

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 29th February, 2012

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

SUPPLY OF FOOD TO IDPS

Mr. Mututho: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) Could the Minister table copies of all delivery notes for food supplied to IDPs in Tumaini Vision IDP Camp in Maai Mahiu, Ngeteti and Wanaruona IDP Camps in Gilgil from August 2011 to date?

(b) Could the Minister also confirm how many IDPs are currently malnourished and are facing starvation within Nakuru County and when will the Ministry address the fate of the six families within Vumilia Eldoret IDP Camp in Maai Mahiu who have been consistently neglected?

(c) What urgent measures are in place to comply with Article 43(b) and (c) of the Constitution in order to prevent more deaths and when will the victims be compensated as contemplated in Article 46(d) of the Constitution?

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Deputy Speaker, Sir, I am sorry I was late for two minutes!

I beg to reply.

(a) I am not able to table copies of delivery notes for food that is supplied to Internally Displaced Persons (IDPs) in Tumaini Vision Camp, Ngeteti and Wanaruona Camps in Gilgil since the camps are not among the 20 self-help IDP groups profiled by the Ministry. The list of 20 several groups will be tabled thereafter. However, I wish to table the letters of allocation for relief food allocated to District Commissioners (DCs) in Gilgil and Naivasha which is distributed to all the vulnerable people in the district through the District Steering Groups.

(b) I am not aware of any IDPs who are malnourished and are facing starvation in Nakuru County. I am also not aware of any six families within Vumilia IDP camp in Eldoret who have been consistently neglected, since the camp does not exist in our records.

The Ministry has no information of any deaths that have occurred due to non-compliance with Article 43(b) and (c) of the Constitution. In reference to Article 46, the hon. Member needs to clarify what compensation he is referring to so that it can be addressed adequately. However, the Ministry is in the process of resettling IDPs in the 20 self-help groups who are being provided with relief food regularly.

Mr. Mututho: Mr. Deputy Speaker, Sir, it is shocking that the Minister has decided to grossly mislead this House by denying the existence of those camps and the fact that over 3,000 people are starving in Subukia. Would I be in order to rise under Standing Order No.82, which allows me time within 24 hours, to substantiate that this Minister has grossly misled this House and then proceed to Standing Order No.97?

Ms. Mathenge: Mr. Deputy Speaker, Sir, the people the hon. Member is referring to were moved by him from Gilgil and taken to a property in Subukia without the authority of the Government. Their food stocks are in Gilgil!

Mr. Deputy Speaker: Hon. Member and Madam Minister, I want to read to you the provisions of Standing Order No.82.

It reads:-

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

2. If a Member has sufficient reasons to convince the Speaker that a Member is unable to substantiate the allegations instantly, the Speaker shall require such Member to substantiate the allegations not later than the next sitting day, failure to which the Member shall be deemed to be disorderly within the meaning of Standing Order No.97 (disorderly conduct) unless the Member withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

There are allegations both on the part of the Questioner and the Minister. I want to warn you that unless you are able to substantiate either instantly or are given adequate time for you to come back and substantiate, the provisions of this Standing Order, which essentially is Standing Order No.97, will be used to the letter against both of you; whoever fails to do it and basically engages in what is defined as disorderly conduct on the Floor of the House. So, I want you to proceed prosecuting this Question with all that information and sanctions in your mind.

Mr. Mututho: Mr. Deputy Speaker, Sir, I am ready to appear tomorrow afternoon and prove that this Minister has grossly misled this House! Ngeteti Camp exists and I will prove that! By way of documents, I will show that prior to their movement to Subukia, they indeed received food but from that time she has neglected them. I will also go ahead and prove that these people do exist and that they are being fed by the Red Cross. I will table some delivery notes prior to them moving from Gilgil that show that indeed they were receiving relief from this Minister. So, I am seeking leave so that I can organize these documents and then I will prove before this House that the Minister has grossly misled the House and misdirected herself before this House in stating that these people are not recognized by the Government. I will table profiling documents by the DC, Gilgil.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. The Questioner, or the hon. Member of Parliament asking this Question, is the one who was seeking to be answered. Therefore, it is up to him to have come with the full documentation that he required to prosecute the Question. So, when it comes to that point and then he seeks more time, it means that he was even unprepared for the Question that he presented to this House. Is it in order for the hon. Member to keep on asking for extension of time and yet the onus is on him to be prepared to execute his Question?

Mr. Deputy Speaker: Hon. (Dr.) Eseli, if you sometimes listened to the Communications from the Chair, you would have understood that it is within his rights to seek more time. All you need to do is to acquaint yourself very well with the provisions of Standing

Order No.82. In any case, I do not see how that could be out of order when somebody is seeking more time in accordance with Standing Order No.82.

Yes, Madam Minister!

Ms. Mathenge: Mr. Deputy Speaker, Sir, as the hon. Member has clearly said, we were feeding these people when they were in Gilgil. He took the mandate and moved them illegally to some farm. So, he is responsible for feeding them! The food is in Gilgil and I continue to distribute food in Gilgil! If the hon. Member resettled over 3,000 families, then I should have no camps in this country!

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I thought the honourable Minister was in the “Yes Team” during the constitutional Referendum. This Constitution allows free movement of people. If the hon. Member felt it necessary to assist the IDPs and move them, is that illegal? Where does it say in law that for you to move an IDP and help him settle somewhere, it is illegal?

Ms. Mathenge: Mr. Deputy Speaker, Sir, then he should buy the land and feed them!

Mr. Deputy Speaker: Is it, indeed, true hon. Mututho, that you moved IDPs from that designated camp and took them to a private property?

Mr. Mututho: What do you do, Mr. Deputy Speaker, Sir, with a Minister who is totally in slumber? A Minister who has---

Mr. Deputy Speaker: Order! The Chair is seeking clarifications! The House will not be used for diatribes between hon. Members! Is it, indeed, true that you did take some of the IDPs from the designated IDP Camp to a private property?

Mr. Mututho: Mr. Deputy Speaker, Sir, I did not move the IDPs, but I assisted them to have a big Christmas party when they arrived at their Canaan!

Mr. Deputy Speaker: I think the Minister is---

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. We seem to be trivializing a very serious matter. Assisting the IDPs is the concern of everybody. Or, are the IDPs the property of the Government? Could the Minister confirm whether the IDPs are the property of the Government? I thought it is our business to help!

Mr. Deputy Speaker: It is the responsibility of the Government! You know human beings can become a property of the Government. This is not a kingdom where we are subjects; we are citizens of the country. But nonetheless, we need to move forward, hon. Minister!

Ms. Mathenge: Mr. Deputy Speaker, Sir, every hon. Member of Parliament has integrated IDPs. If we took the law into our hands and started resettling them, there would be anarchy in this country. That is what hon. Mututho is doing. There is a procedure that we are following and he does not want to follow it. I have no idea, but I know that he took 3,000 households to a private farm.

Mr. Mututho: Mr. Deputy Speaker, Sir, is the Minister in order to continue to refer to a non-existent law? Can she name that law which she is referring to, noting that the Constitution – and I will be gracious enough to read to her specific provisions of the Constitution – allows expressly that anybody could settle anywhere?

Ms. Mathenge: So, what is the problem then, Mr. Deputy Speaker, Sir? They have settled. They are okay!

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: I will take just one more supplementary question on this.

Yes, hon. Mututho!

Mr. Mututho: Mr. Deputy Speaker, Sir, Article 43 of the Constitution states:-

“Every person has the right—

(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;

(b) to accessible and adequate housing, and to reasonable standards of sanitation;-

--”

Mr. Deputy Speaker, Sir, I do not need to go through these articles because the Minister should be well versed with this particular article. Even if these people came without the express authority of the Government, these are Kenyans and they have these basic rights. I am saying that these people have stayed from November, last year without even a grain of food, and they are now numbering about 10,000 people. They do not have water, sanitation and this Government still sits here because they have not been consulted. They would like to ignore those 10,000 people. Will these people be fed or not? It is that simple. Are they Kenyans or non-Kenyans? Are we within the precincts of all the international statutes that demand that any human being, whether moved for political or religious reasons, must be treated with humanity?

The Assistant Minister for Roads (Dr. Machage): On a point of order, Mr. Deputy Speaker, Sir. Could the hon. Member declare his interest in these land transactions involving the settlement of IDPs?

Mr. Mututho: Mr. Deputy Speaker, Sir, my interest is that I am an hon. Member of Parliament, and a Member of Parliament has three basic functions; one, representing the people or representation; two, making laws; three is oversight. I am talking about 20,000 people in Naivasha who, after the 2007 elections, came to Naivasha. These people have drained the Constituencies Development Fund (CDF); these people have sat there as the Ministers or people in Government continue lavishing in money, over Kshs8, 9 or 10 billion which his meant for IDP settlement. My interest is---

(Dr. Machage stood up in his place)

I am still on a point of order!

The Assistant Minister for Roads (Dr. Machage): My point of order was---

Mr. Mututho: Please, protect me, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Order!

The Assistant Minister for Roads (Dr. Machage): My point of order was for the hon. Member of Parliament to declare his interest on the land transactions because I read mischief or I see a process of profit making in using IDPs in getting money from the Government.

Mr. Njuguna: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to say that the hon. Member has settled some IDPs without laying on the Table of this House the names of the families affected?

Mr. Deputy Speaker: It has been controverted by the hon. Questioner himself. So, essentially, it is---

Yes, hon. Mututho!

Mr. Mututho: Listen to the hon. Member and my friend, Father Christmas, he imputes---

The Assistant Minister for Roads (Dr. Machage): On a point of order, Mr. Deputy Speaker, Sir. My name is honourable Dr. Wilfred Machage, the Member of Parliament for Kuria and Assistant Minister for Roads; nothing else!

(Applause)

Mr. Deputy Speaker: Order! Hon. Members, the Chair will not entertain any further diatribes on the Floor of the House! Can you ask a question, hon. Mututho?

Mr. Mututho: Mr. Deputy Speaker, Sir, could the Minister substantiate that I have interests in the said parcel of land, whether commercial, social or otherwise or withdraw and apologise?

Mr. Deputy Speaker: She is asking you to declare your interest. Under the normal circumstances, you just say you have no interest and if you have an interest, you declare the interest.

Mr. Mututho: Mr. Deputy Speaker, Sir, I have no interest.

Mr. Deputy Speaker: Fair enough! Minister, can you answer his question?

Ms. Mathenge: Mr. Deputy Speaker, Sir, actually, he has an interest because he has officially written to me to buy that particular piece of land. I went to the particular piece of land and found it has issues; we cannot accept it for resettlement of IDPs. Since people want to be governors and senators, they are misusing the IDPs and that is what hon. Mututho is doing – settling people from Naivasha in Subukia, so that he can get the votes that he needs to be a governor!

Mr. Mututho: Mr. Deputy Speaker, Sir, it is a geographical fact that Subukia is in Nakuru County. So, people can vote for me whether they are in Gilgil or Subukia. That notwithstanding, I would like this expansion to be investigated in total. I wrote letters but I talked about my land. I have written several letters complaining about the IDPs. I have also written others complaining that some of these Ministers have enriched themselves. Could the Minister inform the House whether these people are going to be fed or not?

Ms. Mathenge: No, Mr. Deputy Speaker, Sir, because their food is in Gilgil. They can go back to Gilgil and they will get their food there; or he can use the Kshs1,600 that he used to transport them to Subukia to transport the food for them from Gilgil to Subukia.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I think the matter of IDPs is being trivialized. It seems as if there are deep personal differences between the Member of Parliament and the Minister. In between, there are Kenyans who are going to suffer. Is it in order for the Minister to really get a little bit personal, worked up and then insinuate that she no longer cares about those particular Kenyans, just because the Member of Parliament has been trying to help in his own small ways? Really, we do not expect a Government to be impersonal and unconcerned. I heard a statement from the Minister that the Member of Parliament has settled those IDPs, and so there is no problem. This is not the sort of answer we want to hear in this House; I am inviting the Chair to really give guidance on this because Kenyans are watching us. We cannot get this law.

Mr. Gaichuhie: Mr. Deputy Speaker, Sir, this matter is a big one because those people are in my constituency. The land in question is 5,000 hectares. Five hundred acres have a problem, but the owner of the land has agreed to sell 4,500 acres on humanitarian grounds, since these people are already in Subukia; they are starving. Could the Minister just consider taking the food from Gilgil to Subukia, so that these people can continue feeding before we can settle these land matters? This is because these people are already there and it is very hard to transport them back. We have always tried talking to them.

Mr. Deputy Speaker: For the benefit of the Chair, how many are they?

Mr. Gaichuhie: Mr. Deputy Speaker, Sir, for the benefit of the Chair, the population is 10,000 people from 3,000 families; they are already in Subukia living in tents without food. The only people who feed them are the Kenya Red Cross (KRC). Could the Minister be kind enough and take the maize from Gilgil to Subukia before she settles the land issues?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I do not think we should be begging the Minister to do her work. If, indeed, there are 3,000 families and the food is in Gilgil--- If, indeed, we are here as a Government to serve the people, the Minister should not appear to be so arrogant and uncaring as not to think about that child--- She should forget about her differences with the hon. Member. Is the Minister in order to take this matter of IDPs so lightly?

Mr. Deputy Speaker: Minister, is it, indeed, true that the people who have been moved are 10,000 from 3,000 families? I thought the Question talked about six families.

Ms. Mathenge: Mr. Deputy Speaker, Sir, you know hon. Mututho says he moved 3,000 IDPs from some camps; my argument is, if he did so, then I should not have any camps. I should have closed the camps. Where he got the people from, it is only him who knows. I do not know. As of last week, I had obtained a list of the people who are there. I am not aware that anybody has died from hunger in that area. I take the issue of IDPs more seriously than he does, because I do not have a personal interest in them. I only look after their welfare.

Mr. Deputy Speaker: Order! Hon. Minister, is it, indeed, true that there are 3,000 families in that farm and your Ministry is not doing anything to help them? Are they in tented camps?

Ms. Mathenge: Mr. Deputy Speaker, Sir, they are there but I do not know who they are. It could be anybody. It could even be his relatives!

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

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. I rise on a point of order to seek your guidance. The issues raised by hon. Mututho are grave, and the Government needs to say something substantive to Kenyans and to Parliament. It is four years after the post-election violence. These are just 3,000 families. There are some Kenyans who are still living in Uganda. Could the Minister be gracious enough to Kenyans and tell us why her Ministry and the Ministry of Lands are purporting to be dealing with this issue when they are not? If it is not corruption, then the Minister needs to tell these people what they are doing. These people are feeding on the blood of Kenyans. These people are playing around with a time bomb. The kids of these people do not go to school. The IDPs are being rained on. They are not working on their farms; this issue cannot be as trivial as the Minister is trying to make it. Could she be so gracious and tell us what this is all about?

