

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 20<sup>th</sup> September, 2012

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Members:-

Mr. Tirus Nyinge Ngahu;

Mr. Moses Somoine ole Sakuda;

Mr. Augostihno Neto Oyugi.

**Mr. Speaker:** Hon. Members, congratulations are in order for the new Members for Kangema, Kajiado North and Ndhiwa.

*(Applause)*

Perhaps, by popular request, congratulations are in order for Mr. Uhuru Kenyatta.

*(Applause)*

A further request is to the effect that congratulations should also go to the Prime Minister.

*(Applause)*

Next order!

**Mr. Speaker:** Order, hon. Members! We have a technical hitch for the moment. I think the Serjeant-at-Arms and the lead clerk did not realize that we needed a computer pencil as we started the session.

Chair of the Committee on Transport, Public Works and Housing, please, proceed!

The following Papers were laid on the Table:-

Report of the Departmental Committee on Transport, Public Works and Housing on the Traffic (Amendment) Bill, Bill No.8 of 2012.

Report of the Departmental Committee on Transport, Public Works and Housing on the Traffic (Amendment) Bill, Bill No.29 of 2012.

Report of the Departmental Committee on Transport, Public Works and Housing on the National Transport and Safety Authority Bill, 2012.

*(By Mr. Were)*

Report of the Departmental Committee on Administration and National Security on the Vetting of the Nominees to the National Police Service Commission.

*(By Mr. Kapondi)*

**Eng. Rege:** Mr. Speaker, Sir, will I be in order to ask the whereabouts for the cards for the newly elected Members so that they can also contribute in the House business?

**Mr. Speaker:** You are out of order! Why would you wait until after we have passed that order to raise that matter? Obviously, you are out of order.

### NOTICE OF MOTION

#### ADOPTION OF REPORT ON VETTING OF NOMINEES TO NATIONAL POLICE SERVICE COMMISSION

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

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the Vetting of the Nominees to the National Police Service Commission laid on the Table of the House today, Thursday 20<sup>th</sup> September, 2012.

1. Mr. Johnson Kavuludi – Chairperson
2. Ms. Esther Chywi Kolombini – Member
3. Mr. Murshid A. Abdalla – Member
4. Mr. Ronald P. Musengi – Member
5. Dr. Major (Rtd) Shadrack Muia Mutia – Member
6. Ms. Mary Auma Owuor – Member

**Dr. Nuh:** Mr. Speaker, Sir, you will pardon me. I wanted to raise this issue at the time of Petition, but I was consulting. There is a Petition which was laid on the Table of the House concerning the people of Lamu---

**Mr. Speaker:** Order, Member for Bura! You are obviously overtaken by events. We can deal with that in the next sitting tomorrow.

### ORAL ANSWERS TO QUESTIONS

*Question No.1701*

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

**Mr. Shakeel** asked the Minister for Foreign Affairs:-

(a) if he is aware that the Government of Kenya had intended to support and campaign for Ambassador Azad Rana for the position of Director General of United Nations Industrial Development Organization (UNIDO) and informed His Excellency the Ambassador/Permanent Representative to the Kenya Mission to

the United Nations in Vienna that the Ministry of Trade had committed Kshs10,000,000 to assist in financing the campaign;

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

(c) why the candidate, who was asked to use his own funds for the campaign on the promise of a refund by the Ministry, has not been refunded and when he will be refunded Euros 53431.18 which has been due since 2005.

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** Mr. Speaker, Sir, the Ministry of Foreign Affairs is indeed aware that the Government of Kenya had intended the campaign for Amb. Azad Rana for the position of Director General of United Nations Industrial Development Organization (UNIDO) and informed His Excellency the Ambassador/Permanent Representative to the Kenya Mission to the United Nations in Vienna that the Ministry of Trade had committed Kshs10 million to assist in the financing.

The Ministry is also aware that a budget of Kshs20,295,000 was agreed upon to facilitate this campaign. The reason Amb. Azad Rana has not been given these funds even when the Government committed to it is because of, I would assume, a little bit of negligence and to a large extent the fact that nobody followed up this matter to its logical conclusion.

Mr. Speaker, Sir, before I make any further statements on consultation with the hon. Member who asked this Question, we also felt that it is important that we seek some interpretation from the Attorney-General's Office and the legal office within the Ministry of Foreign Affairs so that I can then come with a substantive promise on what the Ministry of Foreign Affairs is going to do.

**Mr. Shakeel:** Mr. Speaker, Sir, it is true that we discussed this matter and I presented to the Assistant Minister a letter that I would like to table so that you can have a look at it as well and then advise. We have agreed, but you can advise us the next step.

**Mr. Speaker:** Carry on.

*(Mr. Shakeel laid the letter on the Table)*

Mr. Onyonka, in those circumstances, I will defer this Question for another two weeks so that you can come with a conclusive position on what the Government is going to do.

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

*(Question deferred)*

## QUESTIONS BY PRIVATE NOTICE

### UPGRADING OF OL-JOROROK-DUNDORI CENTRE ROAD

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

(a) Is the Minister aware that Ol Jororok-Dundori Centre Road (C83) is currently in a deplorable condition, thereby making it difficult for farmers to take their produce to the market?

(b) Is the Minister also aware that the said road has been designed four times but no works have ever been undertaken?

(c) What measures is the Minister taking to ensure that the road is upgraded to bitumen standard?

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

(a) Yes, I am aware that the Ol Jororok-Dundori Centre Road (C83) is not in a satisfactory state.

(b) I am also aware of a number of designs that have been carried out on the road, but with different objectives at each time.

(c) My Ministry, through the Kenya National Highways Authority has allocated funds for the commencement of the upgrading of the road to bitumen standards.

**Mr. Mureithi:** Mr. Speaker, Sir, this is a very unfortunate position because this road is the one that helps us take our foodstuff from the farms to the market. Could the Assistant Minister tell us exactly what happened to the first tranche of Kshs60 million which was allocated last year and only Kshs4.5 million was given to upgrade only five kilometers. What happened to the money that was allocated last year?

**Dr. Machage:** Mr. Speaker, Sir, what I am aware of is that in March, 2012, we had another report given to us at a cost of Kshs15.9 million which was paid for this design. The Kshs60 million was too little and so we staggered to the present state where we have increased it to Kshs150 million which is still not enough to pay for the relocation of equipment to the site. We are going to add more money to this very soon so that work can start. I hope that the hon. Member will appreciate and become patient as we get more funds for him.

**Mr. Mwangi:** Mr. Speaker, Sir, the Assistant Minister has said that the road has been designed four times for different objectives. He did not stipulate the objectives. In the first place, they allocated Kshs60 million and now Kshs150 million which is insufficient. Could he be categorical and say whether they are committed to do the road and how much it would cost to complete the project?

**Dr. Machage:** Mr. Speaker, Sir, if the hon. Member had me correctly, I talked about the road being designed three times and not four times. At one time, the design was to upgrade the road to gravel standard. At another time, it was designed and constructed to bitumen standard which deteriorated extensively hence another design of the same, which is the third design. I am yet to receive the exact amount for total completion of this road, but because of the urgency, we have started building the road as we await the final figures.

**Mr. Pesa:** Mr. Speaker, Sir, Questions about roads which have been designed and are pending construction have been coming to this House every other day. Could the Assistant Minister tell us whether he has a programme to ensure that roads that are programmed after design are put in some order, so that they are done according to priority and the timing of the design?

**Dr. Machage:** Mr. Speaker, Sir, it is unfortunate that we have had this exercise recurring on some roads in this country, which is a total waste of resources. I have to accept it was a mistake, but we have been addressing this by prioritizing roads on a special programme in the Ministry, namely, the Road Sector Investment Programme (RSIP). The programme has prioritized roads and we intend to see the roads built and completed as per the programme.

**Mr. Mureithi:** Mr. Speaker, Sir, this road has been allocated Kshs150 million through a Circular from the Treasury to all the Accounting Officers. I believe that it is going to be done. However, I would like the Assistant Minister, who is my friend, although these days we do not

sit together, to tell us when is the starting point in terms of upgrading very old road which has been overtaken by even D and E Roads in other areas in this country.

**Dr. Machage:** Mr. Speaker, Sir, we are serious about this project and in the next 60 days, work will start. At the same time, I am going to make the road motorable for the sections that will not be under construction. I have allocated a further Kshs16,200,000 for the repair of those sections of the road.

AVERTING IMMINENT CROP FAILURE IN BURA  
IRRIGATION SCHEME

**Dr. Nuh:** Mr. Speaker, Sir, I beg to ask the Minister for Water and Irrigation the following Question by Private Notice.

(a) Is the Minister aware that farmers in Bura Irrigation Scheme are at the brink of a major loss following failure by the National Irrigation Board (NIB) to supply water to the farms?

(b) What occasioned the failure and what acreage of crops is affected?

(c) What urgent measures will the Minister take to restore water supply to the farms to avoid crop failure in the Scheme?

**The Minister for Water and Irrigation (Mrs. Ngilu):** Mr. Speaker, Sir, I have not given the Member a written answer because I got the Question late this morning.

I beg to reply.

(a) I am aware that farmers in Bura Irrigation Scheme may have temporarily experienced some challenge when one of the large pumps that supply water to the scheme broke down.

(b) The failure of the pump was caused by stones and debris that found their way into it causing internal damage, specifically to the impetus. Currently, 3,800 acres of crop are under irrigation and continue to receive water supply.

(c) Supply of water to the farms was not interrupted and, therefore, there will be no crop failure. However, to avoid recurrence of similar damage, the openings of the screens leading to the pumps have been reduced. Repairs of the pump have also been ongoing and are expected to be completed by 12<sup>th</sup> October, 2012.

**Dr. Nuh:** Mr. Speaker, Sir, I do not know how to proceed on this Question because I am shocked. It seems that the Minister has been misinformed by her officers on the ground. I am really disturbed by her statement that the facts as put in the Question are not as they are on the ground. She has said that it was only a short interruption, but I want to confirm to her that crops are at the brink of being destroyed because of wilting. To this hour, water has not been restored to the Bura Irrigation Scheme. What does she have to say about that?

**Mrs. Ngilu:** Mr. Speaker, Sir, I am aware that one of the pumps failed and it is under repair. We always have a spare pump. This is a huge pump and the reason why it is taking long to repair it is because the spares have to come from Germany. We have ordered for two more pumps, which are not anywhere on the shelves where you can just go and pick one.

**Mr. Mungatana:** On a point of order, Mr. Speaker, Sir. It is apparent from the face of the record that there is a great contradiction in terms of the facts. The Minister is asserting different facts from those of the Member. Would I be in order to request that this Question be differed, even if for a few days? What we want eventually is not an argument here, but a solution to the farmers who are having a problem right now.

**Mr. Speaker:** Fair enough. That is legitimate. Minister, are you prepared to take a deferment, so that you can compare the facts that you have with those that the Member for Bura has?

**Mrs. Ngilu:** Mr. Speaker, Sir, I could do so, but it will not change much because before I came here, I spoke to people on the ground, unless the Member would want me to go on the ground to see for myself. However, I cannot always not rely on the information that I get from my officers. I know that we always have two pumps and one broke down---

**Mr. Speaker:** Order, Minister! Let us use our time optimally. You go to the bottom of the matter and the only way that you can be absolutely certain, is if you actually went to the ground and saw. If you have not, you are relying on information conveyed to you. All the Member for Garsen has asked for is that you are accorded time to ascertain what the actual position is. So, how long do you need, ten, seven or two days?

**Mrs. Ngilu:** Mr. Speaker, Sir, as you realize, this is a Question by Private Notice which requires to be answered within 48 hours. I could not get it this morning, travel to Bura to check for myself and then bring an answer to the House. Therefore, maybe I could take two weeks to go down there and see for myself. I am as concerned about the farmers and their crops as much as the Member is. We would be going at a loss if we let all the work that we have done at Bura to go to waste.

**Mr. Namwamba:** On a point of order, Mr. Speaker, Sir. I am also a rice farmer in Budalangi. So, I can appreciate the very serious concern by the Member for Bura.

Mr. Speaker, Sir, I would imagine that whereas the Minister says she talked to her people on the ground, but in this House, the ground in Bura is Dr. Nuh. I do not believe there would be any better ground to listen to than the hon. Member for Bura. Would I be in order, therefore, to reiterate what has already been requested that really in the next 48 hours---

**Mr. Speaker:** Order! Member for Budalangi, the moment you say “would I be in order to reiterate,” that implies you are being repetitive. That is out of order.

I am afraid I will rule you out of order. Your point of order is not valid.

Madam Minister, you said you need two weeks. Member for Bura, are you comfortable with that two weeks from today?

**Dr. Nuh:** Mr. Speaker, Sir, the Minister is not in tandem with what is on the ground. She says she only came across the Question this morning. So, all she did was to make a few phone calls when I made the visit.

The crops have been without water for the last three weeks. We have been promised every other day that within the next 24 hours, the supply of water would be restored. The big generator she is talking about is in Nairobi for repair. The other small one broke down last week.

**Mr. Speaker:** Order, Member for Bura! I have asked you, a simple question: Are you happy with the Minister being given two weeks?

**Dr. Nuh:** Mr. Speaker, Sir, the basis for me giving you this little information is to tell you that I am not comfortable with two weeks because she can find out the facts on the ground within the next two days. With your indulgence, let us have this Question on Tuesday, next week.

**Mr. Speaker:** Fair enough! Balancing one thing against the other, Madam Minister, I will direct that you have a week from today. In the meantime, try and take some remedial measures if the situation on the ground is desperate. So directed!

Next Question!

*(Question deferred)*

### ORAL ANSWERS TO QUESTIONS

**Mr. Speaker:** Question by Member for Subukia! Any Member with an idea as to what is happening to him? That may very well be so, but the rules are cast in stone. The Question is dropped.

*Question No.1712*

DELAY IN COMPENSATING  
MR. WESTON A. HAMILTON

*(Question dropped)*

**Mr. Speaker:** Next Question by the Member for Dujis.

*Question No.1604*

IRREGULAR ALLOCATION  
OF KMC LAND TO PRIVATE DEVELOPERS

**Mr. Speaker:** Member for Dujis not there? The Question is dropped.

*(Question dropped)*

**Mrs. Odhiambo- Mabona:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, hon. Millie Odhiambo! If, indeed, you have a message or an explanation from the Member for Dujis, then, you will have known what to do. You are four years and seven months here. Pressing is not good enough. Maybe, you want some instructions or some education from the Clerk. Please, take education from the Clerk of the National Assembly. He is available at the desk.

Next Question by the Member for North Imenti. I am able to recollect the position of Mr. Ruteere. He is away on official parliamentary business with permission from the Speaker.

*Question No.1750*

DELAYED COMPENSATION FOR FAMILY  
OF LATE NKUMBUKU AUGOSTINO

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Hon. Millie Odhiambo, if that persists, then I am afraid, I will have to deal with it.

*(Question deferred)*

Next Question, Member for Gichugu.

*Question No.1755*

REHABILITATION OF ORTUM-KAINUK-LOKICHAR-LODWAR ROAD

**Ms. Karua** asked the Minister for Roads:-

- (a) what criteria the Ministry uses to prioritize rehabilitation of roads in the country,
- (b) whether he is aware that Ortum-Kainuk-Lockichar-Lodwar road is in a deplorable condition; and,
- (c) when the road will be rehabilitated.

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

- (a) My Ministry uses the road sector investment programme to prioritize development, maintenance and rehabilitation of roads in the country.
- (b) Yes, I am aware that the above mentioned road is not in a satisfactory state.
- (c) Currently, my Ministry, through the Kenya National Highways Authority (KeNHA), has engaged three consultants to do the detailed engineering design for rehabilitation of this road. Once the designs are completed, the Ministry will source for the required funds for rehabilitation.

**Ms. Karua:** Mr. Speaker, Sir, it appears the Minister is not willing to give details. Could he tell this House what criteria in the so-called RISSP he uses to prioritize roads, if that road, which is part of the Northern Corridor leading to the whole of Turkana and Southern Sudan, has not been prioritized in the last ten years? What actual criteria do they use other than just some blank name?

