

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 11th September, 2012

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

NOMINATION OF CHAIRPERSON AND MEMBERS OF NATIONAL POLICE SERVICE COMMISSION

Mr. Deputy Speaker: Hon. Members, I have the following Communication to make.

Following the decision of the House on 31st July 2012, on the Report by the Departmental Committee on Administration and National Security on the Vetting of nominees to the National Police Service Commission laid on the Table of the House on Tuesday the 15th of May, 2012, His Excellency the President, in consultation with the Rt. Hon. Prime Minister, has submitted a fresh list of nominees to the National Assembly for approval.

In a letter Ref. OP/CAB.3/77A, dated 31st August 2012, from the Permanent Secretary, Secretary to the Cabinet and Acting Head of the Public Service, the National Assembly has been advised that His Excellency the President, in consultation with the Rt. Hon. Prime Minister, has nominated the following persons for the positions stated hereunder:-

- | | | | |
|-------|------------------------------|---|-------------|
| (i) | Johnston M. Kavuludi | - | Chairperson |
| (ii) | Ronald L. Musengi | - | Member |
| (iii) | Esther Chui-Colombini | - | Member |
| (iv) | Murshid A. Mohamed | - | Member |
| (v) | Dr. Major Muiu S. Mutia, EBS | - | Member |
| (vi) | Mary A. Owuor | - | Member |

Hon. Members, I direct that these names and the accompanying curriculum vitae of the nominees together with the report of the selection panel, including the score sheet, be forwarded to the Departmental Committee on Administration and National Security for consideration prior to approval by the House.

The Committee is hereby directed to table its report on or before the 25th September, 2012.

PAPERS LAID

The following Papers were laid on the Table:-

Financial Statements of the Town Council of Funyula for the years ended 30th June, 2010 and 2011 and the certificate thereon by the Auditor-General.

Financial Statements of the Town Council of Malaba for the years ended 30th June, 2010 and 2011 and the certificate thereon by the Auditor-General.

Financial Statements of the Town Council of Kakamega for the years ended 30th June, 2010 and 2011 and the certificate thereon by the Auditor-General.

Financial Statements of the Town Council of Nandi Hills for the two years period ended 30th June, 2009 and the Certificate thereon by the Auditor-General.

Financial Statements of the Town Council of Litein for the two year period ended 30th June, 2009 and the certificate thereon by the Auditor-General.

Financial Statements of the Town Council of Litein for the years ended 30th June, 2011, and the certificate thereon by the Auditor-General.

*(By the Minister for Public Works on behalf of
The Acting Minister for Local Government)*

Financial Statements of the Gatundu South Water and Sanitation Company Ltd. for the years ended 30th June, 2011, and the certificate thereon by the Auditor-General.

*(By the Minister for Public Works on behalf of
the Minister for Water and Irrigation)*

Financial Statements of Moi Teaching and Referral Hospital for the years ended 30th June, 2011, and the certificate thereon by the Auditor-General.

Financial Statements of Kenya Medical Supplies Agency for the year ended 30th June, 2011, and the certificate thereon by the Auditor-General.

*(By the Minister for Public Works on behalf of
the Minister for Medical Services)*

Financial Statements of the Kenya Plant Health Inspectorate Services (KEPHIS) for the year ended 30th June, 2011, and the certificate thereon by the Auditor-General.

*(By the Minister for Public Works on behalf of
the Minister for Agriculture)*

Annual Report of Accounts of the Kenya Polytechnic University College for the year ended 30th June, 2009 and the certificate thereon by the Auditor-General.

*(By the Minister for Public Works on behalf of the
Minister for Higher Education, Science and Technology)*

Financial Statements of Kenya Marines and Fisheries Research Institute for the year ended 30th June, 2011, and the certificate thereon by the Auditor-General.

*(By the Minister for Public Works
on behalf of the Minister for Fisheries)*

Financial Statements of Postal Corporation for Kenya for the year ended 30th June, 2008, and the certificate thereon by the Auditor-General.

*(By the Minister for Public Works on of
the Minister for Information and Communications)*

QUESTIONS BY PRIVATE NOTICE

RECRUITMENT OF APs WITHOUT FOLLOWING LAID DOWN CRITERIA

Mr. Olago: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Questions by Private Notice.

(a) Under what circumstances were Administration Police constables recruited and enrolled at Administration Police Training College (APTC) without basic academic qualifications certificates and without being given service numbers that resulted in 600 of them being given 3 days off on 28th May 2012 to present the documents to enable them proceed with training?

(b) How many of these officers have so far returned to the college with genuine documents and could the Minister provide a list of the 600 officers who were affected?

(c) Why were the officers exempted from normal courses offered at the college and instead only taught "Field Craft" (Science of War)?

The Minister of State for Defence and Acting Minister for State for Provincial Administration and Internal Security (Mr. Haji): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Administration Police recruitment was carried out in accordance with the laid down recruitment guidelines of 25th March, 2011, issued by the Ministry of State for Provincial Administration and Internal Security. The required documents to be presented by potential recruits were:- Original identity card to prove citizenship; Kenya Certificate of Secondary Examination (KCSE) with a mean grade of C plain or a Bachelors Degree in case of graduate recruits. Other physical and medical requirements were age, medical fitness, good vision, hearing and without a criminal record.

The recruits undergoing training at the Administration Police Training College (APTC) underwent the above and were certified without reasonable doubt to be fit to undergo police training as required by the guidelines.

As the training progressed, there are other subsidiary administrative requirements by the Directorate of Personnel Management (DPM) to assist in updating personnel records of recruits into the integrated personnel payroll database and issuance of service numbers. This necessitated the additional requirements, including the KRA Pin Number and birth certificate. Since these requirements were not initially included into the recruitment, the college administration made efforts to facilitate the recruits to acquire these documents.

Those who had the documents at home were requested to collect them during their midterm break. A total of 225 recruits who did not submit them by the end of the internship

citing various reasons of delay were given two days off duty on 28th May, 2012, to collect the documents.

(b) All the recruits have so far returned to the college after submitting the above and KRA Pin as requested. I wish to table a list of 225 officers who were affected.

(c) The issue of selective training of Science of War does not arise as the recruits undergo an extensive 15 months course which is guided by the new training curriculum adopted by both the Kenya Police and the Administration Police Training institutions.

The issue of equity as raised by one of the hon. Members does not, therefore, arise as this had been catered for during recruitment.

Mr. Olago: Mr. Deputy Speaker, Sir, the last time the Minister attempted to reply to this Question, the House insisted, and the Speaker agreed, that he should table this list of the recruits who were sent home for the purposes of interrogating him to establish whether there was an attempt to set up a private army or not. He has just laid the list on the table. I need to look at the list, so that I can interrogate it properly. I, therefore, request the Chair that this Question be deferred to next week to enable me look at the list very carefully.

Mr. Deputy Speaker: You do not have a written answer with the list?

Mr. Olago: Mr. Deputy Speaker, Sir, the written answer is with me but the list was not attached. It has just been tabled a few minutes ago.

Mr. Deputy Speaker: That is a very valid point. I will have to direct that this Question be again listed on the Order Paper on Thursday afternoon.

Are you okay with that, Mr. Olago?

Mr. Olago: Mr. Deputy Speaker, Sir, may I kindly ask for your indulgence to have it on Tuesday or Wednesday next week?

Mr. Deputy Speaker: Minister, are you okay with that?

Mr. Haji: Mr. Deputy Speaker, Sir, I am okay with that but I want the hon. Member to withdraw his assertion that there was a private army that was being trained. I have given the 225 people who have been trained all over the country. Therefore, he is making a very serious allegation.

Mr. Deputy Speaker: Minister, the Question has been deferred; so, these are matters that are going to be raised when the Question is again validly before the House.

(Question deferred)

Next Question by Dr. Wilber Otichilo.

DISREGARD OF NEMA RECOMMENDATION
ON CONSTRUCTION OF SOUTHERN BY-PASS

Dr. Otichilo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) Could the Minister confirm that the Government has approved the de-gazettement of parts of Nairobi National Park for the construction of Nairobi Southern By-Pass road against the recommendation of NEMA?

(b) Is the Minister aware that the degazettement of any National Park in the Country without the approval of Parliament is prohibited by law?

(c) Is the Minister further aware that implementation of the proposed de-gazettement will set a dangerous precedent for demands for degazettement of various parts of national parks in the country by the local communities, and could the Minister assure the House that the proposed degazettement will not be implemented and instead the earlier planned road reserve will be repossessed from illegal allottee(s) and developer(s) who may have encroached on the same?

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Deputy Speaker, Sir, I am rising to answer a supplementary question which the Minister had answered twice previously. He was asked to come back owing to the fact that he had informed this House that there were consultations going on between my Ministry, the Ministry of Lands and the Ministry of Transport to discuss issues and agree on where the particular southern by-pass is going to pass through within the borders of Nairobi National Park.

Mr. Deputy Speaker, Sir, between the 9th and 24th of August, a technical team of the relevant Ministries, which I have just mentioned, held a series of meeting, reviewed the literature that has been available since 1957 and had this to report. This is the position of the Ministry, and also the position of the Government.

Indeed, sometime in 1957, a deed plan indicated that a title deed existed for the Nairobi National Park. Indeed, this deed plan indicated that a railway reserve was created along the Northern Corridor of the Nairobi National Park in that same year. Within the same year, the Royal National Park was transferred to the East African Railways. The land that was under the Royal National Park was transferred to East African Railways and Harbors Corporation for the purposes of marshalling a yard and a railway corridor.

Mr. Deputy Speaker, Sir, the technical team noted that this particular area that had been reserved for the railway reserve has been encroached on by buildings.

In regard to the Wilson Airport, the team also obtained a deed for this airport which reflected the presence of an airstrip, a strip of land between the end of the runway and the national park. This strip approximately coincides with the position of railway reserve created in 1957.

The technical team recommended the following:-

1. the repossession of the railway reserve that was existing;
2. in regard to creation of the road reserve, they established that no legally valid road reserve for a highway has ever existed between the Ole Sereni area and area south-west of the Wilson Airport Runway 1432. The team thus recommended that a 60 meter road reserve be created alongside the park boundary except where aviation, or engineering considerations, make departure from the boundary unavoidable.

They went further and made recommendations as to the extent of intrusion into Nairobi National Park. The extent of possible intrusion into the park needs to be minimized. It was noted that the extent of intrusion is dependent on several factors including the following:-

- “1. There exists a 30-meter pipeline way leave and oil pipelines inside the park. The pipeline way leave is agreed between Kenya Wildlife Service (KWS) and the Kenya Pipeline Company and is registered.

2. The road reserve requires a 60-meter width and the proposed railway reserve also requires a 60-meter width.

3. The Kenya Airports Authority Development Master Plan contains proposals for expanding the runway of Wilson Airport to accommodate the ATR72500 aircraft. Currently, the airport can only accommodate a bigger size of aircraft, Beach Craft 1900, as a critical aircraft. There is, therefore, adequate space between the end of runway safety area and the oil pipeline to

accommodate both the road and proposed railway, if the current status of the runway is maintained”.

However, if Wilson Airport was to go to the proposal of accommodating the bigger aircraft, ATR72500, then there would be insufficient space between the end of the runway safety area and the oil pipeline to accommodate both the road and railway.

Mr. Deputy Speaker, Sir, the technical team also noted the Environmental Assessment Licence that was issued by NEMA without regard to this, which imposed general construction and operational conditions. I want to quote condition No.2.2 which stipulated that:-

“The proponent shall not encroach on gazetted parks. Nairobi National Park”.

Mr. Deputy Speaker, Sir, as a way forward what has been recommended, and Ministry is taking it, is that the Ministry of Roads, through the Kenya National Highways Authority (KeNHA), should apply for the review of the Environmental Impact Assessment Licence, which is a statutory requirement for a development of this nature under the Environmental Management and Co-ordination Act. Two, KeNHA, through the Ministry of Roads, should also apply for an easement from the Kenya Wildlife Service (KWS) for the park construction of the southern by-pass for the section between Ole Sereni Hotel and Wilson Airport along the northern boundary of Nairobi National Park. The easement will also include consideration for complying with air safety regulations and engineering design standards.

Lastly, for purposes of expediency, issues relating to the construction of the southern by-pass to ease traffic congestion on the northern transport corridor should not be enjoined with the proposed rail development.

Mr. Deputy Speaker, Sir, this indicates what my substantive Minister indicated to this House, that no section of the National Park has been given up for road construction. These are the conditions that have to be met by those who may need extra land beyond what was reserved for them. Until those conditions are met, then my Ministry is not ready to cede any part of the national park.

Thank you.

Dr. Otichilo: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for the comprehensive answer he has given after he had almost two months to get it. However, listening to the Assistant Minister, it is clear that he is indicating indirectly that there will be need to make part of the Nairobi National Park part of the southern by-pass. Could the Assistant Minister confirm, and assure this House, that nothing will be done unless the matter is brought to this House so that the House gives authority for granting of any easement or de-gazettement of Nairobi National Park?

Mr. Nanok: Mr. Deputy Speaker, Sir, I have already indicated, and the Minister also indicated, that proper procedures will have to be followed in the granting of this easement. This will include the Ministry of Roads, which is constructing the road, requesting a review of the environmental impact assessment. If it is recommended that we give part of the national park, that will definitely come to this House. This is because the requirement of the law is that this House must approve such request before the portion of the land that may be required by the Ministry of Roads is given out to them.

Mr. Balala: Mr. Deputy Speaker, Sir, as we are talking today, there is already an encroachment on the national park. It is very clear that the procedure must be followed. If the Government needs to encroach on the national park, it should get that approved by the Cabinet and bring it to Parliament; let us discuss it; let us look at the interests of the country and then proceed and approve it. This *jua kali* way of getting things done by this Government should stop.

The Assistant Minister has not cleared the situation about the encroachment by the contractor who is already on the road. Could he assure us that the contractor is not encroaching on the national park?

Mr. Nanok: Mr. Deputy Speaker, Sir, I want to state here categorically that no encroachment has happened on the national park, and that Nairobi National Park has 117 square kilometers, and the northern, eastern and western parts have fences. We are saying that proper procedures, which include NEMA giving its okay, a Cabinet approval through the Cabinet memorandum and a Motion being tabled in the House to be debated; that will have to take place. Unless that is done, I want to assure this House that the boundaries of the national park will remain intact.

Mr. Mureithi: Mr. Deputy Speaker, Sir, I also want to declare a bit of interest in this, as I have been the chairman of the KWS. That land has always been an issue. When the Assistant Minister will be coming back to Parliament, I would like him to give us a policy regarding the Nairobi National Park, considering that it has been completely encroached on. It is the only national park in a city in the world. He should also give us the details of what happened to the railway line which does not seem to exist. I would like the Assistant Minister to take that into consideration. What happened to the railway line considering that many houses have been built on railway line land?

Mr. Nanok: Mr. Deputy Speaker, Sir, I may not have much to say about the railway line because it is outside the national park---

Mr. Balala: On a point of order, Mr. Deputy Speaker, Sir. We know the Assistant Minister has assured us that everything is intact. However, there is no proof that everything is intact. From the reality on the ground, we can see the contractor already encroaching not only by building the road but also by erecting other structures used in the construction of the road. Can he table documents that show that they have not encroached on the national park?

Mr. Nanok: Mr. Deputy Speaker, Sir, the Question that was brought here was about whether the boundaries of the national park have been altered or not. I have said categorically that they have not been altered and I still stand by that position.

Mr. Koech: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for the answer he has given. However, with regard to part (c) of the Question, I want him to be categorical and tell the House the truth. That part of the Question states that the earlier planned road reserve will be repossessed from illegal allottees who may have encroached on the same. Could the Assistant Minister be categorical and tell us whether or not there are encroachees and what he is doing with those who have encroached on the road reserve?

Mr. Nanok: Mr. Deputy Speaker, Sir, the railway reserve, which I believe is the proposed road reserve, is outside the preserve of my Ministry. Nevertheless, the technical committee that involved the Ministries of Land, Transport and Roads has actually recommended that that option should be looked into. I believe that the relevant Ministries are going to pursue it. However, if we are going to pursue the option of wanting us to ease some piece of land from the national park, then the proper procedures have to be followed including a review of the NEMA Environmental Impact Assessment (EIA) licence and the subsequent approvals by Cabinet and this House.

Mr. Kabogo: Mr. Deputy Speaker, Sir, you are aware that the national park along Mombasa Road has literally no animal population. This is because the corridor of animals moving from one end towards to the Tanzanian end has already been occupied by settlements. Is

it possible for the Ministry to consider exchanging the land along Mombasa Road with those that are occupying the corridor so that the corridor opens out for animals which should enjoy staying in the park? As it is now, if you drive along Mombasa Road, there are hardly any animals you can see.

Mr. Mwau: Mr. Deputy Speaker, Sir, on a point of order. Is the Assistant Minister in order to mislead the House? He said that there is a NEMA licence which would include the proposal, the EIA Report, the drawings, maps and whatever was to be considered for the licence to be issued. Could he table that bundle of documents before the House so that hon. Members can scrutinize them and be well informed?

