

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 27th November, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

WELCOME/INTRODUCTION OF DELEGATION FROM PARLIAMENT OF UGANDA

Mr. Speaker: Hon. Members, I wish to introduce to you and welcome a delegation from the Parliament of Uganda who are seated at the Speaker's Row. They are as follows:-

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| 1. Hon. Babadiri Magrett, MP | - | Leader of the delegation |
| 2. Hon. Yaguma Wilberforce, MP | - | Deputy Chair, Gender
Committee |
| 3. Hon. Ssentongo Theopista, MP | - | Member |
| 4. Hon. Iriama Rose, MP | - | Member |
| 5. Hon. Kitata Aboud, MP | - | Member |
| 6. Hon. Hon. Anywarach Joshua, MP | - | Member |
| 7. Hon. Manoah Acile, MP | - | Member |
| 8. Hon. Betty Acan, MP | - | Member |
| 9. Hon. Ndezi Alex, MP | - | Member |
| 10. Hon. Santa Alum, MP | - | Member |
| 11. Hon. Babura Beatrice, MP | - | Member |

They are accompanied by three members of staff, namely:-

1. Mr. Manzi Victor
2. Mr. Barry Owouch; and,
3. Ms. Apia Susan.

They are Members of the Committee on Equal Opportunities and Gender and the Committee on Labour and Social Development, who are on a study tour to the Kenya National Assembly. On behalf of the House and on my own behalf, I wish the delegation a fruitful and happy stay in Kenya. Thank you.

(Applause)

POINT OF ORDER

TABLING OF COMMITTEE REPORT ON WRANGLING AMONG CMC BOARD OF DIRECTORS

Mr. Speaker: What is it, Dr. Khalwale?

Dr. Khalwale: Mr. Speaker, Sir, towards the end of last year, a matter came before this House, the contents of which were referred to the Departmental Committee on Finance, Planning and Trade. As a result of that, the Committee on Finance, Planning and Trade tabled a Paper here.

Mr. Speaker, Sir, I am rising because I have an interest in this matter; namely, in respect of the CMC Company. I had proposed that this Parliament interrogates that issue and, indeed, you referred the issue to the Departmental Committee, which has made findings. The Paper has been tabled but, unfortunately, I am requesting for your intervention because the Chairman has severally asked me to approach the House Business Committee to have this matter put on the Order Paper, but Members of the same Committee who sit on the House Business Committee have opposed any intention to have this matter discussed by the House. The petitioners, who are shareholders in this publicly listed company, but their shares are not trading at the Nairobi Stock Exchange. The banks are moving on the CMC and my hope is that if Parliament resolves the matter, this situation can be resolved. I am begging that the Chair may make a determination and, if possible, rule that the matter be discussed by the House and be settled.

Mr. Speaker: Hon. Member for Ikolomani, that is fair enough except that in your delivery this afternoon, you have referred to several “Chairs”, and in your final request you asked that the “Chair” makes a finding. So, I do not know which “Chair” you are referring to.

Dr. Khalwale: Thank you, Mr. Speaker, Sir. I am sorry to call you the “Chair”. By the first “Chair”, I meant the Chairman of the Departmental Committee on Finance, Planning and Trade. I wish to correct that I would request the Speaker to make a determination on this very important matter.

Mr. Speaker: That is fair enough. Now you are clear. Hon. Members, I recollect this matter. In fact, the day it came before the House the very first time, we all determined that it was a matter of great national importance and I directed that the Departmental Committee on Finance, Planning and Trade inquires into the matter and makes its findings available to the House within 21 days, I believe. The Committee has done so. So, there is no reason why this matter cannot be allotted time. So, I direct that the House Business Committee, which is due to sit this afternoon, allots this matter time as a matter of urgency. At any rate in our Standing Orders, Committee reports take priority over other Motions.

So, hon. Member for Ikolomani and those of you who sit on the House Business Committee, please, be guided accordingly and let us hope that this matter will come on the Order Paper as early as this week. It is so directed.

Next Order.

(Dr. Shaban stood up in her place)

Dr. Shaban, is it another Paper?

The Minister for Gender, Children and Social Development (Dr. Shaban): Yes, Mr. Speaker, Sir.

PAPER LAID

The following Paper was laid on the Table:-

Sessional Paper Number 5 of 2012 on National Social Protection Policy

(By the Minister for Gender, Children and Social Development)

NOTICE OF MOTION

ADOPTION OF SESSIONAL PAPER NO.5 OF 2012 ON
NATIONAL SOCIAL PROTECTION POLICY

The Minister for Gender, Children and Social Development (Dr. Shaban): Mr. Speaker, Sir, I beg to give Notice of the following Motion.

THAT, this House adopts Sessional Paper No. 5 of 2012 on National Social Protection Policy laid on the Table of the House on Tuesday, 27th November, 2012.

QUESTIONS BY PRIVATE NOTICE

REPATRIATION OF MS. LILLIAN NYAMBURA FROM SAUDI ARABIA

Mr. Wambugu: Mr. Speaker Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice:-

(a) Is the Minister aware that the remains of Ms. Esther Muthoni Ngarega (Passport No. A1746327) who died in Saudi Arabia three (3) months ago, have not been transported back to the country for burial?

(b) Is the Minister also aware that Ms. Lillian Nyambura, a sister to the deceased and working in Saudi Arabia is not allowed to communicate with her parents by her employer?

(c) What urgent measures is the Minister taking to ensure that Ms. Lillian is repatriated to the country and postmortem on the deceased is carried out and her remains brought back to the country?

Mr. Speaker, Sir, I just want to note that the Minister was supposed to give us the postmortem report which was supposed to come from Saudi Arabia on the said person.

Mr. Speaker: The Minister for Foreign Affairs! I actually recollect this matter, hon. Members, and the Minister for Foreign Affairs did actually request that he is given until today, of his own motion. So really, there is no excuse or explanation as to why he will not be in the House.

Hon. Mwakwere, you served in this portfolio before! Could you hold brief for your colleague? See if you can account for his absence or what do you want the House to do?

The Minister for Environment and Mineral Resources (Mr. Mwakwere): Mr. Speaker, Sir, that was during the NARC Government and a lot of water has passed under the bridge!

(Laughter)

Nonetheless, Mr. Speaker, Sir, I will inform my colleague, the Minister for Foreign Affairs, to do the needful. I am requesting that the reply or the response be made tomorrow.

Mr. Speaker: That is fair enough. Before I do that, I think I will want to revisit this Question later on because we will be completely at a loss as to why the Minister would want a particular date and fail to be in the House. So, really, I would want to deal with this matter. So, we will revisit this Question before we finish Question Time and I hope, hon. Mwakwere, you can find a way to make a call to the Minister.

Next Question, hon. Member for Vihiga.

EXPENDITURE ON MEDIA ADVERTISEMENTS BY NSSF

Mr. Chanzu: Mr. Speaker Sir, I beg to ask the Minister for Labour the following Question by Private Notice:-

(a) How much money is the National Social Security Fund spending on the on-going advertisements in the print and electronic media?

(b) Were these funds budgeted for and what tangible achievements does the Fund expect to realize from these advertisements?

(c) Could the Minister confirm that this unnecessary expenditure will reduce the intended benefits for members of the Fund?

The Minister for Labour (Mr. Munyes): Mr. Speaker, Sir, I beg to reply.

(a) The National Social Security Fund (NSSF) has spent a total of Kshs33,709,999 on advertisements in the print and electronic media from April, 2010, to date. The following is a summary of the media campaign initiative. The cost involved and the benefits realized are as follows:-

(i) *Sawazisha* Media Campaign which was carried out within the period of April, 2010, for three weeks at a cost Kshs6,983,600. The benefit realized is that the suspense account was reduced from Kshs7 billion in April to Kshs3.3 billion in October.

(ii) The KTN Business Weekly in the months of May and June, 2012, where we spent Kshs11,200,000. The benefit realized is that the monthly contributions shot up from Kshs400 million in May to Kshs600 million currently.

(iii) The NSSF Rebranding Exercise in the month of September, 2012, where we spent Kshs15,524,399. The benefit realized was that customer satisfaction improved from 70 per cent to 74 per cent within the last three months.

(b) These funds were provided for in the Budget and approved by the Board of Trustees during its 157th Meeting held on 26th January, 2012, and by the Treasury vide its letter Ref.DGIPE/1/1 of 29th March, 2012. A total of Kshs62,500,000 was approved for this purpose. So far, the NSSF has spent Kshs33,707,999, as tabulated above.

As indicated above, the Fund has realized benefits from this effort. Our suspense account has reduced, meaning that many more members have made their claims. Membership increased and customer satisfaction levels were raised.

(c) This expense will not, in any way, reduce the intended benefits for the members as it was provided for in the Budget under the Item "Member Education and Advertisement". This is an important component of any corporate organization. Indeed, the current compounded interest which is supposed to be at 2.5 per cent is now at 7.5 per cent paid to members accounts and is the highest in the last 10 years.

[Mr. Speaker left the Chair]

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

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I asked this Question because the NSSF has, more often than not, gone out of its core mandate. When I saw this on television and all over the place, I was wondering whether the NSSF has been able to satisfy its core mandate before going into these advertisements which I thought were costing a lot of money. Could the Minister prove the last part of his answer where he is talking about customer satisfaction having improved from 70 per cent to 74 per cent within the last three months? I do not know if he can prove that.

Mr. Munyes: Mr. Speaker, Sir, what the NSSF has done of late is part of the wider reforms that we have undertaken at the NSSF. My friend over there, who I have met many times over these issues, likes the NSSF very much and his brother was also working as an accountant at the NSSF. By the fact that we have opened up offices all over the country and Kenyans can now access their accounts; the fact that we have increased our contributions, all these compounded and the feedback I get is enough proof. The Members call me every time to tell me that it is now better and people can walk into our offices and get information. This is a clear proof that customers in this country are now happier than before.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, the question of the cost of spending at the NSSF is of great concern to all Kenyans. Could the Minister tell the House whether he intends, or he has any plans, to address the issue of administering this Fund? We all know that the Kenya Revenue Authority (KRA) can actually do the administration of this Fund by way of collecting money on behalf of this body, so that all these thieves whom the Minister has refused to arrest are not given an opportunity to administer the Fund.

Mr. Munyes: Mr. Temporary Deputy Speaker, Sir, that is a very good question. We are fully compliant with the RBA requirements. For the last few months, all NSSF investments have been done by Fund Managers, who are competitively recruited. We do not handle money investments except in the case of wider reforms like advertisements which you have just heard about. The core amount of money that is in NSSF, that is over Kshs110 billion, is under Fund Managers. That is a fundamental shift from what we know. We do not handle money now. It is the Fund Managers who handle the money.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to thank the Minister for that, but is he really in order to refuse to answer the question? When I talk about wrong, or poor administration, I am referring to cases where the Minister and his people pay some companies billions of shillings. Recently, they paid a company called Salolo or Salulu(?) billions of shillings. This is a company that is run by his fellow politician. Could it be that the Minister was cutting deals with the man they paid billions of shillings for houses he did not build?

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Minister, this is a serious matter. Please, take this matter seriously. Is this money budgeted? How is this expenditure? Try to deal with part (b) of the Question.

Mr. Munyes: Mr. Temporary Deputy Speaker, Sir, I answered that Question. For Dr. Khalwale, I said that we are having wider reforms, including the Trust Formation Bill, which is coming into this House. With regard to the investments we are talking about, we are tighter now

because we are giving all the money to the managers to handle for us. So, it is something that we are taking seriously. I am not aware about the money Dr. Khalwale is talking about. I do not sit on the Board to take decisions.

Mr. Chanzu: On a point of order, Mr. Temporary Deputy Speaker, Sir. The money the Minister is saying that he has given to Fund Managers to manage is the same money they gave to one of the deposit companies and they ran away with Kshs1.4 billion. So, is the Minister in order? He is actually misleading the House.

Mr. Munyes: Mr. Temporary Deputy Speaker, Sir, the funds the hon. Member is referring to relate to the funds which were under discount securities. This happened just before this programme of ensuring that we go through Fund Managers started. In fact this happened even before I came into this Ministry. It is something that happened in the 1990s. So, you cannot pin me down on that, because it happened before we came to this House. So, I cannot respond to that.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, in answering this Question, the Minister indicated that within six months, the NSSF spent over Kshs33 million in advertisements only. This adds up to an average of over Kshs5 million per month. In his answer to part (b), he said that they are in order because they had budgeted for it. I am wondering whether the Minister is convinced that there was no over-budgeting for this Vote Head, hence there has been total waste of money. What he is calling “current compounded interest” of 7.5 per cent could actually go up to even 12 per cent if there was prudent management.

Mr. Munyes: Mr. Temporary Deputy Speaker, Sir, that interest, for sure, will go up. We want to ensure that we keep the taxpayers’ money safe and we invest properly. That is why this time we sought clearance from the Treasury. This was a matter that came to the Board of NSSF. I referred it to the Treasury and it got the clearance. Half of the money has been spent. This money was spent on the right purpose. We have gained Kshs400 million to Kshs600 million. We have achieved the satisfaction that we wanted. We have relieved the suspense account and that is our purpose in this business, namely to ensure that clients get their money. We have been holding people’s money in suspense accounts. At least now Kenyans know that they can get their money. It is a plus. It is a plus for every Member of Parliament here that people are now getting money which was lying somewhere in our suspense accounts.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, the Minister really needed to give us some statistical data to show how the clearing of the suspension account has been achieved. You cannot just rely on what you hear the public say all over the place. As politicians, we know that there are many people who believe that they are going to win elections, but when the voting takes place, they do not. Could the Minister give us some data showing that the benefits to the members have increased?

Mr. Munyes: Mr. Temporary Deputy Speaker, Sir, I could provide that specific information, maybe, in the next few days to the hon. Member, if it is necessary to him.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. Hon. Chanzu, I am sure you will communicate with the Minister directly in order to get that answer.

Next Question by Hon. Boaz Kaino!

SALE OF IMMOVABLE PROPERTIES/ASSETS BY PYRETHRUM BOARD OF KENYA

(**Mr. Kaino**) to ask the Minister for Minister for Agriculture:

(a) Is the Minister aware that the Pyrethrum Board of Kenya has advertised the selling of immovable properties/assets; what is the rationale of the Board's intention to dispose of the assets?

(b) Is the Minister further aware that the Board is not a state corporation and is fully owned by the pyrethrum farmers in the country?

(c) How much money has the Government set aside in the 2012/13 financial year to pay pyrethrum farmers their outstanding arrears for the produce they delivered to the Board?

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Kaino is not in yet. We will wait for him to get here for the second round.

ORAL ANSWERS TO QUESTIONS

Question No.1642

POLLUTION OF KIKUYU TOWN BY STEEL ROLLING MILLS FACTORY

Dr. Otichilo asked the Minister for Environment and Mineral Resources:

(a) if he is aware that the chemical fumes emitted by the Steel Rolling Mills Factory in Kikuyu Town have seriously affected the health of the residents and the environment of the area;

(b) if he is further aware that due to public complaints, NEMA closed the factory for six months in 2005, but it was re-opened under unclear circumstances; and

(c) what urgent action he will take to ensure that the residents of Kikuyu Town are relieved from health hazards of the pungent fumes emitted by the factory and their living environment restored.

The Minister for Environment and Mineral Resources (Mr. Mwakwere): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that fumes emitted from the Steel Rolling Mills Factory in Kikuyu Town have seriously affected the health of the residents.

(b) I am also not aware that the factory was closed down for six months in 2005. However, I am aware that it was closed on 7th December, 2006 and re-opened on 2nd February, 2007. I am also aware that the factory was re-opened under very clear circumstances.

(c) As an immediate measure to ensure that there are no health hazards emanating from the factory to the Kikuyu Town residents, NEMA issued a closure order on 28th May, 2012 after an inspection conducted on 24th May, 2012 established that the factory had failed to sustain air pollution control measures. An inspection conducted by NEMA on 26th June, 2012 confirmed that the factory had complied with the restoration order and issued a temporary lifting of closure notice on 28th June, 2012.

The second inspection conducted on 5th October, 2012 to review the status of the factory based on the conditions given to the management on 28th June, 2012 as a prerequisite for permanent closure notice established the following:-

1. a new induction furnace was under installation;
2. containment of fugitive furnace oil at the offloading point; and,
3. paving of rolling mill section was at 80 per cent completion.

Mr. Temporary Deputy Speaker, Sir, a third inspection of the facility on 8th November, 2012 confirmed that the induction furnace is fully installed and operational. It was also observed that the smoke, which was hitherto the subject of complaint and therefore the issuance of the stop order, had drastically reduced and was no longer visible.

Finally, NEMA will in due course lift the stop order initially issued to the factory while at the same time closely monitoring its operations to ensure that no further environmental pollution of any nature is occasioned by its activities. This will be achieved by making sure that the factory submits regular reports on air quality measurements and annual environmental audits to NEMA. Frequent compliance inspections will also be undertaken.

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, while I thank the Minister for the elaborate answer he has given, if you listened very well, you will realize that his answer is very contradictory. Therefore, we do not know exactly what is going on in this factory. It is clear that something wrong is going on. In the answer, the Minister said that he is aware that the factory was re-opened under unclear circumstances. I want to know these unclear circumstances under which that the factory re-opened.

Mr. Mwakwere: Mr. Temporary Deputy Speaker, Sir, my brother, Dr. Wilbur Otichilo, has my written answer. What he is referring to is what I have stated in part (b) of my answer. What he has said is not what I said, yet he has it in front of him. I said, "I am also aware that the factory was re-opened under clear circumstances". I did not say "unclear circumstances".

Mr. Chachu: Mr. Temporary Deputy Speaker, Sir, the law of this land is that whenever such a factory is established, a comprehensive Environmental Impact Assessment is done. Could he table any technical report to show that, that assessment has been done to allay the fears of Kenyans? This is about the health of Kenyans.

Mr. Mwakwere: Mr. Temporary Deputy Speaker, Sir, there are 67 laws covering environmental issues. Yes, an assessment was done and I will be very pleased to table the report as requested although not now. Of course, this has just come to my notice.

The Temporary Deputy Speaker (Prof. Kaloki): You can provide that directly to hon. Dr. Otichilo.

Mr. James Maina Kamau: Mr. Temporary Deputy Speaker, Sir, I am surprised to hear from the Minister that he is not aware that whatever is happening there is affecting the people in the area. What has he done to get proper information? I believe that Kikuyu Town is only 15 minutes drive away from Nairobi. Why can he not make a trip to that place and come with an answer as to why people are affected in that area?

Mr. Mwakwere: Mr. Temporary Deputy Speaker, Sir, I made it clear that there was a phase when we closed the factory because we were not satisfied with the interventions by the management. This was to ensure that there was no air pollution from the factory and I gave the exact dates. Then I highlighted the actions that were taken by NEMA. Maybe, I can read the same again, but I think I was fairly clear on what interventions NEMA made.

The Temporary Deputy Speaker (Prof. Kaloki): Yes, you did that.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, listening to the Minister keenly, it is notable that prior to the closure of the factory, there were some issues that triggered the closure. Could he, therefore, consider providing adequate compensation for the workers and the communities that suffered during that time?

Mr. Mwakwere: Mr. Temporary Deputy Speaker, Sir, I will be very pleased to receive from Mr. Njuguna his quantification for compensation for a stench. How much should one be

compensated for a foul smell, over what period and under what quantum? The idea sounds good, but how do we arrive at a figure that will satisfy a stench?

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, the issue of pollution is not only confined to steel rolling factory in Kikuyu. Many factories in the country are not adhering to the national and international standards of chemical emission. What action is the Minister taking to ensure that factories meet the agreed national and international standards of emission?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Minister, let me allow one more question so that you can deal with the two questions. That will be your final answer.

Mr. Mureithi: Mr. Temporary Deputy Speaker, Sir, I probably thought I was under quarantine because I have been wanting to ask this question. The issue raised by Dr. Otichilo is of paramount importance. When one is driving through Kikuyu, you can see the emissions from the factory. Along that area there are so many wetlands and one of them is called Audrey, which feeds into the rivers that are used by the Alliance High Schools. The balance of the rivers go all the way to Ngong and feed into the Mbagathi River and finally goes to the Coast. Has NEMA done the assessment to see what fumes reach those wetlands such that people's health is not affected without necessarily confining them to the factory?

The Temporary Deputy Speaker (Prof. Kaloki): That is very clear Mr. Mureithi. Mr. Minister, please, be brief. That will be your final answer there.

Mr. Mwakwere: Mr. Temporary Deputy Speaker, Sir, I fully agree with Dr. Otichilo that we have problems of air pollution in several factories all over the country. We are doing our very best to ensure that we maintain regular inspections of these factories. Taking Kikuyu Factory as an example, we occasionally close such factories until they satisfy the requirement for cleaner environment. On the question of waste flowing into the wetland and then into rivers, yes, we conduct inspections and our officers on the ground present regular reports. They test the water around factories to ensure that there is no pollution extended to other parts of the country and least of all, the immediate environment.

Question No.912

GOVERNMENT EXPENDITURE ON ADVERTISEMENTS

Mr. Mututho asked the Minister for Information and Communications:-

(a) whether he could provide a breakdown of Government expenditure on advertisements in each media house per year and cumulatively from 2005 to date;

(b) whether he could provide the list of top 20 Ministries in spending in each of the media entities in descending order; and,

(c) whether he could also table all the contracts that were used in procuring those advertisements and/or promotions.

