

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 24th May, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Departmental Committee on Health on the Budget Estimates for the year 2012/2013 for:-

Vote 111: Ministry of Medical Services; and
Vote 149: Ministry of Public Health and Sanitation.

(By Dr. Monda)

POINT ORDER

EXTENSION OF DURATION FOR PRESENTATION
OF REPORT ON KQ RIGHTS ISSUE

Mr. Okemo: Mr. Speaker, Sir, I rise to seek your indulgence. We were directed by the Chair to produce a report to the House today on the matter of the Kenya Airways Rights Issue. We have been very busy with the Budget and we are still involved with it. So, I am seeking your indulgence to extend the period by another two weeks when we will have finished with the Budget process.

Mr. Speaker: Two weeks beginning today?

Mr. Okemo: Yes, Mr. Speaker, Sir.

Mr. Speaker: Fair enough. Granted!

ORAL ANSWERS TO QUESTIONS

Question No.1457

ILLEGAL ENTRY OF TANZANIAN VEHICLES INTO NYATIKE DISTRICT

Mr. Speaker: Member for Nyatike. Is the Member for Nyatike present? The Question is dropped.

(Question dropped)

Question No.1402

REVIVAL OF FISH FARMING PROJECTS UNDER ESP
IN IKUTHA/MUTOMO DISTRICTS

Mr. I. Muoki asked the Minister for Fisheries Development:-

(a) if he is aware that fish farming projects funded under the *Economic Stimulus Programme* in Mutomo and Ikutha districts were abandoned at the initial stages; and

(b) what urgent measures he will take to revive the projects.

Mr. Speaker: Minister for Fisheries! Is he not in?

(Loud Consultations)

Order, hon. Members! The Minister for Fisheries is hon. Kingi. Does the Minister for Medical Services know his whereabouts?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I would not say that I know where he is, but I do believe that he is in the country, unless he is out on official visit. That I would not know.

Mr. Speaker: Hon. Members, as we transact this business I have just been given a letter addressed to the Clerk by the Permanent Secretary, Ministry of Fisheries Development. In this letter, the Permanent Secretary informs the Clerk that the Minister is away on an official function as Acting Minister in the Ministry of Industrialization. The Minister does not say why the Assistant Minister in the Ministry of Fisheries Development cannot be present to answer this Question. So, this, obviously, is disorderly conduct and I will direct that the Minister be excluded from the House for the next two days beginning from Tuesday. So, two days from Tuesday, the Minister shall not come to the House nor go to his office or be within the precincts of Parliament; it is strictly so. The Office of the Serjeant-at-Arms is directed accordingly.

The Question will otherwise appear on the Order Paper on Thursday.

(Question deferred)

Question No.1401

COMPLETION OF OLENGURUONE-KIBUNJA ROAD

Mr. Speaker: Member for Molo. He is not in? The Question is, therefore, dropped!

(Question dropped)

Question No.1418

DRILLING OF BOREHOLES IN WAJIR SOUTH CONSTITUENCY

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

(a) if she is aware of a promise by the Right Hon. Prime Minister during his visit in Wajir to commemorate the Wagalla Massacre that the Government would drill two boreholes in Wajir South Constituency and allocate Kshs300 million for the construction of an irrigation project in Habaswein during 2011/2012 Financial Year;

(b) when the Ministry will drill the two proposed and surveyed boreholes in Getwab and Andaki Locations; and

(c) when the Ministry will also start construction of the irrigation project in Habaswein.

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

I am aware of the promise by the Right Honorable Prime Minister that the Government would drill two boreholes in Wajir South Constituency. I wish to report that my Ministry, in response to this request, has, through the National Water Conservation and Pipeline Corporation, drilled two productive boreholes in Sala and Matalibah. These boreholes are in addition to one drilled in Ambole which had a provision in the current budget of my Ministry. The three boreholes have been equipped and are operational.

I am also aware that Kshs300 million was allocated for construction of an irrigation project in Habaswein during the 2011/2012 Financial Year. Already water sources for the irrigation projects have been identified and necessary plans prepared involving development of three boreholes and a dam, which will be followed by installation of deep irrigation systems. The National Irrigation Board (NIB) is in the process of procuring a contractor for the work, and he is expected to be on the site next month.

Mr. Sirat: Mr. Speaker, Sir, first, I have not been supplied with a copy of the answer. I am also aware that this answer was drafted yesterday because the NIB and the Ministry of Water and Irrigation called me yesterday, asking me to help them answer this Question.

During the drought, the Right Hon. Prime Minister, in 2011 when he came to Wajir, we requested him to give us two boreholes. He gave us two boreholes in addition to the usual two boreholes that the Government had given us. The three mentioned boreholes are the PC's boreholes. Every year every constituency in North Eastern Province gets one borehole and one water pan. Of the three boreholes he mentioned, one was mine. With regard to the water pan, I am the one who requested the National Water Conservation and Pipeline Corporation to have two boreholes in its stead. So, basically, the answer the Assistant Minister has given us is misleading. Where are the two boreholes that the Prime Minister gave to Wajir South Constituency for emergency response?

Mr. Waititu: Mr. Speaker, Sir, it is true that the Prime Minister promised them two boreholes. We dug the two boreholes and a third one was dug later. So, in total we dug three boreholes. However, you remember very well that there was a big drought and some of the money was used in drought mitigation. That is why we could not give them the two boreholes that we normally give them every financial year.

Mr. Mwangi: Mr. Speaker, Sir, while we appreciate the answer given by the Assistant Minister, there has been a programme by the Government to give boreholes to other dry areas. Could he tell us whether there is a policy, or programme, to provide boreholes to other areas like

Kiharu East, where we do not receive adequate rain? Is there a policy or programme, to cater for the entire country?

Mr. Waititu: Mr. Speaker, Sir, it is true that some areas that were not experiencing drought are now experiencing it, especially in the last two years. Our Ministry, through drought mitigation, dwelt on the areas that were hard hit. These were North Eastern Province and some parts of Kajiado. I am sure an area like Kiharu East, as the hon. Member has said, needs a borehole. We can prioritize that in the next financial year.

Mr. Kiptanui: Mr. Speaker, Sir, I think I heard the Questioner and the Assistant Minister clearly. The hon. Member for Wajir South said that he was called yesterday by the NIB and the Ministry of Water and Irrigation to assist in answering this Question. Now, is this answer from the Ministry or from the Member of Parliament?

Mr. Waititu: Mr. Speaker, Sir, the NIB was not able to implement the project because of some complications that existed on the ground. The hon. Member is well aware of the problem in his constituency. The communities had not agreed on the irrigation project and, therefore, the hon. Member has been helping NIB to solve those community problems. However, right now, the matter is resolved and the hon. Member is aware that the project is on course now. The contractor will be on the ground next month. He is well aware of the intricacies involved in this particular project.

Mr. Njuguna: Mr. Speaker, Sir, noting the good work the Ministry is doing in that area, could the Assistant Minister indicate to this House the amount of money that was utilized in the construction of the two boreholes and the name of the contractor?

Mr. Waititu: Mr. Speaker, Sir, first and foremost, there is no dispute by the hon. Member that the two boreholes were dug. The boreholes were dug and are in operation. Again, our Ministry has spent a lot of money in those areas. This Sunday, we have 15 water tankers that we will be giving them in Garissa Town. I have brought letters here with me so that the hon. Members can come and join us then.

Mr. Sirat: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House? I want to table documents showing the three boreholes he has mentioned. The Prime Minister gave us two boreholes; one in Gedwap and another one in Dadajabula. The three boreholes he talked about are in my constituency. Every year, every constituency gets a borehole and a water pan. The Matalibah is entitled to one borehole. The Abohore and Matalibah---

Mr. Speaker: Order, hon. Member for Wajir South! You are on a point of order. Prosecute it, so that it passes the test.

Mr. Sirat: Mr. Speaker, Sir, before the Assistant Minister goes further, I want to table some documents, so that he can peruse them.

Mr. Speaker: Order! You must lay a basis for tabling documents. As things stand now I cannot allow you to table those documents. Why do you want to table them?

Mr. Sirat: Mr. Speaker, Sir, from these documents you will know that the Assistant Minister is misleading the House. The two boreholes that the Prime Minister gave us are listed here. This is a correspondence from the Permanent Secretary, Ministry of Water and Irrigation. The boreholes he has talked about are different from the ones from the Permanent Secretary.

Mr. Speaker: Fair enough! You can table them although you have not prosecuted the point of order as effectively as you should, but proceed.

(Mr. Sirat laid the documents on the Table)

Mr. Waititu: Mr. Speaker, Sir, the hon. Member agrees that we sunk three boreholes. He also agrees with me that his entitlement according to our Ministry is one borehole. So, we made extra two boreholes for him. Again, I want to remind him that we had severe drought in this country. So, some of the money was used in drought mitigation.

Mr. M.H. Ali: Mr. Speaker, Sir, the Assistant Minister says Kshs300 million was allocated for starting an irrigation scheme. This is a very good scheme that will help alleviate poverty in that region. We are now talking about the issue of borehole and provision of water to the local people, how will he be able to source water for this ambitious irrigation programme?

Mr. Waititu: Mr. Speaker, Sir, the irrigation scheme will be started at Lolian Swamps. There is no problem with the water sourcing area. I have already identified the areas to supply water. There are three boreholes around that irrigation project. The only complication in that project was that the communities living around that area had not agreed on how the scheme should go on. The hon. Member is aware of this.

Mr. Sirat: Mr. Speaker, Sir, first, the Assistant Minister is misleading this House. I would beg the Chair to refer this Question to the relevant departmental committee, so that they can investigate the matter.

Secondly, the irrigation scheme was a noble idea. Since Independence, it was the first time the Government had given an irrigation scheme to North Eastern Province. The Government gave Kshs1 billion; Kshs300 million for Wajir South, Kshs300 million for Mandera and Kshs400 million for Garissa. However, ten months down the line, the irrigation scheme has not kicked off. What is the point of allocating money for the scheme if ten months down the line nothing has happened yet?

Mr. Waititu: Mr. Speaker, Sir, three areas in North Eastern Province were given money. These are Mandera, Garissa and Wajir. The project in Lahore Canal in Garissa started immediately because there were no complications on the ground. In Habasweni which is in Mr. Sirat's constituency, there were complications on the ground. Where the project was supposed to be undertaken, he knows the problem that was there. He should not actually push me to mention the issue here.

Mr. M.H. Ali: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House by saying that the projects earmarked for Mandera worth Kshs400 million and in Garissa worth Kshs300 million have no issues? He says the communities have no issues with the project. If there is a problem in Wajir, why has the Mandera and Garissa projects not commenced?

Mr. Waititu: Mr. Speaker, Sir, in Mr. Duale's constituency the project has started. It is ongoing. There were no issues on the ground. The other one where Mr. Sirat resides, in Habasweni, is not very favourable to him and that was the problem.

