

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 12th September, 2012

The House met at 2.30 p.m.

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

PRAYERS

POINT OF ORDER

LEGALITY OF MEMBERSHIP OF SPEAKER'S PANEL

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

The Temporary Deputy Speaker (Mr. Ethuro): What is your point of order, Mr. Mbadi?

Mr. Mbadi: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise on a point of order on a matter that I think needs to be addressed. This matter should have, probably, been raised earlier. However, when it comes to matters of constitutionality, it does not matter when it is flagged off.

Mr. Temporary Deputy Speaker, Sir, I will just ask for the Speaker's ruling. Article 107 of the Constitution provides on how the proceedings of the House can be presided over. It says:-

“Presiding in Parliament

107. (1) At any sitting of a House of Parliament—

(a) the Speaker presides;

(b) in the absence of the Speaker, the Deputy Speaker presides; and

(c) in the absence of the Speaker and the Deputy Speaker, another member of the House elected by the House presides.”

Mr. Temporary Deputy Speaker, Sir, based on that, it is very clear that if the two Speakers who we voted for are not present, or are not for any reason able to preside, then a Member elected by the House should preside.

Mr. Temporary Deputy Speaker, Sir, I want to refer you to Standing Order No.10(1) on the appointment of a Speaker's Panel which the Temporary Deputy Speaker sitting on the Chair today derives his authority from. It says:-

“At the commencement of every Session, or from time to time as necessity may arise, the Speaker shall, with the approval of the House, nominate four Members (not being Ministers) who shall be known respectively as the First, Second, Third and Fourth Chairperson of Committees, and who shall be entitled to exercise all the powers vested in the Chairperson of Committees including the powers as Deputy Speaker.”

Mr. Temporary Deputy Speaker, Sir, based on these provisions, it is very clear that for any hon. Member who is not a Speaker or Deputy Speaker, to preside over the proceedings of Parliament, that authority must be exercised with the approval of this House.

Mr. Temporary Deputy Speaker, Sir, I would urge that the Chair finds that in the absence of this House approving any other hon. Member to preside over the proceedings of the House, then it is unconstitutional, illegal and contrary to our Standing Orders.

Mr. Temporary Deputy Speaker, Sir, if that is the case, then you should, therefore, find that all the rulings that have been made by any Speaker who is not the Speaker or Deputy Speaker, who was elected; hon. Kenneth Marende, or hon. Farah Maalim, respectively, have been illegal and, therefore, should be expunged from the records of the House from the times and all the periods they have been made.

Mr. Temporary Deputy Speaker, Sir, this is a very weighty matter. This Provision of the Constitution is actually copied verbatim from the former Constitution. Therefore, the argument that this House has been saved from certain provisions of the Legislature, then it does not invalidate my argument because that is the way it was even in the former Constitution. That ruling needs to be made for the Temporary Deputy Speaker presiding today to continue exercising the authority of the Speaker.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, the issue that has been raised by hon. Mbadi is as amusing as it is serious. In law, that interpretation is 100 per cent correct. But what does it mean for the House? Let me confess that this is a matter that I raised with the Speaker about two weeks ago and I asked him to address his mind to it very carefully because it was going to come to a head. As it is now, it has come to a head.

Mr. Temporary Deputy Speaker, Sir, what hon. Mbadi is asking you to do is to get out of that Chair, so that we get either hon. Farah Maalim or hon. Speaker himself to come and preside.

This matter is so serious because without repeating what hon. Mbadi has said, he is right in law. I kindly urge you to look at Standing Order No.10 and Article 107 of the Constitution, which hon. Mbadi has read. If you do that, you are going to find that, indeed, sitting on that Chair as you do now is clearly illegal and unconstitutional. Under those circumstances, I urge you to think very carefully with all the wisdom that you can acquire and guide the House accordingly.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Dr. Nuh: Thank you, Mr. Temporary Deputy Speaker, Sir. Even the seconder of the issue which has been canvassed by hon. Mbadi says that it is amusing. I would say that it is entertaining and that it can only be given by humorous individuals like hon. Olago Oluoch and hon. Mbadi.

Mr. Temporary Deputy Speaker, Sir, if they wanted an honest opinion or a ruling delivered on the matter they are canvassing, it is improper for them to canvass on the person who is directly involved and interested.

(Applause)

It is most inappropriate to raise it at a time when the person they perceive as a stranger to the Chair is seated on the Chair and expect the same person to give an honest ruling on a matter he has an interest in.

(Applause)

So, Mr. Temporary Deputy Speaker, Sir, even though hon. Mbadi and hon. Olago Oluoch might have a point, I would want you to declare that this matter cannot be canvassed now any further until and unless the substantive Speaker is on the Chair. For them, if they have any doubts as to how this House has progressed and presided over for the last four years, then they can raise it at the right time when the person on the Chair is not an interested person in the matter being canvassed.

Mr. Temporary Deputy Speaker, Sir, I beg to urge you to find that the point of order raised at this time is inappropriate, inadmissible and direct them to wait for the substantive Speaker to come.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mrs. Odhiambo-Mabona: Thank you, Mr. Temporary Deputy Speaker, Sir. I want to disagree with my learned senior, hon. Olago, that the interpretation by hon. Mbadi is 100 per cent legally because we would not have the High Court, the Court of Appeal and the Supreme Court, which are put there because there are as many and varied legal opinions as there are lawyers in this country.

If you look at that interpretation on the face of it, you may draw that conclusion. But I want to say that we have said in this House that even by way of practice of this House and, indeed, by way of Standing Order No.1, I would want to indicate that also for purposes of stability and transition, if indeed we thought this was very important, that we needed to effect this, then we should have brought it at the very point that this Constitution was passed, but not midway.

Mr. Temporary Deputy Speaker, Sir, personally, I would urge that you do not wait for the substantive Speaker, but that you make a ruling now and here, and say that, indeed, you are properly seated, saved that, as a lawyer, I know that then, you would be seating as a judge over your own cause, but then I would urge you to maybe ask the substantive Speaker. But I would urge hon. Mbadi and hon. Olago; for purposes of stability and continuity in the House, that, indeed, we move on. They should not rock the boat unnecessarily because as a country, we are dealing with many serious issues. We do not want to start rocking the boat from within.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Namwamba: Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Let us be brief, hon. Members!

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, on a day when this House was seized of the very grave matter of the very fatal insecurity in the Tana Delta, perhaps, some hilarious moment or some comic relief was necessary this afternoon. This certainly falls in the province of the comic and the hilarious.

But that notwithstanding, may I say that, first of all, this matter, in my humble view, is not about the person of hon. Ethuro, the hon. Member for Turkana Central; eminent, senior ranking Member of the Tenth House and, I do believe, supremely qualified to sit on that Chair. I do believe that this question has been put to the Chair. It is not proper for yourself as an occupant of the Chair at this moment, to be placed under any undue pressure that you have to make a ruling or you have to interrupt this very hilarious interaction or anything like that. But let me draw your attention to just two things. One, I want to draw your attention to Transitional and Consequential Provision of the Constitution. Specifically, Article 2 talks of suspension of provisions of this Constitution. Article 2(1)(b) is emphatic that the following provisions of this Constitution are suspended until the final announcement of all the results of the first elections for Parliament under this Constitution.

One of those provisions that are suspended is Cap.8 except that the provisions of the chapter relating to the election of the National Assembly and the Senate shall apply to the first General Election under this Constitution. That provision therefore, that the hon. Member is referring to, as far as this Constitution of the Republic of Kenya is concerned, is suspended and therefore, inapplicable in the circumstances.

Mr. Temporary Deputy Speaker, Sir, the hon. Member has argued and I can hear him whispering behind me that this clause is carried word for word, *mutatis mutandis* verbatim from the old Constitution but that is immaterial. That is subject to pedantic argument in a court of law. What matters is not what was in the old Constitution; what matters is what is in this Constitution right now. What is in this Constitution right now is that Cap. 8 of the Constitution of the Republic of Kenya states, save for the provisions that are expressly provided in Article 2(1)(b) are suspended until after the next election.

Secondly, and the final point is that that particular clause, even if you were to engage in a philosophical theoretical argument for the sake of argument and you were to say that these Members in the Speaker's Panel were to be elected, then the process of electing these hon. Members has not been specified or elaborated in this Constitution. Election could be by reason of nomination by respective parliamentary parties and by tacit acceptance by this House. Tacit, in the sense that there has not been any objection to the Members of the Speaker's Panel to serve in those positions this far.

Therefore, other than for the comic relief offered by this very interesting interaction, I do just find that this argument is frivolous and is absolutely---

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Rarely do you see the hon. Member for Gwassi and the hon. Member for Budalang'i disagreeing but is it in order for the hon. Member for Budalang'i who is a lawyer of repute and I cannot claim to be having even a half of the knowledge in law as he does, and he also cannot claim the same in finance--- Is it in order for the hon. Member to fail to appreciate the transitional clause which has suspended the provisions of Cap.8 but has extended Section 48 to Section 58 of the former Constitution? The provision that I have referred to is found under Section 50. This therefore, means that Section 50 of the old Constitution applies which is verbatim the same way I read it.

So, based on that, if Mr. Namwamba was saying that it is not clear, I would rather put it to him that it is very clear that Section 50 of the old Constitution is retained and with the same provisions that I have read. It is only that I did not carry the old Constitution because I did not see the need of carrying it. I could quote it from my head.

So, if that is the reasoning of Mr. Namwamba, is it in order for the lawyer to mislead non-lawyers like John Mbadi by insisting that this is not clear? Again in terms of elections, the Constitution has not talked about elections.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mbadi! You stood on a point of order.

Proceed, Mr. Namwamba.

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, I dare say for good measure that you can engage in a philosophical argument; you can want to engage in a purely pedantic and academic argument. What is important is that I do not believe that this matter really carries any importance or significance to this House. But significantly, I also want Mr. Mbadi to address himself to the wording of Article 107 which I do insist is part of the chapter that I do not wish to--

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

Mr. Namwamba: The hon. Member for Chepalungu who purports to be a governor of some *jimbo* in Bomet might want to inform me. I welcome the information.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I wish to inform my good friend here, Mr. Namwamba, that the same Constitution under Schedule 31 on the Miscellaneous matters on existing offices states as follows:-

“Unless this Schedule provides otherwise, a person who immediately before the effective date, held or was acting in an office established by the former Constitution shall on the effective date continue to hold or act in that office under this Constitution for the unexpired period, if any, of the term of the person.”

Mr. Temporary Deputy Speaker, Sir, I wish to inform the hon. Member that it is appropriate and proper for those who are continuing acting in those offices to continue. This particular matter will then be effective after the next elections. But as of now, the Members of the Speaker’s Panel are appropriately in office.

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, I still do insist and it is important for Mr. Mbadi to also appreciate that this Speaker’s Panel came into existence before the enactment of this Constitution. Therefore, even as we enacted this Constitution, as we put these provisions in place and suspended this particular chapter, we were alive to the existence of this Speaker’s Panel.

Purely for purposes of argument, if indeed it were to be found that Article 107 is operating, then I would still insist that unless you bring a statute to this House that explains in minute detail the manner, fashion and style of electing the Speaker’s Panel, there is absolutely nothing anywhere recorded in the annals of the history of this House to purport to indicate that the manner in which this Speaker’s Panel came into being is unconstitutional.

The Temporary Deputy Speaker (Mr. Ethuro): I will take just two more so that we conclude this.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, if it is possible, I would like this House to go back to the HANSARD once in a while. I would want Mr. Mbadi who is an expert of raising temperatures on such issues---

I want to remind this House that Mr. Mbadi did not only whip up the emotions of this House to replace the Parliamentary Service Commission, he even went to the media and anticipated that issue.

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

Mrs. Shebesh: I am on a point of order. If you look at the Constitution---

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Mrs. Shebesh is giving an opinion on a matter. Whether it is pleasant or not, just listen to her.

Proceed, Mrs. Shebesh.

Mrs. Shebesh: I am discussing it because he has brought the Motion. So, I am just responding and saying that during that debate, when there were opportunities to fill up places in some Committees, who raised the issue on the Floor of this House, as women parliamentarians? Hon. Members can remember. We asked for guidance on the filling up of the positions of the Committees of the House and the Parliamentary Service Commission, following the promulgation of the new Constitution, which clearly regulates representation of women in this House. If you refer to the HANSARD, you will see that the substantive Speaker answered that question and put it to rest in the same manner hon. Namwamba has spoken.

Mr. Temporary Deputy Speaker, Sir, therefore, if we are, today, discussing an issue similar to one on which the Speaker has already ruled in terms of constitutional office holders in

this House, it means that we are questioning the Speaker's ruling. I would like you to refer to the HANSARD, so that it can be clear that the Speaker has spoken on this issue. Since I would also like to go further to open up people's eyes to the truth when things come to the Floor of this House, I am ready to show you the political motive behind this issue.

Hon. Members: Show us!

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, as I have said many times in this House before, political issues will not be solved by trying to manipulate the Constitution and other things. If you have a problem with somebody in your political party, deal with it in the caucuses in your political parties. Since political parties have ways of dealing with their issues, please, let us not embarrass this House. Many times before, when we had sensitive issues in this House, I had asked whether we could have the substantive Speaker to preside over the House. The Speaker had come here three times, and told me: "Consider anybody who sits on this Chair the Speaker of the National Assembly."

I am wondering what it is that today wakes up hon. Mbadi. If there is no political motive, let him tell us that he has not heard the Speaker say what I have stated here, or that there has not been a ruling on the same. Maybe, we will then believe that he just stumbled upon Article 107 of the Constitution yesterday and came up with this good intention.

The Temporary Deputy Speaker (Mr. Ethuro): Yes, hon. Musikari Kombo.

Mr. Kombo: Mr. Temporary Deputy Speaker, Sir, I find the matter being canvassed, when you are unfortunately on the Chair, strange. Hon. Members know that this House also depends on traditions, practices, *et cetera*. For a long time, Members of the Speaker's Panel have been chosen in the manner you have been chosen. The current Constitution came into effect two years ago. Where was hon. Mbadi to raise the matter until after two years, unless there is some malice in what he is doing?

Mr. Temporary Deputy Speaker, Sir, therefore, I would urge you to find the matter frivolous, so that we can move on. There are many more important issues we should be dealing with on the Order Paper.

The Temporary Deputy Speaker (Mr. Ethuro): What is your point of order, Dr. Nuh?

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, when I rose to contribute on this matter raised by hon. Mbadi, I requested you to restrain any further ventilation on it but you humbly declined to do so and let debate on it to go on. So, let me add my voice to the issue.

I do not want to even fight the admissibility of Article 107 of the Constitution of Kenya in this case. Even if Article 107 was operational, I would like to refer hon. Mbadi to the same Standing Orders he has been referring to. Standing Order No.10 says:

"10(1) At the commencement of every session, or from time to time as necessity may arise, the Speaker shall, with the approval of the House, nominate four Members (not being Ministers) who shall be known respectively as the First, Second, Third and Fourth Chairperson of Committees, and who shall be entitled to exercise all powers vested in the Chairperson of Committees, including the Powers as Deputy Speaker---"

Mr. Temporary Deputy Speaker, Sir, what does a Deputy Speaker do, and what are the powers of a Deputy Speaker? If the powers of the Members of the Speaker's Panel are equivalent to those of the Deputy Speaker, why would hon. Mbadi not find that the Standing Orders articulate that Members of the Speaker's Panel are as good as the Deputy Speaker, and that they can function as the Deputy Speaker?

Standing Order No.4 talks about the election of the Speaker. I want to cite paragraphs 1, 2 and 3, which say:-

“4(1) A Speaker shall be elected when the House first meets after a general election and before the House proceeds with the dispatch of any other business.

(2) If the office of the Speaker falls vacant at any time before dissolution of the National Assembly, no business shall be transacted by the House until the election of a new Speaker.”

Mr. Temporary Deputy Speaker, Sir, there is no business which is more important than the election of the presiding officer of this House. I want to show hon. Mbadi and the House the hierarchy in which the Standing Orders place Members of this House. Standing Order No.4(3) says:-

“The Deputy Speaker shall preside over the election under paragraph (2) but if the Deputy Speaker is a candidate, a Member of the Speaker’s Panel shall preside.”

Mr. Temporary Deputy Speaker, Sir, if Members of the Speaker’s Panel have been elevated to a position where they can preside over the election of a Speaker in this House, in what other better terms does hon. Mbadi want the Standing Orders to articulate the fact that Members of the Speaker’s Panel are as good as the Speaker, and that they can serve in the Chair?