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, this Question came up last week. I managed to give the answers to parts (a) and (b). For part (c), I was unable to give the answer to this House because as you realize, it is cutting across the Ministries. Therefore, I needed assistance from the Office of the Prime Minister to give the information that the Member wants. I wrote a letter to the Office of the Prime Minister requesting for the same information and up to now, I am still awaiting the response. Therefore, I want to beg for your indulgence that this Question be deferred to next

week, hopefully, we will have got the information we want from the Office of the Prime Minister.

The Temporary Deputy Speaker (Prof. Kaloki): When next week? On Tuesday?

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, on Wednesday.

The Temporary Deputy Speaker (Prof. Kaloki): All right. Mr. Mututho, is that agreeable?

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, that is agreeable if only he could note that the total amount of money involved here is as big as that of Goldenberg. It is a huge of amount involved. If he could note that as he does his research, then I have no difficulty in accommodating him for Wednesday or Thursday.

The Temporary Deputy Speaker (Prof. Kaloki): All right. Mr. Assistant Minister, be prepared to deal with this Question conclusively.

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, I will try my best.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. I defer that Question to Tuesday next week.

(Question deferred)

Question No.1229

GAZETTEMMENT OF KORA NATIONAL GAME RESERVE

The Temporary Deputy Speaker (Prof. Kaloki): Dr. Nuh is out on parliamentary business. So, I defer that Question to Tuesday next week when he will be back to the Chamber to deal with the Question.

(Question deferred)

Question No.1810

NON-ISSUANCE OF IDENTITY CARDS TO YOUTHS IN ILLERET LOCATION

Mr. Chachu asked the Minister of State for Immigration and Registration of Persons:-

(a) whether he was aware that registration of persons is not conducted in the vast North Horr Constituency;

(b) how many people have been issued with the National identity cards in the last two years in the constituency; and,

(c) why the Ministry has not undertaken the registration exercise in Illeret Location for the last two years and when a Registrar of Persons will be posted to North Horr District.

The Temporary Deputy Speaker (Prof. Kaloki): The Minister of State for Immigration and Registration of Persons? Let us wait for him to get to the Chamber and then we will try for the second round.

Question No.1783

EXTRADITION OF KENYANS ARRESTED IN MOZAMBIQUE
TO TANZANIA BY KENYAN POLICE

Mr. Kabogo asked the Attorney General:-

(a) under what circumstances 12 Kenyan businessmen Messrs. Peter Giruka Mburu, David Ngugi Mburu, Simon Gathinji Kariuki, Michael Mbanya Wathigo, Patrick Muthee Miriithi, Boniface Mwangi Mburu, John Odhiambo Odongo, Gabriel Kung'u Kariuki, Jim Maina Njoroge, Wilfred Onyango Nganyi, Simion Ndung'u Kambuthi and Peter Mahera Kariba were arrested in Mozambique and handed over to Tanzania Police by the Kenya Police delegation under the watch of J. Nyaga Reche (SSP) and former Nairobi Area PCIO, Sammy Githui, on the 16th December, 2005;

(b) whether he was aware that two of the above mentioned persons; Messrs. John Odhiambo Odongo and Peter Mahera Kariba, have since died in Karanga Prison in Moshi, Tanzania, as a result of injuries from torture; and,

(c) whether he could undertake to extradite the remaining 10 Kenyans who are languishing in a foreign jail, to face trial in Kenya, if there are any charges against them.

The Temporary Deputy Speaker (Prof. Kaloki): The Attorney-General! He is not here. Hon. Members, let us also allow the Attorney-General to get to the Chamber. We will call this Question a second time a little bit later.

Question No.1809

ACTIVITIES FUNDED BY FPE MONEY

Mr. M.H. Ali asked the Minister for Education:-

(a) what specific activities are funded by money for Free Primary Education (FPE); and,

(b) whether the Government could consider using part of the FPE funds to employ more teachers in view of the increased number of primary schools in the country.

The Assistant Minister for Education (Prof. Olweny): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) Under free primary education, each pupil is entitled to Kshs1,020 annually or Kshs1,050 which is disbursed through account one referred to as samba, is for tuition purposes, whereas Kshs470 disbursed through account two which is called the general purpose account is for recurrent expenses. The vote head for the two accounts are shown in the table which has been given to the hon. Member unless the House wants me to read it.

(b) According to the Constitution of Kenya 2010, Article 237(2) (b), the mandate for employing teachers lies squarely with the Teachers Service Commission (TSC). It is important to know that the Government has been allocating money for employment of teachers every year. However, due to high attrition rates coupled with budgetary constraints, it has not been possible to ensure adequate staffing in all schools.

On the other hand, funding of free primary education programme has remained static at Kshs1, 020 per each pupil annually, since the inception of the programme from 2003 to date. Hence, it is not possible to use the same meagre funds set aside for free primary education to employ more teachers because the money is limited.

Mr. M.H. Ali: Mr. Temporary Deputy Speaker, Sir, while I thank the Assistant Minister for the answer, I want to bring to the attention of this House the fact that in the last five years since I was elected, we have built over 200 classrooms through the Constituencies Development Fund (CDF) but the number of teachers who have been deployed is less than 50 in the last five years. There are high rates of enrolment in all these schools. I have an example of a school which has over 2,000 pupils but only eight teachers. With this kind of teacher-pupil ratio, how do we expect these children to perform at par with other parts of this country?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, the issue of teacher shortage is a national problem and also a problem to the Ministry. The hon. Member has said that there are eight teachers in some of his schools but in some places across the country, it is worse. This House assisted my Ministry to get more money from Treasury to hire teachers. It is a problem that is with us and we are appealing to Treasury so that we can get more funding. If we get more funding, we will be able to employ more teachers. As a matter of fact, the shortage today is 60,000 teachers across the country.

Mr. Pesa: Mr. Temporary Deputy Speaker, Sir, the Ministry understands that we have a shortage of teachers throughout the Republic and in almost all the schools in the rural areas, we have extra teachers employed by communities. Could the Assistant Minister tell us whether it is the free primary education money used to employ these teachers?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, education actually involves cost-sharing between the communities and the Government. Communities get money from the other pocket to subsidize the efforts of the Government to employ teachers. As a matter of fact, account two which is general purpose account, has some money meant for employment of support staff but some schools use it to employ teachers.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I wonder whether this Government is really serious and ready to offer quality education to the less fortunate Kenyans. This House, in a Motion, passed that the Government should double the free primary education money, in a resolution. I wonder if the Assistant Minister followed up with that money. Now that he is confirming that some schools utilize the same money to employ a few teachers, why did you not consider doubling the money so that the said communities could use part of it to employ a few teachers?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, if I can remember very well, the hon. Member who has raised that question is one of those Members who actively and aggressively helped my Ministry to get more money from Treasury but we all failed. We asked for all these money but the budget was slashed substantially.

Mr. C. Kilonzo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not know whether you heard the Assistant Minister and I wonder whether he is in order to purport that the Government and the Cabinet, in particular the Executive, has no control of Treasury to the extent

that they have to rely on my good friend here, who is just a poor Back Bencher to go and talk to Treasury for them to get money while the Minister for Finance is in the same Cabinet? Is he in order?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, I am very much in order. The agitation was not done at the Treasury but in this House. In fact, the hon. Member himself participated.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. M.H. Ali, could you ask your final question?

Mr. M.H. Ali: Mr. Temporary Deputy Speaker, Sir, this free primary education business was a big political joke. How can you tell Kenyans that you are providing free primary education and yet you cannot employ teachers? You are only providing exercise books at the rate of Kshs550 per student per year. Can the Government be serious and make sure that there is free primary education for all the children in this country?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, the Government is very serious, apart from the limited resources.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to refuse to take seriously this matter when we, as Public Accounts Committee (PAC), are waiting for him because this House voted Kshs20 billion for equipment of teachers for onward transmission to the Teachers Service Commission (TSC)? We understand that only Kshs12 billion was used. Is he in order not to take the House seriously when the House gave him Kshs20 billion but he chose to spend only Kshs12 billion in employing few teachers while we wanted him to employ teachers worth Kshs20 billion?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, I am very much in order because what is allocated to my Ministry is what is spent. The House can debate and pass but what Treasury gives to the Ministry is what is used.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Prof. Olweny! Could you deal with that Question one more time?

Prof. Olweny: Then can it be repeated, Sir? I think I have answered the Question. The issue here is the money availed to my Ministry. Let it be repeated so that I can get it.

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. The the question by Dr. Khalwale, in his capacity as a Member of this House and the Chairman of the Public Accounts Committee (PAC) that we passed in this House a Kshs20 billion budget for the recruitment of teachers--- Instead, you have only allocated Kshs4 billion. That explains the shortage of teachers in our schools. My point of order was in relation to that. You have something called “affirmative action”. This Minister has come up with a nomadic boarding education policy, and in the case of Mandera Central where he has a school with 2,000 children and eight teachers, how will this Government make sure that the affirmative action policy especially for northern Kenya, where we are killing each other because even the few who have gone to school cannot be taught because there are no teachers is implemented? Is he serious?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, the money the hon. Member has talked about never came. So, the money that the Ministry was allocated is what we used to hire teachers. We cannot let the money to hire teachers lie idle if it is there. We will use it the same day we get it to hire teachers because we want to deliver quality education to all young Kenyans across the country irrespective of the region or tribe they come from.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, there is a question to the effect that the Ministry was allocated Kshs20 billion but you keep on saying that

Kshs12 billion was utilized. Definitely, there is a balance of Kshs8 billion. Can you clarify that shortfall?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, what the Treasury availed is what we spent to hire the 10,000 teachers.

The Temporary Deputy Speaker (Prof. Kaloki): Do you have Kshs8 billion lying somewhere?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, there is nothing for the Ministry at the moment. The Ministry did not get the whole amount that was proposed in this House.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, I think the Assistant Minister is very clear in that answer.

I will move on to the next Question by Mr. Kiuna.

Mr. Kiuna: Mr. Temporary Deputy Speaker, Sir, I have not been provided with a copy of the written answer. I seek for your indulgence that I be provided with a copy of the written answer before the Minister answers this Question.

Question No.1811

DELAYED ISSUANCE OF DRIVING LICENCES

Mr. Kiuna asked the Minister for Transport:-

(a) whether he is aware that there are many people in the country who have applied for driving licences and have not been issued with the same; and,

(b) whether he could explain the cause of the delay and when the applicants will be issued with the driving licences.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, this is a very straightforward answer. I am surprised that the Member has not received a copy of the written answer because we sent it to Parliament. I wish he had raised up the matter with me earlier on because I would have provided him with a copy of the written answer. However, be that as it may, if it pleases this House, I would rather answer the Question because it is straightforward and then we take it from there.

I beg to reply.

(a) I am aware that there are many people in the country who have applied for driving licences and have not been issued with the same.

(b) The delay has been occasioned by the manual system of processing driving licences. The staff in the department is working extra hours to clear that backlog.

The Registrar of Motor Vehicles has initiated the process of decentralizing the renewal of driving licenses starting July this year. Currently, all the branches of the National Bank of Kenya (NBK) are renewing driving licences. This is being done as a pilot case and soon, all the commercial banks will provide the service. This measure will free more staff to concentrate on clearing the backlog within the next one month.

Mr. Kiuna: Mr. Temporary Deputy Speaker, Sir, although I thank the Minister for the answer he has given, I would like him to tell this House, because there are many young men who have applied for driving licenses and yet they have not been issued--- There are some who have waited for the document for more than one year. In fact, they have problems when they seek employment. Could the Minister be categorical and state exactly when he will clear all the

remaining applications for driving licences because there are very many young men who would like to be employed but they do not have the necessary documents?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Minister, how long will the Ministry take to clear all these cases now that the staff is working overtime?

Mr. Kimunya: Mr. Temporary Deputy Speaker, Sir, the concern is very genuine. We have admitted that there is a backlog. As of last week, I believe we had a backlog of about 36,000 licences. Working at the current rate, we estimated that within a month, we would have cleared a substantial number of that. Recently, this House passed a Bill on the creation of the National Transport and Safety Authority which will take over the responsibility of issuing driving licences from the Registrar of Motor Vehicles as part of reforms to disentangle some of the issues that have been clogging that system.

That Authority comes into effect from 1st December. Realistically, I request that we be patient so that we have a smooth transition or hand over from the Registrar of Motor Vehicles to the Authority, set up the system and clean up the data base. Hopefully, by the end of this year, we would have cleared that backlog because it is not just a matter of issuing licences. There is issuing of the licences and cleaning the data base so that we know that the holder of that licence is in the data as part of the reforms that are integrated with the fines and the new demerit system that this House approved so that if you are arrested and charged with a traffic offence and the magistrate or the court decides that some points should be deducted from your licence, it will be possible to track that in the system. So, there is a bit of patience required and I sympathize with those who are waiting. However, this will be for the good of everyone to have safer drivers on our roads. I would like to request that we give this sometime between the next one month and the close of the year when we should report progress.

Mr. Ochieng: Mr. Temporary Deputy Speaker, Sir, the type of driving licences that are being issued now are the same type that were issued during the colonial time. When does the Minister intend to improve on this and start issuing the new generation driving licences?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Minister, that is a good question.

Mr. Kimunya: Mr. Temporary Deputy Speaker, Sir, indeed, we recognized that weakness, probably five years back when the process of modernizing the driving licences began. However, this is interlinked with modernization of identity cards. There is something called “Integrated Persons Registration System (IPRS)” that should integrate your identity card, driving licence, voting systems and all the other documentation that you have so that you have one unique identifier as a Kenya. We did not want to come up with one item from Transport while other systems were doing something different. However, one of the priorities of the National Transport and Safety Authority is sorting out the electronic modernization of our driving licence so that we can bring it at par with all the other systems. Again, it is just a matter of time but the need has been identified. The designs are all there and it is just a matter of linking with the other systems that are taking place. I cannot give a timeframe but we were keen to have it yesterday.

Mr. Kiuna: Mr. Temporary Deputy Speaker, Sir, maybe the last question I will ask the Minister is whether he can try to decentralize issuance of licences to the county level, so that Kenyans do not travel all the way to the capital city. Could he post officers to the county level to provide services there?

Mr. Kimunya: Mr. Temporary Deputy Speaker, Sir, indeed, we have that intention. As hon. Members will appreciate, the Constitution classifies management of transport affairs as one of the responsibilities of the County Government. In line with harmonizing our laws and our practices with the new Constitution and devolution, we will be moving in that direction in terms

of decentralization. It is not just a matter of issuing the licences, but also oversight of traffic management within the counties. This will be responsibility of the County Governments, working together with the national Government. So, that is in progress and it is just a matter of time. When it is in place, we should also be in place.

The Temporary Deputy Speaker (Prof. Kaloki): Very well, hon. Adan Keynan.

Question No.1774

MARKETING OF MUTTON FROM NORTHERN KENYA
TO NORTH AFRICA/MIDDLE EAST

Let us wait a little bit as in the case of other Members.

Next Question, hon. Kiptanui.

Question No.1640

CAUSES OF POWER BLACKOUTS
IN METKEI/CHEPKORIO DIVISIONS

Mr. Kiptanui asked the Minister for Energy:-

- (a) whether he is aware that there are frequent power blackouts in Metkei Division and in part of Chepkorio Division in Keiyo South Constituency,
- (b) what the cause the blackouts is; and,
- (c) what measures he will take to ensure that the problem is solved.

The Temporary Deputy Speaker (Prof. Kaloki): Minister for Energy! We will wait for the Minister.

Next Question, hon. Charles Nyamai

Question No.1840

REHABILITATION OF ROADS IN
TASSIA ESTATE, NAIROBI

Mr. Nyamai asked the Minister for Roads:-

- (a) whether he is aware that roads in Tassia Estate off Outer Ring Road are impassable;
- (b) what plans he has to improve the roads, including installing street lights.

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

(a) I am aware that the estate developer of Tassia Estate did not develop the roads as required and, therefore, the roads in the estate are in a poor state.

(b) The Kenya Urban Roads Authority (KURA) has no budgetary provision for development of city estate roads. The funds available are being applied towards routine maintenance of the roads to ensure that they are motorable.

Mr. Nyamai: Thank you, Assistant Minister, for your answer.

There are two parts of Tassia; there is Phase I which was developed by Tassia Estate itself; here the roads are tarmacked. They have just worn off over time. In view of the fact that you are saying there is money for road maintenance, how much have you set aside for the maintenance of these roads? I am aware the City Council of Nairobi has also written to you requesting about Kshs40 million for the maintenance.

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, I have set aside Kshs116,618,125 for the maintenance of the roads in Nairobi, eastern region, in the financial year 2012/2013. However, Tassia is not included.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Assistant Minister! The issue here is very clear; the roads in Tassia Estate are impassable; this area includes Donholm. Is your Ministry aware of this and are you going to do something to deal with this situation, which is bad at the moment?

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, I am the Assistant Minister for roads and I have said I am aware. Indeed, in the eastern part of Nairobi, I have 63 projects, whose cost totals to slightly over Kshs116 million. If the Member is interested, I can give him the list to look at any time he wishes.

Mr. Ogindo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to avoid answering a simple question on how much he has allocated for maintenance of roads in Tassia Estate?

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, is the hon. Member for Rangwe really listening to me? I also gave a simple answer. There is no money allocated for those roads.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Assistant Minister! There is a Question here. Part (a) asks: Is the Minister aware that the roads in Tassia Estate off Outer Ring Road are impassable? These roads are under your Ministry. Are you planning to do something to deal with this issue?

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, I am aware that these roads have a problem. I have not denied that fact. I am very much aware. However, I have no funds for them now.

The Temporary Deputy Speaker (Prof. Kaloki): Could you consider doing some grading at least?

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, the Government in which I will serve will repair these roads.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, according to our Standing Orders, the purpose of Questions is to seek information and also press for action.

Mr. Speaker, Temporary Speaker, Sir, according to the Standing Orders, we must press for action so that the Ministry of Roads can go to Tassia Estate and repair those roads. Is the Assistant Minister in order to refuse to reassure the House that he is going to move on site?

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, maybe, some little information is required for the hon. Members to know how roads are managed.

Estate roads should have been developed by the estate developer to adoptive standards and then handed over to the City Council of Nairobi for routine maintenance; I underline "City

Council of Nairobi". However, most City roads were not developed to adoptive standards and others have never been developed at all. That is the reason they are in that deplorable condition.

Routine maintenance is also being considered by my Ministry, especially on request, and when funds are available. I have just said that I have looked not only that road but at the other roads in the eastern part of Nairobi. The Tassia issue had not come to my attention. To answer the hon. Member's question, now that I have knowledge of the Tassia Roads, I will consider repairing them when funds are available.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Temporary Deputy Speaker, Sir, it is true that the roads in Tassia are impassable and Tassia Estate is not a new estate. For the Assistant Minister to purport that he is not aware that the roads are impassable is displaying some sort of ignorance that should not be allowed. Could the Assistant Minister commit some funds to these roads immediately?

(Loud consultations)

The Temporary Deputy Speaker (Prof. Kaloki): Order! Let me allow the Assistant Minister to respond to that one and then I will take your point of order.

(Loud consultations)

Mr. Olago, I do not even see your request! Hon. Assistant Minister, deal with that one first and then we will go to hon. Olago.

(Loud consultations)

Allow the Assistant Minister to try and then we will----

The Assistant Minister for Roads (Dr. Machage): Mr. Temporary Deputy Speaker, Sir, is it your order that I reply to a fellow Assistant Minister? I will be slightly out of order!

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Assistant Minister! I think you can understand that Members are not satisfied with your answer.

(Loud consultations)

Order! Hon. Olago! Yes, proceed!

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Olago Oluoch John, proceed!

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, now I know why you could not pick me out. It is because you are not familiar with my name; it is John Olago Aluoch!

Mr. Temporary Deputy Speaker, Sir, the point that is so fundamental - and which I am sorry to say the Chair does not seem to appreciate - is that Mr. Waititu is a Member of the Front Bench. As far as this House knows, Mr. Waititutu is only suspended. He has not resigned. To that extent, he cannot interrogate the Front Bench. That is a fundamental issue. Neither can Dr. Machage.

The Temporary Deputy Speaker (Prof. Kaloki): Indeed, Mr. Waititu, I think you are guided properly by the Member. So, you do not have to say anything Mr. Waititu. Let it rest there.

Mr. Ekwee Ethuro, I am trying to get your request. Where are you?

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I think there is something wrong with that machine. Mine has been there even before John Olago's name could be pronounced.

Mr. Temporary Deputy Speaker, Sir, I just want to point out a simple observation. This is real comic relief. Mr. Waititu, who is suspended as an Assistant Minister, is asking Dr. Machage a question. As you remember, Dr. Machage was also suspended. He attempted to ask a question but he was stopped. So, I thought that is a good answer.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Ekwee Ethuro, definitely, it is comical, just the way you are trying to put it.

Mr. Assistant Minister, are you going to take some time to visit Tassia Estate, Donholm Area, and see the situation there? You can then be able to consider how to deal with the situation in that area.

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, before I answer that, and on a light touch, once Mr. Olago once referred to me as an interesting creature. I wonder why he did not do that today to my fellow Assistant Minister. However, I give my sympathies to be in that position.

Mr. Temporary Deputy Speaker, Sir, I do not love to see bad roads in this country. Take it from me. I feel very depressed when I hear Members complain about having deplorable bad roads. I will attempt to visit that place and see what is going on.