**Dr. Machage:** Mr. Speaker, Sir, the RISSP has been developed using existing policy documents and analysis of relevant data, including road inventory, condition data and traffic data. A mix of economic and social criteria has also been used in allocation of resources.

The highway development and management module was utilized for data analysis and prioritization of required interventions. The module was calibrated on Kenyan conditions. The RISPP is based on the assessment of the needs of the economy and complies with the Government policies in particular Sessional Paper No.5 of 2006 on development and management of the road sector for sustainable economic growth and Kenya Vision 2030 has also been built through consultative process, including sector holders, participation to create ownership in the form of basis of future devolution and accountability to the taxpayer.

**Mr. Ogindo:** Mr. Speaker, Sir, I am very disappointed with the answer given by the Assistant Minister because he is just glossing on generalities without specifics.

Mr. Speaker, Sir, we are aware that there are certain counties that have gone beyond Class C of upgrading. They are now dealing with Class E. We want to know because the economy of Turkana, recently, with the discovery of oil, shows the potential. This road is in a pathetic condition. The economy of Homa Bay County is also showing some potential. However, the Oyugis-Homa Bay-Roliko Punch Road, which is Class C road, remains untarmacked. It is a pity that after 50 years of Independence, it remains untarmacked despite the economic potential. Could he come out clearly and tell us where these roads have been upgraded what the economic benefits that we stand to reap over and above what is the potential in Turkana?



**Dr. Machage:** Mr. Speaker, Sir, obviously, hon. Member has a legitimate concern, but it will take the whole day for me to really enumerate the details on every road in this country. But for the purposes of this road and the road she has mentioned, let me say that we are aware. We have now prioritized on how to maintain these roads according to this programme. Unfortunately, this programme was not there until mid last year. I am sure we will address it. I would rather concentrate on this road and I beg hon. Karua listen to me because this is very important.

Currently, I have allocated some Kshs75 million to rehabilitate this road. I know it is little. I will also be allocating it Kshs300 million for rehabilitation. That is immediate intervention. I have requested the Treasury to give me this money, but it is yet to respond. The request was actually to the tune of Kshs2 billion for the rehabilitation of this road. But this road is also under the LASDAP Programme. It will also be addressed under that programme. I am sure she will be happy to hear that.

**Mr. Letimalo:** Mr. Speaker, Sir, my supplementary question is in reference to part “a” of the answer. I believe that the Assistant Minister is aware that many bridges and roads were destroyed by floods in the recent rains. What plans does he have to rehabilitate these bridges and roads?

**Dr. Machage:** Mr. Speaker, Sir, I am aware that many bridges were destroyed in the last heavy rains. I am currently taking an inventory of the above and we are addressing every part as priority may arise. With regard to the road as mentioned by hon. Karua and hon. Ogindo, it is true that there is priority with the discovery of oil. You will remember that our Constitution puts all roads into classes. We have national roads and county roads. So, the ABC Class, as put by hon. Ogindo, is obsolete. However, this is an important road and now that we have discovered resources, believe me, it is taking priority in the Government’s thinking.

**Ms. Karua:** Mr. Speaker, Sir, this road is over 300 kilometers and the Assistant Minister claims that he has allocated Kshs25 million. It was once tarmacked but you can hardly see any sign of tarmac. What rehabilitation does the Assistant Minister intend to do? Could he table that traffic data and the economic needs assessment before the House so that we are able to understand how his so-called criteria works if it is not pure discrimination?

**Dr. Machage:** Mr. Speaker, Sir, there is no discrimination. The data will be so tabled. I did not carry the data today but if the hon. Member wants, I will table it as soon as possible. I also want to clarify that I have not talked about Kshs25 million for the rehabilitation of this road.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister say that he will table the data if needed in future. Would it be in order for him to tell the House when? Could the Chair direct when he will table it because it was necessary supplementary information but he has not brought it to the House?

**Mr. Speaker:** Mr. Assistant Minister, that is a valid point of order. It is your duty to supply information as fully as possible.

**Dr. Machage:** Mr. Speaker, Sir, I accept that it was an oversight that I did not carry that information but I will table it on Tuesday next week.

**Mr. Speaker:** Very well. It is so directed!

**Dr. Machage:** Mr. Speaker, Sir, I wanted to clarify something for the purpose of the message to be passed. I did not talk about Kshs25 million for the rehabilitation but I talked about a request of Kshs300 million from the Treasury. However, I have already allocated Kshs75 million and not Kshs25 million.

**Mr. Speaker:** Fair enough, Mr. Assistant Minister.

Let us move to the Question by the Member for Makueni.

*Question No.1744*

NON-ISSUANCE OF TITLE DEEDS TO PUBLIC  
SCHOOLS IN MAKUENI COUNTY

**Mr. Kiilu** asked the Minister for Lands:-

(a) whether he is aware that public schools in Makueni County have no title deeds for the pieces of land they occupy; and,

(b) when they will be issued with title deeds to forestall possible land grabbing.

**The Assistant Minister for Lands** (Mr. Rai): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that some public schools in Makueni County have no title deeds for the pieces of land that they occupy. However, the land in question belongs to the County Council of Makueni.

(b) Titles to public schools are prepared out of the initiative of individual schools and with the recommendation of the Minister for Local Government in case of trust land.

**Mr. Kiilu:** Thank you, Mr. Speaker, Sir. I would like to thank the Assistant Minister for the answer that he has given regarding the process under which public schools holding land under trust land can apply for title deeds. There are cases where land has either been excised or encroached upon. Could the Assistant Minister describe the procedure which these individuals should follow so that we forestall---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! The Member for Runyenjes, the Member for Cherangany, hon. Amina Abdalla and the other group of Members around the Member for Kilome, we have facilities for you just behind the Speaker's Chair.

Hon. Deputy Prime Minister, I thought you did very well this afternoon but you are eating into it!

*(Laughter)*

We have facilities for you if you want to have a conference.

Proceed, the Member for Makueni.

**Mr. Kiilu:** Mr. Speaker, Sir, I wanted the Assistant Minister to describe the process which individual schools can follow to get title deeds for their schools so that they forestall possible land grabbing because this is not just an issue that obtains only in Makueni but is common throughout this country.

**Mr. Rai:** Mr. Speaker, Sir, I have stated that at any given time, a school has the right to request the county council, as long as the land on which the school is built is either trust land or Government land, so that the county council can prepare minutes and forward them to the Commissioner of Lands for it to have a title deed.

**Mr. Njuguna:** Mr. Speaker, Sir, could the Assistant Minister consider waving land fees that are levied on title deeds so that public schools can easily acquire them?

**Mr. Rai:** Mr. Deputy Speaker, Sir, the question of waving payment of what is called “costs of getting a title” normally do not lie with our Ministry. So, if a request is made, we will make the necessary recommendations to the relevant department so that a waiver can be given.

Thank you, Mr. Speaker, Sir.

**Mr. Yakub:** Thank you, Mr. Speaker, Sir. The issue of public schools’ land being grabbed is all over especially at the Coast. Could the Assistant Minister make special consideration for such schools so that they can directly go to the District Lands Officer instead of going through the municipality?

**Mr. Rai:** Mr. Speaker, Sir, we can only talk about land grabbing if one is holding a title deed. If one does not hold a title to show that his land has been grabbed, it becomes very difficult for the Ministry to give consideration. However, if there is a title, definitely, a surveyor would be in a position to ascertain the amount of land that has been taken by whoever is trying to grab that piece of land. Any of these schools that feel that its land has been grabbed can get in touch with the relevant bodies so that we ascertain whether it is encroachment or grabbing so that we can deal with those cases as and when they are forwarded to us.

**Mr. Wambugu:** Mr. Speaker, Sir, most of the schools in this country are under either the Catholic, Anglican or AIPCEA churches. There is a big danger because the land owned by these churches is also being taken over by municipal councils to be allocated to other organisations. What immediate action will the Assistant Minister take to make sure that these pieces of land that belong to the churches are not given out to other organisations?

**Mr. Rai:** Mr. Speaker, Sir, the law is very clear because when land is being taken from one party to the other, that particular party who feels that the land is being taken from him has a right to go to court. In this particular case where we are talking of churches owning pieces of land, I think what is prudent is that we should ensure that before any land is set aside for a particular school, the gazettment needs to be done and if there is no objection, then that particular institution is given a title deed. I believe if that is actually done, I do not foresee any situation where land can just be taken away from this particular school or the church for that matter.

**Mr. Kiilu:** Mr. Speaker, Sir, the Assistant Minister has conceded that land in Makueni is held under trust by the municipal council. Land held in trust is meant for public utilities. What guarantee could the Assistant Minister give to this House that the council through a resolution cannot allocate that land to another user?

**Mr. Rai:** Mr. Speaker, Sir, the land in Makueni is trustland. For the school to maintain its land, it has a duty to actually have a board meeting, make recommendations and request the council to set apart that particular land. Once that is done, gazettment will be done. If no objections are received, the Commissioner of Lands will be requested to issue a letter of offer and then the school will get a title deed. For us to protect our schools, I think it is prudent that we request the Board of Governors in these particular schools to ensure that they have actually engaged the municipal council for the purpose of getting their rightful share of their land where the schools are standing.

*Question No.1773*

DELAYED COMPENSATION FOR CPL BORU HALAKE

**Mr. Yakub** asked the Minister of State for Defence:-

(a) whether he is aware that Corporal Boru Halake (F/No.104484) was discharged from the Armed Forces on 15<sup>th</sup> July, 2009, and if so, why; and,

(b) why he has not been paid his benefits and gratuity since discharge and when he will be paid.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Corporal Boru Halake was discharged from service on 15<sup>th</sup> July, 2009. He was discharged on medical grounds under Section 176(d) of the Kenya Defence Forces Act.

Corporal Boru appeared before a medical board on 23<sup>rd</sup> February, 2009, to assess his medical condition whereby it was established that he had developed hysterical depression since 1988.

Without going into the details of his condition, the medical board recommended that he be awarded 40 per cent disability compensation noting that his medical condition was of a chronic nature.

(b) Corporal Boru was entitled to service gratuity, service pension and disability allowance, all which have not yet been paid because he has not cleared with the Kenya Airforce where he was working. Once Corporal Boru clears with the Kenya Airforce his service benefits will be processed and duly paid to him. I would like to request the hon. Member to advise Corporal Boru to clear with the Kenya Airforce so that he can be paid his dues.

**Mr. Yakub:** Mr. Speaker, Sir, I would like to thank the Assistant Minister whom I have high respect for. The only thing which is very sad is that this Kenyan had worked for more than 20 years and it has taken almost four years for the Ministry to get in touch with him so that he can do his clearance. Could the Assistant Minister assure us that the Ministry will try to contact him very soon so that this person is fully aware of what he is supposed to clear with the Ministry?

**Mr. Musila:** Mr. Speaker, Sir, I appreciate the comments by Mr. Yakub. I am very embarrassed that this serviceman, having worked for 23 years and seven months, to date, he has not been paid his dues. All this is because he has not been able to come and clear with the service.

I would like to confirm to the House that if Corporal Boru can be produced to me, I will personally do everything to ensure that he is paid his dues immediately without any delay.

**Dr. Eseli:** Mr. Speaker, Sir, I wish to thank the Assistant Minister for that concern for this poor soldier. The Assistant Minister has explained to us that possibly the condition that led to the discharge of this soldier could be something related to a psychiatric condition and perhaps that is what has made him unable to go before the Assistant Minister. The Assistant Minister is aware that his condition could be what is making him not to come and therefore, being produced before him might be difficult. Is there any other method that the Ministry can use to ensure that they reach to this good soldier and do justice to his family?

**Mr. Musila:** Mr. Speaker, Sir, indeed, there is a problem because even the corporal did not clear the quotas that he was allocated. I have talked to Mr. Yakub who appears to have his contact and we have agreed that as soon as we leave here, he will give me his contact and I will do everything possible to contact him and if need be, through the Provincial Administration, to ensure that he comes. Since there appears to be a problem, even members of his family can come forward and we see what we can do to assist him.

**Mr. Yakub:** Mr. Speaker, Sir, I do not have any other question and I really appreciate the assurance of the Assistant Minister.

**Mr. Speaker:** Next Question, Mr. Mwau.

*Question No.1630*

AUTHENTICITY OF PRE-SHIPMENT REPORTS

**Mr. Mwau** asked the Minister for Finance:-

(a) whether the pro-forma invoice presented by an importer at the point of entry has any influential value to the pre-shipment company or agent in respect of the value of the goods,

(b) to clarify whether the inspection report and value stated by the pre-shipment inspection company or agent is solely based on the standards and values provided by the seller or the buyer, or whether the pre-shipment report is based on test verification and the prices at open market value; and,

(c) whether he could confirm that the goods are re-inspected and verified by the Kenya Bureau of Standards (KeBS) and valued upon arrival while still within the Customs area before they are released to the importer.

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

(a) The pro-forma invoice presented by an importer at the point of entry is a formal expression of intention to import. It has influential value after it has been subjected to verification and confirmation of orders or signing of contracts.

(b) The inspection report and value stated by the pre-shipment inspection company or agent is based on actual price paid or payable as guided by WTO/GATT values of identical and similar goods previously imported when compared against other benchmarks.

(c) I confirm that goods are re-inspected by the Kenya Bureau of Standards to confirm the standards and quality upon arrival. The valuation of the imported goods is done by the Customs Services Department.

**Mr. Mwau:** Mr. Speaker, Sir, I really want to thank the Minister for his articulate answer. However, the Minister has confirmed that the prices of goods are based on the actual value of the price paid. The *wananchi* are really suffering due to the escalating prices of goods that are being sold because of unnecessary charges.

The pre-shipment inspection is a mandatory requirement. Goods are inspected at the point of shipment and there is a cost to the importer which is passed to the consumer. There is the cost of money and there is cost of time. The Minister also admits that the goods are also inspected by the KeBS. This double work is costing the importer and business community untold loss and damages. Could he tell the House whether this process will stop and only one stop be made?

**Mr. Githae:** Mr. Speaker, Sir, I agree that double inspection costs money to the importer. It increases the cost of goods. It makes our economy uncompetitive. However, not all goods are subject to double inspection. It really depends on the category of goods imported. There are some goods which cannot be inspected by the pre-shipment company in the countries of origin. I would like to assure this House that I will go and look at those goods which are subjected to double inspection and see if we can eliminate, if not reduce, that category of goods; so as to

make our economy more competitive and conducive to trading and less expensive as we continue with the upward growth of our economy.

**Mr. Speaker:** Yes, Member for Lari.

**Mr. Njuguna:** Mr. Speaker, Sir, now that the Minister for Finance has agreed that this has been an anomaly, could he consider reimbursing the charges that have been levied on those imports?

**Mr. Githae:** Mr. Speaker, Sir, the issue of reimbursement does not arise because, as I said, as of now, that is the law. There are some goods which are subject to double inspection and others which are not. I have promised to look at the list of the goods that are subject to double inspection and see if we can reduce them to minimise the incident of double inspection. So, as of now, the issue of reimbursement does not arise.

**Mr. Speaker:** Yes, Member for Kilome.

**Mr. Mwau:** Mr. Speaker, Sir, could the Minister tell the House what he is going to do? As it is now, the Customs Department has actually imposed a cash bond for goods in transit to our neighbouring countries of Uganda, Rwanda and Burundi. Those countries are now contemplating shifting from the Port of Mombasa to the port of Dar-es-Salaam. As hon. Members know, Uganda is our biggest trading partner. Are we going to allow them to go?

Secondly, imported goods awaiting inspection by the Kenya Bureau of Standards (KeBS) at the port incur demurrage charges. What is he going to do to ensure that goods going to Uganda do not incur demurrage charges and that we do not lose business or ruin our relationship with Uganda because of these charges?

**Mr. Githae:** Mr. Speaker, Sir, I would like to take this opportunity to thank the Member for Kilome for that very good question. It is true. It was brought to my attention yesterday that the Kenya Revenue Authority (KRA) is now insisting on cash bond, instead of insurance bond, for all transit goods. This makes the cost of transportation of goods very high.