Mr. Nanok: Mr. Deputy Speaker, Sir, as usual, I am always a very prepared Minister. I want to table a copy of the final technical report done by the various officers from the inter-Ministerial committee. I also want to table a copy of the NEMA licence plus the map of the Nairobi National Park.

With regard to the supplementary question asked by hon. Kabogo, I think there are opportunities for expanding the national park to include the dispersal corridor arrears towards Isinya and Kitengela. Ever since I joined this Ministry, that is, four-and-a-half years now, we have been seeking funds that will include money for easement of certain land which we can bring into the national park, but our budget has never been approved the way we have always been presenting it to Treasury and this House.

This is still an option that could be considered, that is, buying off some of this land and making it part of the park. I think this could be the best way forward to ensure that the park continues being there. We may not be able to get back some of the dispersal areas because huge constructions and human settlement have already happened. However, I think there is still room for certain areas to be included as part of the park for it to be expanded. In case the population of the wild animals increases, we will then have enough room for them.

Dr. Otichilo: Mr. Deputy Speaker, Sir, it is clear from what the Assistant Minister is saying that there is still a problem and yet he seems not to be giving us the true picture of what is happening. I would like the Assistant Minister to table a real authenticated map of Nairobi National Park certified by the Ministry of Lands with the exact beacons so that this House is very sure that what he is telling us is correct. That way, in case he ever comes back to this House to ask for any easement, we shall be able to look at the map and if we find that what he is saying is not correct, we could use that map to say that what the Assistant Minister said was not correct.

Mr. Nanok: Mr. Deputy Speaker, Sir, I have tabled a map. However, if the hon. Member feels he needs additional information - he is my friend - I could provide it to him. I would like to ask him to look at what has been already tabled and in case he finds any information missing, he should not hesitate to contact me.

CRITERIA FOR RECRUITMENT OF TEACHERS IN NJORO/MOLO DISTRICTS

(**Mr. Kiuna**) to ask the Minister for Education:-

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

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

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

Mr. Deputy Speaker: Mr. Kiuna is not with us today. The Chair is satisfied. This Question will be listed in the Order Paper at the time Mr. Kiuna will be around.

(Question deferred)

RESOLVING BOUNDARY DISPUTES BETWEEN
WAJIR/GARISSA COUNTIES

(Mr. Sirat) to ask the Minister of State for Provincial Administration and Internal Security:-

(a) Could the Minister confirm that the current conflict being experienced in Wajir South Constituency emanates from the disputed boundary with Lagdera Constituency?

(b) Where does the boundary between Wajir and Garissa Counties fall and could the Minister table a map for these areas and the relevant Kenya Gazette notice?

(c) What steps is the Minister taking to ensure that the conflict over the boundary between the two constituencies is resolved expeditiously to avert recurrence of attacks?

Mr. Deputy Speaker: Equally, the Chair will defer this Question for the reason that it touches on the constituency of the Deputy Speaker, that is, Wajir South and who is the Chair now. The Chair would like also to participate in the prosecution of this Question. It should be listed on the Order Paper at the earliest opportunity when the Speaker is present.

(Question deferred)

MURDER OF MR. PATRICK K. KIPRONO BY
KFS WARDEN AT KAPCHEMUTWA

Mr. Chepkitony: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) Under what circumstances was Mr. Patrick Kibet Kiprono (ID No. 9865647) killed by a Kenya Forest Service Warden while harvesting dry firewood at Kapchemutwa Forest near Chebiemit in Keiyo District on 12th August, 2012?

(b) Why has the concerned warden been released by the police before being taken to court?

(c) What compensation will the Government give to the deceased's next of kin?

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Deputy Speaker, Sir, I beg to reply.

(a) On 12th August, 2012, two rangers were conducting routine patrol duties at 7.00 a.m., in Chebiemit Forest when they came across two people who had illegally cut tree logs and were preparing a kiln to convert the logs into charcoal. When they were challenged to stop what they were doing and surrender themselves to the forest rangers, one of the two persons proceeded menacingly towards one of the rangers and attacked him. He injured the ranger by cutting his right arm which was holding a rifle.

The ranger, in pure self-defence released a bullet from his gun which unfortunately resulted into the death of the aggressive attack. The second accompanying forest ranger immediately reported the incident to the police station; the District Criminal Investigation Officer (DCIO), Keiyo; and the local District Officer (DO). The local Kenya Forest Officer, an inspector who is based at Kaptagat, also promptly visited the scene.

The body of the late Patrick Kiprono was subsequently taken to the Kaptagat District Hospital Mortuary.

(b) The forest ranger who was concerned, James Bore, was arrested and placed under custody where he was charged with manslaughter. The case will be mentioned on 19th September, 2012. He is still under police custody.

(c) The Kenya Forest Service does not pay compensation in respect to persons who are injured or killed by forest rangers who act in self-defense in the course of their duties.

Mr. Chepkitony: Mr. Deputy Speaker, Sir, I am very disappointed with the quality of this answer because it does not reflect any seriousness from the Assistant Minister. I want to clarify some points which are not correct. The Assistant Minister has misrepresented some points. The Question I asked is about Kapchemutwa Forest and not Chebiemit Forest or Elgeyo Forest. The Assistant Minister has also referred to Kaptagat which is in Keiyo South. He has said that the body was taken to Kaptagat District Hospital Mortuary and yet that district hospital does not exist. I want the Assistant Minister to clarify these issues and confirm the right name of the mortuary the body was taken. I would also like him to give us the right name of the forest and the name of the other forest ranger because this is a clear case of extra-judicial killing.

Mr. Nanok: Mr. Deputy Speaker, Sir, I want to agree with hon. Lucas Chepkitony no further that probably, there may have been some misunderstandings in terms of which hospital and where the body was taken. As you know, when an incident of death happens in this country, it becomes a police case. Some of this information is reported but we can again cross-check with the Kenya Police and provide the appropriate information. I will also request that this Question is also directed to the Ministry of State for Provincial Administration and Internal Security because it is about the death of a Kenyan or a citizen of this country. Investigations were also being conducted by the Kenya Police and not by my Ministry.

Mr. Duale: On a point of order, Mr. Deputy Speaker, Sir. You have heard the Assistant Minister request that the issue where a forest ranger has killed another Kenyan should be referred to the Ministry of State for Provincial Administration and Internal Security. You will see Questions in this House about extra-judicial killings being conducted by either the KFS officers or the Kenya Forest Guards who are under his Minister. Could he confirm and tell the nation why he wants the Question directed to the Minister of State for Provincial Administration and Internal Security when his own officers are killing Kenyans?

Hon. Members: Yes!

Mr. Nanok: Mr. Deputy Speaker, Sir, I want to correct that impression. I said that any death as a result of being killed or injured is normally the responsibility of the Kenya Police to investigate and take up the matter. That is why I was requesting that this Question, although it

may have involved forest rangers who were doing their duty and who are in my Ministry, the investigations were being done by the appropriate arm of the law, which is the Kenya Police that falls under the Ministry of State for Provincial Administration and Internal Security. This Question should have appropriately been directed to the relevant Ministry to give you a fuller response.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Njuguna: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to inform this House that the forest guard was threatened and eventually harmed without tabling a pathological report to qualify the information?

Mr. Nanok: Mr. Deputy Speaker, Sir, I could table that document but I do not have it here. However, that is something that I can follow up and table. I have delivered what I have promised this House in the past. I have also done my job appropriately.

Mr. Deputy Speaker: Mr. Assistant Minister, how do you say that a ranger acted in self-defense and then you proceed to say that the ranger is facing charges of manslaughter right now? Is that not the content of your answer? Is that not what you basically have because that is what I have in front of me?

Mr. Nanok: Mr. Deputy Speaker, Sir, the information I have is that the ranger was acting in self-defense but at the same time, after the police had done some investigations, we went ahead and arrested him.

Mr. Deputy Speaker: You do not arrest an officer who is acting on self-defense. There must be some culpability for an officer to be arrested and charged in a court of law. You better consult your friend, Mr. Haji, who is seated next to you to tell you how the system works. Mr. Assistant Minister, there is an officer here who is in court and you proceed and say that he is innocent!

Mr. Nanok: Mr. Deputy Speaker, Sir, I said that matter is in court. The case will be mentioned on 19th September. I think I am clear on that.

Mr. Kutuny: On a point of order, Mr. Deputy Speaker, Sir. It is apparent that the Assistant Minister does not even know where the incident took place. He also does not know the name of the ranger and even the hospital where the person who was shot was taken. Would I be in order to request that the Assistant Minister goes back and comes with a substantive answer on this matter?

(Applause)

Mr. Nanok: Mr. Deputy Speaker, Sir, I am not in disagreement about that except that I will seek your indulgence that this Question be directed to the Minister of State for Provincial Administration and Internal Security.

Mr. Olago: Mr. Deputy Speaker, Sir, the Assistant Minister will get away with a very serious issue that we have addressed his mind to. I have noticed that he does not appear to appreciate your concern. I will give the Assistant Minister benefit of doubt. He may not know the difference between malice aforethought, manslaughter and murder but he cannot tell this House that this forest ranger was acting in self-defense and at the same time, he is charged with manslaughter. This is a contradiction in terms. Is he in order?

Mr. Deputy Speaker: Indeed, it is a perfect case of serious contradiction. If somebody did it in self-defense, he should not be charged with manslaughter because it is an entitlement for security officers to protect themselves in the course of their duty. Manslaughter comes in when

there is culpability. So, can you address this, hon. Assistant Minister? I direct that this Question has not been adequately answered.

Mr. Nanok: Mr. Deputy Speaker, Sir, if you look at part “a” of the Question, you will see that it clearly asks under what circumstances. In part “b”, I have provided the circumstances the way we understand them and from the statements that have been provided by the two forest rangers, who were there that particular day. However, this matter has been picked up by the Kenya Police who have investigated and gone further to take it to court. It is now up to the courts to determine what, indeed, was the correct position with regard to this serious and regrettable incident.

Mr. Chepkitony: Mr. Deputy Speaker, Sir, I would still plead that the Assistant Minister goes and brings back a proper answer because this answer is not satisfactory. The names he has referred to in his answer are not correct. He is referring to places which are not within that area and are outside my constituency because this incident happened within my constituency and in the northern part of my constituency; not in the southern part. I would plead with you that the Assistant Minister be asked to come back again with a proper answer.

Mr. Nanok: Mr. Deputy Speaker, Sir, with your indulgence, I want to agree with the hon. Member. But I want with your indulgence to ask that this Question be redirected to the Ministry of State for Provincial Administration and Internal Security. I think they are the relevant Ministry to answer this Question. Otherwise, there will be no reason why we, as Ministers, are appointed for certain dockets and we keep answering Questions for colleagues who are also sitting in the Front Bench of this House.

Mr. Deputy Speaker: Order. You are right. This, of course, is a matter that cuts across the two Ministries. This is because prosecutions and investigations are under the Ministry of State for Provincial Administration and Internal Security. But this is also claimed to have been done by rangers who are under your Ministry. In any case, when you have these cross-cutting issues, it is not for the questioner or the Chair to go and co-ordinate the answer. All the Ministers in the Government have collective responsibility. So, it is up to you to co-ordinate with your colleagues in the relevant Ministry and bring a satisfactory answer to the House. The Chair directs that this Question be listed on the Order Paper--- When is it convenient for you, Mr. Assistant Minister? After you have done the co-ordination and consultation with your colleagues on the other side, which is the valid position on your part?

Mr. Nanok: Mr. Deputy Speaker, Sir, you can see very clearly, it is my Ministry that is on the spotlight here but we cannot be a judge of ourselves. That is why I am saying since this is an issue of murder that was being handled by the Ministry of State for Provincial Administration and Internal Security, then this Question, with your indulgence, should be re-directed to the Ministry of State for Provincial Administration and Internal Security.

Mr. Deputy Speaker: The Question is directed to you. There is a role you both have to play. The direction of the Chair is that it is not the business of the Chair to co-ordinate and supervise the functions of the Government. It is the Government to do its own internal mechanisms and bring a satisfactory answer to the House. The Chair directs that this Question be listed on the Order Paper next week on Tuesday in the afternoon.

Is that okay with you, Mr. Chepkitony?

Mr. Chepkitony: That is okay, Mr. Deputy Speaker, Sir.

(Question deferred)

REPATRIATION OF MS. ROSEMARY W. NDUATI
FROM SAUDI ARABIA

Mr. Kabogo: Mr. Deputy 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?

Mr. Deputy Speaker: Hon. Members, I have a communication from the Ministry for Foreign Affairs that both the Minister and the Assistant Minister are engaged. There is a visiting Head of State from the region, the President of Tanzania who is with us. This Question will be listed on the Order Paper at the time when the Minister can prosecute that.

Do you have any preference for next week, Mr. Kabogo?

Mr. Kabogo: Mr. Deputy Speaker, Sir, this is a difficult situation that I find myself in. If I refer you to last week's answer the same communication you have given was given then. We know that a Question by Private Notice, especially one that touches on the liberty of a Kenyan is a serious matter.

The Chair did order last week that the Minister, even if he was not in the House, should give an assurance to the House that once he leaves Parliament that day and the days on, he will take action to make sure that this lady who is in captivity is released. So, really, I urge that you ask the Leader of Government Business to follow up this matter because it cannot wait any more.

Mr. Deputy Speaker: Clearly, the absence of the Minister and his Assistant Minister today are valid and the Chair is understanding in that nature. What is your preference for the Question to come up again? I do know that it is a Question by Private Notice.

Mr. Kabogo: Tomorrow morning or afternoon, Mr. Deputy Speaker, Sir. I am prepared.

Mr. Deputy Speaker: The Chair directs that this Question be listed on the Order Paper on Thursday afternoon. I think you will just have to bear with the situation.

(Question deferred)

ARREST/DISAPPEARANCE OF MR. ADAN B. ABDI
BY KWS WARDENS IN MAUA TOWN

Mr. Duale: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Why was Mr. Adan Billa Abdi (ID. No.126139101) arrested by Kenya Wildlife Service (KWS) wardens in Maua Town in Meru on 30th June, 2012?

(b) Could the Minister confirm or deny that the said person was arraigned in a court of law after his arrest, and if so, where?

(c) Could the Minister appraise the House on the whereabouts of Mr. Abdi since efforts to trace him by his family members have not borne fruit?

The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware of the arrest of Mr. Adan Billa by Kenya Wildlife Service (KWS) wardens in Maua Town on 30th June, 2012. However, I am aware that a report of a missing person, namely Adan Billa was made at Maua Police Station vide OB No.95 of 30th June, 2012, by Mohamed Burash. Subsequently, a signal for the same was circulated to all police stations to help trace the missing person. An inquiry file No.4/2012 was later opened by the District Criminal Investigation Officer (DCIO), Meru, and the same was later taken over by CID Headquarters, Homicide Section and is pending under investigation.

(b) The missing person was never taken to court as he was reported as missing only and the police have no information of his arrest, if any.

(d) The whereabouts of Mr. Adan Billa is currently under investigation.

Mr. Duale: Mr. Deputy Speaker, Sir, I want to thank the Minister. Extra-judicial killings were the preserve of the Kenya police but these days, extra-judicial killings are being done by the KWS. Mr. Abdi is the seventh person being investigated by the Homicide Division of the CID Headquarters. Mr. Abdi was picked on 30th June, by a vehicle registration No.KBN 418F, Land Cruiser by Meru National Park officers. The officers who picked Mr. Abdi are known even to the CID. These officers are: the warden in charge of operations and company commander of Meru; Intelligence Officer in charge of Meru and the driver, who is a sergeant.

This information is with the Government. I want the Minister to confirm to the nation that KWS and - he can confirm from his officers - have been doing extra-judicial killings mainly on the people of northern Kenya who border Meru National Park. The Minister must come out clearly on this.

Mr. Deputy Speaker, Sir, I want your indulgence that this is a serious matter. I want the Departmental Committee on Administration and National Security to investigate this matter.

Mr. Haji: Mr. Deputy Speaker, Sir, as I said earlier, the information available to me is exactly what I have read to the House. But if the hon. Member feels that there is need for the parliamentary committee responsible for security to investigate, I have no objection whatsoever. They can go ahead and investigate. If it will give us some truth over this allegation, the Government will be willing to receive it.

Mr. Deputy Speaker: Has the relevant department under your Ministry recorded statements from the people who the hon. Member is now mentioning?

Mr. Haji: Not particularly. I do not have the details of the people. But what I know is that the matter is---

(Mr. Duale held consultations)

Mr. Deputy Speaker: Mr. Duale, you are supposed to prosecute this Question and you are engaged in an intimate discussion with somebody else. How will you listen to the Minister's answers?

Proceed, Mr. Minister.

Mr. Haji: Mr. Deputy Speaker, Sir, I do not have any information about the vehicle number. I do not have information on the number of people who have given evidence. But what I am aware is that a case file has been opened by the Homicide Section of the CID in Nairobi and they are looking into the issue right now.