The Temporary Deputy Speaker (Prof. Kaloki): So, hon. Assistant Minister, what is your undertaking there? Are you going to visit the roads in question so that you take some action? Is that what you are assuring the House?

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, that is exactly what I have said in so many words.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. That is Tassia in Donholm Area. If you can, please, visit there.

Hon. Member, I think you have a burning issue there and it is a question. Could you make your request?

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, first of all, I would like to appreciate the Assistant Minister for the good work that he has been doing in my constituency especially along Jogoo Road. However, the road in question - Outering Road - acts as a feeder road. It feeds Thika Road, Jogoo Road and Airport North Road which connects Tassia Estate to other neighbouring estates like South B Estate and South C Estate. Could the Assistant Minister consider that once repair works in Tassia Estate commences, he is going to consider the other estates which have pathetic roads like Buru Buru, South C and South B which is five kilometers away? Could he also assure this House that he is going to fulfill his earlier promise of constructing a pedestrian fly-over at Belle Vue, which connects South B and South C? That is because we lose over 20 to 30 Kenyans on a weekly basis on that particular road.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Member! I think that is a completely different question. It is an important question though, Mr. Assistant Minister, what is your comment?

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, although it is quite a different question, it is quite relevant to our situation. Yes, I have heard your request. Let me remind you that on the request on the Belle Vue pedestrian path, the Mombasa Road is under serious

consideration for reconstruction to a single-storied road and all those factors will be taken care of and, especially so, to cyclists and pedestrians.

For the inter-connectivity of the roads in Nairobi, we are very much aware and you may appreciate that in your own constituency, we have done quite some significant by-pass roads. We are in the process. Rome was not built in a day. We are going to build all those. If you are interested, I am going to table a list of 63 roads that may be of interest to you.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Charles Nyamai, last question!

Mr. Nyamai: Mr. Temporary Deputy Speaker, Sir, I thank the Assistant Minister for the undertaking he has given. But that notwithstanding, I am a bit worried because the Assistant Minister says he is not aware about the situation of the roads in Tassia Estate, which require routine maintenance and yet, the Nairobi City Council (NCC) did request money from the Ministry about five months ago.

Mr. Assistant Minister, can you, please, assure us that you are going to look for money from somewhere and reallocate so that those roads can be done? Otherwise, you are likely to face my wrath! I will come for my daughter!

(Laughter)

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Nyamai, could you withdraw the last part? The rest was okay.

Mr. Nyamai: Okay, withdrawn!

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

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, as Mr. Nyamai was asking his question, we had “Chirau” which means “King”; Chirau Mwakwere who is actually disturbing me here. Could he repeat the question?

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Assistant Minister! What exactly are you doing? Did you deal with the question by Mr. Nyamai? Order, Mr. Nyamai! You have asked your question. Mr. Assistant Minister, just assure the Member and we will be able to move on.

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, I actually requested that he repeats his question.

The Temporary Deputy Speaker (Prof. Kaloki): What he is asking is whether you are going to source for funding to make sure that you not only visit that the roads in Tassia Estate, but also look for a budgetary allocation to deal with the roads there.

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, that is exactly the duty of the Ministry of Roads. Not only will I visit the place, but I will also attempt to look for funds if necessary, depending on what I will have seen. Now I am aware that, as per the Member’s complaint in the House, there is a problem on Tassia Road. I will do exactly that.

The Temporary Deputy Speaker (Prof. Kaloki): Next Question by Mr. Mbai!

Question No.1839

DEPLOYMENT OF OCPD TO MASINGA DISTRICT

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

(a) whether he is aware that Masinga District does not have a police station and is served by Yatta Police Station;

(b) whether he is further aware that Masinga Constituency Development Fund Committee has constructed a police station in Masinga Constituency; and,

(c) when he will post an Officer Commanding Station to the station.

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

(a) I am aware that Masinga District which is newly created does not have a police station. The district is currently served by Matuu Police Station and not the other police station.

(b) I am also aware that Masinga Constituency Development Fund has been used to construct a proposed police station in the constituency. The construction is, however, not complete. When the construction is completed, the Constituency Development Fund Committee should inform the Ministry for inspection, to verify whether it meets the standards of police stations. The inspection will facilitate gazettement and posting of officers.

(c) An Officer Commanding Station and other officers will be posted to the station once it is declared ready for use.

Mr. Mbai: Mr. Temporary Deputy Speaker, Sir, I want to thank the Assistant Minister for the answer. However, I want to inform him that Masinga District has two divisions; one is Masinga which is served by Matuu Police Station from Yatta District and the other one is Kithinu which is served by Yatta Police Station from Yatta District.

I am the one who is constructing this police station and to me, the construction is complete. How can the Assistant Minister tell me that the construction works are not complete? Could the Assistant Minister find time to accompany me to Masinga and see for himself that we have completed the construction of that police station in consultation with the Machakos OCPD's office?

Unless the Assistant Minister wants---

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Mbai, that is clear enough.

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, I appreciate the effort made by the hon. Member to construct this police station. I do not want to challenge his information because he is the Member of Parliament for that area.

The information I have is that the building is 95 per cent complete with some aspects still incomplete, according to the report I have. Once the items listed here such as ceiling boards, painting, electricity connection, water connection, report office counter and rifle racks are done, I will then arrange because we also need police line housing units. I will also arrange to assist with accommodation of the officers.

However, I am quite willing to come and look at the facility myself and I am sure we ---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Assistant Minister! The hon. Member, through his CDF and the community have already set up that particular facility with 95 per cent of the work already complete. I think your Ministry should be appreciative that this constituency has put such a facility there and your Ministry can even proceed and complete it and then post your officers there. Actually, it is your responsibility to provide that facility there but Masinga has already constructed one for you.

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, I have already appreciated the efforts made by the hon. Member and very many other hon. Members in this position. I have said that I will also equally make my contribution. I do not mind visiting the place with my finance officers to see if we can finish the 5 per cent that is remaining.

The Temporary Deputy Speaker (Prof. Kaloki): Very well! Maybe then, complete it and then post officers there. Is that your undertaking?

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, I have already said in my answer that once that is done, we will do an inspection and then we will post---

The Temporary Deputy Speaker (Prof. Kaloki): Assistant Minister, who will do the 5 per cent?

Mr. Mbai: Mr. Temporary Deputy Speaker, Sir, while I agree with the Assistant Minister, we have done some of the items that he has mentioned here. We have already installed electricity at the police station. Unless the officer who was giving you the information misled you electricity is there. Masinga District does not have water. So, we do not have that facility. I am not asking the Assistant Minister to construct the police station. We are just asking for the officer to be posted.

The Temporary Deputy Speaker (Prof. Kaloki): Let me get one more and then the Assistant Minister can deal with it.

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, now that the Assistant Minister concedes that, indeed, a station has been built, that invites the next question. In Kisumu North District there is a whole OCPD, a very experienced person who has just been posted but there is no facility for him to work from. What is the policy of the Ministry in posting OCSs and OCPDs to ensure that they have facilities and they are properly housed?

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, the ideal situation is to post officers when all these facilities are in place such as quarters and also when vehicles are available. There has been considerable growth of the police service over the last five years. So, we do face a big challenge in providing facilities. I can also say that the Ministry was able to get substantial funds to acquire vehicles, being one of the facilities which are very critical. We are now in the middle of procurement for the vehicles since we got Kshs1.4 billion. The procurement is in process and when we get these vehicles we will give the officers the necessary facilities.

Mr. Mwangi: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has made an effort to explain the circumstances that have led to him not giving enough officers. He has not stated the role of the Ministry in putting up police stations and other facilities in the country. Most of the stations that are already in place have been put up through CDF.

Could the Assistant Minister tell this House whether there is a budget from his Ministry to put up these facilities in other parts of the country?

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, the little budget that there is, is not adequate to meet the needs of the whole country given that we have 288 divisions and only 178 OCPDs. So, we still have a shortfall.

In the last budget we got substantial funds for the purchase of vehicles but not adequate funding for police housing and police stations. We will still make efforts to provide this infrastructure progressively.

Mr. Nyammo: Mr. Temporary Deputy Speaker, Sir, I want to advise the Minister that we have had two police stations built, complete with quarters in Tetu Constituency. Tetu District is served by officers from Nyeri Town. We have reported this matter to the PPO Central Province.

He has visited the two stations but we do not appear to be having the police officers we built those facilities for. When are we likely to get those police officers?

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, I may not be up to date with that particular issue, but I will undertake to ensure that the required number of staff is sent to Tetu Constituency given the fact that we have had recent pass-outs of police officers and we are also in the middle of the recruitment exercise.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, Masinga Constituency is a district. It hosts one of the major dams in this region, leave alone Kenya but it has only a police post whose officers are posted from the Embu side while the other part of the district is served from Yatta. This affects the services being rendered to the residents of Yatta. Could the Assistant Minister ensure that there is adequate security because Masinga Dam is a major investment? That can be achieved by setting up a police station, as a matter of urgency.

Mr. Temporary Deputy Speaker (Prof. Kaloki): Mr. Assistant Minister, let us deal with hon. Mututho and then you can deal with those two questions.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, there is a point that hon. C. Kilonzo has put forward. At a time like this when we have all manner of problems arising from sabotage and other things, it will be very frightening for us to hear that you have only a police post in that particular place. Even a place like Gilgil whose police line was constructed in 1950 does not have an Officer Commanding Police Division (OCPD). Could the Assistant Minister appoint the acting OCPDs immediately so that we can have a force that really protects our people?

Mr. Temporary Deputy Speaker (Prof. Kaloki): Final question, hon. Mbai!

Mr. Mbai: Mr. Temporary Deputy Speaker, Sir, I plead with the Assistant Minister that he posts an OCPD in that district.

Mr. Temporary Deputy Speaker (Prof. Kaloki): All those questions are related. Mr. Assistant Minister, deal with them. That will be your final answer.

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, I will post an OCPD as soon as possible as hon. Mbai has requested. On hon. Mututho's issue, we occasionally face the challenge of staffing because you require gazetted officers for certain posts. These include Superintendent of Police and Senior Superintendent of Police. We will certainly take care of that problem as soon as they complete their management courses. As to the issue raised by hon. C. Kilonzo, I want to assure him that we will provide security, in addition to what we already have. For the sake of the rest of the hon. Members, I would like to say that, indeed, we have a police post at Masinga Dam - Kiamburi Police Post. We also have Masinga Patrol Base and Kikumini Police Patrol Base. In addition to that, we also have Administration Police (APs). We have 13 AP camps within that area. So, I just want to say that we are not completely exposed, but we will take action as per the hon. Member's request.

Mr. Temporary Deputy Speaker (Prof. Kaloki): Thank you, Mr. Assistant Minister. We will now go back to Capt. Wambugu's Question by Private Notice!

QUESTIONS BY PRIVATE NOTICE

REPATRIATION OF MS. LILLIAN NYAMBURA FROM SAUDI ARABIA

Mr. Wambugu: Mr. Temporary Deputy Speaker, Sir, for your information, this Question has been on the Order Paper for six months now. I am very concerned because Esther Muthoni's family has been living with a lot of fear because they think that there is a cover-up by the

Government. These people come from a place called “Gatunguru” in Njumbi Division. I beg your intervention in this matter so that it can be expedited.

The Temporary Deputy Speaker (Prof. Kaloki): Capt. Wambugu, ask your Question and then I will provide direction.

Mr. Wambugu: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Is the Minister aware that the remains of Ms. Esther Muthoni Ngarega (Passport No. A1746327) who died in Saudi Arabia three (3) months ago, have not been transported back to the country for burial?

(b) Is the Minister also aware that Ms. Lillian Nyambura, a sister to the deceased and working in Saudi Arabia is not allowed to communicate with her parents by her employer?

(c) What urgent measures is the Minister taking to ensure that Ms. Lillian is repatriated to the country and postmortem on the deceased is carried out and her remains brought back to the country?

The Temporary Deputy Speaker (Prof. Kaloki): Proceed, Mr. Assistant Minister.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Temporary Deputy Speaker, Sir, I totally agree with what hon. Wambugu has said. This matter has been brought to the House more than six times. I made a specific request to the Speaker in order for this matter to be sorted out once and for all. I think it makes sense for this matter to go back to the Ministry because some of the answers that we are having are inconsistent and not conclusive. I feel that we would be doing hon. Wambugu and the people who elected him a de-service if we do not conclusively sort out this matter. It is a weighty matter and we make a plea if we can be added maybe another ten days, then come with a finality to solve this problem and make sure that the answers that we give this House will be conclusive and that we will not go back to this Question again.

Mr. Temporary Deputy Speaker (Prof. Kaloki): Hon. Assistant Minister, the Question has been coming up and hon. Wambugu has been dealing with this matter for the last six months. Just be fair and take time now. Now you are requesting for an additional ten days. The Chair will direct that you try and deal with this matter within the ten days. You should come to this House and answer this Question raised by hon. Wambugu so that the family of Esther Muthoni Ngarega can move on with an assurance from the Government that you are listening to its concerns.

(Mr. Ethuro stood up in his place)

Hon. Ethuro, I have directed that the Assistant Minister should deal with this matter within ten days. So, please, do not take us back.

What is it, Mr. Ethuro?

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I stand guided. Indeed, I want to agree with you. In agreeing with you, the Assistant Minister has not explained why he did not do anything about the matter although the Question has been appearing on the Order Paper for about six times. So, what confidence is he inspiring to this House, that in the next ten days, he will still make a difference? That is the question the Assistant Minister needs to address.

Mr. Temporary Deputy Speaker (Prof. Kaloki): Order! Hon. Wambugu, are you in agreement with the Assistant Minister that he can seek leave and take the ten days, so that he can deal with this matter within that period?

Mr. Wambugu: Mr. Temporary Deputy Speaker, Sir, I do agree with the Assistant Minister because he is the one who has got the facilities to do that. However, if I do remember very clearly, before we adjourned for the last recess, the Assistant Minister was ordered by the Speaker to use all means – even to travel to Saudi Arabia – to get all the information about this case. But nothing has been reported to this House even after it resumed. The family is very confused because the postmortem report that they were given was written in Arabic and the age of the deceased is completely wrong.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Wambugu, I note your concerns. He will not be able to deal with this matter. That is why he is requesting for ten days so that he can conclude the matter. Mr. Assistant Minister, are you confirming that?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Temporary Deputy Speaker, Sir, I assure the House that the report that will come to this House will be conclusive.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. Thank you, Mr. Assistant Minister.

(Question deferred)

The Temporary Deputy Speaker (Prof. Kaloki): Next Question by hon. Boaz Kaino.

SALE OF IMMOVABLE PROPERTIES/ASSETS BY PYRETHRUM BOARD OF KENYA

(Mr. Kaino) to ask the Minister for Agriculture:-

(a) Is the Minister aware that the Pyrethrum Board of Kenya has advertised the selling of immovable properties/assets and what is the rationale of the Board's intention to dispose of the assets?

(b) Is the Minister further aware that the Board is not a State corporation and is fully owned by the pyrethrum farmers in the country?

(c) How much money has the Government set aside in the 2012/13 Financial Year to pay pyrethrum farmers their outstanding arrears for the produce they delivered to the Board?

The Temporary Deputy Speaker (Prof. Kaloki): Is Mr. Kaino not here? His Question is dropped.

(Question dropped)

ORAL ANSWERS TO QUESTIONS

The Temporary Deputy Speaker (Prof. Kaloki): Next Question by hon. Chachu.

Question No.1810

NON-ISSUANCE OF IDENTITY CARDS TO YOUTHS IN ILLERET LOCATION

Mr. Chachu asked the Minister of State for Immigration and Registration of Persons:-

(a) whether he is aware that registration of persons is not conducted in the vast North Horr Constituency;

(b) how many people have been issued with national identity cards in the last two years in the constituency; and,

(c) why the Ministry has not undertaken the registration exercise in Illeret Location for the last two years and when a registrar of persons will be posted to North Horr district.

The Temporary Deputy Speaker (Prof. Kaloki): Is the Minister of State for Immigration and Registration of Persons not here? Hon. Chachu, I direct that we defer this Question to this coming Thursday so that the matter can be communicated to him. Deputy Leader of Government, could you give the undertaking that the Minister will be here on Thursday to deal with this Question?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, we will communicate.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. That Question will be deferred to next Thursday.

(Question deferred)

Next Question by Mr. Kabogo.

Question No.1783

EXTRADITION OF KENYANS ARRESTED IN
MOZAMBIQUE TO TANZANIA BY KENYAN POLICE

Mr. Kabogo asked the Attorney-General:-

(a) under what circumstances 12 Kenyan businessmen Messrs. Peter Giruka Mburu, David Ngugi Mburu, Simon Gathinji Kariuki, Michael Mbanya Wathigo, Patrick Muthée Miriithi, Boniface Mwangi Mburu, John Odhiambo Odongo, Gabriel Kung'u Kariuki, Jim Maina Njoroge, Wilfred Onyango Nganyi, Simion Ndung'u Kambuthi and Peter Mahera Kariba were arrested in Mozambique, handed over to Tanzania Police by the Kenya Police delegation under the watch of J. Nyaga Reche (SSP) and former Nairobi Area PCIO, Sammy Githui on 16th December, 2005;

(b) whether he is aware that two of the above mentioned persons Messrs. John Odhiambo Odongo and Peter Mahera Kariba, have since died in Karanga Prison in Moshi, Tanzania, as a result of injuries from torture; and,

(c) whether he could undertake to extradite the remaining ten Kenyans who are languishing in a foreign jail, to face trial in Kenya, if there are any charges against them.

Mr. Temporary Deputy Speaker, Sir, this Question is coming now for the eighth time.

The Temporary Deputy Speaker (Prof. Kaloki): Is the Attorney-General not here? Deputy Leader of Government Business, could you give an undertaking on this particular Question. It will come on Thursday. You can communicate with the Attorney-General to deal with this matter?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, we will communicate. I am aware that the Attorney-General is in a meeting this afternoon. But he might actually be coming here later on but we will communicate with him so that it comes up on Thursday.

Mr. Kabogo: On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard the Minister say that the Attorney-General is in a meeting and he will be coming here later. I do not know whether he is trying to tell the House that it can wait for him to come and answer after 4 o'clock. This Question is about Kenyans who are languishing in remand in Tanzania and the last time the Attorney-General answered this Question, he gave a very misleading answer that they have been jailed. I am not going into the merits of the case. I just want to use the Chair to request the Attorney-General to understand that those people are not jailed. They were in court yesterday. They are supposed to go again to court tomorrow. So, he should expedite the process of bringing those Kenyans to answer to our courts of justice here, instead of wasting time by asking questions. You know when an hon. Member gets his Question on the Order Paper, it has queued for long. That denies me an opportunity to have another Question hoping that the Attorney-General or the Minister will be there. So, really, instead of this Minister throwing hands the way he is doing, he should be listening.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Kabogo! You have done well. Hon. Kimunya, you can see that hon. Kabogo has a Question that he has to deal with and you are the Deputy Leader of Government Business. Could you assure him that this Thursday, the Attorney-General will be here to deal with this matter since it is a weighty one?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, once you have given direction and we have agreed, I thought the matter was supposed to rest there. It is up to me to get the Attorney-General to be here on Thursday to respond to the Question.

The Temporary Deputy Speaker (Prof. Kaloki): You said that he is in a meeting and he is coming here later?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I mentioned that he is in a meeting and the Attorney-General does not have an assistant to be in the House. But on Thursday, we will undertake to have the Attorney-General to answer this Question.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, we have to rest that matter there.

(Question deferred)

Next Question by Mr. Keynan.

Question No.1774

MARKETING OF MUTTON FROM NORTHERN
KENYA TO NORTH AFRICA/MIDDLE EAST

The Temporary Deputy Speaker (Prof. Kaloki): Is Mr. Keynan still not here? His Question is dropped.

(Question dropped)

Next Question by Mr. Kiptanui.

Question No.1640

CAUSES OF POWER BLACKOUTS IN METKEI/CHEPKORIO DIVISIONS

Mr. Kiptanui asked the Minister for Energy:-

(a) whether he is aware that there are frequent power blackouts in Metkei Division and part of Chepkorio Division in Keiyo South Constituency?

(b) what the cause of the blackouts is; and,

(c) what measures he will take to ensure that the problem is solved.

The Temporary Deputy Speaker (Prof. Kaloki): Is the Minister for Energy still not here? Mr. Kimunya, could you give an undertaking that the Minister for Energy will come and answer this Question this coming Thursday?

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. Last week, I brought a number of Questions to the same Ministry and the Minister did not appear until last Thursday. I can see that this week, he is continuing with the same bad habit. I was just wondering whether the Deputy Leader of Government Business can take the responsibility of answering or alternatively, that Ministers who cannot get drivers for their buses can ask for the appointing authority to relieve them so that they can concentrate on driving their buses. That way, we will get an alternative person to do the business of the House.

(Laughter)

Mr. C. Kilonzo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I understand that the Minister is going through painful moments having been left out of this marriage, which is a conspiracy by the Deputy Leader of Government Business who is with us here. But is it in order, no matter how much the Minister for Energy is frustrated with the *Mbus*, not to come to the House for two weeks consecutively? Could he consider being relieved of his duties?

(Laughter)

The Assistant Minister for Agriculture (Mr. Mbiuki): On a point of information, Mr. Temporary Deputy Speaker, Sir. I want to confirm that there are consultations in Government so that I can take over that position of the Minister for Energy because hon. Kiraitu Murungi has given up.