Mr. Deputy Speaker: Order! Really, the matter is weighty in every sense of the word. The Chair thinks that actually the Minister believes that those people may not be genuine IDPs. That is the impression I get; for people who are not IDPs to be called IDPs or for genuine IDPs to fail to get attention from the Government are both issues that are very grave. Under the circumstances, the Chair is directing that the relevant departmental committee moves with speed to establish the facts on the ground and report back to this House in two weeks time, and the Question itself will be listed on the Order Paper exactly two-and-a-half weeks from today.

(Question deferred)

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. I support and applaud your ruling; but you know the responsibility of determining whether IDPs are genuine or not is on the Government; that is the Executive. In the event that the Minister stands here in the House and tells us that these IDPs are fake, and in the event that the House discovers to the contrary, what action will be taken against her?

Mr. Deputy Speaker: Order! Hon. Mbadi, you are out of order! This is going to be dealt with at the appropriate time. If you have to raise an issue, you should raise it that time.

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

Mr. Deputy Speaker: Eng. Maina, is it on the same issue?

Eng. Maina: Mr. Deputy Speaker, Sir, I want to put in something which will make your ruling even much better. If you do not mind, it is only fair that you hear my idea.

Mr. Deputy Speaker: Proceed!

Eng. Maina: Mr. Deputy Speaker, Sir, the issue of the IDPs is not an issue of a single Ministry. It is an issue that should have been part and parcel of the prime responsibility of the Coalition Government. We reconciled and we should have undertaken to take Kenya to where it was before the violence occurred. In this regard, I beseech you to direct that the Government comes here, either through the Prime Minister or another office central to the Government and explains whether they have failed as a Government and declare the same to Kenyans. We are coming to the end of the Coalition Government and this matter has not been resolved. It is not going to be resolved if we continue the way we are going. Between the Ministry of Lands and the Ministry of State for Special Programmes, there are always issues to the effect that some IDPs are not genuine. Could the Government come here either through the Prime Minister, under your directive, and give a wholesome Statement and state when Kenya is going to rub this insult on her face?

Mr. Deputy Speaker: You notice that the Chair is giving unusual leeway on this matter because of the sensitivity, but you have to understand that the Chair has given a direction on that. Hon. Sophia Noor, one more question and then the matter has to come to rest.

Mrs. Noor: Mr. Deputy Speaker, Sir, I respect your ruling. Being a Member of the Committee that is going to do this investigation, we have gone and seen how the IDPs are suffering in this country. I want to request, through you, that as we are doing the investigation, the Minister provides food to the IDPs. That is my request and appeal because I know the people are suffering in the IDP camps.

Mr. Deputy Speaker: If you understand the separation of powers in a democracy and the way Government business is transacted, the Chair cannot direct a Minister to go and undertake an Executive duty. The Chair is not the President. It is not the Executive. The Chair can only direct a Minister to come with an answer that befits the dignity of this House, which indeed, has been done. This matter will now rest at that.

CAUSES OF HUSBAND BATTERING IN NYERI COUNTY

Mr. C. Kilonzo: Mr. Deputy Speaker, I wish to ask Question No.2 regarding battering of husbands by wives in Nyeri County.

Mr. Deputy Speaker: Mr. C. Kilonzo, there are two ways you can ask a Question. There is one way that is the tradition which is that you stand up and say: I beg to ask Question number so and so" but there is a way that has been accepted in our Standing Orders lately which is the one of reading the Question itself, which as much as the Chair discourages because of the

consumption of time, in the Standing Orders, you are allowed. There is nothing else other than the two.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, with your permission and kind advice, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) How many men have been battered by their wives in Nyeri County over the last three (3) years?

(b) What are the causes of husband battering in the county?

(c) What urgent action is the Government taking to discourage the menace?

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): On a point of order, Mr. Deputy Speaker, Sir. Am I in order to say that, that Question is gender insensitive? Why is the Member not asking how many women have been battered by men?

Mr. Deputy Speaker: Order, hon. Mwiria! You are out of order! The Chair, indeed, has communication from the Minister that he will not be available this morning. He has an official function which he has elaborated.

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Deputy Speaker, Sir, I think this Question is a little bit gender insensitive!

Mr. Deputy Speaker: Order! Order! Hon. Murugi Mathenge, you run a Ministry yourself and you have---

The Minister of State for Special Programmes (Ms. Mathenge): And I am from Nyeri!

Mr. Deputy Speaker: Hon. Minister, you are pushing the patience of the Chair a little bit too far. It is not the role of the Executive to approve Questions in this House. That responsibility is vested in another arm of the Government. The only reason why the Chair allowed you to stand up is that the Chair thought that you had something to say on behalf of the Government in line with the collective responsibility. But under the circumstances, the Chair already has the communication from the Minister that this Question be listed on the Order Paper tomorrow afternoon. The Chair directs the same.

Ms. A. Abdalla: On a point of order, Mr. Deputy Speaker, Sir. I was just wondering if we are following the procedure given that this Question involves very few cases. For it to be listed as a matter of national concern as a Question by Private Notice, it is not indicative of the seriousness of the matter. The matter is not as serious as the number of women who are battered every day.

Mr. Deputy Speaker: Order! The Chair has given a direction on that.

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

Mr. Deputy Speaker: Order, hon. Eng. Maina!

Eng. Maina: The people of Nyeri are---

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1283

TERMINATION OF ENG. NYAROGHO'S SERVICE BY NZOIA
SUGAR COMPANY

Mr. Washiali asked the Minister for Agriculture:-

(a) under what circumstances the term of Eng. Julius Nyarotho at Nzoia Sugar Company was terminated; and,

(b) what steps have been taken to compensate him.

Mr. Deputy Speaker, Sir, this is the second time I am asking this Question. When it last came to the Floor, the Minister insisted that it is the President who revoked the appointment of Eng. Nyarotho. Looking at the answer, it appears that he still has the same answer. I do not know whether he now has any additional information.

Mr. Deputy Speaker: The Chair and the House do not have the benefit of having the answer that you have. The only time the Chair will have that information is after the Minister has answered the Question.

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

(a) The term of Eng. Julius Nyarotho was revoked by His Excellency the President of the Republic of Kenya vide *Kenya Gazette* Notice No.8003 dated 15th July, 2011.

(b) A chairman appointed by the President to a State corporation shall be non executive and earns monthly honoraria and sitting allowance only, hence the issue of compensation does not arise.

Mr. Deputy Speaker, Sir, we dealt with this Question fully, but the Member wanted to know why the appointment was revoked. There is a letter to this effect and I have told the Member that I will give him the letter so that he can look at it.

Mr. Washiali: Mr. Deputy Speaker, Sir, the Assistant Minister has promised to give me a letter. In that case, could I seek the indulgence of the House to defer this Question to a later date, so that I can interrogate the letter and come back to the House?

Mr. Deputy Speaker: Mr. Washiali, can you repeat your question?

Mr. Washiali: Mr. Deputy Speaker, Sir, I will repeat. The Assistant Minister has promised to give me a letter explaining the reasons which made the President to revoke the appointment of the Chairman of Nzoia Sugar Company (NSC), Eng. J. Nyarotho. In that case, could I seek the indulgence of the House so that the Assistant Minister avails the letter to me? I will then interrogate the letter and then come back to the House. I seek the indulgence of the House to defer the Question to a later date.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, as far as the Question is concerned, we have dealt with it extensively and I have discussed with the hon. Member some of the reasons. I will table it, even though I am not supposed to do this, so that he can understand the gravity of the whole issue. So, I do not see why we should defer it.

Mr. Deputy Speaker: The Assistant Minister did, indeed, share this particular matter with the Chair and says that he would hesitate – if you are asking this Question in the interest of the person in question – discussing the person or the character of the person on the Floor of the House. That is in line with exactly the reasons that were advanced for the actual sacking. But the Chair says that should you insist, then the Assistant Minister has no other option other than to share it with the House. So, the presumption on the part of the Chair is that the Assistant Minister would want to share with you first, before he shares it with the plenary of the House.

Mr. Washiali: Mr. Deputy Speaker, Sir, I have no objection to that. But, first of all, I would like to look at the letter because the reasons are in the letter. I would like to see the letter before I come back to the House and decide whether it will be shared with the House.

Mr. Deputy Speaker: This matter has been dealt with. But should you wish the Chair to direct the Assistant Minister to proceed and read the reasons for which the person in question was sacked, the Chair would oblige. But are you sure you are taking care of the interests of your own constituent?

Mr. Washiali: Mr. Deputy Speaker, Sir, I am the representative of the people of Mumias. For me to have brought this Question to this House, it was because the person who was dismissed wanted me to bring it to the House. So, I will leave it to the Chair to decide because I would, first of all, want to look at the letter and see whether it is in his interest, my interest or the interest of the Chairman who was sacked and decide whether the matter should not be shared with other hon. Members in the House.

Mr. Deputy Speaker: The Chair directs that the Question has been adequately answered. Proceed and share the contents or the reasons with the Assistant Minister and should you wish to again file the same Question, the Chair will be much obliged to approve it. Otherwise, we cannot move back and forth on this issue. The Chair cannot now be involved in mediation to the level beyond what has been done so far now.

Question No.987

FUNDING OF INSTITUTIONS FOR PERSONS WITH DISABILITIES

Mr. Ruteere asked the Minister for Education:-

(a) whether he could provide a list of special schools and technical training institutions which are caring for the mentally challenged, physically challenged, deaf and blind in the country;

(b) whether he could further consider funding the schools/institutions adequately considering that most parents/guardians of such students cannot afford high school fees; and,

(c) whether he could transfer the technical training institutes to the Ministry of Higher Education, Science and Technology for financial support and infrastructural development.

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

(a) The list of public special schools and technical training institutes is attached. This list excludes both mainstream primary and secondary schools and colleges which have either special units attached to them or integrating programmes or practise inclusive education.

(b) In the current Financial Year, 2011/2012, the Ministry of Education will disburse Kshs420 million financial support under Grants-In- Aid Provisions to 184 public special institutions with viable special needs education programmes throughout the country. The funds are used for payment of wages of the support staff and also to subsidize the cost of food. In addition, the special schools will also benefit from the free primary education top up besides the free education funding.

(c) All the special needs education institutions offering vocational/technical training including the four registered as technical institutes are an integral part of curriculum differentiation intervention for special needs education learners by the Ministry of Education. Therefore, the institutions cannot be transferred to the Ministry of Higher Education, Science and Technology. However, my Ministry is ready to collaborate with the Ministry of Higher

Education, Science and Technology and other Government Ministries or partners willing to support these special institutions financially and in terms of infrastructural development.

Mr. Ruteere: Mr. Deputy Speaker, Sir, I appreciate the Assistant Minister's answer this time because last time, he had said that those institutions do not fall under his Ministry. I wish to ask him whether the names of some of the special schools have been changed because the names as listed are not the registered names of the schools. I will give the example of Kaaga School for the Deaf which is listed here as Kaaga Special School with a special wing for vocational training with enough workshops and trained teachers with skills for technical training. However, it is not one of those listed as technical schools. It is not one of the vocational training schools. Is the list comprehensive enough or you have omitted some of the schools?

Prof. Olweny: Mr. Deputy Speaker, Sir, in the list I have in my records, probably, some names might have changed from the ones that the hon. Member is having. But as far as I am concerned, the list I have is fairly comprehensive. That is the list that we have.

Mr. Njuguna: Mr. Deputy Speaker, Sir, noting that the Assistant Minister has already indicated to the House that Kshs420 million has been set aside to assist those institutions, could he then inform the House which criteria will be applicable on the sharing of those resources?

Prof. Olweny: Mr. Deputy Speaker, Sir, the criteria relates to the enrolment and the kind of special needs we are dealing with; the kind of disabilities in the various institutions.

Mr. Ruteere: Mr. Deputy Speaker, Sir, realizing that this list has 189 special schools, vocational training institutions and only a provision of Kshs420 million has been given this financial year, is the Assistant Minister satisfied that the money will be enough for funding those schools to meet their needs and to buy specialized equipment?

Prof. Olweny: Mr. Deputy Speaker, Sir, I think the hon. Member has a concern that the resources are not adequate and, as a matter of fact, that is one of the challenges my Ministry has. The Ministry does not get enough resources as we would like to give to those institutions. The resources are limited. What is availed to the Ministry is what we give out. But we would have liked to get more because the equipment and facilities that those institutions need and all other kinds of support need a lot of money. But my Ministry would have appreciated if we got additional support from any corner or development partner.

Question No.1192

WATER SHORTAGE FOLLOWING CONSTRUCTION
OF RAGATI DAM

Eng. Maina asked the Minister for Water and Irrigation:-

(a) whether she is aware that since the construction of Ragati Dam, the Ragati River has dried up and residents lack water for domestic and commercial use;

(b) whether she could state how the dam was designed resulting in the above situation; and,

(c) what urgent measures the Ministry will take to solve the problem of water shortage in the area.

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

(a) I am aware that River Rigati has experienced considerable low flow of water due to the long dry spell experienced in the area mid last year. In addition, water abstractions upstream of the dam also affected the flow. However, the dam is currently full and is spilling water.

(b) The dam was designed based on guidelines from design and construction of dams and pans in Kenya and a provision was made in accordance with those guidelines to maintain environmental flow after the dam even during the dry season.

(c) To maintain the environmental flow within the river course, my Ministry will put in place various measures to control water abstraction from the river. In addition, any abstraction of water for irrigation will be removed in accordance with the Water Resources Management Rules as related to the Water Act, 2002. Under the rules, no irrigation that threatens water for human consumption will be permitted. In addition, my Ministry has allocated Kshs6 million to provide three water storage tanks and distribution pipes to stabilize water flow and solve the problem of water shortage in the area.

Eng. Maina: Mr. Deputy Speaker, Sir, this Question was deferred last time because the Ministry came and gave misleading answers. Once again, they have come and given similar answers. However, they have admitted one thing; that there is need to build downstream dams to balance water supply in this area and to have pipelines extending in some areas. My point is that the money they are providing is a paltry amount. The Kshs6 million cannot build one single tank of 10,000 gallons. Could the Assistant Minister state here that they will increase this budget and that next year, he will provide close to Kshs300 million which is required to solve this problem?

Otherwise, the people downstream continue to suffer and no water is flowing downstream because this Ministry--- They call themselves designers of dams, but I think they are designers of problems for the community. I still beseech the Assistant Minister to commit his Ministry to ensure that there are enough funds as was requested last time.

Mr. Waititu: Mr. Deputy Speaker, Sir, I have coordinated this matter, personally, with the engineers on the ground. We have allocated Kshs6 million for urgent work to start on the construction of the three storage tanks and if the money is not enough, we will allocate more for that work.

Mr. Mbadi: Mr. Deputy Speaker, Sir, such works as construction of a dam need first prior environmental impact assessment to determine the effects it would have on the surrounding community. Could the Assistant Minister confirm to us why this was not done so that whatever is being experienced in this place, at this moment, would have been avoided in the first place?