Mr. Speaker: Order, Mr. Waititu! Why can you not just be relevant to the question asked or the point order raised? You seem to be hopping around and mixing issues. There is a challenge from Mr. A.H. Mohamed, just respond to it.

Mr. Waititu: Mr. Speaker, Sir, the areas the district committee had identified for the project were not the areas that the Members of Parliament had chosen. That is the issue.

Mr. M.H. Ali: On a point of order, Mr. Speaker, Sir. I was very categorical because there are no issues in Mandera. The irrigation programme is cross-cutting the three constituencies of Mandera West, Mandera Central and Mandera East. The three Members of Parliament have met over this issue. There has been no complaint from the ground or any problem. But the Ministry

of Water and Irrigation has not commenced this project. So, could he tell us why he has delayed since there are no issues there?

Mr. Waititu: Mr. Speaker, sir, if the hon. Member for Wajir can tell the truth---

Mr. Speaker: Order! That is the hon. Member for Mandera East.

Mr. Waititu: Mr. Speaker, Sir, you have just heard that it is cross-cutting three constituencies; Mr. Abdikadir's constituency where there was an issue that necessitated the delay---

Mr. Speaker: Order, Mr. Waititu! Your performance on this Question is certainly, much as I have gone out of my way to accommodate you, unsatisfactory. So, I will defer this Question to two weeks away from today. Go back and come with comprehensive information to respond to the questions raised. I am not satisfied that you have dealt with them properly.

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

Mr. Speaker: Order! Two weeks away from today, you can come back and raise more issues if you are inclined to.

Next Question, Mrs. Shebesh!

Question 1404

PROVISION OF MEDICAL INSURANCE COVER FOR CHILDREN

Mrs. Shebesh asked the Minister for Medical Services:-

(a) whether he is aware that health insurance companies only provide cover to parents, but exclude their children with congenital disorders,

(b) whether he is also aware that more than a third of children with congenital disorders require constant medical care which most parents cannot afford; and,

(c) what measures the Government has put in place to compel insurance companies to cover children with special needs and whether he could consider revoking the licences of insurance companies that do not cover children with special needs.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I beg to answer.

(a) I am aware that commercial health insurance companies do not provide cover for children with congenital disorders.

(b) I am also aware that more than a third of children with congenital disorders require constant medical care which most parents cannot afford.

(c) Commercial health insurance companies are business entities outside the regulation of the Ministry of Medical Services. The regulatory capacity of the Ministry in the area targets hospitals where patients end up for medical care. The only health insurance provider under the mandate of the Ministry is the National Hospital Insurance Fund (NHIF) and has no exclusions on congenital disorders. Members of the public are, therefore, advised to insure with NHIF as it offers broad benefits that cannot be derived from other insurance insurances. To further ease the burden on Kenyans, the Ministry is also pursuing establishment of universal health insurance coverage for all Kenyans and all diseases.

Regarding the revocation of licences for health insurers on account of exclusion of congenital disorders, the Ministry does not license commercial health insurance companies and is not, therefore, in a position to revoke their licences.

Mrs. Shebesh: Mr. Speaker, Sir, the Minister has just admitted to us that if a woman from Kisumu Rural or Nairobi County today was to give birth to a child, who is always a gift, with a disease known as spondylolithesis – I have asked my colleagues to help me – which is spinal disorder or hydrocephalus which is the enlarged head--- These are children we see every day in this country. The Minister is telling us that these children cannot get services, be treated or get insurance schemes because the parents cannot afford. Even if parents can afford, the health insurance would not cover them and yet the Government says that they cannot do anything about it. Could he then tell us what he wants us to do with those children?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, services are definitely available in Government hospitals for the diseases that they can handle, but where a child with congenital disorder requires specialized treatment and is not available in our health facilities, then the only place you can resort to is private health care. If such mothers are insured by NHIF their health costs will be met by NHIF without any discrimination. I know that the poor are not currently covered by NHIF. That is one of the reasons we have been pushing for universal health coverage, first, by increasing contributions, so that, in the pool, we can set up a fund for the indigent, that is, the poor who will then be covered. So long as there are roadblocks in our establishing universal health care coverage *wananchi* will continue to suffer. That is the truth.

Mr. James Maina Kamau: Mr. Speaker, Sir, aware that private insurance companies are out to maximize their profits, what is the Government doing to make sure that Kenyans get value for their money when they visit these private insurance companies?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, the law has to be changed to empower my Ministry to regulate private insurance companies. Otherwise, at the moment, they do not come within our purview and they will continue to do e-commerce with the health of Kenyans.

Ms. Karua: Mr. Speaker, Sir, you heard the Minister say that NHIF will cover without discrimination while he knows very well that scheme has controversies and comes with people with turbans. Having said that, has he tried to leverage the clout of the Government as the biggest consumer of insurance services through its parastatals and its departments to negotiate for insurers to cover these special cases, even if it is within a given limit? Would he consider doing that if he has not done it?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, the controversy surrounding NHIF at the moment does not stop it from carrying out its normal duties. That controversy can be sorted out in its own terms while NHIF continues its normal duties.

I have said that we have gone a long way to work on a universal health coverage scheme which will sort out these problems. Unless somebody has some invention which is better than the universal health coverage then we shall stick with what we know.

Secondly, when it comes to having leverage over commercial insurance companies, that requires a cross-Government approach, including the Ministry of Finance, under whose care the regulation of financial facilities, including insurance, come. This question should be posed to the Government as a whole and not only the Ministry of Medical Services.

Ms. Karua: On a point of order, Mr. Speaker, Sir. I appreciate what the Minister says, but in view of collective responsibility, is he in order to say that the question can only be posed to the Government as a whole? Posing to him is posing to the Government as a whole!

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I am not shy of answering on behalf of the Government. At the moment, the surest way of dealing with this problem is through universal healthcare coverage. If somebody has a better invention than mine, I am prepared to listen.

Mr. Twaha: Mr. Speaker, Sir, a crucial piece of equipment in diagnosing some of these ailments is an X-Ray machine. The Minister came to Lamu in July, 2011 and promised us that we would have a new X-Ray machine in August of the same year but to date, we have not received the X-Ray machine. I wonder what the Minister has to say about this.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, the hon. Member knows that one of the reasons as to why the equipment could not be delivered was that we were moving from analogue to digital systems and, therefore, we had to order for them a most appropriate X-Ray machine that will serve them in the future rather than give them an analogue X-Ray machine, which will shortly be obsolete.

Secondly, the hon. Member knows that in order for the X-Ray machine to work properly, given the climate in Lamu, there is need for a specially prepared room for such an X-Ray machine. Therefore, the situation is under control. I have assured the residents of Lamu and the hon. Member that the Government is not renegeing on its duty. If anything, the Government is trying to do something that is much better than was originally envisaged.

Dr. Monda: Mr. Speaker, Sir, you heard the Minister talk about the NHIF being the only insurance institution that will cover congenital conditions. Can he tell the House whether there are any conditions that are not covered by the NHIF as we stand today?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I have stated very clearly that under what we are proposing as universal healthcare coverage, no disease will be excluded. It is important to understand that in order for the NHIF to cover all the diseases, some of which are extremely expensive to deal with, we need to improve on contributions to the NHIF, so that the NHIF can have the ability to cover those diseases.

Secondly, under the special civil servants and disciplined forces cover, the coverage is universal. What we mean is that the normal NHIF contributors' scheme needs to be up-scaled, so that we can cover everything.

Dr. Monda: On a point of order, Mr. Speaker, Sir. I am sure that you heard me ask about conditions, if any, that are currently not covered by the NHIF. The Minister is talking about what is envisaged to be coming. I want to know what the practice is today.

Mr. Speaker: Minister, that is legitimate.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, the practice today is that any NHIF contributor with any exceptional disease will not be discriminated against.

Mr. Olago: Mr. Speaker, Sir, I have listened to the answer by the Minister very carefully. It is not true that all insurance companies exclude children with congenital needs and other special needs. Companies like the APA Insurance Limited, Jubilee Insurance Limited, and Re-Insurance Company Limited discriminate against children with such needs and say that they will not cover them. However, there are other insurance companies which will cover these types of conditions, but at very high premiums, and it becomes impossible for parents of children with such conditions to insure them. In these circumstances, what is the policy of the Ministry in terms of directing insurance companies in a way that they can make their exclusions minimal, and also have special conditions within the Ministry that will assist children with congenital needs and other special conditions?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, if the hon. Member listened to me very carefully, he must have heard me say that we have no regulatory powers over private insurance

companies. If anything, the Ministry that covers financial institutions is the Ministry of Finance. Ours is to go by our mandate.

When it comes to insurance matters, we have only the NHIF as a Government body over which we have control. In that regard, I have said – and I will say again – that our aim is to ensure that the NHIF contributions are enhanced, so that those who go to private insurance companies and face these high premiums for congenital disease will get a more effective cover at much lower premiums from the NHIF.

Mr. Speaker, Sir, let us realise that congenital diseases cover a wide range of diseases, which are either as a result of genetics or as a result of mothers' conditions when they are pregnant. For example, as an hon. Member said, something like hydrocephalus is as a result of lack of folic acid in mother's food when they are in lactation or when they are pregnant. That means we have to deal with the issue of poverty because hydrocephalus is extremely prevalent in poor neighbourhoods like Kibera, Nairobi.

Therefore, the cause of hydrocephalus is known. It should not wait for treatment. It should be dealt with at the level of prevention: That is fighting poverty and making sure that our poor populations have access to nutritious food, especially when mothers are pregnant, in order to avoid the occurrence of congenital diseases.

Mr. Speaker: Last question, hon. Shebesh!

Mrs. Shebesh: Mr. Speaker, Sir, the Minister has led me to my final request from the Government, having suggested a very good way in which some of these diseases can be dealt with before a child is born. Can he tell us whether they have a policy that deals with congenital diseases and how to treat them, and if not, how quickly can they come up with such a policy, so that even if children with such condition cannot be treated, we can at least reduce their numbers instead of having parents dumping and abandoning them in public hospitals, which is what is currently happening?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I am very grateful for the hon. Member's question. We have just passed, in the Cabinet, the Social Protection Cabinet Memorandum, which, among other things, covers protection of mothers, especially in the area of maternal care. The moment we have what is called "transfer funds" – some funds to be given to the Ministry of Gender, Children and Social Development to support selected poor mothers – the Social Protection Policy will be much wider in coverage, to make sure that some of the issues that particularly affect the poor and vulnerable are dealt with, so that we can take care of pregnant mothers in poor communities by having them access nutritious food and, perhaps, supplementary food, so that they can give birth to children who are healthy and forestall the occurrence of congenital diseases.

Mr. Speaker: Next Question, Member for Kisumu Town West!