(Laughter)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Kimunya, could you give an undertaking that the Minister will be here to deal with the matter?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, if we leave the political sideshows out of this matter, I think the most important matter is that we have undertaken that the answer will be provided in this House on Thursday. So, I would urge that the House ignores all the other political sideshows and wait for Thursday.

The Temporary Deputy Speaker (Prof. Kaloki): You have done well, Mr. Kimunya.

(Question deferred)

POINT OF ORDER

MISREPORTING BY NEWSPAPERS

Mr. Kabogo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to rise on a point of order under the Order that you want to close. We have situations here where when we ask Questions and we give our input, we have newspapers that keep reporting and doing things that have not been said in the House. I want to bring to your attention the fact that on Wednesday, 21st November, 2012, I had asked a Question about a lady who was held captive in Saudi Arabia. I reported that I had requested for a Diplomatic Passport and the Minister for Foreign Affairs had not issued it yet the *Daily Nation* on Thursday, 22nd November, had a headline: “Kabogo denied visa for Saudi Arabia”. This information is being used by politicians who want to portray me in bad light that I have been denied a visa yet if you go to the HANSARD, and I want to quote page 3, it indicates that I requested for a Diplomatic Passport “to be able to go there worried that with an ordinary Passport I will get into trouble”. So, I want the indulgence of the Chair on what it is that hon. Members like me would do in a situation like this where a newspaper that is circulating in the entire Republic circulates falsehood and innuendos; things that are of no value to anyone except to political fellows. I am requesting the Chair to protect me as an hon. Member. My contributions in the House are in the HANSARD and I expect that this paper should either be asked to apologize in the same manner that it had put this story or be barred from covering issues that are happening in the House. I request your indulgence.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Just on the same issue, I would request that as you give us guidance on the issue raised by hon. Kabogo, as you may be aware, yesterday *The Standard* on its front page named many Members of Parliament to the extent that they alleged that we are fearing that we will not be allowed to run for our parliamentary seats or otherwise. I have no case against me in court. Which Kenyan does not know that the case against hon. Ethuro and hon. Nanok was dismissed only last week? Is it not the height of irresponsibility for a national newspaper like *The Standard* to go maligning Members of Parliament at a time when people need their good names as they go back to campaign? You need to protect us because I am getting a lot of phone calls. If I am the one in court or took somebody to court, how can that stop me or bar me from contesting for a public office? The newspaper is also aware that even the cases against hon. Uhuru and hon. Ruto are in court and they shall be determined in good time for us to go to elections. Why must we entertain irresponsible journalism in our country? I beg that you find these newspapers at fault and reprimand them because I do not think they are above the law.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I want to thank the two speakers before for highlighting this particular matter. I am one of the aggrieved parties. All of you know that we did not even take the plea on the basis of our responsibilities in this House. The newspapers keep giving out this information as if we have already been convicted. They should know that even if a conviction was sustained, as long as it is less than six months, you should be allowed to run. So, this kind of business that seems to be targeting politicians in particular, I think the House must protect us according to the House Broadcasting Rules.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, I would like to inform my colleagues that those were just mere speculations by the media. The media cannot come up with their laws and the Members should know that negative publicity is positive publicity. So let them write what they want to write.

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, as much as I respect the freedom of Press and the freedom for Kenyans to access certain information, I feel that this freedom must be exercised responsibly. Whatever newspapers carry creates perceptions across the country considering that these are national papers that are read across the country. For a weak politician or a weak Kenyan, depending on the material content of the story, those stories have been found to bring people down. Without gagging the media, we must send very strong signals to the media houses especially at this time that the country is going for an election that whatever content or whatever they do must be within what is acceptable because we cannot condone character assassination. We need a clear guidance from your end because this is really a big problem to us and the country.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members! The Chair will consider your concerns and at an appropriate time will come with an appropriate answer to deal with all the concerns that you have raised pertaining to the media houses. Let us rest that matter there until a later date when all these matters will be considered. Definitely, the Chair will deal with that.

Next Order!

MINISTERIAL STATEMENTS

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I wish to make two Statements. One is with regard to the diaspora vote that you had previously requested for. The second Statement is with regard to the ongoing voter registration exercise, as requested by Dr. Khalwale. There were further clarifications and with your permission, I wish to seek your direction that I be allowed to deliver both. The first one on the Diaspora is very brief.

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

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

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

RIGHT TO VOTE BY KENYANS IN DIASPORA

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, to start with the one on the Diaspora, Prof. Kaloki requested for a Ministerial Statement on the arrangements made to ensure the right by Kenyans living outside Kenya to register and vote in the next General Elections is observed. The right to vote is a fundamental human right enshrined in the Constitution and other international

and regional human rights instruments as ratified or acceded to by Kenya. It is also one of the critical components of a democratic state. Article 38(3) of the Constitution guarantees every adult citizen the right to be registered as a voter and to vote by secret ballot in any election or referendum. This has to be without unreasonable restrictions. Further, Article 82(1)(e) requires Parliament to enact legislation to provide for the progressive registration of citizens residing outside Kenya and the progressive realization of their right to vote. In this regard, Article 22(1)(b) and (c) of the Kenya Citizenship and Immigration Act grants every Kenyan citizen the right to be registered as a voter, to vote or to seek an elective position. Section 109(1)(b) of the Elections Act, 2011, empowers the IEBC to make regulations to prescribe the procedures for registration and issuance of the voters' cards and to provide for progressive registration of Kenyan citizens living outside Kenya.

Section 3(1) of the same Act stipulates that an adult citizen shall exercise the right to vote as specified in Article 38(3) of the Constitution. More important, Article 20 of the Constitution directs that every person must enjoy the right and fundamental freedom in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom. The Constitution wants the state to ensure the enjoyment of rights and fundamental freedoms taking into account the application of the principle of equality, non-discrimination and equity.

Mr. Temporary Deputy Speaker, Sir, today I am unfortunately the bearer of bad news because many Kenyans in the Diaspora had looked forward to having each of them registered as a voter to participate in the historic general election that is ahead of us. Whereas the Government is committed to ensuring the realization of this right and has even put in place the constitutional and legal framework, including the election regulations that this House passed recently, but due to logistical, financial and time constraints, it is impossible to have this constitutional right realized immediately. The Government has therefore decided that the Independent Electoral and Boundaries Commission (IEBC) be given enough time to make the necessary preparations to ensure Kenyans living in the Diaspora are able to vote in the 2017 general elections. We are all aware of the challenges IEBC is currently facing even in ensuring that all Kenyans are able to register as voters within 30 days. These are challenges that we can see are rising and they are subject of the question asked by Dr. Khalwale. I will be explaining to you shortly those challenges as they are arising and how IEBC is thriving to address them.

Mr. Temporary Deputy Speaker, Sir, the High Court has also had the opportunity to consider this matter because Kenyans in the Diaspora had already challenged the Government in this case. It is High Court Civil Case No.331 of 2012. On 15th November, 2012 in a landmark ruling delivered by Justice David Majanja, the High Court found that although the Constitution under Article 38(iii) guarantees all Kenyan citizens the right to vote, that right is not absolute and is not realizable instantaneously but progressively and it can also be subject to restrictions. I have a copy of the judgement which I will be tabling shortly.

Mr. Temporary Deputy Speaker, Sir, it is, therefore, the position of the Government that the IEBC be given sufficient time and whereas we have had the perception that we have over Kshs3 million Kenyans in the Diaspora, after sometime, the Ministry of Foreign Affairs established that Kenyans who have officially registered with their embassies and High Commissions near them are roughly about 130,000 in all the 52 Kenyan embassies abroad. Officially, the estimated figure is close to Kshs700,000. We are, therefore, asking that in the meantime, it will be necessary to conduct a census first of all to establish exactly how many Kenyans reside outside Kenya in order to facilitate the expected voter registration and subsequent voting as stated above. This is the position that the Government has taken and it is a

decision that was made in the Cabinet only last Thursday. Although we had already put in place election regulations, it might not take effect immediately. We will ask Kenyans who are able to come home to register for the coming general elections to do so but IEBC in the meantime, will proceed to put in place the necessary arrangement.

That is as far as the first statement is concerned. I would ask for direction if we could go to the second one then we can take questions relating to both or we do one by one.

The Temporary Deputy Speaker (Mr. Ethuro): Minister, one at a time. I also want to guide hon. Members that you have a Ministerial Statement that if you want to make an intervention to the Statement before us, put it under intervention then I will be able to know who is interested in what.

I can see there are three interventions excluding Prof. Kaloki. Let us have Prof. Kaloki first then Mrs. Odhiambo-Mabona, Mr. Oyugi and Mr. Mututho. You will have one clarification for each, except for Prof. Kaloki who could have a bit more.

Ms. Karua will have the last bite.

Prof. Kaloki: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister, Mr. Wamalwa for the answer. This Ministerial Statement was as a result of Kenyans living outside this country willing to participate in this particular general election. If we go by the Minister's Statement, it looks like the Ministry is not prepared while we know that we have the right technology in place at the moment.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Prof. Kaloki, just seek clarifications. I am sure the Minister has said as much; they are ill-prepared.

Prof. Kaloki: Minister, with available technology at the moment, could you consider putting up voting stations in particular areas so that Kenyans in the Diaspora can participate in the general election?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, first of all, I want to thank the Minister for the Ministerial Statement. In the Statement, he indicated that because of various challenges, they are not able to ensure that the Diaspora votes. What I would like him to clarify, because he is also ready to consider that the Constitution talks about this right being progressive--- I can see that we have been playing around with words even where the Constitution is clear, like the women's one-third gender rule is not progressive but we now want to make progress and where it is progressive, we want to make it retrogressive. What I would want the Minister to explain is; when you talk about "progressive", what does it mean for the Government? "Progressive" means that you are starting with a number and progressing but you cannot start with a zero and say that it is progressive. Zero is not progressive. Could the Minister tell us what numbers are put towards the "progressive" because zero is not?

Mr. Oyugi: Mr. Temporary Deputy Speaker, Sir, I would like to pick from my very learned sister, Mrs. Odhiambo-Mabona. Whereas I would like to thank the Minister for the Ministerial Statement, my rudimentary understanding of the law and human rights to that extent does not make civic and political rights progressive. The only rights I appreciate could be progressively realized are economic and cultural rights but as he still ponders about that, I would like to ask the Minister whether this is a particular ploy---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Oyugi! We are not asking for your rudimentary understanding, interrogate the Minister on his Statement.

Mr. Oyugi: Mr. Temporary Deputy Speaker, Sir, I would like to ask the Minister whether this is a ploy not to have the Diaspora vote and a ploy to delay the next general

elections. I think a member of the Diaspora could actually go to court for their rights being violated. Is this then a ploy to delay the next general election?

Mr. Mututho: On a point of order, Mr. Temporary Deputy Speaker, Sir. I seek your indulgence. While listening to the Minister, I got perturbed by the fact that he does not know the identity of the 3 million Kenyans out there. Any Kenyan abroad travelled out with a passport which is backed by a hard copy of fingerprints and all the biometric details that we require. If truly we need to capture their biometric details, we can scan the hard copy documents that we have here. They can vote from wherever they want to vote using the biometric details.

The other point that disturbs me immensely is that the people in the Diaspora - 3 million - are our ambassadors. They have seen good governance wherever they are. They are the kind of people who will now make sure that we have a President who will steer this country to greater heights. Compared with some of the voters we have, these people are our champions in terms of setting up benchmarks for elections. Three million votes can make a difference between us having a President---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mututho! Seek your clarification.

Mr. Mututho: Is the Minister in order to rise in this House and tell the nation that they do not have data on their biometrics on the 3 million Kenyans abroad and yet they were issued with passports from this country?

Ms. Karua: On a point of order, Mr. Temporary Deputy Speaker, Sir. You will note that the Government's position is coming after this House laboured to pass rules relating to Diaspora voting. It is coming after the biometric voter registration kits (BVR) have arrived and after registration of voters has commenced countrywide, but not in the Diaspora and after the IEBC has set aside - I am told - 47 kits for the Diaspora. What informed the Government's decision at the eleventh hour, and does this not amount to interference with the IEBC instead of being a facilitator to the electoral body, he is now obstructing registration of the Diaspora?

The Temporary Deputy Speaker (Mr. Ethuro): I had said that hon. Karua would be the last but I can see three other requests. This matter being important - one of them being the Chairman of the Departmental Committee on Justice and Legal Affairs - I will allow it. I will allow hon. Mureithi, hon. Midiwo and hon. Baiya will come last.

Mr. Mureithi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to ask the Minister for Justice, National Cohesion and Constitutional Affairs this question: When we were doing the campaigns for the new Constitution we had a lot of input from the Diaspora. Why has the Cabinet sat and not even consulted the Diaspora with respect to elections? Will this not be a disincentive for our people who live in foreign land? They will feel that the Government will leave them out in key decision-making. In future, they might not send funds to this country the way they have been doing in the past.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Let me, first, thank the Minister because he has been very brave of late. I want to applaud him for that. What the Minister has done is the right thing. I want to tell him that as things stand today, there is no other way of realizing this taking into account the integrity of the process. It is good that we have been telling out colleagues in the Diaspora that we will realize this but it involves money. However, this is not the first country to try to get the Diaspora to vote. I would like the Minister to tell us or commit that this country will carry out a thorough search in countries--- Even if you go to Israel, you will see that people vote but they have put it in law that they register but you vote at home because of integrity. How will we be sure that if we take the BVR kits to

Washington DC, Nigerians will not register to vote as Kenyans? How will we be sure that if we give somebody a right in Los Angeles, somebody in Alaska will not complain if we are talking about universal rights? I want the Minister to commit or, at least, tell us what the Government will do in terms of research so that we do not do something because we want to politically please people?

Mr. Baiya: Thank you, Mr. Temporary Deputy Speaker, Sir. I want to say that this Government does not seem to take the new constitutional dispensation seriously. If a right has been conferred to Kenyans in the Diaspora as it was done by the Constitution, the Government does not have an option but to demonstrate an attempt to comply with the Constitution. Kenyans in the Diaspora are key stakeholders as far as this country is concerned. They remit very substantial resources and they have an interest in the way this country is managed.

Can the Government come clear and state why it has taken such a retrogressive position even to an extent of not allowing voting in embassies and consulates? Why can they not do that? It is very regrettable that they had to wait until the last minute to lock the door on the Diaspora.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Thank you, Mr. Temporary Deputy Speaker, Sir. When I rose to speak, I said that I was a bearer of sad news because we have been out there and we have assured Kenyans in the Diaspora that they will participate in the historic General Election.

I know that His Excellency the Vice-President and Minister for Home Affairs has toured several countries in Europe. I know that the Prime Minister has done so as Ministers have. Our desire and assurance to Kenyans out there has been that they will participate in the General Election. However, the integrity or the credibility of an election starts with the integrity of the voters' register. As it is now, with the tight timelines that the IEBC has and the delay in the delivery of the BVR kits; even ensuring that we have all the 18 million Kenyans registered before 19th December is a challenge. Everything must be done. Shortly, I will be tabling the figures of registration in every constituency. I will be asking hon. Members to go out to their constituencies to mobilize their constituents to come out and register as voters. The voter turnout as of yesterday, after one week, is still very low. There are serious challenges, even locally on the 18 million Kenyans.

What hon. Mututho asked and which I need to clarify to him is that we do not have 3 million Kenyans out there. This has been a perception that has been there. The registered Kenyans living outside our borders are about 130,000. There are less than 1 million Kenyans out there. So, 3 million has been a perception and as part of the progressive realization of this right, we will be, as hon. Millie asked, conducting a census in all the countries.

Mr. Mututho: On a point of order, Mr. Temporary Deputy Speaker, Sir. I would hate to challenge my friend, the Minister on this aspect. However, he should know that even a place like Boston, there is a vernacular radio station, Jambonet, which has a subscription of 100,000 people. These people listen to presentations in Kikuyu. That is in Boston in the USA.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Mututho! If you really wanted to challenge the Minister, you should have produced evidence and not your own opinion.

Proceed, Mr. Minister. Disregard that!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Thank you, Mr. Temporary Deputy Speaker, Sir. Hon. Mututho has sought in his clarification why we do not know the number of all Kenyans who travel out and yet they have passports. There are many Kenyans who travel out of this country but for reason best known to

themselves, do not register with our embassies or consulates. This is an issue that needs to be addressed.

Kenyan out there should register with the closest embassy or High Commission, so that we know how many there are out there. Once we have done that we will start the registration because already we have the rules in place. After carrying out the census to establish how many Kenyans are there, we will prepare them to participate in the next general election. For now the Government is very committed to ensure that these Kenyans participate. It is not that the Government is being retrogressive in its thinking it is just a question of practicability. With the time left and the challenges the IEBC is facing even locally, can we really expect them to carry out voter registration all over the world? Kenyans out there are also challenging. If you are saying that we only register in the few High Commissions or embassies, what about Kenyans who are living in countries where they do not have an embassy or High Commission nearby? These are all issues that need proper preparation, logistical preparation and support to be able to effect the realization of this right. So, it is really the practicability and it is going to be achieved progressively.

Mr. Temporary Deputy Speaker, Sir, we have suggested that we can start with certain parts out there. We could even start with the Intergovernmental Authority on Development (IGAD) region, the East African Community region or Europe, but how do you allow Kenyans living in London to vote and you leave out Kenyans living in New York? It is a question that needs proper preparation before we go out; let us get our house in order within this country. Let us get all the 18 million registered. Let us prepare properly to avert what happened in 2007/2008. That is all we are saying; we are not saying they will be denied this right. There will be progress from this year to the next until we allow them to participate in the next general election.

Mr. Temporary Deputy Speaker, Sir, hon. Karua asked why the decision is belated---

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. Listening to the hon. Minister, probably, we should go back to the Chair to make a determination whether the Cabinet can take away constitutional right of one Kenyan or more Kenyans without even reference to Parliament and to the citizens of Kenya. If this is the case, before we give the country the impression that Parliament is supporting Cabinet on the fact that they are going to deny Kenyans their constitutional right, probably the Chair needs to consider and send the Minister back to Cabinet, so that the Cabinet can beg this House to support them. Most of us will be denying them that wish. We protect our Constitution.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Khalwale! You have a point except the procedure by which it should be done. Here is the Minister communicating to you Government position on a matter which we have raised; you are at liberty to use other avenues to get determination from the Chair.

Proceed, Minister.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, perhaps hon. Khalwale did not get me.

There was a decision in court. Already the Diaspora had challenged the Government as to why it had not implemented or effected the realization of this right. That decision has already been made in High Court Civil Case No.331 of 2012. When you look at the elaborate decision by the court, it also answers the questions by hon. Neto and hon. Odhiambo-Mabona about the progressive approach.

Hon. Neto said realization of political rights cannot be progressive. The Constitution says under Article 82(1)(e) that it is progressive and requires Parliament to enact legislation to

provide for the progressive registration of citizens outside Kenya, and the progressive realization of the right to vote. This is our Constitution under Article 82.

Under Section 109 of the Elections Act, Parliament is also allowed to approve regulations made by the IEBC; it is allowed to make regulations to prescribe procedures for registration and issuance of ID cards and voter's card, and to provide for progressive realization of these rights. So, both in the Constitution and in the Election Act, the principle of progressiveness is embraced. What the Government is saying really--- The court described what "progressive" means and one Member did ask about this.

Mr. Temporary Deputy Speaker, Sir, the concept of progressive realization constitutes recognition of the fact that full realization of all economic, social and cultural rights will generally not be achieved in a short period of time. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the covenant should not be misinterpreted as depriving the obligation of all meaningful content. So, what we are talking about is really the practicability. The Government is willing. They say the State is willing but the procedure is weak; we are facing constraints and challenges locally, let us get it right locally for the 18 million Kenyans. We have heard what happened in 2007/2008; we can look at the rights of the other 700,000 or so Kenyans living outside. In the meantime, let us go out. Let us engage, let us conduct our census. Let us put in place mechanisms to ensure the realization of these rights; this will be done progressively. There was a finding by the High Court; it is what informed the decision of the Cabinet. But this does not mean all is lost. Why it was belated was because we were trying everything to empower IEBC. We have given them more money. We have given them new equipment. We have given them all the support; even where they have faltered, the Government has stepped in to hold their hand. There was a Government to Government arrangement that was entered into with the Governments of Canada and France. The Government is giving the IEBC full support and we have full confidence in this institution; but for now----

Ms. Karua: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to say they are giving support to IEBC when he has just confessed that the Government made the decision, not the IEBC? The Government made a decision that was informed by a court decision.

Is it in order for the Government to make a decision that is constitutionally reserved for the IEBC? Some of us know that the IEBC was actually ready for Diaspora registration and had set aside 47 biometric kits for that.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, the mandate to conduct an election under our Constitution, Article 88, lies with the IEBC and the IEBC is up to the task. It was set to conduct this election both locally and internationally. But the responsibility to facilitate it logistically and otherwise is with the Government. This is what the Government has been doing in consultation with the IEBC; its decision was informed by the decision of the High Court; it is really an issue of practicability. It might not be a right achievable instantaneously; it is a right that we are saying will be achieved progressively. We urge Members to understand this.

As we come to the issue of elections, in the second statement---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Minister! You seem to have invited various points of order. Hon. Members, let us be brief; we will have hon. C. Kilonzo, hon. Odhiambo-Mabona and then hon. Dr. Khalwale; one point and I will rule you out of order if you go beyond that.

