

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 4<sup>th</sup> September, 2012

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

PRAYERS

### QUESTIONS BY PRIVATE NOTICE

#### USE OF BVR SYSTEM TO CURB ELECTORAL FRAUD

**Mr. Mwau:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Justice, National Cohesion and Constitutional Affairs the following Question by Private Notice.

(a) Could the Minister confirm that the Biometric Voter Registration (BVR) system by the Independent Electoral and Boundaries Commission (IEBC) is intended to curb electoral fraud, election rigging, multiple registrations and voting?

(b) Could the Minister confirm that with the BVR system, only one finger or thumb shall be scanned and it shall not be used to infringe on individual right to privacy by collecting biometric data such as eye retina scans, facial characteristics and/or hand geometry?

(c) How will a recount of votes be carried out in the absence of a paper trail in cases of electronic ballot manipulations, tampered voting process, software or computer failure without compromising the validity of election results?

(d) Could the Minister confirm that the biometric data to be collected from the over 14 million people in the voter registration will be used for the conduct of elections only and will not be shared with foreign nations, agencies or bodies?

**Mr. Deputy Speaker:** Minister for Justice, National Cohesion and Constitutional Affairs, I do not see your request unless you do not have your card. Can you give him the microphone?

Mr. Eugene Wamalwa, can you switch off the microphone that is next to you?

Proceed.

**The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, the Biometric Voter Registration (BVR) will curb electoral fraud and multiple registrations of voters. The system uses the unique biometric information of the individual such as the finger prints or face recognition to accurately identify the person during registration as a voter and during the actual voting day.

(b) The BVR system will use data from the finger prints and/or the face recognition. That information shall only be used when identifying a voter at a polling station. Once polling is completed, the register shall be secured along with other strategic materials.

(c) The BVR system is a mode for registration of voters. It is not an electronic voting system. Voting will, therefore, still be paper-based and by secret ballot. There shall be a paper trail in case subsequent verifications have to be carried out.

(d) I can confirm that the information that is collected by the Independent Electoral and Boundaries Commissions (IEBC) on voters is only for the purpose of discharging their mandate. The information they collect will not be shared with foreign nations, agencies and/or bodies.

**Mr. Mwau:** Mr. Deputy Speaker, Sir, the Canadian company Coded Incorporation was contracted by the Fiji Government to do BVR registration and now they have a dispute because the company took the data of Fiji voters and gave it to Canadian intelligence. The question here is for the Assistant Minister to confirm, since he is saying that the purpose of BVR is to prevent double registration, double voting and manipulation of votes, the iris and facial characteristics - including thumb geometry - has anything to do with voting. Can he confirm that only the thumb or one finger will be necessary for the purpose of voting?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, the BVR is a system that, as I have said in the answer, is meant to help this country to avoid double registration and, therefore, double voting by voters in this country.

Two features are being addressed here. One is the finger prints and the recognition of the voter's facial appearance. The other aspects of the retina scans and facial characteristics and hand geometry are issues which we believe may not be very necessary for us because what we want to avoid is double registration. Therefore, we need the facial appearance of the person to enable the official recognize that the person who is voting is the one who is registered in that polling station.

**Mr. Cheruiyot:** Mr. Deputy Speaker, Sir, much as the Assistant Minister is telling us that the information will only be used by IEBC, can he give us an assurance by way of giving what penalties are there for any person misusing his or her authority and giving out the information? There is really a definite concern that, that authority may be misused. What punishment are you planning?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, the user of the information is the IEBC. That is an institution that is given the responsibility to manage elections in this country. Article 86 of our Constitution is very clear. The IEBC shall take appropriate structures and mechanisms to eliminate electoral malpractices and safe keeping of election materials. The BVR is part of the elections materials. They are under duty in law to ensure that those records are kept safely. That is the institution which is going to utilize this information. I believe they have to take care of those materials to make sure they are not going to be used---

As for the penalties being requested by the hon. Member, I may not, at this point in time, be able to state the penalty amount or extent of that. However, all I want to say is that they will be kept safely as required by the Constitution.

**Mr. Olago:** Mr. Deputy Speaker, Sir, when the IEBC Act was being crafted, it was deliberately meant to stop the officials of the IEBC from misusing information or powers vested in them. However, if the Assistant Minister has looked at the Act carefully particularly the section that relate to the punishment of officials who misuse the powers, what is there in the Act to ensure that the concerns raised by Mr. Mwau will be addressed within the Act?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, there is the law as it is. I do not want to give the law as it ought to be. I am not able, at this point in time, to give the specific provision of the penalty. But given time, I can be able to confirm that. If it is provided for under the IEBC Act,

then those penalties will definitely follow in the event that an officer of the IEBC discloses information to any other party.

**Mr. Deputy Speaker:** Do you have the law that has the penalty? That is the thing you probably need to clear.

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, I suppose there is a provision on penalties but, at this point in time, I cannot be able to spell out the specific penalties available under the Act.

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, if the information is disclosed, it can have implications on the relevant individual who is affected. I would like the Assistant Minister to confirm to this House what he is going to do. I know there is no law at the moment making it illegal for the IEBC to share information with other bodies that are not allowed to access the information. Could you tell us what you are going to do urgently to come up with a law – or amend the IEBC Act – or in the regulations which we are just about to debate, make it illegal for IEBC to share information with bodies that are not supposed to get access to the information?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, the Commission has already designed a format for any member of the public. Under the Constitution, the Kenyan people have a right to access information. However, the information to be given to any person shall relate only to issues of the details of the voter like the ID, polling station and so on. There is already a format designed by the IEBC, which will be used by the Kenyan people should they require information. I have a designed format which I can lay on the Table. We have to avail information to the Kenyan people as required by the Constitution.

**Mr. Mwau:** Thank you, Mr. Deputy Speaker, Sir. As you can see, the Assistant Minister has information and some forms which are in support of his answer, but he has not supplied them to me. So, I am not able to interrogate the forms as it relates to the penalty and the format. So, it is important that I am supplied with those particular documents so, that I am able to interrogate them.

Further, Mr. Deputy Speaker, Sir, when the Question was deferred last time, he was to address the question as to whether the software to be used during the elections is closed box. Was it a software or open source software? Closed box software is where the software is programmed to do things without audit. Open source software is where you can audit. So, closed box software is where the software can be directed three votes out of ten votes to go to a particular candidate. Could he address that issue?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, from my answer, I was able to clarify that the Biometric Voter Registration (BVR) system is not for voting; it is only for identifying voters at the time of registration of those voters and on the polling day.

So, Mr. Deputy Speaker, Sir, that concern by the hon. Member is genuine. If the system was to be used to vote, that could be a serious problem. It is only identifying the voter upon arriving at the polling station. Therefore, somebody else who is not supposed to vote cannot do so because he will not be identified by it.

So, Mr. Deputy Speaker, Sir, the open box or the closed box issues could be very relevant only if the machines were to be used for voting purposes. As I said, this system is only for identifying a voter at the time of registration and during the polling day.

**Eng. Rege:** Thank you, Mr. Deputy Speaker, Sir. I would like to ask the Assistant Minister if he is preparing to have the Independent Electoral and Boundaries Commission (IEBC) have a high technical committee representing every presidential aspirant to make sure that the software is not tampered with or the related equipment or peripheral devices accompanying the equipment are not tampered with from the time of procurement until

installation?

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, that is, indeed, a very important issue. This country must and should conduct very transparent and fair elections. The political parties are very key players and stakeholders in this process. Therefore, that can be considered because we want all the parties and all the stakeholders to be happy with the process. It can be done.

**Mr. Njuguna:** Thank you, Mr. Deputy Speaker, Sir. While thanking the Assistant Minister for that lengthy answer and indicating to the House that this is an electoral process, could he inform the House what clear security measures they have put in place to make sure that internal enemies will not interfere with the new technology?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, I would like to request the hon. Member to repeat the question because it is not very clear to me.

**Mr. Deputy Speaker:** He basically is asking you how you will eliminate internal tampering or an insider job in terms of tampering with this technology. Is that not what you meant?

**Mr. Njuguna:** It is, Mr. Deputy Speaker, Sir.

**Mr. Cheptumo:** Thank you, Mr. Deputy Speaker, Sir. That is equally important because we want this equipment to guarantee fair elections by ensuring that we do not have double registration.

Mr. Deputy Speaker, Sir, the IEBC has an ICT Department. It is their responsibility to ensure that this is done so that we do not have defective equipment in the process of either registration or at the time of polling.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** What is your point of order, Mr. Mwau?

**Mr. Mwau:** Mr. Deputy Speaker, Sir, is the Assistant Minister in order to mislead the House that the purpose of the BVR is only to identify a voter while in the draft election regulation, which the Minister tabled before the House on 30<sup>th</sup> August, 2012, Section 21(2) provides that:-

“A voter shall cast his or her vote by use of a ballot paper or electronically.”

Is he in order to mislead the House that the voting will only be done through a manual process?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, if the provision of the regulations only say”- “through electronic voting,” that could really be finality. But it says: “through ballot or electronically.”

So, Mr. Deputy Speaker, Sir, these regulations are before the House for debate. I want to make it very clear that the purpose of the BVR System is purely for registration and identification of voters during the polling day. That is the true position and I cannot mislead this House.

**Mr. Deputy Speaker:** So, you maintain that the description “electronic or manual” is actually in itself not true?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, it should actually be---

**Mr. Deputy Speaker:** When you say “or---” this basically means both are implied or relevant.

**Mr. Cheptumo:** I agree with you, Mr. Deputy Speaker, Sir. In fact, in my view, when we discuss that issue in this House, the part “or electronic” should be considered because it is not going to be relevant since we will not use electronic voting this time round.

**Mr. Mwangi:** Thank you, Mr. Deputy Speaker, Sir. Listening to the Assistant Minister

answering most of the supplementary questions, it has not come out clearly why he would want to use BVR fully during the voting exercise. Could he tell us why the thumb is not adequate enough to make us vote if we are going to do it manually? It is still not clear from his answer why the Government would want to use this BVR and get all these other details and the fact and he has not given a guarantee that this information will not get to another body?

**Mr. Deputy Speaker:** Mr. Assistant Minister, not only have you not given that guarantee, but you have not even spelt out the penalty or consequences if somebody abuses this system.

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, I had said earlier that the penalty is provided for specifically in the IEBC Act. I also said that I may not be able to confirm now. I am trying to establish this from the Act now.

There are two issues here; that is, the finger prints and the facial recognition. These two features will help us identify the voter at the time of registration and voting. As I said earlier, the aim of the equipment is only to identify the voter at registration and on the polling day. It will not be misused, but it will be used for the betterment of our electoral process.

**Mr. Deputy Speaker:** The last supplementary question on the same, hon. Mwau.

**Mr. Mwau:** Thank you, Mr. Deputy Speaker, Sir. I am certainly disturbed because the Assistant Minister has failed to address the issues clearly. In the draft rules, they provide for both the manual and the electronic voting process. So, he must then be able to explain why all, because---

**Mr. Deputy Speaker:** Order! Eng. Rege, are you on a point of information?

**Eng. Rege:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Do you wish to be informed by Eng. Rege, hon. Mwau?

**Mr. Mwau:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Proceed, Eng. Rege and inform hon. Mwau.

**Eng. Rege:** Thank you, Mr. Deputy Speaker, Sir. Actually, this information is for the Assistant Minister.

Sometime this year, we passed the Bill on Electronic Voter Registration, but the one on electronic voting is not passed yet. This should be understood clearly. Those two issues must be understood.

**Mr. Deputy Speaker:** The Assistant Minister has been very categorical; he has said that there will be no electronic voting; it is a manual voting. We need the electronic component for purposes of identification and registration.

Yes, hon. Mwau, can you conclude your question?

**Mr. Mwau:** Thank you, Mr. Deputy Speaker, Sir. In conclusion, the Assistant Minister has not addressed why thumb prints are not necessary. They require facial characteristics which, in the process, they will also be capturing the eye iris. What is the purpose of capturing the facial features and the eye iris? What has that got to do with voting?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, the whole idea is really accurate identification of the voter. The facial elements are being taken into account in this process because it is a process where we want to have full recognition of this particular voter when he appears in the polling station.

Mr. Deputy Speaker, Sir, I said it and I want to repeat it; that it is not intended to be used to the disadvantage of a Kenyan during or even after the election process. It is to accurately identify the voter.

**Mr. Deputy Speaker:** He is just giving goodwill or an assurance. He says it is not

intended, it is not right. But hon. Members want to have their fears rested. You must say that it cannot be done as the law is in place and give the guarantees!

What is your point of order, hon. Mungatana?

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to assert that those facial expressions as mentioned by hon. Mwau cannot be used for other purposes and yet we know this BVR is being given to a foreign company? What assurance does he have that, that same data will not be utilized for other purposes?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, once the equipment is in the country and the election process is complete, this equipment under Article 86 of the Constitution will be secured by the Commission. If it was to be that after the process again, the equipment is taken back to another country; that fear could be real. I see the fears of the hon. Members, but this equipment will be secured by the IEBC as required by the Constitution. Therefore, no foreign country or body will have a chance to use that particular equipment.

**Mr. Duale:** Mr. Deputy Speaker, Sir, you heard the Assistant Minister say that “he sees our fear.” What hon. Mwau and hon. Mungatana are asking is this: What are the safeguards that the same information or data that will be captured during this process cannot be used for other purposes? I want to give an example. Some of us who have issues with terrorism and all this, you might give our data; finger prints, facial features and everything else to foreign agents and we end up being killed like Sheikh Aboud Rogo.

*(Applause)*

**Mr. Deputy Speaker:** Assistant Minister, hon. Elmi wants to inform you. Are you willing to get the information from your colleague?

**Mr. Cheptumo:** I am willing, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Proceed, hon. Elmi.

**The Minister of State for the Development of Northern Kenya and Other Arid lands** (Mr. I. E. Mohammed): Mr. Deputy Speaker, Sir, I had the privilege to sit in that Sub-committee and the technical people made presentations. They said: “The database is secured. It is a Kenyan thing. We are just buying equipment and one of the visual images is a photograph. The Iris is not involved.” That is what the Head of the Information Technology (IT) told us in the sub-committee. So, that fear does not exist.

**Mr. Deputy Speaker:** Yes, hon. Wamalwa, you also wish to inform? Okay, proceed!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Deputy Speaker, Sir, I just want to inform Members and the country that we have been able to reach an agreement with the Canadian Government on the Government to Government (G-to-G) procurement of equipment from Canada. As of this morning, the Cabinet Sub-committee did approve the Memorandum of Understanding (MoU). Some of the issues raised here are going to be part of this MoU that must be abided to by both parties and the supplier. When we see that equipment, we will be providing the MoU that, that information be secured.

**Ms. Karua:** Mr. Deputy Speaker, Sir, I will want the Assistant Minister to clarify to the House: Do you have international agreements with any foreign country to exchange data and especially criminal data for the mutual benefit of our country?

**Mr. Deputy Speaker:** What is the relevance of that to the machines for the elections?

**Ms. Karua:** Mr. Deputy Speaker, Sir, I am surprised that you ask the relevance, whereas the undertone of the questioning is people who may wonder whether information will be shared. This is the clearest of the supplementary questions that have been asked so far.

The Assistant Minister was just about to answer--- I will seek the Chair's indulgence, let the question be answered.

**Mr. Deputy Speaker:** Proceed. The Chair has also got to see the relevance of that. But, nonetheless, proceed if you feel you can answer.

You see, the information here is on data on election and your question is on information to be shared with organizations that deal with criminals, such as the Interpol, and all those things are general knowledge.

Proceed.

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, my earlier answer to a question raised by a Member here was: It is important for us, as a House and people, to appreciate the stages of that process. There is the first stage of securing the equipment.

Mr. Deputy Speaker, Sir, the second stage really is the feeding of information to the equipment in Kenya. After the process, the information will be retained in our country. That is why we want to assure the House and the nation that the information will not leave the country. It will be within our borders. It will be secured under the Constitution as provided for.

Therefore, we are satisfied that the steps being taken are going to ensure that we secure our Kenyan people. Their details are not going to be used by any other person who is not supposed to use them.

**Mr. Deputy Speaker:** The last point of order from hon. Mwau and then we will proceed on to the next Question.

**Mr. Mwau:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House that the data collected is secured and its integrity will be protected while, in actual fact, you have foreign bodies sitting at the Independent Electoral and Boundaries Commission (IEBC)? You have the United Nations Development Programme (UNDP) sitting at the IEBC. You also have the UNDP sponsoring the biometric voter's registration. How then can he confirm that with their involvement, the integrity of the data will be secured?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, the involvement of the bodies referred to by the hon. Member is really in terms of support.

Mr. Deputy Speaker, Sir, the Act is very clear. The Commission is independent. The bodies which are giving support to the IEBC do not have the role of really setting and controlling the day to day running of the institution. The keying in of the information and securing of the information is not the business of those bodies. They support our institutions as development partners.