I am also aware that the Ugandan High Commissioner to Kenya protested to the KRA and our Minister for Trade. I am further aware that the Personal Assistant to the President of Uganda has also called the Minister for Trade and protested about that move. I have, therefore, scheduled a meeting for next week with the KRA to come up with a solution, because this move is going to make transportation of transit goods very expensive; mainly because banks are insisting that in order for them to give an importer a bond of, say, Kshs10 million, the importer must place with them an equivalent amount of cash. That makes it very expensive. Insurance companies would charge a commission of about 2 per cent. So, it is cheaper.

So, this issue has since been brought to my attention. Uganda is our main trading partner in this region. We must protect that business. When Uganda complains, we must listen. We are also trying to encourage business with Ethiopia. That is why I have, in this year's Budget, provided money for construction of the last section of the road from Turbi to Moyale. We have also agreed with the Ethiopian Government that they are going to rehabilitate the road from Moyale to Addis Ababa, so that we can reduce the transportation costs. We have a huge market in Ethiopia. Therefore, I would like to confirm that I am going to deal with this matter having been brought to my attention.

Mr. Speaker, Sir, concerning demurrage charges---

**Mr. Speaker:** What is your point of order, Member for Kiharu?

**Mr. Mwangi:** Mr. Speaker, Sir, is the Minister in order to give a long story, instead of answering the question he was asked by hon. Mwau? You have admitted that Uganda is a good

business partner of ours. What action are you taking to address the situation? Is he in order to avoid answering the question?

**Mr. Speaker:** Minister, that is a legitimate challenge. I thought the question by the Member for Kilome was straightforward. It may be complex, but it is straightforward. You do not have to give that long answer.

**Mr. Githae:** Mr. Speaker, Sir, it is because I am passionate when it comes to increasing exports to our neighbouring countries. Uganda is our main trading company. As I said, the matter has been brought to my attention, and I have scheduled a meeting for next week with the KRA to sort out the issue.

Concerning the issue of demurrage, this only occurs when you do not collect your goods on time.

**Mr. Speaker:** What is your point of order, Member for Central Imeni?

**Mr. Manyara:** Mr. Speaker, Sir, is it in order for the Minister, who previously stood where he is now and said that the word “passion” is un-parliamentary, to now say that he is very passionate, when he was previously at pains to say that he did not understand what “passion” means?

**Mr. Speaker:** Minister, do you have any reaction to that one?

**Mr. Githae:** Mr. Speaker, Sir, we now have a “measure” for passion. We have a “passionmetre”. The “passionmetre” is how passionate a person is. That is the measure. You can see how passionate I am. Therefore, I am within my rights to be passionate. As I said---

**Mr. Speaker:** Order, Minister! I thought there was consensus that “passion” can only be determined or assessed at night. How many nights have you done?

*(Laughter)*

**Mr. Githae:** Mr. Speaker, Sir, we have since learnt that there are many types and categories of passion. There is passion for the night and passion for the day. I am talking about passion for business.

**Mr. Speaker:** Very well.

Next Question, Member for Narok South.

*Question No.1775*

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

**Mr. Speaker:** Is the Member for Narok South not here?

Member for Karachuonyo, what is it that you want to say?

**Eng. Rege:** Mr. Speaker, Sir, I am sorry. I thought it was Mr. Nanok, who went on a trip to Nigeria.

**Mr. Speaker:** Order! Order, Member for Karachuonyo! That is not the way I expect you to do it. Our long-standing practice is that if you have that kind of information, you should have approached the Chair, which is what I was prompting hon. Millie Odhiambo to do a little earlier although she contested it with her body language. That is our long-standing practice but I will all the same bend backwards and accommodate this one. So, I will defer the Question to two weeks away from today.

*(Question deferred)*

**Mr. Speaker:** Hon. Members, that brings us to the end of Order No.6.  
Next Order!

## STATEMENTS

**Mr. Speaker:** Members of the Front Bench, do we have any Ministerial Statements due for delivery today?

In the absence of any Ministerial Statements, we will take requests for Ministerial Statements from hon. Members, beginning with the Member for---

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** What is it, hon. Millie Odhiambo?

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, I was just wondering whether the Government side is going to tell us something about the teachers' strike, because teachers have always been demonstrating outside Parliament Buildings. Really, with the situation that we have in the country now, unless the Minister can give us an indication as to what they are doing to address the crisis by the striking teachers, the country will think that we are not doing our work.

**Mr. Speaker:** Very well. Hon. Millie Odhiambo, that point is quite valid because this House does not operate in a vacuum. We are aware that there is a teacher's strike out there. We are further aware that there is a threatening doctor's strike. Surely, the Front Bench cannot be doing nothing about it. Minister for Finance, could you, maybe, give us some indication on when the Government position will be coming on these matters?

**The Minister for Finance (Mr. Githae):** Mr. Speaker, Sir, as I try to give some indication, let me, first of all, say that it is the right of the doctors and teachers to demonstrate. So, I do not know why hon. Millie Odhiambo is worried about the demonstration by teachers.

*(Laughter)*

**Mr. Speaker:** Order, hon. Minister! Minister, I think you are being a bit casual on this one. It is not a question of the right to strike or not. It is the fact of the strike taking place. Minister, I think you must draw a distinction between the right and the actual event taking place. Are you happy that it is taking place? What are you saying?

**The Minister for Finance (Mr. Githae):** Mr. Speaker, Sir, I am saying that this afternoon, the Minister for Education and the Minister for Medical Services will be issuing statements on the progress that has been made to resolve the strikes.

**Mr. Speaker:** Very well. That is much better, Minister. Otherwise, it would be callous. You cannot say that.

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. There is a long standing practice that policy statements should be given in the House and not out there. Is the Minister suggesting that those statements will be given in this House today or when?

**The Minister for Finance (Mr. Githae):** Mr. Speaker, Sir, let me say that the negotiations are at a very delicate stage. They are working on a return to work formula. I talked about press conferences because we do not know what time they are going to finalise. It may be



after parliamentary hours. Whatever happens, once it is agreed upon, the Minister will officially come to this House and issue a statement.

**Mr. Speaker:** Order, hon. Members! We will now take requests and we want to begin with hon. Outa.

## POINTS OF ORDER

### DEATH OF MR. OGADA IN DUBAI

**Mr. Outa:** On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Foreign Affairs. Three years ago, a Mr. Enos Ogada who hails from Nyando Constituency left this country to seek for greener pastures in Dubai. Mr. Ogada, together with his wife and children have been in Dubai for the last three years. Mr. Ogada is a good citizen of Kenya and while he was in Dubai, he was fending for his family and relatives here at home – I mean the nuclear and extended family.

Mr. Speaker, Sir, two weeks ago, we got a call from Dubai - through Ogada's friends - that informed the family that Ogada passed away after being sentenced to jail in Dubai. Up to date, the family does not know under what circumstances Mr. Ogada was sentenced to jail. The shocking part of it is that he was sentenced to jail and he died in one of those jails in Dubai. I want to ask the Minister for Foreign Affairs the following questions:-

It has taken almost two weeks and we have not heard from the Ministry. We do not know what the Ministry is doing to get the correct position regarding Mr. Ogada's death.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, the family of Ogada are my constituents; people that I respect so much. They are now wondering whether they have a Government that could really help them to find out whether Mr. Ogada died in jail. That brings me to three things which I want the Minister to clarify as a matter of urgency.

(i) Could the Minister confirm whether the Government is aware of the death of Mr. Enos Ogada – a Kenyan citizen who was serving a jail term in a central jail in Dubai? Under what circumstances did he meet his death?

(ii) Is the Government aware that up to this moment, his widow, Mrs. Dorothy Ogada, has been denied access to the husband's remains, and fears that the Dubai authorities could have cremated his body since no help has been forthcoming to secure the release of his body from jail? Three weeks have elapsed without his family being informed about the whereabouts of his remains?

(iii) Finally, what steps is the Government taking to ensure that the family is assisted in getting the body of the deceased released from jail and transported home for a decent send off?

Mr. Temporary Deputy Speaker, Sir, on a light touch, where I come from, we are traditionally-bound. The people at home expect the body of Mr. Ogada who passed away under unknown circumstances in Dubai to be transported back home intact and not in a cremated state. That is why I want the Minister---

**The Temporary Deputy Speaker** (Mr. Imanyara): You are being repetitive now.

**Mr. Outa:** Mr. Temporary Deputy Speaker, Sir, but you heard me. This is a serious matter and I hope he will treat it with urgency.

**The Temporary Deputy Speaker** (Mr. Imanyara): Minister for Foreign Affairs. Is the Minister for Foreign Affairs not here? Mr. Kimunya!

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, yes, I will communicate the message to the Ministry of Foreign Affairs and have the matter investigated and reported to the House by Wednesday next week.

**The Temporary Deputy Speaker** (Mr. Imanyara): Wednesday, next week? Mr. Outa, are you comfortable with that?

**Mr. Outa:** Mr. Temporary Deputy Speaker, Sir, we are dealing with an urgent matter. We have a Mission in Dubai. Why next week?

**The Temporary Deputy Speaker** (Mr. Imanyara): If you want a Statement in the House, the earliest you can have it is Tuesday.

**Mr. Outa:** That is okay, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): This is information that is going to be obtained out of the country. I think you are being unreasonable to request for just a day after. So, the day suggested by the Minister appears to be a reasonable time to me. So, let us have it in the morning session on Wednesday next week. Are there any other requests?

Next Order! Just a moment! Mr. Kimunya, before we go to the next Order, you have some business to do under the Standing Orders. I am sorry.

BUSINESS FOR THE WEEK COMMENCING  
25<sup>TH</sup> TO 27<sup>TH</sup> SEPTEMBER, 2012

**The Minister for Transport** (Mr. Kimunya): Yes. Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to take this opportunity to make the following Statement under Standing Order No.36(4) with regard to the business for next week.

Mr. Temporary Deputy Speaker, Sir, the House Business Committee (HBC) has scheduled the First Reading of the National Cohesion and Integration (Amendment) Bill, Bill No.40 of 2012. Also, the following Bills at the Second Reading will be considered:-

The Internally Displaced Persons Bill, Bill No.21 of 2012; the Alcoholics Drinks Control (Amendment) Bill, Bill No.19 of 2011 and the Pyrethrum Bill, Bill No.57 of 2011. All these are Private Members' Bills.

We shall also deliberate at the Committee of the whole House the following Bills which will be rescheduled from today:-

The National Transport and Safety Authority Bill, Bill No.37 of 2012 and the Traffic (Amendment) Bill, Bill No.29 of 2012. Additionally, the HBC resolved to consider at the Committee of the whole House all the Bills that have so far reached the Second Reading stage. The House will also deliberate on the Motion to adopt the draft Elections Regulations of 2012.

As is the practice, we will give priority to the Business that will not be covered in today's Order Paper.

Finally, Mr. Temporary Deputy Speaker, Sir, the House Business Committee will be meeting again on Tuesday, 25<sup>th</sup> September, 2012, at the rise of the House to consider Business for the rest of the week.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Kimunya, although the Speaker stepped out, he asked me to notify you that the House expects a statement next week regarding the various strikes that are ongoing in the country. It is for you to indicate when that statement may come, preferably from the Office of the Prime Minister because they touch on a number of Ministries. Could you indicate when a major statement regarding these issues can be done in the House next week?

**The Minister for Transport** (Mr. Kimunya): Yes, Mr. Temporary Deputy Speaker, Sir. I did not want to include it in the Business of the House because that was already done, but it will be best done within the framework of the Prime Minister's Time on Wednesday, next week.

**The Temporary Deputy Speaker** (Mr. Imanyara): So, you will communicate the Speaker's directive to the Prime Minister, so that he addresses that issue during the Prime Minister's Question Time on Wednesday, next week.

**The Minister for Transport** (Mr. Kimunya): I will do so, Mr. Temporary Deputy Speaker, Sir.

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

## **BILL**

### *First Reading*

#### THE PUBLIC HEALTH OFFICERS (TRAINING, REGISTRATION AND LICENSING) BILL

*(Order for First Reading read – Read the First Time and  
ordered to be referred to the relevant Departmental Committee)*

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

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

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

## **COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, the Order Paper indicates that we are in the Committee of the whole House for three Bills. Indeed, the National Transport and Safety (Authority) Bill and the Traffic (Amendment) Bill will be deferred. I understand that with regard to the Traffic (Amendment) Bill, hon. Midiwo's Bill was supposed to be brought together with this, so that they can synchronize them. But because it is not on the Order Paper, we will only deal with the Breast Milk Substitutes (Regulation and Control) Bill. That is the Business that is before the House now.

THE BREAST MILK SUBSTITUTES  
(REGULATION AND CONTROL) BILL

*Clause 2*

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Monda? Where is Dr. Monda? Is there anybody standing in for him?

**Dr. Nuh:** Thank you, Mr. Temporary Deputy Chairman, Sir. I was not prepared for this. The Chair of the Health Committee was supposed to be here---

*(Dr. Monda entered into the Chamber)*

**Hon. Members:** He is here!

**The Temporary Deputy Chairman** (Mr. Imanyara): I can see that Dr. Monda has walked in.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, can you just accord us about one minute as the Chair logs in?

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Monda, we are giving you some minutes to settle down and get your card. It is your Committee's Business that is on the Order Paper.

Dr. Monda, can you move the amendments to Clause 2 or do you need assistance from any of your colleagues in the Committee? Would you like Dr. Nuh to assist you?

**Dr. Monda:** Mr. Temporary Deputy Chairman, Sir, as I prepare myself, I will ask Dr. Eseli to move the amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): Any hon. Member of your Committee who is ready can do it on your behalf.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, as the Chair sorts out the computer issues, I want to propose the amendments.

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

THAT, Clause 2 be amended-

(a) in the definition of "health worker" by deleting the words "health services, whether professional or non professional and includes a volunteer" and substituting therefor the words "professional health services";

(b) by deleting the definition of "complementary food" and substituting therefor the following new definition-

“complementary food product” means any food suitable or presented as suitable, as an addition to breast milk, for infants from the age of six months up to the age of thirty six months”;

(c) by deleting the definition of “follow-up formula” and substituting therefor the following new definition-

“follow-up formula” means a food intended for use as part of the complementary diet for the infant from the sixth month and for young children”

(d) by deleting the definition of “gift” and substituting therefor the following new definition-

“gift” means inducements of such type as may be prescribed that are not of professional utility to health workers;

(e) in the definition of “infant formula” by deleting the words “and includes all infant formula for special medical or nutritional purposes” and substituting therefor the words “and adapted to their psychological characteristics”

Mr. Temporary Deputy Speaker, Sir, this amendment is just basically redefining the term “health worker” to fit in with the relevant definition. We want to go for professional health services and not just any health services. As for “b”, it is redefining again the word “complementary food” as per the Bill to align it to the best definition that we would be able to get from the World Health Organization (WHO) and other codes; as well as the definition of the “follow up formula” in part “c,” that of a “gift” in part “d” and that of “infant formula” in part “e.”

Mr. Temporary Deputy Speaker, Sir, all these were done to remove ambiguity which we thought the Bill had. It was meant to make the definitions a little bit more clear.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, Minister?

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Thank you, Mr. Temporary Deputy Chairman, Sir. I beg to oppose.

Mr. Temporary Deputy Chairman, Sir, we prefer to keep the definition of “follow up formula” as it is in the Bill because the proposed definition does not accurately describe the nature of the product. This product is widely recognized as a breast milk substitute and not a complementary food. An attempt to redefine it as proposed is confusing, inaccurate and unacceptable because it removes the product from the purview of the law.

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Eseli, do you have any response to that?

**Dr. Eseli:** Mr. Temporary Deputy Chairman, Sir, these definitions, as they were put in the Bill, appeared to, at times, be rather severe to the extent that some definitions were out of what would be called the “Codex Alimentarius” standard of the WHO. This Bill is based on that WHO Code. So, when we have definitions that go outside that code, it means that we have actually made things quite different from what the code intended. The code was a consensus document with all the stakeholders at the WHO. So, we felt that those amendments would be more in line with the Codex Alimentarius standard.

