

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 4th October, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Joint Departmental Committee on Energy, Communication and Information and the House Broadcasting Committee on the Interference of Avionic Communications Frequencies by Local Radio Stations.

(By Eng. Rege)

Report of the Departmental Committee on Labour and Social Welfare on the Internally Displaced Persons Bill, 2012.

(By Mrs. Noor)

NOTICES OF MOTIONS

INTERFERENCE OF AVIONIC COMMUNICATIONS
FREQUENCIES BY LOCAL RADIO STATIONS

Eng. Rege: Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Joint Departmental Committee on Energy, Communication and Information and the House Broadcasting Committee on the Interference of Avionic Communication Frequencies by Local Radio Stations laid on the Floor of this House today, Thursday, 4th October, 2012.

NON-PAYMENT OF SALARIES AND TERMINAL DUES
BY NYAYO TEA ZONES DEVELOPMENT CORPORATION

Mrs. Noor: Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on the Ordinary Question No.919 by hon. F.T. Nyammo, the hon. Member for Tetu Constituency, on non-payment of salaries,

terminal dues and other benefits to the employees of Nyayo Tea Zones Development Corporation, laid on the Table of the House on Thursday, 28th June, 2012.

LICENSING OF MIGORI MINING COMPANY LTD. TO
EXPLORE AND PROSPECT GOLD IN NYATIKE

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

THAT, this House adopts the Report of the Departmental Committee on Lands and Natural Resources on the Question by Private Notice by hon. E.O. Anyanga, MP, on the Licensing of Migori Mining Company Ltd. to Explore and Prospect Gold in Nyatike, Migori County, laid on the Table of the House on Wednesday, 22nd of August, 2012.

Mr. Speaker: Very well! There is a point of order. What is it, hon. Member for Kisumu Town East?

Mr. Shakeel: Mr. Speaker, Sir, I beg to inform you that with reference to the Political Parties Act, there are strangers in this House.

Mr. Speaker: Order! Order, hon. Member for Kisumu Town East! You have risen on a point of order. If you want to give me information, I am afraid, I do not require it. But if you want to prosecute a point of order on anything that is out of order in the House, you may proceed. But as for the information, no.

Mr. Shakeel: Thank you, Mr. Speaker, Sir. Is it in order to have strangers in the House?
(Laughter)

Mr. Speaker: Order! What strangers are you referring to? Who are the strangers in so far as the---

Mr. Shakeel: Mr. Speaker, Sir, I can see Dr. Nuh and Mrs. Sophia Abdi Noor. There are a number of other hon. Members who have openly defected from the party on which they were elected.

Mr. Speaker: Very well, hon. Member for Kisumu Town West; you may now resume your seat.

Yes, you are raising a very formidable point of order. But formidable as it may be, it is not a matter that you can speak to in a manner that is cavalier. You must be prepared to provide evidence to articulate an argument that can lead me to make a finding, or even give a considered ruling. But the way you have done it is such that you have given me no substance.

In those circumstances I am afraid, I will rule that, that is not a valid point of order. This is because you have given me, as the Speaker, nothing to show that there has been defection, for example, which you are alleging. So, I cannot just go by merely what you say because this House is an institution of records. When all these hon. Members were elected and sworn in, a majority of them on 15th of January, 2008, we had communication from the Electoral Commission of Kenya (ECK) which told us who had been elected as hon. Members of Parliament. We had a Gazette Notice which publicized to the Kenyan public who had been elected for what seat.

As far as I know, I have no other records or documents that changed that position, as things stand today. So, I will not make any such finding. I am afraid that, that is my direction as at this point.

Next Order!

QUESTIONS BY PRIVATE NOTICE

REPATRIATION OF MS. ROSEMARY W. NDUATI FROM SAUDI ARABIA

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

(a) Is the Minister aware that Ms. Rosemary Wariera Nduati is missing and had earlier complained of detention and mistreatment by her employer of phone number +966551782526 in Jeddah, Saudi Arabia?

(b) What urgent measures is the Minister taking to ensure that she is traced, released from her exploitative employer's custody and repatriated?

(c) What is the Government doing to ensure that Kenyans living and working in the Middle East are safe from such dehumanizing occurrences?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, this matter has been presented to the Ministry of Foreign Affairs for quite a while by hon. Kabogo. As at yesterday evening, the Ministry had received information from hon. Kabogo giving us details of the identification and the contact details of the employer of Ms. Rosemary Wariera Nduati as well as the contact details of Rosemary's son. We also received a telephone number of Ms. Rosemary Wariera Nduati's sister who lives in Thika, and a recorded conversation which took place between hon. Kabogo and Ms. Rosemary Wariera Nduati. We then passed these details to the Kenyan Embassy in Riyadh so that our ambassador could get in touch with the employer of Ms. Rosemary Wariera Nduati. When the ambassador contacted the so-called employer, the individual on the other side denied having any Kenyan in their household and said that he, in fact, was a resident of a town called Jizan and not Jeddah, as it was indicated in the visa application. The ambassador subsequently called the employer's son, but the number also was not answered. The ambassador then got in touch with the agent, as hon. Kabogo had searched and found who the agent was. When we talked to the agent through our ambassador, the agent confirmed the details which had been given; which means that hon. Kabogo was right and had actually gotten in touch with the people who supposedly had hired this lady.

Mr. Speaker, Sir, after that, the ambassador called this morning and said that considering today is a weekend in Saudi Arabia, he is not able to get in touch with any other person until he is back again in the office on Monday.

Thank you, Mr. Speaker, Sir.

Mr. Kabogo: Mr. Speaker, Sir, that long story says very little; it only says that the Ministry is not able to do anything because it is a weekend. Mr. Speaker, Sir, out of the frustrations that I have gone through on this Question, I did engage a private eye and I managed to find where this Kenyan girl is held captive. I forwarded this information to none other than the Assistant Minister sitting here. I even gave him a recorded conversation between myself and the captive girl, and she says: "Rescue me! Rescue me! I have never been paid! I only eat leftovers." It is in this compact disc (CD) here.

(Mr. Kabogo waved a CD)

Hon. Members: Table it! Table it!

Mr. Kabogo: And I table it, Mr. Speaker, Sir.

(Mr. Kabogo laid the CD on the Table)

(Applause)

So, Mr. Speaker, Sir, the Ministry has all the information they require, including the person holding this lady captive. They want us to sit here and believe that, really, there is nothing they can do because it is a weekend.

Mr. Speaker, Sir, there is a racket and a conduit in that Ministry that is using Kenyan people and paying US\$1,000---

Mr. Speaker: Order! Hon. Member for Juja, it is Question Time---

Mr. Kabogo: Yes, Mr. Speaker, Sir.

Mr. Speaker: Even if you are aware there is a conduit, you must be having a way of putting that in a question such that the Assistant Minister can answer it.

Mr. Kabogo: Mr. Speaker, Sir, I am guided. You might understand that this is a very emotive matter.

Mr. Speaker: Appreciated!

Mr. Kabogo: Mr. Speaker, Sir, is the Assistant Minister in order to tell the House that there is nothing they can do now considering that I have furnished them with all the information, yet there is a cartel making money through these things in the Ministry?

Mr. Onyonka: Mr. Speaker, Sir, first of all, I would want to say that, indeed, hon. Kabogo has done his constituents proud for having done an excellent job of tracing the whereabouts of the lady and the contacts which the Ministry could use to get in touch with where she is staying.

Mr. Speaker, Sir, the ambassador who has really been working tirelessly--- He is somebody who has tried his level best for the simple reason that these cases are very many. On some occasions, it has been very difficult to trace where somebody is once they are in trouble. But I can assure this House that what the ambassador said was that he will make sure that he follows the visa application documents which he had not gotten yesterday from the Ministry of Immigration in Jeddah and he says that he will trace that with the Government officials so that he can then trace it to the person who actually issued that visa.

Secondly, Mr. Speaker, Sir, I would like to say that the statement by hon. Kabogo as to whether there are employees within the Ministry who are corruptly receiving money for sending individuals to go to Saudi Arabia after the ban--- I have also heard these rumours, but I do not have anything substantive that I would actually use to qualify that allegation.

Thank you, Mr. Speaker, Sir.

Mr. K. Kilonzo: Thank you, Mr. Speaker, Sir. This is a rather unfortunate statement, coming from the hon. Member of Juja.

Mr. Speaker, Sir, as a Member of the Departmental Committee on Defence and Foreign Affairs, issues of Kenyans going to work as domestic workers and being mistreated are many in Saudi Arabia. In fact, we, as a Committee, did meet with some of the victims who said that when these domestic workers are rescued, the ambassador himself sends them away. This information is in the domain of the Ministry of Foreign Affairs. What measures has the Ministry taken against this ambassador to ensure that we have an ambassador who is sensitive to the needs of Kenyans and who can handle Kenyans in a better way when they are in problems?

Mr. Onyonka: Mr. Speaker, Sir, the clarification I would like to make on this matter is two-front. The first clarification is that, yes, we have been having very outstanding cases where Kenyans have been abused, misused and lost their lives.

I would like to state that even when that has been the case, a huge number of Kenyans live in Saudi Arabia. The data we have is that the number is not less than 50,000 Kenyans. They earn a decent living by working. They have not been mistreated. They are actually helping because their remittances come back to build this country. Therefore, the Saudi Arabia Government has been positive in encouraging Kenyans who go and work in Jeddah and many other areas in Saudi Arabia.

Mr. Speaker, Sir, but even when that is the case, I do agree with what Mr. Kiema Kilonzo has said. We have had complaints. I would not want anybody to blame our ambassador. The reason is that the ambassador has constantly been reporting to us on what is going on. He is overwhelmed. The budget that has been allocated to him in Jeddah is not enough. It does not help him to provide all that appertains to making sure that the Kenyans who are rescued are, for example, given a place to stay, taken for medical help and psychological analysis, evaluation and treatment. These are issues that I would wish that this House would look at very seriously and make sure that in the next Budget or even in the Supplementary Estimates, it would allocate funds which would go directly to help Kenyans who are getting into trouble in the Diaspora.

Mr. Ochieng: Mr. Speaker, Sir, a couple of months ago, the Assistant Minister informed us that there were several Kenyans who were holed up at the embassy due to reasons that their travel papers were being held by various employers in Saudi Arabia, including one who hails from my place. She is called Maurine Atieno Ochieng'. Could the Assistant Minister inform us on the position of the people who were holed up there? We were told that some were even staying in containers? Could the Assistant Minister tell us whether he has been able to give them papers so that they can travel back home?

Mr. Onyonka: Mr. Speaker, Sir, the Ministry of Foreign Affairs has been making arrangements. Some Kenyans who were holed up at the embassy and were unable to travel were provided for. Most of them actually bought their own tickets and came back. Those who were unable to purchase ticket were helped by the ambassador through the Saudia Government. Any time a Kenyan goes to work in Saudia and they have problems, the Saudia Government usually foots the bill to make sure that they come home. I do not have the exact list or the numbers. However, if the Member would like me to substantiate further, I would be glad to do that.

Mr. Kiuna: Mr. Speaker, Sir, I would like to appreciate the answer that the Assistant Minister has given. I thank him for assisting my constituents who were abducted in Saudi Arabia previously. Could the Assistant Minister recall the ambassador in Saudi Arabia because it seems all is not well? Right now, I have a problem with a certain person by the name Nancy Wambui Gathii from my constituency. She was abducted and detained in Saudi Arabia. We have tried our best but we are not getting a good response from his Ministry.

Mr. Onyonka: Mr. Speaker, Sir, first of all, I would like to say that I appreciate the fact that the Member for Molo has given the Ministry for Foreign Affairs credit for having rescued a member of his constituency about four months ago. We made sure she arrived in Kenya safely. She had been held captive and the Ministry of Foreign Affairs provided all the necessary support for the individual to come home. I am very proud of that success.

On the case of our ambassador in Jeddah the problem we have had is that, sincerely speaking, he is overwhelmed. We have not given him the necessary capacity to make sure that he has enough officers to follow the matter. All that sometimes boils down to funds. The Ministry

will have a general overview to see what his performance has been and then we will make a recommendation to the President. I am sure hon. Members know the President is the appointing authority.

Mr. Konchella: Mr. Speaker, Sir, is this electronic age, it is surprising that the Assistant Minister is not able to use all means available to rescue that victim. The Member has just said that he had spoken electronically with the victim. Now, we know all electronic information is controlled in New York. Why are you not able to extend your request to the Federal Bureau of Investigations (FBI) who can pinpoint where the girl is so that she can be rescued?

Mr. Onyonka: Mr. Speaker, Sir, I was hoping that I would not be asked to clarify on that for the simple reason that the Saudi Government gave a recommendation to the ambassador to make the necessary applications legally. That is because it may involve an issue of trying to find out the whereabouts of those individuals. The Saudi law kind of protects the Saudi citizens from invasion; they would like to know whether an individual has broken the law or not. In this case, the information the ambassador gave is that he has contacted the necessary Ministries. The Ministry has agreed to follow up on this by Monday. We hope he will get a court order and then he will proceed and follow up and get down to the bottom of the story.

Mr. Kabogo: Mr. Speaker, Sir, you realize that this matter has been in the House--- I think this is the eighth day. Until yesterday, the Ministry had done absolutely nothing to find where that young Kenyan lady is held. I would want to urge the Chair to find that the Assistant Minister is not doing his job as expected in this House. I even request that the Ministry facilitates itself and I accompany Mr. Onyonka to go to Saudi Arabia and rescue that girl.

Mr. Speaker: Mr. Assistant Minister, that is a good offer by the hon. Member. I want to encourage you to take it up. However, let us hear your response.

Mr. Onyonka: Mr. Speaker, Sir, I would be glad and willing to accompany Mr. Kabogo to Saudi if it means we are going to save a single Kenyan. It will be a worthy course.

Mr. Speaker: Yes, indeed, do so.

Mr. Onyonka: Mr. Speaker, Sir, as soon as it is logistically convenient and as soon as the Speaker may rule---

Mr. Speaker: Organize the logistics and I will then want to defer this Question just for you to come and give us a feedback 14 days away from today.

I want to expect that by then you will have travelled with the Member for Juja to Saudi Arabia, and you will give us a positive report that, that girl is back in Kenya.

Mr. Onyonka: Mr. Speaker, Sir, much obliged.

(Question deferred)

Mr. Speaker: Very well. Further Assistant Minister, there has been an assertion on the Floor by the Member for Juja that there is a racket in your Ministry where, perhaps, some of your officers are picking money to take Kenyans to Saudi Arabia, and some of them actually into slavery. Investigate that matter beginning today and, at the end of those two weeks, let us have a report from you.

Mr. Onyonka: Mr. Speaker, Sir, I shall follow up on that and give the House a full report on what is going on in the Ministry.

Mr. Speaker: Very well. Next Question by the Member for Ikolomani!

STALLING OF WORKS ON SIGALAGALA- BUTERE ROAD

Dr. Khalwale: Mr. Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) Is the Minister aware that the 20km section (Mulundu-Bukura) of the Sigalagala-Butere Road is not motorable due to negligence by the contractor and that the 10km stretch (Inaya-Sabatia) has stacks of gravel piled on it by the contractor who abandoned the site three weeks ago?

(b) Could the Minister clarify whether the project has been cancelled or abandoned by the contractor and give reasons?

(c) How much money has been paid to the contractor so far and when will the construction of the road be completed?

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

(a) I am very much aware that Mulundu-Bukura section of the Sigalagala-Butere Road is not easily motorable. I am also aware that between Inaya and Sabatia, there are stacks of gravel that have not been spread out by the contractor.

(b) Mr. Speaker, Sir, I want to reassure the Member that, that road project has not been canceled nor abandoned by the contractor. Actually, Kshs328,687,955.09 has been paid to the contractor and the road is expected to be completed by December 2013.

Dr. Khalwale: Mr. Speaker, Sir, the people of Shinyalu Constituency, Ikolomani Constituency, Lurambi Constituency, Butere Constituency and parts of Ugenya Constituency who use that road have had enough drama. It started when a senior politician pretended that he was going to use earth movers to cause the people to vote for his preferred candidate in a by-election 11 months ago.

It was followed by further drama when the Government took away those machines from Sigalagala and Musoli to Sabatia. It was then followed by further drama by the machines now being finally taken away. The Assistant Minister has said that he is not aware that the project has been abandoned. Would I be in order to ask that you allow the Assistant Minister to consult Mr. Oparanya who was on the road last weekend and found that the contractor had left the site? That is because Mr. Oparanya is also suffering the way I am suffering. Could you allow the two of them to consult?

Dr. Machage: Mr. Speaker, Sir, indeed, I have already consulted Mr. Oparanya and, maybe, the little change you might see in the copy of the answer that you have got is the emergency basis. I give an order on the Floor of this House to the contractor that the gravel should be removed from that section of the road by 13th October. I further give instructions that no further payments will be made to the contractor until that is done in compliance to the contract that he signed.

Ms. Karua: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to order that the gravel be removed, having confirmed that he is aware the road is not motorable, instead of ordering for the gravel to be leveled? We already have a weather focus that the *El Niño* rains are coming. Is he in order to even cause more suffering to the people of Ikolomani, Butere and others who are using that road by ordering that the gravel be removed instead of being leveled?

Dr. Machage: Mr. Speaker, Sir, in my earlier answer, I talked about gravel stacks that are blocking that road. I want those gravel stacks to be removed by 13th of this month. If the hon. Member wishes that I do not remove them, then I will not.

Mr. Speaker: Order, Assistant Minister! You were asked by the Member for Gichugu to utilize the gravel on the road; you can spread it out and press it, so that the road becomes motorable. You are being told that, that is the reasonable thing to do instead of you misleading the House that you will remove the gravel, yet the road is not motorable.

Dr. Machage: Mr. Speaker, Sir, this contractor has worked on only 27 per cent of this road. I expect him to have worked on about 60 per cent of this road. I have an issue with this contractor. Wherever he gets the gravel to make the road motorable is not my problem. What I want is this road to be motorable and the gravel stacks removed. If he will want to use these gravel stacks to prepare the rest of the road, that is up to him. He is on contract and the rest is not my issue.

Mr. Speaker: Fair enough, Assistant Minister. You make yourself clear that way.

Mr. Njuguna: Mr. Speaker, Sir, the Assistant Minister has said that this contractor has delayed the construction of this road. Why has the Ministry, with that evidence, continued to give the same contractor additional works in the country?

Dr. Machage: Mr. Speaker, Sir, I have not said that I am going to give this contractor any additional work. To the contrary, I will not.

Dr. Khalwale: Mr. Speaker, Sir, the new Constitution is in force. Therefore, we should not allow the drama that has been going on, on the ground to also be played in this House. The theatrics by the Assistant Minister, that he is giving an order really amount to nothing. Under the new Constitution, you are supposed to put it in writing to the contractor. This Assistant Minister knows very well that this contract was for 24 months. It is now 13 months into the contract and he is saying that only 27 per cent of the work has been done. He even does not know that the contractor has left the site. Can you, Mr. Speaker, delay the conclusion of this matter, so that the Assistant Minister can accompany hon. Kizito, hon. Oparanya, hon. Keya and the Bull Fighter to site, so that we confirm to him that this joke of his has come out? In fact, he has an interest in this man, because he is the same guy he gave the contract on the road from Ekeru to Sabatia, which has been poorly done; the road from Kisumu to Kakamega was patched up, but it was poorly done too. It is that interest that he is protecting.

Dr. Machage: Mr. Speaker, Sir, whereas I may not know who the Bull Fighter is, I know the other Members that I have been requested to accompany to inspect this road. It has come to my knowledge that this contractor employs mischief in the contracts that he has been given. Take it from me that it has come to my notice. Take it from me that this contractor is going to work on this road and if he does not, I will take it away from him. As per the contract, there are some obligations that he has to meet at specific times. Take my word about this road, and let us revisit this issue after 13th. If he will not have moved his machines back to the site and started the work, then I will take an issue with him. I will be back on the Floor to reply. I will take the initiative to do exactly what the hon. Member wants. Give me time.

NON-PAYMENT OF FARMERS BY PYRETHRUM BOARD OF KENYA

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

(a) Is the Minister aware that pyrethrum farmers have not been paid for the produce they have supplied to the Pyrethrum Board of Kenya since July 2012?

(b) Why have they not been paid, yet they had an agreement with the Board that they would be paid promptly upon delivery of their produce?

(c) When will they be paid?

Mr. Speaker, Sir, I would kindly request you to ask the Assistant Minister to provide me with a written answer, so that I am able to grill him.

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

(a) I am aware that the Pyrethrum Board of Kenya (PBK) has paid Kshs8.6 million for the July and August, 2012 pyrethrum deliveries by farmers. Currently, the payment for September, 2012 is in progress and will be finalized by tomorrow.

In view of my response to the above, parts “b” and “c” do not arise.

Mr. Kiuna: Mr. Speaker, Sir, when I asked this Question I requested your office to ask the Assistant Minister to provide me with a written answer. He has just read it verbally and I have not understood exactly what he has said. However much I would have liked to question him--- I would like him to provide me with a written answer so that I can go further.

Mr. Mbiuki: Mr. Speaker, Sir, I have already provided him with a written answer. To add to that, I would like to table the payment schedule for the entire period the hon. Member has asked about.

(Mr. Mbiuki laid the document on the Table)

Mr. Kigen: Mr. Speaker, Sir, could the Assistant Minister tell the House why the pyrethrum crop has continued to perform very poorly? Why, also, has the management of the PBK been interfered with a lot by the Ministry?

Mr. Mbiuki: Mr. Speaker, Sir, the PBK has encountered a number of challenges due to failure to pay farmers in time. The Ministry’s responsibility has been to clear all the historical arrears once and for all. The Ministry had arrears of more than Kshs52 million which we have so far cleared. As at now, we are paying for all the deliveries in time, that is on the 15th of every month.

Mr. Mututho: Mr. Speaker, Sir, PBK is the property of farmers and the Government does not have a single share in it. What is the Ministry doing by appointing CEOs, financial accountants and even selling assets of the PBK?

Mr. Mbiuki: Mr. Speaker, Sir, as much as I would like to appreciate the sentiments by Mr. Mututho, I would like him to appreciate that the Government has been pumping in a lot of money to revive the pyrethrum sector. So far the Government has pumped in more than Kshs1.5 billion towards the revival of the sector. The pyrethrum sector has actually been on its deathbed, and the Ministry for Agriculture has gone out of its way to revive it. Initially, we used to have elected directors, but once the term expired the board could not even hold elections; that was why we had a caretaker board for the sub-sector to stabilize and then we are able to hold elections.

UNILATERAL FREEZING OF CDF ACCOUNTS

Dr. Nuh: Mr. Speaker, Sir, I beg to ask the Minister of State for Planning, National Development and Vision 2030 the following Question by Private Notice.

(a) Why has it taken the Minister too long to appoint a substantive Chief Executive Officer (CEO) to the Constituencies Development Fund Board, considering that the current CEO and heads of departments in the board have been in acting capacity for more than a year?

(b) Why has the Minister directed unilaterally the freeze of all CDF Constituencies accounts by 4th December, 2012?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, I want to seek the indulgence of the House to allow me to answer this Question on Tuesday of next week. I have just come from outside the country, where I had gone for Ministerial duties. I have not been adequately briefed; so, I request that I answer this Question on Tuesday.

Mr. Speaker: Member for Bura, are you prepared to indulge the Minister?

Hon. Members: No! No!

Mr. Speaker: Order! Member for Bura, the Minister says that he does not have the answer now.

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

Mr. Speaker: Order!

Dr. Nuh: Mr. Speaker, Sir, without anticipating debate, I am privy to what is written on the Order Paper and this could be a ploy by the Minister to buy time. These issues are very critical and they need to be explained before we go on recess, if at all we are to go on recess. I would have indulged him, but if only he did not have an Assistant Minister. I know he has an Assistant Minister and even though he had travelled, the Assistant Minister should have been in a position to answer the Question. Besides, the Question is very straightforward and does not require any research or going to technical officers. It is something within the brains of hon. Oparanya, who I have worked with and I know he is very sharp. If he is not buying time, then he is in a position to answer the Question.

Mr. Speaker: Minister, what would be your position?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, I just came this morning. I know what has been going on and the Member knows. By answering the Question on Tuesday, that will not be a delay. I will answer it effectively on Tuesday, next week.

Mr. Speaker: Order, hon. Members! I just want us to use our time optimally. We really cannot force the Minister to give an answer which he does not have, particularly with respect to information that he thinks is necessary for this Question. In those circumstances, I will defer the Question to Tuesday, next week at 2.30 p.m.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1753

STALLING OF WORKS ON FRESH PRODUCE MARKET AT MAJENGO

Mr. Chanzu asked the Minister for Local Government:-

- (a) what has caused the stalling of the fresh produce market under the Economic Stimulus Programme (ESP) at Majengo in Vihiga District; and,
- (b) what measures he will take to ensure that the market is completed without further delay.

The Assistant Minister for Local Government (Mr. Nguyai): Mr. Speaker, Sir, I beg to reply.

(a) I wish to state that the ESP Majengo Market Project has not stalled. The market is over 90 per cent complete and is ongoing. All the superstructure works are completed, including roofing. Currently, the contractor is doing the finishings that include painting and electrical works.

(b) As I have stated, the market is over 90 per cent complete. The contractor, M/s Stuff Contractors, the Town Clerk of the Municipal Council of Vihiga and the County Works Officer have assured my Ministry that the market project will be completed on or before 31st October, 2012.

Mr. Chanzu: Mr. Speaker, Sir, although politicians can sometimes be jacks of all trades, even to a layman, a structure like that market, without a roof, cannot be 90 per cent complete. The structure does not have a roof. In fact, I wish I had some photographs to show the Assistant Minister because the contractor left the site about six months ago. The project is hardly 60 per cent done. He is misleading the House. He has given an answer which is totally wrong. Nothing is going on there. How can it then be 90 per cent complete when it does not have a roof? He says the contractor is roofing. It is a disgrace.

