

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 15th June, 2011

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

WELCOME TO MEMBER OF OPPOSITION LEADERSHIP FROM PARLIAMENT OF UGANDA

Mr. Deputy Speaker: Hon. Members, I wish to introduce to you and welcome, this afternoon, a delegation from the Parliament of Uganda seated at the Speaker's Row. They are Members of the Shadow Cabinet and other Opposition leadership in the Parliament of Uganda. They are on a study visit to explore roles of elected leaders in various Government programmes. The hon. Members are:-

1. Hon. Kasianu Ezra Wadri MP for Terego County and Secretary-General for the Forum for Democratic Change and the Leader of the Delegation.

2. Hon. Alice Alaso, woman MP for the Serere District and Acting Shadow Minister for Education.

3. Hon. Eng. Amuriab Patrick Oboi, MP for Kumi County and Shadow Minister for Works and Infrastructure.

4. Hon. Dr. Epeteyit Francis, MP for Ngora County and Shadow Minister for Health.

5. Hon. Anywar Beatrice Atim, woman MP for Kitgum District and Shadow Minister for Environment.

They are accompanied by two members of staff namely, Ms. Alice Nyamwenge and Mr. Andrew Kalianaki.

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

PAPERS LAID

The following Papers were laid on the Table:-

The Anti-Corruption and Economic Crimes Amnesty and Restitution Regulations of 2011

*(By the Minister for Justice, National
Cohesion and Constitutional Affairs)*

Report of the Departmental Committee on Education, Research and Technology on the Petition on the Ownership and Management of Aga Khan Primary School, Nairobi.

Report of the Departmental Committee on Education, Research and Technology on Official Study Visit to the State of Israel in 2010.

(By Mr. Koech)

Report on the public Petition by the Kiboroa Squatters Alliance, Trans Nzoia Region Presented by Dr. Bonny Khalwale, the Member of Parliament for Ikolomani

(By Mr. Musyimi)

NOTICES OF MOTIONS

ADOPTION OF REPORT ON OWNERSHIP/MANAGEMENT OF AGA KHAN PRIMARY SCHOOL

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

THAT, this House adopts the Report of the Departmental Committee on Education, Research and Technology on the Petition on the ownership and management of Aga Khan Primary School, Nairobi laid on the Table on 15th June, 2011.

ADOPTION OF REPORT ON KIBOROA SQUATTERS ALLIANCE

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

THAT, this House adopts the Report on the Public Petition by the Kiboroa Squatters Alliance, Trans Nzoia Region, presented by Dr. Bonny Khalwale, the Member of Parliament for Ikolomani laid on the Table of the House on 15th June, 2011.

ADOPTION OF REPORT ON STUDY VISIT TO ISRAEL

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

THAT, this House adopts the Report of the Departmental Committee on Education, Research and Technology on the Official Study Visit to the State of Israel in 2010 laid on the Table of the House on 15th June, 2011.

QUESTIONS BY PRIVATE NOTICE

IRREGULAR TRANSFER OF CHEBORORWO FTC MANAGEMENT

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

(a) Why has the Permanent Secretary in the Ministry directed the Marakwet District Agricultural Officer (DAO) to transfer the management of Chebororwo Farmers' Training Centre (FTC) from Elgeyo Marakwet County to Uasin Gishu County in spite of heavy investment in the centre by residents of Elgeyo Marakwet?

(b) Could the Minister consider rescinding the decision in view of the disadvantage that the decision will occasion to the people of Elgeyo Marakwet?

(c) Were concerns in the pre-Independence arrangement to have the management of the Centre based in Elgeyo Marakwet County considered in the decision?

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

(a) The decision by the Permanent Secretary in the Ministry of Agriculture to direct the Marakwet DAO to transfer the management of Chebororwo Farmers' Training Centre from Elgeyo Marakwet County to Uasin Gishu County is based on the county re-alignment in accordance with the new Constitution.

(b) The Minister cannot consider rescinding the decision as it is meant to realign the administration of the institution to the new constitutional administrative boundaries. However, the Minister can consider directing the implementation of an agreed agreement between the two counties for the benefit of the people and the farmers in the two counties.

(c) The concerns in the pre-independence arrangement were based on the fact that no two farmers' training centres - now Agricultural Training Centres (ATCs) - should be situated in one district. This is a case that does not arise today.

Mr. Kaino: Mr. Deputy Speaker, Sir, I am surprised by the answer that the Assistant Minister has given today. The agreement between the two councils ought to have been done earlier on instead of transferring the management of the institution. I am saying this because the spirit of the new Constitution requires inclusiveness which the Permanent Secretary has completely ignored. He has transferred the management from Marakwet which was there during the pre-Independence arrangement to Uasin Gishu within a day. As I speak today, all Marakwets have been sacked! They are annoyed by what the Ministry has done! Could the Assistant Minister now direct, that a meeting between the two counties be held so that all these things can be sorted out?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, I so direct that the leaders of the two counties meet and agree on the management of that ATC!

(Applause)

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to purport to issue directives on the Floor instead of undertaking to issue those directives in the proper manner? Is that not hoodwinking the Member of Parliament for Marakwet East that he has actually issued those orders on the Floor of the House?

Mr. Deputy Speaker: He is absolutely in order! A Minister is a Minister whether inside or outside the House!

Mr. Litole: Mr. Deputy Speaker, Sir, I want to inform the Assistant Minister that Chebororwo FTC was jointly run by about six counties during the existence of Sirikwa County Council. Even as we talk now, it should be run by the same counties. Will I be in order to ask the Assistant Minister to consider that all the counties, that is, Turkana, West Pokot, Elgeyo Marakwet, Trans Nzoia, Uasin Gishu and Nandi--- This is a joint venture of the former Sirikwa County Council. All the six or seven former Sirikwa County Council counties should benefit!

Mr. Mbiuki: Mr. Deputy Speaker, Sir, it is only that, that ATC is based in Eldoret East. I call upon the leadership of the seven counties to ensure that they meet

and agree on how they will continue to manage that institution for the benefit of all the farmers within the larger North Rift region or in the entire county.

Mr. Mbadhi: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for taking quick action and ordering, on the Floor, that a meeting be held. However, could he tell us when this meeting will be held?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, the Ministry of Agriculture can convene the meeting. By the end of the day, I would like the leadership of these counties to come together. We have a letter here from the Assistant Minister for Environment and Mineral Resources, Prof. Margret Kamar. I urge the leadership of the entire area to sit together and agree. The management should be all-inclusive so that nobody feels left out. I want to give an undertaking that by next week, we will ensure that all leaders come together and agree on leadership and the future of that institution.

Mr. Kaino: Mr. Deputy Speaker, Sir I wish to thank the Assistant Minister for the answer he has given especially that bringing forward to next week. I hope he takes it seriously and gives us the final date. Finally, I wish to inform him that the counties are represented in the Board of Management which the Permanent Secretary ignored. There is no director of Chebororwo who knows that this institution has been transferred. So, it is very important that he has accepted to organize a meeting.

Mr. Deputy Speaker: Next Question by Mr. C. Kilonzo!

BISHOP G. DEYA/Y. DEVANI FROM UK

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I beg to ask the Attorney-General the following Question by Private Notice.

a) Why has the Government not been able to secure the extradition of Bishop Gilbert Deya and Mr. Yagnesh Devani from the United Kingdom?

(b) How many arrest warrants from Kenya are with the Interpol for the arrest of persons who have fled the country after committing crime and could the Attorney-General table the details of the arrest warrants mentioned above?

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, the Attorney-General had informed me that there is a communication between him and your office and we agreed that the Question be deferred to tomorrow.

Mr. Deputy Speaker: It is so directed the Question appears on the Order Paper tomorrow!

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.919

PAYMENT OF TERMINAL DUES TO FORMER EMPLOYEES OF NYAYO TEA ZONES

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

(a) whether he is aware that employees who worked for the Nyayo Tea Zone in Tetu Division from 1996 -1990, among them Ms Ruth Muthoni (ID No. 9353450), Mr. David Karimi (ID No. 1425374

and Ms Sarah W. Nderitu (ID No. 5544960) were not paid their salaries, terminal dues and other benefits;

(b) whether he could confirm that the Ministry of Agriculture recommended to the Ministry of State for Provincial Administration and Internal Security to pay the former employees in 2005; and,

(c) what measures the Government has taken to ensure that the persons are paid their dues.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker Sir, I had dealt with this Question last week and it was agreed that I do further consultations with the Ministry of Agriculture, the Nyayo Tea Zones corporations and the Provincial Administration and I can now confirm with regret that I have not been able to confirm whether or not the former employees referred to were paid 25 years ago since the records cannot be traced. So, we are not able to know whether they were paid or not paid. This is a matter that was being implemented by the Provincial Administration from 1986 to 1990. The parastatal was created in 1986 and that is a long time ago. So, we are not able to trace the documentation and we are not able to pay.

Mr. Nyammo: Mr. Deputy Speaker, Sir, the answer is certainly not satisfactory. What does he suggest that my people do to get their dues? They are denying that they owe them money. What is the Ministry going to do to ensure that my people are paid?

Mr. Lesrima: Mr. Deputy Speaker, Sir, there is nothing the Ministry can do because we are not able to confirm whether these employees did actually work. Just looking at the registers, even the names that are referred to do not tally with the ones in the identity cards!

Mr. Deputy Speaker: You will realize that the new generation identity cards were not there in 1986!

Mr. Lesrima: That may be so but we do not have payment vouchers or registers going back to those years. Indeed, over the last several months---

Mr. Nyammo: Mr. Deputy Speaker, Sir, I do not have a written answer to this Question!

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Please, could we have some silence so that hon. Members can transact the business that brought them here?

Mr. Lesrima, when the Government says that it does not have records and yet they are supposed to be there, because this is a parastatal, where do you expect somebody to go and get those records from? Ordinary citizens cannot keep records of their employment!

Mr. Lesrima: Mr. Deputy Speaker, I would have thought that when the corporation was formed in 1986 the matter of assets and liabilities would have been handed over to the Nyayo Tea Zones. Last week I undertook to refer this Question to the Ministry of Agriculture but in the spirit of collective responsibility and in view of the fact that the supervision of these casuals at that time was under the Provincial Administration, I undertook to go back and consult them. So, the answer I have right now is that we do not have records and I am not able to assist because the records were handed over to the Nyayo Tea Zones and they are also telling me that they do not have records. So, I am really unable to assist.

Moreover, in September, 2005 there was a request from another group which was claiming Kshs2 million. In 2006 another group of 900 casuals were putting up a claim of Kshs50 million. In March, 2006 another group of 855 casuals also claimed Kshs45 million. So, it appears that a number of groups are emerging trying to put up claims for work they did as casuals 25 years ago. I am aware that the hon. Member is simply concerned about three members. From the point of view of my Ministry, I am not able to assist because under Government regulations, these records tend to get destroyed as per the Government accounting rules.

Mr. Nyammo: On a point of order, Mr. Deputy Speaker, Sir. On the one hand the Assistant Minister says that there are no records yet he went on to read some information. What records is he reading from? Is the Government not running away from its responsibility to honour its responsibility to pay the people who have worked?

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

Mr. Deputy Speaker: Mr. Affey, could you give an opportunity to the Chair to be able to appreciate what the Assistant Minister is saying?

Mr. Lesrima, I thought you said that you have the names but they do not match with those in the identity cards. If you have the names then the presumption is that the identity cards must have been issued after that time. Based on the recollection of the Chair, the new generation identity cards were issued in 1994. Are you able to counter-check your facts to be able to move this matter forward?

Mr. Lesrima: Mr. Deputy Speaker, Sir, the list I have is from the various representatives of people who claim to represent former employees of Nyayo Tea Zones. They have written to us and to the President. When you check in those lists, you find those names there but the identity cards are different. Even if the identity cards were there, it would be very difficult to confirm because those registers do not indicate whether they worked or not. So, this is a very difficult exercise. There are thousands who are listed.

Mr. Bahari: Mr. Deputy Speaker, Sir, since the Assistant Minister agreed that these were employees and there are allegations made by the former employees that their terminal dues have not been paid, it is incumbent upon the Government to prove that they have been paid. In the absence of that, the liability still rests with them. Could the Ministry now undertake to pay them because there is no option and he cannot prove otherwise?

Mr. Lesrima: Mr. Deputy Speaker, Sir, I do not want to defend the Nyayo Tea Zones and those who were responsible at that time, but when you look at the acreage they claim to have worked on, it is excessive. The total area cleared during that time was 4,226 hectares. Even the whole question of reconcillation of records is something that requires to be done. I would appeal that this matter requires more time and should be referred to Nyayo Tea Zones to examine it in detail. The time I was given was two weeks. I also do not have proof that we paid, as the hon. Member said.

Mr. Nyammo: Mr. Deputy Speaker, Sir, I am disappointed because we tried to furnish the Ministry with all the records from our districts. He has no reason to deny that he has no records because we have given him all the records that we had in the districts. It is now for you to direct that this Question should be answered satisfactorily and give an indication when my people will be paid.

Mr. Deputy Speaker: It does not augur well for the Government not to have its own records of a matter hardly 30 years ago.

(Loud consultations)

Order, hon. Members! Order, Mr. ole Metito and Mr. Kiuna. You have come to transact the business of the House and not to consult loudly. There are couches in very good places at taxpayers' cost where you can always have such comfort. But here you have come to transact the business of the House. So, give a lot of respect to the business that is being transacted.

Mr. Lesrima, under the circumstances, the direction that the Chair can give, and this is clearly a very serious failure on the part of the Government not to be able to have records of its own employees---. The presumption is that such records should be there including the ones that were there in the colonial days. If you are saying that 1986 was long time ago, then there is something seriously wrong with the way you take care of your archives. Under the circumstances, I direct the relevant Committee, that is the Committee on Labour, to scrutinize the same matter with speed and report to the House.

Mr. James Maina Kamau: On a point of order, Mr. Deputy Speaker, Sir. I am very surprised to hear that records for the Nyayo Tea Zones are not available. If you recall, the Nyayo Tea Zones was a State Corporation formed under the State Corporations Act. So, for the Assistant Minister to purport not to have records---

Mr. Deputy Speaker: That is exactly what the Chair is surprised about and I have given a ruling on the same!

Mr. James Maina Kamau: Mr. Deputy Speaker, Sir, there is a case in the Ministry of Home Affairs where a prisoner's records were available since 1957 and were brought to this House. So, I do not know what the Minister is telling this House.

Mr. Deputy Speaker: The Chair directs the Committee on Labour to move with speed, investigate the matter, scrutinize and report back to the House in three weeks time.

Next Question by Mr. Mututho!

Dr. Khalwale: Mr. Deputy Speaker, Sir, I had been directed by Mr. Mututho through a letter he wrote to the Speaker that I ask this Question. So, because he has not vacated the---

Mr. Deputy Speaker: On behalf of Mr. Mututho, who is in the House?

Dr. Khalwale: Yes, Mr. Deputy Speaker, Sir. I wanted your---

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

An hon. Member who is in the House directs you to ask a Question on his behalf! That is out of order! The tradition and the practice is that if the Member is unable to ask his own Question then another Member can ask on his or her behalf. There is no proxy representation on the Floor of the House!

Mr. Mututho, please, proceed!

Question No.913

EVICITION OF LANDLORDS BY TENANTS

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

(a) whether he is aware that landlords in some settlements within Nairobi and Nakuru like Kibera, Mathare, Huruma, Kaptembwa and Kwa Rhoda were evicted from their houses by tenants who have refused to pay rent for the last three years following the 2007/2008 Post-Election Violence;

(b) whether he could provide the details of such cases which have been reported by *bona fide* landlords and what the status of the investigations is; and,

(c) what measures the Government has put in place to ensure that these landlords enjoy their constitutional right to property and that all rent arrears due to them are paid.

Mr. Mututho: Mr. Deputy Speaker, Sir, I seek your indulgence in that I had travelled. I had written a letter and had not stayed my letter which had already requested him to ask the Question for me. That was the position then.

Mr. Deputy Speaker: Your very presence in the House voids that letter! Mr. Minister, please, proceed!

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

(a) I am not aware that landlords in some settlements within Nairobi and Nakuru, like Kibera, Mathare, Huruma, Kaptembwa and Kwa Rhoda were evicted from their houses by tenants who have refused to pay rent for the last three years following the 2007/2008 Post-Election Violence. No such cases have been reported to my Ministry or the respective councils.

(b) The houses in question are private properties and any dispute that arises is criminal in nature and can be only handled through Provincial Administration and security agencies. No such cases have been reported to my Ministry and no investigations have been carried out by my officers.

(c) For these landlords to enjoy their constitutional rights to property and to have all the rent arrears paid to them, I suggest that the matter be referred to the Minister of State for Provincial Administration and Internal Security for investigations with a view to taking corrective action.

Mr. Mututho: Mr. Deputy Speaker, Sir, I am shocked by the Assistant Minister's answer. It is not only inaccurate to say the least, but also, it does not seem like he is even abreast of what appears in the local media. It is a fact and, everybody knows, including those who were born after 2007, that people are occupying other people's houses! Would I be in order to ask that you rule subject to Standing Order No.82 that the Assistant Minister be held responsible for the inaccuracy of the information he has given to this House? I have got firm proof that he has misled this House to the extent that people have been occupying other people's houses from 2007 and yet he stands here to say the contrary!

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Indeed, this is very serious! It is a case of deliberate misleading of the House. I have with me documents filed to the Government by 912 affected business people who were formerly landlords in one of the affected areas, that is, Kibera. These 912 people have written to the District Commissioner (DC) who is a servant of this Government. They have written to the Vice-President of Kenya. They have also reported the case to the Commissioner of Police. I have those documents here!

The Assistant Minister is deliberately refusing to answer or he desires that he hides this case! I have further documents showing that a very powerful man in this Government is actually behind the tribulations of these 912 Kenyans.

Mr. Deputy Speaker: I thought the Assistant Minister did say that the matter can either be of a criminal nature or a civil nature. If a matter is of a criminal nature you do not go to the Ministry. There are avenues to report that matter; the police and CID. If it is of a civil nature there is a way also. I fail to understand how the Deputy Prime Minister and Minister for Local Government can be responsible.

Dr. Khalwale: Mr. Deputy Speaker, Sir, because of our very nature of playing oversight over the Executive and given that one of the persons who is reported in these documents as being the one who is interfering is a Member of the Executive, it therefore falls on this House to be the mouth piece of these 912 people who have been dispossessed of their property. In some instances, in this document, the properties were deliberately burnt down and then this powerful man came and put up other structures which the former tenants took and said they were now the new landlords!

Mr. Deputy Speaker, Sir, because it is important that you understand what I am talking about, allow me to table a document from the CDO that takes care of these 912 people. This document shows that the area Member of Parliament came with construction material after these people had been chased from their properties and put up fresh structures for the people.

I table the documents for the Chair to make a decision.

(Dr. Khalwale laid the documents on the Table)

The second document shows that militias called *Siafu, Taliban, Kariobangi* and *Bukhungu* have since organized themselves to the extent that the owners cannot access their former properties or the sites where their former properties are. I table.

(Dr. Khalwale laid the documents on the Table)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. The hon. Member has requested the Chair to make a ruling. I request that, in making the ruling, he should also avail the title deeds to those places to show whether those properties belong to the Government or those tenants. I cannot go to a place, put up a structure and purport it to be mine when it is Government property. Could the hon. Member also table the title deeds to enable the Chair make his decision?

Could the hon. Member also table evidence showing when the hon. Member of Parliament for the constituency was present on that day? We do not want a spill-over of post-election---

The Assistant Minister for Roads (Mr. Kinyanjui): On a point of order, Mr. Deputy Speaker, Sir. The Question that is being addressed now talks about two areas that are actually in my constituency. The hon. Bonny Khalwale went ahead and said that the Member of that area who is also a Member of the Executive went there with construction materials. By extension, this would also include me. I would wish to state here that Kaptembwa and Kwa Rhoda have no problems of landlords who have been evicted.

At no time have we had this issue. If, by any reason, there is any evidence to that effect - I have seen him table evidence on Kibera and nothing on Nakuru and Kwa Rhoda - I would wish to see the same.

Eng. Gumbo: On a point of order, Mr. Deputy Speaker, Sir. The area that Dr. Khalwale spoke about is in Kibera, and he has implied that the Member of Parliament for that area, specifically, Kibera--- As far as I know, it is against the Standing Orders of this House to impute improper motive on a Member without moving a substantive Motion. Could hon. Dr. Khalwale table documents in this House to show that the area Member of Parliament is the one responsible for what he has just talked about, and substantiate?

Dr. Khalwale: Mr. Deputy Speaker, Sir, it can never be my desire to mislead the House. I want to add further documents to what I have tabled. I had given you the

document showing my first point. The second one is about the organized militia groups. This is the second---

Mr. Deputy Speaker: Order! Order! The Question is about landlords in some settlements within Nairobi and Nakuru, who were evicted from their houses by tenants who have refused to pay rent.

Mr. Assistant Minister, could you answer that?

Mr. Nguyai: Mr. Deputy Speaker, Sir, I have answered the Question quite substantively. I have said, specifically, that no such cases have been reported to my Ministry and, therefore, we could not carry out any investigations. I also further said that if there is anything of a criminal nature, it should be looked at by the Ministry of State for Provincial Administration and Internal Security. That is because it could be criminal in nature.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, the Question here is dealing, of course, with the issue of landlords. I would like the Assistant Minister to clarify whether he is aware that the slum upgrading project has been put on hold because landlords have gone to court and, therefore, held up billions of shillings and also inconvenienced hundreds of thousands of Kibera residents---

Mr. Deputy Speaker: Order, hon. Shebesh! That supplementary question is different from the content, spirit and object of this Question.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, if you allowed me finish, you would have seen that it is very connected to this Question, because I have read it.

Mr. Deputy Speaker: Proceed!

Mrs. Shebesh: Mr. Deputy Speaker, Sir, this Question is touching on the landlords not getting rent. Is the Assistant Minister also aware that the same landlords have gone to court and stopped a slum upgrading project which would have now benefitted hundreds of thousands of residents of Kibera and Nairobi? That is because the slum upgrading project was meant to move people from the slums to better housing. Is the Ministry aware of that very important issue?

Mr. Nguyai: Mr. Deputy Speaker, Sir, that is a substantive Question. It is entirely different from the Question that is here! I would ask the hon. Member to probably ask it on a different occasion.

Ms. Karua: Mr. Deputy Speaker, Sir, I am just very surprised by the Assistant Minister's answer. That is because I recall going to a home-coming party for the Prime Minister in Kibera in 2008, where this issue was alive and, thereafter, holding discussions on the same. Is the Assistant Minister saying that he is not aware that houses belonging to landlords in Mathare, Kibera and several areas in Nairobi were inhabited by people who, to date, refuse to pay rent as part of the post-election violence? Is that the answer that the Assistant Minister is giving? In that case, what does the Government intend to do to enforce the right to property without fear or favour, and to ensure that the houses are paid for?

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro): On a point of order, Mr. Deputy Speaker, Sir. Are the two hon. Members who have just spoken in order to mislead this House that, one, there is a militia being referred to as "*Kariobangi*" when Kariobangi is an entire ward within my constituency and there is no such militia and, two, that there are problems in Mathare, which have never been brought to my attention? I have never had that problem!

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. About Mathare, I have a case on which I can give the specifics. But I am asking, more so, whether this fashion of members of a political party trying to intercept a Question is a new method in Parliament, because a Question seeks an answer. It is not accusing anyone or a

political party. This fashion of people intercepting Questions--- My supplementary question is not accusing anyone, but seeking an answer. Could we have an answer to my supplementary question?

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to impute improper motive on Members of Parliament, when the Standing Orders are very clear that when something is out of order, we can raise it? She is a lawyer and she knows that! I am also a lawyer and I know that! Is she in order to impute improper motive on Members?

An hon. Member: *Arudi shule!*

Mr. Deputy Speaker: Order, hon. Members! It is, indeed, in order for a Member to rise on a point of order. That is not an interception. Hon. Dr. Khalwale, you made a claim on the Floor of the House and substantiation has been demanded. You realize that Standing Order No.82 says 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. Are you in a position to substantiate your claims, to the extent of imputing an improper on a fellow Member of Parliament?

Dr. Khalwale: Yes, Mr. Deputy Speaker, Sir. The evidence that I have - and which I wish to use for substantiation - is the first document which you allowed me to lay on the Table. If you allow me to give further substantiation, I would like to table yet another document; which is a letter written by that group to the Commissioner of Police. The copy I have indicates that, yes, indeed, the Commissioner of Police received and acknowledged receipt of this letter. I wish to table it as part of my substantiation. We must help all the squatters in the country. We should not help some squatters and leave out some others.

(Dr. Khalwale laid the document on the Table)

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. The substantiation that was expected from hon. Dr. Khalwale was with regard to the claims that he made about the Member who represents Kibera. Could you, kindly, substantiate or withdraw? Please, do not extend this to your bull-fighting in Ikolomani!

Dr. Khalwale: Mr. Deputy Speaker, Sir, if the Chair could, please---

The Assistant Minister for Lands (Mr. Bifwoli): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Order! He is responding to a point of order!

Dr. Khalwale: Mr. Deputy Speaker, Sir, if you allow me to read---

The Assistant Minister for Lands (Mr. Bifwoli): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Bifwoli, you are out of order! Dr. Khalwale is responding to a point of order. Can you wait until the hon. Member responds, unless you want to see yourself out of the House for the rest of the day? I will gladly be able to move in that direction!

