget.

(By Mr. Okemo)

Mr. Okemo: Mr. Speaker, Sir, in compliance with the Standing Order No.181(3), I have the complete Report here plus annexes I to XVI and all the minutes relating to the meetings we held to deliberate the matter.

Mr. Speaker: Hon. Namwamba!

POINT OF ORDER

EXTENSION OF TIME FOR COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS

Mr. Namwamba: Mr. Speaker, Sir, the Departmental Committee on Justice and Legal Affairs has made tremendous progress. We have our Report basically ready. However, a matter has arisen in the Committee that has necessitated the Committee to seek the indulgence of the Chair for a little more time to proceed.

Hon. Members: No! No! No!

Mr. Namwamba: Mr. Speaker, Sir, I seek your protection to communicate a plea from the Committee that they would wish to seek more time to enable the Committee to consider the question of vetting.

Mr. Speaker: Order, hon. Members! The request by the Member for Budalang'i, who is also the Chairman of the Departmental Committee on Justice and Legal Affairs, is really least expected this afternoon.

(Applause)

This is because hon. Members will recollect that we originally set a deadline for Thursday last week. As at that date, the Committee was not ready with its Report and so we extended time to this afternoon. It will appear like the Committee is still not ready and yet it is dealing with a matter that is of grave national importance and which is keeping the whole country anxious. Indeed, Kenyans are waiting with bated breath for the Report of this Committee.

I want to commend the Departmental Committee on Finance, Planning and Trade for doing everything within its powers, including sitting for as long as 12 hours a day, to expedite its Report. On behalf of the House, I thank the Members of that Committee for their industry.

(Applause)

With respect to the Departmental Committee on Justice and Legal Affairs, I now direct finally – absolutely finally – that you table your Report not later than 12.30 p.m., tomorrow without fail! You must table a Report one way or the other even if it is one sentence, or a minority, or majority, or both. We cannot keep the whole country and, indeed, the House waiting eternally. Please, comply! I want you to confirm that you will, indeed, avail that Report not later than 12.30 p.m. at my offices.

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

Mr. Speaker: Order! I was addressing hon. Ababu Namwamba, Member for Budalang'i!

Mr. Namwamba: Mr. Speaker, Sir, I certainly would not wish to challenge the direction of the Chair. I would endeavor to communicate this decision to the Committee.

Mr. Speaker: Very well. What is it Member for Chepalungu?

Mr. Ruto: Mr. Speaker, Sir, with due respect to the rulings you have made, I am a Member of the Departmental Committee on Justice and Legal Affairs. I am, indeed, aware of the remaining part of the work. In your ruling last week, you ruled that the Committee should discharge its responsibility according to the law and the Standing Orders. I wish to bring to the attention of the House the fact that we have, indeed, met since Thursday last week non-stop. We had no weekends. We have been meeting until today morning. The remaining work, in my own estimation, may not be completed in the next 12 hours unless we are not expected to discharge our responsibility fully according to the Standing Orders.

(Loud consultations)

Mr. Speaker, Sir, it is not clear why you intend to give us a limit that will, therefore, lead towards flouting the law and the Standing Orders.

Mr. Speaker: Order, hon. Members! I have heard the Member for Chepalungu. Indeed, in my directions, which do not amount to a ruling as I made this afternoon, I said that the Committee must table its Report not later than tomorrow and that the Report be availed to my office by 12.30 p.m. I made it clear in those directions that they should avail that Report in some form or other; whether it be one sentence, a minority Report, a majority Report or an interim Report. The Standing Orders allow this. Maybe the Member for Chepalungu has not acquainted himself with the practices of this House. We

have had Reports tabled in some form or other. I will be able to cite those occasions to you. So, please, bear with me because that is the correct position.

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Speaker, Sir, I rise to seek your guidance on this matter. In seeking for extension of time, hon. Namwamba indicated to us that the Report is ready save for the fact that they want to go and do vetting. That is the reason he gave.

Mr. Speaker, Sir, I have gone through your ruling when you were assigning these Committees this responsibility. Nowhere in your ruling, did you instruct these Committees to do vetting of the candidates that were chosen for the various positions. In my recollection---

Mr. Speaker: Order, Member for Hamisi! I have heard you. It is not my intention to direct the Committee beyond what I have so far done. I will await compliance with the directions that I have given and we will be able to cross that bridge when we get to it tomorrow at 2.30 p.m.

(Mr. Namwamba stood up in his place)

The matter must rest there, Mr. Namwamba, unless you have another Paper!

PAPERS LAID

Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of Judges and Magistrates Bill, 2011.

(By Mr. Namwamba)

Compliance Report in form of Quarterly Economic and Budgetary Review for the Period Ending 31st December, 2010.

(By the Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu))

NOTICES OF MOTIONS

Mr. Speaker: Order, hon. Members! By standard, normal, and ordinary procedure, it would have been expected that the Chairman of the Departmental Committee on Finance, Planning and Trade would give notice of Motion with respect to the Report that he tabled at this point. However, I received this proposed Motion only this afternoon at 1.45 p.m. So, I need to acquaint myself with the substance of the Motion and then I will be able to speak to it on Thursday at 2.30 p.m.

DECENTRALIZATION OF ISSUANCE OF NATIONAL IDENTITY CARDS

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

THAT, in accordance with Section 174(h) of the Constitution, which provides that one of the objects of devolution is to facilitate the decentralization of state organs, their functions and services from the capital of Kenya, noting that Kenyans face serious challenges in acquisition of national identity card; this House urges the Government to facilitate the decentralization of the issuance of national identity cards from Nairobi to the 47 counties in line with the provisions of the Constitution within the next six months.

ESTABLISHMENT OF FERTILIZER
FACTORY IN KENYA

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

THAT, being aware of the need to establish a fertilizer factory in the country, noting the effort made so far by the Government of Kenya, both nationally and regionally, in setting up such a factory, conscious of the suffering of farmers for lack of readily, accessible and affordable agricultural inputs, especially fertilizer, appreciating the need to enhance productivity in order to ensure national food security; this House resolves that the Government takes immediate and urgent steps to establish a fertilizer factory in Kenya as soon as practically possible.

COMMUNICATION FROM THE CHAIR

PRESENCE OF ZAMBIAN MINISTER FOR CONSTITUTIONAL
AFFAIRS IN SPEAKER'S ROW

Mr. Speaker: Order, hon. Members. Hon. Members, I wish to introduce to you, and welcome this afternoon, the hon. Advocate E.T. Matinenga, Minister for Constitutional and Parliamentary Affairs of the Republic of Zimbabwe, who is on an official visit to Kenya at the invitation of his Kenya counterparts. On behalf of the House, and on my own behalf, I wish the Minister a fruitful and happy stay in Kenya.

(Applause)

QUESTIONS BY PRIVATE NOTICE

LAND OWNERSHIP IN LAMU COUNTY

(Mr. Yakub) to ask the Minister for Lands:-

(a) Could the Minister provide the names of land owners and acreage of ownership in Lamu County and those issued with title deeds in the last ten years and indicate the specific dates they were issued?

(b) Could the Minister confirm that the Government plans to settle persons displaced during the 2008 Post-Election Violence (IDPs) in Lamu County and, if so, is he aware that the plan is creating tension in the area?

(c) What measures is the Minister taking to ensure that the concerns of the residents are addressed and could he consider resettling the local IDPs first before resettling IDPs from outside the county?

Mr. Speaker: Question one by Private Notice. Is Mr. Yakub not here? His Question dropped!

(Question dropped)

STRIKE BY MIGORI
MUNICIPAL COUNCIL WORKERS

Mr. Pesa: Mr. Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that workers at the Migori Municipal Council went on strike from Friday, 3rd December 2010, due to three months' unpaid salary arrears?

(b) Could the Minister disclose the current financial position of the Council to clarify whether there are any funds meant for the Council held by the Ministry and state the measures the Ministry is taking to address the problem and avert recurrence of the same in the future?

(c) What is the state of the working relationship between the Chief Officers and the councillors and what measures is the Minister taking to restore a functional working relationship?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, I have three Questions to answer. However, I do not have the reply for this particular one. I am requesting you to allow the hon. Member to ask this Question in the next round. I will make sure I have the written reply by then.

Mr. Speaker: You are aware that since there is no first, there is no second round.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well! We shall accommodate you for the moment and revert to it a little later.

ORAL ANSWERS TO QUESTIONS

Question No.593

IMPROVEMENT OF FACILITIES
AT MAKONGENI MARKET

Mr. Kabogo asked the Deputy Prime Minister and for Local Government:-

(a) whether he is aware that Thika Municipal Council does not collect garbage on time at Makongeni Market, thereby exposing traders and locals to serious health risks,

(b) whether he is also aware that, despite daily collection of revenue, the council does not use the funds to improve the facilities at the market; and,

(c) when the council will improve the drainage system, which is faulty as a result of the short rains?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, last week, when I was answering this Question, I was not comfortable with the answer. I requested to be allowed to go to Thika and to confirm what was actually happening. I went to the ground with the hon. Member.

I beg to reply.

(a) I am aware that the Municipal Council of Thika is now collecting garbage on time on Mondays and Thursdays at Makongeni Market.

(b) I am aware that despite the daily collection of revenue, the Council uses more than collected funds to improve the facilities at the market.

(c) I agree that the drainage system has been problematic, especially during rainy season. However, currently, the council has taken measures to improve the system as follows:

1. On 10th November, 2010, the council delivered 20 loads of hardcore.
2. On 18th November, 2010, the council delivered quarry murram to blind top of the above mentioned hardcore.
3. Manhole covers have been ordered.
4. The council has ordered 20 No.450mm diameter culverts to drain empty water from inside the market.

[Mr. Speaker left the Chair]

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

Mr. Kabogo: Mr. Temporary Deputy Speaker, Sir, it is true we visited the market in question with the Assistant Minister. Since I asked the Question, the council is now collecting garbage.

However, on part “c” of the Question, he should tell the House, what the Council is doing about drainage. Since yesterday, the place is flooded. What will the Ministry do?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I would want to inform the House that Thika falls under what we call the Kenya Municipal Reform Programme. Under this programme, there is a very comprehensive outlay that is looking into ensuring that all the markets within the Thika Municipality are, not only fixed, but also comprehensively repaired and solve the residents’ problems.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has spoken about a short-term solution for a long-term problem. The long-term problem is that the markets are not properly managed by all local authorities.

Mr. Temporary Deputy Speaker, Sir, could you refer this matter to the Departmental Committee on Local Authorities, so that we can come up with a comprehensive proposal as to how markets should be managed? At this moment, the poor people are being taxed very heavily.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Shakeel, it is Question Time. Could you be a specific with your question?

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, could the Chair be kind enough to refer this matter to the Departmental Committee on Local Authorities because it is a matter of policy affecting most local authorities?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, obviously, there are a lot of structural issues that are being addressed by the Ministry. Since we now have a Constitution---

Mr. Chanzu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Shakeel was seeking for your guidance on the matter. He was not addressing his question to the Assistant Minister. He requested the Chair to refer this matter to the relevant departmental Committee.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Chanzu!

Mr. Assistant Minister, could you comment on the issues of policy and what your Ministry is doing?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, as you can see, I have talked about the long-term Kenya Municipal Reform Programme, which really address fully comprehensively, a lot of the long term issues that hon. Shakeel want clarified.

Further to that, with the new Constitution and us transcending towards to the County Government, there are quite a lot of issues on the devolved Government that we will look into.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, last week, when this Question came up, the Assistant Minister promised to visit the place. I am glad to hear that he actually visited Makongeni Market personally. I think he needs to be promoted! The problem of Makongeni is not specific to Makongeni alone. This is a problem across the country. Garbage collection by the councils takes almost one week and in some places, even a whole month. What is the Assistant Minister doing to ensure that Questions are not brought before the Floor of the House for the councils do to what they are required to do every day?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I want to thank the hon. Member for the compliment. We are rolling out a number of ways using the Rapid Results Initiative (RRI). I am sure you have seen those RRIs address specific issues in specific towns. All the 175 local authorities will roll out those Rapid Results initiatives. I think we are making all the efforts to ensure that the impact that the councils are supposed to have is felt.

The Temporary Deputy Speaker (Prof. Kaloki): But, Mr. Nguyai, when do you think you will solve the problem in Thika Municipal Council? The problem is garbage collection.

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, as I indicated in my answer, on the issue of Thika Municipal Council, we went there specifically with the hon. Member. We had a meeting with all the council officials together with the councils. We got into short-term issues which we addressed there and then and we certified that all the markets

were pretty clean compared to the past. The issues that will be addressed in the long-term are the ones that I have indicated in my answer. They will be undertaken under the Kenya Municipal Reform Programme.

The Temporary Deputy Speaker (Prof. Kaloki): Order! You are on the short-term!

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, on the short-term, I will probably just ask the hon. Member to say whether he was satisfied with the particular initiatives that we took because the rest are long-term.

The Temporary Deputy Speaker (Prof. Kaloki): For the benefit of the House, when will you do it? Is it two weeks or a month?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, by the time we got there, the markets were very clean. They had been cleaned entirely.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, it is gratifying to note that Thika Municipal Council is up to the task. Under what circumstances do they exempt Nairobi City Council (NCC) from giving similar services to the residents because we all pay private firms to collect garbage in our estates?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, under no circumstances is the NCC exempted from rendering that service. We know that NCC has its own shortcomings but there are particular funding adjustments that are being made to ensure that NCC gives that service.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. The private firms that collect garbage are licensed by the Government. Is the Assistant Minister in order to pretend that he does not know that garbage in Nairobi is being collected by private firms, when those firms are licensed by his Government and they pay licence fees to his Government?