Mr. Waititu: Mr. Deputy Speaker, Sir, if the Member followed what I said, I said that there are very many abstractions along the river. We will disconnect some irrigation so that the water can flow properly without any abstraction. That is the main problem.

Eng. Maina: Mr. Deputy Speaker, Sir, we went through this matter. The dam is in the forest and there is no water flowing downstream. So, the Assistant Minister cannot be talking about abstraction points because there is no water flowing in the river. Is the Assistant Minister in order to continue misleading this House as he did last time?

Mr. Waititu: Mr. Deputy Speaker, Sir, the truth of the matter is that before the dam, there are three abstractions. Two of them are for irrigation purposes and the other one is for the Mathira Rural Water Supply. That is why enough water is not going to the dam. We are saying that as an urgent measure, we want to disconnect those two abstractions for the irrigation before the dam so that more water can flow to the dam.

Mr. Chepkitony: Mr. Deputy Speaker, Sir, the role of the Government is to guard the downstream water rights and it is there in the Act; that people living downstream must get water

flowing. I want to request the Assistant Minister whether they can redesign the dam such that it can only hold flood water. The flow of the river should not be abstracted by the dam. Could the Assistant Minister redesign the dam so that he allows the water to flow? The dam should only hold flood water.

Mr. Waititu: Mr. Deputy Speaker, Sir, the problem is not the design of the dam but the abstractions before the dam.

Eng. Maina: Mr. Deputy Speaker, Sir, I still wish to say that the way the matter is being presented is not adequate. The Assistant Minister should undertake that we sit down--- However, let him first and foremost promise here that he will provide sufficient funds to have tanks built in this area so that this problem can be solved. Otherwise, they cannot create a problem and then come around and say that they will deny people who have been using water from this river since time immemorial that chance.

Mr. Waititu: Mr. Deputy Speaker, Sir, I have committed myself that if the Kshs6 million we have provided is not enough, we will add more for the three storage tanks and the pipes.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to keep repeating that they will allocate more money without being specific on how much money will be allocated? Is he in order?

Mr. Waititu: Mr. Deputy Speaker, Sir, even the Kshs6 million for the tanks, as per the engineer on the ground, is enough. That is why I am saying that if it is not enough, we will provide more.

Eng. Maina: Mr. Deputy Speaker, Sir, I would not like this matter left hanging because it involves the lives of people. Surely, Kshs6 million cannot even build 5,000 gallons tank today. I am saying here that the Assistant Minister does not talk about 'more money' but he should commit himself and say that he will allocate--- There is a budget of Kshs300 million which has already been arrived at. Could the Assistant Minister tell us how much money he will allocate? How much is more?

Mr. Waititu: Mr. Deputy Speaker, Sir, I still insist that for a concrete tank, Kshs2 million is a lot of money.

Mr. Deputy Speaker: Next Question by Mr. Jeremiah Kioni!

Question No.1270

EMBEZZLEMENT OF FUNDS AT MULTI-MEDIA UNIVERSITY COLLEGE

Mr. Deputy Speaker: Is hon. Kioni out of the House on any parliamentary business?

(Question dropped)

Question No.806

NUMBER OF MIDDLE LEVEL COLLEGES
IN MARSABIT/ISIOLO COUNTIES

Mr. Bahari asked the Minister for Higher Education, Science and Technology:-

(a) how many university and middle level colleges exist in Marsabit and Isiolo counties; and,

(b) what plans the Ministry has to establish more such institutions in the two counties.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Unfortunately, there are no public universities and middle level colleges in Marsabit and Isiolo counties at the moment.

(b) However, the Ministry is expanding training facilities to all regions in order to enhance access and equity. My Ministry is implementing various strategies to achieve the above goal. Among them is the development of eight campuses of technical institutions. These TIVET projects are funded by the Government under the Economic Stimulus Programme II. Among these campuses is Marsabit Campus under the Kenya Technical Teachers College. It will be constructed in North Horr Constituency in North Horr Town. The construction is expected to commence in March, 2012.

During the discussions between the Parliamentary Committee on Education, Research and Technology and my Ministry, the matter was brought up. To address the concern, my Ministry has identified nine counties, including Isiolo that are lacking technical training institutes. In that regard, I am in the process of writing to all Members of Parliament from these constituencies to identify land to enable procurement of construction works to begin.

I also wish to inform hon. Members that Kenyatta University, in collaboration with the Ford Foundation has a centre in Marsabit Town that offers women in Marsabit County a Bachelor of Education (Arts) Degree. Although that collaboration is coming to an end soon, Kenyatta University will continue with that programme of expanding access to the women of Marsabit.

Finally, the Ministry is at an advanced stage of establishing the Open University of Kenya that will create access. There will be a centre in every county of that Open University, so that we have more Kenyans enrolling for university education inexpensively.

Mr. Bahari: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for the answer. He has said that it is unfortunate and yet, it was a deliberate move to ignore those counties and marginalizing them through the formal process. As you can see also, it is when this matter was taken up by the Parliamentary Committee that the Ministry started to take this issue seriously. Why did the Ministry have to wait for the report to take serious action, particularly in Isiolo? Even if you establish a campus or technical college in North Horr, people from Moyale and Marsabit will not be able to go there. What urgent steps will the Assistant Minister take to ensure that adequate middle level colleges and universities are established in those two counties without having to wait for that report, which is likely to take another two or three years?

Dr. Mwiria: Mr. Deputy Speaker, Sir, first, I must say that there was no deliberate action on the part of this Government. If anything, this Government, unlike the previous KANU Government which ignored those areas although they were the most faithful supporters of that regime---

Mr. Deputy Speaker, Sir, secondly, it is not because---

Mr. Duale: On a point of order, Mr. Deputy Speaker, Sir. Did you hear what the Assistant Minister said? He said that for the people of northern Kenya, this Government is even better. That is because the Government they supported for many years neglected them. Is he in order to say that resources in this country, including the establishment of higher education

institutions, are allocated on the basis of loyalty? Could he confirm whether that is the Government position?

Dr. Mwiria: Mr. Deputy Speaker, Sir, the hon. Member did not hear what I said. I said that it is the previous KANU Government that ignored those areas. The current Government is concerned about equity and introducing institutions all over the country. That is the point I made.

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to imply that the KANU Government ignored those areas and yet, it actually favoured those areas since Independence?

Dr. Mwiria: Mr. Deputy Speaker, Sir, I am completely in order to say that. Everybody knows that. It is obvious!

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to continue referring to the KANU Government which left power more than eight years ago, when the current Government has been in power for almost nine years?

Dr. Mwiria: Mr. Deputy Speaker, Sir, I am referring to the ten years before!

Mr. Duale: On a point of order, Mr. Deputy Speaker, Sir. Now that the Assistant Minister has confirmed to the nation that the KANU regime did not give the people of northern Kenya institutions of higher learning, and he comes from Meru County where the National Rainbow Coalition (NARC) Government and the Kibaki administration has established more than five universities, could he now tell the nation that if you want to get resources and, more so, institutions of higher learning, you must vote for the Government that will be in place? Could he confirm that to the nation?

Dr. Mwiria: Mr. Deputy Speaker, Sir, first, I will first confirm that the hon. Member has just told a lie. The Kibaki Government has not established five universities in Meru. There is only one university. So, it is good for hon. Members to be truly honourable before making statements that are not substantiated.

Mr. Deputy Speaker, Sir, I just want to make one point clear; that this Government is concerned about equity. Even before this issue came to Parliament, we had already discussed it and decided that we will open up new institutions in counties that did not have them. So, in fact, it is to the credit of this Government. This is more serious than KANU; I must say!

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. I asked a very specific question and instead of the Assistant Minister answering it, he started blaming the KANU Government which left office nine years ago. We are asking for the accountability of this current administration. There is a university in Chuka and Meru Town. There is also a technical college in his constituency. Is this a mere coincidence when there is none in the two counties of Isiolo and Marsabit?

Dr. Mwiria: Mr. Deputy Speaker, Sir, I would like to make a correction.

Mr. Ruteere: On a point of order, Mr. Deputy Speaker, Sir. Could hon. Bahari tell us which public university is in Meru Town?

Mr. Bahari: Mr. Deputy Speaker, Sir, we are talking about universities and middle level colleges. In his own constituency, there is a middle level college known as Meru Technical College.

Eng. Maina: On a point of order, Mr. Deputy Speaker, Sir. I think the direction that this discussion is taking is not conducive to the peace and stability of this country. Truly, if this House is going to sit and declare that one area has been discriminated against another, that is a very unfortunate discussion. I would beseech you, in the spirit of peaceful coexistence of Kenyans, that this line of discussion be stopped. If people need a university, let them---

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

Eng. Maina: I am on a point of order, Mr. Deputy Speaker, Sir. Therefore, I beseech you that this line of argument is not in the interest of this country and should be stopped.

Mr. Mureithi: On a point of order, Mr. Deputy Speaker, Sir. Is the Member for Mathira in order to say that some areas have not been marginalized whereas Nyandarua, which is actually in Central Province, does not have a university, when other parts of Central Province have more than five universities?

(Applause)

Mr. Deputy Speaker: Hon. Chachu, did you wish to catch the Speaker's eye?

Mr. Chachu: Mr. Deputy Speaker, Sir, are my colleagues from northern Kenya in order not to appreciate that, for the first time, the Government is putting up a campus in North Horr Constituency, Marsabit County? Yes, we have been neglected but, for the first time, the Government is investing in a campus under the Kenya Technical Training College, which is going to start next month. We should be appreciative, at least!

Mr. Deputy Speaker: Proceed, Mr. Assistant Minister!

Dr. Mwiria: Mr. Deputy Speaker, Sir, I completely appreciate the feelings of hon. Members on this. But I just want them to also appreciate that we acknowledge that there were mistakes and we are trying to correct them. That is why I have stated that we have already identified counties that do not have those institutions, and they are next on line. We have even written to hon. Members to avail land. In addition to Marsabit, we are starting a university in Garissa. So, we are making progress. I would just like to repeat that we are doing better than KANU.

Mr. Deputy Speaker: Final question on the same, hon. Bahari!

Mr. Bahari: Mr. Deputy Speaker, Sir, we appreciate the college that is being established in North Horr. That is out of context for the hon. Member from North Horr. Having said that, the Questions we bring here are for the purpose of accountability. Can this Ministry sit down once again, and, without having to wait for reports of the commissions or whatever, take action? Can they move? Let them not wait until they receive reports of commissions. They have admitted that there are gaps. Can they move and fill those gaps as soon as possible?

Dr. Mwiria: Mr. Deputy Speaker, Sir, I have appreciated that there are gaps, but I have also stated that we are taking action. We are not waiting for reports of commissions. We are taking action and we will continue to take action. So, we are soon to establish a campus in Marsabit and Isiolo, a technical institute. We have established a university in Garissa. There is one in North Horr. We are going to all the counties that do not have technical institutions and colleges to establish some. So, I would like to assure hon. Bahari that his desire is well taken care of.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. In the second sentence of part four of his answer, the Assistant Minister says:-

“We are currently awaiting the findings of the task force for aligning the Universities Bill with the Constitution; it will facilitate establishment of universities.”

Dr. Mwiria: Mr. Deputy Speaker, Sir, that is in relation to the opening of universities and other campuses. Otherwise, action has already been taken. The report will also help us in terms of improving on the actions that we have already taken. So, there is nothing contradictory about what I have said. I would just like to assure hon. Bahari that we are taking action, and that

we will continue to fill in the gaps where Kenyans do not feel the impact of our expansion of higher education in the country.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Next Question, hon. Sheikh Dor.

Question No.1062

FINANCIAL ASSISTANCE TO STUDENTS IN YOUTH POLYTECHNICS

Mr. Yakub asked the Minister for Youth Affairs and Sports:-

(a) how much the Ministry pays per year for each student in youth polytechnics;

(b) which youth polytechnics are in Coast Province and in which counties they are located; and,

(c) whether he could provide the names of all the students from the polytechnics who were assisted by the Government in Mombasa and Lamu Counties in 2010.

The Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Ministry of Youth Affairs and Sports pays a total of Kshs15,000 per youth polytechnic trainee annually. The Government only pays for the trainees who are in registered public polytechnics.

(b) The registered youth polytechnics in Coast Province and counties within the province are as follows. In Kilifi County, we have 14 registered public polytechnics. In Lamu County, we have two registered public polytechnics. In Mombasa County, we have two registered public polytechnics. In Tana River County, we have two public polytechnics. In Taita Taveta, we have 23 registered public polytechnics. In Kwale County, we have five registered public polytechnics. That is a total of 48 public registered polytechnics within the coastal region.

(c) The names of all the students from the youth polytechnics who were assisted by the Government through subsidized tuition fees in Mombasa and Lamu counties in the year 2010 are in an attached list. It is a very long list, which I am going to table for scrutiny.

*(Mr. Kabando wa Kabando laid
the document on the Table)*

Mr. Yakub: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for the answer and confirm that I have also received the attached list. My only question is on the list attached and the expense of Kshs15,000 per year per student. We all know that everything has gone up in terms of cost-sharing. When will he increase the amount from Kshs15,000 per student per year to Kshs20,000 per student per year?

Mr. Kabando wa Kabando: Mr. Deputy Speaker, Sir, for any amount to be increased on the fee structure, there is need to do a professional assessment per item. The hon. Member will appreciate that the breakdown we have given for justification of all these payments is segmented for the first, the second and third terms. The justification includes utilities, stationery, transport, contracted professional services, including for the community employed instructors, co-

curricular activities, internal examinations within those polytechnics, instruction materials, repairs and maintenance.

Mr. Deputy Speaker, Sir, our challenge is that Members of Parliament should enrol as many students as possible. When you do so, it means that the economies of large scale apply. The enrolment for some areas of this country is worrying. If you have an enrolment of 1,000 students in one polytechnic, the entitlement for that polytechnic will be Kshs15,000 multiplied by the number of students. In this case, the polytechnic would get a lot of money. Economies of large scale will allow you easy access and procurement of the services and the commodities required.

In this regard, and almost connected to a Question that was asked this morning, Members of Parliament need to utilize their CDF well to construct polytechnics and then the Ministry will come in handy to support them through provision of tuition and other infrastructural facilities that are needed in all the districts in Kenya. It is worrying because this is not really happening in many areas.

Mr. Chanzu: Mr. Speaker, Sir, the issue of youth polytechnics is very important in this country because of the huge proportion of the population of the youth in this country. The Assistant Minister has answered on the issue of the amount of money given to polytechnics, but I think these are still meagre funds. In order for us to be able to get the graduates of the youth polytechnics to be properly utilized or engaged, what is the Government doing in terms of linkages to ensure that those training can attain practical skills in some of the large companies?

Mr. Kabando wa Kabando: Mr. Deputy Speaker, Sir, that is a very good question. Thank you very much, hon. Chanzu.