So, Mr. Temporary Deputy Chairman, Sir, I support the amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Githae, do you have something to add?

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

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Now that Dr. Eseli is talking of WHO standards, could either Dr. Eseli or the Minister read to the House the relevant definition from WHO standard, which will then inform us to contribute to the debate and to appropriately agree with or not to the proposed amendments?

**The Temporary Deputy Speaker** (Mr. Imanyara): Madam Minister, would you like to address that matter? It seems that we are not quite prepared for this Bill! You may get assistance from your technical team at the back.

**Dr. Nuh:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I think it would do a little bit of justice to the hon. Members here, if the Minister could say what amendment among these she opposes. She only raised an issue against the definition of “follow-up formula.”

**The Temporary Deputy Speaker** (Mr. Imanyara): Could the Minister, through the technical staff on the bench, provide that definition in order to guide hon. Members in debating this matter? Mr. Kimunya, do you have any assistance for the Minister?

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Chairman, Sir. In the absence of WHO definition from either the Committee or the Minister, I wish to refer to the title of the Bill “Breast Milk Substitutes”, and agree with the Minister that the better definition then, which is in line with the Bill, is the one referring to “breast milk substitutes” instead of “complementary foods”, so that we do not mislead those who wish to know exactly what is being referred to. I would plead with the Committee to abandon their amendment because they are not able to inform us on what basis the amendment has come in. I would really plead with them that we remain with the language that is in line with the Bill.

**Dr. Eseli:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I would beg for a little time, so that we can follow the usual procedure in Parliament. We can actually leave this in abeyance and come back to it.

**The Temporary Deputy Chairman** (Mr. Imanyara): No; we cannot leave it in abeyance!

**Dr. Eseli:** We can go on with it and then we carry it forward at the end when we report progress to the House. We can then revisit it subject to this clause. I can go to my office and bring the codex, so that everybody can be brought up to speed. What I would like the House to know is that they should be able to trust the Committee because we went through the codex. We cannot come and purport to be giving things from the codex when we have not referred to it. It would be very wrong on our part to do so. So, we did so and that is why I was suggesting that we follow the usual Parliamentary procedure, so that we continue with things the way they are, even if we pass it subject to coming back to it at the end.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Githae, do you have a contribution to make?

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I am also pleading with the Committee to withdraw the amendment. If you look at the definition of a “health worker”, in the health care system not all people who get in touch with children and pregnant women are professional health workers. When you talk of “professional health workers” you are restricting the definition. There are other people like community health workers, who are always in touch with children and pregnant women.

Again when you look at the definition of “follow up formula”, this definition is actually expanding it. What I understand from the Bill is that, that definition is only in relation to those industrially produced items that can cause problems. The way it is done, it means that even what our mothers use as traditional substitutes is also covered here.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Chairman, Sir. My concern is that Dr. Nuh raised a very fundamental issue which has not been dealt with. There are several issues in Clause 2 and it would be good to know what the Minister is against in the amendment; we need to know whether what Dr. Eseli is saying relates to the entire clause, and whether the Minister is opposing only certain sections of the clause.

**The Temporary Deputy Speaker** (Mr. Imanyara): Indeed, Minister, that is a valid point. What is it in Clause 2 that you are objecting to? Let us deal with the point of order because Clause 2 has several proposed amendments. Minister, your colleague opposed the clause and hon. Members are interested to know what you are opposing in the clause. According to Mrs. Odhiambo-Mabona, there are various proposals for amendment.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, first of all regarding the definition of “professional health services” I was saying that the people who get in touch with pregnant women and children are not necessarily professionals. This is restricting the---

*(Several hon. Members stood up)*

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! You will be heard but let him make the point he is making.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I am saying that I am opposing that amendment. I am opposing it because it is restricting the definition only to professional health services. I am saying that we know that, in practice, children and pregnant women get in touch with people who are not necessarily professionals; an example is community health workers.

**Dr. Monda:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I am following your direction that the Minister for Public Health and Sanitation does give us direction as to what she is opposed to in this clause. Initially, the Minister talked about “follow-up formula”. This means that the rest are agreeable to her. We should deal with the issue of “follow-up formula” alone and save on time. The Minister for Finance, in supporting the Minister, should do so in what is already agreeable to the Minister.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Minister, if you look at the Order Paper, there are five amendments, namely “a”, “b”, “c”, “d” and “e”, but you stood up and said you were opposing. I think hon. Members are entitled to know what you were opposing so that they can direct their attention to it.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I stood up and said that I opposed the amendment to “follow-up formula”, “gift” and “health worker;” that is basically all of them.

**The Temporary Deputy Speaker** (Mr. Imanyara): Indeed, then the Minister is opposed to all of them. That is the position.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): I prefer to keep what is in the text.

**The Temporary Deputy Speaker** (Mr. Imanyara): If that is the mood of the House, I will simply put the Question and let the House determine.

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

There is another amendment by Mr. C. Kilonzo to Clause 2.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, after consulting the good Committee, I have withdrawn the amendment.

*(Proposed amendment by Mr. C. Kilonzo withdrawn)*

*(Clause 2 agreed to)*

*(Clause 3 agreed to)*

*Clause 4*

**The Temporary Deputy Chairman** (Mr. Imanyara): I notice that there are three proposed amendments. The amendment proposed by the Chair is similar to the ones proposed by the Minister and by hon. Keter.

Minister, proceed with yours!

**Dr. Nuh:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I just wanted to bring to your attention and that of the hon. Members that this Bill, at the stage of consideration by the Committee, the Committee tried to see whether it can have an agreed position or some sort of a negotiated law between all the stakeholders. The Minister was represented by the officials. Although I know that the Government side or Executive would want to come and support the Minister in terms of the amendments and even keeping the law, I would want to caution them against mob support. This is because even in the case of the first amendment---

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Order, Dr. Nuh! You are out of order on two fronts. One, is about the mob and, two, you are anticipating debate on the conduct of Members when the proposals are read out. So, you are out of order!

**The Minister for Trade** (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Chairman, Sir. We take great exception to the remark by Dr. Nuh. He should understand that many of us---

**The Temporary Deputy Chairman** (Mr. Imanyara): Order, Minister! You are also doing exactly the same thing. I had already ruled him out of order and the matter is overtaken by events. If you were paying attention, you would have known that the matter has been dealt with.

Hon. Minister, can you move your amendments, please?

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I oppose the amendment proposed by hon. Keter.

**The Temporary Deputy Chairman** (Mr. Imanyara): Let us deal with your proposed amendment first.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended —



- (a) in sub-clause (2) by –
  - (i) deleting paragraph (j);
  - (ii) adding the following new paragraphs –
    - (j) a representative of the Principal Secretary in the Ministry for the time being responsible for matters relating to trade;
    - (k) two members with relevant expertise in infant and young child feeding appointed by the Cabinet Secretary.
- (b) by deleting sub-clauses (6) and (7) and substituting therefor the following new sub-clauses—
  - (6) In the appointment of a member of the Committee, the Cabinet Secretary shall not appoint a person who has a direct or indirect interest in the manufacturing, distribution, marketing, advertisement or promotion of a designated or complimentary food product.
  - (7) Section 12 of the Public Office Ethics Act, 2003, shall apply to a member of the Committee whose personal interest conflicts with his or her functions as a member of the Committee.

*(Question of the amendment proposed)*

**Mr. Keter:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I just want to request the Minister if she could give us some explanations, so that if we oppose, we will be opposing on the facts that she has given us. She should not jump to my amendment before even moving her own amendments. I think it would be better if she explained the amendment than just standing up and saying: “I beg to move this amendment.”

**The Temporary Deputy Chairman** (Mr. Imanyara): She did indicate “as proposed in the Order Paper.” You will be in order to ask her to explain certain sections, but the proposals for amendments are, indeed, in the Order Paper. So, it is not out of order for her to propose amendments as per the Order Paper, because you have had the Order Paper since yesterday. So, you may contribute to it or oppose it, if you wish.

Since I see no one wanting to contribute, I will put the Question.

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

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

**The Temporary Deputy Chairman** (Mr. Imanyara): Now, we come to you, Dr. Monda. You have an amendment and it is identical to the one that we have just adopted. In those circumstances, do you want to withdraw it?

**Dr. Monda:** Mr. Temporary Deputy Speaker, Sir, I withdraw the proposed amendment.

*(Proposed amendment by Dr. Monda withdrawn)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Very well. I now move to the proposed amendment by hon. Keter.

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

THAT, Clause 4 be amended in sub-clause (2) by inserting the following paragraph-

(k) Three representatives with knowledge of marketing, production, and distribution of breast milk substitutes” nominated by Kenya Association of Manufacturers.

Mr. Temporary Deputy Speaker, Sir, this is a national committee which has been formed. The people who will sit in that committee have been explained from parts “a” down to “j”. There are other players in the industry and I have mentioned Kenya Association of Manufacturers. This is because if you see the objective of the Bill, under the Memorandum of Objects and Reasons, it states very well: “Breastfeeding and proper use of breast milk substitutes where necessary.” So, it did not lock out some of the companies which are doing manufacturing of these products. Therefore, I am making an addition so that they can sit in this board, like other boards, for example, Electricity Regulatory Commission (ERC) and Pharmacy and Poisons Board where the manufacturers have their representation.

*(Question of the amendment proposed)*

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment because their inclusion will create a conflict of interest, affecting the independence and impartiality of the Committee, free from commercial interests as per the World Health Organization (WHO) Resolution 49. The Resolution states that monitoring and implementation must be free from any influence and more especially, commercial interests.

**Ms. Karua:** Mr. Temporary Deputy Chairman, Sir, I stand to oppose the amendment for the same reasons given by the Minister, but also to add that I am looking at the list on Clause 4(j) and wondering whether it is wide enough. Yes, it is. Non-Governmental Organizations (NGOs) with national mandate on infant and young child feeding are included. These are neutral people who will represent both the commercial interests and infants. Let us not bring partisan grandstanding to this committee.

Mr. Temporary Deputy Chairman, Sir, I oppose.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I beg to oppose the amendment by hon. Keter.

Mr. Temporary Deputy Chairman, Sir, the emphasis in his amendment is people with expertise in marketing, production and distribution of breast milk substitutes, nominated by the Kenya Association of Manufacturers. There is conflict of interest. For example, the amendment that the Minister has just moved is bringing in a representative of the Principal Secretary in the Ministry for the time being responsible for matters relating to trade, which now takes care of all trade related issues and at the same time, two other people with relevant experience in infant and young child feeding, appointed by the Cabinet Secretary. So, there is already a route for getting people from KAA, through trade or Cabinet Secretary and not necessarily experts in marketing. When you now limit it to experts in marketing, you are bringing into a regulatory body, the exact people who are going to be regulated and there will be a deadlock through and through. So, let us adopt what we have already agreed on and drop this amendment because of a potential conflict which could arise, especially with the narrow definition of the people that you would want to introduce.

**Mr. Bahari:** Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment.

Mr. Temporary Deputy Chairman, Sir, looking at this committee, you can see that this is a purely professional team. There is a cross section of them in that field. In view of that, we expect objectivity and fairness from this committee. Bringing in what hon. Keter is proposing will make us lose the objective for which this committee has been set up.

Mr. Temporary Deputy Chairman, Sir, I beg to oppose.

**The Minister for Trade** (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, I also oppose the amendment for the reason that we cannot invite persons or organizations that were going to regulate to “sit” on the regulation and regulate themselves. There will be an obvious conflict of interest and I urge Mr. Keter to withdraw the amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): What does the Chairman of the Committee say?

**Dr. Monda:** Mr. Temporary Deputy Chairman, Sir, I also stand to oppose the amendment considering that under part “j” the proposed membership will be experts whom the Cabinet Secretary may consider, if need be, to have expertise in infant and young children feeding from whichever quarters. So, I oppose.

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

*(Clause 4 as amended agreed to)*

#### *Clause 5*

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended in subclause (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) advise the Cabinet Secretary on the policy to be adopted in relation to infant and young child nutrition.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairman** (Mr. Imanyara): I also note that Dr. Monda, the Chair of the Committee has a proposal for amendment. Do you still want to go with it? It appears exactly the same as the one that the House has just adopted, by the Minister. In these circumstances, do you wish to withdraw?

**Dr. Monda:** Mr. Temporary Deputy Chairman, Sir, it had already been said by Dr. Nuh that we consulted with the Minister and these are amendments that we agreed upon and, therefore, on those grounds I withdraw, not because mine is any different as alluded to by the

hon. Members here. Mr. Wetangula needs to be advised that we are withdrawing because these are agreed upon amendments.

*(Proposed amendment by Dr. Monda withdrawn)*

*(Clause 5 as amended agreed to)*

*Clause 6*

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 of the Bill be amended—

(a) in subclause (1), by inserting the words “to the general public” immediately after the words “advertise or promote”;

(b) by deleting subclauses (2) and (3) and substituting therefor the following new subclause –

(2) For the purposes of this section, a person promotes a designated or complementary food product, where that person—

(a) directly or indirectly introduces a designated or complementary food product or encourages the buying or use of the product;

(b) uses sale devices such as special discounts, special displays to promote sales, competitions with prizes, tie-in sales, provision of premiums and rebates, discount coupons, loss leaders, giving of gifts and free samples of a designated or complementary food product to mothers;

(c) as a marketer, makes a direct or indirect contact with members of the public in furtherance of or for the purpose of promoting business of a designated or complementary food product;

(d) makes electronic communications of a designated or complementary food product including internet, website and electronic mail;

(e) distributes promotional items including clothing, stationery, household utensils or items that refer to a designated or complementary food product or the brand name of the product;

(f) engages in any practices or communication in any form, which create, or may create, any association with a designated or complementary food product;

(g) publishes or causes to be published an advertisement of a designated or complementary food product;

(h) distributes any information or educational material relating to infant and child feeding;

(i) distributes or causes to be distributed or donates or causes to be donated or sells or causes to be sold a designated or complementary food product to charitable children’s institutions or a health facility;

(j) engages persons whose duties involve marketing of a designated or complementary food product—

(i) on remuneration which varies according to the volume of sale of designated or complementary food product; or

(ii) for bonuses or similar incentives calculated directly according to the volume of sales of the designated or complementary food product;

(k) displays to the public material which refers directly or indirectly to a designated or complementary food product;

(l) distributes materials to health workers, which directly or indirectly refer to a designated or complementary food product;

(m) offers a gift or a benefit or inducement including a fellowship, study grant, funding for attendance of meetings, seminars, continuing education or conferences to a health worker or a member of his family;

(n) directly or indirectly, provide any support, financial or otherwise, to the general public or a health worker for the purposes of promoting a designated or complementary food product;

(o) funds any research carried out by a health worker in infant and young child health;

(p) employs a person to provide to health workers in health care facilities, pregnant women or mothers of infants and young children or any other person, with education or instructions regarding infant and young child health; and

(q) sponsors an event, contest, telephone counselling line or campaign aimed at pregnant women, mothers of infants or their families.

(c) by adding the following new subclauses—

(3) For the purposes of this section, advertisement or promotion shall not include—

a) the ethical interaction between the manufacturer or distributor and health workers for purposes of creating awareness about the scientific and factual matters of the breast milk substitute or complementary food product;

b) the provision by the manufacturer or distributor to health workers of samples of the breast milk substitute or complementary product for purposes of professional evaluation or research of the product;

c) the distribution in the package of information or educational material relating to the breast milk substitute or complementary food product pursuant to Article 46(1) (b) of the Constitution.

(4) The Cabinet Secretary shall, by regulations, prescribe the manner in which the activities specified in subclause (3) shall be conducted.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Monda, for the same reasons as previously, do you wish to withdraw the proposed amendment?

**Dr. Monda:** Yes, Mr. Temporary Deputy Chairman, Sir.

*(Proposed amendment by Dr. Monda withdrawn)*

*(Clause 6 as amended agreed to)*

*Clause 7*

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause –

(1) Donations or distributions of breast milk substitutes or complementary food product to charitable children institutions shall be in such manner as may be prescribed by the Cabinet Secretary.