Mr. Duale: Mr. Deputy Speaker, Sir, Mr. Abdi is the seventh person to be investigated by the Homicide Section of the CID. The Homicide Section cannot keep on opening inquest files that will never be closed. It is the way they say they will leave no stones unturned but they never turn them. There are other six cases which the Minister's department is investigating till today. Mr. Abdi was picked on 30th June this year. It is two to three months now. Could the Minister tell us what his officers are doing?

Mr. Deputy Speaker: Hon. Duale, regarding the people you are talking about, have you recorded a statement with the Ministry's agency that investigates? You have mentioned the officers whom you said picked up the missing persons.

Mr. Duale: Mr. Deputy Speaker, Sir, a month ago, more than five people spent 14 hours at the CID Headquarters, in my presence, recording statements on this case. A team was sent to Meru National Park but no stones have ever been turned.

Mr. Deputy Speaker: Yes, Minister.

Mr. Haji: Mr. Deputy Speaker, Sir, the hon. Member has repeated what I have just said – that, statements were recorded and, as a consequence, a case file opened. I have even given the OB number. The matter is being investigated. If there are six other people, as alleged by the hon. Member, he can drop a letter to me and I will ask the CID to give me the position as of now.

Mr. Deputy Speaker: Yes, Dr. Khalwale.

Dr. Khalwale: Mr. Deputy Speaker, Sir, it is very clear from the Minister's answer that he is saying he is not aware. He has been challenged by the hon. Member, who has given him the names of the officers who made the arrest and the registration number of the vehicle that was used to carry out that particular exercise. The House cannot act in vain and let him just say that he does not know when he now has evidence, which is further collaborated by the witnesses who have recorded statements. He cannot hide from it. Therefore, as a House, we must put pressure on him to respond to this issue.

Minister, do you know the vehicle referred to? Do you know the officers mentioned? If you do not know, you must have been misadvised. So, you should come back to the House and give us the answer. Who are these people? Why have you not taken action against them? Or you are also supporting extra-judicial killings?

Mr. Haji: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to ask me whether I support extra-judicial killings? He should withdraw that remark and apologise, because that is a very serious allegation.

Mr. Deputy Speaker: Hon. Bonny Khalwale, do not insinuate any improper motive on the Minister. The last sentence is what got you into trouble. Everything else you said is within the Standing Orders.

Dr. Khalwale: Mr. Deputy Speaker, Sir, my English was very clear. I said "Or---" "Of course, the hon. Member is very close to me for many reasons the House does not have to know. I would never impute negative motive on him, but we are putting pressure on him, under Standing Order No.21, so that he can tell us the action is he taking. What are you doing? So, I withdraw that statement. I do not want to make him uncomfortable.

Mr. Deputy Speaker: Minister, I believe that comes back to the clarification that the Chair sought from you. Have the officers who have been mentioned recorded statements? Have they been investigated?

Mr. Haji: Mr. Deputy Speaker, Sir, I cannot answer that one because, as I said, I am not aware. This information is just being given in the House. I said that the hon. Member can write to me, and I will take the necessary action to find out whether that has been done.

Mr. Deputy Speaker: Hon. Chepkitony, what is your point of order?

Mr. Chepkitony: Mr. Deputy Speaker, Sir, is the Minister in order to say that he is not aware yet he is the only Minister who is in charge of the security of this country? He should be aware of what is happening, especially in a case like this one.

Mr. Haji: Mr. Deputy Speaker, Sir, that is a superfluous question. The hon. Member is out of the Question. As Minister, I am not an angel to know what is happening in every kitchen. So, you are totally wrong.

Mr. Deputy Speaker: Yes, hon. Kathuri.

Mr. Kathuri: Mr. Deputy Speaker, Sir, is the Minister in order to avoid answering the question? He has been given the names of the officers who have been implicated but he is deliberately avoiding to tell us what he intends to do about those who may have misled or misled him to give an answer which does not reflect the true position on the ground. Is he in order to avoid answering the question directly? What does he intend to do about the officers who took away that Kenyan citizen?

Mr. Deputy Speaker: Hon. Duale, is the information you have given here, including the implication of those officers, included in the statements that were recorded with the CID?

Mr. Duale: Mr. Deputy Speaker, Sir, this House will bear me out. The gentleman who was with Mr. Abdi when motor vehicle KBL 418F, owned by the KWS, which ferried the officers I have mentioned when he was picked up, recorded a statement with the Director of CID a month ago.

Mr. Deputy Speaker: Minister, you have your machinery for dealing with these things. The hon. Member has, indeed, said that this information is already with your department in charge of investigations. So, it should have been acted upon.

Mr. Haji: Mr. Deputy Speaker, Sir, I will get this information from the HANSARD and find out the position from my officers. The hon. Member is not willing to write me a letter and give me more details. So, the ball is in his court.

Mr. Deputy Speaker: What is your point of order, hon. Emilio Kathuri?

Mr. Kathuri: Mr. Deputy Speaker, Sir, what disciplinary action does he intend to take against the officers who have misled him? We want to be sure that in future, no Minister can give the House an answer which is an outright lie.

Mr. Deputy Speaker: Hon. Duale, you are also on a point of order. What is it?

Mr. Duale: Mr. Deputy Speaker, Sir, I want to go further and jog the memory of the Minister. The warden in charge of operations, who is also the Company Commander, is called Peter Lokitele. The guy in charge of intelligence in Meru National Park, who picked Mr. Abdi, is called Lukas Narisha. The driver of the vehicle is Mr. Hussein Murima, who is a sergeant. This information is with senior homicide officers within the CID. I do not need to write a letter. I am a Member of Parliament, and I want to use the Floor of the National Assembly to deal with the Government.

Mr. Deputy Speaker: Yes, Minister.

Mr. Haji: Mr. Deputy Speaker, Sir, that is fair enough. That information should have been given to me before I answered the Question. Perhaps I would have had the answers to them. So, in view of the new development, I will find out from the CID whether the allegations are true and what they are doing.

Mr. Deputy Speaker: How much more time do you need, so that I can defer this Question to another day? Is it okay if it is listed on Wednesday afternoon or do you prefer Thursday afternoon? It is a Question by Private Notice.

Mr. Haji: Mr. Deputy Speaker, Sir, Thursday afternoon will be more appropriate.

Mr. Deputy Speaker: Fair enough. The Chair directs that the Question be listed on the Order Paper for Thursday afternoon. I hope that the Minister will come with a satisfactory answer.

(Question deferred)

Mr. Deputy Speaker: Next Question, hon. Harun Mwau!

ORAL ANSWERS TO QUESTIONS

Question No.1602

IRREGULAR DISCLOSURE OF DEPOSITORS' INFORMATION TO KRA BY FORMER CHARTERHOUSE BANK INTERNAL AUDITOR

Mr. Mwau asked the Minister for Finance:-

(a) whether he could confirm that Mr. Peter George Odhiambo, ID No.0461987, a former Internal Auditor at Charterhouse Bank Limited, disclosed depositors' accounts information without their consent to the Kenya Revenue Authority (KRA) for a reward;

(b) whether he could provide copies of the documents given to KRA; and,

(c) whether he could confirm that the said depositors/customers used to bank exclusively with Charterhouse Bank.

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

(a) I am not in a position to confirm whether one Peter Odhiambo, ID No.0461987, a former Internal Auditor at Charterhouse Bank Limited, disclosed information on the depositors' accounts to KRA without their consent for a reward.

(b) In view of my response to part (a) of the Question, parts (b) and (c) do not arise.

Mr. Mwau: Mr. Deputy Speaker, Sir, I thank the Minister, but is he in order to refuse to answer the Question? The matter surrounding the Charterhouse Bank relates to allegations of tax evasion and money laundering. Tax evasion is associated with the customers of the bank in respect of whom it is alluded Peter Odhiambo gave information to the KRA. It is important that if there are people who did not pay tax at Charterhouse Bank are brought to book. Let those people be punished and made to pay but innocent people should not be subjected to suffering. I am, therefore, surprised by the Minister's answer to the effect that he is not aware. Can he explain to the House why he is not in a position to confirm?

Mr. Githae: Mr. Deputy Speaker, Sir, the reason why I am not in a position to confirm is because those are just allegations by Mr. George Odhiambo. He alleged that while he was working at Charterhouse Bank, he noticed that several accounts were being operated in violation of the Income Tax Act and the Kenya Anti-Corruption and Economic Crimes Act, Central Bank of Kenya Banking Act and the Prudential Regulations by banks. Those are just allegations. He is the one who said that. When we went to the Kenya Revenue Authority (KRA), they said that the information they received was not from him, but it was from other agencies. In fact, he has gone further---

Mr. Deputy Speaker: So, what did you receive from him?

Mr. Githae: Mr. Deputy Speaker, Sir, the KRA has said that it has not received any information from him. Those are just allegations. To shock this House further, he has gone ahead and sued the Kenya Government, the KRA and many Government officials claiming almost Kshs2 billion that he should have been paid for whistle-blowing. That is in America. That is not even a commercial transaction. We are defending that suit. He is claiming the money in dollars. That is very serious. So, those are just allegations that he made.

Mr. Deputy Speaker: Hon. Minister, I do not know whether you have looked at part “a” of this Question, which is whether the so-called Odhiambo George Peter had disclosed that information to KRA. Are you disputing the fact that he did not disclose any information to KRA?

Mr. Githae: Mr. Deputy Speaker, Sir, what I am saying is this: That fellow has sued the Kenya Government in the United States of America (USA).

Mr. Deputy Speaker: That is a subsequent thing. Hon. Minister, start from the beginning.

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. It is against the Standing Orders of this House for any hon. Member, including a Minister, to knowingly give information that is not true. We have heard the Minister admit that there is a law suit suing the Kenya Government and the Ministry for Kshs2 billion. Yet in that suit, paragraphs 13, 11 and 18 indicate - and I would want to quote:-

“On May 5 2004, the KRA paid Odhiambo Kshs200, 000 (US\$2,568) in Exhibit 6. The payment was described by the KRA as a token of appreciation to Odhiambo for providing the KRA with very useful tax information.”

Mr. Deputy Speaker, Sir, it goes on to paragraph 18 and it shows other payments. So, really, the Minister is aware that the KRA paid Odhiambo for providing information on Charterhouse Bank. Is the Minister in order to mislead the House and the Republic of Kenya while depositors like me continue to suffer?

Mr. Deputy Speaker: Order! You have made your point. Minister, you are a lawyer and I am sure you would think twice before you give information that you think or you are not sure that is factual.

Mr. Githae: Mr. Deputy Speaker, Sir, coming to that specific reference of Kshs 200,000-- First of all, it is Kshs200,000 and not US\$200,000. When we looked at the payment voucher, it was made in the name of J. Nduati for onward transmission to an informer. But that informer - and Mr. Nduati swears that it is not that fellow called Odhiambo. It is another informer. So, what I am saying is this: He is claiming over Kshs2 billion on the basis that he gave the KRA information. There are only two cases where Mr. Odhiambo gave information to the KRA. In one case, he was paid Kshs278,808. In another case, he was paid Kshs900,278.

Mr. Deputy Speaker, Sir, I want to clarify this: That the fact that somebody is having an account in a bank like Charterhouse---- the bank has nothing to do with the way the accounts are run. The bank has nothing to do with whether there is any tax evasion. If there is money laundering or tax evasion, it is those customers and not the bank that should be held responsible. That is exactly what happened.

Mr. Duale: On a point of order, Mr. Deputy Speaker, Sir. The Minister is misleading the House. The same Nduati he is talking about is the Head of Investigations at KRA. Could the Minister come out very clearly and say how many informers work for the KRA? Could he also tell us whether the KRA’s mandate to collect revenue has changed and now they are playing the role of the National Security Intelligence Service (NSIS)?

(Laughter)

Mr. Githae: Mr. Deputy Speaker, Sir, it must be good to inform my friend, hon. Duale, that under the KRA Act, I think Section 5(a), the Commissioner-General is authorized to reward people who inform the KRA about people who are evading taxes. In fact, it says:-

“The Commissioner-General may, upon the recommendation of a Commissioner, reward any person for information leading to identification or recovery of un-accessed taxes and duties, providing this section shall not apply to any officer of the Authority.”

Section 5(b) says:-

“The reward payable under this sub-section shall be:-

(a) In case of information leading to the identification of un-accessed duties or taxes, one per centum of the duties or taxes so identified or Kshs100,000, whichever is less.

(b) In case of information leading to the recovery of un-accessed duties or taxes, 5 per cent of the taxes or duties recovered or Ksh2 million, whichever is less.”

Mr. Deputy Speaker, Sir, the KRA has got its own informers who inform it about people who are not paying taxes. That is why they have been able to increase tax collection from Kshs300 billion in 2002 to Kshs1 trillion this year.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. The Minister needs to be aware that his predecessor, hon. Mwiraria, appeared before the Finance, Planning and Trade Committee and admitted - and it is on record - that the KRA put that particular gentleman on some allowance. That was done publicly in a committee hearing. So, the Minister needs to be a bit honest when he is answering this Question because many people sitting in that Finance, Planning and Trade Committee were accused of being part of some collusion to help that bank evade taxes. Until today, the bank is closed and the Government can never tell this country why. So, the Minister needs to be candid and tell Kenyans what it is about that bank and that Odhiambo guy. I even met him in Washington. How did the US Government or the former American Ambassador to Kenya, Mr. Ranneberger get him out of Kenya and for what reason? What is his value?

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. I request the Chair's indulgence on the matter of the Minister misleading the House. In his answer, he has said that he is not aware that one Peter Odhiambo was paid money for giving information. He has then later confirmed through a suit – and I have the documents - that the Ministry paid him. So, he has misled the House. What is expected of us when a Minister blatantly tells falsehoods or untruths to the House? I have a document which I would want you to look at. The same fellow met the Prime Minister in the US. It is in this affidavit here. So, really, the entire Government is aware of a scheme to pay an individual Kshs2 billion for falsehoods when depositors continue to suffer. I would wish to table these documents and request the Chair to find the Minister out of order for misleading the House.

Mr. Deputy Speaker: Can you table them?

(Mr. Kabogo laid the documents on the Table)

Mr. Githae: Mr. Deputy Speaker, Sir, I have not mislead this House and I have no intention of doing so. I am being totally honest. As I said, these are just allegations. He has said that since he was the one who provided all the information, he is entitled to Kshs2 billion. I wish

to assure this House that the Government of Kenya has absolutely no intention of paying the Kshs2 billion. We are going to defend that suit. We are going to hire the topmost lawyers in the United States of America (USA). We are going to hire a team of the best lawyers in the USA.

Mr. Deputy Speaker: Order, Mr. Minister! Are you sure you are not answering a Question that is not before the House today? The question you are answering is about a whistleblower and the issue he has with the Government. The issue here is, did you use or did you not use a banker who works in the establishment to give that information? You cannot say that you have not used an employee of Charterhouse Bank to blow the whistle on the issues that you have stated. Then you proceed on to say that you will fight that using the best lawyers. In a way, you are inadvertently admitting what Mr. Mwau was saying.

Mr. Githae: Mr. Deputy Speaker, Sir, I am saying that those are allegations. That is what he said in his suit. It is for those allegations that he is saying that he is entitled. The matter is more serious than that. We have one Mr. Maina Kiai who waived diplomatic immunity on behalf of the Government of Kenya. There are some things that are happening and they are like fiction. Imagine a former Chairman of the Kenya Human Rights Commission (KHRC) waiving diplomatic immunity!

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. The hon. Member for Juja has tabled a document which he said shows that the person was paid. The Minister is saying that they have not paid, they will not pay and they will hire lawyers to ensure that no payment is done. Allow the House an opportunity to compare the document you have and what the Minister is saying, so that we can interrogate him further. He is on record for having refused to collect Kshs2.4 billion.

The Attorney-General (Prof. Muigai): On a point of information, Mr. Deputy Speaker, Sir. I rise to inform the Minister, first, that this gentleman---

Mr. Deputy Speaker: Does he wish to be informed?

The Attorney-General (Prof. Muigai): I would hope so.

Mr. Deputy Speaker: Proceed.

The Attorney-General (Prof. Muigai): Thank you, Mr. Deputy Speaker, Sir. I rise to inform the Minister that this gentleman - and I use that word in its most elastic form because of the nature of claims he has made against the Republic - has filed a suit in the USA; we have retained lawyers in there to defend that suit. In that suit, we have pleaded that the Government of the Republic of Kenya is not amenable to the jurisdiction of the USA, and we have denied---

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

Mr. Deputy Speaker: Order! The Attorney-General is responding to a point of order. Wait for your opportunity; let him respond.

The principal advisor to the Government, could you come to the Front Bench? You have to get used to sitting in the front.

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, as I was saying before I was very politely interrupted, we have defended this suit in the USA on two grounds. First, the Government of the Republic of Kenya is a sovereign state and is not amenable to suits in a foreign country. This issue has been taken by---

Mr. Deputy Speaker: Order, hon. Attorney-General! Can you read the Question on the Order Paper today, and let us maintain the relevance of the answer? We are not debating the suit by one Mr. Peter George Odhiambo against the Republic of Kenya. The issue at hand is the Question asked by Mr. Mwau which says:-

“Could the Minister confirm that Peter George Odhiambo, a former Internal Auditor, Charterhouse limited disclosed depositors’ accounts information without their consent to the Kenya Revenue Authority (KRA) for a reward?”