Mr. Nguyai: Mr. Speaker, Sir, the ESP market design is such that the total superstructure is the foundation. There are also still structures that support the roof. The superstructure that supports the roof takes quite a big chunk of the project. Presently, the project, in terms of construction, is 90 per cent complete. We have paid only 60 per cent for the superstructure that is outstanding. We are aware that there was a problem with some materials being brought, but I would like the Member to visit the site with the County Works Officer and the Town Clerk to ascertain who is telling the truth.

Mr. Chanzu: On a point of order, Mr. Speaker, Sir. The Assistant Minister is misleading the House completely. As I said, the building does not have a roof and he is trying to justify the kind of design it is. Is he in order? We cannot paint a building which does not have a roof. He is asking me to visit the site. How can he ask me to visit my home? I was there last weekend. He is asking me to visit the site instead of him going there. He is totally out of order.

Mr. Speaker: You do not have that prerogative.

Mr. Nguyai: Mr. Speaker, Sir, I said that the Town Clerk and the County Works Officer have assured us that this project will be finished on 31st October, which is exactly three weeks from now. After those three weeks, we can see if it is the Ministry or the Member who erred.

Dr. Otichilo: Mr. Speaker, Sir, Emuhaya and Vihiga are neighbours. I can attest to what the Member for Vihiga is saying. There is no roof. However, the Assistant Minister has said that the Town Clerk and the County Works Officer have assured him that this has been done. Could he table before the House, empirical evidence to show that they have stated that this work has been done?

Mr. Nguyai: Mr. Speaker, Sir, the only empirical evidence that would be possible is if we had photographs. Unfortunately, we do not have photographs. Like the Member had offered, I would ask him to take photographs and then I would have a look at them to ascertain. The County Works Officer and the Town Clerk assured us that the project was going on well. They assured us that it will be completed on 31st October, 2012. That is not a very long time.

Mr. Chanzu: Mr. Speaker, Sir, we are leaving this Question without a proper answer. The Assistant Minister says the project will be completed on 31st October. I would like to request you to defer this Question to a day after the 31st, October, so that we can see who is telling the

truth. We cannot just leave it like that. The market is supposed to serve the people of Vihiga and it has taken a long time. This is why I brought the issue to the House.

Mr. Speaker: Order, Member for Vihiga! In this House, by our practices and traditions, we take what Ministers say on the Floor of the House as being truthful. We take the Minister's word with honour. The Minister's word is his bond. So, Mr. Assistant Minister, do you want to reiterate that the project will be completed on 31st October?

Mr. Nguyai: Mr. Speaker, Sir, I once again reiterate that this project will be completed by 31st October.

Mr. Speaker: Very well! The Member for Vihiga, that goes on record. Just monitor to see whether it is completed by 31st October. If it is not, it has gone on record and you can raise the matter in the House and the Assistant Minister is aware of what the consequences can be.

Question No.1646

NON-PAYMENT OF LIQUIDATION PROCEEDS TO MR. B.K. MACHARIA
BY COLLAPSED KENYA FINANCE BANK

Mr. Gitari asked the Minister for Finance:-

(a) whether he is aware that the late Mr. Boniface Kamau Macharia, ID Card No. 5540480 and Account Number 007280, had deposited Kshs955,000 with the Kenya Finance Bank by 1995 and lost all his money after the bank collapsed;

(b) whether he is further aware that the bank was later liquidated but the family did not get anything out of it; and,

(c) how much money was realized from the liquidation process, who the beneficiaries of the proceeds were and when the family will be paid.

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the late Boniface Kamau, ID No.5540480 and Account Number 007280, had deposited Kshs955,242.65 with Kenya Finance Bank. However, it is not true that he lost all his money after the bank collapsed.

(b) After liquidation of the bank, Mr. Boniface Kamau filed a claim for payment vide Claim Form No.29470 and was paid the protected deposit of Kshs100,000, together with the first and second evidence of Kshs90,262.45 and Kshs16.3899.90 respectively. He was, therefore, paid a total of Kshs206,662.25.

Two cheques for the third and fourth dividends of Kshs73,771.75 and Kshs50,000 totaling Kshs123,771.75 were prepared and issued but they were never collected.

(c) Part of my response has shown that the money realized from the liquidation process has been paid. The balance of the claim will be paid once the administrators of the estate of the late Boniface Kamau apply to the liquidator with confirmed grant of letters of administration as proof of their entitlement. The liquidator will facilitate payment subject to the financial position of the institution at that time.

Mr. Gitari: Thank you, Mr. Speaker, Sir. I want to thank the Minister for that answer. I will advise the family because they have told me that they have received the letters of administration to go ahead and apply to the liquidator.

Thank you.

Mr. Githae: Mr. Speaker, Sir, I was waiting for the Member of Parliament to commend me for giving such an exhaustive answer.

Hon. Members: He has commended you!

Mr. Githae: Mr. Speaker, Sir, if he has commended me, then I am satisfied.

Mr. Speaker: Very well! Hon. Gitari, ask you last question.

Mr. Gitari: Mr. Speaker, Sir, I did so and I will continue doing it.

Question No.1772

ISSUANCE OF IDENTITY CARDS
TO YOUTH IN GARISSA COUNTY

Mrs. Noor asked the Minister of State for Immigration and Registration of Persons:-

(a) why it is so difficult for youths in Garissa County to be registered and issued with National Identity Cards;

(b) whether he could provide a per constituency list of people issued with National Identity Cards in Garissa County since 2010; and,

(c) how many people have applied for the document and are yet to be issued and what measures the Minister is taking to reach the youth who have attained 18 years in the county.

The Assistant Minister, Ministry of State for Immigration and Registration of Persons (Mr. Baya): Mr. Speaker, Sir, before I answer the Question, I wish to apologise for having been unable to be in this House on Tuesday, this week. I was attending to a very unusual incident where my constituents were attacked and 15 people died. I remember I shared this information with hon. Kiema on Monday but unfortunately this House was not informed appropriately.

Mr. Speaker: You may proceed, Mr. Assistant Minister.

The Assistant Minister, Ministry of State for Immigration and Registration of Persons (Mr. Baya): Mr. Speaker, Sir, as far as this Question is concerned, I had answered all the parts except that I was to submit a list of the people registered within the given period. I beg to lay this list on the Table because I have it.

(Mr. Baya laid the document on the Table)

Mrs. Noor: Mr. Speaker, Sir, while the Assistant Minister was answering the Question, he said that 18,820 people had been issued with identity cards in Garissa County for the last three years. Could the Assistant Minister tell this House how long it takes a person to get a national identity card after he or she has applied for one?

Mr. Baya: Mr. Speaker, Sir, for most parts of northern Kenya, it takes up to 45 days because some of the registration units are mobile. It takes about 30 days for us to receive the forms and it takes us ten days to issue the identity cards.

Mr. Warugongo: Thank you very much, Mr. Speaker, Sir. We all know that elections will be held on 4th March, next year. I am sure that there are very many youth who do not have identity cards. Some of them have applied and they have been given waiting documents. In the event that their identity cards will not be ready, could the Assistant Minister consider asking those without identity cards to use their waiting cards for voting?

Mr. Baya: Mr. Speaker, Sir, it will be dangerous to use waiting cards that do not have photographs to vote. The photograph that is appended to each identity card is supposed to assist the officers to know whether or not the holder of the identity card is truly the owner. However, to make sure that nobody is left out, as a Ministry, we have worked harder than any other time before. We have dispatched very many mobile units and we will continue to do so. However, should any Member feel that there is a backlog somewhere, I request that we be informed and we will deal with that situation.

Mr. Lagat: Thank you, Mr. Speaker, Sir. While listening to the Assistant Minister, he has said that the youth in the North Eastern Province take about 45 days to get their identity cards. Could the Assistant Minister tell this House how long it takes the youth in Nandi to be issued with identity cards? This is because I have some youth who have not got identity cards since March.

Mr. Baya: Mr. Speaker, Sir, Nandi and all other areas should take a much shorter time, perhaps 25 days. It takes longer in most parts of northern Kenya because of the distances involved and due to the fact that we use mobile units in most areas.

Mrs. Noor: Mr. Speaker, Sir, the Assistant Minister has said that it takes 45 days for the youth from North Eastern Province and northern Kenya to be issued with the national identity cards. I would like to table a document and inform this House that the Assistant Minister is misleading the House. I have waiting cards which were issued in 2002. One of these cards belongs to Hajir Abdi who comes from Habasweni. She applied for an identity card in 2002 and I would like to table her waiting card. I have another person who applied for an identity card in 2005 and that person has not been issued with one up-to-date. This is denying someone his or her right of identity. This person is known as Daudi Khalif Mohammed who applied for an identity card in Ijara in 2005.

Mr. Speaker, Sir, I have another waiting card for a person who applied in 2006, in Garissa Township. His name is Mohamed Noor. Garissa Township is only four hours' drive from Nairobi. The Assistant Minister has alluded to distance as the cause of delay. So, is he in order to mislead the House and deny the youth of this country national identity cards? As I promised the House before, I have all these waiting cards. It is shameful for a Minister to tell Kenyans that it takes only 45 days for one to acquire an identification card when I have people who applied for the document as early as 2002, but who have not yet gotten it.

Mr. Speaker: Yes, Assistant Minister.

Mr. Baya: Mr. Speaker, Sir, first, I would like to deny the allegation that I am misleading the House. I know of two cases involving two persons born by the same parent. According to the information they gave to my officers, they were born on the same day yet they were not twins. Those two cases are being handled. They have been told to re-apply because they said that they did not understand what the officers were doing. So, we have given them a second chance to apply.

We have cases, which have nothing to do with northern Kenya but rather with some border towns. Somebody would fill in an application form but somebody else from across the border would come and get photographed. So, you find that the bio-data on the application form, including the fingerprints, belong to a different person from the one who is photographed. So, these are some of the cases the Ministry is dealing with.

Mr. Speaker: What is it, Member for Mutito?

Mr. K. Kilonzo: Mr. Speaker, Sir, the Assistant Minister is a public servant. Is he in order to continue denying facts by saying that he is not misleading the House, in terms of the

period of time applicants have to wait to be issued with identification cards? Hon. Sofia Abdi has over 100 waiting cards of people who applied for identification cards a long time ago. Would I be in order to ask you to defer the Question, so that he can come back with a substantive answer and explain why all these people have been waiting? He has said that there are only two cases yet there are more than 100 cases. Is he in order?

Mr. Baya: Mr. Speaker, Sir, the Question asked is how many people have been registered, and whether we could provide a list for each constituency, showing the number of people who have been issued with the document, which we have done. As to how many people have not received their identity cards since the time they applied, that is not a question. The hon. Member should have brought a different Question or have the case handled at the office.

Mr. Speaker: What is it, hon. Hussein Ali?

Mr. M.H. Ali: Mr. Speaker, Sir, you have heard the Assistant Minister continuously denying and saying that it takes only 45 days for one to get a national identity card in North Eastern Province. We brought to this House several Questions relating to this matter in the past. We have very many similar cases. As hon. Sofia Abdi said, quite a number of applicants do not receive their identity cards for even a year. It takes more than a year for them to get their identity cards. Is he in order? Would I be in order to ask you to defer this Question, so that he can come back to this House and explain how many applications are pending in the North Eastern Province?

Mr. Speaker: Order! I will not defer the Question. Assistant Minister, let me take your response.

Mr. Baya: Mr. Speaker, Sir, as I said, I have answered the Question, as asked. I have also provided the list requested. About those applications whose processing has delayed, that could be another case.

Mr. Speaker: Order! Order, hon. Members! As a matter of fact, the Assistant Minister is within his rights. Look at the Question, as asked. He has supplied the information which was sought.

Next Question, Member for Makueni.

Question No.1745

ACUTE SHORTAGE OF WATER IN KILALA MARKET

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

(a) whether she is aware that Kilala Borehole, which was sunk in 2012, has not been equipped to date; and,

(b) what measures she is taking to equip the borehole to alleviate the acute water shortage in Kilala Market and its environs.

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, first, I would like to apologise for not being in the House yesterday, to answer this Question.

Mr. Speaker, Sir, I beg to reply.

(a) I am aware that a borehole was drilled at Kilala Health Centre, Makueni County, in October/November, 2011, under the Economic Stimulus Programme. The borehole was equipped with a submersible pumping system and motorised.

(b) The water situation at Kilala Market and its environs is really acute. However, residents get water from Mikangini Borehole. The Ministry has taken the following measures:-

(i) improved the Ikakyua/Kilala Water Project, whose source is Yubani Springs; and,
(ii) equipped one of the JICA (Japan International Co-operation Agency) drilled boreholes with a windmill pumping system in the current financial year. The borehole is located about 1.5 kilometres from Kilala Market. Both projects are ongoing, and they will be completed by the third quarter of the current financial year.

Mr. Speaker, Sir, in addition, my Ministry has purchased and allocated two water bowsers to Makueni County to be used for provision of water during the dry season.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Yes, Mr. Kiilu.

Mr. Kiilu: Mr. Speaker, Sir, first of all, I would like to point out the fact that there was a typographical error in part “a” of my Question. The correct position is that the Question is about the borehole that was drilled by JICA. I would like to tell the Minister that I was on the ground as late as Monday, and that nothing was going on, in terms of equipping the borehole. I would like her to tell us when the works of equipping the borehole will start, and what the cost of the windmill is.

Mrs. Ngilu: Mr. Speaker, Sir, JICA is doing several boreholes in Makueni and Machakos. We just launched the work that they are going to do but this particular one is going to be equipped, because it is an ongoing project; it is going to be completed in the third quarter of the current financial year. Otherwise, I am aware that Kilala in Makueni County and its environs have an acute shortage of water.

Mr. James Maina Kamau: Mr. Speaker, Sir, boreholes are supposed to be a short-term way of supplying water to most Kenyans, including in Kandara in Murang’a County. What are the long-term plans for the Ministry to supply water to most Kenyans in this country?

Mrs. Ngilu: Mr. Speaker, Sir, it seems there are no long-term plans in this country to ensure that Kenyans get water. I say this because we have destroyed all water resource areas and water catchment areas. If the hon. Member remembers, when we were growing up, we used to see rivers flowing everywhere in this country, but now most of them have dried up. So, we will continue looking for water from underground. We do not know as yet whether we have water underground; the future of water in this country is very bleak.

Mr. D. Muoki: Mr. Speaker, Sir, sometime last year, the Minister promised that several boreholes in Mwala would be equipped starting April this year. To date, this work has not started. When will they be equipped?

Mrs. Ngilu: Mr. Speaker, Sir, actually, work on all the boreholes that I promised in Mwala is ongoing. We have just launched another lot of about 32 that are going to be started.

Mr. Kiilu: Mr. Speaker, Sir, you have heard the Minister confirm that there is shortage of water in Makueni County, and as a way of addressing this problem in the short-term, the Minister has provided two water bowsers to serve a population of close to one million people and institutions. Could she consider increasing the number of water bowsers, so that water can be availed to institutions, particularly schools and markets?

Mrs. Ngilu: Mr. Speaker, Sir, at the moment we do not have extra water bowsers, but where we do not have acute shortage of water within the country, I will see whether I can take a water bowser from that area and take it to Makueni.

Question No.1701

NON-REFUND OF CAMPAIGN FUNDS TO AMB. AZAD RANA BY GOK

Mr. Shakeel asked the Minister for Foreign Affairs:-

(a) whether he is aware that the Government of Kenya had intended to support and campaign for Ambassador Azad Rana for the position of Director General of United Nations Industrial Development Organization (UNIDO) and informed His Excellency the Ambassador/Permanent Representative to the Kenya Mission to the United Nations in Vienna that the Ministry of Trade had committed Kshs10,000,000 to assist in financing the campaign;

(b) whether he is also aware that a budget of Kshs20,295,000 was agreed to facilitate the campaign; and,

(c) why the candidate, who was asked to use his own funds for the campaign on the promise of a refund by the Ministry, has not been refunded and when he will be refunded Euros 53,431.18 which has been due since 2005.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, on consultations with the Questioner, and due to the fact that Mr. Rana served this country with distinction, and given the fact that this matter has lasted a period of over 20 years, we decided that we would refer this matter to the Treasury. The Ministry of Finance has agreed to evaluate the matter in its totality and give us a substantive answer as to how much money will be refunded to Mr. Rana, and we have agreed to the same.

Mr. Speaker: Mr. Shakeel, have you agreed to accommodate the Assistant Minister? Will we defer this Question until such time that the Assistant Minister is ready with the answer?

Mr. Shakeel: Yes, Mr. Speaker, Sir.

(Question deferred)

Mr. Speaker: The hon. Member for Narok South is away on Parliamentary business. He is actually attending the Pan African Parliament (PAP) sitting in South Africa. So, this Question is deferred until he returns.

Question No.1775

MEASURES TO RESOLVE ESCALATING HUMAN WILDLIFE
CONFLICT IN KAJIADO/NAROK/SAMBURU COUNTIES

(Question deferred)

Question No.1587

COMPUTERIZATION OF SERVICES AT KENYAN AIRPORTS

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

(a) whether he could inform the House why travellers in Kenya airports have to fill a declaration form before departure and upon arrival;

(b) whether he is aware that the information given in these forms is all contained in the passport and other travel documents; and,

(c) what measures he will take to ensure that all the operations are computerized.

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

(a) Travellers have to complete the declaration forms because they are provided for in Sections 16 and 17 of the Kenya Citizenship and Immigration Regulations 2012. Filling of declaration forms is also an East African Community procedure under the East African Community Protocol. At the international level, the practice is provided for in the international civil aviation organization, annex 9 on facilitation.

(b) I am aware that most of the information required in these forms is also contained in the passport or other travel documents. However, some information that is crucial to other sectors like security is not available in the passport and other travel documents. These include:-

- (i) details of duration of stay, physical address and telephone numbers;
- (ii) flight details, points of embarkation or disembarkation;
- (iii) reasons for entry into the country.

(c) There is an ongoing process to computerize all operations of the Department of Immigration. Currently, all international airports and key border posts are computerized. Plans are at an advanced stage to introduce e-visa and e-border management system, which is a major project aimed at computerizing all the points of entry and exit for efficient and effective delivery of services, as well as enhancing border management.

Mr. K. Kilonzo: Mr. Speaker, Sir, first I want to say that I met with the substantive Minister who indicated to me that the answer being read now is unsatisfactory. In fact, he cited an incident which the Assistant Minister, Mr. Baya, has just mentioned in his answer; that one of the issues he felt was very unsatisfactory from this answer from his Ministry was bullet 3 on why Kenyans are being asked to explain the reasons of entry into their own country. Therefore, the substantive Minister said that he would want to defer this answer and come with a satisfactory one.

It is shown here that the answer has been signed on his behalf. Mr. Baya, would it not be better to consult with your colleague so that you can give the House an answer which is useful to Kenyans?

*(Mr. Speaker was engaged in conversation
with an hon. Member)*

Mr. Speaker, Sir, I do not think you have been following my argument because it calls for your intervention.

Mr. Speaker: Can you come again?

Mr. K. Kilonzo: Mr. Speaker, Sir, I said earlier on that the substantive Minister, the hon. Kajwang', did intimate to me that he felt that this answer which he had been given by the Ministry was not satisfactory to be given to this House. He cited bullet 3 which Mr. Baya has just read out to us as to why Kenyans are being asked to state the reason why they are entering into their own country. The Minister felt he needed to have a better answer.

I have looked at this answer and it has been signed on his behalf. Therefore, I want the Assistant Minister to tell us whether he would want to consult with the Minister so that they can give this House a useful answer.

Mr. Speaker: Assistant Minister, that is useful. What is your response to that proposal?

Mr. Baya: Mr. Speaker, Sir, the interaction between Mr. Kiema Kilonzo and my Minister was something that perhaps took place outside the office. I was not party to that discussion.

Mr. Speaker: Order, Mr. Baya! A Minister is a Minister wherever he/she is. So, there is nothing like a discussion held outside the office not being official and that held in the office being official. Even as you sit next to Dr. Shaban, she is a Minister. She will be a Minister still if you met her at the airport and a Minister still if you met her at Mwembe Tayari.

(Laughter)

Mr. Baya: You are right, Mr. Speaker, Sir. I was building my case. As the hon. Member indicated, I am seasoned in this matter. These answers do not come from Ministers. They come from CEO's office---

Mr. Speaker: Order, Mr. Baya! I am afraid I cannot allow you any more time on the Floor. I will defer this Question for you to go and consult with the Minister, check the veracity of what the Member for Mutito has said and come with a position that is in consonance with what the Minister may have said to the hon. Member. So, I defer this Question to one week away from today. Please come with a full answer including the reaction to the claims by the Member for Mutito.

Mr. Baya: Much obliged, Mr. Speaker, Sir.

(Question deferred)

Question No. 1822

ROLLING OUT OF CASH TRANSFER PROGRAMME FOR
OLDER PERSONS IN KISII SOUTH DISTRICT

Mr. C. Onyancha asked the Minister for Gender, Children and Social Development when the Cash Transfer Programme for older persons that has been running for several years will be rolled out to cover Kisii South District in particular and all other districts in the country.

The Minister for Gender, Children and Social Development (Dr. Shaban): Mr. Speaker, Sir, I beg to reply.

The Cash Transfer Programme for older persons was started in 2007 in three districts; Busia, Nyando and Thika. It has since covered several districts including Kisii South District. In the last financial year, we were covering 36,036 households but in this financial year we are scaling upwards to 55,000 households. Kisii South District was brought on board in the financial year of 2009/10 and it has 110 beneficiaries. We disbursed the funds as Kshs2, 000 times two months; that is bi-monthly, through the Postal Corporation of Kenya.

Mr. C. Onyancha: Mr. Speaker, Sir, I wish to thank the Minister for the answer but also to say that 110 beneficiaries in a constituency which has more than 5,000 old persons is really a very small amount and I wonder whether it will be possible to increase it much more substantially than the figure she has proposed. This is because requesting for budgetary allocation is something that Parliamentarians would support heavily, considering the need to alleviate old age poverty.

Dr. Shaban: Mr. Speaker, Sir, as I had earlier said, over 20,000 households will be added this financial year and we intend to include Kisii South District which is Mr. Onyancha's constituency. We intend to add it amongst the beneficiaries who will have a scaling up being done. This will happen in 173 constituencies and Kisii South District is one of the areas in which we will do the scaling up.

I just want to assure the hon. Member that within the next few weeks more constituents from his area will be on board. Whereas this was being done in a---

(Dr. Shaban's microphone went off)

Mr. Speaker: Minister, look for the Floor again.

Dr. Shaban: Mr. Speaker, Sir, I was just talking about Kisii South District being one of the areas where we will scale upwards with over 20,000 households who will be added to the list. This financial year we have Kshs1.5 billion from which the extra Kshs500 million will be used for scaling up in all the constituencies in the country. We stopped being a pilot programme and now we will cover the whole country. Unfortunately, since the funds are not more than the Kshs1.5 billion that we have, we intend to have equality in all the districts and constituencies in the country.

Mr. Speaker: Member for Subukia, you were looking for the Floor. Have you changed your mind?

Mr. Gaichuhie: Mr. Speaker, Sir, the Minister has just answered my question because I wanted to ask her when this pilot study will end and how fair they will be to all constituencies.

Mr. Speaker: If that is done then I will pick Mrs. Odhiambo-Mabona.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I want to thank the Minister because she has said that this project will be scaled up to take into account other areas that have not been covered because I have heard a lot of questions coming from Mbita Constituency on the older persons that are not covered in various places.

However, given that you are saying that you will apply it equally and equality sometimes leads to injustice, would you consider also looking at equity so that areas that are more needy, because of incidents of poverty, like Mbita Constituency, are considered to be given more?

Dr. Shaban: Mr. Speaker, Sir, for as long as we do not have so much being given to that kitty, then it becomes difficult for me to say that we will start considering equity.

An example is Bonchari Constituency where we are just giving to 110 households and there are thousands of people who are supposed to be on board. As much as we want to consider equity in terms of poverty levels, the beneficiaries are still so few but we are hoping that by the time we get to the mark of Kshs2 billion, then we should be able to also look at those factors so that we can give a bit more to the areas which are worse off.

As it is right now, the areas which started being used as a pilot have been getting upwards even up to 750 beneficiaries. So, we will not scale upwards those areas. What we will do is to scale upwards where we have fewer people.

Dr. Kones: Mr. Speaker, Sir, my understanding of this programme is that it is meant to benefit all the elderly people in the country irrespective of where they come from. This is because it has very specific programmes for people from marginalized and disadvantaged areas. Could the Minister come out clearly and indicate that this fund will finally be shared by all the elderly people in the country?

Dr. Shaban: Mr. Speaker, Sir, that is exactly what I had said earlier on; that we are now going to cover the whole country. Despite the minimum numbers, at least, we should have in the whole country not less than 150 persons from each of the constituencies, otherwise, being known as “even districts”.

Mr. Speaker: Last question, the Member for Bonchari!

Mr. C. Onyancha: Mr. Speaker, Sir, could the Minister consider upping the allocation or requesting for an allocation of, at least, Kshs8 billion per year in view of the fact that the people of Bonchari will increase from 110 to about 140 elderly people being assisted, if we were to follow the current budget request? I am sure that all Parliamentarians will support it because there is no point of increasing from 100 to 140. We will still have the same problem. I urge that the Minister requests for a bigger budget allocation, which Parliament will support.

Dr. Shaban: Mr. Speaker, Sir, as a matter of fact, you will have over 200 beneficiaries and I do not know how the hon. Member is calculating it. However, I am hoping to work very closely with the Budget Committee and the Committee on Social Welfare in Parliament, which has really done a tremendous job. That is why we had the increment of Kshs500 million. We are hoping that in the next financial year we should have, at least, another Kshs1 billion. If we have that, then certainly we will have up to 500 beneficiaries in all the constituencies.

Question No.1828

NON-PAYMENT OF PENSION DUES TO
FORMER EMPLOYEES OF KCB

Ms. Karua asked the Minister for Finance:-

- (a) whether he is aware that 86 former employees of Kenya Commercial Bank Ltd. (KCB) have not been paid their pension dues; and,
- (b) what he is doing to expedite the settlement of their dues.

