

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 19th June, 2013

The House met at 2.30 p.m.

[The Speaker (Hon. Muturi) in the Chair]

PRAYERS

PAPERS LAID

The following Paper was laid on the Table:
The Report of the Budget and Appropriations Committee on the Supplementary Estimates II, 2012/2013.

(By Hon. Musyimi)

NOTICES OF MOTIONS

REVIEW OF TERMS OF SERVICE FOR KPR IN ASAL AREAS

Hon. Lentoimaga: Hon. Speaker, Sir, I beg to give a notice of the following Motion:

THAT, aware that insecurity in Arid and Semi Arid Lands (ASAL) is caused by perennial cattle rustling that is aggravated by poor or no infrastructural facilities, also noting that there is inadequate deployment of National Police Reservists, who are ill equipped and paid volunteers within the National Police Service and lack the motivation to fight this crime leading to apathy that has seen residents losing their livestock and even lives; further aware that there is need to restructure the security machinery in ASAL areas to mitigate the situation; this House urges the Government to urgently review the terms and conditions of the recruitment, remuneration and deployment of Kenya Police Reservists (KPR) in ASAL areas; with a view to providing them with uniforms, proper identification documents, automatic firearms, regular allowances and general improvement of their working conditions so as to restructure this crucial sector and help the KPR fight cattle rustling more efficiently.

Hon. Speaker: Very well. It is time for Hon. James Kimaru Bett. Is Hon. J.K. Bett not here? The hon. Member being absent, then there is chance to give notice by hon.

(Hon. J.K. Bett stood up in his place)

Are you the one?

Hon. J.K. Bett: Yes, hon. Speaker, Sir.

Hon. Speaker: Hon. James Kimaru Bett?

Hon. J.K. Bett: Yes, Sir.

Hon. Speaker: Okay. Go ahead.

Hon. J.K. Bett: Thank you, hon. Speaker. I do not have the document with me here today. Maybe, I will present next time.

Hon. Speaker: Which document, your Motion?

Hon. J.K. Bett: Yes, hon. Speaker, Sir.

(Hon. Bett was given a document)

REVIEW OF FARM GATE MILK PRICES

Hon. Speaker, Sir, I beg to give notice of the following Motion:

THAT, aware that milk production is a major source of income for millions of small livestock farmers in the country who account for over 75 per cent of milk industry's total output; concerned that whereas livestock farming is a tedious and delicate undertaking when compared to farming of other consumable produce; smallholders farmers get a paltry Kshs27 per litre of milk, way less than what bottlers of water get at Kshs65 per litre; and further noting that smallholder farmers of milk producers encounter numerous obstacles, amongst which is high cost of production but they are forced to settle for less when selling their produce at farm gate prices; this House urges the Government to urgently intervene with a view to review farm gate milk prices in order to guarantee small holder farmers better returns and shield them from endless sources.

Thank you.

Hon. Speaker: Very well. The chance now is for Hon. John Waluke.

REQUEST FOR STATEMENT

IMPACT OF BUDGET REDUCTION ON PARLIAMENT'S OVERSIGHT ROLE

Hon. Linturi: Hon. Speaker, Sir, I rise to seek a Statement from the Chairman of the Budget and Appropriations Committee. As we are aware, the Constitution gives Parliament the oversight role of public expenditure by the Government and other State organs. Noting that the Office of the Auditor-General plays a critical support role in the proper functioning of the oversight role of Parliament, and considering that this role can easily be compromised for lack of capacity by Parliament and the Auditor-General, I request the Chair of the Budget and Appropriations Committee to provide a clear roadmap on how this oversight role will be played, in view of the fact that the Budget of

the Office of the Auditor-General was reduced from the initial request of Kshs6.1 billion to Kshs1.8 billion, contrary to Section 44(4) of the Public Audit Act.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Yes, Hon. Jakoyo Midiwo.

Hon. Midiwo: Hon. Speaker, Sir, the issue raised by Hon. Linturi is important. Further to his request, I would like the Chairman of the Committee to tell the House and members of the public how the Executive would wish the Office of the Auditor-General to function in the counties. The Office of the Auditor-General has been using the budget of Kshs1.8 billion to service the national Government. We now have 47 other governments. How would they wish the Office of the Auditor-General to play the oversight role over the county governments, so that we do not “export” corruption from Nairobi to the counties?

Thank you, hon. Speaker, Sir.

Hon. Speaker: The Chairman of the Budget and Appropriations Committee seems to have withdrawn from the Chamber. Is there a Member of the Committee who would like to give an indication as to how long the Committee will take to produce the Statement?

Hon. Wambugu: Hon. Speaker, Sir, I have heard the sentiments of the hon. Members. I will deliver the same information to the Chairman of the Committee, so that he can bring the Report on Tuesday or Wednesday, next week.

Hon. Speaker: Hon. George Peter Opondo Kaluma, you have made a request for intervention.

Hon. Kaluma: Hon. Speaker, Sir, I have not made any request; I am sorry.

MOTIONS

Hon. Speaker: The Chairman of the Budget and Appropriations Committee has gone out. How is this Committee working?

(Hon. Musyimi entered the Chamber)

Chairman of the Budget and Appropriations Committee, I was about to direct the Serjeant-At-Arms to hunt for you and bring you here dead or alive.

We are on Order No.8. Later on, I will make some communication on the process we are undertaking. In the meantime, Hon. Musyimi, proceed and move your Motion on Supplementary Estimates II.

APPROVAL OF SUPPLEMENTARY ESTIMATES

THAT, in accordance with the provisions of Section 223 of the Constitution of Kenya, the reduction in withdrawal from the Consolidated Fund a sum of Kenya Shillings 19,605,399,382 representing the total net estimates of Recurrent and Development Expenditure made up of the following-

- (i) A sum not exceeding Ksh.13,267,488,318 be granted from the

Consolidated Fund to meet expenditure during the year ending 30th June, 2013, in respect of Supplementary Estimates II of 2012/13 Financial Year (Recurrent) having regard to the proposed reduction of Ksh.3,752,372,182 therein appearing; and,

(ii) A sum not exceeding Ksh.4,711,241,884 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 2013, in respect of Supplementary Estimates II of 2012/13 Financial Year (Development) having regard to the proposed reduction of Ksh.33,831,757,402 therein appearing.

(Hon. Musyimi on 12.6.2013)

(Resumption of Debate interrupted on 12.6.2013)

Hon. Midiwo: On a point of order, hon. Speaker, Sir. If I remember correctly, this Motion was before us a few days ago. Hon. Members requested that the Budget and Appropriations Committee gives us a report. We want these figures itemised so that we can be sure that the Kshs10.1 billion that is supposed to be going to the Constituencies Development Fund (CDF) is in Supplementary Estimates II of the financial year that is coming to an end. We have not seen the report that you ordered the Committee to bring to the House.

Hon. Speaker: Maybe, the Chairman of the Budget and Appropriations Committee will respond.

Hon. Musyimi: Thank you, hon. Speaker, Sir. We discussed this matter at length in my committee yesterday. We have made sure that the concerns of the hon. Members have been taken care of. Indeed, the report that I would have hoped hon. Members would have this morning indicates as follows:-

“The Committee raised concern with the reduction of funds for the CDF amounting to Kshs5.4 billion.

The Committee notes that the Constituency Development Fund Committees (CDFCs) had already committed the funds to various projects in the constituencies. Moreover, the new CDFCs were already gazetted and operational. After lengthy deliberations, the Committee proposed that the allocation be rolled out in the next financial year, which begins in a week’s time or so; and that the funds be disbursed immediately at the beginning of the financial year.”

Hon. Speaker, Sir, we were indeed engaged by this subject. I had requested the Chairman of the CDF to be here, because he was in the meeting in his own right as a Member of the Committee. I also felt that because he is the man we all look up to, with your permission, he amplifies the matter.

He is here, hon. Speaker, Sir.

Hon. Speaker: Proceed, Hon. Lessonet.

Hon. Lessonet: Hon. Speaker, Sir, it is true that I am also a Member of the Budget and Appropriations Committee, and that I attended the Committee’s sitting yesterday. As the Chairman of the CDF Committee, I want to confirm to hon. Members that we have Kshs6.3 billion with us. We are waiting for you to deal with the formalities

of taking over of the various CDFs, and for the remaining 43 constituencies to be gazetted. Therefore, we have money for disbursement, starting this week. On the Kshs5.4 billion, which Hon. Musyimi has alluded to, we agreed yesterday in the Budget and Appropriations Committee that the money will be available from 1st July, 2013, which is only 10 days away. In other words, I am confirming to hon. Members that the CDF money is safe. We will get the Kshs5.4 billion from the National Treasury in the first week of July, 2013.

Hon. Speaker: Yes, Hon. Midiwo.

Hon. Midiwo: Thank you, hon. Speaker, Sir. This cannot be a small matter. We are talking about Kshs5.4 billion that was already allocated in the financial year ending in 10 days. Let me just tell the Chairman of the Budget and Appropriations Committee that he represents a constituency and the monies we are talking about will go to projects which were expecting it. The committees have been gazetted. Because, hon. Speaker, you ruled that they give us a report, what the Chairman of the Budget and Appropriations Committee has done is to read something from a piece of paper. Your direction was that they table a report in this connection.

Hon. Speaker, Sir, there is an attempt by the Senate and some people in the Executive to kill the Constituencies Development Fund (CDF). This is the crux of it and this is the window both chairmen are trying to open.

(Applause)

That window will help you cross right now. Where did that negotiation happen? The Chairman of the Budget and Appropriations Committee has not even told us that they called anybody from the Treasury. These are representatives of Members of this House and they have no information. What is the Treasury trying to do? We expected a report which will elaborate what somebody was attempting to do. The ultimate or final conclusion of this is that we defeat these Supplementary Estimates right now or he takes time out and does the right thing, because none of these Members will accept monies that belong to Kenyan projects which have been waiting for over one year to be taken away without explanation.

Hon. Speaker, Sir, I totally disagree.

Hon. Musyimi: Hon. Speaker, Sir, I have the highest regard for the Member for Gem, Hon. Jakoyo Midiwo. However, if he has other reasons and motives for wanting to see the Supplementary Estimates defeated, I do not think we will give him that window. This is for the simple reason; yesterday, we spent four hours with the Cabinet Secretary for the National Treasury who came with his team. We spent about two hours or so on the issue of the CDF, seized of the same issues and emotions that the Member for Gem has raised today. If what he wants is a 100 page report, I can assure the Chair that we do not have it. If what he wants are facts, the figures and the numbers that will satisfy any of us who want to look at this matter reasonably, then he has that report. That is why the Chair of the CDF, Hon. Lessonet and I are here to make the point that the money for CDF will be available. We will be the last people to want to see the CDF killed. That matter was discussed here in a *kamukunji* and we have a common position on this issue as Members of the National Assembly. I am very glad to see sections that were clamouring for the

death of the CDF gradually coming down and trying to come to the right side of the law on this issue. The CDF is a matter that should be operationalized by the constituencies. That is the position and I do not know whether Hon. Lessonet has anything he may wish to add on this matter as the Chairman of the CDF.

Thank you, hon. Speaker, Sir.

Hon. Speaker: With what you have said Hon. Musyimi, unless we do not want to debate this Motion--- Of course, Members will be at liberty to raise whatever issues they may wish or ask questions on the report. I think it will be unfair for us to preempt debate on this Motion before it has been moved.

Hon. (Dr.) Simiyu: On a point of order, hon. Speaker, Sir. Respecting what you have said, I have listened to Hon. Jakoyo Midiwo, the Chairman of the Budget Committee and the Chairman of the CDF. There is a danger we are facing here in the sense that in the financial year that is ending, money that was allocated to the CDF will not be fully disbursed. It will be disbursed less Kshs5.4 billion which is then being carried on to the next financial year. I am sure the next financial year's projections for the CDF have already been made. Will the Kshs5.4 billion add on to that and, therefore, increase the amount which will go beyond the regulation of not less than a certain percentage? This is because if that happens then we will be breaking the law. So, we could be setting a precedent that we will break the law, and we will keep on carrying this every year and eventually by the time we are through there will be a lot of money owed to the CDF. This is the problem we found in the last Parliament, that there was a lot of money owed to the CDF. Eventually, that money had to be paid in the last financial year as an additional amount. So, are we heading into the same scenario and that is the danger that I thought that I need to alert the House? If there is a reasonable explanation for this, I think it will be worthwhile for the Members to know so that we do not carry an illegality into the future.

Thank you, hon. Speaker, Sir.

Hon. A.B. Duale: Hon. Speaker, Sir, with your indulgence, I want to shed light on this matter. Last time you directed the Budget and Appropriations Committee, after the issues which were raised by the Chair of the CDF, to go and scrutinize the Supplementary Estimates.

It was found that the Kshs5.2 billion for the CDF would have been removed. I want to concur with the Chair of the Budget and Appropriations Committee that it invited the Cabinet Secretary for the National Treasury and his team. That can also be confirmed by the Chair of the CDF.

Finally, what was agreed by all these stakeholders, for the benefit of the House and Hon. (Dr.) Eseli, is that because of the period remaining in the current financial year, he will put the Kshs5.2 or so billion in the next financial year. We have agreed in principle that we will factor in that amount of money that belongs to the CDF in the Appropriations Bill that will come before the House, either on Tuesday or Thursday, next week. So, that will be seen in the Appropriations Bill for 2013/2014 which will be brought to Parliament. Maybe, it will be published by the end of the day.

So, unless somebody else has other motive to kill the Supplementary Estimates, the direction you gave has been complied with. The Chair of the Budget and Appropriations Committee has interrogated the Treasury officials and this can be

confirmed by the Chairman of the CDF. Because the House works through Committees, if the two Chairs have agreed in principle, and I can confirm that the Appropriations Bill will factor in that amount of money, then that issue will be sorted out. I can assure this House that, that amount of money has been factored in the Appropriations Bill for 2013/2014.