Mr. Temporary Deputy Speaker, Sir, therefore, I request that you find the arguments by hon. Olago and hon. Mbadi not convincing enough in order to dissuade you from leaving the Chair, so that we can conduct today’s business, which we are eagerly waiting. So, I urge that you rule them out of order.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, I am sure that hon. Mbadi and hon. Olago had clearly come here with the mission of raising this issue. You got all the time you needed to raise the important issues that you wanted to raise. First, I want to say that I cannot make a ruling on this matter because I am affected. I allowed ventilation of the matter, so that the substantive Speaker can make a ruling after hearing contributions from hon. Members. So, we will leave it that way.

The second issue is that hon. Olago Aluoch captured the mood of the debate. I feel the same way. I wondered whether hon. Mbadi felt that there should be no business in the House today. This is because, firstly, the Speaker is away on CPA business in Sri Lanka. Secondly, the Deputy Speaker is with the visiting President of Tanzania. So, that leaves you with Members of the Speaker’s Panel only. So, under the circumstances, do we proceed with the business or do we stop the business?

My own feeling, which is the only thing we will have to do with this matter, is that we proceed, because we proceeded in the morning. Hon. Mbadi did not raise the matter. We have been proceeding in all previous times. Only last week, the Speaker pronounced himself on this matter in the manner in which hon. Shebesh has already indicated, and on which I did not hear my good friend, hon. Mbadi, object. Just as he rarely disagrees with hon. Namwamba, he also rarely disagrees with me.

I must also admit that he ambushed the Chair today because the norms and the good manners of this House dictate that the Chair is informed in advance of whatever points of order will come. I do not want to dismiss the point of order immediately, so that hon. Mbadi and the House do not suspect that, as I sit here, I am protecting myself.

Anybody sitting in this House has the leave of the House, including the Speaker himself and the Deputy Speaker through the elections. You have given that power to the panelists to the Speaker.

I also wish to remind the House that the Fourth Session, which is going on, is a continuation for quite a number of years now. So, I would not be surprised if it is determined by the Speaker that whatever hon. Mbadi is asking for was determined before even the Constitution

came into force. We have not changed the session. The Standing Orders require that to be done at the beginning of every session. We are still on the same session.

Anyway, let me not anticipate what the Speaker will rule. I will forward the request by hon. Members to the Speaker. But I think for now, it will be prudent for us to continue with the business and I sit here. Any of my colleagues will be sitting here with the express authority of the Chair.

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

The Temporary Deputy Speaker (Mr. Ethuro): No more. I have already concluded that. Remember we have done about 40 minutes since we begun on this particular issue.

Next Order!

PAPERS LAID

The following Papers were laid on the Table:-

Financial Statement of the Municipal Council of Kitale for the year ended 30th June 2009 and the certificate thereon by the Auditor-General

Financial Statement of the Municipal Council of Homa Bay for the year ended 30th June 2009 and the certificate thereon by the Auditor-General

Financial Statement of the Town Council of Bondo for the year ended 30th June 2009 and the certificate thereon by the Auditor-General

Financial Statement of the County Council of Turkana for the year ended 30th June 2009 and the certificate thereon by the Auditor-General

Financial Statement of the County Council of Nyamira for the year ended 30th June 2009 and the certificate thereon by the Auditor-General

Financial Statement of the County Council of Samburu for the year ended 30th June 2009 and the certificate thereon by the Auditor-General

Financial Statement of the Town of Maralal for the year ended 30th June 2009 and the certificate thereon by the Auditor-General

*(By the Assistant Minister for Fisheries Development (Mr. A.C. Mohamed)
on behalf of the Minister for Local Government)*

Financial Statement of the Lake Basin Development Authority for the year ended 30th June 2010 and the certificate thereon by the Auditor-General

*(By the Assistant Minister for Fisheries Development (Mr. A.C. Mohamed)
on behalf of the Minister for Regional Development Authorities)*

Financial Statement of the Kenya Industrial Property Institute for the year ended 30th June 2011 and the certificate thereon by the Auditor-General

*(By the Assistant Minister for Fisheries Development (Mr. A.C. Mohamed)
on behalf of the Minister for Industrialization)*

Financial Statement of the Communications Commission of Kenya for the year ended 30th June 2010 and the certificate thereon by the Auditor-General

*(By the Assistant Minister for Fisheries Development (Mr. A.C. Mohamed)
on behalf of the Minister for Information and Communications)*

Annual Report of the Kenya Agricultural Finance Corporation for the year ended 30th June 2010 and the certificate thereon by the Auditor-General.

Financial Statement of the Kenya Sugar Board for the year ended 30th June 2009 and the certificate thereon by the Auditor-General

Annual Report and Accounts of the Sisal Board of Kenya for the year ended 30th June 2008 and the certificate thereon by the Auditor-General

*(By the Assistant Minister for Fisheries Development
(Mr. A.C. Mohamed) on behalf of the Minister for Agriculture)*

Report of the Joint Committee on Transport, Public Works and Housing, Finance, Planning and Trade and the Budget Committee on the cancellation of tender for the construction of the new terminal at the Jomo Kenyatta International Airport Volumes 1 and II

(By Mr. Were)

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

NOTICES OF MOTION

ADOPTION OF REPORT OF JOINT COMMITTEE ON CANCELLATION OF NEW TERMINAL AT JKIA

Mr. Were: Mr. Temporary Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the report of the Joint Committee on Transport, Public Works and Housing, Finance, Planning and Trade and the Budget Committee on the cancellation of the new terminal at Jomo Kenyatta International Airport Volumes I and II laid on the Table of the House today, Wednesday, 12th September, 2012.

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

ORAL ANSWERS TO QUESTIONS

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, this being a Wednesday, I am inclined to give the first shot to the Prime Minister. You need to read our Standing Orders. Prime Minister, are you ready? The Rt. hon. Prime Minister, you have two Questions. Maybe, you could deal with the first one first; the one by the Member for Ikolomani.

He is not here. Then there is the Member for Yatta. The Rt. hon. Prime Minister, maybe, let us start with the one by the Member for Yatta who is present.

PRIME MINISTER'S TIME

QPM/012

INTIMIDATION OF WITNESSES BY KAA BOARD

Mr. C. Kilonzo asked the Prime Minister:-

(a) Why has the Board of Kenya Airports Authority (KAA) sent the Managing Director (Eng.) Stephen Gichuki on compulsory leave after he appeared before three Joint Committees of Parliament investigating the Airport Greenfield Project?

(b) What action is the Prime Minister taking to ensure that the Board of KAA does not intimidate potential witnesses appearing before Joint Committees of Parliament?

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I have given direction that the Managing Director of KAA should not be harassed by the Board or anybody else. I would like to inform the House that this matter is still being dealt with by the Cabinet and that the Cabinet has not taken a decision on the issue of the Greenfield Project.

The matter was referred to a Committee of the Cabinet which has looked into the matter and is going to report back to the Cabinet tomorrow. I also want to inform the House that it actually acted prematurely by starting an investigation into a matter over which the Executive had not made any decision.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I do not know why the Rt. hon. Prime Minister has totally avoided dealing with my question. My question is, why in the first place? The other question is, what action the Prime Minister is taking to ensure that the Board of Kenya Airports Authority (KAA) does not intimidate potential witnesses appearing before Committees of Parliament. This has happened before.

Mr. Ruto: On a point of order, Mr. Temporary Deputy Speaker, Sir. With due respect to the Rt. hon. Prime Minister, I do not know whether I heard him right saying that Parliament acted prematurely on a matter which the Executive was handling. Is it in order for the Prime Minister to assume that this Parliament is in any way subservient to the Executive, and that Parliament must wait for the Executive to do certain things and not act on its own? Is it in order for the Executive to appear to belittle the role of this Parliament and the independence thereof?

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Ruto, you should have raised that at the time when the Rt. hon. Prime Minister concluded his statement.

Mr. Ruto: I pressed my button and wanted to make it clear. We have just heard him, and it is in the HANSARD. That is a matter that he has to withdraw, otherwise we take it that he belittles Parliament.

The Temporary Deputy Speaker (Mr. Ethuro): You had not finished, Mr. C. Kilonzo? Conclude your question.

Mr. C. Kilonzo: I was just interrupted, Mr. Temporary Deputy Speaker, Sir. I do not know why my good brother is wasting too much energy on that. We all know, in the words of Dr. Nuh, that we are dealing with a wheelbarrow Government.

That said, my question is why the Managing Director was sent on compulsory leave. There is a tendency of the Executive, when somebody appears before a Committee of Parliament, he is sent on compulsory leave. That is like intimidating any potential witnesses appearing before Committees of Parliament, thereby sabotaging the role of Parliament. The issue is not on the Managing Director of the KAA; it is this thing of Government trying to intimidate and threaten witnesses before Committees of Parliament by taking actions like sending them compulsory leave. That is what I want the Prime Minister to address.

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, the Question is, why has the Board of KAA sent the Managing Director on compulsory leave after he appeared before three Joint Committees of Parliament investigating the Airport Greenfield Project. That was the question.

I have said that if that is the reason, I have given the directive that Mr. Gichuki should not be victimized by the Board. Having said that, I did not in any way intend to slight the role of this Parliament or its powers. What I am saying is that the Constitution provides for a clear separation of powers between the Executive, the Legislature and the Judiciary. The Executive has its functions clearly spelt out in the Constitution. Matters which the Executive is still dealing with are purely functions of the Executive. Parliament oversees the Executive. If the Executive makes wrong decisions, then Parliament is within its powers to censure it. But Parliament should not act on a matter which has not been resolved by the Executive. I would say that the issue of the Airport Greenfield Project is still being dealt with by the Cabinet. The Cabinet has not made a decision. So when Parliament invites members of the Executive to appear before it is like Parliament is assuming the role of the Executive. So, this is an issue that requires a clear definition. The matter went before the Cabinet---

Mr. C. Kilonzo: On a point of order, Mr. Temporary Deputy Speaker, Sir. With due respect to the Rt. hon. Prime Minister; when he says that Parliament can only act when the Executive has done its bit, that is totally misguided. Only this morning we were dealing with the case of Tana Delta where Parliament is urging the Government to take action. That is purely because the Government has failed. The reason why Parliament is coming up every now and then to urge the Government is because the Government is not able to move. That is why Dr. Nuh said that we are dealing with a wheelbarrow. The mechanism of a wheelbarrow is very simple; you push it, you leave it here and you must push it again the following day.

Therefore, the Rt. hon. Prime Minister cannot come and try to look down upon the role of Parliament in overseeing, which includes urging the Government in many occasions to act; it has failed to act in many occasions.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, I think these are differences on opinion. The Chair is actually satisfied that the Rt. hon. Prime Minister is saying that the matter has not been concluded by the Government, and Parliament is saying that they cannot wait for it to conclude the matter. I do not think we should go to the debate of whose mandate it is. Let us address the specific issues in this particular matter, and then we will make progress.

Mr. Balala: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Prime Minister to confuse the House? We know that the Greenfield was a project under Vision 2030; so, it is a Government project. The tender that is being questioned is on the

Greenfield project which has already gone through a process which the Executive has taken action on. So, there is no way we can say that the Government has not addressed this issue. The issue is in the public domain and needs to be addressed. If the Government is taking too long, then it is the duty of the House to act, so that there is no victimization of staff. For example, Mr. Gichuki has been victimized and the Board is now being victimized. Then there is power struggle between the Minister, the Prime Minister's Office and Office of the President. Who is in control of this country?

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, the hon. Member who has just spoken was until very recently a member of the Executive, and is privy to a number of other secret Cabinet deliberations.

I want to inform the other hon. Members that there are certain ways in which the Cabinet deals with issues emanating from various line Ministries. They come to the Cabinet through memoranda which are dealt with by the Cabinet. In this particular case, the matter was referred back to a Committee of the Cabinet, which is called "the Infrastructure Committee".

The Committee has investigated this matter and is going to report back to the Cabinet tomorrow. What I am trying to say is that it was premature for this matter to be investigated when no decision had actually been taken by the Cabinet. In other words, the Cabinet has not nullified the tender. The Attorney-General, who appeared before the Committee, was able to share some information with the Committee. What I am trying to say is that it was wrong for the Chief Executive Officer (CEO) of KAA to be victimized over an issue which has not been decided by the Cabinet. That is why I have given instructions that he should not be touched. He should be allowed to continue with his work until the Cabinet has taken a decision on the matter. By extension, I am also saying that since the matter has not been resolved in one way or another, where one can say whether the Government has acted wrongly or rightly, it was premature for Parliament to begin investigation on an issue in which the Cabinet had not finished deliberating. That is what I was trying to say in the spirit of separation of powers between the Executive and the Legislature.

The Temporary Deputy Speaker (Mr. Ethuro): Let us take more questions.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I want to ask the Prime Minister why he thinks that Parliament has actually acted prematurely when the matter has already come into the public domain, particular when the Kenya Airports Authority has taken a decision and a Minister has taken a clearly contrary decision. The Executive itself, in trying to reconcile those two decisions, has taken unduly wrong decision before they can really arrive at a solution. What other mandate would Parliament really have other than to intervene and ensure that a decision is made by the Executive either way, to have this project proceed? If Parliament cannot really intercede, at what level does he imagine that Parliament ought to exercise its oversight responsibility over the Executive?

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, I would like to repeat for the hon. Member to understand; that there are ways in which the Cabinet operates. I have said that this matter was referred to the Infrastructure Committee of the Cabinet. That Committee carried out its own investigations. It set up a taskforce consisting of experts, both technical and legal; to investigate the way this tender was handled and dealt with. It was seeking, for example, the opinion of the Attorney-General. After evaluation of all that information, that taskforce then gave a recommendation to the Committee of the Cabinet. So, that report will be presented to the Cabinet tomorrow. That is the reason I was saying that we need to define how we relate to each other. If the information had been sought from the Office of the Prime Minister,

we would have been able to communicate to the House that the matter is still being dealt with by the Cabinet and, therefore, there was no need for a parallel investigation to be carried out by the House.

Mr. Temporary Deputy Speaker, Sir, the House is very much justified in questioning certain decisions of the Executive, but over this particular issue, the House has acted prematurely because no decision has been taken by the Executive.

Mr. Chepkitony: Mr. Temporary Deputy Speaker, Sir, the Prime Minister has said that Parliament took over the issue of the Greenfield project before the Executive concluded it, yet the Executive was given enough time to explain to the House. The Minister responsible should have explained to the House and satisfied the Speaker, because the Speaker made a ruling based on what was explained by the Government. The Government did not explain the way the Prime Minister has done today and so, the blame is not on this House but on the Executive. Why was that information not given to the Speaker at that time, so that this House could not have formed a Committee to investigate the issue?

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, after the matter had been discussed here, I did have an opportunity to actually draw the Speaker's attention to the fact that this matter was still not concluded. If it was a matter before the Judiciary, we would have said that it was *sub judice*. I do not know how you will deal with an issue which is also being dealt with by the Executive. It is very similar to the one that is being dealt with by the Judiciary. In other words, this issue was still not concluded and, therefore, the Executive could have been blamed for a wrongful decision one way or the other. Therefore, my plea with the House would be to hold their horses until this matter has been deliberated conclusively by the Cabinet and a decision made.

The Temporary Deputy Speaker (Mr. Ethuro): Maybe for the information of the Rt. hon. Prime Minister and hon. Members, the Report which was laid by hon. Were is on this matter. So, the Committees of the House have actually concluded and tabled the Report. It is available to all of you. Let me just take one more, so that we move.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, maybe it is just good for us to get it clearly, because I think hon. Chepkitony has asked a question, but the answer has not come out clearly from the Prime Minister. The reason the three Joint Committees took over this issue is because there was a purported cancellation of a contract, which became public knowledge and an issue of national concern. Therefore, I think whether or not the Committees took it over is not the issue. The issue is that it was taken over, the Speaker ruled, a Joint Committee was formed and there is a Report which we have not yet debated. Could the Prime Minister tell us whether there was a purported cancellation of this contract of the Greenfield Project, because it is the reason the Committees of the House were asked to investigate the matter and subsequently, that has led to the victimization of the Managing Director of the Kenya Airports Authority (KAA)?

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, there was a purported cancellation of this contract that drew the attention of some hon. Members. But following the purported cancellation of the contract, a communication was made to the KAA Board that this matter was being dealt with by the Cabinet and, therefore, the Board had no powers or authority to act on it until the matter was resolved by the Cabinet. Yes, I agree that, that is what probably drew the attention of the House and that is the reason questions were being asked here. But, basically, the Board was informed accordingly and the Minister, of course, was also aware, because he is a Member of the Sub-committee of the Cabinet which was dealing with this particular issue. I want to repeat again that this matter will go to the Cabinet tomorrow and

the conclusion will be known after it has had opportunity to receive and discuss the recommendations of the Committee.