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that 86 former employees of Kenya Commercial Bank (KCB) filed complaints with the Retirement Benefits Authority (RBA) regarding the computation of their pension benefits.

(b) I confirm that the dispute between the 86 employees and trustees of KCB Staff Pension Fund has since been resolved by the RBA and all the pension benefits due to the said complainants have been paid.

Ms. Karua: Mr. Speaker, Sir, I want to thank the Minister for that answer, but point out to him that it is totally inaccurate. I have just received information through text that, indeed, the 86 were paid, but not completely because there are still disputes in the actuarial calculations and that the whole dispute was not just about the 86, but 690 people who are yet to be paid. What is the Minister doing to ensure that the actuarial calculations are agreed upon by both sides and that the remaining people are also paid? I know that I had asked about the 86, but I am told that the dispute actually involved 690 and I have a document showing that the tribunal case was for 595 people.

Mr. Githae: Mr. Speaker, Sir, I am not aware of the other members who have not been paid, because the Question was very specific on the 86 employees. I think the hon. Member could also file a Question on the others and then, we will find out why they have not been paid. This is because this matter was resolved by the RBA. Together with the actuaries they went

account by account and those who had been underpaid were subsequently paid the balance between what the actuaries had recommended and what the pension fund had paid. So, these ones have been sorted out. As to the others, I would require maybe another Question or further information because I am not aware of them.

Mr. Speaker: The Member for Gichugu, there is no other hon. Member interested in the matter. So, you might as well do your point of order and then ask the final question.

Ms. Karua: Mr. Speaker, Sir, I have told the Minister that the information I have just received from the claimants who asked me to ask the Question is that even for the 86, there is still a dispute in the actuarial calculations. So, their position is that what they were paid is not the rightful amount. I have asked the Minister what he is doing about that and he has not answered that question. I am willing to give him information on the 595 people. I wish to table the list of the tribunal case.

(Ms. Karua laid the document on the Table)

Mr. Speaker: Minister, answer the first part of the question and then indicate if you want time to go and look at the 600 or so names.

Mr. Githae: Mr. Speaker, Sir, indeed, I would like more time to look at the others who are not part of the 86 people and see whether they have not been paid. However, on the 86 people, they have been paid, except for small disputes on legal fees, when it was apportioned. But the actual amount has been paid, less legal fees, which was apportioned among all the complainants. That is something that can be sorted out, because the formula for the payment is there.

Mr. Speaker: Very well, Mr. Minister! In that case, so that we get full information on this matter, I will defer the Question to a week away. Since you are familiar with the ground now, it should not take too long. The Question then can reappear on the Order Paper for us to deal with that residual part.

(Question deferred)

Hon. Members, that finishes Order No.6.
Let us move on to the next Order!

STATEMENTS

Mr. Speaker: The Assistant Minister for Foreign Affairs, do you have a Statement to give?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Yes, Mr. Speaker, Sir.

Mr. Speaker: Proceed!

DEATH OF ENOS OGADA IN DUBAI

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, this was a Statement with regard to the death of a Kenyan in Dubai, Mr. Enos Ogada.

The Ministry of Foreign Affairs confirms that the Kenyan Consulate in Dubai has informed us that Mr. Ogada died in Dubai's Al Awir Jail. He was found dead in the morning of 20th September, 2012.

The authorities in the United Arab Emirates, in a letter dated 25th September, 2012, indicated that Mr. Ogada died of natural causes and medical examination reports were handed over to his wife Mrs. Dorothy Ogada who was also in Dubai. Prior to the late Mr. Ogada's death, officials from the Kenyan Consulate in Dubai had been making monthly prison visits to see him and the last visit was then done just two weeks before he died.

Mr. Speaker, Sir, after that, the necessary processes following his death were all done and the procedures for repatriation of the body were carried out by the relevant Government authorities of Dubai, which culminated on the 24th September, 2012. The Kenyan Consulate, therefore, issued a certificate of no objection for his death and the certificate was handed over to his wife. As a result of that, I would like to announce that information from our Consulate in Dubai indicates that the remains of the late Mr. Ogada will arrive in Nairobi tonight aboard an Emirates flight accompanied by the widow.

Mr. Speaker: Request for clarification. Hon. Outa you want a clarification from the Assistant Minister for Foreign Affairs, or you have your own request?

Mr. Outa: Mr. Speaker, Sir, on behalf of the family of the late Ogada, I want to thank the Assistant Minister. We are so grateful for their efforts to have the body transported from Dubai to Kenya tonight.

Mr. Speaker: Fair enough, that then brings us to the end of that Statement. Any other Statement, Minister in charge of internal security.

I do not see a request, Minister. Not yet. Go to the Dispatch Box Minister. You do not have a statement, Minister?

INCREASED INSECURITY IN KISUMU CITY

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, I have three Ministerial Statements. I want to start by the one asked by hon. Olago, Member for Kisumu Town West.

In the Ministerial Statement, he wanted to know the insecurity state in Kisumu City. He wanted to know the following:-

1. The genesis of the violence, which also led to the attack of one Mr. Owino at Tuskys Supermarket in Kisumu Town and state the action that the police took subsequent to the attack.

2. To clarify whether the attack on Mr. Stephen Mithialo also known as Mada in Nairobi during a football match between Gor Mahia and AFC Leopards is associated with the ongoing violence in Kisumu and explain why Mr. Mada was arraigned in court at 5.00 a.m. on 26th September, 2012.

3. To clarify whether the conflict in Kisumu has been fuelled by a politician from Nairobi and, if so, provide details.

4. Finally, also to explain to the House how the Ministry has employed dialogue and peace building in the City in the wake of escalating violence.

Mr. Speaker, Sir, further to that, hon. Shakeel Shabir, Member for Kisumu Town East Constituency requested to be informed why the Provincial Administration is exercising partiality by selectively arresting members of one group and not another and why they are receiving instructions from one Mr. Onyango Oloo.

Mr. Speaker, Sir, I wish to state as follows: I want to start by informing the House that there are two rival business groups operating in Kisumu City. One is called China and the other is called America. On its part, China which means change in life, is a self help group duly registered by the Ministry of Gender, Children and Social Services, while the American one is an amorphous group, which does not have structures.

In August, 2012, the City Council of Kisumu allocated a Temporary Occupation License (TOL) to four members of the American Group along Miuru Street. The rest of the members went ahead and grabbed some other spaces. This resulted in construction of a total of 86 kiosks. The China Group on its part moved in and grabbed spaces and allocated it to 32 of its members who refer to themselves as China 32 brothers.

Later, the City Council in collaboration with Kisumu East District Security and Intelligence Committee decided to demolish all the kiosks. This action resulted in the reduction of tension that had previously built up between the two groups.

On 15th September, 2012, at 1800 hours, at Tuskys United Mall, one Caleb Owino Nyamor in the company of his friends, Richard Ogira, Daniel Odhiambo and George Odhiambo while entering the United Mall parking lot, were approached by one Paul Otieno Akoth alias Baby. He engaged Caleb in a talk and as they were talking, another man, Moi Nyakor Nyawer came from behind and held him by the neck and punched him on the right cheek. Two other men, Peter Ochieng Okore alias Maroon and Wilias Ochieng Akoth alias Boi joined in and started beating him with sticks and *rungus* before they escaped. During the attack, he lost his mobile phone and cash amounting to Kshs10, 000.

Caleb reported the attack at the Kisumu Police Station where investigations started immediately. The following three persons were arrested:-

1. Mr. Willis Ochieng Akoth alias Boi
2. Peter Ochieng Okore alias Maroon
3. Paul Otieno Okoth alias Baby.

They were later arraigned in court and charged before the Chief Magistrate's Court Kisumu vide CR1627/47/4/2/0/1/2 for the offence of robbery with violence contrary to Section 296 subsection 2 of the Penal Code. The case is set for hearing on 17th October, 2012.

Mr. Speaker, Sir, on 6th September, 2012, a group of people allied to Caleb Owino Nyamor attacked Peter Ochieng Okore alias Maroon injuring him seriously before destroying property valued at Kshs400, 000. He reported the incident at the Kondele Police Station. The same mob moved to Kisumu Bus Park in search of one Willis Ochieng Okoth, who is alleged to have been among the persons who assaulted the said Caleb Owino Nyamor. They however did not find him and they vented their anger on his property thereby destroying his three butcheries and burnt his Land Rover before stealing weighing machines, fridges, friers and meat. The value of property destroyed and stolen is estimated to be Kshs4.4 million.

Willis Ochieng Akoth reported the incident at Kisumu Police Station and investigations commenced. So far two suspects, Stephen Mudeny, alias Mada, and Washington Ouko have been arrested and charged with the offence of malicious damage to property contrary to Section 339 (1) of the Penal Code and robbery with violence contrary to Section 296(2) of the Penal Code. The hearing is set for 24th October.

On 23rd September, 2012, Stephen Mudeny, who had travelled to Nairobi for a football match between Gor Mahia FC and AFC Leopards, alleged that he had been attacked and injured by members of the American group while in Nairobi. However, this incident was not reported to any police station in the country. In retaliation to this allegation, a mob attacked Peter Ochieng

Okore's premises damaging the fence and stealing iron sheets. After this incident, the police managed to arrest three suspects, namely Agostino Nyaori Miyoma, Vincent Otieno Dola and Jonathan Okwiri Ojwaka. They were arraigned at the Kisumu Law Court and charged with the offence of stealing contrary to Section 339(1) of the Penal Code. The case will be mentioned again on 4th October, 2012.

Mr. Speaker, Sir, I want to clarify here that Mr. Stephen Mudeny, alias Mada, was removed from the cell at 5.00 a.m. However, he was presented before the Maseno Court at 8.00 a.m. It should be noted that the courts, like any other Government institution, commence operations at 8.00 a.m.

At this point of investigations, there is no tangible evidence to link the violence to a politician based in Nairobi. However, we request any person with any evidence to present it to the police to aid investigations. If anybody will be found culpable, appropriate action will be taken.

With regard to what the Ministry is doing to bring about dialogue and peace, a meeting aimed at reconciling the two warring groups was convened between the OCPD and the stakeholders on 18th September, 2012 and several resolutions were arrived at. In addition, the DC for Kisumu East had met the stakeholders in a bid to stress the need to adhere to the resolutions arrived at, at the earlier meeting. Further, a meeting chaired by the Provincial Commissioner and which brought on board all the stakeholders, including leaders of the China and American groups was held on 20th September, 2012. The meeting resolved that there should be cessation of all forms of violence within the city. Apart from the above mentioned fora other meetings have been held by different organizations, including Peacenet, the District Peace Committees and local councilors, amongst others.

Finally, from the foregoing it is clear that the Provincial Administration officers have been impartial in the execution of their duties; it is evident that after every incident the police have managed to move in, arrest suspects and arraign them in court. I am appealing to the two hon. Members to join the Provincial Administration and security officers in coming up with a solution to this problem to avert further violence.

Mr. Speaker: Minister, have you given all your Statements? We will take requests for clarifications beginning with hon. Olago.

Hon. Members, please, try and restrain yourselves from approaching the Chair. I have had too many visits to the Speaker's position to a point that I am hardly able to follow proceedings. My computer, sometimes, gets full.

Mr. Olago: Mr. Speaker, Sir, the facts, as set out by the Minister, are basically superficial, because they do not go to the depth of this issue that took place in Kisumu. It pains me as a Member of Parliament that, for the last one-and-a-half years, we have been preaching peace in Kisumu and assuring all residents that the violence that they witnessed in 2008 would never happen again. However, just when we thought we had succeeded, this happened.

Mr. Speaker, Sir, the PPO and the OCPD are on record as having said that this violence was instigated by some politicians, without saying which politicians. It is very clear to him that the issue of security should not be politicized. If it is a politician who is instigating violence, that politician should be arrested and charged in court. In the present circumstances, for the police to politicize the issue and blame politicians, but not make any arrests, simply means that they are not willing to perform their duties. In this case, it is clear that the only politician they are referring to is based in Kisumu, and this is the one he has named as Onyango Oloo; nobody else.

Under these circumstances, could the Minister tell this House clearly what action is being taken to deal with this particular politician who is inciting people in Kisumu?

Mr. Njuguna: Mr. Speaker, Sir, it is notable that during the commotion in Kisumu innocent traders lost their property worth Kshs4.4 million. What measures is the Government taking to compensate these innocent traders?

Mr. Speaker: Order Minister! We will take one more.

Mr. Oyugi: Mr. Speaker, Sir, could the Minister tell us whether it is true or not that both the District Security Committee (DSC) and Provincial Security Committee (PSC) are composed of members from a certain region in Kenya? If it is so, is it true that they are biased towards a certain group, either China or American? What is the Minister doing to create a balance in both the PSC and the DSC?

Mr. Speaker: Minister, we have to accommodate two more because these are Members from that diaspora.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I notice that the Minister has given a very comprehensive answer, but he has very conveniently avoided the Question that hon. Shakeel asked about Mr. Onyango Oloo. I would like the Minister to confirm if he knows this Onyango Oloo, and if he is, in any way, the Secretary-General of TNA, or he is a different Onyango Oloo.

Mr. Pesa: Mr. Speaker, Sir, in his answer, the Minister said that the PPO had said that there was a politician based in Nairobi. What action is he going to take against the PPO who has refused to arrest this politician, who is based in Nairobi?

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Speaker, Sir, the question asked by hon. Olago and hon. Odhiambo-Mabona is the same. They wanted to know why Mr. Oloo Onyango has not been arrested. In my statement, I said that upon investigation, there was no evidence linking Mr. Oloo to this violence. I also appeal to anybody who has evidence to provide it now that the three incidents are in court.

As to whether I know Mr. Oloo and whether he is the Secretary-General of TNA, it is true that the Secretary-General of TNA is called Mr. Onyango Oloo. But I do not know if this particular one is the TNA Secretary-General. There are so many Onyango Oloos in this Republic. So, it might not necessarily be him.

Mr. Speaker, Sir, I want to respond to hon. Njuguna's question on compensation. All these cases are in court for the reason of destruction of this property; I cannot confirm that the Government will compensate those whose property was destroyed during demonstrations. Let us wait for the outcome of the cases and see where the costs of these cases will fall.

The MP for Ndhiwa, hon. Neto Oyugi, asked about the composition of the security team in that region. I may not have the details of who is who in the security team in that region. However, members of the security team are civil servants and they can work anywhere in the country. They are not supposed to be partial in anywhere. Whatever composition of the team is, that is not a reason for being partial or aligning itself to any group.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. Is the hon. Minister in order to mislead this House that the composition of the security team does not matter when by law the composition matters? By both the Constitution and the National Cohesion and Integration Act, you cannot have more than two-thirds members of the same ethnic community. Is he in order to mislead this House?

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, I have not said that the composition does not matter. I have said that I will check what the composition is. I have said that whatever the composition is currently, it does

not give that security team any leeway to be aligned to any group at all. So, I will check that, but whatever the composition, they are supposed to exercise their duties and responsibilities with utmost impartiality.

Hon. Pesa talked about the PPO, Kisumu, who was obstructing or refusing to arrest the politician in Nairobi. I do not have that information, but I will check. If you look at what I initially said, there was no evidence linking this man to the violence. So, if evidence had been brought forward and somebody refused to arrest him, then I will take action against that person.

Mr. Olago: On a point of order, Mr. Speaker, Sir. The Minister has said that there is no evidence that there is a politician who is involved in these skirmishes. But the PPO is on record as having said in general terms that the skirmishes were being instigated by politicians without mentioning who they are. It is a fact there is only one politician. Is it in order for him to say that he is not aware of who this is when his PPO says that he knows?

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, when a general statement like that is made, that this violence is instigated by politicians, politicians are not only those who are vying for Parliamentary seats or the sitting Members of Parliament. The suspects who were arraigned in court could be having political ambitions. We should allow the due course of law to take place.

Mr. Speaker: Minister, which is your next Statement? How long are you going to be?

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, I have one which is long and a very small one by Dr. Khalwale.

Mr. Speaker: The long one is about how many minutes?

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, the long one is by hon. Kabogo.

Mr. Speaker: What is it about?

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, it is about the disappearance of a Mr. Pius Kimani Karumba. It is about three pages. I will be very fast.

Mr. Speaker: Do both of them if you can, quickly.

APPOINTMENT OF TWO CHIEFS FOR KIMINDA LOCATION

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, I will start with the one that was requested by Dr. Khalwale because it is straightforward. On Tuesday, 25th September, Dr. Khalwale rose on a point of order and requested my Ministry to issue a Ministerial Statement to clarify who is the chief for Kiminda Location in Nandi Central District and whether there are two chiefs for Kiminda Location.

I wish to state as follows: The appointment of chiefs and assistant chiefs is done through the authority delegated to the Permanent Secretary who is the authorized officer for this purpose by the Public Service Commission. To facilitate the appointment of chiefs and assistant chiefs, the Permanent Secretary has mandated the District Commissioners to constitute panels to interview candidates when such vacancies occur and recommend three qualified candidates from whom the Permanent Secretary picks one. The recommendation of the District Commissioner is forwarded to the Permanent Secretary through the Provincial Commissioner. This process is strictly adhered to in the appointment of chiefs and assistant chiefs.

In the case of Kiminda Location, the advertisement for chief, Kiminda Location, was done on 7th September, 2009 vide District Commissioner's office, Nandi Central, Data Ref.

ST1/8/24. Interviews were conducted on 13th January, 2010, by a panel consisting of the District Commissioner, Senior District Officer, District Officer, Kiriboni Division, Executive Officer and District Human Resource Officer. The interview's instrument for appointment of Chief II, Kiminda Location, Nandi Central District, Rift Valley Province, was forwarded to the Permanent Secretary vide the Provincial Commissioner letter Ref. No.SRST/1/3/5 dated 29th January, 2010.

Shortly thereafter, it was established that Mr. Stephen Tum, the successful candidate had presented a fake certificate of Diploma in Human Resource, purportedly obtained from the Chester Institute of Science and Technology. Mr. Stephen Tum was arrested and charged with making a document without authority contrary to Section 357 of the Penal Code, vide Police Criminal 771/293/20010. The case file No.4110/2010 is pending before the Kapsabet court.

On 30th March, 2010, Mr. Stephen Tum wrote a signed apology letter to the District Commissioner, Nandi Central, for having presented a fake certificate during the interview. Following this development, the Provincial Commissioner in his letter of 14th April, 2010, commended the revocation of appointment of Mr. Stephen Tum or Steve Tum, Kiminda Location. The same was effected by the Permanent Secretary vide the letter dated 25th May, 2010.

Subsequently, the post was re-advertised vide District Commissioner letter dated 20th April, 2010. The interviews were conducted and the instruments forwarded to the Permanent Secretary through the Provincial Commissioner letter dated 22nd June, 2010. The candidate rated No.1, Ms. Priscilla J. Meto was appointed vide the Permanent Secretary letter dated 23rd July, 2010.

Following the appointment of Ms. Priscilla Meto, as Chief II, Kiminda Location, Mr. Stephen Tum went to court *ex parte*, applying for orders of *certiorari* and *mandamus*. I am not a lawyer, but I know what this means. The pronunciation is a little bit difficult but the first one means quashing the appointment and the second one means reinstating him as the chief. They were filed on 23rd October, 2010 and on 27th October, 2010, the applicant was granted leave to apply for an order of *certiorari* quashing the appointment of Ms. Priscilla Meto and also to apply for the other prayer on the issue in question. The substantive motion was filed 21 days from the date. Mr. Stephen Tum applied for affirmation orders at the High Court of Kenya at Eldoret, vide Miscellaneous Application No.276 of 2010 seeking the following orders:-

(i) Quashing the appointment of Ms. Priscilla Meto.

(ii) An order compelling the DC, Nandi Central, to revoke the appointment of Ms. Priscilla Meto and confirm his appointment.

The court in its ruling delivered on 15th June, 2011, quashed the appointment of Ms. Priscilla Meto, but declined to issue orders confirming the appointment of Mr. Stephen Tum. My Ministry has written to the Attorney-General, seeking his advice on this matter.

Dr. Khalwale: Mr. Speaker, Sir, I want to thank the Minister for finally conceding that the lady chief was not a chief because the court so ruled. I also want to thank him for acknowledging the fact that Mr. Stephen Tum is the only one who has a letter of appointment. The matter is still ongoing and the House should appreciate where I am coming from; Kiminda Location, in Nandi Central, is a cosmopolitan location. The majority are the Nandis, followed by the Kipsigis and followed by the Luhyias. The Kipsigis and the Luhyias are marginalized whenever there are appointments. So, the real undercurrent of this problem was that Mr. Stephen Tum is a Kipsigis. Could he confirm that as soon as the court matter ends and Mr. Tum is found to be innocent, he will then proceed and continue working as the chief and he will be paid starting from the time he was first appointed in 2010?

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

Mr. Speaker: Order, hon. Isaac Ruto! You know that you can catch my eye even without pushing too hard. Maybe you are used to the old way of doing things.

Proceed, Isaac hon. Ruto.

Mr. Ruto: Thank you, Mr. Speaker, Sir. I just heard the hon. Dr. Khalwale assert that there is a place in Kenya where there is open discrimination against the Luhya and Kipsigis, among others. Is he in order to make a statement as if it is a statement of fact and as if it is an accepted state of event without seeking remedy of the same because the Constitution guarantees everybody freedom and rights?

Mr. Speaker: Order! I think the Member for Ikolomani articulated that part fairly well. If you only cared to follow and listen to what he was saying, he made it clear and there is nothing to substantiate because the names were already in place. There is no information that Dr. Khalwale did not supply. So, I am afraid I will rule that, that is out of order. Is there any other hon. Member who is interested?

Yes, the Member for Emgwen!

Mr. Lagat: Mr. Speaker, Sir, I just want to inform hon. Members that Kiminda is in my constituency and Kapsabet is also in my constituency. When hon. Dr. Khalwale said that there is discrimination--- The councillor for Kiptuiya comes from the Luhya community while the chief for Kapsabet comes from the Kipsigis community.

Mr. Speaker: Order, the Member for Emgwen! You obviously have useful information but the manner in which you are doing it more or less demonstrates that you have not mastered your Standing Orders. When the Member for Ikolomani was making those claims, you should have sought to intervene on a point of order and challenged him for misleading the House by claiming that the Luhya community and whoever is being discriminated against when, in fact, the chief for Kituiya Location is a Luhya and it would have passed. However, it cannot now. So, I am afraid that I will rule that out of order.

Mr. Minister, do you want to respond finally?

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, I want to respond to the clarification by hon. Dr. Khalwale by saying that, first of all, we have appointed an Acting Chief, Mr. Shadrack Sitienei, who is the Assistant Chief, Kiminda Sub Location. He will act until this matter is resolved in court. To what hon. Dr. Khalwale has said, we will wait for the outcome of the court. If the court says Mr. Tum is supposed to be reinstated as a chief, so be it. If it decides the other way, we will follow the ruling of the court.

Mr. Speaker: Fair enough! You have one more statement and I do not want us to go beyond 5 O'clock because of the business that is on the Order Paper. We were just endeavoring to clear the backlog of statements and that is why I am giving you this much time. Can you do that in five minutes, utmost?

DISAPPEARANCE OF MESSRS. P.K. KARUMBA
AND K. WAITHAKA

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Yes, Mr. Speaker, Sir.

This is a Statement which was sought by Mr. William Kabogo, the Member for Juja. It is with regard to the disappearance of Mr. Pius Kimani Karumba and Mr. Kamau Waithaka. I want to state as follows.

On 23rd August, 2012, it was reported vide OB No.32 at Gatundu Police Station at 9.00 a.m. by Ruth Wairimu Kimani, a resident of Ichaweri Village that her husband Pius Kimani Karumba aged 54 went missing on 22nd August, 2012. She further reported that her husband was last seen by Mr. Warui, a driver at Gatundu Stage on 22nd August, 2012 at around 5.00 pm. Police immediately commenced investigations and circulated a signal to all police stations, posts and patrol bases in Kenya with a copy to the Criminal Registration Officer, Nairobi, via Gatundu Police Station signal dated 23rd August, 2012.

Further, on 1st September, 2012, photographs of the missing person were sent to the Criminal Registration Officer at the CID Headquarters Nairobi for publication in the next Kenya Police Gazette Notice vide Gatundu Police Station inquiries 5 and 6 of 2012. With the assistance of the members of the public, the police also conducted a search in Gatundu Township and its environs in vain.

Subsequently, Inquiry File No.5/2012 was opened and several statements have been recorded so far. On 24th August, 2012, the Gatundu OCPD and other senior police officers visited the family of Pius Kimani for further inquiries and requested the members of the public who had gathered there to volunteer any information that could help in tracing the missing person. The investigating officers accompanied by the family members have also visited the City and Kerugoya mortuaries besides enquiring with other police stations to check if a report or a recovery of an unknown body has been made.

Inquiries at the Gatundu Family Bank where Mr. Kimani had an account revealed that he had a total of Kshs36,369.33 at the time that he disappeared. On the same day, amounts of Kshs15,000 and Kshs20,000 were withdrawn from his account at Ruiru and Thika respectively using the ATM card. On 24th August, 2012, another Kshs1,000 was withdrawn again using the ATM at the Nakuru Branch leaving a balance of only Kshs269.33 in the account. Unfortunately, Family Banks ATMs do not have CCTV cameras which could have enabled the police to get the images of the drawer.

On September 4th, 2012, OCS Yatta Police Station recovered a decomposing body in Masinga Dam which is believed to be that of Pius Kimani and it was removed to Thika District Hospital Mortuary.

With regard to the disappearance of Mr. Kamau Waithaka, on 23rd August, 2012 at 9.00 a.m, Ms Feslista Wanjiku Kamau reported at the Gatundu Police Station vide OB No.13/23/8/12 a case of misuse of motor vehicle registration No.KBN 764B. She alleged that on 21st August, 2012, at around 11.00 a.m., her driver, Mr. Kamau Waithaka was hired by a customer only known by one name as Kinyanjui who had allegedly spent the night at the driver's home at Kiganjo. She further claimed that although the driver had informed her that he had been hired to go ferry some people to Mundoro from Naivasha, where they were to harvest avocados, after departure, the driver's phone went off.