Hon. (Maj-Gen.) Nkaissery: Thank you, hon. Speaker, Sir. This is a very interesting situation, with due respect to the Chairman of the Budget and Appropriations Committee and the Leader of Majority Party. The amount of money which was budgeted in the current financial year was meant to meet a certain requirement, and that Ksh 5.4 billion was part of it. You directed that the Chairman of the Budget and Appropriations Committee brings the report; they said they had met the National Treasury Secretary. How are we sure of the commitment of the Cabinet Secretary of the National Treasury without a report to meet this? Remember last time when we closed Parliament, they withdrew the CDF money. How are we sure that this money will be put in the coming financial year when the projects are for this financial year? We, therefore, want a confirmation that this money will be released along with the Supplementary Estimates, which we are going to debate otherwise there is nothing we are going to tell our people, because some of our projects are going to be left incomplete.

Thank you, hon. Speaker, Sir.

Hon. Nyamweya: Thank hon. Speaker, Sir. I am a Member of the Budget and Appropriations Committee.

Hon. Speaker: Hon. Members, I think it is important to appreciate the---

Hon. Nyamweya: I am a Member of the Budget and Appropriations Committee.

Hon. Speaker: No. Hon. Nyamweya. These are interventions and, therefore, we just have to give them in terms of priority, that is, as they were placed. That is what I am going to do now. So, do not bother standing up in your place, if you have not placed a request. If you are still not being called, it is because you are way down the placement list. Hon. Linturi, you are very far down.

(Laughter)

Hon. Speaker: Yes, Hon. Nyamweya.

Hon. Nyamweya: Thank you. You know the law does not give us an opportunity to follow what the Chairman has said, or what the CDF Chairman has said; the law is very clear that it is 2.5 per cent of every Budget. In effect, if we allow this to happen, it will mean that we have cut the budget of some constituencies in this financial year. There is no other way you can explain it. I will plead with the Chair that we have the funds which are meant for CDF for this financial year as they should be. We are not asking for extra money; what we are saying is that the money we are asking for has been budgeted for. We have projects which are incomplete; we have bursaries to give this year. We have even given to students half of this. I am shocked that we can reach the stage of saying that it can be carried forward when the law is very clear - it will never be carried forward.

Finally, this bit was hidden; it was not disclosed earlier by the Cabinet Secretary. Was this information disclosed earlier? Was it given to us? It came out when you gave us time to go and scrutinize the Estimates.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Leader of Majority Party, you are the one who moved this Motion actually.

Hon. A.B. Duale: Hon. Speaker, Sir, Hon. Manson is a Member of the Budget and Appropriations Committee, and this is what that Committee said. "Committees work and they must own their reports". You cannot be part of a deliberation and own a report and come again to tell the House a different story. For the records, I want to read what the Budget and Appropriations Committee, in which Hon. Nyamweya Manson belongs, said. "The Committee raised concern with the reduction in funds for Constituencies Development Fund amounting to Kshs.5.4 billion". The Committee, including Hon. Manson, indicated that the Constituency Development Fund Committees (CDFCs) had already committed the funds to various projects in the constituencies. Moreover, the CDFCs were already gazetted and operational. After lengthy deliberations, which I believe Hon. Manson Nyamweya participated in, the Committee proposed that allocations be rolled out in the next financial year, and the funds dispersed immediately with the beginning of the financial year.

(Loud consultations)

Hon. Speaker Sir, if you protect me I am making a substantive statement, so you can have your time.

Hon. Speaker: You are protected.

Hon. A.B. Duale: I have no problem with other hon. Members of that Committee but Hon. Manson Nyamweya, this is what he said in the report and yet here he comes and says something totally different. Hon. Speaker Sir, is he in order to contradict a deliberation of a report in which he put his input?

Hon. Nyamweya: On a point of information, hon. Speaker, Sir.

Hon. Speaker: Hon. Nyamweya, why are you standing? You are not going to engage in argument, please hon. Members. You want to inform who now? What information can you give the Chair? You have none. You know the procedure, Hon. Nyamweya. It is indicated that you are in your second term surely, you are therefore a knowledgeable person.

Hon. Members, debate on this Motion had been commenced, in fact, I proposed the Question. Since the Committee did what it was directed to do and has filed a report which is tabled, I believe hon. Members now, the best way to go about this since we are a debating Chamber is to allow debate on the report of this Motion to continue, and the House will be at liberty to take decision one way or the other. This is the best way because if we engage in these altercations, it is not going to be helpful. Let us debate the report of the Committee and we will make a decision either to reject the report and the Motion or pass it. Hon. Members, let us allow the Chairman of the Budget and Appropriations Committee to make his contribution.

I am aware that several Committees are meeting even at this time but I was waiting for us to have a buildable membership for this Communication. Let me just make it.

COMMUNICATION FROM THE CHAIR

INVITATION TO NATIONAL PRAYER BREAKFAST

Hon. Members, I wish to make a Communication regarding the National Prayer Breakfast. Hon. Members are invited to attend the Annual National Prayer Breakfast which will take place tomorrow, Thursday, 20th June, 2013 at the Safari Park Hotel, Nairobi. The event will be graced by His Excellency the President and Deputy President and will involve Members of both Houses. All hon. Members are invited to attend and be seated by 7.30 a.m. This will be the 11th National Prayer Breakfast.

I can allow the Members who are at the door to come in so that I can make the next communication. Please walk in quickly.

(Hon. Members walked into the Chamber)

APPROVAL OF ANNUL ESTIMATES

Hon. Members, I wish to make a Communication regarding approval of the Annual Estimates. You will recall that on 11th June, 2013, I promised to give directions in relation to a point of order raised by Hon. John Mbadi on the import of adoption of the Report of the Budget and Appropriations Committee on Estimates of Revenue and Expenditure for the Financial Year 2013/2014.

The hon. Member also sought clarification on the implication of the decision of the House on the Report *vis-à-vis* the provisions of Article 221 of the Constitution, Section 39 of the Public Finance Management Act, 2012 and the requirement of the Standing Orders on the Committee of Supply. The Committee of Supply provides the alternative forum for the specific votes to be discussed and resolutions thereon made.

Hon. John Mbadi argued that the moment the House adopts the Report of the Budget and Appropriations Committee on the Estimates, the consideration of those Estimates should not be reopened. In his view, what remains as the resolution of the House is the inclusion of Estimates as approved by the House, in the Appropriations Bill for consideration of the House.

Hon. Members, before I give my guidance I wish to take the House through the salient features of the budget-making process as it concerns the National Assembly. Articles 173(3), 127(6)(c) and 221 of the Constitution require the Estimates of the Judiciary, the Parliamentary Service Commission and the National Government to be submitted to the National Assembly for approval. Indeed, in respect of the Financial Year 2013/2014 this requirement was fulfilled on 30th April, 2013. In my view, the requirement at Article 221 of the Constitution that the Estimates of Revenue and Expenditure be submitted at least two months before the end of the financial year is aimed at ensuring that there is adequate time for the legislature to undertake the necessary

public participation in the budget-making process. This was also fulfilled when the Committee undertook public hearings in various parts of the country, prior to submitting their Report to the House.

Hon. Members the next step was for the Budget and Appropriations Committee to lay its Report on the Estimates in the House for debate and adoption before the House can move to the Committee of Supply. The Report was laid on the Table on 6th June, 2013. However, the said Report did not contain the respective total sums to be allocated under each vote and allocations to individual programmes. Nevertheless, the Report was adopted by the House on Tuesday 11th June, 2013 and therefore, the resolution remains binding to the House unless countermanded.

The question whether the Committee of Supply should then commence as provided for in Standing Order Nos.236 to 240 then follows. Hon. Members may wish to note that in the previous dispensation, Ministers who were also Members of the House would move the votes of their respective Ministries. Once the Estimates were approved, an Appropriation Bill would be introduced in the House by the Minister for Finance. That is no longer the case in the new constitutional order.

Hon. Members, I have taken the liberty to explain this process of budget-making in the new dispensation in order for the House to assess whether the spirit of the provisions of Article 221 of the Constitution have been met by the resolution of the House approving the Report of the Budget and Appropriations Committee on the Estimates.

This then brings us to the issue raised by Hon. Mbadi, as to whether having passed the Report of the Budget and Appropriations Committee on the Estimates, the House needs to commit them to the Committee of Supply when in fact, the adoption of the Report of the Committee has already granted those votes.

Hon. Members, to attempt to answer this question I will be guided by Article 221(6) of the Constitution which reads as follows:

“When the estimates of the national government expenditure and the estimates of expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in an Appropriation Bill, which shall be introduced into the National Assembly to authorize the withdrawal from the Consolidated Fund of the money needed for the expenditure and for the appropriation of that money for the purposes mentioned in the Bill.”

The Constitution, therefore, leaves the House to choose the method it deems necessary to have the estimates approved. The second question then arises: What value would the process of the Committee of Supply add to this process? For the benefit of new Members, the Committee of Supply is the stage at which the House debates the expenditure proposals, vote by vote as per the provisions of Standing Orders Nos.236 to 240. Based on the Supply resolutions, an Appropriation Bill is introduced in the House to give legal effect to those resolutions of the House.

Hon. Members, to attempt to answer that second question I will be guided by Erskine May who as we all know is a leading authority in parliamentary practice and procedures. Erskine May guides that the supply resolutions do not, themselves, constitute authority for expenditure. They serve as foundation for the legislation which provides the authorization of withdrawal of money from the Consolidated Fund. When

confronted with similar questions as the ones we have today, my immediate predecessor, Hon. Kenneth Marende ruled on 30th August, 2011 that:

“The Motion on the Budget Committee Report is a Motion within the meaning of the Standing Orders and was, therefore, dealt with and disposed of like any other Motion. The rules applicable to debate on a Motion and the permissible amendments apply. What is key there – I want you to carry this with you even as I go through these directions – is that it was a Motion adopted by the House. If it is a Motion, then just like any other Motion, rules applicable to debate on a Motion and the permissible amendments will therefore apply. The Motion passed by the House on the Budget Committee Report is an expression of the views of the House on the Budget.”

Hon. Members, from the foregoing it matters not whether it is consideration of specific votes in the Committee of Supply or a resolution of the House adopting the Budget Estimates. The cardinal rule is that the House has expressed itself on the Estimates and that the National Assembly has passed them. The House on 11th June, 2013 passed with amendments the Motion for adoption of the Report of the Budget and Appropriations Committee on the Estimates and the Motion as amended having been passed became in effect a resolution of the House on those Estimates.

The Report of the Committee had recommended to the House increments, reductions, and reallocations on the votes and those recommendations were adopted by the House with amendments.

In other words, any Member of the House had an opportunity to propose amendment to the Budget Estimates as it would be the case in the Committee of Supply. In the last financial year, the House did not commit the estimates to the Committee of Supply; instead, an Appropriation Bill was introduced and passed upon adoption by the Budget Committee Report.

Hon. Members, I wish to agree with the contention of Hon. Ng’ongo that the House, having passed the Report of the Budget and Appropriations Committee, had in effect approved those Estimates. Committing the Estimates to the Committee of Supply again would imply re-opening matters for which the House had already taken position on. In this regard, I rule as follows:

(i) The resolution of the House of 11th June, 2013, adopting the Report of the Budget and Appropriations Committee on the Estimates for the year 2013/2014, met the requirements of Article 221(6) of the Constitution, which obligates the National Assembly to approve the estimates before an Appropriations Bill is introduced.

(ii) Future reports of the Budget and Appropriations Committee on the Estimates to this House contain the respective total sums to be allocated under each Vote and allocations to individual programmes.

(iii) Having fulfilled the provisions of Article 221(6) of the Constitution, an Appropriations Bill may now be introduced in the House pursuant to Article 221(6) of the Constitution.

(iv) Should the House have concluded the Bill by 26th June, 2013, the House need not consider the Motion for Vote on Account. However, should this not happen, the House shall, on that day, consider the Motion for Vote on Account which will be based on the sum approved by the House when adopting the Report of the Budget and Appropriations Committee on 11th June, 2013.

Hon. Members, this is the process to be followed in the approval of Estimates and the introduction of the Appropriation Bills for the remainder of the term of this Parliament, along with the relevant Standing Orders, save for those providing for the Committee of Supply.

(Resumption of Debate on Motion)

Hon. Musyimi: Hon. Speaker, Sir, I continue with my Report. When we met the Cabinet Secretary, National Treasury, we were very clear to him. This is what we told him: If we do not get the money that has been voted in by this House, we will not pass the Supplementary Estimates. The concerns that have been raised here today were raised yesterday. May I add that money once voted does not go back to the Consolidated Fund. The money will come back to the constituencies. Therefore, the Committee recommends that the Appropriations Bill, 2014, includes an additional Kshs5.4 billion to the Ministry of Devolution and Planning for the CDF. This will cater for the shortfall arising from under-provision of the grant in the Budget of 2012/2013. I hope that puts the matter to bed.

With regard to a figure of Kshs700 million, the Committee was concerned that the Cabinet Office for the immediate retired President had proposed this figure. Whereas the allocation of an office of the retired President is in order, a major concern for the Committee is whether all other suitable viable and affordable options had been considered. My Committee was of the view that the matter was not a subject of the Supplementary Estimates. Indeed, ordinarily, Supplementary Estimates are supposed to cater for unforeseen expenditures in accordance with Article 223(1)(a) of the Constitution. Moreover, the Committee was concerned that a wrong decision made at this point could easily set a wrong and very costly precedent. That being the case, after intensive consultations, the Budget and Appropriations Committee resolved and wishes to recommend that an amount of Kshs700 million, proposed for purchase of an office for the immediate retired President be reviewed and deferred for consideration for the Financial Year 2013/2014.

Finally, my Committee is concerned with the reduction in funds for the construction of a building by the Kenya National Examinations Council since this project has dragged on for a very long time. The figure in question is Kshs200 million. We consulted with the Cabinet Secretary and this is the recommendation of the Budget and Appropriations Committee to the National Assembly. My Committee recommends that to avoid a pending bill in the Ministry of Education, Science and Technology towards the construction of the Mitihani House, the Development Vote of the Ministry of Finance itself be reduced by a figure of Kshs200 million and the Development Vote of the Ministry of Education, Science and Technology be increased by Kshs200 million, so that this matter can be handled. We accept all the other figures and I now wish to move that the Motion be amended as follows:

(i) By deleting the figure of Kshs19,605,399,382 on the third line and inserting the figure of Kshs20,305,399,382 in place thereof.