Mr. Ruto: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Prime Minister to avoid answering the Question as clearly put in the Order Paper? Allow me to read it aloud, so that probably he can be refreshed. The Question is:-

“Why has the Board of Kenya Airports Authority sent the Managing Director”---

The Temporary Deputy Speaker (Mr. Ethuro: Order! Order! Hon. Ruto, make your point. That was the issue raised by hon. C. Kilonzo.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, we are prosecuting an irrelevant issue. The Prime Minister is telling us the substance of something else. The Question is: What are the reasons that led to suspension of this Chief Executive Officer (CEO)? Is it because he appeared before the Parliamentary Committees? He has simply told us that he has ordered the reinstatement. We want to hear what the reasons were and not these other matters that are before the Cabinet. Is he in order to take a whole 30 minutes without answering the Question?

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Ruto, you have made your point but it is my understanding that the Prime Minister has answered you directly by saying that he has given directions to the Board to reinstate the Managing Director. Why flog a dead horse? I think that is what the Rt. Hon. Prime Minister is telling the House. Whatever concerns he had, he had already taken them into account by reinstating the CEO.

Rt. hon. Prime Minister, maybe you want to shed more light.

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, you could not be more right than saying that the hon. Member is flogging a dead horse. You usually bury the dead horse and not flog it. I have already stated that---

Hon. Members: Why? Why?

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, hon. Members! The Rt. Hon. Prime Minister must be heard.

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, I need to be heard and not heckled. Hon. Isaac Ruto, Member for Chepalungu, could you, please, be patient and listen to what I am telling you?

The Temporary Deputy Speaker (Mr. Ethuro): Order, Prime Minister! You should ignore those issues that have not been entertained by the Chair.

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, I have said that the Board of the Kenya Airports Authority (KAA) was supposedly disciplining the Chief Executive Officer by ignoring their recommendations to purportedly cancel this contract contrary to the laid down procedures. I have also said that the Board acted without authority because the matter had still not yet been concluded by the Cabinet. Therefore, I have ordered the reinstatement of the Chief executive and I have also given directions that he should not be molested until this matter is concluded by the Government.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I appreciate that the Office of the Prime Minister, like other senior Government Offices, the three top ones, are very busy offices and perhaps because of the responsibilities in those offices, he might not have been privy to what transpired in Parliament. The Cabinet Sub-Committee he is referring to; the Sub-Committee on Infrastructure, was in disagreement with the Minister for Transport and the Permanent Secretary. At the same time, the Secretary to the Cabinet, Mr. Kimemia, complained and there are letters which were tabled in Parliament that the action which was being taken by the PS instructing the

KAA to take action was disrespectful to the entire Cabinet. So we want to know what action he is taken against the PS and the Minister because he was totally disrespectful.

Dr. Nuh: On a point of information!

Mr. C. Kilonzo: I will accept that information, Mr. Temporary Deputy Speaker, Sir. I information is power.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I want to inform my colleague, Mr. C. Kilonzo, that even if there were no disagreements between the PS and the other PS, Mr. Kimemia, the Minister and the Board, the Committees of the House are mandated, according to Standing Order No.198, to investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments. So I want to inform him that Parliament was not acting in vain; that Parliament had not overstepped its mandate; that Parliament was within the limits of what it did and that it did not subvert the Executive.

(Applause)

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! I had already determined that matter, Dr. Nuh, and you did not have to remind us. I am sure we are all literate and we can read the Standing Orders you are referring to. So the issue here is not really the mandate of the said versus the Legislature. Let us ask specific questions on this issue. I also want to remind you that the Report has been tabled and according to our Standing Orders, the areas we are now engaged in could be considered like anticipating debate. So I will only entertain the issues in terms of why the Managing Director (MD) and why certain actions happened. Be specific, Mr. C. Kilonzo.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, as he says, he has given instructions to the Board not to molest the MD. I am also curious whether he can give the same instructions to the PS and the Minister not to keep on molesting the MD because what they are doing is threatening the Board because if the Board does not act, it is kicked out and a new one brought in. The problem is within the Cabinet, the Minister and the PS. That is why there was a complaint by Mr. Kimemia on the PS being disrespectful of the Cabinet itself.

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, let us all agree that there is separation of powers: That the Executive cannot do the functions of this House and neither should this House try to manage the Executive; to show the Executive how to do its functions.

Hon. Members: Oversight!

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

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, oversight is a very different matter from being the Executive. So what we are trying to say is that the Executive has a role and powers conferred on it by the Constitution just like the House has powers conferred on it. The House should not be seen to be intruding---

(Loud consultations)

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Prime Minister! When I communicate to the House, I am communicating to both sides of the House including the Rt. hon. Prime Minister. Let us not revisit that matter because the Standing Orders are very clear.

Indeed, the Executive can proceed and the Legislature can proceed on the same matter because the Standing Orders allow. So I thought you were only pleading that we should be giving the Executive a bit of time to do the initial work. Just respond to the specifics of the question.

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, the Legislature should not tell the Executive how to discipline its officers, how it should deal with its PSs or how it should deal with other officers within the Executive just like we do not tell Parliament how to deal with Members of Parliament on how to handle issues which are purely legislative. I was just saying that there was clear separation of powers in this particular matter but Parliament can make recommendations. That is why a number of Motions are all the times framed such that Parliament recommends to the Executive rather than directing the Executive to do its own functions; what the Executive is mandated to do under the Constitution just like we do not direct the Judiciary. So the time has come for us to define these boundaries clearly so that we do not prey into the other areas which are purely of the Executive.

The Temporary Deputy Speaker (Mr. Ethuro): Except, Mr. Prime Minister, when Parliament passes the law which becomes an Act, is that not a direction from Parliament on the Executive to implement? But that is not for the Chair; it is just food for thought.

We will now go to the next Question.

Question No.QPM/011

VISIT BY US SECRETARY OF STATE, HILLARY CLINTON

(Dr. Khalwale) to ask the Prime Minister:-

Could the Prime Minister address the House on the matter of the recent visit by the US Secretary of State, Hillary Clinton?

The Temporary Deputy Speaker (Mr. Ethuro): Dr. Khalwale is not here, so the Question is dropped.

(Question dropped)

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, if you look at your Standing Order No.40 which is Prime Minister's Time, you will appreciate that it says: "Notwithstanding Standing Order No.36 (Order of Proceedings), there shall be time, to be designated the Prime Minister's Time, commencing at 3.00 p.m. every Wednesday." I wanted to be faithful to that particular Standing Order because I have had occasion to refer to the same severally. That is why, Mr. Prime Minister, by the time you came, we were already within your time and so we allowed you have the first bite on Questions. So we will go back on the Questions on the Order Paper.

QUESTIONS BY PRIVATE NOTICE

MEASURES TO AVERT IMMINENT SHORTAGE OF MAIZE/WHEAT

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

(a) Is the Minister aware that there is a looming shortage of maize and wheat due to the expected poor harvests during the 2012 long-rains season?

(b) What are the main causes of the expected maize and wheat poor harvests?

(c) What short, medium and long-term measures has the Ministry put in place to ensure that adequate or surplus maize and wheat is realized in the country in future?

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

(a) My Ministry is aware that there will be a slight drop in maize harvest during the year 2012, long rains season, from the projected 29,991,748 bags to 28,991,748 bags. However, there is no anticipated shortage as the production will be completed by the forthcoming short rain production and the cross-border trade. Wheat yields are expected to increase from 2,180,8046 to 3,688,991 bags harvested over the same period last year.

(b) The drop in maize harvest has been occasioned by the following: Instances of disease and pests such as emerging maize lethal necrotic disease that has affected about 64,115 hectares, declining of soil fertility, erratic rainfall patterns causing poor germination in some cases and cross-harvest loses in others.

(c) The Minister together with other stakeholders will undertake the following measures: Carrying out maize varieties trials within the affected areas with a view to coming up with tolerant varieties to the disease; designing of implementation crop rotation schedules for all regions to break the disease cycle; availing subsidized fertilizers through bulk purchasing; providing maize seed and fertilizer for one acre to farmers in programme areas; capacity building along value chain for disease and pest management; and advising farmers to apply for seasonal credit from AFC for maize and wheat production.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members. Before I allow more questions, I have a Communication to make.

There will be a Speaker's Kamkunji tomorrow Thursday 13th September, 2012 at 11.00 a.m. to deliberate on the Constitution of Kenya (Amendment) Bill, 2011. All Members are expected to be in attendance.

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, while I want to thank the Assistant Minister for the answer he has given, I want him to elaborate further. He said that there will be a slight drop in the production of maize in this country by less than a million bags. He also clearly said in his answer that 64,000 hectares of maize that was planted was destroyed by the disease. How can that be possible?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, the areas where the crop was affected--- It is not that some people did not harvest. Rift Valley Province was the most affected area with 43,000 hectares and the crop lost was between 60 per cent and 90 per cent. In Nyanza Province, 9,000 hectares were affected and the crop lost was between 80 per cent and 90 per cent. In Eastern Province 10,000 hectares were affected and the crop lost was between 10 per cent and 80 per cent. In Central Province, there was 1,435 hectares and the loss was about 10 per cent to 60 per cent. If you take the average, the expected crop harvest in some of these areas was supposed to be 15 bags per hectares. If you take 64,115 multiply by 15, the product is 991,000 hectares. If you subtract that from what we expected to harvest, the difference is below one million bags.

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

[Mr. Deputy Speaker took the Chair]

Dr. Otichilo: Mr. Deputy Speaker, Sir, is the Assistant Minister in order to mislead this House by using acres and hectares? He is now using acres. For your information, one hectare is equal to 2.5 acres.

Mr. Deputy Speaker: Are you confusing acres and hectares?

Mr. Ndambuki: Mr. Deputy Speaker, Sir, what I was talking about is in hectares and not acres.

Mr. Ruto: Mr. Deputy Speaker, Sir, I am surprised that the Ministry does not even understand simple arithmetic. With 64,000 hectares each producing 15 bags, you quickly get 2.4 million bags. A loss of 2.4 million bags is peanuts to a Ministry that normally likes importing maize. In the whole of South Rift, there is no food. The hon. Minister, my good elder sister, visited the area although she made some remarks that were not very popular. She was telling parents that if you are affected by malaria, you do not expect the Government to compensate you. I do not know whether if we lose maize and there is total hunger in the area, this Government will care.

Mr. Deputy Speaker, Sir, could the Assistant Minister tell us what measures they have put in place to supply food to the whole region where people are now hungry and yet it is raining. There is a total maize failure and yet it is staple food. Are you supplying the other balance of maize to the farmers? There is complete maize failure in Narok, Bomet, Kericho, Trans Mara and South Nyanza. I understand now that in her area of Nandi, there is the same problem.

The Minister for Agriculture (Dr. Kosgey): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to impute improper motive on matters that he purports were said by myself when he was not there and I did not say those things.

Mr. Deputy Speaker: What did he say? The Chair must have been busy consulting with somebody here.

The Minister for Agriculture (Dr. Kosgey): He made a statement to the effect that I said, while visiting the Southern Rift that if somebody catches Malaria are you going to ask Government--- First of all, that is not my language. Secondly, I did not say that. I protest in the strongest terms possible. If he wants to bring a particular Question on those issues, I suggest that he does so and I will respond to him appropriately.

Mr. Deputy Speaker: Hon. Ruto, could you, please, confine yourself to the matters on the Order Paper which is Question No.1 by Private Notice and not anything extraneous? What do you wish to do? I have not asked you to apologize. Why do you want to apologize if you have not been told to apologize?

Mr. Ruto: Mr. Deputy Speaker, Sir, my question is: What measures is the Government taking to ensure that the people who are now hungry in the South Rift are given food?

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Deputy Speaker, Sir, that question should be directed to the Ministry of State for Special Programmes because they are the ones who should be taking care of those who require food at the moment.

Mr. Deputy Speaker: Indeed, the Ministry of Agriculture is involved in production, but in distribution and making sure that every Kenyan has food that is the function of the Ministry of Special Programmes.

Dr. Otichilo: Mr. Deputy Speaker, Sir, in all the actions that the Assistant Minister has mentioned that he will take to ensure that this country is food sufficient, he has not indicated that the use of biotechnology is very important in the production of food. Countries like China and India have been able to produce their own food because of using biotechnology. How come this Government and this Ministry are not ready to embrace the new biotechnology techniques for the production of food? They still want to remain in the old way of producing food using a hoe?

Mr. Ndambuki: Mr. Deputy Speaker, Sir, I want to tell the hon. Member that we are not using the old method. The Ministry has already taken the initiative to make sure that this country has enough food. For example, the Ministry or the Government will start supplying subsidized fertilizer which is already in this country. Because we want to break the cycle of the disease, we are giving farmers planting seed in the areas which were affected. The Ministry will spend almost Kshs0.5 billion to provide subsidized seeds to the farmers---

Mr. Deputy Speaker: The hon. Questioner is asking why you are not able to adopt biotechnology. Do not answer a question that you have not been asked. Proceed on the basis of that. Why can you not enhance agricultural products in the country by using bio-technology? If you have a problem with that, say that you will answer the question another day or give it to the Minister seated next to you.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, we are using the new technology.

Mr. Deputy Speaker: Bio-technology? Be careful because somebody who is an expert in that will ask a question!

Yes, Dr. Otichilo.

Dr. Otichilo: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House by saying that by supplying certified seeds and fertilizer that is biotechnology?

(Laughter)

The Minister for Agriculture (Dr. Kosgei): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Do you wish to inform your colleague, Dr. Sally Kosgei? He has an issue, so you better support him.

The Minister for Agriculture (Dr. Kosgei): Thank you, Mr. Deputy Speaker, Sir. You will recall that in another capacity, I was the one who brought the Bio-Safety Bill to this House. There was a lot of resistance but fortunately, the House passed it. So, we cannot introduce it overnight. Last Friday, we were busy using the universities to introduce farmers to biotechnology. So, it is not as if we are not trying it but it has to be done very carefully using the research institutions that we have. You will also be aware that in view of the drought, we have used the research institutions to get seeds that are able to resist drought. These are better yielding seeds. You will find this in every sector of agriculture now. If you want us to bring details of this, we are ready to do so but it is not true to say that we are totally unaware of what biotechnology is all about. We are trying to promote it but like everything else, you cannot ram it down the throat of farmers without education.

Mr. Deputy Speaker: You have made your point very eloquently. I am sure that the hon. Questioner is satisfied.

Let us move on to Question No.2 by Private Notice.

PROTECTION OF SAMBURU EAST WOMEN EMPOWERMENT
FORUM FROM STATE INTERFERENCE

Mr. Letimalo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Gender, Children and Social Development the following Question by Private Notice.

(a) Could the Minister clarify whether or not a women group namely, Samburu East Women Empowerment Forum (SEWEF), has ever held elections for office bearers?

(b) Why did the Provincial Administration in Samburu East District stop the forum from holding its elections on 25th August, 2012 at Wamba District Headquarters?

(c) Why did the District Officer, (Mr. Okoth) forcefully demand a cheque from the forum's Secretary and what measures will the Minister take to ensure that the group conducts the election without interference from the Provincial Administration?

The Assistant Minister for Gender, Children and Social Development (Mr. Keya): Mr. Deputy Speaker, Sir, I request for the indulgence of the Chair to answer this Question later because it was received late yesterday and it involves two Ministries. Although I undertake to answer it, I would like to have time to go and enquire something from the other Ministry.

Mr. Deputy Speaker: How much more time do you want?

The Assistant Minister for Gender, Children and Social Development (Mr. Keya): One week, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: One week for a Question by Private Notice? Ideally, it should be answered within 48 hours. You can only ask for, at the very most, one day until the next time that the House sits. The Chair directs that you bring this answer on Tuesday, next week. Are you okay with that hon. Letimalo?

Mr. Letimalo: Mr. Deputy Speaker, Sir, I have no objection to that. However, I only want to request the Assistant Minister to tell the Provincial Administration and the police to stop harassing women because these are innocent rural women who are only interested in elections. So, the Provincial Administration should not be taking sides.

Mr. Deputy Speaker: Can you give that undertaking in the meantime in line with collective responsibility? I know that you are not the Minister of State for Provincial Administration and Internal Security but you have a common responsibility as a Government.

The Assistant Minister for Gender, Children and Social Development (Mr. Keya): I will do that, Mr. Deputy Speaker, Sir.