Mr. Olago: Mr. Speaker, Sir, I will read out the Question.

Question No.1479

FAILURE BY GULF WATER COMPANY
TO MANAGE WATER PROJECTS

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

(a) which water projects are contracted to be run by Gulf Water Company Limited, on behalf of the Ministry, together with Lake Victoria South Water

Services Board in Kisumu East District, Kisumu North District and Kisumu West District, and whether she could state the period of the respective contracts;

(b) how many times operations at each of the water projects have stalled in the last four years due to failure of Gulf Water Company Limited to pay staff or power consumption; and,

(c) what steps the Ministry is taking to terminate the contracts, in view of failure by Gulf Water Company Limited to discharge its contractual obligations.

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

(a) The water facilities contracted to be run by Gulf Water Company Limited, on behalf of Lake Victoria South Water Services Board, are Maseno, Kisumu Rural, Nyahera and Mukendwa Water Supplies. The supply provision agreement between Lake Victoria South Water Services Board and Gulf Water Company Limited, which is a service provision contract, ran from February, 2007 to February, 2012.

(b) Whereas I am aware that the operations of the facilities have stalled a few times over the last four years, I do not have an exact answer as to how many times the operations of each of these facilities have stalled as a result of failure by Gulf Water Company Limited to pay for power consumption or staff unrest.

I am, however, aware that, as is the case with water service providers of its size, the company is not able to run effectively from the revenue it collects due to a small consumer base. In this regard, my Ministry has diligently subsidized the operations of the company by regulating and meeting electricity costs, on its behalf. This was done after an analysis by the Water Services Regulatory Board, which established that the company needed electricity subsidy in order for it to continue providing services.

I am also aware that the members of staff manning Lake Victoria South Water Services Board have demonstrated very high commitment to service delivery in a very challenging working environment.

Mr. Speaker, Sir, the lapsed contract of Gulf Water Company will not be renewed. Instead Lake Victoria South Water Services Board in consultation with the regulator and the Ministry has negotiated a new service provision agreement with the more experienced Kisumu Water Services Company Limited (KIWASCO) to include in its coverage the areas now under Gulf Water Company. The agreement is expected to be signed by next month.

The increase in the service area of KIWASCO will allow for economies of scale to improve water services levels and bring in an effective management team to oversee operations of the four water supplies. This is in keeping with the Ministry's move to cluster water supplies countrywide to achieve a critical mass of consumers for sustainable operations of these schemes.

Mr. Olago: Mr. Speaker, Sir, the residents of these three areas that used the water supplies namely Maseno-Kombewa, Kisumu Rural, Nyahera, Mukendwa and Kanyakwar have suffered for years. I am glad that at least the contract of Gulf Water Company will not be renewed. However, the Assistant Minister is hiding behind words in the last answer where he says:-

“I am also aware that the staff manning Lake Victoria South Water Services Board have demonstrated high commitment for service delivery in the very challenging working environment.”

Now that the contract of Gulf Water Company has ended and the Assistant Minister is aware that the staff in this water project have not been paid for a long time, what will the

Ministry do to ensure that these staff are paid before Gulf Water Company winds up its operations and goes away?

Mr. Waititu: Mr. Speaker, Sir, I will find out the number of staff that were not paid so that we make sure that they are paid before the Gulf Water Company is paid their final dues.

Mr. Olago: On a point of order, Mr. Speaker, Sir. The thrust of my question was the action the Ministry is taking to ensure that Gulf Water Company will discharge its obligations to staff before it winds up. Is it in order for the Assistant Minister to say that he will find out?

Mr. Waititu: Mr. Speaker, Sir, I will make sure the staff are paid before we pay them the final dues.

Mr. Ochieng: Mr. Deputy Speaker, Sir, I do have a similar problem in my Constituency. Nyakach Water Supply electricity was disconnected three weeks ago. This has happened several times and every time I rush to the Ministry they do pay. For the last three weeks we do not have water. What will the Ministry do to make sure that the services of Nyakach Water Supplies are transferred to KIWASCO just like the one he has just talked about because it is also within Kisumu County?

Mr. Waititu: Mr. Speaker, Sir, that one we can just do it immediately. We can transfer the operations to KIWASCO because there is no complication.

Mr. Speaker: Order, Mr. Assistant Minister! Are you saying you will do it immediately or you can do it immediately?

Mr. Waititu: Mr. Speaker, Sir, I will find out whether it is possible to transfer it immediately because there are some other issues on the ground.

Mr. Ruto: Mr. Speaker, Sir, the Assistant Minister talked about some final dues to the Gulf Water Company. If this was a water service provider, to the best of my knowledge, they were supposed to run the water company with the income that they get from the consumers. But I do not think it was contracted by the Government to manage water. Could the Assistant Minister possibly confirm to us what it is that these final dues entail?

Mr. Waititu: Mr. Speaker, Sir, some of these companies are not able to raise enough revenue because of the consumer base. Some of the money is subsidized from our Ministry. Therefore, before Gulf Water Company is wound up, we shall have to make sure that they clear the bills of the staff.

Mrs. Shebesh: Mr. Speaker, Sir, could the Assistant Minister tell us, knowing very well that we will be moving into a new system of Government in the next year which will be a devolved Government, how they will safeguard the water services in these counties where there are contracts such as these that are not serving people? This is because he has said that he will sign a new contract with KIWASCO. How will he ensure that when the county government of Kisumu starts working that he will not have tied them into a contract that will also fail them just like the Gulf Water Company has failed them?

Mr. Waititu: Mr. Speaker, Sir, our Ministry is in the process of aligning the operations of various service providers with the new Constitution and we do not expect any hiccup when the new Constitution is in operation.

Mr. Olago: Mr. Speaker, Sir, it is gratifying to note that water Services for Nyahera, Mukendwa, Kanyakwar and Kisumu Rural will be handed over to KIWASCO. KIWASCO has proved that it is worth and it can do the job. So far there is sufficient water in Kisumu Town but KIWASCO is not able to pump water up the hills of Kiboswa, Nyahera and other places. What has the Ministry done to ensure that when this contract with KIWASCO is signed they will be enabled to provide water up to the hill?

Mr. Waititu: Mr. Speaker, Sir, KIWASCO is an experienced company in the provision of water in Kisumu area and the proposals that they will give our Ministry, we will undertake to commit the Ministry to pay.

Mr. Speaker: Next Question by Mr. D. Muoki!

Question No.1430

NON-PAYMENT OF HARDSHIP ALLOWANCE TO
TEACHERS IN MWALA DISTRICT

Mr. Speaker: Order! Hon. Members, I have information that Mr. D. Muoki is away in Mombasa on parliamentary business although that should not be the case. It ought to be discouraged. Parliamentary Committees should only go out of Nairobi when Parliament is on recess and not otherwise. Those concerned please note.

Yes, the Member for Chepalungu!

Question No.1435

UNRELIABLE COLLECTION OF TEA LEAVES
FROM BUYING CENTRES

Mr. Ruto asked the Minister for Agriculture:-

(a) why the collection of tea leaves from the buying centres in Bomet County is unreliable; and,

(b) what measures the Government will take to ensure that the crop is collected from the farmers on time and on a regular basis.

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

(a) The delayed collection of tea leaves from the buying centres in Bomet County was as a result of inadequate capacity of processing plants due to increased leaf intake caused by periodic irregular high precipitation and impassable non all weather roads.

(b) The following short, medium and long-term measures have been initiated to ensure that the collection of leaves is efficiently managed in Bomet County. Short-term measures include improvement of tea feeder roads to all weather level by the KTDA, regular leaf collection fleet management to maintain serviceable and operational status and prompt fleet outsourcing during peak crop seasons. There is also schedule diversion of excess leaf collected to neighbouring factories. The medium-term measures are to inject capital to facilitate expansion and modernizing of the existing six factories to accommodate the annual leaf harvest, construction of a new 5 million green leaf capacity factory at Olenguruone at a cost of Kshs400 million commenced in December, 2011. The construction is expected to be completed in July 2013.

Mr. Speaker, Sir, for the proposed Mboito Tea Factory and Mogogoisek Tea Factory, long terms measures include the fact that factory boards are in the process of identifying a suitable site for construction of another processing plant at the conclusion of the project being undertaken.

Thank you.

Mr. Ruto: Mr. Speaker, Sir, the Assistant Minister is giving us some answers which I am not sure are making any sense. This is because first of all, much as I support the expansion of the tea factory in Olengurueni, there is no connection between Bomet County and Olengurueni. There is a road that is impossible to use. In any case, that would only help in off loading.

Mr. Speaker, Sir, the real problem for the farmers is that they pick the green leaves and wait for the trucks to collect them. They wait up to around 3.00 a.m. in the morning. Children are unable to go to school because they have to wait to notify their parents that the lorry has come. We would like the Assistant Minister to tell us how he is going to improve even on the fleet management. What he is giving us here ---

Mr. Speaker: Order! It is Question Time!

Mr. Ruto: Mr. Speaker, Sir, can the Assistant Minister tell us how he is going to ensure that there is more efficient fleet management, and that farmers will no longer wait until 3.00 a.m.? Are you assuring us that all the tea will now be collected by 6.00 p.m.?

Mr. Ndambuki: Mr. Speaker, Sir, this Question was asked last year in November, and already things have happened. For example, the capacity of Kapkoros Factory is only 25,000 kilogrammes and what is collected in that area is over 38,000 kilogrammes of tea. What has happened---

Mr. Speaker: Order, Assistant Minister! Why do you not just stay with the Question and we will save time?

Mr. Ndambuki: Mr. Speaker, Sir, it is true we have made arrangements to ensure that the tea is going to be collected in time. Whatever is not going to be collected will be diverted to other factories in time.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I am not asking the Assistant Minister about the diversion of already processed tea. I am asking him; can he assure us that there are enough vehicles to collect tea leaves from the farmers, and that farmers can retire to their homes by 6.00 p.m.? I am not asking about diversion.

Mr. Speaker: Assistant Minister, as I prompted you; stay with the Question.

Mr. Ndambuki: Mr. Speaker, Sir, there is an arrangement during peak time to hire fleets to collect the tea leaves in good time.

Mr. Chanzu: Mr. Speaker, Sir, this problem is not only confined to Bomet alone County. It is a multi-faceted problem, which also affects Mudete Tea Factory, the farmers in Vihiga and so on; they have to wait until even 4.00 a.m., for their tea to be collected from the *bandas* and this causes a lot of inconveniences. The Assistant Minister should tell us what he is doing, as a policy, to be able to improve this situation.

Mr. Ndambuki: Mr. Speaker, Sir, as I have said, the Kenya Tea Development Agency (KTDA) has entered into an arrangement to hire extra vehicles during the peak time. I can assure the Member that, that is not going to happen. If it happens, let me know and I will talk to the management of the KTDA, because they are the ones who assured us that it was not going to happen.