On 25th August, 2012, the police received information that Waithaka had gone missing and the OCS Gatundu and his officers visited Kiganjo Area and his home to investigate the incident and to establish that the said driver had not resurfaced. A signal Reference C/PUB/8/27/12 dated 26th August, 2012 was sent to circulate the disappearance of Mr. Waithaka and the motor vehicle. Since the reporting of the disappearance of Mr. Waithaka, the owner of the motor vehicle has become reluctant and uncooperative in the investigations. Police are

investigating whether there is complicity and involvement. Several witnesses have recorded statements and crucial leads are being followed by the police.

Following this incident, security has been beefed up within Gatundu and measures being taken include monitoring and random checks at road blocks along Gatundu-Kenyatta Road, enhanced day and night patrols, formation of special units to man Gatundu Matatu Terminus to rid the matatu stage of any members of organized gangs and thorough investigation regarding the disappearance of Kimani Karumba and Waithaka Kamau. Other related cases are ongoing.

Finally, appropriate action will be taken against any person found culpable or having complicity in the disappearance of the two men.

Thank you, Mr. Speaker, Sir.

Mr. Speaker : I want to begin with the Member for Juja.

Mr. Kabogo: Mr. Speaker, Sir, you have heard the sad story of one Pius Kimani. His remains will be buried tomorrow. May his soul rest in peace and rise in glory.

Mr. Speaker, Sir, the blood of Pius Kimani is squarely on the hands of the Ministry. I want to tell the Minister why I say so. On Wednesday, 1st August, 2012, I requested for a Ministerial Statement regarding the killing of a *matatu* operator by the name of Gitua, and specifically the circumstances under which he was killed. The Acting Minister then, Mr. Yusuf Haji, told the House the same thing: That security would be beefed up; that rivalry in the *matatu* industry had caused the problem, and that they would make sure that security was restored.

A few days later, the late Pius Kimani was abducted and killed. The same story was told to this House: That security would be beefed up by erecting roadblocks. This is the third *matatu* operator to die in Gatundu. Is the Minister satisfied that there is security in Gatundu? In a few days, we may get information to the effect that another person has died, and that will be four people in a span of three months. What is he going to do to make sure that we do not have further deaths in Gatundu as far as *matatu* operators are concerned? This is a sad matter.

Mr. Speaker: Indeed, it is. Yes, Member for Garsen.

Mr. Mungatana: Mr. Speaker, Sir, listening to the Minister, you will appreciate that all the evidence circulates around historical evidence. The question of acquisition of a forensic laboratory for the police has been hanging for a long time. I would like him to tell us what progress he has made. The existence of a forensic laboratory in the country will probably act as deterrence. People will be afraid of committing the kind of murders witnessed everywhere.

Mr. Speaker: Finally, the Member for Lari.

Mr. Njuguna: Mr. Speaker, Sir, it has been very perplexing to hear of the disappearance of young *matatu* operators, who are later murdered brutally in the glaring eye of the Government. What security assurance can the Government give to the people of Gatundu South, particularly those operating in the *matatu* sector?

Mr. Speaker: Yes, Minister.

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, hon. Kabogo and hon. Njuguna have said the same thing. It is very true that the security situation in that area concerns everybody. Perhaps what is required is more police stations. I am informed that there is only one police station in that area, which is serving two districts. So, we will expedite the establishment of at least one more police station in that area to help deal with the issue of insecurity. We will also try to find out the real causes of competition in the *matatu* Savings and Credit Co-operative Societies (SACCOs).

Mr. Speaker, Sir, what hon. Mungatana has said is true. A forensic laboratory would be a major project which would help the police in fighting crime. We all know what happened in the

initial attempt to acquire forensic laboratory equipment for the police. It is a matter which is in the public domain. Maybe, we have to fast-track the same. We may require the approval of this House, so that a certain amount of money is allocated for that purpose. It is a very big project. So, I agree that we should have it back as part of police reforms, in terms of provision of adequate and modern facilities for fighting crime. I will take up the matter with the Ministry and report progress to the House.

Mr. Speaker: Yes, Member for Gichugu.

ATTACK ON NARC-KENYA GOVERNOR ASPIRANT
FOR TURKANA COUNTY

Ms. Karua: Mr. Speaker, Sir, on 19th September, 2012, I requested for a Ministerial Statement from the Minister in charge of internal security regarding an arson attack on the NARC-KENYA Governor aspirant for Turkana County, one Mathew Rogulale. The Ministerial Statement was to be given on the Thursday of the following week, which was two weeks ago. I am wondering whether it would be in order for the Minister to indicate when he can give the long overdue Statement.

The Minister of State for Provincial Administration and Internal Security (Mr. ole Metito): Mr. Speaker, Sir, I would undertake to issue the Ministerial Statement on Tuesday, but I already have two others due for Tuesday. So, since I have already committed myself, and the Speaker has approved that I issue two Statements on Tuesday, let me issue this one on Wednesday morning.

Mr. Speaker: Hon. Members, that will be the position. Statements which are due for delivery are done. We cannot take any more Statements, except the one from the Leader of Government Business. Minister for Energy, I am afraid that we really do not have time for you. So, we will have to take that one at the nearest opportunity, which may come as early as Tuesday, next week.

The Minister for Energy (Mr. Murungi): Mr. Speaker, Sir, I beg your indulgence because I may not be in Nairobi. I have got another very urgent matter to attend to on Tuesday, next week. Could we do it on Thursday, next week?

Mr. Speaker: Yes, I so direct.

The Minister for Energy (Mr. Murungi): Thank you, Mr. Speaker, Sir.

Mr. Speaker: Yes, Deputy Leader of Government Business.

HOUSE BUSINESS FOR THE WEEK COMMENCING
9.9.2012 TO 12.9.2012

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I wish to take this opportunity to issue the following Statement with regard to business for next week.

Mr. Speaker, Sir, allow me, without appearing to anticipate debate, to point out that today we have, on the Order Paper, a Motion of Adjournment of the House to a day other than the next normal sitting day. As is the practice of the House, in the event that hon. Members decide to continue with the House's sittings, we shall give priority to the business that is contained in today's Order Paper. In the event that hon. Members decide to support the Motion, we will not have business for next week. If we need to meet next week, the House Business Committee will

meet on Tuesday, 9th October, 2012, at the rise of the House, to consider business for the rest of the week.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Yes, Member for Tharaka.

EXTENSION OF TIME FOR COMPLETION OF REPORT ON CHARTERHOUSE BANK

Mr. Mwiru: Mr. Speaker, Sir, I rise to seek your indulgence on a matter that was referred to a Joint Committee of Finance, Trade and Planning, and the Committee on Implementation, to deal with the issue of re-opening of Charterhouse Bank. The Joint Committee was directed to complete its work within 14 days and present its Report to the House today. Unfortunately, although we have made tremendous progress, we have not been able to call some of the main players in that particular line.

Therefore, the Joint Committee is requesting that it be given an extension of about 10 other days from today, to complete its works because key players like the Governor of the Central Bank (CBK) has to appear before it, so that it can bring its findings to the House.

We seek you indulgence, Mr. Speaker, Sir.

Mr. Speaker: Hon. Member for Tharaka, your request is granted. We shall extent the time for ten days as sought, but, please, live within those ten days because this matter was supposed to be urgent. If you take too long, then the urgency will obviously dissipate; this will not be in the interests of the public anymore. So, please, note that and expedite the process.

DISCRIMINATION AGAINST INSURANCE FIRMS BY KRA

Mr. Kabogo: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Finance regarding a situation where the Kenya Revenue Authority (KRA) recently issued a circular for the clearance of transit sugar and motor vehicle units of about 2000 cc through Kenya to the following insurance companies only, namely APA, First Assurance, Lion of Kenya, Fidelity, Cannon Assurance and Chartis. In the Ministerial Statement, the Minister should explain why the KRA is discriminating against other licensed insurance firms that offer the same services and also undertake to reverse this unhealthy directive.

THE ROLE OF THE *UONGOZI* 2012 CAMPAIGN CARAVAN

The second one is a Ministerial Statement that I sought from the Minister for Justice, National Cohesion and Constitutional Affairs which you had asked him to deliver yesterday, but he did not. This was regarding an organization called *Uongozi*. I was wondering whether the Chair would assist and tell us when this is going to be delivered.

Mr. Speaker: The Ministerial Statement on *Uongozi* was supposed to come from which Ministry, hon. Member for Juja?

Mr. Kabogo: From the Minister for Justice, National Cohesion and Constitutional Affairs. He had promised to issue it yesterday but he was not in.

Mr. Speaker: Yes, the Minister for Justice, National Cohesion and Constitutional Affairs has appeared lately to be overburdened. He was here a little while ago, but appeared to be

literally under siege. Maybe, we will direct that the Ministerial Statement comes next week on Wednesday.

The one you have sought today is from the Minister for Finance. Mr. Githae, when will that come?

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, yes, this is an urgent matter. This has even affected our trade with our main partner Uganda. We will be able to issue the Ministerial Statement on the steps we have taken. In the meantime, I have asked KRA, if they could withdraw that directive pending discussions. As far as we are concerned, if an insurance company is licensed it actually means that it is licensed, and there should not be any other criteria for selecting companies. This only causes misunderstanding in the industry.

Mr. Speaker: So, shall we have the Ministerial Statement on Wednesday next week?

The Minister for Finance (Mr. Githae): Yes.

STATUS OF BUDGETED FUNDS IN THE 2012/2013 BUDGET

Mr. Ruto: Mr. Speaker, Sir, I had sought a Ministerial Statement from the Minister for Finance on the status of devolved funds as budgeted in the Budget and he had promised to deliver it more than a week ago, but he has not done so. May be, he could indicate when he is going to issue the Ministerial Statement.

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, the Ministerial Statement is ready; so, it will be issued on Wednesday morning.

PRIORITIZATION OF BUSINESS BY THE HBC

Dr. Kones: Mr. Speaker, Sir, mine is slightly on a different matter. I would like to know from the Chair of the House Business Committee how they prioritize their business. There are some of us who have Bills pending but they have never found their way to this House even for the First Reading. I have a Bill which was published as Bill No.44 of 2012. I also had a Motion which had to be debated not later than August, but it has never seen the light of day. So, I really do not know how the House Business Committee prioritizes business.

Mr. Speaker: Hon. Member for Konoin, although you have raised that at the wrong point, we will permit it. Leader of Government Business, you have heard the concerns of the hon. Member for Konoin.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, the matter was raised with us and we had hoped that it would come in the next sitting of the House Business Committee, because we did not consider it on Tuesday; but it is scheduled for review and allocation of time in the next sitting of the House Business Committee. It is the First Reading of a Bill. I am aware of the matter and we have already scheduled it for discussion.

Mr. Speaker: Fair enough. Member for Konoin, your concerns are being addressed, as the Deputy Leader of Government Business now asserts. As an ex officio Member of the House Business Committee, similarly my attention has been drawn to your business, and I will monitor to see that justice is done. There must be equity even in the House Business Committee.

Hon. Members, that ends then Order No.7. Before we move to the next Order, I have this communication to make.

COMMUNICATION FROM THE CHAIR

GUIDELINES ON CONSIDERATION OF THE DRAFT ELECTIONS
(REGISTRATION OF VOTERS) REGULATIONS

I would like to guide the House on the procedure which shall apply to the consideration of the Draft Elections (Registration of Voters) Regulations, 2012 appearing under Order No.8. The regulations will be considered in two stages, first, when the Order for the Motion is read, I will call upon the Minister to move the Motion. Once seconded, I will proceed to propose the Question. The purpose of this Motion is to initiate debate on policy and principle of the Draft Regulations and the debate should take a maximum of one hour. Upon conclusion of this debate, the House will dissolve to the Committee of the whole House, in which case the House will, in the Committee, consider each regulation in the Draft Regulations in a manner similar to a Committee stage of a Bill. The purpose of moving into Committee is to enable hon. Members to examine each of the proposed regulations and schedules one after the other and move amendments where necessary as in a Committee Stage of a Bill.

In the Committee of the Whole House, I will call upon the Minister for Justice, National Cohesion and Constitutional Affairs to move the Motion: “That pursuant to Section 109(3) of the Elections Act, Act.No.24 of 2011, this House approves the Draft Elections (Registration of Voters) Regulations, 2012, laid on the Table of the House on Thursday, 30th August, 2012.” This is essentially the Motion for approving the Draft Regulations. The Clerk will read each regulation and schedule one after the other as contained in the Draft Regulations, 2012. At the end of the consideration, the Chair will ask the Minister to move the Motion which is: “That the Committee doth report to the House its consideration of the Draft Election (Registration of Voters) Regulations 2012 and its approval thereof with or without amendments.”

If the Question is agreed to, the House will resume, herald in the Third and last phase of the consideration of the Draft Elections Regulations. When the House resumes, the Chair of the Committee of the whole House will report thus: “That the Committee has considered the Draft Elections (Registration of Voters) Regulations, 2012 and approved the same without or with amendments”.

Finally, I will call upon the Minister to move the Motion: “That the House do agree with the Committee in the said Report”. After the Motion is seconded, I will propose and later put the Question for the decision of the House, indicating the conclusion of the matter.

I thank you.

PROCEDURE OF BUSINESS ON THE ORDER PAPER

Hon. Members, I have a further Communication with respect to how we will proceed with the business hereafter as appears on the Order Paper.

We will defer business at Order No.8 until later on in this sitting because the Minister has had to go into consultations with the Committee on Delegated Legislation to finalize their position on the different sets of regulations. Apparently, they have not had adequate time prior to this sitting to do so. But they have both assured me that they will be ready to continue during this sitting. So, that business will be kept in abeyance until they come back into the House after concluding their negotiations.

With respect to Order No.9, we will re-arrange such that we begin with Order No.9(iii) which is the Bill on Internally Displaced Persons, Bill No.21 of 2012, by the Member for Turkana Central, Mr. Ekwee Ethuro. We shall take that Committee first.

Thereafter, we will proceed and take Committee on Order No.9(ii) which is the Elections (Amendment) No.2 Bill (Bill No.58 of 2012) by the Member for Chepalungu. We will then take the Committee of the Whole House on that Bill.

Finally, we will take Order No.9(i) which will be The Finance Bill (Bill No.26 of 2012) and that will be moved by the Minister for Finance.

So, henceforth, that is how we will proceed. We want then to take the next order.
Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE INTERNALLY DISPLACED PERSONS BILL

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, the House now will be able to move to the Committee of the whole House and deliberate on the Internally Displaced Persons Bill, Bill No.21 of 2012.

Clause 2

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

THAT, Clause 2 of the Bill be amended by deleting the definition of “civil society” and substituting therefor the following new definition in proper alphabetical sequence-

“non State actor” means persons or organization who are not attributable to the State and whose actions are generally not attributable to the State.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Prof. Kaloki): Mrs. Noor, your amendment is the same as that of Mr. Ethuro. So, can we proceed, Mrs. Noor?

Mrs. Noor: Mr. Temporary Deputy Chairman, Sir, my amendments are the same with those of Mr. Ethuro but I just want to give a clarification that the Departmental Committee on Labour and Social Welfare worked on all these amendments and we gave them to Mr. Ethuro yesterday. We feel as a Committee we need to move our amendment. We are in agreement with Mr. Ethuro on that.

The Temporary Deputy Chairman (Prof. Kaloki): The point is that you are in agreement and so we will proceed.

Minister of State for Special Programmes, I think your amendments have also been captured by Mr. Ethuro and so I think you are satisfied there.

The Minister of State for Special Programmes (Ms. Mathenge): Yes, we have discussed and we are in agreement.

(Clause 2 as amended agreed to)

(Clauses 3, 4 and 5 agreed to)

Clause 6

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

THAT, Clause 6 be amended in sub clause (2) by inserting the words “in the manner specified under principle 6(2) of the Guiding Principles” immediately after the word “displacement”

(Question of the amendment proposed)

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

(Clause 6 as amended agreed to)

(Clause 7 agreed to)

Clause 8

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

THAT, Clause 8 be amended-

- (a) by deleting the word “address” appearing immediately after the word “shall”;
- (b) by deleting the words “ the disabled” appearing immediately after the word “children” and substituting therefor the words “persons with disabilities”;
- (c) by inserting a new sub clause immediately after sub clause (2)-

(3) In formulating programmes for assistance and protection under this section, the Government shall ensure that consultation is made with the internally displaced persons.

(Question of the amendment proposed)

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

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

(Clause 8 as amended agreed to)

Clause 9

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

THAT, Clause 9 be amended by inserting the following new sub clauses immediately after sub clause (2)-

(3) The procedure for resettlement of internally displaced persons and the standards applicable to such resettlement shall be as prescribed.

(4) In formulating the durable solutions under this section, the Government shall ensure that consultation is made with the internally displaced persons.

Mr. Njuguna: On a point of order, Mr. Temporary Deputy Chairman, Sir, could the Mover explain to the House the motivation on this amendment?

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I thought that the hon. Member has the Order Paper. If he looks at part “b”, he will find that we are deleting the word “disabled” so that we maintain the more acceptable definition of “persons with disabilities.” In part “c”, we are just looking for a forum in which consultations are also made with the Internally Displaced Persons (IDPs) themselves in the spirit of public participation.

(Question of the amendment proposed)

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

(Clause 9 as amended agreed to)

Clause 10

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

THAT, Clause 10 be amended by deleting sub clause (2)

(Question of the amendment proposed)

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

(Clause 10 as amended agreed to)

Clause 11

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

THAT, Clause 11 be amended in sub clause (5) by inserting the following new paragraph immediately after paragraph (e)-

(f) ensure adequate provision of the social economic rights specified in Article 43 of the Constitution.

Mr. Temporary Deputy Chairman, Sir, for clarity, we are just trying to define what “adequate living standards” are as prescribed in Article 43 of the Constitution.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

Clause 12

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

THAT, Clause 12 be amended-

(a) in sub clause (2) by deleting the word “incorporated” and substituting therefor the word “unincorporated”;

(b) in sub clause (3)-

(i) by inserting the following new paragraph immediately after paragraph (i)-

(ia) the chairperson of the National Lands Commission.

(ii) by deleting the words “civil society” appearing in paragraph (ii) and substituting therefor the words “non State actors”;

(iii) by deleting paragraphs (k) and substituting therefore the following new paragraph-

(j) two persons appointed by the Cabinet Secretary to represent the non state actors and donor community

(a) by inserting the following new sub-clause immediately after sub clause (3)-

(3A) The Accounting Officer shall provide the secretariat to the Committee.

(b) by deleting sub clause (4)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Ethuro, could you provide some clarity in order to take care of the interest of other hon. Members and those who have some amendments? Could you provide the rationale behind your amendment?

*(The Temporary Deputy Chairman consulted
with the Clerk-at-the-Table)*

Hon. Ethuro, are you dealing with “j” or “k”? The Committee’s amendment is dealing with “j” and “k”. What are you dealing with?

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I am dealing with sub-clause 2 as well as sub-clause 3.

The Temporary Deputy Chairman (Prof. Kaloki): You are dealing with “k” then.

Mr. Ethuro: Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Prof. Kaloki): Could you provide some explanation?

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, in “k” which you seem to be interested in, we are providing for the Cabinet Secretary to get two persons from the ones we had identified as non-state actors and the donor community to the committee.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Ethuro, I think your amendments are similar to those of the Committee.

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, we actually sat together and harmonized.

The Temporary Deputy Chairman (Prof. Kaloki): Could you approach the Chair for clarity? We want to make sure that we capture the right thing.

*(Mr. Ethuro consulted with the Chair
and the Clerk-at-the-Table)*

Members, let us allow hon. Ethuro to consult with the Committee to make sure that the amendment is moved properly. Hon. Ethuro will be consulting with the Committee so that they are on the same page.

(Mr. Ethuro consulted with Mrs. Noor)

Hon. Ethuro, I think you are ready. Just move the amendment so that we can capture it properly. Please, clarify whether you are dealing with “j” and “k” or “k” only, so that it is captured properly by the Clerks-at-the Table.

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, the Committee was doing both “j” and “k” and I wanted to retain “j” and deal with “k” but we have just consulted as you directed and we have agreed that we do away with “j” and “k”. So, I will, therefore---

The Temporary Deputy Chairman (Prof. Kaloki): When are you doing away with “j” and “k”?

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, we are deleting subparagraphs “j” and “k” and substituting with a new paragraph of the Cabinet Secretary to appoint two persons.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Prof. Kaloki): Even the Minister has filed some amendments and these amendments have been captured by hon. Ethuro. Hon. Minister, for the record, you can proceed and confirm that.

The Minister of State for Special Programmes (Ms. Mathenge): I think paragraph 12 (i) is not properly covered because it was talking of the Chairperson of the Kenya National Commission on Human Rights and we were also deleting that. So, we would like that also to be deleted.

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I accede to the further amendment to Clause 12 by the hon. Minister. It will capture all our amendments. I have no problem with that. The Minister has been good.

The Temporary Deputy Chairman (Prof. Kaloki): She is deleting “(i)”

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Speaker, Sir, I am deleting “(i)” “(j)” “(k)” and we are also inserting a Commissioner from the National Lands Commission.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Minister, for the record, your deletion with the extension to “(i)” has been captured by hon. Ethuro.

Hon. Ethuro, just to make sure we capture this, could you then move it again and you capture the deletion of “(i)” from the Minister.

Hon. Ethuro, I want you to capture that further amendment so that we can capture and call them out at the same time. The Minister’s amendment was deletion of “(i)”.

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, that is why I am trying to check because after deleting that, she is capturing the Chairperson of the National Lands Commission which we had also captured.

The Temporary Deputy Chairman (Prof. Kaloki): It is in sub-clause 3, page 4254.

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, let me try to paraphrase that Clause 12---

The Temporary Deputy Chairman (Prof. Kaloki): Order, hon. Ethuro! Let us hear hon. Odhiambo-Mabona.

Mrs. Odhiambo- Mabona: Mr. Temporary Deputy Chairman, Sir, my understanding is that hon. Ethuro and the Committee did not delete “(i)” but they deleted “(j)” and “(k)” and introduced that amendment which I was happy with and which I supported. I, however, do not support the Minister’s amendment and say it will be prudent if the Minister moved hers as a further amendment so that those of us who want to speak to it can do so.

The Temporary Deputy Chairman (Prof. Kaloki): There is no agreement then and other Members want to contribute on the same.

Hon. Ethuro just move yours so that we can dispose it off and then we will be able to deal with the Minister's amendment, which is "(i)".

Proceed, hon. Ethuro!

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I propose that Clause 12 be amended by deleting '(j)' and '(k)' and substituting with the following:-

"The Cabinet Secretary to appoint two persons from the non state actors and the donor community"

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Prof. Kaloki): Minister, because we are still dealing with that particular clause, you can now move your amendment.

The Minister of State for Special Programmes (Ms. Mathenge): I had proposed that we also delete "(i)"; that is, the Chairperson of the Kenya National Commission on Human Rights but I do not have a big issue with it being retained. It is neither here nor there. So, we can retain it.

The Temporary Deputy Chairman (Prof. Kaloki): Order, Minister! Are you withdrawing or you want it to be retained?

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Speaker, Sir, I am withdrawing the deletion of "(i)".

(Proposed deletion of (i) withdrawn)

(Question of the amendment proposed)

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I just wanted to point out that we have an (i) which I want to amend. On the Order Paper, (i) talks of the chairperson, but we had consulted with the Minister and agreed that it should be the chairperson or any other commissioner.

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

THAT, Clause 12(b)(i) be further amended by inserting the following new paragraph immediately after paragraph (i) which is (ia) "the chairperson or a commissioner from the National Lands Commission.

Mr. Temporary Deputy Chairman, Sir, we had agreed on this with the hon. Minister.

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, we agreed so that the clause we are inserting is in conformity with the National Land Commission Act.

(Question of the further amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I support, but for purposes of clarity, I want to state that the Minister withdrew her proposed deletion of (i). The records need to be clear that we have not removed the Commission.

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

(Clause 12 as amended agreed to)

Clause 13

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I beg to move:
THAT, Clause 13 be amended-

(a) by deleting the words “civil society” wherever they occur and substituting therefor the words “non State actors”;

(b) in paragraph (d)-

(i) by deleting the full stop and the word “The” appearing immediately after the words “such persons” and substituting therefor the word “which”;

(ii) by deleting the word “90” appearing in subparagraph (i) and substituting therefor the word “three”.

(c) in paragraph (g) by inserting the words “relating to the fulfillment of its functions” immediately after the words “Annual Report”

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Minister, since you seem to be in agreement with the hon. Ethuro, this is now your time to confirm that. You had a proposed amendment which is similar to that of Ekwe Ethuro.

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, except for 13(d)(i) where we have changed from 90 days to 48 hours. We have agreed with him that 48 hours is the prudent time to do the profiling of IDPs.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Minister, I think you know the amendment by hon. Ekwe Ethuro. It is dealing with three days. You are deleting 90 and substituting it. So, you are supporting that.

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, no. We are deleting 90 days and substituting therefore 48 hours, that is, two days.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Minister, you are amending Mr. Ekwe Ethuro’s amendment by replacing 90 days with 48 hours. You can do that.

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, that is what I am proposing because what we have discovered in profiling the IDPs is that the longer time you give them the more you have---

The Temporary Deputy Chairman (Prof. Kaloki): So, you are moving.

(Question of further amendment proposed)

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, it is not practical for the profiling of these persons within 48 hours. The Government itself will drag its feet even to identify the officers to move to site. They will even deny first that there is such a thing happening. I suggest that this profiling can reasonably be done within 30 days or a minimum of 14 days. So, I oppose.

Mrs. Noor: Mr. Temporary Deputy Chairman, Sir, I support the proposal by the Minister. Profiling means that immediately an incident happens, the Commission established within this Bill that will have the work of going immediately to the site and identify the people and profiling them. We do not want people coming on board from elsewhere.