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

(Question deferred)

Hon. Members, indeed, this is a Wednesday and ordinarily, on Wednesdays, we do not have many Questions. There are a few substantive businesses of the House by the Government that have to be disposed of. The Chair directs that Questions Nos.1661, 1229, 1605, 1780, 1356, 1719, 1653, 1709 and 1736 be deferred to Tuesday, Wednesday and Thursday, next week on equal measure.

ORAL ANSWERS TO QUESTIONS

Question No.1661

STALLING OF CONSTRUCTION OF
CLASSROOMS UNDER KESP PROJECT

(Question deferred)

Question No.1229

GAZETTEMMENT OF KORA NATIONAL RESERVE

(Question deferred)

Question No.1605

LACK OF POLICE STATION IN LAFEY DISTRICT

(Question deferred)

Question No.1780

AWARD OF TENDER FOR REHABILITATION
OF LOWER SIO IRRIGATION SCHEME

(Question deferred)

Question No.1356

AWARD OF TENDER FOR CONSTRUCTION
OF MWINGI-TSEIKURU ROAD

(Question deferred)

Question No.1719

NON-COMPLETION OF KIRIGITI-KIBICHOI ROAD

(Question deferred)

Question No.1653

PROTECTION OF NAIROBI CITY COUNCIL
PROPERTY FROM IMMINENT DISPOSAL

(Question deferred)

Question No.1709

LIST OF BENEFICIARIES ISSUED WITH LETTERS
OF ALLOTMENT/TITLE DEEDS IN LAMU COUNTY

(Question deferred)

Question No.1736

STALLING OF ITEN-KAPSOWAR ROAD

(Question deferred)

Mr. Balala: On a point of order, Mr. Deputy Speaker, Sir. With regard to Question 1709, I had requested the Minister to table the list. Can we get the list prior to him answering the Question so that we can scrutinize it?

Mr. Deputy Speaker: This is a Question that had been asked in House before!

Mr. Balala: Yes, but it was deferred until today, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: When it was deferred, was it answered unsatisfactorily?

Mr. Balala: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Then why do you assume that the--- Has he furnished you with a copy of the written answer?

Mr. Balala: No, he has not furnished me with a copy of the written answer.

Mr. Deputy Speaker: The Chair directs that hon. Questioners must have copies of the written answers to all Ordinary Questions or Questions by Private Notice within five days.

Mr. Balala: Mr. Deputy Speaker, Sir, I have a copy of the written answer but I do not have the list and the map of the area. So, I have a partial answer and I think it will be important to table the list. We can scrutinize the list and then interrogate the Minister.

Mr. Deputy Speaker: Where is the Minister for Lands, the Leader of Government Business or his deputy?

Hon. Wakoli Bifwoli, why did the Minister not give the hon. Questioner the list because the Question, indeed, asks for a list?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, we have agreed with the Questioner that I will give him the list tomorrow.

Mr. Deputy Speaker: Fair enough. It is so directed! Hon. Balala, you can proceed and get this list so that by the time this Question appears on the Order Paper, next week you have sufficient information to prosecute it adequately.

MINISTERIAL STATEMENT

STRIKE BY MEDICAL DOCTORS

Mr. Deputy Speaker: We will just take one very brief Statement by hon. Kazungu, the Assistant Minister for Medical Services. Do not read a very long Statement! You have to be precise.

Proceed. You know the rules of the House.

The Assistant Minister for Medical Services (Mr. Kazungu): Mr. Deputy Speaker, Sir, the Ministry of Medical Services wishes to make it clear that the intended Doctors' Strike which the Kenya Medical Practitioners, Pharmacists and Dentists Union intends to call tomorrow, Thursday, 13th September, 2012, is ill advised and cannot be justified. Should it take place, it will be in violation of a return-to-work formula signed between the Minister and the Union under which the Ministry was to fulfill a number of recommendations which it has faithfully done.

From the outset, I wish to say that the union's current demand that the Government needs to pay some allowance to self-sponsored Masters Programme students at Kenyatta National Hospital and Moi Teaching and Referral Hospital cannot be met. It is important to know that on admission, all self-sponsored post-graduate students make a commitment to pay school fees, find suitable accommodation and meet all financial commitments to the university and for themselves and abide to all universities regulations. This was not one of the issues agreed upon in the return to work formula. What is more, the Government is under no obligation to pay self-sponsored students as they are not on the payroll. All the Government-sponsored students at the two hospitals have been getting their allowances due to them regularly.

In the return-to-work formula which both parties signed in December, 2011, a number of recommendations were made which the Ministry undertook to honour.

I am glad to inform you that we have fulfilled all the recommendations which include: doctors, dentists and pharmacists have been getting their call allowance amounting to Kshs30,000 with effect from 1st December, 2011.

Mr. Deputy Speaker, Sir, secondly, they have also been paid extraneous allowance ranging from Kshs30,000 to Kshs40,000 depending on their rank and duty station. The first instalment was paid in December, 2011, and the second one was paid in July, 2012. Each doctor has received extra allowance amounting to between Kshs30,000 to Kshs70,000 with effect from 1st December, 2011.

The Government released a total of Kshs113 million to cater for their promotions. All eligible officers have since been promoted as per Government regulations. The Government made available a total of Kshs181 million for training and settling of training debts. University fees for first, second and third year students should be paid in the academic year 2012/2013.

The Ministry has so far employed 57 doctors and after advertising posts for 200 doctors, the rest will be recruited soon.

Mr. Deputy Speaker, Sir, lastly the Government is in the process of purchasing modern equipment and rehabilitating old facilities in a bid to improve the work environment in hospitals. In light of the foregoing, it is obvious the union is not acting in good faith in calling for the strike. The Ministry is appealing to all the doctors, dentists and pharmacists as well as all the other health workers not to be misled into taking part in an illegal strike. All the health workers need to put the interest of patients first and not to participate in an industrial action that could lead to loss of lives.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: I will take a few clarifications then the Assistant Minister will respond.

Dr. Nuh: Mr. Deputy Speaker, Sir, since I was in school and to date when I am a Member of Parliament, I have never heard of any legal strike from the Government. Every other strike for the last 20 to 30 years has been illegal. So, referring to a strike as illegal when we know all strikes according to the Government are illegal is irrelevant. Just talk about the strike.

But more importantly, the question I want to put across is that since the strike by the interns or the registrars has resulted in a shortage that has now started biting so much and the ones suffering are the patients, what mechanisms has the Ministry put in place to ensure that the resultant shortage of doctors on strike is filled with immediate effect so that the patients do not lose at the end of the day?

Mr. Yakub: Mr. Deputy Speaker, Sir, I wish to get clarification from the Assistant Minister on the Kenyatta National Hospital, on the registrars---

*(Mr. Mureithi crossed the Floor
without bowing at the Bar)*

Mr. Deputy Speaker: Order, Mr. Mureithi. You bow to the bar. You do not just cross the Floor.

(Mr. Mureithi bowed at the Bar)

Mr. Yakub: Mr. Temporary Deputy Speaker, Sir, I wish to get one clarification from the Assistant Minister especially on registrars from Kenyatta National Hospital. Could the Assistant Minister clarify to this House whether these registrars when they are on duty, do they charge the patients especially on consultations and operations like caesarian cases or not? Could the Assistant Minister clarify?

Mr. Njuguna: Mr. Deputy Speaker, Sir, the looming strike is really going to affect the lives of patients in these hospitals. What new efforts is the Ministry taking to avert this very imminent strike?

Mr. Langat: Mr. Deputy Speaker, Sir, the Assistant Minister just said that the doctors who are about to strike will be acting in bad faith. Could the Assistant Minister confirm whether the Government has also been acting in good faith because we know that the teachers are striking because the Government has never acted in good faith? Could the Assistant Minister confirm whether the Government has been faithful to what was agreed upon between the Government and the doctors?

Mr. Ochieng: Mr. Deputy Speaker, Sir, I am a worried person especially when it comes to this strike. Could the Assistant Minister tell us if the doctors actually execute their threat, what measures has the Ministry put in place to make sure that patients do not suffer in this process?

The Assistant Minister for Medical Services (Mr. Kambi): Mr. Temporary Deputy Speaker, Sir, first of all, I would like to start with Dr. Nuh's question. The reason why this strike is illegal is that we did have an understanding last year at the time when the doctors were on strike and ironed out all those issues. Indeed, the Government did its part and we did pay them all the allowances as demanded. So, it is an illegal strike because we did our part as a Government but they are not doing their part as doctors.

Mr. Yakub asked whether patients are paying for the consultancy fees at the Kenyatta National Hospital. The registrars are actually doing their Masters Degree and they are doing their practicals at the hospital. In fact, they are supposed to pay us because we have allowed them to

use our facilities to do their practicals. So, the patients do not pay. I have asked Kenyatta National Hospital that if they really do need these private registrars then they should sit down and negotiate with them. but as a Government we cannot pay them since they are not Government employees. There is no way we are going to pay them because before we do that, that must be passed by this House.

Regarding the efforts being made by the Government, we have our own registrars and doctors. We have recalled most of them who are on leave and we have told them that it is illegal for the Government-sponsored registrars to join this strike since their fees are being met by the very Government.

Lastly, the private registrars are not sponsored by the Government. They are self-sponsored. We do have our own Government registrars or those doctors who are doing their Masters. We have already paid their training fees to the various universities.

Mr. Deputy Speaker, Sir, I understand the problem is that most of the doctors had borrowed money from banks but when we received the money from the Ministry of Finance, we refunded the monies they had spent in the various universities in order for them to get their certificates. So, as Government, we have had several meetings. There is no need for the strike since all the payments that have been pending have been met by the Government.

Mr. Deputy Speaker: Assistant Minister, you have not responded to the clarification sought by hon. Ochieng, have you? What was it, hon. Ochieng, just to refresh his mind?

Mr. Ochieng: Mr. Deputy Speaker, Sir, I wanted to know, if the doctors execute their strike, how the Ministry will take care of patients in hospitals.

Mr. Deputy Speaker: Assistant Minister, what are your contingency plans, if the doctors maintain their strike in the way it is?

The Assistant Minister for Medical Services (Mr. Kambi): Mr. Deputy Speaker, Sir, as I said, the bone of contention is that most of the Government registrars want to join the private registrars. We have told them that since the Government has been paying for those doctors who are doing their Masters Degrees courses, there is no need for them to go to the streets. If they do so, it will be unfortunate. We have recalled all the doctors who are on leave. We also have the private hospitals and the Government registrars. So, there is no cause for alarm. Everything is under control.

Mr. Deputy Speaker: Fair enough. Yes, hon. Abdul Bahari.

POINTS OF ORDER

MEASURES TO ALLEVIATE POSSIBLE ADVERSE EFFECTS OF ENHANCED SHORT RAINS

Mr. Bahari: Mr. Deputy Speaker, Sir, I wish to seek a Ministerial Statement from the Office of the Prime Minister regarding the possible consequences of enhanced rainfall. Information emanating from the Meteorological Department indicates that the short rains are going to be enhanced with obvious consequences, perhaps on the lower and upper parts of the country. In the Statement, I would like the Prime Minister to tell us:-

- (a) What are the likely adverse effects of the expected enhanced rainfall.
- (b) What measures the Government will immediately put in place to alleviate possible adverse consequences of the expected enhanced rainfall.

Mr. Deputy Speaker, Sir, this matter is urgent. I will appreciate if they can respond very quickly.

Mr. Deputy Speaker: I can see that the Prime Minister is not in. Deputy Leader of Government, you should be listening to these issues. When will we get the Ministerial Statement on the matter raised by hon. Abdul Bahari, which is directed to the Prime Minister? Hon. Bahari has basically asked what measures have been put in place, given that the expected short rains are likely to be much heavier than usual.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, we can have it issued within the framework of the Prime Minister's Time next Wednesday.

Mr. Deputy Speaker: Fair enough. It is so directed.
Hon. Sofia, what is your point of order?

RETRENCHMENT OF STAFF BY KENYA AIRWAYS

Mrs. Noor: Mr. Deputy Speaker, Sir, I sought a Ministerial Statement from the Minister for Transport on the Kenya Airways retrenchment programme. I am seeking your direction as to when I can get the answers to my questions.

Mr. Deputy Speaker: When did the Speaker direct the Minister to make the Ministerial Statement available?

Mrs. Noor: It was on Tuesday, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: When was the Minister for Transport supposed to make the Ministerial Statement available? Hon. Kimunya, what happened to the Ministerial Statement?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I have, indeed, prepared the Ministerial Statement. I even brought it yesterday. It is with my Assistant Minister, who is ready to issue it. He can issue it tomorrow since it has already been overtaken by events.

Mr. Deputy Speaker: Given the urgency of the matter, the Chair directs that it be issued tomorrow.

Hon. Mututho, what is your point of order?

SUSPENSION OF THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL

Mr. Mututho: Mr. Deputy Speaker, Sir, during the beginning of the business of the House yesterday, hon. Kapondi rose and objected that the Alcoholic Drinks Control (Amendment) Bill should not be read the First time. During that time, you ruled that if the Bill was exactly the same, in content or otherwise, it should not be read the First time. First and foremost, the Bill is not exactly the same.

Mr. Deputy Speaker: Hon. Mututho, it is for the Chair to determine whether those two Bills are similar, in the manner that the Chair defined yesterday. The matter is already before the House Business Committee. There is some work going on. The Chair is going to give Communication on the same tomorrow. The Chair should have given the Communication today, but there is some unfinished business.

What is your point of order, hon. Shabesh?

LOBBYING OF MPS ON MUTUTHO BILL THROUGH TEXT MESSAGES

Mrs. Shebesh: Mr. Deputy Speaker, Sir, it is on the same issue. I am not sure whether I am the only one who has gotten these messages, but I suspect that I am not. There are text messages of lobbying by a senior civil servant on the particular Bill, explaining why it should not be supported. I just want clear guidance as to why we get text messages, telling us to support issues one way or another when we do not sit in Government. We have never met some of these people on a one-on-one basis. They do not understand our ideologies or our thinking on issues.

I got a text message from a senior civil servant, asking me not to support the particular Bill brought here by hon. Mututho, which, of course, I cannot comply with because I am totally in support of Mututho laws. So, can you give us guidance as to why we get these text messages? We do not sit in Cabinet. Neither do we intend to sit there.

Mr. Deputy Speaker: Order, hon. Shabesh! Ordinarily, you would go and share such things with the Chair, in his or her Chambers. In any case, this is not a matter which you raise in this manner and ambush the Chair on it. On any matter that concerns welfare, freedom and breaking of the rules outside this House, you can approach me in my Chambers, and we will deal with it.

In any case, there are serious regulations on when you can even do lobbying outside this House. On a matter that is before the House, there are certain restrictions. Once a matter is before the House, it is left entirely to Members of Parliament to determine. So, you will have to share those issues with me at an appropriate time. You can approach me in my office and then I will make an appropriate Communication on the same.

What is your point of order, hon. Ogindo?

Mr. Ogindo: Mr. Deputy Speaker, Sir, on 4th September, 2012, hon. James Rege sought a Ministerial Statement from the Minister for Environment and Natural Resources, and the Deputy Leader of Government Business undertook to ensure that the Statement is delivered today. It was in connection with the water hyacinth that is choking Lake Victoria. It is an issue which is really threatening the lives of the people living around Lake Victoria.

Mr. Deputy Speaker: Where is hon. Rege?

Mr. Ogindo: Mr. Deputy Speaker, Sir, he is on official parliamentary business abroad.

Mr. Deputy Speaker: We have a tradition in this House. We deal with Ministerial Statements sought by hon. Members when those hon. Members are in the House. So, as soon as he comes back to the country, you can draw the attention of the Chair to that fact. I am sure that the Minister will be in a position to issue the Statement.

Mr. Ogindo: Mr. Deputy Speaker, Sir, due to the urgency of the matter, he asked me to hold brief for him.

Mr. Deputy Speaker: Order! Order! Even then, you share that position with the Chair before coming to the Floor of the House. You show a written proof, in the form of a letter, indicating that he has asked you to ask a Question on his behalf or prosecute and interrogate a Ministerial Statement on his behalf. Nonetheless, this is not a matter you determine on the Floor of the House in the manner you want to do now. We can deal with it at an appropriate moment, once you have followed the procedure.

Next Order!

BILLS

Second Reading

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL

(The Minister for Finance on 11.9.2012)

(Resumption of Debate interrupted on 11.9.2012)

Mr. Deputy Speaker: Who was contributing? Yes, hon. M’Mithiaru.

Mr. M’Mithiaru: Thank you, Mr. Deputy Speaker, Sir, for allowing me to continue with my contribution to the Central Bank of Kenya (Amendment) Bill. The House is already aware that the amendment to the Central Bank of Kenya Act was actually initiated by Parliament through the Finance Act of 2012. But there were no sufficient consultations and the affected entities were not involved. As a result, it has even affected the functionality of the Central Bank of Kenya (CBK).