If you compare this amount with the money allocated per student in secondary school education, you will appreciate that my Ministry is doing very well in terms of the amount allocated to students. The Kshs15,000 per year per student that is given to public polytechnics, if compared it with about Kshs10,000 per student per year in secondary schools, I think it is good. I should be congratulated for achieving that and for implementing it without any prompting in terms of Questions being brought to this House or by any audit.

The other question by hon. Chanzu is what we are doing to engage the trainees in practical training. I want to assure the hon. Member that, in fact, we are trying to promote the engagement of students with the private sector. You already know that there is the *Kazi Kwa Vijana* component, which is facilitated by the World Bank and implemented by the Kenya Private Sector Alliance for people who are in tertiary institutions to engage in contracted work for practical training during their courses or even at post-graduate level. This is a matter that we have put on the table with the KEPSA and with the World Bank in our reviewed negotiations, so that it benefits for students who are in public polytechnics.

Thank you for that question.

Mr. Mwangi: Mr. Deputy Speaker, Sir, while I appreciate what the Ministry is doing and that the youth polytechnics have some courses that young boys and girls would require in the rural set-up, would the Assistant Minister consider providing adequate and well-trained instructors in most of these youth polytechnics? My observation is that we have a shortage of enough instructors who should be able to impart the skills to these youth.

Mr. Kabando wa Kabando: Mr. Deputy Speaker, Sir, last year, we employed 1,000 youth polytechnic instructors through the Public Service Commission. This means that in the nearly 1,000 registered youth polytechnics in Kenya which are publicly owned, we deployed on

average an instructor. Additionally, there has been the programme of top up grants for instructors employed by the board of governors.

Mr. Deputy Speaker, Sir, the Government cannot sufficiently and adequately given the budget that this House itself approved for my Ministry meet the totality of the requirement 100 per cent of the youth polytechnic cash. This is actually my seventh time answering such a Question and making this plea. Could Members of Parliament, please, in their CDF bursary budget, ensure that they allocate students in youth polytechnics some money, so that the same resources combined with the allocation from the Ministry can actually help youth polytechnics to put additional trainees whom we were unable because of budgetary constraints to contract among the 1,000? It is doable. I think this message needs to sink in. Members of Parliament need to put money in youth polytechnics

In Mukurweini Constituency, we have 900 students freshly admitted in youth polytechnics this year. All of them have their fee fully paid by the Mukurweini Constituency bursary. So, we are preaching wine and taking the same!

Mr. Yakub: Mr. Deputy Speaker, Sir, it is very encouraging to note that in Coast Province, out of the six counties we have 48 youth centres. However, could the Assistant Minister inform us what criteria does the Ministry use to allocate the number of youth polytechnics? In one county in Coast Province we have 23 polytechnics. However, in Mombasa County, we have only two youth polytechnics. What criteria does he use to allocate the number of youth polytechnics per county?

Mr. Kabando wa Kabando: Mr. Deputy Speaker, Sir, it is very beautiful that the hon. Member asking is the nominated Member of Parliament, Mr. Yakub. This is the third Question he is asking for Coast Province to this Ministry regarding youth polytechnics and *Kazi kwa Vijana*.

I would urge the elected Members of Parliament from Coast Province to pull up their socks with regard to putting up CDF-funded youth polytechnics. Almost 100 per cent of the youth polytechnics in this country were not initiated by the Central Government. They were initiated by communities. I want to note that about 46 constituencies in this country have put on average, two youth polytechnics in their areas. Rachuonyo Constituency, for example, led by Eng. Rege, is one such that has established one of the most ICT-compliant programmes that is facilitated by Microsoft and the Gates Foundation. The wake-up call should be for Members for Parliament from all parts of this country to put youth polytechnics using CDF. I want to inform hon. Members that living by example. I got two polytechnics in my constituency established by the community. I have put additional four established through CDF funds that are now fully operational.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir, while I admire the Assistant Minister for Youth Affairs and Sports in the zeal with which he wants to advance the course of the youth, is he in order to contradict his own statement that the Government is unable to provide for tutors and again urge Members of Parliament to put up white elephant projects when they cannot even have tutors in those schools?

Mr. Kabando wa Kabando: Mr. Deputy Speaker, Sir, Dr. Nuh is not fully sincere on this. Any constituency that has established a youth polytechnic including Belgut of Charles Keter, Narok and that of Dr. Kones, have put money in youth polytechnics. Those polytechnics have received full equipment to cover all the courses that are provided. I speak with courage because I know in this House there are enough Members of Parliament who know this is a reality. They know that I or my colleagues have visited their constituencies to give equipment

and instructors. If you are a Member of Parliament and you are sleeping and you are not using your CDF---

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead this House that in polytechnics where Members of Parliament have put CDF money, they have given them equipment? I have done that to a polytechnic called Mavulini. However, I have even written to this Ministry and they have not given us the equipment. Is he in order to mislead this House?

Mr. Kabando wa Kabando: Mr. Deputy Speaker, Sir, you know we cannot prove on the Floor of this House that he has actually done the same. I will challenge him to table me a copy of the letter he has given to the Ministry. If action is not taken within 48 hours, you can ask me.

As I said and I want to repeat as I sit, in this House there are enough Members of Parliament from Sotik, Belgut, Mathira, Narok and Ndaragwa that know that we have actually been visiting their polytechnics to give equipment and to launch and commission instructors.

POINTS OF ORDERS

DATE OF NEXT GENERAL ELECTIONS

Eng. Maina: Mr. Deputy Speaker, Sir, I wish to seek a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs regarding the date of elections in this country and the consequences of conducting Harambees. In the Statement, I wish him to advise the country, as we stand now, which is the date of the election.

Secondly, I wish to ask him to specify since Harambees are banned eight months before the elections, I would wish to know whether there is justification for the banning of Harambees because there are many types of Harambees and some harambees are inevitable. For example, if the issue involves somebody who has died and people have come together because the family is poor, could he clarify whether an hon. Member or any contestant in the coming elections will be in order to contribute with that small community, the small amount for assisting in the burial of the deceased? People are always calling Members' officers for monies when they are raising small monies in their communities. Is it illegal for a Member of Parliament to assist in those kind of small fundraisings?

Mr. Deputy Speaker, Sir, I would wish him to also state what constitutes a criminal offence and whether it is only when a Member appears publicly or even you give money either publicly, through an agent or otherwise.

Thank you.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I followed closely the request by the Member for Mathira. If my recollection is correct, Members cannot ask questions whose information they have or is generally available. The interpretation of harambees is contained in the Elections Act which was passed by this House. Therefore, I do not see why the Minister for Justice, National Cohesion and Constitutional Affairs will be coming to make a Ministerial Statement on a law that has been passed by this House.

Mr. Deputy Speaker, Sir, I would like to urge the Member for Mathira to refer to the Elections Act and if the Elections Act is not clear, then the Speaker has also ruled that the issue of interpretation of the laws is not a matter for this House. It is a matter for the courts.

I would want to assist the Member, first of all, by referring to the Act and after that instead of having to drag the Minister for Justice, National Cohesion and Constitutional Affairs

to come and engage in an exercise in futility, to seek the necessary interpretation within the courts.

Mr. Deputy Speaker, Sir, I am unable to give any undertaking as to whether the Minister can come because I do not believe that it is the duty for the Minister for Justice, National Cohesion and Constitutional Affairs to come and provide the information so requested.

Eng. Maina: Mr. Deputy Speaker, Sir, I think the person representing the Leader of Government Business may not be aware that the Minister has already undertaken to me personally that I should raise this matter and he will be glad to clarify it to the country.

Hon. Members: Ooooh! Ooooh!

Eng. Maina: Mr. Deputy Speaker, Sir, I think we are getting to another unnecessary discussion. We always converse as Members of Parliament.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. On the matter of the date of elections, I am aware that a committee of the House has been going round the country, collecting views of Kenyans on this issue. I think it would be a waste of the time of Parliament to debate a matter that probably needs to be debated in a different way. Asking the Minister to come and address this Parliament will just be asking him to give his personal opinion which we may not need.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I believe I have expressed the Government position. If there was a personal undertaking by the Minister, perhaps the Member for Mathira could have a personal consultation with the Minister and he will be duly advised.

Mr. Deputy Speaker: Fair enough! Since an understanding has been there, let the Minister then come and reply to the same and issue that Statement on the Floor of the House.

Next order!

PROCEDURAL MOTION

EXEMPTION OF BUSINESS FROM PROVISIONS OF SO38

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

THAT, the business appearing in today's Order Paper be exempted from the provisions of Standing Order 38(2) being a Wednesday Morning, a day allocated for Private Members' business.

Mr. Deputy Speaker, Sir, this is following the tight deadline that we have in terms of completion on the discussion of the Committee Report on the issue of boundaries. As Members will recall, we have a deadline of completion of the seven days by this afternoon. It is appropriate that we provide adequate time for Members to go through the Report and all the issue so that we can hopefully complete it in good time this afternoon.

I do not think I would wish to belabour the point. This is something we have all agreed on. I would just like to ask Mr. Y. Haji to second.

The Minister of State for Defence (Mr. Y. Haji) Seconded.

(Question proposed)

(Question put and agreed to)

Mr. Deputy Speaker: Next order!

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

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

Mr. Keter: Mr. Deputy Speaker, Sir, I am rising on a point of order pertaining to Order No.9. Last week, Mr. Jakoyo Midiwo raised some fundamental issues concerning this issue. You made an undertaking that you were to give a way forward yesterday. Would I be in order to ask that you make that ruling right now before we proceed to this order?

Mr. Deputy Speaker: I also recollect exactly what the Chair had done. I did make a ruling on that. I had made a direction on that and said that these are recommendations of a Committee, it can proceed!

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. Just on the same issue, we notice and agree that you made a ruling. We asked for time to read the corrigenda. I have read through the corrigenda and a few issues that need clarification arise before we debate this issue.

The first issue that arises is that it has only been signed by the Chairman. We need to authenticate whether this corrigenda was adopted by the Committee or it was a creation of the Chair.

Secondly, under Standing Order No.48 it says:-

“The Speaker may permit a Member to move in amendment form a Motion of which notice has been given if, in the opinion of the Speaker, the amendment does not materially alter the principle embodied in the Motion of which the notice has been given”.

Mr. Deputy Speaker, Sir, I have looked at the corrigenda, there is in many parts of the report total departure from the reasoning of the earlier report. There is total reversible---

*(Several hon. Members stood up
in their places)*

I am on a point of order! Just to give you an example, on page 14 of the report---

Mr. Deputy Speaker: Order, hon. Midiwo! Hon. Midiwo, the amended Motion has not been moved. The Acting Chair of the Committee has to move the amended Motion and then you can rise on the matters you want to raise.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I will. I just thought it is proper at this time because you allowed the corrigenda to amend the report. I am raising the issue of the legality, if an amendment alters the spirit of a Motion--- That is the issue I want you to address.

Mr. Deputy Speaker: The amended Motion has to be moved by the Acting Chair. Proceed, hon. Acting Chair, and move the amended Motion.

(Dr. Khalwale stood up in his place)

Order! Allow the hon. Member to move the Motion and then you can rise on your point of order.

(Dr. Khalwale stood up in his place)

Dr. Khalwale, you are out of order. Could you allow the hon. Mover to move the Motion? Mr. Acting Chair, proceed!

MOTION

ADOPTION OF IEBC REVISED PRELIMINARY REPORT ON BOUNDARIES OF CONSTITUENCIES/WARDS

Mr. Baiya: Mr. Deputy Speaker, Sir, I beg to move the following Motion in amended form:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Revised Preliminary Report of the proposed boundaries of constituencies and wards by the Independent Electoral and Boundaries Commission (IEBC) laid on the Table of the House on Wednesday 22nd February, 2012 together with the corrigenda laid before the Table of the House on Tuesday, 28th February, 2012.

Mr. Deputy Speaker, Sir, this is a report of the Departmental Committee on Justice and Legal Affairs regarding the report produced by the IEBC on the proposed boundaries of constituencies and wards.

Mr. Deputy Speaker, Sir, on receipt of the revised Preliminary Report on the proposed boundaries of the constituencies and wards from the IEBC, the Committee invited members of the public to make written submissions on the Report. A total 500 memoranda on the report were received with a majority of the submission requesting for alignment of wards and ward boundaries within constituencies.

Mr. Deputy Speaker, Sir, the process of boundaries delimitation requires detailed analysis of population, geographical features and urban centres, community of interest, historic, economic and cultural ties and means of communication. It became apparent that the IEBC only considered population in the exercise. As such, the Committee recommends the IEBC increase the total number of wards to 1,510 to accommodate *inter-alia* other constitutional criteria.

The Committee thanks the offices of the Speaker and Clerk of the National Assembly for the support extended to it while preparing this report and in the execution of its stated mandate.

Mr. Deputy Speaker, Sir, it is pleasant duty and privilege on behalf of the Departmental Committee on Justice and Legal Affairs to present and commend this report to the House for adoption pursuant to Standing Order No.181.

Mr. Deputy Speaker, Sir, the legal framework for delimitation of boundaries is provided under the former Constitution as amended by the Constitution of Kenya (Amendment) Act, 2008, the Constitution of Kenya 2010 and the Independent Electoral and Boundaries Commission Act, 2011. Article 89 of the Constitution of Kenya 2010 gives the IEBC the mandate of creating and delimiting constituencies and wards. Additionally, the Constitution in Article 89(5) spells out the criteria to be used in boundary delimitation, as well as the maximum number of constituencies provided for under Article 89(1).

The IEBC Act 2011 limits the Commission to resolve issues arising from the first review and to use IIBRC Report as primary reference level, and Parliamentary Committee on Justice and Legal Affairs report as its secondary reference material.

The Constitution further provides that the delimitation of boundaries be done at the intervals of not less than eight and not more than 12 years. However, paragraph 27 of the Sixth Schedule of the Constitution provides as follows: That the Boundaries Commission established under the

former Constitution shall continue to function as constituted under that Constitution, and in terms of Section 41(c) and 41(c) but:-

(a) It shall not determine the boundaries of the county established under this Constitution.

(b) It shall determine the boundaries of constituencies and wards using the criteria mentioned in this Constitution, and,

(c) The members of the Commission shall be subject to Chapter 7 of this Constitution.

The requirements in Article 89(2) that a review of constituency and wards boundaries shall be completed, at least, 12 months before a general election, does not apply to the review of boundaries preceding the first election under this Constitution; that the boundaries Commission shall ensure that the first review of constituencies undertaken in terms of this Constitution shall not resort in the loss of a constituency existing on the effective date.

Article 82 of the Constitution 2010 allows Parliament to enact legislation, to allow the delimitation by the IEBC as follows:-

Section 82(1), Parliament shall enact legislation to provide for:-

(a) Delimitation by the IEBC of electoral units for election of Members of Parliament and County Assemblies. Similarly, Article 85(5) sets out the Constitutional basis of the function of the IEBC as follows:-

The Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation.