The Temporary Deputy Speaker (Prof. Kaloki): Order, Dr. Khalwale! That is a different Question all together. The Question here pertains to Thika Municipal Council.

Mr. Kabogo: Mr. Temporary Deputy Speaker, Sir, it is true that we visited the market with the Assistant Minister. It is true that they have started cleaning the markets but it was quite evident that there is a problem of drainage in that market. I have asked the Assistant Minister what is the council or the Ministry or the two doing together to rectify that. Today, it rained and it is flooded. What is the Ministry going to do in the interim as it undertakes the five or 30 year plan to come up with a standard market? What is it that they will do now?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I think if you look at my last part of the answer, I said that the council has already ordered for culverts to ensure that there is emptying of the drains. Those culverts will be used to ensure that the drains are empty.

Mr. Kabogo: On a point of order, Mr. Temporary Deputy Speaker, Sir. That is where we differ with the Assistant Minister. He is talking about six culverts for a whole seven acres of land. How do you drain water in a big market with six culverts? Could they be serious?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Nguyai, could you make it clearer?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I am not sure if we are reading from the same script with the hon. Member. If you look at the answer that I have given

here, I have said 20 culverts and if they are not sufficient, we will make sure that they are sufficient.

Question No.683

FILING OF CASES BY NAIVASHA MUNICIPALITY EMPLOYEES

Mr. Mututho asked the Deputy Prime Minister and Minister for Local Government:-

(a) whether he is aware of Civil Case No.1001 of 2009 at the Senior Magistrate's Court at Naivasha filed by suspended employees of Municipal Council of Naivasha against the council, the consent between the plaintiffs and the council on 17th September, 2010 and subsequent court order dated 24th September, 2010; and,

(b) when he will order the Municipal Council of Naivasha to comply with the order and pay half salaries due, pending hearing and final determination of the case.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Civil Case No.1001 of 2009 at the Senior Magistrate's Court of Naivasha filed by suspended employees of the Municipal Council of Naivasha against the council.

(b) The two officers who qualified for half salary payment as per the court order have been reinstated and are on the payroll on half salaries. The other four were not in compliance with the Public Service Commission (PSC) Local Authorities Officers Regulations of 2008 and their terms of service.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister inform the House why they never thought it prudent to go and vary the order? The order is very specific that they should be reinstated, although on half salary. Why did they go half way and decide to pick some of the employees instead of going back to the court and have that specific order varied?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, it is obviously not the duty of the Ministry to vary court orders. What the Ministry does is to ensure that it complies with those orders. The specific orders which were qualified were only for the two officers. The rest of the officers had either left the council or were facing criminal charges and as such, could not be completed.

Mr. Mututho: On a point of order, Mr. Temporary Deputy Speaker, Sir. I will speak very slowly so that he can hear me. If they were not happy with the court order, the best they could have done is to go and appeal against that order so that they can comply as they wish. This time round, they did not appeal and the order was specific that they reinstate those workers. Why is the Assistant Minister avoiding reinstating those workers whereas the court order is very specific?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I will give you an example. For example, John Kimani Waweru was no longer an officer of the Municipal Council of Naivasha. He had already been transferred to NCC with effect from 5th November, 2008. It would not have been in order to take him to a more junior position rather than be there.

Secondly, there was another officer, Daniel Kangoi Njuguna who was facing criminal charges and, therefore, could not be reinstated. The other officer had already been dismissed for gross misconduct on another count. Mr. Benjamin Cheserek had been recommended for retirement on public interest due to numerous cases of fraud.

(Mr. Mututho stood up in his place)

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Mututho! Mr. Nguyai, if it is the issue of paying salaries, why are you not complying with the court order? It is very clear. The question is half pay salaries!

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, we complied with two of the half pay salaries and those were for Patrick Mathenge and David Kirimi Marete. The ones who were not put on half pay had other cases that they were dealing with. They had been transferred and were elsewhere.

The Temporary Deputy Speaker (Prof. Kaloki): So, Mr. Assistant Minister, is it your answer that all the employees affected are being paid half salaries at the moment?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, except those who have other issues besides what was in the court order.

The Temporary Deputy Speaker (Prof. Kaloki): That is very clear.

Mr. Mwathi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead the House that he only reinstated some employees? I have a document here with me which I wish to table. It indicates that he was required to reinstate the following people at half salary. These are: Jackson Kimani Waweru, Daniel King'ori Njuguna, Benjamin Cheserek Kimengich, David Kirimi Marete, Patrick Gakongo Mathenge and Hassan Godana Bagaja. This was by mutual consent.

This is a court order from the Senior Principle Magistrate's Court at Naivasha, Case No.1001 of 2009. Did he appeal or go for varying of these court orders before he decided to do otherwise?

(Mr. Mwathi laid the document on the Table)

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Mwathi. The Assistant Minister has already said the concerned employees are being paid half salaries at the moment.

Hon. Members: Not all of them!

The Temporary Deputy Speaker (Prof. Kaloki): Apart from a few. Mr. Assistant Minister, could you clarify how many employees have been dismissed?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, out of the six employees, two are being paid half salary. The others have other issues besides those in the court order. They are facing criminal charges on other issues.

Mr. Kabogo: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister is taking this House for granted. Here is a court order that is specific. He is not telling us whether he complied with it or not. Could he tell the House whether he has complied with the court order? If not, why has he varied it?

The Temporary Deputy Speaker (Prof. Kaloki): Order! He has already said he has complied with it.

Hon. Members: No!

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, are you misleading the House?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I have complied with the orders of the court. Some employees have not received their salaries because of other issues. Unless these officers want to come to my office and find out what those other issues are, I think I have answered this Question sufficiently.

The Temporary Deputy Speaker (Prof. Kaloki): I think the Assistant Minister has provided an answer very clearly. If he is misleading the House, we will be able to take up that matter. At the moment, we must agree with the answers provided by him.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, this Assistant Minister is very notorious. Only last week, we were dealing with a case of his Ministry refusing to follow a court order in Thika.

Mr. Nguyai: On a point of order, Mr. Temporary Deputy Speaker, Sir. What does he mean by saying I am notorious?

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Assistant Minister. Mr. C. Kilonzo, ignore that. Just proceed.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, it is not worth responding to anyway.

The court order here reads as follows:-

“It is hereby ordered:

(a) The plaintiffs who are employees of the Municipal Council of Naivasha currently on suspension for alleged gross misconduct be paid their half salaries due to them by the fourth defendant pending hearing and final determination of this suit.”

Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has now become a judge on a matter which is in court. He says he can only pay two employees and that he cannot pay the other four employees because according to him, and him being a judge, they should not be paid because of the allegations. Is he not encouraging impunity of the highest order?

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Assistant Minister, I will give you a chance to make your final submission here. Could you assure the House on the issue of the Municipal Council of Naivasha pertaining to Case No.1001 of 2009, that you are handling it to the satisfaction of the court?

Mr. Nguyai: Yes, Mr. Temporary Deputy Speaker, Sir. We are handling that issue to the satisfaction of the court. We will continue to comply to the satisfaction of the court.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, Standing Order, No.82 is quite clear that:

“A Member shall be responsible for the accuracy of any facts which the Member alleges to be true and may be required to substantiate any such facts instantly.”

In view of the fact that now we know for a fact that only two employees have been reinstated and are on half salary, shall I be in order to ask the Chair to order that this matter be referred to the relevant departmental Committee, so that it can be dealt with effectively?

Mr. Bahari: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to ask the Assistant Minister to substantiate his statement that it is only two out of the total six that he is able to put on half pay. Could he explain the circumstances under which the others cannot be paid in addition to what Mr. Mututho asked?

The Temporary Deputy Speaker (Prof. Kaloki): I just want to give the Assistant Minister a chance to make his final submission. Just be comprehensive with your answer and make sure the House moves with you. This is your final submission.

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I just want to give an example. I would want to invite the hon. Member to come to my office, so that we can have deeper clarification. One thing I would want to clarify is that if an officer has been transferred to Nairobi and has been given full pay, would you prefer them to have the half pay of Naivasha or full pay in Nairobi?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, answer the question. Do not ask hon. Members questions. They have already asked you questions.

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I think I have satisfactorily said that we have addressed the issues of the court and we have complied with the issues of the court. If there is anything to the contrary, I would want to be given that information, so that I can further interrogate.

Question No.685

EXTENSION OF COMESA DEADLINE

Mr. Ochieng asked the Minister for Agriculture:-

- (a) whether she could consider extending the COMESA deadline once more considering that little has been done in reforming the sugar sector; and,
- (b) when the Government will implement the Sugar Act, 2001 and also disburse the Sugar Development Fund.

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) It is not possible for the Government to request for the extension of the COMESA safeguards because the maximum period for the safeguard is exhausted.

(b) The Government is implementing the Sugar Act 2001 since it was signed into law. The Government, through the Kenya Sugar Board (KSB), has disbursed a total of Kshs18.87 billion to finance various activities in the sugar industry since its inception in 1992.

Mr. Ochieng: Mr. Temporary Deputy Speaker, Sir, it is unfortunate that the answer that I have been given by the Assistant Minister is different from the one he has just read. I do not know whether he can comment on that. What I have is quite different from what he has just read.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I know the hon. Member might be having the answer for last week, but I got a new answer. So, I am really sorry if he did not get the new version of the answer.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, is the answer that you have the same as the one that Mr. Ochieng has? Is it a different answer?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, that one was relating to the Ministry of Trade. I went to the Ministry of Trade and collected the answer which I have just read out.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, if you are not ready, would you prefer we defer the Question, so that you can prepare yourself?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I am ready. It is only that the hon. Member does not have the answer which I have.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I am ready.

Mr. Ochieng: Mr. Temporary Deputy Speaker, Sir, I think I will proceed. The answer that the Assistant Minister has read is quite shallow. I had asked a very specific question. I had asked whether the Government could consider extending the COMESA deadline considering that very little has been done in reforming the sugar sector. The answer that the Assistant Minister has given has explained that an extension could not be given. Could he tell us why it is difficult for them to extend the deadline, while he knows very well that our sugar factories are not properly positioned to match the COMESA prices that will be coming into the market very soon?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, the Member is asking whether you could reconsider giving another Government position that allows for an extension. That way, the interests of the Kenya sugar industry will be factored in that request.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, it is not the Kenyan Government which is refusing to ask for an extension. It is COMESA which has said that it could not extend the deadline further. Last year, the Cabinet passed a Memorandum which is being worked on by the Departmental Committee on Agriculture, Livestock and Co-operatives. We will use that to reform the sugar industry.

Mr. Washiali: Thank you, Mr. Temporary Deputy Speaker. Part (b) of this Question is very clear. The Member wanted to know when the Government will fully implement the Sugar Act, 2001. In that Act, there is a clause that clearly dictates that 51 per cent of sugar factories be owned by farmers. The Question is very clear and I wish the Assistant Minister could address the issue of 51 per cent ownership of sugar factories by farmers.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, as I said, those are the issues that are being dealt with by the Departmental Committee on Agriculture, Livestock and Co-operatives. We will bring that issue to this House for debate. I have checked with the Chairman of the Committee and he has told me that they are waiting for the Standardization Committee to sit with them and agree on some issues.

Mr. Mututho: Mr. Temporary Deputy Speaker, I am the Chairman of the Departmental Committee on Agriculture, Livestock and Co-operatives. Indeed, what the Assistant Minister has said is accurate. We are actively engaged with them and according to our Standing Orders, we cannot disclose what is before the Committee until it is laid on the Table. I promise Members that the Report will be here next week for debate and interrogation on everything concerning the sugar industry.

Mr. Ethuro: Thank you, Mr. Temporary Deputy Speaker, Sir. Is it in order for an Assistant Minister to evade answering a question because he is engaging the Committee when Part (b) of the Question asked by Mr. Washiali is about an Act of

Parliament of 2001? This is 2011. You had 10 years. Did you have to wait for the Tenth Parliament, which began in 2008, to implement the law?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I said that we are implementing the law. Already, we have the Sugar (Amendment) Act which is with the Attorney-General. He is going through it and once he has finished, it will be brought to this House.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir this Question is about protecting the sugar industry in Kenya. We have witnessed, as a country, the killing of industries which are very key in generating employment in this country. If the sugar industry collapses, many youths and farmers will lose out. What are you doing to safeguard factories that crash sugarcane in this country as we open up to COMESA?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, that is a very good question. What efforts is the Government putting in place to stabilize the sugar industry?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, according to the Cabinet Memorandum that was discussed last year, it was agreed that the Government would take over some of the debts and convert them into equity. The Government would also waive some of the statutory deductions.

Mr. Mwangi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to keep on answering the Question when he has already said that it is being discussed by the relevant departmental Committee? Is he in order?

The Temporary Deputy Speaker (Prof. Kaloki): Order! Hon. Member, we have not yet reached there. The Assistant Minister was just giving his own submissions and I think he is in order to continue giving answers.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I was just outlining the measures that the Government is taking to make sure that the factories and farmers are safe. I have also said that the Government has promised to take up some of the debts and convert them into equity. The Government will write off some of the statutory deductions which have accumulated for a long time. The Government is serious.