Mr. Deputy Speaker, Sir, the House is already aware that a number of amendments were made to the Finance Bill. They were making a sweeping change towards the operation of the bank itself – an area that really requires proper consultations with all the stakeholders; the CBK, the Treasury, the public and the banking sector. So, as a result, there has been a lacuna in the operations of the CBK itself. That is because the Governor now is no longer the Chairman of the Board. The Board has not been able to meet to deliberate on the operations of the banking sector. That has really impacted negatively on the operational independence and efficiency of the CBK.

Mr. Deputy Speaker, Sir, we are also aware that, currently, the Governor is the Chairman of the Monetary Policy Committee – the Committee that gives policy direction on the interest rates and other monetary issues. Now, the proposal to have a non-executive chairman is going to cause some kind of friction between those two officers. So, as a result, it will now be the Chair of the Monetary Policy Committee and also the Chair of the Board of CBK. I am not against the Chair even being non-executive. But I am only against the process that we have used because we cannot do this in piecemeal. Let us do a proper review of the Central Bank of Kenya Act so that it can be able to address all the areas in totality.

Mr. Deputy Speaker, Sir, we are also aware that when it comes to the operations of the banking sector, there are certain areas that require to be acted upon expeditiously. To wait until a board is constituted to act may really cause a lot of havoc. For example, if there is any delay in the interventions in the banking sector when there is a crisis, it can cause a lot of delay, indeed. Even acting conventionally, we know that even worldwide, there are over 70 central banks where the Governor is the Chair. For example, to shape our own operations, in the Central Reserve Bank of New York, the President is actually the Chair of the Board. In Africa, we have the South African Reserve Bank where the Chair of the Board is also the Governor.

So, let us not review this Act in piecemeal, so that we can be able to address the issues in totality. I know that there are some other central banks in the world that have what we call non-executive chairmen like New Zealand. But New Zealand has got its own unique operations; something akin to what we have in Kenya today in terms of parastatals.

Mr. Deputy Speaker, Sir, so, what I would really wish to urge this House is that when it comes to the Committee of the Whole House, we should look at the current Constitution, Article 231(2) (3). That Article talks about the functions of CBK and how it should operate. If you may allow me to read a little bit of it, it says:-

“(2) The Central Bank of Kenya shall be responsible for formulating monetary policy, promoting price stability, issuing currency and performing other functions conferred on it by an Act of Parliament.

Mr. Deputy Speaker, Sir, Article 231(3) continues to say:-

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

Mr. Deputy Speaker, Sir, Article 231(5) says:-

“An Act of Parliament shall provide for the composition, powers, functions and operations of the Central Bank of Kenya.”

So, if the Act is supposed to be enacted, then all the machinery must be followed to do that, including having public participation to ensure that we conform to the new Constitution. So, having reviewing the CBK Act in piecemeal, we are not solving the problem. We have not even looked at the area where the CBK Act interfaces with the Banking Act and the Micro-Finance Act. Those are all players within the industry.

Mr. Deputy Speaker, Sir, so, I urge the House that, as we look forward to having a non-executive Governor of CBK, this time round, let us restore the position as it was and then start a process where we properly involve everybody and we have a complete review of the CBK Act.

With those remarks, I support the amendments on the issues of the appointment of the two deputy Governors but, on the issue of the Governor being non-executive as of now without the review of the entire Act, I will not support that. I will bring amendments to that effect.

Mr. Mungatana: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity also to give my views on the proposed amendments to the CBK Act. I am wondering why the Minister chose to bring these kinds of amendments and what the purpose for these amendment is. If you look at the Memorandum of Objects and Reasons for these proposed amendments, the Minister wants to provide for a procedure for the appointment of the chairperson of the board and set out the working relationship with the Governor and Deputy Governors. Then down there he says:-

“The enactment of this Bill will occasion additional expenditure of public funds which shall be provided through the Estimates.”

Mr. Deputy Speaker, Sir, it is not making sense to me! Even having heard the input of hon. M’Mithiaru who is a very respected and long standing banker in this House, why are we creating two powerful offices at CBK? I am asking this because the Minister’s proposed amendment in New Clause 2(a) is creating a chairperson who is going to be appointed by the President through a transparent and competitive process, and with parliamentary approval. He is going to hold office for four years with eligibility for reappointment for one further term. That is the chairperson of the board of CBK.

Then, again, under the proposed amendment in Clause 4 of this Act, we are also creating the Governor who will be the chief executive officer of the bank. Again, his appointment also is subject to a parliamentary approval against the President who is appointing the same person. It will also be through a transparent and competitive process and with the approval of Parliament. Now, the question I am asking myself is: What is it that the chairperson will do after he or she has been given that kind of office with parliamentary approval that cannot be done by the Governor of the CBK?

Mr. Deputy Speaker, Sir, are we just creating positions for the sake of creating positions? Are we just incurring additional expenditure to the Exchequer because there is an assumption that there is money at the CBK? There is no functionality that has been attached to this new

powerful office. The chairperson is going to be appointed by the President through parliamentary approval, just the same way as the Governor of CBK.

Recently we had issues with the currency in Kenya. We had issues with how the shilling had been fluctuating. We even had a parliamentary committee here which showed the magnitude of the problems the Central Bank of Kenya (CBK) was going through. Then we had the executives being critical. Whatever information the Governor of CBK gave, he was critical. People were able to say that the final authority in this matter has said this or that. There was a time the Governor issued a statement that raised eyebrows in this House, concerning certain banks. We were able to pinpoint how the final responsible authority ought to have acted or not to have acted. We were able to say that this is the person who should take responsibility. Now, we are creating another person, equally powerful. So, who are we going to be holding responsible? Who is going to convince me why we are creating this office? Are we just creating offices because some political cronies are going on retirement and we are looking for jobs for them? What is this person going to be doing to supervise the Governor? If we have said that the Governor himself--- We have even defined a fit and proper person in this amendment to mean a person possessing all the attributes taken into account in determining the suitability of a person to be appointed as Governor, including the person's general probity, competence and soundness of judgement for the fulfillment of the responsibility of office and the diligence with which that person is likely to fulfill those responsibilities.

Mr. Deputy Speaker, Sir, we are appointing a person who is going through a parliamentary process called the Governor. We have reinforced this requirement of fit and proper into this Act. We have said that he will be a person of very high competence and soundness of judgement. This is not going to be an ordinary office. It is not just an elected office and we are not just looking at academic qualifications. I was going to ask this House, after we have gone through all that process and have created this person; he is now the Governor, why do we not give him the proper responsibilities? Why are we creating a chairperson to chair the Board again, yet this chairperson in this proposed amendment is not subject to this condition of being fit and proper? This chairperson is just supposed to be appointed by the President and approved by Parliament. He is not supposed to be in this category of fit and proper. Fit and proper is only applying to the Governor and the two Deputy Governors of the CBK. So, why is this Parliament, as Mr. M'Mithiaru is asking and I am also asking aloud, having piecemeal amendments just to create a position? I have a feeling that somebody has already been identified and is waiting in the wings to chair the Board of the CBK as soon as we approve these amendments. This is not the House of Parliament for rubber stamping decisions that have been reached somewhere in the background.

The Minister for Transport (Mr. Kimunya): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Who do you want to inform?

The Minister for Transport (Mr. Kimunya): The hon. Member for Garsen.

Mr. Mungatana: No, Mr. Deputy Speaker, Sir.

The Minister for Transport (Mr. Kimunya): He should because it will help him.

Mr. Deputy Speaker: He does not need your information. You can use it at the right moment.

Mr. Mungatana: Mr. Deputy Speaker, Sir, what I am saying, and I am saying it here, loud and clear, is let us not waste public funds. If this amendment is creating more stringent measures for the Governor, let us appoint the correct person. Let him go through the process in

Parliament, but let us not create unnecessary positions. I have always argued against creating two centres of power. I think this is a clear case of two centres of power. Let us deal with a Governor. Let us say that if Parliament made a mistake in choosing or approving the Governor, then Parliament will take responsibility and take corrective measures. But let us not have two people approved at the same time.

I really do not understand this; if we are going to amend the CBK Act, I expect that it will be a substantive amendment of the Act, and it will come through the Committee on Finance, Planning and Trade, there will be a lot of work, there will be serious consultations and we will have met the Governor and other stakeholders within the monetary sector to make presentations to Parliament. The whole country will be aware that we are going through a certain process, so that we can make this Act as effective as possible.

Mr. Deputy Speaker, Sir, we are dealing with the biggest economy in the entire East African region. So, why are we doing it this way? Why are we doing it piecemeal? How can we be amending the CBK Act, yet Members of Parliament are really clearly not aware of it; otherwise they would be here if that process had been followed properly by involving all the stakeholders.

On the creation of this office, we strongly oppose this proposed amendment. We shall be bringing an amendment at the Committee Stage, so that we keep the good thing that is in here but we remove what is not necessary.

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

Mr. Deputy Speaker: Who do you want to inform?

Mr. Duale: The hon. Member.

Mr. Deputy Speaker: He has already finished his contribution. Why do you not ask for your time, so that you can inform the House?

Mr. Duale: I did mine yesterday.

Dr. Eseli: Mr. Deputy Speaker, Sir, thank you for this chance to contribute to this very important amendment Bill. The adage is: "If it ain't broken, don't mend it". Here we are trying to mend something that is not broken. Instead we are trying to introduce problems. We have examples in this country. Some of us are stuck in this attitude that every organization must have a chairman, a CEO and things like that. We have eyes and we do not see. We have corporations and organizations with chairmen and CEOs who quarrel and things become very bad. You can imagine if that were to happen at the CBK. That would send very bad signals to the financial world. We have good examples. Right now we are dealing with the Independent Electoral and Boundaries Commission (IEBC) where the CEO and the chairman are in two centres of power. We have just heard the Prime Minister answering questions on the issues of the Kenya Airports Authority (KAA). Recently, we saw it happening at the National Hospital Insurance Fund (NHIF), where the CEO and the chairman were not seeing eye to eye and were pulling left, right and centre, yet we want to create this at a premier organization of this country, the CBK? I think there, we will be blind. We should never attempt that sort of thing. If we are to enact any legislation, it should not be enacted just because some people, perhaps, do not like the holder of the office; if we do not like the current holder of that office, there are mechanisms of removing that holder, but you do not throw out the baby with the bath water. This should not be allowed to happen.

Mr. Deputy Speaker, Sir, I believe that while the Bill might contain certain good things, we need to amend it carefully, because we cannot have two people both of them with good financial management experience, but totally with different views. Just as with lawyers there are

as many opinions as there are lawyers. Similarly, in financial transactions, some people believe doing things in different ways. If you have a chairman whose views are different from those of the Governor, then that will be a recipe for disaster. While this amendment Bill might have some good intentions, some of them look like they might set up the country for a very rough time in future and create jobs for people, who are known to certain people only.

While I support the rest of the Bill, that particular part will have to be amended to make it more useful to us in this country since the CBK has not been grossly out of step with the country's ambitions in development. If those ambitions on development have so far been fulfilled to a certain extent, and there are any amendments, they should be able to improve it and not take us a step backwards.

With those few remarks, I support but wish to amend that particular section.

(Mr. Duale and Mrs. Shebesh consulted loudly)

Mr. Langat: Mr. Deputy Speaker, Sir, I am being disturbed by some discussions which are happening in front of me.

Mr. Deputy Speaker: Order, Hon. Duale and hon. Shebesh!

Mr. Langat: Thank you very much, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, the Central Bank is a very important institution in this country, which is charged with the management of our monetary policy. I agree with my colleagues that the Central Bank of Kenya, by and large, has performed its duties over time, but things are changing. When I hear the arguments from my colleagues, it is like we are saying now that we no longer need all the board of directors in various companies. I agree that two centres of power are not very good, but I also agree that too much concentration of power is also dangerous. That is why in this country---

Mr. Duale: On a point of order, Mr. Deputy Speaker, Sir. The Bill that is in discussion in Parliament is the Amendment Bill and the hon. Member is talking about whether it is within the corporate governance--- Hon. Mungatana, hon. M'Mithiaru and Dr. Eseli talked about the corporate governance and the tradition in all countries. We are talking about the creation of a very powerful chair approved by this House. We are not talking about centres of power. Is the hon. Member in order to mislead the House with a different thing which is not in this Bill?

Mr. Langat: Mr. Deputy Speaker, Sir, I think that the hon. Member is coming out too soon. I know exactly what I am discussing and by extension, I am a bit of a professional in this field more than the hon. Member. So, he should listen to me until I build my case.

Mr. Deputy Speaker, Sir, I have said that by and large, the Central Bank has done its job. But in this country also, we are aware that we are coming from a system where the President's word was law and the final authority. But we know where that has taken this country. If we continue in the same way with the Central Bank of Kenya (CBK), I think we might take the CBK where this country was at some point in the 1990s up to 2000 or thereabouts. So, it is good for this House to be very strategic and realize that although the former Governors have done a very good job, it is not always true that all the Governors who will come will do a very good job. Too much power is dangerous and, therefore, there has to be some form of counterchecking.

Mr. Deputy Speaker, Sir, we have created institutions before this House. For example, the Director of Intelligence used to be the final authority, but we said: Let us have some board over him, as long as we specify the functions that will be done by the board and those what will be done by the Chief Executive, who in this case, is the Governor of CBK. Even in this House, we

have separation of powers. We have the Chairman of the Parliamentary Service Commission and we still have the Clerk of the National Assembly. The powers of the Clerk of the National Assembly have not been interfered with by the creation of the Chairman of the Parliamentary Service Commission. So, I want the hon. Members to realize that there is no problem in creating the position of the Chairman of the Board because there have to be some checks and balances. The powers of the Governor have actually been given by the Constitution. The powers of the Board which are fairly policy matters, will be spelt out. Therefore, it is not really right that we are creating those centres of power. We are only saying: Let us have checks and balances.

Mr. Deputy Speaker, Sir, I know that this was a matter which we recommended as a Committee, when we did the Report on the depreciation of the Kenya Shilling. This House approved that Report. I do not know why hon. Members are now turning away from the Report which they approved without amendments. Hon. Duale was in the House and never brought amendments which recommended the creation of the position of Chairman and Board.

Mr. Deputy Speaker, Sir, we are having issues, for example, with what we were discussing the other day on De La Rue procurement. If you look at those issues, they are actually giving the CBK Governor a very bad name. We should have a board which deals with administrative procurement issues and let the CBK deal with monetary policy, so that we do not burden the CBK Governor with issues of procurement, recruitment of staff and staff welfare. Let us have a board that deals with administrative and policy issues and let the CBK Governor deal with the technical issues of monetary policy.

Mr. Deputy Speaker, Sir, I want to urge the hon. Members to realize that this is a step forward and not backwards.

Mr. Deputy Speaker, Sir, I support the amendment to create the position of Chairman of the Board. I also support the creation of the positions of two Deputy Governors, to support the Governor in running the monetary policy of this country.

Mr. Mureithi: Mr. Deputy Speaker, Sir, I stand here to contribute to this Bill. I operated in this capacity for 14 years.

Mr. Deputy Speaker, Sir, although I was a Member of the Committee that investigated the slide of the Shilling, it would be very dangerous in this country if we were to remove the powers of the Governor. We may have a bad Governor today but tomorrow, we will have a Governor that will work within the elements or directives of the monetary systems of a country. I have travelled to various places and met various Governors. I was in Bolivia where I met the Governor of the Central Bank. You will find that Governors are mandated by their States to look after the monetary systems of that country. In fact, if you read quite a lot about the American system, when the Governor is going to speak about the interest rates, everybody listens, including the stock markets. When he brings down the interest rate, you will find that the stock market reacts in a certain direction. If you look at most of the countries, the Governors are mandated. For that matter, they are actually guided by the fiscal policy department, which is the Treasury. Within the Central Bank of Kenya itself, where my friend, M'Mithiaru worked, they have several directors who sit with the Governor. As a result, what we would like to do is to look at whether the Governor is following the Banking Act, as is stipulated in this country. But in this country we are known for creating and dismantling great things. I have a case in mind. Officials from Botswana came here to learn about livestock and their first Managing Director in their Kenya Meat Commission (KMC) – equivalent, in Gaborone, was the late Mr. Maina. He developed such a wonderful meat commission in that country. What has happened in Kenya? We

have killed our own KMC and the pastoralists are suffering, such that our quota, which was supposed to go to Europe, was taken over by Botswana.