The Attorney-General (Prof. Muigai): I was informing the Minister because an allegation was made by the hon. Member for Juja, that the Kenya Government either has acceded to the suit or plans not to defend the suit.

Mr. Deputy Speaker: Order! The Chair never heard that. The hon. Member for Juja said that, indeed, this man was an informer for the Kenya Revenue Authority (KRA), which paid him to disclose that information on the depositors when he served as an internal auditor.

The Attorney-General (Prof. Muigai): That is a matter not within my knowledge.

Mr. Deputy Speaker: That is not a matter before the House today. Prof. Muigai, I still have to bring you back to order.

Mr. Minister, can you proceed and respond to the matters raised by the hon. questioners?

Mr. Githae: Mr. Deputy Speaker, Sir, again I want to say this clearly, that the exhibit D, which Mr. Odhiambo has attached to his suit showing that he was paid Kshs200,000, the payment voucher is in the name of Mr. J. Nduati and it was for payment of an informer. Mr. Nduati says that the informer was not Mr. Odhiambo but somebody else. These are just allegations. This matter is more serious because the former Chairman of the KNHRC has written a letter waiving immunity of the Government of Kenya. So, we are saying that there is a conspiracy going on here.

I want to confirm that from the records held by---

Mr. Deputy Speaker: Mr. Kabogo, what is your point of order? Unfortunately, my screen has failed.

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. It is sad that the Minister continues to mislead the House. The document I have laid on the Table - paragraph 18 - talks of a payment to Mr. Peter Odhiambo for information on a bank evading taxes. It is there in black and white. Indeed, the Minister has consented to the fact that they have been sued. So, he continues to mislead the House; we sit here and enjoy stories about a waiver of diplomatic immunity. That is not the issue and it is irrelevant. I beseech you to find the Minister completely out of order.

Mr. Deputy Speaker: Mr. Minister, I have a problem with bringing the Government side to address the issue that is there. The issue that is before us is whether, indeed, the KRA, which falls under you, used an internal auditor in the bank to supply to the KRA information on depositors’ accounts. You have admitted a form of consideration; exactly as he puts it, this is the suit by Mr. Odhiambo which shows all the payments that he was paid because of doing this work against the bank. Do you wish to go back and, probably, come with a comprehensive answer to be able to adequately address the question and not extraneous matters like the suit filed by him?

Mr. Githae: Mr. Deputy Speaker, Sir, I have all the information. If you look at that exhibit, it is an allegation. He is saying that he was paid, but when you look at the original payment voucher from KRA it shows that it was somebody else who was paid. So, it was not Mr. Odhiambo. This is just an allegation that he is making.

I have admitted that he was paid on two occasions by the KRA, and I have given you the amounts. He was paid Kshs278,000 in 2008, which was 3 per cent; he was paid 900,000, but it does not say whether he got that information from Charterhouse Bank. He says that it is information that came to him on companies which were evading tax. I do not know what further information is required.

Mr. Ochieng: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to continue telling us that Mr. Nduati, whom we know is an investigator for KRA, was paid some amount to pass it to a third party whom he does not want to mention? Is he in order? Can he mention the third party on whose behalf Mr. Nduati took the money?

Mr. Deputy Speaker: The Minister has mentioned that, unless you have another point of order.

Mr. Ochieng: Mr. Deputy Speaker, Sir, he has not mentioned the name.

Mr. Deputy Speaker: The Chair has heard him say that Mr. Odhiambo has been paid by the Kenya Revenue Authority (KRA) on a number of occasions. He gave two occasions, if my memory serves me right.

Mr. Ochieng: No, Mr. Deputy Speaker, Sir. He said that Mr. Nduati collected the amount on behalf of a third party, whom he does not want to mention. It is not Mr. Odhiambo.

Mr. Deputy Speaker: Hon. Githae!

Mr. Githae: Mr. Deputy Speaker, Sir, I think that we are confusing two issues. Let me, first of all, start with the documents tabled by the Member for Juja on that individual payment of Kshs200,000; Exhibit D. On that one, the payee is somebody J. Nduati. On the others, Mr. Odhiambo has been paid by KRA on only two occasions---

Mr. M. H. Ali: On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to ask that the Chair determines whether the paper which was tabled by hon. Kabogo is admissible?

Mr. Deputy Speaker: This paper is a suit by one Peter George Odhiambo. He is the plaintiff against the Republic of Kenya and a foreign State, and it has been served to the Minister for Foreign Affairs, the Ministry of Finance, the KRA, one John Njiraini and one Michael Waweru. I am sure that you understand the identity of both of them. They are from the KRA, unless there are people who share the same names with them. The problem that the Chair has is that this thing is admissible to the extent which our Standing Orders call for. It is signed and there is a name. It is a suit. It has a lot of information, including what the Minister is talking about now. The only problem I have with the Minister is that he says: "Yes, the man has been paid." The hon. Members says: "Yes, he was paid to give information on the bank where he served as an internal auditor." The Minister is not able to say why he was paid and this is where the matters of contention are.

(There was a technical hitch)

My screen is not working and so, you will have to do the old way of raising your hands.

Yes, hon. Karua!

Ms. Karua: Mr. Deputy Speaker, Sir, the Minister having admitted that the gentleman was paid, presumably for giving information that bore results, could he, therefore, confirm that, indeed, there were investigations relating to various matters and Charterhouse Bank, so that we do not stand here and trivialize the role of informers who help detect crime?

Mr. Githae: Mr. Deputy Speaker, Sir, indeed, informers play a very great role as far as KRA is concerned in the collection of its revenue. I think the point of contention can be simplified as this: Yes, Mr. Odhiambo was paid by KRA on two occasions and I have listed them. But that information was gotten from Charterhouse Bank. The KRA continues to receive information from the Kenya Anti-Corruption Commission. They also receive information from the Criminal Investigation Department (CID). They even have their own intelligence unit called the Revenue Protection Services. First of all, I want to put it very clearly that what Mr.

Odhiambo is actually saying is illegal. He should not have revealed confidential information on currency which came to him by virtue of his job. I think we need to make that very clear. Secondly, this, in my view is a conman. He is trying to con the Government of Kenya of Kshs2 billion. We should not rely on what he is saying. We do not even know how he ended up in the United States. We do not even know how he was given political asylum. This country is safe and so, he does not need to go to America.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to refer to Mr. Odhiambo as a conman after a Government institution has paid him twice for revealing what he has termed as valuable information?

Mr. Deputy Speaker: Last question, hon. Mwau!

Mr. Mwau: Mr. Deputy Speaker, Sir, firstly, the hon. Minister---

Mr. Kathuri: On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to make this very strong statement? I strongly doubt whether Kenya is a sovereign State, when I look at this saga of the Charterhouse Bank. If you look at the number of questions that have been raised here severally over the closure of this bank, I always think that there is a deliberate move to either close it for good or frustrate the survival of that indigenous bank. Would I be in order to ask the Minister to tell us whether or not they have any intention of opening the bank, so that the depositors can go home and sleep without having to imagine that money being recovered?

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. I am wondering whether we are still discussing a ruling that the Speaker made just last week. We had this discussion, the Minister read us a letter that he had written to the Governor of Central Bank of Kenya and the Speaker made a ruling. I am wondering whether we are actually now challenging the Speaker's ruling or in our debate we are opening up questions and doubts as to the explanation that the Minister gave on that day; that made the Speaker make that particular ruling. I am worried that this House continues to go round in circles because we have a Minister who, obviously, does not really understand the intricacies of this particular case. I think that the Speaker made a ruling and this House, at the end of the day, goes with the Speaker's ruling. Are we not opening up, again, debate on an issue that the Speaker made a clear ruling on, including the last question that has been asked about the opening of the bank?

Mr. Deputy Speaker: Not quite, hon. Shebesh! It might have relevance. It could be on the same bank, but if the Chair's memory serves it right, the last one was on the opening or failing to open of the bank itself. This one is on a supposed whistleblower who was an internal auditor in the bank.

Hon. Mwau can you ask your last question and then the Chair will give a direction on the same?

Mr. Mwau: Mr. Deputy Speaker, Sir, first of all, the Minister has told the House that there was a waiver of immunity by one Kenyan. He said that he has a letter but, unfortunately, I did not see him table the letter. Could he table the letter? However, my question is extremely simple. Here we are talking about a person who says that he is a whistleblower and that he gave information which disclosed some criminal activities. We have been going round and round about Charterhouse Bank for a long time. I would want people to be punished if they are involved in criminal activity. We should not condone any criminal activity. The Minister should state specifically, maybe from the Dispatch Box, whether any information by Peter George Odhiambo disclosed that Charterhouse Bank was involved in criminal activities or money laundering.

Mr. Deputy Speaker, Sir, secondly, the Minister should state whether the information given by Mr. George Odhiambo disclosed any money laundering or tax evasion by Charter House Bank as an institution. Did the information given - the accounts that were taken to the Kenya Revenue Authority (KRA) - disclose that a customer of the bank was involved in tax evasion and whether that customer was only banking with Charter House Bank or the customer had accounts elsewhere? This is because tax computation is not computed on a single account. Could the Minister specifically explain and answer those two questions?

Mr. Githae: Gladly, Mr. Deputy Speaker, Sir. I think this matter was investigated by a Committee of this House and their conclusions are very clear. The Charter House Bank was cleared by the KRA. It was cleared by the Criminal Investigations Department (CID) and the police. It was cleared by the Kenya Anti-Corruption Commission (KACC) and that is the position. On the specific questions that Mr. Mwau has raised, it will be noted that at this time we have a law prohibiting money laundering. So I would like to say the bank – I am talking about the bank and not customers – was not found to have evaded any tax. The bank was not found to have laundered any money. I also want to confirm that the reason why I am saying Mr. Odiambo is trying to con the Government of Kenya out of money is because the fact that you have an account does not mean that that is the tax payable. The fact that you have a fixed deposit account or a savings account running into millions does not mean that that is the tax due because this is what he is trying to do. He is trying to claim money; that if you had an account in Charter House Bank, say Kshs200 million, then you evaded tax equivalent to Kshs200 million. That is the basis of his argument and that is why he is claiming Kshs2 billion. So, tax evasion cannot be calculated from one bank account. You have to look at the entire operations of a company. Again, if a company has an account in a bank and it is found to be evading tax, that has nothing to do with the bank, otherwise no bank in Kenya would be existing.

With regards to the other issue, again, I want to confirm that I wrote to the Governor of the Central Bank of Kenya (CBK) and we are waiting for his actions. Mr. Speaker said that if he does not take action, this House will take action on him and so as far as I am concerned on this matter, we want to wait and see the action the CBK Governor will take.

Mr. Mwau: On a point of order, Mr. Deputy Speaker, Sir. It is the tabling of the letter waiving the immunity of the Republic of Kenya. He has not done it. Could he table the letter?

Mr. Deputy Speaker: What is the relevance of that to the Question we have before us today? Much as the Minister has said that, I did not quite see how relevant it is to what is before us. On the contrary, Mr. Mwau, I can see the Minister is on your side and on the side of what hon. Members are saying.

Mr. Mwau: Mr. Deputy Speaker, Sir, since he has the letter, only to table it should not be a problem.

Mr. Deputy Speaker: Mr. Minister, are you willing to table a letter in which one Kenyan tried to take away our immunity?

Mr. Githae: Mr. Deputy Speaker, Sir, as I said, this is the allegation that is in the affidavit of that man that one Mr. Maina Kiai waived diplomatic immunity for the Government of Kenya and, therefore, the Government of Kenya can be sued in the USA. This is the allegation he is making but we are saying that we have no intention of waiving our immunity. This is not a commercial transaction and we are going to defend this suit with the top most lawyers in the USA. We have no intention of paying a single cent to this man.

(Mr. Kabogo consulted loudly)

Mr. Deputy Speaker: Order, Mr. Kabogo! The Minister is, with a lot of pain, more or less saying that that internal auditor had no business giving inside information concerning the bank and that, indeed, certain things were wrong and he is in the process of addressing them. So what more do you want? If you get the HANSARD I am sure you will deduce and deduct all that.

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

Mr. Deputy Speaker: What is your point of order? Please be brief.

Mr. Kabogo: Mr. Deputy Speaker, Sir, I will be very brief. I invited you--- now that you know the Minister has answered a supplementary positively to the Question, but his original answer was: "He was not aware", I invite you to ask the Minister to bring an answer at a later date.

Mr. Deputy Speaker: Order! The Minister has answered. The Minister has given the information that is within his domain. It is abundantly evident that he regrets a lot of things happened and he is basically there to do the needful within his own powers, so I think you should be happy.

(Mr. Mwau shook his head)

Mr. Mwau, I think that is what the Chair says. You are shaking your head and I do not know what you want to say.

Mr. Githae: He is agreeing!

Mr. Deputy Speaker: Okay!

Hon. Members, we have a lot of business today including matters that touch on our own national security and under the circumstances, the Chair wants to defer the following Questions: 1229, 1750, 1605, 1712, 1541, 1672 and 1649. They are all going to be deferred, in equal measure, to tomorrow morning, tomorrow afternoon and the day after tomorrow which is on Thursday and they should take precedence over the other Questions.

Question No.1229

GAZETTEMMENT OF KORA NATIONAL GAME RESERVE

(Question deferred)

Question No.1750

DELAY IN COMPENSATING FAMILY OF
LATE NKUMBUKU AUGOSTINO

(Question deferred)

Question No.1605

LACK OF POLICE STATION IN LAFEY DISTRICT

(Question deferred)

Question No.1712

DELAY IN COMPENSATING MR. WESTON A. HAMILTON

(Question deferred)

Question No.1541

IRREGULAR ALLOCATION OF LAND
LR.No.NYANDARUA/OL JOROROK SALIENT/1886

(Question deferred)

Question No.1672

PROTECTION OF LITIGANTS FROM EXPLOITATION
BY STATE/ADVOCATES

(Question deferred)

Question No.1649

STALLING OF THOGOTO-MUTARAKWA ROAD

(Question deferred)

POINTS OF ORDER

NOTICE OF MOTION FOR ADJOURNMENT UNDER
STANDING ORDER No.23(1)

Mr. Keynan: Mr. Deputy Speaker, Sir, I rise to give notice of the following Motion under Standing Order No.23(1) to seek leave to move the Adjournment of the House for the purpose of discussing a definite matter of urgent national importance.

THAT, this House do now adjourn to discuss the escalating insecurity in Tana River, Garissa, Wajir, Mandera, Marsabit, Turkana, Isiolo and other affected areas which have left many innocent Kenyans maimed, hundreds dead and thousands homeless.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Fair enough; you have the requisite threshold. Hon. Members, you may be seated now. You need at least 15 hon. Members and I think you have had almost

everybody who is in the House now. Under the circumstances and given the urgency of the matter itself, the Chair is going to allocate time between 5.30 p.m. and 6.30 p.m.: One hour.

Mr. Ethuro stood up in his place)

Mr. Ethuro, you are also rising on a point of order or you are seeking a Ministerial Statement?

RESIGNATION OF MEMBERS OF THE MAU FOREST
EVICTEES RESETTLEMENT COMMITTEE

Mr. Ethuro: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement that; following the public resignation of a Cabinet Minister, two Assistant Ministers and one Back bencher from the Mau Forest Evictees Resettlement Committee, we are concerned about the plight of these Internally Displaced Persons (IDPs) in particular and IDPs still in the camps, generally; further acknowledging that this House unanimously passed a report of the Select Committee on IDPs, which you had the privilege of Chairing and which made specific recommendations on how to solve the IDPs issues including deadlines for resettlement and possible compensation, could the Minister clarify the following?

(i) Whether the Ministers mentioned and the Members have truly resigned from the Committee and the circumstances that led to their resignation.

(ii) What is the current state of the IDPs Resettlement Programme including possible identified parcels of land for all the IDPs including the Embobut Forest evictees, the IDPs who are still in camps, integrated IDPs and those recently disposed by clashes in Tana River, Mandera, Wajir, Turkana, Baringo, Samburu and Marsabit counties among others due to cattle rustling or fighting.

(iii) He should give a definite and firm date as to when all the IDPs would have been settled, which should definitely not be after 31st December, 2012.

(iv) He should also give an update on the implementation status of the Parliamentary Report on IDPs.

Mr. Deputy Speaker: Minister, can you give an undertaking on this? Hon. Ethuro, you started off by talking about the Mau Forest evictees' resettlement. My presumption is that they are IDPs, but when you go down there and seek the status of the IDPs Resettlement Programme, you do not include them. Do you wish to amend that to include them? You have talked about Embobut Forest evictees and all the others except the Mau Forest evictees.

Mr. Ethuro: Mr. Deputy Speaker, Sir, you are right.

Mr. Deputy Speaker: Can you proceed and put that amendment?

Mr. Ethuro: Mr. Deputy Speaker, Sir, I cannot proceed because the English is very clear. I talked about the plight of the IDPs in Mau Forest specifically and the other IDPs generally. So, I want her to identify the others, who are the general ones.