However, there are a few things that are being attended to by the Departmental Committee on Agriculture, Livestock and Co-operatives, so that we can move forward. Once we get that sorted out, we will move forward in reforming the sugar industry.

Mr. Ochieng: Mr. Temporary Deputy Speaker, Sir, for the sugar factories to compete well with the sugar coming in from the COMESA countries, I believe that our factories must be privatized. When will the Government complete the process of privatization?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, for us to move forward, the Departmental Committee on Agriculture, Livestock and Co-operatives has to table its findings in this House. The Chairman has promised that he will do that next week. So, we will move on with the privatization of the factories.

Question No.682

RELEASE OF FUNDS TO RECARPET ROAD D511

Mr. Nyamai asked the Minister for Roads÷

(a) whether he is aware that Road D511, which serves Lower Yatta and Katulani Districts, is currently in a deplorable condition; and,

(b) when the Ministry will release funds which have been earmarked for the improvement of the road.

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

(a) I am aware that Road D11, which serves both lower Yatta and Katulani District is in a state of disrepair and needs attention.

(b) My Ministry has already released Kshs2.73 billion to be distributed equally to the 210 constituencies. That translates to Kshs13 million to each constituency for maintenance of rural roads. I want to announce that the next tranche of Kshs7 million should be in the accounts in the next 14 days. That includes Kitui West. Therefore, I expect the Constituency Road Committees (CRC) to hold meetings. The reports I have from the Committees are that hon. Members are utilizing the funds well and in full consultation with their constituents. Similarly, in this particular one, the CRC of Kitui West is advised to prioritize this road in this financial year.

Mr. Nyamai: Mr. Temporary Deputy Speaker, Sir, I would like to inform the Minister that we are not talking about the CRC for Kitui West only, but the CRC for Kitui Central also. That is because the road serves the two constituencies. I would like to know the following: On 16th June, 2010, when I asked a Question about the repairs on Mutasyani Bridge which is on this road, you indicated - and the HANSARD will bear me witness - that you had set aside Kshs38 million for repair of roads which join at that bridge. The road I am talking about is D11. I am asking about the Kshs38 million that you promised on the Floor of the House. When will it be released?

Mr. Bett: Mr. Temporary Deputy Speaker, Sir, I have gone through the HANSARD and I have not received a promise from my Ministry to set aside that amount of money for the repair of that road unless the Member could be kind enough to favour me and confirm with the HANSARD for that day. I am not aware of such a promise from my Ministry. I have gone through the HANSARD for that day and I have not seen such a promise.

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, the Ministry of Roads has not allocated any money for Class C roads in my constituency. After the rains, farmers are unable to transport their produce to the market. In fact, the public is unable to use the Class C roads. Could the Minister visit my constituency and see for himself the pathetic state of the roads? He should allocate some emergency money to repair the roads. The people are suffering because of the Ministry's failure to provide money to repair the roads.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Konchella! If you want the Minister to answer that Question, just bring it up! We are dealing with the link road between Yatta and Katulani districts.

Mr. Konchella: Mr. Temporary Speaker, Sir, the Questioner's district is similar to mine. It is part of Kenya. I am only asking the Minister that when considering the Member's Question, he also include other parts of the country like my constituency where there is a lot of problems, worse than in the Questioner's area.

Mr. Bett: Mr. Temporary Deputy Speaker, Sir, I want to confirm to this House that the Member, hardly a month ago, asked a Question on the road he is making

reference to and we gave him specific answers. The procedures to do what we promised to do are in progress.

Mr. Nyamai: Mr. Temporary Deputy Speaker, Sir, indeed, the Minister has indicated that I furnish him with a copy of the previous answer. I have a copy of the HANSARD for that day with me which I will table for him to peruse.

(Mr. Nyamai laid the document on the Table)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Nyamai, which part of the answer are you not satisfied with? The road has already been funded.

Mr. Nyamai: Mr. Temporary Deputy Speaker, Sir, he has said that he never promised Kshs34 million for this road. Indeed, I have a copy of the HANSARD for that day. Meanwhile, this road is quite critical for both Kitui West and Kitui Central. Indeed, we have gone to the Minister's office with hon. Ngilu requesting for assistance, so that the road can be repaired. Could he consider allocating more money than the Kshs34 million he promised, so that the road can be improved?

Mr. Bett: Mr. Temporary Deputy Speaker, Sir, I want to reiterate that I am not aware of the promise of Kshs34 million. I want to note that I am not privy to what was allocated by the Constituency Roads Committee (CRC), Kitui Central. However, I am aware that the CRC, Kitui West, has allocated Kshs1.875 million from the current funds. I also want to indicate to the hon. Member that in the last financial year, we spent Kshs1.8 million on the road, which covers two constituencies, to top up what had been allocated to each constituency.

(The Chair consulted with the Minister)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, I will defer Question No.682 to next Thursday, so that the Minister can consult and come back with a comprehensive answer.

Mr. Bett: Mr. Temporary Deputy Speaker, Sir, I will then collect, from the Clerk's office, a copy of the HANSARD which has been tabled by the Member, so that I can study, understand it and come back with a comprehensive answer in the course of next week.

The Temporary Deputy Speaker (Prof. Kaloki): Thursday next week?

Mr. Bett: Yes, Mr. Temporary Deputy Speaker, Sir.

Mr. Nyamai: Mr. Temporary Deputy Speaker, Sir, I seek your indulgence. This Question was on the Order Paper last week. The Assistant Minister asked for more time and it was deferred to today.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Nyamai! I am assisting you. I have already seen your document and that is why I have allowed the Minister adequate time to consult and come back with a comprehensive answer this coming Thursday.

(Question deferred)

Question No.529

LEVEL OF DISCHARGE OF RIVERS OMO/TURKWEL/KERIO/
KALAWASE INTO LAKE TURKANA

Mr. Ethuro asked the Minister for Water and Irrigation:-

(a) what the flow and discharge of River Omo, Turkwel, Kerio and Kawalase is, which all drain into Lake Turkana;

(b) what projects have been undertaken by the Rift Valley Water Services Board aimed at tapping the waters of the said rivers for economic benefit of Turkana County; and,

(c) what measures the Ministry is taking to ensure that the Board taps the potential of the said rivers and if the Government, in “Affirmative Action”, could consider establishing a Lake Turkana Basin Development Authority to undertake development projects in the county.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The discharge of River Omo is about 20 billion cubic meters per year and contributes 90 per cent of Lake Turkana waters. River Turkwel discharges 0.25 million cubic meters per year while Kerio River discharges 193.47 cubic meters per year. River Kawalase is a seasonal river which flows only during rainy seasons around Loima Hills.

(b) My Ministry, through the Rift Valley Water Services Board have designed a project to abstract water from River Turkwel to serve Lokichar, Katilu, Kalimorok, Kakong and Nakabosan areas of Turkana County at a cost of Kshs243 billion. The project will involve putting over 60 hectares of land under irrigation, supplying over 80,000 people with domestic water and over 500,000 livestock. This will enhance economic benefit to the people of Turkana County. My Ministry will seek funds from the Exchequer, so as to start the project during the next financial year. This is one of the priority projects in Turkana County during the financial year 2011/2012.

(c) My Ministry, through the Rift Valley Water Services Board, is preparing a masterplan on how to utilize water from River Turkwel, Kerio and Kawalase rivers, ground and service water sources for implementation under IGAD Infrastructure Investment Initiative to benefit the people of Turkana County. River Omo does not flow into Kenya’s mainland as it enters Lake Turkana at the border with Ethiopia. However, my Ministry, working with other Government departments, is in consultation with the Government of Ethiopia to establish a joint commission to oversee the exploitation of rivers flowing into Lake Turkana, including River Omo, in order to ensure sustainable development and conservation.

On the establishment of Lake Turkana Basin Development Authority, my Ministry has no mandate to establish such an authority as this is under the Ministry of Regional Development Authorities.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I want to thank the Assistant Minister for the good plans that he seems to have made for the development of the Lake Turkana Basin. If you look at part “b” of the answer, you will realize that the Rift Valley Water Services Board can only contemplate and plan for the future of the Turkana County as if these rivers and the lake have not been in existence for the many years that the Rift Valley Water Services Board has been in existence. What projects, including the

boreholes in Kerio, that the Rift Valley Water Services Board promised to drill, have been undertaken? This year, I have started a new secondary school that requires water.

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, the records available to me indicate that the Rift Valley Water Services Board is implementing 33 water projects in this financial year. Some of these projects include boreholes and shallow water pans in Turkana County. I wonder whether that covers his constituency.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Ethuro, I suppose that covers your concern as raised under part (b) of the Question.

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Assistant Minister has asked whether the 33 projects being overseen by the Rift Valley Water Services Board cover my constituency. If I had the schedule with me, I could confirm. The water services board has a broad scope.

There is a specific question I raised on drilling of a borehole in the Kerio Valley area, which the Ministry promised three years ago. There is a major problem right now because we have opened a brand new secondary school to cater for the entire division, and those people need water.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Ethuro, in answer to part (b) of your Question, the Assistant Minister was very clear that 33 projects have been initiated. So, he has already covered that part of the Question.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, this Ministry seems to have very beautiful plans and programmes, which need to be implemented. We seem to be doing very poorly in tapping the waters within our country. Egypt, for example, allows only 5 per cent of the River Nile waters to drain into the Mediterranean Sea. We seem to release 100 per cent of the waters of River Tana and River Athi to drain into the Indian Ocean.

The Assistant Minister has indicated that they are looking for Kshs243 million to ensure that they put 60 hectares of land under irrigation in Turkana County. Could he commit himself that come next year, we shall hear of positive results on that commitment?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, our Ministry is in the process of restructuring some of the decision-making mechanisms existing in our Ministry. Our Ministry has already instructed the District Water Officers to form district committees so that, come next year, our Budget will be devolved to ensure that every constituency receives some funds for water development as a matter of guarantee. That way, we shall make sure that every constituency has a water project. Our priority will be harvesting rain water.

In the particular case of Turkana County, this is our priority project for that area during the next financial year. A sum of Kshs243 million will be available for this project.

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, I would like to know from the Assistant Minister for Water and Irrigation whether he is aware that River Omo is being dammed in Ethiopia to form a big dam, which will make the flow of water from the river into Lake Turkana to reduce drastically? What he has given us as 2 billion cubic metres of water may reduce by even 80 per cent. What has the Ministry done to ensure that this does not happen, because Lake Turkana is likely to dry up?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, as the hon. Member has clearly indicated, River Omo flows from Ethiopia into Lake Turkana. Our Ministry has no power to control the way the Ethiopians use the river waters in their country. However, we are negotiating with them so that we can form a joint commission for the Lake Turkana development projects, so that we can co-ordinate the operations of Lake Turkana.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, could you also clarify to the hon. Member the issue of establishing the Lake Turkana Basin Development Authority to take care of development projects in that area? This is covered under part (c) of the Question.

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, our Ministry supports the idea of establishing Lake Turkana Basin Development Authority. However, the authority to establish the same is with the Ministry of Regional Development Authorities.

Mr. Ethuro: On a point or order, Mr. Temporary Deputy Speaker, Sir. I really want to thank you, because the Assistant Minister almost ran away from responding to this part of my Question. A Minister of the Government is essentially a part of the Government. Is it in order for him to run away from responsibility by saying that because the establishment of development authorities is not his Ministry's mandate, they cannot lobby or initiate the same? Ministers are supposed to sit in the Cabinet and collectively be responsible to this House. Is he in order?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, considering that this Question should have been directed to the Ministry of Regional Development Authorities, I would advise the hon. Member to re-direct the Question to the Office of the Prime Minister.

The Temporary Deputy Speaker (Prof. Kaloki): Order! As the Ministry of Water and Irrigation, you set up water boards. Could you also consider setting up Lake Turkana Basin Development Authority?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, because we are in the process of restructuring some of the establishments in our Ministry, we can also consider establishing this one.

The Temporary Deputy Speaker (Prof. Kaloki): Very good!

Yes, hon. Nuh!

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has confirmed that 90 per cent of the water of Lake Turkana comes from River Omo. This country is unable to tap fully into the rivers that drain into Lake Victoria because of a colonial agreement that was overseen by the British. The Assistant Minister is talking of a bilateral agreement between Kenya and Ethiopia, which can flop at any time. Could he consider, through the IGAD process or the African Union, to sanction Ethiopia that River Omo is not over-utilised so as not to dry up Lake Turkana?

The Temporary Deputy Speaker (Prof. Kaloki): Assistant Minister, are you prepared to answer that question? It is kind of a different question.

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, that is a separate question.

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

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Nuh!

Final supplementary question, Mr. Ethuro! Or are you satisfied?

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, how can I get satisfied when the Assistant Minister has ignored a question of 90 per cent of the waters of River Omo

destined for Lake Turkana being re-directed elsewhere? However, since he has been quite willing to assist with Kshs243 million, I do not want to squander that goodwill. I pray that God gives me and him at least one more year, so that by the next financial year, which will start later this calendar year, I can confirm the disbursement of Kshs243 million for that project.