Proceed and respond!

Dr. Khalwale: Mr. Deputy Speaker, Sir, if the Chair can allow me, the first document which I tabled refers directly to the area Member of Parliament. I can then read directly from that document. If the document will be admissible, then I will have sufficiently substantiated my claim. I beg that you give me the document because I want to read from it directly.

The Assistant Minister for Lands (Mr. Bifwoli): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Mbadi in order to say something about other people's culture like bull fighting, and refer to an individual? Can he withdraw and apologise?

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. You will recall that I asked a specific supplementary question to the Assistant Minister before being interrupted by hon. Members, who are members of a certain political party. Could my supplementary question be answered?

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

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. I am a member of the Orange Democratic Party (ODM), and have no apologies to make. Having said that, I want to say that I had raised an issue. Is the hon. Member in order to be imputing improper motives on Members? If am a member of ODM, I have a right which entitles me, as a Member of this House, to contribute.

Mr. Mututho: On a point of order, Mr. Deputy Speaker, Sir. Shall I be in order to request that this matter goes for full investigation by the relevant committee? I know you have ruled in the past, where a matter generates as much interest as this, that it can be disposed of comprehensively and adequately.

Mr. Nguyai: Mr. Deputy Speaker, Sir, what I want to say, and I am sure hon. Mututho is intelligent enough to see this, is that, obviously, this Question was misdirected. It is obviously not a Question for the Office of the Deputy Prime Minister and Ministry of Local Government, and as such my answer was substantive and conclusive to the extent that I said that the matter be referred to the police and action will be taken.

Mr. Mututho: On a point of order, Mr. Deputy Speaker, Sir. To what extent should the people sitting there in the Front Bench take collective responsibility, particularly when we are talking about 900 people who do not have a home? Why do we not refer the matter directly to them, so that they can provide the answer?

Mr. Deputy Speaker: Order! Clearly the Chair is equally convinced that this Question was directed to the wrong Ministry. If it is a matter of a criminal nature, or a civil nature for that matter, as you put it; but it seems to be more of a criminal nature---. There is a Department of the Government that deals with it. It happens very often that a Question goes to a wrong Ministry. This Question seems to have been exhaustively dealt with. As much as it concerns the Ministry of Local Government, it is upon you to now advise the people whom you have acted for on the Floor of the House – the aggrieved Kenyans - to take the matter to the relevant Ministry. If there is no action taken, bring it again here in the form of either a Ministerial Statement or a Question to the right Ministry. Justice is always defeated when matters of a criminal nature are politicized. The Chair is convinced that, as you put it, the matter is one that belongs to the Police Department.

Next Question by Mrs. Odhiambo-Mabona!

Question No.961

NUMBER OF ORPHANS AND VULNERABLE CHILDREN IN KENYA

Mrs. Odhiambo-Mabona asked the Minister for Gender, Children and Social Development:-

(a) whether she could state, by county, how many orphans and vulnerable children were in Kenya as at March 2011, and indicate how many of these are in child-headed households;

(b) what specific action the Government has taken to ensure they access basic needs, including food, shelter and education; and,

(c) what the Government is doing to come up with a new strategy to deal with the matter, given that the National Orphans and Vulnerable Children Action Plan 2007-2010 has expired.

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I have not received a written response to this Question.

Mr. Deputy Speaker: Do you wish to proceed without the written response?

Mrs. Odhiambo-Mabona: No, Mr. Deputy Speaker, Sir. I do not wish to proceed without it, because it talks about statistics and I have not seen them. So, I would not be able to interrogate the Minister. I also want your direction because yesterday I asked a Question about the facebook to the same Ministry, and you said that it would be on today's Order Paper but it is not on it. So, could the answer be availed to me tomorrow and then you give your direction on the Question that was in yesterday's Order Paper.

Mr. Deputy Speaker: Hon. Minister, how soon can the hon. Member get the written response?

The Minister for Gender, Children and Social Development (Dr. Shaban): Mr. Deputy Speaker, Sir, this is the answer. It should have reached the Member. It is unfortunate that it has not, but I still have a copy here.

Mr. Deputy Speaker: Could you make it available to the hon. Member today?

The Minister for Gender, Children and Social Development (Dr. Shaban): Even now, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: Fair enough! I direct that this Question appears on Tuesday's Order Paper.

(Question deferred)

Question No.918

ROLES OF INSTITUTIONS UNDER EMC ACT

Mr. Deputy Speaker: Hon. Jamleck Irungu Kamau is not able to ask this Question today and that communication has been made to my office. In the circumstances, I direct that this Question also appears on the Order Paper on Tuesday, next week.

Next Question by Mr. Chanzu.

Question No.953

PERCENTAGE OF BUDGET EARMARKED FOR ROAD MAINTENANCE WORKS

Mr. Chanzu asked the Minister for Roads:-

(a) what proportion of the road project funds in the Ministry's budget is earmarked for maintenance works, and,

(b) what tangible measures the Ministry has put in place to ensure that there is regular maintenance and repair of roads to avoid complete deterioration arising from potholes and minor wear and tear.

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

(a) My Ministry has set aside a proportion of 22.8 per cent of the total budget towards the maintenance of roads in the Financial Year 2010/2011; this translates to Kshs20.648 billion. I, however, want to mention that this money is not sufficient to maintain our roads in the country compared to the pressing needs for both maintenance and development of roads countrywide.

(b) My Ministry has put in place a number of measures to ensure that there is regular maintenance of roads in the country. These measures include:

(i) The establishment of the Kenya Roads Board (KRB), whose main function is to administer the Road Maintenance Levy Fund (RMLF), which is used for maintenance of roads;

(ii) The creation of roads agencies, that is the Kenya Urban Roads Authority (KURA), the Kenya National Highways Authority (KeNHA) and the Kenya Rural Roads Authority (KERRA) that will ensure close supervision during maintenance and development of roads in their jurisdictions; This will promote efficiency and transparency in the delivery of road works programmes;

(iii) The Government has over the last four years, increased funding to the Ministry for development from Kshs19.8 billion in the Financial Year 2006/2007 to Kshs37.55 billion this financial Year 2010/2011 to address the backlog. The bulk of these funds are spent on rehabilitation works, thereby ensuring that most of the Kenya Roads Board's funds are set aside for maintenance works;

(iv) My Ministry, through the KRB, has undertaken a roads inventory and condition survey in order to establish the total road network and its condition. This will provide planning data for road authorities to prepare realistic work plans based on actual roads conditions. It will also provide baseline data to help in monitoring the effectiveness of road maintenance programmes as well as those undertaken by roads authorities;

(v) Lastly, we have also placed qualified staff on the ground to ensure that the works are done as per the laid down specifications.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for that comprehensive answer. I also want to congratulate the Ministry, and the Government in general, for the reforms that are taking place in this sector.

Mr. Deputy Speaker, Sir, the second part of the Question was ideally dealing with the wear and tear on the paved roads. I would like him to tell this House the measures his Ministry has put in place to ensure that we adhere to the specifications, and quality of work to ensure that we do not encounter these potholes on the roads frequently the way we do.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, as I have indicated, we came up with several roads agencies such as the Kenya Rural Roads Authority (KERRA) and the Kenya National Highways Authority (KeNHA). These roads agencies have qualified manpower to ensure that the contracts awarded for the purpose of maintenance of these roads are actually adhered to. Whenever such is not the case, we are able to execute the performance bonds that are given.

Mr. Deputy Speaker, Sir, allow me to also add that, other than the actual maintenance, we have ensured that the trucks that carry cargo on our roads do not exceed the allowed limits. For a long time, our roads have been deteriorating actually before the expected period because of extra load on the vehicles. Therefore, I want to thank the hon. Member---

Mr. Chanzu: On a point of order, Mr. Deputy Speaker, Sir. I am addressing the aspect of quality and compliance with specifications, so that we do not have the potholes that we encounter every now and then. That is what I would like the Assistant Minister to address.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, as I said, close supervision is one of them. We are considering the possibility of having long-term maintenance contracts instead of just a one-off, whereby the contractors, once they have been given an area to maintain, they are responsible for that area for a longer period to ensure that they put the right quality and that they are responsible for the condition of the road during the contract period.

Mr. Deputy Speaker, Sir, we also have the defect liability period. This is the period within which any defect appearing on that section of that road is within the mandate of the contractor; to ensure that they do repair and maintain the road. We are also trying to ensure that we extend the defect liability period which currently stands at 24 months.

Mr. Deputy Speaker: Hon. Chanzu, could you ask the last supplementary question on this?

(Several hon. Members stood up in their places)

Order, hon. Members!

Mr. Chanzu: Mr. Deputy Speaker, Sir, I have just asked my first question!

Mr. Deputy Speaker: You need to ask another question again!

Mr. Chanzu: What about other hon. Members?

Mr. Deputy Speaker: Proceed! It is upon the Chair to decide how many Members will ask supplementary questions!

Mr. Chanzu: How long will the Ministry take to get in place those long-term maintenance schemes, which can take care of these roads regularly rather than what we are experiencing now?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, we are currently evaluating all those possibilities, and also ensuring that we get the proper technical advice from our officers and also to look at the legal implications of such contracts. I can assure you that through the KURA, we are way ahead in terms of implementing this particular proposal.

Mr. Deputy Speaker: Hon. Members, I direct that the following Questions appear on the Order Paper tomorrow afternoon; Question No.973 by the hon. Baiya, Question No.798 by the hon. Kabogo, and this Question was deferred yesterday. It is only fair that it has priority over the others tomorrow. Question No.981 by hon. Langat; Question No.988 by hon. Mbadi; and finally, Question No.993 by the hon. Member for Subukia, Mr. Nelson Gaichuhie.

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. Yes, I do agree that the Question was deferred yesterday, but it was with three other Questions!

So, I seek the indulgence of the Chair to allow the three Questions to appear as the first Questions tomorrow!

Mr. Deputy Speaker: Order! You cannot have more than one Question, as a Member of Parliament! Yes, the Questions that were deferred yesterday should have priority tomorrow over the ones deferred today.

Next Order!

Question No.973

STALLING OF WORKS
ON KIRIGITI-KIBICHOI ROAD

(Question deferred)

Question No 798

COMPENSATION TO LAND OWNERS IN JUJA/RUIRU

(Question deferred)

Question No 981

RESETTLEMENT OF SQUATTERS
IN KERICHO TOWN

(Question deferred)

Question No.988

LACK OF BOARD AT CBK

(Question deferred)

Question No.993

DISMISSAL OF JOSEPH K. NJOROGE

(Question deferred)

PRIME MINISTER'S TIME

PRIME MINISTERIAL STATEMENT

GOVERNANCE AND INTEGRITY ISSUES AFFECTING
THE FUNDING OF THE KENYA EDUCATION SECTOR
SUPPORT PROGRAMME (KESSEP)

The Prime Minister (Mr. Ralia): Mr. Deputy Speaker, Sir, I had intended to talk about the governance and integrity issues affecting the funding of Kenya Education Sector and the Arid and Semi-Arid Lands Sector.

Mr. Deputy Speaker, Sir, however, the matter of Arid and Semi-Arid lands sector is not yet complete at the moment. So, my statement this afternoon will be confined to the audit report of the Kenya Education Sector Support Programme, which is also known as KESSP.

Mr. Deputy Speaker, Sir, in 2003, the then NARC Government launched the Free Primary Education (FEP) in all public schools. The move was lauded as unprecedented in a struggling economy like ours. It quickly won the support of our development partners, including the World Bank, DFID, CIDA (Canada) and the USAID, among others under the global effort to achieve the Millennium Development

Goals. The Government was hailed as being one of the most progressive on the continent as a result of introducing FPE.

Mr. Deputy Speaker, Sir, the FPE enabled an extra, 1.6 million children from poor households to enroll in schools, within two years of its implementation. Gross enrolment in our primary schools increased from 93 per cent in 2002 to 104.8 per cent in 2004. Introduction of FPE has resulted in improved girl child-enrolment nationally to about 48 per cent of all primary pupils. At the beginning of the year, 2011, a record of 539,792 students qualified to join Form One. This is the highest number of students to have enrolled in Form One in our nation's history.

Mr. Deputy Speaker, Sir, two days ago, I was at the Precious Blood Girls School in Riruta to meet with the young students from High Schools, polytechnics and universities across the country.

(Loud consultations)

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Members of Parliament are consulting so loudly that we cannot hear what the hon. Prime Minister is saying! Could you, kindly, ask them to lower their consultations?

Mr. Deputy Speaker: Hon. Members, we have to understand and appreciate what brings us all here. Could we listen to the Rt. Hon. Prime Minister, so that you can prosecute the Statement by him?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, this is a very serious issue and the House needs to listen patiently! It is in the interest of this country that there is transparency and accountability in management of public affairs.

Mr. Deputy Speaker, Sir, I was saying that I listened to the challenges that students face, at that highly consultative meeting at Precious Blood School, and the solutions they proposed. I also shared with them my conviction that education opens the door for a bright future for them and for our nation. That view is shared by all of us in this House and this country. I was moved by the patience, enthusiasm, excitement and hope that these young Kenyans showed.

Many of our schools do not have toilets with decent sanitary conditions. There is lack essential books, libraries, and laboratory equipment. Many children stay through school without sufficient meals.

Mr. Deputy Speaker, Sir, for some time, since 2009, our development partners have raised concerns about suspected fraud at KESSEP. It now turns out that close to Kshs4.2 billion may have been lost in just four years in the education sector project. A very large number of officials was involved in several irregular activities such as making payments without supporting documents, irregular banking practices, improper withdrawals under imprests and facilitation payments. Moreover, in many cases, single individuals irregularly received millions of shillings, some up to Kshs10 million as inputs.

It is even more painful because, according to the audit report, there was limited co-operation by Ministry of Education staff, particularly those in the Accounts Department. This reflected a deliberate attempt to limit the potential for the audit to uncover accounting operations, unethical behaviour or inappropriate spending. This is dreadful!

Mr. Deputy Speaker, Sir, equally troubling is the fact that, for very many years, those unscrupulous behaviours went un-detected. Those problems should have been uncovered by a spot-check of ongoing operations. This is the task of an internal auditor within the Ministry concerned. It took the Internal Audit Department of the

Office of the Deputy Prime Minister and Ministry of Finance to detect the fraud. There was apparently a systematic and, even a co-ordinated effort to steal the Free Primary Education (FPE) money and the future of our children!

The frustrations run deep, far and wide. The United Kingdom (UK) Secretary in charge of Development Assistance wrote to me twice stressing that the UK would like to increase financial assistance to Kenya, but was unable to put its monies through Kenya's public financial systems largely because of this education project case. The World Bank, together with DFID and CIDA suspended the Kenya Education Sector Support Programme (KESSP) nearly two years ago, but we are yet to come to a closure of the education sector fraud.

Mr. Deputy Speaker, Sir, I want to acknowledge that, in this case, the Internal Audit Department of the Office of the Deputy Prime Minister and Ministry of Finance did undertake an audit and the Treasury has now made public its damning findings. That is a positive step. I also want to acknowledge that the Kenya Anti-Corruption Commission (KACC) has tried to get to the bottom of this matter. As we speak, the KACC has investigated and is investigating 60 cases of this fraud involving Ksh192.6 million. This includes 25 cases that are in court involving Ksh80.7 million. However, all this is not enough. The future of our children is still in peril. The issue is not that misuse of public funds occurs because it can happen in any country. However, the issue is our inability to deal with it firmly, decisively and swiftly.

I deeply regret that those parents who sacrificed even basic necessities so that their children can go to school are deprived of public money and donor funds that they deserve. However, I did make my position known on this matter from the very first day; that is that those involved must take responsibility at every level.

(Applause)

Finally, I want to appeal to hon. Members to come to terms with the fact that the key to ending systemic corruption in this country is in the laws we are beginning to implement. Our Constitution today demands the highest standards of leadership and integrity of officers. This is what we must uphold. The steps we are taking to reform our Judiciary, and which I hope will be reflected in all other key public institutions appear, to me, to hold the future for our country with regard to corruption. This House, together with the Government, has the responsibility to the public to uphold those principles of integrity, accountability and transparency. Let us be uncompromising in the application of these demands.

Mr. Deputy Speaker, Sir, I now table the Finance Audit Report of the Ministry of Education.

Thank you, Mr. Deputy Speaker, Sir.

(Mr. Raila laid the Report on the Table)

(Applause)

Dr. Khalwale: Mr. Deputy Speaker, Sir, may I thank the Prime Minister for that Statement. However, he is not quite clear because we remember last year when 25 officers were arraigned in court because of what the KACC had found--- The 25 officers from the Ministry were being arraigned in court in respect of Kshs123 million, which was mainly imprest for workshops that the Ministry was arranging for teachers. That had nothing to do with direct disbursement of money to schools. The

report which is before us now talks about direct disbursement of money to schools, which has resulted in the loss of Kshs4.2 billion. Could the Prime Minister tell us, now that he has the benefit of hindsight, what he will do about the following officers who were responsible for direct disbursement? They were formerly at the Ministry but they have moved on. One is the Permanent Secretary who was the Accounting Officer. In this case, it was Prof. Karega Mutahi. The second one is the Chief Finance Officer, who in this case, was Alice Ngichu and the third one is the Principal Accountant who, in this case was Nancy Kinyua and, lastly, the Senior Accountant who, in this case, was Rachel Ndung'u.

Mr. Deputy Speaker, Sir, for the benefit of the House, the way direct disbursement was working is that it is only these officers who were wiring the money directly to the accounts of the respective schools. So, if they took 25 officers to court because of what the KACC found out, with respect to the workshop money on imprest, what will the Prime Minister do with these officers that I have named? More importantly, he is on record as having suspended the Minister for Education because of this scam. Now that the scam is there, what will the Prime Minister do to Prof. Ongeru, who is the Minister in question?

Mr. Ruto: Mr. Deputy Speaker, Sir, the Statement by the Rt. hon. Prime Minister is, indeed, shocking. In fact, it is not the sort of Statement he should just receive casually. We expect very drastic action to have been taken by the Government.

Mr. Deputy Speaker, Sir, the KESSP has been a problem for a number of years. This programme had actually started assisting the construction of infrastructure in the schools in rural areas, and there are very many classrooms that are now abandoned and we do not know what to do with them because we are unable to finish them even with the CDF money. This is the case and yet the Government can admit that a colossal amount of Kshs4 billion can get lost! Could the Prime Minister tell us what very serious structural adjustments will have to be done to the Ministry of Education because apparently, it is not just a matter of officers being moved from here and there? There has to be a very serious structural re-arrangement to deliver funds directly to the counties so that these schools can be salvaged.

I think this is an understatement. Probably, this matter should be handed over to the relevant Departmental Committee to give us a proper report within the next one week. However, the Prime Minister should tell us the serious steps he will take in the next two days to save the image of the Government.

Mr. Langat: Thank you very much, Mr. Deputy Speaker, Sir. Yesterday, the Director of KACC asked the Minister for Education and the PS to resign. I want the Prime Minister to confirm whether the Director of KACC, who is supposed to investigate and talk about facts, was talking out of the findings from an investigation that he had done, which linked the Minister and the PS to any specific corruption case or he was just playing some politics!

Ms. Karua: Mr. Deputy Speaker, Sir, Kshs4 billion is a colossal amount of money. We expect, this time round, some serious action. Could the Prime Minister tell us what specific steps the investigators - whether KACC or the police - are taking to freeze the properties of the persons who drew the money from the accounts, and how many criminal charges have been brought against the culprits to date?

Mr. Mbadi: Thank you Mr. Deputy Speaker, Sir. I would like to get the following confirmation from the Prime Minister. If that Report was ready by December last year, why did it take the Government so long - six months - to take action or even to make it public that Kenyans had lost that amount of money?

Finally, I wanted to find out from the Prime Minister the following: In case those investigations are complete, instead of asking the Minister and the PS to step down--- That is because stepping down would only mean that the investigations are being carried out. If they are not found to be involved, are you still going to ask them to take responsibility?

Mr. Deputy Speaker: The Rt. hon. Prime Minister will respond to the five clarifications sought, and then we will take another five.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, the Member of Parliament for Ikolomani – and I have not had an opportunity to congratulate him on his re-election - talked about the staff who had been prosecuted last year. He wanted to know what had transpired since last year and now, and what will be done to other officers whom he has named, and who were directly responsible for disbursement.

I have said that people must take responsibility at every level. None will be spared. All those people will be made to answer for crimes, if any, that they may have committed in this saga. I will talk about the other part of his question later.

Hon. Isaac Ruto is calling for structural adjustment in the Ministry of Education to deal with this issue, for example, by providing for direct disbursement of funds to the counties as opposed to the current system that is being operated by the Ministry. However, first, the counties have not been fully operationalized until after the next elections. Secondly, the hon. Member will remember that in the devolved Government system, education was one of those things that were not devolved. The health services were devolved. The hon. Member may remember that there was a very strong campaign by KNUT. That is why the education sector was not devolved as such. With hindsight, that was a mistake. Education should have been devolved. There is a provision in the Constitution for delegation; to delegate some of the responsibilities that have not been devolved. This is one of the subjects which the taskforce formed by the Deputy Prime Minister and Minister for Local Government has been grappling with; how to delegate some of the responsibilities that were not devolved. Educational services should be better managed by the county governments rather than the Central Government. The Central Government could delegate a representative at the county level, whose responsibility will be supervising the management of education by the counties, to ensure that there is parity countrywide, and that equal standards are maintained throughout the country.

Hon. Langat talked about the statement that was issued by the Director of KACC yesterday. KACC, at the moment, has only powers to investigate. It does not have prosecutorial powers. So, once it has investigated, it hands over to the Attorney-General who is, at the moment, also the Director of Public Prosecutions. So, it is the responsibility of the Attorney-General to prosecute. I have details from KACC which show in detail how many cases have been investigated and handed over to the Attorney-General for prosecution. But they have not been prosecuted. That, hon. Member for Ainamoi, was not politics, but facts coming from the Director of KACC. However, I do not hold brief for the Director of KACC in any way.

The hon. Member for Gichugu wanted to know what steps the police and KACC are taking to freeze assets belonging to suspects. That is a profession for the police.

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

Mr. Deputy Speaker: The hon. Prime Minister is still clarifying! Proceed, the Rt. hon. Prime Minister!

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, the hon. Member for Makadara is in one of those moods that he, sometimes, gets involved in. However, I think it is just a jest.

Hon. Mbadi wanted to know why the Government has taken long to act. The wheels of justice, sometimes, grind slowly but, eventually, get there. The Report, yes, was ready last year in November, but it was only released the day before yesterday. I would like the hon. Member to know that we had discussions with our development partners, particularly with the Vice-President of the World Bank, the day before yesterday, and agreed that this Report should be made public. I hold the view that we will only be able to develop this country, if we can plug the loopholes; if we can block those areas that allow for leakage of public funds. Pilferages are still very many in our system. That is because of where we are coming from. We all know where we are coming from.

We have been trying to carry out reforms to make a number of changes. Also, as Members of Parliament, we must play our role. If somebody commits a crime, or has embezzled public funds, and that person is dealt with in accordance with the law, those efforts should not be trivialised by saying that that fellow is being finished because he comes from this community or that community. We should not defend impunity on the basis of ethnicity. That makes the work of the Government very difficult.

Mr. Speaker, Sir, I know it for a fact because I know how many Members of Parliament sometimes approach me when Members of their communities are being subjected to disciplinary action for having committed what would be a crime and say, "Please, spare this young man. This fellow is very good. He comes from a very poor family---." Hon. Members say all sorts of things. Let us rise above petty politics. It makes the work of the Government very difficult. All of us come from different communities. There is no Kenyan who does not have a tribe. We all belong to tribes. So, when we deal with an issue, let us not try to tribalise it and say that So-and-so is a member of this tribe or that tribe.

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

Mr. Deputy Speaker: What is not in order, hon. Lagat?

Mr. Lagat: Mr. Deputy Speaker, Sir, the Prime Minister is asking hon. Members to stop acting for members of their communities, yet he is on record telling the people of Kitui that he was going to protect hon. Ngilu. Is he in order?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, the hon. Member could never be further from the truth. While in Kitui on that day, I was launching a water project. The people who were there had suffered from shortage of water for a long time. You could have seen the tears coming from the eyes of the women who were there when they saw water. Then I told them: "I congratulated the Minister for making water available to you people of Kitui." That was not ethnicity. In any case, I do not come from the same tribe as the Minister for Water and Irrigation. So, that example is very irrelevant, indeed!

Mr. Deputy Speaker, Sir, I want to reiterate something. There was a time when a former Chief Justice was being removed from office – Justice Chunga. There were lots of petitions brought to me, saying that I was being targeted. I said: "Mr. Chunga is being targeted as an individual. He is not a representative of the Luo community."

(Applause)

I can quote very many other examples. So, let us rise above our tribes and be Kenyans. Let us not look at everything through an ethnic mirror! That makes the work of Government much more difficult in dealing with issues of impunity.

Mr. Deputy Speaker, Sir, in other countries, people take political responsibilities. Mr. Strauss-Kahn, the Head of the International Monetary Fund (IMF), was just accused of molesting a hotel worker. He had not been tried and the law says that you are innocent until you are proven guilty. However, in order to save the integrity of the institution that he headed, he decided to voluntarily resign. That is what we call taking political responsibility. If Mr. Strauss-Kahn was a Kenyan, he would have said: "I am being framed. People are after my blood. People are targeting my tribe."