Mr. Speaker: Last question by Member for Chepalungu.

Mr. Ruto: Mr. Speaker, Sir, right now, there is a lot of rain in the region and there is a lot of tea. I have, however, not seen any vehicles hired by KTDA. Farmers have started queuing again. Could the Assistant Minister tell us whether he has any information that what he is telling us is applicable? Even as of now, that area has precipitation.

Mr. Ndambuki: Mr. Speaker, Sir, the information I have is that, that has been taken care of. They have hired lorries to collect the tea, and no collection of tea will be delayed anymore.

Mr. Speaker: Fair enough.

Hon. Members, I am informed that the Member for Central Imenti is in South Africa, at the Pan African Parliament (PAP) for a session that is currently on. Therefore, this Question is deferred until the Member returns to the country.

Question No.1449

REINSTATEMENT OF HASHIM MOHAMMED ELMOGE
INTO POLICE FORCE

(Question deferred)

Next Question by the Member for Gichugu.

Question No.1373

SETTLEMENT OF DEBT OWED TO JAWA PRINTERS BY KMC

Ms. Karua asked the Minister for Local Government:-

(a) whether he is aware of an outstanding debt of Kshs 675,200 to Jawa Printers, Nakuru, owed by the Kitale Municipal Council since 2005; and,

(b) what he is doing to expedite settlement of the debt and when it will be settled.

The Minister for Regional Development Authorities, and Acting Minister for Local Government (Mr. Gumo): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that a debt of Kshs675,200 to Jawa Printers, Nakuru, owed by Kitale Municipal Council, has been outstanding since 2005.

(b)The council had factored this debt into their debt resolution programme; it has, indeed, drawn a cheque for the full amount, which is ready for collection from 25th May, 2012.

Ms. Karua: Mr. Speaker, Sir, while thanking the Minister for that answer, which suggests that tomorrow, which is the 25th of May, we may be able to resolve this matter that has been outstanding for eight years; could the Minister undertake to confirm to the House next week that this cheque will, indeed, have been dispatched?

Mr. Gumo: Mr. Speaker, Sir, I undertake to confirm that this cheque is drawn. I also do not agree with the idea of people who have debts trying to use this Parliament as their way of collecting their payments---

Mr. Speaker: Order, Minister! What is your role as the Member for Westlands?

Mr. Gumo: Mr. Speaker, Sir, my role as a Member of Parliament is to represent my people but not to collect their debts.

Mr. Speaker: Represent people? So, you represent their interests, amongst other things. That really answers it.

(Ms. Karua stood up in her place)

Member for Gichugu, what is your point of order?

Ms. Karua: On a point of order, Mr. Speaker, Sir. Is the Minister in order to lament that Parliament is being used as a debt collection forum when a Government local authority, which is part of the Government, bullies a citizen for eight years, and bankrupts their business by refusing to pay for services rendered? Is he in order to tell the House that we should not act on behalf of members of the public when the Government and the department he is supervising is misbehaving and bullying citizens?

Mr. Gumo: Mr. Speaker, Sir, there is a court of law. If anybody has not been paid they should go to court and not use Parliament.

Mr. Speaker: Minister, I am afraid your conception is wrong. Maybe you need to visit your law on the role of the legislature, and, therefore, that of Members of the Legislature. You will find that this is legitimate business that a Member of Parliament should undertake. Please, accept my direction and be guided accordingly hence forth.

Mr. Gumo: Mr. Speaker, Sir, I accept that, and I confirm that the firm will get its cheque by tomorrow.

Mr. Speaker: Very well! We must rest the matter there! Mr. Gumo, perhaps you may want to recollect what transpired on 22nd May, 2012 when Mr. I. Muoki asked a Question and you were not here to answer that Question. Do you recollect?

Mr. Gumo: Yes, Mr. Speaker, Sir. I do. I was not well; I had a swollen leg. I thought the Assistant Minister would have been here. I apologize.

Mr. Speaker: Fair enough! That serves the purpose and that brings us to the end of Order No.6.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. I rise on a point of order to seek the indulgence of the Chair. Last week I had Question No.1585 that was to do with two young minors who are stranded in Mozambique. The Minister for Foreign Affairs made an undertaking to make sure that those kids were brought safe home by yesterday and it was supposed to appear on the Order Paper yesterday. However, it did not and so I am seeking the assistance of the Chair: What can I do as the Member for Juja?

Mr. Speaker: Yes, I am satisfied you have made your point. I direct that Question No.1585 be placed on the Order Paper for Tuesday so that we can deal with the matter.
Next Order!

(Prof. Anyang'-Nyong'o moved to the Dispatch Box)

Order, Mr.Minister! Do you want to deal with Order No.6?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Order No.7!

Mr. Speaker: Order! Then wait!

MINISTERIAL STATEMENTS

Mr. Speaker: We will take you first!

BUSINESS FOR THE WEEK COMMENCING 28TH MAY, 2012

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, pursuant to provisions of Standing Order No.36 (4), I would like to issue the following Statement.

I want to take this opportunity to make the following Statement with regard to the Business for next week. Next week, we expect the House to debate on the following two Bills currently at their Second Reading Stage: The Judicature (Amendment) Bill, Bill No.60 of 2011 and The Pyrethrum Bill, Bill No.57 of 2011. We also expect the Committee of the Whole House on The Publication of the Electoral Opinion Polls Bill, Bill No.59 of 2011 whose deliberation could not take place yesterday morning due to lack of quorum. We shall also give priority to any remaining Business from today's House Proceedings.

The House will consider debate on the Motion to adopt the report of the Departmental Committee on Defence and Foreign Relations on the agreement between Kenya and international partners in combating piracy in the Indian Ocean. The House will also consider debate on the Motion by Mr. Pesa to the Office of the Prime Minister urging the Government to pay dues owed to retired teachers without further delay.

Finally, the House Business Committee (HBC) will meet on Tuesday, 29th May, 2012 at the rise of the House to consider Business for the rest of the week.

Thank you!

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I am worried with the programme that the Minister has just read. It has excluded the one Motion touching on extension of time for the two Bills; The County Governments Bill and The Public Finance Management Bill. Remember, for The County Governments Bill, we adjourned the time which was February this year and even The Public Finance Management Bill, there is an element that we have passed time. So, I am even wondering why Kenyans have not gone to court to have this Parliament dissolved because--

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Mr. Speaker: Order, Mr. Mbadi! Your point is made!

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, it is for that very purpose that the HBC is meeting on 29th May next week to consider further Business in the House.

Mr. Mututho: On a point of order, Mr. Speaker, Sir. I realize that this week we had the Second Reading for The Pyrethrum Bill. The Departmental Committee on Agriculture, Livestock and Co-operatives and the Minister for Agriculture have been consolidating all the laws under one Statute and technically withdrawn another five Bills before. Is the Minister still intending to take more Parliamentary time bringing Bills that ordinarily have been consolidated in the other Bill next week?

Mr. Speaker: Minister, just keep notes on that one. Let us take Mr. Ruto then you can respond to both of them.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. Last week or in fact ten days ago, the Vice-President, while making Statements on behalf of the Government, gave exactly the same promise the Minister is giving about consideration of the two Bills requested for by Mr. Mbadi. He told us that they were going to meet in the HBC last week on Tuesday to prioritize the same. We are getting worried that the Government is not serious on these issues to do with the implementation of the Constitution.

(Applause)

Ms. Karua: On a further point of order, Mr. Speaker, Sir. There are sanctions in the Constitution where Parliament fails to do what it is supposed to do. In view of that, would it be

in order for the Chair to order the Leader of Government Business to prosecute that Motion which is in any event before the House for the sake of the House and the country?

Mr. Speaker: Minister, let me hear your responses to all the three.

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Speaker, Sir, I take seriously the proposals by hon. Members as stated by the three hon. Members and, indeed, I will forward these proposals to the Leader of Government Business in the HBC on Tuesday so that he can put paid to any worries about the Government not taking its work seriously and so that the said Motions and Bills that need to be discussed urgently are indeed disposed of on Tuesday next week in the HBC and the Leader of Government Business can report to the House accordingly.

Mr. Speaker: For the moment then, I order that the Minister ensures that all these concerns of hon. Members are presented to the HBC on Tuesday and we will take up the matter from there, depending on what transpires at the HBC.

Minister for Special Programmes, give your Statement!

FLOODS SITUATION IN THE COUNTRY

The Assistant Minister, Ministry of State for Special Programmes (Mr. Gabbow): Mr. Speaker, Sir, I wish to give a Statement on the floods situation in the country. The Statement will address the issues raised by Mr. Ochieng on 6th December, 2011 and Mr. Ethuro on 9th May, 2012, respectively.

Several parts of the country have been receiving heavy rains that have resulted in serious floods. The floods have caused displacement of about 22,000 people in various counties. They have also destroyed property worth millions of shillings, damaged infrastructure and killed 66 people. The most affected districts include Tana River, Nyakach, Athi River, Loyangalani, Homa Bay, Gucha, Kitui, Narok North, Kwale, Magarini, Nyeri, Nairobi, Kajiado, Turkana North and Baringo as of two days ago. The Government, with the support of other stakeholders such as the Kenya Red Cross, responded immediately by providing both food and non-food items. Victims were also moved to safer grounds. Further, the Government immediately commenced on the repair of damaged infrastructure.

Mr. Speaker, Sir, the Government is mitigating the floods through various programmes. For instance, my Ministry through the Western Kenya Flood Mitigation Project has come up with an elaborate integrated flood management approach in addressing the perennial flood problem in Budalangi. The project has formulated a master plan that focuses on the upper, middle and lower catchment areas of Nzoia River. The immediate interventions include river training in the flood plains, construction of check dams and wells; construction of evacuation centers to act as a holding and logistics ground during floods, floods early warning systems which include daily flood bulleting and dissemination of information through local community radio stations.

The long-term measures will include rehabilitation and management of the upper catchment of the Nzoia River and the reconstruction of dykes. The feasibility study of dyke construction is ongoing. The design of multi-purpose dam for flood control is at an advanced stage. Under disaster preparedness, the District Disaster Management Committee in Budalangi has put in place contingency plans and has remained on alert to deal with any eventuality of flooding. Other key players in management of floods include the Ministry of Water and Irrigation in areas of water conservation and general water use management; Ministry of Agriculture to ensure proper on-farm activities that include proper land use management

especially in middle and upper catchments; and the Ministry of Forestry and Wildlife to facilitate afforestation and reafforestation activities.

The Government has no resources currently to reconstruct houses or compensate victims of floods in the country. In Turkana County, specifically around Lodwar Town and its environs, light flash floods have been experienced during these long rains. The flash floods were not severe and therefore, no families and properties were marooned by floods since all water dissipated into Lake Turkana. However, the Government continues to monitor the situation and is improving the supply of relief food under the regular relief programme to the area. Finally, floods response requires a concerted approach and I urge the Members to support this endeavour by sensitizing communities against settlements in riparian areas and to also desist from deforestation to reduce the occurrence of floods.