**Mr. Deputy Speaker:** Next Question, hon. Kiuna Joseph, Question No.2 by Private Notice.

#### CRITERIA FOR RECRUITING TEACHERS IN NJORO AND MOLO DISTRICTS

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice:-

(a) What criteria was used by the Ministry in recruiting primary and secondary school teachers in Njoro and Molo districts in the recent recruitment exercise?

(b) Why were all the stakeholders such as the District Education Officers (DEOs), District Commissioners, Kenya National Union of Teachers (KNUT) and elected leaders left out of the recruitment panel?

(c) Could the Minister explain why only three (3) out of the 530 applicants for the 31 vacancies in Njoro district and only seven (7) out of the 450 applicants for the 30 vacancies in Molo district were successful?

**The Assistant Minister for Education** (Prof. Olweny): Mr. Deputy Speaker, Sir, I beg the indulgence of the House to give me one more week to come up with the appropriate answer.

**Mr. Deputy Speaker:** Given that this is a Question by Private Notice, why do you need a whole week?

**The Assistant Minister for Education** (Prof. Olweny): Mr. Deputy Speaker, Sir, I know that, but I do not have the appropriate information to make me deal with this Question effectively.

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, this is the second time I am rising in this House to ask this Question. Last time, when I raised it, I was promised that the Minister will come to this House and give a comprehensive answer as to why that exercise was conducted irregularly.

Mr. Deputy Speaker, Sir, I am shocked to hear that the Assistant Minister has come without an answer. I would like you to give us guidelines on how we are going to conduct this business. This is not the first time.

**Mr. Deputy Speaker:** Mr. Assistant Minister, this is a Question by Private Notice. It is a very straightforward Question. Why do you need a whole week?

**The Assistant Minister for Education** (Prof. Olweny): Mr. Deputy Speaker, Sir, you see, we do not have anything to deal with it. There are serious allegations about this issue. So, I want to be given adequate time to deal with it appropriately. That is my appeal.

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. If you look at the nature of this Question, the main complaint that the hon. Joseph Kiuna has is that only seven out of the 450 applicants for the 30 vacancies in Molo District were successful. So, if you wish to be fair to both sides, could the Assistant Minister give an undertaking to the House that you will hold in suspension further processing of those applicants so that this matter is dealt with properly to the satisfaction of the Member and the people of Molo? That way, the people whose spaces have been taken by other people can get satisfied.

So, could the Assistant Minister - as you wait - order the suspension of the exercise for the part that is being complained of? That way, we will be fair.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Deputy Speaker, Sir, yes, I give that undertaking.

**Mr. Duale:** Mr. Deputy Speaker, Sir, on the same, a number of Members of Parliament have written to the Teachers Service Commission (TSC) and the Ministry complaining of the irregularities. There are similar cases.

So, I want you to direct that this Question comes early because if we delay it, the TSC will continue and recruit those teachers. There are so many teachers out there who were left out due to reasons which were very unprofessional.

**Mr. Deputy Speaker:** When will you have the answer, hon. Prof. Olweny?

**The Assistant Minister for Education** (Prof. Olweny): Mr. Deputy Speaker, Sir, I have requested for a week. There are serious issues related to this Question.

**Mr. Deputy Speaker:** As much as all Members of Parliament seem to have an issue on this, the only Question is from hon. Kiuna. So, under the circumstances, the presumption of the



Chair is that what hon. Mungatana said or rather asked the Assistant Minister, which was undertaken----. Are you comfortable with that hon. Kiuna, provided that the recruitment is not finalized and the Assistant Minister can come with the answer one week from today?

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, I concur with the Assistant Minister, but I would like him to reassure this House because this is not the first time that he has said this. Last time he came and promised the same. Today he has come empty handed and he says he is not sure. All I know is that there is a cover-up by his officers in my constituency and they do not want to be discovered.

**Mr. Deputy Speaker:** The Assistant Minister has intimated that, indeed, there is something that he is dealing with. He has given an undertaking that the recruitment in Molo will not be finalized until this Question is answered on the Floor of the House.

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, I concur with you.

**Mr. Deputy Speaker:** The Chair directs that this Question be listed on the Order Paper one week from today.

Next Question, hon. Pesa.

LEGAL BASIS OF DISCIPLINARY ACTION AGAINST  
HOMA BAY COUNTY DIRECTOR OF EDUCATION/DEO

**Mr. Deputy Speaker:** Is the hon. Pesa not here? The Question is dropped.

*(Mr. Pesa stood up in his place)*

Proceed, hon. Pesa!

**Mr. Pesa:** Mr. Deputy Speaker, Sir, I accept that the Question be dropped the way you have done it.

**Mr. Deputy Speaker:** Order! Order! Hon. Pesa, you cannot accept that the Question be dropped and you are in the House.

**Mr. Pesa:** Mr. Deputy Speaker, Sir, you dropped it. Who am I to defy your authority?

*(Laughter)*

**Mr. Deputy Speaker:** Order! Order! Proceed and ask the Question.

**Mr. Pesa:** Mr. Deputy Speaker, Sir, indeed, I intended to ask the Question. I also recognize the fact that this Question belongs to the House. It is in the Order Paper today. But I want to ask the for indulgence of the Chair that having discussed the same Question with the Minister for Education and with the response from the Minister of Education, I feel that I do not have any further interrogations to make on this Question. This is because all the issues that I raised are going to be answered. So, I seek your indulgence that you allow me to withdraw this Question.

*(Mr. Deputy Speaker consulted  
with the Clerk-at-the-Table)*

**Mr. Deputy Speaker:** Fair enough! Ordinarily, when a Question is listed in the Order Paper and the Member is in the House, the Member should ask because it is out of order for a

Member not to ask a Question and for a Minister not to answer. But given that this Question has to do with specifically a matter in your own constituency which you feel has been adequately answered and satisfactorily dealt with, I have a problem in dealing with this kind of a Question.

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

**Mr. Deputy Speaker:** Hon. Mbadi, you are a point of order!

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, actually, I just wanted to add my voice. Actually, one of the officers affected is my constituent. We have discussed this matter with the Minister and action is being taken. Allowing it to continue being discussed in this House would also even traumatize some of the people who are affected. So, we consulted and agreed with hon. Pesa that this Question be withdrawn. So, I would urge you to just consider it favourably. It is not in bad faith. We have a good working relationship with the Minister for Education.

**Mr. Deputy Speaker:** Given that the matter involves some kind of a tragedy that happened and the fact that both of you are of the opinion that the tragedy should not be replayed on the Floor of the House and the fact that Government has adequately dealt with it, the Chair will accept that this Question be dropped.

*(Question dropped)*

#### RELUCTANCE BY ERC TO LOWER ELECTRICITY COST

**(Mr. Ochieng)** to ask the Minister for Energy:-

(a) Why has the Energy Regulatory Commission (ERC) not lowered the cost of electricity in the country considering that the cost of fuel was reduced two months ago?

(b) When will the cost of electricity go down?

(c) Could the Government consider refunding consumers the overcharged fuel costs for the last two months?

**Mr. Deputy Speaker:** Is hon. Ochieng not here? Indeed, this Question is addressed to the Ministry of Energy and the Minister for Energy has already communicated to my office to say that he has also had a tragedy that has affected his very close friend and is at a burial. I will have to defer this Question to tomorrow.

*(Question deferred)*

#### DEPORTATION OF MR. ABAS M. ATHMAN

**Mr. Yakub:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Immigration and Registration of Persons the following Question by Private Notice.

(a) Under what circumstances was Mr. Abass Mohamed Athman, a holder of an Irish travel document No.0009315, deported at Jomo Kenyatta International Airport (JKIA) on 20th August, 2012?

(b) Could the Minister outline the procedures for a foreigner to be issued with an Entry Visa to Kenya and also explain what informed the refusal of entry for Mr. Abass?

**The Assistant Minister, Ministry of State for Immigration and Registration of Persons (Mr. Baya):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Mr. Abass Mohamed, holder of travel document No.0009315, was not deported from Kenya on 20<sup>th</sup> August, 2012. Instead, he was denied entry on 17<sup>th</sup> August, 2012 because he did not have the prerequisite referred visa.

(b) The following are the procedures for a foreigner to be issued with an entry visa to Kenya:-

(i) The Kenyan visa policy is guided by the Kenya Citizenship and Immigration Act, 2011 and the Kenya Citizenship and Immigration Regulations, 2012;

(ii) The Fifth Schedule of the Kenya Citizenship and Immigration Regulations, 2012 documents the categories of visas;

(iii) Category 1 enumerates the countries whose nationals do not require visas to enter Kenya. Category 2 lists countries whose nationals require visas to enter Kenya and who may be issued with the Kenyan visa upon arrival at the port of entry, while Category 3 nationals are required to apply for visas prior to arrival (Referred visas).

(iv) Nationals whose countries fall under Category 3 submit their visa applications through Kenyan missions abroad or consulates for onward transmission to the Department of Immigration Services.

(v) Requirements for visa application include, but are not restricted to the following: Visa application form, duly filled; passport (bio-data page) copy of the applicant; two passport size photographs of the applicant and a copy of the Identity Card of the host.

(vi) Once received by the Department of Immigration Services, the application is processed and an authority letter addressed to the respective mission is scanned and e-mailed, while a hard copy of the same is forwarded to the Ministry of Foreign Affairs for transmission by diplomatic courier.

(vii) If the application is approved, the visa issuing officer in the Kenyan mission endorses the applicant's passport with a visa sticker which authorizes them to travel to Kenya within a particular timeframe.

(viii) Possession of a Kenyan visa does not guarantee automatic entry into the country given that the final authority lies with the immigration officer at the port of entry.

(ix) Upon arrival, the traveler is still subject to the normal *bona fide* checks. A person that fails the normal Kenyan entry criteria will, therefore, be denied entry.

(b) The following informed the refusal of entry for Mr. Abbas Mohamed Athaman:-

(i) The above mentioned is a stateless national holding Irish Travel Document No.0009315.

(ii) Stateless nationals fall under Category 3 and are thus required to apply for a Kenyan visa prior to arrival (Referred Visa).

(iii) Mr. Athaman applied for a Referred Visa on 3<sup>rd</sup> August, 2012 at the Kenyan Embassy in Dublin, Ireland.

(iv) The visa application was forwarded to the Department of Immigration Services through the aforementioned process, that is the Diplomatic Bag, and was received on 22<sup>nd</sup> August, 2012. This was after he had already been returned at the airport.

**Mr. Yakub:** Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for the long and detailed answer. If you want to travel to all other foreign countries, including Dubai, the airlines at the international airports will do not give you a boarding pass until you show them a visa of their country. What measures are there in place to make sure that a foreigner who does not have Kenyan visa is not allowed in the country and that he will not incur unnecessary

expenses and harassment at our airports? What is the Ministry doing to make sure that another foreigner does not get into the same problem?

**Mr. Baya:** Mr. Deputy Speaker, Sir, it is true that visa requirements are checked right at the boarding point and this has been communicated to all airlines that come to Nairobi and other entries. In this particular case, there was confusion and that is why this traveler was allowed in the aircraft. When we profiled him, we found that he is a Somali who is a student in Ireland. I believe at the airport, wherever he boarded, he must have used that confusion that he holds Irish travel documents, but he is not an Irishman. This is where the problem was.

**Mr. Duale:** Mr. Deputy Speaker, Sir, first, there are Somalis who are Irish, American, European or Saudi Arabian nationals, so there is no crime for a Somali to be of Irish citizenry. But could the Assistant Minister confirm to the nation that one year ago, they introduced a system where if you are a Muslim and you have a nationality of any European, American or any other country and you want to apply for a visa, you go to a Kenyan Embassy of the host country where you want to fly from and that is not the case for European and white people who want to come to Kenya? They can fly to Nairobi and get their visa as soon as they arrive. However, if you are Muslim and you have a citizenship of another country and you want to come to Kenya, you go through a rigorous system where you go to the Kenyan Embassy in that host country. After that, like the case in point, after you come here like many others, you are denied entry. Could he confirm that their system discriminates against people of Muslim faith whether they hold an American or European passport?

**Mr. Baya:** Mr. Deputy Speaker, Sir, I deny that our Ministry discriminates against anybody based on his or her religion. Religion is a personal thing and we would not want to interfere with it. But there are arrangements between countries where visas could be issued to their nationals in either country. It is true of some countries whose nationals could be issued with visas at Nairobi and they also reciprocate. For example, if a Kenyan travels to India or Singapore, for instance, he is not required to apply for visa from their mission here. He can get a visa right at the airport. So these are arrangements and they depend on reciprocity. The Kenyan visa regulations documents list a number of these countries. It is a policy and agreements that have been made between us and those countries.

**Mr. Deputy Speaker:** Are you sure, Mr. Baya, what you are saying is the position that foreigners like the Americans, the British and the Dutch can come and get their visas in our airport and they will also reciprocate? That we also go there and get the visas at their airports? Are you sure that is the fact because we all happen to travel a lot?

**Mr. Baya:** Mr. Deputy Speaker, Sir, I am very sure about this. There are those countries whose nationals can get visas from Nairobi and he has agreed to that. There are some countries whose nationals when they apply for visas, their applications are not referred to the Director of Immigration Services. However, there are some countries where it is mandatory that the application is made at the mission and must be referred to the Director of Immigration in Kenya for direction.

**Mr. Duale:** On a point of order, Mr. Deputy Speaker, Sir. I do not want the Assistant Minister to mislead the House. If I walk with him to Nyayo House right now, you will find UK citizens who when they want to come to Kenya, they must go to the Kenyan Embassy in London. We also have UK citizens of European origin who do not need to that; they just board the planes, come to the Jomo Kenyatta International Airport (JKIA) and they get their visa. So, is he in order? Right now as we speak, there are many people of Muslim faith from European countries

who want to come to Kenya, but they are told to go to our embassies while Europeans come directly to the JKIA and get a visa. Could he clarify that there is discrimination on that part?

**Mr. Baya:** Mr. Deputy Speaker, Sir, I would not like to involve religion here because these are arrangements between countries and have nothing to do with religion. Secondly, it is true that there are countries whose nationals are issued with visas right at the Jomo Kenyatta International Airport and they also treat our nationals the same. America is in the category where there is no need to refer the applications to the Director of Immigration Services. Those documents are dealt with and finalized at the missions. So, there are three categories.

**Mr. Affey:** Mr. Deputy Speaker, Sir, this matter is not as easy as the Assistant Minister is trying to portray to the country and the House. This country hosts one of the largest refugee camps in the world. There are very many people living outside who wish to come and visit their relatives here in Kenya, but who, by virtue of where they live may not have acquired the passport of that country and, therefore, they have what he has called travel documents in his answer. If these referral visas are reviewed, the Ministry could generate a lot of income from all these friendly people who want to come and visit their relatives here in Kenya instead of them finding alternative means of going to Uganda. As I speak, there is no harmonization of the immigration laws in the region. In Uganda, if you have a travel document and you stay in Ireland, like Mr. Athman, you just need to land at the airport and get a visa there. In Kenya, you have to apply at the Embassy even before you come.

Could he consider reviewing this, so that he can generate income for this country? Otherwise, he is doing a disservice to the country in the name of security.

**Mr. Baya:** Mr. Deputy Speaker, Sir, I cannot promise to do that and I have a reason for this. We work very closely with the Ministry of Tourism, the Department of Tourism in particular, and they have always requested us to lessen the grip because we have such a tight grip on our immigration laws. There are some countries whose nationals would like to visit our country, but our regulations do not allow. We have always agreed on which countries as long as those countries also reciprocate. We allow the nationals of these countries to pick visas at the airport. As we boost our economy, we should also be conscious of our security. There are some countries that are at war and we cannot allow everybody to just enter our country, unless they are refugees.

**Mr. Hassan:** Mr. Deputy Speaker, Sir, this issue affects a large number of people in my constituency. In fact, many of those people who are denied visas are people with connections in Kenya. They are married to Kenyans and some of them have investments in this country. Someone from Iceland or any other country, maybe the Arctic, can be given an automatic visa to come to our country while these people are denied visas. Is it right for this Ministry to have a discriminative, almost an apartheid type of policy, towards one particular group of people? These people are coming to our country with goodwill as investors, travelers and tourists. They are forced to go to Uganda where they are given visas without any problem. The other element is that many of them were given refugee status from Kenya. There is enough gutter intelligence about them and their lives because they have lived in our refugee camps for many years. That information is available to the Government of Kenya.

Is it right for Kenya to be discriminating against those people and using policies that are outdated? In fact, these are well meaning people who want to come and spend their money here. They have purchasing power and are well to do people.

**Mr. Baya:** Mr. Deputy Speaker, Sir, it is true the Member's constituency is flooded with people who have relatives out there. But in this particular case for Mohammed, he was supposed

to wait for our reply for him to get a visa before he travels, as required by the law and the regulations. He was so much in a hurry. He was denied entry because he came without a visa. That was the only problem.

**Mrs. Shebesh:** On a point of order, Mr. Deputy Speaker, Sir. Can we continue to discuss an issue that is contrary to the Bill of Rights? I want to quote the Bill of Rights, so that the Assistant Minister is aware that he cannot just answer this Question as easily as he is trying to do. This is Article 28 on Human Dignity. It says that:-

“Every person has an inherent dignity and the right to have that dignity respected and protected”.