Time has come for the people of this country to take political responsibility. How else can you explain the disappearance of Kshs4.2 billion that is under your charge? This is money which is meant for the education of children. How can you say that you cannot take responsibility? How can you be innocent? Why do we have people in positions if Kshs4.2 billion under your charge can disappear and then you say that you are innocent, and that it is "only the thieves who are responsible"? I think we should do better than that.

Thank you, Mr. Speaker, Sir.

Mr. Kombo: Mr. Deputy Speaker, Sir, I am actually surprised that the Prime Minister is giving a long lecture on accountability yet he is the supervisor and co-ordinator of Government Ministries. Could he stand up and tell us when he is going to take action against the perpetrators of this rot? Is he waiting until he consults his co-Principal before he takes action? What is happening?

Mr. Chachu: Mr. Deputy Speaker, Sir, I would like to thank the Prime Minister for his Statement. He has done well on the issue of ethnicity. We have a report from the National Cohesion and Integration Commission (NCIC), which is one of Commissions that have been established under Agenda Four. It is public knowledge that in Ministries which are headed by persons from large ethnic communities in Kenya most of the vacancies in those Ministries are filled by members of those communities. Those include the Office of the Prime Minister and many other Ministries. What is he going to do about that problem as one of the Principals and the Prime Minister of this country? These are facts contained in a report tabled by the NCIC, and I want to know how we are going to deal with this problem as a nation.

Dr. Munyaka: Mr. Deputy Speaker, Sir, my query is on the Efficiency Monitoring Unit (EMU), which is within the Office of the Prime Minister. Why did the EMU not detect the crime early enough? I believe that the EMU was set up, so that it could detect crimes of this nature before they get out of hand.

Mr. Koech: Mr. Deputy Speaker, Sir, it is a very serious crime for a country to lose over Kshs4 billion. I have listened to the Prime Minister, who has made it very clear that those involved must face the full force of the law. We are aware that immediately this report was released, the Kenya Anti-Corruption Commission (KACC) started a public relations exercise. What type of commitment is there in the Government to ensure that those involved are actually arrested, so that they can face the full force of the law?

Secondly, what specific action is the Government taking to ensure that the Kshs4.2 billion is recovered? What action is the Government taking to ensure that top officers in the Ministry are stopped from frustrating investigations into this crime? Hon. Members have heard that there are some officers who were transferred

immediately this case came up, and that it is not easy to keep on tracking them. Is the Government serious in terms of ensuring that action is taken?

Mr. Mwathi: Mr. Deputy Speaker, Sir, I want to thank the Prime Minister for the Statement that he has given this afternoon. More specifically, just like every hon. Member is concerned about the Kshs4.2 billion being a lot of money, it is clear that there are many programmes which have already collapsed or will collapse because of the embezzlement of these funds. In the meantime, what steps is the Government taking to allocate money to these programmes, so that they do not collapse as investigations proceed?

Mr. Deputy Speaker: Mr. Pesa is an educationist himself. Proceed.

Mr. Pesa: Mr. Deputy Speaker, Sir, I want to thank the Prime Minister for the good Statement he has given on this matter. But you will realize that the Prime Minister himself mentioned that the whistle blowers were our development partners. Since the time this embezzlement was done in 2009, what changes have we made in the Ministry to assure Kenyans that their money now will be safe, so that they can be at peace?

Mr. Namwamba: Mr. Deputy Speaker, Sir, as has already been said, Kshs4.2 billion is not loose change. It will be remembered that when this issue of fiddling with public funds first erupted within this Ministry, the Right hon. Prime Minister did take some decisive action of suspending the Minister responsible for this Ministry.

As it will be remembered, that decision never saw the light of day. What assurance will the hon. Prime Minister give this House and the country that should any decisive action be taken this time, other considerations, other than the public interest, will not come into play?

Mr. Deputy Speaker: Right hon. Prime Minister!

Mr. Mbuvi: On a point of order, Mr. Deputy Speaker, Sir, over the same!

Mr. Deputy Speaker: The Right hon. Minister Prime Minister has not said anything yet! You rise on a point of order when somebody is not even out of order!

Proceed, Right hon. Prime Minister.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, you know that the people of Makadara are watching, so they need to see their hon. Member on the screen.

Mr. Musikari Kombo was a bit surprised. I was even more surprised when the hon. Member said that he is not aware of what action was taken and Mr. Namwamba has just told him the action that I took on this particular matter. All that he needs to understand is that we are in a coalition Government. Managing coalitions is not the easiest of things. There is need all the time for compromises, consultations and so on. I would have done it differently, but this is not a purely ODM Government. It is not also a PNU Government. It is a coalition Government. Therefore, we must compromise.

Mr. Chachu was talking about ethnicity or tribalism in employment in the Government. We all support the work that has been done. We have actually said that we must move towards equity in employment in the Government generally.

I want the hon. Member to note that the figures that were released with respect of the Office of the Prime Minister were not quite correct. We have since corrected it. The Commission has been given the correct figures. You will find that the Office of the Prime Minister is the most representative of all the Ministries in the Government.

Dr. Munyaka talked about the Efficiency Monitoring Unit (EMU). The EMU monitors efficiency in the Government, so we use it where there are problems of efficiency in delivering services to the Government. We have in the Office of the

Prime Minister what is called the Delivery Unit and the EMU falls under that Delivery Unit. We take them where there are problems of provision of services; where there is inefficiency. They do not investigate fraud.

So, in the Government, we have got Internal Audit Departments in each and every Ministry. There is another Audit department in the Treasury which supervises all these other Internal Audit Departments.

Mr. Koech said that KACC described this as a Public Relations exercise. I am not aware. His concern is that some of these officers were merely transferred. He wanted to know what steps would be taken to ensure that these officers do not frustrate investigations. That is the reason why we have directed KACC and the CID to move with speed to ensure that all these officers, who were involved, are immediately taken to court, so that they do not remain in the system where they can continue to frustrate investigations.

Mr. Deputy Speaker, Sir, you will realize that the Report I have tabled here has got names of people together with the amount of money that they embezzled. So, there is really no need for any further investigation. There has been sufficient investigation carried out. All that is required now is prosecution.

What we are talking about is that we should not just begin with the small fish. There is always the tendency to begin from the bottom and leave the other people. Our instructions are that this should start from the top going downwards.

Mr. Mwathi was concerned that with so much loss, some of the programmes of the Government might collapse or might not continue to be operated. Steps have been taken to ensure that there is no disruption of services of the Government which were supposed to be funded. For example, the donor governments have decided to now forward money directly to the schools for the time being as we continue to deal with these issues of integrity in the Ministry of Education. The money is actually going down to the schools, so that the programmes are not interrupted at all.

Mr. Baiya: On a point of order, Mr. Deputy Speaker, Sir. The Prime Minister says that there are no programmes that have been affected as a result of this misappropriation of public funds yet we know certain programmes such as the school infrastructure programme which was being used to refurbish infrastructure in the primary schools has already been suspended, thanks to this embezzlement. Is he in order to mislead the country that the programmes are not affected?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I am talking about the programmes as being implemented right now. The ones which have been suspended are basically because of probably lack of funding at the moment. As you know, the Government has been forced, because of additional unforeseen expenditures, to cut down on expenditures elsewhere. But this is not as a result of this particular case. This money was allocated for those particular financial years. When the financial year is closed, the Budget is prepared and provision is made adequately for those particular programmes. I want to assure the House that those programmes are not going to suffer or be suspended because of this. The best way to prevent recurrence of this is to take decisive action.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. The hon. Member has cited specific projects which have already been suspended like the money for textbooks and infrastructural projects. The Prime Minister is saying that no projects have been suspended yet we know that the DFID has suspended up to 30 per cent funding. Is he in order to say that projects are not going to be affected yet they have been suspended?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I have said that where, for example, the donors have withdrawn or reduced funding, the Government of Kenya has complemented. They are not suspended to my knowledge.

Mr. Mbuvi: On a point of order, Mr. Deputy Speaker, Sir. Before I raise my point of order, I want to bring to the attention of the Prime Minister that when I rise on a point of order, I do not want to be seen by my people of Makadara. I stand on a point of order to represent my constituents. We respect the Member for Langata and the same way, he should respect the other Members in this House. I am a presidential candidate just like him and I deserve respect from all the Members in this House.

I recall that there is a time when the Member for Langata did a very good job. He suspended two Cabinet Ministers who were later reinstated by the Member for Othaya. Could he tell this House what facts he used to suspend these two Ministers while investigations were still incomplete? Further, the Member for Langata---

Mr. Deputy Speaker: Order! You have made your point! You cannot turn a point of order into a speech!

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

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

Mr. Deputy Speaker: Dr. Nuh and hon. Ruto, order! Proceed, Hon. Prime Minister!

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, to “His Excellency” the hon. Member for Makadara, as a fellow presidential candidate, I would advise him that it will be risky to jump over fences. He might break his leg before the race starts. However, he also needs to know that the hon. Member for Othaya is also the President. So, he is also “His Excellency” like himself.

Having said that, I do not take the matters which have been raised by the Members lightly. I take them very seriously, indeed. If the Member has any impression that I was trying to slight him, that was not so. I was only saying that his constituents are also watching as he is talking here in the House.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. We do not want to get into sideshows. The issue we are prosecuting was the question of the infrastructure funds. The Prime Minister has told us that Kshs4 billion was stolen. He is misleading the House that the funding of the Infrastructure Support Programme has not been affected by the loss of the funds. How does this happen? Were there funds set aside by the Government of Kenya for embezzlement? Then, why would he complain? Were these funds set aside specifically for embezzlement? If the funds were meant to support a programme, for example, the construction of classrooms in our villages which have remained incomplete for the last three years, why would the Prime Minister mislead the House that this has not been affected by the loss of this money? Is he in order to make this statement?

Mr. Deputy Speaker: You have made your point! Right Hon. Prime Minister!

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, the hon. Member is talking about history and I am talking about the current situation. The Budget has just been read here. I want the hon. Member to point out in the Budget that was read by the Deputy Prime Minister and Minister for Finance here last week where the infrastructure funds have been cut down. I am saying that the Infrastructure Fund has been provided for in the Budget that is before the House right now. That is all I am talking about.

Mr. Deputy Speaker: The Right Hon. Prime Minister, I think we have had enough time for the Prime Minister's Time. Have you addressed all the issues that were raised on the last clarification?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I have addressed all the issues that have been raised here. I just wanted to conclude by telling the Members that corruption is a dragon. What we have is systemic. It will take all arms of the Government to fight corruption. We must, therefore, create strong institutions that can deal with this corruption. The Legislature, the Judiciary and the Executive must work together to deal with this cancer called corruption.

Mr. Deputy Speaker: We will take one Ministerial Statement from the Minister of State for Provincial Administration and Internal Security, Prof. Saitoti.

DESIGNATION OF HON. MWAU AS DRUG
TRAFFICKER BY UNITED STATES PRESIDENT

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Thank you very much, Mr. Deputy Speaker, Sir. This morning, 15th June, 2011, hon. John Harun Mwau, Member for Kilome, stood on a point of order to seek a Ministerial Statement from me, as the Minister, on his personal security. The Member specifically wanted an assurance of his personal security alleging that suspicious characters have been sited around his office and also his residence.

I was not aware of any threat to the life of hon. Mwau until the Member issued the Statement this morning before this House. This is a serious matter. I wish to assure the Member and this House that adequate security commensurate to the threat will be accorded to him. Therefore, I wish to request him to see the Commissioner of Police or myself for further action, to ensure that measures are put in place. The Government is mandated to provide adequate security to every citizen to enable them to carry out their businesses without fear. I, therefore, assure this House that the Ministry shall continue to protect the lives and property of all citizens of this country without discrimination.

Mr. Mwau: Mr. Deputy Speaker, Sir, I would want to clarify two things. First of all, it is not correct that the Minister should not be aware that my life has been under threat for a while. This is because he is aware that on the 4th of January this year, I was trailed and pursued by a vehicle with a registration No.29 which is an American registration number. This was a Toyota land cruiser. I took refuge at the Central Police Station and this matter was reported there.

Further, as he assures us that every Kenyan citizen is entitled to security, I would also want him to assure us, first of all, whether he was aware that President Obama, before 2nd of June, was going to mention my name adversely.

Secondly, since President Obama has now mentioned my name adversely without having followed the due process, what is the Minister doing about it as the Minister in charge of Foreign Affairs? Could he also explain or tell this House what steps the Government has taken to get the evidence that was used by the President of the United States of America (USA) to arrive at his decision?

Finally, Mr. Deputy Speaker, Sir, I would want to state categorically that I am a trained person and when I say that white people accompanied by some black people are trailing me, it is a matter of fact. This has been going on for a while. I have written persistently and consistently to the Minister, personally, but no reply or courtesy to respond to any of the letters has been made. Therefore, when I say my life is in danger, it is!

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, first of all let me say this. Before the President of the USA made his announcement, we had not been alerted. But even much more important, I doubt and wish to seek guidance, whether in actual fact it will be in order to discuss the Head of State of a friendly nation.

Mr. Deputy Speaker, Sir, I would not touch on it until I get the clarification.

The key point here is that once the announcement had been made that Mr. Mwau is allegedly a kingpin in the drug and narcotic matters, in my capacity as the Acting Minister for Foreign Affairs, I ensured that information was sought both from the American Embassy here and also from our Embassy in Washington DC on the basis that this decision had been made. That was important and I was obliged to do so because Mr. Mwau is not only a Member of Parliament but also a citizen of this country. That is the standard form that is followed internationally.

Mr. Deputy Speaker, Sir, if the hon. Member did see the police, that information did not come to me. I cannot tell a lie and I will not tell a lie! I only came to learn today that the hon. Member is being trailed in his own office and his home.

Mr. Deputy Speaker: Now that you have said that you have learnt of that information and the Chair takes very seriously anything that concerns the life of an hon. Member of Parliament, have you given sufficient undertaking, in your opinion, on the security and the safety of Mr. Mwau?

Mr. Mwau: On a point of order, Mr. Deputy Speaker, Sir. I am surprised by the submissions by Prof. George Saitoti because we are not discussing the President of the USA. We are discussing an act where a citizen of this country has been punished by a foreign Head of State without consulting our Head of State or the Prime Minister! This is unless, of course, my Head of State is subordinate to any other Head of State and my Prime Minister is subordinate to any other Head of State!

The duty of a Government is to protect its citizens wherever they are and that is what I will be asking of my Government!

The Assistant Minister for Foreign Affairs (Mr. Onyonka): On a point of order, Mr. Deputy Speaker, Sir. Even though the issue that Mr. Mwau is raising is quite substantive and weighty, it is critical that he realizes that for you to discuss the President of the USA, the President of Kenya and the Prime Minister of Kenya, you need a substantive Motion to do that.

Mr. Deputy Speaker: Order! Mr. Harun Mwau is not discussing the character or the person of either our President or the President of the USA. He is discussing what directly touches on him; a personal matter. Under those circumstances, he is at liberty to say that, "I have these problems". The only thing is that he now cannot discuss the person of Obama without bringing a substantive Motion on the Floor of the House!

Minister, could you give the undertaking to the---

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. This is on procedure!

Mr. Deputy Speaker, Sir, while this is a very heavy matter, the procedures of the House must be followed. The Minister, Prof. Saitoti, was answering this question and yet the Assistant Minister rose on a point of order. Is that in order with the procedures of this House? It is not!

Mr. Deputy Speaker: Order! Clearly, the Government must be having a certain discipline within its own ranks. Nonetheless, Mr. Minister, please proceed and give the requisite---

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I really beg your indulgence that you allow us to interrogate the Minister on this, considering that Mr. Mwau has actually been pleading with a lot of pain for protection from the Minister. He has been stating this several times in this House. We would like to know whether the Government is taking matters of its citizens very seriously. He believes he has been wronged and he has come to the Floor of the House several times pleading that he be accorded rights and that his rights be protected. We really would like to know whether the Government of Kenya is actually desirous of protecting its citizens against these wild allegations and blacklisting. Alternatively, the Minister should bring actual hard facts to prove that Mr. Mwau is culpable in all these issues other than pleading and hiding behind foreign affairs protocols to injure citizens of this country!

We have had several instances in which rights of citizens have been infringed on. For example, recently Mr. Okemo was seeking protection from the courts and he was casually dismissed. There are several others.

Mr. Deputy Speaker, Sir, we would like to hear some more substantive and serious undertakings by the Government and not casual statements like the Minister is making. He has not even told us what is happening in Embakasi. About 15 citizens are still under rubble and today the Minister has spoken but he is telling us nothing about what is happening in Embakasi.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Nobody in this House, or in any other Parliament in the world, would want to share the Floor of the House or the National Assembly with a drug dealer or a drug baron. We have been faced with challenges from the Government. Whenever we want information from the Government, it is not forthcoming. When we want information on drug dealers, the information is not forthcoming or is not completed. When we want information on who owns the Grand Regency, they have no idea. When we want information on who is dealing in ivory trade, the same situation obtains. On pyramid schemes, they have no idea and they do not want to prosecute. Since drug dealers know each other, will I be in order to request the Chair to refer this matter; both the initial Statement by the Ministry of Foreign Affairs and the other one which was given by the Minister of State for Provincial Administration and Internal Security, to the relevant Departmental Committees?

Mr. Deputy Speaker, Sir, it is very clear that it is not in the interest of the Government to investigate anything!

Mr. Deputy Speaker, Sir, to finish, the United States of America (USA) is a friendly nation, but it appears that it does not have any trust in giving any information to this Government. This matter will be better off handled at the Committee level, because they have no confidence and that is why they have refused to give information to the Government.

Mr. Deputy Speaker: The matter that is before the House now is the security of hon. Mwau. I think the hon. Minister has had sufficient clarifications sought from him to give that very firmly, categorically and unequivocally; in a manner that essentially is going to rest every hon. Members' fear here that a Member might be lost due to one problem or the other.

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. The Minister did say in the House, a few minutes ago, that he, as the Acting Minister for Foreign Affairs, has taken action by writing to the USA Embassy here and our Embassy in Washington. Would I be in order to ask the Minister to table proof of that in writing? That is because you will remember that, six months ago, the same Minister did say

here, on the Floor of the House, that he had written to Ranneberger, the then USA Ambassador, and it came to pass that, that evidence was not brought to the House. Would I be in order to request that?

Mr. Deputy Speaker: No, hon. Kabogo! You are out of order! A Minister of a Government or the Government for that matter, can give a Statement and that Statement is considered in every sense to be true. If you can prove that, indeed, the Minister did not write a letter or wrote a letter that is different from what he said on the Floor of the House, then you can rise on a point of order at the appropriate moment. But no Government Minister is obligated to come and prove to you that he has written a letter by bringing a copy of that letter. That is a matter for the Executive, but once he has given an undertaking and said that he has written it, you have to believe that he has written it.

Mr. Kabogo: Mr. Deputy Speaker, Sir, it is not about believing him. It is about a Statement that he made in the House; that he will produce evidence. The HANSARD can bear me witness. I was just asking him to show that it is true that he has done so.

Mr. Deputy Speaker: An undertaking that he is going to produce certain evidence on the Floor of the House? Proceed, Mr. Minister! What do you have to say to that?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I did give an undertaking---

Mr. Mwau: On a point of order, Mr. Deputy Speaker, Sir. I want to point out two things. First of all, the two Ministers have said that, to be able to discuss the President, you require a substantive Motion. When they were mentioning the names of the Members of Parliament, purporting that they were suspects of drug trafficking, it seems that they could not remember that part of the Standing Orders. They did not follow that process. Further, I am not discussing the person of Obama as the President, but his action. Secondly, when I talk about our President, I am not talking about the President as a person but rather, about the Executive Authority that is supposed to protect me. It is my constitutional right, unless these two have not read the Constitution! When I refer to the Rt. hon. Prime Minister, I do not mean the person of the Prime Minister, but the Executive Authority of that office. That is all I am trying to say.

Mr. Deputy Speaker, Sir, further, the Acting Minister for Foreign Affairs, Prof. Saitoti, must declare, really, why he is playing this game! That is because he has been playing this game with an agenda that is not really coming out! I would want him to confirm that if anything happens to me---

Mr. Deputy Speaker: Order! Order! In the same vein and in the same way you have said, you cannot impute an improper motive on a fellow Member of Parliament without a substantive Motion. You cannot do so, hon. Mwau! You will have to withdraw!

Mr. Mwau: Mr. Deputy Speaker, Sir, there was a Ministerial Statement that was supposed to be given---

Hon. Members: Withdraw! Withdraw!

Mr. Mwau: Mr. Deputy Speaker, Sir, I withdraw.

Mr. Deputy Speaker: Fair enough! Allow the hon. Minister now to respond.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I think hon. Members have listened to the Statement that I was issuing prior to this interruption. I made it very clear that, indeed, the Government will provide hon. Mwau with adequate security. I also did invite the

hon. Member to not only see the Commissioner of Police, but also to come and see me, so that appropriate arrangements can actually be made. I do not know of a more powerful undertaking I could give. But there is one thing, and I want to clear it.

Mr. Deputy Speaker, Sir, I did say that, upon the Government learning about this matter - the predicament that hon. Mwau is in - I ensured that the American Embassy here was contacted to give us the information surrounding the decision that was made. That was done, indeed, on 6th June. That is when my Ministry wrote, by the hand of my Permanent Secretary, upon my instructions, to provide us with that information. That information has not yet come.

Mr. Deputy Speaker, Sir, after this matter was announced on 1st June or 2nd June, we did not waste time at all. On 3rd June, a letter was written, again by my own Permanent Secretary, upon my instructions, to the Kenya Ambassador to the USA, in Washington, to get information from the State Department, surrounding the decision that was made by the American Government. We did not even leave it at that. On 10th June, again, I directed that my Ministry does write to the Attorney-General to give us guidance on this matter and how it should be handled. So, essentially, what I am trying to say here is that we did not sit on our own laurels when we heard that a Kenyan had been adversely mentioned by another Government. We took the decision and acted as any Government would do when its own citizen is adversely mentioned or is being dealt with in an adverse manner.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Hon. C. Kilonzo rose on a point of order and suggested that this matter could be properly handled, if it is taken to the relevant Committee---

Mr. Deputy Speaker: Who is out of order in that process?

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, that is what I am coming to!

Mr. Deputy Speaker: Who are you seeking an order from?

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, I am seeking guidance. I am rising on a point of order---

Mr. Deputy Speaker: Order! Order! You do not decide for the Chair! Hon. C. Kilonzo has made his point. It is upon the Chair to give direction on the same. It is not for you to---

What is your point of order, Ms. S. Abdalla?

Ms. S. Abdalla: Mr. Deputy Speaker, Sir, would I be in order to tell the Minister, since he has failed to tackle this issue, and since the American Government pronounced the issue of hon. Mwau, that this issue be referred to the Office of the Prime Minister? That is because it touches on security, drugs and everything. The Minister has proved that he has failed to follow up on this issue. He has not been able to tell us what action the Government has taken since President Obama announced the issue of hon. Mwau.

Mr. Deputy Speaker: Order, hon. Minister! The Chair, and the House at large, expect from you and the Republic that the personal security for the hon. Harun Mwau is going to be taken very seriously. He is at liberty, as soon as possible, to also draw the attention of the Chair in the event that that action is not taken by you. The Chair has a special responsibility to make sure that Members of Parliament are protected. Having said that, and having seen the amount of interest this matter has generated, and the amount of anguish it is causing many people in this country--- Those who want to see drug dealers and drug barons put behind bars because their children are affected in the process, and those who are Members of this House who believe that they have no business in that particular trade, and that they are being victimized for one reason or the other, the Chair is going to direct that the

Departmental Committee concerned with Internal Security and Provincial Administration should move with speed and carry out investigations. That is for the joint Departmental Committees concerned with internal security and foreign affairs to move with speed and carry out the requisite scrutiny and investigations and report to this House as soon as possible. At the very latest, the Chair expects a report to be on the Floor of the House in the next three to four weeks.

COMMUNICATION FROM THE CHAIR

PROCEDURES FOR CONDUCTING PUBLIC HEARINGS AND ANNUAL ESTIMATES/BUDGET STATEMENT

Mr. Deputy Speaker: Order, hon. Members! In view of the fact that today, we have a lot of substantive business to transact, the Chair has one communication to make.

Hon. Members, as you are aware, the Chair ruled on 7th June, 2011 on the procedure to be followed in the tabling of Estimates of the National Government, the Judiciary and Parliamentary Service Commission in the House, and subsequently the Deputy Prime Minister and Minister for Finance, and the Minister for Justice, National Cohesion and Constitutional Affairs laid in the House the Estimates of Expenditure and Revenue for the Fiscal Year 2011/2012 for the National Government and the Judiciary. Hon. Members may wish to note that the Estimates for Parliament were tabled in the House on 28th April, 2011 by the Vice-Chair of the Parliamentary Service Commission.

Pursuant to the provisions of the Standing Orders, all the Estimates were committed to relevant Departmental Committees of the House for review, while the Financial Statement for the Fiscal Year 2011/2012, which included the taxation and financial measures delivered by the Deputy Prime Minister and Minister for Finance on 8th June, 2011, were referred to the Budget Committee by a resolution of the House. This House expects the Departmental Committees and the Budget Committee to review annual Estimates and Financial Statements referred to them and report back to this House as required.

