

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 15th March, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

A CLARIFICATION TO THE PRESIDENTIAL MEMORANDUM ON THE COUNTY GOVERNMENTS BILL, 2012

Mr. Speaker: Hon. Members, I have two communications to make. First, further to my Communication on the Presidential Memorandum on the County Governments Bill, 2012, issued on 29th February, 2012, I wish to inform the House that His Excellency the President has, in a letter dated 13th March, 2012, clarified that a reference in the Memorandum to the proposed deletion of Clause 30(1)(i) was erroneous and that the correct reference is to “Clause 30(2)(i)”.

It is noted that, notwithstanding the correction of this formal error, the text proposed by His Excellency the President to be deleted remains as it is and reads as follows:-

“(1) Subject to the operational command structures set out in the National Police Service Act or any other national security legislation, chair the county equivalent of the National Security Council as provided for in Article 239(5) of the Constitution.”

I thank you.

Hon. Members, the second Communication is with respect to the Tax Account at the Treasury as raised by the hon. Member for Gwassi.

STATUS OF THE TAX ACCOUNT AT THE TREASURY

Hon. Members, on Thursday 21st April 2011, hon. Mbadi rose on a point of order and requested for a Ministerial Statement from the Deputy Prime Minister and Minister for Finance on the status of the Tax Account at the Treasury. In particular, hon. Mbadi sought to know:-

1. The number of revenue statements that were certified by the Controller and Auditor-General for the financial years, 2007/2008 and 2008/2009.
2. The actual receipts of revenue for the year 2007/2008 and 2008/2009 in respect of certain revenue heads.
3. Whether the receipts of revenue for the years 2007/2008 and 2008/2009 as declared to Parliament in the estimates of revenue reflected the actual receipts into the Exchequer Account for the respective revenue heads and for the same period.

Hon. Members, on Wednesday 18th May 2011, in the Afternoon Sitting, the Assistant Minister in the Office of the Deputy Prime Minister and Ministry of Finance issued a Ministerial

Statement in response to the request by hon. Mbadi. In his statement, the Assistant Minister stated that the accounts for the Financial Year 2007/2008 had been queried by the Controller and Auditor-General and that the Controller and Auditor-General had submitted a report on the accounts to the House. The Public Accounts Committee had investigated the matters arising and had, subsequently, submitted its report to the House. The Assistant Minister further stated that the accounts for the Financial Year 2008/2009 had also been audited by the Controller and Auditor-General, and that the report of the Controller and Auditor-General was before the Public Accounts Committee. Arising from this, the Assistant Minister argued that issuing a statement in response to the hon. Member's request would be in violation of the Standing Orders and in breach of parliamentary practice.

In response to the aforesaid position taken by the Assistant Minister, the Member for Gwassu averred that the Report of the Public Accounts Committee relating to the Financial Year 2007/2008 had been adopted by the House, and that the report did not cover the matters that he had raised in his request for a Ministerial Statement. On this, the Assistant Minister took the view that the concerns by the Member in his request for a Ministerial Statement had been adequately addressed in the Report of the Public Accounts Committee. I undertook to give directions on this matter as I now do.

Hon. Members, having reflected on this matter, I have isolated two issues that require the directions of the Chair.

1. Can a member request for a Ministerial Statement or otherwise seek to re-open debate on a matter that has previously been addressed conclusively by the House?

2. Can a member seek a Ministerial Statement on or seek to deliberate on a matter in Plenary when the same has been referred to, or is before a Committee of the House?

On the first issue as to whether or not a member can request for a Ministerial Statement or seek to re-open debate on a matter that has previously been addressed conclusively by the House, the general rule of debate in the House is that, a matter is subject to the Standing Orders, free---

I am sorry, hon. Members. I will have to read that again.

On the first issue as to whether or not a member can request for a Ministerial Statement or seek to re-open debate on a matter that has previously been addressed conclusively by the House, the general rule of debate in the House is that, a member is, subject to the Standing Orders, free to interrogate the Executive on any matter of concern to the Member. This is the essence of parliamentary oversight over the functions of the Executive. The Standing Orders, however, do not encourage the repetition of issues that have already been deliberated on and resolved one way or the other by the House.

Hon. Members, I will pause for a minute for those at the door to come in.

(Hon. Members walked into the Chamber)

Standing order 14(4) provides that "a Question shall not repeat in substance any Question already answered, either as a Question or in the course of a debate during the same Session". Concerning Motions, Standing Order No.49 provides that "no Motion may be moved which is the same in substance as any question which has been resolved (either in the affirmative or in the negative) during the preceding six months in the same Session, provided that a Motion to rescind the decision of such a question may be moved with the permission of the Speaker".

Hon. Members, the Standing Orders having specifically made provisions that address the issue of repetition in not less than two instances, it is clear that repetition is, at all costs, to be avoided, in the proceedings of the House. This would naturally extend to re-opening, for debate, matters that have conclusively been addressed by the House in the previous six months.

Hon. Members, I now proceed to the second question on whether or not a member can seek a Ministerial Statement on or otherwise seek to address a matter on the Floor of the House when the matter has been referred to or is the subject of deliberations of a committee of the House. Committees are agents of the House and the House relies on them to thoroughly scrutinize and study specific matters that cannot be adequately interrogated or inquired into by the House in Plenary.

Hon. Members, Standing Order No.78 gives guidance on how matters that have been committed to or are before committees are to be dealt with by the House. It states that, “no member shall refer to substance of the proceedings of a Select Committee before the Committee has made its report to the House”.

Hon. Members, it is clear from these provisions that the Standing Orders do not contemplate a scenario where the House delegates a matter to a Committee with one hand and, with the other, continues to deliberate the same matter. Such a scenario would most certainly lead to disorder in the manner in which we conduct our business.

Bearing the foregoing in mind, I now turn to the specific matter at hand. The issues raised by hon. Mbadi in his request for a Ministerial Statement traverse two financial years - 2007/2008 and 2008/2009.

In the case of the Financial Year 2007/2008, the Minister informed the House that the Public Accounts Committee had investigated the matters raised for that financial year and tabled its Report in the House. Indeed, hon. Members, the HANSARD record indicates that the 2007/2008 Public Accounts Committee Report was tabled in this House on 7th December 2010 and was, subsequently, adopted by the House on 14th December 2010. The Treasury’s Memorandum responding to the Committee’s recommendations was submitted on 24th May 2011 and will be tabled in the House along with the Public Accounts Committee Report on the 2008/2009 accounts.

Hon. Members, in respect of the accounts for the Financial Year 2008/2009, the Minister informed the House that the Report of the Controller and Auditor-General on those accounts had been submitted to the House and that the Public Accounts Committee was presently seized of the matter, and is at an advanced stage of completing the Report. Hon. Dr. Kones, the Vice-chairperson of the Public Accounts Committee confirmed on the Floor of the House that the accounts for 2008/2009 were, indeed, before the Committee and that the matters visited by hon. Mbadi had been raised as an audit query by the Controller and Auditor-General.

Given that the matters raised by the Member for Gwassi were before the Public Accounts Committee at the time he sought to speak to them in Plenary, I find that it would be premature for the House to interrogate the same matters before it formally receives a report of the Public Accounts Committee.

Any debate prior to the receipt of a report of the Committee would be tantamount to anticipating the findings of the committee.

Honourable Members, I therefore uphold the objection of the Assistant Minister in respect of the Financial Year 2008/2009 accounts on the grounds that the Public Accounts Committee (PAC) was seized of the matters raised by the hon. Member for Gwassi. I would advise Mr. Mbadi and, indeed, any other hon. Member who is interested in the matter, to attend

and participate in the meetings of the PAC during the Committee's deliberations on the matters at hand in terms of Standing Order No. 178. Should such hon. Members still have outstanding issues after the PAC has concluded its consideration of the accounts for the Financial Year 2008/2009 and tabled its Report in the House, hon. Members would be free to raise those issues in the House at that point.

Regarding the accounts of the Financial Year 2007/2008 in respect of which the House adopted recommendations on 14th December, 2010, I find that the Assistant Minister is obligated to respond to the issues sought by Mr. Mbadi, as no provisions of the Standing Orders would be breached. I, therefore, direct the Minister for Finance to issue a Ministerial Statement in relation to the receipts of revenue for the Financial Year 2007/2008.

I thank you.

Dr. Nuh: On a point of order, Mr. Speaker, Sir. I want to thank you for your ruling and more specifically, the first ruling. I also want to thank His Excellency the President for having amended the Memorandum. When His Excellency the President first submitted the Memorandum to this House, I had gone through it and hinted to a section of the Executive that the Memorandum of the President was in contravention of the National Police Service Act which I had the opportunity of obtaining from one of the arms of the Government. Barely three days after I had obtained the Act, it was missing in all Government premises including the Government Printer. The answer we got was that this Act has not been published and is not operational. Frantic efforts to locate the Act were not fruitful until later I submitted a copy and even circulated a copy to some hon. Members who I wanted to obtain the benefit of what is contained in it.

The reason why I am raising this issue is that according to the President's Memorandum, the one that was not amended and the version which has not been amended in one section states that, accordingly, there is no county equivalent of the National Security Council. This is the section that I had raised with a section of the Executive; that there is indeed a county equivalent of the National Security Council in the National Police Service Act.

In that regard, I would humbly request that the amended version of the President's Memorandum be distributed once again to the House for us to have the benefit whether this particular sentence that is contained in the President's Memorandum that contravenes the Act that we passed in this House of the National Police Act, indeed has been amended or what the President has amended is only the section that deals with Section 30(1) (i) to change it to Section 30(2) (i).

Thank you.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Indeed, I can confirm that the Act had disappeared but yesterday afternoon it was restored to the library and it is now available and it may be of interest to my friend that it is now available. So, whatever mischief had been intended has been subverted and they will not be able to do what they had intended to do.

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

Mr. Speaker: Order! Mr. Mbadi, do you want to speak on the matter of the Memorandum?

Mr. Mbadi: Yes.

Mr. Speaker: Let us dispose of the Memorandum first.

Hon. Members with respect to the President's Memorandum, I direct that the amended version, in accordance with the Communication which I read, be immediately circulated so that hon. Members are better acquainted with it before we get to Order No.9.

Most Obligated the Assistant Minister for your prompting.

With respect to the other assertion which you have made, hon. Member for Bura, that this Bill somehow was not available in Parliament and more so in the Library, I just like you and the rest of the Membership also got very concerned when I called for a copy of the Act yesterday, as I considered matters relevant to Order No.9, more so, prompted by the hon. Member for Central Imenti and it could not be immediately made available to me from the Library, not until the hon. Member for Central Imenti somehow made a copy available to me. I actually raised the red flag from yesterday and thank God that this morning, though belatedly, the Library was able to give me a copy. They said that they had now received a copy today; that otherwise, previously, they did not have it.

I want to trust our Chief Librarian that the information that she has given to me is accurate and correct because as the Speaker of the National Assembly, I am obligated to trust my officers and if anything is not true, I will want my officers concerned to examine their consciences and just ensure that they do what they should do. As far as I am concerned, they have always done what they are employed to do and I just want to encourage them to keep their performance completely objective, non-partisan and indifferent to what may be in the undercurrents or what may inform political positions. For the moment, I am satisfied that the matter is resolved and the Act is now available for circulation to all hon. Members.

If you want a copy urgently, we will be able to give you a photocopy and if you want an original copy as printed by the Government Printer, we will be able to avail a copy to you beginning from any time after we rise. If you want an immediate copy then you can get a photocopy. That is the position.

Mr. Mbadi, you wanted to speak on the second Communication!

Mr. Mbadi: Mr. Speaker, Sir, I would like to thank you for your communication especially the second one. I just wanted a clarification as to when this statement will come. You will appreciate that this Statement was sought last year, in May. It is now going to one year and the gravity of the matter is even appreciated by the Minister himself; if this country is not sure of how much we collect in terms of revenue, that is a big issue that the Minister needs to address and do so quickly.

Mr. Speaker: Minister for Finance, obviously this is a fairly urgent matter and of critical importance. It is a matter of information to Kenyans on the state of our finances.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, in line with your ruling, the information will be submitted to Parliament next week and I believe that the Statement will be issued at the earliest opportunity which would be in the next sitting on Tuesday.

Mr. Speaker: Very well! I am glad you are responding to it in that fashion. I want also at this point to encourage the PAC to try and expedite its consideration of the returns for the year 2008/2009. Apparently from the Communication that I did read, these were available with PAC last year in the final quota. So, you are close to the 6th month with the returns. So, it is not very amusing. Try and expedite your consideration of that year.

Dr. Nuh: Mr. Speaker, Sir, I want to apologize to the House on behalf of the PAC and on behalf of the Chairman. We are at the final stage. In fact, we have just done the recommendations and it is only requiring the signatures of all the Members. We will avail a report to this House as soon as possible, as you have directed.

Mr. Speaker: The apology is accepted and you have noted our sentiments.

Next Order!

PETITIONS

CANCELLATION OF KCSE RESULTS IN GARISSA, WAJIR AND MANDERA

Mr. Duale: Mr. Speaker, Sir, I want to declare a public petition according to Standing Order No.205(2) on the cancellation of the examination results of the 2011 Kenya Certificate of Secondary Education(KCSE) in the counties of Garissa, Wajir and Mandera.

We the undersigned, parents and 2011 KCSE candidates from Garissa, Wajir and Mandera counties have authorized the hon. Member for Dujis to present this petition to the National Assembly on our behalf, drawing the attention of the House to the following:-

(i) Aware that the Kenya National Examination Council (KNEC) cancelled the results of 1,600 students from Wajir, Mandera and Garissa;

(ii) The Ministry of Education has intimated the involvement of the examination officials in the alleged examination cheating;

(iii) Cognizant of the fact that the examination board and the Ministry have not given tangible proof of any collusion between students of these three counties;

Therefore, your humble petitioners pray that the Parliament of the Republic of Kenya should do the following:-

1. Investigate whether the cancellation of the results of the 1,600 students was warranted.

2. To investigate alleged collusion of the students vis-à-vis the copies of the confiscated materials from the students so as to ascertain the credibility of the cancellation.

3. To investigate the KNEC with a view to establishing the officials behind the alleged examination cheating.

4. To investigate the cancellation and cheating of Kenya Certificate of Primary Education (KCPE) and KCSE examinations in the three counties in the last five years and; your petitioners will forever pray.

Mr. Speaker, Sir, I have raised this with the Minister for Education because this is a matter of national importance. It is not only the students of these three counties but students of 37 counties out of the 47 counties whose results were cancelled. We are talking about the credibility of examinations in this country. I want to bring to the attention of this House that what is going on at the KNEC is bigger than what we think. I can prove. I have a student by the name Bantin Yusuf Gure, Index No.5081 who passed away two months before the exam but he was graded as “cheating”. This student was shown as cheating. If Kenyans who are in the grave are cheating in exams and are graded---

Mr. Speaker, Sir, I have another student, Nadhifa Bare, Index No. 025, of Arabia Secondary School in Mandera, who left school four or five months before the examination; this child was shown as having attained a D+. We have results of one school where students from the same institution---

Mr. Speaker: Order! Order! Order, hon. Member for Dujis!

Mr. Duale: Mr. Speaker, Sir, I beg to table the Petition.

(Mr. Duale laid the Petition on the Table)

Mr. Speaker: Hon. Gen. Nkaissery!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaiserry): Mr. Speaker, Sir, this is a grave matter. In my Kajiado Central Constituency, 91 students had their examination results cancelled. This is a very important issue that this House should deal with. I want to recommend that a thorough forensic investigation should be done on the Kenya National Examinations Council (KNEC). As you realize, this is a custodian of all the exams; if there was any leakage, it must have originated from the KNEC officials. Therefore, the leadership of the KNEC should actually be removed as investigations take place

(Applause)

So, Mr. Speaker, Sir, I support this petition.

Mr. Speaker: Yes, Mr. Affey.

Mr. Affey: Mr. Speaker, Sir, thank you very much for giving me this opportunity. First of all, I want to support the hon. Member for Dujis, my friend hon. Duale, for bringing this petition to the Floor of the House.

Mr. Speaker, Sir, what we are dealing with is a very serious situation of young Kenyans whose future has been destroyed by the KNEC. We are speaking of the three counties in particular; Wajir, Garissa and Mandera, and generally of the 37 counties. But in this particular case, the number is too high; we have got 1,600 youths who do not know what to do with their future. As leaders in this country, we know what to do with students who fail, or who do not do well, but what do you do with a young man or woman who is educated but has no papers? It is a very difficult situation and that is why we are asking the Minister for Education – he ignored us when we brought this matter to Parliament – to establish a special committee to undertake a forensic audit. He ignored this, but I am now glad that the House is going to do it for him and the truth will be known. I thank the hon. Member for bringing this matter to the Floor of the House.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Thank you, Mr. Speaker, Sir. I would, first of all, want to congratulate my colleague and friend, hon. Duale, for bringing here such an important petition, which borders on national interest and the very survival of this country.

Mr. Speaker, Sir, I would like to state that even when we are making a request in this House for us to get down to the bottom of what exactly has been the issue in terms of exams, I would also actually want to make a recommendation that we need to go much further back, probably to ten years ago; this is because in some of the areas we represent, we believe that our children have been victimized before. In fact, I remember there was a time when a colleague in this House stated that maybe the communities where we come from are used to cheating in the exams. That is not the case now; the issues which are coming out are vindicating some of our communities. Something drastic needs to be done to the KNEC; urgent action has to be taken.

Thank you, Mr. Speaker, Sir.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Thank you, Mr. Speaker, Sir. I also want to support this petition. I am saying this because this is not only confined to this year; this problem has been recurring in the last six years. There are also other issues about some patterns of grades; all of a sudden, you find schools that are scoring just “As” and “A-” from nowhere. It must be that there is something that is happening. So, when you talk about cheating, it is not just north eastern, there are issues in schools in all counties, where you have to ask questions about whether or not some schools were able to get the leaks

while others did not get them. So, what is happening right now is that the examination system is not really determining who is the best and who is the worst; there are cases where we are not getting the whole story; it is important to take care of this.

Mr. Speaker, Sir, therefore---

(Mr. C. Kilonzo stood up in his place)

Mr. Speaker: What is it, hon. Member for Yatta? There is a point of order, Dr. Mwiria.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. You have, on very many occasions, warned the Government to avoid coming to cry to the House. The matter which has been brought up by the hon. Member for Dujis is because of the failure by the Government to supervise exams.

(Applause)

So, Mr. Speaker, Sir, the House has seen three Assistant Ministers lamenting here on a matter which this House wants to take over. So, I would want to urge the Chair to go by the previous ruling, that Ministers have no business coming to cry to the House; you are here to govern; we are here to make sure that we correct what has failed in the Government.

(Applause)

(Dr. Mwiria stood up in his place)

Mr. Speaker: Order! Order! Indeed, I reiterate my previous directions; it was just that I was engaged by the hon. Member for Sabatia, the Deputy Prime Minister and Minister for Local Government; so, I did not follow what exactly Dr. Mwiria was saying; given that you serve in the education portfolio, you are supposed to be part of the solution.

(Applause)

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I took the cue from you; an Assistant Minister spoke before me. Secondly, I am not in the Ministry of Education. I am also talking as an hon. Member of Parliament who is concerned. I also hope that the hon. Member is talking against this, not because it is a Kamba who is the boss of the KNEC, because we tend to tribalize all these things!

Mr. Speaker: Order! Order! Order, Dr. Mwiria! That, obviously, is a very dangerous trait. I have, again, directed in this House that as much as possible – except where the law permits – we do not talk about tribes, or refer to each other or any business in this House on tribal basis! I have reminded you and I think the HANSARD has captured it correctly. You are the National Assembly of Kenya, and not the Tribal Assembly of Kenya! So, please, withdraw that reference to Kamba.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I would like to withdraw it, although my friend has always told me that all politics is local; but I do withdraw.

Hon. Members: And apologize!

(Mr. C. Kilonzo stood up in his place)

Mr. Speaker: Order! Order! Order, hon. Member for Yatta!

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria):
Mr. Speaker, Sir, I also apologize.

Mr. Speaker: Let it rest there.

The hon. Member for Lagdera.

(Mr. M.H. Ali stood up in his place)

Order! I appreciate, hon. Member for Mandera East, but in these circumstances, you know what the Standing Orders say regarding practice of the House.

Mr. Farah: Mr. Speaker, Sir, I also stand to support the petition. A few of us remember in the Seventh Parliament when there was a situation in which all the students in Bishop Musa Gitau School, which was somewhere in Kiambu, were supposed to have done very poorly. But when we went for remarking again, it was found that those students were actually some of the best in the country. At that time, a pattern was developing in the country in which the politically correct areas, where the powers were domiciled, were the areas which always produced the best students and the best schools in the country. We kept on seeing this as we have progressively moved through one regime to the other regime, right from the first regime, to the second regime and a part of this regime.

Mr. Speaker, Sir, I remember in the late 1960s and in the 1970s, when Muslim students in Tanzania--- We used to do the same exams; we had the East African Examination Council. Students used to assume Christian names or used to assume names that did not have any Islamic connotations, because there was a cleverly contrived syndicate to make sure that they did not pass. Fifty per cent of the population contributed only less than five per cent of the students who were in Dar es Salaam University those days. I do not want our country now to recede into that, because one is bound to be incorrect at one time or the other on religion, on ethnicity, on region or all those things. We must get to the bottom of this thing; this is very serious, where a child who abandoned school months ago is shown as having attained grade “D”, while a child who has died is shown to have cheated.

(Applause)

Mr. Speaker, Sir, this pattern has been there; I think it is time our own system went back to something like what used to happen in the East African Examination Council, in which students from Kenya had their exams marked by another country. Examinations scripts did not carry names or regions; they only carried numbers that changed from time to time. Otherwise, the KNEC is suspect; we must get to the bottom of this thing because it puts our entire educational system into disrepute in the eyes of the international community!

Thank you, Mr. Speaker, Sir.

Mr. Speaker: The hon. Member for Mandera East; I am afraid that is the last one; look at Standing Order No. 207.

Mr. M.H. Ali: Thank you, Mr. Speaker, Sir. I wish to thank the hon. Member for Dujis for bringing this petition. More than 350 students in my constituency were affected. You know

very well that parents have invested in these children for 12 years, so that they can better the lives of their families. Now, 12 years of investment have gone to waste, and this is very saddening. This is coming when we have got this war in Somalia; many young people in northern Kenya are lured into the *Al Shabaab* and the Transitional Government of Somalia forces. When somebody who has been in school for 12 years is told “you have failed” and he has not been given an alternative, what do you expect that child to do?

So, Mr. Speaker, Sir, this is a very sad moment for the students of this region. When these young people in northern Kenya go to university through parallel system, sometimes they start as low as from certificate level; they pass the certificate level and go to the diploma level, which they also pass very well. Then they go to university and they do even better than some of the students who have gone through Alliance High School or Starehe Boys Centre. So, we are saying that these students are not fools; they are very clever people and we want them to be given an opportunity. We want that Committee and this House to make sure that we do justice for the children in this part of the country.

Thank you, Mr. Speaker, Sir.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! Order, hon. Members! That is it; in accordance with Standing Order No. 208, any further interventions, including comments, observations or clarifications in relation to the petition shall not exceed five minutes. I have already exceeded five minutes; in fact, I have done three times that time! I order that this petition be committed to the Committee on Education, Research and Technology. Those hon. Members who may have issues, views or comments they want to present, including the good Member for Gichugu – whom I respect as a senior hon. Member of the House – should go and contribute in the Committee.

(Applause)

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

Mr. Speaker: What is it, hon. Member for Ol Kalou?

EXTENSION OF RETIREMENT AGE FOR
PERSONS WITH DISABILITIES

Mr. Mureithi: Thank you very much, Mr. Speaker, Sir. I stand here to present a petition on behalf of persons living with disability, who are in the Public Service. The people who have signed the memorandum have asked me to draw the attention of the House to the following.

“THAT, aware that the matter on the extension of the retirement age of persons with disability from 60 years to 65 years was brought to Parliament on the 19th of October, 2011; whereas the Minister of State for Public Service promised to present a revised decision on Thursday, 27th of October, 2011, and as the matter was nearly concluded by the Ministry of Gender, Children and Social Development to the contrary, this has not been done to date; whereas persons with disabilities strongly agree with the hon. Members of Parliament that failure to extend the retirement age to 65 years for those who wish to continue with their

service is a form of discrimination, which is against Article 54 of the Constitution; that persons with disability who have attained 60 years of retirement are still waiting for a Government circular to extend their service to 65 years at their place of work, including those who were retired in 2011.