Unfortunately, because of the Members who have raised this issue, it appears as if it is only targeted at Kenyans with UK citizenship who are Muslims. It applies to every Kenyan who wants to come home, but who happens to be a UK citizen. They must go through the Kenyan Embassy. We cannot be a country which discriminates against our own people. Any UK citizen can come into this country and get a visa at the airport when our own Kenyans cannot get visas. We are looking at this issue as if it only applies to our Muslim brothers who have UK citizenship. I am talking about Omondi, Karanja, Khalwale or Wambui who is discriminated against by the Kenyan Government. Going to the Kenyan Embassy, one has to be screened. That is against our Constitution and therefore, the answer given by the Assistant Minister is unconstitutional. What they are doing is unconstitutional. He should be telling us how they plan to redress this rather than trying to answer this Question because this is fundamentally against the Bill of Rights.

**Mr. Yinda:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead the House? He is aware that this Government is discriminating against colour. It seems like any white person coming into this country from the UK or America will get a visa at the airport, but any black, blue or yellow person will be treated as if they do not belong. Is he in order?

**Mr. Deputy Speaker:** Can we take all the points of order?

**Mr. James Maina Kamau:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has said that if you are a Kenyan and you are travelling to India or Singapore, you can get a visa there. That is not correct. I was in India and I was almost deported. What is he telling us?

**Mr. Deputy Speaker:** Well, to that extent, indeed, yes.

**Mr. Baya:** Mr. Deputy Speaker, Sir, I will start with the last one. I do not know which words to use to the Member, but I was a High Commissioner in India, accredited to Singapore, Malaysia and Bangladesh. A number of Members here used to travel and that is the treatment. You can go there, stay for three months after which you can explain why and whether you want to increase the length of your stay. This is not a matter of guessing, but I saw it practically happen.

With regard to hon. Yinda's question, there is no discrimination against white, blue or black people. If you have not followed the regulations, for example, you come to Kenya without a visa and you know that it is mandatory to have one, then you are on the wrong side of the law and we cannot allow you entry.

**Mr. Mwau:** Mr. Deputy Speaker, Sir, is the Assistant Minister in order to mislead the House? I think the problem here is not all these explanations. The problem here is that the person in question has the name Abbas Mohammed Athman. If it was Mr. Rogers Brown, or Peter Johnson the standard would be different.

Mr. Deputy Speaker, Sir, I would like to support hon. Shebesh. She was very clear. This is a constitutional issue only that I would want to take it slightly further. This is a new Constitution. We almost fought for it so that we could legislate on it. Article 39 is very clear and in bold. It is about freedom of movement. It says that every person - it does not matter whether it is Athman Mohammed or Peter Njuguna or Peter Brown – has the right to freedom of movement. Every person has the right to leave Kenya. Article 27 is about equality. Article 27(1) says that every person is equal before the law and has the right to equal protection and equal benefit of the law. So, the Assistant Minister must come clear and state categorically---. If there are categories like he is trying to say, he should table a document showing those categories before this House so that we can know.

**Mr. Baya:** Mr. Deputy Speaker, Sir, the Constitution is a Kenyan Constitution for Kenyans. All the freedoms there, I believe, were made for Kenyans. However, as a country we must find ways and means of protecting ourselves. This has been documented. The documents I quoted here, the latest one is for last year. We also have the regulations of 2012. We put them in place to protect Kenyans. This particular gentleman, it does not matter whether he was English or black. If he had a visa - that stamp - that would have been fair for Members of Parliament to belabour on why there was this-and-this. He did not have this document. We had not even replied. Maybe he was too impatient. So, you want us to open our doors to every Tom, Dick and Harry to come in without reciprocity? We cannot do that!

**Mr. Sirat:** Mr. Deputy Speaker, Sir, the Assistant Minister, in his answer, said that the said applicant applied for his visa on 3<sup>rd</sup> August. He went further to say that the diplomatic bag arrived in Kenya on 22<sup>nd</sup> August. It took three weeks for that application to arrive in Kenya. Can he kindly shorten the duration of the process for that kind of applicants?

**Mr. Baya:** That one I will consider.

**Mr. Deputy Speaker:** We will take another point of order. Hon. Shebesh!

**Mrs. Shebesh:** Mr. Deputy Speaker, Sir, we are just asking a very fundamental question and I do not want us to go round in circles. If a white UK citizen, and it is unfortunate that we are being forced to go into this, can come and get a visa in Kenya, why cannot a UK black citizen or a yellow one or a blue one get a visa at the airport? We are now being thrown into semantics, but of course we know the Assistant Minister was a provincial administrator and so he knows how to take us in circles. However, our question is fundamental and he does not want to answer it.

**Mr. C. Kilonzo:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Hon. Shebesh, hon. Charles Kilonzo is giving you some information.

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, I wish to inform my good friend hon. Shebesh and hon. Members that this Government has something called inferiority complex where a white man is involved. That is why if a young white man walked into the office of this particular Assistant Minister, he will start shivering. So, it is a disease within the Government where the Ministers, especially those of the older generation, when they see a lighter skin especially that of a white man, they shiver. That is why you find that they are at the mercy of the World Bank and the IMF. Also that is why they are told that Muslims are terrorists. That is why they are compliant. To be compliant to a white man means that they ensure that they do what the white man does. And that is why you find that if a black man comes from the UK or Guyana and there is also a white man from Guyana, they will clear the white man and the black man will end up even in the cells. That is the Government that we have.

**Mr. Deputy Speaker:** Hon. Kabando wa Kabando, you are on a point of order!

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): Mr. Deputy Speaker, Sir, this Question, obviously, is very specific, but the direction that it seems to take is one where not the Government, but the Back Bench wants to give religious and even racial connotations. It is a very wrong trend. To accuse the Government of suffering from an inferiority complex is completely wrong, despite the emotions this could emanate. In contrast, it may be that those who are accusing the Government collectively are the ones who could easily qualify as captives of caucuses that are facilitated by those who are accused.

**Mr. Deputy Speaker:** Order, hon. Kabando wa Kabando. Hon. Dor, ask your last supplementary question and then we will proceed.

**Mr. Yakub:** Mr. Deputy Speaker, Sir, I was very shocked when the Assistant Minister mentioned that a Somali becoming an Irish--- I hope he will not start vetting our brothers the Kalenjins when they become citizens of Qatar just because they are now in Qatar.

In the answer given by the Assistant Minister, the last bullet states that the process was done and received on 22<sup>nd</sup> of August. Could he arrange for Mr. Abbas Mohamed Athman to come back with his proper visa to visit Kenya as a tourist or any other visitor?

**Mr. Baya:** Mr. Deputy Speaker, Sir, as an Assistant Minister, I cannot arrange for people to travel to Kenya, but if he so wishes, he should submit a fresh application and we shall consider it.

## ORAL ANSWERS TO QUESTIONS

### *Question No.1573*

#### UTILIZATION OF ALTERNATIVE SOURCES OF ENERGY

**Mr. Deputy Speaker:** Hon. Alfred Odhiambo, the Minister for Energy is engaged in the burial of a friend's mother. Under those circumstances this Question is deferred until tomorrow.

*(Question deferred)*

Hon. Daniel Muoki!

### *Question No.1424*

#### UPGRADING OF MAKUTANO-KITHIMANI

**Mr. D. Muoki** asked the Minister for Roads:-

(a) If he is aware that tender bids for the upgrading of Makutano-Kithimani road (C100) to bitumen standard were invited in 2007 and, if so, who won the tender and what the cost was; and

(b) When the works on the road will commence.

**The Assistant Minister for Roads** (Mr. Kinyanjui): Thank you, Mr. Deputy Speaker, Sir. I beg to reply. I am aware that this Question has been before this House, at least, twice and that you had ordered that proper explanation be given. Nevertheless, allow me to go through the old answer and then I will be able to give the part that was missing.



(a) I am aware that the tenders for upgrading of Makutano-Kithimani Road (C100) were invited in October, 2007. However, no award was made for the project and, therefore, it is not possible to state who won the tender.

(b) Currently there are no funds for upgrading the road. However, there is a budget of Kshs55,030,000 for routine maintenance of the road during the financial year 2012/2013. I have also directed that the procurement for the maintenance works to begin immediately and not later than September, 2012.

Mr. Deputy Speaker, Sir, I want to apologize because as I had stated in the earlier answer, the Ministry advertized for this road. At the time it was advertized, we had only Kshs400,000. It was hoped that at the supplementary stage we would get more money to commence this. However, in the supplementary estimates that followed, we were not able to get more money and, therefore, the Ministry could not get into any contractual arrangements with the contractors who had bided because we would not service the contract.

**Mr. D.M. Muoki:** Mr. Deputy Speaker, Sir, even if we were to accept the Assistant Minister's apology, it is now five years since this project was advertized for tender. Why had the Assistant Minister subsequently not budgeted for the upgrading of this road?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, indeed, I want to confirm that this is a class "C" road; it is, indeed, a very important road linking two very important areas. Although not much has happened in the last six or seven years, I want to assure the hon. Member that we have agreed with the Ministry, through the Kenya National Highways Authority that we will put this road on top priority to ensure that we get funding and we are able to start construction.

**Prof. Kaloki:** Thank you, Mr. Deputy Speaker, Sir. You heard the Assistant Minister clearly state that the bids and tenders were undertaken in 2007. It seems as if the funds were available. The budget was there. Could he clarify what happened to the budget of 2007 and whether that money was diverted to another area in the country? What exactly happened? He has just stated that the tenders will be advertized starting this September?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I have indicated that in our budget we had only Kshs400,000; when that money was not utilized because we did not execute the contract, it was distributed to other projects that were available at that particular time. With Kshs400,000, it would not have been possible for us to start the project. Indeed, we had put it in as a line item to make the Treasury pump in more money, so that we could commence the contract.

**Mr. Kiilu:** Thank you Mr. Deputy Speaker, Sir. Arising from the answer from the Assistant Minister, you will realize that five years down the line, even after tendering for this road, the Ministry did not allocate money for it. During the same period, five years down the line, roads of lower class than this one in certain regions of this country, that is classes "D" and even unclassified roads, have been tarmacked. In the same period, the Government promised to do roads in the same region like Kitui-Kibwezi, which is a class "B" road and Ukia-Emali Road, which is a class "C" road, but they have not had any funding. Is this not a clear case of marginalization of certain regions? Could the Assistant Minister tell us what affirmative action he is taking to ensure that this marginalization of certain regions when it comes to road construction, is done away with?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, it is, indeed, true that there are certain roads of class "B" that have not been upgraded to bitumen standard. I want to assure the hon. Member that the Ministry, through the Kenya National Highways Authority, is implementing affirmative action to ensure that all roads--- The categorization of roads into classes "A", "B" and "C" denotes the importance of those roads. Therefore, for us to have class "B" roads which are not

tarmacked when we have a class “D” road which is tarmacked, it shows clearly there is an issue. I want to assure hon. Members that we have been able to come up with a programme that will ensure that before we go to the class “D” and “E” roads, all key roads connecting all the major headquarters between one county and another are addressed. I want to assure the hon. Member that this is one road that we have been able to put in the programme.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I do not know whether the hon. Assistant Minister was listening to himself. He told us that they put this road as a one-line item in the budget and, therefore, went ahead and tendered as they were waiting for the Treasury to pump in more money. Could he tell us who comes up with that decision because in the five years that have intervened, many other roads have been given money and constructed. What standard did you use to discriminate against the people of Ukambani?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, there was no discrimination. As I have already indicated, the fact that we had Kshs400,000 was sufficient demonstration of goodwill that the Ministry had, more so for this particular road. However, we are only able to work with what we have been given. Before we did the procurement or, at least advertized, we sought authority from the Treasury hoping that they would give us funding to complete this road. I want to assure hon. Members--- I started off by saying that we apologize because five years is a long time. What is important is the affirmative action that we hope to implement to restore this road to the condition that it ought to be in.

**Mr. D.M. Muoki:** Mr. Deputy Speaker, Sir, we will accept the Assistant Minister’s apology. However, I want to ask him to assure the people of Mwala that in the next supplementary estimates, funds to start work on this road will be factored in, and it will be enough to complete the work before the next Budget. Could the Assistant Minister assure us of that?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I want to assure hon. Members that we will prioritize this road; in our request to the Treasury for the supplementary budget we will include this road and hope that the Treasury will reciprocate.

*Question No.1311*

NON-PAYMENT OF COMPENSATION TO  
MR. ABASS S. NUR BY KENYA ARMY

**Mr. Affey** asked the Minister of State for Defence:-

(a) whether he is aware that Mr. Abass Sheikh Nur (No. 18131849) served in the Kenya Armed Forces between 1959 and 1962;

(b) whether he is also aware that the said officer sustained injuries following an accident along Gilgil Road in 1962; and,

(c) what the policy of the armed forces was in providing assistance to officers injured in the course of duty before 1963 and whether he could ensure that Mr. Nur is assisted.

**The Assistant Minister of State for Defence (Mr. Musila):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Ministry of State for Defence is aware that Abass Sheikh Nuh, Service No.18131849, served under the British East African Forces and was seconded to one of the units

of the East African King's Rifles based in Kenya. In 1959, Kenya had not yet attained Independence from Britain, and in 1962 the Kenya Armed Forces had not come into being.

(b) The Ministry is aware that Abass Sheikh Nuh got involved in an accident along Gilgil Road in 1962 while in service, and that the responsibility to compensate him was taken by the Colonial Government.

(c) There was no insurance cover for the African members of the King's African Rifles before Independence. However, after Independence members of our Defence Forces are comprehensively insured by the Government, and have a Group Insurance Policy.

The insurance cover we have now cannot be applied to any individual retrospectively. The Ministry of State for Defence takes this opportunity to advise the ex-service men like Abass to personally report to the Ministry with the certificate of service, which was issued to him on discharge in order to be assisted to access the Kenya Armed Forces Comrades Association office in Nyayo House for further assistance. For the information of the House, the British Government has in the recent past offered financial assistance to war veterans and their families through the Kenya Armed Forces Comrades Association, and this is the same case with Mr. Abass.

**Mr. Affey:** Mr. Deputy Speaker, Sir, I thank the hon. Assistant Minister for the answer given. Mr. Abass is a resident of Wajir County. He was recruited from Wajir in 1959. Even at the time of Independence, all the officers who served with him, including himself were taken over by the Kenya Armed Forces as officers of the Kenya Armed Forces. This officer is aged and suffering as a result of sustaining injuries in the course of duty.

I just want to find out from the Assistant Minister because there is no evidence to suggest that the responsibility was taken over by the Colonial Government, if the responsibility was taken over by the Kenya Government and not the Colonial Government. If that is the case, then it means the responsibility for compensating him was undertaken together with the responsibilities of care. Could the Assistant Minister undertake as an Assistant Minister for Defence to write to the British Government seeking for not only compensation, but also financial support and medical care which this old man now requires? Mr. Assistant Minister, can you undertake to write to your counterpart in the United Kingdom?

**Mr. Musila:** Mr. Deputy Speaker, Sir, I want to make it clear that Mr. Abass was discharged in 1962 before Independence having served for only three years. He was eligible for a discharge lump sum and an injury compensation which he was duly paid by the Colonial Government. Therefore, he is not eligible for any other service benefit. However, as I have said, recently through the various negotiations between the Kenya Government and the British Government, it has been agreed that those people who suffered injuries before Independence can be assisted. I have just undertaken that if Mr. Abass---

**Mr. Affey:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead the House that this officer was paid when indeed he was not paid? If he was paid, can you table evidence that he was paid because we know he was not. You should not mislead the country.

**Mr. Deputy Speaker:** There are two issues here, hon. Affey, which you need to clarify. There are benefits for having worked for three years and then there is the compensation for the injuries he suffered as a result of the accident. Can you clarify to the Assistant Minister so that he knows whether any part was paid or not?

**Mr. Affey:** Mr. Deputy Speaker, Sir, none was paid.

**Mr. Musila:** Mr. Deputy Speaker, Sir, the information we have is that Mr. Abass was paid a lump sum for the three years that he served. If the hon. Member wishes for me to lay

documents to confirm that, I will be ready to do so. But more importantly is that this former serviceman was injured before Independence in 1962; that is not in dispute. Recently, through the intervention of the Kenya Government, it has been agreed that those people who suffered during that time could be assisted through the Kenya Armed Forces Comrades Association. An office has been duly opened at Nyayo House for that purpose. We have offered to assist Mr. Abass access this assistance if only he can visit the offices. I want to undertake that I will personally take him there and ensure that he is assisted.

**Mr. Olago:** Mr. Deputy Speaker, Sir, before Independence this country was being governed by Her Majesty's government for the colony and protectorate of Kenya. After Independence we had the Government of the Republic of Kenya. In law the Government of the Republic of Kenya is a successor of Her Majesty's government. So, to that extent this Government must take responsibility for all the acts that should have been undertaken by that government. So, in that case, can the Assistant Minister tell the House exactly what he is doing to make sure that he keeps the Kenya Armed Forces out of this? That is a welfare matter.