I do urge all Committees to accord this exercise the highest priority. The House will consider the Report thereof in the Committee of Supply. Hon. Members, Article 221(5) of the Constitution provides that:

“In discussing and reviewing the Estimates, the Committee shall seek representations from the public and the recommendations shall be taken into account when the Committee makes its reports to the National Assembly”

To adhere to this provision, the following procedures will be followed.

(a) Public hearings will be held in eight centres in the country. Seven of the hearings will be held simultaneously next week. The following are the centres: Mombasa, Nakuru, Embu, Kisumu, Nyeri, Garissa and Kakamega.

(b) As from Tuesday, 28th of June, 2011, public hearings on the Annual Estimates and the Budget Statement will be carried out in Nairobi at the Kenyatta International Conference Centre (KICC).

(c) The Budget Committee will take the lead in this exercise and will host all the hearings.

(d) As to the public hearings, the various committees will scrutinize the Estimates of Ministries assigned to them. Thereafter, the committees will compile reports and table them in the House.

(e) The Committee of Supply will commence on 20th of July, 2011 using the same procedure as what has been used in the past with Ministers initiating debate on programmes and policies amplified under the watch of their respective Ministries.

Hon. Members, as you are aware, we shall be unable to review and scrutinize any proof of the Estimates before the end of the current financial year. It is in this regard that as per the provisions of Article 222 of the Constitution and under Standing Order 155(7) that this House shall be called upon to deliberate on Vote on Account so as to ensure that services by the Government to the people of Kenya are not disrupted.

As has been our tradition, immediately after the tabling of Estimates, a briefing is held for all Members on the salient issues contained in the Estimates. All hon. Members are, therefore, invited to a briefing session tomorrow, Thursday, 16th June, 2011 at 10.00 a.m. in the Old Chamber. During this session, Members will be taken through the salient issues contained in the Estimates and the procedure to be followed in processing the Estimates and other logistical arrangements for the Budget hearings. A brief session will be held by the Parliamentary Budget Office and the Directorate of Committee Services.

Thank you very much, hon. Members.

Mr. George Nyamweya: On a point of order, Mr. Deputy Speaker, Sir. I have listened very attentively to your communication, and in line with separation of powers of the Legislature, Executive and the Judiciary--- Now, in respect of the Departmental Committee on Justice and Legal Affairs, part of whose responsibility is, indeed, to scrutinize those Ministries or departments that fall under its purview, I would like some clarification that these matters are currently being handled by the Implementation Committee of the House. I find it somewhat difficult in the sense that the Committee comprises Ministers of the Government. They will now be required to be reviewing, or scrutinizing, proposals emanating from the Government. If we want to bring this matter to rest--- If, indeed, the Departmental Committee on Justice and Legal Affairs has been abolished, I think it will be useful for the country to know that. If it has not, then I think it is the responsibility of the House, even under the new articles of the Constitution that some decision be given in writing to members of that Committee, so that they understand what their functions are. I particularly would not want us, when implementing the new Constitution, to start by breaching it. Perhaps, you could give some clarification as to how we handle that one.

Mr. Deputy Speaker: Indeed, it is common knowledge that a sanctified doctrine is that one has always to protect democracy, which is the separation of powers, and that the Government cannot be expected to scrutinize the same work that the Executive had done. That is the role of Parliament, and that matter itself, is under due consideration by the Speaker and the Deputy Speaker, who is the Chair of the Liaison Committee. If you talk to some of the Members of the Liaison Committee, you will know that there is a process which is ongoing, and which we hope to complete tomorrow.

Next Order!

PROCEDURAL MOTIONS

APPOINTMENT OF HON. BONNIE KHALWALE
TO SERVE IN HBC/PAC

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of Standing Order 159, the Hon. Bonny Khalwale be appointed to serve in the House Business Committee and Public Accounts Committee.

Mr. Deputy Speaker, Sir, it would be recalled that the hon. Khalwale had to relinquish membership to these two Committees because of the events that culminated in a by-election in Ikolomani Constituency. The House Business Committee deemed it prudent not to fill that vacancy. Indeed, on that note, allow me, to congratulate both the people of Ikolomani, and the hon. Khalwale for a resounding victory.

[Mr. Deputy Speaker left the Chair]

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

Madam Temporary Deputy Speaker, if you allow as personal note, I think that this House is richer with the presence of the hon. Member for Ikolomani. It appears to me that from the days, as Minister for Tourism and Information, I officially launched the bull fighting event in Western Kenya, and I remember he came on a winning bull, and actually instead of a bull being carried shoulder high, it was the hon. Khalwale who was instead carried shoulder up. He seems to have perfected this art of bull fighting. That is with a light touch.

Therefore, after consultations, and also with reference to provisions of Standing Order No.160, if I can just read:-

“In nominating Members to serve on any select Committee, the House Business Committee shall ensure that the membership of each Committee reflects the relative majorities of the seats held by each of the parliamentary parties in the National Assembly and Kenya’s ethnic, geographical, cultural, political, social and economic diversity; and shall give consideration to the need for gender balance.”

These issues have all been adequately addressed. The coalition side to which hon. Khalwale belongs, the PNU alliance, was able to make that decision. Therefore, this was clearly not a very difficult decision. That is why I have great honour in recommending the decision of the House Business Committee, which I hope will receive overwhelming approval.

Madam Temporary Deputy Speaker, I beg to move.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

Mr. Gitari: On a point of order, Madam Temporary Deputy Speaker. I doubt whether it is in order to debate this Motion, while Dr. Khalwale was re-elected about a month ago. Four months down the line, I have been following the Chief Whip to be appointed to any Committee, and I have not been appointed to any Committee.

(Laughter)

Madam Temporary Deputy Speaker, I have a copy of a letter here from the Chief Whip showing that he has written a letter to the Speaker asking that I be appointed as a Member of the Public Accounts Committee. I have written to the Speaker to that effect.

The Temporary Deputy Speaker (Dr. Laboso): Is the Chief Whip here?

Yes, hon. Leader of Government business!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Madam Temporary Deputy Speaker, I have great respect for the sentiments that my good friend, Member for Kirinyaga Central, has expressed. That communication and that decision by the Chief Whip will be similarly handled. So, I do not think that there is any cause for alarm.

Mr. K. Kilonzo: On a point of order, Madam Temporary Deputy Speaker. Members here, irrespective of where they come from, are equal. Much as I have profound respect for my brother, hon. Khalwale, and I would like him to continue serving in that Committee, I also want to say fair is fair. If we want to be just, we must be just to all.

Is the Leader of Government business in order to defer appointing the Member for Kirinyaga Central, who is older in Parliament than hon. Khalwale, and also having been given a letter being appointed to the same Committee, and then casually, he says that that issue will be looked into? Would I be in order to suggest that this matter be deferred until such a time that, that issue is resolved?

Ms. Karua: On a point of order, Madam Temporary Deputy Speaker. I think we may be missing the point. It is the Leader of Government Business and the Whips, who may not be doing their jobs. However, we should not pit one Member against the other. It has nothing to do with the two Members. It is the right of each Member of Parliament especially the Backbenchers, to at least belong to one Committee and, therefore, the Member for Kirinyaga Central is entitled to belong to a Committee. We should be asking the Leader of Government Business and the Chief Whip to ensure that, that happens. But, in the meantime, it should not be held against the Member for Ikolomani. The matter before the House should be passed. It is not about that Member. It is about failure by the Office of the Leader of Government Business and the Chief Whip.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Dr. Laboso): Order! Could we have a copy of that letter that the hon. Member for Kirinyaga Central has, asking him to join the PAC? Did you say that you have a letter to that effect? Do you have it here?

Hon. Members: Ask for time!

Mr. Gitari: Madam Temporary Deputy Speaker, I will table it tomorrow in the afternoon.

Mr. Mbadi: On a point of order, Madam Temporary Deputy Speaker. I also want to agree with hon. Karua that truly, I think we should separate the two issues. However, it becomes a bit tricky to separate them when the hon. Member is talking of a letter nominating him to the same Committee. We will be seen to be unfair, and many of us actually believe that up to now that hon. Khalwale should serve in the PAC. He actually performed well as the Chair of that Committee. But let the side that nominates these Members to these Committees go and resolve that issue and give the hon. Member for Kirinyaga Central another Committee and give hon. Khalwale another Committee. This thing is not unique. The ODM side has asked Members to surrender some Committees and we have done it before. So, I do not see why the PNU side should not resolve this matter and bring it to the House, and we pass it. So, my request is that the PNU side should go and sort out the mess. Let us defer this issue.

Dr. Machage: On a point of order, Madam Temporary Deputy Speaker. A Member has made what I would call an allegation against the Leader of Government Business in the House. The allegation has not been substantiated. He has not tabled any document to show that, indeed, he was given a letter. Would I, therefore, be in order to request the Chair either to completely quash the Member's complaint or to adjourn this Motion to tomorrow, when he will be able to table that letter?

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, this is a Procedural Motion and we cannot continue debating it for long. In view of what the hon. Member for Kirinyaga Central has presented, and in view of the fact that he has asked for more time to be able to table the document that he was given by the Chief Whip, I rule that we defer this Motion up to tomorrow afternoon.

(Applause)

Yes, Leader of Government Business!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Madam Temporary Deputy Speaker, in the interest of justice and fair play, I would like to request that instead of having the matter debated tomorrow – because as you see, we will be very busy today and tomorrow – may I suggest that I withdraw this Motion so that we can have fairer consultations so that we report progress to this House.

Thank you, Madam Temporary Deputy Speaker.

(Applause)

(Question put and agreed to)

(Procedural Motion withdrawn)

The Temporary Deputy Speaker (Dr. Laboso): Let us move on to the next Order!

EXTENSION OF SITTING TIME

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

THAT, notwithstanding the provisions of Standing Order 20(2), this House resolves that the sitting time of the House today, Wednesday, 15th June, 2011, be extended until the Business as set out in the Order Paper is concluded.

Madam Temporary Deputy Speaker, this House has demonstrated its capacity to sit and dispose of business that is considered critical. The hon. Members who will look at the Order Paper will notice that Orders No.11 and 12 are critical to the implementation of the Constitution and in line with the agreement that was reached by the hon. Members. Through the consensus that has been reached, hon. Members have said that should that eventuality come, they will be prepared to stay on until the business is disposed of.

Madam Temporary Deputy Speaker, we expect that perhaps this could be disposed of latest by 8.00 p.m. depending on the interest shown in the two Orders, but hon. Members will be at liberty to dispose of the matter earlier.

Madam Temporary Deputy Speaker, this is a very straightforward matter and I request Mr. Murungi to second it. I also request hon. Members that we make this decision fast enough so that we can start transacting business.

The Minister for Energy (Mr. Murungi) Seconded.

(Question proposed)

Hon. Members: Put the Question!

Mr. Ruto: Madam Temporary Deputy Speaker, let us not rush through everything!

I want to support the proposal that we actually extend sitting time. However, I would like to hear the justification for Order No.12. I am willing to get along with Order No.11 that, indeed, we have to finish.

Madam Temporary Deputy Speaker, I think it is also important that we interrogate some of these very important Bills. I have not heard of the justification for Order No.12 which I wish could be deliberated on in an orderly manner.

Thank you, Madam Temporary Deputy Speaker.

(Question put and agreed to)

The Temporary Deputy Speaker (Dr. Laboso): Let us move on to the next Order!

REDUCTION OF REFERRAL PERIOD OF INDEPENDENT
OFFICES (APPOINTMENT) BILL

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

THAT, this House orders that the referral period of the Independent Offices (Appointment) Bill, (Bill No. 11 of 2011) to the Constitutional Implementation Oversight Committee be reduced from 10 to 6 days.

Madam Temporary Deputy Speaker, as you remember, last week, this House was generous enough to allow the publication period to be reduced because of the importance of this Bill. This Bill seeks to create the offices of the Controller of Budget as well as the Auditor-General. These are two very key offices and it would be desirable if they were actually in place at the commencement of the next financial year so that they can start the work of the new Constitution within the new financial year or, at least, not come into the office too late, which will amount to trying to close the door after the horses have bolted.

Madam Temporary Deputy Speaker, in the discussions that were held in the House Business Committee and, in consultation with the hon. Members, it is obviously clear that hon. Members would like to take a break and that matter will come tomorrow because I did indicate that in my Statement last week. It would be desirable if we could complete Order No.12 so that we probably get into the Committee tomorrow and go home having passed these major constitutional landmark Bills. That will mean that when we are away on recess, we can have these offices or the process of filling these offices take place. However, we need the legal framework and I believe that, that is why we need to finish this matter as fast as we can.

(Loud consultations)

Madam Temporary Deputy Speaker, again, this is a matter that is very clear and I believe that even Mr. Isaac Ruto has now taken heed of this because I can see he is consulting rather well on the matter---

The Temporary Deputy Speaker (Dr. Laboso): Order, Mr. Ruto! You asked for the justification for Order No.12 but you are not listening to it!

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I believe that I have given Mr. Ruto all the reasons why we need this matter to be concluded faster. It is very clear that we need this constitutional law passed and it takes precedence over very many other matters.

Madam Temporary Deputy Speaker, I do not wish to really belabour this point because it is a very straightforward matter. We should reduce the time so that we can debate this Bill today. That will give us an indication as to how much longer we need between now and the time we go into the Committee. That will depend on the contribution by hon. Members during the Second Reading of this Bill.

Madam Temporary Deputy Speaker, I beg to move and request Mr. Githae to second the Motion.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Thank you, Madam Temporary Deputy Speaker. I just want to add one more justification as to why we need to sit until we complete the business appearing on the Order Paper of today. Since there is a proposal that we may go on recess tomorrow, we want to enter into parliamentary history that we went on recess when we have no constitutional Bill on the Floor of this House. I think that will be a wonderful feeling as we go on recess.

Madam Temporary Deputy Speaker, I beg to second.

(Question proposed)

Mr. Ethuro: Madam Temporary Deputy Speaker, I rise to oppose this Motion. This House cannot consistently and persistently be used by the Executive that does not do its homework, rushes through Bills and wants this House to go by its bidding. More fundamentally – and we have had occasions to raise objections to such Motions - the whole reason why a Bill is published for the period of 14 days is to allow for public participation, a principle that is now enshrined in the Constitution. How many lessons does the Government need to learn, if it has not learnt from the case of hon. Uhuru Kenyatta, who was taken to court for trying to commit an illegality? This House cannot allow itself to be misused by the Executive to rush through Bills, unless there is something they are hiding!

With those remarks, I strongly oppose and urge this side of the House, including the good people from the other side and hon. Mutula Kilonzo, who is always complaining, to support me.

I beg to oppose.

Mr. Chachu: Thank you Madam, Temporary Deputy Speaker. I stand to oppose this Motion. We are living in a very sensitive time. We need to implement this Constitution. As Members of Parliament, we are tired. However, we are ready to burn the midnight oil to ensure that we enact all the necessary Bills before we go on recess. For that purpose, I oppose the Motion.

Mr. Linturi: Thank you Madam Temporary Deputy Speaker. I rise to oppose this Procedural Motion. The 14 days publication period is to allow us to have time to scrutinize the Bill. The independence of---

The Minister for Transport (Mr. Kimunya): On a point of order, Madam Temporary Deputy Speaker. It appears, perhaps, that we are debating two different things. The Motion on the Floor is not about extending the publication period. It is about reducing the period of committing the Bill to the Committee. The House already granted the reduction of the publication period last week. I needed to make that correction because we could be discussing and swaying Members to make the wrong decision. We know that CIOC has demonstrated its capacity to do the work. It has already been seized of this matter and can look at it based on the contributions of Members. So, I just wanted to make that correction so that we do not debate the wrong item and make the wrong conclusion. We are debating the reduction of the time that the Bill stays in the Committee from ten days, which is the preferred period, to six days, which we believe is adequate for the Committee to look at it and come up with a Report by the time we get to the Committee Stage. That should not stop the Second Reading from taking place.

Mr. Abdikadir: Madam Temporary Deputy Speaker, I strongly oppose the Motion. The CIOC has been working overtime to ensure that work that was meant for another Committee is handled. This House has bent over backwards to accommodate the issues of the Executive. We will be happy in doing so. However, we cannot ask Parliament to shorten time and sit up to midnight when there is not much work being done on the other side. They do not have even one Bill in the pipeline to be debated. This is one Bill that we sat up---

Mr. Mututho: On a point of order, Madam Temporary Deputy Speaker. Is the hon. Member in order to suggest that we have been bending our backs backwards when just yesterday, we had to bend the same back again to accommodate him to table and move a Motion? That was yesterday. We are here seeking further indulgence. We are here for the people of Kenya. It is for the people of Kenya that we stand here.

Mr. Abdikadir: Madam Temporary Deputy Speaker, that is precisely the point. This House had to extend time so that CIOC could have enough time to handle and finish its work. The point I am making is that Parliament is more than ready to do this. However, we cannot let the Executive get away with it every time. Sometimes, we must say no, so that the signal is sent that we are ready to do our work on this side, and they must be ready to do their work on the other side.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you Madam Temporary Deputy Speaker. Allow me to persuade my colleagues that there is some confusion on this matter. Let me say, again, that I have been challenged that there are no Bills on the Floor of the House. Let me also say that, barely a week ago, the House allowed the publication period of the Bill to be reduced. Today, we are simply asking you to debate the Bill, itself, for Second Reading and reduce the number of days.

If you look at the calendar, you will notice that today is Wednesday and tomorrow is Thursday. In fact, if we do not reduce the number of days from six to four, strictly speaking, what Parliament will gain is Tuesday next week. Otherwise, by tomorrow, there will only be two more days left.

It is not true that there are no Bills in the pipeline. I am a bit surprised by the Chair of CIOC because he is our oversight. He knows the work we are doing. We have a big spectrum of Bills. Right now, the Cabinet Office has the Political Parties Bill. Next week, we will publish even more Bills. My challenge to the House is that by 26th August, there will be an enormous amount of Bills that will be required and outstanding. Since this Bill is available now, I beg to support the Motion.

Ms. Karua: Madam Temporary Deputy Speaker, I beg to support the Motion. There is one thing that we really have to appreciate. It is not about the Executive, but about the country. We agreed in the CIOC that we ought to push the Executive to publish the Bills on time but flexibility is needed on both sides.

A Member has just reminded us, as Members of the CIOC, that we came back to the House to request for more time when we could not finish within the time granted. I am pleading that since we are employing many members of independent offices, if we delay these Bills, that will mean that we are putting them in limbo without structured terms of service. I think when we debated the Insolvency Bill yesterday, although we are asking for more time, I am afraid that, that Bill was passed by only seven of us!

(Applause)

I am pleading that we let the process go on and that the Committee on which I sit should burn the midnight oil to produce the Report. We know that we have more than 20 or 30 Bills to pass in this House. Kenyans are waiting for those Bills which will guarantee the proper implementation of the Constitution.

I want to support the Motion and request hon. Members to support it.

(Mr. Ruto stood up in his place)

Mr. Affey: On a point of order, Madam Temporary Deputy Speaker. I think we have ventilated on this matter. The intention of the Motion is obvious. I suggest that you put the Question so that we can dispose of it.

The Temporary Deputy Speaker (Dr. Laboso): Let us allow the last submission because he is already up!

Mr. Ruto: Madam Temporary Deputy Speaker, I rise to oppose this Motion on very clear reasons; that we have to scrutinize the Bill. We cannot be told to go to the Second Reading and finish it today - this evening. That is the effect of passing this Procedural Motion. I had raised these issues when we were discussing finishing everything on the Order Paper today. However, we owe it to Kenyans to give them a quality Bill; one that has been properly debated and has our input. However, Order No.11 is very clear. We should finish with it because it is about the Chief Justice and the other two. I wish the Executive could allow public participation in the same spirit that is enshrined in the Constitution. We have the time and we are willing to work overtime. However, let us give out quality laws.

I oppose.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Dr. Laboso): Order! I think we agreed that, that was the last one.

(Question put and agreed to)

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

MOTION

ADOPTION OF CIOC REPORT ON JUDICIAL NOMINEES

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

THAT, this House adopts the Report of the Constitution Implementation Oversight Committee (CIOC) laid on the Table of the House on Tuesday, 14th June, 2011 on the approval of the nominations of Dr. Willy Munywoki Mutunga as the Chief Justice, Ms. Nancy Makokha Baraza as the Deputy Chief Justice and Mr. Keriako Tobiko as the Director of Public Prosecutions, pursuant to Articles 166(1)(a) and 157(2) of the Constitution read together with Section 24 of the Sixth Schedule to the Constitution.

Madam Temporary Deputy Speaker, while this House has, in the past couple of years, handled a number of historic businesses and issues, this particular business before the House is, indeed, the most historic. It is the first time in the history of this country that the nominee for Chief Justice, the nominee for Deputy Chief Justice, and the nominee for Director of Public Prosecutions have come to this House for approval by the representatives of the people of Kenya. The Constitution says “We, the people--” This is, indeed, a moment of “we, the people”, where this House has been called upon to give approval and confirmation of names that have come from the Executive through a constitutional procedure for appointment to high offices.

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

[Mr. Deputy Speaker resumed the Chair]

Mr. Deputy Speaker, Sir, the two gentlemen and the lady, whose names are before this House this afternoon, are Kenyans of exceptional quality and qualifications. They seek high office in the Republic of Kenya, and it is important for me to confirm that we, in the Committee, having talked to them, seen their qualifications and talked to Kenyans, are strongly of the view that their appointment should be approved by this House.

It is important for me to outline the manner in which this process came to the CIOC. On 28th January, 2011, the Office of the President announced the names of four nominees for the constitutional offices of Chief Justice, Attorney-General, Director of Public Prosecutions and Controller of Budget. Shortly thereafter, the Rt. Hon. Prime Minister asserted that the same nominations had been done without the requisite consultations with his Office as required by the National Accord and Reconciliation Act 2008. The matter raised considerable public outcry, with different groups issuing Press statements on the same, including the Constitution Implementation Committee (CIC), the Judicial Service Commission (JSC) and many Kenyans. The matter also found its way to the House and the High Court, with both the court and the Speaker pronouncing themselves on the same.

Mr. Deputy Speaker, Sir, on 26th February, 2011, His Excellency the President withdrew the list of nominees to the constitutional offices and directed that the appointments of the Chief Justice and Deputy Chief Justice be done by the JSC. He also stated that he would hold consultations with the Rt. Hon. Prime Minister on the nomination of the Attorney-General and thereafter appoint a panel to advertise and

interview candidates for the position of Director of Public Prosecutions. On 4th March, 2011, the JSC, through Gazette Notice No.2061, advertised the positions of Chief Justice and Deputy Chief Justice and invited members of the public to submit applications.

Twenty-six persons applied for the position of Chief Justice, while 14 others applied for the position of Deputy Chief Justice. Soon thereafter, ten applicants were shortlisted and interviewed for the position of Chief Justice, while eight applicants were shortlisted and interviewed for the position of Deputy Chief Justice. On 13th May, 2011, the JSC nominated Dr. Willy Munywoki Mutunga and Ms. Nancy Baraza for appointment as Chief Justice and Deputy Chief Justice, respectively. The JSC then forwarded the names to the President for formal nomination and eventual approval by Parliament.

Mr. Deputy Speaker, Sir, on 17th May, 2011, His Excellency the President and the Rt. Hon. Prime Minister endorsed the nominees for the posts of Chief Justice and Deputy Chief Justice, and that of Director of Public Prosecutions, paving the way for vetting and approval by Parliament. Owing to the challenges in the Departmental Committee on Justice and Legal Affairs, on 2nd June, 2011, the Hon. Speaker, in a Communication to the House, referred the names of the three individuals to the CIOC for vetting and approval.

The Hon. Speaker directed that the CIOC submits its recommendations to the House on 8th June, 2011. On that date, I reported, on behalf of the Committee, progress and requested an extension of time to enable the Committee conclude its work. The Hon. Speaker then extended the time and directed the Committee to table its Report on Tuesday, 14th June, 2011, which was yesterday, and which we did.

Mr. Deputy Speaker, Sir, in conducting this process, the Committee examined the candidates against the criteria set out in the Second Schedule of The Commission for Implementation of the Constitution Act, 2010, which is the criteria for Vetting and Approval of Nominees for Appointment to Public Office by the National Assembly. The criteria require the nominees to disclose information on their personal and professional life, including their political affiliations, tax compliance, potential conflict of interest and issues raised by members of the public during the hearings. Memoranda presented to the Committee are also attached to the Report.

With respect to qualifications, the requirements by the Constitution are set out in Article 166(2) for the positions of Chief Justice and Deputy Chief Justice, which provides as follows:-

“166(2) Each judge of a superior court shall be appointed from among persons who-

(a) hold a law degree from a recognised university, or are advocates of the High Court of Kenya, or possess an equivalent qualification in a common law jurisdiction;

(b) possess the experience required under sub-articles 3 to 5 as applicable, irrespective of whether that experience was gained in Kenya or in another common law jurisdiction; and,

(c) have high moral character, integrity and impartiality.”

Mr. Deputy Speaker, Sir, Article 166(3) provides as follow:-

“166(3) The Chief Justice and other judges of the Supreme Court shall be appointed from among persons who have-

(a) at least fifteen years’ experience as superior court judge; or

(b) at least fifteen years' experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal field; or

(c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in aggregate, to fifteen years.”