Therefore, the humble petition and prayer is that the Government of the Republic of Kenya urgently ensures that justice is done to the less fortunate members of the society by reinstating the persons with disabilities who were retired at the age of 60 in 2011 and extend the retirement age to 65.

The petitioners have hereby signed it and I lay on the Table their petition.

(Mr. Mureithi laid the document on the Table)

Mr. Speaker, Sir, this comes as a result of the circular that was issued by the Minister of State for Public Service and I will read only one paragraph which says:

“Employees in service, including those on extended service periods, will now be allowed to serve up to age 60. Persons with disabilities will be allowed to work to age 65 if they so wish”. However, at the moment there is a lot of discrimination and they are being forced to leave notwithstanding that these people even take time to get married and get on with their lives.

Mr. Speaker, Sir, so, I present the petition of all the Kenyans with disabilities that are being discriminated against at the moment in the public service.

Ms. Karua: Thank you, Mr. Speaker, Sir, I rise to support the petition and to congratulate the hon. Member for Ol Kalou who has brought the petition, who is a member of NARC-(K). I say that this Parliament should come to the aid of people living with disabilities. Since the Executive has failed to implement the Equal Opportunity Committee recommendations, the entire Parliament should come to the aid of people with disabilities, so that they may enjoy their rights.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I want to thank the hon. Member for Ol Kalou for bringing this petition. I just want to indicate that the hon. Attorney-General is here and he should advise the Government that it is unconstitutional and untenable; it should be redressed before it reaches the Equal Opportunity Committee of which I am a member. There is no reason why you should have different standards for persons with disabilities. I support.

Mr. Mwangi: Mr. Speaker, Sir, I stand to support and congratulate hon. Mureithi for bringing this petition to the House. If we look at the circular which was issued by the Minister concerned, it gave a leeway where people with disabilities would be discriminated against while others are given fair conditions. It is unfair and in breach of the Constitution. These people have been serving the country like anybody else. Therefore, they should be given an opportunity to serve to the age of 65 years; I would wish to support the petition and say that it has come at the right time.

Mr. Ruteere: Mr. Speaker, Sir, I congratulate hon. Mureithi for bringing this petition. I support it because many of us are candidates of disability. I was not disabled until 2001 when I had an accident and these days I limp a lot. As much as my disability is not of a serious nature, people can acquire disabilities even at a time when they are functioning very properly. Recently, there were grenades fired in Nairobi and there are those who have already been disabled. They were citizens in this country who were doing very well. So, I support this petition and let it be handled in the right way, so that these people are not discriminated against.

Mr. Ngugi: Mr. Speaker, Sir, I also rise to add my voice in support of this petition. In many cases, we forget people living with disabilities; when it comes to retirement most of us who have no disabilities go to do some other work. In fact, it should be the reverse. People with disabilities should be allowed to work longer because they are unlikely to retire and take up any other jobs. For that reason, I support this petition.

Mr. Affey: Mr. Speaker, Sir, I want to thank the hon. Member who has brought this matter before the House. I want to say that disability is not inability, and that these wonderful Kenyans work very hard; for the Government to discriminate against them is a very dangerous trend. It is against our Constitution. As a committee we are prepared and willing to investigate this matter and get to the bottom of it. Thank you very much, hon. Member; I hope that in future the lessons learnt from this will be used by the Government in order to treat Kenyans equally; this is what should be done under the law.

Mr. Speaker: Order, hon. Members! I direct that this petition be committed to the Minister of State for Public Service and for him to comply with Standing Order No.210, in which event there has to be a response and a report to the House within 21 days from today. Deputy Leader of Government Business, will you undertake to ensure that the Minister becomes aware immediately?

The Minister for Transport (Mr. Kimunya): Yes, Mr. Speaker, Sir. I will communicate.

Mr. Speaker: Next Order.

PAPERS LAID

The following Papers were laid on the Table:-

The Report of the Sixth Session of the Second Legislature of the Pan African Parliament held in Addis Ababa from January 16th to January 20th

(By Mr. Imanyara)

The Report of the Committee on Equal Opportunity on the Distribution of Government Advertising Services and Revenue among Radio and Television Stations

(By Mr. Affey)

The Report of the Departmental Committee on Health on Regulation of the Pharmaceutical Sector in Kenya.

(Dr. Monda)

Mr. Speaker: Next Order!

NOTICES OF MOTIONS

ADOPTION OF REPORT OF SIXTH SESSION OF SECOND
LEGISLATURE OF PAP

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

THAT this House adopts the Report of the Sixth Session of the Second Legislature of the Pan African Parliament held in Addis Ababa, Ethiopia, 16th January to 20th January, 2012 laid on the Table of the House today, Thursday, 15th March, 2012.

ADOPTION OF REPORT ON REGULATION
OF PHARMACEUTICALS SECTOR

Dr. Monda: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT this House adopts the Report of the Departmental Committee on Health on regulation of the pharmaceuticals Sector in Kenya laid on the table of the House today, Thursday, 15th March, 2012.

ADOPTION OF REPORT ON DISTRIBUTION OF GOVERNMENT
ADVERTISEMENT SERVICES AND REVENUE

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

THAT this House adopts the Report of the Committee on Equal Opportunity on the distribution of Government advertisement services and revenue among radio and television stations laid on the Table of the House today, Thursday, 15th March, 2012.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

QUESTIONS BY PRIVATE NOTICE

PURCHASE OF MAIZE BY NCPB IN HOLA

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

(a) Is the Minister aware that over six thousand bags of maize belonging to farmers at Hola Irrigation Scheme is in danger of contamination due to the delay and/or failure by the National Cereals and Produce Board (NCPB) to purchase the same?

(b) Is the Minister also aware that the National Irrigation Board acts as an agent for Kenya Seed Company Limited as well as the NCPB in Hola?

(c) Could the Minister consider opening an NCPB office in Hola?

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

(a) The Ministry is not aware that over six thousand bags of maize belonging to farmers at Hola Irrigation Scheme may be in danger of contamination due failure by the NCPB to purchase the same.

(b)The National Irrigation Board acts as an agent of Kenya Seed Company for seed maize production. My Ministry is not aware of the existence of any agency agreement/arrangement between NIB and NCPB.

(c)The Ministry has no immediate plans to open an NCPB office in Hola.

Ms. Karua: Mr. Deputy Speaker, Sir, I am very disappointed. My colleague the Assistant Minister, yesterday asked for time to give a comprehensive answer today. What he has brought is a contemptuous answer which has no regard to the plight the farmers in Hola are facing.

Mr. Deputy Speaker, Sir, farmers in Hola Irrigation Scheme grow two types of maize; maize for Kenya Seed Company for use as seeds, and maize for human consumption. The NCPB, like the Assistant Minister has admitted in the statement, has no depot at Hola, the nearest depot being in Bura. For purposes of purchasing, they use the NIB to purchase the maize in Hola. For this particular maize, the farmers co-operative through their Chairman, Mr. Komora wrote a letter indicating the plight of the farmers.

These 3,000 bags of maize is lying in the NIB offices and it has already been inspected and I wish to table this document by the Chairman of the Irrigation Board. I also have a certificate which shows that the maize is fit for human consumption.

(Ms. Karua laid the documents on the table)

Could the Assistant Minister then tell the House; if he denies the agency agreement, how does the NCPB purchase the maize from the farmers in Hola in the absence of a depot at Hola?

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. The issue raised by hon. Karua is really not that simple. I was sitting in this House yesterday when the Minister admitted that the issues raised required a comprehensive answer and undertook to give a very detailed answer. In fact, the HANSARD would bear me witness to this. Is it now in order for the Assistant Minister, having stood before the House to give an assurance that he is going to give a very comprehensive answer to come and give a summary of a denial, when he has stood in the House to assure us that he is buying time in order to give a comprehensive answer?

Mr. Deputy Speaker, Sir, I think this is a matter that requires the Chair's intervention. It is not as light as the Government side would like to believe.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. On the same and we are all alive to promises that are given by Ministers in this House---. This House should not be taken lightly. When at times Members of the Back Bench sit back when a Minister asks for indulgence for more time to go and source for more information, then it is that trust that holds many Members of Parliament to just oblige and wait until the Minister gives a comprehensive answer.

Mr. Deputy Speaker, Sir, it is such a contemptuous answer where the Assistant Minister just bluntly denies that he is not aware of any maize that is rotting, when indeed, just on Monday, I was with the manager of the NIB of Hola and he confirmed to me that there are 5000 bags of maize lying in Hola. The same Government is contemplating importing maize from South Africa; again they may import maize that is contaminated. Is the Assistant Minister in order to just come here and deny facts that are already here without having to give a satisfactory answer that would satisfy the ego of this House?

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. Hearing the answer by the Assistant Minister, to say the least, it is contemptuous. May I seek your direction to determine

whether that is actually a comprehensive answer before we proceed and interrogate the Assistant Minister?

Mrs. Odhiambo Mabona: On a point of order, Mr. Deputy Speaker, Sir. If we let the Assistant Minister get off the hook with such an answer, then our proceedings would basically be cosmetic, because if you ask a Minister a Question and he says that he is not aware, then everybody here would say he is not aware. Then why can we in the Back Bench not go and take over their jobs so that we are aware? If he is not aware, we can do his work!

Mr. Mututho: On a point of order, Mr. Deputy Speaker, Sir. Listening to the Assistant Minister, in my view and that of my Committee, it is total betrayal to the Kenyan people. In the first instance, looking at the key pillar of the Vision 2030, irrigation is one of them. The only point where they can count measurable success is Bura Irrigation Scheme where they have been producing maize under the Economic Stimulus Programme.

Listening to the Assistant Minister, he denies all the facts, that indeed, even what is documented under Vision 2030 for the Kenya Government, does, in essence, not exist. Shall I be in order without necessarily getting directions from you, move my Committee without reference, and have this matter reported back here to this House by Wednesday this week so that this Assistant Minister can be named for misleading the House?

Mr. Koech: On a point of order, Mr. Deputy Speaker, Sir. Just as my colleagues have indicated here, when the Minister committed herself to come and give a comprehensive statement - I say the substantive Minister - the farmers in the Republic of Kenya expected a better answer than what the Assistant Minister has indicated.

Mr. Deputy Speaker, Sir, we are at the point where the farmers mainly in the North Rift have not been able to sell their maize because NCPB has stopped purchasing the maize. Two weeks ago, the Rt. Hon. Prime Minister indicated on the Floor of the House that there is money to buy maize in this country and to date, nothing has happened. Would I be in order to request the Minister to take this very seriously; that farmers in this Republic are eagerly waiting? They are about to go back to farming and the indication from the Government, even to the point of wanting to import maize, is actually a discouragement to the farmers.

Would I be in order to request that we support the Chairman of the Departmental Committee on Agriculture's position that he moves with speed and tables a comprehensive report in this House?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I want to support my colleagues. We bring Questions to this House where the Government has failed to listen to the citizens of this country.

Mr. Deputy Speaker, Sir, about two years ago, because of this business of the Government not being aware, farmers in the eastern part of the country lost huge harvests. As you make your ruling, we plead with the Chair to ensure that when we ask Ministers Questions, they must avoid coming to say that they are not aware. A Government which is not aware is not really a Government which should be serving its people.

Mr. Deputy Speaker: Assistant Minister was it not you who gave the same undertaking to the House yesterday?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, yes, I assure this House that I will give a comprehensive answer. As far as I am concerned—

Mr. Deputy Speaker: Order! To correct Mr. Koech's assertion, it was not a "she" although there is a "she" as a substantive Minister. It is the same Minister. I think if I am not wrong, I was on the Chair then.

Hon. Members: Yes!

Mr. Deputy Speaker: You gave an undertaking and the matter is serious and you intended to give a comprehensive answer. A comprehensive answer is not the same as saying: “I am not aware.” The word “comprehensive” entails a raft of explanations on these things. So, could you proceed and make good your undertaking?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, I have all the information here, and whatever I have given is part of my comprehensive answer which I am prepared to share with hon. Members so that, they can understand the dynamics in which the Ministry of Agriculture really operates. I want to assure hon. Members that the Kenya Seed Company has an agency agreement with the National Irrigation Board, specifically for seed maize production. They buy that seed on timely basis. For commercial maize, we are operating under a liberalized economy whereby NIB is free to sell maize stocks currently held to any cereal dealer who is ready to offer a competitive price. We have a problem here because it seems like it is only the Government which is supposed to buy all the maize that is produced in this country. We want to encourage farmers to identify other competitive buyers.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House that there is a misconception out there that it is the Government that is always supposed to buy maize from farmers, when it is the same Government that intimated that it has money but there is no maize to buy? Is it the public that has a misconception of information or the Government which is misleading the public?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, the National Cereals and Produce Board (NCPB) has already received approximately Kshs2 billion through the Ministry of State for Special Programmes, which has the responsibility of buying the strategic grain reserve. So far, the NCPB has bought 618,000 bags of maize. I have already received an assurance from the Acting Minister for Finance that he will be releasing Kshs1 billion through the Ministry of State for Special Programmes towards the NCPB, so that they can go to Bura and other parts of the country and buy the maize from the farmers.

Mr. Deputy Speaker: Clearly, it is not generating much more interest as you can see.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. It is not that it is not generating a lot of interest. Many of us are waiting for you to rule whether the Assistant Minister should bring a comprehensive answer. That is why we are not giving any comments because we do not think he has given any comprehensive answer.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. You will notice that I laid documents before the House. He has not even bothered to look at them and yet, these are documents by the farmers’ co-operative, which is clearly stating the number of bags. There is a total of 6,000 which have already been received and inspected since 12th January. Farmers are unable to feed and take their children to school. It is quite clear from these documents that there is an agency agreement where NIB is acting on behalf of NCPB. I am convinced that the Assistant Minister will not answer this question comprehensively and he is not willing to answer it. Would I be in order to ask that you rule this matter be investigated by the Agriculture, Livestock and Cooperatives Committee which would be willing to bring a comprehensive answer to the House, so that we can remove the farmers of Hola from this slavery and abject poverty?

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir, once again, I rise on the same issue. In the written reply, the Assistant Minister says that the Ministry is not aware.

However, after he has been pushed and documents have been presented to him - which he does not even want to look at - he talks of Kshs1 billion.

Is it in order for a substantive Assistant Minister to say that he is not aware and when these issues are raised, he says that there is Kshs1 billion? He has not even looked at the documents that have been availed to him! The written answer is very clear and it goes on to say that the Ministry has no immediate plans to open an NCPB office in Hola, contradicting all that he has said in his answer. Is he in order?

(Mr. Imanyara laid the documents on the Table)

Mr. Deputy Speaker: Could you table the written answer for the Chair to see?

(Mr. Mbiuki laid the document on the Table)

Hon. Assistant Minister, the standard definition, when you say that you are not aware, means that it does not exist, and the Question does not capture the state of affairs on the ground. That means that, indeed, there are no 6,000 bags out there that are in danger of contamination due to failure by NCPB to purchase the same. Are you telling us that, that maize does not exist?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, the Ministry has admitted that there is maize out there in the entire country.

Mr. Deputy Speaker: We are not talking about the entire country but Hola. Could you confine yourself to the specifics of the Question?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, yes, the Ministry is aware that there is maize which has been produced through the NIB Programme. What the Ministry is not aware of is that the maize is in the process of contamination due to poor storage. But, in general, we are aware---

Mr. Deputy Speaker: Then you must have the information to counteract that and say that, indeed, that is not happening. That way, you can say it is not true that this maize is in danger. You cannot say that you are not aware and assume that it is a satisfactory answer. Who is supposed to be aware?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, I want to put the facts very right and say that yes, the Ministry of Agriculture, which is responsible for the production of maize in the entire country, is aware that there is maize in Bura and Hola. On top of that, due to limitation of finances in the NCPB, we have petitioned the Treasury to give us money so that we can buy maize that is being held by farmers. I am happy that the Minister for Finance has assured me--- He is here and he can give me that assurance. He is in the process of providing more than Kshs1 billion so that NCPB can go to the ground and buy maize from farmers who are really suffering.

Mr. Deputy Speaker: What happens in the interim because the maize is in danger?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, meanwhile, we want to encourage farmers, especially those in Bura and the rest of the country, to identify other cereal dealers who can buy their maize through competitive prices as we make arrangements to get money from the Treasury.

Mr. Mututho: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has failed to say that the Government spent over Kshs6 billion to produce over 500,000 bags of maize that they could not go and buy from farmers at the Bura Irrigation Scheme. We have heard him say that farmers should be encouraged to go and look for clients. The other day, we heard the Prime Minister say that they have over Kshs2 billion to buy mainly imported maize. Is he in

order to continue misleading this House that, indeed, the same Ministry is not shooting itself in the foot in terms of food security? I seek your direction.

Ms. Karua: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister say that he is encouraging the farmers to look for other maize dealers. The sad story of cereals in this country is that the NCPB and the Ministry of Agriculture, fail to buy the farmers' maize to make them desperate and push them to the brokers. When the Government releases the money, it benefits the brokers and not the farmers. Is the Assistant Minister in order to avoid his duty for which he is paid every month and push the farmers to the brokers?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, it has been made very clear that the responsibility of buying maize from the farmers is not in the Ministry of Agriculture. It is the Ministry of State for Special Programmes which normally has an agency with the NCPB. The responsibility of the Ministry of Agriculture is maize production.

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. A short while ago, the Assistant Minister stood here to say that they have made arrangements with the Ministry of Finance to buy additional maize and he stands the second time to say that is it not actually his responsibility to buy the maize, but that of another Ministry. Is it in order for him to keep on giving us mixed information and, thus, misleading the House?

Mr. Njuguna: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to avoid your question, to respond on the status of the harvested maize by farmers in Hola?

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House that the Ministry of Agriculture has no business in the purchase of maize, when he knows that his Ministry is mandated not only in the production of maize, but also in marketing of maize, which again goes to the issues of buying and selling of maize?

Mr. Deputy Speaker: Order! Hon. Assistant Minister, it does not help to feign helplessness. It is the role of the Government to make sure that such an important commodity as maize, which is the staple diet of most Kenyans--- For you to say that you are waiting for money from the Treasury, ordinarily in a democracy, that is supposed to elicit an outrage in the streets of that country. This is because this is an important staple food as well as a cash crop for Kenyans. So, the Chair is not satisfied. When there is a five cents increase in the price of a loaf of bread in Egypt, the country comes to a standstill. You have to take seriously the livelihood, interest and welfare of our countrymen. The Chair has the responsibility to see to it that Ministers give satisfactory answers on the Floor of the House. The Chair is not satisfied and it directs that you go back and come with a comprehensive and satisfactory answer. In the meantime, because there are limits to how much the Chair can direct the Government to perform its own functions, I also direct the Chairman of the Committee on Agriculture, Livestock and Cooperatives to move with speed and in a maximum of ten days and bring that Report to the Floor of the House.

Next Question, hon. Kiilu!

CRISIS AT WOTE DISTRICT HOSPITAL

Mr. Kiilu: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Medical Services the following Question by Private Notice.

(a) Is the Minister aware of a go-slow by nurses and other medical staff in Wote District Hospital in Makueni County, which is causing a crisis in service delivery?

(b) Is the Minister also aware that the only amenity ward in the hospital, which serves the whole county, has closed down?

(c) What is the Government doing to avert the crisis?

The Assistant Minister for Medical Services (Mr. Kambi): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that there has been a go-slow by nurses and other medical staff in Makueni District Hospital since the start of an illegal strike called by the Kenya Health Professional Society (KHPS) from 1st March, 2012.

(b) I am also aware that the amenity ward at the hospital was closed down one year ago.

(c) Following the decision by the Union of Civil Servants and leadership of the KHPS to call off the strike on 4th March, 2012, after discussion with the Ministry, health workers at Makueni District Hospital have, by and large, resumed work and the situation is now back to normal. The amenity ward was closed due to staffing challenges. The Ministry has identified staff to work in the ward and plans to re-open in the next two months are ready. I can assure the House that instead of two months, we can do it within one month.

Mr. Kiilu: Mr. Deputy Speaker, Sir, I wish to disagree with the Assistant Minister's answer, particularly on part "a." I would agree with him up to the level where he says: "I am aware that there has been a go-slow by nurses and other medical staff in Makueni District Hospital."

Mr. Deputy Speaker, Sir, however, I totally disagree with the area where he says "since the start of an illegal strike." The nurses and other health workers in this place have been on a go-slow since last year. The reason for this go-slow basically has been because of serious differences between the supervisors, that is, the nursing officer and the deputy. Health workers have been threatened most times with transfers and other kinds of threats, particularly those who belong to the Union of Civil Servants and KHPS. Even with the resumption of duty by officers who have been on strike, what is the Assistant Minister doing to ensure that the working relationship between the nurses and other health workers in this facility is cordial and that they are able to deliver services effectively, to the satisfaction of the people who live in this county?

Mr. Kambi: Mr. Deputy Speaker, Sir, I am not aware that there have been differences among different cadres in this facility. However, as a Government, we are going to investigate this issue and if we find that it is in actual sense being practised in that facility, then drastic measures will be taken against these officers.

Mr. Deputy Speaker: Hon. Kiilu, are you satisfied or you wish to ask the last question?

Mr. Kiilu: Mr. Deputy Speaker, Sir, I am not satisfied. The Assistant Minister is avoiding the truth. As late as last month, and he should confirm this, he had to recall the nursing officer, a Ms. Agnes Mutinda, to the headquarters here because of those differences in the hospital. As late as last week, over 40 nurses had either resigned or transferred out of this facility. So, the problem still persists.

Mr. Kambi: Mr. Deputy Speaker, Sir, posting of different officers is one of the prerogatives of the Ministry of Medical Services. However, in any circumstances, it is not because the staff have differences. But if we find that an officer has stayed in one station for long, we transfer them, and those are normal transfers within the Government system.

Mr. Kiilu: Mr. Deputy Speaker, Sir, may I ask the last question?

Mr. Deputy Speaker: Proceed and ask the last question!

Mr. Kiilu: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister confirm that this amenity ward which serves nine districts in Makueni County has remained closed for the last

one year or so and that he has now identified staff. Could he, as he confirms this, tell us the optimal staffing level of this facility and how many new people he is posting to open this facility, particularly the amenity ward? Could he table the list of the staffing levels, that is, the current status of those who are in post and the intended number of people that he is posting to Makeni, so that the services of the amenity ward can resume?

Mr. Kambi: Mr. Deputy Speaker, Sir, personnel has been a challenge not only in Makeni District Hospital but in hospitals all over the country. However, in this case, we have identified staff but I do not have their names. I can give the hon. Member the names of the personnel who are going to be posted to that facility in due course. I can do so even tomorrow.

Thank you.

Mr. Deputy Speaker: Next Question, Mr. Kiema Kilonzo.

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

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

Mr. Imanyara: Mr. Deputy Speaker, Sir, I stand on a point of order to seek your guidance on the meaning of today's Order Paper. You notice that the Motion for Adjournment is supposed to be moved not later than 3.30 p.m. but it is now getting to 4.00 p.m. We ought to have gone into the Motion for the Adjournment of the House. I seek your guidance. What is this business that we have been transacting?

Mr. Deputy Speaker: Clearly, it is the presumption of the Chair that there will be a Supplementary Order Paper, in which there will be a Procedural Motion. The philosophy behind the "Not Later than 3.30 p.m." is so that the Motion can have three hours, unless there is nobody else who wishes to contribute.

Hon. Members, there is a Supplementary Order Paper. So, you can now shift to the Supplementary Order Paper.

Dr. Nuh: Mr. Deputy Speaker, Sir, on the same note, even the Supplementary Order Paper, on the last page, shows that the Adjournment Motion has to be moved not later than 3.30 p.m. If the presumption of the House is that the Procedural Motion will be passed, then we are anticipating debate. So, the only fair thing for the Government to do is to move to the Procedural Motion and if the Procedural Motion passes, the "not later than" will lapse. Until and unless the Procedural Motion is passed by this House, the presumption in the Order Paper and the Supplementary Order Paper is that we move to the Adjournment Motion not later than 3.30 p.m.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Indeed, both the Order Paper and the Supplementary Order Paper are very clear. I believe that while preparing the Order Paper, the Leader of Government Business understood the ordinary meaning of "3.30 p.m." There is unlikely to be an interpretation other than that one. They should have known that they should move the Procedural Motion before 3.30 p.m. Otherwise---

Mr. Deputy Speaker: Order! Order, Isaac Ruto! I do not know what word to use. You have been in this Parliament for so long. When you have a Procedural Motion that says, among other things, "until the conclusion of the business appearing on the Order Paper", you ought to know that the House can sit up to 11.59 p.m. A Motion of Adjournment is supposed to have a maximum of three hours. It can have less than three hours but it has to have a maximum of three hours. So, we are still within our own rules and traditions.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. We agree with you that when the Procedural Motion is passed, we can sit up to any time but because the Executive failed to move the Procedural Motion before 3.30 p.m.--- The Order Paper that we have says that we should go to the Motion for Adjournment not later than 3.30 p.m. So, even if the Procedural

Motion is moved now, it cannot cure that defect. Therefore, I support the point of order that we ought to be moving to the next Motion, but we are already late by a half an hour. I think the Leader of Government Business was sleeping on the job.