(b) in subclause (2), by deleting paragraph (a) and substituting therefor the following new paragraph –

“(a) the label on the package carrying a designated or complementary food product shall be in accordance with the provisions of the Standards Act, cap. 496”.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Monda, are you withdrawing your proposed amendment?

**Dr. Monda:** Yes, Mr. Temporary Deputy Chairman, Sir, for the same reasons I withdraw.

*(Proposed amendment by Dr. Monda withdrawn)*

*(Clause 7 as amended agreed to)*

*Clause 8*

**The Temporary Deputy Chairman** (Mr. Imanyara): There are several amendments by Dr. Monda, Mr. Keter and the Minister. All of them are dependent on the proposal by Dr. Monda. They are given in the alternative so, Dr. Monda, please move your amendment.

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

THAT, Clause 8 be amended-

(a) in paragraph (a) by deleting subparagraph (ii).

(b) by deleting paragraph (b);

(c) by deleting paragraph (c).

(d) by renumbering the existing provision as subsection(1) and inserting a new subsection (2) as follows-

(2) A manufacturer or distributor of a designated product or complementary food product and the recipient health worker shall disclose to the institution to which the health worker is affiliated any sponsorship granted or received for fellowships, study tours, research grants, attendance at professional conferences, continuing education

**The Temporary Deputy Chairman** (Mr. Imanyara): Madam Minister, I notice just for your guidance that it is indicated here that if Dr. Monda's is carried through, you will be dropping yours. Is that the position?

*(Question of the amendment proposed)*

**The Minister for Public Health and Sanitation** (Mrs. Mugo): I oppose.

**The Temporary Deputy Chairman** (Mr. Imanyara): You are opposing it?

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Yes, Mr. Temporary Deputy Chairman, Sir, I am opposing it the reason being that the word "inducement" has been taken out of context from the original text. In the proposed amendment, it has been used as a qualifier or verb whereas the original code---

**The Temporary Deputy Chairman** (Mr. Imanyara): Madam Minister, let me guide you a bit. Be clear you had indicated that if Dr. Monda's amendment is carried through, you would be withdrawing yours. Therefore, it does not add up if you are opposing it now. We are on Clause 8. I will give you a few minutes just to familiarize yourself because the Order Paper indicates that you have indicated that if Dr. Monda's amendment is carried, yours will be dropped. That is the message you have sent to the Chair.

**Ms. Karua:** Mr. Temporary Deputy Chairman, Sir, just to assist the Minister because she appears a little lost, what is on page 4115 of the Order Paper shows that her amendment is changing the terminology whereas Dr. Monda's is deleting. Dr. Monda's amendment is on page 4119 and the Minister's is on page 4115. So, is it in order for her to clarify so that we know which way?

**The Temporary Deputy Chairman** (Mr. Imanyara): Madam Minister, if Dr. Monda's amendment is carried, it deletes so yours becomes redundant; there will be nothing because it will have been deleted. Let us take a decision on the proposed amendment by Dr. Monda then the rest will fall in place.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I am opposing.

**Dr. Eseli:** Mr. Temporary Deputy Chairman, Sir, I wish to support the amendment for the following reasons: When you look at the code of conduct by the World Health Organization (WHO), Article 7.5, manufacturers and distributors of products within the scope of this code should disclose the institution to which a recipient health worker is affiliated, any contribution made to him or on his behalf for fellowships, study tours, research grants, attendance at professional conferences or the like, similar disclosure should be made by the recipient. In that case, it shows that the code does not exclude the healthcare workers from receiving this kind of consideration so long as it is disclosed. The onus is the disclosure but in the case of this Bill, it

tends to criminalize or prohibit the health care worker from receiving any such assistance from this so called manufacturing company yet again you find that we are doing it differently from what the code recommended. We are going an extra mile which could be detrimental to further education and further training of healthcare workers. So, the onus here is that whoever provided that is supposed to disclose to the institution that, that health care worker belongs to certain institution or that health care worker receiving such consideration is obligated to disclose to the institution. The code is not meant to stop them from receiving that kind of consideration but to stop them from not disclosing which would, therefore, mean that they are doing something underhand. That is why I support the amendment by the Committee.

I beg the Minister to look at it that way. When we say that healthcare workers are not allowed to distribute, the pharmacists are in their pharmacies actually dispensing these products. In other words, they are distributing these products. We are telling them no. So, the healthcare workers, including pharmacists and pharmaceutical technologists will not be allowed to distribute these products.

With regard to demonstrating the use, there are those special circumstances where a baby or a mother may need to be demonstrated to how to use certain equipment. So, the equipment is not outlawed; that is the fact. However, we are stopping the healthcare workers from actually demonstrating that. I think that apart from impinging on professional freedom it also impinges on what they are actually trained to do. What we are saying is that there will be nobody available to train these people in case there is need. They should be discouraged from using it where there is no need. In case there is need, they will not be allowed to do it. In case there is need the pharmacies will not be allowed to dispense the same because that is a healthcare worker. That is why we are saying that we need to align this to the code. This is because this has gone beyond the code. What the Bill has done has gone beyond the code.

**Mr. Mureithi:** Mr. Temporary Deputy Chairman, Sir, I would like to agree with the Minister.

**The Temporary Deputy Chairman** (Mr. Imanyara): You have risen on a point of order.

**Mr. Mureithi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the mover of the amendments aware of Section 76 of the Constitution that conflicts---

**The Temporary Deputy Chairman** (Mr. Imanyara): Mrs. Shebesh, please, go on with your contribution. That is not a valid point of order, Mr. Mureithi.

**Mrs. Shebesh:** Mr. Temporary Deputy Chairman, Sir, I want to support the Minister and disagree with my colleague, hon. Dr. Eseli who I really respect. It is because the principle of this law that the Minister is coming up with is the basis upon which the code is written. You cannot be quoting a code that this law will be higher than. It is the code that needs to be regulated according to the law. If it was not for the fact that these issues have been identified--- In fact, probably the key reason women are being encouraged not to breastfeed---

These amendments totally negate the spirit of this Bill. It will make no sense to have this Bill and continue to allow reasons why the Government has come up with a law that is encouraging breastfeeding. It is for the very reasons that he is giving---

**Mr. Bahari:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I wanted the Minister to clarify something. The Chairman of the relevant Departmental Committee has raised a valid point that---

**The Temporary Deputy Chairman** (Mr. Imanyara): I overruled hon. Mureithi. I am going to disallow that because it is not a point of order.



**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I think we need to go point by point so that this point is made clear.

The Committee is proposing that Clause 8 be amended in Paragraph (a) by deleting (ii) which is gifts. We are saying: “A health worker or proprietor shall not---” If we delete (ii) which is “financial assistance” we are actually saying that a health worker or professional can accept financial assistance from a manufacturer and yet that is exactly what we want to prevent.

Let us go to the other one. By deleting Paragraph (b) which is “distribute or display a designated or a completed food product,” that is the same thing we are trying to remove. You know that is how there is influence.

**Dr. Monda:** On a point of order, Mr. Temporary Deputy Chairman, Sir. What the Minister is reading is misrepresentation of facts. This is because when you look at Clause 8, we are discussing a health worker or proprietor. In this case, we are saying that you will not accept financial assistance save for what hon. Dr. Eseli said, that this will be done by the recipient and giver of the donation or the financial assistance having disclosed this to the employer of the health worker. Therefore, the loyalty of the health worker will not be directly to the manufacturer. It will be to the institution. So, we cannot limit distribution or display of products by health workers. That is what the clause is talking about. If we shall not display---

*(Loud consultations)*

Mr. Temporary Deputy Chairman, Sir, protect me. When hon. Martha Karua is speaking, she is given her time. When the others are---

**The Temporary Deputy Chairman** (Mr. Imanyara): Go on, Dr. Monda. You have the Floor.

**Dr. Monda:** Stop her from shouting at me!

Mr. Temporary Deputy Chairman, Sir, these are products. We are saying that distribution must be done in a certain way. We have given terms under which that should be done. We have talked about demonstration by experts. If that is not done by experts, who else will do it? We are, indeed, closing out totally substitutes to breast milk and complementary feeding because we are saying that health workers should not. I am asking hon. Githae to relook at his facts.

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, I think it is important that we understand the purport of the amendments. Hon. Dr. Monda, please, read Clause 8. What does it say? It begins by saying,

“A health worker or proprietor shall not –

(a) accept from a manufacturer or distributor of a designated or complementary food product-

(i) a gift;

(ii) financial assistance;

(iii) fellowship, scholarship, research grant, study tour, funding for meetings and conferences, seminars or continuing education courses; or

(iv) sample of a designated or complementary food product---

That is what the clause is providing. Now, what does your Committee intend to do with that? Does it intend to take it away? It is good for hon. Members to understand.

**Dr. Monda:** The proposed amendments are meant to compel any manufacturer or distributor to disclose all their systems given to health workers.

**The Temporary Deputy Chairman** (Mr. Imanyara): Let us go together on part “a”. It reads thus: “A health worker or proprietor shall not accept---” What is your intention with that provision. Why do you want to amend it and to what end? Dr. Eseli, what is your point of order on that one?

**Dr. Eseli:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Probably, my Chairman was not able to explain clearly as we had asked. Clause 8 states that:-

“A health worker or a proprietor shall not –

(a) accept from a manufacturer or a distributor of a designated or complementary food product-

(i) a gift”.

We have not deleted that.

“(ii) financial assistance”.

We were trying to qualify that. If you turn over the page on our amendments, we have said that “by renumbering the existing provisions in Sub-section (1) and inserting a new Sub-section (2) as follows:-

(2) A manufacturer or distributor of a designated product or complementary food product and the recipient health worker shall disclose to the institution to which the health worker is affiliated any sponsorship granted or received for fellowships, study tours, research grants, attendance at professional conferences, continuing education”.

Once they disclose, whoever is in charge of that institution will judge whether this particular sponsorship or scholarship is right or not. That disclosure is important. Then with regard to the issue of samples and the fact that a health worker shall not accept from a manufacturer or a distributor of a designated or complementary food product samples of a designated complementary food product, when the health worker, who is a professional cannot receive that sample, you are expecting him to go and buy that sample to see how it works. Further, they have been barred from demonstrating how it is used. The mothers will require somebody to demonstrate to them. The ones who should breastfeed should breastfeed, but there are those babies whose mothers are dead. They cannot be breastfeed. There will be care-giver, who must be trained by somebody.

**Mr. Farah:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I have a problem using this system because I am always up there and so, it is giving me a problem. I wanted to rise, but I cannot. Even as Parliament, the universal practice all over the world is that when you go to a place and you are given a gift, you come and declare, bring it to Parliament and use it for Parliament’s archives here. So, for somebody who is supposed to regulate these things and you allow him to be given inducements and fellowships, these are tantamount to the word “inducement” itself, a connotation I do not want to go beyond to discuss. I am opposing the amendment by the Chairman of the Committee.

**The Temporary Deputy Chairman** (Mr. Imanyara): Order, Members! You will all have an opportunity to speak, but it is good that Members debate knowing what they are debating. Therefore, if you have a valid point of order, raise it. But if you just want to contribute, just go on the queue and I will give you a chance, as I am now doing with hon. Karua, who is next.

Hon. Githae was actually interrupted when he was on a point of order. Finish, Minister!

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, first of all, I wish to thank you. As I said, we just need to look at what the Committee is proposing. If you look at Clause 8(a), they propose to delete paragraph 2. We have said that paragraph 2 is

about financial assistance. So, according to the Constitution, what is not prohibited is allowed. In fact, they are allowing financial assistance. Let us go back to the bit on deleting part “c” which is about demonstrating the use of a designated or complementary food product. Again, going by the rules of interpretation, what is not prohibited is allowed. So, in fact, they are saying “allow a health worker or a proprietor to accept from a manufacturer or distributor and to demonstrate the use of designated complementary food product”. We are saying that even when you look at the counter proposal, which is part “d” about renumbering the said provisions of (i), it is basically diluting it.

**The Temporary Deputy Chairman** (Mr. Imanyara): You have made the point, Minister.

**Ms. Karua:** Mr. Temporary Deputy Chairman, Sir, it is great that there are such emotions that even a Member can accuse me of shouting when I am queuing and waiting to contribute. I want to oppose this amendment. It is deleting all the prohibitions which are meant to protect the consumer. You remember that we are in a country where the level of literacy is low and where our mothers, when they see something in the shops, they know it has the Government approval.

We are not going to lose the chance to have samples for demonstrations given when required. The amendment by the Minister, which will come later and is on the Order Paper, allows for demonstrations. To suggest, therefore, that health workers will have to buy samples for demonstration is actually misleading. This is a protection. This Bill is supposed to protect. Otherwise, we are not here to give mothers permission to breastfeed. We are here to safeguard those who use formula. We know that supplements are important because there are mothers who die when giving birth. There are mothers also who do not produce milk. We are here to safeguard, so that what they get is proper.

I beg to oppose.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose this for reasons advanced by colleagues. I want to ask the Committee to be very careful in terms of what we bring into law. If we cannot enforce what we are bringing into law, then we have failed as Parliament. When you say financial assistance, but qualify only financial assistance for scholarships, we are basically saying that for scholarships, you must disclose, but if you receive any other financial assistance as an inducement, you are not expected to disclose. In trying to get out of this, the Committee has complicated the matter even further. For that reason, I would rather be safe by sticking to what is in the Bill and not what we are going to bring in. Then we are going to have a situation where our health workers will be arrested every day. Also, I want to emphasize the point that we need to know where we are coming from, where a health worker tells a mother what she can do, how do you distinguish between demonstration and getting the mother to stop breastfeeding and use the formula because her breasts will sag as we were being told last time? Let us know where we are coming from. Let people go to the shops and buy when they have the information. Let them not receive that information from the health worker.

**The Minister for Trade** (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, I want to urge the Chairman of the Committee to reconsider his amendment. Indeed, the foundation of this Bill is in Clause 8. That is the basis of this Bill. If we are going to allow health workers to receive gifts and financial assistance, then it defeats the entire purpose of bringing this Bill to do what we want to do. Secondly, the Minister should also have considered the issue. Putting together a health worker and a proprietor is a miss-match because a proprietor is probably a business person. A business person will definitely promote what they are selling. So, you cannot

put together the health worker and the proprietor. A proprietor will be acting for the manufacturer to sell their products. So, he is most likely going to receive the product and promote it. But the health worker should not, under any circumstances, be allowed to receive any gifts, financial inducements and fellowships. The Minister has done very well by bringing the amendment that designs the ambit of those gifts. So, I want to urge her to give clarity to the law by deleting the “proprietor” from this clause.

**The Temporary Deputy Chairman** (Mr. Manyara): Minister, we actually are on the amendment by Dr. Monda and not the Minister’s.

**Mr. Mureithi:** Mr. Temporary Deputy Chairman, Sir, I have been queuing for quite some time, but I am very grateful that you have given me this opportunity.

As my colleagues have said, Clause 8 really is the gist of the whole Bill. The Constitution is supreme. Therefore, no Bill should go against it. Article 76 says in part that you cannot even seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State Officer. Health workers are State officers. So, the proposed amendment by the Committee negates the Constitution.

I beg to oppose it.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, if you look at my amendment, which is more or less the same as the one proposed by the Committee, I am not deleting anything. Instead, I have said that a health worker or a proprietor shall not accept a gift as an inducement from a manufacturer or a distributor.

Mr. Temporary Deputy Chairman, Sir, I am saying this to reinforce what has been said by Dr. Eseli. Section 10(2) of the code of regulation by Kenya Bureau of Standards says:-

“No facility of a healthcare system shall be used for the purpose of promoting infant formula or other products within the scope of this code. This code does not, however, preclude the dissemination of information to health professionals.”

I think that is what Dr. Eseli was saying. We are not outlawing the complementary food. We need to train some of these people. We can only train them through seminars and workshops. Sub-clause “iii” says:-

“A health worker or a proprietor shall not accept from a manufacturer or a distributor of a designated or complementary food product fellowship, scholarship, research grant, study tour, funding for meetings and conferences, seminars or continuing education courses.” So, instead of being so harsh, I have put “inducement” so that the ambiguity is removed. I do not know the feeling of other hon. Members.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, I think this is a case of double standards. We do this in Parliament, but out there, we do not want it to be done. You want people to sponsor Parliament to go for seminars and conferences which are paid for by other parties.