Mr. Deputy Speaker: And the status? You do not seem to get the point, but anyway, somebody else will help you.

Mr. Ruto: Mr. Deputy Speaker, Sir, I get the point and it is only you who may not be getting it.

Mr. Deputy Speaker: It is only who?

Mr. Ruto: Mr. Deputy Speaker, Sir, that is a slip of the tongue.

Mr. Deputy Speaker: Proceed!

Mr. Ruto: Mr. Deputy Speaker, Sir, considering that this is a very serious matter, I would like the Minister to respond to it tomorrow. I have already filed a Motion of Adjournment tomorrow for the whole House to debate this matter. But, if, indeed, hon. Ethuro's request---

Mr. Deputy Speaker: Which Motion the Chair has not seen. You intend to file. You have not filed yet.

Mr. Ruto: Mr. Deputy Speaker, Sir, it is already in the substantive Speaker's Office. I thought we would adjourn to debate this serious matter considering that it can have a negative impact on the election period. Could the Chair consider the two issues which may be pending on his desk together with this one or give directions as to the best manner possible to dispose of the matter this week?

Mr. Deputy Speaker: My presumption is that the relevant Minister is the Minister of State for Special Programmes.

Mr. Duale: On a point of order, Mr. Deputy Speaker, Sir. This matter of the Mau evictees and the IDPs has been with us for the last five years. Could the Minister bring a comprehensive Statement detailing the land that has been bought, from whom and when she will resettle the many Kenyans who are displaced, more specifically the Mau evictees, now that Ministers are resigning from the Secretariat?

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I am also aware that there is a Private Member's Bill on IDPs, I believe from hon. Ethuro. This Bill has been pending for a very long time. Could the Minister also, having consulted with the Private Member and to demonstrate the seriousness of this Government about settling the IDPs, take over this Bill, so that immediately before we go on recess, it becomes law for us to have a legal instrument that can be used to push this Government into settling Kenyans who are sleeping in the cold plus their children?

Mr. Deputy Speaker: Minister, you have heard the Members. Can you give an undertaking on the same?

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Deputy Speaker, Sir, I wish to issue the statement this next week on Tuesday because it is very comprehensive.

Mr. Deputy Speaker: Order! Considering that there are Kenyans who are now living out there in the open and this matter has been before us for a very long time, the Chair is not going to take kindly any further delays. Can you do it sometimes this week, hon. Minister? Get your officers to work day and night! Members of Parliament sit here and we pass laws very late. We can have it on Thursday, which is the outer limit because there is no sitting after Thursday afternoon for this week.

The Minister of State for Special Programmes (Ms. Murugi Mathenge): Mr. Deputy Speaker, Sir, I will try.

Mr. Deputy Speaker: The Chair directs that this be delivered on Thursday next week.

STRIKE BY MEDICAL DOCTORS

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. For the last three weeks, I have been waiting for a Ministerial Statement from the Ministry of Medical Services. I notice that the Minister is around, but I do not know whether he is ready. This is on the strike by the medical doctors.

Mr. Deputy Speaker: Minister for Medical Services, are you ready?

The Assistant Minister for Medical Services (Mr. Kambi): Mr. Deputy Speaker, Sir, I have been ready for the last three weeks to dissect this issue, but the Member has been away. So, I am ready to deliver the Statement now.

Mr. Deputy Speaker: Given the fact that we have a Motion of Adjournment and we want to transact some business, the Chair directs that you issue this Ministerial Statement tomorrow morning. It has to be the first one in terms of priority tomorrow morning. Dr. Khalwale, I presume you should be happy with that.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I thank you for that, but I kindly request that you push it to next week because I will not be available tomorrow morning.

Mr. Deputy Speaker: Next week when?

Dr. Khalwale: On Tuesday, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Okay. The Chair directs that this Ministerial Statement be delivered on Tuesday next week.

INCREASED CASES OF INSECURITY IN UASIN GISHU

Mr. Kutuny: On a point of order, Mr. Deputy Speaker, Sir. I requested for a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the deteriorating security situation in parts of Uasin Gishu and Trans Nzoia counties. So far, it has not been brought to the House.

Mr. Deputy Speaker: What was the direction from the Chair as to when it should be delivered?

Mr. Kutuny: Mr. Deputy Speaker, Sir, probably next week because the situation is not appealing at the moment.

Mr. Deputy Speaker: When next week?

Mr. Kutuny: Perhaps on Tuesday or Thursday next week, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Minister, can we have that Ministerial Statement on Tuesday next week?

The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Y. Haji): Mr. Deputy Speaker, Sir, in the first place, I am not aware of the Statement that was requested by hon. Kutuny before today. So, he should tell us when he asked for it although I will follow the Chair's direction to deliver it on Thursday. But when did he request for the Statement?

Mr. Deputy Speaker: Hon. Minister, when Members seek Ministerial Statements, it is upon the Minister and his officers to make sure that they have that information. It is not for the Member to come and supply or offer the same information. I am sure the Member would not say that he requested for a Ministerial Statement when he has not done so. So, it is only fair that your officers keep themselves abreast of this.

The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Y. Haji): Mr. Deputy Speaker, Sir, with all due respect, if he requested for this Statement before I joined the Ministry, there is no way that I can ask the officers to give me the information. So, following what he has said, I will attempt to respond on Thursday, but he should clarify.

Mr. Deputy Speaker: Hon. Minister, your Ministry is an institution that is supposed to be permanent and timeless. The Member asked for this Ministerial Statement, as he put it, to be precise on 22nd February, 2011 on increased cases of insecurity in Uasin Gishu. Your Ministry

was supposed to have delivered it on 8th November, 2011. So, you can now get that. I direct that this Ministerial Statement be delivered on Tuesday next week. Is that okay with you, hon. Minister?

The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Y. Haji): Mr. Deputy Speaker, Sir, Thursday would be much better.

Mr. Deputy Speaker: Fair enough. It is so directed? Are you okay with that, hon. Kutuny?

Mr. Kutuny: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: It is so directed!

Next Order!

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

Mr. Deputy Speaker: On what, hon. Kapondi?

Mr. Kapondi: On Order No.8!

Mr. Deputy Speaker: Wait until it is called. Clerk-at-the Table, could you call for Order No.8 first?

BILLS

First Readings

THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL

Mr. Deputy Speaker: The hon. Member is rising a point of order on this Bill. Mr. Kapondi, are you rising on that Bill?

Mr. Kapondi: Exactly, Mr. Deputy Speaker, Sir.

I want your direction on this particular Order because I have a similar amendment that passed through First Reading on 21st of July, 2011. It is currently pending in Second Reading. It is an amendment on the so called Mututho Law. Hon. Mututho has brought a similar amendment Bill. As I said, my amendment Bill is currently going through the legislative process.

So, it is important for the Chair to give guidance on whether it makes sense to have two private Members Bills before the House.

Mr. Deputy Speaker: *(Off the record).*

Mr. Kapondi: What is it, Mr. Deputy Speaker, Sir? I am not getting you.

Mr. Deputy Speaker: The Chair can give a direction when it is validly seized of the matter after the Clerk-at-the Table, has completed reading.

I do agree with you that you have an issue. However, let him read fully Order No.8 and then proceed to raise your point of order?

(Mr. Deputy Speaker Consulted the Clerks-at-the Table)

Are you intimating that, indeed, the kind of amendment you want to make to the so called Mututho law is exactly the same amendment that hon. Mututho is moving now and yours is already in the Second Reading?

Mr. Kapondi: Yes, it is Mr. Deputy Speaker, Sir. In fact, what hon. Mututho should have done is to make these amendments within my Bill instead of coming up with a new Bill.

Basically, it is having two Private Members' Bills on the same amendment running concurrently. That is why I am seeking your indulgence to give us guidance.

Mr. Deputy Speaker: Indeed, if those concerns are true; that the House is already seized of a business exactly similar to this one, we have to suspend the business on Order No.8. The Chair will verify and give a communication on the same tomorrow afternoon.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I sit on the House Business Committee and I want to confirm that I normally push Private Members' business. I have been pushing the amendment Bill by hon. Kapondi without much success in the House Business Committee. We are completely surprised given that there is scarcity of time for doing business in the House, that we can have two similar Bills running concurrently or is it that ----

Mr. Deputy Speaker: Order! Unless, it has been an oversight, we cannot have two similar Bills at the same time.

We have already one which in the Second Reading stage. There is no way we can introduce another Bill which is similar to the one which is going through the Second Reading. Clearly, I have now directed this one be suspended. But I will do a confirmation and give a communication to the House tomorrow afternoon on the same.

*(The Alcoholics Drinks Control (Amendment)
Bill was accordingly suspended)*

Let us proceed to Order No.9.

THE NATIONAL COHESION AND INTEGRATION
(AMENDMENT) BILL

*(Order for the First Reading Read – Read First Time- Ordered to be referred to the relevant
Departmental Committee)*

Second Reading

THE SUGAR (AMENDMENT) BILL

(The Minister for Agriculture on 6.9.2012)

(Resumption of debate interrupted on 6.9.2012)

Mr. Deputy Speaker: Who was contributing? Hon. Ababu Namwamba! Since hon. Ababu Namwamba is not there, we will give an opportunity to Dr. Nuh. Dr. Nuh, you appear on the screen, but you do not appear in the House, what is this?

Yes, hon. Musikari Kombo.

Mr. Kombo: Thank you, Mr. Deputy Speaker, Sir. I have a good neighbour here who was also fighting that I get the opportunity.

Mr. Deputy Speaker, Sir, I want to support the Bill. In so doing, I want to make a few remarks in certain areas. I want to touch on the section that is dealing with privatization in particular. The law on privatization and even the Sugar Act came into being before the devolved

systems of Government. We now are going to a new Order where we will have county governments. When you think about privatization of sugar industries, we are actually talking about major assets of one county or another. So, I would like to say that, as we finalize with this Bill, that privatization is not allowed to come into effect under this order until the devolved systems are in place.

Mr. Deputy Speaker, Sir, if you take a place like the County of Bungoma, where Nzoia Sugar Factory is situated, the land under the nucleus estate was actually land that belonged to individuals. It is huge tracks of land that was taken away with very little compensation. It is an asset that is very dear to the citizens of that county. Therefore to rush in privatization and not take into account the involvement of the new order of the county government, I think it will be giving the people of those counties a raw deal.

It is only through the county governments, that the citizens of those areas can fully participate. In fact, we were saying that under the old order, we were suggesting that, at least, 30 per cent be reserved for the farmers. I would like to say that 30 per cent be reserved for farmers and also a portion be given to the county governments because it is a major asset.

I also want to talk about weigh bridges. Most of the farmers lose their cane in the transportation process from the farm to the factory. There are also corrupt people on the weigh bridges who manipulate the weight of the cane that arrives. But the loss on the way is quite a lot. Earlier on, we had insisted that the weighing of the cane be done on the farm or as close as possible to the farms. I would like to see a situation where the Government takes the responsibility of ensuring that the weighing of the cane is done as close as possible to the farms. If there is any loss between the farm and the factory, it is not the responsibility of the farmer. Currently, it is the farmer that pays a heavy price in that situation.

Mr. Deputy Speaker, Sir, I also want to talk about research. I do appreciate that the amendment is trying to beef up the research section of the sugar industry. That is a very good idea. The development of cane seedlings is something that we should pursue vigorously to ensure that varieties which can yield more sucrose and cane are in place.

Lastly, we have had a lot of problems in the areas growing sugarcane with regard to different factories fighting it out. Sometimes they hire goons who burn vehicles and do all manner of things because of cane poaching. This cane poaching comes about because when the factories make contact with the farmers, they do not take full responsibility whereas the sugarcane can delay in the farm for a very long time until it dries to the extent of being firewood. In such a case, the farmer loses, but nobody takes responsibility and yet the factory that had the contract with the farmer has not harvested on time.

Mr. Deputy Speaker, Sir, I would like the Minister to put heavy penalties on the factories if they find that the factories are not harvesting the cane on time. With those few remarks, I beg to support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to support this Bill. This country has set out on a reform agenda in all our sectors and it is very important that this day that this House is discussing reforms in the sugar sub-sector. This Parliament is dealing, for the first time, with concerns that have long been raised by farmers, particularly those from Busia County. There has been the long outstanding issue of the Nasewa land where farmers of Nasewa have been crying out for justice to see that the land was purchased by public funds to ensure that a sugar factory is established in Busia County is finally returned to the people of Busia County for purposes of establishment of this factory. As we address the reforms that are

being carried out in the sugar sub-sector through this Sugar (Amendment) Bill, 2011, we are very pleased that the Departmental Committee on Agriculture, Livestock and Co-operatives and the Departmental Committee on Lands and Natural Resources are already dealing with the Nasewa issue. The Committee has had time to visit Busia.

I want to thank the two Chairmen, that is, hon. John Mututho and hon. Musyimi for taking time to visit this area. They not only visited Busia County, but also Mumias. There are issues that are now being addressed by the joint-Committee. People are being summoned to answer questions which in the past we thought might never be answered in this country. This is the kind of change that Kenyans have been fighting for and we want to congratulate the Minister for bringing this Bill. We know that farmers have been crying out for a long time to have reforms in this sector to address particularly issues touching on delivery of cane where they have had to travel long distances to deliver their cane when they have hoped that the weighing of cane would take place at the farm gates and so on. We hope that as we go ahead to bring about reforms through this Bill and other reforms that will come, that we will listen more to the farmers.

We are doing what needs to be done to address their concerns and also to bring a balance between the interests of the farmers and the millers, as well as look at how we can improve production through research. I am very pleased that through the provisions of this Bill, resources will be directed towards research. We are also very pleased that when disputes arise, we will have a tribunal that will listen to and make rulings. For the first time, through this Bill, those findings of the tribunals will be enforceable. We wait for the day when after tribunals have made their findings they can be able to be directed to the relevant courts and they can become, with their proceedings, part of the court record and, therefore, enforceable. So, these are some of the changes that farmers have been crying out for.

[Mr. Deputy Speaker left the Chair]

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

We know that the issues of privatization are coming. At the same time we are juggling many balls as a country because even as you look at privatization we are looking at devolution at the same time. We are trying to see how we can set structures up and operationalize these counties. Of interest, you will find that even plans that have been set in place--- There was an objection from the Constitution Implementation Commission (CIC) about establishment of county headquarters where the law now requires that there have to be consultations between the county governments and the national Government even on matters such as the construction of the headquarter of any county. Because of this, and the CIC for good reasons has intervened, construction of headquarters of counties might have to be stopped until we have county governments in place.

Therefore, much as crucial as privatization might be, where perhaps, the existing factories might find themselves to be the main assets within those counties, the people of those counties should be given an opportunity to have a say. We know that in Mombasa when we started the privatization of the port, the people of the county of Mombasa had issues and they were asking: Why is it that on the eve of devolution you are moving so fast to privatize without allowing the people of this county to also have a say? Though they are national assets, at the end of the day we must take into account the views of the people of the county. We are very pleased

that as we move forward there will be more representation and less Government on the boards. There will also be more representation from the stakeholders.

We want to congratulate the Minister for bringing these changes although I notice that when it comes to board members there is a requirement that a board member should be a holder of a degree. I would urge the Minister to relook at that particular section. This is because we recently had debate in this House where we were looking at qualifications. To raise the qualifications so high as to prevent some Kenyans, probably, who come from this sugarcane growing areas from participating in this board might be a problem when you look at Clause 5(a)(1)(e). There is a requirement for one to be a holder of degree from a university recognized in Kenya. Some of these provisions might be too high and strenuous. We would urge the Minister to relook that. Otherwise in totality it is a good Bill. It is one that would empower the farmers. It is a Bill that would bring about trustees who will exercise the fiduciary relationship and duty of care to all stakeholders.

With those few remarks, we do support.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, like those who have spoken before me, I find this Bill to be timely and good. I, therefore, rise to second it. However, I wish to remind the Minister that this gives us an opportunity to completely overhaul the sugar sub-sector and end up improving the economy, especially, of those counties that find sugarcane farming as the mainstay of their economy.

I say this knowing that Kakamega, Busia, and Bungoma counties produce over 80 per cent of all the sugar that is consumed in this country. I would, therefore, like to invite my sister and Minister for Agriculture to remember that Departmental Committees of this House have been looking at this matter and they have made very interesting findings. Maybe she could find time and look at the findings of those Committees. Farmers spoke to them and they spoke their hearts out. If we use those ideas, it will help us improve this Bill. I find it completely unacceptable that the critical players in this industry do not realize the benefits of the industry.

POINT OF ORDER

WITHDRAWAL OF NOTICE OF MOTION FOR ADJOURNMENT UNDER S.O. 23 (1)

Mr. Keynan: On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise under Standing Order No.5. A few minutes ago, I gave notice under Standing Order No.23 (1). Since then, I have realized that the hon. Member for Bura, Dr. Nuh, had given a Substantive Motion on the same to the House Business Committee and since this is a very serious national issue, I wish to withdraw mine and allow Dr. Nuh to present his Motion to the House Business Committee today hoping that it will be approved so that the Substantive Motion which covers all aspects of insecurity in Kenya which will also have a binding resolution can be discussed by the House tomorrow.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Granted! Proceed, hon. Dr. Khalwale. For the benefit of the House, there will be no Motion of Adjournment at 5.30 p.m.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, as I was saying, I find it completely unacceptable that the critical players in this sector do not enjoy the benefits of sugarcane farming. I say this aware that when you look at the body language of the Government, over the

years that our county has been participating in this industry, you get the impression that the Government is very keen on the sugar industry but does not care too much about sugarcane farming because issues affecting farmers are not put in the front burner by this Government.