Mr. Deputy Speaker: Order! Order, hon. Members! Can I exhaust Question No.3 by Private Notice, which I called ?

(Mr. Kabogo stood up in his place)

Mr. Deputy Speaker: What is it, hon. Kabogo?

Mr. Kabogo: Mr. Deputy Speaker, Sir, I want to seek the indulgence of the Chair. Hon. Kiema Kilonzo had asked me to seek the indulgence of the Chair so that this Question can appear on the Order Paper of the next sitting day.

Mr. Deputy Speaker: Fair enough. You, indeed, approached the Chair and intimated the same. Therefore, the Chair directs that this Question be listed on the Order Paper on Tuesday afternoon.

NON-PAYMENT OF TAXES BY MASTERMIND
TOBACCO (K) LIMITED

(Mr. K. Kilonzo) to ask the Minister for Finance:-

(a) Is the Minister aware that Ms Mastermind Tobacco (K) Limited has not been remitting taxes since 2007 and now owes the Kenya Revenue Authority (KRA) more than Kshs.12 billion?

(b) Why has the company not paid the arrears despite several Tax Demand letters sent to them by KRA?

(c) Can the Minister confirm that the failure by KRA to enforce the several tax demand notices is attributed to corruption and, if so, what measures will the Ministry take to ensure that all companies which have not remitted due taxes do so, with the appropriate penalties?

(Question deferred)

Mr. Deputy Speaker: Hon. Members, under the circumstances, Question No.4 by Private Notice by hon. C. Kilonzo, Question No.964 by hon. Odhiambo Mabona, Question No.1378 by hon. Benjamin Washiali, Question No.1255 by hon. Luka Kigen and Question No.1020 by hon. Silas Ruteere will be listed on the Order Paper on Tuesday, next week.

DISMISSAL OF POLICE OFFICERS

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

(a) Under what circumstances were police officers, CPL Peter Thaine Koome (No. 76078), PC Benjamin Kipruto Chumba (No. 85263), PC Charles Agwingi Ambogo (No. 64417) and Andrew Lomosi Budembeshe (No.66637), who investigated mobile phone and digital accessories counterfeiting by Ms Banlon Kenya Ltd., dismissed from service in December 2011?

(b) What charges were preferred against the Director, Mr. Yang Zhihong (a Chinese national) and under what circumstances was he released from custody?

(c) Can the Minister confirm or deny that Police Force procedures were violated in the dismissal of the four officers?

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.964

ENFORCEMENT OF SECTION 53 OF EMPLOYMENT ACT

(Question deferred)

Question No.1378

PERFORMANCE OF COUNCIL GRADER

(Question deferred)

Question No.1255

RELOCATION OF KIHOTO DUMPSITE IN NAKURU TOWN

(Question deferred)

Question No.1020

ILLEGAL LAND TRANSACTIONS AT TUTUA LANDS OFFICE

(Question deferred)

Mr. Deputy Speaker: Hon. Members, I now direct that we shift to the Supplementary Order Paper.

Next Order.

(Mr. Ruto stood up in his place)

Mr. Deputy Speaker: Are you rising on a Statement?

Mr. Ruto: I am rising on a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: This is the time for Statements. You will have your moment.

STATEMENTS

Mr. Koech: On a point of order, Mr. Deputy Speaker, Sir. I was waiting for a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs, which was supposed to have been delivered yesterday but he promised to deliver it today.

Mr. Deputy Speaker: Minister for Justice, National Cohesion and Constitutional Affairs? Is the Minister not here?

Leader of Government Business, in line with the principle of collective responsibility, what do you have to say for your Minister, who has promised to deliver a Ministerial Statement but is not here to do so?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, I will catch up with him. I request that the Ministerial Statement be brought to the House next Tuesday.

Mr. Deputy Speaker: Fair enough.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): On a point of order, Mr. Deputy Speaker, Sir. I just wanted to draw the attention of the Chair that I also have a Ministerial Statement to deliver.

Mr. Deputy Speaker: Order! Order! All Ministerial Statements, whether you are seeking one or you are delivering one, are deferred to next week.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister, Ministry of State for Provincial Administration and Internal Security had promised to deliver a very important Ministerial Statement to this House today. As we speak, the residents of Kimilili Constituency are not sleeping in their houses. They are sleeping in the bushes for fear of being attacked. The Assistant Minister was supposed to give a Ministerial Statement today. He is still here.

Mr. Deputy Speaker: Order! Order! The Ministerial Statement will be delivered next week, on Tuesday. In line with the provisions of our Standing Orders, the Leader of Government Business is supposed to lay before the House the programme of the business for next week.

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

Mr. Deputy Speaker: Order! Let the Leader of Government Business finish his business.

Proceed, Leader of Government Business.

BUSINESS FOR THE WEEK COMMENCING
20TH MARCH, 2012

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Thank you Mr. Deputy Speaker, Sir. I wish to take this opportunity in accordance with Standing Order No.36 (4) to make the following Statement with regard to the business for next week.

Allow me to note that in today's Order Paper - I hope the Member for Gichugu does agree with me that I was not sleeping on the job because you rightfully said there is a Supplementary Order Paper - we have scheduled a Motion of Adjournment of this House to a day other than the next normal sitting day. During the debate on that scheduled Motion, Members will have the opportunity to contribute on various issues as we break off to the anticipated debate. However, Members will be free to exercise their discretion and be able to determine the fate of that Motion.

Mr. Deputy Speaker, Sir, should Members decide to vote against the Motion, we already have business lined up for deliberation and as usual, the House Business Committee (HBC) will then have to meet next Tuesday at the rise of the House.

Thank you.

POINT OF ORDER

TIMELINESS OF AMENDED MEMORANDUM FROM THE PRESIDENT

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I wish to get your guidance on a circulated letter which had been addressed to the Speaker by His Excellency the President. Earlier on, there was guidance from the Chair that there will be an amended memorandum to be circulated. What I have here says:-

“Ref: Memorandum of refusal to assent to the County Governments Bill (2012);

The above matter refers:

I write to clarify that the reference in memorandum to clause 30 (1) (i) is erroneous, the correct reference should be clause 30 (2) (i)”.

Mr. Deputy Speaker, Sir, the ordinary meaning of “clarify” is where something is not expressly clearly written. It reads on page two of the memorandum, Clause 30 (1) (i) of the Bill is very categorical. Unless this letter purports to delete this particular sentence and, therefore, insert another sentence that would read correctly or are we supposed to assume that this letter forms part of the memorandum? If so, this letter is written on the 13th of March. That is obviously out of time.

According to Article 115 of the Constitution, the President is supposed to do that within 14 days. I think we can read the Constitution, I think it is Article 115. I may wish to read or I am sure you are quite conversant with it. Maybe I need not take your time. It is very clear that he should do that within 14 days. The date of 13th is beyond the 14 days. Do we then at this hour have a different memorandum before us? Has this one been amended? Does this letter, which is out of time, have the power to amend the earlier memorandum? Are we likely to receive another letter in May again saying there are other errors? I know there are a number of other errors inside here which I do not need to divulge right now. Will there be another letter next week and it will still be acceptable?

Does the meaning envisaged by Article 115 of the Constitution; that it should be within 14 days meant to be respected? I seek your clarification as to whether we have an amended memorandum. I thought we would be having an amended memorandum circulated to us. I have not seen it. I have only seen a letter which I am unable to find.

It uses the word “clarify”. You clarify what is not clear.

Mr. Deputy Speaker: Can you table that letter you are talking about?

(Mr. Ruto laid the document on the Table)

Mr. Imanyara: Mr. Deputy Speaker, Sir, I do have substantive comments to make on the issue but I would just seek your direction because the Chair, just before you moved in, did expressly direct the Clerks-at-the-Table to distribute “the amended memorandum”. Those were the words of the Speaker. The Speaker did not say distribute a copy of a letter from the President.

Mr. Deputy Speaker, Sir, I am seeking guidance that the memorandum is going to be circulated so that we can make substantive comments on it.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. I would also wish to seek your ruling and in your ruling you know that we are implementing a new Constitution and we are going to be setting precedence by what we do in this House and by what rulings that are made in court. What I would want to draw your attention to is what the provisions of the Constitution are, in terms of time lines. The President forwarded a memorandum within given time lines. If that memorandum is not in order and the President either amends or brings a further letter, does that constitute part of the earlier memorandum within the meaning of the Constitution? In my view, that is not so.

What we also want to know is; can a letter amend a memorandum? Constitutionally, again, in my view as a lawyer, I do not think that can happen. I am calling on you to give us your ruling on whether what is purported to be done can be done constitutionally.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Deputy Speaker, Sir, I think we are reading too much in what is not there. If you look at the President's letter dated 13th March, 2012 it is addressed to the Speaker. It is referring to the memorandum of refusal to assent to the County Governments Bill (2012). It says:-

"I wish to clarify that the reference to the memorandum to Clause 30 (1) (i) is erroneous. The correct reference should be Clause 30 (2) (i)".

Mr. Deputy Speaker, Sir, he is simply clarifying. He is simply drawing attention to the fact that there was an error. This is a typographical error. Anybody can make that mistake and so we should consider the memorandum as properly before the House.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. On the same issue, I was indeed the one who requested the Chair - the hon. Speaker then - to avail a copy of the amended memorandum to the House so that Members can acquaint themselves with whether we have a memorandum or something different. Although Mr. Githae says that he is "clarifying" an error, you cannot clarify an error. You can only correct an error. If we are to go with plain English, you can only clarify what is not clear as in expunge and add a few things.

Mr. Deputy Speaker, Sir, the reason as to why I raised the matter; that the amended memorandum be circulated, was in respect of the President's memorandum that was submitted on 27th February that indicates that there is no county equivalent of the National Security Committee. I had said that in the National Police Service Act which disappeared from the Government Printers and Parliament Library even after I had made a copy and only resurfaced after I went with a copy and showed it to them that, indeed, I have a copy---

Sometimes it behooves whether Acts of Parliament can be published then arbitrarily be withdrawn and then it is assumed that it was never published. If it was not for the copy that I had made, it seems we would not even be having the National Police Service Act in this country until the Government Printer decides otherwise.

Mr. Deputy Speaker, Sir, if the National Police Service Act in determining the members of the County Policing Authority says that one of the membership will be the Chairperson of the County Security Police, then it calls to question whether the County Security Committee is not the equivalent of the National Security Community hence an erroneous memorandum from the President. Would we accept such a memorandum in this House when it contravenes sections of Acts that we passed in this House?

Thank you.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): On a point of order, Mr. Deputy Speaker, Sir. Thank you and I can take the comments kindly by Dr. Nuh that indeed the President---

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

The Vice-President and Minister for Home Affairs (Mr. Musyoka): I thought I was on a point of order, Mr. Deputy Speaker, Sir. If Mr. Mbuvi could give way.

In any event, I rose on this point of order because we have scheduled business at the Committee Stage of this House when these matters can, actually, be ventilated. I therefore, would have thought Mr. Ruto, a very good friend indeed, would have waited for Order No.9 and then he can raise those issues. That is because we are actually dealing with Statements at that particular point. That, notwithstanding, I think the President's letter corrects an obvious mistake and, therefore, his Memorandum should stand as corrected. The Memorandum is properly before the House!

Mr. Mbuvi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Right Hon. Prime Minister to turn this House into a lodging, while we are discussing serious business?

Mr. Deputy Speaker: Order, Mr. Mbuvi!

(Loud consultations)

Order, hon. Members! There was a Communication this afternoon by the Speaker on the same. There is a difference between correcting an error and amending a Bill or a Memorandum for that matter. If you list down 1, 2, 3 and forget to put 3 and end up putting 4 in there, that is not an amendment. That is if you have to correct and put the 3 in there. All that the letter from the President is giving is, maybe, a clarification as you put it. You might have a merit for that but that is a pure linguistic debate. But on the substance of this matter - and we are now involved in a linguistic debate - it is an error; an error that has been corrected. The Chair does not see any further discussions on this matter.

(Applause)

(Mr. Mbadi stood up in his place)

Order, hon. Members, there is serious business before us and I am going to direct that we go to the next Order, Order No.8, and proceed with the substantive Business of the House.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I respect your ruling; only that you did not rule on the next issue I had questioned, as to whether that can be done out of time.

Mr. Deputy Speaker: You can always correct an error of this nature any time. You can even have it in the Constitution. Instead of saying Article 128, you could skip 128 and put 129 in place of 128. That is a human error. It is a normal thing; it is a typographical thing in life. Let us not make too big an issue out of that. Let us get into the substantive issues and we are in Parliament and Kenyans are watching us.

Next Order!

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, notwithstanding the provisions of Standing Order No.20(2), this House orders that the Sitting Time of today's Sitting be extended until conclusion of business appearing on the Order Paper.

Clearly, Ms. Karua and Mr. Ruto had concerns about the earlier Order Paper which read "not later than 3.30 p.m." But since we have clarified this matter because we have a Supplementary Order Paper in place, I want to move that we accept that we can sit until we conclude business. As I indicated in the Leader of Government's Statement, it is our intention today at an appropriate time to seek leave so that this House can get three hours for debate to move a Motion for Adjournment. Therefore, this Procedural Motion then becomes absolutely essential. I was going to ask the first Deputy Leader of Government Business to prepare to second this Motion because it is just a Procedural Motion, but I think one that has to be seen as being brought before this House in absolute good faith and not in violation of our own Standing Orders. Ordinarily, I would have liked to say that Ms. Karua imputed improper motive because the Leader of Government Business was not sleeping on the job. He was just relying on today's Order Paper. But since she is my learned friend, I can still take even that criticism.

I beg to move.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I second.

(Question proposed)

Ms. Karua: Mr. Deputy Speaker, Sir, I rise in support of the Motion. I agree that we need time to complete the business on the Order Paper. The Leader of Government Business should not worry too much. He was not sleeping. Indeed, he was napping on the job.

(Laughter)

Nevertheless, since he has moved the Motion, I beg to support.

Mr. Mbadi: Mr. Deputy Speaker, Sir, I rise to oppose this Motion. My reasons for opposing this Motion are as follows:-

Last week on Thursday, the same Government proposed that this House goes on recess. At that time, on the Order Paper, there was no County Governments Bill. There was no Finance Bill and there was no Public Financial Management Bill. I would urge my colleagues not to allow the Government to treat this House like that, and think that whatever it wants to be done would always be done. I do not see why we should be held here past 6.30 p.m., when this Government was very much awake and knew that we were supposed to transact all these Bills before we went on recess. So, we want to help this Government to go and rest the way it has always rested by opposing this Motion. When we get to 6.30 p.m. we go home and go on recess.

With those few remarks, I beg to oppose.

Eng. Maina: Mr. Deputy Speaker, Sir, I stand to support the Motion. We have been working quite hard and Kenyans know. But we also have another duty. We have constituents and other responsibilities to attend to. Secondly, people need this break so that they can recoup their energy. We cannot continue--- We are dealing with important matters and we need energy to---

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. Is Eng. Maina in order to anticipate debate on the Adjournment Motion which is not yet before the House? We are debating the extension of time! Is he in order?

(Dr. Nuh stood up in his place)

Eng. Maina: No! Mr. Deputy Speaker, Sir, one is free to think whatever he wishes to think. Some people are better thinkers than others. Others are slow thinkers! I am thinking as I make my comments.

Mr. Deputy Speaker: Order, Eng. Maina! Dr. Nuh is on a point of order!

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is Eng. Maina in order to mislead the House that anybody who opposes the Procedural Motion is opposing hon. Members to go home? Is he in order to mislead the House that anybody who opposes the Procedural Motion is opposing the Adjournment Motion?

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

Eng. Maina: Mr. Deputy Speaker, Sir, this House guarantees everybody his total freedom to even consult his sub-conscious memory and, therefore, that is what I am doing. Whatever one does after we finish business today is one's business. But I am damn sure that after we finish business today, we will have time to consult with our constituents.

I rise to support this Motion because in this House, I think we have important business which we want to finish today and thereafter, we will make decisions accordingly. It cannot be that every Motion brought here, one thinks that we are in a stereotyped or rigid system. Things will always come and we have to react to them as they are.

Thank you.

Mr. Ruto: Mr. Deputy Speaker, Sir, I rise to support the Motion that, indeed, we extend the time, but I will be moving an amendment that we deal with business at Order No.9 and go to the Motion for Adjournment and postpone Order No.10. I know that these Ministers who are telling us to extend time will all disappear after 6.30 p.m. We will pass a number of these Bills and next Tuesday, they will come with memorandum of amendments, because they were not even there. They come and extend time and we sit here until midnight when the entire Front Bench is entirely absent. I know that that is the right time for most of them to sleep. Some of them want to sleep at this hour---

I am sorry; I must withdraw that part since I am imputing improper motive.

I mean, we can extend time for today but we need an undertaking that the Government is serious with this business, and that the Government will be present with us until we finish this business instead of them disappearing at 6,00 p.m., and then the next day, they take us backwards. So, I will be moving an amendment that we deal with Order No.9.

Mr. Deputy Speaker: Order! Are you in support or in opposition to the Procedural Motion? Do not just jump over.

Mr. Ruto: Mr. Deputy Speaker, Sir, I am in support but I have, an amendment.

Mr. Koech: Mr. Deputy Speaker, Sir, I rise to support this Procedural Motion for the reason that the orders ahead of us are very important for all of us and this country. We must be able to get through them.

However, while I support this Procedural Motion, you should take note that I was awaiting a very important Ministerial Statement from my good friend, the Minister for Justice, National Cohesion and Constitutional Affairs, who avoided walking in and decided to walk in

after Order No.7. My prayer to my good friend is that during this period, he must ensure that the Truth, Justice and Reconciliation Commission (TJRC) works as a team. The report that will come to this House will be from all the commissioners who were approved by this House. Their report must be inclusive of all the matters in this country. I support.

Mr. Deputy Speaker: Are you sure you want to contribute to the Procedural Motion or to the Motion for Adjournment? I will take one more and then we put the question.

Yes, hon. Bahari!

Mr. Bahari: Mr. Deputy Speaker, Sir, I stand to support this Motion because it has happened before. Precedents are there and basically the Leader of Government Business is showing foresight in terms of the volume of work ahead.

With those few remarks, I beg to support.

Mr. Ngugi: Mr. Deputy Speaker, Sir, I also rise to support this Motion. If you look at the Order Paper, there is quite heavy business which we are to undertake. A lot of it has been postponed in the last two weeks. So, it is only fair that we extend time, deal with the business and then we can deal with any other thing.

I support.

(Question put and agreed to)

Mr. Deputy Speaker: Hon. Members, under Order No.9, the Chair wishes to direct that Order No9(ii), Finance Bill, (Bill No12 Of 2011), be deferred. So, we will go into the Committee Stage to deal with only The County Governments Bill (Bill No.1 of 2012).

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. I am not standing to challenge your ruling, but I think the country now needs an explanation as to why the Finance Bill cannot be transacted in this House and concluded. Remember, the Minister was asked to bring a Ministerial Statement to explain to this House and to the people of Kenya why we are playing around with the Finance Bill. I call it “playing around” because as we speak, illegal collection of taxes is going on in this country. This is something we cannot accept. It is important that Kenyans get an explanation.

Mr. Deputy Speaker: Order! Hon. Members, “Freshmen” or otherwise, you have to understand that it is the responsibility of the Government to move Government Bills. If the Government wishes to withdraw or defer them, the Chair has absolutely no other business but to conform.

(Dr. Nuh stood up in his place)

Mr. Deputy Speaker: Order! If only you could sit back, listen and try to digest what the Chair has said. Much as you are a very brilliant debater in this House, there are certain things that you miss out on very often. This is a Government Bill, and the Government has the right to withdraw it, defer it and to do whatever it wants with it. Under the circumstances, the Chair is acting on the basis of the intervention by the Government; the Chair has already deferred the Bill.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. With all due respect to your ruling, we do not deny the right of the Government to introduce Bills when they so wish and to withdraw Bills at their will, but this House is a responsible House; and as Members of Parliament, we are here to exercise oversight over the Executive arm of Government. If the act of

withdrawing a Bill by the Government is tantamount to committing a crime or an anomaly, why should we just sit back and say “let them introduce it as they wish?” The Constitution is being violated; Bills passed by this Parliament are being violated. Currently, the collection of taxes is not---

Mr. Deputy Speaker: Order! What happens when the Government breaks the law? You go to court. What is the purpose of that sanctified, cardinal doctrine of separation of powers? You think the Chair has the powers to direct the Government to stop collecting taxes? You can amend the law, you can change the law. You can go to court and say that the Government is collecting illegal taxes. The Chair has no role in that.

Under the circumstances, we are going into the Committee of the Whole House and I have directed that The Finance Bill, (Bill No.12 of 2011), be deferred for the time being.

(The Finance Bill was deferred)

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

[Mr. Deputy Speaker left the Chair]

[Mr. Chairman took the Chair]

THE COUNTY GOVERNMENTS BILL

(Consideration of Memorandum from His Excellency the President)

POINT OF ORDER

THE CONSTITUTIONALITY OF THE PRESIDENTIAL MEMORANDUM ON THE COUNTY GOVERNMENTS BILL

Mr. Imanyara: On a point of order, Mr. Chairman, Sir. I restrained myself from taking the position of Chairing this Committee because I have substantive issues that concern this and I do not wish to sit on the Chair while those issues are subject to debate.

Mr. Chairman: Fair enough! We have four Members who are Chairs of Committees of the Whole House and we would always be able to find one more to do that work. So, you can proceed and prosecute the issues that you intend to.

Mr. Imanyara: Mr. Chairman, Sir, you will recall that yesterday when this matter came up, or whenever it was, the Speaker then deferred consideration of this business to enable certain consultations to take place.

Mr. Chairman, Sir, following that deferment of the order, I did participate in a discussion with the Deputy Prime Minister and Minister for Local Government, the hon. Attorney General and the Deputy Leader of Government Business who is also the Minister for Transport. I did indicate to them certain areas of this Memorandum that a substantial number of us in the Back Bench were unhappy with and offering a way forward in order to progress this matter.

At the time at which we left, we were to receive communication from the hon. Attorney General as to whether they had addressed those concerns. But now that those concerns have not been addressed and now that this has not been taken into account, I feel duty-bound, unless the hon. Attorney General can intervene, to raise matters regarding the constitutionality of this Memorandum. But before I do so, I would seek to know whether the hon. Attorney General can confirm that that is indeed what we had agreed.

The Attorney-General (Prof. Muigai): Mr. Chairman, Sir, I thank the hon. Member, first, for seeking me out and my colleagues to discuss the difficulties that he had with the President's Memorandum and for the very candid and honest discussion that we had. But as I indicated, our points of convergence were many but on the questions of the interruption of the Constitution, we were unable to agree.

I am, therefore, not able to confirm that the issues that the hon. Imanyara wanted to raise can be addressed in any other way other than through an open debate on the Floor of this House.

Mr. Imanyara: Mr. Chairman, Sir, then, obviously, if that is the situation, we would have to report progress so that the issue can be determined in the plenary of the House rather than in a Committee, because I raised substantial questions of the interpretation of the Constitution, particularly if the Attorney-General does agree that we could not disagree on the areas that constitute unconstitutional aspects of this memoranda.

If that is the position of the Government, then I would urge that we first Report Progress so that we can discuss that substantial issue in plenary.

(Applause)

Mr. Chairman: Fair enough! Attorney-General!

The Attorney-General (Prof. Muigai): Mr. Chairman, Sir, I thank you again. I think I want to make one thing very clear. When we held the discussions with the hon. Imanyara, we had at least one area of concurrence; that he had a different interpretation of the Constitution from that of the President and his legal and political advisors.

I took the view myself that that is not an issue that goes to the procedure of how this Motion got to the House or whether it is rightly in the House. It is an issue that goes to the merits of the amendments of the proposal by the President. Therefore, I think we are properly before this Committee. We should debate the substantive questions themselves. This Committee is in a position to resolve this.