**Mr. Musila:** Mr. Deputy Speaker, Sir, what the hon. Member has said is quite right. However, in terms of cases of this nature we are talking of a force that ceased to exist after Independence. Even if you look at the documents relating to Mr. Abass, you will find that they are confusing. He was working in Tanzania and only a few months prior to the accident he was seconded to Kenya by the British Government. The Kenya Government cannot take responsibility of all the things, good and bad that were done by the former King's African Rifles.

Mr. Abass---

**The Minister of State for Special Programmes** (Ms. Mathenge): On a point of order, Mr. Deputy Speaker, Sir. Is Mr. Aluoch in order to say that the Kenya Government took over responsibility from the Colonial Government and we continued? If so, why have the *Mau Mau* victims not been paid?

**Hon. Members:** You tell us!

**The Minister of State for Special Programmes** (Ms. Mathenge): You want an answer?

**Hon. Members:** Yes!

**The Minister of State for Special Programmes** (Ms. Mathenge): We are in court suing the British Government---

**Mr. Deputy Speaker:** Order! Ms. Mathenge, you are in the Government. The Republic of Kenya Government is the successor to the British rule. This is a simple basic state of law. There is no vacuum in governance.

**Ms. Shebesh:** Mr. Deputy Speaker, Sir, in the answer the Assistant Minister gave, he clearly stated in part "c" and if I could just quote:-

"There was no insurance cover for African members of the King's African Rifles before Independence. However, after Independence members of our Defence Forces are comprehensively insured by the Government."

Mr. Deputy Speaker, Sir, I want the Assistant Minister to be very clear on whether there is insurance cover for our Defence Forces when they are travelling in a chopper, tanks or when they are killed directly by fire. I am asking that question with the background that all parliamentarians here understand. Is there insurance cover for our Defence Forces when they are flying in military or police choppers?

**Mr. Musila:** Mr. Deputy Speaker, Sir, I cannot talk about the insurance of the police. This question relates to the Kenya Defence Forces.

**Mr. Deputy Speaker:** Mr. Haji, are you on a point of information? Do you want to inform your colleague because I can see your name on the screen?

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji):** I think I touched this thing by mistake.

*(Laughter)*

**Mr. Musila:** Mr. Deputy Speaker, Sir, to answer the hon. Shebesh and the House, I want to confirm that members of the Kenya Defence Forces today are comprehensively insured for whatever circumstances, whether it is an accident or fire. I want to confirm that they are comprehensively insured.

**Mr. Nyambati:** Mr. Deputy Speaker, Sir, it is the responsibility of any government to take care of its people. This incident happened in 1962. We are even lucky that this person is alive today. Can the Assistant Minister tell us, in no uncertain terms, when they are going to settle the issue of payment to this unfortunate Kenyan?

**Mr. Musila:** Mr. Deputy Speaker, Sir, I have not said that the Government of Kenya will settle the claim. I said that the Ministry of State for Defence will assist Abass to access the funds that have been provided by the British Government, which is his former employer. He was not employed by the Government of Kenya.

**Mr. Deputy Speaker:** What is your point of order, Dr. Khalwale?

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, is the Assistant Minister in order to suggest that, for that reason they cannot pay Abass when he knows that every year, the Government of Kenya pays out monies to widows, through two special funds called the Asiatic Widows' and Orphans' Pension Fund and the European Widows' and Orphans' Pension Fund? These are widows of officers who served with Abass Sheikh before Independence. The Government has no shame of setting aside funds for those people and leave out a group of other people, who are actually black Kenyans.

Is this not the same discrimination that the House has been talking about this afternoon? In view of that fact, could he tell us when they are going to set up a fund to not only address the issue of Abass, but also those of many people like Abass who served during that same time, including Mr. Lukhano of Kakamega, who is in a similar situation?

**Mr. Deputy Speaker:** Charles, what is your point of order?

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, the Assistant Minister keeps on insisting that they cannot take responsibility for the good or bad deeds of the Colonial Government whereas our good lawyer, hon. Olago Aluoch, has just told him that, as the successor government, the Government of Kenya should be responsible. To show that this Government has an issue where a white man is concerned, they recognise all the land occupied by a white man even to date, but when it comes to the black man, who suffered under the colonial regime, they say: "Excuse me. We cannot deal with this. You know, you were serving the white man, you were not serving us." They discriminate against the black man, while protecting the properties of their colonial masters in this country.

**Mr. Deputy Speaker:** We will have the last point of order on this matter from hon. Harun Mwau and then the Assistant Minister will dispose of them all at the same time.

**Mr. Mwau:** Mr. Deputy Speaker, Sir, is the Assistant Minister in order to mislead this House? It is a matter of public notoriety that at the time of Independence, in 1963, the Government of Kenya took over the obligations and liabilities that existed then. The predecessor

of the Kenya Defence Forces took over Kahawa Garrison and the military vehicles. They took over Langata and Gilgil Barracks as well as Nanyuki Airbase. They cannot say that the only liability that they never took over was the little pension payment to Abass Sheikh.

**Mr. Deputy Speaker:** Assistant Minister, take the last point of order from hon. Onyancha, so that you can dispose of them all.

**Mr. Onyancha:** Mr. Deputy Speaker, Sir, hon. Wamalwa and I had the privilege of serving in the pensions fund for retired workers of local authorities. In that fund, we have Europeans who are being paid pensions by the Government of Kenya for having served during the colonial period. Is he in order to now say that Africans cannot be paid from the fund in the same way?

**Mr. Deputy Speaker:** Assistant Minister, you have all these points of order to respond to.

**Mr. Musila:** Mr. Deputy Speaker, Sir, I want to emphasise once again that, as we all know, we attained our Independence in 1963. Abass left service in 1962. His terms of service did not include pension, which hon. Members are referring to. In any case, the three years he served could not have earned Abass any pension. The question we are dealing with is compensation for injuries suffered while Abass was travelling along Gilgil Road. As I said, he was not entitled to any insurance cover, which did not exist then. If the British Government did not provide for insurance for its employees, you cannot blame the Government of Kenya, which came into being after the incident. In this case, there is no discrimination against Abass. If there was any discrimination, it was not by the Government of Kenya. It was by the Colonial Government, which, as we all know, subjected Africans to discrimination. The successor Government, which is the Government of Kenya, is taking care of members of its Kenya Defence Forces fully, as I have explained.

Mr. Deputy Speaker, Sir, in the interest of Abass, can I, again, emphasise that I will personally assist him access the funds that the British Government is offering him, through the Kenya Armed Forces Comrades Association?

**Mr. Deputy Speaker:** Last question, hon. Affey!

**Mr. Affey:** Mr. Deputy Speaker, Sir, I am quite satisfied with the Assistant Minister's assurance. I hope that when I visit his office with Abass, it will not be a different ball game altogether.

**Mr. Deputy Speaker:** Fair enough. The Assistant Minister has given an undertaking. In the event that he does not help you, you can always draw the attention of the Chair to that effect, because it is obligatory for Ministers to execute any undertaking made on the Floor of the House.

Hon. Khalwale, what is your point of order? Is it on a matter that has been disposed of by the Chair?

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, my point of order is on a very small issue, but which is important. I just reminded the Assistant Minister that we have two funds in the Ministry, which address widows of Asiatic and European origins, who worked with this old man in the same army.

**Mr. Deputy Speaker:** Which Ministry are you addressing yourself to? Is it the Ministry of State for Defence?

**Dr. Khalwale:** Yes, Mr. Deputy Speaker, Sir. I want him to clarify, so that the rest of the people who have issues similar to that of Abass do not have to queue outside his office, or come to their Members of Parliament for redress. I would like him to make an announcement here on the same or put up an advertisement through the electronic and print media, asking such people

to come forward, so that they can be paid. I would also like him to confirm that he will set up a fund similar to those being used to pay European and Asiatic widows.

**Mr. Deputy Speaker:** Assistant Minister, give a very quick and final response to this matter.

**Mr. Musila:** Mr. Deputy Speaker, Sir, each case will be treated on its own merit. Certainly, I cannot come here and give a general undertaking on matters I have not examined. I very carefully examined the matter of Abass. I got all the information. That is why I am able to say what I will do about it. I have said, and I want to repeat; that if the British Government set up pension funds for its nationals during those days, those funds must be submitting money to the Government of Kenya once their parliament approves the same. So, if hon. Khalwale has issues of any gentlemen in his constituency, he is welcome to bring them to me. I am known by this House as being very sensitive to pensions, having introduced an amendment Bill in this House to take care of pensioners. Therefore, he knows that I am very sympathetic to pensioners. So, I will do my best.

**Mr. Deputy Speaker:** Order, hon. Members! The Assistant Minister has given an undertaking. The Chair can vouch for this particular Assistant Minister that whenever he makes an undertaking, he tries very hard to live to it.

Hon. Members, Question No.1670 by hon. Chanzu, Question No.1696 by hon. Omondi Anyanga, Question No.1682 by hon. Shebesh, Question No.1694 by hon. Letimalo, Question No.1520 by hon. Gitari and Question No.1735 by hon. Maina Kamau are deferred to tomorrow. The Questions will be divided in equal measure, for the morning and afternoon sessions, and they will take priority over other Questions which have been listed for tomorrow.

*Question No.1670*

NON-PAYMENT OF DEATH GRATUITY TO FAMILY  
OF MRS. MARGARET C. LING'AFWA

*(Question deferred)*

*Question No.1696*

MEASURES TO TAP TALENTS AMONG THE  
YOUTH IN NYATIKE CONSTITUENCY

*(Question Deferred)*

*Question No.1682*

CRITERIA USED FOR APPOINTMENT  
OF COUNTY COMMISSIONERS

*(Question deferred)*

*Question No.1694*

NON-PAYMENT OF DUES TO MESSRS. NANTEI  
LOSENKEI/MR. LOLRIMIS MEIDIMI

*(Question deferred)*

*Question No.1520*

NON-PAYMENT OF CONTRACTORS  
FOR FRESH PRODUCE MARKETS

*(Question deferred)*

*Question No.1735*

HIKING OF CESS LEVY BY KENYA TEA BOARD

*(Question deferred)*

**Mr. Deputy Speaker:** Next Order!

**STATEMENTS**

POINTS OF ORDER

**Mr. Deputy Speaker:** Eng. Rege, you want to seek a Ministerial Statement.

FISHERMEN TRAPPED BY WATER HYACINTH IN LAKE VICTORIA

**Eng. Rege:** On a point of order, Mr. Deputy Speaker, Sir. I want to seek a Ministerial Statement from the Minister for Environment and Mineral Resources with regard to the 50 fishermen in 30 boats who were trapped by water hyacinth in the gulf of Lake Victoria, Rachuonyo North District from 29<sup>th</sup> to 31<sup>st</sup> August, 2012 and left two people dead. In the Statement, the Minister should:-

(i) confirm that if it were not for the Kenya Wildlife Service (KWS) who rescued the fishermen, who had been stranded without food and water for three days, all these Kenyans would have perished;

(ii) clarify whether the consultant's report which he alluded to in this House on 15<sup>th</sup> February, 2012 on the removal of the water hyacinth is ready; and if so, he should outline its findings and recommendations;

(iii) further clarify the status of the project of clearing the gulf of the water hyacinth, which should include the rehabilitation of the Mbita Causeway;

(iv) confirm to this House that the fishermen in Lake Victoria are assured of their safety and lake waters are made good for human and domestic use.

**Mr. Deputy Speaker:** Minister for Environment and Natural Resources or any other Minister to give an undertaking on when this Ministerial Statement will be ready. Is the Deputy



Leader of Government Business in the House? There is a Ministerial Statement that you have to give an undertaking on, on behalf of the Minister for Environment and Natural Resources.

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, we had a quick consultation. We can have the Ministerial Statement by Wednesday next week.

**Mr. Deputy Speaker:** Are you comfortable with Wednesday next week, Eng. Rege?

**Eng. Rege:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Fair enough! It is so directed.

Next Order!

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

**Mr. Deputy Speaker:** Order! If you have to rise on a point of order seeking a Ministerial Statement, you must do it at an appropriate time.

Proceed and seek your Ministerial Statement.

#### IMPENDING STRIKE BY UASU

**Mr. Shakeel:** On a point of order, Mr. Deputy Speaker, Sir. I request for a Ministerial Statement from the Ministry of Higher Education, Science and Technology. In the Statement, I would like the Minister to tell the House whether she is aware of a strike notice that has been served by the University Academic Staff Union demanding action in respect of a collective bargaining agreement 2012, which was being negotiated and which the Government has refused to discuss or offer any solution to. In the Ministerial Statement, the Minister should inform the House what the Ministry intends to do to avert the impending strike, an action that will drastically affect all public universities in Kenya.

**Mr. Deputy Speaker:** Deputy Leader of Government Business, can you give an undertaking on that?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, we could have the same Thursday next week.

**Mr. Deputy Speaker:** It is so directed.

**An hon. Member:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! The Chair is not aware of any Ministerial Statement to be issued or sought by any hon. Member.

Proceed.

#### MOTIONS

##### APPROVAL OF THE DRAFT ELECTIONS REGULATIONS

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Deputy Speaker, Sir, Order No.8 is a Motion for approval of the regulations which were tabled before this House on Thursday 30<sup>th</sup> August, 2012. Following the Speaker's *Kamukunji* this morning, we were able to agree with hon. Members and Committees, including the Constitutional Implementation Oversight Committee (CIOC), Committee on Justice and Legal Affairs and the Committee on Delegated Legislation. Following the consensus built this morning, I wish, with your permission, under Standing No. 51, to make a request for withdrawal of the Motion under Order No. 8. This will allow time for hon. Members and particularly the Committees, to have more time to do justice to the four documents that were laid on the Table on 30<sup>th</sup> August, 2012. The three Committees felt that they needed time, particularly to look at the

voter education regulations, the registration of voters regulations and the item relating to the Diaspora. Following this, we also agreed that there was need for time to be allowed for public participation. There has been public outcry, particularly with regard to what is regarded as exorbitant fees to be charged for nominations. This morning, we received a petition from persons with disabilities in which they are asking that this House gives them an opportunity to have an input into the matter of the fees. We have had a lot of calls from youth groups and women groups who feel that they will be excluded from the upcoming historic general election because of the exorbitant fees. This requires that we do give Kenyans time to participate in the passing of these very important regulations. The regulations have been placed before this House as mere proposals for consideration and approval by the Independent Electoral and Boundaries Commission (IEBC). Under Section 26 of the IEBC Act, it is provided that:-

“Except as provided in the Constitution, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority but shall observe the principle of public participation and the requirement for consultations with all stakeholders.”

Mr. Deputy Speaker, Sir, this will allow time for that to take place. With the concurrence of CIOC, the Committee on Justice and Legal Affairs and the Committee on Delegated Legislation it was agreed that we do amend the Elections Act to allow for two months’ extension for public participation and also for improvement of the regulations. With your permission, I do beg to withdraw the Motion before the House to allow for this. Also there were four sets of documents tabled before this House. We noticed that the first set had some pages missing. With your permission, we are seeking time to replace the first set of regulations. The other sets are in order. We wish to have the first set tabled on 1<sup>st</sup> August, 2012 replaced by a cleaned up copy from the Office of the Attorney-General.

With your permission, I wish to lay on the Table of the House this one in substitution of the first set that I had submitted and which I beg to withdraw.

*(Mr. Wamalwa laid the document on the Table)*

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I think it is important that since this is arising from a *Kamukunji* we held earlier on in the day, that the Minister also clarifies to Kenyans that this is not a deliberate attempt by Parliament or by his Ministry, to extend the date of the next elections. We would like you to come out clearly that the fourth coming general election will be on 4<sup>th</sup> March, 2013.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Deputy Speaker, Sir, I wish to confirm to the House that this matter came up and we allayed the fears of hon. Members that it is not a conspiracy or an ill-intended move. It is in good faith to allow Kenyans to participate. This will not in any way interfere with the election time table as released by IEBC. The date of election remains 4<sup>th</sup> March, 2013.

**Mr. Deputy Speaker:** Fair enough, given the fact that the Motion has not been moved, you are under Standing Order No.51, as you put it, the Government side and a Minister can seek to withdraw a Motion that is listed on the Order Paper. So, that is granted. Also, you are merely replacing the papers you laid. The Chair directs that, that also be accepted.

THAT, pursuant to Section 109 (3) of the Elections Act, No. 24 of 2011, this House approves:-

- (i) The Draft Elections Regulations 2012;
  - (ii) The Draft Elections (Kenya Citizens Residing Outside Kenya)(Registration and Voting) Regulations 2012;
  - (iii) The Draft Elections (Registration of Voters) Regulations 2012; and
  - (iv) The Draft Elections (Voter Education) Regulations 2012;
- Laid on the Table of the House on Thursday, 30<sup>th</sup> August, 2012

*(Motion withdrawn)*

ADOPTION OF REPORT ON CURRENCY PRINTING  
CONTRACTS BETWEEN CBK/DE LA RUE

THAT, this House adopts the Report of the Public Accounts Committee on the matter of currency printing contracts between Central Bank of Kenya and De La Rue Company laid on the Table of the House on Wednesday 1<sup>st</sup> August, 2012.