We have the issue of underpayment to the farmers. This is a matter which the Minister must address. We also have the issue of the high cost of farm inputs. This includes the high fertilizer costs and the high cost of ploughing an acre. I do not understand why a Government whose economy depends substantially on agriculture cannot at this point, 50 years after Independence, make a deliberate move to construct a fertilizer producing factory. There is the issue of the young men who cut cane. This law should be strict and know that we have critical players called “cane cutters”. These young men lead pathetic lives and yet without them cutting the cane, there would be no sugar on the tables of the rich people in this country. It is a shame that if you go to Mumias Sugar Company, you will find that the young people who weed cane are paid in terms of cents. Can you imagine Kenyans are being paid 30 cents to 70 cents per meter for weeding and somebody slugs out like a slave to increase the number of cents that they will be paid? The level of poverty in that area, in spite of it producing sugar, is unimaginable. We also have the drivers who drive the trucks and tractors. It is important that the Minister responds to the plight of these young people because they are critical players.

I want to speak on the issue of the Sugar Development Levy (SDL). The Minister must try and craft it into this law so that it is clear that the more SDL a particular factory produces, the returns that are brought to the factory should reflect how much that factory collected. It is very unfortunate that Mumias and Nzoia Sugar companies have been contributing billions of shillings towards the SDL. However, if you look at what they reap from the SDL Fund, you will realize that it is not comparable to what the smaller factories contribute.

On the issue of transport, it is killing farmers. If the Minister will not address the issue of transport, then forget it. Farmers will never have their lives improved. Let me give you an example. Butali Sugar Company, and you know the long story of this company, these days buys cane from as far as Shinyalu, Malinya and Mutaho in Ikolomani. When they cut cane – and by the way two days ago, they cut my neighbour’s cane in Malinya – they charged that farmer Kshs390 per tonne. From Malinya to Butali Sugar Company is, in fact, over 40 kilometers. Mumias Sugar in zone zero where there is no transport because that is the neighbourhood of the company charges farmers Kshs677. I am serious because this is a factual issue. So, Mumias Sugar Company is just ripping off our farmers. We want to see a situation where---

Mr. Midiwo: Six hundred!

The Temporary Deputy Speaker (Mr. Ethuro): Order! Hon. Midiwo, you know what to do under those circumstances.

Proceed, Dr. Khalwale!

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, he could just have informed me, but it is okay. May I clarify that point because I am not talking about theory? I am saying that Butali Sugar Company charged my neighbour in Malinya, over Kshs40 kilometers from Butali, Kshs390 per tonner for hauling cane to the factory. This is the case and yet Mumias Sugar Company which falls under Zone Zero or is in the neighbourhood hauls cane at Kshs677 per tonne. This is a complete rip off and the answer is that there should be no factor called “transport cost”. Why? Let the Minister think about it. The Minister comes from a cattle-rearing community. Some of her community members grow sugarcane. Imagine a situation where the Minister sells her cow to a butcher man who thanks her very much and then tells her that she should transport the cow to his butchery because he has paid her. That kind of economics does

not exist. Basically, what we are doing is to ask the farmer who has planted cane to transport it in the same way that you expect the person who owns a cow and has sold it to a butcher to transport it.

I want to conclude by commenting on the issue of co-generation. I want you to think through the issue of co-generation. Sugar factories have now moved into production of electricity into the national grid. There is gas and many other things that come out of co-generation. We would like the law to be crafted in such a manner that the farmer also benefits from co-generation because that is where the real money is.

Hon. Members: Yes!

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, if we do not do this, we are simply condemning the people of Bungoma County, South Nyanza and Kakamega County to perpetual poverty. I want to conclude and urge the Minister of State for Provincial Administration and Internal Security that this is a matter touching on his Ministry. Some factories use Administration Police or the Provincial Administration to frustrate private cane farmers so that when a farmer who has planted private cane in the Mumias Zone chooses to sell his cane to West Kenya Sugar Factory, that cane is impounded. What law is in operation here that you stop me from selling my cane, which I have planted privately to the best buyer? What greater impunity can you think of than for somebody to use a section of the Provincial Administration to carry out that punitive measure of denying a farmer the opportunity to enjoy better prices out of the rule of competition? This is unless, of course, in his Ministry he wants to ensure that certain factories are enjoying monopoly.

Mr. Temporary Deputy Speaker, Sir, as leaders of this area we are condemning this practice and requesting the Government that sections of the Provincial Administration should not be abused by millers to stop private cane farmers from selling their cane to the best buyer.

With those few remarks, I support this Bill.

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, in arriving at this Bill, amending the Sugar Act, we did hold a workshop and went through the proposals. I think if properly passed by this House and implemented, we will make the sugar industry more responsive, organized and be able to support the farmer.

I want to laud the Minister for bringing this Bill so that it can address the chaotic situation that we have witnessed in the sugar industry. We have witnessed chaos in harvesting, zoning and management of funds. This chaos impacted very negatively on the cane farmer. One third of my constituency grows cane. Sometimes you will find that a farmer who is two kilometres from the factory is charged more for transport than a farmer who is 18 kilometres away from the factory. So, we need some order so that if there are any transport charges, they must be equitable.

Most factories have contracted independent transporters but they must also be brought to order. You will find at every level when there is a payment to be made, the transporter is always given priority over the farmer and yet it is the farmer whose commodity is the raw material for the factory.

Mr. Temporary Deputy Speaker, Sir, when we held the workshop we did unanimously agree - and I am sure my friend Bonny Khalwale will bear me out - that an organization called "outgrowers" serves absolutely no purpose to the farmer. We had recommended to the Ministry to abolish outgrowers organizations because they have simply been used to fleece the farmer. For every harvest, a farmer is deducted 15 per cent of his or her income as a retention fund that goes to the outgrowers organisation for services. I can assure you that the outgrowers

organization give absolutely no services to the farmer and yet the farmer loses 15 per cent of his income to this organisation. They attempted to buy tractors ostensibly to transport cane at cheaper rates for the farmers. They vandalized all those tractors regardless of where they are.

Mr. Temporary Deputy Speaker, Sir, I want to urge the Minister at Committee Stage - and we shall support her - to delete the existence of outgrowers organisation from this industry because it is a middle consumption group that only fleeces the farmer, adds no value to the cane farming and the factory.

I also want to urge the Minister to clear the grey areas on this issue of zoning and contracting. I do know that some farmers, if not most of them take inputs from the sugar millers to develop cane. A very small percentage of crooked farmers will take those inputs and eventually, dishonestly, sell their crop to another miller, therefore, dispossessing the miller that funded them. But this is a negligible minority. I would want to see a situation where we have clear contractual obligations defined in the Act, indicating what the factory should do for the farmer and the farmer's duty and obligation to the mill. This will ensure that the farmers who opt out of this arrangement and plant their cane as independent growers should have the liberty to sell their crop to any mill. If I have ploughed, bought seed, planted, done the weeding, put in the fertilizer I am not obligated to sell my crop to the nearest factory simply because it is close to me when it has not helped me to grow the crop. So, I think either in the Act or in the rules that will be promulgated - and I know that all such rules to get legal credence must come to this Floor - must clearly define the relationship between the farmer and the mill, both contracted farmers and independent farmers.

Mr. Temporary Deputy Speaker, Sir, in reference to the outgrowers, I would urge the Minister to look at Clause 9 of the Bill and delete altogether any reference to outgrowers institutions. This country has been growing cane for a very long time. The oldest sugar mill, Miwani Sugar Company, was built at the turn of the last century. We have an institution called "Kenya Sugar Research Foundation". I am not quite sure that the continuous research that we expect from the Kenya Sugar Research Foundation has been sufficient or beneficial to the farmer. If you look at the research going on in the maize sector, you see constantly there is a new breed or a better breed. We even have some breeds that are resistant to weevils and other pests. If you go to countries like Brazil and Mauritius, they now have cane that matures at 12 or 13 months. I do not see why in Kenya we should still be stuck to varieties that mature at 22 or 24 months, therefore, denying the farmer the opportunity to earn from his or her crop every year.

The cane industry is not like the tea sector where a farmer continuously earns some bits and pieces of income every month and eventually gets a bonus for the crop. For the cane farmer, if your cane goes up in smoke or some malicious neighbour grazes his cattle on your cane, or something tragic happens, the farmer is left with nothing. I would want to see a situation where the law has some degree of insurance for the farmer. This should be insurance that actually can be underwritten from the Sugar Development Levy that lies in billions so that the farmer is covered from the vagaries of weather, malice of neighbours and many other things that disposes the farmer so that we make this farming of cane attractive and helpful to the farmer.

I would want to propose that when privatisation eventually arrives - I know it is not in the competence of the Ministry of Agriculture to chaperon privatisation - but that at the time it comes a lot of factors need to be taken into account.

The nucleus estates of Mumias and Nzoia were taken from people's ancestral land and given to the investors for free. Nzoia alone has over 10,000 hectares of land which was taken from people and given to the French group that came to develop the sugar factory. The new

Constitution defines who owns land, namely, communities, amongst others. So, that land should be taken and accounted for as equity for the counties where the factories and their nucleus estates are based, so that they make a contribution. Should the private owner of the company, after privatisation, take that nucleus estate, depending on the arrangements in the contract, the private owner must be obligated to pay rent to the county government for using that land, so that there can be income with which to develop the area.

Mr. Temporary Deputy Speaker, Sir, sugar factories are now generating income from more than one source. There is coal generation and sale of molasses. They are now even going into production of fresh water, bottling and marketing. In a workshop, we agreed unanimously that in computing income to the farmer, all those sources of income to the mill must pile down to benefit the farmer, who is the principal source of raw materials, so that when the farmers' crop is being priced at Kshs2,900 per tonne, there could be a percentage added onto to the farmer's income from the coal generation and sale of water and ethanol, which is processed into several other products. This should also include the sale of molasses to those who engage in brewing of illicit drinks like *chang'aa*. The molasses is still sold, and it generates income for the sugar factories.

I also want to urge the Minister to harmonise the operations that hon. Bony Khalwale has been talking about. I have seen in my county, some hired hoodlums setting on fire trucks carrying sugar-cane and assaulting innocent drivers very viciously. There can be a better way of handling these things. If there is an illegal harvest of cane, we now have a tribunal which should handle and adjudicate on such disputes. I want the Minister, during the Committee Stage of this Bill, to obligate the tribunal to determine any dispute going before it within not more than 30 days. If we do not have a timeline, we will just end up with the same mess we have with the courts, where you go to court with an emergency and get judgment five years later.

For example, a director of the Kenya Sugar Board was elected in Bungoma, and his competitors challenged his election. The matter has been pending before court for the last three years. The man cannot sit on the board. The zone is unrepresented in the board. The court is in no hurry to give a determination to the matter. Therefore, I would wish that the tribunal is obligated to conclude any dispute going before it, within 30 days, so that any aggrieved party can proceed to the High Court. I hope the High Court will also see the urgency of determining such disputes, so that farmers are not held in limbo over disputes.

Mr. Temporary Deputy Speaker, Sir, I now want to refer to Clause 5 of the Bill. Sometimes I get concerned. This obsession about degrees in this country sometimes disposes groups of people the right to be led by people they want. I once said that if a group of fishermen on the shores of Lake Victoria want to elect one of their own to represent them at whatever level, so be it. We are saying that to stand as a candidate to be elected to sit in the Sugar Board you must be a sugar-cane farmer. You cannot then say that to stand to be elected as member of the board you must hold a degree. That is like saying that every sugar-cane farmer must hold a degree. I want to urge the Minister to delete this provision from the Bill. If farmers are going to elect themselves to the board, how do you impose degrees on them? That is how we find that those so-called "degree holders" go and lease cane from unsuspecting farmers, gain eligibility, use their money to get elected but never represent the farmers. I want the farmers to truly elect one of their own to represent them on the board. In order for you to be a sugar-cane farmer, you do not need to have a degree. So, I want to urge the Minister to delete Clause 5(e), which provides that in order for you to be elected to the Sugar Board, you must hold a degree from a university recognised in Kenya.

Mr. Temporary Deputy Speaker, Sir, we are having a board of farmers. What that board requires are very qualified and competent staff members to run its secretariat. The Chief Executive Officer (CEO) and the accountants must be properly qualified. The farmers should then send whoever they wish, who should be a sugar-cane farmer, to sit on the board and represent them. I want to support hon. Khalwale on the point of disbursement of the Sugar Development Levy (SDL). It happens that the areas that grow and produce the most sugar for the country get the least disbursement of SDL funds. By its very description, the SDL is intended to help develop sugar-cane. So, it should be targeted to areas where most sugar-cane is grown, such as Mumias, Bungoma, Kakamega, Kisii and other areas, on equitable basis, and not on first come first served or on equal basis. So, I want to urge the Minister, in the rules that will follow, to deal with that aspect as well.

Mr. Temporary Deputy Speaker, Sir, finally, the current Act provides – and I would want my learned friend, hon. Namwamba to let the Minister to listen to this very important point - that during privatisation, the farmers must be given 51 per cent of the mill. This defeats logic, economics and any other reason! That is because if you have a strategic partner coming to invest in a sugar mill, I have no doubt that farmers must be given stakes. The county governments who own land must be given stakes. But there is not a single investor---

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Wetangula, your time is up.

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, let me finish this point because it is so important.

The Temporary Deputy Speaker (Mr. Ethuro): Order! Manage time. Hon. Manson Nyamweya! You have done very well. I asked you to conclude in a minute and you failed to do so.

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, I support the Bill and---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wetangula! Proceed, Mr. Nyamweya.

The Assistant Minister for Trade (Mr. Oyongo Nyamweya): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me time to support this Bill. But one thing that we must thank the Government for – if you see where those sectors come from - is that we are moving in the right direction. But the Government needs to do more to improve the sugar sector. I would like to touch on sugar zone areas. I come from Kisii where there are three factories for harvesting cane. We have Trans Mara, Kahawa Sukari and South Nyanza (SONY) sugar factories. Those factories do not have the capacity to crush cane.

So, as we liberalize the sector, we must make sure that those factories have adequate cane so that they do not employ and sack people arbitrarily. That way, we will ensure continuity and order in production. We will avoid the situation where farmers and sugar factories are forced to hire security firms or groups to take care of the cane. If one factory allows its cane to be harvested by another factory, it can go to the tribunal. But by the time it goes to the tribunal, it would have closed the factory. If your cane has been harvested unfairly, the factory that has done that will pay the farmers. But what happens if the factory whose cane has been taken had offered loans to the farmers? So, that is an area which the Ministry should address, especially the licensing of factories without adequate planning.

Mr. Temporary Deputy Speaker, Sir, another point is the high yield of cane. Time is money. The research institutes should be funded properly so that they can develop a crop which can mature between 12 and 13 months. That way, farmers will have better returns on their

investments. We all know that the country is a net importer of sugar. The Government should make deliberate efforts to reduce that. That can be done by increasing the area where sugar-cane is grown. It can also be done by planting high yield sugar-cane which takes less time to mature. That way, we will reduce the importation of sugar. The Kenya Sugar Board (KSB) should not be seen as an institution where people line up to get licences to import sugar. It should be seen as an authority which is supposed to bring efficiency to the farmer and the factories. It should develop more varieties of cane and help the research institutes to improve. It should give a big percentage of money to research institutes.

Mr. Temporary Deputy Speaker, Sir, we get sugar shortages every year. I would like to appeal to the Government to allow millers to import sugar, rather than the traders. What happens is that the traders wait every day. They do not do any business. Those people should invest their money in productive activities which can improve the economic standards of this nation. They should not wait when there is shortage of cane every year and then they apply for import licences. That is not how to grow an economy. That is not how to create employment in this nation. Those people are not patriotic Kenyans. They need to do economic activities which can improve the balance of payments and encourage exports. We do not want businessmen who sit and wait to import cane. Yes, they are traders, but they are not patriotic. That is the point I am raising here. As a nation, we need to improve our economy and efficiency. We cannot do it when some people sit and wait for cane shortage and then they use their political influence to get import licences. Who imports this sugar? Who are they? What do they do every day?

So, that is an area where the Government must look into. It is a loophole. If the millers are able, they should be allowed the opportunity to import sugar. There is a history in this country. When there is sugar shortage, millers bring in their sugar and the factories do not sell their sugar. When they do not sell their sugar, they reduce the price. When they do that, the person who is greatly affected is the farmer. Meanwhile, these importers use foreign exchange to import sugar. When this happens, farmers get less money; the factory is not able to manage its activities and so, it causes a crisis. It is an area that the Government must look into, as far as I am concerned. It should find a way of discouraging importation of sugar. The KSB needs to be proactive in this area and spend more money to improve research, rather than spend time in office and serve people who are fighting to get import licences. As a nation, let us think of how we can reduce imports. Once we know we do not have enough sugar, every effort should be done to improve the yield of that crop.