But when it comes to other issues, surely---

**The Temporary Deputy Chairman** (Mr. Manyara): There is a point of order.

**Mr. Farah:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is hon. Charles Kilonzo in order to equate a commercial activity by a commercial entity to an ideological situation.

When we accept these things as Parliament, it is because of the promotion of democratic space of human rights and other values. But in this case, that is not the product being sold. The product being sold by the State University of New York (SUNY) Kenya and other people is those ideals and values that we share, which are universal. But these people are selling something that we believe, in a sense, precisely, is helpful to our children.

So, there is no way of equating the two of them. I think he is out of order to try and equate the two.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Speaker, Sir, in fact, this is very interesting, because none other than myself rose in Parliament and objected to SUNY funding a guest of Parliament. This is because the former Ambassador used to say he controls Parliament. I even went to see the Deputy Speaker in his office. What did he do about it? Those are issues which are still pending and I would still want to hear from the Deputy Speaker. He should come and tell us why---

**The Temporary Deputy Chairman** (Mr. Imanyara): Order, Mr. C. Kilonzo. You know the rules. Please, be relevant.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, I am just responding. I am saying this is a case of double standards because if a foreign country can say it controls Parliament, then we should have no business receiving money from them.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. C. Kilonzo, there is a point of order from hon. Shebesh. I do not know what it is.

**Mrs. Shebesh:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I want to ask our colleagues to really explain what this training is all about because we are the ones who normally---

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Hon. Shebesh, you know now really, you are taking advantage of a point of order---

**Mrs. Shebesh:** No, I would like the explanation of what the training entails because we have “inducement” and “training”. We want to do away with the training because it can be used as an inducement.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I am actually glad that the hon. C. Kilonzo has brought up this issue. I am a stickler for the sovereignty and independence of our country. I regulated SUNY or any other agency that tries to come and deal with us. They are working with us on our terms. So, that is basically how the position is.

**The Temporary Deputy Chairman** (Mr. Imanyara): What is your point of order, Mr. Wetangula. I want to allow hon. C. Kilonzo to finish.

**The Minister for Trade** (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, is it in order for the hon. C. Kilonzo and the Deputy Speaker to derail debate and start engaging in triviality?

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, indeed, you are absolutely right. They are breaching the rules on relevance and I will not permit.

Hon. C. Kilonzo, please, finish your contribution.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, the Deputy Speaker is a good friend of mine. It is only that I got an opportunity to deal with that issue of the former American Ambassador.

Mr. Temporary Deputy Chairman, Sir, what I am basically saying is that the recommendations by the Committee are very fair. Surely, if we are accepting training, why would we not want health workers to be trained? The Committee has recommended and given conditions for that.

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. C. Kilonzo let me ask you. Hon. Mureithi raised the issue of constitutionality of this provision and cited the relevant provisions of the Constitution. Now the Chair, of course, is bound by Standing Order No.43 not

to allow anything that is unconstitutional. So, I would like you to address that issue regarding constitutionality because you seem to be justifying it.

**Mr. C. Kilonzo:** It is because we are attending very many seminars and workshops. Luckily, the Chair presiding now is part of the Speaker's Panel. Some of them---

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! If you insist on being irrelevant, obviously, I will overrule you.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, you asked me to state. I asked, are we having double standards? We can do this in Parliament. We can have seminars, but we are not allowing other sectors to have seminars and workshops. That is not being irrelevant.

**Mr. Njuguna:** Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment by my friend, Dr. Monda by saying that allowing the amendment is tantamount to pollution of the character of the health worker. This will be very dangerous precedent in this country.

I beg to oppose.

**The Temporary Deputy Chairman** (Mr. Imanyara): This has gone blank. I cannot see the list of those who are requesting. There are only two remaining, hon. Bahari and hon. Odhiambo-Mabona and then I will put the Question after that.

**Mr. Bahari:** Mr. Temporary Deputy Chairman, Sir, I can see the concerns of my colleagues about scholarships and the rest. But this can always be channelled through the Ministry of Education which can vet, like the Deputy Speaker has always done and it can move forward along those lines.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I wish to oppose the amendment by the Committee because it negates the whole spirit of the Bill. The Bill is seeking to protect our children by ensuring that they are provided with breast milk. Therefore, for us to discourage activities and actions, we would actually be going in the opposite direction.

With those few remarks, I oppose. I would like to tell hon. C. Kilonzo that when we are trained by SUNY we have not brought legislation here. So, he is actually giving a very interesting angle on this matter.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Speaker, Sir, this amendment completely negates the spirit of the Bill. I would like to state here that the Kenya Private Sector Alliance (KEPSA) regulations were established immediately after the code. We also have some subsequent regulations. Also, our accepting training here does not put any life in danger.

I beg to oppose.

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Minister, I can see a point of order here, but the machine is not working. I cannot tell who is on the line and who is not.

Mr. Keter, what is your point of order.

**Mr. Keter:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Keter, what is your point of order? Make a request. The microphone is malfunctioning. You will have to use the Dispatch Box. Come down!

**Mr. Keter:** Thank you, Mr. Temporary Deputy Chairman, Sir. I have just heard the Minister say that there are subsequent legislations which are in place.

**The Temporary Deputy Chairman** (Mr. Imanyara): Just a moment! The technical people, please switch on the microphone. It is on now. Go on.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, I have just heard the Minister respond when tabling the Kenya Bureau of Standards (KEBS) Code of Marketing Regulations

say that there are other subsequent regulations. Could she table those regulations so that we can be able to make this decision?

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! You know you are completely out of order. Hon. Members, I will now put the Question.

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

**The Temporary Deputy Chairman** (Mr. Imanyara): Even if they did not have it, this would not have passed the threshold of Standing Order No.43 regarding constitutionality of legislation. The Chair would have disallowed it anyway.

Mr. Keter, you were proposing an amendment. We have a technical problem because the microphone has gone off again! Maybe try the Dispatch Box. You can use whichever microphone is working.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 8 be amended-

(a) by inserting the words “as an inducement to promote a breast milk substitute or a complementary food product” immediately before the word “accept” appearing in paragraph (a);

**The Temporary Deputy Chairman** (Mr. Imanyara): I just want to clarify that “a” has been negated. So, you can only move an amendment on part “b”.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, I am moving an amendment by inserting the words “as an inducement” on it. What was defeated was the deletion. Mine is not a deletion but an insertion of the words “as an inducement”. I am replacing that.

**The Temporary Deputy Chairman** (Mr. Imanyara): You are right. Proceed.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, I am moving this amendment to remove the ambiguity which was there. The Committee was removing and the Minister has just made the Bill prohibitive for everybody. However, mine is to put an end by saying that a health worker or a proprietor shall not accept “as an inducement” from any manufacturer or distributor of a designated or complementary food product. I went ahead and deleted part “b” of “a”, distribute, display complementary foods---

*(Loud consultations)*

Can you protect me, Mr. Temporary Deputy Chairman, Sir, from the hon. Members who are consulting loudly?

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. C. Kilonzo, please consult in low tones in the spaces provided.

Hon. Keter, please move on.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, I am moving this amendment so that this Bill can be in line with the other regulations which had been mentioned earlier on and I do not need to repeat.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, because the machine here is not working, you will have to do it the traditional way by standing for me to see who wants to speak.

Yes, Madam Minister! You can use the Dispatch Box because there appears to be a problem with the microphones. If you want to catch the Chair's eye, you will have to wait and stand when she completes although the microphone seems to have started working now that you have moved to the Dispatch Box.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment because it is impossible to tell whether a gift is an inducement or not. This will lead to a lot of litigation.

I oppose the amendment.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I thank Mr. Charles Keter for this very important amendment. However, it could only be possible if there was a meter to measure inducement. But now that there is no meter to measure inducement, it becomes very difficult to say that one has accepted this gift and it is not an inducement.

*(Mrs. Odhiambo-Mabona and Mrs. Shebesh hugged  
Mr. Namwamba when he entered the Chamber)*

**The Minister for Finance** (Mr. Githae): They are congratulating him because he has been appointed the Minister for Youth Affairs and Sports.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, whereas we would like to celebrate with him, he is taking away our lady Members who are supposed to support this Bill. So, if he wants his appointment to be really celebrated, he should come and participate for the sake of the children of Kenya.

**Mrs. Odhiambo-Mabona:** ODM reloaded!

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Millie, I will send you out so that you can perform that out there!

**The Minister for Finance** (Mr. Githae): Hon. Millie is very excited. Maybe she can tell us why she is very excited.

**Mr. C. Kilonzo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Because of the good mood in the House, I will request the Chair perhaps to allow us to congratulate hon. Ababu Namwamba for his new achievement especially after being appointed the Minister for Youth Affairs and Sports.

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! The Chair is yet to be notified.

Hon. Githae, please conclude.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I was just saying that we accept the amendment by hon. Charles Keter because it was in good faith. However, the only problem is that you cannot know when a gift is an inducement or not. If only there was an inducement meter, then we would agree with him and measure what is inducement or not.

Although this was well intended, I oppose it.

**Mr. Njuguna:** Mr. Temporary Deputy Chairman, Sir, thank you for this opportunity. I very vehemently oppose the amendment by Mr. Keter.



**The Minister for Trade** (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. A health worker has no business accepting gifts of whatever nature from a manufacturer or a distributor of the very products that this Bill is trying to limit. It does not matter the nature of the gift. It should not be allowed at all because it is tantamount and susceptible to abuse.

I oppose.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I also oppose this amendment because it changes the text from being prescriptive to one in which we have to qualify the proof of intent itself. We do not have any machinery to be able to judge on that.

So, I oppose it.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, after listening to Mr. Githae and after having been convinced by my Chair, Mrs. Noor, and I can see the way they are talking together, he has agreed with me that because we cannot measure the inducement, therefore, I withdraw this amendment.

*(Amendment withdrawn)*

*Clause 8*

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 of the Bill be amended in paragraph (c), by deleting the words “determined by the Cabinet Secretary or his representative, in writing” and substituting therefor the words “prescribed by the Cabinet Secretary”.

*(Question of the amendment proposed)*

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I have a problem with the amendment proposed by the Minister here because it talks of the representative of the Cabinet Secretary. The Cabinet Secretary is the Accounting Officer. I know that some people in the industry who were calling themselves stakeholders pushed the Minister into accepting the amendments. We do not want this very important thing to be dealt with by anybody other than the Cabinet Secretary. So, I oppose the amendment.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): It will be the Cabinet Secretary.

**Mr. Farah:** Fair enough. If it is the Cabinet Secretary then I support the amendment.

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

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

*(Clause 8 as amended, agreed to)*

*(Clause 9 agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Minister, you do have a proposal to amend.

Dr. Monda, you had better listen carefully because it indicates here that if the Minister's amendment is carried, yours will not be necessary. So, just note.

*Clause 10*

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 10 of the Bill be amended in subclause (1), by deleting the words "approved by the Cabinet Secretary or his representative, in writing" and substituting therefor the words "prescribed by the Cabinet Secretary".

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Monda, I take it that you have withdrawn your proposed amendment? Confirm.

**Dr. Monda:** Yes, Mr. Temporary Deputy Chairman, Sir.

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

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

*(Clause 10 as amended, agreed to)*

*Clause 11*

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

THAT, Clause 11 be amended-

(a) in sub clause (1) by deleting the words "or a class of persons" and substituting therefor the words "with training in health matters";

(b) in sub clause (3) by deleting paragraph (b).

*(Question of the amendment proposed)*

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. The reason being because the Bill is not limited to police and health workers, any authorized person can implement this law. For example, if it is goods coming through our port, the Immigration Officers or the Kenya Revenue Authority (KRA) can deal with that. It can be importation like when we had the Chinese milk which was very bad and we had to use the port.

*(Question, that the words to be left out*

*be left out, put and negatived)*

*(Clause 11 agreed to)*

*Clause 12*

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

THAT, Clause 12 be amended by deleting the words “at any reasonable time” appearing in sub clause (1) and substituting therefore with the words “upon warrant issued by a court”.

Mr. Temporary Deputy Chairman, Sir, for the same reason Mr. Githae opposed my earlier amendment on inducement, Clause 12(1) states as follows:-

“For purposes of enforcing this Act an officer may at any reasonable time enter any place in which the officer believes on reasonable grounds.”

To me, this sounds ambiguous and I am replacing that to read as follows:-

“with a court order upon a warrant being issued, this officer can be allowed to do that.”

Section 31 of the Constitution, under Privacy - and I wish to read it out - it states as follows:-

“Every person has the right to privacy, which includes the right not to have-

(a) their person, home or property searched;

(b) their possessions seized;

(c) information relating to their family---“

So, I am basing my amendment on the Constitution.

*(Question of the amendment proposed)*

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. The reason being that some instances are emergencies. I will remind the hon. Members about the time when we had the Aflotoxin---

**The Temporary Deputy Chairman** (Mrs. Mugo): Hon. Minister, address the issue of constitutionality. The Constitution guarantees the right to privacy. That is what is being provided for. If the law that you are amending goes contrary to the Constitution---

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, the law guarantees the right to privacy but I think when there is danger of any sort and especially to life - and health, Bills normally deal with life and welfare of the people - that time we must be allowed to move fast.

I would like to remind this House that when there was the case of Aflotoxin in Unimix children’s food, this House ordered that we remove all the Unimix wherever it was – and it was manufactured in this country - which the Ministry did. With such a law, we would have had to wait to go to court to get a warrant. In the meantime, children would have died.

The other one is when we had the Chinese milk that was contaminated. We removed it immediately. Indeed, some children had already died. So, this will be cumbersome. It would mean---

**The Temporary Deputy Chairman** (Mr. Imanyara): What is the purpose of the amendment?

**The Minister for Public Health** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, it is to introduce the requirement of a court warrant.

**The Temporary Deputy Chairman** (Mr. Imanyara): Minister, it is to limit arbitrariness. That is why the Mover of the amendment wants such action taken after securing a court warrant. Otherwise, it will be open to abuse.

**The Minister for Public Health** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I am opposing the amendment on reasonable grounds. I want to call to your attention to the fact that we already have this provision in the Public Health Act, which is what we have been using. It has never been abused. It is only used when there is utmost need. We are trying to realign the law, so that one Act does not contradict the other.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, hon. Martha Wangari Karua.

**Ms. Karua:** Mr. Temporary Deputy Chairman, Sir, I, too, wish to oppose the amendment but to also state clearly that the Constitution allows derogation from the rights, but it only can be through a law enacted in Parliament, which is what we are doing. The test is whether it is justifiable in an open democratic society. It is justifiable in situations that warrant emergency action. Anybody who feels that their rights are violated can have recourse to our courts.

Therefore, in the circumstances, Clause 12 should be left as it is, because food is a matter of life and death.

I beg to oppose.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, hon. Kutuny.

**Mr. Kutuny:** Mr. Temporary Deputy Chairman, Sir, while appreciating the contribution by the Minister and “Her Excellency”, we are giving a blanket cheque to the people who are going to be the custodian of the resultant Act. They might misuse it. We have seen many cases of people using their offices to settle scores or carry out vendetta. So, it is important, if someone has to be searched or arrested, that the officer concerned is required to go to court and seek a warrant of arrest, so that the other party can also be given a fair hearing.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, hon. Farah Maalim.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I also want to oppose the amendment. The right to privacy is by and large in respect of a private place. A public place for manufacturing, like an industry, is not a private place. I do not think the Constitution protects factories and industries. Otherwise, the public health workers who go to butcheries to check whether the meat being sold is fit for human consumption or not could also be told that they cannot do so without a court order.

You can imagine the situation in which we consume meat everyday and every time we have an issue with meat, we have to go to court to get an order. The amendment goes further to say “at any reasonable time”, which means it does not allow the enforcement officer to go in at midnight or early in the morning. It has to be at reasonable time.