Mr. C. Kilonzo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am wondering whether the Minister is in order to purport that it is the responsibility of Government to decide where elections will take place and where they should not take place, bearing in mind that if the Government, indeed, saw a problem they should have raised a red flag to the Constitutional Implementation Oversight Committee (CIOC) of Parliament. We do not forget that the particular Minister is a Presidential candidate; he has said he has gone round. Who knows? Perhaps, he realized that the Diaspora was hostile to him and came back to his office to ensure that they do not vote!

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to mislead the House about the meaning of the word “progressive” after reading to us what the court stated? If I heard him correctly, the court said something to the extent that it does not mean denying the substance of that right. “Substance” cannot be logistical issues, like putting logistical issues over a period of seven years is not substance. Is he in order to mislead the House about the meaning of the word “progressive”? I am concerned especially because of the one-third gender rule. If he starts misbehaving on this, he will misbehave on the gender rule.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, the first four general elections after the multiparty system were bogged down by only one cry - and I know many Members in this House know what some of us went through because of one thing. The then Electoral Commission was not perceived to be independent; that it was under the control of the Government. In fact, we went on and changed the name of the commission from the “Electoral Commission of Kenya (ECK)” to the “Independent Electoral and Boundaries Commission (IEBC)”. Is the Minister telling us that the new commission has now lost its independence to the extent that whereas we forgave them when you attempted to procure on behalf of the IEBC, it went into your heads; you have gone on now and arrogated to yourselves the power as the Government to identify polling stations? The polling stations in the embassies are simply like a polling station in Makhokho in Ikolomani. It is identified by the IEBC. Where on earth did you get the power to identify polling stations by telling the IEBC, “No, you cannot vote in Kampala. You cannot vote in Washington”?

Mr. Temporary Deputy Speaker, Sir, this is a matter which is very serious. If IEBC has lost its independence, then we might as well admit that the President and the Prime Minister have already decided who will be the President of Kenya.

The Temporary Deputy Speaker (Mr. Ethuro): Minister, proceed! The Chair cannot --- But I think Dr. Khalwale has---

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I think Dr. Khalwale probably did not get me right. What was presented before the Cabinet was really from IEBC; there were suggestions that “progressively” they could start in one area, go to the other area. They could start with the IGAD region or EAC, but they have legal and logistical challenges. The role of the Government--- I think we will want Members to have the benefit of going through this judgment.

The hon. Judge, in addressing part of what you have raised, said this under paragraph 39:-
“The core obligation (that is of the Government) is to take appropriate legal, administrative and policy measures to realize the rights that are protected under the Constitution.”

So, it cannot be IEBC to do the policy, the legislation and all that. It is the responsibility of the Government. This requirement, the hon. Judge goes on to say, “is to be assessed in the light of

the circumstances, the resources available and time.” These are the constraints I am referring to as I speak. It is something that is assessed on a time basis based on the timelines, the constraints we are facing and it is just not practical now. That is what we are saying.

Mr. Temporary Deputy Speaker, Sir, it is not that we are denying the other---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Minister! You may conclude so that you move to the next Statement.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I just want to thank Members and assure them that everything will be done to ensure the progressive realization of this right by Kenyan citizens in the Diaspora.

Thank you.

Mr. Temporary Deputy Speaker, Sir, I did not want to read the whole judgment. If hon. Millie reads the judgment, it is almost a whole page where the judge is addressing the issue.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Minister! Now you are responding to what?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Thank you Mr. Temporary Deputy Speaker, Sir. I will table the judgment.

Thank you.

(Mr. Wamalwa laid the document on the Table)

DENIAL OF OPPORTUNITY TO REGISTER AS A VOTER
DUE TO RELIGIOUS DRESS

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, the second issue is a Ministerial Statement regarding a request made by Dr. Bonnie Khalwale, the Member for Ikolomani on 20th of November, 2012.

Dr. Khalwale did request for a clarification as to whether we are aware that thousands of youths currently holding waiting cards otherwise called *Nusu Kipande* are unable to be listed as voters for the forthcoming general elections, whether we are aware that many elderly voters who have the first generation identity cards are being denied an opportunity to register as voters and whether we are aware that a section of Christians, for example the *Akorinos*, members of the Holy Spirit otherwise called *Avakamburi* from his area and the nuns of the catholic church are being denied registration unless they agree to strip their heads bare for photo sessions.

Finally, Dr. Khalwale asked us to ensure that Kenyans will not be denied their constitutional right to vote.

After that, Mr. Ogindo sought for further clarifications. Mrs. Odhiambo-Mabona also sought further clarifications. Dr. Nuh, Mr. Shakeel, Mr. Chanzu, Mr. Ochieng’ and Prof. Kaloki also sought clarification with regard to the Diaspora vote that I have just addressed. Mr. Olago, Mr. Ethuro, Eng. Gumbo, Capt. Wambugu, Mr. Pesa, Mr. Koech and Mr. Musila had some information for me which I received. The information was about the challenges facing, particularly, Makueni and Kitui counties.

Mr. Temporary Deputy Speaker, Sir, before we proceeded on recess, I issued a Statement in this House as to the state of preparedness for the general elections scheduled for 4th March, 2013 which had been requested by my friend Mr. Benjamin Langat, Member of Parliament for

Ainamoi and Mr. Sirat of Wajir South. I indicated then that the IEBC was set to commence voter registration in November for a period of 30 days using 15,000 BVR kits which have a capacity of registering 50 persons per day in the 14,050 wards across the country with a target of registering 18 million Kenyans by the 18th of December.

That exercise kicked off on 19th November 2012 with the official launch presided over by His Excellency the President at the Kenyatta International Conference Centre (KICC) and the exercise is ongoing. However, it is true that with the new technology being introduced in this country for the first time, with belated delivery of the kits and the tight time constraints, the exercise has had several challenges in different parts of the county. As they have arisen, IEBC has been up to the task in being able to respond immediately. I want to assure hon. Members that IEBC is, indeed, up to the task and that although we are facing those challenges, they are not insurmountable. We should be able to deal with them.

Mr. Temporary Deputy Speaker, Sir, to respond specifically to the issues raised, because they were coming from several Members but relating to the first issue of ID cards; the primary document needed for registration as a voter is the national ID or a valid national passport as provided in Section 5(3) of Elections Act (No.24 of 2011) which states that:-

“Any citizen of Kenya who has attained the age of eighteen years as evidenced by either a national identity card or a Kenyan passport and whose name is not in the register of voters shall be registered as a voter upon application, in the prescribed manner, to the Commission.”

Mr. Temporary Deputy Speaker, Sir, there has been an issue of the shortage or the delay in the issuance of ID cards. There has been an issue of many young people who are still holding what Dr. Khalwale called the *Nusu Vipande* or waiting cards. Unfortunately, because of the requirement of the law, those waiting cards cannot be used for purposes of registration.

It is an issue that came up and I think it was the subject of a court case that one Member or two hon. Members in this House were actually pursuing. But as of now, we must follow the law. There are security features that an ID card has that the waiting card does not have. Therefore, we will go by that.

The Minister of State for Immigration and Registration of Persons has assured this House time and again that they are fast-tracking the issuance of ID cards. We believe that every Kenyan with a waiting card should be able to get an ID card and to vote before the exercise is over.

Mr. Temporary Deputy Speaker, Sir, on the issue of old generation ID cards, I recently visited Kakamega County and there are very many elderly voters who are still holding the old ID cards. They were actually being turned away. But after consultations with the Ministry of State for Immigration and Registration of Persons and the IEBC, it was agreed that anyone with an ID card, whether first generation or the new one should be allowed to register. So, that should enable us to capture many old voters who are still keeping their old ID cards.

As to the removal of veils, turbans for the *Akorinos* and other head covers during registration, while acknowledging the right to freedom of conscience, religion, thought, belief and opinion as stipulated under Article 32(1) of the Constitution, the Commission has opted to use a full range of biometric perimeters to conduct registration where fingerprints and a photo of applicants are taken. This will reduce election fraud and, at the same time, considerably accelerate the voter identification process.

Applicants who wear headgear for religious reasons may continue to do so during the registration. This is because once your fingerprints are taken, your identification will be captured. But in the case where the headgear completely obscures the face, they may be

requested to remove the headgear just for the facial part to be captured. But they will not be turned away. They will not be asked to remove their entire headgear. Even Catholic nuns will not be asked to remove their veils during registration.

Mr. Temporary Deputy Speaker, Sir, on the issue of delay in opening of registration centres, this is a complaint that came from hon. Members in this House. Overall voter registration started on schedule on Monday, 19th November, and will go on up to 18th December. However, there were a few temporary challenges, but the Commission was able to promptly deal with them as they arose.

There were some areas where registration started a bit late, a day after or so. The Commission is aware of these cases. Where there are such complications either with the equipment or with the delay in starting of the process, I would like hon. Members to immediately get in touch with the IEBC, so that they respond accordingly. The areas affected can be compensated through extension of hours of voting. As the Head of State and the chair of the IEBC stated while launching this exercise, extension of time will not be possible because of the time constraints. All efforts will be made to see how to compensate areas that have been affected, particularly those that have lost a day or two.

I have just addressed the issue of the Diaspora. As to the registration centres in Rarieda, my good friend Eng. Gumbo did raise a complaint about an officer who was alleged to have meddled with the centre. Equitable distribution of the registration centres was based on the estimated population of voters projected from the 2009 census data as well as on the social, cultural and geographical factors of different regions across the country. However, the Commission can do corrigenda. I would like hon. Members to pay attention to this where perhaps a polling station was left out, the Commission still has the discretion to actually do corrigenda to ensure that registration centres that were maybe left out or were placed in wrong wards, are corrected. There have been several cases where a registration centre belonging to one ward is found in another ward. That can be quickly corrected. Please bring it to the attention of the IEBC, so that a corrigenda is done to put that station in the correct place.

The delienation of wards will not change from what was already published. The former CEC of Rarieda, Mr. Orwa, according to IEBC is a diligent and conscientious officer. There is abundant recorded evidence that Mr. Orwa did extensive consultations within the constituency and acted within the accepted parameters. Following earlier unsubstantiated claims against the officer, the national team visited this area and the PC and DC Rarieda and the District security team met stakeholders who revealed extensive documents and concluded that the CEC had acted correctly and within the law. But if the hon. Member has any evidence to the contrary, we will invite him to raise it with the Commission, so that it can be addressed. But we must desist from attacking public officers who cannot be here to defend themselves.

Mr. Temporary Deputy Speaker, Sir, on the clarification as to whether one can register in a different centre from where one will cast the vote, one is required to register where they will vote or within a ward or state clearly the station where they will vote. So, that is allowed.

On measures taken by the Commission to register those displaced by the security operation, I did visit Turkana County. There were serious fears about a military operation that is ongoing and the displacement that could result from it. These are issues that are being addressed. We believe that where there are already IDPs, the Commission will open mobile registration centres to address the challenge of IDPs. We would like hon. Members to give us more information where they have IDPs within their respective constituencies for appropriate arrangements to be made to ensure a mobile voter registration.

As to whether 30 days period of registration has any legal or factual backing, given that the election date is fixed for 4th March, 2013, the Commission was obliged to fix both legal and administrative processes that we could have a credible register before the next general elections. The Commission relied on the provisions of Section 83(3) of the Constitution which stipulates that the IEBC will come up with administrative arrangements for registration of voters and will conduct the election. The Election Act under Section 51(a) actually states when the Commission should stop registration of voters which is 60 days before the election date. The Act also stipulates when to inspect and when to publish the compiled register. I will be asking hon. Members because of delays and the tight timelines, we might be called upon again to accommodate another amendment to the Election Act to perhaps reduce the period of inspection of the voters' register from 30 days to 15 days. We might also be called upon under Section 6(3) of the Elections Act to ask hon. Members to consider another amendment to also reduce the period of publication from 30 days to 15 days to accommodate the delays that have occurred.

So, the period has a basis in law and has already been put in the tight time table that has been circulated to hon. Members. So, as political leaders, we must all support the IEBC in mobilization our supporters to register in large numbers. We will also be calling upon religious leaders whether it is in the mosques on Fridays, in all the churches on Sunday to ask their faithful to register as voters. We must tell Kenyans to get out and register as voters.

When I table the figures of those registered up to now, I will be urging hon. Members to find time to scrutinize them. Please, look at your constituency; you will be surprised how low the voter registration is. So far, we have Thika region that is doing very well. We have Nairobi that is also leading. We have Kakamega and Bungoma doing very well. In other areas when you look at the percentages we are doing, they are doing very badly. We will ask hon. Members to go out and mobilize people and let us see if this 30-days-period can be achieved. The IEBC is confident that the deadlines will be met. I believe with our support it is doable.

Mr. Temporary Deputy Speaker, Sir, bear with me because there were very many clarifications sought by hon. Members. So, it is taking a little longer than I anticipated.

On universities that are in session and what will happen during the registration period, the IEBC used the 2009 Census Report to identify voter registration centres. Most of the registration centres are in primary schools. There are centres near universities where students who have attained 18 years and hold valid ID cards and can register will be allowed to register. The IEBC is also in consultation with deans and chancellors of various universities to see if mobile voter registration can also be allowed. This is an area that is being considered.

On call centres, the IEBC has emergency numbers. They have also created call numbers which hon. Members should get. I urge hon. Members to circulate them when they are in their constituencies. In case there is any problem in any registration centre, please, alert the IEBC through the given centres. The Commission will also activate a Short Message Services (SMS) system during the inspection period where members of the public will send a query to verify their details. Further, the Commission is due to open a public call centre, where members of the public can address queries and receive authoritative answers on all matters touching on elections.

Mr. Temporary Deputy Speaker, Sir, on equipment breakdown, the Commission has placed standby spare kits. I was alerted by a Member from Makeni that one kit failed and it was taken back. There are spare kits. We ask hon. Members to keep in touch with their people on the ground. If there is any breakdown, please, alert us and emergency kits can immediately be sent there, to ensure that we do not lose an hour or a day in this exercise. Every hour and day counts.

In addition, the suppliers have given their resource persons as well as distributed warranty spares to the region to replace any defective part. So, there are spare parts readily available. No malfunctioning kit can be inoperable for long without replacement or mechanical rectification. Those are some of the issues that were raised.

Mr. Temporary Deputy Speaker, Sir, with your permission, together with the judgement on the Diaspora vote, I would also like to table the official figures released by IEBC on 19th. We have also said that the IEBC must do this on weekly until we achieve the target. The target was about 3.7 million, but we are slightly below three million. We are anticipating that as the staff get familiarized with the kits, they will be able to gather momentum. In the second week, we should be able to achieve higher results. With the Chair's permission, I do urge that I be allowed to table these two documents for the consideration of the hon. Members.

(Mr. Wamalwa laid the documents on the Table)

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! You will realize that we are not doing very well on time. I will, therefore, allow a maximum of three interventions. I had requested that the specific interventions to the Statement should come under interventions. On that basis, I have Dr. Khalwale, hon. C. Kilonzo, hon. Kutuny and hon. Sirat, in that order.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, allow me to join the Minister in congratulating Kenyans who have come out and registered for this very historical election which to many of us, we hope, will give us a leadership that will reunite our country and restore our pride or place in the community of nations that appreciate the rule of law.

Mr. Temporary Deputy Speaker, Sir, I want to request the Minister to go and sit with the Chair and the Chief Executive Officer (CEO) of IEBC. There are real challenges. In fact, it is a big disappointment given the Minister's age and given that he is a presidential aspirant to not address the issue of youth who have the so called *nusu Kipande*. Most of them are his agemates. He should have gone out of his way to make sure that they are accommodated. I will leave that to him with his voters.

However, as he sits with the Chair and the CEO of the IEBC, he should think about the many disabled people who do not have hands; either because they are old cases of leprosy, victims of traffic accidents or they were born without hands. He has to bend and think outside the box, so that he can have a unique way of ensuring that all these people participate in the election.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg the people of Kakamega to vote for me as Senator under the new arrangement of things.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, the hon. Minister in his earlier statement used the following words. He said:-

“Integrity of an election starts with the voter registration process.”

Mr. Temporary Deputy Speaker, Sir, he also said that it appears that they were ill-prepared to handle the voter registration outside Kenya or in the Diaspora. So, I want him to clarify whether they are also ill-prepared here on the following basis. The whole of last week when they started they were not accepting old generation cards. Is that not a sign of being ill-prepared? The whole of last week the problem was about faulty equipment. A good case is in Maliku in Kitui County, where for five days no registration took place. Is that a case of being ill-prepared? The other good case of being ill-prepared is, for example, in Makueni, Kitui and parts

of Machakos covering of a radius of 20 kilometres with five polling stations is sharing only one kit. Is that not a case of being ill-prepared?

Finally, is the case in my constituency where voters have refused to register because they claim that the voter registration card that they are being given is not sealed and laminated. The Minister keeps on asking Members of Parliament and leaders to go and do civic education, as if we do not provide the responsibility to IEBC. Is that also a case of being ill-prepared?

Mr. Kutuny: Mr. Temporary Deputy Speaker, Sir, listening very keenly to the Statement by the Minister, it surprises me because we come from the same County. The areas which are affected and registration of voters has not even started are in Trans Nzoia County.

Mr. Temporary Deputy Speaker, Sir, what measures has the Government put in place to ensure that registration kicks off, for example, in Kitale Campus Station; titled Kimeloi and Kiptenden, where it has not kicked off? This is the county where the Minister comes from.

Mr. Sirat: Mr. Temporary Deputy Speaker, Sir, I have asked this Minister many times various questions regarding the IEBC and their preparedness to conduct elections in March. Everytime he is adamant that they are ready, while the situation on the ground and everybody, including himself knows that the IEBC is not ready to conduct elections in March, next year. There are many challenges in my constituency and the whole country. The batteries that are given to the clerks do not work in my constituency, which is very big. From the headquarters to the farthest point is 350 kilometres. If that particular station fails to work, the District Coordinator will know three days later. That means three days lost. What will the Minister do to compensate for the time lost in my constituency? I have just come back from my constituency where I got my voter registration card, but we started partial registration in Wajir South on Thursday. Up to now, there are centres which are not capable of issuing full voter registration. Will he consider---

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Sirat! For the purposes of regional round up, I will recognize hon. Pollyns Ochieng, hon. Midiwo, hon. Njuguna and then we conclude.

Mr. Ochieng: Mr. Temporary Deputy Speaker, Sir, I was actually going to raise that idea with you that other regions were being left out, but then my concern---

The Temporary Deputy Speaker (Mr. Ethuro): Then you should appreciate.

Mr. Ochieng: Mr. Temporary Deputy Speaker, Sir, I have appreciated profusely.

I want to seek clarification with regard to university students registration because there are about 3,000 from my constituency. They are based in various universities in this country. They do not reside in those towns where they are studying. If they are allowed to register next to the colleges then, obviously, during voting time, they will not be able to vote because that time will find them at home. What is the Minister doing to make sure that those university students register back at home because they do not reside in those areas during voting time?

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I want the Minister to help us move this process forward by committing that tomorrow, some of the clarifications he has made before the House, he will do the same in a public press conference, particularly the one where the old generation identity cards are not allowed. That is because even as at yesterday, I got a phone call from Bondo and Gem that the clerks are rejecting the old generation identity cards. Further, he should clarify what is the time of reporting to work and the time of closing those centres. I have specific complaints of certain centres in my constituency where those people come at 11 a.m. and leave at 2.00 p.m. So, it is important that those issues are clarified because if the information is with the public, then the clerks will not be mischievous.

I also want you to commit to support us because I have brought an amendment to the definition of “identity cards” for the purpose of these elections. I want him to assure us that all Kenyans with waiting cards will be allowed to register. The Bill has just come from the Government printers. I also want him to tell us now how many Biometric Voter Registration (BVR) kits are in each constituency. It is important for us to know that.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, this morning, I visited five registration centres in my constituency. One thing that surprised me is about the failing kits. After the failure of those kits, the staff disappears from those centres. Therefore, the constituents are left helpless. What is the Minister doing about that?

Mr. Temporary Deputy Speaker, Sir, the other one which is a bit serious is about the laminating films. They are not there in those centres, meaning the generated cards are incomplete. That is very serious because we want very high quality cards. What is he doing about that?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, to start with the last question from hon. Njuguna, we do not need high standard cards. Through the rules and regulations and the law that we passed here, we no longer require voter card. In fact, those receipts are not mandatory. Whether it is laminating or creating high standard ones, I think it has given the public the wrong impression that those are voters’ cards. There are some areas where actually hon. Members have refused to go until their cards are laminated. I think we want to disabuse the members of the public of that. You will only be required to have your identity cards during the voting. That is the only document you will present during the voting.

On the issue of identity cards and waiting cards raised by hon. Khalwale, the youth of this country have spoken about it before. When I was appointed to the Cabinet, there were about 4 million youths that were anticipated to have, for the first time, the opportunity to participate in this historic election and they were in danger of being left out. But hon. Kajwang has already assured us that very many of them have been issued with identity cards. There are many identity cards that are at the collection centres. We would like the young people of this country to go for them. But we would really welcome the proposed amendment that can allow people with the waiting cards or other forms of identification to participate in this historic election. That will really help in ensuring that those many Kenyans with waiting cards are not left out. Kenyans with old identity cards, particularly the senior citizens, are also not left out.