(ii) By deleting the figure of Kshs4,711,241,884 on the first line of the second paragraph and inserting the figure of Kshs4,028,241,884 in place thereof.

(iii) By deleting the figure of Kshs33,831,757,402 on the last line of the second paragraph and inserting the figure of Kshs32,848,757,402 in place thereof.

Hon. Midiwo: On a point of order, hon. Speaker, Sir. I rise under Standing Order No.31 which reads as follows:

“A Member may at any time, for reasons stated, seek leave to move “That, this House do now adjourn.”

My intention is that the debate be now adjourned. The issue I wish to raise is in regard to the CDF Act, which says in Part II, Section 4, that:

“There is established a fund to be known as the Constituencies Development Fund which shall-

- (a) be a national fund consisting of moneys of an amount of not less than 2.5% (two and half per centum) of all the national government ordinary revenue collected every financial year.”

Hon. Speaker, Sir, the issue I wish you to address before we continue with this debate is whether there is any window in law that the Government or this House can give less than 2.5 per cent of the revenue collected to the CDF kitty. That is what seems to be going on here. I want you to determine that one particular part in terms of whether what this House is engaged in is not breaking the law and if this House can do that in full glare of the public. This is important and we have been here before. In this financial year, which ends in 10 days, 2.5 per cent has not been given to that kitty. I wish you to determine just that little question, whether there is any window that this Committee can do what they are recommending to do.

Hon. Speaker: Is it the case that another hon. Member wants to contribute to that? Before I allow it, I have sympathy to what Hon. Midiwo is saying but, of course, when he rises on the wrong Standing Order. I, obviously, must rule him out of order because he should have proceeded under Standing Order No.96. Now that you have not proceeded under Standing Order No.96, for the one that you have raised, I can only rule that you are out of order until such time again as you will rise under the correct Standing Order. On this, you claim to rise under Standing Order No.31 and I must rule as to whether you are correct to do so and I am saying you are not. I am sure you have been correctly referred because this is a Motion which has been moved and proposed. So, you cannot move under Standing Order No.31 but since there are other hon. Members who also want to raise, you will have another chance.

Hon. A.B. Duale: Hon. Speaker, Sir, the matter at hand is not as complicated as the Deputy Leader of the Minority Party wants to look at it. With your indulgence, I want to go back to the same and make it very clear that the Budget and Appropriations Committee is seized of this matter in consultation with the Committee on Constituencies Development Fund (CDF). The financial year has 10 days remaining and depending on the absorption rate of every Ministry including the one of planning and the situation in which we are *vis a vis* the 11th Parliament being elected on 4th March, 2013--- It is barely 14 days since the new CDF Members were gazetted. Hon. Members will agree with me and so will the Chair of the CDF, how do we even say that? That means that even the Kshs5.4 billion that was with the Government could not have been sent anywhere. The CDF is so dear to some of us; so dear even to the Chairman of the Budget and Appropriations Committee and just like devolution, the CDF is not the preserve of

anybody. All of us want to get money and in the report by the Executive through the Cabinet Secretary which you asked, it said – and the Chairman of the CDF Committee will confirm – that because of the absorption rate and the remaining days, he will make sure that the Kshs5.4 billion for the CDF which is within the law as my colleague has cited, the 2.5 per cent annually, will be put in the Appropriations Bill for hon. Members to access from 1st July. Let us be very realistic. Even if today we return this Supplementary Budget and the Cabinet Secretary for the Treasury puts the Kshs5.4 billion to the Ministry of Planning for it to go to the CDF board, for them to disburse to various banks - Some of us are managers and accountants - all books will be closed. So, the CDF money will go nowhere. The Motion for Adjournment is out of place; it is frivolous and it is not going anywhere.

We need you to rule that the Budget and Appropriations Committee and the CDF Committee which both Chairs have spoken must be heard. We are working through Committees of the House. It is not the individual Member but the Chair of the CDF Committee whom we have mandated together with the 28 Members; the Chair of the Budget and Appropriations Committee and his 50 Members. If we will not trust our own Committees and the report they have tabled, then we have more issues to deal with and I want you to rule on that.

Hon. Nyamweya: Hon. Speaker, Sir, I am rising on the Adjournment of debate under Standing Order No.96 which states. “A Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move “That, the debate be now adjourned”, or, in Committee of the whole House “That, the Chairperson do report progress”.

I am rising on this point because the law is very clear. If we go to the CDF Act, Section 4(2) and read the same Act, Section 9(2), it is very clear that funds allocated for a particular project shall remain allocated for the said project and shall not be reallocated during the financial year for any other purpose whether in that constituency or anywhere else without the approval of the board. The point I am trying to raise is that the CDF funds, once given remain for the constituency. The point is not whether the money has been utilized or not; the point here is whether the law is being followed and whether us in Parliament are breaking the law we are supposed to protect. That is the big issue.

(Applause)

Hon. Speaker, Sir, guide the House so that we can move forward. Guide the House and anybody watching what we are doing at the National Assembly of the Republic of Kenya.

Hon. Kinoti: Hon. Speaker, Sir, mine is a request for clarification and I think that is what is eating most of the hon. Members. From the Chairman of the Budget and Appropriations Committee, would it be in order to say that a way of closing a Budget deficit is by pushing an allocation that had been passed in the previous Budget to the next financial year? That is the explanation that hon. Members want. The disbursement could be done even in August. That is the clarification we want from the Chairman so that this can be unlocked and we move forward. Even if we get it from July, is it a vote for this

financial year or is it eating into the Budget that we are passing for the next financial year? That is all we need and then we move forward.

Hon. Musyimi: Hon. Speaker, Sir, English is a very simple language and it is very straightforward like all other languages and we have sought to communicate in that language in the hope that all of us can understand simple facts in the manner that I have tried to communicate. I read and for the avoidance of doubt I repeat, could hon. Members, kindly, listen to simple English. My recommendation and that of my Committee was this: “The Appropriations Bill, 2013, includes an additional Kshs5.4 billion to the Ministry of Devolution and Planning for the CDF. This will cater for the shortfall arising from under-provision of the grant in the 2012/2013.” What we discussed with the Cabinet Secretary for Treasury was that this money needs to be in our accounts soonest possible. That will not be possible this financial year. We were given the undertaking that in the first week of July, this money would be in the accounts. I was the first one to make the point to the Cabinet Secretary and after we finished our meeting here on Thursday, I was in a CDF meeting in my own constituency the following day on Friday. The very first meeting after the Committee was gazetted and we looked at the concerns such as have been canvassed today. The CDF law as revised this year provides that there will be Project Management Committees (PMCs) and these are very critical instruments in the operationalisation of the CDF Act.

In my own constituency, we have not even set the PMCs because we had our first meeting (*technical hitch*).

I, therefore, wish to say we are trying to look for a storm in a tea cup. There is no storm here. This matter is very straightforward; the money we are passing will be available, not the CDF provisional funds.

I thank you, hon. Speaker.

Hon. Speaker: I cannot understand why there is so much excitement. James Wandayi. (*Technical hitch*)

Hon. Members, even if you reject these Supplementary Estimates, I do not know when that money will be in your accounts. So, you must be pragmatic. Please, let us not argue about this. Debate the Motion or Hon. Nyamweya moves the Motion that the debate be adjourned. Whether that gives you money or not, obviously, that is a matter for debate for another day. But let us not go to what the law says because we know what it says. The Chairperson of the Budget and Appropriations Committee has actually used the word “under-provision”. So, I do not know whether you are proposing to move amendments to this report so as to make the provision.

Hon. Members, we must be practical about it. You can debate the Motion for Adjournment as moved by Hon. Nyamweya. Hon. Nyamweya, you moved that the House adjourns under Standing Order 96. Were you seconded?

Look at your microphone, Hon. James Wandayi!

Hon. Wandayi: Thank you, hon. Speaker, Sir. I beg to second the Motion on adjournment of debate that is before the House.

Hon. Speaker, the matter at hand is extremely serious; it is not as light as Hon. A.B. Duale would want us to believe. The issue here is not a matter of trying to go around the law. The issue here is that we are under an obligation as a House of this country to obey the law. The issue of absorption capacity cannot arise because nearly all

of this money has been allocated to specific projects, some of which are nearing completion on the basis of the contracts which had been signed. Therefore, we want the Chairman of the Budget and Appropriations Committee to come back to the House with a report that factors in Kshs5.4 billion so that it can be disbursed immediately to the Ministry of Devolution and Planning and then to the constituencies, as a matter of urgency.

Hon. Speaker, unless that undertaking is made by the Chairman of that Committee, we cannot proceed with this debate.

Therefore, I second.

Thank you.

Hon. Speaker: Please, hon. Members, just allow us to continue. It cannot be that way. I am supposed to listen to the arguments and others want to sneak in---
I cannot afford to do that.

(Question proposed)

Hon. Baiya: Thank you, hon. Speaker. With regard to the application for adjournment; when the adjournment was sought last week about the CDF funds, it was actually sought on the basis that; whereas the CDF was allocated properly in the Budget for current financial year, the Supplementary Budget sought to reallocate the CDF, that means allocating it to other accounts other than CDF account contrary to the law.

Hon. Speaker, it is important that a clarification is made on that account for hon. Members to feel assured that the CDF issue is simple. The problem that is there for both sides is the need to understand whether it is re-allocation. If we are assured that it is a matter of disbursement, I am sure hon. Members would not mind if there is delay in disbursement. But they will be concerned if there is a question of re-allocation because the two are very different.

Hon. Speaker, the Leader of Majority Party and Chairperson of the Budget and Appropriations Committee should make this clarification. So, we are prepared for delayed disbursements, but we are not prepared for tampering with the Budget allocation for CDF in the financial year because that would be against the law. Subject to that, if that clarification is made, there may not be need to adjourn because we do not want to tie up funds when they may be needed for other more pressing areas. We only need to be assured that the money allocation is there and the allocation is safe according to the law, even if it is delayed to next week; it will still be available.

Thank you.

Hon Kato: Thank you, hon. Speaker, Sir. I would really like to plead with my colleagues not to support this Motion.

The current financial year ending in 10 days' time had an allocation of Kshs21.8 billion for CDF. The disbursement already done is Kshs10.1 billion. What is remaining to be disbursed in these 10 or so days is Kshs11.7 billion. As a matter of prudent management of finances, if you release Kshs11.7 billion to be absorbed in two weeks or in 11 days, it will not be possible. It is not possible to absorb Kshs11.7 billion and what the Committee has done---

Hon. Musyimi: On a point of order, hon. Speaker, Sir. I am aware of the figure of Kshs5.4 billion, not Kshs11.7.

Hon Kato: Hon. Speaker, let me correct the Chairperson of Budget and Appropriations Committee. He is not getting it right. The amount not yet disbursed is Kshs11.7 billion, but the amount which is in this Supplementary Budget is Kshs6.3 billion; that leaves you with an allocation of Kshs5.4 billion, which the Chair of the Budget and Appropriations Committee is asking to be delayed. That is the mathematics. What is left for CDF in the whole country for this financial year, ending in 11 days' time is Kshs11.7 billion. But what you have put in the Supplementary Estimates is Kshs6.3 billion. So, you are asking for delayed disbursement of Kshs5.4 billion.

I am supporting that for this reason. If you look at that report which I do not think many hon. Members have seen, just to bring it to the attention of this House, it says that the reduction relates to an amount of money which was borrowed by the national Government to address other expenditure needs. Taking into account that the absorption of the CDF has been low and it was unlikely that the CDF---

(Loud consultations)

Hon. Kato: Hon. Speaker, Sir, protect me from hon. Members.

Hon. Speaker: Order! Order, hon. Members!

Hon. Kato: Hon. Speaker, Sir, I am actually helping some of them to follow the report. It is good for hon. Members to listen because some of them have not even read it. I am just explaining to the House why the Chairman of the Committee is seeking for delayed disbursement of the Kshs5.4 billion. They say that it is very unlikely that the CDF will disburse the remaining amount with less than two weeks remaining. So, what the Committee is asking for is just delayed disbursement. The report says that the Appropriation Bill for Financial Year 2013/2014 will have the re-allocation of the CDF. So, I would like to plead with my colleagues that we do not defer this business for the second time. I agree with Hon. Baiya. If it is delayed disbursement, we will agree.

Even though the disbursement may delay, the money is already provided for in the Budget. It is just a matter of requesting for re-allocation of the delayed disbursement. So, at the end of the day, we will still get the money allocated to us. First and foremost, all of us are Members of certain constituencies. The CDF is very critical to all of us, but we want to give an assurance. Even if the Chairman of the Budget and Appropriations Committee does not provide the Kshs5.4 billion by 1st July, as he said, this House still has got powers to re-allocate money from any vote of the Budget and ensure that the CDF gets its full allocation for Financial Year 2012/2013.

Therefore, I kindly plead with my colleagues that we do not adjourn debate on this Motion.

Hon. Speaker: Hon. Members, let us now hear Hon. Lessonet.

Hon. Lessonet: Thank you, hon. Speaker, Sir. I want to confirm again to hon. Members that I represent them on CDF matters. As the Chairman of the CDF Committee, yesterday, I participated in the proceedings of the Budget and Appropriations Committee. What hon. ole Metito has alluded to, in terms of the delayed disbursement, is true. We had the elections in March. After the elections, some guys decided to go to court to stop

disbursement of CDF funds. While there is intention on the Kshs5.4 billion, I want to confirm to hon. Members that, as of today, we have Kshs6.3 billion to disburse to constituencies.

Hon. Member:---(*off-record*)

Hon. Lessonet: Hon. Speaker, Sir, the money is with the CDF Board. It is not with the National Treasury. The amount is Kshs6.3 billion. When are we going to disburse it? We will disburse it as soon as the process of handing over by previous committees is completed.

(Loud consultations)

Hon. Speaker, Sir, I plead with hon. Members to listen to me. There is handing over which is going on this week. Many hon. Members are being handed over their respective CDFs. Many were handed over on Monday. Some were handed over on Friday, last week. Others have not yet been handed over their CDFs. We are yet to gazette other 47 constituencies. If we were to table the entire report of the CDF Board, hon. Members would be surprised. There are constituencies which have not even accessed their money for three years because they have failed to comply with the CDF Act.