Mr. Deputy Speaker, Sir, let us not destroy a system that has been working. If one person is not working, we cannot assume that the whole system is not working. Let us look at the whole banking system and banking association, where I was the Chairman for two years, and see how we can integrate.

Mr. Deputy Speaker, Sir, I oppose this amendment which is creating the position of an Executive Chairman, where if things go wrong, they will be accusing each other and the country will go backwards.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Thank you, Mr. Deputy Speaker, Sir. I stand here to support this Amendment Bill.

(Mr. Duale crossed the Floor without bowing)

Mr. Deputy Speaker: Order, Mr. Duale! Go to the Bar.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Thank you, Mr. Deputy Speaker, Sir, let us not fear reforms. Let us not fear reforms in our institutions. Let us not assume the old thinking and continue remaining there. I think the problems that we face in our corporate world or organizations or parastatals should not be reason for us to refuse to strengthen governance in the Central Bank of Kenya (CBK).

In any situation, the society has its own ways of handling its problems. We have a Constitution that is very different from the rest of the world. We do not need to compare ourselves to other central banks, particularly Europe and elsewhere. They have problems even today simply because probably power is centralized in their central banks.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. This is just a point of clarification to guide the debate. It is important to tell hon. Members that the amendment that we are seeking to do is not to create the position of a chair. The position had already been created last year through the Finance Bill. The only problem is that the amendment by Mr. Ogindo did not give a process by which the President will appoint the chair. So what we are seeking to do is only to allow the existing board to be picking one of them to guide them in meetings because now the functions of the CBK are halted and we took away that power from the Governor. The argument seems to suggest that we are taking away that power. We took away that power last year.

Mr. Deputy Speaker: Indeed, yes, basically the Act is to provide the procedure for the appointment of the chairperson and the delineation of the functions between the chairperson and the Governor and his deputies. So can you maintain your arguments to the relevance of the amendment before us?

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Thank you, Mr. Deputy Speaker, Sir. All I was saying is that these rules or the procedure that we need to put in place will strengthen the CBK. It will not in any way weaken this institution and the squabbles taking place in many of our organizations or institutions should not be reason for us to start worrying about centres of power at the CBK. If there is a pecking order where power and responsibility is distributed with regard to policy setting and management, then we will be strengthening that institution rather than having someone who is the chief executive chairing a board. Where there is a problem if the board has issues with that personality, it becomes very difficult for that board to question because she or he will be chairing that board. We would also

like to urge hon. Members not to look at this issue from a narrow perspective of personalities; either those probably planned to take these positions of chair or those who are currently holding it particularly the current holder of the CBK governorship. Let us divorce those issues from this. It is for posterity's sake that we are putting this in place and the problem that we face with our institutions has got nothing to do with the rules or mandate that they have, but rather our politics.

We are still in the old habit of interfering in the governance structures and management of our institutions but in time this will die. Subsequent governments, I am sure, will obey the rule of law and the Constitution in an upright manner. Therefore, I expect in the future that our corporate organizations will run their affairs, the boards will do their job right and the management will be able to run its affairs within the regulations that are set up.

With those few remarks, I beg to support.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I rise to support this amendment and thank Mr. Midiwo for having clarified the position. Listening to the contributions by hon. Members, it appears that there is, indeed, some confusion as to what this amendment is seeking to do. Hon. Members will recall that arising from the report of the Committee that was looking at the depreciation of the Shilling, one of the amendments that were proposed was that there should be proper governance structures within the CBK. There was a very clear recommendation that a position of the chair should be created to delink the administrative functions from other technical functions of the CEO of the bank who is the Governor. Mr. Ogingo took a cue from this and within the framework of the Finance Bill brought an amendment which was unanimously passed by this House creating the position of a chair and defining the functions of the chair of the CBK. What was left and I believe this is now the lacuna that is being cured through this amendment---

Mr. M'Mithiaru: On a point of order, Mr. Deputy Speaker, Sir. I was a member of that Committee on the Shilling depreciation and it is true we talked about a non-executive chair but we provided for a procedure where the appointment and the amendment of the CBK Act was to follow a due process but not to sneak it through a Finance Bill without discussion.

Mr. Deputy Speaker: Order, Mr. M'Mithiaru! You realize this is business before the House in the Second reading stage and you are a Member of the Departmental Committee on Finance, Planning and Trade. As a Member of that Committee you should have done your business or you are probably in the process of finishing your business so that you can bring in the amendments; the relevant amendments to this Act because the Amendment Act itself is still going to come to the Committee Stage and so whatever you had carried in your own recommendations, you should proceed, concretize that and move the right amendments and bring them to the Clerk's department so that we can dispose them off at the appropriate time.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, like I said, the House unanimously adopt the amendment that was proposed within the Finance Bill by Mr. Ogingo and we passed it as a House and created the position of chair plus two deputy governors. We also said that the chair will be in charge of board matters, et cetera, and the Governor will be in charge of the other day to day operations of the bank. However, what was left missing was: How will this chairman be appointed? The President could well appoint the chairman even tomorrow by just picking one person and saying: "You are the chairman of the CBK." This is because it says the chair shall be appointed by the President but the mood of the House was that all appointments shall be made through a competitive process. This is the essence of the amendment that is coming in Section 2(a) to say that the chairperson should be appointed by the President through a transparent and competitive process and with the approval of Parliament.

That is basically describing who will be involved in the appointment of the chairman that Parliament said should be created within the CBK Act through the amendment that was already passed by this House.

I think the other thing that was left out and which has created some problems within the CBK as of now is that having agreed that there shall be a chairperson who will be chairing the board, it was then not stated until that person is appointed or in the absence of that chairperson who else can chair the board. The second amendment at Section 12 is basically catering for a situation where, if there is a vacancy in the chair, by whatever reason, including the chair not turning up on that day, who will chair a meeting of the board.

These two are very fundamental amendments that we need to create without delaying the process; that one, to me, is the crux of the matter.

Riding on the back of these two amendments which were necessary to supplement what was already done is the amendment that was proposed, again, through in put by the Central Bank in terms of: Is it not time to amend Section 13 of the Central Bank of Kenya Act to further clarify the functions of the Governor of the Central Bank of Kenya? This is so that, there is no conflict of interest between the Governor as the CEO and the Chairman as the Chair of the Board. All these amendments, if you look at them within the framework of what is existing in Section 13 is actually to state what the Governor and the Chairman are supposed to do. This is to ensure that there are no two bulls in the same kraal fighting over who is in charge. The amendment should have ordinarily been a very straight forward matter basically clarifying that this was left out in the initial amendment and all that.

An issue has been raised concerning corporate governance. Members will recall that the CBK issued prudential guidelines to all the banks. It basically told them how banks will be managed in the future. There used to be Executive Chairmen in the banks. I believe hon. Erastus Mureithi was one of them or worked under one of them. We had the Executive Chair of commercial banks and so on. It became very clear that for proper governance, we needed to delink the Chair of the Board from the Chief Executive. Instructions were held that there must be an independent chair, independent directors, executive directors, independent directors and even owners have a restriction as to how much you can own in a bank. If you own so much in a bank you can also not be part of the management. These are all part of good governance issues that have been created. What happened is that the CBK was very good in prescribing that for all the banks to follow. They would penalize any bank that did not follow that. However, the CBK was the first one not to follow its own guidelines and it continued with the system where the Governor was also the Chair and the Chief Executive. We lost out in the good practice that was being forced on all the other banks within the industry, but not being practiced by the regulator. All other regulators, say, the Capital Markets Authority (CMA), the Insurance Regulatory Authority (IRA), the Retirement Benefits Authority (RBA), have exactly the same governance structure where you have an independent chairman and an independent Chief Executive.

The CBK is a regulator for the financial sector in addition to its role in terms of monetary policy. It is clear that monetary policy is the work of the Governor plus the Monetary Policy Committee. That is very clear whether you talk of Kenya, UK, or other places. However, in terms of the issues on the functions of the Board, the administrative functions of the CBK, that is a Board issue. And now those things have been sorted within the law and I would urge hon. Members to look at it from this point of view that, indeed, the House was right and nobody should regret that, perhaps, the House made a decision without full information.

The House was right in terms of delinking the functions of the Board and the functions of the Governor and in terms of who chairs the Board, the Monetary Policy Committee and so on. The only missing link, which I believe we want to cure through this amendment, is basically to state how this Chairman will be elected. In the absence of this Chairman, who else can chair the Board? That is basically the long and short of this amendment. The rest is basically further clarification in terms of the functions of the Governor. I believe that all these amendments have come with the full input of the CBK in terms of them clarifying what negotiations--- These things were discussed further in Naivasha with the Committees and also the Treasury. This is, therefore, really a negotiated text and it is acceptable. I can see the Minister for Finance is walking in to further confirm what we are saying. I want to urge the House to pass these amendments so that we can give the current structure of CBK---

Mr. Deputy Speaker: Very well, Mr. Minister. Please, conclude.

The Minister for Transport (Mr. Kimunya): So, we can give them the opportunity to meet even as we are talking now because they cannot meet until we have passed these amendments. This is because they do not have a Chairman. Until that Chairman is appointed or we give a leeway to the directors to appoint one of them, then we are paralyzing the operations of CBK. So, I think the long and short of it is that I urge this House that we pass this amendment and if there is any other amendment we want to bring on board, we can always discuss that within the framework of the Committee Stage. As of now I urge that we have it done.

Mr. Deputy Speaker: You have put it very eloquently.

(Question put and agreed to)

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

Mr. Deputy Speaker: Order, hon. Members! By the powers granted to the Chair under Standing Order No.36 (2), the Chair wishes to rearrange the business of the day. Instead of going to Order No.9, the Chair will dispose of Order No. 11 which is the Bill on Breast Milk Substitutes (Regulation and Control), Bill No.38 of 2012. We will then revisit the other Bills in Order Nos. 9 and 10.

Second Reading

THE BREAST MILK SUBSTITUTES (REGULATION AND CONTROL) BILL

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Deputy Speaker, Sir, I beg to move that the Breast Milk Substitutes (Regulation and Control) Bill, 2012 be read a Second Time.

In moving the Bill, hon. Members are aware that child survival is one of the indicators of a nation's progress in development and Kenya is committed to achieving the fourth Millennium Development Goal (MDG) on reduction of the under five mortality rate by two-thirds of that of 1990 by 2015. This will contribute to the Vision 2030 target to develop Kenya into a medium income country with high quality life for every Kenyan which includes all children.

Proper feeding of infants and young children provides the foundation for their survival, growth, and development. Poor infant feeding practices and their consequences on the other hand

are one of the world's major problems and a serious obstacle to social and economic development.

Members are also aware that breastfeeding has multiple advantages hence it is imperative to ensure that every child gets the right to breastfeed unless where there is loss of mother, medical indications or other reasons. Exclusive breastfeeding maybe the best option for HIV Positive women in resource poor settings and saves an estimated 1.5 million infants every year. Breastfeeding also benefits the society by strengthening family ties and saves time and money hence providing overall economic benefits.

In addition, industrially processed complementary foods should not be marketed or promoted as ideal and suitable complements to breast milk as this would be contrary to the national nutritional policy which recommends use of available indigenous foods. Breast milk substitutes and complementary foods will still be used on the advice of a health worker or through the decision of the child caregiver or mother. However, the Bill seeks to ensure that this decision is not unduly influenced by aggressive promotion or marketing of specific products.

It is important to note that the Bill does not prohibit the manufacture or sell of breast milk substitutes, designated products or complementary foods, but only seeks to regulate the promotion and marketing of these products due to their health implications.

Mr. Deputy Speaker, Sir, my Ministry is mandated to ensure fulfillment and protection of children's rights to health, survival and development. This includes initiating legislation of instruments proven to be effective to achieve this, including those resulting from international resolutions.

Kenya is a member state of the United Nations system of which the World Health Organization (WHO) is the arm that advises and guides member states on the policies that affect health. The WHO also acts as the secretariat during the World Health Assembly (WHA) where health resolutions are passed by member states. The member states formulate the WHA resolutions and are bound to implement the signed resolutions. The International Code of Marketing of Breast Milk Substitutes and subsequently related resolutions constitute part of the health policy and guidance emanating from the WHA. The code and subsequent relevant WHA resolutions aim at protection, promotion and support of breastfeeding and appropriate infant and young child feeding practices. Since the adoption of the Code in 1981 to date, 103 member states have instituted statutory regulations. Nine have regulations in draft that solely rely on voluntary compliance by the infant formula manufactures and 25 have not taken action.

Kenya is one of the countries whose regulations are in draft and currently relies on voluntary compliance by infant formula manufacturers. The United Nations Children's Fund (UNICEF) is the United Nation (UN) arm that is mandated to ensure protection and fulfillment of children's rights. Available data from UNICEF reveals significant correlation between the level of code implementation and breastfeeding rates. For example, countries with stringent code legislations have the highest level of exclusive breastfeeding rates while those countries with weaker ones have lower levels of exclusive breastfeeding rates. The enactment of this Bill will be an implementation of the resolutions that Kenya has endorsed at the WHA as a member state of the United Nations. It is expected to contribute to further increase of breastfeeding rates which stood at 32 per cent in 2008 having increased from 13 per cent in 2003.

The Bill takes into account the well known benefits of breastfeeding during infancy, young childhood and later stages of life. The International Code of Marketing of Breast Milk Substitutes is the minimum requirement. Therefore, countries are free to include other measures to promote and protect appropriate infant and young child feeding. Most countries have revealed

their legislation to include this. However, this Bill only covers the Code and the subsequent relevant World Health Assembly resolutions. Evidence shows that countries that have enacted this legislation have over time sustained control of use of breast milk substitutes as compared to those with no legislation.

Globally and regionally, Kenya is way behind in enacting this legislation which in part explains our poor infant and young child feeding practices. Low breastfeeding rates put the children at the risk of chronic conditions later in life such as obesity, high cholesterol levels, high blood pressure, diabetes and childhood asthma. Studies have also shown that breastfed infants do better on intelligence and behaviour tests into adulthood than formula-fed babies.

Breastfeeding saves 11,000 lives of children per year in Kenya. It has fond impact on a child survival, health, nutrition and development. Breast milk provides all the nutrients, vitamins and minerals an infant needs for growth for the first six months. In addition, breast milk carries antibodies from the mother that help combat disease in the child. The art of breastfeeding itself stimulates proper growth of the mouth and jaw and secretion of hormones for digestion and satiety.

Breastfeeding creates a special bond and promotes interaction between the mother and child, both of which have positive outcomes for life in terms of stimulation, behaviour, speech, sense of well being, security and how the child relates to other people. Breastfeeding also contributes to maternal health immediately after delivery because it helps reduce the risk of postpartum hemorrhage which is excessive bleeding after giving birth. This is the commonest cause of maternal deaths because it is responsible for 34 per cent of maternal deaths in Kenya.

In the short-term, breastfeeding delays the return to fertility and in the long-term it reduces the breast uterine and ovarian cancer in the mother. Studies have also found an association between early cessation of breastfeeding and postnatal depression in mothers.

Currently, the breast milk substitutes are regulated as a standard in the Kenya Bureau of Standards (KEBs). This, however, does not include regulation of marketing and promotion of these products and has no penalty for violation. The development of the standards in 1983 under KEBs was the immediate transitional measure that the Kenya Government, through the Ministry of Health, put in place to ratify the International Code of Marketing of Breast Milk Substitutes. It was envisioned that this would later be enacted into law. This process has, however, taken too long.

This Bill is a health Bill in public interest. In addition, the Bill concerns the welfare of the child hence the best interest of the child is the primary consideration in all matters of this Bill as defined in Article 3 of the UN Convention on the Rights of the Child, the Kenya Children's Act, 2001 and Article 53(2) of the Constitution of Kenya.

Mr. Deputy Speaker, Sir, with these remarks, I beg to move that The Breast Milk Substitutes (Regulation & Control) Bill No. 38 of 2012 be now read a Second Time.

I would like to request hon. Kimunya to second the Bill.

Mr. Deputy Speaker: Do you want to be seconded by hon. Kimunya?

The Minister for Transport (Mr. Kimunya): Yes.

Mr. Deputy Speaker: My presumption was that you would look for a lady who has breastfed like you. But nonetheless proceed, hon. Kimunya

An hon. Member: The fathers also have their own experience.

Mr. Deputy Speaker: Yes, the fathers also have their own experience!

Proceed, hon. Kimunya.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I rise to second this very important Bill on breast milk substitutes. I would like to confirm that I am one of the very many Kenyans who suckled and breast-fed for perhaps rather long because traditionally, I am named after my mother's brother. Hence, being a favourite, I believe I enjoyed privileges that were not enjoyed by many others. So, I am a firm believer of that and I would like to see every child going through the same experience.