*(Dr. Khalwale on 30.8.2012)*

*(Resumption of Debate interrupted on 30.8.2012)*

**Mr. Deputy Speaker:** Who was on the Floor? The hon. Dr. Kones was seconding this Motion and he is not here. So, I assume that it is seconded. The Chair is now going to propose the Question.

*(Question proposed)*

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I rise to oppose this Motion.

Let me start by thanking my people of Kipipiri, colleagues in the House as well as supporters and friends for having stood with me during these unending wars with my colleague, hon. Dr. Khalwale. I also want to recognize the work by the Committee despite our personal differences with your Chairman, which I believe contributed to not having a conducive environment for us to interact with the Committee in a way that would have facilitated us to understand one another on issues.

*[Mr. Deputy Speaker left the Chair]*

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

I am aware that Public Accounts Committee (PAC) relied on the Auditor-General's Report, which also recognizes some inherent limitations that resulted in some wrong conclusions being drawn by the Auditor-General on the laws. I shared this with the Auditor-General when I met him on 25<sup>th</sup> of June. But again, it was a bit too late because he was doing the report after the Committee had already concluded its work.

The Auditor-General, for purposes of knowing what these limitations are, does recognize that he did not review the Cabinet Papers on the joint venture. That is the crux or the genesis of the joint venture. If the Auditor-General did not review the Cabinet Papers that gave birth to the joint venture, then he missed out very crucial evidence in terms of the rationale and the Government thinking behind the joint venture. He ended up making his assumptions based on purely PAC proceedings. He never even took any evidence from me, although he then passes judgment on me which, again, I think he is almost condemning me unheard. That is also another issue. But I am happy to take on this matter with him again for corrective action; to correct the report in future so that, it does not happen again with any of the other assignments. As a fellow accountant, I will be happy to do that, anyway.

Mr. Temporary Deputy Speaker, Sir, the good news is that PAC agrees with the Cabinet in 2011; agrees with the decision that was taken by the Cabinet in 2007 that, in terms of going forward on the currency printing in this country, the joint venture framework is the way forward. Having agreed on that, then, perhaps, the rest is a matter of interpretation of what happens in between. I wish to just respond, for purposes of this House, and to show why I am disagreeing with the Committee on the various recommendations.

The first recommendation is that the Governor and I should be investigated for a loss of Kshs1.8 billion. Now, first of all, let me say that the Ethics and Anti-Corruption Commission (EACC) does not require a recommendation from Parliament or from anyone to investigate. They can do that on their own. If they are so determined that they need to do it, we cannot stop them. They are independent and free. Even if they will investigate, they will arrive at exactly the same conclusion that I have arrived at myself that, indeed, there was no loss. I have done some calculations--- I have had some colleagues in accounting fraternity do some calculations and we have all arrived at the fact that, indeed, not only was there no loss, but we actually had savings. I will be happy to just go through this, but I might save the Members for this, unless it comes up.

Mr. Temporary Deputy Speaker, Sir, let me also say that in terms of the interim orders that have been referred to in this Report, interim orders started being issued in the year 2003/2004 after the cancellation of the first contract. Interim orders for 1,120,000,000 pieces worth Kshs4.6 billion were issued between 2003 to 2005, when hon. Mwiraria was at the Treasury and Jacinta Mwatela, as the Deputy Governor, was in charge of procurement at Central Bank of Kenya (CBK). A sum of Kshs4.6 billion was procured within two years through interim orders using the same prices as the interim orders that were issued after that period. Now, PAC has no problem with those orders. Why? I do not know. But the issues that happened during Kimunya's time, which was only 554 million pieces worth Kshs2 billion, are problematic according to PAC because it was done by Kimunya. It is not because they were done, it was because it was Kimunya. When it was done by Mwiraria and Mwatela, there was no problem! When it was done by Kimunya and Mwatela, there was a problem. When it was done between Kimunya and Ndung'u, there was a bigger problem! Now, this is double-speak. This is double-jeopardy. This is double--- I am not sure what to call it but it is double-standards of a certain sort.

Mr. Temporary Deputy Speaker, Sir, the rationale for the interim orders that arose during my term at the Treasury was very clear. The year 2007 was an election year and it would have been very irresponsible of me, as Minister for Finance, to allow printing of brand new currency and, indeed, it will be very irresponsible if the current Minister for Finance was to do that now, much as the Constitution requires that we have new generation currency. It will be very irresponsible to actually do it with six months to an election because by the time you introduce new notes, you are giving room to counterfeiters because people have not got used to the new

type of money. They will do that and then use it in electioneering campaigns and flood this country, as it had happened in the year 1992. So, we made the decision that no new money will be introduced in 2007. That caused a delay in terms of the receipts and launch of the new currencies. I proposed January, 2008 and the Deputy Governor then, Jacinta Mwatela said: "In fact, that is even too early. Can we do it in April, 2008?" That triggered the first interim order to fill in the gap for 164 million pieces, which cost about Kshs600 million.

Mr. Temporary Deputy Speaker, Sir, the next thing after that is looking through what needed to be done in the long term. Are you going to print money through competitive tendering? Is that the best way forward in terms of securing your currency into the long term? As we were discussing with De La Rue, they had given an indication that because of having won a contract to print money in Malta, which is a cheaper cost regime, they would close the Ruaraka factory and declare all the people redundant because of our Government's policy to print money outside instead of Kenya. I looked at it and we quickly consulted with the PS - then Joseph Kinyua - and agreed we needed to give a better alternative to ensuring that those jobs were secured while, at the same time, ensuring that we continued printing money in Kenya under prices that could be afforded by CBK. The joint venture route, which we all agreed, became the bone of contention.

Mr. Temporary Deputy Speaker, Sir, what is then amusing is that having made a fundamental Government decision that we were going to go the joint venture route, a Government policy cannot be challenged in an audit. That is within the Public Audit Act. It is very clear that even in doing value for money audit, which the Auditor General is empowered to do, he cannot challenge a Government decision based on cost effectiveness. Once the Government, for example, determines that we are going to buy maize from farmers at Kshs4,000 per bag, it does not matter whether the international maize price is Kshs1,000. You cannot say: "We are making a loss by buying from farmers at Kshs4,000 instead of buying maize internationally at Kshs1,000.

When the Government determines that Webuye Paper Mills must be resuscitated, it does not matter that the cost of paper produced at Webuye will be more expensive than the paper produced in India and hence, we are making losses by doing it locally instead of importing. A Government has decided and that was exactly the same decision that was made; that it was strategic important for Kenya, as a pioneer economy within the East African Community, to have a money printing factory within Kenya which could also service the region and our needs. All we needed to do was to determine the mechanism to put in place, to ensure that the Government voice can be captured at the point of determination of the price to be charged to Central Bank. That was within the joint venture framework, where the Government would then have its two directors sitting there. You cannot be cheated on price when you are sitting in the boardroom and determining your own prices. You also share in terms of the cost and profits that come along. Again, I am only emphasizing a matter that has already been emphasized by the Committee itself in accepting the joint venture and the Committee on Finance, Planning and Trade that had looked at this matter earlier, the Cabinet in 2007 and 2011. So, the joint venture issue was really not a matter.

Mr. Temporary Deputy Speaker, Sir, since the issue of the loss is what has triggered all this debate, if you look the production, the total supply up to the year 2010 was 1,004 million pieces and the total cost of those three contracts - 164, 390 and 450 - was Kshs3.721 and that is exactly what was paid. If you compare that with what should have been paid under the full contract on the new generation, it was Kshs3.754. So, on the cash basis, we are even. There was

no loss at all. Now, the last payment that was made – 483 million pieces that were printed in the year 2010 – was to cover the period 2011/2012. This was going to be printed anyway with or without the new generation currency, because the new generation currency contract was only going to run for three years. In any case, come the year 2010 we changed the design of our currency by saying that no currency will have portraits of anyone, which means that even if the new generation currency was to succeed, it was going to only work for three years and come the new Constitution, we needed a new one. So, I can confirm that there is no loss. I am an accountant and have had people looking at it and they have confirmed that, in fact, there is no loss. But the good thing is that we have saved 301 jobs or whatever number. We have brought into the country – confirmed by De La Rue themselves – an upward value of Kshs5 billion plus. If you look at the multiplier effect, everyone who works at De La Rue has a family and child and they spend. They go to the local kiosks. The multiplier effect of that money is greater than even the loss that we are being told. So, having agreed that there was no loss then, perhaps, the first recommendation flies straight in the face, that, indeed, there is nothing to investigate. Even if there was to be an investigation by the Anti-Corruption Commission, bring us those figures and we will argue it out in court.

Mr. Temporary Deputy Speaker, Sir, the second recommendation is that we are not fit to hold public office. I found it rather strange that we are saying “investigate” on one hand and then on the other hand, saying “we have already condemned you anyway, you are not fit to hold public office.” As Parliament, are we really a House for legislation or have we turned ourselves into a Judiciary, to start passing judgment, including on ourselves? This is a dangerous precedent that we need to guard against, especially having gotten a new Constitution. Article 47 is very clear that fair administrative action must be provided for. Article 50 is very clear and the separation of duties between the respective Houses. So, like I said, there was no loss and nobody has shown that I benefitted at all from this contract. In fact, the Government saved a lot of money from this, like we have demonstrated. We saved jobs. I acted in the best interest and saved a crisis.

Mr. Temporary Deputy Speaker, Sir, we all know what happened in 2007/2008. We also know what happened in 2007. There was a lot of talk that there was a lot of money entering into our circulation from piracy and all that. Now, had we then allowed production of new money in 2007, we could have compounded the crisis that we witnessed, because 2007 was a unique election. So, I acted in the best interest of this country and expected accolades and not condemnation.

Mr. Temporary Deputy Speaker, Sir, the other issue that has been brought here is that there was the issue of the procurement law being flouted. The procurement law is very clear in terms of when you can do single-sourcing. In all these things the Auditor-General is saying that all those tender prices and interim orders are approved by the tender committee of Central Bank, Central Bank Board and Treasury. Who else was expected to approve them to make them legitimate? Those are the institutions that are set up by the law and so, there was nothing wrong. If the ones during Kimunya’s time were wrong, then the ones during Mwiraria’s time would even have been more wrong. This is because at that point even the amounts are worse. But if you find that one is right, then all must be right and if one is wrong then all must be wrong. Those contradictions are what are creating the issue that there, perhaps, is more of double standard than bringing out the facts. So, the four conditions that have to be met are very clear within the law and I can confirm to this House that all those were actually met.

Mr. Temporary Deputy Speaker, Sir, I am not quite sure how much time I have, although I would really need quite a bit of time to bring the facts clearly.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Minister, you have four minutes. I think those are enough for you to make your remarks and conclude.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I will do that.

Mr. Temporary Deputy Speaker, Sir, like I said, we got some glaring discrepancies. This is because if we are supporting the joint venture, we cannot then say that we are condemning hon. Kimunya for communicating the same message to Central Bank; that the Government has passed a joint venture, which now means that whatever agreement you have, is overtaken by events. That is a natural reaction. The Central Bank had entered into a competitive tender and signed a three-year contract, saying that you will produce the money in Malta - close Ruaraka factory. Having agreed that the only way to save Ruaraka was through a joint venture, then it would have been reckless of us to sit with that information and not communicate with the Central Bank which does not go to the Cabinet and not tell them: "The Cabinet has now approved this. Can you now realign your operations to fit within the new Government policy, which now says that money will be produced through a joint venture to be entered between Treasury and De La Rue and provide value for Central Bank?" Indeed, I did ask the Central Bank to actually look at ways of ensuring that they can get the international price benchmarks and brought into their joint venture negotiations. They will actually be negotiating with the Government and De La Rue as a printer for them. We have seen examples of this. That is why the Government is in Kenya Airways, Kenya Commercial Bank and every parastatal that is strategic. It is to ensure that the national good is protected.

Mr. Temporary Deputy Speaker, Sir, the second contradiction that I find is obviously the fact that we are saying that hon. Mwiraria was cancelling the tenders for 2002 and issuing interim orders for 1.1 billion pieces at Kshs4.6 billion. But Kimunya is wrong for having postponed the delivery of money to beyond election time and having said that we are going into a joint venture; do not print under this framework and basically, for not causing any loss to the country, because we would have spent Kshs3.75 billion. We actually spent Kshs3.72 billion during the same period, unless we want to get into the trap of where the Auditor-General is comparing a five-year production with a three-year cost commitment, which is basically comparing oranges with apples.

Mr. Temporary Deputy Speaker, Sir, the other issue that I want to raise is really that had the Auditor-General looked at all this information in the Cabinet papers, which contain all the documentation or called me, then we would have had a detailed discussion on this matter and gone through the numbers. He would probably not have given the impression that there was a loss which, again, may have triggered the Committee to think that there was a loss and it needed to act. Now that you know that there is no loss, I would like to urge the House that, perhaps, we need to delete all those recommendations. When you delete them then, really, the Report is left with nothing, because we are agreeing on the joint venture. There is no need for investigation and calling on Kimunya not to hold public office. So, really, there is no other recommendation and we might as well tell the Committee: "Thank you very much for doing the work and raising our awareness, but this Report will not be of any use to this House or Kenyans into the future. We probably do not need to vote on it either way". That is why I am opposing it.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I would like to ask hon. Members to look at this report against that background. Let us make whatever necessary

amendments we need to make, either by 100 per cent or less, but I am opposed totally to the adoption of this report because it may well set the wrong precedence for Committee work and for this House and entire generations to come in accepting wrong things.

With those words, I beg to oppose.

## COMMUNICATION FROM THE CHAIR

### WORKSHOP ON GENDER PARITY PRINCIPLES

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, before we continue to make our contributions, I have a Communication to make.

Further to my Communication on the workshop being worked out by the Ministry of Justice, National Cohesion and Constitutional Affairs, for all hon. Members to deliberate on consensus building forum on gender parity principles in the National Assembly and Senate, I wish to inform you that the workshop will now be held on 7<sup>th</sup> to 8<sup>th</sup> September In Emerald Bay Hotel, Mombasa, North Coast.

Hon. Members who have registered for the workshop will be expected to leave on Thursday, 6<sup>th</sup> September and return on Sunday, 9<sup>th</sup> September, 2012.

Thank you!

Let us continue with our contributions.

**Hon. Members:** What?

**The Temporary Deputy Speaker** (Prof. Kaloki): This is a workshop that is organized at the Emerald Bay Beach Hotel in Mombasa, North Coast. The Emerald Bay Beach Hotel is next to Continental Resort Hotel in Mombasa, North Coast. It will be on 7<sup>th</sup> and 8<sup>th</sup> September and you will return on Sunday 9<sup>th</sup> September.

Let us continue now.

*(Resumption of Debate on Motion)*

**Mr. Onyancha:** Mr. Temporary Deputy Speaker, Sir, I rise to support this Committee's report. The Committee did a lot of work in arriving at the conclusions that were arrived at. It is a pity that it is being rubbished at such an early moment without sufficient grounds.

The crux of the matter is that money was lost. A Government policy that promotes loss of public funds must be a policy which should be challenged anytime. The Government is the people. You cannot hold the Government as a sacred cow that makes wrong decisions and then hold on to it that it has the right to lose money from the taxpayer.

The loss of funds was occasioned by the following reasons:- That there was a tender issued and approved on 4<sup>th</sup> May, 2006. This tender involved several bidders. It was awarded to the De La Rue Branch in Malta. Malta is part of the European Union (EU). The salaries in Malta are much higher than the salaries in Kenya, so is the cost of living. The presumption then would be that the prices in Malta would be higher than the prices in Ruaraka. The Ruaraka Branch was unable to quote mainly because it did not have the capacity to produce the new generation notes which had been proposed. It could not produce that because it has old outdated machinery. Some of them are more than 20 years old. That is the machinery that the Government proposes to buy. In view of the fact that the land belongs to the Central Bank of Kenya (CBK) already, it really adds no value. This is because amortized for 20 years, that machinery would be worth nothing



and the fact that this factory was not able to tender for an international tender put out by the CBK is proof enough that it could not possibly be working efficiently.

The loss was occasioned by a very simple fact. When the hon. Member starts quoting accountants and all these, some of us are much more senior accountants than certain hon. Members in this House. The fact is that the Maltese quotation for say a Kshs50 note, was Sterling Pound 12.45 per 1,000 pieces when we are buying from Ruaraka at Sterling Pound 25.17 for the same number of pieces of notes. That is more than double the price and the quality.

**An hon. Member:** And the quality?

**Mr. Onyancha:** Mr. Temporary Deputy Speaker, Sir, it is already confirmed that the new generation notes were going to be having better safety features and higher quality at half the price. So, when we start saying that we saved money because of saving 300 jobs, we are not sincere to ourselves because the same Government sold Telkom Kenya Ltd and rendered many people jobless. So, I think we are not facing the facts unless all other pieces were going at much less price at Malta than they were going at the Ruaraka Plant. So the Committee is asking itself: Does this make sense? Does it make sense to pay for anything which is of a cheaper quality at double the price? It does not make sense.