So, we have money to disburse to the constituencies between today and 30th June, 2013. I can, therefore, confirm that by the end of this month, every constituency will have gotten 75 per cent of its money for the current financial year. We are still in Financial Year 2012/2013. Once we are through with the disbursement of the Kshs6.3 billion, as the Budget and Appropriations Committee has indicated, we will get the Kshs5.4 billion in July, which we shall promptly disburse to the constituencies.

Therefore, I urge hon. Members that we do not belabour this issue. I want to assure hon. Members that their CDF money is not at risk. Even on the risk that is pending in court, I would like to inform hon. Members that we are properly in control. If we see danger at any time, we shall be more than willing to summon hon. Members, so that even if it means amending the Constitution to entrench the CDF in it, we can do so.

Therefore, with those remarks, I urge hon. Members not to support the Motion for Adjournment of this debate.

Hon. Speaker: Yes, Hon. Benson Mulu.

Hon. Mulu: Thank you, hon. Speaker, Sir. I am a Member of the Budget and Appropriations Committee, and I think there is a question which has not been answered. So, I would like to make that clarification.

An hon. Member asked whether the money we are talking about for the next financial year includes the Kshs5.4 billion. We put this question to the Cabinet Secretary for Finance yesterday. He assured us that the allocation for the CDF in the next financial year is Kshs23 billion. So, because of the Kshs5.4 billion, we will get Kshs28.4 billion in the next financial year. That is an addition of Kshs5.4 billion, which takes care of the CDF money that had been borrowed to meet other national needs. So, we will not lose any money in terms of the CDF allocation for the current financial year. The understanding is that the CDF allocation for any financial year does not go back to the National Treasury at the end of that year. So, the money is actually secured.

Therefore, on that understanding, as a Member of the Budget and Appropriations Committee, I plead with hon. Members that we do not adjourn debate on the basis that the remainder of the CDF money for the current financial year is threatened.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Yes, Member for Emurua Dikir.

Hon. Kipyegon: Thank you, hon. Speaker, Sir. Some of us are also worried because of the explanation given. Although we know English, we are not Englishmen. My worry is when we talk about re-allocating and reduction at the same time. My other worry is that the money we are talking about was allocated to the constituencies before the creation of the new constituencies. We are talking about money which has already been committed to projects. When we are told that we will be rolling out this money in the next financial year, it means that we will only be rolling out money which is already committed to projects. The new constituencies also want to function.

I think the Chairman of the Constituencies Development Fund agreed with the Chairman of the Budget and Appropriations Committee under coercion. He needs to explain to us whether he was in this meeting as the Chair of the CDF or as a Member of the Budget and Appropriations Committee. He should tell us that so that we can also understand. We need to discuss this in totality. We will not rush it. We are not voting machines that are used just to pass things. We are not saying that we are denying anybody any money. We are just saying that the money we are talking about goes to Kenyans. The amount of money that we are talking about right now also goes to Kenyans. Who are these Kenyans we want to allocate some funds and who are these Kenyans we want to deny the CDF funds?

Hon. Musyimi: On a point of information, hon. Speaker, Sir.

Hon. Speaker: You should not inform him. As the Chair, you can make some contribution. Remember that the Motion is to adjourn debate.

Hon. Musyimi: Hon. Speaker, Sir, which I oppose in the strongest possible terms for these reasons: The issue under discussion is not an illegality committed but under-provision. That recommendation has been brought to you as an issue of under-provision.

Hon. Speaker, Sir, may I also say that yesterday Hon. Moses Lessonet, the Member of Parliament for Eldama Ravine was in my Committee not merely as a Member of the Committee but also in his capacity as the Chairman of the CDF. We chose those people because we knew that the matter of the CDF would feature prominently yesterday and today. I can tell you that I am not disappointed. For that reason, we felt it will be important for Hon. Lessonet to be in the meeting not just as a Member of the Committee but also as the Chair of the CDF. This is because he had a position, view and information that we did not have.

May I also say that because the issue of the teachers came up and was going to come up, the previous night I called Hon. (Ms.) Sabina Chege to attend the meeting because I knew that we would be discussing the issue of teachers and education. Hon. (Ms.) Chege sat in the meeting as the Chair of the Departmental Committee on Education, Research and Technology. In all modesty and a man with little experience in chairing committees of Parliament, it does not help when you discuss critical matters of this House when the chairs of committees are not present. It was for that reason we were glad to have Hon. Chege in the meeting. We were also lucky to have Hon. Lessonet in the

meeting. The issue, I repeat, is not of an illegality but under-provision. I think the House should listen to what Hon. Moses Lessonet has said. To this extent, I concur with Hon. Katoo ole Metito. There is Kshs6.3 billion with the Board as we speak. If that money has not been given, it is because of administrative reasons. The Kshs5.4 billion will be given once we pass the Supplementary Estimates for next year.

Thank you, hon. Speaker, Sir.

Hon. J.K. Bett: Thank you very much, hon. Speaker, Sir. With all due respect to the Chairman of the Budget and Appropriations Committee alongside the Chairman of the CDF, I would like to make one inquiry. I represent views of many Members. We would like to support this Motion but we want to have documentary evidence that this House will be assured that this money will be provided in the next financial year. What was so difficult to put an entry of Kshs5.4 billion in this financial year to be disbursed in the next financial year? Can they give us, with all due respect, some documentary evidence to the effect that this money will be provided in the next financial year? This is because you cannot go to a meeting where nobody is committing himself in writing and then you come and tell these Members that this money will be provided. In the absence of that, we will support that we adjourn debate.

Hon. Midiwo: Thank you, hon. Speaker, Sir. Remember I had originally tried to raise this issue although under a wrong Standing Order and so you overruled me. However, I thank my colleague, Hon. Nyamweya for raising it. The Chair of the Budget and Appropriations Committee has said that the issue here is not illegality but an issue of under-provision.

Section 4(2) of the CDF Act closed that window of under-provision. That is why we said “shall”. That window is closed. When we talk about issues that are of common sense, Members of this Parliament must do it right.

Hon. Speaker, you were in this House when we literally forced the Executive to allow us have the CDF. We had to go around bureaucracies. I plead with hon. Members that this is your lifeline. Some people were in this House or left their jobs in August, last year. They have been here and until today they have not been paid. You are bestowed trust by members of your constituency to look after their interest. How will you do this if the bursary kitty is being slashed?

I agree that Kshs6.3 billion is with the CDF Board but we are not looking for that money. We are looking for the Kshs5.4 billion. This is the crux of the matter. When I moved the adjournment on the Motion, it was not to deny the Government money because it must move on. In fact, it should interest us to have a smooth running of the Government. However, all we are saying is that this is also part of the Government. All I was trying to do was to give the Chair and Members a chance. We have discussed issues of the CDF in a *kamukunji* and there was no moving forward. So, that is where my mindset was. We can do without this adjournment on the Motion, but this is the only way we can do it. If this Chair stands in front of this House and moves an amendment that includes or appropriates Kshs5.4 billion--- I want to assure you on behalf of these Members that disburse it next year if you will, but appropriate it right now. That is the law. We do not have the word “if” or “not” but we have “shall”.

Hon. Speaker, Sir, Mr. Robinson Githae, the former Minister for Finance, in order to hoodwink Members said from this Dispatch Box that the CDF of Kshs10.1 billion has

already been disbursed to the constituency accounts. That was in January and that is the money we are talking about. Why is the National Assembly of Kenya being reduced to a House of beggars? Why are we begging on behalf of our people while in our own wisdom we passed the law?

(Applause)

Hon. Members if you make a mistake this year it shall happen double next year because the membership of these Committees has been compromised. The Chairman is saying that we chose our chairman of CDF, yes, but if we knew we would never have voted him the chairman. We did not know. This is our lifeline. This is this country. So, I plead with you--- *(off record)* ---has the power to appropriate less than 2.5 per cent. The answer is no.

Hon. Speaker, Sir, I know you as a smart lawyer. This does not even require your interpretation. This cannot require your interpretation. Let us help the Government, but give the Chair a chance to move here. Please, do not be afraid of anybody. You are our Chairman and not their Chairman.

(Laughter)

The Constitution in its wisdom has given the power of budget-making to this House and not somebody in the streets. So that I end, I want to kindly ask you hon. Speaker to give the Chairman of the Budget and Appropriations Committee a chance to amend the Motion on the Floor or we defeat it.

(Loud consultations)

Hon. Speaker: Order, hon. Members! These Members who are walking around, I kindly encourage you to read Standing Order No.104 that requires Members to be seated when another Member is contributing. You should not be walking around the passages and gangways.

Hon. Member: Put the Question!

Hon. Speaker: Who is this directing the Chair? You have no capacity to direct the Chair!

(Laughter)

Hon. (Ms.) Shebesh: Hon. Speaker, Sir, I want to plead with the Chairman of the Budget and Appropriations Committee, the Chairman of CDF and the Leader of the Majority Party that they either get a coherent explanation---

Hon. A.B. Duale: On a point of order, Hon. Speaker, Sir. The last time when this House adjourned, you gave a directive to the Budget and Appropriations Committee in consultation with the Chairman of CDF. Is the hon. Member in order to drag me into an issue I am not part of?

(Laughter)

It is about the Budget and Appropriations Committee and the CDF Committee.

Hon. Speaker: Hon. Members as you know the Leader of the Majority Party is out of order because he is the Mover of this Motion. Therefore, Rachel Shebesh is perfectly in order to make reference to him.

Proceed, Hon. Shebesh.

Hon. (Ms.) Shebesh: Hon. Speaker, Sir, thank you for protecting me. I was saying that failure to present a coherent explanation as to why Kshs5.4 billion allocated to CDF has been reduced, deducted, re-allocated, subtracted, lack of absorption capacity, divided--- I am pleading with them to study the mood of the House. We have gone through enough humiliation as Members of Parliament. These hon. Members have been unable to go to their constituencies.

Without CDF and you know it because you are part of this House's history, Members of Parliament will be almost irrelevant. In the last Parliament this discussion was rife because there was an attempt to take away CDF. I, therefore, understand this conversation. I can read body language very well. The body language, the Chairman of the CDF is not comforting. I know him as a confident man and there is something that just does not sit right.

(Laughter)

I am begging the Reverend Mutava Musyimi to bring an amendment to ensure that the Kshs5.4 billion is here now. Absorption capacities are things that the structure of CDF deals with. We will all be supporting what is being suggested, for once, by the opposite side of this House.

Hon. Nakara: Thank you, hon. Speaker, Sir. I rise in support of this Motion. There are some issues that are still unclear. I believe that this was supposed to be a one off payment for this matter to be settled.

We are coming to the close of the Financial Year 2012/2013. There was an allocation of Kshs6 billion for the presidential re-run. I cannot see it in these manuals. I need clarification as to whether the money was re-allocated to other votes without the House being informed.

Hon. Speaker: *(Technical hitch)* ---making his contribution and also sought to move some amendment. So, it should not get lost. You will require, whenever it is that you will resume debate on this Motion, if you adjourn at all--- I do not know what you want. You will require that your proposal for amendment should be seconded. However, in order to dispose of the matter I will put the Question.

(Question, that debate be adjourned, put and agreed to)

(Debate on the Motion adjourned)

Hon. Speaker: Next Order! Members, those of you who are withdrawing, please, do so in decorum. You do not have to laugh as you move. You can laugh outside.

Hon. Members, even as you withdraw, you must allow business to continue. Hon. Letimalo, as you withdraw, please, do so quietly in a manner that allows business to continue. The Member standing near Hon. Lessonet, Hon. Shill, you should not stand along the passages and gangways. That is what Standing Order No.104 says. Please, allow Hon. Chepkong'a to move the Motion.

REPORT ON APPOINTMENT OF NOMINEES
TO VETTING BOARD

Hon. Chepkong'a: Hon. Speaker, Sir, I beg to move the following Motion:

THAT, pursuant to Section 9(13) of the Vetting of Judges and Magistrates Act (No. 2 of 2011), this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the appointment of nominees to the Board, laid on the Table of the House on Tuesday, 18th June, 2013; and approves the appointment of the Hon. Justice (Rtd.) Barnabas Albert Samatta of Tanzania, The Hon. Lady Justice---

Hon. Speaker: Hon. Chepkong'a, I propose that you move from the Dispatch Box because you are slightly inaudible. I think the designers of this system did not have in mind the people of your height.

Hon. Chepkong'a: Thank you, hon. Speaker, Sir, in fact, I have been struggling quite a lot because the designers of this equipment did not take into account that they would have people as long as myself and Maj-Gen. Nkaiserry. But I want to thank you for giving me the opportunity to move here.

Hon. Speaker, Sir, I beg to move the following Motion:

THAT, pursuant to Section 9(13) of the Vetting of Judges and Magistrates Act (No. 2 of 2011), this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the appointment of nominees to the Board, laid on the Table of the House on Tuesday, 18th June, 2013; and approves the appointment of the Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania, The Hon. Lady Justice A.E.N. Mpagi-Mahigeine of Uganda and the Hon. Justice Joseph Asoka Nihal De Silva of Sri Lanka as members of the Judges and Magistrates Vetting Board.

The President made appointments in accordance with Section 9(13) of the Vetting of Judges and Magistrates Act and forwarded the names of the said judges to this House. Under your direction, the Committee on Justice and Legal Affairs had a total of three sittings to consider these nominees. You directed that our report be tabled on 18th June, 2013, which we did. I would like to register my appreciation to your office in particular. This is not an idle statement that has been made severally. You facilitated this Committee to meet even when this House was sitting at some point. Indeed, we would sincerely like to thank you for granting us that opportunity to sit at such a time.

I would like also, on behalf of the Committee, to take this opportunity to thank the Members of the Committee who gave their time. They were indeed patient and sat and endured. At some point, we registered a record attendance of a full House of 29 Members of this Committee. The Committee also wishes to record its appreciation to the

members of staff who are attached to this Committee for their effort and input that made the work of this Committee possible in producing this report. In the appointment process, the Committee, as I stated, held three meetings. We invited the Chairperson of the Vetting Board, Mr. Sharad Rao, who was accompanied by the Vice-Chairperson, Ms. Roselyn Odede and the Chief Executive Officer of the Board, Mr. Reuben Chirchir.