The situation in Marigat is not as bad as Letangule. Floods have subsided and it has not rained for the last three days. However, reports that reached us yesterday indicate that floods have now affected that area. I will personally make a visit tomorrow to the affected area.

Mr. Speaker: Any Members interested in clarifications? Member for Nyakach!

Mr. Ochieng: Mr. Speaker, Sir, the Assistant Minister has said that they do not have funds to construct houses that have been brought down by floods and what they could be having in store is relief food for the flood victims. My people in Nyakach have always moved to safer grounds every year since Independence while this is a problem that can be managed by the Government. What is the general policy of the Government to make sure that it sorts out this problem once and for all so that these people do not move out and then depend on relief food every now and then?

The Assistant Minister, Ministry of State for Special Programmes (Mr. Gabbow): Mr. Speaker, Sir, it has always been a perennial problem of floods and people are displaced. The Budget is always a very good reason for not solving the problem. This Ministry has been asking for money in the Budget. Currently, the Budget that we have been given is not enough to care for all those flood victims. We have always given our Budget to the Government and we have not received the money. Once this Ministry is financed, we will do a permanent job, so that we can control the floods.

Mr. Ochieng: On a point of order, Mr. Speaker, Sir. The Assistant Minister has repeated that they lack funds because the Budget is not sufficient. Is it in order for the Government to keep quiet when it knows very well that it can declare this a national disaster, so that other interested parties can come in and assist the Government to sort out this problem?

Mr. Speaker: Order! At best, that is just a question. I am afraid, we will have to leave it at that. Assistant Minister for Provincial Administration and Internal Security, what Statement do you have?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I have a Statement that was requested by Hon. Peter Mwathi. I have again a Statement that was requested by hon. Ethuro, who is not here. I have a clarification for hon. Martha Karua.

Mr. Speaker: Will you kindly do one; the one that is in respect of the Member for Limuru? That will be it.

CATTLE RUSTLING IN KAJIADO NORTH, NAROK/NORTH/
LIMURU CONSTITUENCIES

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, hon. Peter Mwathi, the Member for Limuru, sought a Ministerial Statement from my Ministry in regard to cross border cattle rustling in Kajiado North, Narok North and Limuru constituencies.

In the Statement, he wanted to know the number of cases of livestock theft that have been reported to the security agents and the action taken thereof. He further wanted a clarification on why livestock theft has continued unabated and the number of livestock stolen since January. The Member also sought to know why the Provincial Administrators in Ewasu Kedong have declined to facilitate the return of 45 goats stolen from Ndia in Limuru. Lastly, he wanted to know the measures being taken to eliminate the livestock rustling.

I wish to state as follows:-

Since 2010, one incident and about six cases of stock theft have been reported in Limuru and Kikuyu constituencies respectively. On 7th May, 2012, it was reported that people suspected to be Maasai morans from Kajiado attacked Ndeiya Village and made away with 20 sheep and three cows belonging to Wainaina Kamau Gachui and Moses Ndungu, respectively. Residents pursued the rustlers and on the way, they came across 14 cows from Narok North grazing in the fields and drove them to the District Officer's office in Ndia. However, after negotiations, the animals were handed over to the owner, Mr. Daniel Sukun. Efforts are underway to recover the stolen animals while the case is pending under investigation vide criminal case No.212/110/2012.

On 25th March, at Rwanyanga grazing area, seven suspected Maasai morans stole 53 goats belonging to Geoffrey Ndichu Nderu and Samuel Gichuru Mwangi. The animals were intercepted by Maasai elders while the suspects escaped and the goats were handed over to the owners. On 13th February, at about 5.00 p.m. at Gatune Sub-location, people suspected to be Maasai morans stole six heads of cattle belonging to Edward Waithaka. The local morans intercepted the suspects at the Kajiado-Kikuyu border and all the animals were recovered and handed over to the owner.

On 26th December, 2011, at Nachu grazing area, 26 heads of cattle belonging to George Kabutha were reported to have been stolen. The Lari OCPD and his officers tracked the animals which were recovered at Saitili area within Ewasu Kedong Division. The suspects escaped and the animals were handed over to the owner. On 29th November, 2010, at Rwanyanga grazing zone within Nachu, six people suspected to be Maasai morans stole 13 heads of cattle and 11 sheep belonging to Joseph Kamau, Peter Kahiu and George Muchiri. On 13th October, 2010, six people suspected to be Maasai morans attacked and killed one Njuguna Nyore and Tyson Gichina before stealing 13 heads of cattle and 8 sheep from Lari and drove them towards Kajiado. Similarly, the morans were intercepted by the Oldebe Assistant Chief with the help of other morans. Thirteen heads of cattle and five sheep were recovered while three caucuses were found having been slaughtered by the suspects. A murder file No.214/333/2010 was opened and it is pending under investigations.

Mr. Speaker, Sir, on 11th October, 2010, people suspected to be Maasai morans stole 13 sheep belonging to Paul Gichuhi at Nachu Village and drove them towards Kajiado. The suspects were intercepted within Ewasu Kedong by the Saikeli Location chief with the assistance of other Maasai morans who managed to fight off the suspects. All the animals except three sheep which were found slaughtered were recovered within Michiro Location with the help of a local chief and a police officer. The animals were later handed over to the owners.

I want to emphasize that the security personnel have been on high alert and most of the animals that were stolen in the area have been recovered with the help of the members of the community, the Provincial Administration from Ewasu and the police.

Mr. Speaker: Any Members interested in clarifications? Member for Limuru!

Mr. Mwathi: Mr. Speaker, Sir, thank you for giving me the chance. I want to seek two further clarifications and, in fact, as I do so, to point out that the Assistant Minister did not answer the last question. I asked him what the Ministry is doing currently to curb all those incidences. He has mentioned six of them but, at the end, he did not say what he is doing. I think the Statement is not complete.

(Mr. Ojode stood up in his place)

Mr. Speaker: Order, Mr. Assistant Minister! Our Standing Orders do not allow the two of you to be on your feet simultaneously.

Mr. Mwathi: Thank you, Mr. Speaker, Sir. At the same, the other aspect which he left out is that there are people who already were identified. I have discussed with him. Those people have neither been arrested nor anything been done. They were identified by their colleagues from the other side of Narok North. But you have not done anything to date and the names are there. They are even with the Provincial Administration, including a letter that was written by the Chief to return a few herds of cattle which were stolen by the very same people who are free now.

(Mr. Ojode stood up in his place)

Mr. Speaker: Order, Mr. Assistant Minister! We will take one more. Member for Lari!

Mr. Njuguna: Mr. Speaker, Sir, we note with sadness that a Mr. Njuguna Nyoro was killed by the cattle rustlers. What is the Government doing to prevent further loss of human life and even the fear and scare in that region?

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

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, indeed, it is true that I did not mention what measures we are putting in place to eradicate cattle rustling within that area. One, patrols by police officers from Nachu have been enhanced within the grazing fields. Joint barazas have been taking place under the auspices of the Provincial Administration to prevail upon the morans to abandon cattle rustling.

Mr. Speaker, Sir, again, elders from both communities have been tasked to identify suspected cattle rustlers in an effort to eradicate such practices. He also asked why we have not arrested the suspects. Yes, we have the names of the suspects but whenever the police officers go to arrest them, they kind of get wind of it and go underground. But I want to assure the hon. Member that no stone will be left unturned. We will make sure that those who commit those kinds of acts will be brought to book and taken to court.

Mr. Speaker, Sir, again, we are saying that it is like a cartel. They collude with some businessmen to get some cattle in order to sell to Nairobi and elsewhere. We are going to check the source of the herds of cattle that are being ferried to Nairobi and to the Kenya Meat Commission (KMC), in order for us to know who are in that cartel.

(Mr. Mbadi stood up in his place)

Mr. Speaker: That then brings us to the end of Order No.7. What is it Member for Gwasssi.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I would just like to remind the Chair that he was supposed to give a ruling or a Communication today, giving this House directions as to how we will proceed with the appointments to the National Police Service Commission.

Mr. Speaker, Sir, this is an issue that I think needs to be addressed very fast, given the importance of that Commission in the reforms in our security organs and the police. I am sure you are aware that this issue has raised a lot of concern and quite a bit of communication between the Prime Minister's Office, Office of the President and even Parliament. I have in my hands copies of letters from the Office of the Prime Minister written to the Speaker and another written to the Clerk of the National Assembly, and also a communication to the Office of the President touching on a weighty matter of constitutionality and respect to the National Accord and Reconciliation Act. So, I think for this country to move forward---

Mr. Speaker: Order, Member for Gwasssi. Just resume your seat for a moment. Indeed, one of the first matters that were drawn to my attention as I returned to the country was the issue pertaining to the National Police Service Commission.

I was made to understand that this matter was ventilated upon in the House sometimes last week and I am just wondering how you did not table those documents, when the matter was before the House. Why did you not table those documents then?

Mr. Mbadi: Mr. Speaker, Sir, at that point, there were other issues which were raised.

Mr. Speaker, Sir, I think it is not in contention about whether the matter is constitutional or not. That is because the Chair had already ruled on that. So, what was remaining was the issue of how to proceed and that is why I am asking the Chair to give us direction. The Chair promised to give direction today.

The reason why I touched on these letters is because the matter is weighty and a communication needs to come so that we know how we are going to proceed in disposing of this issue. This issue will require the Office of the Prime and the Office of the President to consult and be in agreement before the House proceeds. So, I was not re-opening debate as to the constitutionality or otherwise of the matter but, rather, I was asking the Chair to make the communication. The Chair had promised to make that communication today. Actually the Communication was supposed to come yesterday.

Mr. Speaker: Very fair, Member for Gwasssi. I have heard you and that communication will surely come. It is being treated as an urgent matter and there will be communication on Tuesday afternoon. Indeed, it had been indicated to me that the Communication was likely to be made today, but I was made aware just before I came to this Sitting that the final touches had not been put to the Communication. So, you will have to bear with the Speaker's Office. We will deliver that on Tuesday afternoon. We will give you clear directions on how you will proceed, taking into account all the submission that may have been made last week.

Next Order!

BILL

Second Reading

THE STATUTE LAW

(MISCELLANEOUS AMENDMENTS) BILL

(The Minister for Lands on 15.05.2012)

(Resumption of Debate interrupted on 16.05.2012)

Mr. Speaker: Hon. Members, I think the Minister for Lands, hon. James Orengo, who is also the Member of Parliament for Ugenya, had the Floor. You have a balance of 36 minutes, I am advised!

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I had the misfortune of being cut down in my----

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order, Member for Gwassi. The Minister has hardly said anything. I do not see that there is anything out of order as yet, other than his standing on his feet, which he is entitled to do. Minister, proceed!