Mr. Chairman: Could you then proceed as the Attorney General and the Minister and move the amendments?

Mr. Imanyara: On a point of order, Mr. Chairman, Sir. In that case, before the hon. Attorney General can move the amendments, I should be heard on the legality of this Memorandum.

Mr. Chairman: Proceed!

Mr. Imanyara: Mr. Chairman, Sir, the Memorandum that we are now seized of is a Memorandum dated---

Mr. Ogindo: On a point of order, Mr. Chairman, Sir. On a point of procedure, Mr. Chairman, Sir!

Mr. Chairman: What is the procedure?

Mr. Ogindo: Mr. Chairman, Sir, the issues raised by hon. Gitobu Imanyara are very grave.

Mr. Chairman: What has he raised?

Mr. Ogindo: Mr. Chairman, Sir, the constitutionalism in the amendment!

Mr. Chairman: He has not raised it. It has not been presented. It has not been debated.

Mr. Ogindo: Mr. Chairman, Sir, but we need to determine it at the plenary.

Mr. Chairman: Order! Order! You are out of order, hon. Ogindo!

Proceed, hon. Imanyara! We are going clause by clause!

Mr. Imanyara: No, No! Mr. Chairman, Sir. I am seeking a ruling of this Chair that this Memorandum is inadmissible for debate by this House on two grounds. First, that it is contrary to Standing Order No.55 and that is why my view was that these issues can only be canvassed in the House and not in the Committee of the Whole House but you have not made a ruling on that issue. So, I am proceeding on the basis that after I make my submission, we would be moving to report progress in the House to enable this issue to be determined by the House in accordance with the Constitution but I proceed.

Mr. Chairman, Sir, you notice that Standing Order No.55 deals with amendments to a relevant Motion. It is about amendments. I am interested in Standing Order No. 55(2) which says:-

“No amendment shall be permitted if in the opinion of the Speaker it represents a direct negative of the question proposed”.

Mr. Chairman, Sir, what the President’s Memorandum is attempting to do is to negate a specific constitutional provision that is to be found as one of the principles of devolution in Article 174. I would read to you what it says. Article 174 is part of Chapter 11 of the Constitution of Kenya and is about the objects of devolution. They are quite a number, but I am interested in object No.8.

Mr. Chairman: No.8 that is page—

Mr. Imanyara: Mr. Chairman, Sir, Article 174(h) of the Constitution, which reads as follows as one of the objects:-

“To facilitate the decentralization of State organs, their functions and services from the capital of Kenya and, secondly, to enhance checks and balances and the separation of powers”.

Looking at the President’s Memorandum, it seeks to amend the law that was lawfully passed in this House to take away decentralization of the Provincial Administration as we know. So, on that ground, it is a direct negative of the Constitution.

Mr. Chairman, Sir, secondly, you notice that the reason given by the President for that, and you will find it on page 2 and 3 of his Memorandum, the President is claiming that the law that was passed by this House - I want to stress that that law was not passed by this House at the instance of the Back Bench, it was actually an amendment moved by the Deputy Prime Minister and Minister for Local Government of the Republic of Kenya in this House. So, it was not a non-Government Motion. It was an amendment moved by the Deputy Prime Minister and Minister for Local Government during debates and agreed to. The President said that the amendment that was introduced by this House by the Deputy Prime Minister and Minister for Local Government and approved by this House is contrary to Chapter 14 of the Constitution. If you look at Chapter 14 of the Constitution on page 152, it has more than one section. Part I which deals with the principles of national security. There is a section that deals with the national security organs and there is a section that deals with the establishment of the National Security Council, among other things.

The President does not tell us – through this Memorandum of His, which is vague - what Article of Chapter 14 that the provisions that were passed by this House have contravened. Therefore, to that extent of being vague and being directly contrary to the law that was passed by this House at the insistence of the Government, it is unconstitutional. However, more importantly, the reason for the recommendation says: Accordingly, there is no county equivalent to the National Security Council. That is the President of the Republic of Kenya telling us that the reason he wants us to change the law that his own Deputy Prime Minister and Minister for Local Government moved in this House and we passed it, is because there is no county equivalent to the National Security Council. But what is the truth? I will remind the Government that on 27th August, 2011, His Excellency the President assented to the National Police Service Act. That is when he gave his ascent to a Bill that was passed in this House. The commencement of that law was 30th August, 2011. So, as we stand here now, the President is telling us that there is no equivalent of the National Security Council as far as the counties are concerned. I will not use a more serious word like “deception”, but he is clearly misleading the House. That is because if you look at Section 41 of that Act, Act No.11 of 2011, which the President himself assented to--- I will read it to you. Part VI of that law reads as follows:- Under the County Policing Authority, Part VI has a number of sections and the relevant section for me is Section 41. This is what it says:-

“There shall be established a County Policing Authority in respect of each county, which shall comprise---“

So, contrary to what the President is telling us that there is no equivalent of the National Security Council, there is, indeed, a very relevant specific equivalent in the county which the President, himself, assented to.

It also says in No.1: “The Governor or Member of the County Executive Committee appointed by the Governor who shall be the Chairperson.”

(Applause)

That is the law that we passed in this House. That is the law that the President found fit, gave his assent and allowed the commencement date to take effect. So, to say that there is no county equivalent is to mislead the people of Kenya. Nothing can be worse than a democratically elected president misleading the people who elected him to the highest office in the land.

Section 41(b) says – it is on the composition of that – the county representatives are appointed by the Inspector-General who shall comprise of the Head of the National Police Service, the Head of the National Intelligence Service and the Directorate of Criminal investigations at the county level. Again, we are talking about the county level. There is an equivalent at the county level. We passed that law and the President assented to it. It is the law in operation as we speak today.

(c) Two elected Members of the County Assembly and it says in (d): “The Chairperson of the County Security Committee.” It defeats the very purpose for which the entire Memorandum of the President was brought to this House. He is telling this House and the people of Kenya that there is no equivalent to the provisions of the National Security Council at the county level when the law he, himself, assented to, is in black and white. The President can read and write, and he assented to this law. So, those who advise the President misadvised him when they told him that there is no provision for this.

The foundation upon which this Memorandum was brought to this House is lacking and it is without substance. So, it does not matter whether they change the dates or whether they change the clause from 30 to 32, the most important aspect here is that there is, indeed, a county equivalent to what the President is saying is not there. So, that is why we came to a suggestion with the Attorney-General and the leadership of the Government that we must find a way because the law is clear, rather than provide a basis for somebody rushing to court and making this Parliament look extremely foolish for passing a law on the basis of ignorance. Parliament, in its great wisdom and the President, in his greater wisdom, found it necessary to assent and make the law of this land. So, if that is the case, what does this mean in terms of the Constitution? If the President wants to introduce, through the backdoor, a system of government that fails to decentralize provincial administration as we did in this House, at the request of the Deputy Prime Minister and Minister for Local Government; so that he can retain the Provincial Administration - the PCs, DCs and the DOs - that contravenes directly Article 174(h); the one I read to you. Therefore, it is contrary to the Constitution and it is inadmissible also under Standing Order No.47. Standing Order No.47 which you are familiar with says:-

(3) If the Speaker is of the opinion that any proposed Motion-

(b) is contrary to the Constitution without expressly proposing appropriate amendments to the Constitution.

That Motion is inadmissible and we will be breaking the law even to consider it in this House. That is why I was at pains to point out to the Government that it was a great embarrassment for them to come to this House and pretend that there is no law in place and, therefore, bring through the backdoor, amendments that were designed to ensure that the provisions of Article 174 on the Decentralization of State Authority from Nairobi to the counties is in place. That is what they are trying to do through the backdoor. It is contrary to the Constitution and ought not to be allowed. That is the reason why I am asking you not to allow further debate on this because it is unconstitutional. We will be participating in an illegality to discuss this Memorandum which on the face of it is unconstitutional for the reasons that I have given you. You must reject or, at least, adjourn and report to the House for consideration in plenary in accordance with the Standing Orders.

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, the matter before the House is a very grave and serious matter. In my own understanding of the Constitution that we have enacted, devolution constitutes a third, and it is one of the fundamental pillars of our new constitutional dispensation.

Mr. Chairman, Sir, His Excellency the President was confronted with three Bills from this House. Immediately and without equivocation, he signed two of them into law. He sent the third Bill back to the House for consideration by this House. I do not understand my distinguished and noble friend, hon. Imanyara, to be suggesting either that the President was lacking in constitutional authority to do that or he did that in bad faith or without due consideration of the law. The Memorandum presented by His Excellency the President speaks for itself. The President has identified the provisions that he has difficulties with. He has also explained the manner in which he believes they can be dealt with by the House and given his own interpretation of the Constitution, as he understands it unless you were to rule that the President is not entitled to interpret the Constitution, but hon. Imanyara is. This is because both these distinguished Members of this House are perfectly entitled to make an interpretation of the Constitution. I, therefore, say this with tremendous respect, that the issues raised by the hon. Member go to the question of the substantive merits of the opinion held by the President. They

do not go to the question of the admissibility of the Memorandum that the President has sent to this House.

Mr. Chairman, Sir, I submit that the President's Memoranda is within the four pillars of our existing Constitution. You will recall that the operative provisions on the exercise of the President's veto are the provisions as contained in our old Constitution. These provisions are in Section 46(4) and 46(5) of the old Constitution, and read:-

“Where the President refuses to assent to a Bill, he shall within 14 days of the refusal, submit a memorandum to the Speaker indicating the specific provisions of the Bill, which in his opinion, should be reconsidered by the National Assembly, including his recommendations for amendments.

The National Assembly shall reconsider a Bill referred to it by the President taking into account the comments of the President.”

Mr. Chairman, Sir, nothing could be clearer in my view. That is exactly what the President has done. He has exercised a constitutional authority equivalent to that which this House exercised, when it sent the Bill to him.

Mr. Chairman, Sir, secondly, if hon. Imanyara would like to raise issues of merit; if he were to say that the proposal by the President is unmeritorious, ill-considered and not well founded given the history, philosophy or whatever it is, indeed, I suggest with great respect to you that it is not an issue that you can rule on at this point. It is an issue for the vote in this House by the hon. Members. The hon. Members know that if you want to override the veto by the President, the Constitution speaks very clearly. You cannot do it by taking a shortcut. You cannot say that the Memorandum is defective in this and that manner. You can only raise the quorum required by Article 46(5), and that is, you, hon. Members, excluding *ex-officio* Members like myself. You would need to have a 65 per cent vote. I can assure you, if I speak for the Government, that the Government would have no option if this House, by a 65 per cent majority, overruled the President's veto. That would be the end of the matter. But I submit that it would be unfair, unjust and curtailing the President's own constitutional authority. I want to remind the hon. Members that the presidency is a succeeding office. In the next decade and decades to come, we will have another President, another one and another one. If we erode the constitutional authority of the President to exercise the powers conferred to him by law, we will have done this country a great injustice.

Mr. Chairman, Sir, when hon. Imanyara says that we should look at Standing Order No.55, we ought to remind ourselves that the Standing Orders are themselves subordinate to the statute governing the business of this House, which statute itself, is subordinate to the Constitution. If we entertain any doubt whatsoever as to whether the President was right or wrong, we should read the Constitution. But even if we gave the hon. Imanyara some latitude, no amendment shall be directly negative--- The issue that hon. Imanyara raised as to the decentralization of Government, creation and restructuring of the Provincial Administration, is a deeply contentious constitutional question in this country. There is not a single hon. Member here seated who does not remember that the reason we wrote the transitional provisions in the broad language; that within five years, the Provincial Administration will be restructured, is because – and I was a member of the Commission that wrote the first Constitution - we were for over five years unable to find a consensus on a language that would cater for the restructuring.

Mr. Chairman, Sir, what the President has said in his Memorandum is that there is a period---

(Loud consultations)

Mr. Chairman, Sir, I would like you to protect me so that I make this point because it is important.

Mr. Chairman: Order, hon. Members! Allow the Attorney General to be heard!

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, we should not play politics with this issue because it is a very important issue.

Mr. Chairman, Sir, the Bill that found its way to this House and was presented by the Deputy Prime Minister and Minister for Local Government, had been subjected to consensus building for over two years, if my memory serves me right. It was debated by the civil society and professional bodies. It was approved by the Commission on the Implementation of the Constitution (CIC), Kenya Law Reform Commission, my Chambers and by the Committee that these hon. Members – the hon. Mbadi and hon. Odhiambo-Mabona – sit in. The Committee went to great length to look at this Bill and it came to the Floor of the House because it was a consensus Bill. Therefore, to suggest that the President was flippant or that he did not seriously address himself to the history of the controversy surrounding this issue is untrue.

Mr. Chairman, Sir, secondly, hon. Imanyara, who is my senior learned friend and my friend, says that this provision is vague. We cannot defeat the provision for vagueness. We can ask the Mover to provide further reasoning when he says it is open to hon. Imanyara to say that the President is unclear when he says this, but it cannot be defeated as a procedural issue before the debate is open.

Finally, hon. Imanyara wonders whether the President does not recognise that there is the National Police Service Act and says that the provisions that we have tried to insert there are equivalent to those ones. That, again, is not a basis for refusing to allow the Motion to be debated. That is an issue that goes to merit. It is to say, when the debate is open, that what the President has said is unacceptable to hon. Members and, therefore, hon. Members can vote in a different way.

Mr. Chairman, Sir, I want to also say that there is a difference between “police services” and “security services” as used in these two different Statutes. It is clear – this is my last comment and I say this with respect to you - if you allow me one minute. Again, our Constitution has created a system of Government in which some jurisdiction has been left with the national Government. Some jurisdiction has been devolved to the counties. It behoves all of us in this House to, whenever we make the law, ensure that we have each organ exercising its constitutional mandate.

Reading the President’s Memorandum, he says that in his opinion, to devolve security services of the national security intelligence variety is not contemplated by the Constitution. He is entitled to say so. Whether he is right or wrong, will be determined by how hon. Members will vote.

Therefore, I want to close by saying that the Motion is not contrary to the Constitution.

Mr. Chairman: Mr. Attorney-General, it will do the House a lot of good if you counter the assertions by hon. Imanyara that, indeed, the amendments that you are trying to pass are unconstitutional. He cites Article 174(h), among other things.

I understand, and I agree with you, that when it comes to the Standing Orders, they are subordinate to the laws and the laws are subordinate to the Constitution. There is a provision in the Standing Orders that directs the Chair to instantly stop any discussion on a matter that in the

opinion of the Chair is unconstitutional. That opinion, basically, has to be formed from the arguments that you are all going to engage in, for and against.

So, it will do us a lot of good if you show that actually Article 174(h) does not apply in this case, or whatever other authority you intend to use in the Constitution, which you have now; whether it is the Constitution the way it is right now, or it is the transitional process in the whole Constitution that still obtains.

Proceed, Attorney-General!

The Attorney-General (Prof. Muigai): Mr. Chairman, Sir, I thank you for drawing my attention to this specific matter. When hon. Gitobu Imanyara says that Article 174 is clear authority for his proposition, I beg to differ. It cannot be. That Article, which is at page 113 of our Constitution, sets out many objects of the devolution of government, amongst which are to promote democratic and foster national unity. At object (h), the Article says: “to facilitate the decentralisation of the State organs---“

Mr. Chairman, Sir, it is a principle. It does not tell us how that will be done and when it will be done. I want to tell you of a stronger authority than that one. That stronger authority is to be found in the transitional provisions themselves, which state it in the clearest possible language. I want to remind you of an equally important constitutional principle – the consultative process with the people. We will not devolve the Provincial Administration without a serious consultative process with the people of Kenya. It will not be done.

So, my authority as to why, in my own judgment, the President is entitled to hold the view that he holds – that the restructuring of the Provincial Administration shall take place within five years and after extensive consultations with the people of Kenya, and hon. Imanyara has said that this amendment was made in this House after being moved by the Deputy Prime Minister and Minister for Local Government. That is all true. The question is that it is an amendment that fundamentally went to restructure a part of Government. Was it done with adequate consultation? That is a question I cannot answer myself. It is for hon. Members to answer. If at the time that was available that was so, my only submission is that it was not so.

Therefore, I want to conclude by saying that whether or not this House will agree with the President that the changes he has proposed ought to be made or ought not to be made is at the discretion of this House. Indeed, this House has the power, the authority and the responsibility, if it believes so, to overrule and override the Presidential veto, but that cannot be done, and should not be done, by a Procedural Motion for a closing debate on merit.

Thank you, Mr. Chairman, Sir.

Mr. Midiwo: Mr. Chairman, Sir, as it appears, the debate has turned into legal jargons. The more I listen to our Attorney-General, the more it strikes me that nothing is changing in our country. It is a shame that the Attorney-General should say that if nothing is contemplated in the Constitution, it is for the President to decide. We cannot seek to make laws away from the only lawmaking organ of this country. It has been said by hon. Imanyara that a law already exists – the National Police Service Act. The memorandum clearly says that this is contrary to that.

What the memorandum of the President seeks to do is to create a third and parallel government, which is not contemplated in the Constitution. The Attorney-General talks of a devolved system. How would you do devolution without inheriting, in the devolved government, the existing devolved government, which comprises of the chiefs, the assistant chiefs, the District Officers and the District Commissioners?

Mr. Chairman, Sir, I want to plead with the Attorney-General that the issue here is not to humiliate the President, but it is for us to make devolution work in its originally contemplated spirit.

One other thing is that, this amendment was brought here by the Deputy Prime Minister and Minister for Local Government. This is one Government. It is a shameful public display which we are giving to Kenyans; that one arm of Government brings an amendment and the law makers approve it. The President in his wisdom assents to it and then the same Government comes back to say that the law is contrary to its wishes.

Mr. Chairman, Sir, we are not doing a good public display to our people. We need to resolve this issue. I urge you to decide the illegibility or acceptability of this Memorandum. We cannot go to a vote. We cannot take this thing to a vote just because it came from the President.

Let us do our job and follow our rules. I also think it is wrong to say that the Standing Orders of our National Assembly are some laws which you can abrogate if you think that they are junior or inferior to the Constitution. These Standing Orders have been carried along in the new Constitution. They are part and parcel of our laws. We must follow them. If we want, we then initiate a process of changing the Standing Orders.

Mr. Chairman, Sir, I want to urge you to find that this Memorandum is in bad spirit and it violates the spirit of the Constitution and it seeks to establish a third government which is not contemplated in the Constitution.

I thank you.

Mr. Chairman: You have made your point.

Mr. M. Kilonzo, please, proceed!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, allow me to make some comments on a matter that is very important.

Mr. Imanyara has cited Article 174 of the Constitution. He is a man I hold with a lot of respect. However, I think on a matter of this importance, it is totally unfair; (a) to ignore and read the Constitution, this very important document in a selective manner.

Mr. Chairman, Sir, in fact, I am so glad that you asked the Attorney-General to address Article 174. If you look at Article 174, the heading is clear, part one says, "Objects and principles of devolved government". If you go further, you will find another part of this Constitution and you will find that at page 119, Part III. Whenever a person is seeking to interpret the Constitution, it is very important that you realize that the Constitution is like a fabric. It is like a table mat; you cannot pick one stitch and leave out the others. Therefore, Part III is a very important part of this Chapter of the Constitution. You see it says: "Functions and powers of county governments". Further, another title says: "Respective functions". I want to emphasize for the country and this hon. House the word, "Respective". It says, "Respective functions and powers of national and county governments" Then it says expressly that; "Except as otherwise provided by this Constitution, the functions and powers of the national government and the county government respectively are as set out in the Fourth Schedule".

Mr. Chairman, Sir, you will have noticed that the Fourth Schedule is also a very elaborate document. It shows the respective functions. You will find it on page 185. This is one of the reasons that my Ministry tomorrow is launching public civic education. If you look at page 185, you will not find reference to Article 174. In fact, the Fourth Schedule is specifically referring to Article 185(2), Article 186(1) and Article 187(2).

Therefore, it is my submission before you, Mr. Chairman, Sir, with utmost respect to Mr. Imanyara and others who might think otherwise, that Article 174 is not definitive on the functions of the respective governments. Therefore, when you are addressing this matter particularly seeking the admissibility of a Presidential Memorandum, it is essential that one reads very carefully Articles 185 (2), 186 (1) and 187 (2). If you suggest that the President is in any way violating the Constitution, particularly on this very omnibus word called “decentralization”, you have to be careful because then you are misleading the House and the country. Decentralization is now expressly provided for in Articles 185 (2), 186 (1) and 187 (2) and the Fourth Schedule.

Mr. Chairman, Sir, my recommendation is that you look again at Section 46 that the Attorney-General read to the House. You notice that Mr. Imanyara, a very distinguished lawyer as senior as you can get, has ignored to mention the heading of the Presidential Memorandum that the Deputy Prime Minister and Minister for Local Government was going to read. It is at page 3355 and begins like this:-

“Amendments recommended by H. E. the President pursuant to Section 46 (4) of the former Constitution of Kenya which is saved by Section 3(2) of the Sixth Schedule to the Constitution”.

Unless you can show the unconstitutionality in that heading, we are engaging in academic debate. The President has expressly told the Speaker the specific sections of the Constitution he is relying on.

Mr. Chairman, Sir, if I may give you this photocopy of Section 46 (4) of the old Constitution - I notice you do not have the Constitution - it talks about the President expressing his opinion, not the opinion of Mr. Imanyara or of Mutula Kilonzo or the Attorney-General. It is the opinion of the President!

Let me go further and say that he then makes a recommendation; not the recommendation of Mr. Imanyara or Mutula or the professor of law, Prof. Githu Muigai. This is the recommendation of the President. To even debate the admissibility of the President’s memorandum is in itself unconstitutional.

A hon. Member: Ah! Ah!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): It is! Let me read for you---

Mr. Chairman: Order, Minister!

Mrs. Millie Odhiambo-Mabona, the Chair has to consistently restrain itself because of the manner you shout from where you are. This is a dignified House! Seek your moment---

Mrs. Shebesh: On a point of order, Mr. Chairman, Sir. It is me who has been shouting. It is not Millie Odhiambo-Mabona.

Mr. Chairman: Order, Mrs. Shebesh!

Mrs. Shebesh and Mrs. Odhiambo-Mabona, the Chair would love to give you your moment in this House so that you can explain yourselves. You can compound on what you think is the right way to move or the wrong way to be avoided. However, for God’s sake, this is not a high school where you say, “Ah! Uh! Eeee!” No! This is a dignified House. Allow everybody to be heard!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Chairman, Sir, I was referring to page 193 of the Constitution which you have and I thank you for protecting me. This is very clear. Mr. Imanyara did not refer to this and I think in

your ruling--- You will notice that it begins with the words, “extension of application of the provisions of the former Constitution” Then it says:-

“Sections 30 to 40, Sections 43 to 46 and Sections 48 to 58 of the former Constitution, the provisions of the former Constitution concerning the Executive and the National Accord and Reconciliation Act No.4 of 2008 shall continue to operate until the first general elections held under this Constitution. But the provisions of this Constitution concerning the system of elections, eligibility of election and the electoral process shall apply to that election”.

Therefore, Mr. Chairman, Sir, I submit without hesitation that if Section 46 is in force and, if it authorizes the President of the Republic of Kenya to express an opinion on legislation, to make a recommendation on account of legislation, the least that this House can do is to honour the right of the President to debate that opinion and recommendation, but not to say he cannot send his opinion and recommendation to this House. You cannot seek to block his rights to express that opinion.

(Mrs. Shebesh stood up in her place)

I have not finished; I am on a point of order! Allow me to say that if you look at the Articles on decentralization as mentioned, the word “decentralization” has no application in Kenya’s Constitution. What it talked about is devolution and that devolution is driven by the Articles that I have read in the Constitution.

The other one is that this is not a Motion as understood by Standing Order No.47. Why do I say so? Again, I refer you with, Sir, with utmost respect, to the section of the old Constitution that I have read. It reads: “The President does not send a Motion to the House; the President sends a Memorandum expressing his opinion and his recommendations.” Therefore, to seek reliance on Standing Orders Nos.55 or 47 is, in my view, a misapprehension of what is before this House. This is legislation making. The President of Kenya under the old Constitution was the second part of legislation making in this country. Unless you are saying - because I heard Mr. Imanyara use words like ignorance, neglect and the President has forgotten the laws that he has assented to--- It is far from it; perish the thought. The fact of the matter is that the President is painfully aware of all the laws that he has assented to. That is why he selected one and said that you cannot move on this basis because it violates the Constitution. I would suggest that you find the Memorandum of the President is admissible and ought to proceed in the Committee of the Whole House. Thank you.