The Vetting of Judges and Magistrates Act, 2011, gives effect to Section 23(1) of the Sixth Schedule of the Constitution, 2010. The statute provides mechanisms and procedures for the vetting of all judges and magistrates who were in office on the date of the promulgation of the new Constitution. The Judges and Magistrates Vetting Board is established under Section 6 of the Vetting and Judges Act, No.2 of 2011, which came into force on 22nd March, 2011, with the objective of vetting judges and magistrates in order to restore public confidence in the Judiciary. The inclusion of foreign judges in the Board was as a result of consultation with the stakeholders, particularly the Kenya Judges and Magistrates Association during the drafting of the legislation to enhance fairness and transparency in the vetting process.

The process of appointment of the non-Kenyan members, namely, the foreign judges is a consultative process and it took quite a long time to conclude. Unlike the local members of the Vetting Board who are appointed through a competitive process, the foreign judges were appointed through a consultative process within the Government itself and also the Commonwealth Secretariat, the African Union and the Panel of Eminent Persons. Through this process, three eminent judges from the Commonwealth were nominated and presented to Parliament for approval before formal appointment. This process has taken quite a long time. The process of vetting was suspended because the three foreign judges who were sitting in this Board left because their term expired. The one-year contract expired and they did not wish to renew because they had given time to the Vetting Board and it had been indicated that they are going to be there for one year. Since their time had expired, it was incumbent upon the Government to source for three other new judges.

As I speak today, the Vetting Board is not doing any business except house-keeping. It is not proceeding with the vetting process because it is not properly constituted for lack of the three foreign judges who are expected to sit on this Board at any one time as required by the law. The vetting of magistrates cannot, therefore, proceed in the absent of these judges. On the process of appointment, when the three non-Kenyan members of the judges expressed their desire to leave as they stated last year, the Government, therefore, began this consultative process resulting in the nomination of the three judges who were identified through that consultative process. The Hon. Lady Justice Alice Mahigeine, formally the Deputy Chief Justice of Uganda, the Hon. Justice Joseph Asoka Nihal De Silva, the former Chief Justice of Sri Lanka and the Hon. Justice Barnabas Albert Samatta, the former Chief Justice of Tanzania, were nominated to replace those three other judges who had since left the Vetting Board.

Hon. Speaker, Sir, the Committee carried out the vetting process and examined the curriculum vitae and the additional information that was given to us by the members of the Vetting Board, whom we had invited. They are not the appointing authority, but we just wanted to know something about the entire process and their proceedings. Some Members of the Committee, using the self help remedy, googled the names of some of

these nominees and we found that they are held with high regard in the countries where they come from.

Hon. Speaker, Sir, one of the hon. Members of the Committee happens to have met one of these nominees and gave us oral information that he is well regarded in his own country. We examined the academic qualifications. We also examined employment records of these nominees as well professional affiliations. We also examined their knowledge of relevance through their CVs and their overall suitability for the positions in which they had been recommended for appointment. Our observation with regard to these nominees was as follows:-

With regard to Hon. (Rtd). Justice Barnabas Albert Samatta, we found out that he was formally the Chief Justice of Tanzania and he did a lot of legal work in Tanzania. In particular that we noted was that in 2011, a facilitation volume, *Rule of Law versus Rulers of Law; Justice Samatta's Road to Justice* was published by the School of Law of the University of Dar es Salaam and I would like to quote verbatim what he said; they celebrated this former Chief Justice and they said "He is an example of an ethical lawyer whose integrity cannot be questioned, making him worthy for the younger generation to emulate and draw inspiration from." We found that this particular nominee was suitable for the position he had been proposed or nominated to.

With regard to Hon. Lady Justice A.E.N. Mpagi-Mahigeine, the former Deputy Chief Justice of Uganda, we found that she retired having served the Judiciary for over 25 years in her own country and that she was born in 1942. She has held various positions, distinct within her own country and we found that she has offered distinguished services with regard to human rights in her own country. We found that she was suitable for the position.

With respect to Hon. Justice Joseph De Silva, the former Chief Justice of Sri Lanka, we also found that he has been regarded as a scholar in his own right having served as visiting lecturer in various universities, in particular the University of Sri Lanka where he has been lecturing in criminal and procedure law. We found this nominee to be suitable for the position that he has been nominated for.

Hon. Speaker, Sir, in conclusion, on behalf of the Committee on Justice and Legal Affairs, I would like to present the following recommendations to this House: That pursuant to Section 9(13) of the Vetting of Judges and Magistrates Act as amended in 2011 and Standing Order No.199 and in order to enable the vetting process to proceed to conclusion, the Committee recommends that this House approves the Hon. Justice (Rtd). Barnabas Albert Samatta of Tanzania, Hon. Lady Justice A.E.N. Mpagi-Mahigeine of Uganda and Hon. Justice Joseph Asoka Nihal De Silva of Sri Lanka for appointment by His Excellency the President as members of the Judges and Magistrates Vetting Board.

Thank you and I will call upon Hon. Kaluma to second.

Hon. Kaluma: Hon. Speaker, Sir, my thanks also go to the Chair of the Committee on Justice and Legal Affairs. The process of vetting of judicial officers, as all hon. Members know, is anchored in the Constitution and the Vetting of Judges and Magistrates Act, passed in 2011. As a requirement under those laws, the Vetting Board must have in its membership three foreign persons. This is something that needed to be clarified because some hon. Members could be wondering why we are seeking foreigners in the process. It is a matter that worked the mind of the nation when the Act was being

legislated and I remember debates about the need to depoliticize the composition of the board and its workings and the need to have a very impartial process recognizing that this was a process that was attacking the entire Judiciary and everybody who was serving as a judicial officer or in any other capacity in the Judiciary. As we all know, as a national House, that process has stalled for some time because of lack of the foreign component in the membership of the board. That has not been a tidy situation for those who were the subject matter of the vetting process. We have a number of applications for review of decisions previously made by the board which can only be undertaken by the full board not sub-committees. In fact, even in terms of the committees of the board, each committee must have a foreign person sitting in it for that impartiality. Those decisions are still pending there. The process, as far as I know, all judges of the High Court, Court of Appeal and those brothers and sisters sitting as judges in the Supreme Court have been vetted. A few magistrates, hardly 10, have also been vetted and so we have the bulk of vetting process waiting.

We want to, in moving this Motion before the House and supporting it, urge that the House considers the anxiety those Kenyans who are the subject of the vetting process are going through. It has not been easy for the judicial officers sitting not knowing whether they will be permitted to continue to serve the nation in their judicial capacities or whether they should be leaving to think of other ways to pursue their careers. We, therefore, as a Committee, on the directions given by the House, took the persons being presented to the House today through the approval process. All Members of this House have looked through their CVs. It is amazing how qualified people are in the legal profession. We have former chief justice; in fact two are former chief justices. One served additionally as a director of public prosecutions. Special appreciation and acknowledgment for accomplishment has been written and dedicated by the whole profession to them. There was worry in some Members of the Committee that maybe we needed more than these people but we were satisfied that it would be perverse to imagine somebody of the calibre of a former chief justice; somebody of the rich academic and professional background we are seeing in these two gentleman and a lady to be coming all the way from their country, for instance, with a partial or biased mind to fix one magistrate out of the pool of over 3,000 we are going to vet. So, we considered that and we recommended that these are people who should be approved by the House for the vetting process.

I need to urge the House to agree with the Committee and approve the names of the great professionals and academicians we have here for the process to go on. For those of us who are related to people serving in the Judiciary, it has not been easy, sitting there not knowing whether the nation is pleased with you in the capacity you are serving as a State officer. This is not the best of things.

With those many remarks, I beg to second and urge the House to support the report of the Committee.

(Question proposed)

Hon. (Ms.) Kajuju: Thank you, hon. Speaker. I rise to support this report and to state that it is important that we give quorum to the Vetting of Judges and Magistrates

Board because for quite some time this board has not been able to sit because they lack the three judges that are supposed to sit with them to constitute the required forum and quorum. You will find that, much as these judges did not physically present themselves before the Committee to which I belong; you will find that even in their appointment, the Vetting of Judges and Magistrates Act sets the criteria which the appointing authority must comply with.

Hon. Speaker, under Section 7(b), it is clear that the appointing authority must appoint and distinguish a judge who is either retired or serving in the commonwealth. He must have been a chief justice or a judge of a superior court. When we looked at all these requirements, and the criteria that have been set, we found that the appointing authority had complied with the provisions of the law.

Hon. Speaker, I am aware that there are several magistrates who have not been vetted and they had applied to be promoted to be judges through the process of vetting by the Judicial Service Commission (JSC). What the JSC did is that it dropped the people who were magistrates and had not been vetted from the list of the persons who were supposed to be interviewed. We know that there has been a delay.

So, what we are asking in this report is that this board be allowed to proceed with its mandate as per the Constitution. You will also find that bringing on board the foreign judges is meant to restore confidence in the Judiciary. For a long time, members of the public had thought that the Judiciary was failing and that is why foreign judges were brought on board. It is also important that we have the foreign judges on board for best practices as they had served for 20 to 40 years at most, in their respective jurisdictions. Therefore, what this means is that these are judges who are recognized and accredited in their various jurisdictions.

Hon. Speaker, I rise to support this report.

[The Speaker (Hon. Muturi) left the Chair]

*[The Temporary Deputy Speaker
(Hon. Kajwang') took the Chair]*

Hon. Waiganjo: Thank you hon. Temporary Deputy Speaker, Sir. I rise to support this Motion. You will recall that since the radical judicial surgery by Hon. Ringera, the then Chief Justice; the Judiciary has never been the same. Of course, you know that a lot of time has been lost---

The Temporary Deputy Speaker (Hon. Kajwang'): Just a minute. There is point of order.

Hon. Midiwo: On a point of order, hon. Temporary Deputy Speaker, Sir. I am just wondering whether something has changed. I thought that since the report comes from a committee, it is the Members who are not in the Committee who are supposed to get the first bite of the report. It seems this report that you want us to debate has taken a different angle. We are being treated to debate that took place in the Committee.

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Midiwo, you are right in the sense that we need to hear from as many Members who were not in the Committee as possible. But you will see that most of the Members who are in this Committee are the

ones requesting. Where are these hon. Members who were not in the Committee? I am seeing the request order. Let us have Hon. Waiganjo who was on the Floor, finish.

Hon. Members, let us make ourselves clear, relevant and brief. We do not have to take long debating issues which are very clear. We want other hon. Members to also have opportunity to debate.

Thank you.

Hon. Waiganjo: Hon. Temporary Deputy Speaker, Sir, we know that the radical surgery really disparaged professional judges and magistrates. This time we want to get it right. The administration of justice in Kenya has not run smoothly for the reason that the magistrates that are to face the vetting are not sure whether they will continue serving the Kenyan people on the Bench. So, it is important to adopt this report and allow the three eminent judges to come on board to fast-track the process of vetting our magistrates.

Hon. Temporary Deputy Speaker, Sir, I hasten to add that the three judges that are now to vet our own magistrates were not found to have any impropriety by the Committee. Therefore, there is no reason at all why they should not be allowed to serve in the Judiciary.

With those very few remarks and in order to allow Members who were not in the Committee to contribute, I beg to support.

Thank you.

Hon. Wangamati: Thank you hon. Temporary Deputy Speaker, for giving me this opportunity. I rise to support this Motion before the House. I would also like to thank the Committee on Justice and Legal Affairs for what they have done as indicated in their report. It is very important for the Judiciary to move forward and continue to look at cases in this country. Most of our magistrates and judges in the country who have not been vetted find themselves a little bit doubtful of what will happen to them next. They continue being anxious and some even want to go to school before they appear for vetting.

As we have been told in this report, the three judges are very qualified and we trust the Committee on Justice and Legal Affairs. I feel that this is the right time for us to have these judges take up the responsibility in the Vetting Board.

With those few remarks, I support the Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Midiwo, you are the Deputy Leader of the Minority Party, and you have caught my eye.

Hon. Midiwo: Hon. Temporary Deputy Speaker, Sir, I thank you very much. I rise to support the Report for the reason that we have a body which is partially complete. The Judges and Magistrates Vetting Board cannot be complete without these eminent foreign persons. I also want to thank their countries for letting them come and help us clean our Judiciary.

Having said so, let me add that the Board is not achieving what it was intended for. It has acted like a body that is used by some crooks in town to victimise judges and magistrates. Many good Kenyans have lost their jobs because of some purported non-performance. One of the judges was dismissed because he would take so long to read a judgement. Another one was dismissed because he disagreed with some lawyers in Kitale. Lady Justice Ang’awa comes from my constituency. She was the strictest person in the Judiciary. You could not corrupt her.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Midiwo, I just want to remind you that you may be speaking to some matters which are before court. So, you need to tread very carefully.

Proceed.

Hon. Midiwo: Hon. Temporary Deputy Speaker, Sir, I stand guided. The point I am trying to make is that out of the 16 Judges who were dismissed, 11 are women. That was never the purpose of this Board, and it will never be. Let me tell you what I thought the Board would be doing for this country. I thought that at the coming into force of the current Constitution, we would have a zero-beginning as a country. I thought that a judge who was instructed by a politician to do something wrong during the Moi era would not be victimised for it today, because that judge could not have done it in any other way. They would never have had their jobs, if they did otherwise. The President then was the hirer and the firer of a judge. So, until recently if the President called and told you to convict somebody to be hanged to death, you would do so. That cannot be something that would constitute the basis for firing such a judge. I know eminent persons who are now out there, and who were so scared because they did not know when or if---

(Hon. Waiganjo stoop up in his place)

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Waiganjo, we want to have debate without interruptions. What is your point of order? I would want you to cite the Standing Order under which you claim to rise on a point of order.

Hon. Waiganjo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am just wondering whether we have a quorum in the House. I do not intend to disrupt the debate.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Midiwo, proceed.

Hon. Midiwo: Mr. Temporary Deputy Speaker, Sir, the new hon. Member may not even know that after he spoke, he could not do what he has just tried to do. We need to induct hon. Members.

This is not a small matter. We are vetting eminent foreign persons. We are talking about people whose countries have been magnanimous enough to let us have them. They could be used somewhere else. If the hon. Member had looked at the background of these people – I believe he has since he is a Member of the relevant Committee – he would not have tried to stop me from saying good things about them. But we must talk about this process.