Secondly, we invited all the people mentioned in the report to give evidence. On several occasions, some of them lied to the Committee. Some of them could not recollect what happened. Others were contradicting each other and some of them actually were telling outright lies. At the beginning, one of the lies told was that the notes from Malta, why we could not print there, was because we would have a storage problem in Kenya because they would have been brought in one batch in bulk and the CBK does not have that storage capacity in addition to security. This was later proven to be wrong from other evidence we took because the contract from Malta provided for batch deliveries as and when they were required by the bank.

Another falsehood was that the sentry at the CBK had disappeared and could not be traced. The Committee managed to get him within three days. He had never disappeared, but there was simply reluctance to get him to come and appear before the Committee. The orders which we are talking about that resulted in the loss of Kshs1.8 billion are orders which were made subsequent to the approval of the tender. The frustrations that Mrs. Mwatela went under the Minister for Finance are all in the evidence in trying to produce the new generation notes.

Mr. Temporary Deputy Speaker, Sir, the Auditor-General was detailed by the Committee on making a calculation showing the differential between the higher price locally and the local price of Malta, multiplied by the number of pieces of notes that had already been ordered. It is very simple. Any layman can make that calculation. So, to tell us no loss was incurred is misleading the House. When we go to the issue of Cabinet approval, the Cabinet approved the joint venture. It never approved the usurping of the powers of the Central Bank of ordering for bank notes or placing procurement orders.

Turning to De La Rue as a joint venture, our recommendation that it should be looked at and accepted is not because we now accept that we can take the higher price. It is because we feel that it will need a complete overhaul. The new company that is supposed to form a joint venture with the Kenya Government has machinery that is all obsolete. We are of the idea that it is good for a country to have its own printing press; its mint. But in having it, we would expect that it will quote cheaper than anybody overseas because there are no transport costs involved and labour is cheaper in Kenya than elsewhere. So, we do not see any reason why it cannot compete fairly against any foreign competition.

Further, on this joint venture, we did not give it a blanket approval. The idea is that due diligence should have been done and that was not done. I do not know which investor just puts money in a venture without any due diligence. I do not know which investor puts money where the land belongs to him and all the machinery is old. The structure is worth maybe Kshs50 million and he is putting in Kshs600 million for absolutely no reason. The valuation related to the machinery is also in question. Machinery, by passage of time, naturally, amortizes itself. The machinery at Ruaraka is analogue and today, every manufacturing plant is digital. There is no way you can use that machinery at all in printing the new generation bank notes especially those recommended in our new Constitution. The other issue that we had was that we were going through some other funny companies in Switzerland to be the joint owners of the joint venture. We did not understand why we could not simply own it jointly with De La Rue International from London. I need not say anything other than to let you imagine why.

This Committee has done a very good job. The Auditor-General has given us a very good report. We are not averse to us acquiring the plant at Ruaraka, but it must be at a fair price with due diligence properly done and at such a timing that we do not rush to have to paint the old notes. Meanwhile, we should also be subjecting all our tenders to international bidding.

With those few remarks, I beg to support.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion. I want to start by saying that anything that has semblance of corruption needs to be fought. If this Committee was given a task to go and investigate this matter and do a report to this House, as a House, what we need to use to form an opinion is what we read from the report of the Committee.

I have taken my time to look at this report and I am convinced that it was arrived at after a thorough investigation. The relevant witnesses were invited to present their views. The minutes are there and their views are recorded verbatim. I am convinced that the Committee did a thorough job that we can form an opinion around. I want to congratulate and thank the Public Accounts Committee for taking time to dig into this matter. We must admit as a country that this is a matter that has been with us for quite some time now. The earlier we dispose of this matter, the better for us and for this country.

I hear of reports that the notes that we have are dirty and archaic. I agree because when I look at some of the notes that we get nowadays, I wish I could show this House some, they have changed colour. I wonder why they are still treated as genuine notes. So, sometimes I have a feeling that we have delayed in taking some action. We need new generation currency as early as yesterday.

However, I want to propose an amendment to this report and I plead with the Committee and the House to accept it. It is based on thorough scrutiny of the report. The Committee has recommended---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, hon. Mbadi! Can I get a copy of that amendment? Proceed, hon. Mbadi!

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I beg to move that the Motion be amended as follows:-

By deleting recommendations 5(a) and 7 on pages 53 and 54.

The recommendation of the Committee is that it concurs with the Cabinet decision for the Government of Kenya to enter into a joint venture with De La Rue Company with respect to the Ruaraka, Nairobi Plant, but not so for anomalies relating to the draft joint venture agreement. For this reason, the joint venture should only proceed upon fulfillment of the following conditions:

(a) It must not tie the Central Bank of Kenya to signing a ten year currency printing contract with De La Rue Company. This contravenes the Government's procurement regulations and procedure since the bank cannot be guaranteed a fair market price for currency printing unless there is a competitive procurement process.

That is the clause that I want to be deleted. I agree with the Committee that we need a feasibility study. We need due diligence to allow us to get into this joint venture as the Cabinet has recommended. That should be done. But if we are going to allow this country to invest 40 per cent into a company and you are not giving that company business, then that does not make business sense to me. We should think like businessmen and women if as a country, we have elected that a joint venture can be a good step. The Committee has found that there is nothing wrong with a joint venture except that it has made a very good recommendation that before we go into a joint venture, as a country, we, first, need to do a feasibility study and due diligence. That must be done. Once we find that this company is viable and we are investing in it, then we need to be the first ones to guarantee business to that company. That is where I found a little contradiction. I would also allow maybe the Committee, if they are not comfortable with my amendment to have a contrary opinion. My proposal is that we get into joint venture, if we find it viable, only after doing a feasibility study. The moment we find that it is viable, then we must guarantee it business because we need to show the whole world, those who will be giving us business, that as a country, we have faith in this company that we are investing in.

Otherwise, it would not make business sense and then you are saying that you have no faith in that company. That is the bit I wanted to remove. It does not hurt anything. It does not really give automatic business to De La Rue. However, if we have it in the Report, it means that, as a country, we doubt this company. So, that is my view. Anything relating to whether we should give them business or not need to be deleted from this Report so that once feasibility studies are done, then as a country, we can make a decision at that point.

Mr. Temporary Deputy Speaker, Sir, I want to conclude by saying that this House needs to have faith in its Committees. Once a Committee has gone out there with the full mandate of this House and done a thorough job--- Look at this Report, Mr. Temporary Deputy Speaker, this is a voluminous Report; a lot of input has gone into this Report. This is certainly not about people sitting somewhere to write a report out of nothing. If you read this Report and especially the story of Mr. Ndungu--- I sympathize with that *mzee*. He faced a lot of tribulations.

**Hon. Members:** Gikonyo!

**Mr. Mbadi:** I am sorry. It is Mr. Gikonyo. He faced a lot of tribulations just because he was doing the right thing. I do not think that as a country, we want to go that direction. I want to see a country where if you are on the right side, however, long it takes, you will be vindicated. I think today is the right time to show Gikonyo that whatever he was fighting for was not in vain.

Mr. Temporary Deputy Speaker, Sir, I move that amendment and ask hon. Charles Kilonzo to second on behalf of hon. Duale who was still busy talking to hon. Dr. Khalwale.

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir. With regard to the intended amendment Motion, it is within the rules of this House that a Motion that should be debated by the House should not be unconstitutional. I want to draw the attention of the mover to Article 231(3) of the Constitution of Kenya. It provides that the CBK shall not be under the direction or control of any person or authority in the exercise of its powers or in the performance of its functions. I am inviting you to find, if the hon. Member does not agree with me and withdraw the amendment, that if this Motion was to continue, it would be unconstitutional because it attempts to make the authority of Parliament be the one to direct CBK on how to

procure. That is directly against Article 231(3). So, I request my brother that when the company will be there to actively compete not only locally but even internationally because we want it to do local jobs, regional jobs and international jobs.

Mr. Temporary Deputy Speaker, Sir, his Motion is unconstitutional.

**The Temporary Deputy Speaker** (Prof. Kaloki): Dr. Khalwale, what we have here is an amendment and hon. Charles Kilonzo will be seconding it. After that, we will be able to deliberate on that matter. If hon. Members will be convinced with your view that we do not want to continue with it, we will vote on it. So, the fair thing is to allow hon. Charles Kilonzo to second it and then we will deal with that matter.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Speaker, Sir, as I second this particular Motion as amended, I want to put it very clear that the Committee, as far as we are concerned, did its work. However, what I find a little bit intriguing is to tell us that we commit public funds and buy a 40 per cent stake from De La Rue. I find that a little bit uncomfortable and yet you claim that the equipment in De La Rue is obsolete. You cannot have it either way. You either tell us as a Committee, “Do not invest in De La Rue!”

Secondly, you need to tell us, “After you invest in De La Rue, do not trade with them for the next ten years.” That is what it means when you read in between the lines. We are not saying that they be given an automatic tender. It will be open to the public. You cannot, however, tell us that after the Government buys 40 per cent in De La Rue, then they should not at all trade with Government for the next ten years.

Mr. Temporary Deputy Speaker, Sir, we do not need to be shy. When it comes to a company which has invested in this country and it is manufacturing, we must ensure that we encourage other companies. The only way we can do that is to ensure that we come up with policies which favour companies that are already established here – these companies are employing people - as opposed to companies which are established outside Kenya.

It is common knowledge that these companies have many benefits. There is direct and indirect employment. They also pay taxes to the Government. We are not saying that if this particular amendment is removed, then De La Rue will be getting direct procurement. When you read between the lines, you cannot tell us that after buying 40 per cent, then De La Rue should not trade. When you look at the standard criteria which is used in procurement, the awarding of marks, perhaps, should be revised to ensure that companies which are trading and manufacturing here in Kenya and they have employed people are given a high scope in evaluation. That way, we will come up with policies which encourage people to set up companies here. We should not get so convinced about--- It might look cheap when you go to buy out there, but when you look at a company which has employed people here and it is paying taxes, we really need to be carefully.

Mr. Temporary Deputy Speaker, Sir, as I support this particular amendment, I want to plead and make it very clear that it is not asking for special treatment. What we are saying is: Do not deny them the opportunity to trade because no Government officer will ever agree to sign any agreement for ten years even if there is a fair tender out there and the word De La Rue is there. This is because we have been referring to this particular Report.

I wish to support.

*(Question of the amendment proposed)*

**Mr. Ruteere:** Mr. Temporary Deputy Speaker, Sir, I am here to support the amendment because it is asking what many Kenyans would ask. There are people employed in these companies and they are Kenyans. It is an investment in our country. We are always trying to get investors to come to this country. It is good that they are given the opportunity through these joint ventures. When there is any company that makes profit, there is the 30 per cent corporate tax that they pay to the Government. It is very necessary that this company is given the opportunity and continues to do all the ventures that are here. As much as we are trying to say that when we go out there we benefit, there are more benefits here because there are a lot of people who benefit. The small scale businessmen who interact with these people are employed in these companies.

I beg to support

**Mr. Duale:** On a point of order, Mr. Temporary Deputy Speaker, Sir. You need to give direction on this. Hon. Khalwale has said that this is unconstitutional. Recommendation No.5 (a) is one that I had an issue with and I want to put it in my contribution. Article 231(3) of the Constitution, which the Minister for Finance is supposed to bring a legislation on – I hope it will come back in the Central Bank of Kenya (CBK) (Amendment) Bill which is before this House – gives the CBK independence in its operations. Two, I want you to give guidance. The 40 per cent joint venture is between the Ministry of Finance and De la Rue. The CBK as a third entity has no business there.

Finally, this Committee, under recommendation No. 5(a) is recommending that the CBK should procure their banking notes competitively from the market, so as to compete with other players in the industry. So, those three contradict the amendment in the sense that the amendment wants to ensure that the CBK is tied to De la Rue, or whichever company. However, the Government has a joint venture for ten years. That is not there in the law. Later, even the Committee agreed to the joint venture. Why crucify Amos Kimunya? These are issues that must come out clearly and soberly. Yes, very soberly! People must read this report. So, you must give direction. The amendment by hon. Mbadi, which has been seconded by Charles Kilonzo, contravenes the Constitution that provides the CBK with the independence that it needs.

Mr. Temporary Deputy Speaker, Sir, two, under the CBK Act, this Committee has confirmed that the CBK must play in the competitive liberal market in doing its business. Thirdly, the 40 per cent joint venture is not between the CBK and De la Rue. It is between the Government, as fronted by the Ministry of Finance, and De la Rue. So, the CBK is not a signatory to the joint venture. Those three issues need your direction before we either support or oppose the amendment. This is a constitutional issue that you need to spell out.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! I think I need to deal with that matter. First, what we have here, under the Constitution, Article 231(3) pertaining to the CBK on says;

“The Central Bank of Kenya shall not be under on the direction or control of any person or authority in exercise of its powers or in the performance of its functions.”

This is the Constitution and I do not see that coming out in the Report. What we have here is the draft joint venture. It is a draft and there is nowhere where we are talking about an individual or a group that will control the CBK. I think we are talking about two different issues. Therefore, the debate on the amendment needs to proceed. We should deal with it. It should either be passed or defeated on the Floor of the House. So, let us continue with the contributions.

**Hon. Members:** Put the question.

**The Temporary Deputy Speaker** (Prof. Kaloki): Should I put the question pertaining to the amendment?

**Hon. Members:** Yes.

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

*(Debated on the original Motion resumed)*

**Mrs. Shebesh:** Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support the Report of the Committee but with an amendment which reads as follows:

“THAT, the Motion be amended by deleting the fullstop at the end thereof and inserting the words “subject to deletion of recommendations 3 and 4 on page 53.”

Let me read what I am proposing to delete in my amendment. I am proposing that we delete the recommendation that says: “hon. Amos Kimunya and Prof. Njuguna Ndung’u have been responsible for the loss of Kshs1.83 billion acted contrary to the provisions of Chapter 6 of the Constitution of Kenya, the Public Officer Ethics Act and the Public Procurement and Disposal Act in that respect and for that reason, they are not fit to hold public office.

I also want to delete recommendation (4) which states:

“The appointment of Prof. Njuguna Ndung’u as the Governor of the Central Bank of Kenya should be terminated towards this end. The President should appoint a tribunal pursuant to provisions of Section 14(2) and (3) of the CBK Act, Cap 491. In the meantime, Prof. Njuguna Ndung’u must step aside from office with immediate effect.”

Mr. Temporary Deputy Speaker, Sir, I want to be very quick and precise as to why I am recommending this. I started by saying that I support the report. One reason why I support the Committee Report is, as my colleagues have said, we must respect the work of Committees of this House. That is number one. Committees that come with a Report that is unanimous must be respected, because that is why we sit in Committees. However, Committee Members that come here in disunity should not blame us when we throw out their reports or dismiss them. So, I will clearly say that this is not a split committee, and that is why I have brought an amendment. I am not talking about throwing out the Report.

The Report, as has been said by the Minister, gives very good suggestions and agrees with many policies that the Government came up with, especially the issue of the joint venture. The Committee also went further to check whether there were any losses incurred. Recommendations 1 and 2 of the Committee talk about the Ethics and Anti-Corruption Commission, and say that it should investigate the Minister for Finance for the loss of about Kshs1.8 billion. They also say that the same Commission should investigate the Governor of the Central Bank of Kenya.

I will then go to the third and fourth recommendations that I am deleting. Why am I deleting them? This is because with all due respect to the Committee and to this House, we have started to be accused of going beyond our mandate. We cannot give work to the Ethics and Anti-Corruption Commission clearly as recommendation one and two, and say that it should investigate the Minister and the Central Bank Governor and then quickly follow by saying that they should not hold public office. Then what have we asked the Ethics and Anti-Corruption Commission to do? We should just forget about the Ethics and Anti-Corruption Commission. According to me, if they had gone directly without the Ethics and Anti-Corruption Commission--

- Since the Committee saw fit in recommendations numbers one and two recommendations to ask for further investigations, that means that the Committee genuinely wants further investigations into this issue. If they want further investigations into the issue, it is because they want to show fairness. When they ask that Mr. Amos Kimunya and the Governor of the CBK do not hold public offices--- They are asking the Ethics and Anti-Corruption Commission to come up with a clear report which this Committee is unable to do because they do not have the capacity and mandate.

The second reason why I ask that we delete these two names is because we have entered the political stage of this country; people do not like telling the truth on the Floor of this House. We speak good English because this House is full of good English speakers and debaters, but we massage the truth.

I said during discussion on the NHIF Report by the Committee that was split that when you see the name Anyang-Nyong'o and the name Kimunya, investigate the political intrigues behind the issues that these two people are being mentioned about. It is unfortunate for them because they either do not have people skills, I do not know what their problem is, that they are always facing the brunt of political intrigues in this House. These political intrigues will continue because we are going into a campaign period and we must be alive to it. If we are not alive to it, we are cheating Kenyans and the rest of the world.