Mr. Deputy Speaker, Sir, I think the most important thing, even as we promote commerce and substitutes because they have their own place within the development of the child especially given the issues of the working mothers and what is happening, there must be a way of regulating the access and the choices that people make so that they are not unduly influenced through adverts, social media, peer pressure and people then abandoning what they should be doing naturally and what they should be doing for the best interest of the child and taking what is seen as the flavour of the month.

I believe this Bill covers exactly, within the various sections, how we can achieve a balance between good commerce, providing substitutes, but at the same time ensuring that the mothers and the users are given all the information that they need and the manufacturers are held to account for purposes of ensuring that there is a responsible relationship between the manufacturers and the consumers and that in whatever we do, the health of the child is put to be of paramount concern. This is well-captured within our Constitution that whatever we do, the interest of the child must be paramount. I believe this is something that has been re-emphasized even in our courts and with the recent declarations in terms of the intended strike by the teachers where the courts were very clear that the rights of the child cannot be compromised even with what is already allowed the Constitution.

Mr. Deputy Speaker, Sir, I am very happy that this has come and I was very happy to support the Minister for Public Health and Sanitation. I know she has been very passionate on this matter. It is a matter that has taken long. It should have come earlier but at last we have managed to do it. As I support this Bill, I would like to avoid creating the picture of what some people have said that this Bill is coming to fight the industry. There is no fighting of the industry. Every industry has a regulator. If you are talking of the transport industry, we are already bringing a Bill here to bring regulations in that industry. If you are talking of the alcohol industry, there is already a regulator for best practices so that people know what to expect.

Within the food industry we said very clearly that food must be labelled. Even this water we are taking here, there is a very clear label attached to it. It says this is what it contains. It can be harmful or not harmful. I am happy at least that the consumers, who are the toddlers who do not even know how to read or write; who do not even know what they are taking, at least their mothers and parents and those who provide them with these substitutes will have been given the opportunity to know what they are giving their children.

We heard of the unfortunate incident that took place in China where lots of children died because of being fed with the wrong supplements. We would hate to have a situation like that in our country. We are going into a world of commerce and unless we are very clear ourselves that what we are getting, whether as adults or as children has passed a certain standard, then we risk losing a whole generation who will have gone through some processess and it will be too late to start reversing the damage that will have been done.

Mr. Temporary Deputy Speaker, Sir, I agree totally and I am very happy to hear that breastfeeding creates a special bond between the mother and child. For me, that bond is still very strong after all these years and I would like to see every child having the same bond. I am not

quite sure of what we are going to do with the fathers because they cannot breastfeed and how that bond will be created between the fathers and their children. The mothers have this natural endowment that enables them to have a bond with their children. But for us men, we then need to cultivate in a different way how we will create this special bond. When all is said and done, I am happy to support this Bill and I would urge the entire House to support it. Let us give our children and their mothers the right to choose what to feed their children based on the information and standards and at the same time we give the industry the requirement they need to meet so that there can be level playing field in terms of all the manufacturers and promoters of instant substitutes, foods and formula so that nobody will ever subject our children to take what is not in their best interest.

Mr. Deputy Speaker, Sir, with those words, I beg to second.

(Question proposed)

Mr. Mureithi: Mr. Deputy Speaker, Sir, I am also not one of those people who have breastfed, but I have had experience, like Mr. Kimunya and that is why I want to support this Bill.

As the Minister said, this Bill has not come to put the manufacturers out of their business. But I think it is one Bill that will create awareness to our daughters and children on the issue of breastfeeding. Those of us who have done human development in our careers know that the development of a child takes place between birth and three years. Within that time, the child develops all the faculties that he needs. Therefore, the relationship between the mother and child is very important. That is why I support this Bill. That bond that a child creates with the mother enables him relate to other people. It builds inter-personal and inter-human relationships. That is why I say that as a country that has committed itself to the Fourth Millennium Development Goals, this is one of the very major objectives that will help us achieve the Vision 2030 and be able to give value to our children.

One of the areas that have been mentioned is that of health. We are not able to meet our health needs in the rural areas because we lack a lot of things. So, when children are breastfed, they are able to grow up healthy. Of late, scientists are studying why kangaroos carry their young ones in a pouch when they are young. Young kangaroos only come out to breastfeed and then go back to the pouch. They are called Marsupials. This behaviour helps create a relationship.

Mr. Deputy Speaker, Sir, as Mr. Kimunya has given his experience with his mother, Maria, I would also like to give my experience. I will explain to Mr. Kimunya how to bond with his children because he has posed that question.

I have a family of four and these children wanted to come to this world a bit early; all of them. When they came a bit early the issue was, do we subject them to formula milk or do we subject them to the mother's milk? We made it a family policy that the mother would breastfeed them for one year. What happens is that because of that aspect of selflessness, the milk increases. Those mothers who leave their children in the incubators in hospitals and they do not go back to express milk, what happens is that their breast ducts actually dry up. As a result, the children continue feeding on formula milk. These four children have grown up to be mature children and now they have their own children. I would really support this Bill because it is necessary that we make sure that we breastfeed our children.

Mr. Deputy Speaker, Sir, I wish Mr. Kimunya could listen to me. What happens is that if your wife feeds a child, the next thing is to remove gas. I am sure that the mothers who are here

know that you have to remove gas and hand him over to his father. You massage the baby's back and the baby removes gas through the mouth. I think because he was a mother's child, he did not have the opportunity to be given to the next person to remove the gas. So, you can create a bond with your children. This is an experience I would like to say has gone a long way. I happened to meet a Senior Deputy Director of Medical Services, with whom I shared this responsibility in Mombasa. It is a great experience that must be explained to the mothers so that they can breastfeed their children. The Minister has talked about the antigens that come from the mother and the inter-personal relationship that is established between the mother and her baby. Body language is learnt at that stage.

Mr. Deputy Speaker, Sir, this is a wonderful Bill. I hope that everybody will support it. It is not meant to push out the industrialists but rather to ensure that mothers support breast-feeding to save our children. I would like to tell them that the experience I have had with Mrs. Mureithi is one that must be shared. She would go out of her way to take care of children who had been deserted by their parents.

These are some of the blessings that we get when we feed our children with what God has created for us. We should not remove that attribute from us. So, the Constitution is very clear, under Articles 26 and 53(2) on the rights of children. They are all entitled to life. So, when you create a system that would make them die, you are breaking the Constitution. Therefore, I want to encourage the Minister to push this Bill until it becomes law.

With those remarks, I support.

Mr. Deputy Speaker: Yes, hon. Robinson Githae.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I also rise to support this very important Bill. The Bill should have been in this House yesterday, and not today, but it is never too late.

The Bill proposes regulations and control measures to be instituted, so that *wananchi* are not cheated. In my view, there is no substitute for breast milk. Hon. Members will remember that when we were young, there was no substitute for breast milk. Afterwards, Farex came---

(Mr. Kutuny crossed the Floor)

Mr. Deputy Speaker: Order! Hon. Kutuny, can you go to the Bar? You cannot break the rules of the House so blatantly. You do not cross from one side of the House to the other without going to the Bar. So, proceed to the Bar and do what you are supposed to do. This is not a market place. This is the august House. It is a dignified institution. Why do you like short-cuts?

(Mr. Kutuny proceeded to the Bar, bowed to the Chair and crossed the Floor)

Mr. Deputy Speaker: Proceed, Minister.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, this is, indeed, the august House, discussing a very important Bill.

I was saying that at the time some of us were born, there were no substitutes for breast milk. Your mother had to breastfeed you. If for some reasons she was unable to do so, it was possible to get a substitute mother to breastfeed you. You would not be fed on any other milk. That was our traditional way of doing things. Thereafter, formula for babies came.

Mr. Deputy Speaker, Sir, I do not know who came up with the idea that if you are modern girl, you do not breast feed but instead you go for breast milk substitutes; that, if you breastfeed, your breasts will sag. I do not know who came up with this idea. Breasts cannot sag. That is the way God made them. After breastfeeding, the breasts assume their normal elasticity. Therefore, I would like the Minister to also include provisions for civic education in this Bill, so that we can educate our young mothers on the importance of breastfeeding their children.

As the Minister said, it is scientifically proven that if a child is breastfed, it acquires immunity and, therefore, does not suffer from common diseases. So, we need to encourage young mothers to breastfeed their babies. However, since we know that some young mothers may not have adequate milk for their babies, we should continue having breast milk substitutes. I am glad that, for the first time, we are going to have rules and regulations which will determine what constitutes breast milk substitutes and how they should be manufactured.

Mr. Deputy Speaker, Sir, lastly, it is important to say that we need to educate young mothers, so that they can know the importance of breastfeeding. Nowadays we do not have substitute mothers who can give breast milk to babies. I would actually have gone for a total ban of milk substitutes and say that every mother must breastfeed her child for at least one year. When we were young, we were breastfed up to the age of three years, after which we went to school. These days babies are being breastfed for only three months. So, there should also be a regulation to say that if a mother has adequate milk, her child must be breastfed for at least a year, and not for the three months maternity leave period.

With those remarks, I beg to support.

Mr. Deputy Speaker: Yes, hon. Cecil Mbarire.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Deputy Speaker, Sir, I rise to support this very important Bill. I stand to speak as a mother who has breastfed two children. I support the Bill because I am a strong defender of breastfeeding. I really want to thank the Minister for finding it appropriate to bring this Bill, whose time is up. I want to thank the Ministry for supporting this very important legislation.

Mr. Deputy Speaker, Sir, I have an example to give, having had two children. I am lucky to have been able to breastfeed my first born for two years. Unfortunately, due to my political work, my son did not get that privilege. I feel very guilty about it, because I breastfed him for only about ten months. I look at the way the two children respond to illnesses. I find the first born having more immunity to diseases than the second born, who breastfed for less time. Therefore, it is firsthand experience for me. Breast milk is more important than any other milk, be it cow milk or formula.

Scientifically speaking, we know that breast milk contains a lot of antibodies from the mother's body. Therefore, a child gets better immunity when it is breastfed. It is also scientifically proven that breast milk helps in the development of the brain of a baby. There has been research which has shown that babies who have been breastfed for a long time score an average of six points more on IQ test. So, really, nobody needs to belabour the point that breast milk would definitely give babies healthier bodies and greater brains. That is what we need to promote in this country. It does not have monetary value. It is the bonding that a mother has with the child when the child breastfeeds for long.

Mr. Deputy Speaker, Sir, you are a man and so, you may not understand this. But when a mother holds a baby---

Mr. Deputy Speaker: You will be surprised!

(Laughter)

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Deputy Speaker, Sir, when a mother holds a baby for an average of 30 minutes for about four or five times a day or more, there is such strong bonding between the mother and that child. That bond never ever dies and that is why you find that in times of war, men run away to fight. But a woman first takes the babies. She would rather even burn in her house with the babies. But she can never run and leave behind the children. It is that bonding that has developed since the baby was small. I think that is a very important thing.

Then, there is the whole issue of costs. Formula milk is not cheap, by the way. The average cost of a tin of Nun in Kenya today is about Kshs600 to Kshs700. Now, a baby who is using formula milk will probably use a tin every two days. What happens is that if you look at that cost, including the cost of buying the bottle, nipples and sterilizers and having to store them in a hygienic way, it ends up being way more than the cost of breast milk which is actually free. All a mother needs to do is eat and drink well and there is enough milk for the baby.

Mr. Deputy Speaker, Sir, it is also a hygienic way of feeding the baby. Breast milk is always clean. It is ready to use. A mother in the *shamba* can have the baby under a tree as she works on her *shamba*. She can run back under the tree, breastfeed the baby and go back to her farm. It is so easy to use. In fact, at this point, now that we are having more women coming here - and I believe many will be in their reproductive age - we actually need a nursery where we will be bringing our babies. I am sure Rachel and I have not yet crossed the reproductive age. We may want to bring more babies into this world. So, if my baby is just next here, I will just leave here, go breastfeed and come back and contribute to nation building. Also, as we think about the new look Parliament, we must start being more gender sensitive with our amenities and facilities. Remember there will be many more women in the Eleventh Parliament.

I really want to support this Bill. I want to tell the young women of this country that it is actually very unfair and immoral to deny your child his or her natural God given gift because you want to maintain the shape of your breasts; you want to look young. If our parents had done that to us, some of us would not be here. I want to tell hon. Githae who has contributed very well the following: You know nowadays, there are also new types of brassieres that ladies can wear when they are breastfeeding. They keep their breasts in shape, if that is your biggest concern. I do not think there is any concern that would make you deny your child that very important thing called breast milk.

With those few remarks, I beg to support.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity. I want to congratulate my sister, hon. Beth Mugo, who is also the Minister for Public Health and Sanitation for bringing this Bill at a time such as this. That is because we are becoming a developed country very fast. When we hear that we have now discovered oil and there is gas, we are going to be an industrialized nation very soon. What we must not leave behind is our African culture of breastfeeding our children until a time when you are able to send them to bring you something. After that, you can wean that child and get another baby.

Mr. Deputy Speaker, Sir, breast milk is the best food for babies. The people who come up with those infant milk formulas are out to make money. The same people still also want to make more money by treating the diseases that come about because of using infant formula milk instead of breast milk. So, somebody somewhere is out to do business out of the health of our

children. I am calling upon young women to breastfeed their children for as long as six months. The shortest period should be six months before they introduce them to something else.

Mr. Deputy Speaker, Sir, using my experience, I grew up in the village. In the village, you come across many things like snakes, for example. One day, I was in Class Three and we were sent to collect firewood. When we were collecting firewood, a snake on a tree spat on me. I almost became blind were it not for the breast milk. Everybody was asking: "Which woman has got a baby?" I was taken there and for the next one week, every day, breast milk was put in my eyes so that I could see. Look at what breast milk can do. If it can do that on the outside, what about in the inside of the baby? So, that is why we are advocating for breastfeeding of children. The bonding goes on until death parts a child with the mother.

Mr. Deputy Speaker, Sir, that is why when married old men are faced with disaster or when something happens suddenly here, you will hear everybody say: "Mama"! That is because that is the first bonding word they have; a bond word of security and nurturing by their mother. So, for us to have a healthy nation so that we can even spend less on medication, it is important that this House passes this law that says: "All mothers must breastfeed their children." Where possible, we should give more time to mothers to stay at home to breastfeed their children. It should not be for three months. It should be for six months. They should just be working half day, so that they have enough time. In the long run, it is economical because we shall be saving on medication. We are going to have a healthy nation and clever people. We do not have to import expatriates from other nations because the IQ of the children who are breastfed is higher than those who have used other formulas.

With those few remarks, I support.

Mrs. Shebesh: Thank you, Mr. Deputy Speaker, Sir. I want to first congratulate this Ministry because many issues that have to do with reproductive health of women have, for many years, been left without any Government policy or direction. Of course, you know the reason why this is happening; it is because we have a woman as a Minister and that is why we need more women Ministers.

(Applause)

Mr. Deputy Speaker, Sir, issues to do with family planning and breastfeeding are normally considered by the Government as "those issues of women" yet, they really concern the health and development of this country. It goes without saying that the reason breastfeeding lost its importance is because the Government did not take it seriously; just the same way family planning has stopped being serious because the Government also just decided it was none of its business. That is why I must congratulate the Ministry. The first thing that the Ministry should do is to roll out a massive awareness campaign. It is true that most young girls, the moment they give birth, the first thing they think about is to buy formula milk. Actually, baby showers which we attend a lot these days--- We have started to attend them as grandmothers. We used to attend them with our age mates. Baby showers are full of gifts which are normally formula milk. That problem is mostly manifested in urban areas and areas where there is a lot of inter-mingling with the Western world.

Let me say this to the young girls who, I hope, will listen or I hope somebody will go and tell them: Number one, breastfeeding is the easiest way to lose weight after giving birth. All those other theories we try to do--- The easiest way to lose weight after giving birth is breastfeeding. The other thing that, of course, hon. Githae spoke about - and which is about the

shape of your breast - I can tell you that these days, you can breastfeed for two years and still keep the shape of your breasts. You can decide not to breastfeed and your breasts will still sag. Sagging is a phenomenon nobody can stop, whether you breastfeed or not. We thank God for the new technology; that it is no longer a problem as my colleague has already talked about. But the biggest issue is that of opportunistic infections that children get. I have also breastfed boys and boys really breastfeed; it is like a competition. When they are breastfeeding, there is a feeling of calmness that a mother gets. This calmness comes when you are breastfeeding because there is a hormone that is released. It helps the mother to calm down and have that loving feeling that helps the bonding. So, most of the time when people do not breastfeed, they are irritable and the cry of the child irritates them. All they need to do is to breastfeed and they will be automatically calm. They do not need to go and buy medicine for becoming calm. It is already in our bodies because there is a hormone that is produced by our bodies called oxytocin. I just know that there is a calm feeling when you are breastfeeding.