Mr. Temporary Deputy Speaker, Sir, having said that, there are three dams on River Omo; namely, Gibo I, Gibo II and Gibo III. The Ethiopian Government is already damming the river. If the two countries form a joint commission after the completion of those dams, the damage will have been done. What urgent measures is the Ministry taking to engage the Ethiopian Government to halt the damming of this river until that joint commission is formed?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, as I have indicated, my Ministry, in consultation with other Government Ministries, is in consultation with the Ethiopian Government with a view to forming a joint commission to oversee development projects in Lake Turkana. I urge the hon. Member to one day come to our Ministry, so that we can talk more about this matter.

The Temporary Deputy Speaker (Prof. Kaloki): Next Question, Dr. Nuh Abdi!

Question No.534

YOUTHS UNDER KKV PROGRAMME
IN BURA CONSTITUENCY

Dr. Nuh asked the Minister for Youth Affairs and Sports:-

(a) whether he could provide a list of names of youths who worked under the Ministry's *Kazi Kwa Vijana* Programme in June and July 2010 in Bura Constituency, indicating the location of work, number of days worked by each person and amount of money owed to each one of them.

(b) whether he is aware that the said youths have not been paid their dues: and,

(c) what occasioned the delay in payment and when they will be paid.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I would like to bring to your attention the fact that I have not been supplied with the full answer. In fact, I have an answer which is incomplete; there is a list which I requested, and I think it is presumably being tabled by the Assistant Minister today. I request that the Minister tables the list then I will have a look at it and the Question can be deferred to tomorrow or the following day for me to ably interrogate it.

The Temporary Deputy Speaker (Prof. Kaloki): Madam Assistant Minister, do you have the answer with you and a copy that you can provide to the hon. Member?

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Temporary Deputy Speaker, Sir, we have already sent a copy of the answer to the Clerk's office and I have the answer with me.

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

The Temporary Deputy Speaker (Prof. Kaloki): Order! Let me consult the Clerk.

(The Temporary Deputy Speaker consulted with the Clerk)

Madam Assistant Minister, proceed because this copy has already been sent out by the Clerk's office. I do not see any problem to warrant deferring the Question.

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

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) A total of 200 youths---

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. With due reference to the Chair, if you look at this Question, it says that the Minister should provide a list of names. In all fairness, the hon. Member needs to apprise himself of the names, so that he can interrogate the Question.

The Temporary Deputy Speaker (Prof. Kaloki): I have consulted with the Clerk, and he has already sent a copy to the hon. Member. The Assistant Minister is here and is willing to respond.

Just a minute, let me consult. Dr. Nuh, could you approach the Chair?

(The Temporary Deputy Speaker consulted with Dr. Nuh)

I think the hon. Member's request to the Assistant Minister is very fair, because the hon. Member has received the list as we are speaking. Let me just defer the Question until tomorrow afternoon.

(Question deferred)

Question No.674

DISBURSEMENT OF FUNDS BY YEDF
IN THARAKA CONSTITUENCY

The Temporary Deputy Speaker (Prof. Kaloki): This Question by Mr. Mwiru will be deferred.

(Question deferred)

Question No.688

PROMOTION OF WESTERN CIRCUIT
AS TOURISM DESTINATION

Mr. Olago asked the Minister for Tourism:-

(a) what concrete tourism marketing strategies the Ministry is employing to promote the upcoming Kisumu International Airport as a destination of choice for local and international tourists;

(b) what steps the Ministry is taking, in liaison with the Ministry of National Heritage and Culture, to ensure that the burial site of Okore Ogonda, the ancestral hero of the Kogony clan next to the airport, is converted into a shrine; and,

(c) how else the Ministry is engaging the local tourism industry players so that Kisumu and surrounding areas of the Western Tourism Circuit make maximum gains from the airport.

The Minister for Tourism (Mr. Balala): Mr. Temporary Deputy Speaker, Sir, I have already consulted and discussed with the hon. Member for Kisumu Town West, and I have observed that Question parts (a) and (b) should be directed to the respective Ministries of Transport and Heritage and Culture. For part (c) I could answer, but I have agreed with the hon. Member that he can reframe this part of the Question and then I will be able to answer it.

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, it is true that the Minister consulted with me last week, that the parts of the Questions as asked were cross-cutting. I have since consulted further and I find that these parts should be answered by him, because once the Ministry of Transport constructs an international airport, it becomes the responsibility of the Ministry of Tourism to see how best they can market it themselves. Secondly, once the Ministry of Heritage and Culture have gazetted the burial site for Okore Ogonda as a shrine, it becomes the duty of the Ministry to see how to market it themselves. Thirdly, part (c) is clear. So, in my view, this Question should be answered by the Minister for Tourism.

The Minister for Tourism (Mr. Balala): Mr. Temporary Deputy Speaker, Sir, I am so surprised; I agreed with the hon. Member and then suddenly, on the Floor of the House, he has changed his mind. I will not shy away from responding to any Question directed to my Ministry. But since there are issues about marketing or promoting Kisumu International Airport, which falls directly under the Ministry of Transport, the Question should be properly directed.

Mr. Olago: On a point of order, Mr. Temporary Deputy Speaker, Sir. My point of order relates to the hon. Members approaching the Chair as we discuss very serious issues; the Chair may be able to multi-task, but I think the interruptions are distracting the attention of the Chair.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Olago, could you repeat that?

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, my point of order relates to hon. Members approaching the Chair when serious issues are being discussed.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Olago! I am listening to you. Do you have any question or a different point of order?

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, it was the Minister who was addressing the Chair and not me.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Minister, proceed!

Mr. Balala: Mr. Temporary Deputy Speaker, Sir, I have already addressed the Chair.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. This Question is of immense interest to the entire western Kenya, which covers the former Nyanza Province and Western Province. The Minister had tactfully avoided answering

the Question, citing cross-cutting matters with other Ministries. We want him to answer the Question and if there is anything that he thinks that his Ministry cannot answer, then he can tell that to the House.

The Minister for Tourism (Mr. Balala): Mr. Temporary Deputy Speaker, Sir, I cannot answer part (a) of the Question, and it should be directed to the Ministry of Transport. It concerns marketing of Kisumu International Airport. On part (b), I do not think that I have the capacity to respond to issues of the national museums of Kenya; these should be directed to the Ministry of Heritage and Culture.

On part (c), we are designing strategies to market western Kenya. We find it very important that the construction of the Kisumu International Airport will increase the number of tourists and visitors to that region, as well as---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Minister! On part (a) about tourism marketing strategies, you are likely to plan and incorporate them in the upcoming Kisumu International Airport. Although this falls under a different docket, the Ministry of Tourism can work with other Ministries. We know that it is not your docket, but can you find ways to work with the Ministry of Transport to promote tourism?

Mr. Balala: Yes, Mr. Temporary Deputy Speaker, Sir. I was answering part (c) and it has connection with parts (a) and (b).

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Minister, I am asking you a specific question. Are you able to come up with some strategies which you can use with the Ministry of Transport and promote the upcoming airport in Kisumu?

Mr. Balala: Mr. Temporary Deputy Speaker, Sir, I said yes, we can work together, but the responsibility of promoting Kisumu International Airport so as to increase the number of airlines is under the jurisdiction of the Ministry of Transport.

Mr. Olago: On a point of order, Mr. Speaker, Sir. I find the reason by the Minister incredulous, in the sense that since the airport is put up by the Ministry of Transport, we do not expect the Ministry of Transport to do the marketing. It is the same way that God gave us wildlife; we do not ask God to do the marketing of wildlife for us. In my humble view, all these parts of the Questions need to be answered in a proper way and not casually. I wish to ask for your direction that the Minister goes back, comes with a proper written answer and gives it to the House.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Olago. The Minister was very humble. He said he can work with the Ministry of Transport and come up with some strategies to promote the airport. I think that is what I heard the Minister say. Let us give him time to do that.

The Minister for Tourism (Mr. Balala): Mr. Temporary Deputy Speaker, Sir, I appreciate why the hon. Member for Kisumu Town West changed his mind on the Floor of the House. If we consulted properly we would have come up with an appropriate Question and appropriate answer. I think the ambushing of me by the hon. Member has confused the whole thing. I will be more than willing to sit down with Mr. Olago and come up with the appropriate Question. We need some adjustments to this Question for us to be able to answer it appropriately.

The Temporary Deputy Speaker (Prof. Kaloki): All right; I think the Minister is saying that he will follow up the matter with you to make sure that you work together.

Mr. Olago: On a point of order, Mr. Speaker, Sir. Could the Question then be deferred to another date, so that we can carry out consultations? It has to be a specific date.

The Temporary Deputy Speaker (Prof. Kaloki): I think the Minister has already agreed to that. He is requesting two weeks. The Question will come to the House again!

(Question deferred)

Next Question by Mr. Mbau!

Question No.650

FAILURE TO EMPLOY YOUTHS AS
CHIEFS/ASSISTANT CHIEFS

Mr. Mbau is not here? Question deferred!

(Question deferred)

Next Question by Mr. Koech.

Question No.699

NUMBER OF APPLICANTS TO KMTC
FROM MOSOP CONSTITUENCY

Mr. Koech asked the Minister for Medical Services:-

(a) how many applications were received by the Kenya Medical Training College (KMTC) from Mosop Constituency in 2010;

(b) whether he could indicate the number of trainees from Mosop admitted per year in the last three years; and,

(c) what plans he has to increase the number of students joining the college.

The Assistant Minister for Medical Services (Mr. Kambi): Mr. Temporary Deputy, Sir, I beg to reply.

(a) The administrative unit given consideration by the Kenya Medical Training College (KMTC) during admission is the district of origin, and not the constituency which is an electoral unit. Admissions for 2010 courses were finalized in June 2010. Since the results of the 2009 population census had not been released, the college worked with the 76 districts that had been in existence as at the 1999 population census.

(b) Mosop Constituency falls under Nandi District. Out of the total of 18,344 applicants, 328 were from Nandi District where Mosop falls. The number of trainees from Nandi admitted per year in the last three years is as follows:-

2008	-	83 students;
2009	-	74 students;
2010	-	74 students;

(c) Due to increased demand for training opportunities at KMTC the college has embarked on an expansion programme as demonstrated by the measures below.

(i) an expansion policy is already in place;

(ii) more academic programmes are being introduced in the existing schools; in this regard, admission in the year 2010 increased by more than 600 students.

(iii) expansion of existing facilities in some schools is in progress.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I do not know whether the Assistant Minister is reading from the same answer that I have. In the answer I have, there are (iv) and (v) strategies that he has not read out. I would have wished to interrogate him on these issues.

The Temporary Deputy Speaker (Prof. Kaloki): Do you have a question?

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I am seeking your indulgence on this, because the Assistant Minister has not read the complete answer as given to me to enable me interrogate it.

The Temporary Deputy Speaker (Prof. Kaloki): Do you mean there is an answer that he was able to provide and there are some areas you are not comfortable with?

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, one of the strategies that he has indicated here is that the college, in conjunction with the Ministry, is pursuing the possibility of opening new schools in various parts of the country. He, however, did not read that.

While I thank the Assistant Minister for the answer he has given, in his answer he has indicated that he is not able to get me the list per constituency. He has indicated that out of 328 applicants from Nandi County he was only able to take 74, leaving out 254 applicants. These are Kenyan students who were ready to join the KMTC. He has also indicated that in the year 2010---

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Koech, what is your question?

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has indicated that in 2010 there was an increase in admission of 600 students. However, from Nandi County the number stood at 74. This increase went to which counties? How come he did not consider Nandi County?

Mr. Kambi: Mr. Temporary Deputy Speaker, Sir, you find that quite a number of people applied but only a few qualified.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, under the Economic Stimulus Programme (ESP) the Government advised that each constituency would recruit 20 nurses. This year they have made another offer of 15 nurses to be recruited. Unfortunately, even last year some constituencies could not raise the 20 nurses, and now they are being asked to raise another 15 nurses. What affirmative action is the Ministry employing to ensure that constituencies that could not raise nurses for employment are given opportunities to take their children to the KMTC as a priority?

Mr. Kambi: Mr. Temporary Deputy Speaker, Sir, I thank the hon. Member for the good question. As I said earlier, the 2010 admissions were based on districts. However, as we are going into a devolved Government, I have given instructions to my Ministry to change the policy, so that this year we start recruiting based on constituencies instead of districts.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I am happy that the Assistant Minister is considering more recruitments. I am just wondering why he has not recruited more trainees to the Lodwar Medical Training College, which has sufficient capacity to train nurses. Why is he looking for more colleges when I have provided one to him? When is he going to increase the recruitment to Lodwar Medical Training College?

Mr. Kambi: Mr. Temporary Deputy Speaker, Sir, as I said earlier, this year we are going to improve on the recruitment and will consider his request.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, let me first of all thank the Assistant Minister for accepting to change the policy so that they can recruit up to the Constituency level. I believe this problem is going to be sorted out.

He has indicated that he is going to open new schools. My constituency is one that is terribly affected. Could he consider – I will give them land – putting up a school in Nandi County?

Mr. Kambi: Mr. Temporary Deputy Speaker, Sir, as we are revising the health sector policy, I think we are going to consider Nandi as a county.

QUESTION BY PRIVATE NOTICE

STRIKE BY MIGORI MUNICIPAL COUNCIL WORKERS

Mr. Pesa: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that workers at the Migori Municipal Council went on strike from Friday 3rd December 2010 due to three months' unpaid salary arrears?