Mr. Temporary Deputy Speaker, Sir, on the issue of those who are starting or reporting late like the case of Bondo, reporting at 11 a.m. is not allowed. That will really be robbing the citizens of that area of the limited time to register and right to register. We would like any of the staff that reports late or that are lax in the discharge of their duties to have their names reported to IEBC, so that action can be taken. We have very limited time. As I have said, every hour counts. If you were to lose three hours in a day and given the remaining few days to the closure of registration, you would really have robbed and denied many Kenyans the opportunity to register as voters.

Mr. Temporary Deputy Speaker, Sir, on the issue of late starting of registration exercise in many counties, I had already referred to Kitui County that hon. C. Kilonzo referred to. We have already reported such cases to IEBC. We must see how such affected areas can be compensated in terms of more hours. We will see if it will be possible to get extra kits to compensate them for that time. These are issues we would want you to bring to the attention of IEBC, so that they are addressed.

On the issue of the 4th of March date, hon. Sirat has raised this time and again with me. I have said the 4th March date cannot be changed because it is not really out of choice. It is due to the constitutional constraints that require that under Section 9 of the Sixth Schedule that elections be held within 60 days of dissolution of this House. The term of this Parliament is known and when it will expire, 60 days thereafter, we must have elections in this country. We have no choice over that. So, anyone in this country thinking the 4th of March date will be changed and those who have been advocating for an August date, it might not be possible. Unless we amend the Constitution, we might really be looking at a constitutional crisis. So, every effort must be done to support IEBC meet the deadlines that are in place. Where there are stations that have not started as my good friend and neighbour hon. Kutuny has said, I would have expected him to have been the first to call me to alert me because I was in Kitale where I was registered as a voter. I went round and many of the stations in my constituency were working very well. In fact, one of the leading stations in Kiminini was nearly with almost 1,000 registered voters. I was pleased with the progress. But where there are challenges, please, let us and IEBC know and there will be appropriate interventions put in place.

Hon. Ochieng, for university students, it will be very difficult for the Government to assist the students to go home, register and then come back. The kits that have been sent to the respective education centres are coded for those particular areas. So, they cannot be brought to the universities where the students are. In fact, the only citizen now who had the privilege of having a machine moved was His Excellency the President. We had that machine transported all the way from Othaya to the Kenyatta International Conference Centre (KICC) where registration was done. I am very privileged to have been the only presidential hopeful present when the first vote was registered. I did ask for it. As we continue consulting, we will be telling the Members, on a weekly basis---

The Temporary Speaker (Mr. Ethuro): Order, Mr. Minister! In your own statement, you said that there are a number of polling stations around the universities and that you can register as long as you specify where you want to finally cast your vote. So, maybe, you need to come out clearly.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Speaker, Sir, it is within the ward. If, perhaps, you are in one ward and you are registering in a different polling station, but within that ward, it is allowed because it is coded. The code is for that ward. We are allowing these kits to be moved, but within the wards. They can be moved from one polling station to another. That is allowed and that is what I meant.

With regard to universities which are in session, we have said that we will encourage the students to register. As I said, close to every university, there is a registration centre. We will urge university students to register so that they are not left out.

We are also particularly concerned about our brethren from Western Kenya and Nyanza who have the habit of travelling home for Christmas. They go home once a year for Christmas. I listened to one registering in Kawangware and he was very particular that he only goes home for Christmas once. He will be going in December for Christmas. Therefore, he cannot go for Christmas, come back and go back in March. It will not be possible. We will encourage those who live in the cities to register in the cities, so that they do not lose the opportunity of voting on 4th March, 2013 because of constraints. We might not have the money to sponsor university students to go home. There is no such provision, but please, as hon. Members, let us work with those students. Let us encourage them to register close to their campuses.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, that should bring us to the end of that Order. I know there are other Statements outstanding, but we will not take any more.

Mr. Midiwo: On a point of order, Mr. Temporary Speaker, Sir. Just a quick one, the Minister has also been promising this House that he would be making a Statement on the academic qualifications required for the various posts. This is important because it is causing a lot of anxiety around the country.

The Temporary Speaker (Mr. Ethuro): I will allow that one because it is very important. Minister, do you have the Statement ready?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Speaker, Sir, with your permission, may I deliver it on Thursday? I had consulted with hon. Muthama; he had already requested for this Statement and several hon. Members have, and we will be delivering it. I also want to inform the Members that IEBC will be making weekly statements; progress reports, to the public and as and when necessary, as the line Ministry, we will update the House.

The Temporary Speaker (Mr. Ethuro): Why not tomorrow morning?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Speaker, Sir, we had already consulted and I had given an undertaking for Thursday. I will make the Statement.

The Temporary Speaker (Mr. Ethuro): When were you required to make the Statement?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Speaker, Sir, this was before we went on recess and Mr. Muthama raised it last week. I had just consulted with him and agreed that we do it on Thursday this week. It is only tomorrow and I will deliver that statement as well.

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

BILLS

First Reading

THE OFFICE OF THE ATTORNEY-GENERAL BILL

(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE TRUTH, JUSTICE AND RECONCILIATION (AMENDMENT) BILL

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, we are now in the Committee of the whole House and we will begin with The Truth, Justice and Reconciliation (Amendment) Bill, Bill No.56 of 2012 and thereafter move on to The Vetting of Judges and Magistrates (Amendment) Bill.

(Clause 2 agreed to)

Clause 3

The Temporary Deputy Chairman (Prof. Kaloki): There was an amendment by Mr. George Nyamweya.

Hon. Members: He is not here!

The Temporary Deputy Chairman (Prof. Kaloki): Then we will then drop that amendment.

*(Proposed amendment by
George Nyamweya dropped)*

(Clause 3 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Truth, Justice and Reconciliation (Amendment) Bill and its approval thereof without amendment.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, we will then move on to The Vetting of Judges and Magistrates (Amendment) Bill, Bill No.57 of 2012.

THE VETTING OF JUDGES AND MAGISTRATES BILL

(Clause 2 agreed to)

Clause 3

The Temporary Deputy Chairman (Prof. Kaloki): There was an amendment by Mr. C. Kilonzo.

Hon. Members: Mrs. Odhiambo-Mabona!

The Temporary Deputy Chairman (Prof. Kaloki): Mrs. Odhiambo-Mabona, I think you are holding brief for Mr. C. Kilonzo.

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

THAT, Clause 3 of the Bill be amended by deleting the proposed new sub-clause (7) and substituting therefor the following new sub-clause -

(7) No act or proceedings of the Board shall be invalid by reason only of-

(a) a vacancy in the membership of the Board; or

(b) a defect afterwards discovered in the appointment or qualification of a member of the Board.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Chairman, Sir, we welcome the amendment in 7(a). However, we have a problem with 7(b). We had discussed this with the Committee and had agreed that 7(b) be deleted.

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Minister, is that a new amendment that you are bringing up and are you in agreement with the Committee?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Yes, in addition to that, we can take it as further amendment.

The Temporary Deputy Chairman (Prof. Kaloki): Let us then deal with Mrs. Odhiambo-Mabona's amendment then you can introduce yours.

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

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

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Minister, you can now move your amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Chairman, Sir, I beg to move a further amendment:-

THAT Section 7(b) be deleted.

The Temporary Deputy Chairman (Prof. Kaloki): Mr. Minister, could you give us your reasons for proposing further amendment as moved by Mrs. Odhiambo-Mabona? Tell us exactly what you want to happen there?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Chairman, Sir, we are proposing that Section 7(b) be deleted, but Section 7(a) is okay. We had already discussed with the hon. Member.

(Question of the further amendment proposed)

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I note obviously that once we amend by deleting Section 7(b) we shall basically be going back to

what was in the original Bill which was providing that the proceeding of the Board shall not be invalidated by a vacancy in the Board, however it arises. Obviously, a defect is part of creating a vacancy. Section 7(a) already covers everything irrespective of how that vacancy has arisen. Section 7(b) is only paraphrasing part (a) if we go back to exactly where we were, hence the amendment by the Committee.

My recollection of this Clause was that there shall be no invalidation of the proceedings of the Board on account of a vacancy in the membership of the Board. That is what was already provided for and the Committee was attempting to now add the second one which is creating a defect. This defect can only create a vacancy which is already provided for. I believe that the entire amendment is not necessary, if we go this route.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, there is an amendment Bill before the House. That amendment Bill carries Section 3. The amendments we are discussing were negotiated between the Committee, the Minister and the Vetting Board. The reason the Minister carried this amendment is that we had agreed with him in Mombasa--- Hon. C. Kilonzo will bear witness that this was not acceptable. However, in introducing the amendments, it was carried the way it was originally. So, we agreed with him that there should be no defects arising out of vacancy in membership. However, part (b) sounds too far-fetched because of the litigation surrounding the actions of the Board. It says:- “A defect afterwards discovered in the appointment or qualifications of the membership of the Board.” This sounds to be inviting too much litigation. We retained “No act or proceedings of the Board shall be invalid by reason only of a vacancy in membership”. We agreed with him that part (b) as it appears on the Order Paper be deleted.

Therefore, I support his proposal that Clause 3 be amended as moved by hon. Millie Odhiambo-Mabona, but be further amended by deleting part “b”.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the original proposal in the amendment Bill we are discussing was “no act or proceedings of Board shall be invalid by reason only of a vacancy or defect in the composition of the Board”.

Mr. Abdikadir: The defect is being removed!

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I just want to clarify that we are removing the defect rather than the vacancy. As long as the vacancy is there, I am okay.

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

(Clause 3 as further amended agreed to)

Hon. Members, for clarification, part 7(a) has been carried while part (b) has been retained.

(Clause 4 agreed to)

Clause 5

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT Clause 5 be amended by-

(a) re-numbering the proposed new sub-section “(3)” as sub-section “2A”; and (b) inserting the following new sub-section immediately after sub-section (3)-

(4) A removal or a process leading to the removal of a magistrate from office under this Act shall not be subject to question in, or review by, any court.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Chairman, Sir, we really welcome this amendment. There was an omission in the Act; we only referred to challenge to removal of judges and left out magistrates; we want to thank the Committee for bringing this amendment.

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

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

(Clause 5 as amended agreed to)

Clause 6

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

THAT Clause 6 be deleted and be substituted with the following new clause-
Amendment of section 23 of No. 2 of 2011.

6. Section 23 of the principal Act is amended-

(a) by deleting sub-sections (2) and (3) and substituting therefor the following new subsections-

(2) The vetting process once commenced shall be concluded not later than 31st December, 2013 and any review of a decision of the Board shall be heard and concluded within the above specified period.

(3) Despite sub-section (2), the Board shall conclude the process of vetting all the judges, chief magistrates and principal magistrates not later than 28th March, 2013 and any review of a decision of the Board shall be heard and concluded within the above specified period.

(Question of the amendment proposed)

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I think my good Chairman has a duty to explain to this House why certain amendments are being proposed, especially given the circumstances surrounding this particular matter.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I am most obliged. The amendment essentially is extending time for this institution. You remember the Act that this House passed gave this institution one year to conclude the vetting process with a possible extension of time by one further year. This extension was requested by the institution. They have had a lot of delays, quit a bit of it related to court actions stopping their process. It is for that

reason that we are saying that the vetting process once commenced shall be concluded not later than 31st December, 2013 and any review of decision of the Board shall be heard and concluded within that period.

With respect to subsection (3) we are indicating that even though Parliament has given the institution up to December of next year, as far as the High Court and magistrates who will deal with election petitions are concerned, the deadline is March of next year. So, you will see in 6(3) we have said that despite subsection (2) the Board shall conclude the process of vetting all judges, Chief Magistrates and Principal Magistrates not later than 28th March, 2013 and conclude that process, so that any judicial officer who will handle election petitions--- First of all, all the superior courts, that is the Court of Appeal and the High Court, will have finalized the vetting in March next year; but more critically also Chief Magistrates and Principal Magistrates, who may be called upon to do election petitions with respect to the county----

The Temporary Deputy Chairman (Prof. Kaloki): All right, you have done well.

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

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

(Clause 6 as amended agreed to)

New Clause 2A

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

THAT the Bill be amended by inserting the following new clause immediately after clause 2-

2A. Section 7 of the principal Act is amended by-

(a) re-numbering the existing provision as sub-section (1); and

(b) inserting the following new sub-section immediately after the new sub-section

(1)-

(2) Notwithstanding sub-section (1), the Board may, for the purpose of the vetting of magistrates, co-opt such members of the Judicial Service Commission as it considers necessary to its membership provided that such co-opted members are not serving magistrates.

Let me give a small brief. The Board is made up of nine members and the number of judicial officers they have to vet is quite high. The magistrates are almost 300 in number and the time is short. So, we are allowing the Board that while retaining the duty as the core entity to co-opt members of the JSC who are not magistrates to help the Board in doing this business, so that they can conclude the business as fast as possible.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

*(Question, that the new clause be read a
Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

New Clause 3A

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 3-

3A. Section 17 of the principal Act is amended by-

(a) deleting sub-section (1) and substituting therefor the following new subsection-

(1) The chairperson may, for the purpose of ensuring the expeditious disposal of matters, constitute three or more panels to work concurrently in the vetting of judges or magistrates; and,

(b) inserting the following new sub-section immediately after sub-section (2)-

(3) Notwithstanding sub-section (1), the vetting of judges shall be undertaken solely by the members of the Board appointed under section 7(1).

Mr. Temporary Deputy Chairman, Sir, the proposed amendment indicates that the Chairperson of the board will have, for purposes of expeditious disposal of matters, the ability to constitute three or more panels to work concurrently. Right now, all the nine or so members, sit in one bench and that takes a long time. We are allowing them to have panels.

Secondly, we are indicating that with respect to the judges, it is only the nine members who can do the vetting. With respect to the magistrates, they can co-opt the members of the Judicial Service Commission.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be
read a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

(Title agreed to)

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Vetting of Judges and Magistrates (Amendment) Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE TRUTH, JUSTICE AND RECONCILIATION (AMENDMENT) BILL

Prof. Kaloki: Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered The Truth, Justice and Reconciliation (Amendment) Bill, Bill No.56 of 2012 and approved the same without amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Truth, Justice and Reconciliation (Amendment) Bill, Bill No.56 of 2012 be now read the Third Time.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

*(Mr. Abdikadir and Mr. Kimunya
held loud consultations)*

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members!

For the benefit of Mr. Abdikadir and Mr. Kimunya, you do not put a Question at the same time that you are proposing while on your feet. Those are two distinct stages.

(Question put and agreed to)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

Prof. Kaloki: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Vetting of Judges and Magistrates (Amendment) Bill, Bill No.57 of 2012 and approved the same with amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Agriculture (Dr. Kosgei) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Vetting of Judges and Magistrates (Amendment) Bill be now read the Third Time.

The Minister for Medical Services (Prof. Anyang' -Nyong'o) seconded.

(Question proposed)

(Question put and agreed to)

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

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise on a point of order to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.20(3) this House resolves to extend the Sitting of the House until the conclusion of business appearing under Order No.11.

Mr. Temporary Deputy Speaker, Sir, as you can see, we have taken rather long today on---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, hon. Kimunya! Of all the people, you must be fully conversant with the rules and procedures of the House. You have ambushed the Chair. You should have brought it to my attention because it is not on the Order Paper. This is a House of rules. We will proceed as per the Order Paper.

Proceed, the Chairman of the Budget Committee!

MOTION

ADOPTION OF BUDGET COMMITTEE REPORT ON ALLOCATION OF RESOURCES TO COUNTIES

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Budget Committee Report on the basis for Allocating Resources among the counties for the period 2012-2015 laid on the Table of the House on Thursday 22nd November, 2012.

Mr. Temporary Deputy Speaker, Sir, from the outset, I underscore that solemn responsibility that the new Constitution has given Parliament in ensuring that devolution is supported financially and more so, in acting as a link between the Commission of Revenue Allocation, the Executive and other stakeholders, to provide quality and equitable services to all the people of this country.

The Budget Committee wants to register gratitude in the manner in which the stakeholders engaged in the process of finalizing this criterion for resource allocation. This is especially with regard to avoiding hard-line positions in favour of compromise and harmony, which has resulted in consensus. I hope that this will be the norm in the management of public finance. This should give rise to consensus and reflective division of resources, resulting in dispassionate division of resources and ultimately, the equitable development of our country.

Mr. Temporary Deputy Speaker, Sir, this Report is as a result of a long journey which began with the public release of the preliminary recommendations by the Commission on Revenue Allocation in April, 2012. The Commission specifically shared these recommendations with the Budget and Finance, Planning and Trade Committees at a breakfast meeting in April 2012. The Commission on Revenue Allocation (CRA) has selected five parameters to guide resource distribution and these are:-

(a) Population which was given 60 per cent weight and was dependent on the number of people living in a particular county.

(b) Equal share which was given 20 per cent weight and which was to be distributed equally amongst all counties respective of other considerations; which meant we cater for the Recurrent Expenditure of all the counties and ensure that they are viable entities.

(c) Poverty index.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Sambu! Hon. Kimunya!

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

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

THAT, notwithstanding the provisions of Standing Order No.20, this House extends its sitting today until conclusion of business appearing at Order No.10.

Mr. Temporary Deputy Speaker, Sir, the business that we are transacting at Order No.10 is very critical for purposes of realising devolution, moving to the new counties. Given the limited time that we have as a House, it will be important for us to clear this business, so that it unlocks the process of bringing in some Bills that are required to actually put this into effect. The longer we stay, the longer it gets worse for our counties.

So, I would like to urge that hon. Members support this Motion and we extend time today. We need some sacrifice today for the future of our counties and for our devolution process.

With those words, I beg to move and seek the hon. Anyang'-Nyong'o to second.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, I would like to second and support the proposal by the Deputy Leader of Government Business, hon. Amos Kimunya. The Tenth Parliament sits in a very historic moment in our nation. I believe that before we adjourn *sine die*, we will have to make a lot of sacrifices to pass the necessary Bills and policy papers that will lay the foundation for the second Republic.

Mr. Temporary Deputy Speaker, Sir, today on the Order Paper, we have very important Motions and Bills. The Motion that hon. Kimunya is referring to on Crops Bill is extremely important. I want to just appeal to hon. Members of Parliament who are present here today for their patriotism and commitment to the nation to support the Minister for Transport's proposal, so that we sit and finish this important Motion before we adjourn today.

I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Although the Chair notes that hon. Kimunya, at the second attempt, did not acknowledge and that he has not consulted the Chair as he is supposed to but, nevertheless, the Chair is more understanding on the situation of the House and I will propose the Question.

(Question proposed)

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I reluctantly support. I think hon. Kimunya must learn how to do things the right way. But I support him on this Motion.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I also reluctantly support. I want to encourage the Minister because of the limited time that he should not be sneaking in things, especially because of the short time that is remaining. Most of us would have left without knowing that this is a very important Motion. Otherwise, if he brings another one next time, we will oppose it.

(Question put and agreed to)

(Resumption of Debate on Motion)

The Temporary Deputy Speaker (Mr. Ethuro): Proceed, hon. Sambu. Continue, Vice-Chairman!

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, I would like to thank Mr. Kimunya because this is an important Motion.

(c) Poverty index is given 20 per cent weight and depends on the index calculated by the official statistics agency on poverty per county.

(d) Land size given 6 per cent weight and was introduced as a measure to ensure that the citizens of the counties with large tracts of land were not disadvantaged by the difficulties in transportation, communication and logistics in relation to the counties with smaller land areas.

(e) Fiscal responsibility which was given 2 per cent weight and was intended as a measure to promote and encourage financial discipline and prudence by rewarding counties that performed well with additional resources. This parameter was to be distributed equally the first few years as the data base was accumulated on the financial performance of the counties.

Mr. Temporary Deputy Speaker, Sir, what followed was the engagement of the public in line with the spirit of the Constitution. I would like to inform this House that the Committee undertook this responsibility diligently and, indeed, the particular views of the public in the specific centres visited are contained in this report.

The Committee particularly noted that a vast majority of the public were concerned with the weight given to the population parameter and requested that it be revised downwards. They also proposed that poverty should be accorded greater significance in order to ensure equitable development of our country and the weight given to the land size be increased to mitigate the difficulties in the provision of services to the larger area counties which also happens to be largely under-developed. The Budget Committee took these recommendations seriously and has acquiesced with the proposals of the public. This is evident in the report of the Committee before this honourable House.

To this end, the Budget Committee recommends the final parameters to be as follows:-

- | | | |
|---------------------------|---|-------------|
| (i) Population | - | 45 per cent |
| (ii) Equal share | - | 25 per cent |
| (iii) Poverty Index | - | 20 per cent |
| (iv) Land Area | - | 8 per cent |
| (v) Fiscal Responsibility | - | 2 per cent |

Mr. Temporary Deputy Speaker, Sir, I would like to re-emphasize that this was a result of meticulous consultations by the Budget and Finance committees with as many stakeholders as it could reach and this included professionals, Government agencies, expertise from parliamentarians as well as the public. We believe that this is responsive to the needs of the counties and hope that Parliament will join us in endorsing it in order that the requirements and expectations of the population are met by the amount of resources provided.

Lastly, with these few remarks and in honour of Kenyans who require the services, I request the support of this august House and urge that we endorse the Committee's report. I now wish to ask Mr. Ethuro to second the Motion.

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I wish to applaud the Vice-Chairman, the Chairman and, indeed, the rest of the membership of the Budget Committee. This Committee is very unique. It has seasoned membership as well as all the Chairs of the other Committees. Therefore, it reflects the face of Parliament. This was one of those very difficult matters, but the House demonstrated unity of purpose and commitment to ensure that this country develops equitably.