Mr. Lagat: Mr. Temporary Deputy Chairman, Sir, I oppose the 48-hour period because even the Minister knows that logistically, it is not possible to organize the Government within 48 hours to do the profiling. So, I oppose. We would leave it at 90 days.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, the original 90 days that was given by the Committee was informed by the fact we had gone round the country on this issue of IDPs. We discovered that in many places most people had not reached any centre where they could be profiled within two weeks. Many people today, especially integrated IDPs, are not profiled. There are women with no hands, people who lost their husbands and so on; they do not appear in any data because they did not reach on time. I oppose. I know 90 days may be too long, but the hon. Member could be kind as to move a further amendment and reduce it to 60 days. Otherwise, most people have been excluded and are facing injustice because of this short time for profiling.

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I want to amend--- The Minister was amending my amendment, but I want to amend her amendment. If you look at the Bill, (d) talks of “ensure the registration of all Internally Displaced Persons in order to maintain a national data base of such persons.” It then states: “Registration shall (i) commence and conclude within 90 days of the occurrence of the event.”

Mr. Temporary Deputy Chairman, Sir, to start registration and conclude it within two days--- I appreciate that the Minister will act in speed in future; I think it is a bit of a tall order. So, I want to bridge the gap if the Minister will allow. I am sorry I am persuading her through open media. I wish to propose that instead of the 90 days, we have 30 days. At least, that is one month. Just one month; to commence and conclude within thirty days. That is reasonable knowing the Government and its bureaucracy.

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Ethuro, this is your amendment. So, you want two days and not three or you want 30days?

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I am proposing a further amendment to 30 days instead of 90 days, which is a practical duration. If you allow me, the reading is commencement and conclusion. It is not commencement alone. The 48 hours come when you think of commencement, but to conclude the exercise of registration, you need thirty days.

The Temporary Deputy Chairman (Prof. Kaloki): The words “commence” and “conclude” must be there within the particular time. The particular time that you are proposing is 30 days and not 90 days. So, hon. Minister, is there an agreement from the Executive?

(Question of the further amendment proposed)

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, I agree reluctantly. In those 30 days, there will be a lot of infiltration. So, I would have said that we commence within 48 hours and conclude before 30 days. Otherwise, if you say 30 days, everybody will be an IDP.

The Assistant Minister for Livestock Development (Mr. Gabbow): Mr. Temporary Deputy Chairman, Sir. I agree with the Minister. The issue is infiltration. The information on the ground is not doctored. That is why we had to act with speed. That is the essence. Currently, what is happening with the IDPs, we keep on “manufacturing” new IDPs, who are actually not IDPs.

I support her.

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

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

(Clause 13 as amended agreed to)

Clause 14

The Minister of State for Special Programme (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 14 be amended

- a) By deleting in 14 (i) there is established a fund to be known as the Protection and Assistance to Internally Displaced Persons Fund and inserting “there will be the restructuring of the current existing National Humanitarian Fund
- b) By inserting in clause 14 (3) (f) “Funds from the exchequer”

We are proposing to have the Humanitarian Fund restructured as opposed to creating a new Fund. This is because in the Report that was done by the Committee refers to the restructuring of the Humanitarian Fund, and the policy also refers to the restructuring of the Humanitarian Fund.

This will just harmonize everything.

The Temporary Deputy Chairman (Prof. Kaloki): Madam Minister, on Clause 14, you have to be very clear with your amendment. What are you amending?

The Minister of State for Special Programme (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, there is the restructuring of the Humanitarian Fund. Period!

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Minister, approach the Chair. Hon. Members, allow the Chair, the Minister and the Clerk-at-the-Table to consult a little bit so that we have clarity on the amendment.

*(The Temporary Deputy Chairman consulted
with the Minister and the Clerk-at-the Table)*

It is now clear. Proceed, Madam Minister.

The Minister of State for Special Programme (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, we are going to delete Clause 14(i) and say that there will be restructuring of the National Humanitarian Fund. On Clause 14 (f), we will insert Funds from the Exchequer.”

(Question of the amendment proposed)

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

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

(Clause 14 as amended agreed to)

Clause 15

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

THAT, Clause 15 be amended by deleting the words “civil society” wherever they occur and substituting therefor the words “non State actors”; This is as previously agreed.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Prof. Kaloki): Minister, you have a further amendment.

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Chairman, I want Clause 15(3) deleted and the words “the programmes to be funded and the amount to be determined by the National Consultative Co-ordinating Committee” inserted in place therefor.

(Question of further amendment proposed)

(Question, that the words to be left out

be left out, put and agreed to)

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

(Clause 15 as amended agreed to)

The Temporary Deputy Chairman (Prof. Kaloki): Yes, Minister.

Clauses 16

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, my amendment to Clause 16 is just deleting the word “Controller” so that it can read “Auditor-General”, because we do not need “Controller and Auditor-General).

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

(Clauses 17, 18, 19, 20 and 21 agreed to)

Clause 22

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, the amendment is just deleting “special attachment” because every community has an attachment to their land. So, the wording is superfluous.

(Question of the amendment proposed)

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

(Clause 22 as amended agreed to)

(Clause 23 agreed to)

Clause 24

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

THAT, Clause 24 be amended in sub clause (2) by inserting the words “provide for” immediately before the words “the dissemination” appearing in paragraph (e).

(Question of the amendment proposed)

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

(Clause 24 as amended agreed to)

New Clause 23A

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I agreed with the Chair of the Committee to move that particular amendment.

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 23-

23A. Any person who-

(a) pretends to be an internally displaced person or presents himself in a manner likely to suggest that he is an internally displaced person whilst he's is not such person: or

(b) provides false information during the verification or profiling of internally displaced persons or;

(a) establishes an institution or camp which consists of persons pretending to be internally displaced persons as contemplated in paragraph (a);

commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(Question of the new clause proposed)

(New clause read the First Time)

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

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I wanted to support that proposal and say that this new clause was to allay the kind of concerns expressed by the Minister in terms of infiltration of people into the camps.

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

(The new clause was read a Second Time)

*(Question, that the New Clause be added
to the Bill, put and agreed to)*

(First Schedule agreed to)

(Second Schedule agreed to)

Third Schedule

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Temporary Deputy Chairman, Sir, I beg to move:

1. THAT, the Third Schedule: Conduct of Business and Affairs of the Committee be amended by –
 - a) By deleting and inserting correct numbering.
 - b) By deleting in clause 3, (5) number and inserting “members”
 - c) By deleting in clause 5, (2) shal and inserting “shall”

In the Third Schedule, Clause 5 is reading “number” and I think it should be “member”.

(Question of the amendment proposed)

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

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

(Third Schedule as amended agreed to)

Long Title

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

THAT, the Bill be amended by deleting the long title and substituting therefor the following new long title-

“An Act of Parliament to make provision for the prevention, protection and provision of assistance to internally displaced persons and affected communities and give effect to the Great Lakes Protocol on the Protection and Assistance to internally displaced Persons, and the United Nations Guiding Principles on internally displacement and for connected purposes”.

Mr. Temporary Deputy Chairman, Sir, the effect of this is just to ensure that we put emphasis on prevention and also that the host communities that are increasingly playing a bigger role on resettlement are recognized.

(Question of the amendment proposed)

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

(Question, that the words to be inserted in place

thereof be inserted, put and agreed to)

(Long Title as amended agreed to)

Short Title

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

THAT, the Bill be amended by deleting the short title and substituting therefor the following new short title-

“Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Bill, 2012”

Mr. Temporary Deputy Chairman, Sir, this is for the same reasons I had given in the Long Title.

(Question of the amendment proposed)

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

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

(Short Title as amended agreed to)

Clause 1

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

THAT, Clause 1 be amended by deleting the word “ninety” and substituting therefor the word “fourteen”

(Question of the amendment proposed)

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

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

(Clause 1 as amended agreed to)

PROGRESS REPORTED

THE INTERNALLY DISPLACED PERSONS BILL

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report progress to the House and seek leave to sit again.

Mr. Temporary Deputy Speaker, Sir, the import of this is for us to move to the main House and seek time to extend so that we can complete all the business on the Order Paper.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

Prof. Kaloki: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered The Internally Displaced Persons Bill and seeks leave to sit again today.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said resolution.

The Minister for Energy (Mr. Murungi) seconded.

(Question proposed)

(Question put and agreed to)

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

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

THAT, notwithstanding the provisions of Standing Order No.20(2), this House resolves that the sitting of the House be extended until the conclusion of business appearing on the Order Paper under Order Nos.8 and 9 on the Motion for Adjournment.

Madam Temporary Deputy Speaker, the import of that is to facilitate us with adequate time to dispose of the business that we had set ourselves to do this afternoon, so that we can feel that we have not left any business unattended to as we go home today.

Madam Temporary Deputy Speaker, I beg to move and request the Minister for Finance to second.

The Minister for Finance (Mr. Githae) seconded.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

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

IN THE COMMITTEE

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

THE INTERNALLY DISPLACED PERSONS BILL

*(Resumption of Consideration interrupted in
Committee today)*

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, we have now moved back to the Committee of the whole House. We just completed the Internally Displaced Persons Bill, Bill No.21 of 2012. Hon. Ethuro it is your time to move.

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth Report to the House its consideration of The Internally Displaced Persons Bill, Bill No.21 of 2012, and its approval thereof with amendments.

(Question proposed)

(Question, put and agreed to)

The Temporary Deputy Chairman (Prof. Kaloki): Hon. Members, we will be moving now to the Elections (Amendment) No.2 Bill, Bill No.58 of 2012 and hon. Ethuro will be leading that session. So, hon. Ethuro will be the Chair.

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

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

THE ELECTIONS (AMENDMENT) BILL

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members, as previously communicated from the Chair, we are at the Committee of the whole House and we started from

the bottom coming upwards. So, we have disposed of the IDPs one and we are going to the Elections (Amendment) No.2 Bill, Bill No.58 of 2012.

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Ruto, you may now move. Hon. Ruto, put your request. It is the reading at the very top.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, I rise to move that the Committee reports progress.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Ruto. Maybe, Dr. Laboso could be a good neighbour.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, I have seen it.

Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Elections (Amendment) No.2 Bill, Bill No.58 of 2012 and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

THE FINANCE BILL

(Clauses 2, 3, 4, 5, 6 and 7 agreed to)

Ms. Amina Abdalla: On a point of order, Mr. Temporary Deputy Chairman Sir. I had raised a point of order before you moved to The Finance Bill. I wanted to request that we report progress on the previous Bill.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Amina Abdalla, you notice that we did not do the same on the Internally Displaced Persons Bill. Let us just finish all of them and then we report at once. In any case, we have already approved a Motion to be here until we exhaust the business appearing on the Order Paper.

Clause 8

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 8 and substituting therefor the following new clause –

Amendment of the Fourth Schedule to 8. The Fourth Schedule to the Customs and Excise Act is amended in the manner specified in –

Cap.472.

- (a) item 1 of the First Schedule to this Act;
- b) item 2 of the First Schedule to this Act;
- (c) item 3 of the First Schedule to this Act.

Mr. Speaker, Sir, the purpose of this is to increase the rate of Export Duty on hides and skins specified in the First Schedule in the Order Paper from 40 per cent or Kshs20 per kilogramme to 80 per cent or Kshs40 per kilogramme. This is meant to discourage the export of unprocessed hides and skins in order to allow for local value addition. This is in line with our neighbours.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I want to support this amendment. It is true that in the region, Kenya is losing to its neighbours. For example in Ethiopia, the leather industry is growing by leaps and bounds. In fact, in Ethiopia, the tariff on raw hides and skin is in the region of 90 per cent and in Uganda and Tanzania, it is beyond 80 per cent. I think what the Minister is doing is in line with Vision 2030 in relation to ensuring that there is value addition.

I beg to support this.

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

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

(Clause 8 as amended agreed to)

Clause 9

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 9 and substituting therefore the following new clause –

Amendment 9. The Fifth Schedule to the Customs and Excise
of the Fifth Act is amended in the manner specified in –
Schedule to
Cap.472

- (a) item 1 of the Second Schedule to this Act;
- (b) item 2 of the Second Schedule to this Act;
- (c) item 3 of the Second Schedule to this Act.
- (d) item 4 of the Second Schedule to this Act.

The purpose of this amendment is to introduce Excise Duty of 10 per cent on money transfer services and fees charged by financial institutions. The amendment also seeks to increase the *ad volem* rate of Excise Duty on alcoholic beverages from 40 per cent to 50 per cent. The amendments are intended to expand the tax base, ensure equity and enhance Government revenue to support the financing of priority expenditures. I will explain so that it is clear to hon. Members.

The current law requires that we use the retail selling price. It has been very difficult to determine what the retail price is because there are some hotels which charge Kshs200 for beer while others charge Kshs70. So, we now want to go to the ex-factory price on the figure stated. The effect of this is that there should be no increase in beer prices. If on the contrary, it should go down but we will have enhanced revenue because of the difficulties of collecting tax based on average resale price.

Thank you. I beg to move.

(Question of the amendment proposed)

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

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

(Clause 9 as amended agreed to)

(Clauses 10 and 11 agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Minister, you have an amendment. Hon. Ogindo, if the amendment by the Minister is carried, yours will be dropped.

Clause 12

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, the Bill be amended by deleting Clause 12 and substituting therefor the following clause –

Amendment of
section 34 of Cap
470.

12.Section 34 of the Income Tax Act is amended –

in subsection (1) -

by inserting the following new paragraph immediately
after paragraph (h) –

tax upon the amount or value of the consideration from sale of property or shares of a resident person charged under section 3(2)(g) shall be charged at the rate provided for under paragraph 5 of the Third Schedule;

in subsection (2) –

by deleting the paragraph relating to “winnings from betting and gaming”;

by inserting the following new paragraphs immediately after paragraph (i) -

(j) a payment in respect of gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2).

(k) the amount or value of the consideration from the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies.

(Loud consultations)

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I wish I could have the attention of the House because this is really important.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Minister! Proceed. Nobody has distracted you.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, the difference between my amendment and that of hon. Ogindo is that hon. Ogindo’s amendment seeks to impose Capital Gains Tax on all shares, land and transfers. In my amendment, I am seeking to only restrict it for now to mining companies and mineral companies because, recently, mining companies got prospective licences on payment of minimum amounts of Kshs3,000 or Kshs10,000. However, when they discover oil, they sell their shares to other companies. It has happened. When they do so, the Government does not get any revenue at all. So, in my amendment, I am only restricting for now to oil companies, mining companies and mineral prospecting companies.

Mr. Temporary Deputy Speaker, Sir, we are also working on how we can extend the Capital Gain Tax but that study is not yet over. We have realised that some of our neighbouring countries exempt tax on the first house. People are encouraged to own houses. Other countries give a grace period, so that if you retain your house for, say, four or five years, you do not pay Capital Gain Tax. So, we are doing a study on these aspects. I would really plead with my friend and colleague to withdraw his amendment, when the time comes, to enable us do a proper study on the consequences and how we can proceed from there.

With those remarks, I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Ethuro): Yes, hon. Ogindo.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I have heard the Minister, but allow me to say this, on account of the amendment I have proposed.

The Minister is under siege today at Treasury. He needs a lot of money. Any avenue that can give him legal money should be encouraged. My amendment goes beyond his amendment. I think it hurts nothing. A study has already been done on this matter. You will remember that Capital Gain Tax was suspended, first, in 1978. There was an attempt to bring it back as late as 2006. Today, we have seen the industrial unrest in this country. We have a Budget deficit of Kshs186 billion. This is one of the routes with which we can cure these problems.

Mr. Temporary Deputy Chairman, Sir, we are the ones lagging behind in this aspect. In the Republic of South Africa, there is Capital Gain Tax of 40 per cent. In Uganda, there is Capital Gain Tax of 30 per cent. In Botswana, it is 25 per cent. In Tanzania, it is 20 per cent. So, I would want to plead with the House. There are Schedules in the Income Tax Act that deal with the kind of exemptions that the Minister has referred to. For posterity, this country can only run on taxes. This is a tax which is not going to hurt anybody. We are taxing capital gains.

Hon. Members will appreciate that when the NIC was sold by the Barclays Bank, huge profits were made, but they went untaxed. There is talk of selling Kenol/Kobil. There is going to be a profit of Kshs25 billion, which is going to go scot-free. There was the sale of KenCel Limited and huge profits were made, but they went scot-free. Celtel was sold and the profits went scot-free. Therefore, I want to plead with this House, being aware of the challenges that we are facing as a country. The teachers staged strikes only the other day. Nurses and doctors also staged strikes. Our development programmes are lagging behind.

Therefore, if this House is really considerate of the wellbeing of Kenyans, I want to urge us to support my amendment, which goes beyond the amendment by the Minister. The Minister has powers to make regulations which will make the law operational.

Mr. Temporary Deputy Chairman, Sir, I beg to move that Clause 12 be amended as it appears on the Order Paper, which encompasses the amendment of the Minister. We appreciate that there is oil in Turkana. There is oil being prospected in Nyanza Province.

Mr. Temporary Deputy Chairman, Sir, you can appreciate that there is oil coming up in the Nyanza basin and we must capture all this in advance. This is the legal framework that we are creating.

Eng. Gumbo: Mr. Temporary Deputy Chairman, Sir, while I do not have any objection in totality to the proposal to introduce Capital Gains Tax, you remember that the main reason why people acquire property, especially at individual level, is to gain from the appreciation of the property. I would request the Minister that, much as I do not wish to oppose his proposed amendment and even that of Mr. Ogindo, he safeguards the upcoming Kenyan investors. In a lot of cases, taxation level in this country is not one of the lowest in the world. One of the escape routes that young Kenyans have found themselves in is through acquiring property which appreciates over time, and then they sell it. I think as long as the money remains here, one way or the other, the economy still gains indirectly.

My proposal to the Minister is that much as we may approve capital gains tax, I think the regulations for the time being should exempt individuals and concentrate on the corporate. In any

case, when somebody buys a house for Kshs1,000,000 and sells it for Kshs1.5 million--- If you concentrate too much on those small time investors and leave out the big time ones, there will be more to gain by targeting the people with money. Let us have a situation in Kenya where we tax those who have big mouths more than those small time investors who are just beginning to entrench themselves on the footpath to economic independence.

I hope that the Minister will take that into consideration.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Eng. Gumbo!

Mr. Langat: Mr. Temporary Deputy Chairman, Sir, although I support what Mr. Ogindo is saying, I would like us to ensure that we separate those dealing with land from those who do business. We should tax those who are doing business as opposed to those who sell land to move to another place. I support but I would prefer a situation where we only tax the people who do actual trading instead of those who move from one area to another.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Ogindo, the effect of that is that your amendment falls. I said that since there are two amendments, we will take the Minister's first and if it is carried, yours would fall. That was the proper time for you to have raised issues, but let me hear you.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, my amendment and the Minister's amendment are not contradictory. So, I was moving my amendment to amend the Minister's amendment further. If it was procedural, then the question you were to put was the Minister's amendment as further amended by my amendment, because the Minister's amendment is a subset of my amendment.

The Temporary Deputy Chairman (Mr. Ethuro): That is where you have difficulties with the Chair. Your amendment is materially different from the one of the Minister. In any event, the Chair granted you an opportunity to contribute to the proposal by the Minister. The procedure usually is that when you have a further amendment, then that is the time you actually make your further amendment. So, since you did not even do so---

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I did so. If you remember well, I made my contribution and then I pleaded to make a further amendment to the Minister's amendment. I did so.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Ogindo! The Chair is very alert and the Chair gave you the first opportunity to contribute to the Minister's amendment in recognition of the fact that you were an interested party to that amendment. The procedure is usually that immediately you rise to speak, then you actually start by saying: "I want to further amend". You did not use that language. You just prosecuted the amendment.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, the HANSARD will bear me out. I did it.

The Temporary Deputy Chairman (Mr. Ethuro): We have heard you and the Chair will proceed to rule.

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

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

(Clause 12 as amended agreed to)

Clause 13

The Minister for Finance (Mr. Githae):- Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting clause 13 and substituting therefor the following new Clause –

Amendment of section
35 of Cap 470.

13. Section 35 of the Income Tax Act is amended –

(a) in subsection (1) –

(i) by deleting paragraph (j).

(ii) by inserting the following new paragraph -

(k) the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies;

(iii) by inserting the following new paragraph immediately after paragraph (k) –

(l) gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2).

(b) in subsection (3) –

(i) by deleting paragraph (i);

(ii) by inserting the following new paragraph at the end thereof -

(j) the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies.

Mr. Temporary Deputy Chairman, Sir, this is basically proposing to delete the proviso. What I am trying to do is that this country is now a tax-paying nation. We want everybody to be filing income tax returns. That proviso will require that everybody with taxable income will be required to file their income tax returns.

This gives the right atmosphere for tax payments and even from the returns the KRA is able to get more evidence and facts on whether all taxes are being paid. This is now a tax-paying nation.

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

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

(Clause 13 as amended agreed to)

(Clauses 14, 15 and 16 agreed to)

Clause 17

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 17.

Mr. Temporary Deputy Chairman, Sir, the purpose of this is to require the Commissioner for Income Tax to be able to appeal to tenants to give him information where he thinks that a landlord is not paying tax.

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

(Clause 17 deleted)

Clause 18

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

THAT, Clause 18 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) in the proviso to paragraph 10 by inserting the following immediately after sub-paragraph (iii)-
and provided further that an exemption under this paragraph-

(i) shall be valid for a period of five years but may, at any time, be revoked by the Commissioner for any just cause; and

(ii) shall, where an applicant has complied with all the requirements of this paragraph, be issued within sixty days of the lodging of the application.

Mr. Temporary Deputy Chairman, Sir, the rationale for this amendment is that the current application in the Kenya Revenue Authority (KRA) normally takes six to 36 months. So, we want to reduce that period. This takes a lot of time and hence, there is loss of image for the country when an application is lodged.

(Question of the amendment proposed)

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, whereas I see the rationale for doing this, what the Committee is proposing is to extend the exemption period. At the moment, it is three years and they want to extend it to five years. This is really not necessary. Again, in our view, three years is adequate because it requires keeping of records and audit. If we extend the period, then we may have challenges in audit. We have all seen the danger that when you set a specific timeline, that timeline is not met and there is no sanction, it becomes pointless. I wish the Committee could withdraw the amendment, because three years is adequate period.

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, the three years have been difficult for the KRA to keep up with their routine paper work. We have already consulted on this and agreed that five years will allow the KRA to do the audit and documentation, so that it can have its reports timely. So, five years seems to be the normal time.

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

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

(Clause 18 as amended agreed to)

(Clause 19 agreed to)

Clause 20

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 20 and substituting therefor the following new Clause -

**Amendment of the
Third Schedule to
Cap 470.**

20. The Third Schedule to the Income Tax Act is amended in HEAD B as follows -

(a) in item 3 -

(i) by inserting the words “which is chargeable to tax under section 9(2)” immediately after the words “method of communication” appearing in paragraph (l);

(ii) by deleting paragraph (m);

(iv) by adding the following new paragraph at the end thereof -

(n) in respect of the amount or value of the consideration from sale of property or shares, in respect of oil companies, mining companies or mineral prospecting twenty percent of the gross amount payable.

(b) in item 5 –

(i) by deleting paragraph (j);

(ii) by inserting the following new paragraph -

(k) in respect of the amount or value of the consideration from sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies, ten percent of the gross amount payable.

Provided that the tax so deducted shall be final.

(Question of the amendment proposed)

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

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

(Clause 20 as amended agreed to)

Clauses 21 and 22 agreed to)

Clause 23

The Temporary Deputy Chairman (Mr. Ethuro): There are two amendments, one by the Minister and the other one by the Committee. Again, if the Minister's amendment is sustained, then the one of the Committee will fall.

Proceed, hon. Minister!

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I did not have the opportunity to share the opinion I have just received from the Attorney-General.

(Mr. Okemo consulted with other Members)

The Chairman of the Departmental Committee on Finance, Planning and Trade could listen to me.

As, I said, right now, you have seen somebody bring me a letter from the Attorney-General and he is saying that according to our Constitution---

Let me, first of all, start by saying we wanted to allow Kenya Revenue Authority (KRA) to retain its commission instead of paying everything to the Treasury and then the Treasury giving back the commission. But I have just received an opinion. I had asked the Attorney-General whether it is constitutional or not. I have just seen a letter from him saying that since KRA is not a State body, therefore, it cannot be allowed to retain its commission. Therefore, I will request the Chairman also to withdraw his amendment. I want to withdraw mine. It is unconstitutional according to the letter I have just received from the Attorney-General.

I can read the letter from the Attorney-General. That will even be better.

The Temporary Deputy Chairman (Mr. Ethuro): Now let us get it straight. Who is representing the Committee?

The Minister for Finance (Mr. Githae): So, I am withdrawing mine.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Minister! In fact, my phraseology was getting straight and you are merely making it crooked.

I wanted to know nothing to do with the Minister. Who is representing the Committee because it cannot be Prof. Kaloki and at another time hon. Okemo. Perhaps, hon. Midiwo is in the waiting. So, could we hear from the Chair of the Committee? Have you delegated or you are still performing your duties?

So, I will take it from the Committee that you will be the one moving them.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I am leaving in about three, four to five minutes, but Professor will ably do so. However, since I am here and I know that this has been a very touchy issue, we thought that we should address it through an amendment.

What has been happening is that KRA has a lot of difficulties with the Ministry of Finance. In fact, there are times when they do not even have enough money to run the place. So, we said that since they are doing such an important function, they are collecting money and yet they are not being enabled to do that very important function of collecting revenue for the country, we should make it easy for them by allowing them to withdraw a specific amount or to withhold a specific amount from whatever they collect. I think it makes a lot of sense.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Chairman, it does make a lot of sense but we are dealing with constitutional matters. In fact, the issue is not the merits or demerits of the argument. The issue before the Chair is whether that is constitutional or not and according to our Standing Order No.43, we cannot entertain and according to the same Constitution Article 10, every state organ is under obligation.