The Fifth Schedule of the IEB Act, 2011, sets the legal provision regulating the completion by the IEBC of the first review. The IEBC is enjoined by the Act to resolve all the issues arising out of the first review relating to the delimitation of boundaries of constituencies and wards, and publish its final report within the period of four months from the date of its appointment under this Act. The Act reads the issues arising out of the first review as:-

(a) Redistribute such wards or administrative units in the affected constituencies, as maybe appropriate.

(b) Subject to the constitution addressing issues of new constituencies falling outside the population quota as provided by Article 89(6) of the Constitution, but at the same ensure that such a process shall:-

(i) Take into account the provision of Article 89(7(B) of the Constitution that requires progressive efforts and not instant demographic equality, or towards attaining the population quota in each constituency and ward for the purpose of the first review

(ii) Not be subject to new definition of urban areas, cities or sparsely populated areas, or to new population figures.

(iii) Be subject to the use of enumerated national census figure and not projected figures, and

C. Addressing the issues of progressively advancing towards the population quota, in protected constituencies, in relation to neighbouring constituencies where appropriate.

Paragraph 2(1) of the Fifth Schedule to the IEBC Act restricts the Commission in addressing the issues arising out of the first review to:-

1. Use as its primary reference material the report of the former Boundaries Commission on the first review as adopted by the National Assembly.

2. Use as its secondary reference material the report of the Parliamentary Committee on the report of the former boundaries Commission.

Pursuant to the provisions of the IEBC Act, the Commission shall:

(i) Prepare and publish a preliminary report outlining the proposed limitation of boundaries of constituencies and wards and also outlining specific geographic and demographic details.

(ii) Avail the report to the general public for a period of 21 days and invite presentations from the public.

(iii) Review the public presentations received within 14 days after receipt of the recommendation.

(iv) Forward the revised Report to Parliament.

(v) Consider views received from the National Assembly and revise accordingly before the final publication in the Kenya Gazette.

Article 89(10) of the Constitution and Paragraph 4 of the Fifth Schedule to IEBC Act provides for any person dissatisfied with the outcome of the final report of the Commission on boundaries delimitation to apply to the High Court for review within 30 days of the publication of the decision in the gazette and such application shall be heard and determined within three months of the date on which it is filed.

Mr. Deputy Speaker, Sir, that is the legal framework. The IEBC which was constituted on 8th November, 2011, to exercise the powers conferred by Article 88 and 89 of the Constitution, on 9th January, 2012 published its preliminary report in accordance with the Fifth Schedule of the Act and proceeded to undertake public consultation on the matter between 9th January, 2012 and 30th January, 2012. On 9th February, 2012 and in accordance with Paragraph 3(3) of the Fifth Schedule, the IEBC submitted its revised preliminary report to the Departmental Committee on Justice and Legal Affairs for consideration and transmission to the National Assembly.

The revised preliminary report is divided into three volumes. I need not go into details about each volume. However, the report proposes the country's electoral area to comprise of 290 constituencies and 1,450 wards to be spread as stipulated in the list that is contained in the report. The report takes account of the following:

(i) The scope of the mandate of the IEBC to complete the first review in accordance with the IEBC Act.

(ii) The work of the IEBC is cumulative to the work of the IIBRC.

(iii) The understanding that successful and timely conclusion of the first review will facilitate necessary planning for the forthcoming general election.

Mr. Deputy Speaker, Sir, on 9th February, 2012, the departmental committee having received the preliminary report made a paid advertisement in the local dailies asking members of the public to submit written memoranda on the IEBC Report. We have received a total of 500 written memoranda. The Committee analyzed and deliberated the IEBC Report together with the written submissions from the members of the public and noted that the legal framework for elections requires the objective drawing of electoral units and boundaries to achieve the principles of the Constitution to the greatest degree. These principles are aimed at ensuring effective representation and a transition of the will of the electorate into a representative Government.

The Committee also noted that a majority of the submissions received were requesting for a realignment of wards and wards' boundaries within constituencies. The Committee noted that administrative boundaries exist and are a reality in the lives of Kenya. The IEBC should respect the administrative boundaries in creating new units.

Noting that the IEBC did not base the distribution of wards on other constitutional criteria except population, it is imperative that other criteria be weighed, that is, geographical features;

urban centres; community of interest; historic, economic and cultural ties; and means of communication. In the circumstances, extra wards be created and distributed to the deserving areas as indicated in the matrix below.

Pursuant to the provisions of Paragraph 3(4) of the Fifth Schedule to the IEBC Act, the Committee makes the following observations and specific recommendations on the report:

From Mombasa County beginning with Changamwe and Jomvu constituencies, the issues that the Committee received were a request for change of names and for realignment of the distribution of wards. The key issue was the boundary between Changamwe and Jomvu, that is, the way it had been moved. The Committee's recommendation is that IEBC to have old Magongo Road as the boundary between the two constituencies, to retain Miritini Ward in the new Changamwe Constituency and retain Changamwe Ward in Jomvu Constituency, but with the name changed to Magongo Ward. It should also consider adding an extra ward to maintain equity in the wards between the two constituencies.

From the corrigenda, next is Kinango Constituency. The issue that arose was the realignment of wards. The Committee recommends that the IEBC should move Chengoni, Maji Chumvi and Siraroni sub-locations to Mackinon Road and to rename some of the wards are proposed in the corrigenda.

With regard to Kilifi South, there was a request for wards. The main issue was that the natural boundary between Kilifi South and Kilifi North had been altered. We are recommending that the IEBC considers the review of the division of boundaries by the proposals given. It should retain the natural geographical boundary of Kilifi creek between Kilifi North and Kilifi South.

Mr. Deputy Speaker, Sir, on the third constituency, Malindi---

Mr. Mungatana: On a point of procedure, Mr. Deputy Speaker, Sir. It has been the custom and practice of this House that no matter how bulky a report is, the Chairman moving the report should do it in a summary form. The way the Vice-Chairman is moving the report is by reading word for word. You already directed that we read this report. I am pleading with you that you give directions so that the Vice-Chairman can summarize the report. We have already read what he is saying.

Mr. Deputy Speaker: Hon. Baiya, you need to summarize.

Mr. Baiya: Mr. Deputy Speaker, Sir, I am moving within my time. I am not reading the report word for word. I have been allocated time under the Standing Orders and it is not upon Mr. Mungatana to tell me how to go about my business. I will be highlighting only the key issues in the report.

There was an issue about Ganzei Ward. It was about the ward cutting across administration divisions. We are recommending that the boundaries of the wards should coincide with administrative boundaries. In Tana River County, Galole and Garsen constituencies there is a request for an extra ward and realignment of wards. We recommend that the IEBC reconsiders the boundary issues between Galole and Garsen constituencies.

In Lamu County, Lamu East Constituency, all petitioners were requesting for additional wards. There was also an imbalance of population in terms of means of communication and geographical issues. We recommend that the IEBC should reorganize the wards between Lamu East and Lamu West. It should also consider making one extra ward for Lamu East based on geographical factors.

Mr. Deputy Speaker, Sir, in Taita Taveta County, there was an issue on Mwatate Constituency. The issue was that there was a transfer of sub-location between wards and there

was request for change of names. We are recommending that the Independent Electoral and Boundaries Commission (IEBC) retains the words as proposed by the residents and name Chawia Ward as Mwachabo Ward and Chawia Sub-location also be renamed Mwachoba.

From Garissa County, there were issues in Dujis and Barabara Constituency. We received several petitions relating to the request for an extra ward and movement of Arba Ward from Barabara to Lagdera Constituency. There was also a request for movement of a ward, Medina from Barabara to Dujis. This was about boundaries dispute. We are recommending that the IEBC resolves issues relating to the delimitation of boundaries in Barabara and Dabab Constituency. A subsequent confirmation of constituency boundaries between Lagdera and Dujis by the IEBC and the location of Arago Arba, Shidilbab to Daabab Constituency. In Ijara Constituency, there were several petitions requesting extra wards and extra constituencies. Another issue is the boundary issues between Ijara and Fafi. They all requested the revocation of the three mile strip. We have made two recommendations that Ijara should get additional wards in view of other constitutional criteria including community of interest, geographical features, communications and so on. IEBC should give four additional wards. How they will be arranged has also been listed.

Mr. Deputy Speaker, Sir, on Fafi, there was an issue about wards which are needed. We have asked that the IEBC considers realignment of those wards in terms of the request from this petition. In Lagdera and Daabab, it was also the same issue of Arago Arba. We have made similar recommendations. There was a request for a change of name but we did not get sufficient representation about that. In Wajir County, there were 15 petitioners who were requesting for an extra ward. We are asking that the IEBC should consider creating a new ward out of the proposed Elnur/Tulatula Ward. In Wajir East, all petitioners were requesting for an extra ward. They were also requesting that the Wagadud Ward which has been moved to the new Talbaji Constituency and there is a large ward that requires to be split. We recommend that IEBC divides the current Korhorr ward into new wards. They should also consider moving Wagadud Ward from the new Talbi Constituency. IEBC should also give Wajir East an additional ward.

In Wajir South, the key issue was review and reorganization of wards and fair representation, thus the need for more wards. There was a request for additional wards. So, we are recommending that IEBC shall redistribute the six wards and the proposal of how they should be done is listed there. IEBC should also create an additional ward in this constituency and obtain its name from the leaders as well as stakeholders. In Wajir North, the key issue was re-organization of wards. We are recommending that the IEBC shall reorganize these wards in Wajir North and we have set out on how they should do that.

In Mandera South, the issue was request for an extra ward and the placement of Wagadud Ward and the name of the constituency. We recommend Wagadud Ward from Mandera North Constituency to be moved to Mandera South. IEBC should also rename Mandera South as Mandera Central and also align the district administration. In Mandera North, there were 500 petitioners who had signed one document. The issue was that Wagadud Division to move out of Mandera North. Guticha Ward is too large and we are recommending that IEBC should move Wagadud Ward and Division to Mandera Central. IEBC should also reorganize the wards as follows: We have set out the way it should be. In Banisa Constituency, we also received the request for reorganization and creation of Gurba Ward and the key issue was community of interest as a basis for that request. We are recommending the IEBC to reorganize the wards. We have given a proposal on how they should be realigned. In Mandera East, there was a request for

reorganization of wards and the key issue was the Kona tribe which has been marginalized is requesting fair and equitable representation.

Regarding the boundary between Mandera East and Fafi, we recommend that IEBC create an additional ward in Mandera East and reorganize the wards as we have listed there. They should also give priority to creating an extra ward in Mandera East for the Kona tribe.

Mr. Deputy Speaker, Sir, in Nairobi City, in Dagoretti Constituency, the issue was naming the sub-divided Dagoretti Constituency. The proposal is that it should be named Dagoretti South and Dagoretti North. There is also a proposal on how the wards in the two constituencies should be reconstituted. We are recommending that IEBC should remain consistent in line with the request which was publicly asked for. IEBC should also realign the wards as proposed by the petitioners. In Kamukunji and Embakasi, the request was to split into two proposed Kariobangi South Ward which merges the current Uhuru Ward and Kariobangi South Ward. We are recommending that IEBC should split and create an additional one as proposed. In Mihang'o and Kasarani, there was a request about the way Nairobi should be divided but we did not carry it because we thought it was overtaken by events. In Embakasi North, there was a request to rename Dandora III Ward to Dandora Area III and IV Wards. We recommend that IEBC should check if Dandora IV is within Dandora III and if so, they name the ward as requested.

Regarding Kibra Constituency, the request was to sub-divide Sarang'ombe Ward into two; Katwekera and Kianda-Ayany Ward to cater for minority representation; the Nubi. We are saying that IEBC should proceed and grant this request. In Embakasi East, there was a request to rename Savannah Ward as Jacaranda/Soweto Ward. It should remain as Savannah Ward. We also feel that these requests are reasonable and should be allowed.

In Marsabit County, North Horr which is the largest constituency in the country with an area of 3,000 kilometres, they wanted it to be split into two constituencies. That is something that is not within our mandate. They requested for three additional wards. In view of that, we cannot meet their request for a constituency but we recommend that the constituency should be given three more wards and that it should be considered under Article 100 of the Constitution.

In Moyale, they were dissatisfied with the boundary between Moyale Constituency, North Horr and Wajir North. We felt that this problem represents a long standing dispute that goes beyond delimitation of boundaries and should be referred to the relevant state organs to comprehensively address it. There was a request from Moyale for an additional ward which we recommend that it be carried out by the IEBC. In Saku and Moyale Constituency, there was a request to rename Marsabit Ward and also change of name. We did not feel that this should be carried because there was no sufficient representation. In Isiolo County, Isiolo South Constituency, the request was to ensure adequate representation by creating more wards. We think that this does not meet the threshold in terms of population but owing to community interest and geographical land mass, we request that they be allowed to have one more ward.

In Meru County, there was a request for the transfer of Kibirichia Division from Imenti Central to Buuri Constituency. We felt that there was no sufficient representation made to support this request. On Igembe North, Igembe South and Igembe Central, there were various requests about realignment and counter objections. We feel that the IEBC should reconsider the delimitation of boundaries in Igembe South, Igembe Central and Igembe North in line with geographical features and community of interest because the way it has been done, it is raising a lot of objections and issues.

In Tharaka Nithi County, on Chuka-Igambang'ombe Constituency, there was a request to rename Chuka-Igambang'ombe Constituency as Chuka or Ruguti Constituency as the name is too long. Rename Chuka Ward as Karingani Ward and so on and so forth.

Mr. Deputy Speaker, Sir, we recommend that the IEBC should review the names of the constituencies and wards because they are too wordy. Possibly they should adopt the proposals given. In Embu County, Manyatta, Runyenjes, Siakago and Gachoka constituencies, we received proposals that Embu County Wards should be equitably distributed bearing in mind the two main communities namely Embu and Mbeere. There was also a request for a new ward for the Mbeere community in view of the prevailing concerns of marginalization. We recommend that the IEBC should create an additional ward in Siakago Constituency by splitting Efurole Ward in Gachoka and rename Mbeti Ward as Mbeti South Ward to avoid confusion and consistency. We recommend that the IEBC carries out this request.

In Kitui County - Mwingi East and Mwingi West - there was a request to transfer Kivou Ward from Mwingi West to Mwingi East; for renaming of Mwalano Ward and the review of boundaries between Mwingi Central, Mwingi East and Mwingi West. We ask the IEBC to carry out this request for transfer. We also ask them to rename Mwalano Ward as proposed and also consider the boundaries between Mwingi East, Mwingi West and Mwingi North which seem to raise a lot of issues. On Kitui Central, Kitui West and Kitui Rural, there were many issues to do with community interest, means of communication and historical ties raising a lot of complaints. We recommend that the IEBC should reconsider the names and boundaries of these three constituencies as the issues raised in the petitions are numerous and not easy to resolve by the Committee.