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I was just recalling the events of the last time, when we were discussing this Bill. My speech was cut short because of lack of quorum. I will hope that, that does not arise today.

Mr. Speaker, Sir, at the time I was presenting this Bill, I had clearly stated---

(Mr. Mbadi stood up in his place)

Mr. Speaker: What is it Member for Gwassi?

Mr. Mbadi: Mr. Speaker, Sir, you will recall that the hon. James Orengo had just started moving the Motion the other time and then, later on, during the following Sitting, the Attorney General did request this House to suspend or defer debate on this particular Bill so that further consultations----

Mr. Speaker, Sir, I will just read briefly what the Attorney General told the House on that day. He said:-

“ Yes, Mr. Temporary Deputy Speaker, Sir, I want to thank you. It is true that we wish to defer further deliberations on this matter until wider consultations have been held within the next day or so, regarding issues raised by, among other people, the hon. Prime Minister, whom I have held formal discussions with at some length.”

Mr. Speaker, Sir, before we proceed with this order, I would like to get clarification on whether this consultation has now taken place. I have information that the Prime Minister has not held any consultations with the Attorney-General's Office or any other office regarding the matter before us. This matter was deferred last week because there was need for further consultation. This House is entitled to knowing whether that consultation took place.

Mr. Speaker: Order! Order, hon. Member for Gwassi! I have heard you. From my information, I am aware that this Business at Order No.8, which entails a Motion on The Statute Law (Miscellaneous Amendments) Bill, was being moved sometime last week by the hon. Member for Ugenya. He did not complete moving the Bill or the Motion for that matter. So, what is expected to happen this afternoon procedurally is to allow the hon. Member for Ugenya to complete moving the Motion. The Motion will then be seconded by whoever is chosen to be

the hon. Member to second the Motion; perhaps, more appropriately, it will be the Attorney-General. What you are doing, useful as it may be, could easily be anticipatory, which is really not permitted by our rules. So, your concern is noted, but allow the hon. Member for Ugenya to complete his task, which is to move the Motion and then it will be seconded.

(Mr. Mbadi stood up in his place)

Hon. Member for Gwassi, please, respect the House. It is quite possible that some of your concerns as ably canvassed last week will be covered by the Mover and the Seconder. That is why I am saying that you might be anticipatory. Therefore, hold your horse. It is possible that they will cover that gap in which case, then, your concern will be spent or your fears will be allayed.

So, let us hold it; let us hear the hon. Member for Ugenya.

The Minister for Lands (Mr. Orengo): Thank you, Mr. Speaker, Sir. I did say at the time that we were presenting this Bill by way of a Motion that it was very important for hon. Members to interrogate this particular Bill. I similarly did point out experiences in the past where, through the medium of a Statute law (Miscellaneous Amendments) Bill, some provisions have normally found their way in a Bill that turns out to have a lot of problems in the end in terms of implementation. I did point out that, having been graciously allowed by the Attorney-General to move this Bill; the hon. Members must interrogate all issues thoroughly, including those that are concerning the hon. Member for Gwassi.

Mr. Speaker, Sir, if I may be allowed, in order to clear the air, so that I may say what I want to say, after discussions with the Attorney-General, all the assurances are there. All the issues that were raised by the Prime Minister will be addressed at an appropriate stage. From my part, I would not go down on that undertaking. This House would be given that opportunity at an appropriate time because the withdrawal of the Bill will not necessarily cure the overall need to have this Bill sail through Parliament. But that is not to say that the Bill must be passed the way it is. So, I am sure that when the Attorney-General is on his feet, he will give those further assurances.

But, Mr. Speaker, Sir, what I want to say and which is very important to me and I want to repeat it again; laws by themselves, are not good enough if they are not respected. Laws by themselves as a great Englishman did say at a particular time in history when England was a feudal society; their contemplation of the law was that laws are merely there, for the guidance of the rich and mighty, but for the obedience of the poor and lowly. For every law that we legislate, in practice, it is found that those who are supposed to apply it, breach it. It will be very difficult to have the kind of society which is contemplated by the Constitution of being a constitutional democracy.

So, Mr. Speaker, Sir, I believe that this nation now is going through a very critical period. This transition is a transition that this country has never experienced before. I want to say, in the words of a great American leader, that this generation of Kenyans, however old they are; all the Kenyans taken together, as a generation, are part of what he calls “the Joshua Generation.” We are the people who are going to take this country down the valley to Canaan. The Joshua Generation must be such a generation that will live by the spirit and the values of the Constitution.

So, Mr. Speaker, Sir, this is more to the institutions of Government; the three arms of Government – that we must be ready to show that we, ourselves, are prepared to live by the law

of the land instead of requiring our people to live by the law of the land. Similarly, we do not live by the law of the land--- Kenya was a very great society at the beginning; everybody had great hopes for this country. But at a particular time in history, it is almost like everybody was giving up on Kenya. We have a tradition in this country that whenever things look like we are going down the drain and everything does not seem to work, Kenyans always rise up to the occasion and make things move back on the rail and to the required objective or destination.

Mr. Speaker, Sir, in the years past, it is the Executive which has really messed up with the constitutional governance in this country. From 1963, all the changes that this country underwent that rolled back the carpet for change and reform were driven by the Executive. I would like to appeal to the Executive to be on the frontline of this journey towards reform, not just by passing these laws, but ensuring that we live by the spirit of the law.

Mr. Speaker, Sir, I want to conclude by repeating what I said here before; that when you do appointments, they must reflect the face of Kenya. They must also live in the spirit of meritocracy. That is when the law becomes a living word as it were. When we think about this country as a whole, let us look at it as an integral part. Every inch of this territory is an integral part of Kenya. If there is anybody who believes that Kenya should redraw itself to look like Africa--- I was in a meeting where somebody was telling us that if you look at the map of Africa, it is like a broken mirror, because the White people just divided it the way they wanted. We do not want Kenya to look like a broken mirror. The laws of the country are only going to work if the leaders prepare to lead Kenya as one country and not on the basis of communities, tribal or religious considerations. So, in this true spirit, I believe that Kenya will cross the Rubicon and become the country that it should be.

Mr. Speaker, Sir, with those words, I beg to move.

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, I rise to second this Bill.

Mr. Speaker, Sir, I want, first, with your permission, to thank my learned senior and friend, hon. James Orendo, for having agreed to move this Bill while I was away on Government business. I know that he must have done so with his usual erudite eloquence, and I thank him. I also want to thank hon. Mbadi because he has raised, as he was entitled to do, issues about the constitutionality, legality and propriety of certain proposed amendments. If I was a man of greater influence, I think the hon. Member has qualified for the award of the Degree of Doctor of Laws *honoris causa*, for his contribution to Constitutional debate in this House. I want to assure hon. Mbadi that the issues he raised and, indeed, the issues that were raised by other Members of this august House, have been considered. The issues raised by the Rt. hon. Prime Minister as well as those raised by the Salaries and Remuneration Commission have also been considered.

Mr. Speaker, Sir, we intend to proceed with this Bill, subject to strict adherence to the Constitution and law. We shall not invite this House to deliberate on a Bill in any manner inconsistent with the Constitution, laws and Standing Orders of this House. So, I am happy to be able to assure the hon. Members that this Bill, when committed to the Justice and Legal Affairs Committee for consideration and back to the Committee of the House, the issues of constitutionality and legality will be given very special attention.

Mr. Speaker, Sir, having said that, I want to very briefly confirm to the hon. Members that the amendments contained in The Statute Law (Miscellaneous Amendments) Bill originate from individual Ministries, Government departments and Commissions. Although the Attorney-General assumes full responsibility for the drafting of the proposals and nature in which they are presented, the policy decisions behind the proposed amendments belong squarely with the departments and Ministries that proposed them. I say this because I have read widely in the

media allegations that the Attorney General wants personally to achieve this, the other or something else. The Attorney-General only wants to do his constitutional role, which is to ensure, for example, that where the Judiciary has said that the name and nomenclature referring to the Industrial Court has to be changed, that is a decision that lies squarely with the Judicial Service Commission. Where the Law Society of Kenya (LSK) or other professional bodies have requested changes to the law governing them, the Attorney-General is obliged to facilitate an opportunity for the House to debate and determine the propriety of such decisions.

Mr. Speaker, Sir, secondly, I want to assure the hon. Members that the sole purpose of this Bill is to review with a view to removing anomalies and inconsistencies, with the specific intention of updating and streamlining our law, and making sure that the law is aligned with the Constitution.

Mr. Speaker, Sir, the amendments have been spoken about by hon. Orengo and I do not wish to make any special reference to them, save to remind the hon. Members that some of the amendments we are called upon to make are urgent. Some relate to matters that lie at the heart of our constitutional democracy. For instance, you will remember that the people of Kenya, at the Referendum on the Constitution, agreed to remove from my office – and I must say that I agree entirely with their decision – the powers to prosecute in criminal cases. Those powers have been transferred to the Office of the Director of Public Prosecutions (DPP), but we have never amended all the legislation that still vests these powers in me. I am happy to be the one to move this Bill, removing these powers from my office, so that they may lie where they should, with the DPP; and I may spend more time in this House contributing to the deliberations of the House and such other powers as it has pleased this House to commit to my office.

Mr. Speaker, Sir, the other amendments, as hon. Members will note, touch on very critical aspects of the management of our democracy. Some of them ought to have been brought earlier, but were not, because consultations were still taking place. I am pleased that they have now finally found their way to the Floor of this House.

Mr. Speaker, Sir, with those few remarks, I beg to second this Bill.

(Question proposed)

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I am happy with the assurance of the Attorney-General that some of the issues that were raised with regard to constitutionality maybe handled at a later stage; I guess at the Committee stage. But I am at a loss and need direction from the Chair. If issues of constitutionality are raised, are we, as a House, supposed to continue debate on a matter that already substantive issues have been raised? The issue with regard to amendments to the National Assembly Remuneration Act has come up, but there are two other fundamental issues of constitutionality in this Bill. One of them is with regard to the proposed amendments to the Elections Act, 2011; that is, Section 112(2) (b), which proposes that any election held before the first election for Parliament, under the Constitution, shall be held in accordance with the provisions of the former Constitution.

This is trying to revive or reintroduce a Commission that was repealed in 2010. That would be unconstitutional to me. There is also the issue of the National Cohesion and Integration Act proposed amendment that the President can appoint through gazette in the case of re-appointment. The tradition of this House, if we recollect the case of the former Kenya Anti-Corruption Commission Chair, the re-appointment had to follow the process that the initial appointment followed.

Mr. Speaker, Sir, I am raising this on two major grounds. If this particular Bill contains provisions or proposed amendments which ordinarily would be considered unconstitutional, are we supposed to proceed with the debate and even go ahead and take a vote at the Second Reading before we go to the Committee just with a promise that this will be taken care of when we come to the Committee Stage?