Mr. Chairman: Mr. Abdikadir. For the benefit of the Chair, can somebody show me where 31(1) is in this Bill?

Mr. Abdikadir: Mr. Chairman, Sir, I think it is important to differentiate the exercise of presidential or executive power; when the President is exercising those powers as Head of State and when he is exercising those powers as Head of Government. The exercise of this power is as Head of State. It is from the British tradition where the Queen or King exercises the power to assent to Bills after Parliament has acted. In that sense, this House cannot interpret the Constitution for the President.

(Applause)

That is a different arm of Government. In the Canadian Parliament, it is not the Prime Minister who exercises that power who is the Head of the Government. It is the Governor-General who is

a nominee of the Queen who sits somewhere else and when the Bill is passed, it is taken to the Governor-General to assent. That is the assent that we are looking for! If this House says: “You are un-constitutional”, where will the Bill go back to? That is because the President will not sign it and, therefore, we will have no law.

(Applause)

That is why we are not supposed to create a log jack; we are supposed to facilitate this process. The debate about devolution will not start and end here. This is the debate we are having. The debate about devolution is a very germane; a very critical debate. I, myself, am usually divided! Sometimes, I am more pulled on one side especially on the finance issues and on the security issues, I am more pulled towards the centrist issues and those two forces are there. It is genuinely honest debate! Even though there are a quite a few of us who might want to be governors and who want to give the governor quite a bit of power, but the reality is that this debate will not end here. Without wasting time, let us debate it! This House has the mechanism to stop the President in his tracks. We can stop that process through a 65 per cent majority and that is the end of the story. That is the only route we can get. We can debate this! I disagree with Mr. M. Kilonzo that we cannot debate the Memorandum. We can debate it, but there is only one way we can clear it through; either agree with it or there is nothing else we can do. If we do not agree with it, we have 65 per cent majority and we override the veto. It is a very well known mechanism!

Ms. Karua: Mr. Chairman, Sir, I rise to support the point raised by Mr. Imanyara. This debate is not about disrespect to the Head of State or to what he has said. We are merely, as Parliament, asserting our roles and trying to help the nation. We are discharging our duties! With respect, Mr. Imanyara and Parliament pointed out a mistake to the Executive which they appreciated and corrected the section. This point of order must be seen in that light; that it is yet another mistake that is being corrected.

I will very quickly go to the Memorandum by His Excellency the President where he says that on Clause 30 which stipulates the functions of the Governor--- It reads: “Subject to the operational command structures set out in the National Police Service Act or any other national security legislation, chair the county equivalent of the national security council as provided for in Article 239(5) of the Constitution”. The President’s reaction to this is totally in error. Look at how he ends: “Accordingly, there is no county equivalent of the National Security Council.” We go immediately to the Police Act to see whether that statement by His Excellency the President is correct or is in error. If you go to the National Police Service Act, Section 41(1) it says: “There shall be established a county policing authority in respect of each county, which shall comprise:-

(a) The governor or a member of the county executive committee appointed by the governor who shall be the chairperson, county representative appointed by the Inspector-General who shall comprise the heads of the National Police Service, the National Intelligence Service and the Directorate of Criminal Investigations at the county level; two, elected members nominated by the county assembly, the chairperson of the county security committee, at least, six other members appointed by the governor from among the following categories of persons ordinarily resident in the county; the business sector, community based organizations, women, persons with special needs, religious organizations and the youth.”

Now, without even going further as to how they will be recruited, this is the equivalent in the county of the National Police Service. The County Governments Bill is not seeking to make the governor head of the national security. It is just asking that he chairs the county security

equivalent. So, when the President asserts in the Memorandum that there is no county equivalent of the National Security Council, this is in error. They are not saying a replica of the National Security Council. They are saying equivalent, and “equivalent” does not mean identical.

So, Mr. Chairman, Sir, it means that this Memorandum is in error and there is no need for us to debate in error, unless we want to go on record as a rubberstamp Parliament that does not examine documents.

(Applause)

All we are doing is respectfully asking His Excellency the President to re-look at his Memorandum and then bring it back if there is any need. He may very well agree with us just like the Leader of Government Business went back to the President and said: “Your Excellency, an issue has been raised. The section you have cited is wrong. Please, correct it.” His Excellency the President gracefully did that yesterday. Why is the Government side reluctant to draw this other matter to his attention? Why do you want to make the decision on his behalf?

(Applause)

Respectfully, if he returns this matter back, then we shall examine it at that level. We shall have no option but to debate it. But why are you resisting? I want to disagree with my learned colleague and junior, Mr. Abdikadir, and who is the Chair of the Committee that I serve in, in his interpretation of the current position. We have moved away from the British tradition. We have adopted the presidential system which has no queen. So, let us perish the notion that the President is bringing a memorandum as an imperial monarch. He is bringing as a president who is under, and not over, the Constitution that we passed, and that he himself promulgated in August 2010. We know we have heard him say that he respects and will implement the Constitution. I want to beg the Government side and also the Chair to direct: Let the President make his decision. Let us purport not to be in his mind. This debate may well end with the President’s attention being drawn to this very obvious error in his memorandum. It looks like he has truly been let down by his legal advisors. I know it may not be intentional. We know you are busy but let us accept that there is a mistake, and I know that if the mistake is shown to His Excellency the President, this debate will end instantly.

I beg to move.

Mrs. Odhiambo-Mabona: Mr. Chairman, indeed, today, I am actually shocked that we have been taken by the nature of debate back to 1992 when I started the agitation for reforms in this country. Some of the utterances that have been made here are tantamount to telling us as members of the Back Bench to sit in pantomime as things are brought in and passed. Personally, I do not know about the others but I refuse. I will never do that.

Mr. Chairman, Sir, we have fought for reforms in this country for a long time and we respect our President and the Government, but when there is an error, we will correct it. When we think they are violating the law, we will show it. I think it is actually in error that--- Some of us think that when we are raising these issues, it is in disrespect to the Office of the President; that is very far from the truth.

Mr. Chairman, I want to speak on one of the issues that hon. Imanyara has spoken about. I would like to be very specific; to me, the specific issue is whether this is constitutional. This same House has pronounced itself on the matter of the appointment of the Attorney-General, the

Director of Public Prosecutions and it was not an issue of voting. When an issue comes here and it is one that raises issues of constitutionality, it is an issue that the Chair must rule on. It is not an issue that we vote on. Issues of constitutionality do not call for a vote. I know that the hon. Attorney-General, who was my professor in jurisprudence maybe new, and he said that with due respect that he was involved in the writing of the first Constitution; fortunately some of us were involved in the writing of the first Constitution and this one; so, we are very familiar with what we said in this Constitution. I can, indeed, say that if we are talking about Article 174(h) being unconstitutional, what we are calling on you as the Chairman to rule on is whether, indeed, it is unconstitutional. In my view, it is unconstitutional. Even if you look at the Fourth Schedule that the Minister for Justice, National Cohesion and Constitutional Affairs has referred to, it talks about the roles of the national Government. It does not talk about restructuring. It talks about the role of the national government in relation to policing, recruiting, training and all that. If the President was talking about issues of recruiting, training and all that under the fourth Schedule, then that is right. But the issue of restructuring is one that comes to this Parliament. Fortunately, this is a unique Parliament where we are part of the Government, even though we refer to ourselves as the Back Bench sometimes; we are a Back Bench within the Government.

Mr. Chairman, I would want to say that you are called upon to rule on a fundamental issue: Is it unconstitutional under Article 174(h)? To me, it is unconstitutional.

The Vice-President and Minister for Home Affairs (Musyoka): Mr. Chairman, indeed, this is a very healthy debate and I want to congratulate those who have spoken before me for being very candid. I want to encourage all of us, including the Member for Gem, the hon. Chief Whip, Jakoyo Midiwo. He made a very strong allegation that he thinks nothing has really changed. It is very obvious to all of us that devolution is a reality in this country. I have no doubt in my mind that this country has changed forever. What we are involved in is an exercise where we want to be very honest with ourselves. I heard the learned Attorney-General talk about the process of consultation. I think what is actually happening here, in my view, is very healthy consultations. When the Minister for Justice, National Cohesion and Constitutional Affairs said that the debate is unconstitutional--- He is my learned senior and I differ with him. I think that the only thing we are concerned with here is whether the President has acted constitutionally or not.

Mr. Chairman, in my view, it is as clear as daylight that the only way to say the President is wrong is to vote at 65 per cent and really take the matter back to him. I do not think we can quote the Standing Orders as my learned friend, hon. Imanyara, did, and I am sure he knows that as clearly as I do that cannot be superior to the provisions of the Constitution. The fact is that the Executive authority and the powers of the President are stated specifically. I think we should be able to know that--- For instance when hon. Imanyara says that the President wants to save the PCs, DCs and DOs, then who does not know in this country, as I stand before this House, that the person called the PC is not in the Constitution? All there is that, now, we are talking about county commissioners. Therefore, let us direct ourselves correctly. The President is for devolution in its totality, but there is the issue of decentralization. Are we going to decentralize the Foreign Service, for instance? I think we need to be realistic. If you are now telling me that for Meru County, the Secretary for Foreign Affairs--- I am sure that is not the way to go because we are still not a federal state. The reality is that we are operating within a unitary state. I think it is good that we address ourselves correctly.

I am so excited about this discourse because this is the way to go. I think that as we do so, we are not showing disrespect. I agree that this is a matter, and I do not think the Chair can be

invited to decide on the constitutionality of the President's Memorandum. This is very clear to me and the Attorney-General, Minister for Justice and my learned friend, hon. Abdikadir, have actually come out very clearly. Therefore, let us not split hairs. I think this is what we are trying to do.

Mr. Chairman, I would, therefore, want to plead that we move to the business before the Committee and really deal with the issues.

Mr. Imanyara: On a point of order, Mr. Chairman, Sir. Is it in order for the Vice-President and Minister for Home Affairs, who is also the Leader of Government Business to mislead this House that when a matter is on the face of it unconstitutional, we can possibly move to a vote? He is aware that this House in a decision involving the Attorney-General and the DPP, we did precisely that. We did go to vote.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Chairman, Sir, I take kindly what my learned friend is saying, but he knows it. He cannot say on the face of it, it is unconstitutional. That is what some of my colleagues have been belabouring; perish the fact that the President should act unconstitutionally because he has not acted unconstitutionally. So, it cannot be on the face of it.

Mr. Ruto: On a point of information, Mr. Chairman, Sir.

Mr. Chairman: Mr. Musyoka, do you wish to be informed?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Chairman, Sir, I know my friend's disposition. I would rather he holds his peace, because I do not want to be long.

Mr. Chairman: Proceed! Could you conclude now!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Chairman, Sir, I actually must conclude by saying that this is a very healthy debate. We know the rules, we know the Constitution. All of us have sworn to uphold this Constitution. The reality of devolution which is a very exciting thing, to me, is here before us. But let us accept the fact that the President has acted in accordance with the Constitution. Therefore, I think we should move on with the business.

The last point I wanted to make is when the Deputy Prime Minister and Minister for Local Government brought this matter before the House and, indeed, he is still the one shepherding this process, he was acting within the understanding of one Government. There cannot be two governments.

Thank you.

Mr. Chairman: Hon. Shebesh. I will take three more and then give a direction on that.

Mrs. Shebesh: Mr. Chairman, Sir, thank you very much and I want to apologise for earlier behaving like I was in a high school. That is not what I was intending. However, I was getting very perturbed by the remarks that were coming from this Floor. It was actually reminding me of the days that I was in high school. So, maybe, that is why I was confused.

Mr. Chairman, Sir, I just want to speak on one issue. This issue of using the Presidency to whip emotions is very unfortunate by the Attorney-General, the Minister for Justice, National Cohesion and Constitutional Affairs and even our Chair of the Constitutional Implementation Oversight Committee (CIOC). We respect this President and that is why we want to debate this issue. That is why we have not taken this issue outside this House. To purport that we are bringing politics into this issue, the Attorney-General should know that this is the heart of politics. This is the political heart of Kenya. We are in Parliament and this is our work.

Mr. Chairman, Sir, definitely, the Presidency is an institution. It is not an individual. We are definitely being reduced to think about President Mwai Kibaki rather than the Presidency of this country and we will not do it because we are not children. We know the game that is being played. When the Attorney-General was speaking here, he spoke about voting three times or four times in his statement. He kept going back to vote! Vote!

Mr. Chairman, Sir, we can see that the voting machines have been called. We know them. They never come here. Some I have not seen them in a while. In fact, when I leave, I will greet them because I have not seen them for a while.

(Several hon. Members stood up in their places)

Mr. Chairman: Can you finish! Order! Order!

Mrs. Shebesh: Mr. Chairman, Sir, I will remove the word “voting machines”. I would say that the Presidency is advised by two very important organs; the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs. Therefore, to purport that this decision was made by the President alone in his own thinking is also to mislead this House. So, I want them to be candid enough to say that they misled the President and that they are willing to go back and take the points that hon. Gitobu Imanyara has brought. If it comes on the face of it - I do not know what you say in the lawyer’s terms - who is trusted right now on talking on constitutional matters, between the Attorney-General and hon. Gitobu Imanyara, I can tell you, hon. Gitobu Imanyara would take it hands down.

Mr. Mbadi: Mr. Chairman, Sir, when I listened to the Attorney-General, I realized that Kenyans made one mistake of removing the security of tenure.

Mr. Deputy Speaker: Order! Hon. Mbadi, confine yourself to the merits and demerits of the matter that is before the House!

(Laughter)

Mr. Mbadi: Mr. Chairman, Sir, I felt that I should have said that because I saw the Attorney-General who did not believe in what he was saying. But let me go to the fundamentals of what is being discussed this afternoon.

I think what we need to ask ourselves and that is what hon. Imanyara raised, is whether this House can proceed to debate and take a vote on a memorandum that we feel is strongly based on wrong premise of the law. The gist of the memorandum is to try to question the amendments that this House made and which the President is talking about restructuring the Provincial Administration. He goes ahead to say that this is the function of national Government and by extension, trying to explain to us that Parliament is not a national Government.

Mr. Chairman, Sir, if there is no wrong interpretation of the law, I think that is the worst interpretation of the law and we cannot proceed on the basis of misrepresentation of the law by the President. What we are asking the Chair to do is to find that the Motion before us that we are supposed to debate is based on wrong premise of the law. I just want to take the House to Article 239 which says at 239(5):-

“The National security organs are subordinate to civilian authority”

Mr. Chairman, Sir, my understanding of this is that, civilian authority at the County Government is exercised under the Governor. If you have subjected or subordinated the security

organs to his authority, then you cannot say he cannot Chair or that he has no role to play in security.

The argument that was brought by the Government about the people of Kenya and consultation, I want to remind the Attorney-General that the sovereignty of the people of Kenya is actually the first Article of this Constitution. It says that all sovereign power belongs to the people of Kenya. But it goes ahead to say that that power can be exercised either directly or indirectly through democratically elected representatives. There is no democratically elected representative organ of this country superior to Parliament.

Mr. Chairman, Sir, as we speak here, we are perfectly in order to legislate on behalf of the people of Kenya because we have derived the sovereign authority from them. This cannot be questioned. Therefore, I would just urge the Attorney-General and say exactly what hon. Martha Karua said, that, please, let us not argue too much on this matter because it is very clear. Let us accept that probably something was not done right. As for withdrawal of this Bill like you did graciously to the Finance Bill, take it back to the President, sit with him and if you need to consult, you can consult some of us especially hon. Gitobu Imanyara. He came out very well that there is something probably he knows, which you also know, but you missed.

That is my plea to the Government side.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi):
Thank you, Mr. Chairman, Sir. I want to argue from a completely different perspective and not a legal one, because that is not my domain.

I would like to appeal to hon. Members to consider one thing; that the more we prolong resolution on this issue, the more we delay the process of activating a number of issues regarding devolution. We would like to start making serious plans on the budgetary process and how to help the county government start when they start. Therefore, I would like to request the Members to consider the fact that we need this law to help the Commission for Revenue Allocation and to help the budgetary process, so that we can start working on specific legal mandate in preparing for the finances that should be able to kick start the county governments.

Mr. Chairman, Sir, in making the decision, consider the fact that there is also an important process that needs to be triggered off. The other aspect that I would want to point out is that, if we had had time to also look at the Order Paper and the way it is being proposed, you would find that we are finding a solution which does not negate the role of the Governor. We are finding a solution, which still comes out very clearly that the Governor is the Chair of the County Policing Authority under the Police Service Act. It is law. So, we cannot change that. The Governor is already the Chair. What we are doing here also is to just add further and create another body, an inter-governmental body which allows the Governor to go even beyond chairing the County Policing Authority but also chair a forum of all the heads of departments in the county and at the same time, his role under Article 4(1) of the Police Service Commission Act, has not been negated and is also being recognized in this proposal that we are putting before the House.

Mr. Chairman, Sir, equally, I would like Members to remember that the relevant Parliamentary Committee has been seized of this matter and it has also dialogued. We have - and we have even contemplated - that we should have the two-thirds to completely negate the Presidential Memorandum. The reality of it is that after a lot of consultations, we realized that we could not get the two-thirds. So, rather than create a dead-lock, I would like to plead to hon. Members; let us move forward because as we move ahead, the law that will restructure the Provincial Administration will come here. That will give hon. Members the opportunity, if I may

use this phrase, to use the surgical blade that this House has to critically look at that law and what will be obnoxious in the national administration law that may be infringing on the territory of the county governments can then be dealt with at that time. But, please, hon. Members, we must activate the county governments. The more we delay this, the more I feel that we are indirectly playing in the hands of those who are not for devolution. So, I would like to plead that we rethink our positions and then move forward so that we can activate the county governments.

With those few remarks, I propose that we move ahead.

Mr. Ruto: Thank you very much, Mr. Chairman. I will not go into great lengths of the arguments that have been ably argued. However, I want to remind us that the question of devolution is at the very heart of the campaign for constitutional change. The role of the Provincial Administration, Office of the President, through the last 50 years, has come to great question. It has created the impetus for the change that has been demanded all along. Today, this afternoon, we are not questioning the constitutional power of the President to give us a memorandum. It is clearly enshrined in the Constitution that he has that power. We are not arguing about that and, in fact, that is what I wanted to inform the Vice-President and Minister for Home Affairs that we are not arguing about his powers that are clearly put there. The question is: The issue before us that he wants us to agree to in his objections is the particular matters that are not constitutional. I do not think we are obligated to agree with the President just because he has powers to give us a memo. The memo must make sense in law and, in fact, once it is clearly proved in the Plenary here and everywhere--- Every right thinking Kenyan can see that this is in contravention with the existing laws. I think it would be very strange for Parliament to just go ahead and say that because the President has sent it to Parliament and it needs to two-thirds majority, we should just accept. This will send the wrong signals.

I want to urge the Government to be very careful. I am persuaded by the views of the Deputy Prime Minister and Minister for Local Government but, nevertheless, I want to request the Government not to paint the Presidency as a home for regressive forces that are now coalescing around the Presidency as a last bastion against changes that Kenyans have yearned for, for over 50 years. This kind of view is now gaining currency all over the place. You will not hide behind the Presidency and hold onto a very regressive system called the Provincial Administration that operates like an occupational force throughout the country. They are a law unto themselves. We have established a national security organization known as the police. Who are these other fellows that you want to insist that they must exist side by side with the elected leadership at the lower level? Why did we yearn for constitutional changes if we wanted to retain the same? Where are we heading to, Mr. Chairman?

We are persuading the Government to be open minded. You only have seven months. Why do you want to paint yourselves very ugly? I thought you want to come back. Do you not want to? Kenyans are yearning for changes, but you are now yearning to retain the status quo. Did we pass the Constitution so that we remain the same or improve?

An hon. Member: You voted "No".

Mr. Ruto: That is because I did not want half measures like the ones I am seeing here, including giving us 15 per cent. During our campaigns, we were talking about 40 per cent of the resources. Look at the Public Finance Management Bill that you have given us here. You are putting more problems in it. Where are we heading to as a Government? What do we want to achieve? Let us be honest with ourselves. What did we set out to achieve in the constitutional changes? Is it so that we remain the same?

(Applause)

I want to propose that the President be properly advised and that he withdraws this Memorandum. We cannot be persuaded to vote for it; even 20 of us. We may not get two-thirds because we know that they have the capacity to run away from the House, so that we do not get the two-thirds. However, we will pass the message that we are not interested in these kinds of gimmicks.

Mr. Samoei: Mr. Chairman, Sir, thank you for giving me this opportunity. I will go straight to the point. The issue here is not really the merits of what the President is saying. I think you pointed out earlier that the issue here is: Do the Standing Orders apply to the President? When the President is making a recommendation to this House, does he have to comply with the Standing Orders with respect to his proposals? When the President is making his recommendations to the House on changes on a Bill that has been passed by this House, does he have to comply with the Standing Orders? Does his recommendation need to comply with the Standing Orders; that he cannot make a recommendation that negates what was passed by Parliament? That is an issue. Secondly, if the President makes a recommendation that negates what was passed by this House and, therefore, is in contravention of the Standing Orders, what is the position of that recommendation by the President? That is the issue we need to resolve. The issue of: Is it constitutional? That is the issue. This is going to be a very serious issue which I plead with the Chair to apply his mind to, because it will set precedence. You will notice that when the names of the DPP, the Chief Justice and the Attorney-General were proposed, the contest was about the provisions as put in the Transitional Clauses and the ones that were in the Constitution.

Mr. Chairman, Sir, here, you are faced with a situation where you have to set a precedence so that, in future, if the President must comply with the Standing Orders with respect to not proposing recommendations that contravene or negate what was passed--- Even the rule of unconstitutionality applies to the President in his role in the making of the Bills. This is your opportunity to provide guidance to the President, so that in future if he has to make recommendations, they have to comply with the Standing Orders and must be in tandem with the authority given to him by the Constitution to participate in legislation, through recommendations of memoranda, like what he has done. I think the other issues are really issues that will go into merit. But this is not an issue, in my very honest opinion, that we can vote on. This is an issue that you need to make a decision on.

Mr. Chairman, Sir, let me conclude by saying the following: If you find that the President must not necessarily comply with the Standing Orders, then we can go ahead and debate and put it to vote, but I think we are all in the process of establishing a new way of doing things. Your office is called into the fray now to provide guidance, so that even for the President - we are not saying that the President has done anything illegal – in future and those who advise the President whenever they will be making this memoranda, they will be careful to follow what the guidance of the Chair is.

Mr. Chairman: I am going to take two final submissions from hon. Muriithi and the Acting Minister for Finance, because he is a legal mind. Please, confine yourselves to the merits and demerits of the matter that is before us.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): On a point of order, Mr. Chairman, Sir. I do not know how to put this. The problem is that in reality many of us are not quite versatile with the law in terms of interpretation. Would I be in order to request that the

Attorney-General makes a clarity as to whether the interpretation of this issue is based on what happens if this law was passed in terms of the powers which the Head of State will have *vis-à-vis* what powers the Governor will have?

Mr. Konchella: On a point of order, Mr. Chairman, Sir.

Mr. Chairman: Hon. Konchella, are you sure that it is not a point of argument like the one by hon. Onyonka?

Mr. Konchella: Mr. Chairman, Sir, mine is a point of order.

Mr. Chairman: Yes!

Mr. Konchella: Mr. Chairman, Sir, the Speaker of the National Assembly placed this Memorandum before the Committee on Local Authorities. The Committee interrogated it and called witnesses to address the interrogation. The hon. Members need to be enriched by what the Committee found. So, am I in order to request that the Committee on Local Authorities be given a chance to let the House know what we found?

Mr. Chairman: Order! Order! Hon. Members, you must address yourselves to the core of the matter. The core of the matter itself is the constitutionality of the matter before the House. I recognize that there is a lot of debate on many issues, but clearly, try and confine yourselves to exactly what is at hand.

Proceed, hon. Muriithi!

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Chairman, Sir, you will notice that in addressing this question, many of the arguments which have been placed before you have, in one form or another, been about the intentions to restructure or otherwise, the Provincial Administration.

Mr. Chairman, Sir, you will also notice that in the Bill, that is actually dealt with by Clause 54, yet the many arguments that have been presented to you have tried to use Article 30 or Clause 30, and in particular, focus one specific sentence “there is no county equivalent of the National Security Council.” So, I think that it would be useful to go into what is actually the National Security Council and which functions are contained in this particular organ. You will notice that there are five key functions - I am not talking about persons – represented in the National Security Council, that is, foreign affairs, immigration and defence. Can we truly argue that these functions will have their equivalent at the county government? My humble submission to you is that we cannot. This is because, indeed, these functions are the functions of the national Government and that is why even in framing that at the county level, there is an equivalent dealing with policing, that is, internal Security which is a function represented in the National Security Council, but it is only one function.