Mr. Temporary Deputy Speaker, Sir, I do not want to be not alive to it. I am alive to it, the details of which I know. That is why I am saying that if we say: let Mr. Amos Kimunya go home because he stole Kshs1.8 billion, that the Ethics and Anti-Corruption Commission (EACC) will tell us. But let it not be that because if you cannot deal with Mr. Amos Kimunya politically, you come here to the Floor of the House and use 210 hon. Members to help you deal with Amos Kimunya. Even Prof. Anyang-Nyong'o, if you cannot deal with him in Kisumu, do not try and bring Prof. Anyang-'Nyong's issues here to try and deal with him.

**Mr. Duale:** Mr. Temporary Deputy Speaker, Sir, you need to guide us. I want the hon. Member to confirm whether the name Kimunya and Anyang-Nyong'o are part of the amendments she has moved. I thought we were discussing amendments. She has digressed to Anyang-Nyong'o and Kimunya.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Duale! What Mrs. Shebesh is doing is trying to make her point that sometimes when we hear some names, you may have some other connotations behind the names. I think she is making her point.

Proceed, Mrs. Shebesh.

**Mrs. Shebesh:** Mr. Temporary Deputy Speaker, Sir, I will make it faster than Dr. Khalwale did on Thursday and with a little less drama although I did want to put drama because Dr. Khalwale was allowed free airtime on the issue of Siamese twins and Oh! Oh! Oh! That is what the country was told on Thursday when we started debate, not on the details that have come out today. So, on Thursday, the country condemned the Minister for Transport; the country condemned the Governor of the Central Bank of Kenya. We had not even started with debate on the Report. Those are things I am saying that as long as I stand in this House, we will not allow them to happen because the next day, it will be somebody else.

Mr. Temporary Deputy Speaker, Sir, I will finish by saying that as we delete this, clearly, we are not saying do not investigate them. In fact, we are saying investigate them because the recommendations have already been made. So, I am asking this House with all due respect, let us go beyond other issues that we could have. Let us look at the good of this country. This Report

clearly recommends this joint venture. It almost congratulates the Government on the work they have done on this and then they say Mr. Kimunya must go and Prof. Njuguna Ndung'u must go.

There are some reports that have come here on the Governor of Central Bank of Kenya which are worse than this Report and whose recommendations were worse than this. I am telling you that we can deal with a lot of issues here politically, but we can also be fair.

I want to move that amendment and ask Ms. Amina Abdalla to second my amendment.

**Ms. Amina Abdalla:** Mr. Temporary Deputy Speaker, Sir, I would like to congratulate Mrs. Shebesh because it is very difficult to support one Amos Kimunya. This is because he is a very unpopular hon. Member of this House and an extremely rigid Minister of this House.

As a Member of this House, I would have very serious difficulties looking at this as an issue of assisting Mr. Kimunya. He is my friend but he is a very unpopular and difficult individual. When you lump any issue with Amos Kimunya, it is so easy to sell and pass in this House.

Having said, that, we cannot contradict ourselves on the matters that---

**Mr. K. Kilonzo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. While my friend Ms. Amina Abdalla wants to second the amendment, is she in order to start imputing improper motive on the hon. Member saying he is unpopular and rigid? Her deductions should not be brought to us to be part of this debate. The debate is clear; it is on the Report which is on the Floor of the House. Is she in order?

**Ms. Amina Abdalla:** Mr. Temporary Deputy Speaker, Sir, I would like to paraphrase what the late hon. Seroney said, that that is a rhetorical question because that is the reality in this House that he is an unpopular hon. Member. If you bring anything apart---

**The Temporary Deputy Speaker** (Prof. Kaloki): Ms. Amina Abdalla, you have to withdraw the words "unpopular Member of this House." We have not debated on that issue and I think that is not fair to the hon. Minister Kimunya.

**Ms. Amina Abdalla:** He has no problems with those remarks, but I withdraw in the interest of time.

**The Temporary Deputy Speaker** (Prof. Kaloki): Proceed, Ms. Amina Abdalla.

**Ms. Amina Abdallah:** Mr. Temporary Deputy Speaker, Sir, what I was trying to say is that we need to separate the personal grievances we might be having with Mr. Kimunya with the issue at hand. I am saying that because only last week, we appreciated the contents of the Constitution that say a person is innocent until proven guilty. So, if we are saying that we want this person to be investigated, we cannot then again say that we want this person investigated but he should not hold public office. We are already sealing his fate, then there is, definitely, no need to carry investigation on a person you have already said he should not hold public office.

I started with the perception of unpopularity because when you have other issues clouding an individual, it is so easy to lump the perception with the actual issues. The reason I support this amendment is not because Mr. Kimunya is innocent. This is because I do not know if he is innocent or not. I will only know if he is innocent once the investigations by EACC have been approved. If we passed in the Leadership and Integrity Bill that we will not allow anybody to be held responsible unless all avenues of appeal have already been taken into consideration, then we will be judging Mr. Kimunya and Prof. Ndung'u before a court of law has concluded or investigation with an institution such as the Ethics and Anti-Corruption Commission has already been done.

So, based on those reasons that we will be denying them their constitutional rights of being innocent until proven guilty, I support this amendment and urge hon. Members that let us



separate the rigidness of my friend, Amos Kimunya, from this debate and to not have the Governor of the Central Bank of Kenya (CBK) be collateral damage because of our issues with Mr. Kimunya.

With those remarks, I support.

*(Question of the amendment proposed)*

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I rise to support this amendment. In doing so, I would like to point out that the transaction being investigated runs from the period December, 2002 when the initial contract was renewed up to the end of 2011.

In this period, three Ministers have served this Ministry and each of them has had an input in their relations with the CBK. What we are describing as a loss is a computed loss. There was an attempt to consume a tender sometimes in May, 2006. The CBK tendered twice and in each time---

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister who has never worked at the Treasury and has never worked with the CBK to dispute that this loss was just a computed loss yet this has been done by the Auditor-General of the Republic of Kenya?

**The Temporary Deputy Speaker** (Prof. Kaloki): Minister, proceed and make your point, please.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I have a working knowledge of accounts but hon. Mbadi is qualified in the field. "Computed loss" means loss which is computed by the fact that orders were made at a particular price. If the tender had been consummated, there would have been a saving of that much. So, we are talking of a loss arising out of computation of two figures, one of which is the renewal figure of December, 2002, which reduced the 1992 contract figure by about 50 per cent. We are now treating it, in this Report, as if it is an actual cash loss by the Republic of Kenya.

Why was the tender not completed? In the first place, the contract was renewed for two years up to December, 2005. The Central Bank of Kenya (CBK) tried to get this tender through but they could not get more than the two same firms, namely, Goseke and De La Rue. The precedent setting stop gap interim order was made before hon. Kimunya took office. That order was made---

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Charles Kilonzo, what is your point of order?

**Mr. C. Kilonzo:** Mr. Temporary Deputy Speaker, Sir, I think the Minister is totally lost. We are dealing with an issue of amendment but he has gone back to the main debate. Perhaps he should be guided, so that we can move on very fast.

**The Temporary Deputy Speaker** (Prof. Kaloki): Just give him time. I think he is coming back to that point.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I am coming to the point as to why I oppose the Report and support the amendment seeking that the Governor of the CBK and hon. Kimunya do not step aside in accordance with the two recommendations; because the Committee is claiming a loss that never was. They have computed a loss and they are treating it as if it was a cash loss. It was not a cash loss. It was a computed loss.

The Committee is holding hon. Kimunya responsible for the delay in consummating the tender for the printing of 1.7 billion notes, which was delayed for different reasons until the award was overtaken by the Cabinet decision for the joint venture. The issue of the joint venture is a Government matter. The terms of the joint venture are not in this Report. Whether this will be a breach of the Constitution or not, it is left for the decision-making process for the joint venture. Whether printing currency notes at Ruaraka using new equipment, under new management and new ownership will give Kenya value for money or not, that is a separate matter, for which hon. Kimunya cannot be indicted. As Cabinet, we have already given prescription of how the joint venture should be consummated.

Mr. Temporary Deputy Speaker, Sir, it is important for me to repeat that the precedent-setting interim stop gap orders of 300 million currency notes were made before hon. Kimunya took office in February, 2006. It is on that basis of precedent setting interim order that all other orders have been made up to now. Up to now, stop gap orders have gone along the same way. As to why the consummation of the tender was delayed until it was overtaken by the joint venture decision of the Cabinet, it is not for hon. Kimunya to blame.

One of questions that contributed to the delay was whether Treasury should have accepted the signature of the Acting Governor when the substantive Governor was still being tried for offences in a court of law, and his contract had not been terminated. Who was the valid Governor to sign those notes? According to her evidence, the Acting Governor of the CBK then, Mrs. Jacinta Mwatela, wanted to sign those notes but De La Rue refused and insisted that Treasury must authenticate the signature on the notes, and that such signature should be of the substantive Governor of the CBK. That was part of the reason as to why the tender was delayed. It is not Kimunya alone to be blamed for the delay. It is not Ndung'u, who even came much later, to be blamed for that delay.

Mr. Temporary Deputy Speaker, Sir, the Procurement and Disposal Act came into force on 1<sup>st</sup> January, 2007. It is in that Act where issues of direct procurement are specified. The new Constitution came into being in August, 2010. The PAC is indicting hon. Kimunya, under Chapter Six of the new Constitution, which was not in place at the time these decisions were made.

The PAC is discriminating against hon. Kimunya in the middle of four Ministers. They spared hon. Mwiraria and indicted hon. Kimunya. They now want to spare the successors to hon. Kimunya, under whose watch the same interim orders were placed at the same price. So, the question arises whether, as Parliament---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Minister! There is a point of order.

What is it, Dr. Khalwale?

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, as the Chair of the Committee, it befalls upon me to ensure that the Minister does not mislead the House.

After hon. Kimunya left office, and hon. Kenyatta took over, no single interim order was made. I am speaking with authority from the evidence adduced on this matter. The interim orders that had been made were made earlier on. The current currency notes are dirty because they have taken so long to be replaced. I have it in evidence that hon. Kenyatta did not make or preside over any interim orders.

**The Temporary Deputy Speaker** (Prof. Kaloki): You have made your point, Dr. Khalwale. Let us hear hon. Dalmas Otieno.

What is your point of order, Mr. Kimunya?

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, is the PAC Chairman, hon. Khalwale, in order to mislead this House that no interim orders were made beyond the time I was in office whereas the documentation by the Auditor-General, on which he relied, clearly, show the following:-

(i) hon. Kimunya was at the Treasury between 2006-2008, and all hon. Members can remember the drama that was in this House;

(ii) in June, 2009, an interim order was issued for 450 million pieces of currency notes for Kshs1.6 billion; and,

(iii) in July, 2010, another interim order for 483 million pieces of currency notes was issued at Kshs1.8 billion.

Mr. Temporary Deputy Speaker, Sir, interim orders were not issued during hon. Kimunya's tenure at the Treasury. The fact that the PAC Chairman cannot read out these details is an indication of the fact that personal issues have overtaken even basic reading to appreciate when events took place. Is the hon. Member in order to mislead this House by saying that no interim orders were issued when he has all the facts to the contrary or he should have had those facts because they are part of his Report?

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, I want hon. Dalmas Otieno to conclude his remarks.

Proceed, hon. Otieno.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I am only reading page 17 of the Report, which confirms that the first interim order of 300 million pieces of currency notes was made during hon. Mwiraria's tenure at Treasury; the second interim order in 2007 and the third one in 2008, adding to a total of 554.05 million pieces of currency notes, were made during hon. Kimunya's reign. The orders made in 2009/2010 were made during the service of other Ministers at the Treasury.

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

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Khalwale, just allow the Minister to conclude. He is actually dealing with the point of order that you just raised.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I wish the PAC Chairman had his data correct. I have flair for data. I check and cross-check it.

Finally, the power of this House to direct that the President sacks a Minister is provided for under the Chapter on the Executive of the current Constitution. The question arises whether recommendations of this House without following the procedure that has already been debated and included in the current Constitution, are fair to the Executive or not although the chapter is suspended. We continue to recommend that people, should step aside.

We should not make decisions as if ours is a finality when there are competent organs to prove the cases. The several anti-corruption commissions from the time of John Harun Mwau have been to different courts and have failed to prove many cases. Should we continue to confirm allegations before, the judiciary confirms them that otherwise turn out to be scandalizing to members of the Executive? That constitutional question should be answered, and future parliamentary committees should stick to what is within our powers to do.

Otherwise, I wish to commend the Committee for a good start in exercising our oversight authority, but they must not set precedents that are *ultra vires* the law and detrimental to good governance.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, before we hear the other hon. Members, I can see many requests here. Should we continue to debate for the allocated time of 20 minutes or should we reduce it to five minutes? Can we make it three minutes?

*(Question, that speakers' time be reduced, put and agreed to)*

Hon. Members, we can have three minutes each, so that we can conclude this matter because we have many requests.

**The Assistant Minister for Trade** (Mr. Oyongo Nyamweya): Mr. Temporary Deputy Speaker, Sir, I support the amendment. The main reason why I am supporting this amendment is because it is not fair for a Committee to talk of more government in the private sector when we should be moving away. What I expected to get from the Committee is a recommendation that the Government should not invest money in joint ventures because---

**Mr. M'Mithiaru:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We are discussing a report which has been tabled in Parliament. Which is the best way to handle it? Do we debate the report and mention areas of amendment, so that we can properly exhaust it? When we clear this one, I want to bring another amendment. The best thing is to let debate go on, on the report and then we identify areas which we should amend.

**The Temporary Deputy Speaker** (Prof. Kaloki): Thank you, Mr. M'Mithiaru. Actually, we will put the question in a minute to deal with this particular amendment.

**The Assistant Minister for Trade** (Mr. Oyongo Nyamweya): Another point that I wanted to raise is that the Governor of Central Bank of Kenya (CBK) works independently from Treasury. He does not answer to the Treasury. We cannot put the Governor of CBK and the Ministry of Finance together. Clearly, they play separate roles. If the Governor of CBK has made a mistake, he should be pursued alone. If he did not act as he should have acted, then he should be followed. What I did not like about the Committee's recommendations is about the joint ventures. In the Kenya Postal Corporation, people were sacked; and in Telkom Kenya, people were sacked because of technology. Time for De La Rue to be in Kenya is over. If they are competitive and can give value for money, they can invest elsewhere in the world. We cannot be told that we want to keep 200 people in jobs at the expense of inefficiency and the country losing resources. It is time, as a nation, to be more careful. I do not agree with the recommendation of the Committee.

Finally, I am supporting the amendment that Mr. Kimunya should remain in his job and not to step aside. That is what I am supporting here. Also, the Governor of CBK should remain, because we have said they should be investigated. You cannot have two swords as Parliament. We will not run this nation if we do things the way we want and asking for someone to be investigated by the Ethics and Anti-Corruption Commission and at the same time we tell him to step aside. What are we doing as Members of Parliament? Let us be fair to people who cannot defend themselves in this House. Probably, Mr. Kimunya can defend himself here; what about the Governor of the CBK? He cannot come here and speak for himself.

With those few remarks, I support the amendment.

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

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

*(Question of the Motion as amended proposed)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, let us now go back to debate the Report.

**Dr. Eseli:** Mr. Temporary Deputy Speaker, Sir, first, I want to congratulate the Committee for the good work that they tried to do, and the fact that they called on the Auditor-General to make an audit and give them a report. We have had instances where some Committees have come up with drastic reports which actually break up people's careers without any proper audit being done.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Dr. Eseli! Before you continue, I would like to say that we are now debating on a Motion which says that recommendations Nos.3 and 4 dealing with Mr. Kimunya and Prof. Njuguna Ndung'u have been deleted. The same applies to the termination of their positions. The recommendation on the stepping aside has also been deleted. That is just for clarity.

Now proceed, Dr. Eseli. That was just for the record.

**Dr. Eseli:** Mr. Temporary Deputy Speaker, Sir, while I agree that it was good to have an audit report, I would still insist that this audit report was not properly before the Committee. This was a special audit report and the Public Audit Act, Article 42, states special audit reports shall be brought into the House by the Minister, and if he is not able to, they should go to the Speaker who will then table them in the House. Even if we were to say that the report was properly before the Committee, it is so fatally flawed that they could have relied on it, because the Act says that on examination under this section, the Auditor-General may not question the merits of a policy objectives of the Government, a state corporation or local authority. Unfortunately, this audit report questions the Government's policy on the joint venture. So, that makes it fatally flawed. So, the Committee cannot rely on it. It should have been tabled in the House first, but it was not. Secondly, the Auditor-General has over-stepped its mandate by questioning Government policy when he is not supposed to do that. So, this makes the report fatally flawed and it cannot be relied on.

Finally, there is an issue about obsolete machinery. I have looked through this voluminous Report, and I am yet to see a report from any engineer who said that those machines are obsolete.

**The Temporary Deputy Speaker** (Prof. Kaloki): I think your time is up, Dr. Eseli.

**Mr. Duale:** Mr. Temporary Deputy Speaker, Sir, first, I am uncomfortable because I had a major issue with the two amendments that were made by hon. Shebesh. I want to thank the Chairman of the PAC for doing a thorough job. But because of time limit, let me look at these two amendments by hon. Shebesh.