Mr. Deputy Speaker, Sir, the requirements for the post of Director of Public Prosecutions are contained in Article 157(3) of the Constitution, which provides as follows:-

“157(3) The qualifications for appointment as Director of Public Prosecutions are the same as those for appointment as judge of the High Court.”

The requirements for appointment as judge of the High Court are to hold a degree from a recognised university, or to be an advocate of the High Court of Kenya, or to possess an equivalent qualification in a Commonwealth jurisdiction, or to possess the experience required under sub-Articles 3 to 6 as applicable, irrespective of whether the experience was gained in Kenya or in another common law jurisdiction, and to have a high moral character, integrity and impartiality.

Mr. Deputy Speaker, Sir, with respect to Article 166(5), instead of the 15 years' experience for the positions of Supreme Court Judge and the Chief Justice, this one requires an experience of 10 years as superior court judge, or a professionally qualified magistrate, or at least 10 years' experience as a distinguished academic or legal practitioner, or such other experience in other relevant legal field, or held the qualifications specified in (a) and (b) for a period amounting, in aggregate, to 10 years. Those are the requirements under the Constitution for qualification to these posts.

Mr. Deputy Speaker, Sir, allow me now to look at each of the individuals separately and I will start with the nominee for the post of Chief Justice. One commentator once said that one should not go where the path may lead, but that one may go instead where there is no path and leave a trail. If one required the definition of a trailblazer, then the nominee for the Chief Justice to this position is, indeed, a trailblazer by every extension of that term.

This gentleman holds a Phd in law from Osgood Law School which he acquired in 1992. He has a Masters of Law degree which he acquired at the University of Dar es Salaam in 1974. He has a Bachelor of Law Degree which he acquired in 1971. He went to Strathmore College for his “A” level in 1968 and Kitui Secondary School in Kitui for his “O” level at which he attained a Division 1. He was awarded senior counsel by the Government of Kenya in 2003. He was awarded the Lifetime Award for the protection and promotion of human rights by the Kenya National Commission on Human Rights in 2003.

He was awarded the award of Jurist of the year by the International Commission of Jurists (Kenya Chapter) in 2003. He was awarded the award of Distinguished Service Award by the Law Society of Kenya in 1988 and he was the first one to hold that award.

Mr. Deputy Speaker, Sir, this gentleman is not a stranger to this House. He taught our hon. Speaker. He taught the Minister for Energy. He taught Mr. Imanyara. He taught the former Minister for Foreign Affairs, Mr. Wetangula. He taught many distinguished Kenyans. We received a glowing tribute to this gentleman from his Member of Parliament, Mr. Kiema Kilonzo, Member for Mutito.

Mr. Deputy Speaker, Sir, we received submissions and testimonies in the Committee from people who know this gentleman very well. We were told about his

detention, we were told about his humility. We were told about his character. Indeed, he is an impressive gentleman.

With respect to the nominee for Deputy Chief Justice, she is a candidate for Phd. in Law at the University of Nairobi currently. She received a Masters of Law Degree from the University of Nairobi in 2005 with distinction. She holds an LLB from the University of Nairobi in 1980. She holds a diploma in legal studies from the Kenya School of Law in 1981. She attended the Highlands School in Eldoret in 1976 for “A” level and she attended Lugulu Girls High School in 1974 for “O” levels. She was awarded Order of Grand Warrior by the Republic of Kenya in 2008.

With the respect to the Director of Public Prosecutions, this gentleman, without doubt, is one of the brightest lawyers this country has ever produced. The gentleman was admitted for Phd. in Law to Cambridge University in 1991 to study securities regulation. In the legal field, securities regulation is like brain surgery. It is one of the most technical fields a lawyer can study.

He received a Masters of Law from Cambridge University in 1991. He received a diploma in law from the Kenya School of Law in 1990. He received a first class LLB from the University of Nairobi in 1989. Those are very rare achievements as the Minister for Justice, National Cohesion and Constitutional Affairs will tell you. There are very few Kenyans who hold a first class degree from the University of Nairobi. University of Nairobi is very stingy with its first class degrees.

In 1984, this gentleman was the best “A” level student the country ever produced in that year. He had triple As standing. The gentleman went to Kanyekine High School for his “A” level and Athi River High School for his “O” level which he passed in 1982. He was awarded the Gandhi Smakat best “A” level student award for 1984, the Barclays Cambridge Commonwealth Scholarship Award in 1990, the Pigasa’s Cambridge Scholarship Award also in 1990. So, without doubt, the ladies and gentlemen we are talking about are men of exceptionally high qualifications and achievements.

Then we went to look into the criteria that we had set out earlier on the issues of integrity and to allow the public to come to the Committee, so that they could tell us about their views on this gentleman and then we could go ahead with the vetting process.

I will go to each one of them and what the Committee heard and the views the Committee formed. With respect to the Chief Justice nominee, Dr. Mutunga, the issues were as follows:

One, that the nominee did not have judicial experience. That was true. However, the Committee realized that was not a requirement in the Constitution. You could have judicial requirement of 15 years experience or professional legal experience of 15 years or legal academic experience of 15 years. It did not require that you had to only be qualified as having experience of 15 years in the Judiciary.

Indeed, some would consider the fact that he did not have 15 years experience in the Judiciary a plus and not a minus in the current circumstances.

There were very many examples around the world of men and women who went to the top of their judiciaries, including in the USA, with no judicial experience and turned out to be some of the best chief justices including Chief Justice Warren of the United States Supreme Court or the Chief Justice of South Africa who turned out to be one of the best chief justices. So, really that was not a minus as far as the Committee was concerned.

The next issue which was really one of the most highlighted issues as far as this particular candidate was concerned was the issue of moral character. There were very many allegations against the candidate.

One was that the gentleman had married and separated and divorced a number of times. That he had a divorce petition pending in court and he would be the Chief Justice when there will be a divorce petition in the court; that he was an activist with extremely liberal views. That the ideals and principles of the nominee's current employer would negatively impact on his tenure as a Supreme Court Judge and the Chief Justice.

It is also alleged that the institution; that is, the Ford Foundation advocates aggressive population control and explicit sexual education and that he champions ideals and lifestyles of homosexuality with registration by his firm of the Kenya Gays Lesbians Trust. Above all, that he, indeed, wears an ear stud.

The Committee was very clear that to do justice, we had to clarify these issues and bring out these issues so that we could get clarification from the candidate. I can say that the Committee is satisfied with the explanations, clarifications and with the responses we got from the nominee on these matters.

On this nominee and on the Deputy Chief Justice, the key issues are as follows: that these individuals have shown themselves to be a little bit outside the norm as far as their views on homosexuality and morality are concerned. And that they may use that part of their world view and impose it on the rest of the country, a country that is majority religious and majority conservative on those issues. On two issues specifically, on the issue of the family and whether the family is, indeed, marriage being between a man and a woman and on the issue of abortion. This came from the religious community in a very strong way.

We did put these questions directly to the nominees. We were very happy that the nominee was very clear. In fact, he said that if he cannot read the Constitution so clearly on these matters, then he is a dimwit and he should not be confirmed for this position. He says the Constitution is very clear. It says abortion is not allowed. It says marriage is between a man and a woman. He said his fidelity will be the Constitution and he will be a true servant of the Constitution. We were more than happy with that answer and we are satisfied as a Committee.

Mr. Deputy Speaker, Sir, with respect to the nominee for the Deputy Chief Justice, the broad queries and questions came around the same issues, indeed, that her moral values were not in tandem with the religious and cultural values that the majority of Kenyans hold. That she offered a PhD thesis or is finalizing a PhD thesis whose title is "Equality and Non-discrimination Principles and The Question of Homosexuality in Kenya". It was also alleged that she worked very strongly with FIDA - these were allegations coming and not the views of the Committee - that holds very outlandish views on the issue of family. Again, there were Members of the Committee who were members of FIDA, who were not happy with those sentiments, but, indeed, those are the sentiments that came from Kenyans and we were required to listen to them and get the answers.

Just like the nominee for the Chief Justice, the Deputy Chief Justice nominee was able to assuage our fears on this matter. She was very clear that we should hold her personal views separate from the law and that both her and the Chief Justice will not be the only people making judgements and rulings. They will do this in tandem with the other members of the Supreme Court, who I am informed were announced today by the Judicial Service Commission (JSC). On the issue of whether she lacked

judicial experience, we agreed that she lacks judicial experience, but that was not a bar to her holding this post.

Mr. Deputy Speaker, Sir, with respect to the nominee for the Director of Public Prosecution (DPP), the queries were in four broad areas and I want to go through them. One, there were allegations dealing with four cases that this gentleman either handled or was accused of interfering or conflict of interest. Two, the CKRC and his relationship with the former Chairman of the CKRC, Prof. Yash Pal Ghai. Three, were very strange allegations that came to the Committee through the former Permanent Secretary, Mr. Kirui. Four, on his past performance in that post and in that department and whether they were a clear show that he was not fit to hold this position. On the cases, and I want to refer to each one of them, the first two come from a complaint that was raised by Justice ole Keiwua to the Attorney-General some time back concerning a very protracted and long standing dispute over some property in the Maasai Mara. This was a very protracted long standing dispute, but the issues as far as this nominee is concerned, relate to two issues; one, that one of the protagonists in that duo, Livingstone Ole Ntutu, was a former client of the nominee when the nominee was in private practice. A case was filed against this gentleman when the nominee had moved from private practice and was in the Department of Prosecutions as the Director of Public Prosecutions. The allegation is that he used his position to help his former client in this prosecution.

The second allegation, as far as that particular letter is concerned, relates to the Chief Magistrates Criminal Case No.2157 of 2003. The succession case is a Succession Case No.1263 of 2000 which deals with certification. This is a succession cause. Somebody died and somebody wanted to get letters of administration of the estate of a deceased gentleman. The allegation is that in certifying a list of the beneficiaries for that deceased person's estate, the nominee certified as genuine the identity card that allegedly belonged to a six year old minor. The third case deals with Anglo Leasing and it is the case of the Republic versus Zakayo Cheruiyot. The allegation was that the nominee was an advocate for Mr. Cheruiyot before he became the DPP and when he came to the position of the DPP, he may have acted improperly as far as that case is concerned.

Mr. Deputy Speaker, Sir, with respect to those issues, the Committee puts direct questions on the following matters: First of all, these allegations first came in a non-signed document that was brought by a civil society organization. The Committee was willing to take up because of the importance of this position and the importance with which we held this issue. In normal circumstances, even in this House, we would not have accepted unsigned documents to have been taken in on a serious issue, but in view of the seriousness of this matter and the short timelines, we wanted to take it up. Fortunately, by the time we were seeking further clarification the next day, that letter had been signed by, we were informed, the advocate of Justice ole Keiwua.

On the issue of ole Ntutu, the nominee's answer was that, first of all, the process to prosecute Livingstone ole Ntutu was started when he was there. In other words, he was head of department when the decision to prosecute ole Ntutu was made. Therefore, if he wanted not to prosecute him, he would not have started that prosecution if that allegation was correct. Secondly, that he was not the one handling the prosecution and that there was a prosecutor who was handling it independent of him. Thirdly, that when the letter came, the Attorney-General asked for a report from that other prosecutor, who indicated that this gentleman had not in any way interfered with him and that the allegation that he had refused to call witnesses were incorrect. That he had looked for witnesses and they were not available. Finally, that this

gentleman was, indeed, put on his defence and that it was the court that found later that there were no weighty issues.

Mr. Deputy Speaker, Sir, the Committee showed concern on this matter. The Committee's view was that while that may be so, it would have been best, this gentleman having been his former client, that we would have found it best, if, indeed, he had handed this matter over to an independent outside prosecutor in view of his involvement with his client before. On the issue of the succession case, the answer from the nominee was that his firm asked a staffer to handle a whole bunch of documentation with about 42 people, so that this staffer could go ahead and get each of those people look at their identity cards and confirm to the advocate that he had looked at them and that he signed all of them and he had not actually seen each of these people.

While we understood that that might be possible in a law firm, the Committee found that this was reckless behavior for an advocate and for a senior advocate to do. Therefore, the Committee in the report shows concern. With respect to Anglo Leasing and the Republic versus Zakayo Cheruiyot, the Committee was very impressed with the manner in which this matter was handled. The Committee was informed that Joe Okwach, Advocate and Senior Counsel, was appointed as an outside special prosecutor for this matter the moment this gentleman came on board and the CIOC called Mr. Okwach, so that we could talk to him and we were impressed with the manner in which that matter was handled.

Mr. Deputy Speaker, Sir, on the allegations by Sammy Kirui, this matter came up on the day we were handling the public hearings. This gentleman came to one of the Members of the Committee and said that he has some issues to handle. That Member came to me, I looked for his telephone number and tried to call him, but I could not get him. When we closed the public hearings, he came and said that he had issues that he wanted to raise. We asked him to write a letter and we received that letter and that letter was read in public, into the record by a Member of the Committee. Then we asked for clarifications from the nominee and the Committee finally decided that we needed to call Mr. Kirui in person to put clarifications. Essentially, the allegations from Mr. Kirui are that people who said that they were acting on behalf of the nominee solicited for Kshs5 million in bribes. He also alleged that they also told him that in the event that he does not cough up, the number of charges facing him would increase and since the number of the charges increased, he took that as confirmation. We put these questions to three individuals who had issues. One was Mr. Tobiko himself who said that he never met the gentleman and that it was a complete lie and a horrible fabrication that he, indeed, solicited through anybody for any such bribes.

The second was the Attorney-General to confirm that indeed the Attorney-General is the one who increased the charges. The third was the Director of Public Prosecutions who said it is perfectly in order and it is not really up to the Kenya Anti-Corruption Commission (KACC) to determine the number of charges to be preferred. He said that he does not see anything wrong if the charges were increased. This was an issue we looked at and the Committee saw this as very serious allegation and had the views from the nominee.

Mr. Deputy Speaker, Sir, on the issue of the CKRC matter, we had a long letter from the former chairman, Prof. Ghai. He was indeed the first person we called to give evidence to the Committee. Prof. Ghai went into a long list of why he thinks this gentleman is not fit for this office. One of this was that he had breached his confidentiality vows to the CKRC by giving information to political masters who

were outside the CKRC. He also said that he had claimed unlawful funding when he had not done the work. In his opinion, this gentleman was unfit to hold this post.

On this matter, we had several witnesses. One was another Commissioner of the CKRC, Commissioner Adagala who termed Prof. Ghai's views on Tobiko as hate speech. Her view was that the Commission had been divided right in the middle on political issues and that what Prof. Ghai was seeing was because he was on the other side of the political divide as far as the CKRC were concerned and the views were not correct.

Mr. Deputy Speaker, Sir, we also talked to the current Director of KACC who was at that time the Chief Executive of the CKRC. We talked to him on the issue of the funding. Prof. P.L.O. Lumumba was very clear that you could hold anything else against the nominee but on matters of financial propriety he was completely above board. That is the direct evidence of the current Director of KACC. He also informed us that all the Commissioners except Prof. Ghai and one other Commissioner were of the view that their reading of the law allowed them to take transport allowances even when they were provided motor vehicles by the Commission and that when he came on board as the Director, he sought clarification from the Treasury. The Treasury gave him confirmation that indeed his reading of the law was correct; that if the CKRC was providing motor vehicles, the Commissioners should not also be taking transport allowances. He then asked all these Commissioners to cease taking allowances on transport and more to refund. All of them did refund, including Mr. Tobiko. He said that at no time had Mr. Tobiko taken financial payment for work he had not done. He said that he was one of the few people who if he was paid when he was not in a meeting, he would return the funds because he had been paid wrongly.

Mr. Deputy Speaker, Sir, on the issue of past experience, the Committee was very strong that this gentleman and the Attorney-General and that department had nothing to write home about in terms of work product. The Committee was very clear that as far as we were concerned, quite a number of Committee Members felt that the very fact that the Attorney-General had come to support the current nominee, was negative in terms of the nominee's chances with the Committee.

With all due respect, the Attorney-General has no achievement to write home about. That is my person view. The Committee was also of the view that, that gentleman was going to be operating in a new constitutional dispensation. That gentleman was not the Director of Public Prosecutions, indeed. Throughout that process, the Director of Public Prosecutions was the Attorney-General. Indeed, this came out in a very interesting way when one of the witnesses, a former Chief of Public Prosecutions, who had claimed that he had done everything that Mr. Tobiko was talking about. He was asked: "How come then he had entered a *nolle prosequi* in a particular case?" He said: "No! No! You do not understand. That was the decision of the Attorney-General who is the final authority on these matters." So, if it is failure of leadership, there are those in the Committee who felt that, that really should be hanged around the neck of the Attorney-General, hon. Amos Wako, and not the nominee himself.

Mr. Deputy Speaker, Sir, there is one critical issue about the process. This process is a very critical process for the people of Kenya. There are those who feel that we will be doing very many vetting. In fact, when I looked at Gaddo today, he called this a country the vetting nation; that every other minute there is some vetting going on somewhere in the country, whether it is the police vetting or vetting by the Judicial Service Commission (JSC) or vetting by a Parliamentary Committee or all

manner of vetting. It is important and there is a Bill before this House on this issue. It is important that we get this right.

Mr. Deputy Speaker, Sir, vetting must be thorough and accurate. It must be fair and structured. It is very important. If I was to read for you a comment by one of the commentators who was commenting on the hearings in the United States of America (USA) Congress, when Justice Clarence Thomas was being grilled--- The first black Justice in the USA Supreme Court was Justice Thurgood Marshall. He was, indeed a friend of Kenya and helped draft the first Constitution of this country. When he retired in 1991, the nominee to replace him was Clarence Thomas. When that matter came up, it was a major fight between the Conservatives and the Democratic Party. There were major and serious allegations against him. Several women said that he had sexually molested them and, therefore, was unfit to hold the judicial office. Those people came before that Committee. That Committee, just like our Committee on this matter, was actually split – seven to seven – on that nomination. The matter came to the US Senate and the Senate voted 52 to 48 to confirm Clarence Thomas. He has been a Judge for more than 20 years and is one of the best Judges. Let me read for you what one of the commentators said. He said:

“The phone calls came throughout September. Did Clarence Thomas ever take money from the South African Government? Was he under orders from the Reagan White House when he criticized civil rights leaders? Did he beat his first wife? Did I know anything about expense accounts charges he filed for out-of-town speeches? Did he say that women do not want equal pay for equal work?”

Finally, one exasperated voice said: “Have you got anything we can use to stop Thomas?” The article is called “*Open Season on Clarence Thomas.*” We do not wish to have open seasons on every nominee who comes before a Parliamentary Committee for vetting. Even in criminal cases; even when one is charged with rape or horrible crimes, there are basic standards, requirements and guarantees that those people who are facing criminal charges face. One of them is to know the charges against you. The other is to be able to see what has been claimed against you. The third is to be able to have an advocate for that. The fourth is that this matter must be handled in a fair, open court and in a fast manner.

Mr. Deputy Speaker, Sir, when we allow people to walk in from the streets and on national television, make every kind of allegations, is that fair? Are we interested in a blood spot or vetting for suitability? That is not to say that we should very strictly look into the lives and suitability of people who seek higher office, but it is very critical that basic regulations be in place; I am happy that there is a Bill before this House for this particular issue.

Mr. Deputy Speaker, Sir, finally, allow me to read to you the actual recommendations of the Committee. Following deliberations, the Committee resolved to take a vote through secret ballot in order to identify areas of consensus, and to determine the opinion of members on the suitability of the nominees for appointment to the respective offices. The results were as follows: Dr. Willy Mutunga as Chief Justice (CJ), 21 for him and two against him, abstention - zero: total 23. This means Nancy M. Baraza as Deputy Chief Justice had 23 for her, against her, zero, and abstention, zero: total, 23. Three, Mr. Keriako Tobiko as Director of Public Prosecutions (DPP), 11 for him; against him 11; abstain, one: Total 23.

Following the above results, the Committee held further deliberations on the nominees and resolved to move the process forward and, therefore, make the following recommendations to the House. One, that pursuant to Article 166(1)(a) of

the Constitution and Section 24(2) and Section 29 of the Sixth Schedule to the Constitution, this House approves Willy Muniyoki Mutunga for appointment to the position of Chief Justice. Two, that pursuant to Article 166 (1)(a) of the Constitution and Section 29 of the Sixth Schedule to the Constitution, this House approves Ms. Nancy Makokha Baraza for appointment to the position of Deputy Chief Justice. Three, that pursuant to Article 157(2) and Section 29 of the Sixth Schedule of the Constitution, the House approves Mr. Keriako Tobiko for appointment for the position of Director of Public Prosecutor, with some Members expressing reservations on the approval of the DPP, and with hon. Mbadi and hon. Namwamba registering specific objections. Four, that the approval of the DPP be subject to further investigations on the outstanding issues subject to objections by hon. Mwakwere and hon. Ombui. Five, that future nominations submitted to Parliament for approval be accompanied by an explanatory report setting out the criteria and methodology used by the nominating body in setting out such nominees.

Mr. Deputy Speaker, Sir, it my pleasure and historical duty - I have fortunately moved many historical Motions in the House - now to move the Motion.

Hon. Millie Odhiambo-Mabona will second the Motion.

Mrs. Odhiambo-Mabona: Thank you, Mr. Deputy Speaker, Sir. Like the Chairman, I also want to say I am happy to second this historic Motion. This fortunate for me, especially as a woman who has been fighting for women rights for many years. I want to agree with the Chairman that we need to have a vetting law that will guide us as a country, so that when we do vetting we are very clear. I want to be very happy that, as a committee, we undertook this process. It was transparent and open to the public, and everybody was able to see and judge it. I was happy that for the first time, I received as much condemnation as I received applause; this means that we were doing a good job.

Mr. Deputy Speaker, Sir, since the chairman has gone into the educational background, one of the issues that came up that we need to look at as a country when we are dealing with these issues is that we must be clear that the Constitution now allows public participation. We cannot run away from it. We must deal with it. From our experience in vetting other people in the past, especially Mr. Ahmednassir, when we were in the Departmental Committee on Justice and Legal Affairs, one of the things that came out very clearly was that because we do not have a clear law, sometimes we recall a person severally. This continued for long time. Therefore, that is why there is need for a law that will spell out a very clear system, when to call a person and when the public must give information. This is because the way the public is giving information now is very haphazard. We were receiving information in the middle of vetting. We were hearing people with information while others were complaining that they had not been given a chance, yet the members of the public were too many.

Mr. Deputy Speaker, Sir, one of things that the vetting law will do and I hope it will do, is to regulate the way we do public participation. I am not against; I support it because it is a right that was entrenched. The issue of public participation is mentioned more than 15 times in the Constitution.

Mr. Deputy Speaker, Sir, one other thing I want to comment about is how we actualize Chapter Six of the Constitution on issues of leadership and integrity. In that regard, there are certain words that are in the Constitution, when they come to issues of interrogating what they actually mean; you discover that we all have very different ideas about what they mean. This came up, especially in relation to the nominations for Ms. Nancy Baraza, and Dr. Willy Mutunga. We had to actually look at issues to

do with morality and law. We actually wedded a little even to the issue of sin. The issues surrounding them had to do a lot with sexuality. The Constitution provides very clearly that these persons must have very high moral character. Then the question is: What is our morality as a country? Is our morality only what is contained in the Constitution? Is there a morality outside what is contained in the Constitution? Is it a religious morality? If so, which religion? Assuming it is Christian morality, then, for me, some of the questions I was asking are: Will we then just probe for gay, lesbian, bisexual and transgendered rights? Will be looking at people who come before us, whether they are also fornicators because those are also issues of morality? We, as a country, must interrogate the issues of morality, integrity and be clear in our minds. What is our threshold of morality?

Mr. Deputy Speaker, Sir, I know that Members are finding this interesting. But for me, I am actually saying it very genuinely as a Christian; that we must actually probe that issue when we are talking about sexuality. Why one area of sexuality? I am not saying it is right. We, as a country, are at a crossroads. We say we are a religious nation. We say we are Christian, Muslim or Hindu, but there is little in our lives that shows that we are any of those. So, sometimes when we actually hold on to certain things, it is an indictment on us, as a country. We must be true to what we say we are.

Mr. Deputy Speaker, Sir, I do not know whether we would actually be able to resolve this in law. I know, as a former of student of jurisprudence, those are some of the issues even in law that have not been resolved. So, we must be clear. We have people who are living with each other, people who are in come-we-stay marriages; half of the people of this country are divorced.

One of the persons who presented before us gave us statistics on gays and lesbians.

(The entire debate arising from Mrs. Odhiambo-Mabona's remarks on gays and lesbians was expunged from the record of House Proceedings as directed by Mr. Deputy Speaker)

(Question proposed)

Ms. Karua: Thank you, Mr. Deputy Speaker, Sir. I rise in support of the Motion. Indeed, we passed the three nominees as set out by the Chair, but in respect of the DPP, we recommended investigations into, particularly, two issues. The reason is so that as he enters office, he enters without baggage. Once allegations are made, if they are left hanging, it is bad even for the candidate because we leave some Kenyans believing that there is something that was done.

As a Committee, we called for the data from the phone of Mr. Kirui and other relevant phones and by the time we concluded, the Commissioner of Police, to whom Parliament had written, had not responded. This makes me wonder whether---

Mr. Wetangula: On a point of order, Mr. Deputy Speaker, Sir. I am sorry to interrupt my learned friend, but in view of the tremendous interest in this debate, I seek your indulgence. Standing Order No.87 gives the duration of speech as 20 minutes, but I wish to move that we limit it to five minutes, so that we give as many Members as possible an opportunity to contribute to this Motion.