My second comment is that there are very substantive issues being canvassed in this Bill which require, according to the Constitution, public participation. Introducing such amendments in the form of a Miscellaneous Amendment Bill would deny the people of Kenya their right to participate in legislation.

Finally, I have just heard the Attorney-General say that this Bill will go to the Departmental Committee on Justice and Legal Affairs. If you look at the proposed amendments in this Bill, you will see that they touch, almost, on all Ministries. What would be the basis of committing this Bill to the Departmental Committee on Justice and Legal Affairs and yet there are issues of finance and health? All Ministries are touched.

In a nutshell, I am seeking the Chair's directions as to whether we can proceed to debate this Bill in its present form just because we have been assured that at some stage, steps will be taken to correct concerns that we have with regard to constitutionality.

Mrs. Odhiambo-Mabona: Thank you, Mr. Speaker, Sir. Originally, I was rising to find out what relevant Committee this Bill should be committed to because in the Justice and Legal Affairs Committee, we will only deal with certain aspects of it and some of them do not concern us. However, having listened to hon. Mbadi, I would like to ask; if, indeed, a Member raises an issue of constitutionality over certain sections or parts of the Statute Law (Miscellaneous Amendment) Bill, then what hon. Orenge has persuaded us to do is to wait so that when we are voting, we vote either for or against.

The hon. Speaker has made a ruling in the past that in an issue of the Constitution, this is not a question of votes. In your ruling on the matter of the Director of Public Prosecutions (DPP), the Chief Justice and the Office of the Attorney-General, it is very clear that if there is an issue of constitutionality or abuse of the Constitution, then that is a matter of interpretation. If I remember that ruling clearly, you said that any person working as provided in the Constitution in respective areas have a right and a duty to interpret the Constitution. But more fundamentally for me, as a person who comes from a human rights background and I very passionately pushed for public participation right from Bomas to the culmination of this, I would really like to be persuaded that the public has been consulted with regard to the Statute Law (Miscellaneous Amendment) Bill.

Indeed, at a later date, I will be urging the Attorney-General and if not him, I will move the amendment myself. I know that we have canvassed that issue before and you have made a ruling on it, but it does deny Kenyans a chance to participate. This is because you amalgamate so much in one piece of legislation that it does not give ample time for people to interrogate a piece of legislation effectively and adequately. I know that right now, because of the ruling that was made in the past, and because it may probably require an amendment to our Standing Orders and legislation, I would not like to leave it to rest at that. However, I would like to join hands with hon. Mbadi so that you give us a ruling that if, indeed, something is raised that raises fundamental issues of constitutionality, should we debate it or should the Chair give direction first?

Thank you.

Mr. Speaker: I would like to hear a few more contributions on this matter before I give directions.

Yes, the Minister for Transport!

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Speaker, Sir. I thought I would add my voice to this Debate partly because I am a stakeholder in this Bill through some amendments that will be taking place affecting my Ministry. This is on the Kenya Maritime Authority. I wish to confirm to my colleagues, hon. Mbadi and Mrs. Odhimbo-Mabona, that, indeed, the amendments that are coming to the Kenya Maritime Authority Act have come because of stakeholder consultations in reaction to the passage of the Bill. Since it was passed in 2009, stakeholders reacted and have been asking for those amendments. That is how they found their way here.

First of all, to confirm that the magnitude of public participation in this Bill is beyond what is the norm, as the Attorney-General confirmed and we thought that we would bring that in our contributions--- We are forgetting that as Parliament, we have been mandated by the Constitution to represent the people in terms of legislation. Each one of us, I believe, has taken up that role. We have consulted with the people. We have consulted in terms of what we need to have before we came to this Parliament. I think we are pushing the issue of participation too far if we expect that we cannot do anything as Parliament until the people themselves come here to participate.

The Committee has been given the Bill. Since the matter keeps on coming forward in terms of public participation, it is something that we may need to discuss and agree. Where do we draw the line between us representing the people, participating in legislation on their behalf and abdicating our duty as Parliament and telling the people to now do the legislation and only give us to rubberstamp? I believe that we were elected by people to represent them and to carry out the duty of public legislation in this House. Through our Committees, people have an avenue where they can send their views and that is the whole point of the publication of the Bill and giving it time. This is done so that people can participate through Committees. They can also participate through Members of Parliament. So, public participation alone should not stop us from continuing. Indeed, through what we are doing, we are getting more people to participate.

In terms of the other issues of constitutionality, if you look at the Bill, you will see that if there are issues with one, two or three amendments within the Bill, I would like to urge that that should not stop us from continuing with the rest of the Bill because the Attorney-General has undertaken to continue the negotiations. The people who have issues with them in terms of the constitutionality, through the Committee, and by the time we come to the Committee of the whole House, should isolate those things and say that these are inconsistent with the Constitution and we should not continue with them.

However, that should not stop us from carrying on with the rest of the Bill. In effect, what hon. Millie Odhimabo-Mabona and Mbadi are doing is to urge us to throw away the baby with the bath water. There may be issues but that does not stop us from continuing with the rest of the Bill. Indeed, even if there were issues of constitutionality or inconsistency, it is only those sections that are inconsistent that will be ruled to be inconsistent as we continue with the rest of the Bill.

Mr. Speaker, Sir, I would urge that because of the fact that we are seized of this matter as a House, we be given the opportunity to carry on and finish all the issues. Let us isolate and by the time we come to the Committee Stage, then we will be guided accordingly in terms of: Yes, do not vote on this one because it is unconstitutional. But there is no reason why we cannot have

debate on it and we get our colleagues to convince us on the basis on which they believe it is unconstitutional.

However, I would really urge that we make progress on this Bill. We go through all the other issues, isolate the issues that may be contentious and at the point of going to the Committee of the Whole House, then Mr. Speaker can guide us on the ones that he believes we should not proceed on or the ones we should proceed on. But in terms of the debate – constitutional or otherwise – I believe let us have enough time to ventilate and bring the debate alive on all the issues.

Mr. Speaker, Sir, I would like to urge that we continue on this and I hope that you will rule in our favour because time is of essence and Kenyans are waiting for the passage of some of these Bills and we cannot use one excuse to stop a whole set of laws from being amended including things that are so clear cut like changing the role that we have given to do the Constitution from the Attorney-General to the Director of Public Prosecutions (DPP) and getting some of those things moving. We are delaying that because we are not quite sure about the salaries or one or two issues on direction which can be isolated at the point of the Committee of the Whole House. Let everything else move on.

Mr. Speaker, Sir, I would like to urge you to find favour that we move on with this debate.

Mr. George Nyamweya: Mr. Speaker, Sir, perhaps we should always ask ourselves: Why did we even come up with a miscellaneous type of amendment? Is it not really a matter of efficacy – some way of dealing with a variety of Bills or Acts which require to be attended to? Some of them may be as simple as changing a name or moving a comma or sentence from one point to the other.

Mr. Speaker, Sir, to take the route that my colleagues would suggest is that for each particular one, we would now have to do it separately. That is, publish it and so on and go through that process. Yes, we had many months and a lot of time. We could try it that way but when you have what we are facing, it is a new Constitution. We have a raft of legislations coming up which we must attend to before we can even begin to dream about holding a general election and then we want to say that because they have all come in one document, let us just completely stop the train and examine each carriage on its own. Really and as it has been suggested, there are a variety of Bills or Acts. Those which are relevant to finance can go to the Finance, Planning and Trade Committee. Those that are relevant to justice and legal affairs can come to the Departmental Committee on Justice and Legal Affairs and sometimes I have the impression that we are overburdening the Speaker and sometimes assigning the role of Parliament itself to the Speaker. This is because sometimes we are asking you to rule on something which should be settled by debate and by the hon. Members themselves.

Mr. Speaker, Sir, for example, what is to stop a committee itself finding that a matter which has been referred to it borders on it being unconstitutional? That does not have to be the role of the Speaker. The committee itself in its own deliberations can find that this is not something that we can recommend to the entire House but to suggest therefore that because somebody may have noted that one or two proposed amendments may be on that border line, let us now shut the whole House down and send the Attorney-General and tell him: Go and try again since we have the luxury of time, is really not quite the right way to go. What is the history behind this particular approach to amendments? If we have amendments, we do not always have to change everything because it is very fashionable to simply say: Now, we have a new Constitution and let us also have new people and everything must be new.

There must be some other things which are from practice and practices are useful to the House and to the country. Therefore, I would urge my colleagues here that those areas that they feel very strongly, point them out in the relevant committee that this is where we think it is unconstitutional and those ones which are straightforward, let us just deal with them and get on with it because I am particularly worried that days are moving and the pieces of legislation which we must attend to in order to have a stable country, we may not have the time to attend to them. We will be sitting here up to midnight and come back with the very same problems which now require amendments because we are not giving ourselves sufficient time to attend to the relevant matters.

Mr. Speaker, Sir, if you are to look at the Constitution, the Political Parties Act and the Elections Act, you will find that there are a variety of things which are in conflict which require some alignment to be able to conduct an orderly election because in some places like the Political Parties Act, it requires something like three months before you do something else. The Elections Act talks about six months. The Constitution talks maybe about three months. Which one were you to follow if you are a practitioner or you want to conduct an election? Which one does the Registrar of Political Parties follow? Now, do we need to say that all these things must be separated and we cannot do with those ones we can do now? I would really strongly argue that let us get on with some of this work and concentrate on the more important things.

Mr. Njuguna: Mr. Speaker, Sir, in urging you to allow debate on the Bill to continue, I would urge my colleagues to remember that this Bill is in line with the spirit of the new Constitution. Outside there, Kenyans are waiting for faster implementation of the Constitution. We have been experiencing mockery of justice in our Judiciary and one office that has been created by the Constitution is that of the DPP and one major function this office will face is to reduce the numerous cases that have continued for decades unheard. We also note that many people who have been waiting for their cases to be heard, some are sick and others have already passed on. Therefore, allowing this Bill to go through will address some of these concerns that have already traumatized our people.

Mr. Speaker, Sir, we also need the number of prosecutors to be increased in our judicial system.

Mr. Speaker: Order, hon. Njuguna! Will you kindly at this stage stick with the issues? There is a point of order raised by hon. Mbadi. Hon. Mbadi wants debate on this Bill to be discontinued because certain aspects of it are unconstitutional. So, for the time being, stay away from the merits of the Bill and look at whether or not we should proceed at this point. You may perhaps in summary refer to certain aspects that you think compel continuation of debate but just limit yourself to that.

Mr. Njuguna: Mr. Speaker, Sir, in summary, this Bill is on the Floor of the House for the well being of our people in the society and, therefore, with the earlier observations that I made on this Bill and for the great concerns in the minds of Kenyans, I would propose and urge hon. Mbadi to reconsider his position and allow the Bill to continue.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Hon. Member for Sirisia Constituency!