Mr. Temporary Deputy Speaker, Sir, this Report is very good. One of the reasons why I oppose hon. Mbadi's amendments was to do with issues of the joint venture. When you read this Report and see the Committee recommending a joint venture then, at the back of your mind, you ask yourself: What happened to Amos Kimunya? It is Amos Kimunya who started the train of the joint venture.

But coming back to Parliament, I think Parliament has very important legislative and oversight roles. If any wrongdoing has been done, when you look at the public that so and so

should not hold a public office--- Ten days ago, this House amended many provisions in Chapter Six. In the Chapter on Leadership and Integrity, there was no provision that says you should not hold a public office. So, in my opinion, Chapter Six that PAC anticipated in dealing with Governor Ndung'u and hon. Kimunya is not the Chapter Six that this House passed. I want to say it here. So, the Chapter Six of the Civil Society is not the Chapter Six that this House debated. Each and every Kenyan, whether you are a Minister, Governor of CBK or Member of Parliament---

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Duale, you have one minute.

**Mr. Duale:** Mr. Temporary Deputy Speaker, Sir, give me one more minute. Whether you are a street preacher, you must go through due diligence and judicial review process. If the Ethics and Anti-Corruption Commission finds you guilty, you can still not be subject to hold public office. You must be taken to court. You must take an appeal. The final arbiter is the Supreme Court of the land. When the Supreme Court convicts you, then you cannot hold a public office. It is not a Member of this House or a Committee that will tell you: "So-and-so will not hold a public office."

When you look at the Report, Mrs. Jacinta Mwatela is the one who signed the first orders. She is not holy as we are being told. Mrs. Mwatela as the Deputy Governor who was mandated-- - She was the Chair of the Tender Committee.

**The Temporary Deputy Speaker** (Prof. Kaloki): You have done well.

**Hon. Members:** Put the Question! Put the Question!

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, should we put the Question?

**Hon. Members:** Yes!

**The Temporary Deputy Speaker** (Prof. Kaloki): Will as many of this opinion say Aye?

**Hon. Members:** Which opinion?

**The Temporary Deputy Speaker** (Prof. Kaloki): The opinion of putting the Question--- Order, hon. Kimunya!

Members, let me pick a few so that we can ventilate on this issue. Then we will be able to come to the question.

**Mr. Abdikadir:** Mr. Temporary Deputy Speaker, Sir, I have never opposed a Committee Report. So, I will be doing history today by opposing this Report.

Mr. Temporary Deputy Speaker, Sir, this Report has nine witnesses. It is based on the evidence of nine witnesses and except one, all the others agreed. Yet, the Committee's recommendations are opposed to the agreement of those eight witnesses. Therefore, the Committee's evidence and conclusions do not align.

Mr. Temporary Deputy Speaker, Sir, number two, I note three key problems the Committee had with the gentlemen they spoke about. One was that a contract was cancelled. That contract, as the hon. Minister has said, was cancelled on the basis of a Cabinet decision. So, if somebody was wrong, it was the Cabinet that was wrong and not an individual Minister or the Governor. Number two, earlier, the hon. Mwiraria had done exactly the same thing---

**Dr. Nuh:** On a point of order, Mr. Temporary Deputy Speaker, Sir. At the risk of consuming the time given to hon. Abdikadir, I think it will be erroneous if he had to convince the House and Kenyans that the contract, which was so cancelled by hon. Kimunya, was cancelled on the basis of a Cabinet decision, which is not the case.

Mr. Temporary Deputy Speaker, Sir, we searched all the records where--- In any case, the Cabinet even discussed the existence----

**The Temporary Deputy Speaker** (Prof. Kaloki): So, what is not in order, hon. Dr. Nuh?

**Dr. Nuh:** Mr. Temporary Deputy Speaker, Sir, just give me time to elaborate.

Mr. Temporary Deputy Speaker, Sir, let alone cancellation or even the Cabinet giving a decision as to what direction the contract was to take, the Cabinet did not even discuss. We even asked hon. Kimunya if he could table the evidence of the minutes of the Cabinet decision. Is hon. Abdikadir in order to mislead the House that the contract was cancelled on the basis of a Cabinet decision which never existed?

**The Temporary Deputy Speaker** (Prof. Kaloki): Proceed, hon. Abdikadir!

**Mr. Abdikadir:** Mr. Temporary Deputy Speaker, Sir, I will invite hon. Dr. Nuh, who is a Member of the Committee, to look at the evidence that was before the Committee, that was not controverted. The evidence, for example, on page 5 on the joint venture, is not very clear.

Mr. Temporary Deputy Speaker, Sir, if you look at page 1 of the Executive Summary, the Committee was satisfied with hon. Mwiraria's action, which is a cancellation that was done earlier. Now, if one cancellation is good, the other one cannot be illegal. In other words, two Ministers for Finance cannot take exactly the same action; and one becomes unlawful and the other one lawful.

Mr. Temporary Deputy Speaker, Sir, secondly, the Cabinet, as I clearly stated, many times said: "Go for joint venture." Now, when you are going for a joint venture, you cannot have the earlier contract.

Mr. Temporary Deputy Speaker, Sir, thirdly, the action of the Treasury at that point in time was commensurate with the Treasury's responsibilities and powers at that point in time. There was no Public Procurement Oversight Authority at that point in time. The Treasury's involvement with the tenders in any Government body was as per the law and not the Treasury interfering with the Central Bank of Kenya. In any event, it is for the Central Bank of Kenya to complain to the Committee and say: "We were being interfered with."

Mr. Temporary Deputy Speaker, Sir, for all those reasons, I oppose the Report.

**The Assistant Minister for Finance** (Dr. Oburu): Mr. Temporary Deputy Speaker, Sir, I stand to oppose this Report.

Mr. Temporary Deputy Speaker, Sir, I oppose this Report because the De La Rue issue is a Government issue and not individuals. It was not an issue of Kimunya, Uhuru Kenyatta, the late Michuki or any other Minister. This is an issue which was arrived at because, as you know, printing of notes is not printing newspapers or making some burgers. This is a security issue and when you discuss the question of cost, you cannot impute when somebody is doing his job in good faith and cancelling a contract because of issues which are to do with work. There is no proof or insinuation even in the Report that either Kimunya or the Governor of Central Bank misappropriated funds. What we are saying is just a perceived loss that the country would have gained if the new generation notes were printed. The Report also says that there was some evidence to show that the deliveries were to be made in batches. I do not have that particular information, but the information that I have is that the printing of these notes in Malta was because the economy of scale was to be achieved by printing all the notes for the three-year contract.

**The Temporary Deputy Speaker** (Prof. Kaloki): Dr. Oburu, you have one minute!

**The Assistant Minister for Finance** (Dr. Oburu): Mr. Temporary Deputy Speaker, Sir, even if the investigations were done by the Ethics and Anti-Corruption Commission, I am sure that it will not find the two individuals, that is, hon. Kimunya and the Governor of the Central Bank of Kenya, guilty of having misappropriated money.

Mr. Temporary Deputy Speaker, Sir, for all the arguments which have been put here on the Floor, I strongly oppose this Report. I believe there is no good intention because of the recommendations which have just been deleted.

With those few words, I oppose.

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): Mr. Temporary Deputy Speaker, Sir, I rise to oppose this Report. Clearly, we cannot avoid the danger of us killing the very institutions that we have created.

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Now that I see the Government has mobilized to defeat this Report, why can you not just put the question so that we go home? We can save our money and time.

*(Laughter)*

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): Mr. Temporary Deputy Speaker, Sir, allow me to finish my contribution as the Member for Mukurweini.

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

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, how many minutes do I have as the Mover?

**The Temporary Deputy Speaker** (Prof. Kaloki): Let me get clarification from the clerks-at-the Table. Will five minutes be adequate for you to reply?

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I will need ten minutes. Out of those ten minutes, I will donate three minutes to a very able---

**The Temporary Deputy Speaker** (Prof. Kaloki): All right. We will go with that, Dr. Khalwale. You will do ten minutes.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, before I move, I will request that the Chair allows Dr. Nuh to speak for three minutes and Mr. Keter one minute, and then the balance of six minutes will be mine.

**Dr. Nuh:** Mr. Temporary Deputy Speaker, Sir, I want to thank the Members of the Public Accounts Committee (PAC) for having put all their time in putting together this Report amidst very hard and harsh times.

Before I proceed, I have a confession to make. About an hour ago, I was called upon to contribute to this Motion. I and Dr. Kones were among the Members who made the calculations of the perceived loss which turned to be a reality when the Auditor-General tabled his report. Unlucky, the Clerks and myself have scavenged through the files and we were unable to trace the file which I made my own calculations on the day Mr. Kimunya appeared before the Committee. It is a sad thing for a whole file to have grown legs and disappeared.

Secondly, when I walked out to look for my file, I had left my card logged on. Unfortunate enough when I came back again, my card disappeared. I had to ask for a replacement from the Serjeant-At-Arms and that is why it took me long even to come and contribute. Even at the time of voting, I was incapacitated because I could not log on anywhere.

Whether people want to say Mr. Kimunya and Prof. Ndung'u were culpable or not is a different thing, but Kenyans have to understand that money was lost in the De La Rue printing



saga. That is a fact. When Mr. Kimunya appeared before the Committee, what I expected him to say was that as a responsible Minister, he made mistakes. Ministers are not infallible and are capable of making mistakes. In a bid to save the Kenyan taxpayer money and because he thought maybe we would be spending too much in the contract, I expected him to say that he made a decision that ruined whatever his intentions were to save the public money, Kenyans lost money.

That is an honest explanation that I expected hon. Kimunya to present when he appeared before the Committee, but he said that, as a Committee, even with the auditor's concurrence, we were pound foolish, penny wise. It is unfortunate that even after the amendments were made to expunge the names of hon. Kimunya and Prof. Ndung'u, the Members of this House want again to kill the entire Report of the PAC. It is a sad day for Kenya, but history will judge us right.

**Mr. Keter:** Mr. Temporary Deputy Speaker, Sir, I want to go on record in supporting this Report. I say so not because hon. Khalwale is my friend. This is not a Report of hon. Khalwale. It is a report of the PAC. In the last Parliament, I actively participated in the PAC for five years and we even did the report on Anglo Leasing and tabled it before the House. Our recommendations were not looked into and now the Government is paying for that. The other day, they were in Mombasa receiving a ship and they have paid for that. Those are the recommendations which we made as the PAC.

Today, we may throw this Report away, but it will remain in the history of this country. It will be read one day that the Committee was not following hon. Kimunya, but it was following the De La Rue case in which Kenyans lost Kshs1.8 billion. Why is it that in all the Ministries that hon. Kimunya goes to, there are issues? When he was in the Ministry of Lands, he is quoted as having said that title deeds are pieces of paper. He went to the Ministry of Finance and there are issues. Now, he is in the Ministry of Transport and there are issues there. Do you think Dr. Khalwale or a few of the people are against hon. Kimunya? He needs to answer the question why of all the 20 Ministers, none other is being mentioned.

When the NARC Government came in, in 2003, hon. Mwiraria, the former Minister for Finance, whom I respect, instead of extending the contract for another ten years for De La Rue, he said that---

**Mr. Ngugi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I had raised the point of order earlier on because from when we began, I have logged in to speak, to support the amendment by hon. Shebesh and to support the amended Motion.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, hon. Ngugi! Hon. Keter, you had a minute. Could you, proceed!

**Mr. Keter:** Mr. Temporary Deputy Speaker, Sir, I was saying that the former Minister for Finance, hon. Mwiraria, instead of extending the contract for a period of ten years, he recommended for competitive tendering process. By extension, that is how the interim orders were awarded once during his tenure. However, in 2007, the tendering process was stopped by hon. Kimunya.

**The Temporary Deputy Speaker** (Prof. Kaloki): Very well. You have done well. So, hon. Khalwale will have, at least four minutes to make his remarks. I will give you an additional one minute, Dr. Khalwale, to make your point.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I want to thank all hon. Members who have participated in this Report either for or against. The purpose of this Report, the way we designed it in terms of pursuing facts, we were not out to make a kill. We were responding to two issues. The first one is the cry of Kenyans and we have responded. Kenyans were asking:

When shall we have a Report that will not come with questions, but answers? We have come with answers and the House is going to make a decision.

Secondly, I wish hon. Dalmas Otieno was around. I want him to show a lot of respect for hon. Mwiraria. As a result of the cancellation by hon. Mwiraria--- He cancelled tenders that were costing the taxpayer one-and-a-half times more. When he cancelled that, the new tender that came in was one-and-a-half times cheaper. After the new contract was executed, US\$51 million was paid and which hon. Kimunya cancelled.

**The Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): Mr. Temporary Deputy Speaker, Sir, this was a point of order that I alerted very early in the beginning. Now that you have said, "I do"---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Kabando wa Kabando!

**The Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): When we rise, we do so as Members of Parliament and not as captives of Government. When I was interjected by hon. Mbadi, you can send easy message to my constituents that really, I rose as a member of a battalion. We know that there are merchants of impunity even on the Floor who even when we discussed KKV, NHIF and other issues, they did not have a voice and a mouth. Stop your vengeance trail!

I strongly oppose.

**The Temporary Deputy Speaker** (Prof. Kaloki): Very well. I think you have made your remarks there although it was out of order.

Proceed, Dr. Khalwale. You have two minutes.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I am not saying anything out of this world. Just allow me to finish my time which has been taken by the hon. Member.

**The Temporary Deputy Speaker** (Prof. Kaloki): You have three minutes.

**Dr. Khalwale:** Thank you, Mr. Temporary Deputy Speaker, Sir. My Committee has no issue with hon. Mwiraria.

The second point is the issue of jobs. As I beg you to vote to pass this Report, please, let it go on record that the issue of saving 260 jobs should not be the little bush that the former Minister for Finance, hon. Kimunya, should hide in because he had an opportunity to save 1,700 jobs for Telkom Kenya workers which he did not.

Hon. Kimunya, while in the Committee was given an opportunity to either exonerate himself or to demonstrate that he was acting at the behest of the Cabinet. He did not give any piece of paper. When we challenged Mrs. Mwatela on this issue, she confirmed that the matter was taken to the President. She went to State House herself and the President said, "Let the contract continue".

**The Minister for Transport** (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. It is important that some of these facts go on record. The back page of the Report contains two communications from the Cabinet which have been included by the Committee itself showing the Cabinet decisions. Is the hon. Member in order to mislead this House that there was no evidence that Cabinet made these decisions on the joint venture when, in fact, the first question he raised last year was based on the joint venture decision by the Cabinet itself and he used his privileged position as Chair of the Committee to then take it to---

**The Temporary Deputy Speaker** (Prof. Kaloki): All right.

**Dr. Khalwale:** Finally, Mr. Temporary Deputy Speaker, Sir, the hon. Minister has argued and a few people supported him that there was no need to ask the Ethics and Anti-Corruption Commission to come on board if we had already decided that he steps aside. That is

the reason, hon. Members. Having gone aside, this Committee was making those two decisions for recovery. We want the money to be recovered. The Ethics and Anti-Corruption Commission, when it comes on board and that day will come, hon. Kimunya, they are going to do something which is in the Act. It is something that Members passed. It is something called lifestyle audit. That is going to reveal very many beautiful things that will show the money trail of Kshs1.8 billion that the taxpayer lost in this scam.

With those few remarks, I thank Members and request them to support this Report of the Public Accounts Committee.

I move.

*(Question put and negatived)*

## **BILL**

### *Second Reading*

#### THE SUGAR (AMENDMENT) BILL

**The Minister for Agriculture** (Dr. Kosgei): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Sugar Amendment Bill, Bill No. 62 of 2011 be read a second time.

Sugar cane is one of the important cash crops in Kenya supporting over 200,000 small scale farmers. About six million Kenyans mainly in the rural areas derive their livelihoods directly or indirectly from the sugar industry. However, as we know, the sugar sector has continued to perform under par, hence, the need to create a more enabling legal environment to spur the sector to perform better and in a more modern fashion. Many factors have led to the dismal performance in the sugar sector. While there are external factors such as increasing fuel prices and fertilizer prices, the main reasons contributing to this dismal performance in the industry are twofold. One is mismanagement. Two, the regulatory regime has not been adequate enough to ensure faire play by all stakeholders in the value chain and provide a competitive and progressive environment. The proposed amendment seeks to remove these constraints by facilitating privatization of Government owned sugar factories to ensure better management and creating a more refined regulatory system for the industry.

The sugar industry is governed by the Sugar Act No.10 of 2008. The Act establishes---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Minister. Hon. Millie Odhiambo has a point of order.

## **QUORUM**

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Members, after dropping that Report by the PAC to walk out en-mass leaving us without a quorum?

**The Temporary Deputy Speaker** (Prof. Kaloki): All right, Serjeant-At-Arms, could you establish whether there is no quorum?

Hon. Minister, you will have 56 minutes to move your Second Reading of the Bill.

## **ADJOURNMENT**

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

It is now 6.30 p.m. Therefore, the House stands adjourned until tomorrow, Wednesday, 5<sup>th</sup> September, 2012 at 9.00 a.m.

The House rose at 6.30 p.m.