Hon. Temporary Deputy Speaker, Sir, it is good to know that the term of this Board needs to be extended. I want to say that I will oppose that bit. Why? Unless we change the Act, so that they stop victimising Kenyans, I will not support it. This is what I thought would happen. This House has a duty to empower the Office of the Director of Public Prosecutions, so that the weaknesses that we are experiencing can be taken care of in law. What is somebody trying to do with the Budget? Somebody is trying to deny Tobiko some of the money he has requested, so that we can continue being lawless, as a country, and so that the prosecution can be killed. We will never allow it. The Office of the Director of Public Prosecutions must be strengthened. This House must give it money.

This county did not anticipate that this thing called JMVB would take the victimisation approach. We must reject this, as a country. We may have made a mistake, but we cannot leave the mistake to continue being repeated. So, I want to tell this House that if the request to extend their term comes, we will reject it. Let us find a different solution to the problem.

Let me go further and tell you how victimisation is happening. There is a group of Kenyans on the streets of Nairobi, who believe that they own the Judiciary. They have penetrated the JMVB. So, if you are a woman and you did not succumb to their wishes, you go. I am talking about things which judges and magistrates have told me.

Hon. Members may appreciate why out of the 16 dismissed judges, only five are men. Men meet in bars, churches and in other places, but when it comes to women, we want to meet them differently. We will not agree. We know them. It is only that the rules of this House do not allow us to name them without adequate evidence but we know them. We will name them at funeral gatherings. We know what they are doing. It is wrong to the women of Kenya. I said this about women serving in the Traffic Department of the National Police Service when I brought amendments to the Traffic Act. In order for them to get there, their panties must drop. We said that was wrong. It is also wrong in the case of JMVB. It is also wrong in the corridors of power, where some people believe that they are more powerful than the rest of us.

Hon. Temporary Deputy Speaker, Sir, let me jog your memory a bit. Ten years ago, one Kiraitu Murungi was the Minister for Justice and Legal Affairs. He woke up one morning and said that he was cleaning up the Judiciary and, in the process, Justice Chunga and Justice Oguku went. He just used his pen to victimise people whose names or faces he did not like and stopped there. So many Kenyans had to leave their professions and lose their livelihoods because one Minister did not like them. We cannot go that direction, as a country.

I was here during the constitutional review process. Our intention in providing for the establishment of the JMVB was to clean up the Judiciary, and not to fire judicial officers. We wanted to change their *modus operandi*. We did not mean to change faces in the Judiciary. We wanted to have them act under new laws. After all, a half of this county does not believe in the so-called “new judges”. Look at the Supreme Court. We said “Let us not allow the old judges to sit on the Supreme Court,” but already a half of the country has no confidence in the Supreme Court. We do not. Irrespective of what anybody else thinks, we think the court is compromised. That is not what we wanted to do.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Midiwo, Hon. Bett is on a point of order.

Hon. J.K. Bett: On a point of order, hon. Temporary Deputy Speaker, Sir. I just want to ask whether the hon. Member on the Floor is right to mislead the House that Kenyans do not believe in a half of the members of the Supreme Court, when we believe in those people, and in what they do.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Midiwo, let us not get into side shows. We just want to stick to this debate. So, please, get that right.

Hon. Midiwo: Thank you, hon. Temporary Deputy Speaker, Sir. This is really not a statue but factual.

The Temporary Deputy Speaker (Hon. Kajwang’): Order! Let us respect all the arms of the Government. Criticize them all you must but in a language which leaves them with a face. Go on.

Hon. Midiwo: Hon. Temporary Deputy Speaker, Sir, we are not mentioning names. The Supreme Court is not anybody’s name. I am within the rules of debate. I am very much conscious. The country has no confidence. He has said that they do but for us, that is not what we expected when we established it.

(Applause)

I was here and I spent my own resources going round the country convincing Kenyans that the Supreme Court is good; the court of last resort. They are left unhappy and there is nowhere you can take them. You have to wait for them to retire or die.

(Laughter)

They are left unhappy. So, facts are facts.

Hon. Temporary Deputy Speaker, Sir, let me conclude by saying that I plead with this House and even the Committee – I thank you very much the Chairman of the Committee - that when time comes and the time is now to extend the time of the Judges and Magistrates Vetting Board, please---

The Temporary Deputy Speaker (Hon. Kajwang’): Your time is up! That is all the time you had.

Hon. (Ms.) Shebesh: Thank you, hon. Temporary Deputy Speaker, Sir. I want to support this Motion, but I also want to use this opportunity to clarify that it would be very unfair for Members to try and stop debate on an issue, especially if they sit in a Committee and other people have not contributed.

I support this Motion but very begrudgingly, first of all, because of what Hon. Jakoyo Midiwo has said. The Judges and Magistrates Vetting Board that can see mistakes in 11 judges out of 16 judges, because 11 judges out of the 16 judges were women--- Most of the reasons for this Vetting Board dismissing these women judges or suspending them was temperament. We are tired of this word “temperament”. We, women, are emotional but we are okay with it. We have hormones which go up and down and we are okay with that. We are temperamental and men know it.

(Laughter)

If you are sitting in the Judges and Magistrates Vetting Board, you do not know women are temperamental? If you are a lawyer going to a judge’s court, really you know. When you walk into this House and you see me on the Chair, you know that Hon. Shebesh is on the Chair and she is temperamental. That cannot stop me from chairing or being a good judge. Men are also temperamental. The beauty about women is that when we are temperamental, we cry or storm out but we do not stab or kill but these men do.

In the history of temperamental judges, because we cannot mention names, there are those who in their temperament have stabbed citizens of this country. I will not

mention names but that judge has been promoted. The woman who is temperamental has no future at her age, and after her suspension, she really wonders where to go. It is like politicians. We were being told that after being in Parliament your career is over. This is not fair.

I am supporting the foreign judges who have come because maybe, they will bring some sanity to the ones whose term I will never extend if it is brought to this House. These judges though, when we were in the CIOC, we were very clear that we wanted to see the recommendation of the Commonwealth Secretariat or Eminent Persons if it is where they came from. We should not be told that they have been proposed by them. I am disappointed that I cannot see in this Committee Report the letters from the Commonwealth Secretariat forwarding the names. However, I want to trust the Committee that they were forwarded. It would be good for us to see this. This is because in the last Parliament, when we were in the CIOC – remember then we were in a coalition Government and we were watching each other like hawks – we discovered that the names that had been proposed were just obtained from the internet and yet we had been told that they had been proposed by the Commonwealth Secretariat.

One of those judges embarrassingly asked the Government in a letter: “Who asked you to propose me to sit in---” It was very embarrassing. He rejected and asked: “By the way, where did you get my name.” This came from the CIOC.

I hope that one of these judges will not embarrass this Committee today by asking: “By the way, where did you get my name”. This is because their names must have come accompanied by a document. I am saying this because I have read their Curriculum Vitae (CVs) that they have done a good job. I hope that they will bring sanity because the Judges and Magistrates Vetting Board has only done the vetting of judges and they will now vet magistrates. There are very many women magistrates. I am scared if the same ratio will be used, 11 out of 16, who by the way have appealed this suspension. I hope that the same people who suspended them are not the ones who will listen to their appeal. I would like the Committee to sometimes guide us on these things. When somebody is suspended by the Judges and Magistrates Vetting Board and is appealing his or her suspension, if they are the same ones listening to the appeal, where is justice? We are talking about this country’s new judicial system or whatever we are happy with. However, there are some things which are grey. If this ratio could be used, the women magistrates who will go through vetting are already in fear. This is because if you are temperamental, you are in trouble. Or, if three or four judges out of 11 could be dismissed because of temperament, you can imagine how many women magistrates fear how many times they were temperamental. I do not know whether that is one of the criteria of the Judges and Magistrates Vetting Board.

However, I am saying that I begrudgingly support the foreign judges hoping that they will bring a difference to the board. But I assure this Committee that we will not extend the term of these particular members.

I support the Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Kipyegon, are you a Member of this Committee?

Hon. Kipyegon: Yes, Hon. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Hon. Kajwang’): Therefore, will you allow Hon. Nakara to contribute ahead of you?

Hon. Kipyegon: There is no problem.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, please.

Hon. Nakara: Thank you, hon. Speaker, Sir. I rise to support the Motion. I want to state one reason why I support the Motion. Adopting the three judges who have been recommended to serve in the Judges and Magistrates Vetting Board is one way of encouraging regional and international integration. As a country, we need to be with other countries so that we can know what they do. The foreign judges will bring that experience to our nation.

The other issue is about the quarrel that we have in this country. When you are given an opportunity, some people look at your background and tribe. Now, we have foreigners who do not know Luo, Kikuyu and Turkana. So, the Turkana will be given an opportunity based on their qualification. I support that we adopt the names of these foreign judges because they do not have a way of knowing who is who in this country.

Finally, on discrimination, somebody can be qualified to be a judge but because he or she is from a particular tribe or region, and because I know him or her in one way or the other, I will discriminate him or her. However, the foreign judges do not have that in their mind.

Hon. Temporary Deputy Speaker, Sir, with those few reasons, I beg to support this Motion.

Hon. Murungi: Hon. Temporary Deputy Speaker, Sir, I rise to support this Motion and strongly so. First of all, these three judges have what the Committee described as pristine credentials. They have served their countries and also foreign countries. I have no doubt completely that these three judges will add value to the board. However, as we talk about bringing confidence in the Judiciary, as citizens of this country we need to have confidence in the judges who sit on the benches to give rulings on our cases. If a case does not go the Kathuri way I should not always say that the Judiciary is bad or it does not give the best judgment. We must adopt a culture of respecting the people who serve on these benches. High profile cases have been passed in this country and the top cream in this society have been ridiculed and called names. These three judges are coming to add value to our Judiciary. It is, therefore, an opportune moment for us to reflect on these issues and respect the Judiciary.

Lastly, I support Hon. Rachel Shebesh. I know women have been discriminated in this country. Personally, I respect women so much. I hope that the cry of women--- These are the people who keep us well in our houses. We need to respect them. I hope this will be final round and then the cry of women should be heard.

I strongly support.

Hon. (Ms.) Ombaka: Hon. Temporary Deputy Speaker, Sir, I rise to support this Motion on the appointment of these judges. I am a Member of the Departmental Committee on Justice and Legal Affairs. We went through this very diligently. The CVs were excellent. We were dealing with people of great distinction. Their experience is really wonderful. I think it is a great pride for Kenyans to have these judges because of their background, experience and the roles they have played in their own countries. They have an impressive record. In fact, as you read their CVs you just enjoy doing so. This is

because they are people of distinction. Out of the three, one is a woman; that makes it gender balanced. The woman is highly experienced and we should be proud of her. I believe the judges in this country will learn a lot from these three judges. That is the reason I feel that they should be appointed.

However, there are some gaps that are left when you are vetting people from other countries. In our situation, it was not very possible to meet them as we vetted. In this digital area we ought to have used video conferencing. We were actually vetting them based on the CVs. These are very easy to tamper with. It would be wonderful to consider video conferencing when vetting people from outside the country.

This is a very good move and I support the appointment of these three judges.

Hon. Kipyegon: Hon. Temporary Deputy Speaker, Sir, the vetting of the magistrates had stalled for quite a long time and yet we have been talking about reforms in the Judiciary. This is the time we need to make it a reality. What stalled that process was lack of foreign judges as per the recommendations of the magistrates.

We looked into the qualifications and reputation of these judges and realized that they fit the bill. We believe that this House will recommend these judges so that we can have work rolling and in the next few days we have a reformed Judiciary. We are lagging behind and so much needs to be done. We need to complete the process of vetting magistrates and judges.

Although we understand the challenges that magistrates are facing in the courts, the vetting process is not supposed to be used for purposes of intimidating others. It is supposed to produce the best judges and magistrates so that they dispense justice. This country has a backlog of cases which need to be done away with. Most of the judges and magistrates are worried whether they will pass the vetting. This anxiety and anticipation needs to be removed.

I support the Motion.

Hon. (Ms.) Kipchoim: Hon. Temporary Deputy Speaker, Sir, I rise to support the Motion. I know that in Kenya we have a lot of trust in the Judiciary. Going through the Report from the Departmental Committee on Justice and Legal Affairs you can see they have followed all the requirements, including the one-third rule on gender issues. These are also people with a lot of experience. They come from other regions and so this will promote regional and international co-existence.

In this country, women have been put in the second or third slot in the list of preferences. Where I come from, women are always regarded as the third option and when all the other options have failed, they look at the woman as nothing. We must know that women are the strongest people in the society, and given the opportunity, they can deliver. We want to show the nation that women are workers and doers of major jobs. We are strong and we want to show the world that we are strong.

Hon. Korir: Hon. Temporary Deputy Speaker, Sir, I rise to support this report with one caution that we need to be careful, as a country, when we are vetting these foreign judges, so that we do not import corruption instead of fighting it. We need to be aware that this is a sovereign and independent country. We need to have faith in our judicial system. We do not need judges from outside to come and vet our people. It is very hard to vet somebody from outside the country. Anybody can write and send a CV. If you are just vetting somebody by looking at their CV, you do not get a clear indication

of who you are vetting. Maybe we are vetting people who do not even exist. There are crooks in the streets of Nairobi who can write CVs and send them to you. So, we need to have a clear indication of whom we are vetting.

If we are going to have foreigners to help us to vet our judges and magistrates, we need to send committee hon. Members to those countries, so that they can see those people and interview them face to face and see whether they are competent, so that we can have people who are capable of doing the job. We should not bring people here who will come and victimize our people, because they are foreigners. Women were victimized and that was the source of the problem that we are going through right now. We need to take this seriously, and if we do not, it is going to make our country look bad.

We are struggling with the issue of the ICC because we went there looking for justice, yet we can do justice in this country. We do not need foreigners to come here and tell us what to do. We need to be strong as a sovereign country, so that we do not import corruption from other countries.

I support the report.

Hon. J.K. Bett: Hon. Temporary Deputy Speaker, Sir, I rise to support the Motion. I would like to congratulate the Committee on Justice and Legal Affairs for doing a thorough job. I have gone through the report and I have seen that the three eminent persons are academically qualified. They have the requisite experience and have met the criterion of not having any integrity issue. The Committee considered the gender issue and one of them is a lady. I would like to support the Motion. Considering that they are not Kenyans, I can see the impartiality input in the vetting board. They will do their work objectively and give the best results. The same board is going to facilitate international and regional integration.