(b) Could the Minister disclose the current financial position of the Council, clarify whether there are any funds meant for the Council held by the Ministry and state the measures the Ministry is taking to address the problem and avert recurrence of the same in the future?

(c) What is the state of the working relationship between the Chief Officers and the councilors and what measures is the Minister taking to restore a functional working relationship?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Temporary Deputy Speaker, Sir, it was only part "c" of the Question that had not been answered.

I beg to reply.

My Ministry realized that there was no cordial working relationship between the chief officers and the councilors. My Ministry has effected the transfer of the senior officers namely; the Town Clerk and the Treasurer. We have also ordered an audit of the council in order to expose any other underlying issues.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Pesa, I think you are satisfied!

Mr. Pesa: Mr. Temporary Deputy Speaker, Sir, I am least satisfied. While the Assistant Minister says that he has transferred the chief officers, these chief officers appeared to the police and wrote statements. As I am speaking, the workers in Migori Municipality have not been paid for some months. How does transferring this chief officer solve the problem of Migori workers who are currently not earning their salaries?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, Mr. Pesa had sought to know the cordial relationship between the chief officers and the councilors and what action we were meant to take. As I said, the cordial relationship was not satisfactory.

However, I had indicated that we are pushing on for an audit to ensure that funds are made available for the workers to be paid whatever they have not been paid.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Assistant Minister! The issue is that, the council workers went on strike on 1st December 2010. The reason for that is that they had gone for three months without their salaries being paid. The question is: Are you doing anything to address the situation as it stands today?

Mr. Nguyai: Yes, Mr. Temporary Deputy Speaker, Sir. We answered part “a” and “b” of the Question and we provided sufficient evidence to show that the issue had been addressed and we even gave the payment vouchers to show that payment had been made and effected. The only part of the question that was actually meant to feature was part “c” of the Question. That is the one I have addressed today.

The Temporary Deputy Speaker (Prof. Kaloki): Final Question, Mr. Pesa!

Mr. Pesa: Mr. Temporary Deputy Speaker, Sir, it is difficult to ask another question. But I am least satisfied because there is a problem in that municipality; the workers cannot do good work if there is no salary and yet the Assistant Minister is insisting that they had been paid. I come from Migori and yet the Assistant Minister is relying on the answers given by his officers. He actually transferred the same officers. How is he going to help address the plight of the workers in Migori Municipality who have been going without salaries up to now?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, once again, I would want to state very categorically and very clearly that we are having an in-depth audit in that area and we will ensure that any underlying issues will be exposed and specifically, so far, according to the payment vouchers, the workers have been paid.

The Temporary Deputy Speaker (Prof. Kaloki): Next Order!

POINTS OF ORDER

IMPLEMENTATION OF HOUSE RESOLUTION ON APPOINTMENT OF KBC BOARD OF DIRECTORS

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I wish to stand on a point of order Under Standing Order No.183 (1) and (2). On 18th November, 2010, this House received a Report by the Departmental Committee on Energy, Communication and Information on the matter of appointment of the Kenya Broadcasting Corporation Board of Directors. In the same month, this House adopted and passed a resolution, and approved the Report by the Committee.

In brief, the Committee recommended and the House supported the resolution of the Committee that the Minister moves with speed to reconstitute the Board to ensure that appointments comply with the provisions of the Kenya Broadcasting Corporation Act.

Mr. Temporary Deputy Speaker, Sir, to date, the Minister has not acted to implement that resolution. Standing Order No.183 (1) states:-

“Within 60 days of a resolution of the House or adoption of any report of a select committee, the Minister under whose portfolio the matter raised in the report or contained in the assurances or resolution fall, shall provide a report to the House”.

It is now going to three months. It goes on to state:-

“A Minister who fails to submit a report under this Standing Order shall be deemed to be disorderly within Standing Order No.97”.

That relates to disorderly conduct.

Mr. Temporary Deputy Speaker, Sir, I do kindly request the Chair that you find this Minister disorderly within the meaning of Standing Order No.97 and that you rule that this matter be referred to the Committee on Implementation.

Standing Order No.196 reads as follows:-

“The Committee on Implementation shall scrutinize the resolutions of the House, including adopted Committee reports, petitions and undertakings given by the Government on the Floor of the House and examine whether or not such decisions and undertakings have been implemented and where implemented, to the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary”.

To date as we talk, the Board has not been constituted or reconstituted. I wish to ask that you find the Minister totally disorderly and that the matter be referred to the Committee on Implementation.

The Temporary Deputy Speaker (Prof. Kaloki): Thank you for bringing that matter to the attention of the Chair and the House. However, looking at Standing Order No. 1(1) and (2); that is the issue that concerns you, for the Chair to rule that he has been found disorderly. But we will not do that at the moment. I will direct the Committee on Implementation to follow up on the matter and bring the report to this House so that we can be able to proceed from there.

Any other statements!

TABLING OF REPORT ON MPs SUSPECTED OF DRUG TRAFFICKING

Mr. Kabogo: Mr. Temporary Deputy Speaker, Sir, on 22nd December 2010, the Minister of State for Provincial Administration and Internal Security did mention my name, amongst other hon. Members of Parliament, as suspects of drug trafficking. He promised that a report would be tabled in the House within a month. Five weeks later, I rose on a point of order seeking him to give the House that report, and it was said it would be done last week on Tuesday. Last week on Tuesday, again he came here and sought intervention of the House to defer that matter to today. I am requesting that the Minister tables the report to clear our names.

This matter has been in the media every day. Our names have been mentioned as suspects every day. This can be nothing else but a conspiracy to keep us being mentioned in the newspapers. Can he table the report?

The Temporary Deputy Speaker (Prof. Kaloki): Order! Order, hon. Kabogo! The Chair has information that the Minister is trying to complete the Report and bring it to this House. Since the Minister is here, when do you think you will be ready to do that?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I will be able to bring the Report tomorrow. As a matter of fact, hon. Kabogo knows that I had already talked with him informally and informed him that I will, indeed, table that report tomorrow in the afternoon.

The Temporary Deputy Speaker (Prof. Kaloki): Very well! Hon. Kabogo, let us settle that matter. The Minister has already taken it up and will bring a comprehensive report tomorrow.

Mr. Kabogo: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is not a Kabogo matter but a House matter. So, even though the Minister had mentioned to me about it, we have families and are hon. Members of this House. Could we now put it to the Minister that this is the last time he is asking for this matter to be deferred? Again, tomorrow I will not be in the House. I am requesting that it be done on Thursday.

The Temporary Deputy Speaker (Prof. Kaloki): That is a fair request, which is better because the Minister can have an additional day.

Mr. Minister, can you bring the Report on Thursday, when the hon. Member will be present?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, since it is a request that I do bring the Report on Thursday, I have got no reservations at all. I will be able to table it on Thursday afternoon.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Kabogo has requested whether the report can come on Thursday and the Minister has concurred. I do not want to dwell on that any further. The Chair rules that the Minister tables that Report on Thursday, so that we can put this matter to rest.

Are there any other Statements? Yes, hon. Mwau!

ALLEGATIONS OF DRUG TRAFFICKING AGAINST HON. MWAU

Mr. Mwau: Mr. Temporary Deputy Speaker, Sir, I rise under Standing Orders Nos.79 (4) and 82(1). Standing Order No.79 (4) reads:-

“No Member shall impute improper motive to any other Member except upon a specific substantive Motion of which at least three days’ notice has been given, calling in question the conduct of that Member.”

Mr. Temporary Deputy Speaker, Sir, on 22nd December, 2010, the Minister of State for Provincial Administration and Internal Security adversely mentioned my name, saying that I was a suspect of drug trafficking. Those are matters that fall within Standing Order No.79 (4). There was no notice and everything that happens in this House is through the will of the Chair. The Chair allowed such a grave mistake to happen.

Mr. Temporary Deputy Speaker, Sir, Standing Order No.82 (1) reads:

“A Member shall be responsible for the accuracy of any facts which the member alleges to be true and may be required to substantiate any such facts instantly.”

Mr. Temporary Deputy Speaker, Sir, again, the Chair closed its eyes and allowed my name to be dragged seriously into the matter of drug trafficking without the matter being substantiated. Subsequently, the hon. Minister went ahead to state that the matter is

under investigation and the report would be made available within 30 days. That gave me comfort to wait for 30 days, and the 30 days are gone. I have written to the hon. Minister severally asking that I be provided with a copy of the complaint by Amb. Michael Ranneberger, together with the forwarding report or letter of the allegation to him as the Minister of State for Provincial Administration and Internal Security and also as the Acting Minister for Foreign Affairs, but to date there is no reply.

Therefore, I am asking the Chair to ask the Minister to provide a copy of the complaint, which could form a threshold for me to be mentioned as a suspect on the matter of drug trafficking. Only then would that clearly satisfy these hon. Members who are not aware of the basis of the allegations. The Minister should have been able to state categorically what drugs each and every person he mentioned traffics, because you cannot just be a drug trafficker. If they say that there are drugs that are exported to the United States or Europe, the Minister must bring a Ministerial Statement on what drugs have been arrested in America or Europe, emanating from the Port of Mombasa. Otherwise, this innuendo and character assassination should not be the business of the House.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members! There are two issues here. One is the issue of the report. The Minister will bring a comprehensive report on Thursday. The other issue pertains to Standing Orders Nos.79 (4) and 82(1). The Chair will consult and give a ruling on Thursday this week.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): On a point of information, Mr. Temporary Deputy Speaker, Sir. I think the issue of the substantiation or even what has actually been referred to by the hon. Member was actually raised here earlier. I think you will be able to find that, indeed, the Speaker did actually make a ruling on that matter.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Minister! I will prefer that you provide your comprehensive report on Thursday. I do not want you to debate the issue.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I will present my Report, but I also want to say that some of the things which have been said clearly do not reflect what I said here. Indeed, on Thursday, we will make sure that the relevant HANSARD will be here, so that words are not actually put into my mouth.

The Temporary Deputy Speaker (Prof. Kaloki): Fair enough! We will be able to do that.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

THE VETTING OF JUDGES AND MAGISTRATES BILL

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, we are going to defer Order No.8 to tomorrow.

(Committee of the whole House deferred)

Next Order!

BILL

Second Reading

THE JUDICIAL SERVICE BILL

*(The Minister for Justice, National Cohesion and
Constitutional Affairs on 10.2.2011)*

(Resumption of Debate interrupted on 10.2.2011)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Oyongo-Nyamweya was contributing and has a balance of 17 minutes.

Please, proceed!

Mr. Oyongo Nyamweya: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me time to contribute to this very important Bill in the House.

Mr. Temporary Deputy Speaker, Sir, I have gone through the Bill and the whole Constitution. The Bill before us is the Judicial Service Bill. It is the best Bill we have in this country, if we can respect what is in the Constitution. I want to contribute on the ongoing debate about the appointment of judicial officers. The Constitution has made very clear, the role of the Judicial Service Commission (JSC). It is clearly stated in the Constitution that the JSC will be involved in the recruitment of judicial officers. It is their duty to advertise positions in the judiciary and employ the right people.

Mr. Temporary Deputy Speaker, Sir, the Constitution is divided into two sections. We have the main body of the Constitution, which runs from chapter one to 18. Then we have the Schedule of the Constitution, which actually states how the Constitution should operate. There is no way the Government or anybody can make decisions based on Schedules of the Constitution. Any decision that has to be made, especially on the appointment of judicial officers, where we are now, should follow the provisions of the Constitution. We cannot read a section or a schedule of the Constitution in the appointment of these officers.

Mr. Temporary Deputy Speaker, Sir, the main Constitution is from Chapter one to 18. The Schedule is supposed to help the Constitution to be operationalized. The first Schedule is Article Six, which gives the number of Counties. Unless we follow this Constitution to the letter, we will have problems.

Mr. Temporary Deputy Speaker, Sir, I look forward to a scenario where people will apply for jobs such as Chief Justice, judges or any constitutional office. To me, there are two sections here. We have the judicial officers and other civil servants in the Civil Service. The JSC has a mechanism of appointing someone to the position of the Chief Justice. The recruitment of other civil servants is done by the Public Service Commission (PSC). As I said, judicial officers are recruited by the JSC. Is the JSC operational? Yes, it is operational. The Constitution is very clear. Therefore, anything that requires appointment of any judicial officer must be done by the JSC. I have looked at the Schedule.

Mr. Temporary Deputy Speaker, Sir, Article 23 is on judges. The rule on vetting of judges is very clear. It says:-

“Within one year, after the effective date, Parliament shall enact a legislation which shall operate----.”

We have Articles 160, 167 and 168. That Section is anchored in the main Constitution. When it talks about the Chief Justice, it is very clear. It says:-

“The Chief Justice in office immediately before the effective date shall within six months after the effective date, vacate office.”

It is also very clear. We must refer to it.

When you come to the appointment of the Chief Justice, you cannot read that Section alone, without reading the main body of the Constitution. The power of who should appoint the Chief Justice lies with the JSC. After they have done their job, they will forward the names to the relevant authority, who is the President and the Prime Minister. Therefore, for us to move forward as a nation, let us look at the best ways and means we can serve this nation. Let us mix what is in the Schedule which is not the main part of the Constitution with other provisions. We must look at what is in the main Constitution. The main Constitution is from Chapter one to 18. The rest of the sections are to help on how this Constitution will be operationalised. As Kenyans, this country belongs to all of us. We have caused unnecessary problems. The problem we have is that some people feel more important than others. There are some people who feel that they should make decisions and not others. There are people who feel, if we do not do this, we will not look big. That is a problem we have as a nation. We should all realize that we are equal before the law. We are all Kenyans and we want equity for everyone.