Proceed, hon. Okemo!

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I have had this amendment for the last four weeks and then the Minister decides at the last minute to come and ambush us here with the Attorney-General's opinion. It comes on the day when the Bill is under debate. The normal way we have done it is that, we link with the Minister in advance and we carry out any difficulties and we agree on a common position. But this time round, the Minister has decided to come when we are actually on the Floor of the House.

The Temporary Deputy Chairman (Mr. Ethuro): What is it, hon. Ogindo?

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I want to agree with you that the merits of this amendment are glaring. It will be incumbent upon the Minister to explain under which constitutional provision the Attorney-General is giving this advice rather than just waving a letter. We need to appreciate and interrogate this matter alongside his argument; if, indeed, the constitutional provisions---

The Temporary Deputy Chairman (Mr. Ethuro): That is a valid point of order, Mr. Minister. You need to respond to the specifics. Since there is interest in this matter, let us get contribution from hon. Midiwo and hon. Abdikadir.

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I am not sure that what the Minister is trying to do is not in an ambush. I am also in the know that the Attorney-General he is referring to is out of the country. I, therefore, suspect that somebody is trying to time us and use people in his office to do something that is not good for this country. I say that with utmost respect. The independence of the KRA is something which we cannot avoid, if we want to grow this country. There is so much we have sought to do as the Departmental Committee on Finance, Planning and Trade to give the KRA autonomy. Unless the Minister can explain what it is that is unconstitutional, I think we will be opposing and, in fact, continuing with our amendment as the Departmental Committee on Finance, Planning and Trade.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, Article 206 of the Constitution states: "There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national Government except money (a) that is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose, or (b) that may under an Act of Parliament be retained by the State organ that received it for the purpose of defraying the expense of the State organ." Those are the only two cases when the KRA is neither---. It is, therefore, not possible to move on that matter.

Secondly, I also do not even think that there is any merit to state to the tax collector that he should go on and pick whatever he wants from the tax collected. Let them send money to the Consolidated Fund and then the National Assembly will decide how it will be voted on. If they have problems, it is the National Assembly that will be correcting issues. It is up to the National Assembly to vote funds into specified votes. I do not think it is a good idea for the KRA to be scheming.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I am of the same opinion as the Chairman of the Departmental Committee on Finance, Planning and

Trade. I am aware of the challenges that KRA is undergoing. That is why I had proposed the same amendment as the Committee to give the KRA a commission of 2 per cent; that is to allow them to retain a commission of 2 per cent and send the balance to the Consolidated Fund. It is me who is alive to this.

As I said, I have a letter from the Attorney-General dated 4th October, 2012, which is today. It is signed by Mr. E.M. Ng'ang'a, the Senior Deputy Chief Parliamentary Counsel for the Attorney-General. It says exactly what hon. Abdikadir has said. I will read the whole paragraph. "The proposals also contain an amendment to Section 16 of the Kenya Revenue Authority Act to empower the Authority to retain funds for the performance of its functions instead of following the current mode of financing where its funds are allocated to it by Treasury. The issue here is whether the Authority is able to do this under the provisions of the new Constitution.

Under Article 206 of the Constitution, it is provided that all money raised or received on behalf of the national Government shall be paid into the Consolidated Fund except money that (a) is excluded from the Fund by an Act of Parliament, or is payable into another public fund established for that purpose, or (b) may under an Act of Parliament be retained by the State organ that received it for the purpose of defraying its expenses.

Under Article 261 of the Constitution, the word "State organ" is defined as a Commission, agency office or other body established under the Constitution. The KRA does not fall within that definition, nor does it have a Fund into which its funds may be paid. It is, therefore, not able under the Constitution to retain the funds as it tends and the amendment should not be allowed to stand.

That is the conclusion of the Attorney-General. We are on the same page with the Committee.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Minister! You have read the letter and since you are relying on the advice of the Attorney-General, there is no point adding more. It is very clear. If you look at Article 206 of the Constitution and the concluding paragraph of the letter from the Attorney-General, there are two things you can do. You can reasonably exclude money from the Fund, which the law is attempting to do, but it can only qualify if it is payable to another public Fund. The KRA does not qualify to be a public Fund. The second one is (b). You can do so, but through an Act of Parliament to a State organ. He explained that.

My job, therefore, is extremely simple. I had talked about the Standing Order No.43, but I got it wrong. It is the Standing Order No.47(3), which states that:-

"If the Speaker is of the opinion that any proposed Motion-

(b) is contrary to the Constitution, without expressly proposing appropriate amendment of the Constitution; the Speaker may direct either that, the Motion is inadmissible or that notice of it cannot be given without such alteration as the Speaker may approve".

I direct that the both amendments are inadmissible. It means that the proposed amendment to Clause 23 is inadmissible. So, there is no amendment to that particular clause.

Hon. Ogindo and hon. Midiwo, this matter is very clear to the Chair. I will only entertain if I was anticipating that there is something more useful that you could add.

(Clause 23 agreed to)

(Clause 24 agreed to)

Clause 25

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

THAT, Clause 25 of the Bill be amended in the proposed new definition of the expression “significant owner” by inserting the words “directly or indirectly” immediately after the words “a person who”.

The rationale for this is to put the definition a little bit better. We intend to include “indirect ownership” because it is missing there, so that the Capital Markets Authority will be able to identify indirect ownership of the shares.

(Question of the amendment proposed)

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

(Clause 25 as amended agreed to)

(Clauses 26,27,28,29 and 30 agreed to)

Clause 31

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

THAT, Clause 31 of the Bill amended in the proposed Section 68A-

(i) by deleting the words “from time to time carry out an assessment of the professional, financial and moral suitability” in subsection (1), and inserting the words “upon receipt of a requisition signed by not less than ten per cent of policy holders with the insurer, carry out an assessment of the integrity and professional suitability”, in place thereof.

(ii) by inserting the words “the rules of natural justice, the principles of fair trial and” immediately after the words “accordance with” in subsection (2);

(iii) by deleting subsection (3) and inserting the following new subsection (3) in place thereof-

(3) Upon an assessment under this section, the Authority shall, within reasonable time, convey its findings to the insurer and the person licensed under this Act on whom an assessment has been carried out.

(iv) by deleting subsection (4).

I, hereby, confirm that I have shared by proposal of the amendment with the Minister for Finance.

(Question of the amendment proposed)

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I support that amendment. Unless amended, that section of the law would mean that the Government is trying to interfere with the running of private companies. I, therefore, support the amendment.

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

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

(Clause 31 as amended agreed to)

*(Clauses 32, 33, 34, 35, 36, 37, 38,
39, 40, 41, 42, 43 and 44 agreed to)*

Clause 45

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

THAT, Clause 45 of the Bill be amended by deleting the proposed new sub-section (2) of section 2A and substituting therefor the following new sub-section-

(2) A person who breaches a condition prescribed under sub-section (1) is guilty of an offence and shall be liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

This is with regard to scrap metal. The punishment, as it is already proposed in the Act, is too lenient because of the damage to the economy and the effect to the industry. From the Kshs1 million that is proposed as penalty and three years imprisonment, we are now proposing Kshs5 million as the penalty or five years imprisonment.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Prof. Kaloki! One expectation of a Member of Parliament is literacy. So, this is already in the Order Paper and we can read it.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order, hon. Member! We are at Clause 45. The new clauses come at the very end. So, you may hold your horses.

Yes, hon. Mwaura Njuguna.

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment suggested by Prof. Kaloki. The damage that has been caused by vandalism in this country is colossal. We cannot allow this to continue.

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

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

(Clause 45 as amended agreed to)

(Clauses 46 and 47 agreed to)

Clause 48

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, there is an amendment proposed by the Minister, and another one by the Committee. Again, the two amendments are similar. Of course, being the owner of the Bill, the Minister will move his amendment first. If it is carried, the other amendment shall be dropped.

Proceed, Minister.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in Clause 48 by deleting the words “societies” and “demobilization” appearing in the definition of “eligible securities” and substituting therefor the words “securities” and “immobilization” respectively.

Mr. Temporary Deputy Chairman, Sir, this is basically a clean-up exercise. It was a typographical error. We are correcting it. The Committee has the same amendment.

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kaloki, it is very clear. We are at the Committee Stage.

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, we are in agreement. That is securities.

The Temporary Deputy Chairman (Mr. Ethuro): I propose that if you are not opposed to an amendment, you can indicate so. I will be looking towards your direction. That will be fine, just like the way we second Motions without speaking on them.

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

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

(Clause 48 as amended agreed to)

(Clauses 49 and 50 agreed to)

New Clause

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

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

Amendment of **2A.** Section 127C of the Customs and Excise Act is amended in

section 127C of subsection (2) by deleting the words “except in the case of beer
Cap.472. and wine, where the value shall be the retail selling price as
determined in accordance with the regulations.”

(Question of new clause proposed)

(New clause read the First Time)

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

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, what we are saying is just what I explained earlier; that we are changing the way taxation is done. The retail selling price has been very difficult to implement because various bars, hotels and restaurant charge different prices for the same beer. So, we are now saying that we delete the retail selling price and use ex-factory price, but at 50 per cent. This is to simplify the tax regime and ensure stability in revenue yields.

As I said, I do not expect the prices of beers to change because, in effect, there are some hotels which sell a bottle of beer at Kshs200. Other restaurants sell the same beer at Kshs70 per bottle. Let me warn bars, restaurants and hotels not to increase the price of beer just because we have changed the way we are going to charge tax.

I beg to move.

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

(The new clause was read a Second Time)

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

New Clause 11A

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately before Clause 12 -

11A. Section 2 of the Income Tax Act is amended in subsection (1) by deleting the definition of “winnings”.

We are basically deleting the definition of winnings. Again, it has been impossible to get tax on winnings, particularly in casinos where you win Kshs10 or Kshs100. One is supposed to keep records but it has been impossible. So, we are deleting the definition of winnings following the removal of winnings from gaming and bating from the Income Tax.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 11B

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

Amendment of section 3 of Cap.470.

11B. Section 3 of the Income Tax Act is amended -
in subsection (2) by inserting the following new paragraph immediately after paragraph (f) –

the amount or value of the consideration from the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies.

in subsection (3) by inserting the following new paragraph immediately after paragraph (b) –

“sale of property or shares” includes the assignment of rights, sale of companies and businesses, and takeovers or any other non-inventory assets.

Again, this is just following what we discussed earlier. We want Capital Gain Tax as of now to be restricted to mineral companies and oil companies, so that we benefit from whatever appreciation of the shares they may have. I said that it requires a further study on how we can generally introduce or remove the suspension of Capital Gains Tax. It requires a further study. As I said, we should do it progressively. We have started with mineral companies and we will progressively go to what Mr. Ogingo wants but over time.

(Question of the new clause proposed)

(New clause read the First Time)

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

Mr. Midiwo: Mr. Temporary Deputy Chairman, sir, I want to support the Minister. Capital Gains Tax is one of the ways good governments raise revenue. In our country, I would want to urge the Minister that we discourage our people from being extreme capitalists. If you have a house, you should pay Capital Gains Tax on a second one. That is the only way we are going to stop borrowing perpetually from foreign countries, yet we have a few individuals making money that all of us could share in.

I support.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I wish to support the Minister. I wish to say that this is slightly selective. The Minister should have gone the whole hog and netted as much revenue as there is in this market. It is a step forward and we look forward to making further amendments in subsequent years.

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

(The new clause was read a Second Time)

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

New Clause 11C

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

Amendment of
section 10 of
Cap.470.

11C. Section 10 of the Income Tax Act is amended –

(a) by deleting paragraph (g);

by inserting the following new paragraph -
the amount or value of the consideration from sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies.

Again, as I had explained, the purpose of this is consequential from the amendment we have made. I am saying that even where an oil, mineral or prospecting company sells its property or shares, then there will be Capital Gains Tax on it. This is for now but we will progressively increase the categories of Capital Gains Tax.

I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 13A

The Temporary Deputy Chairman (Mr. Ethuro): There are two proposals. We will take the one of the Minister first. If the Minister's one is carried, the one of the Committee will collapse.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 13-

Amendment of **13A**. Section 52B of the Income Tax Act is amended in subsection(1) by deleting the proviso thereto.

Again, this is just consequential following the amendment we have made that we will restrict for now capital based tax only on oil companies, mineral companies and other prospecting companies. This is really consequential. We had already agreed that progressively we will go on increasing capital against tax on other items.

I therefore, move and ask Mr. Kimunya to second.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, we agree on that proposal by the Minister.

The Temporary Deputy Chairman (Mr. Ethuro): Consequently, the Committee one does not proceed.

New Clause 16A

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 16-

Insertion of new
Section 16A in
Cap. 470.

16A. The Income Tax Act is amended by inserting the following new section immediately after section 98-

Collection of
Tax from
Companies or
businesses at risk

98A (1) Notwithstanding any other provisions of this Act, where the Commissioner has reasonable cause to believe that a person has made income that has not been charged to tax and the collection of that tax is likely to be frustrated due to-

(a) in the case of a person being a company, the company is about to be liquidated, wound up or to otherwise cease to trade or do business;

(b) the company has sold or is planning to sell or otherwise dispose of the assets or trading stock of the business in a manner or for amounts which in the opinion of the Commissioner are not justified in expected business purposes, or

(c) the business has or is seeking to change the nature of its business; or has or is seeking to relocate the bulk of its operations outside of Kenya,

the Commissioner may, by notice in writing and notwithstanding the due date of the tax, issue an assessment of the tax owing and require that person to pay the tax so assessed or provide security for the same to the Commissioner's satisfaction, within the period specified in the notice.

(2) Where a notice has been served on a person under this section, the amount of tax assessed and required to be paid shall, notwithstanding that a notice of objection to, or appeal against, the assessment has been given or is pending, be deemed to be due and payable on the date specified in the notice;

(3) In default of compliance with the notice given under subsection (1) the Commissioner shall in addition to any action taken under subsection (5) of this section be entitled to recover the tax forthwith by agency notice, suit or distress as provided for under this Act.

(4) Notwithstanding subsection (3), where subsequent to the commencement of a suit under this section compliance is made with the notice, that suit shall be discontinued and no order for costs thereon shall be made.

(5) Any person who fails or refuses to comply with a notice under this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

(6) Notwithstanding any other provision of this Act or any other written law, where the person upon whom a notice under this section has been served is a corporate body the General Manager or other principal officer of the corporate body shall be responsible for ensuring that the obligations on the corporate body as set out in the notice are performed by the corporate body, and in default of compliance with the notice that General Manager or other principal officer may be held individually liable for the taxes set out under the notice either jointly or severally:

Provided that nothing in this section shall prevent the Commissioner from enforcing that notice against the corporate body in circumstances where in the opinion of the Commissioner, holding the General Manager or principal officer liable for the taxes set out under the notice would not be appropriate.

(7) Where an offence under this Section has been committed by a corporate body, every person who at the time of the commission of the offence was a director, general manager, secretary, or other similar officer of the body corporate, or was acting or purporting to act in that capacity, shall also be guilty of the offence, unless the person proves that the offence was committed without his consent or knowledge and that he exercised all diligence to prevent the commission of the offence that he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances.

Mr. Temporary Deputy Chairman, Sir, again as I said we wanted to empower the Commissioner of Income Tax to really raise the revenue and even in cases where he suspects that companies and people are not paying tax to be given power to assess. I have just received a letter

from the Attorney-General saying that the insertion of the New Clause in the Income Tax 98A under Clause 16A is unconstitutional and it would be good if I read the letter. So, I would like to withdraw it for record purposes. He says it is unconstitutional. Let me read the letter.

The Temporary Deputy Chairman (Mr. Ethuro): For the same reasons like the other one or a different reason?

The Minister for Finance (Mr. Githae): It is different.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Minister, it is the expectation of this House that your amendments must also be subjected to the Attorney-General just like the amendments by the committees go through the legal department. Why are yours reaching me on the Floor of the House?

The Minister for Finance (Mr. Githae): We had sent the amendments to the Attorney-General but as I said, he has just come in now that is when he has given us the advice. This was what he says:-

“Insertion of New Clause 98A in the Income Tax. The clause intends to empower the commissioner where he has reasonable cause to believe that collection of some income tax which is payable may be frustrated due to the winding up of a company, the disposal of assets by the company or change of the nature of business of the company to demand for that tax and where it is not so, paid as required to demand payment thereof from the officials of the company without recourse to the court process.

The basis of the collection under the new provision will be the commissioner’s opinion that the official who could be a general manager or secretary---

The Temporary Deputy Chairman (Mr. Ethuro): I hope the letter is not too long.

The Minister for Finance (Mr. Githae): No, it is not. It is less than a page.

“--- was negligent in their duties and should therefore, be held liable to pay the tax.

With due respect, the proposed provision is likely to visit great difficulty on the targeted officials solely based on the opinion of an individual and no objective assessment from outside. The Bill has already a proposal on the mode of enforcing tax liability against the individual company officials under Section 116 of the Act. The proposal is in the form of a new subsection which is set out in Clause 17 and provides as follows:-

“2) A person convicted of an offence under subsection (1) may be ordered by the court to make payment to the Commissioner of the whole or such part as remains unpaid of the tax assessed by the Commissioner either in addition to, or in substitution of any other penalty.”

This section can be enforced against negligent officials whose action or inaction leads to the loss of revenue. The proposal by the KRA is against the Constitution, in that it does not allow the aggrieved party to be heard and it arrogates too much discretion on an individual to the detriment of another person.

Therefore, I am recommending that it is not passed.”

It is signed by E.M Ng’ang’a, Senior Deputy Chief Parliamentary Counsel.

Mr. Temporary Deputy Speaker, Sir, we have accepted the opinion of the Attorney-General, as this Government is a believer in the rule of law.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Minister! I thought I heard you say that the reason is that it is unconstitutional. I do not think that you have mentioned anything to do with the provisions of the Constitution. Secondly, you also said that it is half a page and I saw you turning over. So, obviously, it must be two pages. Thirdly, the name you have quoted is actually not the one of the Attorney-General. You have not told us whether the

officer travelled with the Attorney-General because that is the reason they are coming late. But you have heard the Chair. I hope that you will do a better job in future.

What is it, hon. Midiwo?

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, it is unfortunate that the Minister has withdrawn that particular Clause. When companies are winding up under whatever circumstances, the Kenya Revenue Authority (KRA) must be given authority to seize or pre-collect, so that if anybody is aggrieved the courts are there. What this was trying to cure was to avoid the Enrons of the world. But it is unfortunate that he has the powers and has withdrawn it. But he has not even said which part of the Constitution would be contravened if an errant officer or citizen is trying to evade duty.

Mr. Temporary Deputy Chairman, Sir, this is unfortunate.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, being the one who has proposed the amendment, he has all the right to withdraw it and there is not much we can do about that. We can only appreciate the withdrawal. So, there is no New Clause 16A.

(Proposed New Clause 16A withdrawn)

Hon. Ogindo, sometimes it is good to realise that there is no matter for debate or anything.

Let us proceed!

New Clause 17A

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 17 –

Amendment of
section 128 of cap.470

17A. Section 128 of the Income Tax Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (c) –

(d) by public notice through print media of national circulation.

Again, this is to empower the Commissioner of Income Tax to put through public notice in the media, that if there is any tenant who is aware of a landlord who is not paying tax, he can advise the Commissioners. As I said, this is a tax-paying nation and we are trying to empower the Commissioner to actually do his job.

Mr. Temporary Deputy Chairman, Sir, I beg to move and ask hon. Kimunya to second.

The Minister for Transport (Mr. Kimunya) seconded.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the New Clause be read
a Second Time, proposed)*

The Temporary Deputy Chairman (Mr. Ethuro): I would like to remind the Committee that if the New Clause 17A is acceptable, then the one of the Committee will collapse.

Prof. Kaloki!

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I concur with the Minister. So, let us move on.

Mr. M'Mithiaru: Mr. Temporary Deputy Chairman, Sir, I think the one which is captured by the Committee is more elaborate because it talks about the print or electronic media. For the Minister, it just talks about the print media. So, I think we can go by the one of the Committee.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! Minister for Finance, you do not instruct from where you sit. You only respond as directed by the Chair.

For hon. M'Mithiaru the Committee and the Minister had already agreed, so we will go by the agreement.

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

(The new clause was read a Second Time)

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

New Clause 20A

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Ogindo, on New Clause 20A

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, my amendment is on New Clause, 43A according to the Order Paper.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Ogindo, if you look at the Order Paper, page 4249, you have New Clause 20A. You still have one for New Clause 43A. But we have no problem if you drop New Clause 20A. It is yours.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, New Clause 20A was consequential on my amendment that the Chair, in his wisdom, disappeared with. So, I beg to withdraw this amendment.

The Temporary Deputy Chairman (Mr. Ethuro): That is fine.

(Proposed New Clause 20A withdrawn)

New Clause 21A

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

THAT, the Finance Bill, 2012 be amended by inserting the following new clause immediately after Clause 21-

Amendment
the Second Schedule
of Cap.5

21A. The Second Schedule to the National Assembly Remuneration Act is amended by deleting the second column of item 5 and substituting therefor the following-

A severance allowance at the rate of thirty-one per centum of the gross taxable remuneration payable to a member of Parliament each month under this Act, including the salary, constituency allowance, nominated member's allowance, ex officio member's allowance, house allowance, extraneous allowance, transport allowance, entertainment allowance and vehicle fixed cost allowance.

Provided that in respect of the Tenth Parliament, severance allowance shall be paid-

- (a) at the rate of thirty-one per centum of the salary specified in the second column of the First Schedule for every year in service, in respect of the period up to 26th August, 2010; and
- (b) at the rate specified in this item for the period commencing on 27th August, 2010 and thereafter.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The New clause was read a Second Time)

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

New Clause 24A

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 24 –

Amendment of
Section 12 of
Cap. 485.

24A. Section 12 of the Capital Markets Act is amended in subsection (2) –
(a) by inserting the word “and” at the end of paragraph (a); and
(b) by deleting the word “and” at the end of paragraph (b).
Mr. Temporary Deputy Chairman, Sir, this is basically to clean up the Bill.

(Question of the new clause proposed)

(New Clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 35A

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

THAT, the Finance Bill be amended by inserting the following new clause after clause

35-

*Insertion of new
sections 16B and
16C in Cap. 488*

35A. The Banking Act is amended by inserting the following new sections immediately after section 16A-

Maximum interest chargeable

Cap. 491.

16B. Where the Government is a shareholder in a bank or financial institution, the maximum interest rate that the bank or financial institution may charge for a loan or monetary advance shall not exceed by more than four per centum the rate set and published by the Monetary Policy Committee established under section 4D of the Central Bank of Kenya Act.

*Disbursement of
loans for the benefit*

*of the youth, women
and other vulnerable
groups*

16C. Where a national government public fund is established for the benefit of the youth, women or other vulnerable or marginalized groups, loans or monetary advances made to beneficiaries under the fund shall be disbursed only through a bank or financial institution in which the government is a shareholder.

*Accounts of public
Entities*

16D. A public entity shall open and operate bank accounts only in a bank or financial institution in which the government is a shareholder.

Mr. Temporary Deputy Chairman, Sir, I see a lot of jitteriness on the side of the Minister. All I am seeking to do--- As you remember last year I had tried to cap all interest rates of all banks. I was even called a communist. I have now decided to adopt the Brazilian model. Under 16B, what we are saying is that the banks where the Government has interest - there are only three banks. We want to give Kenyans comfort.

Our youth and women, if they go to a bank where the Government has interest they should only be charged up to four per centum above the CBK rate. This creates predictability. Today, as it were, we have thousands of Kenyans who took loans at 11 per cent and the banks are today charging them 32 per cent or 35 per cent.

All we are saying is that if private banks want to charge 1 million per cent, we will never interfere with them because it is a free economy. However, where the Government has interest, it has the responsibility to protect the Kenyans whose interests it holds in trust in these banks.

Mr. Konchella: Mr. Temporary Deputy Chairman, Sir, I want to second this particular item. I want to plead with the Minister that we have always taken care of everybody, including all commercial banks. However, let us take the interests of the people of Kenya into account for the first time. The reason is that we want to grow this economy. Brazil has grown their economy because they have developed their middle class. We can only allow the young executives to access social loans, so that they are able to buy homes and undertake their own development. This is public money. It is tax money which Kenyans have contributed. Let our youth, the marginalized and even the poor access loans at a reasonable rate through banks in which the Government is the majority shareholder. I think this will be a great honour for the people of Kenya.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Minister for Transport (Mr. Kimunya): I stand to oppose this amendment for reasons that Members need to be aware of. This amendment is proposing to say, for example, in

the first one that wherever the Kenya Government has an interest in a bank, that bank will have its business capped by law, that it can only lend a certain amount. This means it is discriminated against its competitors. I want you to look at one specific bank. Part 16B says;

“Where the Government is a shareholder in a bank or financial institution, the maximum interest rate that the bank or financial institution may charge for a loan or monetary advance shall not exceed by more than four per centum the rate set and published by the Monetary Policy Committee established under section 4D of the Central Bank of Kenya Act.”

I want to give you an example of the National Bank of Kenya (NBK). The Government of Kenya has less than 20 per cent of the shares. The bulk of the shares are owned by the workers of this country through the National Social Security Fund (NSSF). So, this amendment will say that the NBK, which is owned by the workers of Kenya can only charge 4 per cent above, but all the other banks can charge interest at 6 or 7 per cent, discriminating the owners of the bank who are the workers of this country. The Government owns only 22 per cent of the Kenya Commercial Bank (KCB). The 78 per cent is owned by Kenyans.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I plead with the Minister to just hear me out. If you read the three amendments together, we are also further saying that all Government monies shall be banked in these banks. In other words, we are increasing their capital base. All the Kenyans shall borrow from them and they will make a whole lot more money than they are making today. At the same time, we are creating predictability and we are giving---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Midiwo! That is not a point of order. That is an argument.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Temporary Deputy Chairman, Sir, for the protection. Let us be sensitive to some of these things that when we pass laws in this House, the intention maybe good to protect people who borrow from the Government banks, but the same intention is a double edged sword. It will cut across and punish 78 per cent Kenyans who own the KCB, just because the Government is a co-investor with them. The bank will start performing poorly because whatever interest the KCB will be charging to any one is capped at 4 per cent. That is one of the things that we cannot allow in the market. The other shareholder who is investing in any other bank is free to do what they want. That discrimination in the market distorts the market. There is no market that is worse to distort than the financial market.