Mr. Deputy Speaker: Hon. Members, indeed, it is only fair that as many Members as possible have an opportunity to contribute to the Motion. It is the Chair's expectation that every Member will confine himself or herself to not more than five minutes.

Proceed, hon. Karua!

Ms. Karua: Mr. Deputy Speaker, Sir, I was just indicating that it is important that these allegations are cleared. There are two critical allegations; the one of signing an affidavit for a six-year-old and attesting that the six-year-old has an ID card. This needs to be concluded so that it is known. If it is not true, then the Director of Public Prosecution (DPP) should be appointed. However, if it is true, it casts a doubt on the integrity of the DPP.

The second one is the allegation of conflict of interest in a criminal case where one of the parties was a former client. We drew from that example of what had happened in a previous case where a private prosecutor had actually been appointed so that the DPP would not be accused of conflict of interest. In the ole Ntutu case, that was not done and it was concluded before seven witnesses gave evidence according to the testimony by the letter of Judge Ole Keiuwa.

Mr. Deputy Speaker, Sir, we cannot ignore the testimony of Judge ole Keiuwa or that of Mr. Kirui which included SMSs. It may or may not be true but these are allegations that ought to be cleared so that we can know the candidate is of the highest integrity as required by Chapter Six. It is good that we enter into this consciously. We know that we have a duty to do that under the Constitution. The DPP is being appointed for the whole country; not for a community or for a group of friends. Every public officer is, indeed, appointed for the country. We should not bring extraneous issues. I want to agree that unfounded allegations should not stop somebody from assuming office. That is why there must be investigations to clear those two outstanding allegations.

We need a law that will help us to---

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Deputy Speaker, Sir. So that we can make progress in a very orderly way and to avoid hon. Mabona's situation, would I be in order to ask the Member contributing to refer us to the Report as to where the source of the two outstanding issues are, so that we do not introduce matters which were discussed there but the Committee has not included them in the Report? We are discussing this Report and not the deliberations that took place out there, where we were not part of the allegations in this Report. If we confine ourselves to the issues in the Report and the debate that took place out there---

Mr. Deputy Speaker: Fair enough! You have made your point.

Ms. Karua, please, proceed!

Ms. Karua: Mr. Deputy Speaker, Sir, there must be no attempt to gag divergent views! I will not be intimidated at all, whatsoever! There is no Standing Order that requires me to read for the hon. Members!

Hon. Members: Aaah! Aaah! Aaah!

Ms. Karua: It is a great shame that Members of this House can resolve to shouting like they are in a market place!

Mr. Deputy Speaker, Sir, the allegations I have indicated are in this document. The Chairman of the Committee, while moving the Motion tabulated them. The evidence was from Mr. Kirui. The other evidence is contained in the letter from Justice ole Keiuwa whose letter is annexed to the proceedings.

Mr. Deputy Speaker, Sir, let there be tolerance. Give your views but allow divergent views. These are not the days---

Mr. Mbadi: On a point of information, Mr. Deputy Speaker, Sir.

Ms. Karua: Yes, inform me!

Mr. Mbadi: On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Ms. Karua, do you wish to be informed?

Ms. Karua: Yes, Mr. Deputy Speaker, Sir.

Mr. Mbadi: Mr. Deputy Speaker, Sir, I did hear the Minister ask the Member for Gichugu to substantiate. I want to take him to page 22. On the issue of the six-years-old, it says:-

“In High Court Succession Case No.123 of 2000, in the matter of the estate of ole Ntutu (deceased) he had certified the consent in which Ntutu, who was listed as No.42 and to whom I.D Number (stated there) was ascribed, was at the time a minor of six years of age and thus, could not have possibly held an identity card.”

Mr. Deputy Speaker, Sir, secondly, he---

Mr. Deputy Speaker: Order! Order! A point of information is not a debate!

Mr. Karua; Mr. Deputy Speaker, Sir, while appreciating that information, I will repeat that it is up to each hon. Member to read the Report---

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. I was the Chairman of the Committee on Local Authorities and I can tell this House that he came and lied under oath. I refer you to the HANSARD!

(Loud consultations)

Mr. Deputy Speaker: Order! Order! Let hon. Karua conclude!

Ms. Karua: Mr. Deputy Speaker, Sir, in conclusion, Mr. Kirui's evidence was accompanied by SMSs which must be investigated.

Mr. Deputy Speaker, Sir, I beg to support with the recommendation that the Director of Public Prosecution (DPP) be investigated before taking office.

The Minister for Lands (Mr. Orengo): Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to contribute to this very important Motion. I want to say from the outset that I support this Motion.

Mr. Deputy Speaker, Sir, in supporting this Motion, I also plead to the House that the debate today will go to the annals of history as one of the most consequential debates in the life of this Parliament. I would urge that we give ears to our colleagues who are going to make contributions so that, in another ten or 20 years, if somebody would come back and try to look at what informed the approvals, he will be able to get it from the debate in this Parliament.

Mr. Deputy Speaker, Sir, I will move very fast because the time is very short. I think one of the things that the Committee should have used – and I think this was forgotten – is the Constitution that we have in place. This Constitution sets some standards in the Bill of Rights. In that Bill of Rights, I think the Committee, in looking at the deliberations that went on before them, should have been guided by some of the provisions of the Constitution. For example, on the freedom of expression, the Constitution is very clear – and this Constitution binds everybody, including this Parliament – that in any matter that involves the freedom of expression, that freedom of expression shall respect the rights and reputation of others. I am saying that because if this was the guiding principle in that Committee, they would have sat down and agreed on some rules and on how to collect evidence. Before you put a witness before you, you need to collect the evidence and interrogate that evidence. There is an Inquiries Act that is already in place. If there is any evidence that is adverse, then you give the other party notice, so that he is able to respond to it, in an organized fashion.

Mr. Deputy Speaker, Sir, the other very important issue which I think, as we debate this matter, we keep on forgetting, is that amongst these principles, there is a balance. We must all the time read the Constitution as a whole and look at that

balance. There are issues of integrity and suitability. The same Constitution says that the issue of ethnic diversity is also important. So, it cannot be a State problem all the time. When you are confronted with any issue, I think it is important to look at the Constitution as a whole. Repetition, yes but there are also other issues that need to be addressed under the Constitution. But I think in the little time they had, they did an extremely good job.

I just want to flag one or two issues, which I think were important. One, there are universal standards that have been set in this Constitution. They apply to all of us and we should not at any time when we are confronted with any issue, use other values as the principles outside the Constitution. I plead with you, because if somebody who comes from my home area or community is being interrogated on the basis of the principles which are in the Constitution, I should not hide behind any other principle or value that is not contained in the Constitution; otherwise, we are going to get it wrong. We went wrong in 1963 because when we were faced with any constitutional issue, other considerations were brought in, and they undermined the constitutional authority of the land as it was at that time.

Mr. Deputy Speaker, Sir, having said that, I have worked with the nominee for Chief Justice, Dr. Willy Mutunga, and I think I have no reservations at all about him. I think he is a great Kenyan. Many of us would say that even in the process of the creation of a new constitutional order and dispensation, he was in the thick and thin of things. He is a great legal mind and the same goes for the nominee for the Deputy Chief Justice. I have worked with Tobiko. I have been in court with him and I know the degree of his brilliance and his capacity. We are making a decision that we have got to live with for eight years. So, we should not forget this rider that the Committee that has put on the basis of 17 votes against two. It is not to stop anybody from assuming office. Even the Constitution says that when you are appointed even by the President, there are other constitutional provisions that you must abide by before stepping into that office. I would want my friend Tobiko to set in this office on a clean slate, and not to have this baggage. One of the problems that he had was with the Attorney-General. He was not the prosecutor. his hands were tied in a certain way, but we cannot leave these questions unanswered, otherwise we will be doing great injustice. We will have set the wrong standards. I want to ask this Parliament, when we are passing this judgment, who will cast the first stone? We need to also look at ourselves. Who are we? Who will cast the first stone?

I support.

Mr. Affey: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I stand to support this Report with amendments. I wish to read to the House the text and the meaning of the amendment and then we debate it.

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

THAT, we delete the full stop at the end of the Motion and insert the following words therefor: "subject to the deletion of paragraph 3 on page 4 and (iv) on page 30 of this report".

Mr. Deputy Speaker, Sir, the meaning of this is that we have just seen an incident in this House. We were all taken aback by blanket condemnation and statements that did not have any basis. I want first of all to take this opportunity to thank the Committee of this House for doing a good job.

Mr. Deputy Speaker, Sir, I want to take this opportunity to thank the Committee of this House for doing a good job under very difficult circumstances. I want the House to know that even as this Committee was doing this very important job, all of us in this House and country, had the opportunity to watch these

proceedings live. So, in a major way, the decisions that were reached could have been reached by the whole House. We had an opportunity to sit in the Committee and watch these proceedings live.

Mr. Deputy Speaker, Sir, I want to speak, not only as a Member of Parliament, but also as the Chairman of the Committee on Equal Opportunity in this House. From the outset, I want to say that this list as it is, these three nominees, are equal opportunity compliant. We have a distinguished lady. We have been looking forward to a lady assuming a very important responsibility in this country. We also have a distinguished Kenyan from a minority group. This is what we have been looking for; for a minority group in this country to be given an opportunity to serve on behalf of Kenyans, not on behalf of the community he comes from. The Constitution recognizes the rights of minorities in this country.

Mr. Deputy Speaker, Sir, I have very serious issues with the wording of this Motion. The basis of my amendment was laid by the Chairman. The Chairman spoke as though he was laying the basis of my amendment, and I want to thank him. Why are we asking for further investigations? I want to refer Members to the Constitution. Because I am moving a Motion, I want to be given the indulgence of the House to do so. I want to refer Members to Article 157(2) of the Constitution. We have to respect our Constitution. I expected a Committee of Parliament to take the spirit of the Constitution in their recommendations. It says:-

“The Director of Public Prosecutions shall be nominated and, with the approval of the National Assembly, appointed by the President”.

It does not say he should be nominated with a rider. The Committee should have said: “We either say yes, or no. We do not say yes, but with rider. I want to thank hon. Orenge because he said the Committee should be guided by the Constitution. I am of the view that this recommendation, if it is taken as it is, is a breach of the Constitution. I want to amend this amendment. The Committee should have told us, “yes”, or “no”. Not, “yes no, yes no”.

Mr. Deputy Speaker, Sir, I have a problem with the witnesses. The former Permanent Secretary in the Office of the Deputy Prime Minister and Ministry of Local Government was a key witness and is the subject of this investigation. There is no way you can allow a criminal to come and appear before a Committee of Parliament to testify against the prosecutor! It does not happen anywhere! You call a criminal---

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Could you, please, move your amendment, Mr. Affey?

(Several hon. Members stood up in their places)

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): On a point of order, Mr. Deputy Speaker, Sir. We are here not to discuss personalities of people, whether they are criminals or not. Mr. Kirui has been taken to court but he has not yet been convicted as a criminal. By the way, I support the Motion but you do not do that. These people have families, wives and children we have to respect!

(Loud consultations)

Mr. Affey: Mr. Deputy Speaker, Sir, I said “a suspect.” You cannot call a suspect to come and testify against the prosecutor. It does not happen anywhere in the world.

Mr. Deputy Speaker, Sir, I beg to move and request Mr. ole Ntimama to second me.

The Minister of State for National Heritage and Culture (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, I have read the Report very carefully and I listened to the Chairman of the Committee which approved the three nominees for the jobs. That is what is in this Report. If there was any reservation then it is from a few people who are disgruntled, who had personal affairs and who were actually killers of Tobiko!

(Applause)

Mr. Deputy Speaker, Sir, it is not a party! Some people are saying that it is the party because maybe one or two of those members belong to the Orange Democratic Movement (ODM).

Hon. Members: It is!

The Minister of State for National Heritage and Culture (Mr. ole Ntimama): It is not a party, Mr. Deputy Speaker, Sir!

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

The Minister of State for National Heritage and Culture (Mr. ole Ntimama): For these few minutes, Mr. Deputy Speaker, Sir, you should control the points of order. This is especially a dissenting point of order like this one!

(Laughter)

Mr. Deputy Speaker: What is it, Ms. Karua?

Ms. Karua: Mr. Deputy Speaker, Sir, a dissenting point is necessary so that there is debate! Is this hon. Member, whom I respect, in order to suggest that the dissent was by a few dissenting voices when, on page 30, it is a split vote of 11 aside? Is he in order to mislead the House?

The Minister of State for National Heritage and Culture (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, I am not misleading the House! The Chairman of the Committee said that even the balancing of 11 and 11 is ripe to approve those names to those jobs!

(Applause)

Mr. Deputy Speaker, Sir, when the Commissions nominated those members to this Parliament, a case that the Speaker referred to the Committee, they were three and you cannot separate these people. They are welded together; they are one team and they should be passed as a team! All the dissent was wrong, malicious and without any reason at all!

(Applause)

Mr. Deputy Speaker, Sir, I want to say that the Principals passed their names without a nib and without a bud. So who are these reservists who cannot say---

(Laughter)

I will complete by saying that it is not a party issue at all. This is because even in the nomination of Mr. Tobiko, under the chairmanship of Atwoli, one member called “Caroli Omondi” who is the Principal Administrative Secretary in the Prime Minister’s Office gave Mr. Tobiko 92 marks! I also want to say that Mr. Tobiko is a qualified person; is a man of integrity and he must be given a chance to serve this country!

Mr. Deputy Speaker, Sir, I beg to second the amendment and support it.

*(Question of the first part of the amendment,
that the word to be deleted be deleted proposed)*

Hon. Members: Put the Question!

Mr. Deputy Speaker: Order! Order!

Proceed, Mr. Murungi!

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I rise to support this amendment. As you all know, I am an Advocate of the High Court of Kenya. I know those three people personally. Dr. Willy Mutunga was my lecturer at the University of Nairobi and when he was charged with sedition in 1984, it is I and *Mheshimiwa* Gitobu Imanyara who were his lawyers in the High Court. We defended him. I also know Nancy Baraza. She was then in FIDA and I am the one who appointed her to the Law Reform Commission when I was the Minister for Justice, National Cohesion and Constitutional Affairs.

I also do know Keriako Tobiko, a brilliant lawyer. We worked with him at Bomas, when he was a member of the Constitution of Kenya Review Commission (CKRC). We are all members of the Law Society of Kenya. They are all very learned people, people of high integrity and my recommendation is that all of them be approved as a package by this House, without any amendments or reservations. I have read the Report. I have also followed the media reports as the Committee was interviewing those people. It was quite obvious that there has been an orchestrated campaign against Keriako Tobiko through the media.

The role of approving and disapproving people to high offices as per the Constitution is vested in this House. This House is sovereign. There have been some attempts to intimidate this House from out there. This House should stand firm!

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Deputy Speaker, Sir. I just want the record to be put straight. According to the new Constitution, this House is not sovereign. Sovereignty is vested with the people. It states that very clearly. Once we do not get that right, we are beginning to undermine the Constitution!

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, hon. Orengo is getting a bit old! The sovereignty vests in the people, but is exercised by this House as per Article No.2 of the Constitution of Kenya. This House, in approving or disapproving, should base its action on facts, objectivity and impartiality. The allegations made against Tobiko are motivated by malice, jealousy and revenge. If you look at the characters who came to give evidence, they all had an axe to grind with Tobiko. Those are not credible witnesses and their evidence should be disregarded by this House.

Allegations were made against Dr. Willy Mutunga that he is a---I do not want to say it. Why are we not saying that further investigations be done about those

allegations? It is discriminatory against Tobiko to single him out from the rest because allegations were made and we need to do further investigations. It is the duty of the police to carry out investigations. They do not need to be directed by this House. That is what they are paid for. If Tobiko has committed any crime, it is obvious that the police will investigate that. So, we do not need to deny him his constitutional right on the basis of these innuendos and baseless allegations. We also heard that Tobiko should not be supported because he is not a reformist. We were in the struggle with Orengo and others here. Where was Professor Ghai? The leading reformist was absent in the struggle for constitutional reforms against the one party dictatorship in this country. If they do not want you, they say you are not a reformist. Tobiko is a reformist and he should be supported.

I support the amendment.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I also rise to support the amendment. In doing so, I would like to go on record that I am a Member of the Committee. What we agreed, as a Committee, as we made the recommendations had nothing to do with this particular amendment to the Report. This amendment came as an afterthought, when we were supposed to be approving the proceedings of the Committee on Thursday.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Indeed, hon. Ethuro is a Member of the CIOC. The procedure of this House is very clear. If you dissent, you become man enough, as Mbadi was, and register your dissent. Is it in order for hon. Ethuro to fail to register his dissent and come to the House and purport to be supporting the amendment?

Mr. Deputy Speaker: Proceed, hon. Ethuro!

Mr. Ethuro: Mr. Deputy Speaker, Sir, indeed, hon. Mbadi went on record, together with hon. Namwamba, as the two “official” representatives of that other party which opposed the nomination of Mr. Keriako Tobiko. We also agreed, as a Committee, that all Members, given that we could not agree on all those recommendations, were at liberty to make their positions known on the Floor of the House. When hon. Karua was contributing, hon. Mbadi could only give information. As I contribute, he can only rise on a point of order!

The other reason as to why I am supporting this amendment is that allegations were raised against each and every candidate who appeared before us, and rightly so. I support the candidature of the nominee for the position of Chief Justice. I was with him in the struggle, during which we formed the NGO Council. The same applies to Ms. Nancy Baraza. We dismissed the allegations that were brought against them regarding their morality.

Mr. Deputy Speaker, Sir, when it came to the issue of the nominee for the post of the Director of Public Prosecutions, Mr. Keriako Tobiko, who is a brilliant son of the pastoralists, we started exhibiting colonial mentality; that “after 100 years, all the Maasais would be Kikuyus!” That is a quote from a book! It is not my own statement.

The serious allegation made by Prof. Ghai against Keriako Tobiko is that he had claimed money that was not owned to him. We called none other than the Chief Anti-corruption Officer, Prof. P.L.O. Lumumba – a great Kenyan whom this House cleared to head an institution. He came and testified that nothing of the sort happened.

Mr. Deputy Speaker, Sir, the other allegation against Mr. Tobiko was that he had a hidden interest, and he said that he had already given a particular case to a private prosecutor, who came and gave evidence. The Attorney-General of the Republic of Kenya also appeared before us and said that Tobiko is the greatest Director of Public Prosecutions he has seen all his time in that office. The only reason

some hon. Members were of the view that Mr. Tobiko should not be approved was that he was from a minority community and, therefore, he does not deserve a place in this country. We have a new Constitution which provides for affirmative action and protection of the interests of minority communities as well as the youth, the elderly and women. By supporting this amendment, we will ensure that the Judiciary becomes functional, and that the Supreme Court is put in place. Those opposing this amendment are only confirming one thing – they are not interested in a functioning Judiciary!

With those remarks, I beg to support.

Mr. Bahari: Mr. Deputy Speaker, Sir, I stand to support this amendment. I want to pay great tribute to the Committee---

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Going by the mood of the House, would I be in order---

Mr. Deputy Speaker: Order!

Mr. Ruto: I am not contributing, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Proceed!

Mr. Ruto: Mr. Deputy Speaker, Sir, would I be in order to request that we call upon the Mover to reply?

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

Mr. Ruto: Would I be in order to request that we put the Question?

Mr. Deputy Speaker: Proceed, Mr. Bahari.

Mr. Bahari: Mr. Deputy Speaker, Sir, I want to say---

Mr. Deputy Speaker: Order! Hon. Members, the mood of the House is such that as many hon. Members as are standing up want to contribute. If you do not want to contribute, sit tight and wait until such time that the Chair is convinced that---

Mr. Bahari: Mr. Deputy Speaker, Sir, I want to pay a glowing tribute to this Committee, particularly to the Chairman because of the manner and skills with which he presented this Report. If one ever bothered to, perhaps, give his ears fully to how the Chairman presented this Report, as advised by Mr. Orengo, you will see that he actually managed to sell the nomination of the three nominees.

Mr. Deputy Speaker, Sir, the issue of investigations is based on some allegations. I had an opportunity to interrogate, at the level of Committee, the former Permanent Secretary, Mr. Kirui. You know where that bank account is. You know where that money went; where you and I are supposed to sleep after here. That money went to Indo-Afric Bank at Kenya-Re which is next to the Ministry of Local Government, which is very bad! This kind of conmanship is very common in this country! I want to give two or three examples. When I used to serve as one of the senior executives---

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

Mr. Deputy Speaker: Allow the hon. Member to contribute!

Mr. Bahari: Please, let me finish!

Mr. Ruto: Mr. Deputy Speaker, Sir, I was asking that we settle the amendment, so that hon. Members can contribute on the amended Motion. Right now, hon. Members are contributing as if we have settled the amendment!

Mr. Bahari: Mr. Deputy Speaker, Sir, I am contributing to the amendment. I was giving examples of some of this conmanship behaviour in this country. I want to give you one of the old ones when I used to serve as a senior executive where somebody imitated the voice of the late hon. Kones who was then the Minister for Higher Education and wanted to get something out of me. I was bright enough to say no.

The second example is that somebody else behaved like he was calling from State House then and you know at that time how powerful State House was; at the time of President Moi but I declined all that.

The latest example is on the recruitment of security agents. Texts have been going round telling people to give out money so as to get chances for recruitment. This conduct is there. We cannot take somebody of the calibre of Mr. Kirui seriously to warrant such an investigation!

I wish to support the amendment.

Ms. Karua: Mr. Deputy Speaker, Sir, I stand to oppose the amendment. Mr. Kirui's calibre cannot be in doubt! He was fit to be a Permanent Secretary of this Government. Therefore, his allegations deserve investigations just like those of Judge ole Keiwa. Those who want to dismiss the dissenters just like a bunch of people, I refer you to page 30 to see that it was a split vote! I refer you to the HANSARD to see that what we are saying today in this House is what we said under reservations. To those who want to quickly rush Mr. Tobiko to office without clearing these allegations, is there something you know that we do not? May it be that these allegations are true? You are putting a yoke around his neck for posterity! It will look like he actually had something wrong and ought not to have been appointed.

Brilliant he is, and that is why he should go to office with a clear conscience. I think it is totally regrettable if we are going to treat individuals to mob justice; people who stand out and give evidence or whistleblowers. Maybe Mr. Kirui's allegation may end up not at all leading to Tobiko, but it will lead to other people who should be punished. But until that allegation is cleared, especially when he named people who are friends of Mr. Tobiko, we are sending him to office with aspersions on his character.

I beg to oppose!

Eng. Maina: Mr. Deputy Speaker, Sir, I rise to support this amendment.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Clearly, we can now gauge the mood of the House having listened even to the Member who is now contributing in support of the Motion. Would I be in order to---

Mr. Deputy Speaker: Order! You are not in order! You are out of order! Proceed, Eng. Maina!

Eng. Maina: Mr. Deputy Speaker, Sir, I rise to support this amendment. The allegations that may have led to the inclusion of this serious paragraph to defer the appointment of Mr. Tobiko have no basis. No credible basis has been given. I want to warn this House that where we are in this country, unless this House stands firm now, the House will become a rubber stamp to some other views of people who are unknown and who may represent the civil society. Mr. Tobiko was subjected to this simply because he has worked in the Government. There was the KANU Government which had a lot of good and there is the Kibaki Government which also has a lot of good. You cannot just condemn somebody because he was working wherever he was working. Anybody working is bound to have something to be questioned about. The issue is: Is there any evidence? No evidence has been shown.

We are in the new Constitution, but this does not mean that this House should leave its responsibility of being the supreme House that represents the people of Kenya to other people. Therefore, any report that is brought here, we should have the final say about it. We should not be intimidated because some words have been put that we must follow them. It is high time that we stamped our authority as people who are elected to represent our people. The people of Kenya have confidence in Mr. Tobiko except a few Non Governmental Organizations (NGOs) around this town. Just

a reflection, if Mr. Tobiko was working for an NGO in Chicago, today, we would be praising him because we have nothing to say. That is what would be happening. Mr. Tobiko is being vilified because he is a son of Kenya and there is nothing wrong with him. Even looking at the geographical distribution of this list, it is only fair that Mr. Tobiko's appointment is approved with the others. Regarding somebody thinking that he is going to live with ----

I beg to support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I will be very brief. This country is emerging---

(Loud consultations)

I wish the Members could listen to me because hon. Orengo has told you that this is a historic debate! You make a false move and it will be a false move for a long time to come! This country is emerging from a history of impunity and that impunity covers a lot of the allegations you find in this Report. Therefore, the recommendations of the Committee should be left the way they are, if nothing else, to protect the name, character, abilities and the training of Mr. Tobiko. Impunity is when members of the public at their own expense come and appear before a House Committee and make statements that are hurting to them; a statement of a false affidavit about a minor and you want to cover it up. You want to put it in the drawer. That is impunity. I want to assure hon. Members that Mr. Kirui is not a criminal. He will only become a criminal after he is convicted. He has a right as a citizen to appear and make allegations as he deems fit under the principle of freedom of expression.

Mr. Deputy Speaker, Sir, it is essential---

The Assistant Minister for Roads (Mr. Kinyanjui): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, Mr. M. Kilonzo!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): He just wants to consume my time!