Our Standing Orders preceded the new Constitution in terms of Budgetary process. However, the new Constitution has already enabled Parliament to be a facilitator of revenue

sharing. In this particular case, the Parliamentary Committee engaged the Commission for Revenue Allocation, the Cabinet Secretary, and the Ministry for Finance, professional bodies and the rest of the public. This process is one of the most inclusive and comprehensive you could ever get. What we are about to do as we approve this will help the Committee on Revenue Allocation to facilitate the introduction of two major Bills.

Our good friend, the Commissioner for Revenue Allocation, Mr. Cheserem, has been quite loud and has been blaming Parliament for delaying the introduction of this Bill. I think that is why the Deputy Leader of Government Business sought the extension through a Procedural Motion this evening. This will facilitate two major Bills that must be brought to this House. We must conclude that business before we go home because they are extremely important for devolution. If we do not get devolution working now, this Parliament and this country will go back to those days of 1963 where they killed the Senate for the purpose of making an imperial presidency. These two Bills will be the Division of Revenue Bill and the County Allocation of Revenue Bill as required by our Constitution. We expect the two Bills to be brought to this House.

I want to give notice to the aspiring governors. There are people in this country who think that because we will now give money to counties, it will be the responsibility of governors to engage in some conspicuous consumption and live large. These are the obese type. We want to make it very clear from this initial stage that the resources that are being allocated to the counties are for the purpose of development; they are for the purpose of ensuring that services reach our people. They are for the purpose of ensuring that northern Kenya can no longer think that it is in another country while the rest of the country is another country. The same applies to southern Kenya or western Kenya. Each part of this great Republic will subscribe to Article 43 of the Constitution where it is expected that every citizen will enjoy certain minimum standards of living in terms of education and health.

I note with concern that in the entire budgetary process in the last two years the Government is still to come to terms with the Motion on devolution. We are yet to see the desegregated votes and allocations from the Ministry or the amount of money that will go to the counties. This Government must do this. Since we hear that they might bring the Supplementary Budget before we go home, we want to see a measure of commitment that there is thinking within the Government. If you look at the provisions of Article 222 in the Constitution, you will see that the Government is yet to come up with a budget and format in which it will present its concerns to the House.

Therefore, these remain the concerns of the House even as we talk about resources allocation. How much resources are required to develop the counties? What have been the spending levels of the counties? Is what we will allocate sufficient enough not only to meet the recurrent costs of the counties as per now, but have a bit left to develop those counties?

I will not take long. I want to conclude by emphasizing that the Transitional Authority has a job to do. It must come up with timelines. It must ensure that the transition to the county Governments, after the General Election, will be fully operational. For those of us who aspire to come to the Senate, I have seen hon. Dr. Khalwale ask the people of Kakamega to vote for him, I have also seen the Minister for Justice, National Cohesion and Constitutional Affairs taking the earliest opportunity, when the President was registering to be a voter, to ask for his vote.

Mr. Temporary Deputy Speaker, Sir, in the same vein I want to ask the good people of Turkana County to give me an opportunity to serve them as a senator. For all the tribulations I have gone through as I seek the Senate vote, it would be natural for them to know where their

vote will go. But more fundamentally, the Senate will ensure equal disbursement of revenue from the central Government unlike the CDF, where even a Minister promises he would allocate money and they do not release a hundred per cent of it. That bad habit by the central Government must stop. Hon. Kimunya, you have been a Minister a before. We want to ensure that stops. All the money that we will agree on as a House to give to County Governments must be given in time and in all the amounts that are needed. I do not see my good friend, hon. Githae, here.

With those remarks, I beg to second.

(Question proposed)

The Minister for Medical Services (Prof. Anyang-Nyongo): Mr. Temporary Deputy Speaker, Sir, I stand to support this Motion which is very important. As the Mover, my friend, hon. Sambu said, it was important that the Budget Committee, together with the relevant organs of Government, arrived at a manner of exercising the distributive powers of the State to counties. This should be done in such a manner that it will make sense to the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, as my friend Ethuro has also emphasized, the essence of the new Constitution is devolution. This is because through devolution government goes to the people, resources go to the people and there will be a tremendous stimulus for development in this country.

Mr. Temporary Deputy Speaker, Sir, the Coalition Government had what was called stimulus programmes for building dispensaries or health centres and schools and so on across the country. We have seen the impact of these stimulus projects in rural economy or in the places where the majority of our people live. There are schools of excellence both primary and secondary. For the first time, equipment and infrastructure has been established in rural areas and in areas where one never expected these things to happen. With the establishment of the model health centres, the Government is now able to carry out certain diagnostic tests in these health centres. For a long time, we were not seen in certain parts of this country.

With the CDF and stimulus programmes, we can see the economic and social impact of resources taken to the grassroots level. Then with devolution and with more money taken there properly, we look forward to a stimulation of development from below and not the “top down approach” that has bedeviled the authoritarian regimes in this country since Independence.

Mr. Temporary Deputy Speaker, Sir, I only want to go through the percentages that the Committee has recommended and hope that we will use those five years as a pilot programme to see the extent to which this answers to the question of equity that is very central to the Constitution. I think these percentages were put so that in devolving funds to the counties, there should not emerge yet another system of unequal development. We should, instead, address previous structural and historical patterns of unequal development. I do not want the percentage to be changed now. But I would like to see that during the first five years of what I call the pilot scheme. After that, we look at the percentage very carefully on the issue of land areas.

Mr. Temporary Deputy Speaker, Sir, if we use the land area alone as an essential category without further qualification of what land area means, we may end up putting resources in large land masses, quite a good part of which is not really productive. I think with land area, we should also add land area and land utility. Area alone is not enough. In the United States of America (USA), for example, you will find that there are certain states which are very big. They are big because quite a good part is desert and does not really have much utility until such time

that you discover oil or other minerals in those areas. When you do discover useful minerals, you extend infrastructure to those places because now there is proven utility.

I do not think that from the beginning, we should just put money because there is a large land mass. We should associate area with utility so that the extent to which you are crediting a county because it is big, the fact that it is big should also be associated with the utility of that bigness. Whereas I will tolerate using this 8 per cent for the first five years, I think we should watch how it is used. We should ask ourselves whether that 8 per cent goes towards improving the utility of land or it just becomes a measure by which a large land mass gets more money without being associated with any utility to that land.

My recommendation would be that in the long run, we should reduce that 8 per cent to something like 5 per cent. The 3 per cents should be taken to fiscal responsibility. We will have 5 per cent for land area and utility and 3 per cent for fiscal responsibility.

Mr. Temporary Deputy Speaker, Sir, if we reward fiscal responsibility with more money, then people are bound to be more judicious in the way in which they use public resources. If fiscal responsibility is a mere 2 per cent, then it is apparent that the responsibility of being judicious in using public resources is not really very seriously considered by those of us who vote monies to counties.

I would just advise the next Budget Committee or the next Parliament of which I will be a Member in the Senate representing Kisumu County, that this is something that we may have to revise in the Senate. This will be the responsibility of the Senate. I expect my dear friend, Dr. Khalwale, who is sitting opposite me, to be my colleague in that Senate.

I beg to support.

Mrs. Odhiambo-Mabona: Thank you, Mr. Temporary Deputy Speaker, Sir. Now that everybody is asking for votes, let me also start by asking the people of Mbita to vote me as the Member for Mbita. Having said that, I think there must be something good about asking, maybe because we are within the 16 days of activism on gender-based violence. So, that is why my good friend Dr. Khalwale is remembering the women and Senator Anyang' -Nyong'o.

I will be very brief on this. I want to thank the Budget Committee for presenting this Report. The only thing I would want to say is that, looking at the computation, I wish that they had given a little bit more weight on poverty as opposed to the equal share. I note that the equal share is at 25 per cent and poverty at 20 per cent. The reason is that the incidence of poverty is very high in this country. It defines a lot of people, especially women with the feminization of poverty.

Even though I know that we have the Equalization Fund that will deal with a lot of the issues of inequalities, I wish we had mainstreamed gender and disability in this. I can hear Dr. Khalwale getting shocked, but for those of us in the development sector, we know that you can mainstream gender in every sector. My entire life I have been mainstreaming gender. The way you have done; to provide a percentage to that or to, for instance, households that are headed by widows and households that are headed by children, especially if you are mainstreaming children's issues.

Mr. Temporary Deputy Speaker, Sir, I would also wish to request the Chairman in his response, for purposes of record, to indicate that when we are talking about the land area, we are not just talking about massive land, especially in northern Kenya because that is what people tend to think whenever we are talking about land area. But we are talking about vast expanse of lake and sea.

In Mbita Constituency where I come from, communication is very difficult from one island to the other. There are 16 islands between Mbita and Gwassii. But reaching some of them is not pretty. I know that at one point we had a District Officer who was a Kisii. He had to get a special request because he could not survive travelling by water in some of those places because there are no roads even within the islands. This is the first time there is a ring road around Mfangano Island. There are no roads on the smaller islands and so. The means of communication is by boat. Many times the Government does not even have boats for different things like health or for the IEBC voter registration exercise. Ministries are facing serious challenges. You find six Ministries sharing one boat. For purposes of record, when we are talking about land area and assigning 8 percent, that must include the vast expanse of water in places that I come from.

With those few remarks, I support.

Dr. Khalwale: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to strongly support this Report. This is because when the Commission on Allocation of Revenue first talked about this issue, very many of us made noise and we were very apprehensive. But, finally, it has come before us and due diligence has taken place. I wish to support it.

Mr. Temporary Deputy Speaker, Sir, listening to the two Senators-in-waiting who have spoken before me, hon. Ethuro and Prof. Anyang' -Nyong'o, I have no doubt that this role which is currently being discharged by this Committee will be adequately tackled by us when we shall sit in the Upper House. I hope that the Members of this Lower House will sit in the comfort that we will represent the interests of all of you.

Mr. Temporary Deputy Speaker, Sir---

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, this is not a Lower House!

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, that was a "commercial break." Please, hon. Millie!

(Laughter)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to refer to this House as a Lower House, because he wants us to start engraining the Senate as an Upper House when it is not? They are equal Houses. I sat in the Committee that came up with the Constitution. They are equal Houses. But in terms of powers, the Senate is actually a weaker House. So, is he in order to mislead the House?

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, let us not belabour this because I do not want to pretend that I sit in the Supreme Court which is charged with the responsibility of interpreting the Constitution. If the hon. Member has any doubt, she should remember what happened when there was a tussle for the position of who is senior between the Prime Minister and Vice-President and Minister for Home Affairs. Slowly, the court of public opinion has reminded the Vice-President and the Minister for Home Affairs that the Prime Minister is nearer the President than himself. So, hon. Millie, it is just a matter of time---

(Laughter)

The Temporary Deputy Speaker (Prof. Kaloki): Order, Dr. Khalwale! Where are you getting all that from?

Proceed and make your contribution!

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I just wanted to make a small important point, that the Ministry of Planning, National Development and Vision 2030, whatever it will be called must realise from now that the issue of statistics will be extremely crucial.

(Applause)

There are two points on this one. There is the issue of population. We must be a wonderful country, that one corner of the country can have its population growing in a period of ten years from, probably, 300,000 or 400,000 people to two million people. When you subject it to the dynamics of demography, you will find that even in that increment from 300,000 to two million people, there are more men than women in that population. As leaders of this country, I believe that these are some of the things that we will iron out when we will have proper orientation of the new Constitution so that statistics on population reflect the truth on the ground.

Mr. Temporary Deputy Speaker, Sir, what is more is the issue of poverty index. It is very easy for a mischievous Minister to play around with this index, so that some areas in the country can purport be poorer in order to access more resources.

The third point I want to make is on the errors in the recording of population. I have a particular experience where in the former Western Province, had the greater Busia District. In the last census the Teso Community was counted under the greater Bungoma District. So, whereas the population of Busia reflects to be small, it is because the Tesos of Busia were counted under Bungoma. So, if this is not corrected, it means that funds meant to develop Busia will be sent to Bungoma and the people of Busia will have smaller or less access to resources for development than Bungoma. These are things that we must talk about if the minority groups live in our midst, for example, us we have majority. If we do not address this issue, then our brothers who live in our region as minorities will lose confidence in the principle of devolution.

Mr. Temporary Deputy Speaker, Sir, the fourth point that I want to make is on the role of the vote that is given to the county. Let governors and county assemblies know that this money will not be taken there for purposes of devolving corruption from Nairobi to the counties. I hope that all of them will be reading to know that the Senate will have a say on the corruption that will go on in those counties. We want to put them on very early notice. I want to put them on very early notice. We have a history of pursuing corruption and we will make sure that no governor, be it in Taveta, Machakos or Makeni, will be allowed to play around with public resources meant to improve the lives of our people.

Mr. Temporary Deputy Speaker, Sir looking at the 15 per cent plus that we are taking to the counties, you realize that it looks like this money is just going to be used for remuneration. My thinking and my campaign for the new Constitution was on the understanding that this money was going to go to the county governments for development. However, if it is going to be used for buying cars, fueling and paying salaries of the civil servants who work there, then all that we have done is that we have merely devolved jobs. In fact, I am afraid that if that is the case, then the pace of development might as well slow down.

Mr. Temporary Deputy Speaker, Sir, I want to conclude my contribution with a reflection of the unfairness of the current system. One of the most ambitious programmes that have been a large success in this country was Roads 2000 Programme. I do not know, hon. Members, if you have looked at the Economic Survey. It has got startling statistics. It says that on this ambitious programme that has seen a revolution in the infrastructure of the country, a total of 6,074 kilometres of new roads have been done. That is something very nice. But when

you analyze it further, you find that out of these 6,074 kilometres, 1,015 kilometres have been done in the central region of Kenya and 2,036 kilometres have been done in the Nyanza region of Kenya. The shocking aspect of it is that whereas this is obtaining, in the project of Roads 2000 Programme, zero kilometers of roads have been done in the former Western Province region. It is a shame and Prof. Anyang-Nyong'o, who was the Minister for Planning and National Development, a man I respect--- I was the first one to host him in Kakamega when he was campaigning for the Social Democratic Party (SDP), and he knows how much I respect him. But if he is the one who planned these things that we get zero out of Roads 2000 Programme, Professor, then please, you owe our people an apology. It is not fair. It cannot be fair. It is not wise and we cannot accept. We want Kenya to grow and I want all to know that if I ever have an opportunity to come to this National Assembly---

The Minister for Medical Services (Prof. Anyang'-Nyong'o): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Khalwale to impute improper intention on my part that I planned for them to get zero in Roads 2000 Programmes when Roads 2000 Programmes had nothing to do with the Ministry of Planning and National Development when I was the Minister?

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I beg that the HANSARD strikes all those words that are attributed to me and, therefore, condemning Prof. Anyang'-Nyong'o. In fact, had I not put him under pressure, I would have wrongfully thought that he is the one who visited this unfair thing to me. But since hon. Kimunya is there, he was the Minister for Finance and I do not know whether it was him.

(Laughter)

I was just congratulating him on how he disbursed funds for the roads. I was just concluding by saying that when we win our elections, wherever we come from, be it from Mfangano or wherever, and we come to Nairobi, we should, as we discharge our duties, be truly children of Kenya. I want to swear that in pursuing my duties beyond the end of this term in the Senate, I will make sure that every county in the country gets its rightful share. I thank you for giving me this opportunity and Prof. Anyang'-Nyong'o, my respect to you.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, I want to pray, plead and implore the people of the new Homa Bay Town Constituency to return me to this House. I am happy that these Houses are on the same Floor. So, I do not know which one is upper and which one is lower, but I would be happy to serve them from this House, namely, the Kenya National Assembly.

I rise to support this Motion that is seeking the adoption of the Budget Report. I must say that this was a negotiated position where I was and I argued very strongly in favour of at least 50 per cent based on population. However, in the spirit of give and take, I conceded. I want to point out, at the risk of being repetitive, that the whole essence of devolution is to secure equity in this country. It is imperative that the parameters that will help us realize this equity are strictly and accurately arrived at. The issue of statistics is very important. The population figures must stop being politicized and we must devise a way of getting our population correct if we are to use it as a parameter of resource distribution and for planning.

You will remember that we have assigned certain weights to poverty. Sometimes it is fashionable to be poor and sometimes it is a disgrace to be poor. When it comes to resource allocation, everybody wants to be poor because while we go the direction of using poverty as a

parameter of resource distribution, figures get altered on the way. So, it is important for the Executive to appreciate the need to come up with very accurate poverty indices in this country. The Constitution says that not less than 15 per cent shall be allocated and delegated to the county governments. Further, the Public Finance Management Act says that whatever amount that we shall allocate to the county governments, not less than 30 per cent shall be dedicated to development. We realize that we wanted to cure the imbalance in development in this country, not by bringing down the areas that are developed, but by bringing up the areas that are undeveloped.

If now we only leave 0.5 per cent dedicated to equalization, it is going to take this country a long time to correct this historical injustice.

There was a strong argument for the allocation to land mass. I strongly opposed it but I was persuaded, and I must say that I conceded to the persuasion. But it is important that this country develops a policy whereby we can have nuclear villages to make service provision cheaper. You can imagine how much it would cost to electrify Isiolo County and Moyale County because there are far-flung villages and the lines must run through the vast land.

The other thing that I must emphasize is that we all form governments so that we can provide services to the people. As such, I want to emphasize that the focus should be service delivery to the people of Kenya. That should be one of the most leading parameters in resource allocation.

In arriving at this, we were given various scenarios locally and even internationally. I am glad that this thing is subject to review in three years' time. I hope in three years' time, we shall have generated more accurate parameters and then we shall seriously be tackling the issues that we intend to tackle.

Mr. Temporary Deputy Speaker, Sir, I cannot finish without talking about legality in the management of the resources that we are going to devolve. Arising from this, I expect the Minister for Finance to come up with the Revenue Division Bill and subsequently, the Revenue Allocation Bill. The people on the ground are eagerly waiting to see the implementation of the devolved chapter of this Constitution but we see some inertia with the Executive in actualizing this. My friend, Mr. Githae, is on record as having said that Kshs160 billion is waiting to hit the bank account of the county governments on 5th March, 2013. I have looked through the Budget and I have not seen that money. It is important that we work towards actually availing money so that the swearing in can be financed so that the inaugural meeting cannot be underrated. It is as important as taking off on a plane. If we get that wrong, then Kenyans will lose confidence in this devolved system of government. We will go round in circles and perpetuate inequality.

With those nearly many remarks, I want to support the adoption of this Report.

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, I rise to support this Report. I want to congratulate the Budget Committee for the good work they have done. They have done a lot of consultation, and I think they have come up with what I would say is a very fair formula for the allocation of the proposed resources.

However, having said that, I want to raise some concerns that should be looked into by the coming Senate. The first one is the issue of statistics. This is a very important issue. The formula that has been proposed hinges on good credible statistics. If we are not going to have good and credible quantitative statistics, then this formula is not going to achieve what it intends to. I want to say that when we have the next Senate, one of its biggest assignment is to work in collaboration with the Ministry of Planning, National Development and Vision 2030 to ensure that the issue of population is addressed, particularly in those areas where we saw very glaring

anomalies that do not actually support demographic theories. I do not want to mention those areas because we have talked about them. We will need to look at that population afresh

Mr. Temporary Deputy Speaker, Sir, secondly, if you remember early this year, I brought a Motion to this House contesting poverty indices that were being used to allocate our CDF money. I said that those indices were based on statistics that were faulty because the sampling strategy and value were very low and were mainly based--- The Kenya National Bureau of Statistics did most of the sampling mainly in urban areas and not in rural areas. The sampling test was very low. That was why you found some parts of areas like Kajiado had the lowest poverty index, but if you went to the rest of Kajiado County, you would see a difference. What I am saying is that this is an area, again, where we shall need credible information. I also want to support hon. Anyang-Nyong'o on the issue of land area. We need to look at the utility of land. This is one area again that we need to look at.

With those few remarks, I beg to support.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to respond to the views of the Members.

Let me take this opportunity to thank the Budget Committee for a job well done. They were able to come up with a report within a very short period. Let me also take this opportunity to thank the members of the Commission on Revenue Allocation for taking time to go round the whole country and seek the views of *wananchi*. It is from those views that we now have this Report.

I would also like to take this opportunity to thank officers of the Ministry of Finance and Treasury for having been available whenever they were called upon by the Budget Committee or by the Commission on Revenue Allocation to any of their meetings. Let me also thank the Members of this august House for giving this Motion priority; it is from this Motion that we will be able to prepare two Bills which are required. The first one will be on revenue division between county and central governments and between the county governments themselves. But we could not have done this without this formula. This formula, as the Committee has said, takes into account all the five parameters. Population is now given as 45 per cent; poverty index is recommended at 20 per cent, land area is 8 per cent, basic equal share 25 per cent and fiscal responsibility 2 per cent. This means that we have now achieved what has been the intention of the Government all along; it is to have even distribution of development across the counties. With this, we can now say good bye to poverty. We are saying good bye to unequal distribution of opportunities and resources. Therefore, I think this country is now on the move.

Mr. Temporary Deputy Speaker, Sir, if we elect good governors, I can assure mwananchi that within five years, we will be talking of a different country all together. You will be talking of a country which will be developed. You have been talking of a country which will be developed; you have been talking of a country where all the basic services will be available because it is upon the governors to effect that. The role of Members of Parliament is left to basically legislative and oversight. So, we expect that the actual implementation of CDF and LATF and other devolved funds will be upon the governor. So, really, the governor is the person to be blamed if things do not work, and the person to be commended if things work.