Mr. Temporary Deputy Speaker, Sir, finally, I thank the Government because it has allowed liberalization and farmers are able to earn money from their sweat. They do not wait as they used to do sometimes back. Cane used to stay in the *shamba* for more than 24 to 36 months. When it was finally harvested, farmers were not paid. But now, farmers are paid on time. Something better needs to be done for the farmer to earn more value from his or her crop.

With those few remarks, I support the Bill. Thank you.

Mr. Mututho: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support these amendments and, as I do so, I want to say that, as the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives, we have done one of the most extensive work on the sugar industry and had, indeed, tabled our own Committee Bill. I have had a chance to discuss with the Minister and we will be looking at the two, so that we marry them and then have one Bill at the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, having said that, I want to give the House a sad history about sugar development and the making of “lords” from sugar. One such story and two

most talked about is that during the old bad days of slave trade, the two chief traders in sugar who took Africans as slaves and went on to manage plantations all over America were one by the name of Barclays and the other one was called Leod. The two became so rich but, ultimately, one became a shipper and the other one owned a bank. However, what happened to the Africans who were doing it? They died as slaves and very little is said about their contribution to that welfare.

Mr. Temporary Deputy Speaker, Sir the sugar industry in Kenya is not any different. You realize that these poor farmers pay 27 per cent to 29 per cent in all forms of levies and taxes. From their little earnings, they are taxed again that much. It comes in small portions but ultimately the total figure is about 27 per cent. The first point would be to eliminate all these taxes, so that you end up with a manageable percentage like less than 10 per cent. This should apply to all sections, including transport. The most weird of them all is the sugar-cane payment formula. I will not talk badly of anybody who participated in this, but surely when you said that farmers will be paid as per the weight of the cane and the prevailing price of sugar in the market, you seemed to forget the basic fact, which is that the price of sugar in Kenya is controlled by about four people. So, price is not driven by demand and supply. If you take that as a factor, then you are allowing people to control even what the farmers are producing. Everybody knows that sugar-cane is valued due to sugar content. So, you may have 100 kilogrammes of sugar-cane but it is only equivalent to 25 kilogrammes of sugar-cane which has high sucrose. So, the sugar-cane payment formula is defective. I have an issue with it. There is need for revising it to make these farmers earn fairly.

Mr. Temporary Deputy Speaker, Sir, the other element is transport. There used to be a very good photograph on the walls of the VIP Lounge in Kisumu. Apparently, it went with the old airport, and I wish it could be traced. It shows a farmer harvesting cane and was able to transport the cane using a simple tractor. That is how it used to be and is how it should be. Now farmers are compelled to use huge monsters. Using those pre-arranged contractors makes them suffer immensely in terms of costs. Therefore, transportation should be liberalized. It is obvious that you need to look at our report; we concluded--- I am glad that the Attorney-General is here because after this he may wish to confer with the Director of Public Prosecutions (DPP) who may prefer charges, criminal or otherwise, against these sugar factories. We found that in all cases, they have a factor of 20 per cent to 30 per cent, which is knocked off the weight of cane and nobody seems to take note of it. So, if a farmer delivers ten tonnes, he is paid for seven or eight tonnes. That is proven and there is enough evidence to prove it.

Therefore, we were saying that at the point when we do privatisation, it will be good to take on board the fact that these people have contributed to the welfare of these sugar factories by blood and sweat. So, it is important to appreciate them.

The other matter is to do with land and land ownership. The Minister for Finance is here; he may have sold the shares of Mumias Sugar Company. I want to tell him that what he sold was actually hot air, because that land is owned by the people of Mumias. It was never owned by the Government; it was only leased to the Government for 33 years.

Mr. Temporary Deputy Speaker, Sir, I want to allow the other hon. Members to contribute because we will have all the time at the Committee Stage for one or two amendments. I welcome honourable Members at the Committee Stage so that we can truly liberate our farmers from the sugar- cane growing areas. I want to thank the Ministry of Agriculture because they have woken up to the realization that we need to do something about sugar. I know they have contradicted the Act but the principle that we set here will be useful, particularly in setting up regulations that will form part of the consolidated law in the area of agriculture. While

supporting this, it is good to know that using the Kenya Tea Development Agency (KTDA) you can tell how cartels apply magic to farmers.

Mrs. Shebesh: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not want to interrupt the Chair of the Committee on Agriculture, Livestock and Cooperatives, but earlier there was a Motion moved to start debate on a very sensitive issue. I just want to know whether we are still going into that phase or we are continuing with debate on the Bill.

The Temporary Deputy Speaker (Mr. Ethuro): Mrs. Shebesh, just as you wish not to interrupt the Chair of the Committee on Agriculture, Livestock and Cooperatives, you should extend the same to the Chair of the House. That Motion was withdrawn; so it does not exist.

Mr. Mututho, proceed.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I want to say that the best example we can learn from is KTDA. Farmers are making profits; it is worth noting that in the last 11 years, the KTDA has received from overseas clients Kshs346 billion, but when you look at what they paid to the farmers there was a shortfall of Kshs114 billion, a loss of about 34 per cent. This is worse in sugar industry. I do not want to go into this, because as I said we are going to do something at the Committee Stage.

In conclusion, I would also wish the Attorney-General to give a commitment now. Since we have 234 scheduled crops, if we are going this way, we may need two and a half years to come and work out individual Bills. Let us have a commitment that this is the last Bill we are working on, as we wait for the consolidated Bills, so that we do not waste Parliament's time.

I beg to support.

The Assistant Minister for Education (Prof. Olweny): Mr. Temporary Deputy Speaker, Sir, I want to support this Bill because it is wonderful. What the Minister has put in the Bill are the things that we have been fighting for. So, I congratulate the Minister for bringing these things to the Floor of the House so that we can pass them and make changes in the sugar industry. The Minister has indicated that the Sugar Development Fund will now have a board of trustees. I hope that the intention is to make this fund easily accessible to those who need it like the farmers, the transporters and other key players in the sugar industry, who need loan facilities to help them develop the sugar industry.

The Minister has also indicated that the Kenya Sugar Cane Growers Association (KESGA) will be removed. There are major loans that farmers have taken, and even have contributed towards this association. So, we do not understand what KESGA is doing. We have the Kenya Sugar Board which helps in managing the sector. We also have outgrowers companies and farmers societies which help farmers in selling their cane to the millers. They also sell their cane through those institutions. So, what is KESGA doing? This is simply a political body among the farmers. It has politicized the sugar industry unnecessarily.

Therefore, I congratulate the Minister for removing it, but what I do not understand, and which she has brought in, is the farmers apex body. I hope it is not going to charge farmers. I hope we are not going to have another election because there are too many elections in the sugar industry. There are too many elections among the farmers; they do elections for their societies, outgrower companies, the sugar board and KESGA. At the end of the day, it was politics. I hope this body is not going to be another burden to the farmers in terms of contributions and deductions from the farmers, and also unnecessary elections. In fact, I really do not think we need it.

Mr. Temporary Deputy Speaker, Sir, privatisation has taken too long in the sugar industry. These are companies owned by the Government. It has taken too long to privatise them.

I am happy that the other day the Minister for Finance told us here, privately, that he has solved some of the problems that were attached to the issue. With elections around the corner, I do not think it is the right time to privatise. It should have been done a year ago, but it is important to privatise these companies.

Miwani Sugar Company has been under privatisation for too long. I know that it is moribund, but we need someone to invest, open it up and start operating it. Muhoroni Sugar Company has been under receivership for ten years and the receiver manager there is making money. I thought that the receiver manager should have used the profits that they are making to clear some of the debts. So, something needs to be done by the Government because they have been in receivership for too long. In fact, the farmers are concerned about the prolonged receivership of Muhoroni Sugar Company. So, something has to be done so that the receivership is removed.

Mr. Temporary Deputy Speaker, Sir, I am happy, again, that the Minister has removed zoning. Kenya is a liberalized economy. So, why should we tie farmers to a miller whom they do not want to sell cane to? Why should we tie a farmer to a miller who is paying less than another miller who is ten miles away? Let the farmers sell their cane to whoever they want. They can even sell to those who do jaggeries. So, tying the farmers to some mean millers has been very bad. It has really done a lot of harm to the farmers, yet they are the poorest in the sugar industry.

Mr. Mututho: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not wish to interrupt the Professor, but in our report which was adopted by this House, these receiver managers were supposed to have been removed immediately. It is now over two years ago.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Mututho! How is the Assistant Minister misleading the House?

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, is the contributor in order to refer to Muhoroni receiver managers whom, to the thinking of this House, have long ceased to exist?

The Assistant Minister for Education (Prof. Olweny): Mr. Temporary Deputy Speaker, Sir, I am very much in order because the receiver manager from Muhoroni Sugar Company is the one running that company. That is the same receiver manager who is holding the moribund Miwani Sugar Company. They are joint receivers.

Mr. Temporary Deputy Speaker, Sir, when you look at the zones, that is one way of impoverishing farmers. The sugar-cane farmer is the poorest person in the sugar industry. Today, the price of cane is fluctuating with the price of sugar. When the price of sugar goes up, the cane price is raised a little. When the price of sugar comes down a little, then the price of sugar-cane comes down substantially, yet the prices of inputs remain the same. The prices of fertilizers do not change. The cost of labour and transport remain the same. So, the farmer's margin is the one that is reduced every time there is a fluctuation. So, I really do not know how this should be handled. Maybe the Minister may think about it because the prices of inputs remain the same or are increased, while the price of sugar-cane is fluctuating when there is little fluctuation in the price of sugar. Over the weekend I was with some farmers and they raised concern about that. I told them that it is the implementation of the Sugar Act, but then they asked me: "Okay, we are implementing the Sugar Act, but what about the price of inputs?" They remain the same and so, their profit margin is always reduced.

Mr. Temporary Deputy Speaker, Sir, when farmer's sugar-cane burn he or she is penalized by the miller. Farmers do not burn their cane. It is some mischievous people who always go round burning farmers' sugar-cane. I am a sugar-cane farmer and have suffered. Even in the middle of the night, the sugar-cane burns. Which farmer will go out in the middle of the

night to burn his or her cane? They are always penalized. On the other hand, sometimes when the miller goes to harvest farmers' cane, they burn that cane themselves. Why should they punish the farmer, if by accident the cane burns, and yet on the other hand, they also burn the farmers' cane, without now penalizing anybody? I think that this needs to be addressed by the Kenya Sugar Board and the Ministry of Agriculture. Let us ask these millers: "Why must you penalize the farmer for burnt cane?" It is very unfair. Farmers get very little out of their cane. This is one thing which I hope the Minister will raise in the sugar industry.

Mr. Temporary Deputy Speaker, Sir, during the last KSB elections, some ladies went to court because in those elections we did not have any woman elected by the farmers. There were one or two women who contested, but the farmers rejected them. They went to court and stopped the Minister from gazetting the Sugar Board for almost a year. Last week, I talked to the Minister and she told me that she got a way out of it through the court. The court gave her an opportunity to nominate some women. Actually, the Government representatives in the KSB are women. But then, why can we not put it in the Act? Let us bring an amendment which now allows the Minister, after the elections, to do some nominations so as to balance the gender. That may help, so that we do not have someone going to court and stopping the operations in the sugar industry for some time, the way it happened. There was no Sugar Board for quite some time. So, there were several things which were supposed to have been handled by the KSB but they could not be handled because some ladies went to court.

An hon. Member: *Tosha!*

The Assistant Minister for Education (Prof. Olweny): Mr. Temporary Deputy Speaker, Sir, I hear an hon. Member telling me "*tosha.*" Maybe, yes, because the other hon. Members have made enough contributions. But I also want to tell the Minister that we need good people in the Sugar Board. But people with degrees are not the best farmers around. Most of them are always in town doing other things. But most farmers down there are actually illiterate or Form Four leavers. Very few graduates do cane farming, because it is not very profitable.

Mr. Temporary Deputy Speaker, Sir, I support the Bill.

The Temporary Deputy Speaker (Mr. Ethuro): There being no other contributor, I call upon the Minister to reply.

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Speaker, Sir, let me start by thanking everyone who has made contribution to this very important Bill. I have listened very carefully to the debate and can say quite confidently that the contributions will enrich the Bill that we will end up with.

Mr. Temporary Deputy Speaker, Sir, it is not that we will, in fact, write down everything that everyone has said because some of them are contradictory. For example, to expect in the modern day to have 51 per cent ownership and the investor to have 49 per cent, it does not really work. But, nevertheless, that is not what this Bill is about, because we have a Privatisation Committee which is mandated to do the privatisation. So, do not worry.

Mr. Temporary Deputy Speaker, Sir, regarding the court case, let me just inform my colleague and neighbour at home, that, in fact, we had to nominate the Government representatives as women to get past that hurdle. However, we would not put it in this law; that it is where we want to block women. Somehow, we hope that they will get there. The farmers will be electing, but we have to find a way out.

Mr. Temporary Deputy Speaker, Sir, the sugar industry in Kenya needs to be liberalized. The importance of this particular Bill is for us to start moving in that direction. There have been many years of talking about the sugar industry and farmers suffering. Our intention is to get the

industry modernized and liberalized to avoid the kinds of wars that are going on, which makes it impossible for the farmer to be able to earn a living. There should not be resistance to new ideas especially when there is a wider market for the sugar-cane farmer because then we can negotiate a better price than what he is actually obtaining at the moment. That is why I very much welcome the re-emphasis by hon. Members that this zoning arrangement should be rearranged and managed. You will notice from the Bill that we intend to strengthen the tribunal to avoid running up and down and not being able to sort out the problems.

Mr. Temporary Deputy Speaker, Sir, there are other issues and this is why this is coming here now. As a country, we have not moved forward to deal with the Common Market for Eastern and Southern Africa (COMESA) safeguards. I have to request for a two-year extension despite this matter being with the country for so many years. This will allow us to move forward in that direction. I need to answer my colleague and neighbor in the Constituency about Miwani and Muhoroni receivership. We shall take immediate necessary action as recommended by the House before. Let me assure all those who are interested and all those who have taken their time to make such concise contributions to this debate that we will take them seriously. The HANSARD has recorded it and I have also recorded what you have said. We shall re-discuss them at the Committee Stage. We have, indeed, looked at the Bill that was forwarded by the Chairman of the Committee on this issue. It is a very good report and we will be working with them. We have agreed with them and we will incorporate what is necessary to make the industry more viable and responsive to the needs of Kenyans.

With those few remarks, I beg to move.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

Second Reading

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Central Bank of Kenya (Amendment) Bill be now read a Second Time.

I will be very quick because these are very basic amendments and they follow from what we passed in the Finance Act. The Government has continued to support the development of the banking sector, particularly enhancing the policy and regulatory framework which has been instrumental in widening the scope of customers and investors in the sector. These efforts by the Government have so far helped create a suitable environment for the mobilization of savings to finance projects in our economy.

Mr. Temporary Deputy Speaker, Sir, the measures I have proposed in the Central Bank of Kenya (CBK) (Amendment) Bill of 2012 are aimed at further promoting good corporate governance practices at the CBK in line with what this House had partially implemented through the Finance Act of 2012. I will only highlight a few of the proposals as hon. Members will have an opportunity to debate the entire Bill during the Committee Stage. The Finance Bill of 2012 amended the CBK Act and created the position of the chairperson of the board of directors separating the role of the chair of the board from that of the Governor as the chief executive of

the bank. However and unfortunately, the amendment did not provide for the procedure of the appointment of the chairperson thus making it difficult to implement the law. In order to correct this anomaly and facilitate the appointment of the chairperson to the bank, I have proposed to amend the CBK Act to provide for the procedure of appointment of the chairperson.

Further, in order to facilitate smooth operations of the bank in the meantime, before the chairperson is appointed, I have further proposed to amend the CBK Act to allow for the existing directors to elect one amongst their number to preside at the meetings of the board. This is because so far no chairman has been appointed and, therefore, the board has not met. In order to ensure that the CBK is professionally managed, I propose to amend the CBK Act to require that the positions of governor and Deputy Governors be filled by fit and proper persons of recognized professional standing and suitable experience in the relevant fields.

With those few words, I beg to move and request Mrs. Shebesh to second.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, I also second the Minister and will speak only to the issues that he has spoken about that have become evident in our work in this House: Evident because many times when we have been forced, as a House or Committees, to deal with the CBK, we have been at pains to know who to hold accountable for policy issues and who to hold accountable for implementation issues. The Governor has been and continues - until now that we have brought this amendment - to be "it", "end of it" and "all of it" in the CBK. What the Minister is doing is simply separating roles; roles that have become blurred in the work of the CBK and that have affected the way the CBK is viewed, not only by Kenyans but also by the House. Therefore, the chairperson of the CBK will not only remove this baggage from the Governor of the CBK but the Governor of the CBK will now have clear lines of communication between the Ministry of Finance and the CBK because we have made clear the professional qualifications and what is expected of him or her; where there will be no issue of interference with the work of the same because this role now gives us the clear policy guideline on how to communicate with the CBK. That is why this Motion is important for the way we move forward but most importantly for the confidence that we will continue to have with the CBK.