There is the first milk of a mother called colostrum. When the baby gets that milk, it is guaranteed to have stress free first few months or even years of their lives; they will not have to run for Calpol and cough syrups. I bought so many antibiotics until my son was immune to them at some point. Why? Because I rushed into formulas with my first son, a mistake I did not make with my second. I now want to speak to our mothers because they have also become hostage. It might not be formulas; they are hostage to thinking that breast milk is not enough. I do not blame them because maybe during their time, that was the thinking. Today, the thinking is that you must breastfeed your child for six months exclusively. If you told that to my mother she would, probably, have just laughed because she would not believe that a child can survive for six months on breast milk only. Now my niece, who is her grand-daughter, has breastfed her first great grand-son for six months. So, she has now become a firm believer in breast feeding a child exclusively for six months. These little things that mothers make for babies, let them make them for the mother. Let them make *mokimo or uji* for the mother, but let them allow their daughters to breastfeed exclusively for six months. Sometimes, daughters do not know what to tell their mothers because their mothers know best. Today we, the Government, doctors and nutritionists are saying that breastfeeding a child is not only giving them health but also gives the mother calmness, encourages bonding and reduces the occurrence of opportunistic infections.

I want to finish by talking about the uterus and the contraction of the uterus because this is another thing that is not known. When you breastfeed - you said you might not know a lot, this I am sure you do not know - the retraction of the uterus is very important when a woman has given birth. That is encouraged by breastfeeding. There are studies that show that breastfeeding also reduces the chances of breast cancer. We all know that we have a big campaign and we must be able to fight uterine cancer. If there is anything we have learnt in this country in the last one year, and the country has come to appreciate, it is the cost of treating cancer. So, I am telling women humbly, breastfeed your children; breastfeed your babies. You will not only be doing your child a favour but also yourself and this country. I inform the Minister that we will support her totally in this campaign; I thank her and her officers who have brought this Bill to the Floor, and for being unashamed of doing the little things that matter to women, which are also the big things that change our country

With those few remarks, I beg to support.

Dr. Laboso: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to also strongly support this very timely Bill. I want to start by saying that I am very proud of the Minister for Public Health and Sanitation. I am very proud that she is able to bring forth the

subjects that would otherwise be a taboo, or are not thought about by our dear male colleagues. I want to reiterate what has already been said, that the reason we keep saying we need more women in Parliament is because there are certain topics that only women can talk about, that only women can support, that only women feel anything about, or have strong feelings about. Many times when we speak about sexual harassment, when we talk about female genital mutilation, or all the reproductive health issues you will see--- We can even see evidence now that many of our male colleagues are, probably, long gone from the House; this is because to them these are non-issues. But for us, we know that this is the foundation of the society. They are issues that affect the very chore of our existence; they include the topic that we are talking about now, breastfeeding.

I want to reiterate what has already been said to the Minister, hon. Mugo, thank you, you are there when you are needed to be there, and you have been able to bring this Bill to this House. I cannot say it any better. The bond between the mother and the child is always through breastfeeding. I will not go into the descriptions that Mrs. Shebesh went through about the everlasting bond that makes it, that a mother can never think of leaving the child in times of war or crisis. That is why even when we look at the crisis that is ongoing in the Tana Delta, we are seeing that all the time it is the women and their children who are left behind. We do not know whether some of the men happened to have taken off.

I want to say that when we talk about poverty levels, when we talk about poverty, women are the face of poverty in Kenya. If you want to bring up healthy Kenyans, please reduce poverty. Since women are the face of poverty, when you reduce it they are able to breastfeed their children properly and are able to bring forth strong children who can take this nation to the next level. I would like to urge the Government that if you achieve Millennium Development Goals (MDGs) Four and Five, they are about women. What we are saying is that there is a connection between poverty and mothers not being able to breastfeed their children as they should.

On the question of denying a child--- Young women think they will be destroying what has come to be associated with--- I would say that breasts have come to be associated more with sex than being specifically for procreation. If you think the job of the breast is sex then you miss the point. You can still have it for what you want it to do, but make sure that the first job that the breast is supposed to do is to feed the child, and make sure that if you bring a child into this world, you are able to look after it by giving it breast milk until it is old enough. This will make them immune to diseases that children are prone to if they have not been breastfed.

For us to be able to support women, and for the country to be able to support breastfeeding, we must have facilities. We must put facilities in all the institutions or offices that can then support women when they are breastfeeding. They should be installed in nurseries, in *Bunge* and other offices. Breastfeeding mothers must be enabled to breastfeed their children by these facilities.

Mr. Deputy Speaker, Sir, I am not in that bracket of young women or the age of breastfeeding and do not wish to go into it at my age, but I would encourage the women who are in the child bearing bracket to make sure that they do their duty and responsibility. Once they have brought forth a child into this world, they should give that child the best. The best has been proved to be breast milk until such a time that they are old enough to take formula milk.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support.

Mr. Mututho: Mr. Deputy Speaker, Sir, I rise to support this Bill wholesomely.

Mr. Deputy Speaker, Sir, in supporting this Bill, I want to draw the attention of the House to the fact that the research carried out by various bodies concludes that women contribute 52 per cent of labour in agriculture. At 52 per cent, it tells you that most of the time these good ladies will be occupied doing what would easily have been done by machines. Because of that also, that process of providing for farm labour affects the quality and quantity of milk.

Mr. Deputy Speaker, Sir, I do not need to go through what the other speakers have talked about. It is also important to look at it, again, from the agricultural angle. When we have such poor regulations and people producing vegetables from sewer lines and selling them by the roadside, notwithstanding the emissions of heavy metals from vehicles and so on, the same residues end up in breast milk.

(Mr. Kimunya consulted with Mr. Mwakwere and Mr. Githae)

Mr. Deputy Speaker, Sir, it is for this reason that I would like to encourage the Ministers to stop their discussions now and listen, so that they focus noting that---

Mr. Deputy Speaker: Order, Minister for Transport and Minister for Environment and Mineral Resources!

Mr. Mututho: Mr. Deputy Speaker, Sir, in the year 2009/2010, I believe hon. Kimunya at that time was the Minister for Finance. I do not keep a good track, but whatever it was, although the women produced constantly 52 per cent of the labour, if you look at projects that were domiciled towards women, either improving on their vegetables or otherwise, it was only 0.07 per cent. That means that they were still under 0.1 per cent, although they were contributing 52 per cent of the labour. Unless we also address those broader measures, then we will still hurt the infant.

Mr. Deputy Speaker, Sir, I want to support the feeling by most of the hon. Members that, truly, breasts are not sex objects. They have a purpose by creation. They were not meant to be a nice piece of football to be enjoyed around, but to bring forward nice kids. Good ladies should be given enough time to nurse their babies.

Mr. Deputy Speaker, Sir, I support.

Prof. Kaloki: Mr. Deputy Speaker, Sir, I also rise to support this important Bill, which is a foundation for the children and this country's growth and development.

Mr. Deputy Speaker, Sir, this country is a member of the World Health Assembly. As such, it is encouraging that our country will control the marketing of milk substitutes. Statistics globally show that in 2008, 32 per cent of the mothers were able to feed their infants. That was a little increment from 2003. At the moment, 32 per cent globally, Kenya being part of this particular statistics, is too low. The problem is compounded because of the marketing and promotion. This is because the marketing and promotion gives the mothers an avenue; that it is possible to find a substitute and not breastfeed.

Mr. Deputy Speaker, Sir, we need to encourage our mothers so that they can breastfeed. This will ensure that we have a generation and population that will be healthy, so that we can develop our country through the promotion of breastfeeding.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Kaino: Mr. Deputy Speaker, Sir, thank you for giving me this time.

Mr. Deputy Speaker, Sir, from the outset, I support this Bill. Mothers' milk is very nutritious and important for the children of this nation. All women, by law, must breastfeed their children. It is very economic and very important to the nation. It is economical because it has

been proved through science that mothers' milk has a lot of nutrients and a child who does not get this milk, in the first months, will not grow very healthy. That child will grow up very weak. This will cost this country a lot of money. The money will be stressed, just because she is trying to be beautiful and avoiding appearing old. Whether or not you breastfeed a child, you will grow old. We want the children of this country to be given breast milk, so that they can grow healthy and the mothers will be very happy. I am a pastoralist and when you see even a goat breastfeeding, the mother will be very happy, and it is an animal. What about a human being? We want these mothers to breastfeed the children.

Mr. Deputy Speaker, Sir, I strongly support this Bill.

(Mrs. Kilimo pressed the intervention button)

Mr. Deputy Speaker: Hon. Chebii, unless you are on a point of order, you have already had your moment to contribute.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): On a point of order, Mr. Deputy Speaker, Sir. Will I be in order to request that the Mover be now called upon to reply?

Mr. Deputy Speaker: Order! Order! You are not the only one who has an interest. You have already contributed and according to the Standing Orders, you cannot rise for closure of debate on the Bill itself. In any case, everybody seems to be happy with the Bill. So, I will now call upon the Mover to reply.

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Deputy Speaker, Sir, I wish to thank all the hon. Members for very strongly and overwhelmingly supporting this Bill. It shows how much we care for our children and that we put their interest first before any other consideration.

Mr. Deputy Speaker, Sir, I am proud of being a Member of this House because today we have sent a very strong message to Kenyans out there, that we want a health nation and that we want our children to feed on mothers' milk more than anything else. I know that you will be strong even in supporting the implementation of this Bill when it comes to the Committee of the whole House.

Mr. Deputy Speaker, Sir, I have listened to all the issues raised by the hon. Members and taken notes. We will be, of course, including them. There is the civic education; educating the mothers and rolling out a campaign. We have taken all those into account.

Mr. Deputy Speaker, Sir, we thank you for your support and I also thank my members of staff who are there for a job well done.

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 CAPITAL MARKETS (AMENDMENT) BILL

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I beg to move that The Capital Markets (Amendment) Bill be now read a Second Time.

The Government has continued to support the development of capital markets, particularly by enhancing the policy and regulatory framework. These reforms have been instrumental in widening the scope of issues and investors in the market. As a result, we have created a suitable environment for mobilization of long term resources to finance investments or projects necessary for a long term growth and economic development under Vision 2030. The measures I have proposed in the Capital Markets (Amendment) Bill, 2012, are aimed at further deepening the capital markets as well as tapping international sources of capital. I will only highlight a few of the proposals as hon. Members will have the opportunity to debate the entire Bill during the Committee Stage.

I am seeking to enhance the capacity of the Capital Markets Authority (CMA) to cooperate with other regulatory organizations, both locally and internationally, in order to strengthen the orderly supervision of increasingly interconnected capital markets. In this regard, I have proposed to amend the Capital Markets Act to empower the Authority to provide assistance to other local and foreign financial regulators by exercising any of its powers under the Act. This assistance will be subject to the regulatory body requesting for assistance and being willing to promote reciprocal assistance within its jurisdiction in response to a similar request for assistance from Kenya.

This measure will enhance the investigatory powers of the Authority and hence bolster foreign investor confidence in our market as we seek to leverage on international synergies in the regulation of capital markets.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, in order to further ensure that the Authority's capacity in undertaking investigations is not undermined due to the insufficient human resource or other capacity constraints, I propose to amend the Capital Markets Act to empower the Authority to appoint suitably qualified persons to conduct investigations on its behalf. The persons may include forensic auditors and other specialist investigators. This measure would go a long way to facilitate timely conduct of investigations into allegations of embezzlement of funds, fraud, misfeasance and other misconduct by licensed market players as well as listed companies.

In order to ensure that the integrity within the financial sector is upheld, it is important to grant licences for operations in the capital markets to suitable persons. Towards this end, I propose to amend the Capital Markets Act to introduce criteria for determining whether a person applying for a licence is fit and proper for purposes of being appointed a director. This measure will ensure that licensed entities are only operated by persons with requisite competent financial integrity and capacity.

Finally, these amendments are focused on improving the quality observation of the capital markets in order to make our capital markets more attractive to both local and international investors and to facilitate to a big extent the attainment of Vision 2030.

I beg to move and request hon. Kimunya to second.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I rise to second this important amendment to give more powers and to open the doors for further integration of expertise within the frameworks of the Capital Markets Authority in terms of the investigation capacity and in terms of the collaboration that they have which is something that we need especially now with the state of play of our capital markets.

This is a very straightforward Bill. When you look at it, you will realize that it basically proposes three key amendments, the first one being to give the Authority the means with which it collaborates with the others and most importantly, to enable it to hire independent investigators when it does not have the capacity within itself. At the end of the day outsourcing is the in-thing. This Authority does not need to have all the investigators in-house; that will be very expensive and it is a cost that will have to be borne by the market. However, we can do it by ensuring that we have this available and the Authority can do it.

Most importantly, and I think this is the reason I really want to support this, is that because people playing within our market must be fit and proper, our Authority now has a criteria for determining who is fit and proper. For that, we should just give this Bill our endorsement so that it can actually start being implemented as soon as we pass it.

With those few words, I second.

(Question proposed)

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. I support the Minister and thank him because one of the things that have come to the new CMA is warehouse receipting which will require intensive discipline. Unless we have the capability to investigate, it will not work.

I support.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I wish to thank hon. Members for their support. These are really simple amendments. What we want to do is to empower the capital markets to be able to request for information on condition that that country also approves or accepts our request.

I would like to assure the entire country that under my watch there is no public company that will go under liquidation. I want to assure this House that under my watch no broker will defraud Kenyans. We want to encourage Kenyans to start investing in the capital market. Let us not just think of plots or *shambas* all the time. That is why people are fighting over these *shambas*. Come and invest in the capital markets. There is no fighting there. Come and invest in the capital market. Come and buy shares. Go to the other equities which are available.

With those words, I thank hon. Members and I beg to move.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Minister, before I put the Question, make sure that you consult with all the stakeholders and the relevant Departmental Committee so that during the Third Reading any amendment that will be coming up speeds up the process.

(Question put and agreed to)

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

THE NATIONAL TRANSPORT AND SAFETY BILL

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I beg to move that The National Transport and Safety Bill, Bill No.37 of 2012 be now read a Second Time.

This Bill is brought to this House against the backdrop of this country suffering the incidence of many accidents and disorder within our road sector, and a public outcry that something needs to be done to ensure that we bring order to our public transport system, our road safety and ensure that we can stop the over 2,000 Kenyans who die every year from road accidents and very many others who are being maimed through the accidents that could be prevented.

The principal object of the Bill is to harmonize the operations of various bodies that operate within the road transport sector by bringing them together under one umbrella to be called “The National Transport and Safety Authority” which will then have the overall responsibility to regulate the road transport sector. This will start from the inspection of our vehicles, registration of vehicles and licensing of those vehicles. Then we will go all the way to the drivers in terms of their training, testing, licensing and monitoring their driving to ensure that they actually drive in accordance with the codes that have been set up.

The National Transport and Safety Authority will also ensure that we have harmony because right now you go to the Kenya Revenue Authority (KRA), you pay your taxes and get registered. The Registrar of Motor Vehicles who is an employee of the Ministry of Transport resides at KRA. After that you then go to the Chief Inspector who is hired by the police to inspect your vehicle. You then go to the driving examiner who is a police inspector and by the time you go through the mechanics of all these things, you find yourself lost between who you are dealing with.

Basically, this is a very straightforward Bill to create that Authority. This House is also seized with another Bill that will be prescribing the penalties and all that. We can discuss all the details of all those things within the framework of that Bill. However, this one is straightforward. We can create this Authority and then give it the power to do what needs to be done in terms of co-ordinating our affairs.

With those remarks, I beg to move and request hon. Githae to second the Bill.

The Minister for Finance (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir. This is a very important Bill.

I second.

(Question proposed)

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. In supporting it, I hope that the Minister will have time to look at Victorious State Regulations on similar matter. If he adopted that, I can be assured that no Kenyan will ever die because of misgivings within our regulatory mechanism and our laws.

I support the Bill.

The Temporary Deputy Speaker (Prof. Kaloki): Since there are no other contributors, I will ask the Mover of the Bill to reply.

Yes, hon. Kimunya.

The Minister for Transport (Mr. Kimunya): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I wish to thank the House. I believe that this is a straightforward matter like I said.

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)

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, it is now 6.30 p.m. Therefore, the House stands adjourned until tomorrow, Thursday, 13th September, 2012, at 2.30 p.m.

The House rose at 6.30 p.m.