On Mutito Constituency, there is request for realigning the constituency, ward boundaries and names of the wards. We request that the IEBC should reconsider the names and boundaries of the wards in Mutito Constituency.

In Machakos County, there was a request to split Masinga Constituency into two and we think we have no mandate to deal with this. So, we proceed to Makueni Constituency where we have Kibwezi East and Kibwezi West. There was a detailed issue about the way this constituency has been delimited and the way it has also been realigned. We are asking that the IEBC should reconsider the delimitation of this constituency for the wards and boundaries to comprehensively address the extensive issues raised by the community taking into account community interest and geographical features. In Makueni, the request was to split the constituency into two, but again our hands are tied on this.

In Nyandarua County, Kinangop's request was also to split this constituency into two and, again, our hands are tied by the limited mandate that the IEBC as well as the Committee has. From Ol Kalou and Ol Joroork, there was a request for renaming of the constituencies and for correction of errors contained in Volume II and Volume III of the IEBC Report. We believe that the request for those names – Ol Kalou to Karau Constituency, Ol Joro Orok to Chamuka Constituency and for correction of errors in the Report should be carried out.

As for Kirinyaga County - Ndia Constituency - there was misspelling of names and errors in the IEBC maps and Report. There is also a request for an extra ward and we believe that the two requests should be carried out; that is the correction of errors. They should be given an additional ward. Based on population threshold, they qualify.

In Murang'a County, there was a request from Mathioya Constituency that they should have an extra ward to ensure that there is balance between the various areas. We are recommending that this also be carried out.

In Kiambu County, Kiambaa and Kiambu Constituency, there was a request to redistribute population between two constituencies, moving Cianda Ward from Kiambaa to Kiambu Constituency. As for the Kiambaa-Kabete Boundary, the request was that it should follow Thigire River up to where the river meets Wangige. There was a proposal to rename Gachie Ward as Kihara. There was also a proposal to rename Kiambaa Ward as Karuri and, finally, there was request to transfer Kanunga and Ngegu to Kiambu Constituency due to proximity. We recommend that no sufficient representation was made to transfer Cianda Ward. The IEBC should rename Gachie Ward as Kihara Ward and the river boundary along Thigire River should be applied. There should be renaming of Kiambaa Ward as Karuri and there should be transfer of Kanunga and Ngegu to Kiambu Constituency to align the population.

As for Kikuyu, there was a request to move Uthiru Ward from Kabete to Kikuyu Constituency. There was no sufficient representation as this would also destabilize the population dynamic of the two constituencies.

As for Gatundu North, there were requests for change of names and realignment of boundaries. This appears to be an error and we ask the IEBC to adopt the proposed changes as requested by the petitioner.

In Turkana County - Turkana South, cultural differences and clan rivalries emanating from clan conflicts between residents of Karapata Ward from Turkana West and the location of Karapata in relation to the central point. There was also under representation. We are proposing that the IEBC should move Karapata Ward from Turkana East Ward to Turkana South Constituency. They should also move Letea Ward from the proposed Loima Constituency to Turkana West. They should also consider an additional ward for Turkana Central Constituency. We have also enumerated the other proposals that we have made.

As for West Pokot---

Hon. Members: Conclude!

Mr. Baiya: Mr. Deputy Speaker, Sir, yes, I am just coming to an end. In West Pokot, the issue was that administrative, geographical and community interests as well as means of transport were not taken into consideration when the wards were being moved from Kapenguria to Pokot South. We are recommending that the IEBC moves Beteti Ward from the proposed Pokot South to Sigor. The IEBC should also realign and redistribute wards within Sigor Constituency.

In Samburu East, Mr. Deputy Speaker, Sir, realignment of wards did not take into account historical and administrative boundaries as well as communication. We are recommending that the IEBC moves Lengusaka Sub-location from Waso Ward to Wamba West Ward.

On Trans Nzoia County, Kiminini Constituency, a ward called Bidii Ward which is predominantly an urban constituency, there was a request to move it to a rural constituency. We did not feel that there was sufficient evidence to warrant that.

In Saboti Constituency, there was a request to move Sikhendu Ward, which is heavily populated by the Bukusu Community to Saboti Constituency. It was felt that detaining them there will deny them political representation. Concerning this request, we do not think there was sufficient representation to carry it through.

From Cherangany Constituency in the same Trans Nzoia, there was a request to transfer Sinyerere Ward to Kwana. We recommend that the IEBC should look at the contentious issues of Sinyerere Ward considering the differences between the IIBRC Report and the IEBC Report.

Mr. Deputy Speaker, Sir, with regard to Uasin Gishu Constituency starting with Eldoret North – the proposed Sosiani – there were proposal on names. Turbo Constituency to be renamed Sosiani Constituency; Kapsagoi Ward to be renamed Sugoi Ward. Kabyet and Segero wards were proposed to be renamed. We see no reason why the changes of names should really not be carried through because sufficient evidence exists that those would be the popular names.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, for Eldoret East Constituency, there was a request that Market Ward be surrendered by Eldoret East to Eldoret North. They also wanted Market Ward to be renamed Sisiro Ward. Our recommendation is that there should be no change of name. That name of Market Ward is a cosmopolitan one and we also propose that boundaries should remain as they are.

Mr. Temporary Deputy Speaker, Sir, for Eldoret South, the proposed name was Kesses. The issue was that we change the name of Kesses Constituency and also Kesses Ward. We recommend that the Independent Electoral and Boundaries Commission (IEBC) should rename Kesses Constituency Tarakwa and Kesses Ward Migun.

In Elgeyo Marakwet, there was a request for some wards' names to be changed. That is Mericho Ward to be renamed Mericho/Chepkorio and we ask the IEBC to effect this proposal.

Mr. Temporary Deputy Speaker, Sir, from Keiyo North, there was also a request for a change of name. That is to change Kamariny Ward to Irong/Mutei Ward and change Kaptetumwa Ward to Iten/Chepkemtumwa Ward. We are recommending that IEBC effects these proposals.

On Nandi County, in Tinderet and Nandi Hills, some sub-locations were amalgamated without due regard to geographical interests. These are the issues. Two, Lessos Division should be under the proposed Nandi Hills Constituency and three, place the wards and sub-locations closer to each other. These are the issues and they said in accordance with the IEBC preliminary report of 9th January 2012, the IEBC should effect this change and retain its initial proposal which seems to have met the requirements of geographical interests and communications.

Mr. Temporary Deputy Speaker, Sir, in Emgwen South and Chemusei Constituency, the issue was that Chepterit Ward to remain in Emgwen South. This is a request for realignment and we see no reason why the IEBC should really not effect this and we are recommending that they do so.

In Baringo South Constituency, the issues were that there is marginalization and underrepresentation and also discrimination for the Ilchamus and Njemps people. There was also a proposal that Baringo South should be renamed Muchongoi Constituency and also Marigat Ward to be named Mogosok Ward.

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

(Mr. Deputy Speaker resumed the Chair)

Mr. Deputy Speaker, Sir, we see no reason why we should not effect this. We also say that they should consider an additional ward for the marginalised, rename Baringo South Muchongoi, rename Marigat Ward as Mogosok and rename Mukutani Ward as Ilchamus Ward.

In Baringo North, there was the naming and realignment of boundaries of the five wards. We ask the IEBC to adopt and realign the five wards as recommended. In Baringo East Constituency, there was an issue about the constituency name. There was also a request to split Baringo East Constituency and for an additional ward, and also for Baringo East Constituency to be divided into two – Tiatei Constituency and Korosi. We recommend that IEBC renames Baringo East Constituency as Tiatei Constituency as requested. Creation of an additional constituency is not within our mandate, but if it is possible that they should get an additional ward.

Mr. Deputy Speaker, Sir, in Mogotio Constituency, there was a request for it to be split into Bogoria and Kisanana Ward. We ask the IEBC to allocate them an additional ward. In Eldama Ravine, there is a request for realignment of wards. We ask the IEBC to realign the wards and the request is as contained in the petition which is also contained in this report.

Mr. Deputy Speaker, Sir, in Laikipia West Constituency, there was a petition. The concern was that there are two wards; one, Igwamiti Ward with a population of 69,000 people and Marmanet Ward with a population of 42,000 people. Their complaint is about underrepresentation. They are also asking for an extra constituency which is outside the mandate of the committee. So, we are recommending that they be given two wards to accommodate the population of 110,000 people.

In Laikipia North Constituency, the issue that arose was enjoining Momonyot and Sik Sub-Location to form Mugogodo West Ward. We would like to issue an apology to the people of this region, because the initial report said that the committee agreed not to retain Laikipia North as proposed by IEBC. This clerical error caused a lot of anxiety. The recommendation is that this proposal, which the people of Laikipia North gave, should be carried.

Mr. Deputy Speaker, Sir, in Rongai Constituency, there was a request for change of name and movement of location from Soin Ward to Gichohi Ward. They also proposed to rename Gichohi Ward to Moricho Ward. We have asked IEBC to effect that proposal. There was also a proposal to retain Siboyan Sub-Location and Rimiriri Sub-Location in Rongai Constituency. These two sublocations are said to be in both Rongai and Subukia constituencies. We are requesting IEBC to investigate this and make sure they correct these errors.

From Naivasha Constituency, there was a complaint about the delimitation of the Naivasha and Gilgil Constituencies. Malewa West Ward has been moved to Gilgil, and the residents are complaining; we are proposing that Malewa Ward should be taken back to Naivasha for ease of delivery of services to the people of that area. In Gilgil Constituency, there is a proposal to merge Kong'asis, Eburu and Mbaruk sub-locations to create Mbaruku Ward, and we are asking the IEBC to create an extra ward to take care of these marginalised communities. In Molo and Njoro constituencies, there was an issue of need for fair representation, and we are asking IEBC to also grant these two constituencies because the population threshold allows them to do so.

Mr. Deputy Speaker, Sir, in Kuresoi South and Kuresoi North constituencies, there was a proposal to reconstitute and rename wards and realign locations, and another proposal to create two new wards to cater for marginalised communities. We are asking the IEBC to effect these changes and also to grant them two new wards to take care of the marginalised Ogiek and other communities.

In Subukia Constituency, there was a proposal to move Koisam Sub-Location with a population of 2,800 and Nyamathithi Sub-Location to Subukia. Ruiru and Wiyumirrie are said to be both in Subukia and Rongai constituencies; Magomano Sub-Location is indicated to be in Kabazi Ward of Subukia Constituency. On the map it is part of Munanda of Subukia. We are asking the IEBC to review the current delimitation in this constituency in view of these glaring mistakes, and correct them; it should also bear in mind community interest criterion for realignment.

Mr. Deputy Speaker, Sir, in Nakuru Constituency, there was a request to split up Kaptembwa East Ward of Nakuru County, which has a population of 70,000 people. We ask the IEBC to split this ward into two. They more than deserve that.

In Narok, Kilgoris Constituency and Emuruan Constituency, there was a proposal to move Kapuri Sub-Location to Emurua Constituency, and also to have an additional constituency. However, in the light of all the requests they have made, we are proposing first that IEBC should consider transferring Nararong and Mesurura sub-locations from Lolgorian Ward to Keyian Ward. The committee also requests the IEBC to create an additional ward for the Moitanet clan; we are also---

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the chairman to take us through every item of the report which we already have? Why does he not table this report and we debate it?

Mr. Deputy Speaker: Order! The chairman is within his time. He is doing very well. Proceed.

Mr. Baiya: Mr. Deputy Speaker, Sir, I now move to Narok West Constituency. There is an issue of re-alignment of wards. We are asking the IEBC to realign the wards as proposed in the report. In Kajiado County, Kajiado North Constituency, there is a proposal to move Kiserian Ward to Kajiado North and a request to create an additional ward. We are asking that those two requests be carried. In Kajiado Central, there is a proposal to create an additional ward to cater for the marginalized community. We were not able to carry this through. In Kericho County, Sigowet/Sei Constituency, there is a proposal to get back the phased our Kiptere Ward. Kericho County has asked for additional seven wards. We are asking the IEBC to retain Kiptere Ward in Sigowet Constituency and also to consider only Kiptere Ward for Kericho County.

In Belgut Constituency, there was a proposal for an additional ward. There is a request about the duplicate registration for some polling stations which was arising due to some of the alignments. We did not recommend for additional wards which are not justified by population figures, but we ask the IEBC to ensure that there are no overlaps between the constituencies when re-aligning the boundaries. In Buret Constituency, there is a proposal to change the name and also move Chemoiben to Loronye Sublocation to Kaptaget Ward. We are recommending that the IEBC should adopt this change name and also transfer these two locations from Litein Ward to Kapkatet Ward of Kericho County, based on community interest and geographical factors.

Mr. Deputy Speaker, Sir, in Kepkelion Constituency, there was a proposal to transfer Kariet Ward to Kipkelion West. We did not carry that. There was a request to create a new ward called Kapsagao Ward in Kipkelion West. We request the IEBC to implement this. There was a request to rename some wards and we are asking the IEBC to rename Londiani Ward of Kericho County as Soget Ward. In Bomet/Sotik Constituency, the issue was re-organization of wards and request for an extra ward. We are recommending the IEBC to move Chepkeigei Sub-location to

Danai in Abossi Ward. We are also asking the IEBC to consider an additional ward for Sotik Constituency and to return Kano Singh Location to Kipsonoi Ward.

In Konoin Constituency, there is a boundary dispute between Bomet and Kericho County, specifically the boundary between Konoin and Belgut Constituencies, which need re-alignment. We recommend to the IEBC to retain the boundary between Bomet and Kericho counties as per the Kenya Gazette Supplement No.53 of 1992, the District and Provinces Act and Kenya Gazette No.54 of 1996. This will address the issue of polling stations overlap. Also, the IEBC should rename Ebomos Ward as Cheptarar Ward. In Chepalungu Constituency, there is a proposal to create a new ward called Sigor. There is also a proposal as to how the wards should be re-aligned. We recommend that the IEBC should consider an additional ward for Sigor North to cater for the municipality.

In Vihiga County, Emuhaya, there was an issue that administrative headquarters in Emuhaya have been moved to a new constituency thereby giving Luanda two administrative headquarters. We recommend to the IEBC to re-align the constituency by taking Wemilabi Ward to Emuhaya Constituency and to move Bunyore ward to Luanda, so that we have South Bunyore Luanda Township Ward and move Central Bunyore Ward as we have enumerated in the report. In Lurambi, there is a request to move Butso North Location from the new constituency of Navakholo to Lurambi. We request the IEBC to effect this proposal. In Ikolomani, there is a request to move Idakho to Idakho East. We ask the IEBC to realign the wards as proposed.