However, I want to ask for one thing from the Committee. Considering that two of the judges are from our neighbouring countries, why did the Committee not travel to Dar-es-Salaam and Kampala and interview these people? Notwithstanding that, I support the report and congratulate the Committee on Justice and Legal Affairs.

Hon. Ochieng: Thank you very much, hon. Temporary Deputy Speaker, Sir. I am a Member of this Committee and I wish to start by saying that I support this Motion. Some things have to be done and this is one of the things that have to be done. What disturbed me most when we were vetting these three judges was whether you could call what we were doing a vetting process; these are people who have been invited to assist us to go through a process.

As you know, judging judges can be so difficult. You have seen that in the last one year alone, the judges who have been judged have not gone home easily. They have gone to court and that tells you how difficult it is to judge judges. This was supposed to have gone fast and we should have been done with it by now, but we have been held back by the lack of judges. The way we framed our law on vetting was quite unfortunate, and we must have these foreign judges. This was based on the fact that foreign judges would be impartial. They do not know any judges or magistrates in this country and, therefore, they will not have any ulterior motive about our judges or magistrates whom they are going to be vet.

So, we have three good judges here, namely Hon. Justice Barnabas Albert Samatta of Tanzania, Hon. Lady Justice Alice Mahigeine of Uganda and Hon. Justice

Joseph Asoka Nihal De Silva from Sri Lanka. These are judges with impeccable resumes, but one thing needs to be said; it is that if we were to go through this process again--- If Kenya is to involve itself in a similar process in future, we must be careful to ensure that the way we craft the law will ensure that we get the right kind of judges and we give Parliament the opportunity to vet them. We should not use Parliament as a conveyer belt, to which you give names to be vetted in only two weeks. The previous speaker has said that the Committee should have gone to Uganda and Tanzania. A Committee of 29 Members cannot travel to Dar-es-Salaam or Kampala to look for a single judge, who has not applied for a job here. We are inviting this judge to come and assist us with our process. They are not looking for a job. They are employed people.

So, in future, when crafting our laws, we must make sure that they are crafted in such a way that they give Parliament real, and not perceived, mandate. It should not be used as a conveyer belt. We had difficulty in passing these names, but the wheel of justice must move. We must, again, insist, as we pass these names, that going forward, the vetting board must be more transparent and ensure that the cases that they judge are fewer to ensure that in future business moves faster than it has moved. I support. In fact, I see consensus in this and I would like to request the Mover to respond.

The Temporary Deputy Speaker (Hon. Kajwang’): Order! You are out of order. You have no authority to request the Mover to respond.

Hon. Simba: Thank you very much, hon. Temporary Deputy Speaker, Sir. I beg to oppose this Motion. You need to protect me from Hon. Midiwo.

The Temporary Deputy Speaker (Hon. Kajwang’): You are protected. I think he was having a light moment in the House!

Hon. Simba: Hon. Temporary Deputy Speaker, Sir, I want to oppose the Motion on one ground, that we have seen injustice done to the judges who have been there before. I want to allude to what Hon. Midiwo and Hon. Shebesh were saying. I do not think that we will get any big change from the new judges that we want to bring in. My big question is: Why should we go to Uganda and Tanzania to get judges? Particularly, why should the two countries produce these judges? I beg to oppose the approval of the three judges.

Hon. Barchilei: Hon. Temporary Deputy Speaker, Sir, thank you. I would like to encourage Hon. Simba to learn to support because he is used to opposing.

It is very important that we pass this Motion because looking at these judges as per the report of the Committee on Justice and Legal Affairs they are competent to be members of the Judges and Magistrates Vetting Board. I want to support the Motion.

Hon. Gikaria: Hon. Temporary Deputy Speaker, Sir, I rise to support the Motion. I think there is enough consensus in the House and so we just need to--- I have no authority to give direction, but since there is consensus in the House, am I in order to request that---

The Temporary Deputy Speaker (Hon. Kajwang’): Yours was a request to contribute; that should have come as an intervention. If you have nothing to contribute, just sit down and let us hear Hon. Lati.

Hon. Lati: Hon. Temporary Deputy Speaker, Sir, I came here to add up to quorum because I was told that there was no quorum in the House.

(Laughter)

The Temporary Deputy Speaker (Hon. Kajwang’): Order, Hon. Lati! You have no capacity to determine the quorum of this House.

Hon. Lati: Hon. Temporary Deputy Speaker, Sir, I am sorry but I wanted to state my position, that I support this Motion because my friend Hon. Simba opposed it. I want to say that we need part of our friends across our borders to help us do some things because in our country there is the tribe bias. I am sure the people who come from Tanzania and elsewhere are the most impartial people we can have to vet these judges, and so I support.

Hon. Ogalo: On a point of order, hon. Temporary Deputy Speaker, Sir. Now that you have seen there is consensus in the House, would I be in order to ask that the Mover responds to this Motion and we put the Question?

(Applause)

(Question, that the Mover be now called upon to reply, put and agreed to)

Hon. Chepkong’a: Hon. Temporary Deputy Speaker, Sir, thank you. May I, on behalf of the Committee on Justice and Legal Affairs, take this opportunity to thank hon. Members who have contributed to this debate. We have taken their sentiments, particularly of those who have indicated that they are very unhappy with the process which the Vetting of Judges and Magistrates Board has undertaken in the past, particularly with regard to women whom they have not taken into account.

We will be having a retreat, as a Committee, with the board members sometime at the end of this month, and we will convey to them the sentiments of this House. We will also inform them that this House is not in the mood of extending their term; they better complete the process of vetting within the time which they have been granted.

I also want to thank Hon. (Ms.) Shebesh for indicating that the law – and I totally concur with her – was badly drafted with regard to the issue of appeal. You cannot appeal to the same person who has dismissed you. That is bad law. We hope that in future that will not happen.

With those few remarks, I beg to thank all hon. Members for supporting this Motion.

(Question put and agreed to)

ESTABLISHMENT OF GIRLS BOARDING SCHOOLS IN ASAL AREAS

THAT, aware that the number of girls dropping out of school is very high in the Arid and semi-arid Lands (ASAL) because of the limited number of schools in these areas; concerned that most of the girls dropping out of school opt for early marriages, thus affecting the education standards of the girl-child; noting that lack of boarding schools

in most of these areas has greatly contributed to increased number of school drop outs, this House urges the Government to establish girl boarding schools, both primary and secondary, in all ASAL areas.

(Hon. Dukicha on 19.6.2013)

(Resumption of Debate interrupted on 19.6.2013)

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, may I remind you that this was an interrupted Motion. If you go back your memory lane, you will know that we had discussed it and the Mover had been called upon to reply. We were about to put the Question, but allow me to allow hon. Members to come in before I put the Question.

(Several hon. Members walked into the Chamber)

Hon. Members, I want to confirm for the record that we have the quorum to transact this business.

(Question put and agreed to)

ESTABLISHMENT OF ATHLETES REGISTER

Hon. Korir: Hon. Temporary Deputy Speaker, Sir, I beg to move the following Motion:

THAT, noting the tragic events that occurred at the Boston Marathon where two bombs went off, killing and injuring a number of people; aware that there were Kenyan athletes also present at the event who had no established network of reporting in to confirm their status; deeply concerned that there was no mechanism available to account for the safety and well-being of each member of the Kenyan athletic delegation, this House urges the Government to establish a register or other mode of tracking and accounting for all athletes who leave the country to attend various international athletic events, to ensure their safety at all times.

Hon. Temporary Deputy Speaker, Sir, some parents have come to me looking for their children who left this country a couple of years ago and never came back. Some of them have been told that their children died while running. But there is no way the Government can really tell them where their children went. So, I urge this House to support this Motion to make sure that we put a mechanism in place to protect our athletes when they leave this country. The world has changed and terrorism has become the order of the day; terrorists do not target athletics and marathoners. So, we need to make sure that when our athletes leave this country they are safe. We should have mechanism, so that if something bad happens, and God forbid, we can also make sure that we account for our citizens.

With those remarks, I would like to ask my friend, Hon. Ng'eny to second the Motion. Thank you.

Hon. (Ms.) Ng'eny: Thank you hon. Deputy Speaker, Sir. I rise to support the Motion and I just want to thank my friend, who is an athlete and a member of the Kenyan team which has actually been going out for athletics, for bringing this Motion. Athletics has brought a lot of fame to this country. Athletics has actually made this country to be known worldwide. Even the tourists who come to this country to see our vast wildlife hear the name of Kenya being mentioned because of the athletes who have put this country in the world map. It is pathetic that we talk about people who have brought fame to this nation, but we leave them to survive on their own when they are representing us, whether in Olympics or in other contests. I think it is time the nation looked at its history, not only in the athletic field but also in other fields of sports.

Hon. Temporary Deputy Speaker, Sir, we remember so many names of great sportsmen and women who have been representing this country either in football, cricket, and also athletics. When you look at those people, especially those who have retired from the field of sports, and who no longer run or play football, they live in pathetic conditions. I believe this Motion is a reminder to our Government that it is time we looked at the welfare of these great men and women who brought fame to our nation.

Hon. Temporary Deputy Speaker, Sir, I support this Motion because since Independence Kenya has won not less than 86 gold medals. It is time we looked after the people who keep on bringing home these medals. We should not just call them to State House when they are going abroad to run or even when they come back. We call them to State House and give them some little money and we leave them to go out there.

In the last marathon, incidents of insecurity occurred. I remember there were so many people who were so anxious to know the whereabouts of our citizens and so many other sports people in that event. We did not know whether they had survived the bomb, nor did we know their whereabouts. I think it is time our country put in place tracking machines which can enable us to know the whereabouts of our athletes. Whenever they go to compete, the families of those people should not be left to live in anxiety.

Hon. Temporary Deputy Speaker, Sir, I also support this Motion because there are so many issues that we need to look at. When this Motion matures into a Bill, we will also need to inform the nation that we not only need to track them, but we should also know their welfare. Theirs is a talent we need to tap; theirs is a talent that has earned so much reputation and a talent which has been giving our country a lot of income. Athletes normally participate in championships and win lots of money to invest in this country. We need to put into consideration how we can handle our great men and women. We also need to look at how we can tap the new talents which are coming up in our areas, where athletes are actually groomed.

Hon. Temporary Deputy Speaker, Sir, ministries concerned with athletics in our country are not seriously looking at how we can handle athletes, or who should handle our sports in this country. I think it is time we sat down and looked critically at how we can manage sportsmen and women who leave this country to participate in athletics, or even in other sports, so that we do not encounter the problems we encountered in the last marathon. Our country is vulnerable and it is a target of so many busybodies. We are a target of suicide bombers, the *Al Qaeda* and the rest of them. We need to have a system

that tracks our athletes, so that they are safe. When they go out to participate in sports they should come back home safely. For those who could be involved in some issues out there, we need to know their whereabouts. Otherwise, I am seconding this Motion and request this House to support it. Thank you.

(Question proposed)

Hon. Serem: Thank you hon. Temporary Deputy Speaker, Sir. I rise to support this Motion. Looking at the issues that Hon. Korir has raised, I have no reason not to support this Motion. First, I agree with the Mover of the Motion that this country has so much talent which is untapped. Our athletes leave this country and go abroad, and because of negligence on our part as a country, we find them moving to other countries to become immigrants there. We have so many athletes in Qatar and Dubai. We have so many athletes migrating to Dubai and changing their citizenship because they feel that they are not honoured in their own country. It is high time the issue that was raised by Hon. Korir was taken into account. If you look at the remittances that come from the Diaspora, which our athletes contribute, you will appreciate that these people inject so much money into our economy that we cannot afford to take them for granted. I agree that it is very difficult for us to guarantee each athlete's safety in the various countries they operate from, but a registry of their whereabouts can be kept. I am privileged to have been to the United States of America (USA), where there is a system for tracking all the foreign students. So, what has been suggested by Hon. Korir is not a matter of reinventing the wheel. It is something possible.

If we created a database of all those who leave this country for the purpose of participating in sports, we will not be worried whenever there is a problem outside this country. In addition to that, we should have a system of ensuring that trainers and sponsors do not exploit our athletes. If you interact with some of the athletes, they will raise some very serious issues. Some of them have even been raped and are underpaid because our Government does not care once our athletes leave the country. Therefore, I urge hon. Members to approve this Motion.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Kajwang'): Yes, Hon. Kirwa Stephen Bitok.

Hon. Bitok: Thank you, hon. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this important Motion, which is dear to many of us. This is an area where we have our own citizens representing us outside this country and earning foreign exchange, which is very much needed by this country. We should, therefore, facilitate them to participate internationally by providing them with a good environment within which to do so.

I realise that we need to establish a register, so that we can track their movement at any given time. We should establish a databank which will enable us to know their status. As they move in and out of the country, we should ensure their safety. I urge every hon. Member to support this important Motion. I believe that it will go a long way in assisting the country to stabilise the income of our athletes.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, Hon. John Waluke Koyi.

Hon. Koyi: Thank you, hon. Temporary Deputy Speaker, Sir, for giving me the opportunity to support this Motion.

A time has come for this country to be very serious about sports. Indeed, if there are people who have made this country proud they are the athletes. In other countries like the USA, United Kingdom (UK) and Canada, among other developed countries, athletes are well taken care of. They are allocated security. At any given time, the relevant government authorities know where their sportsmen and sportswomen are. It is only in this country where our sportsmen and sportswomen are neglected.

The Jubilee Government is headed by a young President and a young Deputy President. I am sure that wherever they are, they are watching this debate. Our athletes have always brought a lot of foreign currency to this country. They have always flown our flag high. We are proud of them. Therefore, the Government should now be serious about supporting our athletes.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, Hon. Patrick Wangamati.

Hon. Wangamati: Thank you, hon. Temporary Deputy Speaker, Sir, for giving me this opportunity. I rise to support the Motion.

It is important for us to have a proper record of the whereabouts of our athletes once they leave this country. Whatever happens to them out there, as a Government, we must know. Athletes are very important to this country. They have made this country very proud. Kenya is known all over the world because of our athletes. Therefore, it is important that the Government keeps a record of their whereabouts.