Mr. Chairman, Sir, the last function is finance. So, I think that to base the whole question of the constitutionality of this memorandum on the simple question of whether there is, in fact, an equivalent of the National Security Council at the county level, is erroneous.

Mr. Chairman: Can you conclude?

The Assistant Minister, Ministry of Industrialization (Mr. Muriithi): Mr. Chairman, Sir, as I conclude, I think most hon. Members agree that the Governor elected by the people of that county, surely, has a role to play in the policing of that county and providing other functions that go with policing. But that is not to say that those roles are equivalent to the National Security Council.

Mr. Chairman: Hon. Githae, take exactly not more than three minutes!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Chairman, Sir, I have looked very carefully at the President's Memorandum and do not see any contradiction at all.

Mr. Chairman, Sir, the framers of the Constitution, in their wisdom, placed national security under the National Government for good reasons. I think what the framers of the Constitution had in mind is that if you put national security under county government and get a rebel governor who may want to declare their county independent--- that was exactly the reason why national security was placed under the National Government. That is exactly what the President is saying.

Mr. Chairman, Sir, secondly, if you look again at the functions of the county government, national security is not one of them, again, for good reasons. If you go to the Schedule, it says that the Provincial Administration will be restructured within five years. It will be restructured and not abolished.

Mr. Chairman, Sir, thirdly, again, I have looked at the President's Memorandum and do not see what is negative about the amendments that the House passed. Therefore, to me, the solution is that we now discuss the merits of the President's Memorandum, and if we do not agree with them, raise 65 per cent and override them and then, what originally the House passed, passes. If we cannot get the numbers, then we will accept the President's Memorandum and move on. We need this county devolution as a matter of urgency. The President is on record supporting devolution. The Treasury is also on record supporting devolution. There is nobody who is against devolution.

Thank you, Mr. Chairman, Sir.

Dr. Nuh: On a point of order, Mr. Chairman, Sir. I think enough has been said and I do not want to dwell on the matters that have already been touched. But you know when you start picking on every other aspect that the hon. Members spoke on, the Memorandum of the President stands almost deleted. This is because every other aspect has been termed erroneous.

Mr. Chairman, Sir, even when hon. Githae and other hon. Members stand here and say that they do not see any contradiction, the Standing Orders say that someone shall be entitled to the statements of facts that are made to this House; whether in oral or any written submission. So, when a Memorandum comes from the President and contradicts the facts that are enshrined in both the Constitution and Acts of Parliament that the President has assented to, should we just accept the Memorandum, which is defeating the facts that are in this House merely because it comes from the President? When the issues have already been raised that the memorandum of the President is---

Mr. George Nyamweya: On a point of order, Mr. Chairman, Sir. My good friend pointed out the matter on a point of order but he is, again, debating it. If you are re-opening the debate, for heaven's sake, let us allow the debate to continue.

Mr. Chairman: Order! Order! That is, indeed, out of order.

Dr. Nuh: Mr. Chairman, Sir, I was contributing to the issue that was raised by hon. Imanyara.

Mr. Chairman: You had your moment to contribute.

Dr. Nuh: Mr. Chairman, Sir, I have not---

Mr. Chairman: Proceed.

Dr. Nuh: Mr. Chairman, Sir, because we have already said that the President's memorandum is erroneous for denying the fact that there is a county equivalent of the National Security Council, yet he assented to this; the fact that the President's memorandum negates the

fact that this National Assembly is part of the national Government, which by law is entitled to restructure the Provincial Administration; the fact that the President's memorandum negates the direction that we restructure the Provincial Administration within five years, which have not lapsed. I want to go to Clause 1 on page four of the President's memorandum; he says that Clause 54(1) "provides that the further structures of decentralisation shall include locations and sub-locations".

Mr. Chairman, Sir, that is what was passed in the Bill that the President has rejected. The President's Memorandum says that this is inconsistent with Part II of the Fourth Schedule to the Constitution, which leaves the creation of these structures to the respective county governments. I have gone through Part II of the Fourth Schedule of the Constitution. There is no aspect that has been cited that grants the county governments powers to form any further decentralised units. The only provision that the President should have cited is a provision we passed in the same Bill he has rejected. After we said that the sub-locations and the locations will be further decentralised units, we, again, gave powers to the county assemblies and county administration to establish further decentralised units.

The President, in his memorandum, which I suppose is on the advice of the Attorney-General and hon. Mutula Kilonzo, cites a provision in the Constitution that is not even there. So, should we just go ahead and debate a vague memorandum that cites several aspects in the Constitution in an Act of Parliament that is not established? I call for your guidance that we go back to plenary and report progress.

Mr. Ngugi: Mr. Chairman, Sir, as the Chair of the Departmental Committee on Local Authorities, to which you committed this memorandum, I want to go the route the Deputy Prime Minister and Minister for Local Authorities went. When we got this memorandum, we invited several stakeholders, among them being the Constitution Implementation Commission (CIC), the Minister of State for Provincial Administration and Internal Security, and the Deputy Prime Minister and Minister for Local Government. We have even had consultations with the Attorney-General.

The first thing that my Committee looked at is the President's assertion "By the powers conferred to me by this Section---" We looked at it and saw that the Constitution, indeed, confers the President with powers to return a Bill with areas that he does not agree with, although we did not quite see what was difficult in Clause 30. When we came to Clause 54, we were able to accommodate what hon. Members are arguing about in the sense that in the amendments that we have provided, we have brought in Clause 41 of the National Police Service Act. We have said that the governors of the county governments shall have to be briefed regularly by the chairman of the county security committee.

Mr. Chairman, Sir, we have even gone further to create a body that was not there initially, which will coordinate the functions of the national Government and those of the county governments under the chairmanship of the county governor. I find this debate to be just academic and legal. It will not push us forward to provide the legal framework for devolution. Although my friend, the Attorney-General, has consulted with hon. Imanyara, this is a matter that we should have finished because all that hon. Imanyara was saying is that in the amendments, the two upper parts be removed, and that only the amendments that have been proposed by the Committee, which provide for a win-win situation for both sides, be the ones to be debated and accepted or rejected by this House.

Therefore, I plead with this House that what hon. Members are arguing about does not go against the amendments that have been proposed by the Committee. So, if we are to go ahead

and debate the amendments, I think the matter will be straightforward, rather than dwell on legalistic and constitutional arguments and citing Articles of the Constitution. We can also cite Articles of the Constitution that gives us a way forward. So, mine is to plead with this House that, in order that we move devolution forward, let us go ahead and debate the amendments. We either pass them or throw them out. If we throw them out, we should live with the consequences, which are provided in the Constitution.

Mr. Chairman, Sir, that is my plea to this House.

Mr. Ogindo: On a point of order, Mr. Chairman, Sir. What the House is calling upon the Chair to do is to give guidance and evaluate the Memorandum against the Standing Order No.47 and the Constitution, so that we can proceed because the integrity of this House is at stake. So, can we get guidance along those lines?

Mr. Chairman: Those matters are for the Chair to determine. For you, while on the Floor, you must show why you think in one way or the other. That is the only way you can help the Chair.

Hon. G. Nyamweya is the last speaker. After that, I will give direction.

Mr. George Nyamweya: Mr. Chairman, Sir, I believe that this matter is fairly straightforward and, indeed, simple. The President is constitutionally empowered to refuse to assent to a Bill. If he does, he can return it to the House with his recommendations. Even if it amounts to negating that Bill, the House has one function. Both under the former Constitution and the current Constitution, we can accept his recommendations and pass them as they are, or we can reject them and retain the Bill as passed previously. You can even amend his recommendations. The Committee has actually said yes, we accept this part, but we are also recommending amendments.

So, no matter what we do, it will not take us very far if we think that we can gloss over our constitutional functions by finding a technical way of avoiding the substantive debate. I plead that we get to the recommendations and sort them out. If we disagree with them, let us amend them.

Mr. Chairman, Sir, finally, you are being asked to set a precedent. Let us ask ourselves this question: If we were to reject these recommendations on the direction of the Chairman, what then becomes of the Bill itself? The President may, again decline to accept it. We have not done anything to move the legislative process forward. When you give your direction, think of those consequences.

Mr. Chairman: Hon. Members, I have heard a lot of submissions and the issues that have been raised on the memorandum that was brought back to the House by the President. The President cites Article 46(3) and (4) of the former Constitution which is still in force, which gives him the powers to refuse to assent. He has refused to assent to this Bill.

He goes ahead and also indicates the reasons why he feels certain provisions of clauses of this Bill are unconstitutional. So the President bases his argument on the constitutionality of Clause 30 (2) (i) or the unconstitutionality of it; which indicates and says:-

“Among the functions of the Governor, subject to the operational command, structures set out in the National Police Service Act or any other national security legislation will chair the county equivalent of the National Security Council as provided for in Article 239(5) of the Constitution”.

The President proceeds and says that this is contrary to Chapter 14 of the Constitution which places the National Security Council under the National Government and not the county

government. He argues out his authority in Part II of the Fourth Schedule. Indeed, certain provisions of Part II of the Fourth Schedule have its own division of functions. It says:-

“Distribution of functions between the National Government and County Governments---“

It sets out all this and then proceeds on and gives all that.

That basically is the argument on the part of the President as well as the many Members who have come out here into the open. It goes on and on.

On the part of Mr. Imanyara *et al*, it is that Standing Order No.47 (iii) is very categorical. It says:-

“If the Speaker is of the opinion that any proposed Motion is contrary to the Constitution without expressly proposing appropriate amendments of the Constitution, then the Speaker may direct that the Motion is inadmissible or that notice of it cannot be given without such alterations as the Speaker may approve”.

Clearly, the practice is that when a Motion that is before the House is in the opinion of the Speaker unconstitutional, then even debating that itself is not allowed.

However, the issue on both sides is elaborate. Mr. Imanyara says that Article 174 (h) of the promulgated Constitution says:-

“Objects of the devolution of Government are; to facilitate decentralization of State organs, their functions and services from the capital of Kenya---“

It proceeds and says: “To enhance checks and balances and separation of powers”.

The Chair has taken cognizance of all the arguments that were advanced both for and against this matter. The Chair is also conscious of the fact that this is a weighty matter. It is a matter that essentially the Chair would want to meditate about and reflect about and give a comprehensive communication from the Chair to give the way forward.

Consequently, as per our practice, I can only ask the Deputy Prime Minister and Minister for Local Government whose line Ministry is basically concerned with this Bill to report progress.

PROGRESS REPORTED

THE COUNTY GOVERNMENT BILL

[Mr. Chairman left the Chair]

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

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Chairman, Sir, I beg to move that the Committee do report progress to the House and seek leave to sit another day.

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Mr. Temporary Deputy Chairman, Sir. I am just wondering because, the matter on which the Committee is going to report to the House involved you substantially. I just wonder procedurally whether that presents a challenge.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

Mr. Imanyara: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Presidential Memorandum on The County Government Bill and has instructed me to report progress and seek leave to sit another day.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said resolution.

(Question proposed)

(Question put and agreed to)

Mr. Deputy Speaker: Next order!

BILL

THE PUBLIC FINANCIAL MANAGEMENT BILL

*(The Minister for Nairobi Metropolitan Development
on 14.03.2012)*

(Resumption of Debate interrupted on 14.03.2012)

Mr. Mbadi: Mr. Deputy Speaker, Sir, I want to contribute to this Bill. This is a very important Bill. It cannot be overemphasized the importance of public finance management law in this country. I think this is a Bill that should have come to this House even earlier.

I have a number of comments to make on this Bill. First of all, it is my understanding that when the Government---

(Loud consultations)

Mr. Deputy Speaker, Sir, the consultation is too loud. I cannot even hear myself.

Mr. Deputy Speaker: Order, hon. Members! Order, Mrs. Millie Odhiambo-Mabona, Mr. Imanyara, Dr. Nuh and Dr. Joyce Laboso!

Mr. Mbadi: Could they go and sit behind, Mr. Deputy Speaker, Sir.

I had just started by saying that this is a very important Bill. I think it would be important if hon. Members listened to some of our contributions. Truly, if we do not get this law right then public financial management in this country will be a problem.

Mr. Deputy Speaker, Sir, first of all, I want to say that this Bill has a lot of strong points. This Bill, as it is, has been a product of extensive consultation most of which I have attended, no doubt. Therefore, I would say that I agree with a number of provisions of the law. However, there are also quite a number of issues that I feel need to be addressed especially at the Committee Stage. I am happy that informally we have discussed that some of us will be sitting to go through some of the issues that we have together with the Treasury so that we can thrash out the contentious issues so that we can have a good law for this country.

I want to start by saying that looking at the Bill, I thought we would give more clarity on the functions of the national treasury. The functions of the national treasury are so important and key that we cannot leave them to generalities. We need to be clear as to who is supposed to do what. We need to assign functions to various offices so that we are sure who is supposed to do what.

[Mr. Deputy Speaker left the Chair]

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

Madam Temporary Deputy Speaker, it is also important to mention that I am a bit disturbed that this Bill has a lot of provisions which I feel are contrary to the provisions of the Constitution. I want to mention three instances. The first one is the issue of public participation and the role of Parliament in the budget making process. If you look at Article 221(5) of the Constitution, it puts it very clearly that once the Executive arm of the Government has come up with estimates of revenue and expenditure, those should be submitted to Parliament two months before the end of the financial year. It is the responsibility of this Parliament to then go outside and listen to the presentations from the people of Kenya. This is captured very well in Article 221(5). It is about discussing and reviewing the estimates. However, let me mention Article 221(4) which says:-“Before the National Assembly considers the estimates of revenue and expenditure, a committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly.” (5) Goes on to say: “In discussing and reviewing the estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly.” So, constitutionally, it is the responsibility of the National Assembly, through its committee, to go and seek representation from the people of Kenya. The Bill attempts to take that away from the National Assembly and gives it to the Cabinet Secretary. Most importantly, this Bill asks- and I want to read that under Section 39 of the Bill - the National Assembly to take recommendations of the Cabinet Secretary. I want to read Section 39(2) which says: “Before the National Assembly considers the estimates of revenue and expenditure, the relevant committee of the National Assembly shall discuss and review the estimates and make recommendations to the National Assembly taking into account the views of the Cabinet Secretary on the proposed recommendations.”

Dr. Nuh: On a point of order, Madam Temporary Deputy, Speaker.

Mr. Mbadi: *Wacha niendelee Bwana!*

POINT OF ORDER

ADJOURNMENT OF DEBATE ON PUBLIC FINANCIAL MANAGEMENT BILL

Dr. Nuh: I move under Standing Order No.25(1) that the debate be now adjourned. I know Mr. Mbadi and many hon. Members are also very well versed with this Bill and have the spirit to contribute. But it should not be lost that there are many hon. Members who would really want to contribute to this Bill, but are held up on other parliamentary business. Besides, some of us have been called for a workshop starting from Monday, which is on this same Bill. It is meant to enrich our understanding. We want the contributions by hon. Members in the Second Reading to be those that have been enriched; that have much information, that have been deliberated on and, in that regard, I wish that the debate on Order No.10 be adjourned until further time when the Minister can still introduce and move it on the Order Paper. That will allow hon. Members ample time to go for the workshop that hon. Members have been invited, so that they can benefit from the expertise reading and knowledge of the Bill.

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

Mr. Ruto: I second, Madam Temporary Deputy, Speaker.

(Question, that the Debate be now adjourned, proposed)

The Minister for Nairobi Metropolitan Development (Mr. Githae): Madam Temporary Deputy, Speaker, I stand to oppose that Motion. If I may bring it to the attention of hon. Members, we have already passed the Procedural Motion saying that this House continues sitting until we conclude the business on the Order Paper. In my view, adjourning is not concluding. The Procedural Motion that we passed says that we conclude the business of the House. If it is the feeling of hon. Members that they want to curtail the debate, then, at least, Dr. Nuh should have then risen on Standing Order asking the Mover to reply, so that we can conclude the debate. But in my view, adjourning is not concluding. We passed a Procedural Motion that we will conclude all the business appearing on the Order Paper. So, let him move that the Mover be called upon to reply and then we conclude the debate.

Mr. Mbadi: Madam Temporary Deputy, Speaker, you will remember that I was the one contributing and so, I would have been the greatest loser on this. But I support this Motion.

I do so by reminding my colleague and the Minister for Nairobi Metropolitan Development that concluding debate can also be by adjourning. We can conclude debate by adjourning. So, what convinces me is this: Look at the Government side, for example, you can see the number of Ministers we have on the Government side. They are a handful. I am surprised that Mr. ole Ntimama is here, when very young and youthful Ministers have gone out. I think Kenyans need to be serious. Members of Parliament need to be serious with their work. This is a very important Bill and we require, at least, a near full House to debate it.

So, I support the Motion.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy, Speaker, I rise to oppose that Motion. A tradition has developed in this House where highly important and highly technical Bills are left to a few hon. Members. I say so with confidence because this House was nearly full barely half an hour ago, and this particular Order is very clear. What the hon. Member is suggesting is that we have to put a tether on the necks of hon. Members to sit in this House and contribute, even when they are

showing no interest. They walked out on their own! Sometimes, I think the importance of the laws that this country is making at this time has disappeared from this House.

We are engaged in constitutional implementation and some of these laws, particularly this Bill, affects the single most important item of any Government; the management of public resources and public finance. Therefore, I am satisfied that even though we are few on the Floor of the House, we still have a Quorum and, so the debate ought to continue. Those who have an interest should continue. This idea of postponing debate on such fundamental laws because hon. Members have walked out should be discouraged and, therefore, I beg to oppose.

QUORUM

Mr. Njuguna: On a point of order, Madam Temporary Speaker. In my view this is a very critical Motion that requires very heavy consultations and argument, because it is going to affect the lives of Kenyans. However, Madam Temporary Deputy Speaker, I am concerned about the quorum in this House.

The Temporary Deputy Speaker (Dr. Laboso): Hon Njuguna, are you requesting quorum?

Mr. Njuguna: Yes.

The Temporary Deputy Speaker (Dr. Laboso): Okay, I order that the Division Bell be rung.

(The Division Bell was rung)

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, we now have a quorum. You may proceed, hon. Mbadi

Mbadi: Madam Temporary Deputy Speaker, Sir, I thought we were voting on the postponement of the Motion. There was a dilatory Motion which was before us.

(Question, that the Debate be now adjourned, put and agreed to)

Hon. Members I now ask the Vice-President and Minister for Home Affairs to move the adjournment Motion.

MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE HOUSE TO A DAY OTHER
THAN THE NEXT NORMAL SITTING DAY

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Madam Temporary Deputy Speaker, I beg to move the following Motion:-

THAT, this House do adjourn until Tuesday, 17th April, 2012 at 2.30 p.m.

Madam Temporary Deputy Speaker, in moving this Motion, permit me to congratulate hon. Members for having a wonderful conversation particularly this afternoon. A conversation that clearly shows, as the voice predicted, that the Tenth Parliament has had a date with destiny; that we have been able to pass crucial legislation and we are able to beat the February, 26th deadline.

Madam Temporary Deputy Speaker, I think the House and the country knows that Members of Parliament have fully applied themselves to the need to fully implement our Constitution. I think that is the duty and responsibility that is before us. It is only fair for me to wish Members happy Easter. I think this break is also merited so that you can all consult with your constituents. We can all go out there. I heard the Minister for Justice, National Cohesion and Constitutional Affairs say that they are launching the civic education programme for purposes of making every Kenyan conversant with the implementation process of our Constitution.

Therefore, I wish all of you well and God's blessing. Even on the issues that we could not be able to agree, I am sure that when we come back, we will all have freshness of approach and we will make progress. After all, we reported progress this afternoon to the House.

With those remarks, I beg to move and ask the first Deputy Leader of Government Business who is also the Deputy Prime Minister and Minister for Local Government, hon. Musalia Mudavadi, to kindly second this Motion.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Madam Temporary Deputy Speaker, I second this Motion. I think everybody is exhausted. Let them take a break. I second.

(Question proposed)

Mr. Pesa: Thank you Madam Temporary Deputy Speaker. I want to support this Motion. Members are exhausted and, as you have seen in the past few minutes, the Government side is more exhausted. We want them to go and have a rest so that, when they come back on 17th April, they will be more energetic and deliver what they are supposed to deliver in this House.

Recently, some of us got new constituencies. I think there is a lot of work pending out there. We must go and see how those constituencies will take off.

With those few remarks, I beg to support.

Mr. Onyancha: Thank you Madam Temporary Deputy Speaker. I stand to support this Motion. As I support it, I have a few worries that, as we go on this short recess, I want Members to think about. Our country appears to be under siege mainly because of problems involving security; internally and externally. We are under siege from strikes. We have a problem in Parliament of being seen as a rubber stamp. Parliament is prevented from doing its work. A case in point is when we forward our views to the Independent Electoral and Boundaries Commission (IEBC). They are just rubbish. We have a problem in my constituency about community policing. My constituency is under siege. It has been a very useful institution, but some politicians want to interfere and manage it. So, as we go, I wish you well. But I want the Government to seriously think about these serious issues and see what it can do to push this country forward.

I support.

Mr. Washiali: Thank you Madam Temporary Deputy Speaker. I want to support this Motion, although reluctantly. It is unfortunate that we are going on recess when we have not looked at the Sugar Amendment Act. It is quite unfortunate because that Act came for the First Reading in December last year. Yesterday, it was listed for First Reading just because the House could not recall that it had already gone through that First Reading. As I agree with other Members who are supporting this Motion, I request that immediately the House resumes, we

look at the amendments to the Sugar Amendment Act, so that the farmers and other stakeholders benefit from it.

Mr. Bahari: Madam Temporary Deputy Speaker, I rise to support this Motion.

Madam Temporary Deputy Speaker, security is very important in this country, and I want hon. Ojode and the Leader of Government Business to listen to this. In Isiolo, we have not had peace for the last two years. All the Government efforts have not been successful. People in Isiolo continue to die, yet this Government is capable of arresting that situation. It is now a belief in Isiolo – and I want the Minister to hear this - that perhaps the Government is an accomplice in this matter. That cannot change until the Government institutes adequate measures to ensure that the people in Isiolo live in peace, and this is the county headquarters. Everything is happening within 20 square kilometres of the county headquarters where the Government sits. I want the Assistant Minister to take this to the substantive Minister, so that adequate security is provided to the people of Isiolo.

Madam Temporary Deputy Speaker, with those few remarks, I beg to support.

The Minister for Forestry and Wildlife (Dr. Wekesa): Madam Temporary Deputy Speaker, I rise to support this Motion.

Madam Temporary Deputy Speaker, we are going home and coming back on 17th April. I believe, according to the Director of Meteorology, Dr. Mukabana, that the rains will be here. In the North Rift, this is the planting season. We would like fertilizer and seeds to be available. I also see my colleague, the Acting Minister for Finance, is in the House. A lot of maize has not been bought by the National Cereals and Produce Board (NCPB). This is going to be a big problem for the farmers because they need the money, so that they can plan for next year. Gone are the days when Kenya used to import maize. We are capable of producing enough maize even for export, only if we have the right programme in place.

Madam Temporary Deputy Speaker, finally, Kenya is now at 1.7 per cent forest cover. As we go home, I want to urge my colleagues to rally their constituents, so that everybody can plant some trees when the rains come. My Ministry is prepared to give some seedlings. I am also prepared to visit you, so that we can get every Kenyan who has got a piece of land to ensure that 10 per cent of that land is planted with trees. Every child at school should plant three trees at school and five at home. This is the policy. If we move that way, by 2030, luckily we might reach 10 per cent forest cover.

Madam Temporary Deputy Speaker, I beg to support.

Mr. Kaino: Madam Temporary Deputy Speaker, allow me to join my colleagues in supporting this Motion for Adjournment.

Madam Temporary Deputy Speaker, I would like to echo the words of the Minister for Forestry and Wildlife that in the North Rift, it is actually the time for preparing for the planting season. The Government has let the farmers down in terms of the supply of fertilizer and seeds. We are now getting to that season and there is no fertilizer in the districts. There is going to be a disaster. I am urging the Government and the Ministry of Finance to see to it that Kenyans do not go without food, by supplying the seeds.

Madam Temporary Deputy Speaker, also, I want the Ministers to lead by example by being in the House. I saw the Front Bench completely empty. When they walk out and leave the Front Bench empty, this is not a very good example.