The second point that I want to make, and I think it is what hon. Midiwo is attempting to do, is that public funds shall only be put in Government banks. You have even gone further to say that public entities shall only open bank accounts in banks in which the Government is shareholding. There are only three banks where the Government is a shareholder, namely, the National Bank, the Kenya Commercial Bank and the Consolidated Bank. Do they have a presence in every part of this country? What is going to happen to all the public schools which are obligated to open bank accounts? What will happen to all the CDF management committees who we say must open accounts in the bank for us to give them money? They will all of a sudden be told that they must close those accounts and move to the nearest Government owned bank, which could be miles away. As a result, even at the PMC for them to go and pay the local *fundi*, they will have to travel miles away. Where right now they can do that through all those agencies and banks, they will have to travel miles to withdraw the money. You will now be hearing cases of ‘we went to withdraw the money and it was stolen in a *matatu*’. Those are things that we must

now avoid. The intention may be good, but the Government banking system has been spread to all the constituencies in the country.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the Minister, first of all, in order to say that we are curtailing profits made by banks, while the Government, even hon. Kimunya has several times prescribed interest rates that we charge on Women and Youth Funds year after year? He directs them to private banks. In fact, one particular bank has made billions from money that should be lent at 8 per cent, but they are lending it at 30 plus per cent. Is he in order?

Mr. Shakeel: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the Minister in order to mislead the House that people will not have access to banks when he is well aware that the banking system that we have at the moment has cascaded down to the people? For argument sake, I would like to tell him that it is either agency banking or the other issue that we are talking about which is the National Bank of Kenya or the Co-operative Bank of Kenya and others dealing in M-Pesa. So, I see nothing wrong. I think the Minister is misleading the House in respect of the interest rates.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Shakeel, you were on a point of order but you are now being repetitive.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, as I said, the intention may be good but the execution of that intention - when done in law and done wrongly - could have some repercussions that we will not control. For example, if you control the interest rate that can be charged on the Women Enterprise Development Fund, you are saying that if we give you so much money, you should lend it at this. When you say that an institution that has Government shareholding can only lend at 4 per cent, you are basically saying that all the money that you receive from everybody including the deposit that you are paying for a certain premium, you can only lend it out at 4 per cent above the Central Bank of Kenya rate. However, all the other banks which are in competition with that bank can lend at whatever amount. What does that mean?

That means that when you cap it at 4 per cent above the Central Bank of Kenya rate, it will not attract deposits. So, you are basically saying that everyone else should bank with the other banks and the Government should bank with its own banks. This is a very dangerous thing to do. We are also sending a signal to the investing community that we are now reversing all the gains we have made in terms of promoting Kenya as the investment destination of choice and as the financial centre of East and Central Africa and basically telling everyone to go to Uganda or Tanzania. This is very dangerous. I would like to urge this Committee that we do not go this route until this matter has been processed properly and so that we can see the implications because we will kill the funding for the National Social Security Fund which has invested heavily in the National Bank of Kenya. You will also kill 78 per cent of the shareholders in the Kenya Commercial Bank.

I beg that we all oppose this amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Abdikadir, and let us be very brief.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Consider gender!

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, indeed, I will be very brief unlike the Leader of Government Business.

The Temporary Deputy Chairman (Mr. Ethuro): Mrs. Lina Jebii, there is no name known as “gender” here.

Proceed, Mr. Abdikadir!

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I agree absolutely with the worries that hon. Midiwo has but all those can be addressed without legislating, especially on the first one. The Government is the largest customer in the market and purely, by deciding that they will give these banks business, they can get all these things done. You can tell the National Bank that you will not give it the KRA account unless it shows that it will support small income earners by giving them good rates and the bank will make a business decision. It is not proper for this House to make business decisions for the banks. It is not all the shareholders of that bank who want the control. The Government is a small shareholder, as the Minister has said. What about the other shareholders? Are you telling them to move away and yet these are only three out of 43 or 44 banks? So, you have two regulations for the banking sector which distort the market. It is not appropriate for us to be known as a market that controls banks.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, we need to be very sober. In the first place, we are saying that a public entity shall open and operate bank accounts only in a bank or financial institution where Government has a shareholding. We only have three such banks in this country.

Look at the kind of businesses that some public entities are doing. The Kenya Airports Authority (KAA) is borrowing Kshs56 billion not from a local bank like Kenya Commercial Bank (KCB). The KAA must have an account with the bank they are going to borrow from. So, on that basis alone, this amendment is out of question.

Secondly, let us not legislate based on the fact that a local bank like Equity Bank has succeeded and we seem to be very bitter about it. Tomorrow, there will be a local bank in Kisumu. Assuming that the Government will be from somewhere else, are you going to be that bitter and bring here legislation based on that bitterness?

Thirdly, and which is most important, some of these public entities have already---

The Temporary Deputy Chairman (Mr. Ethuro): What is your point of order, hon. Ogindo?

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, did you hear my colleague, hon. C. Kilonzo, say that there is bitterness with Equity Bank, and that there could soon be a bank from Kisumu, insinuating that people are bitter with Equity Bank on regional basis? Is he in order?

The Temporary Deputy Chairman (Mr. Ethuro): He is completely out of order. Hon. C. Kilonzo, you know better. You need to withdraw and apologise.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, I withdraw, but somebody gave that impression. He actually referred to Equity Bank.

The other reason I am giving is that some public entities have already taken loans from private banks, because they are offering better terms than even the Government banks.

Should I continue, Mr. Temporary Deputy Chairman, Sir?

The Temporary Deputy Speaker (Mr. Ethuro): You cannot continue, hon. Charles Kilonzo. The Chair directed that you withdraw those remarks and apologise. That is not negotiable.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, I respect the law. I withdraw and apologise.

The Temporary Deputy Chairman (Mr. Ethuro): Proceed.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, there are some public entities which have already taken loans, which are even cheaper than what Government banks can offer. So, are we saying that all those loans will be cancelled and taken over by Government owned banks?

Fourthly, these banks are already owned by shareholders. Suppose tomorrow we cap the interest rates? The consequence is that all the shareholders will sell their shares and move out.

Most importantly, taxes are paid and collected from the private sector. So, you cannot say that the monies that come from the private sector are public funds. They originate from the private sector. So, are you so bitter about the private sector that you want to punish them by practising discrimination in the banking sector? This will be a very bad law.

I oppose.

The Temporary Deputy Chairman (Mr. Ethuro): Yes, hon. Jebii Kilimo.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Temporary Deputy Chairman, Sir, from the ongoing debate, it seems that hon. Kimunya does not support the spirit of “Buy Kenya, Build Kenya”. I imagine what savings and credit co-operative societies (Saccos) go through. They borrow money from, for instance, Co-operative Bank of Kenya at 11 per cent. Later on, the interest rate on those funds is increased to over 24 per cent, and the Saccos have to re-pay yet the money is not with the Saccos. It has already been lent out to members, who have bought fixed assets with it.

By supporting other banks, are we interested in the welfare of the majority of poor Kenyans or are we protecting other investors who already have enough money?

The Temporary Deputy Chairman (Mr. Ethuro): What is it, hon. Kimunya?

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member contributing in order to insinuate that I do not support “Buy Kenya, Build Kenya” and giving the example of Co-operative Bank, which would be adversely affected by this because Co-operative Bank is not owned by the Government? It is owned by individual co-operators. It would be one of the victims of this proposal because they will be affected by all the money being moved from Co-operative Bank to government banks. Is she in order? Does she understand the implications of what she is actually talking about?

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): I understand, Mr. Temporary Deputy Chairman, Sir. I am not talking on behalf of the common man. The other day a woman killed herself because of high interest rates. So many things are sold. By controlling the rates, it will mean that banks like the Co-operative Bank that I am talking about will be able to work at par. Why can we not build our own banks? Barclays Bank or Standard Chartered Bank declare high interest rates. I wish it were our local banks declaring big profits because they would plough them back. Even employment in these other banks is not as much as in our local banks.

So, I support the amendment by Mr. Midiwo but we must protect---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mrs. Kilimo! We are in the Committee of the whole House.

Just conclude.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): In conclusion, I would like to say that we have just passed here the Bill to do with elections. That is because we were thinking about self-preservation. It is time we also thought about self-preservation of the majority of Kenyans.

The Minister for Finance (Mr. Githae): On a point of order, Mr. Temporary Deputy Chairman, Sir. I am sure you have heard what the hon. Member has said, that we passed the Elections (Amendment) Bill for self-preservation, yet we were helping the country. If we did not pass that Bill, tomorrow there would be no Parliament, yet we have so many Bills to pass. Is she in order to say that? Parliament does not enact Bills for self-preservation. Parliament enacts Bills for the good of the whole country. We are elected representatives and we have done this on behalf of all Kenyans.

The Temporary Deputy Chairman (Mr. Ethuro): She is definitely out of order. Let us conclude this particular contribution.

The Minister of State for Defence (Mr. Haji): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment on the grounds that all our banks keep shareholders' money who are either Kenyans or other people, who invest in this country. It would be totally wrong for us to pass the amendment since it will rob people who have invested in shares of the money. We cannot take money and give it to a few people because we are trying to help them. We have helped them already by giving certain incentives; therefore, I think it is quite in order to proceed with the Bill.

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, it is with a lot of pain that I will have to oppose Mr. Midiwo. The reason is that unfortunately Kenya is a capitalist country. If it is so, we have people who have had to sweat to raise money to invest in banks. If we allow this to happen, we will be discouraging investors. I believe in fair competition. These banks can compete amongst themselves, and can offer the best rates to whoever wants to open an account. I feel that if we take this line, we will be creating serious disadvantage for the people of Kenya. Even if we are talking of Government owned banks, the majority of the shareholders are Kenyans, who are investors. The Government has a responsibility to provide us with an enabling environment for everyone to do business; it would not be in order for us to allow this kind of an amendment.

I oppose.

The Assistant Minister, Ministry of State for Special Programmes (Mr. Gabbow): Mr. Temporary Deputy Chairman, Sir, I think the mood of the House is that the debate is very clear on which direction we want to go. I will request you to put the Question.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Gabbow! You may wish to spend the would-be recess by investing in your Standing Orders. But I hear you.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I really want to persuade the hon. Midiwo that bringing this amendment the way it is coming will not be very useful because it will require restructuring the entire financial and capital market. I know the example in Brazil. It was not done piece meal. You have got to look at the financial market globally in order to make such kind of intervention.

What I am worried about - because I have specific examples - there was a time when through an Executive Order, Treasury directed that all monies held by the State or institutions in which the State had interest should be put in Government financial institutions. The effect of it actually was disastrous. I did a lot of cases involving the National Bank of Kenya and I want to confess that public money which was put in Government financial institutions, all of it went away.

In fact, the National Social Security Fund (NSSF) came in because workers were now to make up for the messes that had been created through these kind of financial interventions which

had not been well-thought out. So, I want to plead with Midiwo. In fact, I would go your direction but I think you need to look at the financial market as a whole in order to make---

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Chairman, Sir. So that I am not misunderstood, is the Minister in order to try to equate the theft and plunder of public funds through state-owned banks during the past eras with what we are trying to do in a reformed banking sector during the last ten years?

The Minister needs to know that what we are trying to do we have moved from the past. I want to plead with this House, while I am on this point of order, that as a Member of Parliament, I agree it is a capitalist society but capitalism with a face is what will lead this country to the next level.

The Temporary Deputy Chairman (Mr. Ethuro): Order!

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I want to say that for the youth and women funds, none of these banks has ever given it at the prescribed 8 per cent. So, if you throw away this amendment, it means you are only caring for your interests. You should at least for once care about the poor women; Wanjiku and Atieno in the village. This is an amendment which I consulted the Minister and it would be fair that we debate it soberly. We should not debate it as if we are the banks because the Government has a responsibility to---

The Temporary Deputy Chairman (Mr. Ethuro): Order!

Mr. Midiwo: We should take care of those very shareholders.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Midiwo! This House has rules. The Chair has been extremely sympathetic and generous to you, but you want to exceed the limits of the generosity.

Hon. Orengo, you were on the Floor, but he seems to be satisfied.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I love the passion of hon. Midiwo. But unfortunately, what I am talking about were just bad decisions. When you invest money, you want to invest it where there are going to be returns. I think that if you are putting your money in any financial institution, even as a Government, you would like to put it somewhere where there is a return. The Government should not be excluded from making such decisions. My only problem with this is that it is not structured in such a way that the basic structure of the financial market is put into consideration.

In Uganda, there was a time when they had two windows in the financial market. Creating those two windows did not quite help because it was not properly thought-out. So, this is good, but I think it would have been better if we dealt with the entire financial regime and the monetary structures that we have in place. Otherwise, I think that this---

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Minister, whose responsibility is it? It is the Government's. The hon. Member is just trying to say what he can do, given the limited opportunities.

Anyway, conclude Mr. Minister.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, let me just finish by saying that we are not quite a capitalist state. If you look at the laws that we make, even relating to the financial sector, where there is State intervention, you will find that there is some element of state intervention and participation in the financial sector. That is not a truly capitalist situation nor is it pure capitalism. But if we go where hon. Midiwo is going, then we need to be very careful because if we have a disaster in the financial market, because you have put all Government money into institution and the banks owned by the Government, the records are where we have a competitive market like we have in Kenya, public institutions do not tend to

perform well. It is the ones that are fully privately owned that perform better. So, I would rather we have Government money going to performing financial institutions, instead of taking to a Government institution which is not performing. It may be a big bank, but if it is not performing, I would not like to put my money there.

Mr. Keynan: Mr. Temporary Deputy Chairman, Sir, hon. Midiwo is a very good friend of mine, but we need really to understand that the work of a Government, as a big organization, is to provide an enabling and conducive environment for business to thrive.

Mr. Temporary Deputy Chairman, Sir, one of the things that we learnt in the Committee that investigated the decline of the Shilling, and the Report is very clear, is that what we recommended was for the Government to strengthen the functions of the monetary policy committee, to clearly separate the functions of the Governor of Central Bank of Kenya (CBK) and the Board of the CBK and strengthen the working environment of the Nairobi Stock Exchange and the Capital Markets Authority. What hon. Midiwo attempts to create will create a situation where the Government has to create one CBK for the private banks and another one for the Government dominated financial institutions. I think that, that is not going to be a very healthy environment. Therefore, let these issues be cured through a Ministerial arrangement. The Ministers are at liberty. For example, if the Minister for Youth Affairs and Sports can work out with the Chief Executive Officer of the Kenya Commercial Bank and agree on friendly terms with a particular institution, I think this can also be cured in that process.

Therefore, this amendment, as much as it addresses some of the deficiencies that we have seen in the banking sector, I think we need to look at it holistically so that this issue is cured for all the financial institutions and not to create another arena where the Government bureaucracies will have a field day and invest public money without taking into account the necessary due consideration.

Mr. Temporary Deputy Chairman, Sir, I oppose this amendment.

Mr. Langat: Mr. Temporary Deputy Chairman, Sir, I also want to reluctantly oppose my friend hon. Midiwo because he means very well but unfortunately the way the amendment is coming out is actually going to cause discrimination between Government owned banks and other banks. It says, for example, that the Kenya Commercial Bank will be forced to get a lower rate than other banks.

Mr. Temporary Deputy Speaker, Sir, I wish hon. Midiwo would have brought it this way: If the money belongs to, for example, the Youth Fund, then the Government can tell the bank to lend it at a certain rate. You can actually legislate that. But if you say all the funds that the bank holds, you lend at a lower rate than other banks, it is very discriminatory. It is actually going to kill Government owned banks.

Mr. Temporary Deputy Chairman, Sir, let us also go back to history. Before the private sector banks came, our banks were doing very badly. In fact, the National Bank of Kenya was at some point collapsing. The KCB was also almost going the same way. In fact, I remember a case in Kericho where the National Bank of Kenya closed their branch. I am sure people up to now are still claiming money from them. So, let us not discriminate. Let the market be free. Let the competition between the banks be there so that both Government and private sector customers can get fair terms.

Mr. Temporary Deputy Chairman, Sir, the amendment on 16D is the greatest discrimination. You are saying that public entities should only open accounts in Government owned banks. I do not see myself forcing the CDF to go and open an account in a place where there is no good service. In this country, we do not have these banks---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Langat!

*(Question that the new clause be read
a second time put and negatived)*

New Clause 43A

The Temporary Deputy Chairman (Mr. Ethuro): Prof. Kaloki!

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 43-

Amendment of section 34 of Cap. 488. 43A. Section 34 of the Banking Act is amended by inserting the following new sub-sections immediately after sub-section 3-

(3A) For the avoidance of doubt-

(a) the Central Bank shall not place an institution under statutory management in terms of sub-section (2)(b) for a period exceeding two years;

(b) a manager appointed under this section shall not serve in such office for a period exceeding two years.

(3B) Any person, officer of the Central Bank or manager who contravenes sub-section (3A) commits an offence and shall be liable, on conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years, or to both.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Professor, it is Second Reading. I can only propose what you suggest.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Minister for Finance (Mr. Githae): Thank you, Mr. Temporary Deputy Chairman, Sir. We really must oppose this amendment. If you look at what the amendment is proposing to do, it is seeking to limit statutory management of institutions by the CBK to two years. Already we are saying that the current law provides for one year and if the statutory manager wants to extend that time then he goes to court to seek extension. The question I am asking is this: If you say that it cannot be placed under two years, what happens if its affairs have not been sorted out? There will be a lacuna there.

Secondly, it states that a period under which a statutory manager can serve is two years. As of today, the manager serves for one year and if there is need for extension he goes to court

which looks at the circumstances and grants the extension. There are banks that were placed under receivership and statutory management more than a decade ago. Now, what happens to those? I really do not see the--- I wish he could explain the purpose. If there is no purpose I really do not see what this one serves. We, therefore, need to oppose. The current laws are enough. What happens after, say, three years? It is not clear!

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I really do not understand where the objection from the Minister for Finance is coming from. This amendment was put there for a purpose. The existing law today specifies that the statutory manager can be appointed to be in a bank for only one year; if there is need for an extension then one goes to court. The court can only grant one a maximum of one year. I will give you a practical example of Charterhouse Bank. The statutory manager has stayed beyond the two years, seven years. There is no law here today on how to remove such a statutory manager who stays in a bank illegally. So, we are trying to cure it by saying that we must define a period and sanctions must be applied if you break the law. That is the lacuna we are trying to cure. You do not go beyond the statutory period of one year and extension is only up to one year by the courts. If you stay beyond the two years, what does the law do to you? What action does the bank take to make sure that you go away? This is because this statutory manager now lives in Charterhouse Bank and has refused to go. Even if you talk to the CBK they have no way of getting this statutory manager away. So, we are trying to introduce sanctions so that the statutory manager is in the bank legally.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I get what the Chairman is saying. Some of these institutions have been under statutory management from 1984 up to now. There is a moral hazard where statutory managers want to keep themselves in business. I understand that perfectly well. I do not, however, agree with 3(b). This is a commercial transaction and, therefore, making it a criminal offence will make it very difficult for even statutory managers to be appointed in the first place. So, I agree with the first issue which is that let us have a time limit within which statutory issues must be sorted out. However, creating a criminal offence is not acceptable, because this is a commercial transaction. So if the idea is to move this commercial business in two years, we have already said, "A manager appointed shall not serve". That will be the law if we pass it. And then we say, "The CBK shall not place an institution---" That is also the law. The CBK and the manager doing this will be outside the law, and will then create a crime in a commercial transaction, which is not usually the case.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, while I sympathize with the situation, when we are legislating, let us be careful that we do not legislate for one thing and cause pain elsewhere. Here, we are basically saying that a statutory manager can be appointed for one year, which is within the law. If not, the CBK or the regulator has to go to court for extension because there are still matters and they have to justify to the court. If they want to stay further, they still have to go to court. If they do not, then the shareholders can go to court. But when we say that this can only be done for a maximum of two years, we are basically saying that, at the end of two years, the CBK cannot appoint a receiver manager. They are not in a position to return the financial institution to the public because it is based on public confidence. They cannot give it back to the shareholders. So, what are we going to do? We are creating a lacuna where they cannot appoint a receiver manager and they are not in a position to return it. So, the option that will be open is to force liquidation.

Basically, all we are trying to do within this law is to create early deaths for institutions that had they been statutorily managed, can be revived. If you cannot stay for more than two years and you cannot return it to the shareholders, the only other option beyond receiver

management is liquidation. So, we are calling for liquidation after two years because that is the only option we are providing here. That is not exactly what we want to achieve. What we want to achieve is the receiver manager to go in there, do his job and return the bank to the owners. Not through the painful route that we are saying that if you have not done your job, kill it. That is the implication of what we are going to do.

Mr. Okemo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I thought I made my point fairly clear that if a statutory manager goes, the law has provisions for it. But then how do you get that statutory manager out of the institution? Do you just wait and hope that you are lucky and the person will go? I gave a specific example. We were trying to cure some mischief. The best way we thought of was by having some provision in the law to make sure that the statutory manager must go away when they are supposed to go away and not to remain there and the institution becomes completely helpless. This is the situation that we have.

We are saying that if the law provides that and the statutory manager decides not to go, what do we do? That is the question.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, indeed, I was coming to the specific situations. Assume a notorious shareholder of a bank “X”, who has his bank put under statutory management. For it to come out of statutory management, you need to comply with certain regulations by the Central Bank. If you do not satisfy those regulations and mark time waiting for the two years so that the receiver can go, you will have succeeded, using the law, to frustrate the legal requirement for you to comply.

This will not necessarily bring any confidence within the banking sector. We are legislating in vain. This House should not legislate in vain. That is the point I am making. Let us look for other avenues of sorting out that situation, but not through this kind of legislation. It will not help anybody.

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

(The new clause was read a Second Time)

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

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

THAT, the Finance Bill be amended by inserting the following new clause immediately after clause 43-

*Insertion of
new section
44A in Cap.
488*

43A. The Banking Act is amended by-
(a) inserting the following new section immediately after section 44-

*Minimum
interest rate on
deposits*

44A. The minimum interest rate that a bank or financial institution shall pay on a deposit held in an interest earning account in a bank or financial institution shall be forty per cent of the bank’s base rate for loans or monetary advances.

re-numbering the existing section 44A as section 44B.

The import of this is that the minimum interest rate---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Ogindo!

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I want to move it in an amended form.

The Temporary Deputy Chairman (Mr. Ethuro): Start from there.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I beg to move that the New Clause 43A be read a Second Time in its amended form. This is on page 4250. The new clause that I want to bring in says:-

“The minimum interest rate that a bank or financial institution shall pay on a deposit held in an interest earning account in a bank or a financial institution shall not be less than 30 per cent of the bank’s base rate for loan and money advances.” You will recollect that the Central Bank Governor commented on the level of savings in this country. The Central Bank Governor noted that a 30 year old bond in Kenya goes at an interest rate of 12 per cent while the deposits are earning 1.38 per cent. Over the past five years, the savings level in Kenya has dropped to about 1.2 per cent of the GDP. In order to promote this, we need to make savings attractive. This is going to be a floating rate that does not limit any rate payable on the interest earning account.

This country needs to put measures in place that make savings attractive. The reason why we go into small time businesses is because we do not have an attractive deposit regime in this country. I want to persuade the Minister that there are several Kenyans who make their savings there and need to earn. Allow me to ask hon. Langat to second.

Mr. Langat: Mr. Temporary Deputy Chairman, Sir, I second that we must give the depositors a reasonable return on their deposits.

(Loud consultations)

I am hearing some people here making some noise but I am talking from a point of authority. Let Members read and understand this amendment. We are saying that not less than 30 per cent--- The interest on deposits which accrues to customers on fixed deposits is fairly predictable and fair.

I support.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Mr. Ethuro): Let us hear the real Minister for Finance!

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, under our Constitution, there is only one Minister for Finance.

This is an issue we dealt with not less than six months ago. We said that this is dangerous because all it will do is to make the banks increase their lending rates. Even worse, it says even

for Government, we have to pay not less than 30 per cent if we put some deposits or borrow from the Treasury.

Mr. Temporary Deputy Chairman, Sir, what is going to happen is that, first of all, the banks will simply not accept those deposits. So, the same people we want to help are the ones who are going to suffer. The Wanjiku and Atieno are going to lose out. Kenya is a free market. Why are we making business decisions for banks? If banks feel that they do not need your deposit, they should be free to decline taking it. If they tell you: "This is the rate at which we are going to pay", it is for you to take it or leave it. Why are we so much against banks? I do not understand the reason for this hostility against banks. In fact, this matter should not be part of this debate, because we adopted it less than six months ago. Our Standing Orders say that if a decision has been made on the Floor of the House, it cannot be re-visited before six months are over.

So, really, we need to conclude this matter and proceed to the Elections (Amendment) Rules.

I oppose.

The Temporary Deputy Chairman (Mr. Ethuro): Yes, hon. M'Mithiaru.

Mr. M'Mithiaru: Mr. Temporary Deputy Chairman, Sir, we have to go to the fundamentals. We know that the financial arena has its own rules of the game. Parliament cannot be the regulator. We already have the Central Bank of Kenya (CBK) as the regulator. We also know that by trying to control the deposits rates, we are not really trying to assist even the industry itself, just as we talked about the lending rates. There is also the other side of it. So, we cannot seem to be controlling an industry which has a regulator. Ours is really to appeal to the CBK to ensure that, at least, there is a direction from the Government side on how things should move. For Parliament to cap a rate within an Act of Parliament is not appropriate. Please, let us leave it to the regulator to handle that bit.

I oppose.

The Temporary Deputy Chairman (Mr. Ethuro): Finally, hon. Nyamweya.