In Malaba, there was a request to split the constituency. There was also a request to re-align the constituencies and wards. We have no mandate on the constituency issue, but we ask the IEBC to effect the re-alignment as proposed. In Bungoma County, Webuye, the township of Webuye Ward has been split into two and taken to two constituencies. We recommend to the IEBC to re-align the wards, so that they can follow the administrative boundaries. In Sirisia, there was a request to increase the wards from three to four in Sirisia Constituency and we recommend to the IEBC to grant this request. In Mount Elgon Constituency, there was a complaint that the community is under-represented. We also request the IEBC to consider an additional ward.

In Busia County, Budalangi, there are special challenges of geographical features, Yala Swamps and Lake Victoria Islands. There are difficulties in means of communication and they should be considered for two additional wards. We request that the IEBC effects this proposal. In Alego Usonga Constituency, Karabu Ward, there was a request that the ward be transferred back to the township and also for re-alignment of wards. We are recommending that the IEBC re-aligns the wards in the constituency. In Rarieda Constituency, there was a request that five wards assigned to Rarieda be reconstituted to conform with the name and boundaries with the five wards that existed prior to the 2007 elections. We are recommending to the IEBC to re-align the wards. We have outlined the way they should be so that they reflect what the situation was before the 2007 elections.

In Gem, three villages had been hived off from Gem to Butere Constituency irregularly. We recommend that the IEBC reviews the issue of the three villages which are between the Gem and Butere constituencies and make a decision.

In Kisumu County, Kisumu Rural, due to community interest, the issue was to move the upper part of Kanyakwar Sub-location from the railway line to Kisumu Central ward. There is a request for re-alignment and we are asking the IEBC to re-align the boundaries as proposed in this request. In Muhoroni Constituency, there was a request for re-alignment and renaming of wards. We ask the IEBC to consider re-alignment of wards as proposed. In Mbita, the change of

name has a historical consideration. There was a request to move Nyatoto and Nyakiendi of Ruma Kazingira in Suba South to Lambwe in Suba North. We ask the IEBC to consider moving Ruma of Nyaboto to Lambwe. It should also consider giving one ward in Lambwe to cater for Ruma and re-align the wards in Suba South to maintain four wards. In view of the controversies surrounding this request, we ask the IEBC to consider reviewing the boundaries between Suba North and Suba South and also to consult the community on the name of Suba North Constituency. We also ask the IEBC to grant one ward to take care of this.

In Homa Bay Town, there was a request for re-alignment of wards to allow access to the lake for all the wards. We recommend that the IEBC re-aligns the wards boundaries to allow access to the lake as proposed. In Rangwe, there was a request for the re-alignment of wards. As contained in the report, we ask that this be granted. In Kuria West, there was a request for the re-alignment of wards and a request for an extra ward. In Uriri, there was a merger of two wards which may cause conflict. We ask that they be split and they be given one ward. In Awendo Constituency, there was a request for an additional ward and we ask that the same be granted. In Nyatike, Migingo has been left out. We ask that it be included in Nyatike Constituency. In Rongo, there is under representation and we ask that this be carried.

In view of the above, the Committee recommends an extra 60 wards on account of constitutional criteria. They should be created and distributed as we have enumerated in the list which we have mentioned all over. In concluding the delimitation of boundaries for the constituencies and wards, the IEBC must note that for the purpose of the Fifth Schedule and specifically Article 2(2), there are 80 new constituencies and 26 of them protected. The Committee makes the following recommendation: That the House adopts the Committee's recommendations and creates 60 wards and they be distributed as we have stated; that the House adopts the report of the Committee on the revised preliminary report on the proposed boundaries of constituencies and that this report and all the written memoranda received from the public be forwarded to the IEBC for implementation and further action.

Lastly, Mr. Deputy Speaker, Sir, I wish to remind this House that the Fifth Schedule, Sub-section 7 says that should the National Assembly fail to make resolutions within the period specified in Paragraph 5; the Commission shall proceed to publish its report in accordance with Sub-paragraph 6. I would urge this House that, notwithstanding all the divisive nature of this Report, the House should not throw the baby out with the bath water.

With those few remarks, I beg to move and ask Mr. Nyamweya to second.

(Applause)

Mr. G. Nyamweya: Mr. Deputy Speaker, Sir, this is the most important task that the National Assembly of Kenya has to do. Perhaps, we should look back to our history. What is the history of this country? It is a history for self representation to manage its own affairs and the fundamental point is that we are talking about representation. The Constitution has provided us with two levels of representation; the national level - that is the National Assembly and the Senate. Secondly, there is the representation at the county level. What is it that the people of Kenya, therefore, are asking? I am sure anybody in Kenya would want to say that, that is my president, senator, member of parliament, governor, county assembly representative or woman county representative. That is what the people are saying! What is it, therefore, we are asked to do? We are now asking how we define the areas of representation. That is what is really emotive about all these things. If you get to a point where I cannot relate to you and say: "That is my

speaker” and say” “That is speaker *huyo wenu*” that, therefore, excludes me from the affairs of the country. That is why we are here! What is our fundamental basis of being here? The Constitution itself in Article 82 says that Parliament shall enact legislation to provide for the delimitation by IEBC of electoral units for election of Members of the National Assembly and County Assembly. It is the duty of the National Assembly to provide that legislation. Has that been done? If you look at Article 88(5) - and this is in terms of the IEBC - it says: “The Commission shall exercise its powers and perform its function in accordance with this Constitution and national legislation.” One may ask what Parliament has got to do with reviewing of boundaries. It is the Constitution itself which has given the powers to the National Assembly to do so. What has it done? We now have the IEBC Act which provides in the Fifth Schedule that: “The Commission shall, in addressing the issues arising out of the first review, use as a timely reference the report of the former Boundaries Commission. Secondly, use the report of the Parliamentary Committee on the report of the former Boundaries Commission.” The IEBC has done that. It is required by law from the Constitution to submit its report to this House. So, those who are entertaining the idea that Parliament is interfering or arrogating itself powers that it does not have, are not right. Parliament is guided by the Constitution and by legislation.

What is it that we are required to do then? The Act provides that the report be submitted to the relevant Committee. That committee is the Departmental Committee on Justice and Legal Affairs. What is the Committee required to do? It is to take recommendations and memoranda from people. It would be very useful for hon. Members to have a look at the analysis of public petitions in response to IEBC. We received over 500 memoranda from across the country and from many hon. Members. What was the issues being raised in those memoranda? The issues were about representation. If you look at this because Kenya is not a uniform country--- If you go to the Coast - and I will not go through what the Chairman has already gone through - you will find that, perhaps, people who are of the same community of interest or share historical ties have been divided into separate units. Then you are saying that those people are being denied the ability to have representation of people of their own choice. Many people may not know that if you go to the North Eastern part of the country, there is – and I must say this--- All of us emanate from the family, larger family, clan, ethnic community or tribe and the country we call Kenya. But what the IEBC has done is, in some cases, dividing families; the very source of unity; the cohesion of society. You cannot divide people into different areas and ask them to be represented differently when they are members of the same family. The Committee is only saying that where people are of the same family, same clan or same interests, why, for heaven’s sake, not have them together as they, themselves, desire?

The IEBC has dealt with a lot of issues about numbers. People are not just numbers! People share! They love each other; they talk to each other and everything that happens in the rural society, there is some cohesion because you are still dependent on your family or clan and so on. In cities, we have moved to where we form associations around our estates where we live. So, people want to have a sense of belonging. What is the National Assembly’s duty in all that exercise? It is to bring people together to live harmoniously. If, therefore, you go to the North Eastern part of Kenya, the IEBC has even forgotten the size. They may think - after looking at a map – that moving one person to another, it looks very easy on the map. But when you go to the ground, you will be talking about 5,000 people from one place, the next 5,000 people are 200 kilometres away. You are asking them to belong to the same ward. Surely it cannot work! So, if you see that, perhaps, in that particular region there are more wards being recommended, it is not because anybody was favouring somebody. It is because of the reality of the communication and

geographic features. If you go to the huge constituencies that we have like North Horr and so on, you cannot say that we cannot give you an additional constituency because the numbers do not justify it. But, surely, you can tell them that they can have representation at the county assembly. They can have representation in the manner that they are comfortable with.

Mr. Deputy Speaker, Sir, if you go to northern Kenya - the Pokot and Turkana areas - people may think that a ward is here. But the next point is, maybe, 300 kilometers away. Are you going to say that you will deny them representation simply because their numbers do not warrant it? If you go to Trans Nzoia, a cosmopolitan area, there are people there who are asking themselves: "We have been in this country since Independence, but we have never had any representation because the numbers are placed the way they are." Is it not our duty to say that they are also entitled to representation?

Therefore, even if this constituency will have a slightly higher number of wards, the other one will have less. So, both sides have representations. If you talk about the vast Rift Valley, where we even had clashes and insecurity because of community of interests, how can we have a situation where all the communities would be represented both at the national and at the county level? This is why we are making these recommendations. If you cannot have an additional constituency, at least, let us have representation at the County Assembly because it all boils down to representation and resources.

The Americans went to war and said; "No taxation without representation." We do not want to tell any Kenyan that they will be taxed and that their resources will be used without having a say on how the resources will be distributed. When we look at the entirety and totality of what we are recommending, we felt that perhaps there should be more wards so that there are other areas where we can solve local problems by having wards and representation. I will, very strongly, urge that you look at what we had done with the devolved units - the 47 counties. You will realise how emotive those were because there are communities which still feel marginalized by the purpose of the counties as they are. Let us not further marginalize them by denying them representation within the counties which they must operate in.

When you talk about Kuria, yes, they have an additional constituency. However, we know the way they live. Let us not cause them further problems. If you already feel that you are suffering, why should we add to your misery? That is what we are trying to do. I want to invite hon. Members to look at the whole exercise and ask themselves; if I were in the shoes of the other Member, what would I be suffering from? How can I cure his problem? We should not look at it theoretically and say that if he has 10,000, then you should also have 10,000. That is not how the society is. I urge those who had doubts and are thinking that this is a futile exercise, that if they do not take this route; if the National Assembly does not address itself to the causes of disquiet and the tensions in the country as we go into elections, we will have greater difficulties if the Report of the Independent Electoral Boundaries Commission (IEBC) will remain as it is without the improvements that the Committee is recommending.

Finally, I want to urge that as we move to debate as hon. Members, we do great service to our country. This is the last task we will do as the Tenth Parliament which can have meaning to the rest of the country.

I beg to second.

(Question proposed)

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I would like to state, first of all and very quickly--- I have three points because I know other people will be raising that contrary to Standing Order No.47(3) if you look at this Motion clearly, you will find that it is calling for the commitment of public funds for which no provision has been made in the Annual Estimates as adopted by the National Assembly.

Throughout, we have known, and it has been proposed by the IEBC that the wards they were going to work with were 1,450. Indeed, the IEBC has been preparing and has prepared the National Estimates in accordance with those wards that they proposed. My simple point of order is; on what basis then can we debate a Motion that is seeking to commit an extra 61 wards which will mean extra public funds which have not been provided for in the National Estimates?

Secondly, if you look at The County Governments Bill that we debated here on Friday and passed, on the Third Reading, there was an attempt to amend the number of wards from 1,450 up by 60 extra wards. That amendment was defeated on the Floor of this House. This is, therefore, taking the time of this House to discuss a matter that is actioning the House in vain. It is not possible for this House to implement an increment on the wards when, in fact, the law that we passed at the Third Reading clearly states that it is only 1,450 wards that will be available.

Finally, before I sit down, I wanted to state a quick constitutional issue. If you look at the provisions of Article of 248, and I would like to quickly turn there, you will find that it lists down the constitutional commissions that are independent and cannot work under direction of any individual or authority. The IEBC is also part of those Commissions. Article 249(2) (b) says that the commissions and the holders of independent offices are independent and not subject to direction or control of any person or authority. If you look at the recommendation that the Chairman has put forward, which is the last recommendation he made---- Very quickly on page 45 where it is written "End", if you turn with me there, you will see that at the very end, the recommendation that the Chairman has read says that this Report and all the written memoranda received from the public be forwarded to the IEBC for implementation and further action.

If this House carries a resolution that says that this recommendation that the Chairman has read will go, therefore, for implementation, this flies across the face of this constitutional provision that says that not any authority, including the authority of Parliament, and not any individual including any Member of Parliament or even the President who is the highest authority or the Prime Minister in the shared Executive, can direct an independent Commission.

So, we cannot take the time of this House debating an issue that is in vain. We cannot adopt this Report the way it is. You cannot direct the Independent Electoral and Boundaries Commission (IEBC) to carry out its mandate. The most that could have happened is for us to just note, but we cannot direct that these recommendations, which are still very contentious, should be implemented by IEBC and take further action. How on earth can that happen?

Mr. Deputy Speaker, Sir, we must accept that even if we are in a situation where the Constitution does not favour us, it does not change. In this case, the Constitution is favouring the implementation of the mandate of IEBC. I remember the Chairman trying to quote the law of the IEBC, but we have a principle in law which says that any law that is inconsistent with the Constitution is considered repugnant. Therefore, the Chairman of IEBC is not under any direction.

Mr. Deputy Speaker, Sir, I urge that you give a ruling that this Report should not be debated because we are taking the time of this House in vain. I move.

Mr. Abdikadir: On a point of order, Mr. Deputy Speaker, Sir. My old classmate has had a spirited effort in the last few days to stop the debate of this Report on the Floor of the House but, unfortunately, the law is not on his side.

Mr. Deputy Speaker, Sir, indeed, you ruled on this matter just two days ago. My learned friend cannot appeal that ruling of the Chair on exactly this matter, as raised by hon. Midiwo. It is just two days old. So, on the issue of the constitutionality, that is already rested. The Chair's ruling was very clear. The Constitution says that the Commission will do its work on the basis of the Constitution and national legislation. The national legislation in this case is very well known. It was passed by this Parliament, including the hon. Member. It is called the Independent Electoral and Boundaries Commission Act, 2011. The Fifth Schedule of that Act, Article 3, reads:-

“Upon expiry of the period provided in sub-paragraph 2, the Commission shall, within 14 days, review the proposed delimitation of boundaries, considering the views received and submit the revised Parliamentary Report to the Parliamentary Committee.”

Mr. Deputy Speaker, Sir, that is a national legislation which says: “Consider what the public has told you and deliver the report to the Parliamentary Committee.” Then it says:-

“The Parliamentary Committee shall, within 14 days of receipt of the revised report under Paragraph 3, table its revised preliminary report to the National Assembly, together with its recommendation.”

Mr. Deputy Speaker, Sir, that is what this Report is. It is the recommendations of the Parliamentary Committee. Then at 5 it reads:-

“The National Assembly shall, within seven days of the tabling of the revised preliminary report, consider the revised report and forward its resolutions to the Commission.”

Mr. Deputy Speaker, Sir, this is the law. Mr. Mungatana might be aggrieved by the report, but he cannot twist the law.