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Deputy Speaker, Sir, I want to ask whether it is in order for the hon. Member, whose integrity has also been put into question in the past, to come here and malign others when we clearly know very well that if he was to undergo the same vetting he would hardly go through? It is not fair for Kenyans to be treated to this! Let him go and feed the lions!

(Laughter)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, allow me to cite to the House Article 73 of the Constitution---

(Loud consultations)

Could you protect me, Mr. Deputy Speaker, Sir?

Mr. Deputy Speaker: Order, hon. Members!

Mr. M. Kilonzo, please, proceed!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, may I remind this House that under Article 125, which is suspended, a House Committee is, for all practical purposes, a

High Court. It simply means that they must receive evidence on oath and allow everybody to be able to make a presentation. May I remind this House that the right to confront evidence is contained in Article 50(2)(k) of the Constitution within the Bill of Rights.

If you allow these allegations to be buried, this House will be committing the same impunity that this country has committed all the time. You will be leaving a prosecutor who will be exposed, all the time, to these challenges.

Mr. Deputy Speaker, Sir, could you allow me to say, again that if you look at Article 259(i), you will find that the example given by the Chairman of Anita and Gila does not apply. The United States System of Government does not allow the impunity that you are introducing to this House. You cannot condemn a member of the public who willingly comes to ascertain that a person is not---

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

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I oppose the amendment!

Mr. Ruto: Mr. Deputy Speaker, Sir, is it in order for the hon. Member of Parliament who was a lawyer during the reign of impunity, and did not pay taxes, to start throwing--- He did not pay taxes!

Mr. Deputy Speaker: Order, Mr. Ruto! You are out of order! Hon. Members, I will dispose of the amendment!

(Question of the first part of the amendment that the word to be left out be left out, put and agreed to)

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

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, I want to take this early opportunity to thank the Abdikadir Committee, the Constitutional Implementation Oversight Committee (CIOOC), for a job very well done. Now that we have clarity before us, I recall that I am on record as having said that this Tenth Parliament has a date with destiny. I said I know all of us will be able to rise to the occasion and do well for the welfare of this country.

Mr. Deputy Speaker, Sir, I want to take this opportunity to very strongly support the three nominations. As hon. Murungi said, I personally know Dr. Willy Mutunga. He taught me Commercial Law. I know that this country will have, in Chief Justice Willy Mutunga, the very best amongst others who are equally good. Therefore, along with the Deputy Chief Justice and the Director of Public Prosecutions (DPP), I know that the country's image, because we still have got a lot of business--- We still have to think of the good of our country. You can imagine that this country has been without a Chief Justice since 28th February. We have to thank God for his mercies, because who knows what could have happened. Therefore, I think it is good that we act speedily and be able to appreciate that for the first time since we actually attained Independence from Britain, this level of conversation where hon. Members are exercising--- I think I want to agree with my learned friend, hon. Orendo, that the sovereignty vests in the people, but this sovereignty is exercised through the elected representatives of the people. Therefore, I think this House has taken the destiny of this country seriously. I think this is the way to go.

Mr. Deputy Speaker, Sir, we will listen to the civil society and everybody because those are also Kenyans. But, at the end of the day, we have to act responsibly

and be able to take the hard decisions. It would have been very unfortunate to begin with a situation where the House looks indecisive; that we do not have confidence in this or the other officer. But that is now behind us. I think that even the international community has been watching.

I think that from today, the fact that this House has risen to the occasion, it will be testimony even to our people who have been saying that we have been dragging our feet; I think they will now see that we will have a Chief Justice, Deputy Chief Justice and a Director of Public Prosecutions. Therefore, I want to fully support this Motion and urge that we all now go with that, because it is good that we have listened to all kinds of views across parties, and people are speaking their mind and not necessarily representing any party here but looking as leaders in this country.

Mr. Deputy Speaker, Sir, I feel very proud that for the first time we have had a Chief Justice who has to apply for this job. All the people have been applying and now we even have the Judicial Service Commission doing its work. I think we have to be able to match its speed, so that this House will not be accused of dragging its feet when it comes to the full implementation of our new Constitution.

I beg to support.

The Member for Ikolomani (Dr. Khalwale): Thank you, Mr. Deputy Speaker, Sir. In this House we all remember how it has come to pass that we are going through this process. We all remember how we fought on the Floor of this House after names were pushed to this House that we were supposed to accept. If we remember that, then we must say thanks to the new Constitution, because if it were not for this Constitution, these three outstanding Kenyans would never have found their names in this House today.

Mr. Deputy Speaker, Sir, left to the male chauvinists of this country, Nancy Baraza had no chance whatsoever. Left to the movers and shakers of power, politics and money in this country, poor brilliant Willy Mutunga had no chance whatsoever. Left to the big tribes of this country, and I know I come from the second biggest tribe, the poor Tobiko from a small tribe would have had no chance whatsoever. Today it is possible to have them because of the new Constitution, which gives room for affirmative action and women are appreciated. The new Constitution gives room for minorities to be embraced and appreciated. The new Constitution does not give room to any big tribe to lord it over any other community. We must thank the new Constitution.

Mr. Deputy Speaker, Sir, I want to ask Members who attempted to oppose these names on the basis that there is a rider to admit that by putting that rider in the Report, they were refusing to make a decision. Life is about making decisions – sometimes easy ones and sometimes difficult ones. Members of Parliament, why do we not borrow lessons from our voters? Every time we go for a general election and I know what I am talking about since I have just come from an election--- Every time we present ourselves before the voters, who bring us here in the way the three nominees presented themselves before hon. Abdikadir and his team, we normally expect that as we present ourselves, the voters will make a decision. They normally make a decision without saying: “Okay, hon. Farah, we are taking you to Nairobi on condition that you will be investigated for this and that.” They normally allow you to go, so that you serve them for that period. We want to allow Tobiko and the other two nominees to come and serve us for the period that the Constitution has set.

Mr. Temporary Deputy Speaker, Sir, I was reading a book called *Country of a Thousand Hills*. It is about His Excellency Paul Kagame. This is a man who in the difficult history of his country was faced with a time like now, when he had to make

difficult decisions. That time there was serious instability in the north, Ruhengeri, and he needed to stabilize it. His Excellency Paul Kagame went and picked Boniface Rusaku as the Provincial Commission for Ruhengeri in spite of the fact that he was being accused of genocide, to stabilize the country. So, I want to appeal to some Kenyans, especially members of the civil society, if your real problem is that Tobiko has not been with you in the civil society and that he has served some of the people you do not like, then my dear colleagues in the civil society, make the difficult decision of giving it to him, the way Paul Kagame gave it to Boniface Rusaku and stabilized his country.

Mr. Deputy Speaker, Sir, finally, I want to take this opportunity to thank the people of Ikolomani for allowing me to participate in this momentous history in time.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, let me, first of all, begin by thanking most sincerely the Committee headed by hon. Abdikadir. There is no doubt that it has actually discharged its duties very well and admirably. It has been able to bring to us, a fairly good report.

Ultimately, the chairman of a Committee of this House is supposed to make a report to this House. He has exactly done so. However, within this wider representation of the Kenyan people, the Committee also must take the responsibility to ensure that whatever decision we make in this House protects all the people of this country.

Mr. Deputy Speaker, Sir, I have no doubt at all in my mind to commend the newly nominated Chief Justice. He was at the University of Nairobi, as a university don, during my own period. He is a distinguished lawyer. I taught mathematics while he was teaching the law.

Mr. Yinda: On a point of order, Mr. Deputy Speaker, Sir. Going by the mood of the House would it be in order to ask the Mover to reply?

Mr. Deputy Speaker: Order! You have all realized that this is a momentous occasion, and we have a sizeable number of Members of Parliament who want also to be heard on this historical moment. It is the discretion of the Chair; the Chair will exercise that discretion and the Mover will be called upon to reply at the appropriate time!

In the meantime, that is the reason why this House decided to pass a Procedural Motion to allow the Members to have more time to deliberate on this.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, the House will do a great deal of good to this country by actually passing this Motion. We want to give the nod to the nomination of the two gentlemen and one lady. These three people have impeccable credentials. In the case of the Chief Justice, as I said, during my time at the University of Nairobi we were together. As things were, there was a great deal of interaction, and a great deal of intellectual discourse. Dr. Mutunga is a great intellectual and a scholar. It is important that in this type of job, at the Supreme Court, we should have people who are also scholars and intellectuals. There is no doubt that the Chief Justice will be required to read quite a lot. That is one person, I have no reservation at all.

I also have no reservation in the case of Ms. Nancy Baraza. We have seen her work. We also know how she suffered in the struggle for democracy in this country. There is no doubt that is a good reward to the women of this country. She will contribute greatly in streamlining our judicial system in this country. It is important that we have a woman in that position. She will be looked upon as model by the young children, especially the girls.

Mr. Deputy Speaker, Sir, you said this is momentous occasion in this country. With regard to Mr. Tobiko, he has all that it takes to be the Director of Public Prosecutions in this country. He is a man of great credentials; we have been told in this House that he got a First Class Honours degree in law in the University of Nairobi. This was a rare achievement in the University of Nairobi. He also got a scholarship to pursue postgraduate studies at Cambridge.

Mr. Deputy Speaker, Sir, let us also face another view. Mr. Tobiko as a prosecutor will have friends and enemies. However, I know he will act above board and make sure that we do away with the culture of impunity in this country.

I want to tell hon. Members that it is also a moment that we should say goodbye to *fitina* in this country. There is a great deal of lies that are told about people. If you want to destroy somebody today, you only need to go to the media and give something there. Many of us have suffered immensely because of lies being told about us on whatever we have not done.

Mr. Deputy Speaker, Sir, I beg to support fully this Motion.

Mr. Wetangula: Thank you very much, Mr. Deputy Speaker, Sir, for giving me an opportunity to also thank the Committee for a job well done.

Mr. Deputy Speaker, Sir, the three Kenyans we are talking about today herald a history in this country where, for the first time, the Chief Justice of this country, his Deputy and the Director of Public Prosecutions are being appointed with the concurrence of the House. Dr. Willy Mutunga was my lecturer. He taught us at the University of Nairobi and he supervised me in my dissertation, which is teaching material in Commercial Law at the University of Nairobi. He is a brilliant man and I have no doubt that he will live to the expectations of the people of this country.

Mr. Deputy Speaker, Sir, Ms. Nancy Baraza was together with Ms. Martha Karua, Mr. Robinson Githae and Mr. Otieno Kajwang a class ahead of me. They are all men and women of great integrity. I have known Ms. Nancy Baraza since our high school days and I can stand for her. I have no doubt that she will equally add value to the reform process that we are all going through.

I know Mr. Tobiko and he is certainly a young man who will live up to the expectations of the people of this country. I want to take this opportunity to urge our colleagues out there, who have reservations about him, that we should give him a chance and if he does not perform, avenues, ways and means of removal from office are also provided. The Committee has told us that they recommend his appointment and we have deleted the rider. I urge Parliament to give these three young Kenyans an opportunity to serve this country.

(Applause)

Mr. Deputy Speaker, Sir, as I finish, because I know many hon. Members want to speak, I would like all of us who are in this House to leave here knowing that Mr. Keriako Tobiko has not been appointed the DPP because he is from the minority tribe but he has been appointed the DPP because he is a man who is qualified and is capable of doing the job.

Let us not own him as a minority candidate because he will serve Kenyans. When the three move to the high offices tomorrow or any other day, they should serve Kenyans whether they are from minority communities or from majority communities, so that this country can move forward with the reforms that we have put in place.

Mr. Keynan: Thank you, Mr. Deputy Speaker, Sir for giving me this opportunity to contribute to this very important debate. I would like to take this opportunity to thank members of the CIOC for a job well done.

(Several hon. Members stood up in their places)

Mr. Mbau: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for these two hon. Members to come and solicit your eye so that you can see them when we are watching?

Mr. Deputy Speaker: Hon. Mbau, you are out of order! Every Member of this House has a right to approach the Chair. You do not know what the hon. Members wanted to discuss with the Chair, in any case. Proceed!

Mr. Keynan: Mr. Deputy Speaker, Sir, I was saying that I want to take this opportunity to thank the Members of CIOC for the great work they have done. That required a lot of patience and listening. It also required a lot of sobriety. We must commend the Committee. The end-process that we are debating today is a product--- First of all, we started with the Atwoli-led committee. At this final stage, to cast aspersions on a process that we have invested in, in my opinion, we will be failing as a country.

There are issues that we must address. The issue of public vetting is a new phenomenon in any constitutional dispensation. What has happened to those three great Kenyans has taught us a lesson as Parliamentarians. We must come up with rules, *modus operandi* that will be fair to the nominees; that will protect the nominees from public lynching and from agents of impunity who do not see anything good in any organization or any other person, other than themselves. They have condemned Parliament, the Presidency, the Prime Minister and every other institution. The question is: Who is right other than themselves? Those voices must not be heard. They must shut up because 40 million Kenyans understand. I want to appeal to those who have graduated to this "Mr. Right"--- I think this reality must dawn on them.

I want to appreciate the person who heads the Ministry of Justice, National Cohesion and Constitutional Affairs, and I am not in any way imputing improper motive on the Minister. Every other institution and every other person cannot be wrong. Parliament has been condemned. Today, as you know, we do not have Bills. We would have sat down here and debated many Bills. I understand that they are limited. It is not fair to destroy institutions. It is not fair, just because we want to project ourselves as people who have reformed and we want to destroy everybody else--- This must not be allowed to happen in this country.

Mr. Deputy Speaker, Sir, I want to say the following: Tobiko has not been given an independent office to manage. He has worked under the Attorney-General's office. Under the new constitutional dispensation, he will be a man on his own. He will be independent and accountable to the sovereign people of the Republic of Kenya. Let us give him an opportunity to serve this country. That is the only way we will know whether he can deliver.

I support.

The Minister for Medical Services (Prof. Anyang-Nyong): Mr. Deputy Speaker, Sir, I rise to support the Motion as amended. I have listened very carefully to Members who have contributed to this important Motion. However, I would like to appeal that we maintain the dignity of this House. We sit at a very important historical moment of our nation. We are doing very important work of making a final decision

on three very important people in our judicial system who were recommended by the two Principals of this nation.

Let us look back at this process and learn something. The vetting system, as is being practised in Kenya today, is new, but is an important achievement of our Constitution, for which national patriots have struggled and shed blood over the years. For some of us, we celebrate this moment; it is very gracious and very humble to the Kenyan people, who finally voted this Constitution to be the foundation of our Republic.

So, as we start this system, let us, as a House, handle it with the dignity that the people of Kenya expect of us. One thing I want to say is that we should learn that the process of vetting needs some attention. Some of the issues raised in the Constitution Implementation Oversight Committee of Parliament should actually have been raised in the earlier Judicial Service Commission process, which received curriculum vitae of all the people who had been shortlisted. When it comes to the Parliamentary Committee, it is already in the process of confirmation.

If you look at the practice in the USA Congress, you will appreciate that when it comes to confirmation, the Congress is given the opportunity to examine the individuals and satisfy itself that, indeed, the process has been followed, and applicants are qualified to hold those offices. It is something which is done with sobriety, without appeal to political party affiliation, or affiliation to any interest group.

Mr. Deputy Speaker, Sir, what we have done in this House, which is very unfortunate, is to begin segmenting hon. Members into compartments either in terms of social origin or in terms of political party affiliation. That is a false start, as an hon. Member said. This House must understand that this process must be handled very carefully, and in the manner stipulated in the Constitution. First of all, I hold it as self-evident that, under this Constitution, individuals being vetted to work for the State should not be asked about their religious convictions, their race, their ethnic identities or sexual orientation. Under the Bill of Rights, all Kenyans are recognised as citizens, and without any qualification whatsoever.

Therefore, when the vetting Committees do their jobs, first and foremost, they must be conversant with the Constitution of the Republic of Kenya, and not subject any individual to any act of discrimination whatsoever. So, I would like to appeal to the House that once we approve the nominations of these individuals to serve the Republic of Kenya, we should sit back and examine the process of vetting that we are employing to see if it is, indeed, constitutional, and whether the Committees doing the vetting should, prior to bringing individuals before them, know exactly what kind of questions they are going to pose. Thirdly, we, ourselves, should confine our discourse within the House.

Mr. Deputy Speaker, Sir, the Standing Orders of this House say very clear that debates in this House should not be taken to the public when there is an issue on the Floor of the House. We have erred before the Constitution, God and the Republic of Kenya, and we must ask for forgiveness and be repentant. If, indeed, we are going to maintain the dignity of this House, please, I appeal to the House, let us respect and observe the Constitution of the Republic of Kenya; let us serve this Republic with honesty, dignity and sincerity. Let us not, in any way, politicise the process to the extent that it becomes a mockery.

I was listening to my friend, David Ethuro very carefully, and I respect him. I listened to my friend, Dr. Boniface Khalwale, and I respect him. I highly appreciated Boniface's contribution. I would inform my friend, hon. Ethuro – I am the Secretary-

General of ODM – that we never held any PG meeting to whip our Members to hold any one particular view. We left it to the conscience of every individual. This, indeed, must go down in history.

With those remarks, I beg to support.

Dr. Machage: On a point of order, Mr. Deputy Speaker, Sir. Truly, in your own judgment you can see we are now repeating issues! Would I be in order to request that you put the Question?

Mr. Deputy Speaker: Mrs. Mugo has the Floor!

The Minister for Public Health and Sanitation (Mrs. Mugo): Thank you, Mr. Deputy Speaker, Sir. Let me begin by congratulating the three nominees because they deserve those positions. I am a Member of the Committee that vetted these people. I would like to assert here that most of the questions which were being asked bordering on the nominees' sexual orientation were as a result of issues raised by the religious groups. We, as a Committee, had to listen to all views from all Kenyans, including representatives of the religious groups. That is why those questions were asked.

However, the nominees answered those questions very well. They were able to explain themselves and that is why we recommended them for those positions. We congratulate them very much, especially the Deputy Chief Justice. For women, her nomination is a big milestone towards achieving gender equity in this country. Not that she will only serve women, but the whole country. We appreciate what she has done for this country. The same goes for the Chief Justice.

With regard to the nomination of the DPP, I would like to put it on record that we received a letter from the Director of KACC, P.L.O Lumumba which cleared Mr. Tobiko of corruption allegations. It stated that they had nothing that could make them stop his nomination to the position of the DPP. This letter was also with the panel which interviewed him. So, it is wrong to impute ill motive on the character of Mr. Tobiko because some people had difference with him. Others were bitter that he was to be nominated as the DPP. We realized that Prof. Ghai had a big disagreement with Tobiko. So, we did not expect some of those people to have kind words for him. Mr. Kirui alleged that in his case, three issues were added. That made him bitter and he squarely blamed it on the DPP. We also had an hon. Member from Maasailand who alleged that there was land feud between two families and the case was being handled by the DPP. He did not think the DPP would give a fair hearing. There was also Mr. Murgor who felt that the DPP came to take up his job. These were already bitter people who wanted to put hurdles on the nomination of the DPP. Therefore, it would be unfair to really put on people's minds that the DPP is starting his job with baggage.

It should be noted that we, as a House, are not stopping other departments of the Government from investigating these issues.

With those few remarks, I beg to support strongly and congratulate the three nominees.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Thank you, Mr. Deputy Speaker, Sir. I stand to support the Motion. Mine is very short and clear. These people were not brought here because of their ethnic groups or where they come from. Mr. Willy Mutunga, Ms. Baraza and Tobiko have been interviewed and vetted. They are the best of the best in Kenya. We should all appreciate that and support the three nominees. So, mine is very short and I support the Motion. They are the best of the best in this country.

The Minister for Regional Development Authorities (Mr. Gumo): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I thank the Committee

very much for what it did. These three names that have been brought here by the Committee have gone through a number of processes. They even went to the President and the Prime Minister who approved them before they went to this Committee. The only thing I am concerned about is the way the vetting is done. All these people are qualified, but we should not allow people to come to the Committee and begin asking questions that they cannot substantiate like the question of Mr. Kirui saying that Mr. Tobiko was asking for Kshs5 million through a proxy. Mr. Tobiko is not so stupid to ask for Kshs5 million through an SMS. How can somebody who is qualified like that do that yet you can follow this message and find out who did it? Why did Mr. Kirui not report this to the police? Did he ever know that Mr. Tobiko would appear before this Committee? We cannot allow things like these to happen.

Secondly, how could the Committee of qualified Members of Parliament ask a nominee for the Chief Justice post whether he is gay or not and the Deputy Chief Justice whether she is a lesbian? In fact, I am very happy the way Ms. Baraza answered the Committee. She told them that if she was a lesbian, she would have seduced them and I think she was right because it is not fair!

The Assistant Minister for Tourism (Ms. Mbarire): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to state that by asking the Chief Justice whether he was gay, I was wrong? You have seen the reaction of Members when hon. Odhiambo-Mabona was standing here and out of her allegation, many Members stood up. Where did you expect Dr. Willy Mutunga to defend himself if not in the Committee? That is why I asked him that question. I asked him so that he could speak the truth. He was in pain for three weeks. Some of you here accused him of being gay. I knew he was not gay and that is why I asked him that question. Could the Member apologize?

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, the Member does not know how serious it is! She does not know how serious it is to ask a man whether he is gay or not! Does she know what it means for a man to be gay? I am very bitter about this and I think it is wrong for such questions to be asked. What do you tell your wife and children when you get home? It is not fair! Let us be people of dignity and put across questions that are reasonable and good to the people of Kenya. Let us ask questions that can help this country.

With those few remarks, I support.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Hon. Kioni, could you sit down? Order, hon. Chanzu! Hon. Kutuny, it will be my pleasure to send you out of the House if you keep on consulting in the manner you are consulting. Order, Dr. Mwiria! Allow Hon. Ngilu to be heard!

Mr. Mwathi: On a point of order, Mr. Deputy Speaker, Sir. I have followed the debate and, with all due respect, I want to seek the indulgence of the Chair. We are repeating the same things and most of the people who have contributed were in this Committee while some of us were not. Am I in order to move that the Mover be called upon to reply?

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Some of us are on record for opposing this Report. It is going to be unfair if we are not heard. I have been standing so many times and I have to be heard! I have to go on record on this matter!

Mr. Deputy Speaker: Order, Mr. Mbadi! You are seriously out of order! You have said your piece! You can seek the indulgence of the Chair to have the debate go on for longer than it is now. You do not have a right to demand to have the right over everybody else to contribute! The right of catching the Speaker's eye is not a right, it is a privilege and I take exception for any Member who thinks he is more equal than other Members who are on the Floor of this House. Every Member here is an hon. Member of Parliament. There are many Members standing and you will have to catch the eye of the Chair.

Proceed, Mrs. Ngilu!

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Deputy Speaker, Sir, I stand to support this Motion as amended.

We have watched with a lot of interest the nomination of these three. First, three appointments were made in January and they tried to come to this House but the hon. Prime Minister said that there were no consultations. Therefore, we went back to the drawing board.

Mr. Deputy Speaker, Sir, it was not until the 17th of May that, again, the new proposals of the Chief Justice, the Deputy Chief Justice and the Director of Public Prosecutions were made. We were all very happy because we had seen a process that was really participatory. This was what the country has been calling for. Obviously, there was time lost when we in Parliament did not agree on which Committee was going to deal with this.

Now that the CIOC has dealt with this, first I want to commend their good work. We are on the way now to getting this country moving when the Judiciary is in place. This is one of the three arms of Government. If Parliament cannot pass these names, then we want to be discriminatory. I have heard they do not want to support one nominee and we know them. We watched on television all those who came before the Committee and opposed the nomination of Mr. Tobiko and if you look at them you just say; "this is a case of sour grapes". These are the people who had tried to be in that position also but could not make it. For that reason, they opposed the nomination.

Mr. Deputy Speaker, Sir, they made allegations that could not be contained and one could not understand. I am a case in point in this House, where allegations were made but they could not be substantiated simply because somebody wanted to get to me. If this House does not pass the name of Mr. Tobiko, it will be wrong. We did not hear the two Principals say that they had disagreed like before. They agreed with the names and brought them to Parliament. Who would then come up and say we do not think the Principals were right and they did not do what we expected them to do?

In the case of Dr. Willy Mutunga, let me say here that I am very proud of him because he comes from my constituency. He has been in the struggle for so long. We know that Dr. Mutunga is a very independent minded person. We know the Judiciary is going to be independent. We know Parliament is also going to be independent.

We also know now that Parliament is also going to be independent, according to the Constitution. We are also going to have an Executive that will not be too heavy on either the Judiciary or Parliament. So, I think this country is now on the way to getting to the second level of real development and democracy.

Mr. Deputy Speaker, Sir, I watched people who were opposed to Mr. Tobiko and really asked myself many questions. In this case, I watched the Director of KACC, Dr. P.L.O, say that this person was working for the former regime. But up to this day, the KACC Director is still working for Moi. So, how can he accuse Tobiko

of having worked for the former regime when he, to this day, is still working for the former regime? So, I think it is high time we stopped removing specks in other people's eyes and, first of all, look at the logs in our own eyes!

Mr. Deputy Speaker, Sir, I want to support vehemently the nomination of these three people.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I rise to oppose this Motion. I am opposing it because I said this in the Committee, which is an organ of this House. We voted 11 versus 11 and there was one abstention. I am the Member who abstained. As I was abstaining, I did not see the reason to vote for or against Tobiko, the proposed DPP. That is because I believed that until some issues were cleared, it was unfair to go any way.