Mr. George Nyamweya: Mr. Temporary Deputy Chairman, Sir, I needed not even stand because what I was going to say is what has been said by my friend.

The Temporary Deputy Chairman (Mr. Ethuro): What is it, hon. Ogindo? Do you want to withdraw the amendment?

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I want to correct some misleading information that has been put across.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order, hon. Ogindo!

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I was on my way to withdrawing but---

The Temporary Deputy Chairman (Mr. Ethuro): We have passed that stage. I can only grant you the Floor, if you are going to withdraw the amendment and then I will allow you that chance to clarify.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I wish to stand by my amendment.

*(Question, that new clause be read
a Second Time, put and negatived)*

New Clause 44A

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

THAT, the Finance Bill, 2012 be amended by inserting the following new clause immediately after clause 44-

Amendment of section 2 of Cap. 491 44A. Section 2 of the Central Bank of Kenya Act is amended –

(a) by inserting the following new definitions in their appropriate alphabetical sequence-

“authorised money remittance provider” means a money remittance operator licensed by the Bank under section 33B to carry out the business of money remittance;

“money remittance operator ” means a company incorporated in Kenya whose main object consists of the acceptance of monies for the purpose of transmitting them to persons resident in Kenya or another country as prescribed by the Bank by Regulations;

(b) in the definition of “authorised dealer,” by inserting the words “ an authorised money remittance provider,” immediately after the words “authorised dealer means”;

(c) in the definition of “foreign exchange business,” by inserting the following new paragraph immediately after paragraph(b)-

(ba) in relation to an authorized money remittance operator, the business of foreign exchange transfers consisting of the acceptance of monies for the purpose of transmitting them to persons resident in Kenya or another country as prescribed by the Bank;

(Question of the new clause proposed)

(New clause read the First Time)

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

Mr. Chepkitony: Mr. Temporary Deputy Chairman, Sir, I stand to oppose this clause. This is actually trying to cure a wider problem in a very narrow way. So, we need to have a comprehensive way of handling these issues.

I oppose.

(Loud consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Order, you do not dictate to hon. Members what to say. If you know the how, you will say it yourself in your contribution.

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

(The new clause was read a Second Time)

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

New Clause 44A

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

THAT, the Finance Bill, 2012 be amended by inserting the following new clause immediately after Clause 44

Amendment
of Clause 2 of Cap. 491.

44A. Section 2 of the Central Bank Act is amended by-

(a) deleting the definition of “authorized dealer” and substituting therefor the following new definition-

“authorized dealer” means an authorized bank, authorized bureau or authorized mortgage finance company licensed by the Bank under section 33B”;

(b) inserting the following definition immediately after the definition of “authorized dealer”-

“authorized mortgage finance company” means a mortgage finance company licensed by the Bank under section 33B.

(c) deleting the definition of “foreign exchange business” and substituting therefor the following new definition-

“foreign exchange business”-

(a) in relation to a specified bank means the business of-

(i) buying, selling, borrowing or lending foreign currency or other business involving transactions in foreign currency;

(ii) settling payments to or from Kenya or in Kenya or in Kenya between residents and non-residents;

(b) in relation to an authorized foreign exchange bureau means the business of-

(i) buying or selling foreign currency;

(ii) settling payments to or from Kenya as prescribed by the Central Bank;

(c) in relation to a specified mortgage finance company means the business of-

(i) buying, selling, borrowing or lending foreign currency or any other business involving transactions in foreign currency;

(ii) settling payments to or from Kenya or in Kenya between residents and non-residents;

(d) in relation to any other person or body of persons specified by the Bank under section 33A, means such business transactions as the Bank may permit.

The import of this Clause is to allow authorized mortgage finance companies to deal with foreign exchange business. I wish to ask Mr. Mututho to second.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, in seconding this, I want to remind the House the days of the CD3 forms, and it was a criminal offense to have a one dollar bill 48

hours after you had come from a safari. We have so many Kenyans in the Diaspora, and when they remit their mortgage payments, they have to do it through the banks and they lose massive amounts of money. Since most of them have investments in mortgages, it is very important that we allow this mortgage companies, particularly Housing Finance Companies, to trade in foreign exchange, so that the people who are overseas can remit money to the country directly.

I second.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 50A

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

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 50-

Amendment
to Section 26 of
Act No.10 of 2011

- 50A.** The Salaries and Remuneration Commission Act is amended in Section 26by-
- (a) re-numbering the existing provision as sub-section (1); and
 - (b) inserting the following new sub-section immediately after the existing provision-
(2) The power to make Regulations shall be exercised only after a draft of the proposed Regulations has been approved by the National Assembly.

Amendment
to Section 25 of
Act No.16 of 2011

51A. The Commission on Revenue Allocation Act is amended in section 25 by-

- (c) re-numbering the existing provision as sub-section (1); and
- (d) inserting the following new sub-section immediately after the existing provision-
 - (2) For the avoidance of doubt, the power to make Regulations shall be exercised only after a draft of the proposed Regulations has been approved by the National Assembly.

This one is basically saying that the Salaries and Remuneration Commission, whenever they make rules and regulations for the benefit of members--- We are saying that the power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly. This is subsidiary legislation and we are saying that it is necessary for all legislation to be approved by the National Assembly, as the body which makes laws in this country.

(Question of the New Clause proposed)

(New Clause read the First Time)

*(Question, that the New Clause be read a
Second Time, proposed)*

Mr. Langat: Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment because Parliament is given the power to make legislation and these regulations are just related and Parliament must approve them.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I am a bit lost because this is a fundamental amendment to two laws that are critical to the implementation of the Constitution and have not received the input from the Committee on the implementation of the Constitution. I am not sure that we can be passing these amendments here within the framework of the Finance Act when they have far-reaching implications because we will then be getting ourselves into trouble with the Constitutional Implementation Commission.

Since we are now getting into constitutional commissions and then determining what they need to do without consultation with the CIC and with the Committee on the Implementation of the Constitution, unless the chairman of the Committee can convince us that perhaps they have had the opportunity to look at them. I would be very careful that we do not amend laws to do with the Constitution---

Mr. Abdikadir: On a point of information, Mr. Temporary Deputy Chairman, Sir. What the Minister said is very critical and important. The reason why I am comfortable with this is because it is asking for rules and regulations to be brought to the House for approval. Indeed, the way we are going, all rules and regulations made by anybody eventually have to come to the House. Law-making is the preserve of the House. When we donate certain powers to other institutions to make subsidiary legislation, there is a Committee on Delegated Legislation that should look through them. But the way we are heading now, all of them then will have to come back to the House for approval.

Since it is not specific rules and regulations we are making and we are just saying that the rules and regulations we are going to make can come, I do not see any major problem there.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I think we need to look at this within the framework of where we are going. Come 15th January, next year, this House will cease to exist until a new House is elected.

The Commission on Revenue Allocation will have to make some rules on how the devolved governments will access the money. There will be no House to approve those rules. So, we will be saying that there will be rules that we make but cannot be implemented until a new House is in place. Let us not do some of these things in a rush. Let us process these things through what the Attorney-General is planning to do; to bring a comprehensive Miscellaneous Statutory (Amendment) Bill which will clean up some of these things but which will also have the input of--

Mr. Abdikadir: On a point of information, Mr. Temporary Deputy Chairman, Sir. Just like in the event that they needed any rules, there will be no House to pass laws. In fact, these ones will be even less than the normal subsidiary laws. Let them plan because we will be here up to January 15th. If there is anything urgent, they can bring it. If not, they wait for the next Parliament. Even the Budget has to wait for Parliament.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I am sympathetic to this institution but I would urge and I know we will get into problems. I would urge that we withdraw this amendment and bring it within the framework where we will have these consultations on this matter because unfortunately, we are just inviting court action on this matter on the understanding that the process of amending those laws has not been used. I am not sure of what we will gain by having a law that will not have effect because the CIC will obviously be challenging this.

I support them on that.

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

(The new clause was read a Second Time)

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

First Schedule

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the First Schedule to the Bill be amended by –

- (a) deleting the word “reptiles” in the second column under tariff number 4103.10.00 and replacing it with the word “goats”;
- (b) deleting tariff number 4301.13.00, descriptions and the rate of duty thereof and replacing with the following -

4302.13.00	Whole skins of lamb, with or without head, tail or hooves, not assembled, the following: Astrakhan,	20%
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Broadtail, Caracul, Persian and similar lamb, Indian,
Chinese, Mongolian or Tibetan lamb.

(c) by inserting the following new item immediately after item 2 -

2. Delete the existing rates of duty in respect of the following Tariff numbers and descriptions in the first and second column respectively and insert the rates shown in the third column –

3.

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>New Duty Rate</i>
4101.20.00	Whole hides and skins, of a weight per skin not exceeding 8 kg when simply dried, 10 kg when dry-salted, or 16 kg when fresh, wet-salted or otherwise preserved.	80% or Sh.40 per Kg
4101.50.00	Whole hides and skins, of weight exceeding 16 kg.	80% or Sh.40 per Kg
4101.90.00	Other, including butts, bends and bellies.	80% or Sh.40 per Kg
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1 (c) to Chapter 41.	80% or Sh.40 per Kg
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1 (c) to Chapter 41.	80% or Sh.40 per Kg
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1 (c) to Chapter 41.	80% or Sh.40 per Kg
4103.10.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of goats.	80% or Sh.40 per Kg
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of reptiles.	80% or Sh.40 per Kg
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine.	80% or Sh.40 per Kg
4103.90.00	Other raw hides and skins other than of reptiles, goats or kids.	80% or Sh.40 per Kg
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws.	80% or Sh.40 per Kg
4301.30.00	Raw furskins of lamb, the following: Astrakhan, Broadtail, Caracul, Persian and similar lamb, Indian, Chinese, Mongolian or Tibetan lamb, whole, with or without head, tail or paws.	80% or Sh.40 per Kg

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>New Duty Rate</i>
4301.60.00	Raw furskins of fox, whole, with or without head, tail or paws.	80% or Sh.40 per Kg
4301.70.00	Raw furskins of seal, whole, with or without head, tail or paws.	80% or Sh.40 per Kg
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.	80% or Sh.40 per Kg
4301.90.00	Heads, tails, paws and other pieces or cuttings, suitable for furriers' use.	80% or Sh.40 per Kg

(Question of the amendment proposed)

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, we had some amendment. I beg to move that---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Prof. Kaloki! Once the amendment by the Minister succeeds, then yours will be dropped because it is similar.

Mr. Okemo: On a point of order, Mr. Temporary Deputy Chairman, Sir. The Minister's amendment to the First Schedule is completely different from the amendment to the First Schedule that we are proposing. We agree with the Minister's amendments, but they are not in any way contradictory to ours. I think that is what we want to make very clear.

The Temporary Deputy Chairman (Mr. Ethuro): Let us take one at a time.

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

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

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, I am trying to see if our amendment is the same so that we can agree. Could you give us a minute to consult?

(Prof. Kaloki consulted with Mr. Okemo)

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, maybe I can do more justice.

The Temporary Deputy Chairman (Mr. Ethuro): At the Committee stage you can always have a clarification. So, you can pick it.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, the Minister's amendment is a cleaning up exercise. They are trying to remove---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Okemo! I think the proposal by Prof. Kaloki was acceptable to the Chair. You do not consult from the microphone. Consult and then report whether there is an agreement or disagreement. If we think that they are the same and then we carry them separately, then it becomes a bit different. So, just consult and agree. Because of time, I also want to make use of the time when you are consulting to go the other Schedules that have no amendments. This will enable us, at least, redeem some time. After that I will come back to you.

(Prof. Kaloki consulted with Mr. Okemo and Mr. Githae)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Okemo, approach the Minister, or the Minister to approach you. Of course, you know how to cross the Floor.

(Mr. Okemo consulted with Mr. Githae)

Hon. Members, First and Second Scheduled, because there are amendments, I will leave for now so that we can do the Third and Fourth Schedule and then we can come back to them. Hopefully, by that time the consultations will be through.

(Third Schedule agreed to)

(Fourth Schedule agreed to)

(Consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! since there is an indication that consultations are over, I will go the Second Schedule, as they settle.

Second Schedule.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT The Second Schedule to the Bill is amended by inserting the following items –

3. Delete the rates of duty in respect of the following tariff numbers and descriptions in the first and second column and insert the rates shown in the third column.

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Rate of Duty</i>
2203.00.10	Stout and porter	Sh.70 per litre or 50% whichever is higher
2203.00.90	Other beer made from malt	Sh.70 per litre or 50%, whichever is higher
2206.00.10	Cider	Sh.70 per litre or 50% whichever is higher
2206.00.20	Opaque beer	Sh.70 per litre or 50% whichever is higher
2206.00.90	Other fermented beverages	Sh.70 per litre or

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Rate of Duty</i>
		50% whichever is higher
2204.10.00	Sparkling wine of fresh grapes including fortified wines, grape must	Sh.80 per litre or 50% whichever is higher
2204.21.00	Other wine in containers holding 2 litres or less	Sh.80 per litre or 50% whichever is higher
2204.29.00	Other wine in containers holding more than 2 litres	Sh.80 per litre or 50% whichever is higher
2204.30.00	Other grape must	Sh.80 per litre or 50% whichever is higher
2205.10.00	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances in containers of 2 litres or less	Sh.80 per litre or 50% whichever is higher
2205.90.00	Vermouth and other wines of such fresh grapes flavoured with plants or aromatic substances, in containers of more than 2 litres	Sh.80 per litre or 50% whichever is higher

4. Part III of the Fifth Schedule to the Customs and Excise Act is amended by –

- (a) deleting the words “or 40% of the retail selling price” appearing at the end of item 6 and replacing with “or 50% whichever is higher”.
- (b) inserting the following new items immediately after item 6 as follows –
7. Excise duty on fees charged for money transfer services by cellular phone service providers, banks, money transfer agencies and other financial service providers shall be ten percent
 8. Excise duty on other fees charged by financial institutions shall be ten percent.

(Question of the amendment proposed)

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

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

(The Second Schedule as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Now we go back to the First Schedule. There is no communication to the Chair. You should approach the Chair. We do not have the Minister’s. That is sufficient.

Hon. Members, just for the sake of clarity, because you cannot determine, which stage we had reached, the hon. Minister will just go through the Motions but do not read amendments, just say , as per the Order Paper. We will proceed.

The Minister for Finance (Mr. Githae): Thank you, Mr. Temporary Deputy Chairman, Sir, I propose that---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Minister, we are repeating the process.

First Schedule

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the First Schedule to the Bill be amended by –

(d) deleting the word “reptiles” in the second column under tariff number 4103.10.00 and replacing it with the word “goats”;

(e) deleting tariff number 4301.13.00, descriptions and the rate of duty thereof and replacing with the following -

4302.13.00 Whole skins of lamb, with or without head, tail or 20% hooves, not assembled, the following: Astrakhan, Broadtail, Caracul, Persian and similar lamb, Indian, Chinese, Mongolian or Tibetan lamb.

(f) by inserting the following new item immediately after item 2 -

4. Delete the existing rates of duty in respect of the following Tariff numbers and descriptions in the first and second column respectively and insert the rates shown in the third column –

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>New Duty Rate</i>
4101.20.00	Whole hides and skins, of a weight per skin not exceeding 8 kg when simply dried, 10 kg when dry-salted, or 16 kg when fresh, per Kg wet-salted or otherwise preserved.	80% or Sh.40
4101.50.00	Whole hides and skins, of weight exceeding 16 kg.	80% or Sh.40 per Kg
4101.90.00	Other, including butts, bends and bellies.	80% or Sh.40 per Kg
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1 (c) to Chapter 41.	80% or Sh.40 per Kg
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1 (c) to Chapter 41.	80% or Sh.40 per Kg
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed,	80% or Sh.40

Tariff No.	Tariff Description	New Duty Rate
	pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1 (c) to Chapter 41.	per Kg
4103.10.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of goats.	80% or Sh.40 per Kg
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of reptiles.	80% or Sh.40 per Kg
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine.	80% or Sh.40 per Kg
4103.90.00	Other raw hides and skins other than of reptiles, goats or kids.	80% or Sh.40 per Kg
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws.	80% or Sh.40 per Kg
4301.30.00	Raw furskins of lamb, the following: Astrakhan, Broadtail, Caracul, Persian and similar lamb, Indian, Chinese, Mongolian or Tibetan lamb, whole, with or without head, tail or paws.	80% or Sh.40 per Kg
4301.60.00	Raw furskins of fox, whole, with or without head, tail or paws.	80% or Sh.40 per Kg
4301.70.00	Raw furskins of seal, whole, with or without head, tail or paws.	80% or Sh.40 per Kg
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.	80% or Sh.40 per Kg
4301.90.00	Heads, tails, paws and other pieces or cuttings, suitable for furriers' use.	80% or Sh.40 per Kg

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, we have agreed with the Minister.
(Question of the amendment proposed)

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

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

(The First Schedule as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): So, the one of the Committee has been withdrawn.

(Title agreed to)

Clause 1

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 1 of the Bill amended by –

(a) deleting the expressions “12”, “13”, “20” in item (a) and replacing them with expressions “12(b)(ii)”, “13(a)(iii)” and “20(a)(i)”.

(b) deleting the expressions “8” and “9” in item (b) and replacing them with the expressions “8(a), 8(b), 9(a), and 9(b)”.

(c) deleting the expression “23” in item (c).

(d) inserting item (d) and (e) as follows:-

(d) section 13A and section 23 on 1st July, 2013.

(e) all other sections, on publication.

This is basically to provide the effective dates of the various clauses.

(Question of the amendment proposed)

Prof. Kaloki: Mr. Temporary Deputy Chairman, Sir, we had an amendment here and I do not know whether there is an agreement because as per the Order Paper we are proposing an amendment--

The Temporary Deputy Chairman (Mr. Ethuro): To Clause 1?

Prof. Kaloki: To Clause 1.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Prof. Kaloki! The Chair is not aware of the amendment. On which page is it on the Order Paper?

(Prof. Kaloki approached the Chair)

(Consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! I think we are through with the consultations. Let us get that procedure repeated.

Clause 1

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, I beg to withdraw my amendment and allow the Committee to move its amendment.

(Proposed amendment withdrawn)

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

THAT, Clause 1 of the Bill be amended-

(a) in paragraph (a) by deleting the words “21 and 22”; and

(b) by inserting the following new paragraph immediately after paragraph (c)-

“(d) sections 21 and 22, upon the final announcement of all the results of the first elections for Parliament under the Constitution of Kenya, 2010”.

(Question of the amendment proposed)

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

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

(Clause 1 as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, it is now time to report to the House. We will report on all the three Bills, starting with The Finance Bill.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Finance Bill (Bill No.26 of 12) and its approval thereof with amendments, subject to re-committal of Clause 1.

Mr. Temporary Deputy Chairman, Sir, I should not have withdrawn my amendment, because the Committee’s amendment was in addition to mine. So, both amendments should have taken effect. My amendment gives different effective dates for different classes of taxation, whereas the Committee’s amendment was only on one class of taxation. So, my amendment and that of the Committee should be carried, because they are different in effect. The Committee’s amendment has already been carried. It is only my amendment which requires revisiting. We have already amended the law on taxation, but there is no effective date.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members of the Departmental Committee, I would like to inform you that the re-committal of Clause 1 will also need you to be around. So, you will be here for the long haul.

(The House resumed)

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

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE FINANCE BILL, 2012

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, we will use the same order that we used in executing the Committee Stage of the Bills.

Chairman, I call upon you to report on The Internally Displaced Persons Bill.

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Internally Displaced Persons Bill (Bill No.21 of 2012) and approved the same with amendments.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Benjamin Langat, move on behalf of hon. Ethuro.

Mr. Langat: Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Mr. Ruto seconded.

(Question proposed)

(Question put and agreed to)

Mr. Langat: Madam Temporary Deputy Speaker, I beg to move that The Internally Displaced Persons Bill (Bill No.21 of 2012) be now read the Third Time.

Mr. Ruto seconded.

(Question proposed)

The Temporary Deputy Speaker (Dr. Laboso): I can see Mr. Njuguna.

Mr. Njuguna: Madam Temporary Deputy Speaker, mine is only a small comment. I want to urge the Government to be serious in settling the remaining Internally Displaced Persons (IDPs), who are scattered around the country.

(Question put and agreed to)

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

THE ELECTIONS (AMENDMENT) NO.2 BILL
(BILL NO. 58 OF 2012)

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered The Elections (Amendment) No. 2 Bill (Bill No. 58 of 2012) and approved the same with amendments.

Mr. Ruto: Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Mr. Langat seconded

(Question proposed)

(Question put and agreed to)

Mr. Ruto: Madam Temporary Deputy Speaker, I beg to move that The Elections (Amendment) No. 2 Bill (Bill No. 58 of 2012) be now read a Third Time.

Mr. Langat seconded

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, there is something that I really have to say on this, particularly after seeing what is coming out of media organs about what we have done. I commend the House for the amendment. At some particular point in time, we may need to come back and clean this statute. The provisions that have been amended by this House were in the wrong place. They were supposed to deal with party lists, and then they brought in provisions which affected the nomination of candidates for elections. So, the category of Members of the National Assembly elected or nominated, who are found in that provision should be on the party nomination list. So, Clauses 28 and 34 were incongruent. Therefore, it is a very important job that we have done; but the provision must still be cleaned up further.

Mr. Ruto: Madam Temporary Deputy Speaker, I beg to thank hon. Members for giving support to this particular Bill. Indeed, I also want to support what Mr. Orengo is saying. In addition to the incongruence in Clause 28, it would not also have been implementable because there are no registered voters in Kenya. As of now, you cannot be a valid member of a political party if you have not been registered as a voter. The Constitution is clear on that. Those who did not vote in the referendum in 2010 are not in the electoral commission's list of voters. Therefore, they cannot even be registered as members of any political party, even by the software that the Registrar of Political Parties has now. This means we had disenfranchised a very large section of Kenyans, for example those who have just acquired identity cards and those who are in the diplomatic service.

I want to thank hon. Members for giving their support.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, Sir, I just want to take this opportunity on behalf of the House to thank Mr. Isaac Ruto for the effort he has put in convincing all of us to support this amendment Bill despite the opposition that was there initially; that eventually we all saw the light. I would like to ask that between now and election time, there are still some clauses that we may need to comb with a fine tooth comb as members of this House because we will be responsible for how the first elections under the new Constitution are conducted.

For the wider public good, I would like to urge each one of us to go through and then if there are any things you feel that need to be cleaned up, so that we can pass them through the Attorney-General and then we can have a comprehensive law to sort out all these issues for the wider public good and to have free and fair elections when we next sit after the recess that we will be going to at some point in the near future.

(Question put and agreed to)

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

THE FINANCE BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Finance Bill, Bill No.26 of 2012 and approved the same with amendments subject to recommittal of Clause 1.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE FINANCE BILL

(Consideration of Recommitted Clause 1)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We recommitted Clause 1, which means that we have opened it. So, we will repeat the same procedure.

Clause 1

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 1 of the Bill amended by –

- (a) deleting the expressions “12”, “13”, “20” in item (a) and replacing with expressions “12(b)(ii)”, “13(a)(iii)” and “20(a)(i)”.
- (b) deleting the expressions “8” and “9” in item (b) and replacing with the expressions “8(a), 8(b), 9(a), and 9(b)”.
- (c) deleting the expression “23” in item (c).
- (d) inserting item (d) and (e) as follows:-
- (d) section 13A and section 23 on 1st July, 2013.
- (e) all other sections, on publication;

This is with an exception of part (d)(d) which has not been passed by the Committee.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Ethuro): There is a further amendment by the Committee.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I think that ours was passed in the first round.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Okemo! The Chairman is introducing another complication, but I want to clear it. Since the Minister had withdrawn his, the only one that we had actually passed was the one of the Committee. In the recommittal, we were recommitting Clause 1 as amended by the Committee. So, the one by the Minister becomes a further amendment to that Clause 1.

(Clause 1 as further amended agreed to)

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Finance Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE FINANCE BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Finance Bill, Bill No.26 of 2012 and approved the same with amendments.

The Minister for Finance (Mr. Githae): “Madam Temporary Deputy Speaker, Sir”, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Members: Madam Temporary Speaker, Sir!

The Temporary Deputy Speaker (Dr. Laboso): I think you need to clarify. I can see the Members are worried about your expression of “Madam Speaker, Sir”.

(Laughter)

The Minister for Finance (Mr. Githae): “Madam Temporary Deputy Speaker, Sir----”

(Laughter)

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that the Finance Bill, Bill No.26 of 2012, be now read a Third Time.

The Assistant Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question, put and agreed to)

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

MOTION

APPROVAL OF THE DRAFT ELECTIONS (REGISTRATION OF VOTERS) REGULATIONS, 2012

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

The Draft Elections (Registration of Voters) Regulations 2012.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Speaker, I beg the indulgence of the House to be allowed not to move this Motion to allow for further consultations with the Members of the relevant Departmental Committee and, perhaps, to be allowed to move this Motion on Tuesday. There is need for further consultation. Thank you.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, in the circumstances and given the importance of these electoral rules, not just for this country, I will then propose that we agree with the request by the Minister.

You may recall the Speaker had given some indications there was consultation taking place and the Minister has reported. So, in the circumstances, I will also not be moving the

Motion of Adjournment as indicated in my earlier report to the House. We will be carrying forward the business that is pending on today's Order Paper on to Tuesday, which means then that on the Order Paper for Tuesday, we will then be only looking at Order No.8, which is basically what is left for today, because this House had given us authority to only conduct Order No.8 and 9. We have done 9, so Order No.8 will then move on to Tuesday, as being the only business and after that, we will be moving the Motion of Adjournment. So, it is Order No.8 and the Adjournment Motion that we will transfer to Tuesday. With that, I wish to seek the indulgence of the Chair that we move in that direction and seek the Speakers orders in the same direction.

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, in those circumstances, therefore, we will adjourn the House. This House stands adjourned until Tuesday, 9th October, 2012 at 2.30 p.m.

The House rose at 9.45 p.m.