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Maalim, the amendment says “may, at any reasonable time, enter any place“

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, it also says “in which the officer believes, on reasonable grounds, that:-

(a) a designated or complimentary food product is or has been produced or stored, manufactured and packaged;

(b) anything used in production;”

So, parts (a), (b) and (c) qualifies any place, which means you cannot go into the private house of somebody.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, hon. Githae.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I oppose the amendment. The reasons have been stated very clearly by the Deputy Speaker.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, hon. Kimunya.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the spirit of this Clause is consistent with all regulatory bodies. You cannot have a regulator who does not have the power to access any premises, be it factories or shops; to see how products are being displayed and all those things. If they have to go to court before going to a shop, they will be having a lot of issues pending in court and clogging our justice system.

**The Temporary Deputy Chairman** (Mr. Imanyara): Let us have the last one from the Mover.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, while appreciating the contribution by my colleagues, it is good that we also protect the Constitution. The right to privacy is under the Bill of Rights, which is very clear. It says that every person has a right to privacy, which includes the right not to have their persons, homes or properties searched. So, it is the law which---

**The Temporary Deputy Chairman** (Mr. Imanyara): Read that provision to the end.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, it says:-

“(b) their possessions seized; (c) their family or private affairs unnecessarily required or revealed; or (d) the privacy of their communication infringed.”

Mr. Temporary Deputy Chairman, therefore, if you see the reasons that have been given under parts (a), (d) and (c), appreciating the fact that we are now in an era of transparency and our judicial system is functional, any officer can get a warrant of arrest on the same day of applying and move in. It takes about an hour for an officer to get a warrant of arrest.

That is why I said that I was removing the ambiguity that has been misused by some people from time to time. Even businessmen can misuse this ambiguity to have businesses of their rivals closed down.

**The Temporary Deputy Chairman** (Mr. Imanyara): What is your point of order, hon. Shabesh?

**Mrs. Shabesh:** Mr. Temporary Deputy Chairman, Sir, I just want to inform my colleague. I would like him to go to the next---

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, I do not need information.

**The Temporary Deputy Chairman** (Mr. Imanyara): Order, hon. Shabesh. He does not want your information. I am sorry.

Complete your submissions, hon. Keter.

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, therefore, I urge hon. Members to consider this amendment. There is nothing wrong with it. It is just a question of the officers getting a search warrant from court, so that they can move in and do their work.

So, I beg to maintain my amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, I have great sympathy with the proposed amendment, but I would like you to decide on its fate. So, I will put the Question.

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

**The Temporary Deputy Chairman** (Mr. Imanyara): I now call upon Dr. Monda to move his amendment.

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

THAT, Clause 12 be amended in Sub Clause (1) by deleting paragraphs (a), (b) and (c).

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, hon. Robinson Githae.

Hon. Githae, you requested to speak and I recognised you. So, if you are still interested, you may continue.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, we must oppose the amendment by the Chair of the Departmental Committee because if we agree to it, it will become impossible for us to implement the law that we are making. If we delete paragraphs (a), (b) and (c) of this Clause, it makes nonsense of the law we are making.

So, we must, really, oppose the amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, hon. Farah Maalim.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I also oppose this amendment because by deleting paragraphs (a), (b) and (c) of this Clause, we are clearly trying to just have a shell of an Act. What will a shell of an Act do? You must have the substance therein to enforce the Act. So, I oppose it. It is very obvious. It should not take long.

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

*(Clause 12 agreed to)*

*(Clauses 13 and 14 agreed to)*

*Clause 15*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, I notice that there is a proposal for amendment by hon. Kutuny. I take it that hon. Kutuny does not wish to proceed with the proposed amendment. If you do not want, indicate so then. For the record, indicate so. The HANSARD should reflect that you have withdrawn.

**Mr. Kutuny:** Mr. Temporary Deputy Chairman, Sir, I have withdrawn the amendment.

*(The proposed amendment withdrawn)*

*(Clause 15 agreed to)*

*(Clauses 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 agreed to)*

*Clause 28*

**The Temporary Deputy Chairman** (Mr. Imanyara): There are three proposals for amendment and the first one is by the Minister, hon. Beth Mugo. Minister!

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I do not have any amendments to this clause.

**The Temporary Deputy Chairman** (Mr. Imanyara): You do have a proposal for amendment on Clause 28.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, there was this proposed amendment which I wish to withdraw. It will make administration---

**The Temporary Deputy Chairman** (Mr. Imanyara): So, you have withdrawn it?

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Yes, Mr. Temporary Deputy Chairman, Sir. I withdraw.

*(The proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Okay. Hon. Dr. Monda, you have a proposed amendment.

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

THAT, Clause 28 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (2) –

(3) In making regulations under subsection (1), the Cabinet Secretary shall make reference to the International Code of Breast milk Substitutes (1981), subsequent World Health Assembly resolutions or any other stated public policy.

(4) Regulations made under this section shall not come into operation upon publication but shall be laid before the National Assembly and the provisions of sub-sections (5) and (6) shall apply to those regulations.

(5) If a resolution is passed by the National Assembly within twenty days on which it next sits after the regulation is laid before it that the regulation be annulled or amended in a specific manner, the regulation shall thenceforth be void or amended as resolved by the Assembly.

(6) If no resolution is made by the National Assembly

Within expiry of twenty one days from the date which the Assembly next sits from the date on which the regulation is laid under subsection (3), the regulation shall come into operation in the form laid before the Assembly under that subsection.

This amendment is meant to make the Cabinet Secretary to draft regulations. The proposed regulations will be brought to Parliament for approval before they are effected or implemented. As much as the Minister would wish to withdraw her amendment at this point, these are amendments that we agreed upon together. We indicated that it would be fair for Parliament to countercheck and oversee that the Cabinet Secretary does not become rogue and arm-twist manufacturers and anyone else in the industry from doing what they do. Parliament will exercise its watchdog role and ensure that the regulations are implemented.

*(Question of the amendment proposed)*

**The Minister for Public Health and Sanitation** (Mr. Mugo): Mr. Temporary Deputy Chairman, Sir, it is correct that we had discussed the matter. But the way it has been put here is

not what we had agreed. We had agreed that if the regulations are brought before the House and not approved within 21 days, they will be deemed to have come into the effect of the law. That was our agreement. But this amendment as it is was not agreed upon. That is why I am withdrawing. We can have a further amendment.

**Dr. Monda:** On a point of order, Mr. Temporary Deputy Chairman, Sir, I am not really sure whether the hon. Minister is reading from the Order Paper. That is because what she is quoting is exactly what is in the Order Paper. I request that you look at it and advise the Minister. That is what is provided for if you look at Sub-section 4.

**The Temporary Deputy Chairman** (Mr. Imanyara): Indeed, Madam Minister, just pay attention to what he is saying because what you have said is exactly what he is saying.

**Dr. Monda:** Mr. Temporary Deputy Chairman, Sir, if I may refer the House to the Order Paper, we have said in Sub-Clause 2 and 3 that:-

“(2) In making regulations under subsection (1), the Cabinet Secretary shall make reference to the International Code of Breast Milk Substitutes (1981) and subsequent World Health Assembly Resolutions or any other stated public policy.

(3) Regulations made under this section shall not come into operation upon Publication, but shall be laid before the National Assembly and the provisions of Sub-sections (5) and (6) shall apply to those regulations.

Mr. Temporary Deputy Chairman, Sir, both Sub-sections (5) and (6) are talking about what the Minister is saying; that if, indeed, the regulations laid in the House have not been approved or rejected by the House within 21 days, then they will automatically come into effect. That is what is on the Order Paper.

**The Temporary Deputy Chairman** (Mr. Imanyara): Very well. Madam Minister! Any-- - Yes. Sorry. I see a long list here. Mr. Githae, you are next.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I have looked at the Minister’s amendments and the Chairman of the Committee’s amendments and actually they are almost the same. In fact, on Sub-Section (6) on what the Minister was saying is actually there. It reads:-

“If no resolution is made by the National Assembly within expiry of 21 days from the date which the National Assembly next sits from the date on which the regulation is laid under Sub-section 3, the regulations shall come into operation in the form laid before the National Assembly under Sub-section 3.”

So, I think we give the Minister a chance to reconfirm that, indeed, what Dr. Monda is saying is actually what was agreed upon.

**The Temporary Deputy Chairman** (Mr. Imanyara): Do you confirm that what Dr. Monda is saying is what you had agreed upon? Hon. Mugo, is that the position?

**The Minister for Public Health and Sanitation** (Mr. Mugo): Mr. Temporary Deputy Chairman, Sir, yes, it is the position.

**The Temporary Deputy Chairman** (Mr. Imanyara): So, you are, indeed, supporting the amendments.

**The Minister for Public Health and Sanitation** (Mr. Mugo): Mr. Temporary Deputy Chairman, Sir, yes.

**Mr. Farah:** On a point of order, Mr. Temporary Deputy Chairman. This is a specialized Ministry. That is where the experts in all this business are. Most of our ministries make their own regulations. We do not subject all those regulations to parliamentary ratification.



We do not subject them to politics because we are a political body. So, I want to believe that the Minister must have been arm-twisted in a big way because it shows there was intense pressure from the stakeholders. I oppose that amendment.

**Dr. Monda:** On a point of order, Mr. Temporary Deputy Chairman, Sir. If you heard the Member for Lagdera well, he has talked about the Minister being arm-twisted. Indeed, the Minister has confirmed that, that is what we had agreed. In the Ministry, there are technical people who advise the Minister. Is hon. Farah in order to impute that kind of motive on the Committee?

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Farah Maalim, I am sure you did not intend to say what you said in your contribution but, there is an opportunity for you to correct the use of the word “arm-twisting.”

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, it is an open secret that the stakeholders from the industry have been camping out there. This is one thing the Minister will confirm. In any case, the Ministry of Energy, the Ministry of Finance and the Ministry of Local Government are all Ministries which are making their own regulations. They have the experts in there. Why do we have to subject this regulation on a matter that is very professional to Parliament itself?

So, I oppose this amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): But the issue that has risen out of your order is that you have used language that is unparliamentary. You talked about “arm twisting.”

**Mr. Farah:** Is that unparliamentary, Mr. Temporary Deputy Chairman, Sir?

**The Temporary Deputy Chairman** (Mr. Imanyara): You must withdraw that word because you are suggesting that the Minister did not act on her own volition and that she acted in the interest of others who may not have the best interests of the industry or the nation at heart.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, could you allow the Minister to say a word?

**The Temporary Deputy Chairman** (Mr. Imanyara): No! Order! I order that the words “arm twisting” in relation to the Minister are out of order!

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I withdraw the words “arm twisting” and I will use the word “pressure” instead, which basically is very parliamentary.

**The Temporary Deputy Chairman** (Mr. Imanyara): Very well!

**Mr. Farah:** Can I finish now, Mr. Temporary Deputy Chairman, Sir?

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, you may now finish.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I will want to leave this process of setting the regulations to the doctors and other professionals in the Ministry. These are the experts who work for us. They do not work for anybody else other than taxpayers of this country, just like many other Ministries do.

Thank you, Mr. Temporary Deputy Chairman, Sir.

**Eng. Rege:** Thank you, Mr. Temporary Deputy Chairman, Sir. What I wanted to propose has already been alluded to by the previous speaker. Nonetheless, I support hon. Monda’s proposed amendment because the Bill is generated by the Cabinet Secretary, and then it goes to the House Committee before it is tabled in Parliament.

Thank you, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): Very well. Hon. Kutuny?

**Mr. Kutuny:** Thank you, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): Are you contributing or are you---

**Mr. Kutuny:** Mr. Temporary Deputy Chairman, Sir, I think it is similar---

**The Temporary Deputy Chairman** (Mr. Imanyara): We have not dealt with this. I thought you had sought the Floor to speak on the same amendment.

**Mr. Kutuny:** It is the same, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): If so, then that is okay.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Chairman, Sir, I find this amendment regular and proper. We have a whole Committee on Delegated Legislation which meets to look at all these regulations. We should not have a procedure where Ministries are allowed to make regulations without supervision of the National Assembly. So, they should be tabled here and our relevant Committee on Delegated Legislation will look at them. If there is no objection, they become law. Some of them have far reaching consequences like any other direct legislation.

Thank you, Mr. Temporary Deputy Chairman, Sir.

*(Applause)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Indeed, Dr. Monda, that is the position. If you look at the Standing Orders, the Committee on Delegated Legislation is charged with that specific requirement to scrutinize all regulations and all subsidiary legislation. So, it is really superfluous in that you are asking the Committee to do what is already required to do under the Standing Orders. But it is up to you to proceed.

Mr. Kimunya is dying to say something.

Proceed, Mr. Kimunya!

**The Minister for Transport** (Mr. Kimunya): Thank you, Mr. Temporary Deputy Chairman, Sir. Indeed, you have clarified that issue. It may appear superfluous, but I think the last bit is a proviso that if they are tabled here and no action is taken within 21 days, they will become law. So, it obligates the House to either make a decision or to allow it to become law, which is very good. I wish that all this now becomes standard for all regulations.

So, I will support this amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Njuguna; the last one before I call the Minister.

**Mr. Njuguna:** Thank you, Mr. Temporary Deputy Chairman, Sir. It is clear that there is concurrence between the Minister and the Chair of the Committee. There is no harm in this Parliament hearing the regulations. Therefore, I support the amendment by the Committee Chair.

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Mugo, and then---

*(Mrs. Mugo stood up in her place)*

Sorry, Mrs. Mugo. It is not your amendment. I thought the last word should have come from Dr. Monda.

Since you are on your feet now; you may speak.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I just wanted to throw some light on the fact that my position is true; I supported the proviso as it in the Bill. But during the meeting, because of the way the industry had pressed a lot, the Chair and the Committee decided that we should meet half way. So, I agree that we put

it to the House. I support hon. Otieno that it is only, really, procedural, but we should put a limit of 21 days. So, both hon. Farah and Dr. Monda are correct.

Yes, it was not my original idea, but I agree with it.

**The Temporary Deputy Chairman** (Mr. Imanyara): Very well.

What is your point of order, hon. Farah?

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, we are passing a piece of legislation that touches on our own children's future. When parliament goes on recess, I know that the Committee on Delegated Legislation is going to have that oversight on all regulations in future. But as it is right now, before it comes into full force and given that we are going through an election period, let them be part of this blanket one.

But for now, I want us to oppose this amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): Very well; the House will determine that.

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

We have a further amendment by hon. Kutuny. It is actually similar to the one we have just adopted, hon. Kutuny; so that might guide you.

**Mr. Kutuny:** Mr. Temporary Deputy Chairman, Sir, I had wanted to say that earlier and also make my contribution. But I think for this case, then I withdraw my proposed amendment so that we can save time.

**The Temporary Deputy Chairman** (Mr. Imanyara): Very well.

*(The proposed amendment by  
Mr. Kutuny was withdrawn)*

*(Clause 28 as amended agreed to)*

*(Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara) Madam Minister, will you, please, move?

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I beg to move the Committee doth report to the House its consideration of The Breast Milk Substitutes (Regulation and Control) Bill, Bill No. 38 of 2012, and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House Resumed)*

*(Mr. Deputy Speaker in the Chair)*

**REPORT, CONSIDERATION OF REPORT  
AND THIRD READING**

**THE BREAST MILK SUBSTITUTES  
(REGULATION AND CONTROL) BILL**

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole House has considered the Breast Milk Substitutes (Regulation and Control) Bill and approved the same with amendments.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Finance** (Mr. Githae) seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

**The Minister for Finance** (Mr. Githae) seconded.

*(Question proposed)*

**Mr. Deputy Speaker:** Mr. Minister, do you want to say something to appreciate the support of your colleagues?

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Deputy Speaker, Sir, I would like to take this opportunity to thank all the hon. Members and the Chair for the great interest they have shown in this Bill and also for their great support. This is evidence of how much we care for the Kenyan children. I also thank my officers for the work they have put into this Bill. I hope we will participate equally in its implementation.

**Ms. Karua:** Mr. Deputy Speaker, Sir, I wish to congratulate the Minister for bringing this Bill, which was long overdue; I also thank the hon. Members for showing very intense interest in the Bill. I also thank the Committee for being able to work with the Minister in almost all the areas and doing what is in the best interests of children, and not just listening to commercial interests.