Mr. Temporary Deputy Speaker, Sir, people are trying to serve themselves. I want to us to look at a situation where we have applicants for this position. The Office of the President has no capacity to vet applicants who want jobs. The people there are their friends. The people they are likely to consider are those they talk to. This new Constitution is supposed to involve all Kenyans who want these jobs. The other question is whether serving judges can qualify for the post of the Chief Justice. To me, they qualify to be considered. They should appear for interviews and whoever qualifies should be given. Let us not make these country two regions. Let us not be divided for political gains, which will not take us anywhere. We need to be Kenyans. We need to be fair to everybody. We need every person to be given a space to be heard. As I said, unless that is done, the harm is already done by those people who feel more important than others. Let me hope that the Minister for Justice, National Cohesion and Constitutional Affairs will help us to move forward, so that judges are vetted in a more transparent manner. We should not complain about these processes.

Mr. Temporary Deputy Speaker, Sir, there is a lot of animosity in the country. The nation is being divided. There is a feeling that there are certain people who want to divide this country into regions. There are groups of people who come together for their own selfish interest.

Mr. Temporary Deputy Speaker, Sir, somebody said he wants to privatise the Port of Mombasa. For what? It is managed very well. There is an effective Chief Executive Officer (CEO). If there is any investor who has money in this country, then he should go and start Lamu Port. This nation requires all of us to create wealth for all of us to benefit. This nation does not require a few people to create wealth for themselves. If you look at

the issue of the Port of Mombasa, people want to privatise it. What is the reason? Is it making losses? Is its management poor? What is the reason? I think the main reason is that some people want to raise funds for 2012 elections. Let the truth be told.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Onyongo Nyamweya!

Do you have information to substantiate that those people who are calling for the privatisation of Mombasa Port want to raise funds for 2012 elections?

Mr. Oyongo Nyamweya: Mr. Temporary Deputy Speaker, Sir, that is my opinion.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Oyongo Nyamweya! Do you have the information? If you do not have it, withdraw that statement.

Mr. Oyongo Nyamweya: Mr. Temporary Deputy Speaker, Sir, I withdraw and apologize.

So, what I am saying is that as a nation, let us be fair to each other. This country belongs to all of us. Let us work together to foster unity and not divisions. The National Accord came into being to unite this country and not to divide it. Let us not look at who has powers to do what. Let us not look at who has no powers to do this or that. I think that is the problem we have. Some people feel that they have more power than others. Some people feel that they are being squeezed. The point here is that there is nobody who has more powers than the other. If we are guided by the Constitution of the Republic of Kenya, if we truly respect it, the definition of authority for each person is divided. The role of the Prime Minister and the President is given. So, let us be guided by it so that, as a nation, we can move forward. Let us have a nation which we can all be proud of. Let us not have a divided nation which can burst into flames now and then. We do not know what will happen.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, Mr. Sambu will give his contribution as the Vice-Chair of the Budget Committee.

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, I would like to speak on the budgetary issues in this Constitution. The Constitution has provided for prudence in the use of the resources of this nation and, in particular, Article 201 has dwelt on principles of public finance. It provides that public money shall be used in a prudent and responsible way. Financial management shall be responsible and fiscal reporting shall be clear. It is in this light that I propose to make several changes to some of the clauses that pertain to Clause 4 on the financial provisions of this particular Bill.

First of all, the appropriation is very clear. No funds should be appropriated from the Consolidated Fund without appropriation of the House. Kenyans should lose sight or easily forget the problems of yester years when funds were fanned out of the Consolidated Fund without any authority. When you look at this particular Bill and the Constitution, there exists a contradiction between the Bill and the Constitution. The Bill on one hand under Section 26(1) provides that the expenses of the Commission and the Judiciary incurred in the execution of their function under the Constitution and this Act, shall be charged and issued out of the Consolidated Fund “without” further appropriation than this Act. It also provides that the Commission shall be a separate Vote. But when you look at the Constitution, Section 221(6) provides that when the estimate of the National Government expenditure and estimates of expenditure of the Judiciary and

Parliament have been approved by the National Assembly, they shall be included in an Appropriation Bill which shall be introduced in the National Assembly to authorize the withdrawal from the Consolidated Fund of the monies needed for the expenditure. So, one can see a contradiction between the Constitution and this particular Bill. I would like to say that I will make an amendment to that effect.

The Commission and the Judiciary are one entity. Indeed, the Chief Registrar, as provided by the Constitution, is the Secretary of the Commission. Therefore, it follows that they are one and not separate votes. We must start looking at resources as an expensive item. We need to appreciate that, by giving a separate vote we will be automatically giving authority to increase expenditure. Article 114 of the Constitution provides that any Bill that relates to funding should get a nod from the Treasury and the relevant Committee of Parliament before it proceeds. I will, therefore, propose amendments to this clause to provide that the vote will only be one; that of the Judicial Service Commission (JSC).

Mr. Temporary Deputy Speaker, Sir, in the Constitution, Article 173 (3) provides that each year, the Registrar will prepare estimates of expenditure for the following year and submit them to the National Assembly for approval. It is further amplified in Article 221(3) where it indicates that the relevant Committee of Parliament that consolidates the final Budget--- Thus in this Bill, Clause 29(2) and (3) are not in line with the Constitution. I will, thus, propose amendments to them to indicate that once the JSC is happy with the estimates, they should submit such estimates to the National Assembly and, in any case, two months before the end of the financial year.

Lastly, it is important to note that funds from the Fund of the Judiciary should not be applied in any expenditure unless authority has been sought from Parliament. It is, therefore, important that a new clause be added to reflect that reality.

With those few remarks, I beg to support.

Mr. Kioni: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to support this Bill. The issue of vetting of judges and magistrates is something that has been spoken about by virtually all leaders in this country. It is important that, as a nation and a House, we should quickly move and put this thing behind us, so that Kenyans can have the confidence of the Judiciary as it is very crucial. We also need the international community to have its confidence in our Judiciary; not because it will be deferring matters to it but, because we, as leaders in this country, have helped to create that perception that our Judiciary cannot function and is literally on its knees. It is a perception that, perhaps, I do not agree with. It is a perception that we, as leaders, need to be careful about as we move forward. The continued condemnation of our Judiciary from the Floor of this House and even in public fora does not help this country in any way. It does not help either to raise the morale of those working within the Judiciary.

Mr. Temporary Deputy Speaker, Sir, we have our difficulties. We may have had our difficulties in the past. We may want to justify why we never went to court. The continued condemnation of our Judiciary is not useful to us, as politicians. It is not useful to this nation or to anybody. In any case, as we continue condemning it, we still have cases being referred to it, even as we are contemplating vetting them.

So it is incumbent upon leaders to ensure that they are awake to this fact. Every other time, including when we were discussing the issue of consultation here, we heard

statements from Cabinet Ministers expressing their opinions. It is like in their minds, the Judiciary does not exist on one hand, but on the other hand, they want to rely on judgment passed by the same Judiciary. That double-speak is also not useful to us as leaders.

Having said that, I want to commend the Minister, his staff and also those involved in the drafting of this Bill. As I mentioned, it is a useful piece of legislation that we need to dispense with.

However, I have a few issues that I would want addressed by the Minister when he is responding and, perhaps, they are issues that might call for amendment. One of the things is that from this same House we have held arguments that what is provided for within the schedules is not superior or cannot supersede what is provided for in the main Constitution.

Section 23 of the Sixth Schedule provides for the vetting of Judges and the need to have a Bill for purposes of effecting that contemplated vetting procedure. The HANSARD will bear me witness because I think even the Minister has told us in no uncertain terms that a provision within the schedules cannot supersede what is provided for within the body of the Constitution.

Article 168 of the Constitution provides for the procedure that must be followed when you are removing a judge or magistrate from office or even when you are sending him on leave or when you are suspending him. If that be the case, then this Bill will run into problems just like we have been arguing on other Motions and legislations that are there.

Mr. Temporary Deputy Speaker, Sir, I think it is important that we be satisfied that this Bill will not be challenged in a court of law for having violated the provisions as contained or contemplated under Article 168 which among many other things, states:

“The removal of a Judge may be initiated only by the Judicial Service Commission acting on its Motion, or on the petition of any other person to the Judicial Service Commission.”

I may not have read the whole Constitution comprehensively, but I also do not remember coming across a provision in this Constitution about the board. If that be the case, then the board might not have the powers that are contemplated in this Bill to remove or to recommend the suspension of a judge and so forth.

This Bill seems to limit the rights of the judges and magistrates in a number of things. Under Article 24, there is provision for limitation of rights and fundamental freedoms. The requirements of Article 24 are that such freedom in the Bill of Rights shall not be limited, except by law and then only to the extent that the limitation is reasonable, justifiable, in an open democratic society and it continues to provide for the factors that must be satisfied for that right to be limited. The Minister would want to satisfy us when he is responding as to whether this Bill is not limiting the rights and fundamental freedoms of those who are intended to be vetted.

Mr. Temporary Deputy Speaker, Sir, this Bill seems to have been written a little bit earlier before the promulgation or by minds that were still outside the promulgation period. Article 21 says:-

“The Bill of Rights applies to all State organs and persons.”

Even as we seek to enact this Bill as a House, in the words of the Speaker the other day when he was making a ruling, he said that nobody can talk to Parliament in a

compulsive manner. Nobody can compel Parliament to do anything other than what is provided for within the Standing Orders.

As we continue debating this Bill and as we move to enacting it into law, it is important that we make sure that we remain respectful to the provisions of the Constitution, so that we do not pass a Bill that seems to limit the rights of the persons whom it will affect.

If you read Article 21(1) and (2) it states as follows:-

“1. It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.”

2. The State shall take legislative policy and other measures including the setting of standards to achieve the progressive realization of rights guaranteed under Article 43.”

In enacting this Bill, are we living up to the spirit of Article 21(1) and (2)? I think the answer is not in the affirmative.

Again, when our Speaker was making the ruling, he said that it is the work of the courts to look at what we have done and render it--

Dr. Eseli: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to be contributing towards the Vetting of Judges and Magistrates Bill which we have dispensed with? We are now debating the Judicial Service Bill.

The Temporary Deputy Speaker (Prof. Kaloki): I think the hon. Member is aware that we are talking about the Judicial Service Bill, Bill No.2 and he is just borrowing some other areas to support his claims. Mr. Kioni, is that the case?

Mr. Kioni: Mr. Temporary Deputy Speaker, Sir, I think my colleagues will need to pay good attention to the provisions that we are looking at, so that they do not get us mixed up.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Kioni is a lawyer.

Mr. Kioni: Mr. Temporary Deputy Speaker, Sir, I was saying that as we continue enacting legislation based on the provisions of the Sixth Schedule, it is important to remain awake to our own arguments that we have had on this Floor and also the ruling of the Speaker where we have said that there is very little we can do outside the main provisions of the Constitution.

It will be important to look at the provisions as contained in the body of the Constitution, so that we do not seem to be enacting legislation that will be challenged.

Under Article 24, before my good friend Dr. Eseli got me a bit worried, I was saying that it is important, and the Speaker said that in his ruling a couple of days ago, to remain aware of the fact that the court can challenge those provisions. As we continue thinking of how to implement the Constitution, I want us to remain true to our own contributions on the Floor of this House. I said that the Chair holds the institutional memory of this House. Some of us have the opportunity to change our arguments every other time we start. However, it is important to make sure that our arguments do not influence legislative agenda in a manner that is not consistent with the provisions of this Constitution.

With those few remarks, I beg to support.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. First, I would like to thank the Minister for the manner in which he has introduced the Bill in this House. I wish to indicate that Kenyans have been looking forward to getting a credible judicial service and courts. I think this

concern has the best opportunity to be addressed. Credible services, justice and a dependable system has been lacking in this country. That has been caused by those who have been appointed and have not demonstrated any impartiality, competence and humility in the execution of their duties. A good system of execution of duties will be received well by Kenyans. It is vivid in our minds that our Judiciary has not been credible and corruption has been the order of the day. It is notable that at times, fake title deeds have been used by crooked people in our courts to allow them to get out. We should also remember that fire has been used in our courts to destroy evidence and the accounts system. We have noted such cases in Limuru and Kirinyaga.

The new Commission will ensure efficient delivery of justice in all the regions of this country, and particularly the marginalized areas. The new Commission will be expected to effect the establishment of new courts because the new Commission will have adequate funds for doing that. In North Eastern Province and other marginalized areas, people have been receiving justice under trees. This Commission will address some of those issues.

For the first time in the history of this nation, the Judicial Service Commission will be getting its own Funds from the Consolidated Fund. Therefore, this Commission, from the outset, will be expected to reflect accountability, transparency and proper estimates in the way they will be performing their duties. The new Commission will be expected to employ very competent people to handle accounts in the new Commission.

It is also notable that the retirement age has been indicated properly and is limited at 50 years. Time and again, our system has allowed extension of non-performing judicial officers. That should not be allowed to continue because we have many young Kenyans who are well educated, experienced and competent to handle the services that are required in our judicial system. Even on public interest, those extensions will not be necessary unless there are very special cases.