Mr. Deputy Speaker, Sir, as for the budget of IEBC, this Parliamentary Committee called the IEBC to Mombasa when it was considering these issues, and discussed the issue of addition of wards. The IEBC is agreeable. I have not seen any figures tabled by hon. Mungatana to support his view that, that is what the IEBC said. In any case, the burden of this will come in the Supplementary Estimates in next year's Budget. We are not spending money right now.

Mr. Deputy Speaker: That is enough. What is your point of order, hon. Midiwo?

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. Hon. Abdikadir has spoken to the law, referring to the issue raised by hon. Mungatana. Obviously, the law allows the Committee to table the Report with its recommendations, but those recommendations must not contravene the Constitution. The argument here is that those recommendations cannot direct the Commission on its duties. Nothing in law stops the Committee from saying “we agree or we disagree”. That is also a recommendation, and that is as far as this Committee should go.

The Acting Chair of the Committee moved debate on the Report. There is one issue which the Committee would wish that we had not noticed. This is a Committee of lawyers and they need to give us the benefit of their knowledge of law.

(Mr. Olago stood up in his place)

Mr. Midiwo: Relax! Relax! We know that you are a beneficiary, but relax.

Mr. Deputy Speaker, Sir, Article 89(6) of the Constitution says:-

“89(6): The number of inhabitants of a constituency or ward may be greater than or lesser than the population quota by a margin of not more than 40 per cent for cities and sparsely populated areas and 30 per cent for the other areas.”

Mr. Deputy Speaker, Sir, the same Article 89, in paragraph 12, says as follows:-

“89(12): For the purposes of this Article, ‘population quota’ means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards as applicable, into which Kenya is divided under this Article.”

Mr. Deputy Speaker, Sir, the point is that before this Committee attempts to create any wards for the country or for themselves or otherwise, they must tell the country the formulae used. If you tinker with the original formulae in the Constitution, it will mean that the whole population for every ward and constituency will change and everything must be revised upwards or downwards. This is important because it is an issue of population; it is a benchmark by which we share resources in this country.

Thank you.

The Minister for Nairobi Metropolitan Development (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. It is very clear that what the Committee has done is provided for in the Constitution and in the law. I will, first of all, deal with its recommendations.

The Act setting up the IEBC is very clear. It says that after the Commission completes its work, the Committee will look at its Report and analyse it so as to enrich it. What the Committee has done is just to enrich the IEBC Report. There is nothing wrong with the Report’s enrichment by the Committee.

Mr. Deputy Speaker, Sir, if you consult, it does not mean that you lose your independence. The Committee consulted various stakeholders. They received views, which is exactly what they were supposed to do. So, those who are saying that once an independent Commission consults it loses independence are wrong, and we must tell them so. The IEBC must consult. That is what the Constitution requires it to do. They must receive views from stakeholders; that is exactly what they have done. So, on that score, the Report is properly before this House.

Secondly, it would be ridiculous if the Committee observed some errors in the Report and did not recommend that those errors be rectified. There were misspellings of names of wards. I will give you an example. There were even omissions.

There were misspellings and omissions of names of wards. In this report, if you look at Ndia they are recommending one ward. It is not a new ward. In the initial report, it was simply forgotten. Mwirua Ward in my constituency has disappeared. When you look at the map, it is there. But on the recommendations, it is not there. So, what this Committee has done is basically to point out that this is an error. So, it is not a new ward, at least, for Ndia. It is simply an error that the Committee has recommended. The Committee has---

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

The Minister for Nairobi Metropolitan Development (Mr. Githae): I am actually on a point of order! Let me finish!

What we are doing is that we are enriching the report of the Electoral and Boundaries Commission from the views of hon. Members which will come out of the debate. We are improving it. What is wrong with improvement? What is wrong with enriching it? We are fine-tuning their report.

Lastly, on the budget, I wish to confirm that I have not yet finalized the budget estimates. They are being prepared. So, if in the wisdom of this House, the House recommends more than 1,450 wards, I will provide a budget for it. So, that should not be an issue.

Thank you.

Mr. C. Kilonzo: On a point order, Mr. Deputy Speaker, Sir. If you listened very carefully to all who have stood on points of order, what they are doing is basically debating the Motion. So, could I ask the Chair that we just go straight to the debate? Whatever arguments have been availed by Mr. Mungatana and Mr. Midiwo are, basically, debate. So, let us just move on to the debate.

Mr. Deputy Speaker: Order, hon. Members. On the admissibility and the constitutionality of the report being debated based on the independence of the Independent Electoral and Boundaries Commission (IEBC), the Chair did give a communication on that. The only additional thing that Mr. Mungatana had raised and which I will want you to address yourselves to for a very short period of time, not more than 10 minutes, is the issue of the law that was passed in here that has not come into force yet and the Bill that was passed in here putting a capping. I would want to hear the Minister for Justice and Constitutional Affairs, at some stage, also to give certain inputs on that.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, first of all, it should be noted that the deadline is today. For those who are advancing that what we are doing here is unconstitutional, they must be looked at carefully, to make sure that they are not buying time so that we continue with the debate in the afternoon and by the end of the day, if we do not conclude on anything, then the IEBC will go with its work without the recommendation of this House. It will be mischievous and it is not good for the House.

My second point is that we should not only read the law the way we want to interpret it. At the end of the day, if you look at the number of wards this country has, it is applying the same formula, 89/6 the ceiling is 30 per cent up and down. So, if we decide to get the ceiling downwards we can even have 3,000 wards. If we want to apply even the constituencies, it is only that the constituencies are already sealed by the Constitution at 290. But if you want to create according to the 134 given for every constituency, we can create even more. So that argument cannot be valid. We cannot interfere with the constituency because the law is already clear.

On the issue of whether we are in line with the Constitution, Article 89 (6) is very clear. I will read it, once again. It states as follows:-

“The number of inhabitants of a constituency or ward may be greater than or less than the population quota by a margin of not less than or more than-

- (a) forty per cent for cities and sparsely populated areas and
- (b) thirty per cent for the other areas.”

I want to inform the House that if you look at the report of the IEBC and look, for example, at Igwamiti Ward in Laikipia West with 69,000 voters, already the IEBC is contravening the law. If you look at the formula given of 30 per cent for the others, even if you take on the sparsely populated quota of 40 plus or minus, that ward is unconstitutional. Therefore, let us look at this side both ways and also we must not give out the role of Parliament. Parliament is supposed to legislate and nobody can take that role away from it.

Thank you.

Mr. Deputy Speaker: Hon. Members, we want to proceed with the business!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I want to react to the question you have posed to me as to the

status of the Bill that the House passed last week. The position is that the Bill has reached His Excellency the President; the President has sent a memorandum recommending certain things and that memorandum will be coming to the House any time because it is already here. Therefore, that is not a law yet until it is assented to.

Let me just make the point because it is straight forward. The fact of the matter is that until you reject the memorandum or approve it, the President cannot assent to the Bill and, therefore, it remains un-enacted until such a time as it is assented to. That is the correct position but allow me to comment on something else.

Mr. Deputy Speaker, Sir, this House has a historic moment right now to debate this Report. Any attempt to put some obstructions is very unfortunate. Even the words that are in the Report should not be taken as written in the Bible. The Commission will consider what resolution the House sends to it. Therefore, my recommendation would be, please, debate this Report.

Mr. Deputy Speaker: Hon. Members, the Chair did give a communication on these matters on the admissibility of this Report or the constitutionality of the admissibility of this Report. The Chair said that the Report remains recommendations like any other recommendation that is being given by any other Kenyan. Indeed, I have already proposed the question; it is only fair that we proceed on to the full extent of the debate. The House has the option of amending. It has the option of rejecting. It has the option of approving with amendment and also the option of approving without amendments. These are all within the powers and mandates of the House itself.

I have given a direction that all the amendments will be moved in the afternoon. The amendments are going to be moved in a given rapid formula so that we are able to dispose of this business before the rise of the House.

As of now, let us go straight to the debate and let hon. Members debate the Motion.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. I just want to call for your indulgence on giving a direction on one specific matter that you raised. That is the issue of a law we passed in this House. I think the Minister for Justice, National Cohesion and Constitutional Affairs, although he has said that that is not law, if you go to Standing Order No.125 (6), it says:-

“When the President submits a memorandum on a Bill to the Speaker pursuant to Section 46 of the Constitution the House shall deliberate on such memorandum within 21 days”.

It says, “On such memorandum”. That memorandum from the President is not within the precincts of this House and according to the perception of this House that is a law passed by this House. When and if the memorandum of the President does include an issue that has to do with a clause where we are supposed to add extra words or not, then we can say that law has not been passed.

Mr. Deputy Speaker, Sir, according to the Standing Orders, we cannot reopen a law that has been passed in this House except on the margin of the proposal by the President and the memorandum that has been submitted to this House by the President and not touching any other clause.

It is not in the knowledge of this House that the President has said anything to do with the Clause that was passed as regards the number of wards that we have passed within that law.

Mr. Deputy Speaker, Sir, I invited---

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir! On this matter, I think this House needs to be sober.

Mr. Deputy Speaker, Sir, I am seriously disappointed by the sentiments expressed by the Minister for Justice, National Cohesion and Constitutional Affairs. First, this House passed a Bill. That Bill has not been officially returned to Parliament. Therefore, for us, we expect the President to assent to it. So, he comes and tells us to ignore a Bill that we passed and wait for a memorandum, I do not think he is serious. He knows very well that even that memorandum he is referring to, which, probably, some of us have seen informally, does not affect the clause dealing with the number of wards. So, how then do we, on a Motion, change what we passed in the form of a Bill? Why should we legislate in vain? Why should we debate a Motion touching on something we legislated a few days ago on the number of wards?

Mr. Deputy Speaker, Sir, this is very important and now I understand why the Minister for Justice, National Cohesion and Constitutional Affairs who is supposed to be sitting in this House together with the Attorney General are not here, and then goes somewhere to surround the President to convince him to undo what this Parliament has done. This is the kind of impunity that should stop. In fact, even the Acting Minister for Finance whom I had a lot of respect for, just the other day--- he has started dictating that he will give money. Who has given him the powers to give money? It is this Parliament that allocates money in this country. He has no capacity to give money.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. You have just been informed that there seems to be an attempt from some Members of this House to stop debate and that is what we are seeing now.

Mr. Deputy Speaker, Sir, I am disappointed that hon. Dr. Nuh and the hon. Member for Gwassi are attempting----

(Mr. Mbadi stood up in his place)

Hon. Mbadi, that makes him happy. They are attempting to override what the hon. Minister for Justice, National Cohesion and Constitutional Affairs, who is a lawyer of renown repute in this country has said. Just to put the record straight and to get this ignorance out of the way, before a Bill is assented to by the President, it is not a law. That needs to be understood.

(Applause)

The Assistant Minister for East African Community (Mr. Munya): On a point of order, Mr. Deputy Speaker, Sir. First of all, the Minister for Justice, National Cohesion and Constitutional Affairs does not make rules for this House. So, the issue of overriding statement does not arise. It is only the Speaker who can give directives in this House. Every Member is equal here. So, whatever he has given is an opinion that is not special and bigger than any other opinion.

Mr. Deputy Speaker, Sir, this House passed a law that capped the number of wards. This House has not reversed that law. So, we cannot have a report of the same House or Committee of the same House proposing an increase before the amendment of that law. So, this is a very important issue that requires a ruling from you. It is an illegal exercise by a Committee of this House because the Committee is attempting to amend a law passed by this House through a backdoor.

Mr. M.M. Ali: On a point of order, Mr. Deputy Speaker, Sir. When we are debating this subject we need to be sober as hon. Members.

It was only yesterday we debated this matter and, in fact, you were on the Chair. You approved that this Motion be tabled this morning with the corrigenda and we give our opinions. This morning, we are prepared to do that.

Mr. Deputy Speaker, Sir, while I agree with the notion raised by hon. Mungatana that this House has passed the ceiling of the wards allowable only last week. But the Committee was within its mandate to table this Report, and even yesterday, we were aware that we had that capping of the wards. People are debating this report. Give us the opportunity also to debate the recommendations by the IEBC.

Mr. Deputy Speaker, Sir, we may not agree with the Report of the Committee, but unless we debate---

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

Mr. Deputy Speaker: Do you wish to be informed by hon. Isaac Ruto?

Mr. M.M. Ali: No, I do not wish to be informed.

(Laughter)

Mr. Deputy Speaker, Sir, I have seen various hon. Members attempting to open debate which, in my opinion, amounts to anticipating a Motion. The memorandum from His Excellency the President is not officially before this House. Any attempt to refer to that memorandum will amount to anticipating debate. There are many hon. Members who support this Report just like there are many who are against it. Please, give us an opportunity to debate this Motion so that we rest this matter. We should not waste time.

Mr. Keter: Mr. Deputy Speaker, Sir, while I agree with hon. Mutula Kilonzo for the first time that the Bill which we passed has not been assented to by the President and so it is not yet law, we are going to make a decision today to increase the number of wards. The IEBC has a timeline of 14 days. Supposing the Bill is assented to by the President within the 14 days--- We need to make a decision because if the President assents to the Bill, that will override the decision we are going to make.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, we have basically gone back to where we started. There are hon. Members who do not want the debate because they know this Report has the majority support. I do not want to mention an hon. Member's name. If you look at page eight – there is no harm mentioning the name – it is hon. Jakoyo Midiwo. He does not want this Report because he knows that the recommendations of the Committee are not in his favour and he also knows that this Report is going to pass.

Mr. Deputy Speaker, Sir, can we suggest that we go straight to debate? I do not want to talk about Mr. Mungatana. Could we, please, go to debate?

(Loud consultations)

Mr. Deputy Speaker: What is your point of order, Mr. Jakoyo Midiwo?

Mr. Midiwo: Mr. Deputy Speaker, Sir, I think hon. Charles Kilonzo needs to withdraw the aspersion. The recommendation on my constituency will hold water with or without this Report because it is not the mandate of this Committee to go across boundary lines. I know that. My thing had already been gazetted in 1986. So, whether you got the request from the people or from me is irrelevant. The Commission will act one way or another. It is important that you do not cast unnecessary aspersions because we know what you guys are trying to do.

Mr. Duale: Mr. Deputy Speaker, Sir, I think we need to call a spade a spade. As a Member of Parliament for Dujis, I have three roles in this House: Representation, legislation and oversight. Whether or not this Report will be used by the IEBC, my role to oversight, represent my people and to legislate must be respected. This Report must be debated.

The IEBC law that hon. Members passed gives the Committee and Parliament the opportunity to be part of the roadmap in the delimitation of boundaries. So, nobody should deny us that role.

(Applause)

Mr. Deputy Speaker: Order, hon. Members. The same Motion is listed on the Order Paper for the afternoon. The Chair, from the outset, will give a communication on the same. It is our prayer that this Motion will be concluded to the satisfaction of the House.

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, we have now come to the end of today's sitting. The House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 12.30 p.m.