I support.

**Dr. Monda:** Mr. Deputy Speaker, Sir, I also rise to congratulate the Minister for very ably working hard. She has worked with us in person and made sure that even when we worked until at night, she remained with us. When we worked overtime with the industry stakeholders, the Minister was available and participated in our discussions.

I want to congratulate the Committee I chair for the time they put into this Bill; they sat into the late hours of the night to look into the Bill. This collaboration between Ministries and Committees of the House is what I beg for in this House. When we work together and solve issues that are contentious, this easily gives us a way forward.

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): Mr. Deputy Speaker, Sir, I take this opportunity to congratulate Mrs. Mugo for the many Bills she has brought to this House since she became the Minister of Public Health and Sanitation. This particular Bill on breast milk has come at an appropriate time; we know that we have developed so much and many women are employed, and so they forget to breast feed their children. I really thank her for that. This shows how effective women leaders are.

I am counting on all hon. Members; when the Bill on “not more than two thirds” comes here, they should pass it. If we had more women as Ministers or heading various bodies, definitely we would have better Bills in this House that would benefit the whole nation. When you support a woman, you have supported a family and a family is the basis of the nation.

**Prof. Kaloki:** Mr. Deputy Speaker, Sir, let me also join my colleagues and thank the Minister for bringing such a timely Bill to the House. Can I also request the Minister and the Ministry officials, since they are also here, to sensitize the public to know that we now have a law for all the counties that can be used to make sure that we have healthy babies and Kenyans.

**The Minister of State for Development of Northern Kenya and other Arid Areas** (Mr. I.E. Mohammed): Mr. Deputy Speaker, Sir, I also want to congratulate the Minister, the Committee and all the people who have worked very hard on this Bill. I am sure this Bill will save the lives of many children in Kenya. It will improve the quality of life of our children. Therefore, I ask all stakeholders to help in implementing it. The industry should collaborate with the Ministry of Public Health and Sanitation to make sure that this law is implemented as envisaged by the Minister.

**Mr. Kapondi:** On a point of order, Mr. Deputy Speaker, Sir. Basically the Bill has been passed and we have other important Bills awaiting debate. Is it in order that you call the next Order?

**Mr. Deputy Speaker:** Order! Mr. Kapondi, you have been in this House for over four years. You can only call for the Mover to reply; you cannot call for the next Order. That is the prerogative of the Chair. You wait until you are on the Chair then you can exercise that power.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I think he is also out of order because he wants to stop me from contributing, yet I am a defender of children in this House.

I want to congratulate the Minister for putting the children of this country first. I know that this Bill has taken many years. Therefore, I want to thank the Minister and hon. Members.

**Mr. C. Onyancha:** Mr. Deputy Speaker, Sir, let me also add my voice to that of those who have congratulated this Minister in relation to this Bill, which she has worked very hard on. You know how often she has disturbed the House Business Committee wanting this Bill to come to the Floor of the House. Let me say that children are the most important assets that we have in this country; it is very good to see that the Minister is concerned about them.

I support strongly and thank her.

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, let me take this opportunity to also commend very highly the Minister and her entire staff for the very remarkable job they have done. This is a very historic Bill in the life of our country. I hope that it will send a serious signal of the good will that we have towards our children in this country. It is also important that manufacturers note that they are not expected to exploit Kenyans.

**The Minister for Finance** (Mr. Githae): Mr. Deputy Speaker, Sir, the words that I am going to say are those of the Minister. First of all, she forgot to thank the Chairman of the Departmental Committee for a job well done; for really working very hard and particularly, looking for compromises. It was not an easy subject, but we are glad that today we have been able to pass this very important piece of legislation. I also want to thank the Members of the Committee also for agreeing to work late at night and over the weekends, in order to come up with their amendments.

Mr. Deputy Speaker, Sir, let me also thank the members of staff in the Ministry for having been there when they were required and giving the technical input. Lastly, she wishes to thank employees of this august House also for supporting the Committee and her when they were dealing with this Bill.

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*

*Second Reading*

THE PREVENTION OF TERRORISM BILL

*(The Minister for Finance on 19.9.2012)*

*(Resumption of Debate interrupted on 19.9.2012)*

**Mr. Deputy Speaker:** Hon. Augustino Neto will be making his Maiden Speech.

*(Applause)*

**The Member for Ndhiwa** (Mr. Augustino Neto Oyugi): Thank you very much, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, first, I would like to support the Prevention of Terrorism Bill. But I will be making substantive comments on that particular Bill later on. If you may permit me, I will take this opportunity then to proceed and make my Maiden Speech.

Mr. Deputy Speaker, Sir, first, I would like to thank the people of Ndhiwa for overwhelmingly voting for me and the party; showing that the party is still going strong. I would also like to thank the very able party leadership of ODM that came down to Ndhiwa to support the party. I would also like to thank the various Kenyans and people who supported our campaign; the Prime Minister and various Members of Parliament who did support us in one way or the other.

Mr. Deputy Speaker, Sir, on behalf of the people of Ndhiwa, there are a couple of Questions that I will be asking over the next few weeks. One of them, of course, that they are really interested in, is the issue of conclusively having a report on the plane crash of the late Member of Parliament. The people of Ndhiwa Constituency would really like this particular inquiry expedited and the report of the same given. This is because the people of Ndhiwa underscored the fact that under His Excellency's Government, there have been several plane

mishaps, and several of these inquests have never been tabled or concluded. So, it is in their interest that this particular one be expedited and the same report tabled.

Mr. Deputy Speaker, Sir, the other thing that the people of Ndhiwa will be requesting is the fact that there were pledges made in terms of tarmacking various roads. I will be following that very closely over the next couple of days; that the various roads that were being tarmacked be concluded and promises fulfilled. Also, there were promises and pledges of a university being started in Ndhiwa. We will be following that very closely.

Mr. Deputy Speaker, Sir, since I have thanked the people of Kenya and the various supporters, I really think that I come to this particular House at a time when there is a national crisis, if you permit me to say that. I swore today to protect and uphold the Constitution of Kenya. But if you may permit me, Article 43 of the Constitution does highlight what we call economic socio-cultural rights, which is the right to health and education, in Article 43(2). As we speak today, there are several health centres and public hospitals that are not functional. If you saw the way the Minister for Finance did respond to a question in a Ministerial Statement, I think that, that was rather callous because we have various Kenyans without healthcare. I really think that in the next week, I will be demanding for a Ministerial Statement on the status of the doctors' strike as well as the teachers' strike. This is because we have very many poor children who are staying out of schools. I really think that we should not balkanize this country in the sense that the rich are able to afford to go to school, whereas, the poor who go to public schools, are not in school now because of the ongoing teachers' strike. So, the Government really needs to show leadership in this particular issue. I am hoping that next week, we will be seeing various conversations to support. I will be asking about these various Ministerial Statements next week.

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

*(Applause)*

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Thank you very much, Mr. Deputy Speaker, Sir. I would like to congratulate Augustino Neto Oyugi, Member for Ndhiwa Constituency, who waged a valiant struggle to capture that seat, amidst all kinds of propaganda and subterfuge. I must say that from his Maiden Speech, he promises to be an extremely fluent debater, focused and, indeed, constructive in this National Assembly. So, we look forward to adding one more jewel in the crown of ODM, in the person of Augustino Neto Oyugi. *Karibuni.*

Mr. Deputy Speaker, Sir, I would like to support The Prevention of Terrorism Bill for the following reasons. One, laws are always made due to human experiences. Four or five years earlier, it would not have occurred to any Kenyan that a terrorism Bill would be necessary in this National Assembly, notwithstanding the fact that in 1998 we had serious bombings in this City. The reality had not dawned on Kenyans, notwithstanding the fact that subsequently, there was the Paradise incident in Mombasa. The reality is now here with us. Just a few days ago, the security forces recovered a cache of arms in Eastleigh; the kind and range of arms that cannot be carried and kept in any facility in this City, outside the facilities in the security sector, except by those with sinister motives.

Mr. Deputy Speaker, Sir, governments always exist to guarantee three things; the life of the citizens, property of the citizens and security of the citizens, in no order whatsoever because all these guarantees are interdependent and reinforcing. In that regard, therefore, now that the reality of terrorism is here with us, we need a law that is humane, enforceable and in line with

international standards, agreements and commitments that we have as part and parcel of the community of civilized nations.

Mr. Deputy Speaker, Sir, therefore as we debate this Bill, let us be conscious of the fact that it is timely. As we debate this Bill, let us be conscious of the fact that it is urgent. As we debate this Bill, let us be mindful of the fact that our own Constitution expects our Government to have laws that will guarantee life, property and security of our nation. I know that previously there has been a scare about this Bill that it might target a certain community. This is because we were going by the template of other nations which, rather than enact laws that are independent of individuals and communities, were trying to enact laws that were stymied by the specific experiences of those nations and the stigmatization of certain communities. In this country, Kenya, we do not have any culture of stigmatizing anybody on the basis of insecurity or terrorism. Indeed, I would be the first to be against any law or regulation that is based on stigmatizing any community or any individual. Therefore, as we debate this law, let us be conscious that the fear of any Kenyan on the basis that a law like this can be used to stigmatize any community is put to rest. Let us be sure that we guarantee Kenyans that when this Bill comes into law, it will enter the corpus of all Kenyan laws that, first and foremost, promote human rights and guarantee human safety.

I believe too that discipline and professionalism of our security forces are now going to be enhanced and indeed guaranteed by certain provisions in our new Constitution. I believe that the professionalism of our security forces are going to be promoted by certain institutions that this Constitution expects this National Assembly to put in place. One of those institutions is the Police Commission. We know that the framers of our Constitution had a specific goal and purpose for establishing such a body as the Police Commission and for ensuring that the individuals that will compose that Commission are of certain qualifications and origin. Therefore, when such commissions come into place - and it should be in place by now - it will be one of those institutions that will ensure that a law like this is implemented in line and in the spirit of the Kenyan Constitution.

We also know that our security forces as a whole from those in the sea to those on land and in the air require a law like this to make sure that the activities that they undertake against those who would like to use arms to raise against our people and to jeopardize our security; that the actions they take are according to the law. At the moment, we put our security forces in jeopardy because they do not have a proper legal framework when it comes to terrorism to deal with this menace. Therefore, this House has a tremendous responsibility on its hands with regard to our security forces; that since we have the responsibility of making law; that we make a law in such a way that it will guarantee our security forces; the way and wherewithal to undertake and carry out their proper functions in guaranteeing the security of our nation.

Mr. Deputy Speaker, Sir, I know that Kenya in this region is looked up to as a leader. We enjoy the comparative advantage of being a service economy. Security is one of the services that we must not only provide to our people but also to provide to our region. In that regard, I would like to congratulate and encourage our Kenya Defence Forces (KDF) who are playing an extremely gallant role in Somalia in line with the leadership that Kenya must provide in this region, without being arrogant, without assuming anything as being dominant in the region, but with humility and service to the African people and the citizens of this region. It is in that spirit that Kenya must be one of the first nations in this region to pass an anti-terrorism Bill and put in place an anti-terrorism law that will be an example in the region. That will provide the legal



wherewithal for us to exercise this very important role of being a leader in the region as a service economy and as a service provider to the region as we are doing in Somalia at the moment.

We know it from history and from reality that our borders are porous. Indeed, within the region, we are the only nation with extremely porous borders. Why do I say so? It is because we have both land and sea borders and to keep those in an economy which is not much endowed with resources is extremely demanding. Therefore, we give our security forces an extremely onerous responsibility to guarantee security in this nation that requires that when it comes to an issue like terrorism, indeed, we must not be lacking. We must not be slow. We must not be wanting in providing the legal wherewithal for our security forces. We should undertake this extremely important responsibility.

I do not want to speak further than that but let me end by saying that I, as Prof. Anyang'-Nyong'o, Member of Parliament for Kisumu Rural and Minister for Medical Services and incoming Senator for Kisumu County, I beg to support this Bill.

**The Minister for Regional Development Authorities** (Mr. Gumo): Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to support this Bill. Terrorism is a dangerous thing in this world and almost everybody in the world is fighting terrorism. It is necessary that we have a Bill to deal with this particular thing. We have suffered in the past because of terrorism and it is all known that it is a dangerous thing that we must deal with immediately and we need a law that can deal with this particular thing. We have seen quite a number of cases which have been taken to court and for one reason or other; they have managed to get out of it maybe because they are not guilty or because a law was not in place. However, now that we are putting the law in place, I am sure that we shall be in a better position to deal with this.

Just before I continue, I also need to congratulate the two Members of Parliament; Mr. Neto, he did very well. In fact, as an ODM MP, he has done us good. Also Mr. ole Sakuda, my friend, I did not know he had left us until he campaigned on TNA. Is it called TNA or what?

*(Laughter)*

All this time I thought he was with us but all the same, a friend is a friend. We are a developed society and we should not take any party member to be an enemy. We should work with everybody else and we should have friends from either party because if we want to develop this country, we do not have to have friends only from within certain parties.

We have seen terrorism bring countries down. We have realized that our country has been under threats of late. We must realize that some of the jobless young people have been convinced and lured into these activities. Some very young innocent people have been involved in these activities. So, we must try as Government to create jobs so that we can control these young men. This is because some of these young men are influenced because they have nothing to eat or live on. That is exactly why they are involved in such activities. It is because they are paid some little money here and there for whatever reasons that are known to these terrorists.

At the same time, we have had a lot of problems because we have so many guns in the wrong hands. In fact, the Government must now try to get back these guns from the hands of the wrong people and ensure that we make use of the security to look after the people. The guns we give to home-guards and others to try and guard the others have really caused problems to the extent that we do not even know who is, really, a home-guard and who is a terrorist.

Some of the tourists who come here get threatened when they see our people walk around with guns on their shoulders as if they were walking sticks. They put them on the shoulders as

they look after the animals. They are not licensed. *Mtu anatembea na bunduki* on his shoulder and the television cameras pick that. How do we have things like these happening in a civilized country like ours? These guns must be mopped up and taken away from these people. Let them use sticks if they want or spears if they are Maasais like him. Guns are dangerous things that should not go into people's hands anytime.

Mr. Deputy Speaker, Sir, we have to find a way of getting these guns out of the wrong hands so that we can be protected by the security personnel. It is also high time we came up as leaders and gave our security agents, particularly, police officers, support. We have not been able to support the police as much as we could. The police are doing a lot of work in safeguarding this country. However, whenever a policeman is killed, we politicians do not come out to support them. In fact, if a thug is killed somewhere we tend to ask: Why was so-and-so killed? We ask this and maybe the person was a thief who was stealing somewhere. However, whenever a policeman is shot, nobody talks about it.

**Mrs. Odhiambo-Mabona:** I talk!

**The Minister for Regional Development Authorities (Mr. Gumo):** Good. That is very good. We need to give them morale so that if a policeman suffers in the course of duty, he should be supported. We have seen situations where people have wrestled down policemen and taken their guns. This is because these days, policemen fear even shooting thugs. They shoot and then they are taken to court immediately. In the incident that happened in Garissa, the guns were taken from the policemen and the same guns were used to kill the police officers. The police officers fear that if they shoot they will be taken to court and charged. So, we must also change that law. Anybody who has a gun is an enemy. Anybody who comes with a gun and there is a policeman who has a gun, the police officer should shoot that person. Why should a person who has a gun and he is not a police officer--- Who is he going to shoot and why is he carrying that gun? That is a dangerous person. That is not a person you should spare because if you do not shoot him, he will shoot you. This has happened.

Mr. Deputy Speaker, Sir, we must make sure that our country is secure. We have to make sure that we support our security officers so that they know that whatever job they are doing to defend our people, they are also supported.

With those few remarks I beg to support.

## ADJOURNMENT

**Mr. Deputy Speaker:** Hon. Members, it is now time to adjourn the proceedings of the House. The House stands adjourned until Tuesday, 25<sup>th</sup> September, 2012 at 2.30 p.m.

The House rose at 6.30 p.m.