It is important to note that renewal of retirement terms has been based on ethnic considerations. That will not be tolerated in this country. I note that there will be a Discipline Tribunal. It is our hope that members of this committee will be expected to address some of the things that we have seen in this country. We have seen lawyers in this country demonstrating against very abusive and arrogant judges. Therefore, the Commission will be expected to control and contain some of those bad elements. When judges continue to be incompetent in terms of delivering services and continue to earn salaries for no work done that is theft of public coffers. That will be addressed as well. Time and again, we have seen judicial officers misbehaving in courts of law and that will also be addressed.

The new Commission will be expected to be strict and quick in hearing cases so that delivery of service in our judicial system is carried forward uninterrupted.

With those few remarks, I fully support this Bill.

Eng. Gumbo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support the Judicial Service Bill, 2011. I support the Bill, but I will be proposing some amendments. The Judicial Service Commission is a creation of Part IV of Chapter 10 of the Constitution of Kenya which deals, extensively, with the Judiciary. Section 171(f) of that Chapter allows for the appointment of two advocates; one a woman and the other a man, each of whom have 15 years experience, elected by members of the statutory body responsible for the professional regulation of advocates.

Under Section 172 of Chapter 10, the functions of the Judicial Service Commission are listed. Among them is to recommend to the President persons to be appointed as judges. The JSC is also required, under that section of the Constitution, to review and make recommendations on the conditions of service of judges, judicial officers and remuneration of the staff of the Judiciary.

This is fundamental. Under Article 172 of the Constitution, the Judicial Service Commission is required to appoint, receive complaints, investigate and remove from office or otherwise discipline registrars, magistrates and other staff of the Judiciary in the manner prescribed by an Act of Parliament, which is the Bill we are debating today. They are also responsible for preparing and implementing programmes for the continuing education and training of judges and judicial officers. They are also required to advise the national Government on improving efficiency and administration of justice.

Mr. Temporary Deputy Speaker, Sir, when you look at those functions of the JSC, then it becomes the effective employer of judges and magistrates in Kenya. My view is that to allow nominees in Article 171(f) of the Constitution to appear in court and to represent clients constitutes a serious conflict of interest. I will be pleading with Members that, as a country, we should take the step to divorce offices from individuals. This issue has come up even in court and whenever it comes up, we look at the individuals, for example, Ms. Mwangangi and Lawyer Ahmed Nassir. I am just looking at a hypothetical situation where one or the other of these two nominees appear in a magistrate court in Turkana, the magistrate knows that these individuals, at some point, will be responsible for appraising the performance for training. I am to be convinced that the places of these individuals will not tilt justice in their favour.

In that respect, I will, therefore, be proposing an amendment to Clause 18 of the proposed Bill, by introducing Clause 18(d). Clause 18, generally deals with Commissioners to relinquish certain offices. I will be proposing an amendment to introduce Clause 18(d), so that a lawyer in private practice, who appears for clients in court, will have to be excluded from being a member. He should give up one position. I want to state clearly that we are not trying to stop anybody from practising law. My basic understanding of this arrangement, as somebody who is not trained in law, is that it is not in the interest of anybody to ask an employer to seek justice from an employee, which is what will happen in some of these cases. I will be pleading with my colleagues to look at it beyond the two individuals who have been nominated and let us have an amendment. My colleagues have told me that this is happening in some jurisdictions particularly in the West where lawyers in private practice are nominated to sit in commissions, but we have had our problems. We are still maturing as a democracy. The vested interests that play all the time in Kenyan politics and daily lives are not lost to us. It will be nice to apply that caution by making that amendment and I will be pleading with my colleagues to support it.

Finally, Clause 47 allows the Commission to make regulations for the better carrying out of the purposes of this Act. We have argued this matter before. You will recall that when the proposed amendments to the Health Insurance Act were brought to the House and the Minister discussed the merits here, the Members were surprised that those regulations were never brought to the House. We were told that the National Hospital Insurance Fund (NHIF) Act does not require the Minister to bring such regulations for the approval of the House. Consequently, when we debated the Bill on the

Commission on the Implementation of the Constitution, we pushed forward the requirement that any regulations must be brought to the House, debated and approved by the House before the Commission can bring them into force. I also intend to introduce Clause 47(d) in the proposed Bill to require the Commission to make regulations for the better carrying out of the purposes of this Act and the day to day running of its activities and bring them to the House, so that we can debate and approve them before they are brought into force.

With those remarks, I beg to support.

Mr. Muthama: Thank you, Mr. Temporary Deputy Speaker, Sir. I also rise to support this Bill. I have very little to say because a lot has been said by those who contributed before me.

I want to ask the Minister to pay attention to Clause 6(1). The clause says that the President and the Judges of the Court of Appeal shall serve for a non-renewable term of three years. This means that a judge gets into office and before he familiarizes himself with the issues, the term is over. This does not encourage people to apply for that job. It is clear that even if a person performs exemplary, he stands no chance of having his term extended. There will be no encouragement to officers to serve faithfully and with total commitment. I want to ask the Minister to make sure that the term is for over three years and renewable. Disinterested people who just want to pass time may end up becoming Judges of the Court of Appeal.

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

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

The other issue relates to foreign judges. The Minister must make sure that recruitment of judges from outside does not happen again. We are committed to educating our children and we want them to know that we trust them as they strive to serve this country. Judges from outside should not be given jobs here. I want to thank the Minister for the great efforts he has put to make sure that this country has a new Constitution. The road has been very bumpy, but I can say, with confidence, that we have reached somewhere. More Bills should be brought, so that we can pass them immediately, so that we do not waste time for Kenyans.

With those many remarks, I support.

Dr. Eseli: Mr. Temporary Deputy Speaker, Sir, I thank you for giving me the opportunity to contribute to this debate. I would like to take this opportunity to also add my voice in support of the Judicial Service Bill.

Mr. Temporary Deputy Speaker, Sir, the Judicial Service Commission is not a new thing in Kenya. We have had it before. It is only that it is now being entrenched in the new Constitution. So, it is actually a constitutional Commission. Following the enactment of The Vetting of Judges and Magistrates Bill into law, it is important that we enact this Bill into law as well, so that we can have continuity in our Judicial Service. We need to have a Judicial Service which will be respected and admired by all, so that people can have confidence in it.

As the previous speaker said, in my understanding, a judge takes time to mature in his or her position and, therefore, a period of three years is not enough. I believe that we want our judges to grow to the best possible levels. Perhaps we can allow the three year period for the initial appointees but subsequent appointees should be allowed to serve for a longer period of time. Talking of the President of the Court of Appeal, he is a very crucial person to the functioning of the Judiciary. We cannot have the occupant of that seat changing after every three years. It will not be possible to have good continuity in the dispensation of justice.

Mr. Temporary Deputy Speaker, Sir, talking of the Principal Judges, they will also have to be given time to be able to mature in their positions and become what I would call in layman's language "sages" in their positions. I believe this is a very straightforward thing, because we have had the Judicial Service Commission. What we are doing is that we are passing a law to facilitate the constitution of a new Judicial Service Commission, which is also constitutional. So, it is not anything new, and I do not think it is anything that anyone of us should have problems with.

The Bill has only a few minor problems, as exemplified under Clause 10, where it is said that "there may be appointed a Deputy Chief Registrar". I must admit that I did not do English for a very long time but I understand that the word "may" means "optional", and this cannot be allowed. We should say "there shall be appointed a Deputy Chief Registrar". I would want to believe that this was just a typographical error during the printing of this Bill, and that it will be corrected.

Mr. Temporary Deputy Speaker, Sir, there is also the issue of the National Council on Administration of Justice, which will constitute of several people, including the Commissioner of Police. I would like to point out at this stage that, as per the new Constitution, we are not going to have a Commissioner of Police but rather an Inspector-General of Police. So, these are some of the things which need to be flashed out and corrected in this Bill before we pass it. Otherwise, we might pass it for a Commissioner of Police and yet we do not have that post in our new Constitution.

Hon. Members will also find that, in terms of appointment of members of the proposed National Council on Administration of Justice, some people in this country have been given too much leeway as provided for under Clause 34, of which sub-clause 2, paragraph (k) provides for a representative of Non-Governmental Organisations (NGO) involved in the provision of legal aid. These must be NGOs which are involved in the legal field. Again, paragraph (l) of sub-clause 2 of Clause 34 provides for appointment to the Council, a representative of an organisation or association dealing in legal, human rights or governance issues.

Mr. Temporary Deputy Speaker, Sir, the persons referred to under paragraphs (l) and (k) of sub-clause (2) of Clause 34 belong to the same profession. So, these persons are getting an undue advantage of nominating people to the National Council on Administration of Justice. Therefore, this is something which needs to be looked into carefully, so that we do not end up with a particular group of people loading it over the rest of the membership of the Council because they have a slight majority in the Council's membership.

Otherwise, we need to pass this Bill expeditiously. I would, again, like to commend the Minister because he keeps on remembering my flagship school, Friends School Kamusinga. He says that one of the things they are going to consider, as they

apply the procedures and criteria for evaluating the qualifications of individuals who will apply, under Clause 13(f):-

“good judgement, including common sense, will be elements of which shall include a sound balance”.

“Use your Common Sense” is the Motto for Friends School Kamusinga. So, I believe that all lawyers who studied at Friends School Kamusinga will definitely qualify to be judges, because they definitely use their common sense. I would like to commend the Minister for recognising my flagship school.

Mr. Temporary Deputy Speaker, Sir, finally, as we implement this Constitution, we should realise that we are living through a very difficult time in this country. Those who have read George Orwell’s *Animal Farm* will recall that the animals in that “farm” sat down and wrote down their rules on a board for all of them to see. One of those rules was “All animals are equal”. The animals in that “farm” went on with their lives, and they were very happy. However, they woke up one morning and found that this rule was changed to read “All animals are equal but some are more equal than others”.

So, as we implement the new Constitution, we must be very awake to the issues that George Orwell has highlighted in *Animal Farm*. One of the rules of the “animals” in *Animal Farm* was “Four legs are good”. However, when all the animals went to sleep one night, some of the animals who were ruling the others decided to start walking on two legs, feeling that they were superior to the other animals. In the course of that night, those “animals” changed that rule to read “Four legs good, two legs better”.

(Laughter)

Mr. Temporary Deputy Speaker, Sir, we need to be awake as we implement this Constitution, so that we do not end up living in George Orwell’s world as described in his book, *Animal Farm*, which so vividly describes the times in which we are living.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, there being no other hon. Members willing to contribute to debate, I would call upon the Minister to respond.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I stand before you and before my country this afternoon, extremely humbled by the contributions of hon. Members. When I went to law school, I never for one moment dreamt that I would present to my Parliament a Bill on the Judicial Service arrangements and obtain unanimous support, subject to proposals for certain amendments by several hon. Members.

Therefore, I want to beg your indulgence so that I can cover as much of what has been suggested as possible, so that this country can understand that the law we are proposing to this country does not belong to Mutula Kilonzo or the President or the Prime Minister or any individual. It is a law for all of us in the present generation and particularly for future generations. Therefore, any person who, between now and the Third Reading, may have any input whatsoever that adds value to this law should come forward with that input.

Mr. Temporary Deputy Speaker, Sir, I hope that the Third Reading will be at the latest on Thursday. Please, come forward without fear, because this is a law which must be owned by all of us as a country.

I accept and welcome the proposal to amend the Bill to include the idea of a county judge. I have already identified where we can put the county judge, particularly under Clause 35. I am satisfied that each of the 47 counties in this country should have a seat for a High Court Judge, so as to comply with the Constitution where it calls for the services of the Judicial Service being widely available in every corner of the country. This was a proposal by hon. Mungatana, and I want to support and salute him for it.

Mr. Temporary Deputy Speaker, Sir, similarly, on Clause 27(3), I welcome the proposal that money for the Judiciary should come directly from the Consolidated Fund. This has been put forward by hon. Sambu so ably. I want to say without any hesitation that I accept Article 201 on prudence of judicial service over the national funds. I also want to salute him for the proposal that the appropriation of the Judicial Service Commission and the Judiciary, as required by Article 221(6) of the Constitution, should go through Parliament. I similarly accept the proposal that any expenditure incurred by the Judiciary at any time should be such as authorised by Parliament in order to comply with the new Constitution.

I think that this House, this week and last week, has actually risen to the occasion, and is making history, by providing for the vetting of existing judges and for the appointment of new judges. You notice that no hon. Member stood up to move a Motion that the Mover be called upon to respond; debate was exhausted. I think it is a vital opportunity; it is a Rubicon that we have crossed.

Mr. Temporary Deputy Speaker, Sir, allow me to mention something about temperament. Mr. Mungatana was of the view that by talking about temperament, we are making a mistake, as a country. During my presentation, you allowed me to table the Bangalore Principles of Judicial Conduct. We have an obligation, as a country, to start realizing that the world is watching. Above all, we are standing on a crossing point, where we must show that we are using best international practice. The document that I tabled under paragraph 214, page 141, and the Clerk should make it available to you; this is a very critical point. I want you to allow me to read on page 141, paragraph 213 of the Bangalore provisions for our judges who are going to be vetted and also for the new ones, so that they understand what the best international practice requires. Paragraph 213 states:-

“A judge’s demeanour is crucial to maintaining his or her impartiality, because it is what others see. Improper demeanour can undermine the judicial process by conveying an impression of bias or indifference. Disrespectful behaviour towards a litigant infringes on the litigant’s right to be heard, and compromises the dignity and decorum of the court room. Lack of courtesy also affects a litigant’s satisfaction with the handling of the case. It creates a negative impression of courts in general”.