Now, we do not want to hear when something happens: "*Serikali saidia*". From now onwards, I am now telling Kenyans that if there is a problem, if there is a landslide, if there a catastrophe, if there is an emergency, now please say: "Governor *saidia*". That will be his responsibility.

With those few words, I support.

Mr. Mwadeghu: On a point of order, Mr. Temporary Deputy Speaker, Sir, in view of the fact that we are almost getting into repetition, will I be in order to ask you to call upon the Mover to respond?

The Temporary Deputy Speaker (Prof. Kaloki): Let us give a few Members a chance to contribute. Is Mr. Mututho here?

Hon. Members: No, he is gone.

The Temporary Deputy Speaker (Prof. Kaloki): He placed a request and then left. Mr. C. Onyancha, please, proceed.

Mr. C. Onyancha: Mr. Temporary Deputy Speaker, Sir, I stand not to support this Motion because I am a bit worried.

I have looked at the proposal; the population criteria and the others, but I am more concerned about the allocation based on the land mass criteria.

Mr. Temporary Deputy Speaker, Sir, last year, we learnt from the Minister for Education when the examinations in parts of county in North Eastern Province were cancelled, there were 4,800 students who had sat for the KCPE examinations in the whole county. When you go the population census results, that county claims to have more than a million people. My constituency with some 8,000 students who sat for KCPE that same year, the population is supposed to be 114,000 people and yet the registered voters plus all the students in the constituency which is not a county, exceeds the population of 114,000 people. Therefore, unless we first get our population figures right, I do not see how we can be able to use this criteria fairly.

Secondly, on the issue of land mass, I have done a simple calculation that one constituency in the north occupies about 8 per cent of the land mass of this country. It is larger than the old Nyanza Province, old Western Province and parts of the old Rift Valley put together. In essence, if you take 8 per cent of the expected first allocation, that constituency would get more than Kshs1 billion purely related to land and yet its population is less than one ward in my constituency.

Mr. Temporary Deputy Speaker, Sir, I am sure the hon. Members in this House would have preferred to see assimilation first; how it will work out if actually we use these figures. For example, is one constituency on land mass alone going to get Kshs1 billion more than the 60 odd constituencies in Nyanza and Western Province? I think that is an issue that we need to look at.

The second issue is: Where do the boundaries of the constituencies or the counties end? You heard Mrs. Odhiambo-Mabona talk about the lake. Constituency boundaries extend right into the middle of the lake because they must, for example, touch the Uganda border. The UN law of the sea proposed 200 nautical miles from the coast of any country that borders the ocean. So, are the constituencies in Coast Province going to claim that as the land mass?

Mr. Temporary Deputy Speaker, Sir, some lakes, like Lake Turkana, are very large. They are larger than some small provinces. How do you treat that when you are calculating land mass? Then we come to the issue of fiscal discipline, the 2 per cent. What are the parameters? I did not hear the parameters spelt out for determining fiscal discipline. I wish to call upon the Committee to do assimilation before we pass this law because once a constituency knows it will get Kshs1 billion and we come here and try to change it afterwards, I think we will have a very big problem. I am not opposed to the Motion *per se*, but I want to beg that the proposer moves that we adjourn and they do assimilation model before we conclude it.

Mr. Temporary Deputy Speaker, Sir, it is easier to correct this now, than to correct it after the Motion is passed. On the issue about the poverty index, this is an area which is also very

controversial. If you accept the social notion that jigger-infested areas are the poorest areas in any society, then you must conclude that areas in Murang'a are much poorer than areas that do not have jiggers and yet the billionaires from Murang'a are many. Is that a fair judgment that they should be allocated less?

With those few remarks, I beg to request that this Motion be moved forward.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir. Very briefly let me start by supporting this Report and commend very highly the Chairman of the Budget Committee, Alfred Sambu, for generating a very good Report.

It is important that we note that without funds, it will not be possible to start the devolved units well. Therefore, it is important we remind the CEO of KRA to rise to the occasion and make sure that revenue targets are met. In addition, there are areas in this country that, for quite some time, have felt that they are being marginalized. Through this process, this marginalization stigma will be addressed because funds will be released to all the counties through this very credible process.

We have seen some areas in this country without water or health centres and children of this country learning under trees. This process will bring the whole country together enhance peace and tranquility in the land.

The governors in the devolved governments will be expected to be people who are above board. You will not be expected to exhibit any degree of impunity through corruption scams and even fighting with chairs the way we have seen it happening in local authorities.

Mr. Temporary Deputy Speaker, Sir, on the Equalization Fund, this will be done above board and all the areas of the country will have their own share. The funds for the devolved governments will be expected to be released in good time so that no county will be left behind. This formula is on interim basis and will be expected to be reviewed in good time so that as the country grows and economic advancement is realized, more resources will be sent to the counties. It is important that we fully support this Report.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I fully support this Report.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I also rise to support this Motion. I also participated in the Budget Committee where these recommendations were considered and made. It is really important to emphasize that the recommendations have been arrived at as a compromise position. It is not the most ideal or what those who were in it really expected. But it is also very important to appreciate the fact that the country has come from a very emotive experience when talking about resource allocation, historical injustices and inequality in terms of development. Therefore, the proposal made can only be perceived as the beginning point for building socially acceptable position in terms of resource allocation.

Mr. Temporary Deputy Speaker, Sir, while thanking the Commission on Revenue Allocation, it is also important to emphasize that what we are coming up with, is essentially the first experience position. We anticipate that this process can be improved and this improvement can only happen if the country is able to generate data and statistics based on the impact of this mode of allocating resources in the next three or so years. For instance, when it comes to disparity in terms of development, while this proposal anticipates that this disparity will be overcome, the truth of the matter is that the funds under the county are actually meant to go into service delivery taking into account the role of the county government as established within the Constitution.

There are other funds that will still be available, not only to county, but to the Central Government to deal with other issues of underdevelopment. Therefore, it will be very interesting

for us to see how the waited rates are actually tested in the course of time. One of the responsibilities of the county government is to offer service to the local people and we would like to see how the regions with huge populations will fair on within the mode of allocation that is being proposed.

Mr. Temporary Deputy Speaker, Sir, it is also important to appreciate the criterion used such as land mass. We will also need to see how the allocated resources will be utilized. Will they be used, for instance, to overcome the historical communication challenges? These are some of the questions that will need to be retraced.

There is also the question of fiscal responsibility as a consideration for this. I would like to agree with some of the speakers, like hon. Prof. Anyang' -Nyong'o, that we should have given significant weight to this criterion. This is particularly so in the new dispensation. I do not belong to those who hold the view that we are going to have instant solutions to all the problems, especially of poverty and under-development and, more so, with a new system which will have all the challenges of testing and also benchmarking itself. The new incoming institutions are likely to have a lot of challenges with the resources being perceived to be--- Whereas the people think that those resources will go towards their development and addressing their development challenge and service, they are also going to have challenges of governance. It is very important that they also be addressed and we expect that the central Government will want to play a crucial role in ensuring that the capturing of statistics and usage of governance issues should be highlighted so that they can become a basis of other decisions that can be made with regard to revenue allocation.

Mr. Temporary Deputy Speaker, Sir, otherwise, the same complaints that we have heard about inequality of development, much as it may have been contributed by skewed allocation of resources, can still be contributed and, indeed, that sometimes gets contributed by misuse of resources allocated to specific areas, if those resources are not properly utilized.

I am still one of those skeptics who believe that the system of devolved governments does not actually hold success. It is really the way it will be implemented including the character and caliber of people who will actually be elected as governors and Kenyans out there had better be really sensitized that they cannot really expect devolved governments *per se* to deliver to them services. It is really about the character of people they will actually have elected from the governors to ward representatives, and also in terms of their own involvement. That is how they will become interested and involved in the way their resources will be managed.

Mr. Temporary Deputy Speaker, Sir, otherwise, this is going to be a very key transitional period and we urge the Government to move with caution and not to really insist that it is going to devolve all the devolved funds including the Constituencies Development Fund (CDF) to the same institutions of counties before it has proved itself or before it has proved its worth in terms of absorbing resources and ensuring that they are properly utilized.

Otherwise, with those remarks, I beg to support.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support but before I do so, I would like to move some amendments on this report. The truth of the matter is that all good practice in livestock and agriculture--- As a trained professional, I can say this: It will depend on something called "carrying capacity of the land". That is how many people can be carried in a given mass of land. We are trying to offer services to the people and not necessarily to the land. I travel widely and I have been travelling from the 1970s and, in some of these places, you travel for, at least, 200 to 250 kilometres without seeing any human being. Maybe, one or two camels. Now, you want to reward that with a big percentage on land. There are areas which are very

heavily populated. Places like Kiambu for instance, where we are seeing that even the IEBC has a challenge in terms of registering people because of jiggers which have damaged their toes and fingers; there is plenty of poverty.

Mr. Temporary Deputy Speaker, Sir, I want to cite places like Naivasha. Next to the lake, a place called Karagita has the poorest population in Nakuru. That is the place you saw in the newspapers where 180 kids were featured having rickets and marasmus. The population is where it is because of certain parameters. What is expected of this and future governments is to offer certain basic services like health, education, infrastructure including if they are too many, high-rises like they do in Australia and other places. I, therefore, seek an amendment, so that population takes 48 per cent in that formula and the landmass comes back to 5 per cent. That was the original thinking by the Commission and it has rationale in my thinking. I have the amendment and I believe it is approved.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mututho, I have not seen that amendment.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, the amendment must be somewhere with your many hardworking officers. I would ask my brother, Mr. Midiwo, to second me on that amendment before it comes to the main amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mututho, first of all, I need to see that amendment. I need to see when you drafted it and whether it has been approved.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, if you look at areas like north eastern Kenya, for instance, and let us be specific, the area between Modogashe all the way to Wajir, how many households can you count in that particular stretch, which is about 600 kilometres? The truth is that you will not even get a thousand households; forget about the census and everything else. But if you go to Kisii or Emuhaya, where my friend comes from, you have 2,000 persons per square kilometre. Such people will require certain services and those services will not be offered when we use our resources using the luxury of landmass. We are trying to marginalize the people who are already in high potential areas. Even if you look at developed countries like Australia, most of the development is within 20 per cent of the landmass.

Therefore, as we look into this formula, let us also appreciate that the people who did the initial research; the people who worked on these numbers, had every Kenyan in mind. We have this idea that some communities are marginalized. For instance, let us say that in North Eastern, nobody will take an identity card because their fingers are infested by jiggers. Even where my brother comes from in Turkana, BVR will not be used because of jiggers, but when you come to Kiambu where you perceive people to have---

Mr. Koech: On a point of order, Mr. Temporary Deputy Speaker, Sir. With due respect to the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives, this report was discussed within the Budget Committee where my good friend is a very active Member. Is he in order to come to the Floor of the House and try to amend a negotiated position that was clearly stated by the Chair? The Member is, first of all, talking about sparse population without telling us what makes people run away from those areas. I need your guidance on this in view of the fact that the Member is a Member of the Committee.

The Temporary Deputy Speaker (Prof. Kaloki): Indeed, you are right but let me hear from Mr. Ethuro and Mr. Mututho first of all. What you are moving here is not procedural. To begin with, the Chair must be able to see this amendment. I do not see any of the members of the Speaker's Panel or the Speaker himself having approved these particular amendments.

Let me hear the point of order by Mr. Ethuro.

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I seconded this Motion that we are discussing and not the amended one. This is a position we took as a Committee.

The Temporary Deputy Speaker (Prof. Kaloki): Are you contributing?

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I am on a point of order trying to explain why the amendment proposed by the Chair of the Agriculture, Livestock and Cooperatives Committee must not be entertained. Even the recent meeting where we all sat as Chairs to approve this, it was in the spirit of give and take, just as Mr. Ogingo has said in his contribution. So, for him to come to the Floor and ambush all of us, I find that actually in bad faith.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mututho, if you have a contribution to make, go ahead and do that because I am also not going to entertain this amendment you are bringing here. It was not even approved by the Clerk and especially the Speaker or by any member of the Speaker's panel.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. While I agree that the debate ensuing is healthy, this report is a product of this House and once it gets here, any hon. Member is free to debate it. Therefore, I stand to be told which part of the Standing Orders would bar Mr. Mututho from debating and amending the report.

Secondly, I am seeking your guidance because when you say that an amendment of this nature must be approved by the Speaker, I seek to disagree because an amendment to a report can happen on the Floor of the House. It is good that we do not flout our own procedures because going into the future, it will set a very bad precedence. I know that a report can be amended on the Floor.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Midiwo! What I am saying, and I want to repeat it here, it is normally the practice and procedure of this House that if you have an amendment, you normally approach the Chair, but this is coming at this time. So, I am asking whether this is procedural. That is the issue here. It would be proper for you to approach the Chair, we approve it and then you can move it. That is normally the procedure and you know that.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, first of all, I want to clear the impression and quote from Winston Churchill that eating your own words has never caused constipation and only fools do not change their mind. Taking from that position, what I was trying to say and what I want hon. Members to appreciate, as we go to the devolved system and after withdrawing that debate of per centum, I want people to appreciate and I am saying with a lot of sadness---

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mututho, the Chair does not have a problem. Let us agree now. I have seen your amendment but are you withdrawing it?

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I wish to withdraw.

The Temporary Deputy Speaker (Prof. Kaloki): Alright. Then make your contributions and conclude your remarks.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, so that there is avoidance of doubt, I withdraw.

Mr. Mututho: For avoidance of doubt, I withdraw the amendment but continue with my contribution on the original Motion.

I want to tell Kenyans, who are listening to me and the people who are in this Chamber today, to note that as the IEBC is registering voters using the BVR, it is only central Kenya, because of poverty, where some people may not be able to be registered on the BVR because of jiggers, which have eaten up their toes. We do not have such challenges in places like North Eastern and other areas, which we normally call marginalized. This idea about marginalization will be even greater if we do not consider that at Emuhaya the population is 2,000 people per square kilometre; within ten years, these people will be about 6,000 per square kilometre. We will be marginalized further because all the people who are now in high potential areas will be reduced to sheer poverty.

You find the Kisii with land issues because we do not have an education system that can teach this population to forget about land and then move to the cities and do other things. As you get poorer and poorer, you are going to marginalize more people and have slums and ghettos created in the rural areas.

We cannot afford looking at a section like say, with due respect--- I was looking around to see whether my brother from Mbeere was around. We were with him a few hours ago. In that part of the world where we have had a Cabinet Minister from 1963, the population there is only 90,000 people. Places like Naivasha Constituency has 420,000 people, yet every means has been used to try and show how marginalized these people are, and the kind of sympathy they require, yet they do not live in more than two locations. I can see my brother Kathuri is here and he will agree with me that the total population of Mbeere is 90,000 people. I am not saying they should not be assisted. But do we take cognisance of the fact that there are some very populous places now that will not get any service which they deserve like healthcare, including maternal and childcare services, because of this thinking that we have; there is this idea that some communities are marginalized while others are not.

Let us look at western Kenya, for instance; an area with nine Cabinet Ministers; compare it with Nakuru, an area with children of a lesser god; no cabinet Minister since 1963, I am saying this because even those Ministers in the very remote areas----

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

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I can see that the House has a lot discomfort when I talk about this but it is a fact. From western Kenya I can count not less than nine cabinet Ministers. In Nakuru, the last one was appointed in 1966. These Ministers drive cars, fuel there and eat there and that is development.

With those remarks, I beg to support.

Mr. Kathuri: Mr. Temporary Deputy Speaker, Sir, I would want to bring to the notice of my good friend, hon. Mututho, that yes Cabinet Ministers may be in north eastern, but those are not strategic offices in this Republic. There are offices which are more strategic than that of a Cabinet Minister. We have heard a Cabinet Minister say she has held a better position than that of a Cabinet Minister.

Two, it is also good for my colleague to know that infection of jiggers is not a parameter to show levels of poverty. Jiggers can even be a condition of the body. There are those who are more prone to them. There are other areas where we do not have jiggers but cholera outbreak may be more serious than jiggers. It is just in his area where those who are rich have marginalized the poor; they have made them extremely poor by exploiting them; they use them as coffee harvesters and this enables the rich people to go and make money.

The Temporary Deputy Speaker (Prof. Kaloki): Alright, Mr. Emilio.

Dr. Bonnie Khalwale, do you have a point of order?

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, yes. It is important for good manners and respect for the reputation of this House that the Member withdraws. Some of the points he is making are not going to help anything. That is because when you compare Western Province with a small district called Nakuru, which does not even have half the population of Kakamega and go on to suggest that because of the so-called nine Ministers we are privileged, it is not fair. This hon. Member should know that for 15 years, Kenyatta was the President of Kenya and he took resources to your community. For ten years, President Kibaki has been the President of Kenya, he has not built one kilometer of road in Western Province through the Roads 2000 Programme. Correct these things; we want to move on as a new Kenya without these petty tribal things.

Mr. Temporary Deputy Speaker, Sir, is the hon. Member in order?

The Temporary Deputy Speaker (Prof. Kaloki): Dr. Khalwale, are you addressing Mr. Mututho or the Chair and the House?

Prof. Anyang'-Nyong'o, please, proceed!

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, noting that Members have substantially contributed to this Motion, will it be in order for me to call upon the Mover to reply?

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mututho, I think you are done.

Mr. Kiptanui, please, proceed.

Mr. Kiptanui: Mr. Temporary Deputy Speaker, Sir, I thought that initially, there was a point of order by Prof. Anyang'-Nyong'o.

The Temporary Deputy Speaker (Prof. Kaloki): Order! Professor, I was not paying--- I think you are done.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): You did not hear what I was saying?

Mr. Temporary Deputy Speaker, Sir, since most Members have substantially contributed to this Motion, would it be in order to call upon the Mover to reply?

The Temporary Deputy Speaker (Prof. Kaloki): Very well. But there are some issues that we would want to deal with before we do that. I have been notified that there is an amendment to be brought by Mr. Koech.

So, Mr. Koech, please, proceed.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, first of all, let me rise to support this Motion. I am a Member of this Committee. However, I want to propose a small amendment. The amendment reads as follows:-

“THAT, the Motion be amended by deleting the full stop at the end and inserting the following words, “subject to deletion of all the words after paragraph 29 (e) which words would read as follows:-

It is therefore my pleasure to present this report to the House and implore Members to adopt the recommendations as proposed by the Commission on Revenue Allocation (CRA)”.

Mr. Temporary Deputy Speaker, Sir, this allocation is not proposed by the CRA. Therefore, I propose that the last part is deleted and that the House resolves that pursuant to Article 217 of the Constitution the basis of revenue sharing among the counties be as follows:-

- | | | |
|-------------------|---|-------------|
| (a) Population | - | 45 per cent |
| (b) Poverty Index | - | 20 per cent |
| (c) Land Area | - | 8 per cent |

- (d) Basic Equal Share - 25 per cent
- (e) Fiscal Responsibility - 2 per cent.

Mr. Temporary Deputy Speaker, Sir, I just wanted to make it very clear that what we are proposing as a House is not what the CRA recommended.

I call upon Mr. Kiptanui to second.

Mr. Kiptanui: Mr. Temporary Deputy Speaker, Sir, I stand to second the amendment.

As explained by Mr. Koech, the proposal on the formula was out of a process of serious consultations with different and various stakeholders. If we do not amend, it will be like going with the original formula given by CRA. In essence, what we are doing is to amend the initial CRA formula and clear the air to ensure that the formula that we have agreed upon is the one that we are carrying.

I second.

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

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I would like to thank Mr. Koech for coming up with this amendment. As you know, Kenya has become a very litigious society. It would have been possible for an activist to go to court and challenge the formula on the basis that the formula that was approved by Parliament was not the formula that was recommended by the Committee but the formula that was recommended by CRA. CRA's was a mere recommendation. It was up to the Committee to look at it and then come up with its own recommendation.

I thank Mr. David Koech for that so that we put it in black and white that this was an agreed position. This was a negotiated position and I, therefore, support the amendment.

Mr. Chepkitony: Thank you, Mr. Temporary Deputy Speaker, Sir. I do support the amendment as moved by Mr. Koech and supported by Mr. Kiptanui and the Minister for Finance. This was going to mislead the public because if we had left it the way it was proposed by the Commission of Revenue Allocation, then that would have been wrong. That means we would have done nothing as a Parliament. This Parliament consulted all the stakeholders and eventually came up with this formula.

So, I do support the amendment.

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

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

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

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

Resolved accordingly:-

THAT, this House adopts the Budget Committee Report on the basis for Allocating Resources among the Counties for the period 2012-2015 laid on the Table of the House on Thursday 22nd November, 2012

(i) subject to deletion of all the words after paragraph 29(e);

(ii) That the House resolves that pursuant to Section 217 of the Constitution, the basis of revenue sharing among the counties be as follows:-

- | | | |
|--------------------------|---|-------------|
| a) Population | - | 45 per cent |
| b) Poverty Index | - | 20 per cent |
| c) Land Area | - | 8 per cent |
| d) Basic Equal Share | - | 25 per cent |
| e) Fiscal Responsibility | - | 2 percent |

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, it is now time to adjourn the House. Therefore, the House stands adjourned until tomorrow, Wednesday, 28th November, 2012, at 9.00 a.m.

The House rose at 8.05 p.m.