Madam Temporary Deputy Speaker, I beg to support.

Mr. Kiuna: Madam Temporary Deputy Speaker, I also rise to support this Motion and request hon. Members, as they go on recess, to be ambassadors of peace. Let them go and preach

reconciliation. Let them go and tell Kenyans, wherever they are, that all of us are Kenyans; we live in Kenya and that we should not try to engage ourselves in petty politics. Let them be true ambassadors of peace.

As I speak, I understand that there is a demonstration going on. People from a place called “Mauche” in Njoro are demonstrating. They have been incited by a few individuals for political reasons. I wish that the Minister for Wildlife and Forestry was around, so that he could hear it very clearly. I request him to intervene and rescue those people, so that they can know whether they are supposed to be in the forest or where they are supposed to be re-settled.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security, Mr. Orwa Ojode, is still here. If this matter is not looked into, maybe, by tomorrow or next week---

Madam Temporary Deputy Speaker, Sir, you know where I come from. Molo is a hotspot. If the two Ministries do not intervene at the right time, maybe by next week we will be hearing of some funny things, which I do not advocate.

With those few remarks, I beg to support.

Mr. Mbadi: Madam Temporary Deputy Speaker, I support this Motion with a very heavy heart. Why do I say so? We are, again, going on recess without passing the Finance Bill. How are Kenyans going to enjoy their Easter holiday when they are paying loans at over 30 per cent interest? It is terrible that this country is now being run by crooks in the banking sector. They are running this country and holding us at ransom. The Minister has bought into their shenanigan behaviour. For how long are we going to proceed this way?

I would ask the Minister that since he will have time during the recess, let him do what is good for this country.

The Minister for Nairobi Metropolitan Development (Mr. Githae): On a point of order, Madam Temporary Deputy Speaker. Our Standing Orders are very clear that hon. Members are responsible for the accuracy of their utterances. He has just said that I have bought into the shenanigans of the banks. Can he tell me where I bought, when and at what price I bought the shenanigans of the banks?

Mr. Mbadi: Madam Temporary Deputy Speaker, when the Finance Bill---

Mrs. Shabesh: On a point of order, Madam Temporary Deputy Speaker. Is it in order for the Minister to deny what we saw on television today in shock, as he met with the bankers and told the media that he had agreed to a reduction of 2 per cent – something that, of course, was not agreed in this House? I agree with hon. Mbadi. He is playing into the hands of the bankers.

Mr. Mbadi: Madam Temporary Deputy Speaker, I did not say that he was paid money but he has bought the idea. Why do I say so? It is very clear that the reason as to why the Finance Bill was withdrawn from the Order Paper today was because the banks have not allowed him to move the Bill in this House. It is sad that the business of this House is now being dictated to by people who are working in the banks, and who are fleecing Kenyans by charging them interest of over 30 per cent for money that they take from us and loan it to us.

The Minister has agreed with them to control the business of this House and we cannot question him. This is very sad. I hope that when we come back from recess, we will have vigour to make sure that we hold this Government to account. I am telling the Government that some of us are proceeding to the court tomorrow to stop you from taxing us without the authority of the people’s representatives so that you can know the gravity of some of these decisions. Long gone are those days of dictatorship.

Mr. Midiwo: Madam Temporary Deputy Speaker, I rise to support.

I only want to say one thing; we have had a long session. I think normally we are away from here from December to almost the end of March. I want to thank my colleagues for having endured the hard work and, of course, this work more often than not is thankless.

So that we set the record straight about our Acting Minister for Finance, at the risk of appearing that I am apologizing on his behalf, he is better than the ones we had before. He, at least comes to the table to negotiate. I think we need to give him a little bit of credit. I want to urge my colleague, Mr. Mbadi and my friend Rachel not to be too hard on him. We will get somewhere.

Madam Temporary Deputy Speaker, I want to say that this issue of interest rates, the time to crack it is now. We will and we are determined to do so. We have said with the Minister that even though the Motion was pulled from the Order Paper it provides us with the opportunity to further engage. We will be engaging in a way that the result must be that, that helps Kenyans not banks. We are determined. If anybody thought we are doing it to intimidate anybody, it is not our desire to take banks out of business. Simply what we are saying is that it has to happen in Kenya like it happens in every economy. I think in our scenario, the banks must climb down from the ivory tower and come to the negotiating table with the Minister.

I want to say that the Minister is on record as saying that he wants the banks, even before they talked, to bring down interest rates immediately. The bankers even sent their representatives to my office even a few minutes ago. I told them what we want to see tomorrow and not the day after, is acceptable interest rates even as we talk and even as they get reprieve today. I do not think they will get more than one month reprieve. I think their holiday will end with the end of this recess. We will not be compromising any more.

We want them to show goodwill to Kenyans. Kenyans are suffering! The people who are suffering most are not Members of Parliament. As a privileged Kenyan, I am entitled to a Kshs20 million mortgage loan at an interest rate of 3 per cent. I thank God for it. Another Kenyan out there is paying 32 per cent. I think it should be very shameful of us not to feel for them.

Madam Temporary Deputy Speaker, even the people who cannot afford mortgage and are really suffering. These are people like mama Wanjiku or Atieno who took a loan from the bank to buy the non-performing shares of Safaricom. The shares are not performing and the interest rates are high. These are ordinary Kenyans and they do not have the privilege and all those other options of walking to the bank to negotiate. They do not have the privilege that we have. Let us as Members of Parliament think with our brains and not through the stomachs because Kenyans are blaming us for it.

I beg to support.

Mr. Mureithi: Madam Temporary Deputy Speaker, I wish to join everybody else by wishing hon. Members happy and merry Easter.

While I support this Motion, as we have been told by the Minister for Forestry and Wildlife, my dear friend Dr. Wekesa, the rains are on the way. One of our objectives is to plant.

Madam Temporary Deputy, Speaker, the second objective is that we have some IDP camps in lowlands; around Kiprosat where little children, old mothers and fathers, when the rain come, they are completely tortured. So, I would like to ask the Government in this period--- I found people in Mau, Cherangany and others when I was doing the rounds conducting investigations. The Government should take this time to settle the people so that we deal with that problem once and for all. It is not time to rest; it is a time for us to visit the constituencies. It is also a time for the Government to do its job in looking after those Kenyans who continue to languish in IDP camps.

With those few remarks, I beg to support.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Madam Temporary Deputy, Speaker, I want to add my voice to this debate. I support that it is time we actually went for recess. I have been challenged in this House by Mr. Bahari that there is tension in Isiolo. I want to assure Kenyan citizens and the hon. Member that we will do what it takes to keep law and order. We are not just talking about Isiolo. I am talking about the whole country. I would also request my colleagues that when we are outside there enjoying our holidays, please, let us think of what we are going to say. Let us not say and then think afterwards. It takes my colleagues and the Government. It is their responsibility to bring peace amongst their constituents especially those who are bordering with other tribes. I am being challenged here by Mr. Kiuna that there is a demonstration. I am not aware of any demonstration as we speak on insecurity. I want to assure my colleagues that wherever you want to go, I want you to go freely and do not think of any insecurity at this particular time.

Again, we are saying that there were several Ministerial Statements that I was supposed to issue, some of them quite sensitive and urgent. I will try and issue one or two tomorrow in my office. I have in mind the one by Dr. Eseli where people were fighting in his constituency because of insecurity. But I want to assure Dr. Eseli that, as I speak, we have beefed up security within Kimilili and Ndalul areas where we had some insecurity. I also want to assure the people living within Nakuru, where we had some element of insecurity that some changes are going to take place within Nakuru County for those officers who have overstayed in those areas.

Mr. Kiuna: On a point of order, Madam Temporary Deputy, Speaker.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Madam Temporary Deputy, Speaker, there is nothing to warrant a point of order. Again---

Mr. Kiuna: On a point of order, Madam Temporary Deputy, Speaker.

The Temporary Deputy Speaker (Dr. Laboso): Mr. Ojode, the hon. Member is allowed to have a point of order.

Mr. Kiuna: Madam Temporary Deputy, Speaker, Mr. Ojode is talking about insecurity in other areas. I do remember that yesterday he promised this House to deliver a Statement regarding my constituency in Molo and yet, he is not talking about it. Will I be in order to tell him to also include Molo in that list?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Madam Temporary Deputy, Speaker, I said that there are some several sensitive Statements which border on insecurity. Those are the Statements which I will issue in my office in order to contain the situation in those areas. That is what I said.

Let me continue. In many occasions, as a politician, ordinarily, when I see a multitude of people, I can say anything. But little do I know that what I am saying is going to impact negatively on the side of the constituents. That is why I want to caution my colleagues: Think first before you speak. Do not bring controversial issues.

Mr. Baiya: On a point of order, Madam Temporary Deputy, Speaker.

The Temporary Deputy Speaker (Dr. Laboso): What is it Mr. Baiya?

Mr. Baiya: Madam Temporary Deputy Speaker, you heard the Assistant Minister say that hon. Members should think before they speak. Is that parliamentary? There is nobody who can actually speak without thinking.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Madam Temporary Deputy Speaker, Sir, then let them speak positively if that is the case.

Madam Temporary Deputy Speaker, I want to give you some background. Kenya is the only country which should be given a medal in politicking. We started our politics from the day we were elected on 27th December 2007 and will continue up to 27th December, 2013; you know we are still at war. You never know. Since we are at war with the *Al Shabaab*, we might never even go for elections, but this is a personal view.

The Constitution is very clear. Why do we have to go politicking on a daily basis? Why can we not think in terms of empowering our youth? Why can we not think in terms of improving our economy? What is it that we are hurrying for? I want to assure my colleagues that I am going to provide security, but also help me to maintain law and order. I will issue the Statement required by the Member of Parliament for Kamukunji and the Member for Molo tomorrow; I will issue any Statement on security sought by any other colleague. I will issue it in my office. We will continue working with or without Parliament.

With those few remarks, I beg to support.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, Sir, I beg to support and in doing so, I want to wish the women of Kenya a belated happy Women's Day. It was Women's Day unfortunately and so I can only wish women and perhaps wives, girlfriends, grandmothers and aunties a happy women's day. It is also a women's month. So, I wish them a happy women's month, especially because Madam Temporary Deputy Speaker is also a woman.

Madam Temporary Deputy Speaker, I also want to say the Constitution now recognizes participation of women and inclusion of women in elective and appointive positions. Make it real and use the time when we will be on recess to consider ways of making it real so that as women we do not keep coming here and pushing this agenda and sounding like we have a broken record.

Madam Temporary Deputy Speaker, we resumed our sittings earlier than normal because of constitutional Bills. Unfortunately, the record that has been set is not very good because we have only passed very few of them. I would want to encourage the Executive, as the Vice-Chair of the Committee on the Constitution Implementation Oversight Committee (CIOC), that please when we come back avail to us many Bills. We know we have very many contentious Bills. One of the reasons why the Finance Bill has been pushed aside is because hon. Members are not very comfortable with some of the provisions relating to devolution. You know how long we spent on just one of those Bills and the memorandum by the President also in relation to devolution. We want to move forward. So, let the Executive bring us Bills on time, so that we do not go back and forth on these issues. We have comprehensive consultations and we engage with the Executive--- Unfortunately the Minister for Justice, National Cohesion and Constitutional Affairs has left; he used to do a good job of it. I do not know why he has left. If the Executive does that then we will save time.

Again, I am hoping that the Executive will take time to reflect. What we witnessed today was not very encouraging or pleasing where you try to gag members of the Back Bench not to express their views and where we want to make a person bigger than God, we only serve one God. So, please, treat human beings as human beings and consider issues seriously

Madam Temporary Deputy Speaker, finally, I want to encourage hon Ojode that his view about elections in 2013--- Let it just remain his own personal view and a joke; let him not share it with his other colleagues because somebody might just pick it up. In this country, Kenyans think that as Members of Parliament we are trying to extend our time. Some of us would want to

come back as elected Members because we have been called mere nominated Members. Of course, we stand tall and are proud as nominated Members, because we do better work than a lot of elected Members. If I look around now, a lot of us who were nominated are here but elected Members are not here. So, we do a very brilliant job.

Very finally, I would want to encourage the Minister for Fisheries Development to consider that we have gone through a drought period and there are some places where agriculture is not the mainstay of the economy. Remember *omena*. Please, do not put a ban on *omena* fishing.

With those few remarks, I support.

Mr. Ngugi: Madam Temporary Deputy Speaker, I would like to support this Motion for Adjournment and say that Members are tired. I would have liked us to continue, but looking at the way debates have been going in the last one week, it looks like Members are tired and they were not really focusing on real issues that can help this country.

Having said that, I want to encourage my brother, the Acting Minister for Finance to sit on that seat properly. You have this House's goodwill. Please, utilize the goodwill you have here. There is no Bill; Finance or any other that you will not carry through, if you utilize the goodwill that you have here. All of us are Kenyans and we want to move forward. All of us are Kenyans and want banks to behave properly. We want them not to have penalties that if you do not pay early, you have to be penalized for not paying early. We want them not to have floating interest rates that if tomorrow they decide they want Kshs3 billion profit, they increase your interest rate from 12 per cent to 15 per cent. Those are the kind of things you as the Minister for Finance can look into and help this country.

Madam Temporary Deputy Speaker, it is sad that we are going on recess when we have not passed the County Government Bill which is the legal framework for devolution and for starting the process of putting the counties in place. But it is my hope that when we come back on 17th April, we will have sobered up, negotiated with each other and dialogued and we will see sense so that we can all move in one direction not only that Bill but any other that may come.

With those few remarks, because other Members would want to contribute, I beg to support.

The Assistant Minister for East African Community (Mr. Munya): Madam Temporary Deputy Speaker, I would also like to support this adjournment Motion. It is a deserved Motion because this House has worked very hard, sitting and burning the midnight oil very regularly to deliver critical Bills for the implementation of the Constitution. Therefore a rest for Members to come back fresher and ready to continue work and also for Members to touch base with the people they represent in this House is very much in order.

Madam Temporary Deputy Speaker, I also wanted to comment on the issues relating to security. There has been a lot of talk about insecurity in Isiolo. It is true that there has been some insecurity in Isiolo, but most of what is reported as Isiolo is my constituency. It is Tigania East. The killings that took place in Kambela, it is Tigania East where eight young men were killed. The killings that took place near a place called Ruangila a few months ago, again was in Tigania East. The killings that took place in Chundiiri is also in Tigania East. So most of what is reported is erroneously reported that it is Isiolo because my constituency borders Isiolo Town right there. Most of the area where there is conflict is within my constituency. I am trying to correct this so that focus can be where it is. That is because it is never corrected because of the media. The media keeps on saying it is in Isiolo. It is Tigania East but, certainly, we border Isiolo. Many

people who trade in Isiolo Town also live in my constituency. I wanted to thank the Government for---

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): On a point of order, Madam Temporary Deputy Speaker. You have heard hon. Munya say that it is the media that misleads the country to think that, that the problem is in Isiolo. I want to correct that version, that we do not go by media reports. We go to the actual place. We have contained the insecurity in Tigania East and Isiolo Town.

The Temporary Deputy Speaker (Dr. Laboso): Mr. Munya, is what the Assistant Minister has said true according to your knowledge?

The Assistant Minister for East African Community (Mr. Munya): Madam Temporary Deputy Speaker, I do not want to argue with my colleague, the Assistant Minister. But I do not think I was really out of order. That is because we are saying the same thing. He is saying what I am saying. I have said that the flash points that make the whole region insecure are in my constituency. I want to thank him and his Ministry for, at least, taking some positive measures to deal, once and for all, with insecurity in that area. I want to thank the Commissioner of Police for accepting to put up a police station at Ruangila and a police post at Kambela, which are the main flash points. But I will still ask my colleague to consider putting up another police post at Chundiiri, which is another flash point around that area. If those ones are put up, they will be useful in handling insecurity in that region.

The other proposal that has come from the people down there is to have a big GSU camp in that region. There is no GSU camp in my constituency or Isiolo. Whenever there is a serious conflict, police have to be transported from elsewhere to come and deal with insecurity there. The RDU are either transported from Embu or from other stations in Nairobi where the GSU camps are stationed. By the time they reach there – which is more than 350 kilometers from Nairobi or 150 kilometers from Embu - people have been killed and property has been destroyed. The damage has already been done. So, they only come to deal with the aftermath of the conflict. We are saying that you should put the police where they are needed. Put GSU camps in Isiolo or within the vicinity of Isiolo Town so that when a problem arises, somebody is there to deal with it. Transporting them from far is costly, never timely and never helps. I believe that this is a matter that is already being considered because the Minister is also here.

The other issue that affects my constituency, surrounding areas and Isiolo is herdsmen coming from far away, Upper Eastern and North Eastern with their thousands of camels. They traverse all that area to come and graze them around Isiolo. Again, most of the grazing area is in my constituency.

Mr. Hassan: Madam Temporary Deputy Speaker, I rise to support the Motion for Adjournment of the House.

Madam Temporary Deputy Speaker, I do not have the advantage that some of my colleagues have because I am in Nairobi and my constituency is just some few metres away. So, I am constantly in touch with my constituency. However, in the recent past, we have been visited by many problems in Kamukunji, the latest being the devastating grenade attack where we suffered losses in terms of human beings. Nine people died and more than 50 were injured. I have just come back from there, where the community had a fundraising drive to help the families that have been affected. We have also had a series of fires. We had a devastating fire in Gikomba which caused a lot of loss. We also had fire in *Jua Kali* where hundreds of artisans suffered heavy losses. We have also had fires in many other areas.

Madam Temporary Deputy Speaker, the worst thing that is affecting the constituency is the violent crime wave that is taking a lot of lives. I want to challenge the Minister to stop encouraging us here politically and take concrete action to make sure that the people of Kamukunji and Nairobi are protected by our police force. For example, the Minister has promised that there was going to be a police post in Eastleigh four or five months ago when I raised this issue of insecurity, where we have daily attacks and robberies in the constituency. I am urging the Minister to accelerate and ensure that we have that police post and vehicles for the police.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): On a point of order, Madam Temporary Deputy Speaker. The Member for Kamukunji is misleading this House. He requested for an additional police post within his Kamukunji Constituency. I told him to identify the place and then do a note to us and we will go with him and take the security personnel to that place. Again, I did indicate to him that we are waiting for some vehicles which are on high seas, and that once they arrive, he is one of the fellows who will benefit from those vehicles. So, I do not think that he is right by saying that we are taking those issues lightly.

Madam Temporary Deputy Speaker, let me also confirm to you that within Nairobi itself and not just Kamukunji, we have beefed up security completely. I want to go overboard and say that it is not just in Nairobi that we have beefed up security, but also in the whole country, including Isiolo, Garissa, Marsabit, Moyale, including your own place. I do sympathize with his situation, but for political reasons, he has to raise those issues in order for him to be heard. But I also must raise these issues as the Government, for me to be heard that Nairobi is safe. We have contained the situation in the hon. Member's constituency.

Mr. Hassan: Madam Temporary Deputy Speaker, once again, I want to urge the Assistant Minister not to play politics with the lives of the people of Kamukunji and Nairobi. It is in the HANSARD that he had pledged that there would be a police post. We have daily attacks. Even last night when we adjourned, one person was injured seriously in Eastleigh. There are attacks in Gikomba and Muthurwa. Therefore, all I am urging is for the Ministry to do its job and provide protection. I know that the police officers want to do their job, but they are handicapped. I sometimes give lifts to police officers whose vehicles have broken down in the neighbourhood. This is because they have vehicles that are so old that they cannot meet the requirements of policing the area.

Madam Temporary Deputy Speaker, I also wanted to sort of raise another issue which the Assistant Minister touched on yesterday. Yes, we have a large number of refugees in our country and it is a burden. But we, as a sovereign State, have refugee laws. We are hosting these refugees because they have come from countries that have been affected by violence. These refugees themselves are victims. I challenge the Assistant Minister that we should not be demonizing these refugees. He has not given any evidence. I do not know of a single refugee who has been--

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): On a point of order, Madam Temporary Deputy Speaker. You know, when we look for the sources from where criminals come, we must talk of various issues, including the Internally Displaced Persons (IDPs) and the refugees. Yesterday, I said in this House that, maybe, it is because of the influx of the refugees. I also mentioned that instead of having 30,000 refugees per camp, which totals 90,000 refugees, we have 300,000 refugees. Some of the refugees who are there are not genuine refugees, and that is a source of insecurity.

Mr. Hassan: Madam Temporary Deputy Speaker, that is not a point of order.

The Temporary Deputy Speaker (Dr. Laboso): It is a point of information.

Mr. Hassan: Madam Temporary Deputy Speaker, Sir, I was working for a world refugee agency. I also happen to be a refugee myself. I think it is a terrible mistake for a Government Assistant Minister to say such a thing. Under the law, we give people refugee status in our country. I challenge him to name at least ten refugees who have been brought to court and sentenced for criminal activities in our country. Most of the refugees are law abiding people. Even yesterday, two refugees were killed at the Dadaab Refugee Camp. His Ministry has failed to provide protection to those refugees. We are their hosts.

(Mr. Ojode stood up in his place)

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Ojode! Please, try to conclude your contribution, hon. Hassan.

Mr. Hassan: Madam Temporary Deputy Speaker, we are hosting those refugees and, therefore, we should be protecting them in our country. The Ministry that is responsible for the protection of those refugees is the Ministry in charge of internal security. Stop demonising them. Let us protect them. Let us fight crime in our community by investigations, getting the perpetrators and putting them in jail. Let us not scapegoat others.

Thank you.

Ms. Chepchumba: Thank you, Madam Temporary Deputy Speaker. I also want to join my colleagues in supporting the Motion.

Madam Temporary Deputy Speaker, you realise that we need to go back and be with our people to give them hope, especially during these hard times. I want to agree with my colleagues who have said that life is now very difficult for ordinary Kenyans because of the inflation. We feel it.

I am happy that the Acting Minister for Finance is here. The fact that he has sat down with the bankers does not mean that he will totally agree with them, but I want to urge him that he should be realistic and feel for Kenyans the way we feel. We need the bank interest rates to be lowered, so that they can be friendly to all Kenyans, be they rich or poor.

Madam Temporary Deputy Speaker, matters of insecurity are paramount. In Eldoret, of late we have security mechanisms in place. When there is security in place, people will continue engaging in development activities. People will continue being productive in the country. When there is insecurity in some other parts of the country, hon. Members have a right to raise concern. For us from Eldoret---

Madam Temporary Deputy Speaker, I would wish that the Assistant Minister in charge of internal security listens because this is his docket.

The Temporary Deputy Speaker (Dr. Laboso): Order! Order, Assistant Minister in charge of Provincial Administration and Internal Security! The hon. Member on the Floor would like you to hear her.

Ms. Chepchumba: Thank you, Madam Temporary Deputy Speaker.

The reason as to why I am speaking on security is that it is paramount for all Kenyans. I commend the Assistant Minister for beefing up security in Eldoret. However, there were incidents where we had robbers that were arrested in Eldoret and they escaped from a police post. The able Assistant Minister should explain to us the circumstances that led to the escape of those robbers. I know that he is capable of arresting them because he has the capacity. We give

him credit for having beefed up security in Eldoret. I want to urge him to do the same in all parts of the country.

Another thing is that we have an Anti-Stock Theft Unit (ASTU) camp at a place called Chepchiren. The officers have occupied a farmer's premises for the last three years. We do not have loss of livestock in that area and we wonder what those police officers are doing there. Who will compensate the farmers for the loss from this premise?

Madam Temporary Deputy Speaker, I would want to challenge the Minister to remove the police from that post and compensate the farmers for the loss.

Lastly, because I know we are tired and we need to go and do gainful activities in our constituencies, I want to say that we require prayers for this country. When we pray for people, prayers should not be conditional. We have to pray. Kenya is 80 per cent Christian. When we attend these rallies to pray, we are exercising our rights as Christians. It is also very important to pray. I want those who think prayers are not important to be realistic, they need prayers even for themselves.

I support the Motion for Adjournment.

Mr. Baiya: Madam Temporary Deputy Speaker, I also wish to join my colleagues to support this Motion for Adjournment. Indeed, it is a well deserved adjournment. Even as we adjourn the House, we will still continue with the rest of the business.

Madam Temporary Deputy Speaker, I would appeal to the Executive particularly with the implementation of the new Constitution to use this time and prepare the Bills that are coming up. There are also those other Constitutional implementation measures that are lagging behind. We will also urge them to make use of the remaining time for this. For example, there is the issue of the appointments to the Ethics and Anti-Corruption Commission. The Executive is yet to act on the resolution that was made by this House rejecting one of the House Committee's recommendations. At the same time, it was ruled by the Speaker that, that does not amount to the approval of the nominees.