With those few remarks, I beg to support.

(Question proposed)

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, very briefly, let me start by thanking the Minister for the very steady manner he has managed the affairs in the Ministry of Finance and in addition to urge him to start looking for ways and means of making sure that teachers are paid their salaries in good time and even the lecturers. This morning we had a critical meeting which the Minister was not able to attend. We need to bring normalcy in our institutions.

Secondly, I note from the new Act that the President is empowered in the appointment of the Governor of the CBK. This is the nerve centre of resources in this country and, therefore, the President considering the appointment of the Governor is key to improving this centre for proper management of our resources. I also note that Parliament has a role in approving the appointment by the President. I also note in the new Bill that the Governor has powers to appoint staff at the CBK. It will be very important that in the appointment of staff, nepotism and tribalism will not be exhibited at the CBK. It should be given the resemblance of national character where all Kenyans qualified are given a chance to serve at the CBK. Time and again, we have seen governors getting their own brothers and sisters. Therefore, sacking people will not be tolerated.

Mr. Temporary Deputy Speaker, Sir, the Bill also notes that a Deputy Governor will also be appointed. The Deputy Governor will be expected to work together with the Governor, unlike what we have seen in the past where divisions and hatred have been witnessed. Therefore, we call upon those who will be appointed to give a fair reflection of this country and to make sure that the country's resources are managed well. This will be the pride of this country.

With those few remarks, I fully support the Bill.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I must praise the Minister, but he should stop bringing piecemeal amendments in the financial sector. He is doing the same in the Capital Markets (Amendment) Bill, which is before this House. He is also doing the same in the Central Bank of Kenya (Amendment) Bill and the Value Added Tax (Amendment) Bill. Piecemeal amendments will not help the CBK to achieve its desired goals. We can correct the errors that we did in the Financial Bill if we do a comprehensive review of the Central Bank of Kenya Act in line with the independency that the Constitution has given.

Having said that, I intend to bring a number of amendments to this Bill, contrary to what the Minister has. The highlight of the Central Bank of Kenya (Amendment) Bill is mainly the removal of the Governor from chairing the board and excluding the Deputy Governor from the membership of the CBK Board. I want to go into history. The CBK is an institution that has a lot of similarities with other central banks globally, namely, within the region, within Africa and the international community. The amendment seeks to remove the Governor from being the chair of the board, but a member of the board. Why do we have the Governor as the chair of the board in a number of jurisdictions and advanced economies like England, Italy, France, Germany, emerging economies like Brazil, India and South Africa and our neighbours Rwanda, Tanzania and Uganda? Why is the chair of their boards the governor? This is basically to safeguard the independency of the institutions. For us to safeguard the independency of the institution, we must have the Governor as the chair of the board.

In the US and other jurisdictions where they have the Chairman of the Federal Reserve Bank, this is the person who is vested with the powers. The role of our executive chair is not well defined. The chair of the board is similar to the Governor. I want to plead with the Minister that we must live within a global central bank framework. The Central Bank of Kenya (Amendment) Bill provides that the chairperson will be appointed by the President with the approval of this House. It increases the number of the non-executive members of the board from the current five to eight. The reconstitution of the board in this amendment with nine non-executive members and only one executive member is not ideally consistent with the practice of corporate governance across the world. These are the issues that the Minister, and I am sure the Finance Committee, should address themselves to. In corporate governance worldwide, we must have a balanced mix of the technocrats, the bureaucrats and the private sector players.

Mr. Mututho: On a point of order, Mr. Temporary Deputy Speaker, Sir. If I heard him right, is the Member in order to suggest such adverse amendments that will essentially negate the spirit and the word of the Bill? What he is trying to do works against this Bill. Is he in order?

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, maybe there might be a reshuffle coming up and hon. Mututho is anticipating to be the Minister for Finance. We are at the Second Reading and when the amendments come, whether they are fundamental or small ones, every Member of this House is entitled to bring amendments and it is the Members of this House to decide when that is put to question.

Mr. Mututho: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Duale in order to suggest that I am campaigning to be appointed to the Cabinet? He knows too well that I

come from Nakuru where from 1966, we have never had a Cabinet Minister and we are contented to be Backbenchers? Is he in order?

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Mututho, the fact that you seem to even have the background to the subject matter can only give credence to what hon. Duale is suggesting. But that is not here nor there. I think hon. Duale has a responsibility to give contrary opinions and those are his views. Proceed, hon. Duale.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I am coming from a background where there are number of vacant positions in the current Cabinet and it is the preserve of the President to appoint even people from Nakuru. So, I still ask him to have the hope and the dream of joining the Cabinet.

Having said that, the issues I am raising are issues that I can even discuss with the Minister and the Committee and come up with amicable amendments. I have said that having more non-executive members in the board and one executive member is against the corporate governance that calls for a balanced mix of executive and non-executive directors.

The Minister for Finance (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. The Member is misleading this House by suggesting that in the amendments that I am proposing, I am making the chairman the chief executive. It is very clear at Section 4(iii), which states that the governor shall be the chief executive officer of the bank. So, the governor will be the chief executive officer. We are not making the chairman the chief executive officer. In fact, in 2(a), it says that the chairperson shall be appointed by the President through a transparent and competitive manner. The chairman will only be chairing the board.

So, the Governor still remains the chief executive officer in line with the jurisdictions that the Member has mentioned. We need to clarify that.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I know the Minister does not have a serious background in finance. I am talking about amendments. I am discussing the chairperson of the board. I have not discussed---

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Duale! You do not come here because you have serious backgrounds on anything. We really come here because we have been elected by the people. That has been said time and time again. Definitely, the Minister has pointed the relevant section and all of us can read that the Governor shall be the chief executive officer of the bank. Just concede and proceed.

Mr. Duale: Mr. Temporary Deputy Speaker, Sir, I am talking about the chairperson and that is my line of argument. In fact, I have not, at any given time and the HANSARD will bear me out, talked about the chief executive officer of the bank. I was talking about the composition of the members of the board, both the executive and non-executive, and the chairperson being appointed by the President and approved by Parliament. In that amendment, I feel that there is, therefore, a clear need to include a representation of the board by the Deputy Governor to guard against the board composition that is skewed towards representation of non-executive members. This again comes because of the corporate governance across the world. This happens in Nigeria, South Africa, Ghana and India. They have one Deputy Governor as a member of their respective boards. This is in line with the balancing.

Mr. Temporary Deputy Speaker, Sir, there is an amendment on the chairperson on Clause 12(1)(b). It says the chairperson shall preside over all the meetings of the board. Of course, it is very prudent to have the board appoint a vice-chair in their first meeting who shall not be of the same gender as the chair who will be appointed by the President, with approval of House. Again, this is what we have been doing in terms of appointments where if we have a chair who is a man,

then we must have a room for a vice-chair from a different gender. This has been left out. Of course, the vice-chair will be chairing the board meetings in the absence of the chairperson.

Mr. Temporary Deputy Speaker, Sir, Clause 12(1) is on quorum of board meetings. It says the quorum will be five and must be constituted by the chairperson, Governor and three Directors. The quorum of five is acceptable. I agree with the suggestion that the chair shall be the Governor. In my amendment, I want to make the Governor and the deputy always to be in board meetings.

This Bill seeks to introduce Clause 12(1)(c) that provides for the non-executive directors to elect one of them to preside at all meetings of the board until a chair is elected. That is the amendment the Minister wants to bring. Again, the spirit of his amendment prohibits the Governor from chairing board meetings. The Governor should be allowed to chair board meetings until such a time when the President appoints a substantive chair, with the approval of Parliament. We are talking about a situation where there will be a vacuum in terms of the chair. So, we are asking that the Governor be allowed to chair the board meeting until the President appoints a substantive chair, with the approval of Parliament.

Mr. Temporary Deputy Speaker, Sir, very fundamentally again in this amendment, which I think is within the purview of the Constitution, the Governor is to be appointed by the President through a transparent and competitive process and with the approval of Parliament. He is to hold office for a four year term and is eligible for re-appointment for a further term. I think the law on the appointment both in the Constitution and with this amendment is welcome. I support it for the first time. We want to drive this country away from where a very competitive, qualified Kenyan is appointed as Governor of the Central Bank of Kenya (CBK) and by default he happens to come from the region where the President comes from, but those who claim that there are biases do not want to look at the CV and qualification of this Kenyan. So, I think this amendment, pursuant to Section 11(1) is welcome.

Mr. Temporary Deputy Speaker, Sir, there is Clause 13(b) that says there shall be two Deputy Governors who shall be appointed by the President through competitive and transparent process and, again, with the approval of Parliament for a four year term. They shall be eligible for re-appointment for one further four year term. They shall perform such functions, as the Governor may design and the board shall appoint one of the Deputy Governors to act in case of the absence.

Mr. Temporary Deputy Speaker, Sir, as the Deputy Governors shall be appointed by the President through a competitive and transparent process and approved by Parliament, there is a need to exercise executive authority and hence be retained as members of the board. This comes in if the two Deputy Governors will be subjected to the same due diligence process of the Governor; in terms of competitive and transparent process and in terms of a four year term limit, with an extension of another one term. We support this, but it will be very prudent for the Executive to exercise the authority and for them to retain members of the board.

Mr. Temporary Deputy Speaker, Sir, there is a new provision 13(c); qualification for the Governor and Deputy Governor. It provides that the Governor and Deputy Governor shall be fit and proper persons of recognized professional standing and have over ten years experience at senior management level in the field of economics, banking, finance and law. This is a very good amendment so that you do not pick any Tom, Dick and Harry from the streets just because he comes from your community. For example, you do not pick a professor of history to be the CBK Governor. The law is very clear. Clause 13(c) gives the qualification for this job. One must have

ten years experience. He or she must have requisite academic and professional experience related to finance, law and banking.

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

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

Mr. Temporary Deputy Speaker, Sir, Clause 14 is the final one and it sets out criteria for disqualifications of the Governor, Deputy Governor or a Director. This is subject to the board in terms of disqualification. I have no problem with it and I support it.

The Minister needs to relook at the first amendment that I raised in terms of the Chair of the Board of CBK, where we need to get the Governor to the chair in terms of monetary policy formulation and fixing limitations. This docket is very crucial in terms of running the bank because it is key to economic growth in general.

With those few remarks, I beg to support. I will be bringing my amendments on the Floor at the Committee Stage. Hon. Members are allowed to do so by the Standing Orders at that stage.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I am impressed by hon. Duale. He is thoroughly prepared.

Mr. Temporary Deputy Speaker, Sir, let me thank the Minister for what he is trying to do because it will change this country. Powers of the Governor to chair the board is precisely where the problem is in this country. There is no way you can be the executor and the decider. I was in Naivasha about two weeks ago and we talked about this. I asked the Permanent Secretary and the Governor to harmonize this because the Permanent Secretary was sharing the views of the Minister, but the Governor seemed to want to chair this board. We have serious financial problems as a country. I like the Minister because any time we tell him the right things, he follows them. I really like him for that because it is right to do right things for this country. This is because the Chair of this board shall, alongside the board, decide the policy. The Governor shall implement. Let me give you an example.

You know, today, Kenya is the only country where banks are charging people 32 per cent interest rate. I was in Kisumu a week ago and I came across four or five people who were being thrown out of their homes by banks. And we keep talking as Parliament. We cannot sit back. We need a body, or a board that shall discuss these issues, that Kenyans can complain to. The Governor must just give us--- And I am so happy with the Minister because he is saying that so that we mitigate the existing problem, let the existing board sit and elect one of their own to decide policy. I think that is a good middle ground. Let us do that. However, the original proposition in this Bill that wanted to make the Governor the temporary chair is one that would sink this nation twice because we are already in a hole. We must have proper, economic and financial policies if we expect to move our country forward.

I want to plead with the Minister. We already have a problem. We have a scenario where teachers are striking and we are saying that we do not have money. This country will have to sit and talk to itself about enlarged Executive. I would plead with you that in many countries the board is two or three people. Let them be Kenyans of repute; people who understand financial and economical issues. The smaller, or the leaner the better it will be. So that it is not just another way of employing people. Let me tell you the problem you will run into immediately you go to

reconstitute the board; there will be the issue of “our region is not represented”. You are just giving yourself a bullet to shoot yourself. So, the smaller the better. I want to also plead with you that in this amendment, please, let the position of the Governor be one that is advertised and people apply and then you appraise the competence of people. Let it not be a political appointment. Let the President appoint the chair. He can appoint anybody be it his brother, wife or whoever, but we shall vet here. The Governor must, however, be an advertised job so that we can get a whole array of citizens who may wish and are willing to serve in that position and I can tell you that you will never go wrong.

Lastly, in this Act, I would have wished even through the Finance Bill that the Minister addresses somewhat the issue of interest rates. Even if you were to do it in those institutions where the Government has interest, the way they have done in Brazil. Brazilians had a similar problem. A month or two ago Brazil overtook Great Britain as an economic power. This is because of what the President of Brazil did. She decided that she divorces herself from the criticism of International Monetary Fund (IMF) and the World Bank. She said that banks could charge people even 100 per cent or 1,000 per cent, but for the banks where the Government has interest, those banks loan at a rate determined by the Government. That is the best way we can cure this thing.

Look at our economy and look at the banks; look at the ownership too, all these profits they are making, they are taking out of the country. The banks which are making so much money--- One bank makes in one-quarter, that is, four months, Kshs8 billion more than what it made twelve months prior.

I want to plead with the Minister. Let us work together because Kenyans are choking and things are not good in our country. In fact, nothing is bright and I think the answer is in the financial sector. With economic growth, we shall expand the job and investment market for our people. I think this Parliament has a duty. This Minister who listens has a greater duty to intervene so that we look like we care about other people.

With those many remarks, I support the Minister.

Mr. M’Mithiaru: Thank you, Mr. Temporary Deputy Speaker, Sir for giving me this opportunity to contribute to the Central Bank of Kenya (Amendment) Bill. Some sections of the Bill are okay. However, the Bill requires a number of amendments. The Chair will remember that we moved some amendments to the CBK Act through Miscellaneous Bill. Through the Miscellaneous Bill, we brought in very many items. In fact, it was like we were amending the entire Act and what we actually did was wrong. This is because overhauling an Act of Parliament through Miscellaneous Bill and yet there was not adequate time to contribute and get views was not right. In so doing, that has brought a lacuna within the CBK where the board is unable to meet.

We know that the CBK is supposed to be an independent body and it is so created. Even Section 231 of the current Constitution gives the CBK that independence. The Constitution says that the law must be enacted to ensure that the independence of the CBK is upheld. It was just last week when we debated a report about De la Rue on the printing of currency. Printing of currency or issuance of currency is one of the functions of the CBK and it cannot do that in isolation. This is because the currency is signed by the CBK Governor and the Permanent Secretary, Treasury. So, there must be consultations between the CBK and the Treasury for that to happen. The CBK, acting on its own, cannot have things working even if we talk about independence. The CBK will let down Kenyans if it cannot have things working because Kenyans can sue it since it is the one with the prerogative of issuing currency within the

Republic. That is why the CBK was carrying out those orders to ensure that there is adequate currency in circulation.

I have no problem with the issue of the two Deputy Governors but I have an issue where the Deputy Governor is not a member of the board. I have no issue with the Governor and the deputies going through the due process to ensure that we get the right person for the job. The amendment I will bring will seek to have the Deputy Governors as members of the board. The issue that pains me is that one of the Governor. We know the sensitivity of the CBK within the financial sector. We also know the policy directions it is supposed to give in terms of interest rates and monetary policy. Some of these things require instant decisions. We are talking about issues within the CBK where the Governor has to make instant decisions that he may not have time to consult or go and constitute a board because things will not work out. Even a bank may close.

Mr. Temporary Deputy Speaker, Sir, I have worked in the bank and I am aware of a case where you could have a problem in a bank. I am aware of instances where you could have a problem with a bank. So, there must be an instant decision to ensure that banks do not have issues or activities that will make depositors run for their money because the bank will close tomorrow. But if the Governor is there as the chair of the board, he will ensure that an instant decision is made, and for that matter a crisis within the financial sector is arrested.

So, I am saying that even globally, the chairs of the boards of these banks are the governors. All we have to ensure is that we give the job to the right person. Sometimes, when we make laws, we do not make them looking at a person. If the Governor who is there does not appeal to us, let us say so but let us not make a mistake just because we are looking at a person. This is for posterity and this is a bank that will take care of the monetary policy of our land. It is a position that will require the occupant to ensure that he gives the right policy direction; to ensure that the liquidity within the banking sector is always upheld and to ensure that there is no crisis within the banking sector.

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members! It is now 6.30 p.m. The House stands adjourned until tomorrow, Wednesday, 12th September, 2012, at 9.00 a.m. Hon. M’Mithiaru, you will have 15 additional minutes to complete your contribution.

The House rose at 6.30 p.m.