The Minister for Trade (Mr. Wetangula): Mr. Speaker, Sir, I watched from my office, the Member for Gwasssi and, as he always does, he made very eloquent arguments very passionately. I want to urge you as well as the Member for Gwasssi, who has done very well as a first timer; that Miscellaneous (Amendments) Bills are not ordinary Bills. These Bills bring rafts of amendments to a whole broad cross-section of statutes. Some of them are actually editorial

amendments in nature. They are not even substantive amendments to any law. You would, for example, be substituting a title with another, or an office with another, *et cetera*.

With the hindsight of history, precedence is abound in this Parliament. Similar arguments have been placed on the Floor of this House before, adjudicated and prosecuted very well in the same manner he did. I have seen it in the Seventh Parliament and in many other Parliaments before, and the consistent rulings from the Chair have been: “Yes, you may have a point. You may see something differently but the fact that you see things differently does not automatically become a constitutional issue. It is just an opinion.”

Mr. Speaker, Sir, secondly, whenever such arguments were advanced, the House always proceeded on the basis that there is an opportunity at the Committee Stage, where we look at every proposed amendment on each statute because it is so cross-cutting that it is difficult, for example, to say that this Bill can go to any Departmental Committee for scrutiny. Which Committee would you give the Bill to, unless you constitute the whole Plenary of Parliament as a Committee?

Hon. Mbadi, in his infinite wisdom and intelligence, will be here, going through the amendments during the Committee Stage, clause by clause, touching on every statute. Whatever he will identify and convince the Chair as unconstitutional will be dealt with as such. Those amendments that are constitutional will go through, so that the country can move forward. We have the new Constitution. We have certain clauses of the former Constitution that are still applicable. We have transitional issues that we have to take care of.

Mr. Speaker, Sir, a good lawyer will always stand up in court and say: “This statute is talking of the Attorney-General but the new Constitution only recognises the Director of Public Prosecutions.” This is just an editorial amendment to statutes. I want to urge my brother, and I know that he can be a very reasonable man when he wants to be; that we agree that much as he has raised a point, it is just a hurdle that is being placed on the way of this Bill, being prosecuted on the Floor of the House. I urge him to be ready, and we will support him wherever he will convince us that a certain clause is unconstitutional.

Lastly, I heard hon. Millie argue about participation of the public. Let us not overstretch the participation theory. These are not fundamental legislations that require public participation. These are minor amendments to various laws of the country to bring them in line with the current thinking in terms of the new Constitution, and in terms of the current policies and propositions from certain Ministries, so that we can run the country properly.

Mr. Speaker, Sir, to say that even when you bring here an amendment that touches on the re-description of the office of the prosecutor from the Attorney-General to the Director of Public Prosecution we must go to the public to ask them to participate is overstretching the participation theory.

I want to urge you, Sir, that you rule that, without much ado, this debate continues. I will urge my colleague here. I will be at hand to help him as well to identify and prosecute things that he thinks are unconstitutional, to his total satisfaction.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Finally, I want to hear the Attorney-General.

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order, Member for Gwassi! I have already heard you.

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, I want to thank the hon. Members who have contributed to this debate. I will be very brief.

Mr. Speaker, Sir, you have ruled and the courts in this country have also ruled; that a constitutional question does not arise each time there is a contested question or each time there is a difference of interpretation. You have ruled that a constitutional question arises when there is a clear violation of the Constitution on the face of the proposed action.

I am happy to accommodate the hon. Member. That is why I said we will consider all the issues he has raised, those issues raised by all the constitutional commissions, including the Commission on Implementation of the Constitution, and everybody else. Those issues will be scrutinised at the Committee Stage at great detail. I refuse to believe that there is any Member of Parliament here who has sworn an oath to protect and defend the Constitution of Kenya, who will allow any piece of legislation that, to his own mind and conscious is unconstitutional; to pass.

Mr. Speaker, Sir, therefore, I would like to join hon. Wetangula in saying that the questions raised are contentious questions to be interrogated at the Committee Stage. I have undertaken personally to be available to provide such resources as my office can, to help elucidate the issues in question. Where it is demonstrated by hon. Mbadi or by any other hon. Member that there is a serious constitutional question, I undertake to this House that I will withdraw that portion or that proposal of amendment for further consideration.

I do not want to say anything about public participation but I want to urge hon. Members again that some of the Bills we are trying to amend are Bills we passed here ourselves less than a year ago. This House urged me on more than three occasions, while I was very new at the job, to come back with amendments, so that we could clean up that legislation. I have done exactly what you commanded me to do, Sir. Therefore, I urge hon. Members to give the amendments an opportunity to be ventilated on at the Committee Stage.

There are such grave national consequences, including one relating to the holding of a by-election, where upon serious considerations by the Independent Electoral and Boundaries Commission (IEBC), the Office of the Attorney-General, the Minister for Justice, National Cohesion and Constitutional Affairs, and many other stakeholders, it has been felt necessary, for abundant caution, that the statute should come back to the House for us to make it absolutely clear under what circumstances that by-election can be held. We cannot hold that business back for very long.

Mr. Speaker, Sir, I urge you to rule that we ought to proceed with dispatch.

Thank you.

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order! Order! Member for Gwassi, you do not have a right of reply to points of order.

Mr. Mbadi: I am rising on a point of order, Mr. Speaker, Sir.

Mr. Speaker: I want to hear you, as long as you are not going to stray into an attempt to reply. I will want to hear what is out of order.

Mr. Mbadi: Mr. Speaker, Sir, I just want to clarify that actually, my concern was whether it is right for us to proceed with debate on a Bill when issues of constitutionality have been raised. That is what I said from the beginning. The Attorney-General had acknowledged that these issues had been raised and, in his opinion, something needed to be done. I understand

the arguments by hon. Members from the Government side, but this is one Bill. They are not several Bills. If they were several Bills, it would be different but we are dealing with one Bill. Should we proceed to process and dispose of a matter in respect of which we feel there are issues of constitutionality that need to be addressed?

Let me conclude by saying that there are fundamental issues in this Bill, including some that I consider to be touching on money matters. I have a letter from the Prime Minister, saying that this Bill did not go through the Cabinet yet we know very well that any matter touching on finances needs to pass through the Cabinet. I would like to table the letter from the Prime Minister, which indicates clearly that the Prime Minister of the Republic of Kenya has ordered the immediate withdrawal of the proposed amendments and have them placed before the Cabinet for deliberation. This is a clear indication that this matter was not processed properly.

Mr. Speaker: Order, hon. Mbadi! You can proceed and table that letter.

(Mr. Mbadi laid the document on the Table)

Mr. Mbadi: Mr. Speaker, Sir, I was concluding my submission by saying that---

Mr. Speaker: Hon. Mbadi, please, resume your seat for a moment.

(Mr. Mbadi resumed his seat)

Mr. Speaker: The argument you are advancing as to whether or not the Cabinet approved this Bill before the Attorney-General brought it to the House or caused it to be published, to me is unusual. I would have used a stronger word but I do not want to. I am being very cautious here. I want to restrain myself and keep myself restrained. Just, what are you saying? Is Parliament bound by what happens in the Cabinet or is what happens in the Cabinet only instructive to the Attorney-General?

Mr. Mbadi: Mr. Speaker, Sir, let me make myself clear. There are provisions in this Bill which I consider to be affecting what one would call “money Bills” because they have financial implications. Our laws are very clear that such must be processed through Cabinet. It is not something to be left to the Attorney-General. It is also not something to be left to the Executive to decide. The laws of Kenya say that if we have evidence that any proposed legislation coming before this House has an element of financial implication and we have evidence that that was not processed during the Cabinet, as a House and as a Member of Parliament, I have the right to question it. I believe so. That is why---

Mr. Speaker: Which law are you citing? You must be very clear.

Mr. Mbadi: Mr. Speaker, Sir the Constitution is very clear on how money Bills are supposed to be legislated. Money Bills must be tabled before the Cabinet. It must get Cabinet endorsement before it is finally brought to the House. This Bill has elements of money Bill in it. I can even cite the specific provisions---

Mr. Speaker: Resume your seat for a moment. Hon. Members, I am convinced that the issues raised and ably canvassed by *inter alia* the Member for Gwassi, Mrs. Odhiambo-Mabona and contributed to by several other hon. Members of Parliament including Mr. George Nyamweya, the Minister for Transport - Mr. Kimunya, the Attorney-General, the Member for Sirisia are weighty and that they deserve respectful consideration.

That notwithstanding, I am not convinced that I can find as the Member for Gwassi endeavoured to persuade me to, find that business at Order No.8 namely The Statute Law

(Miscellaneous Amendment) Bill, Bill No.14 of 2012 is unconstitutional. I am unable to do that. I do not have adequate material before me from the arguments very ably articulated to make that finding.

However, I would like to accord myself an opportunity to reflect into the matter further and give further directions as may be necessary. For the moment, however, I would like to take whatever interest there may be in this Bill on board. So, I will direct that debate continues but that I will give directions before we get to the right of the Mover to reply and before we proceed to a vote on the matter. So, that is how we will proceed and I will give those directions on Tuesday. So, I want to take whatever interests there may be in the Bill at this point.

Yes, the Minister for Justice, National Cohesion and Constitutional Affairs!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Speaker, Sir, I am most grateful for your ruling. There is great urgency to some of the amendments that we have proposed through this Statute Law (Miscellaneous Amendment) Bill. My Ministry is particularly affected. As of this morning, we had the Judges and Magistrates Vetting Board visiting us and we had audience with the Prime Minister to discuss a very worrying aspect of their mandate because Section 23 limits the period within which they are to vet Judges of the Court of Appeal and Judges of the High Court to only three months. That is according to Section 23(2).

Mr. Speaker, Sir, this Board after appointment commenced its work on 23rd February. They have worked very hard and I wish to commend Chairman Rao and his team. They were able to go through the vetting of nine Court of Appeal Judges. Of the nine, four were found unsuitable and the report was tabled.

Counting the three months from the 23rd---

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

Mr. Speaker: Order, Mr. Minister! There is a point of order.

QUORUM

Mr. Mbadi: Mr. Speaker, Sir, important as the matter was canvassed by the Government, the House is virtually empty. So, I call for quorum.

Mr. Speaker: Order! The Member for Gwassi, is that where you really want to go? We have ascertained that there is no quorum. Ring the Division Bell.

(The Division Bell was rung)

Mr. Speaker: Hon. Members, we will allow the Bell to ring for 10 minutes.

ADJOURNMENT

Mr. Speaker: Hon. Members, we are unable to raise the requisite quorum. Therefore, the House stands adjourned until Tuesday, 29th May, 2012 at 2.30 p.m.

The House rose at 5.10 p.m.