Hon. Temporary Deputy Speaker, Sir, the Government of Kenya should also show some commitment in terms of protecting its citizens when in foreign countries, just as other countries do. When Kenyans are mishandled in foreign countries, it takes a very long time for our Government to respond. I have had a chance of travelling abroad, and I have seen something like this happen. We want our Government to become responsible to its own citizens. We should be protected even if we are out of this country. Our Government must be communicating with foreign governments to ensure that Kenyans are well protected when in other countries.

With those remarks, I beg to support the Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, hon. Elisha Busienei.

Hon. Busienei: Thank you, hon. Temporary Deputy Speaker, Sir. I rise to support this Motion. The athletes, footballers and the rugby men have made this country known outside. It is very shameful that the Ministry of Sports, Culture and Arts is not aware of how many athletes are outside the country, and how many have come back. The same case applies to the footballers. It is high time we did a census to establish how many athletes are outside the country and how many have come back. We should also accord them security.

Hon. Temporary Deputy Speaker, Sir, it is these athletes who make the national anthem of this country be sung two or three times in a day during an international event. These are the people who should be given the necessary security. My colleague has said

that there are some athletes who have gone for an international event but they have not come back and we do not know where they are. This is because, maybe, the Government does not provide security to our athletes.

The City of Eldoret, where I come from has been rebranded. It is now called “the City of Champions”. Why is this so? It is because of these athletes. As my colleague said earlier on, there are many athletes in this country, and if proper census is done by the Ministry of Sports, Culture and Arts--- If the athletes are given more events to participate in, they can rise to the occasion. Where I come from, the market is saturated. We have a number of athletes and footballers who want to be assisted by the Government by being assigned more events, so that they can participate in them and come home with foreign currency.

I support this Motion.

Hon. Lagat: Thank you, hon. Temporary Deputy Speaker, Sir. I am one of the Boston Marathon Champions because I won in 2000 and managed to represent Kenya in the Sidney Olympics. I know that most of the athletes are insecure, especially when they are out of this country.

I have been a victim once when I was leading and I was given some water which contained poison. So, athletes are in danger. What happened in the Boston Marathon shows that terrorists even target sports people. I think the athletes need extra security.

Secondly, some athletes are conned by managers. It is important for the Board of Managers to be registered by the Kenya Government, so that if anything happens, they can be traced. Athletes now get letters demanding that they pay tax. I paid 30 per cent tax calculated against the prize I won in the Boston Marathon to the American Government. I also paid 15 per cent to the manager. Therefore, I came home with only 55 per cent.

If the Kenya Government taxes the athletes again, then it will become double taxation, yet there is evidence to show that they have already paid tax to the foreign government where they participated in the games. The athletes cannot even be paid without paying taxes to that host government. This is because they are paid after being taxed. If you go to Britain, the prize is taxed at 26 per cent. You receive the balance and not the original or gross amount so that you can pay the tax. They tax instantly. So, the letters that the Government writes to sportsmen to pay tax are improper.

I saw a bad image when Ezekiel Kemboi won gold in the last Olympics; he arrived at the airport and jumped into a *matatu* after bringing Kenya a medal. I think the Government should be considerate. When you are going to participate in an athletic event abroad, you are picked from the airport, yet that is in a foreign country. However, when you come back to Kenya, you take a *matatu* to your home. This is the case yet these are champions or people who have brought medals to the country. I think it is time we changed and honoured our athletes.

When I was running in Chicago, the American Government provided transport from the airport and I was given security, but I looked for transport to my home when I came to Kenya after winning a medal. Why should the athletes be taken care of in a foreign country and not in our country? I think our Government should be considerate.

You have seen how the Ethiopians run. Those people are taken care of by their Government. Some of them are given a Mercedes Benz when they win a medal. For

example, the Government built Mr. Gebrselassie a house. That is why the Ethiopian athletes are motivated. In Kenya, nobody knows what takes place. I think it is time the Government gave our athletes good prizes. We passed the Sports Bill in the last Parliament but nothing has happened. Let the Act be implemented fully so that we can realize the changes that we need in sports.

Otherwise, I beg to support this Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Lagat, the Chair would like to commend you for your accomplishment in the area of athletics. I hope you have not retired. I also hope that your parliamentary assignments will not take you away from the pitch.

Yes, Hon. F.K. Wanyonyi!

Hon. F.K. Wanyonyi: Hon. Deputy Speaker, Sir, old as I am – I am 55 years old - I would also like to take this opportunity to salute particularly my brother, Wesley, who is my neighbour, and who has brought this Motion to this House. I pass his home before I go to my home. I am proud of him. I watched him run in Boston and I just held my breath because of what happened. However, immediately after that we knew that he was well. You saw what happened if you watched television.

Hon. Temporary Deputy Speaker, Sir, it is important that the Government takes drastic measures to track down our athletes, although there are those who defect. Hon. Lagat has not told you that but if you gave him more time, he would have told you that some of our athletes have defected to the neighbouring country. That is true. We have somebody who won a gold medal - I do not know in which race - and he is in Uganda, to be more specific. It is important that we track down our athletes because they have done us proud.

Because of our unique talent, the whole world admires Kenyans. I always take pride in seeing them running, winning and beating countries like Germany, our former colonial master, Great Britain, and China, which has got almost 25 times the population of this country. I feel proud.

As we urge the Government to track down our athletes, I have some feeling about the coaches who come to this country. There are some bogus coaches who come and take advantage of our young girls and boys. I think that was said by the Chairman of the Olympics the other day. There are people who come, simply stand there, see somebody sweating and, as Hon. Lagat has said, they take 15 per cent of what the athlete is paid. This is just because he or she is a *mzungu*.

We should also be serious in this career, so that those who come here are vetted and should have a track record of being proper coaches. This is because we have had cases where they come and earn money because they are white men.

Hon. Temporary Deputy Speaker, Sir, the Ministry of Sports, Culture and Arts should take stock of our athletes. We also have very talented footballers in this country. If we can do very well in athletics, I do not see why we cannot do well in football.

We had talent and it is still there. Let the Football Federation of Kenya take a cue from athletics body, and also improve football in this country. Kenya is a power house in sports worldwide. As we pride ourselves in athletics I would urge that we think outside the box and put other sports in order.

Last but not least, I do not agree that the Government should tax our youth. I was one time embarrassed. I was sharing a flight with some of the athletes. My wife was waiting for me at the airport. A poor athlete who had actually got gold did not have transport to get home. Let us have courtesy for our athletes and respect them. Let us make them proud.

I want to encourage the athletics body to put its house in order. They should do away with the wrangles facing them, and concentrate on supporting our youth, who have been making our country proud.

We are very unique in our own way. We have genes that are admired. I have seen people come to our power city of Eldoret to train, so that they can also win. However, when we go for competition they are always last.

I support the Motion.

Hon. (Ms.) Ghati: Hon. Temporary Deputy Speaker, Sir, listening to hon. Members it is clear that this country has not done a lot to protect and promote athletes in this country. It is a clear fact that Kenya dominates the world of sports, particularly athletics. I support the idea of us having a mechanism through which we can track the whereabouts of our athletes.

It is very unfortunate that we watch races in which there are Kenyans representing other countries like Qatar and Uganda; you feel extremely bad. Athletics is a talent that should be harnessed more in this country. In fact, athletics is compared to tourism in this country. If we do not do a lot to help our young people, then we do not know what we are doing.

People invest in athletes. Take the example of Usain Bolt. His name is a marketing brand. However look at our fellow Kenyans like Wesley Korir, we have not done a lot in terms of investing in athletes. I support the Motion. We need to track down our athletes and know where they are going. It is not fair to hear that our young athletes have gone to other countries simply because the Government is not putting in a lot. We need to give incentives. The Government needs to put in place things like free health insurance and life insurance cover. These are things that can serve as incentives to our athletes and make them invest here.

I fully support.

Hon. (Ms.) Wanyama: Hon. Temporary Deputy Speaker, Sir, I wish to support this Motion. I join others in congratulating Hon. Wesley Korir for coming up with this Motion. We do not have any mechanism to track down our sportsmen and sportswomen. We need to urge the Government to put a mechanism in place, so that it can enable our athletes to perform well out there.

I was once a sportswoman when I was working for the Post Office. It is true that the Government does not have a mechanism in place to protect its athletes. When my brother Wesley was in Boston I was very worried about him. I tried to call him three times in vain. We need proper mechanisms as my colleagues have said, so that we motivate the young generation out there. I am happy with Tecla Lorupe, who was once a great athlete in our nation. Today she is a peace maker in our country. I am urging the Government to come up with mechanisms to assist our athletes.

Some of our young men who want to become heroes are practising a great deal. However, if they see that we do not have a proper mechanism in place they will fear for

their security. I want to thank Hon. Lagat for the good work he has done for our country. He deserves something great.

I urge Hon. Wesley Korir to keep up and tell other athletes that Members of the National Assembly are going to support them. The other day I saw the President give Kshs100,000 to the footballers. The Government should not wait for the day when our athletes are going to perform to promise them heaven and earth; that is something which cannot happen. Let us motivate them at an early stage.

Hon. Iringo Kubai: Thank you, hon. Temporary Deputy Speaker, Sir. I am sorry, I have spent the whole day in a committee meeting.

I stand to support the Motion and thank my brother, Hon. Wesley Korir for bringing it. I note with appreciation that our athletes are the best ambassadors this country can have. Their welfare, protection and security are paramount and should be placed at the forefront by our Government, especially the embassies where the athletes traverse in the name of bringing glory to this country.

Most countries in the world have good frameworks for supporting their athletes, medically, security wise and for getting them to know how to manage their finances. It is very unfortunate that in this country individual athletes nurture talents naturally through practice. Whatever they do, they do it because they have the ambition and the passion, but that does not come from the Government. It is high time we harnessed these talents and put in framework for the protection of our athletes. The other day, we lost an athlete, namely Mr. Wanjiru, and nobody can explain the circumstances under which he died. If there was any security for him, we could, at least, have known what caused his death. Now, his death is a mystery to us and it is water under the bridge, yet we lost somebody whom the world has been mourning up to today. After the Boston incident, we saw how other countries were running for their athletes. Ours ran all over helter skelter and only survived by the grace of God; luckily, they were not near the blast. It is high time we invested in our athletes.

In schools, children go for sports and teachers leave them unattended. They board school bus with one or two teachers and the other teachers go away. Children are left to loiter in town when they happen to have gone for sports, as if sports is not part of the school curriculum. We should nurture sports like any other aspect of life and encourage those who have talents to become professionals and earn a living from it. I am happy we have hon. Members of this House who have done us good out there, but they did not do it because there was any assistance; they did it because they took it as a hobby and a career. It is high time the Government established sports centres, where people can develop careers. Even if they do not make it in school, they can nurture their talents.

We have very good footballers in this country, unfortunately, football appears to be going nowhere in this country and we keep on losing games when we have very good footballers. This is because we have no passion and give no motivation to players. We have not encouraged them in any way, and we just go to the field to watch them. When they win, we clap our hands and when they lose, we scold then and walk away with our heads down, but we do not ask ourselves where we go wrong. This country should wake up and find a solution to sporting in this country, so that we can be at par with the other countries. We have the talents and the passion, but the Government is burying its head in

the sand. They should wake up and look at the situation. We have to protect these ambassadors of ours.

I beg to support.

Hon. Angwenyi: Hon. Temporary Deputy Speaker, Sir, I rise to support this Motion, and wish we had this type of a Motion 10 years ago. We are very proud of our sportsmen. In fact, they are the best ambassadors of this country. We should exploit the potential for attracting tourists to this country which is in athletes like Hon. Korir. I am inviting Hon. Korir to Kisiiland, Kericho, Bomet and Narok, where we used to have a lot of athletic talent, so that he can revive it. He should not ask me for too much. I will provide his accommodation and transport, so that we can develop the talent that is in the south western part of this country.

When that incident occurred in Boston, I was watching television and it occurred to me that our Member of Parliament had gone there. I had not yet met him, but I had been told that Wesley Korir was the one who had taken the seat which used to be held by Hon. Kirwa and then, Hon. Kutuny who had nice Kiswahili. So, I wanted to meet him. When this occurred, I felt very bad and I prayed for him, so that he would not be affected by the blast. I am glad his God was with him, and he came back home. He has brought this Motion, which we must support and make sure that it is implemented.

Most countries, for example, the UK, are proud of their footballers and rugby players. They insure them, so that if anything happens to the sportsmen, they are taken care of. We may have to bring a Bill to this House to ensure that we set aside funds from the national Budget to develop and nurture sportsmen in this country. That Bill should provide for diplomatic passports for them, so that they can be traced easily and they do not have to be hassled around in the world when they travel. This House can make a difference to this country. In the last two months, there has been competition between this House and the other House. Let us avoid these kinds of things and prove to Kenyans that we are the people who can deliver. If we pass this Motion and ensure that it is implemented, we will go a notch higher towards promoting sports.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, judging from the mood of this House, let me invite the Mover to reply. Hon. Korir, although you have 10 minutes, would you please, do it within one or two minutes to enable us dispose of this Motion?

Hon. Korir: Thank you, hon. Temporary Deputy Speaker, Sir. I would like to give Hon. Chepkong’a some two minutes to contribute.

The Temporary Deputy Speaker (Hon. Kajwang’): Order! You only have two minutes. How many of those can you donate? Please, proceed.

Hon. Korir: Hon. Temporary Deputy Speaker, Sir, let me thank the hon. Members of this House for the support they have given this Motion. As we have all said and heard today, our athletes are assets of this country. We cannot say enough of that, but our country is not taking care of her biggest asset. We have a lot of athletes who are suffering. We do not even know where they are. There are athletes who go to the US and other countries and suffer because their agents have left them on their own. We need to protect and support them. We need to make sure that they are not intimidated at all, so

that they can know that our country is very proud of them. They are the ones who earn this country a good name.

I would like to ask the House to support the Motion. I beg to move.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, it is now time for the interruption of the business of the House. The House is, therefore, adjourned until tomorrow Thursday, 20th June, 2013, at 2.30 p.m.

The House rose at 6.30 p.m.