Madam Temporary Deputy Speaker, as I speak a very critical institution as far as the fight against corruption in this country is concerned is paralyzed without directors. We expect action to be taken urgently. The same goes with regard to the offices of the Registrar of Political Parties. There were timelines that were not met in terms of the nominees who were not appointed within the legal timelines. We urge the Executive, particularly, the Attorney-General to possibly amend the law and extend the timeliness. This, again, has not taken place, to date. That is a very important office. We require a substantive registrar bearing in mind that the country is preparing for elections. There are issues and disputes that are bound to arise as we move on.

Mr. Temporary Deputy Speaker, Sir, I would also want to take the opportunity to also support the Acting Minister for Finance in his effort to reach out to Members of Parliament and the country in general with regard to the issue of interest rates.

The Kenyan people have spoken. People are suffering. We know the economic fortunes have gone down. Kenyans are going through the high cost of living. This is really not the time we should allow banks to continue earning super profits at the expense of the country's economic situation of the ordinary people.

The Minister is well advised that he can very well speak with the banks but at the end of the day, he must carry the Kenyan people along for us to be able to support him.

Mr. Temporary Deputy Speaker, Sir, there is also an issue that has emerged. I come from a constituency which is also a coffee producer. Over the past number of years---

Mr. Njuguna: On a point of order, Madam Temporary Deputy Speaker. Is the hon. Member in order to keep referring to the Chair as Mr. Temporary Deputy Speaker?

The Temporary Deputy Speaker (Dr. Laboso): Thank you. Mr. Njuguna!

Mr. Baiya: Madam Temporary Deputy, Speaker, I stand guided and I am sorry about that.

As I was saying, on the issue of coffee, we have seen the fortunes of coffee farmers going down over the years. Farmers all over the coffee growing regions have lost even the motivation to work on their coffee farms. Recently, the market has improved and you could see a lot of enthusiasm. But then, all of a sudden, we have seen some cartels which were formed a long time ago. They are right now threatening even to suspend or paralyze the whole auction system. We have noticed that Coffee Board of Kenya appears like it is acting at the behest of those cartels.

The Temporary Deputy Speaker (Dr. Laboso): Your time is up!

Mr. Baiya: Madam Temporary Deputy, Speaker, with those few remarks, I beg to support.

Mr. Kathuri: Madam Temporary Deputy, Speaker, thank you for giving me this opportunity after a big struggle. I also support this Motion and, while supporting it, I would like to take this opportunity to remind the Executive and, specifically, the Minister for Finance that we have gone on recess when the Finance Bill is yet to be approved. He knows why it has not been approved. There are some contentious issues and he should work on them now that we have given him a chance up to 17th April, 2012. He should note down all the interests of ordinary Kenyans. That is because, unfortunately, any one of us can become another ordinary Kenyan just like our predecessors. We have seen some of them being auctioned to the extent that they have become squatters.

The issue of interest rates is not anything that can be taken for granted. I would expect the Minister to take this one month and exhaustively deal with that matter so that, all the instruments that are required to be put in place to ensure that the interest rates have gone down are applied in total. We should even encourage the Minister to think in terms of how he can encourage the banks to go the “fixed interest rates way”, and not the valuable interest rates way. That is because Kenyans are better off when they deal with a problem which they know, rather than where they are going to be subjected to arbitrary increases now and then.

Madam Temporary Deputy, Speaker, there is also the issue of coffee auctions. While it is not in the docket of the Minister for Finance but, east or west, whether the economy is performing well or poorly, the fact still remains that the buck stops at the Treasury. At the end of the day, the much needed foreign currency to fund the activities will come from those auctions. I would like to encourage the Minister to get into that problem. As much as the Coffee Board of Kenya is under the Ministry of Agriculture, he is even a Minister and a Member of Parliament from a coffee growing zone. I would like to encourage him to get into the whole problem and see exactly how best to handle the matter. That is because the coffee farmer is the one who is going to be the loser in this whole game. The coffee farmer is going to suffer serious consequences and, by extension, the economy is going to suffer. As the Minister for Finance, he has a job to protect Kenyans.

With those few words, I beg to support.

Mr. I. Muoki: Madam Temporary Deputy, Speaker, I wish to support this Motion. I would like to raise two issues. I would like to say that by the time we come back, it will be possibly raining; it will be the rainy season and when it rains, we get serious challenges in the country. First of all, I would like to call upon the Government to provide seeds for planting in

good time and, in particular--- I come from an arid zone where we need quick maturing crops. Therefore, I am appealing to the Government, through the Ministry of Agriculture, to provide the seeds in good time. That is because most of the times, we receive the seeds too late and yet, our rains normally come and go very early. We then experience many challenges.

On the same issue of rains, I would like to say that while congratulating the Acting Minister for Finance for handling the position very effectively, I would like to tell him that we get serious challenges when it rains. We have a major road known as Kibwezi-Kitui-Maua-Isiolo, B7; the Minister for Roads was in my constituency two months ago and he said that he has done everything possible and the only bit remaining is for the Minister for Finance to raise some money from donors. I am sure he is aware of this. I am, therefore, requesting the Acting Minister for Finance to move with speed because that road is essential for development and the economy of this country.

Madam Temporary Deputy Speaker, lastly, I would like to say that the Ministry of State for Provincial Administration and Internal Security has done a good job in the country; in particular my division was promoted to a full police division. At the same time we have challenges and I wish the Minister was here to listen to this. We have some invaders who have come from neighbouring districts and they have settled in Kitui South Game Reserve, and are causing tension to the people of Kitui. Therefore, he needs to move with speed so that this tension does not grow into an activity that could result in violence, loss of life or something that may not be very welcome.

With those remarks, I would like to support the Motion.

Mr. Njuguna: Madam Temporary Deputy Speaker, let me start by supporting this Motion very strongly. Now that the Acting Minister for Finance is here, I would urge him to rein in on the production of fake currency in the country. Why have you allowed foreigners to invade this country and continue to manufacture currency? These printers must be arrested. Action must be taken because this is an economic crime. It is sabotage of our monetary strength. What is happening to the Monetary Fraud Unit of the Central bank of Kenya(CBK)? Action must be taken against that.

On the 14-seater *matatus*, I would thank the Government for withdrawing the earlier directive that these *matatus* be withdrawn from the Kenyan roads. This was a very unpopular decision and I think that it is now important that *matatu* operators become careful and maintain their vehicles well.

Madam Temporary Deputy Speaker, on the strikes in this nation, I would call upon the Government to be serious with strikes in this country. Recently we had strikes by the nurses and we saw pregnant mothers going to hospitals only to find that there were no services. I recall seeing one mother and her baby passing away. This is a very bad scenario; any strike in this nation must be addressed urgently so that Kenyans do not experience any suffering.

This adjournment is very important because we, as Members of Parliament, have already initiated many projects in our constituencies, and we need to have them completed. It is also important to note that the weather was severe in certain regions of this country, and frost destroyed crops, particularly in my constituency; subsistence crops were destroyed. Tea farms were destroyed; therefore, it is important for the Government to make sure that small farmers in these areas are given relief food because currently they are suffering.

Fuel prices have continued to be very high. It is therefore prudent for the Energy Regulatory Commission (ERB) to make sure that the prices are brought down to facilitate easier transport by the motoring public.

Madam Temporary Deputy Speaker, we also note that we still have integrated IDPs in camps. They should be given food and of great concern is to provide settlement for these people.

To the Ministry of State for Provincial Administration and Internal Security, in certain areas you have done well. I recall in my constituency we have been given an OCPD and CID Department. But these people continue to operate without transport. Therefore, it is important that facilitation on motor vehicle is given due recognition.

Madam Temporary Deputy Speaker, finally it is important that the citizens of this country are treated with civility. In certain areas *wananchi* are harassed by the police. It is the high time this issue is addressed properly so that Kenyans can continue to enjoy their human basic rights.

With those few remarks, I beg to support.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo):
Madam Temporary Deputy Speaker, I want to support this Motion for Adjournment so that we can get the opportunity to go and visit our constituents, and in particular in areas where Female Genital Mutilation (FGM) is practised.

Madam Temporary Deputy Speaker, when the Bill on FGM was assented to by the President last year, we did not get enough time to sensitize communities on the law. So, you find that some communities still practise FGM on their children over the December holidays. So, starting this early would curb the vice so that the subsequent holidays the girl-child in this country would be safe from this monster called FGM.

Madam Temporary Deputy Speaker, I also support and hope that the Minister of State for Special Programmes would get time to sit down with the technocrats so that they can address the issues of IDPs. People in this nation live in two parts of the world; post-independence and pre-independence. My constituents for this matter are in their pre-independence time. We still live like the colonial era where people were held in holding grounds.

Madam Temporary Deputy Speaker, as I speak it is now four years down the line; people from Cherangany Forest of the Embobut cluster are still in holding ground. I am grateful that the Committee handling the issue of Internally Displaced Persons (IDP) did visit my constituents. They are still on holding ground as though we are not yet independent.

I do not understand why up to now people who willingly accepted to participate and collaborate with the Government in conservation of the waters of this country are still on holding grounds. They are not even in any camp like the post election violence IDPs. They are on holding grounds as though we are still under a colonial regime. People in Kipkurer and Mau Forests have not been resettled. I hope that the Minister of State for Special Programmes would live to her words. She has been promising us that this year would end--- Now we are in the final year and resettlement has not taken place. The Government has had to give Christmas to these people for the last three years. Now this is another planting season and they are still IDPs and more so those people who moved out of their ancestral land to pave way for conservation such as Ogiek, Ndorobos and Kimala have not planted anything.

We are going to April, when the rains are here again and they have not planted. Talking of planting we have potato blights. I do not understand why we do not have certified seeds for farmers in this country. I hope that this season the Minister for Agriculture would be able to give certified potato seeds to the farmers especially those found in Kapyego of Marakwet East Constituency. They solely depend on potatoes and they lost everything because of the blight.

We also experience frequent landslides in my constituency. Many Members know that for the last two years we have had frequent landslides. The Government did not take into account

the effects of people moving out of the forests and re-settling in areas that previously were not good for settlement. So, there is still so much to be done.

Finally, on the issues of security, the Assistant Minister of State for Provincial Administration and Internal Security, hon. Ojode, said that people should be given medals for doing good work. What has happened to the Kenya Police Reservists (KPR)? They have not been given any allowances? If there are any medals, let them be considered to be on the payroll of some sort because they are doing a good job. I take this opportunity to congratulate the KPR from Pokot and Marakwet communities because those old men have worked so hard to ensure that there is security between the two communities. In the last two weeks, between 17th and 24th February, they were celebrating ten years of peace between the Pokot and Marakwet and yet, those people have not been given medals.

I support.

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Madam Temporary Deputy Speaker, I rise to support this Motion. As I support the Motion, we would like to have a moment to be with our people in our constituency so that we can assess and deal with issues affecting them.

Members have been able to appreciate the work that has been done by the Ministry of State for Provincial Administration and Internal Security. However, in my constituency, there is still a lot to be done because yesterday and even last week, a number of livestock were stolen by our neighbours. That is the only source of livelihood for our people. They access food, clothing, pay school fees and live a decent life. They rely on livestock. When they lose their livestock, their lives become exposed. My appeal to the relevant Ministry is to deploy more security personnel to my constituency. They should be deployed at King'ech, Loruk, Chepkesin, Kalabata and other areas along the border. That will, in a very good way, enhance security and reduce rampant cattle rustling. This is very important. As much as we thank them for doing well in other areas, there are other areas which require attention.

We have a serious shortage of teachers in our primary and secondary schools. In my constituency, there is a very serious shortage. We would like to appeal to the Ministry of Education to factor in the employment of more teachers in the supplementary budget. As of now, we have a shortage of well over 80,000 teachers in this country.

So, unless we address that shortage so that we have quality education for our children, we will still not do well. You will realize that under the new Constitution, we are duty bound as a Government to provide quality education to our children. Therefore, the Ministry of Education should be able to address this very serious issue.

Madam Temporary Deputy Speaker, as I conclude, let me also say that in my constituency, we have coffee farmers who have taken loans. The Ministry of Agriculture has been able to waive some of these loans, but it was done selectively. In Baringo County, particularly, in Baringo North, we still have a lot of farmers who have suffered this situation. My appeal is that this should be applied equally in the country, so that there is equity for all our people, particularly the farmers.

Dr. Monda: Madam Temporary Deputy Speaker, I rise to support this Motion.

Madam Temporary Deputy Speaker, before the Acting Minister for Finance leaves, I would want him to hear that despite the fact that the Finance Bill has been withdrawn today, even when we come back, the issue will remain the same; that the interest rates must be capped. This is because it is hurting everybody. The ordinary Kenyan is suffering and we cannot be a Parliament that will pass a Bill just because we must protect businesses for the banks.

Madam Temporary Deputy Speaker, I want to congratulate the Minister for Forestry and Wildlife, Dr. Wekesa, for having indicated that he is ready and willing to supply tree seedlings for this season that we are going out to the constituencies and the rest of the country. This will ensure that we plant trees to improve on our environment. This is a good gesture by the Minister. I would like to urge the Minister, who is also the Deputy Leader of Government Business, who is in the House to advise the Government that Ministers should bring this out for us to amplify when we are with Kenyans out there, now that we are going on recess.

Madam Temporary Deputy Speaker, on that note, I want to tell the Minister of State for Planning, National Development and Vision 2030, hon. Oparanya, that the Constituencies Development Fund (CDF) money is being released late. It will be important for the Government to note that when we go on recess, we also inspect CDF projects. We also want to direct the right usage of these funds. It will be important that the Minister of State for Planning, National Development and Vision 2030 releases these funds on time so that the constituents can use it.

Madam Temporary Deputy Speaker, the planting season is just about to come when we expect rains. I am asking the Government to ensure that we get the right farm inputs, especially seeds. This is because when you go to the eastern region of this country - I sit in the Committee on Agriculture, Livestock and Cooperatives - we realize that in Ukambani region, we have maize seeds whose crop grows very tall but with no maize on it. We must check on the quality of seeds that we plant or give to our farmers to plant as the rains come.

Madam Temporary Deputy Speaker, we had strikes by the health workers. As the Chair of the Committee on Health, I do not want to conclude my contribution without mentioning something about it. The health workers were on strike not only on their remuneration, but also on the kind of infrastructure in which they work; equipment and commodities that they are supplied with in our facilities. There are shortages day-in, day-out.

Madam Temporary Deputy Speaker, the Government needs to have more funds to save our mothers who are dying in big numbers every day. We cannot afford to ignore them. They are dying and the Government needs to listen and do something to save the many mothers who die every hour and every minute. There are so many children who are dying due to lack of supplies and lack of sufficient numbers of personnel. As we go on a recess, we ask the Government to do something about it. As we move to budgeting for the next financial year, there should be sufficient resources to address Millennium Development Goal Nos. 5, 6 and 7.

With those many remarks, I support.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity.

I just want to say two things. First of all, I would like to thank Members of Parliament for the support they have given me in my new docket. I would like to assure them that I will continue working with them, and that I do not take their support for granted.

Having said that, it is important that I say clearly that I have been hard on the banks, particularly on the issue of interest rates. I have been telling them that they must bring down the interest rates because they are unsustainable and they are causing a lot of financial mishaps to Kenyans.

Madam Temporary Deputy Speaker, I am glad to inform this House that, as a result of those efforts, interest rate on consumer loans has moved down from 30 per cent to an average of 23 per cent. Today, when I was discussing the matter with the banks, we were, again, able to get them on mortgage loans to come down from 25 per cent to 19 per cent. So, there has been some progress. We have also agreed that any borrower who wants to liquidate their loans prematurely,

will be allowed to do so without any penalties. That is being done. Quite a number of people have taken that advantage.

We have also agreed that anybody who requests an extension of the repayment period for their loans, it be allowed. Already, quite a number of borrowers have done so. We have also agreed that they will also be amenable to new proposals. For example, if you want to pay interest for some time and then resume paying interest and principal sum later on, that will also be acceptable. So, we have made progress.

Madam Temporary Deputy Speaker, in today's meeting; we also agreed that they will be showing their average cost of funds, so that we know how much they are paying on the funds. We have also agreed that they must also give us their average bills on their loans. We have agreed that these figures must be published monthly, and they must be reported to the Committee of the House on Finance, Planning and Trade. This also must be published in the newspapers, so that Kenyans can know which banks are charging what interest rates and which banks are overcharging their clients.

The bone of contention is that capping interest rates will hurt the same vulnerable group that we are trying to protect. The bankers are saying that if we cap the interest rates, they will ration the credit and obviously, they will give it to the Triple "A" kind of borrowers. In my view, what is required is for the interest rates to come down. If we do that, there will be no need of capping the interest rates.

Madam Temporary Deputy Speaker, concerning the super profits that banks have been accused of making, if banks are making super profits what is required is not capping of interest rates. What is required is coming up with a law to tax the super profits. This happens in England. When their utility companies, particularly water companies were making super profits, the British Government stepped in and imposed a Super Profit Tax, which was far above the normal Corporation Tax of 30 per cent. In some cases, it went as high as 67 per cent.

So in my view, that is the way to deal with the super profits if we think banks and other companies are making super profits. The solution is to bring a tax on super profits not to cap interest rates.

Madam Temporary Deputy Speaker, what I am saying is that the reason why we deferred the Finance Bill is to make further consultations. We are almost there. We have been meeting every day, every evening and every morning having breakfast with the bankers. I must commend my colleagues whom we have been negotiating with; Mr. Jakoyo Midiwo, Mr. Nderitu Mureithi, Dr. Nuh, Mr. Martin Ogindo and Mr. Jeremiah Kioni. We have been meeting the banks every evening and every morning. I think we are almost there.

Again, we should not take any action that may end up hurting the entire economy. The argument of the banks is that the Government policy is a liberalized regime and if you cap interest rates then you are like imposing price controls. The question you have to ask yourself is; do we want to have that turnabout of policy from a liberalized regime to controlled regime? I think the answer is no. We do not want to go back to the days of hoarding commodities where commodities would be hoarded and people make some profits.

Madam Temporary Deputy Speaker, in my view, I am happy that this matter was deferred and, therefore, we now have more time to agree. What we want is to agree. We do not want to kill the economy or distort the economy. We do not want to affect the growth that Kenya is achieving. Once we agree on all these issues, I think we will come and tell this House we have now agreed. We are almost there. What is left is the things we have agreed upon, how can we enforce them? How can we enforce that the banks will be publishing the average cost of funds?

How can we enforce that the banks will be publishing their average yield on their loans? How can we enforce that there will be no penalties for early liquidation? How can we enforce that there will be no penalties for loan extensions? How can we enforce that if a borrower wants fresh terms they can be given? Those are the issues we are now discussing to see the best way of going about it. The consensus that seems to be coming is that we do this through regulation. The Governor has powers to make certain regulations.

By the time we come back from recess, I think these things will be done.

I support.

The Minister for Higher Education, Science and Technology (Prof. Kamar): Madam Temporary Speaker, I rise to join my colleagues in supporting the Motion for Adjournment. We really need a break to go and discuss a number of things even with committees. At the same time need we to go home to deal with our constituents.

At this juncture, I want to say that there are a number of issues that some of us are keen on during this recess. I am happy and appreciate the Members of Parliament who will be joining the Ministry of Higher Education, Science and Technology tomorrow in Mombasa to discuss the Bioscience Bill. This is time we have wanted for a very long time because this is a Bill that is urgent and is required in this House.

I also want to appreciate Members of Parliament who had wanted time to go and sight the middle level colleges that as a Ministry we are pushing for. I would like the nation to know that we are at a point where we want to have the last nine counties which do not have any technical institutes to implement the projects that we have in the Ministry. I will be looking forward to Members of Parliament to come back from this recess with their title deeds and sites already allocated for this important project. This is a very important Bill because we really need technical training institutes that can produce middle level human resource for this country, for purposes of fulfilling Vision 2030. As a Ministry, we are really pushing for that. So, I look forward to hon. Members from those nine counties to come forward with the requirements so that we can implement.

Madam Temporary Deputy, Speaker, today, in the Ministry, we also received a Report from the National Cohesion and Integration Commission (NCIC) on the ethnicity audit that was done in our universities. I want to confirm to the nation that we are ready, as a Ministry, to implement the recommendations that have been given. In fact, we received it with the senior members of the Ministry and the truth is whatever appeared in the Press. There seems to be some ethnic imbalance in our education sector. It is true and we are going to pursue that. In fact, this break gives us another opportunity to have a session between the Commission, chancellors, vice-chancellors and chairs of council. I would also like to appeal to hon. Members that even as we expand our higher education docket, start our new colleges and campuses, it is very important that all of us implement them in our minds; that we should start balancing the ethnic groups in the institutions. That is because, sometimes, it is not just the institutions. We should also push for the same as leaders. We need to work with those people so that we can implement.

So, I believe that this is a well earned break. We need to move out and start implementing parts of the Constitution that require implementing. I have no doubt that each one of us has a very noble agenda for this break. In our Ministry, again, we are trying to complete the alignment of our laws to the new Constitution. I think this break will also be very useful and we should be back very soon appealing to hon. Members that, even as we come with a law, particularly the united law for higher education--- That is because we are going to have one Universities Bill that

will touch on both the private and public universities. As hon. Members, you will support us so that we take the shortest time possible when we come to the House.

With those few remarks, I beg to support.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, thank you for this opportunity to, perhaps, finally close this debate not by choice, but by being the last speaker on it. I am happy to note that hon. Members have been very supportive during this Session. This was a Special Session that was called to fulfill the constitutional obligations. I am saddened that obviously there is still one issue that is hanging on the County Governments Bill, but I am sure it will be resolved in due course, especially when we look at the bigger picture that it to ensure that devolution takes root and that, we are able to have the legal framework to facilitate us moving in that direction.

Let me also take this opportunity to thank hon. Members for the time they have spent, the effort they have put during this Session, and to wish them the very best. As we take this break; which is a very critical break - this is perhaps the only break we will take before we start getting into the electioneering proper - we can now go and sort out our political parties compliance. This break is well deserved. There is a deadline of 30th April, 2012 for Members to decide finally what party they want to be in. That is because if you are not in a certain register by 30th April, you could well be locked out technically through the Political Parties Act that we passed here and the Elections Act.

(Applause)

It will also be a good time for hon. Members to ensure they have their 1,000 supporters. For those who want to go for the governor's seat, they should make sure they have their 2,000 supporters who they will use for their nomination. They must come from their political party. So, let us use this opportunity to go and study the laws that we passed; and which will have some long term implications on all of us. We should study the Political Parties Act and the Elections Act. We should ensure that during this break, we have those people in our constituency who we are going to call when the time comes to send those papers to Chairman, Isaack Hassan. I also believe that CDF is one of the responsibilities that we have as Members of Parliament. With the monies that we have and the extra Kshs17 million that came along and the monies for roads, this will be a very good opportunity to go and sort out the last consultative meetings---

(A cat walked into the Chamber)

Mr. Midiwo: On a point of order, Madam Temporary Deputy Speaker. We have a stranger in the House.

The Temporary Deputy Speaker (Dr. Laboso): Where are the orderlies? Can somebody---

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I have seen the stranger, but it is four legged and, perhaps, may not fall in the definition of a stranger as we know. Since we are going on leave, we might leave the so-called stranger to enjoy its tenure until we come, hopefully, in the new building.

I believe that this break is well deserved. You could see from the tensions in the House that people are tired. The three weeks break will allow some recharge of our energies and, obviously, when we come back, we can now look at the wider issues of the Finance Bill and how

we can sort out the interest rates. This does not, obviously, require simplistic solutions. It requires very complex solutions and I am happy that we are going to engage with as many people as possible, as we look for the optimum solution for this country which lies between a combination of how you sort out inflation, Government borrowing, interest rates, and how we make sure that we do not obviously scare away investors in this country. That is because we are now moving from one liberalized regime to another. With all these things, I am sure we are going to make good progress.

During this break, I wish hon. Members the best. Let all their energies be put into good use and we meet again here all of us in good health. Let us pray to God that we all come back here without losing any one of us and he keeps us in good health, so that we can all come back here and finish the work that he gave us to serve his people.

With those words, I support.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, it is now time to adjourn the business of the House. This House stands adjourned until Tuesday, 17th April, 2012 at 2.30 p.m.

The House rose at 8.35 p.m.