Mr. Deputy Speaker, Sir, when we put the issue of investigation in that Report, it was not for all the reasons that the hon. Members here are purporting. It was because we wanted to give the DPP a chance to do his job at the same level as Willy Mutunga and Nancy Baraza. So, I am opposing because what has been removed will, definitely--- It is the constitutional right of Kenyans. It is a right that Kenyans can still exercise.

Mr. Deputy Speaker, Sir, I have been out of this House and watching what is happening. The amendment to this Motion has not helped Mr. Tobiko, contrary to what many people are thinking. In fact, it will make him start working on a basis of a lot of doubt. That is because if you read our Report, it clearly gives more issues against Tobiko.

Mr. Deputy Speaker, Sir, since we have introduced that amendment, I oppose this Motion.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to put my comments on this historical Motion. I want to say, from the very beginning, that I support this Motion with the amendments that were put. In fact, I would have gone further and removed even all issues about reservations. That is because we did not send the Committee out there to bring us reservations. The Constitution is very clear, that the Committee of Parliament will, subject to the approval of Parliament--- It does not say with or without amendments. What we are given here is approval with some flowers. We have removed the flowers and so, we remain with approval.

Mr. Deputy Speaker, Sir, it reminds me of a wedding. When you go to a wedding and the priest stands and asks: "Is there anyone out there who has any reservations as to why these two people should not be wedded?," you do not hear people saying: "Yes, you can wed them subject to us investigating whether or not he had another girlfriend or she had another boyfriend." Those are issues that are left to people to pursue through other mechanisms. You wed them there and then and then, you follow due process.

Mr. Deputy Speaker, Sir, when I look at the allegations that were labeled against all the three candidates--- We may be looking at Mr. Tobiko, but there were allegations against all the three. I can associate with the bitterness they were feeling. Allegations have been leveled against me including in this House. So many allegations were brought here, including leading Members to even passing a vote of no confidence in me based on allegations. The President then constituted a Commission of Inquiry that called all the people who were bringing all those allegations to go and prove them under oath. Nobody turned up. Those who turned up were actually summoned legally to appear; it was thought to be very critical but when we are looking at people like these---

Mr. Deputy Speaker, Sir, the issue was that allegations were made. People were given the opportunity to ventilate them.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. My good friend was doing very well, but we know the Cockar Report on the former Grand Regency Hotel was never officially availed, but through our own connections we have it; indeed, we find him to have a case to answer. Since he is very well connected in the Government, that report has never been availed to this House. So, is he in order to come and purport to be an angel when we know what that report says?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, if I respond to that allegation, the hon. C. Kilonzo came before this House and disputed the valuation. The same hon. Kilonzo was commissioned by the Cockar Inquiry to give an opinion on the evaluation and he gave a totally different evaluation. We know what interest is made from people who do that kind of double job. Allegations will remain allegations. Every time people make allegations because they do not want somebody, the quickest route they take is that impunity must be fought. Every time that allegation is about impunity because they think that by saying “impunity”, they are basically saying they will report anyone whom they do not like on this Floor.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. You heard the Minister say that I was commissioned to value the hotel. The law is very clear on the Valuers Act. Every valuer as an individual is licensed. So, go and check your facts and you will find the person who signed that report is not one. Charles Kilonzo! Maybe the firms you worked with, I have interest in them. Nothing else.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I think he has answered for himself. He is a director of Crystal Valuers who did the valuation. He was also the same one who was commissioned to do the report. This is the credibility issue we have in this House, and these are the people who make allegations, which they cannot substantiate!

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

Mr. K. Kilonzo: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to support the Motion.

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

Mr. Deputy Speaker: Order! Proceed, hon. K. Kilonzo!

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, thank you for giving me an opportunity to support the nomination of the Chief Justice Dr. Willy Mutunga, Nancy Baraza as the Deputy Chief Justice and Keriako Tobiko as DPP.

Mr. Deputy Speaker, Sir, as I congratulate these three great Kenyans, I also want to say they underwent a watertight process. I also want to congratulate the people who have been involved in this process; namely, the Atwoli team, the CIOC, JSC, Parliament and the two Principals for giving nod to these nominations.

(Loud consultations)

Mr. Deputy Speaker: Order! Hon. Members, if you want to consult loudly, there are places where you can do so.

Mr. Outa: On a point of order, Mr. Deputy Speaker, Sir. Gauging the mood in the House, would I be in order to ask the Mover to reply?

Mr. Deputy Speaker: Hon. Members, under the circumstances, the Chair will now put the Question.

(Loud consultations)

(Mr. Mbadi stood up in his place)

Order! Hon. Mbadi, you will remain out of the House for the remainder of the sitting.

(Hon. Mbadi withdrew from the Chamber)

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I am rising on a point of order because, probably, when you were standing you did not hear what the hon. Member was saying. As he went out, he went shouting and protesting against your ruling.

Mr. Deputy Speaker: Order, hon. Khalwale! The hon. Mbadi has already had his sanctions and punishments. The House moves on.

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

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

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

Resolved accordingly:

THAT, this House adopts the Report of the Constitutional Implementation Oversight Committee laid on the Table of the House on Tuesday, 14th June, 2011 on the approval of the nominations of Dr. Willy Munywoki Mutunga as the Chief Justice; Ms. Nancy Makhoha Baraza as the Deputy Chief Justice and Mr. Keriako Tobiko as the Director of Public Prosecutions pursuant to Articles 166(1)(a) and 157(2) of the Constitution read together with Section 24 of the Sixth Schedule to the Constitution subject to the deletion of Paragraph (3) on page four and Paragraph (iv) on page 30 of the Report.

(Several hon. Members started withdrawing from the Chamber)

Mr. Deputy Speaker: Order, hon. Members! Next Order!

BILL

Second Reading

THE INDEPENDENT OFFICES (APPOINTMENT) BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg to move that The Independent Offices (Appointment) Bill be now read a Second Time.

Mr. Deputy Speaker, Sir, the main purpose of this Bill is to provide for a legislative framework for the identification and recommendation for appointment of

the Auditor-General and the Controller of Budget. Enactment of this law would mark the beginning of application and implementation of the principles of public finance, enshrined in our present Constitution, Article 201. In particular, enactment of this law will enable the appointment of key officers who will monitor the application of the principles of public finance.

To this end, the two offices, that is the Auditor-General and Controller of Budget will ensure that public money is used in a prudent and responsible way; that financial management is responsible; that fiscal reporting is clear, and that there is openness and accounting, including public participation in financial matters.

Mr. Deputy Speaker, Sir, to realise the said principles of public finance, we must put in place a procedure that gives rise to identification of the most suitable candidates who boast of high moral integrity. The Bill, therefore, prescribes a very elaborate procedure for the identification and recommendation for the appointment of the two independent offices. It also provides for the notification of vacancies in the *Kenya Gazette* and in, at least, two newspapers of national circulation and at least two radio and television stations. You will find that in Clause No.5 (1).

Mr. Deputy Speaker, Sir, the Bill also provides for recruitment by a Committee drawn from various Departments of Government and most importantly, provide for approval or rejection of the nominees. You will find that in Article 4. The said procedure is in line with the principle of transparent and competitive recruitment.

From the foregoing, this Bill provides a very fundamental beginning for the re-engineering of our public finance management system. I will plead with hon. Members to carefully consider the importance of the Bill and enact the same in good time.

QUORUM

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Is there a quorum in the House?

Mr. Deputy Speaker: No, we do not have a quorum. Ring the Division Bell.

(The Division Bell was rung)

Mr. Deputy Speaker: We now have a quorum. Please, stop the bell.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, with those few remarks, I beg to move. My learned friend, hon. Githae, has agreed to second the Bill.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Deputy Speaker, Sir, I wish to commend the Minister for Justice, National Cohesion and Constitutional Affairs for a job well done and beg to second.

(Question proposed)

Ms. Karua: Mr. Deputy Speaker, Sir, I rise to support the Bill. This Bill should be widened to cover all independent offices. We have gone through trial and error. We should find a procedure. If you look at the provisions in the Constitution for public offices, you will see that transparency, competitiveness and inclusiveness are called for. We should now provide clearly in this Bill that all independent office holders will be interviewed publicly. We then must develop rules on vetting, because that was the recommendation of our Committee after we went through difficulties and

allegations; we should admit allegations. Otherwise the Bill is timely. We need to appoint very many independent office holders, including Commissioners for the Independent Electoral and Boundaries Review Commission.

I want to say that processes can be manipulated even when they are televised. When it is a panel interviewing, two people can collude and inflate the marks for one candidate. We need to put in this Bill that the report on how the interviews were conducted and the scores of all the interviewers must be in the public domain, so as to prevent manipulation. I know that in one or two places, there has been manipulation. We, therefore, need to improve on what we have. Therefore, I support the Bill with those proposals for amendment at the Committee Stage.

With those remarks, I beg to support.

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Deputy Speaker, Sir, I also rise to support the Bill and join my friend, hon. Martha Karua, in emphasizing the importance of this Bill. We are dealing with extremely important independent offices, whose appointments and rating are important.

At a later date in the life of this Parliament, I would like to bring a proposal to the House that we establish a Health Services Commission for this nation. You will realise that one of the fundamental rights of Kenyans is to have access to free and affordable healthcare. Further, every county government will be duty bound to provide this care. When we bring a Bill to this House, the House will realise the importance of the proposal that was made to make the health services commission one of the commissions of Article 248 on the Commissions and Independent Offices, Chapter 15 of our Constitution. That will come at a later date. In the meantime, I would like to commend the Minister and urge the House that we pass this Bill expeditiously.

With those remarks, I beg to support.

Mr. Kioni: Mr. Deputy Speaker, Sir, as I support this Bill, I want to ask my good friend, the Minister for Justice, National Cohesion and Constitutional Affairs to be kind to us, especially when he talks about Members of Parliament in public forums.

I appreciate that this Bill provides that the names of three persons who are qualified for appointment as Auditor-General or Controller of Budget, as the case may be, will be forwarded to the President. What we have witnessed in the past, especially when we were dealing with the appointment of the Chief Justice and the Deputy Chief Justice, was that the appointing authority is really a body other than the President. It is important that this scenario has come out clearly in this Bill. It is important that more than one name are sent to the President, so that if there are issues that he may want to look at, he will have room for manoeuvre. As it is now, we have been reduced to a rubber stamps!

Mr. Deputy Speaker, Sir, I want to concur with the sentiments raised by hon. Martha Karua, when she said that you can also manipulate this process very easily. You can collude, as panellists from one side of whatever divide, and eventually give marks that elevate one person not because of his or her qualifications but because you belong to a particular persuasion. So, there is need for a standardised way of doing these things, because we could, again, start playing to the gallery. We could pretend to be vetting people to come up with the best candidate but collusion could be the order of the day. That is what informs the continued nomination of persons from the Office of the President and from the Office of the Prime Minister. I really do not see what value you add. You will just be playing to the gallery and trying to respond to some persuasion.

It is important that the process of vetting is given some thorough attention. It is important that as we embrace this movement to liberation as a nation, at the end of the day, we do not end up suppressing the truth and some very progressive moral values that revolve around the family. If that happens, we will have to pay the price. The United States of America is doing it, after 50 years down the line. We should be careful and awake to this fact.

Mr. Deputy Speaker, Sir, I support.

Mr. Midiwo: Thank you, Mr. Deputy Speaker, Sir. I will be very brief. This Bill is very important. This Bill will cure the shenanigans and the dramas which we have witnessed in the last few months with regard to nominations to these independent high offices.

First of all, I want to plead with the Minister that the names which are called for by nominating bodies or interviewing bodies, I want to agree with Mr. Kioni that the hands of the President should not be tied because we are talking about the future. What has happened in some of these cases is that the President can only reject a candidate because no latitude has been given and in each case we use public funds. I want to ask you to put in this Bill that, to avoid mischief, the nominating bodies can make their hearings open. When they present the names to the President in future, they need not be ranked because that is when the President will have the latitude to comply with the articles of the Constitution. We need to put that in law because what has happened in the issue of DPP, you saw where somebody had almost 80 marks and the other one had 60 marks. The President and Prime Minister had no way, but to nominate. I do not mean that the candidate was wrong, but open hearings had to be done.

We now have experience. All that we have been treated to could have been cured if the Atwoli committee was properly tasked and it had rules to go by. I think we ought to learn from our mistakes.

Lastly is this issue of investigations. I want to say that what has happened this evening in this House - and that is what I have been saying for the last three or four days albeit I have been misquoted by some sections of the media and my colleagues chose to chastise me. I want to agree with the sentiments of Ms. Karua that if there is an allegation, the only logical thing to do is to investigate. I want to tell my colleagues who think they were helping Tobiko, they have actually hurt his course. This country being run and the civil society being so awake, you have not seen the end of this because aspersions have been cast over that nomination. I thought a clever Government could have stage-managed these investigations under the circumstances. But you chose to go this way and I want to tell my colleagues that I do not think what has transpired today, we have seen the end of it.

You have opened a Pandora's box and have ended up condemning a very able Kenyan into ridicule in the public podium. What is going to happen is that we will not get a good beginning. So, I plead with you, Mr. Minister and my good friend, to please, take your time as we do this, so that we cure this thing once and for all, so that once people go through interviews, they do not come before Parliament as Luos, Kikuyus or Kambas, but come as good citizens of this country who wish to serve this country.

Mr. Deputy Speaker, Sir, I have been accused in the past, and that is why I was very apprehensive and uncomfortable with this process, of having said that I was going to mobilize Members of the ODM. I have never said that. I read it in the *Daily Nation* newspaper. I called them to say that I had not said that and the following day they wrote: "ODM Digs in", while all I had said was that we should have a process

which shall help us have a new beginning for posterity. I still believe in that. In short, I am saying that the Minister has a good opportunity to cure this once and for all for this country and we shall support you.

I beg to support.

Mr. Ethuro: Mr. Deputy Speaker, Sir, when we decide to do our job, we must be patient and have the staying power. When I was calling for quorum and when I was opposing the Procedural Motion, it was to ensure that this job is done and done properly. I knew that after that previous Order, there will be a mass walkout. You can see for yourself.

I support this Bill and I want to congratulate the Minister for bringing it to the House. We are not refusing to transact business, but lack of planning on the part of the Executive, as they say in the management sloganeering, should not be an automatic emergency on the part of the Legislature to the extent that you reduce the publication period and the referral period. At this rate, you might also reduce the contents of the Bills. This is what I was objecting. I want the Minister to plan anticipatory enough, so that these Bills come in good time to allow public participation in the business we are transacting. It is a constitutional obligation on our part.

On this particular Bill, for those of us who have served in this House, particularly in the Public Accounts Committee (PAC) for a very long time, we always made recommendations that we must separate the office of the Controller of Budget and the Auditor-General. When we went to Naivasha, we made this particular distinction. In fact, some of the issues we are discussing even in the approval process that we have just gone through today is because we knew the institutional constraints in the way the independent offices were operating. That is why we want it to be constitutional. In this Constitution, we must remind ourselves that there are people whom we have forced out of office because there was no other way of doing it. We removed the Chief Justice. We told him: "By 27th January, you will go home whether you like it or not". We have told the Attorney-General that come 27th August, the smiling Attorney-General of the Republic of Kenya will go home. This is because we were caught in a situation that we were helpless, incompetent and we could not do much. We had to get a new Constitution.

Prof. Anyang'-Ny'ong'o seems to have been either following the proceedings of our Committee very keenly or he is just a good professor as I want to believe. The issue of the process and, indeed, one of the recommendations that we have made in the report and even in the Motion that we passed today is that the issue of the process must be looked at. This Bill talks about its purpose of being identifiable even before the recommendation. We would like this Bill not only to confine itself to the two offices, but we would like to expand it and we will be calling on the Minister to cooperate with us in a very maximum manner. We would like to expand it to include the Independent Electoral and Boundaries Commission (IEBC) and all those other independent offices, so that, that process of identification is very clear. We would like the procedures that the professor talked about to be elaborate so that we can be sure that all the members of the Committee that is vetting are together with us.

Mr. Deputy Speaker, Sir, we do not want business to come to us when we are being harassed and have to seek extension of time especially on such important fundamental constitutional matters. First of all, we are looking for a more regular time when there is no stress. In fact, if you look at the HANSARD, because of the nature of business and time, you will find the tempers rising. Some of the meetings take place in the morning, afternoon and late in the evening. If it were not for the wisdom of the larger Committee and some of us who are pronounced peace markers, even for us to

deliver that Report would have been as challenging as the disappearance and malfunctioning of the Justice and Legal Affairs Committee. We have refused to go that way because we believe in the independence of this Parliament. We believe that this Parliament must deliver because we have a responsibility to the Kenyan people. You brought the job, we will prosecute it.

I just want to conclude with one particular remark. It is very easy for us to hide. We want to rush everything. We want to deny people on the argument of dealing with the culture of impunity. Which is more of impunity, when the good lawyer will tell you that you have to prove anything beyond a shade of doubt? Everyone has integrity and everybody has a reputation.

Mr. Deputy Speaker, Sir, I cannot bring a name of a Member of this House or a citizen of the Republic of Kenya when allegations have not been corroborated and are through third parties. It is completely irresponsible for the Ministry of Justice, National Cohesion and Constitutional Affairs to think that because of the culture of impunity, we should just accept any trash that is brought before the Committee. We must confirm that there is minimum credibility in those allegations.

We even added an extra day in order to allow the matter to be prosecuted. We allowed another day to allow the candidates themselves to respond to the issues that had been raised. Apart from a few people, we are extremely satisfied that the process we had put in place was very good. What we agreed on, on Thursday are not the same things we agreed on, on Tuesday. This is because some people listened to the news too much over the weekend.

I beg to support.

The Minister for Roads (Mr. Bett): Mr. Deputy Speaker, Sir, I rise to support this Bill.

At the outset, I want to indicate that we have passed the Constitution. I want to assert that at every opportunity we must be seen in conduct and in word to be implementing and keeping to the letter the contents of the Constitution that we passed. Any moment we divert from it, it will be distorted and we will be sent backwards.

Mr. Deputy Speaker, Sir, I note that there is the urgency on the part of the Government to speed up preparation of Bills. Yes, that is how it should be. As a Member of Government, I want to say that we will endeavor to do so. I also want to plead with my colleagues on the other side that when such Bills are on the Floor of the House, let us avoid sideshows. Let us avoid issues that do not appertain to the Bill or to the matter before the House. Let us avoid partisan issues that will take us nowhere. Let us be nationalists, let us be patriotic and let us move the country in accordance with the Constitution that is in place at the moment.

Mr. Deputy Speaker, Sir, I want to support, while taking note of what happened in the afternoon; the vetting rules and procedures, because it is part of this Bill. There should be vetting as incorporated in this Bill which we are now debating. I want to urge the Minister for Justice, National Cohesion and Constitutional Affairs to move with speed and prepare rules, regulations or procedures to be followed when we are involved in vetting the various officers to those independent offices, or any other offices that would require vetting to be done, as provided for by the Constitution.

Mr. Deputy Speaker, Sir, I would also want to urge the Committees concerned that as they do vetting, they should appreciate the need to have information. They should understand the need to release which information and to where. Other Members, and I took offence with what was said this afternoon about Members of Parliament, were reckless. So, I want to appeal for care, as we prepare for these matters concerning vetting, so that we do not injure the feelings and reputations of

other people. That is because, really, these proceedings in Parliament are on radio, television and internet. Indeed, if we allow ourselves to make such reckless statements that would demean and put into a state of disrepute Members of Parliament, it is not right.

Mr. Deputy Speaker, Sir, I also want to stress completely that Members of Committees---

(Mr. Bett's phone rang)

Sorry, Mr. Deputy Speaker, Sir. I wish to apologize to you. I want to stress the issue. We must be careful also with the evidence that we receive from members of the public. We must give it due sifting, so that we do not release raw material that will, at the end of the day, put into ridicule other people. We must be accountable, responsible, decent and respectful enough as we deal with all those things.

Mr. Deputy Speaker, Sir, in conclusion, the Constitution provides for various freedoms. There is freedom of speech, association and many other freedoms. I want to indicate that the same Constitution says that those freedoms are not absolute. There are no freedoms that would not mind or respect other persons. I will give an example. There is freedom of speech, but if you are talking, you must not interfere with the freedom of another person who is enjoying the freedom of silence next door. So, I would want to really underline that those freedoms are not absolute. People are free to come and give information to the Committees verbally or in written form. The responsibility of giving evidence must still stand. If we do not give evidence, it will not stand. Hearsay will destroy us, as a country and people. So, as we go into this one, I want to caution that we mind those issues which have been mentioned by the hon. Members and which I want to reiterate. They will encapsulate this country in a state of peace, decency and respect.

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

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Deputy Speaker, Sir, for this opportunity to just add my voice in support of this Bill. It is a very important Bill that will set up the offices of the Auditor-General and the Controller of Budget – some two very critical offices. One will guard the door and the other one will report back. In terms of order, everything has been adhered to. The matter is very straightforward but as a member of the accounting profession, I would just like to urge the team that will be implementing this Bill that at the point of their appointment--- I know this matter was not expressly put in the Constitution. It may not be necessary to put it in the law, but will be necessary to ensure that the people we will appoint to these two offices are subjected to some due process through being members of a professional organization that can check and ensure that they will be behaving and performing in accordance with their professional calling on an ongoing basis. For this reason we will not even have to set up a tribunal because the self regulation within the organization will have sorted that matter out for us.

So, I would like to urge that as we go through the recruitment process, we ensure that, at least, the two people we get are members of the recognized Institute of Certified Public Accountants of Kenya (ICPAK), which is a body that was set up by the Accountants Act that was passed in this House to ensure that matters to do with accountability are handled professionally.

Mr. Deputy Speaker, Sir, that is all I really wanted to say. Otherwise, I want to thank hon. Members for their contributions, and for having stayed behind to really ensure that this Bill sees the light of day. Thank you.

Mr. Njuguna: Thank you, Mr. Deputy Speaker, Sir. I also take the opportunity to contribute to this very important Bill. Let me start by thanking the Minister for his dedication and the way he has brought Bills to this House. You realize that this morning we had reports showing that our Government has lost a lot of money in certain Ministries. Therefore, creation of this audit office and the Controller of Budget will stem some of the problems that have already affected management of our institutions.

Mr. Deputy Speaker, Sir, you recall well that the Ministry of Education has lost Kshs4.2 billion through misappropriation or embezzlement. This is going to affect learning in our schools and also the quality of education in our schools. This is a development that we cannot allow to continue in this country. This has also made crucial donors to the education sector lose confidence in the management of our institutions. Creation of the audit office with effective and efficient management will rekindle the lost confidence. We should be calling for constant accountability and transparency in our institutions. We should also be able, through the creation of the new audit office and the office of the Controller of Budget to fight effectively corruption and impunity in our institutions. The vetting committees should be expected not to allow perjurers to appear before these committees to present evidence. We can remember what happened to the founding father of this nation who was detained for eight years as a result of a perjurer giving false evidence and he was put in for eight years. The same thing is likely to happen if we are not careful with those people who are giving evidence in our committees.

Mr. Deputy Speaker, Sir, it is also very important that the image of this nation, which is tainted by senior Government officials, is redeemed. Open vetting of senior Government officials is very important, because it allows public participation. Students in our secondary schools, universities and at all other levels are able to witness how we appoint our senior officers. Even members of the public should be able to see how we give these senior appointments to our people.

With those few remarks, I kindly support this Bill.

Mr. Ogindo: Mr. Deputy Speaker, Sir, I want to thank hon. Kioni for his wise counsel. I rise to support this Motion. I want to thank the Minister for coming up with this Bill. We heard that previously there were attempts to handpick officers into these independent offices. It is now clear that we have a guiding Bill. I want to echo the sentiments by hon. Karua that, indeed, this needs to be enlarged to cover other independent offices.

I also want to propose here that the Minister considers including in the interview panel members of ICPAK as a professional body. That might enrich the interviewing panel, given that these are people who will deal with money matters. You realize that by now there is so much that is required of the offices of the Controller of Budget and the Office of Auditor-General. We know a lot is pending. I want to support so that this process can move on expeditiously.

With those few remarks, I beg to support.

The Minister for Medical Services (Prof. Anyang-Nyong): On a point of order, Mr. Deputy Speaker, Sir. Since Members of Parliament have all contributed, could it be in order to call upon the Mover to reply?

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

The Minister for Justice, National Cohesion and Constitutional Affairs
(Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I want to thank hon. Members and particularly, hon. Anyang'-Nyong'o for suggesting the idea of the Health Services Commission. I am in full agreement. I will be speaking with him, so that we can find a formula.

Mr. Deputy Speaker, Sir, I will also be bringing to this House a very specific law on vetting procedures in order to address all these issues in a manner that leaves the country satisfied and does not frightened applicants that they are coming to be humiliated, bashed or, for that matter, to just come and face any manner of accusations without receiving suitable opportunity to respond.

I will also make amendments, when the Bill comes for Committee Stage to include ICPAK and also to ensure that there is a member in a good standing of a professional body recognized by Kenyan law.

With those few remarks, 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)*

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time for interruption of business. The House is, therefore, adjourned until, tomorrow, 16th June, 2011 at 2.30 p.m.

The House rose at 9.20 p.m.