Mr. Temporary Deputy Speaker, Sir, I humbly recommend this to my country. I recommend that the judges who will be appointed, and those who are going to be vetted, must be examined on clause 2 of paragraph 213 of these Bangalore provisions on the principles of judicial conduct.

Again page 214 is very important, because Kenyans appear before the courts with judges. It says:-

“A judge must channel anger appropriately no matter what the provocation. The judicial response must be a judicious one. Even if provoked by a lawyer’s rude conduct, the judge must take appropriate steps to control the court room without retaliating. If a reprimand is warranted, it will sometimes be appropriate that it takes place separately from the disposition of the hearing of the matter before the court. It is never appropriate for a judge to interrupt a lawyer repeatedly without justification or be abusive or ridiculing of the lawyer’s conduct or argument. On the other hand, no judge is required to listen without interruption to abuse of the court’s process or arguments manifestly without legal merit, or abuse directed at the judge or other advocates, parties or witnesses”.

Again with extreme humility, I recommend this process to my beautiful country, because you will recall that even in the course of last year, we had three courts which were being boycotted by lawyers, who had arguments to advance. Therefore, when we use the word “temperament” in this Bill, we are being guided by these principles which form the international best practice.

Let me also talk of Clause 215 at page 141 in the Bangalore Principles. This is headed “Patience, Dignity and Courtesy are Essential Attributes”. It states:

“In court and in chambers, a judge should always act courteously and respect the dignity of those who have business there. A judge should also require similar courtesy from those who appear before him or her and from court staff and others subject to the judge’s direction or control. A judge should be above personal animosities, and must not have favourites amongst advocates appearing before the court. Unjustified reprimand of counsel, offensive remarks about litigants or witnesses, cruel jokes, sarcasm and intemperate behaviour by a judge undermines both order and decorum in the court. When a judge intervenes, he or she should ensure that impartiality and the perception of impartiality are not adversely affected by the manner of intervention”.

Mr. Temporary Deputy Speaker, Sir, I rest my case on that point of temperance. I would like to assure this House and the country, that the use of the word “temperance” in our proposals in this Bill were advised by the knowledge of these principles. The least I can do is that the experience, the knowledge and the skills that I have are held in trust for Kenyans, and if I do not advance them, then I would be failing in that function.

Mr. Temporary Deputy Speaker, Sir, Mr. Mungatana also talked about interviews in private. I will welcome any intervention in this Bill for amendment, but remember that the people who will seek to become judges are people who are very advanced in their skills and they have families. So, they do not want their private lives exposed in a manner that should they fail to be accepted, hired or be recruited then their careers will be damaged. I seem to remember very painfully an issue that arose in this House regarding the Director of Kenya Anti-Corruption Commission (KACC), when one of the Kenyans came before the House and the sort of debate that ensued was the sort that made that Kenyan, who will remain nameless at this point, a distinguished lawyer whom I have worked with, be still suffering together with his family.

Mr. Temporary Deputy Speaker, Sir, Prof. Ongeru made certain proposals and we are looking at them. We are going to consider his proposal, particularly on Clause 13(c) (e), that is, we must protect judges from flimsy complaints. In fact, for the benefit of Prof. Ongeru, it is important for the country to know that when we were passing this Constitution for ourselves, we did not actually provide in Article 162 for a procedure for

complaints against judges in the superior courts. The only procedure provided for in the current Constitution is for complaints against the magistrates and not the superior courts. When we have to finalize the issues that we are undertaking, it will be one of the first amendments that I will be recommending to this country; we should open a window, so that routine complaints against judges may be noted and recorded, so long as they are not flimsy.

Mr. Maina spoke very well. He supported this Bill and the question of retaining money by the Judiciary was not acceptable to him. I want to persuade him that so long as Parliament has already passed the Budget, or the Estimates, if the Judiciary, by the end of the financial year, has not applied the money, I see no harm whatsoever in having it retain it so long as it has been approved by Parliament in the Estimates.

Mr. Temporary Deputy Speaker, Sir, we cannot afford to continue condemning our Judiciary generally. We cannot afford to appear to be the legislators who pass the law establishing the Judiciary but we are the ones who regularly talk of them as though we got them from Mars or the moon. Our opportunity has come to pass these laws, so that when a judge delays cases, he knows the process that he will have to undergo either in removal or some other disciplinary process. I want to repeat this for the politicians of this wonderful country, of whom I am one; it will be time for us, after we pass these laws and after we vet judges and appointed new ones, to make sure that we support our Judiciary.

Let me address a concern that was raised about advertising. When you look at the advertising proposals, we are not going to put it in the local newspapers like *The Standard*, the *Daily Nation*, *The People* and so on. Since there are very few people who qualify for these vacancies, we will put it on the Judiciary website and, additionally, in the *Kenya Gazette*.

I think that is a legitimate method of avoiding paralysis that we now have on the recent nominations by His Excellency the President. I have no doubt, and speak without fear, that a process which allows Kenyans to participate in this recruitment should protect His Excellency the President and the Prime Minister from some of the debates that have emerged in the last few weeks. I will continue saying, let us involve the public.

Mr. Kajwang' spoke in support. He spoke extremely well. He mentioned my food friend, a former judge of the High Court, Mr. Justice O'connor, Mr. Justice Togbo and others, who were mistreated because we did not have a process of dealing with complaints against judges. We have now given our country that window. If you think you have an idea for improving it, I am asking you expressly, please, tell us how you think we can improve this law. Tell us what sort of technology you think we need. I agree that future proceedings in Kenya should be on HANSARD, so that at the end of the day the participants in the court process can see what they said, and can use whatever was said that day for the work of the following day.

Mr. Temporary Deputy Speaker, Sir, I am sure that Parliament appreciates that this would require funding. It will require enormous resources. I am aware of very friendly countries and institutions like the United Nations Development Programme (UNDP) which are willing, ready and available to help us with this process. Therefore, no judge should feel shy about applying technology.

Mr. Temporary Deputy Speaker, Sir, my very good student, Mrs. Millie Odhiambo-Mabona--- I keep mentioning them because it gives a sense of pride that I have been able to train lawyers such as these ones who have emerged in the national

scene in the area of professional ethics, because that was my areas of specialization. I want to welcome her support and say to her that we will not criminalize activism. I welcome activism myself as a Minister, because I have been able to work with civil society extremely well. I beg to refer to the passages that I have read and confirm to her that the use of temperament is not intended to produce melancholy.

I do not have to remind the country that at some point a Kenyan judge was actually taken to court on allegation that he took out a Maasai or Somali sword and threatened a Kenyan. Therefore, this temperament provision is important for us. On women and gender, I agree with what was stated.

Mr. Nyamweya, I want to salute, support you and say how grateful I am for the support that you are advancing towards this law. Even as you approve of it and accept it, kindly note that I agree with you. It is quite clear that there are some groups in this country which think that continued polarization, politicking and argument for its own sake is the order of the day. I want to persuade them, and everyone in the country that we have a new dawn. We have a new country. We have the most advanced Bill of Rights and it ought to be respected.

I have spoken about Mr. Sambu and I want to salute the Budget Committee for these recommendations. Please, bring forth the amendments. I will even adopt them so that they come from the Ministry, if you like, so as to reduce the amount of time we spend on this.

Mr. Kioni, I want to remind you that, while I totally agree with you on the reading of Section 23 relative to Article 168, when King John of England in 1205, under force by the barons, pronounced the Magna Carter not even him knew the end result would be what it was, namely drive civil liberties and human rights the way it has been able to do. Therefore, I agree that the time for Kenyans to stop double speak when it comes to the Judiciary is now. I agree that continued generalized condemnation of our judges is not helpful for this country; if anything, it exposes us to institutions like the International Criminal Court (ICC), the Rome Statute and now, as it appears, the United Nations Security Council. It is a contradiction for us Kenyans to be seeking a deferral while at the same time we are maligning our judges, we are maligning the Judiciary and condemning it on a daily basis. I want to assure fellow Kenyans that this is an area in which we have to be extremely careful, if we want the rest of the world to accept the work we are doing in this very important area.

Mr. Njuguna, once again, thank you very much. I think the people who elected you knew what they were doing. You always comment very well about the work that my Ministry continues to do. I want to salute you for your focus on negative ethnic considerations that continue to bedevil our country; therefore, I support you.

Mr. Temporary Deputy Speaker, Sir, I think this would be a good opportunity for me to table the letter that the Commission on the Implementation of the Constitution (CIC) has written to Mr. Ababu Namwamba, the Chair of the Parliamentary Committee on Justice and Legal Affairs dated 10th February 2011.

(Mr. M. Kilonzo laid the letter on the Table)

The reason, again, is to say to my country that this law is not a personal property; anybody who has ideas that can come forth, please, bring them.

Eng. Gumbo, again, I thank you. I welcome your comments. I will look forward to the draft that you will present to amend Article 18 and then we can discuss it. I accept that any regulations made under Clause 47 be required by law to be tabled in the House, because, yet again, this Judiciary is everything to us.

Mr. Muthama, my good brother, I want to assure you that I accept that the three years that we have put is inadequate. Several other Members, including Dr. Eseli, have taken the same position. I agree with them. I am thinking that we amend the clause to require that the first Chairs of these important offices serve for three years, and thereafter for five years.

I am unable to find any justification for recruiting judges from outside Kenya, except for the vetting of judges and magistrates. For the information of the country, if you recall, for the purposes of constitutional review, we established a special court for resolving disputes. We hired nine individuals, six Kenyans and three foreigners. You will be very surprised that during the course of the disputes arising from the referendum, four cases were filled. All those cases were determined by the Kenyans. The foreign judges did not participate in any of the decisions that enabled this country to overcome the challenge of disputes. Therefore, Mr. Muthama, I sincerely share your ideas with you, but I think it is also important to know that, for purposes of vetting judges, I will continue insisting, please, allow us to have three senior judges from outside, so that they can help us to come to terms with principles like the “Bangalore Principles of Judicial Conduct”.

I am thanking Dr. Eseli’s real beautiful brains; he gave me an idea. I think I made a mistake. In establishing the National Council on Administration of Justice (NCAJ), although you point out that we will have an Inspector-General of Police, we have designed this law so that for the time being – because some clauses of the Constitution have been postponed and others suspended until the next General Election, and particularly since we have not passed the law on the police – I beg your forbearance that you leave it the way it is until such a time. After we appoint the Inspector-General then we can do this very minor amendment to reflect the law.

However, please, allow me to ask you to consider and agree that in this NCAJ a mistake has been made by my advisors, the CIC and myself. We have overlooked the fact that in Kenya we have a witness protection agency.

Some of the challenges that we have, including post-election violence is that, as a country, the witness protection agency has not yet been accepted by the country, it has not been funded and it has not even found its way to the Cabinet so that the principles and the policy, other than the law can be embraced. While thanking hon. Eseli on this item, I want to tell him that I agree that Deputy Registrars shall be appointed, particularly for the county courts and for the others in the headquarters. But as a Minister, I want to tell you that on my own, I am going to bring an amendment on the National Council on Administration of Justice to seek that the witness protection agency be included so that even the judges and the other departments represented can take account of the issues and the challenges facing the witness protection.

Mr. Temporary Deputy Speaker, Sir, many people continue thinking that when we talk about witness protection, we are talking about the ICC; not at all. In fact, as the Minister for Justice, National Cohesion and Constitutional Affairs, my focus remains witnesses on drugs and drug trafficking, paedophilia, corruption and very many far reaching issues, including even rape. We have had situations where our women may be

raped, but because of the stigma attached to rape, they are reluctant to come forth. Therefore, these evil people think that a woman cannot say yes on her own, she requires to be forced. So, therefore, with the leave of the House, I will be seeking to join in the witness protection agency in the council.

I have covered all the issues raised to the extent that I could. I may have forgotten other issues, but I want to assure the House that before I come for the Third Reading, I am going to ask for the HANSARD and go through it with a toothcomb and identify the areas of improvement because this is the law on which Kenya will be able to face its new dawn.

With those far too many reactions and responses, I beg to move.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Mr. Ethuro): Next Order!

Second Reading

THE VETERINARY SURGEONS AND PARA-PROFESSIONALS BILL

The Minister for Livestock Development! Anybody from the Government side to account for the Minister!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. K. Kilonzo): Mr. Temporary Deputy Speaker, Sir, allow me to apologize on behalf of my colleague. He was here earlier and perhaps he thought that the enormous amount that was on the table from the Ministry would take the whole day. May I apologize and seek that this matter be put off until tomorrow so that the Minister can be able to deal with it.

The Temporary Deputy Speaker (Mr. Ethuro): Thank you Minister for that. But I think the Government owes this House some substantial explanations. You should always anticipate the possibility of at least the next Order. It is not for the Chair to accede to your request for tomorrow. I recommend the matter comes before the House Business Committee tonight in order to allocate it time.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Order hon. Members! Given that we have exhausted the business for the day as per the Order Paper, I therefore, wish to adjourn the House until tomorrow, Wednesday 16th February 2011 at 9.00 a.m.

The House rose at 5.52 p.m.