

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 28th June, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Department Committee on Justice and Legal Affairs on Presidential Memorandum on the Statute Law (Miscellaneous Amendments) Bill, 2012.

(By Mrs. Odhiambo-Mabona)

Report of the Departmental Committee on Labour and Social Welfare on Ordinary Question No.9019 by the Member for Tetu Constituency, Mr. Nyammo.

(By Mrs. Noor)

QUESTIONS BY PRIVATE NOTICE

ILLEGAL SUB-DIVISION OF LAND PARCEL LR NO. BARAGWI/RAIMU/22

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

(a) Is the Minister aware that land parcel LR No. Baragwi/Raimu/22 which belongs to Kirinyaga County Council and which was a subject of Civil Appeal case No. 280 of 2001 has been irregularly subdivided and transferred to a third party contrary to the Court order?

(b) What is the Minister doing to reverse the irregular transaction?

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

I had replied this Question up to a certain point. The House even requested me to visit Gichugu. I visited Gichugu and discovered the Court of Appeal had reversed whatever had been done by my Ministry. The only problem is that it was not registered by us.

Ms. Karua: Mr. Speaker, Sir, having discovered that, is the Assistant Minister willing now to cancel the irregular title deed issued to third party on this land which is owned by the county council and has four Government facilities which he witnessed?

Mr. Bifwoli: Mr. Speaker, Sir, we, as a Ministry, are willing to do so. But I want to request the parties to go back to court and get a court order for us to transfer the land back to the county council.

Ms. Karua: Mr. Speaker, Sir, the court has already issued the order. If the Ministry does not have a copy, I undertaken to supply it within a week. Is the Assistant Minister willing to then come back to the House and confirm that this matter has been put to rest?

Mr. Bifwoli: Mr. Speaker, Sir, maybe the hon. Member did not get me well. I said I am more than willing to do so. All we need is that document from the court.

Mr. Speaker: Order, Mr. Bifwoli! Just resume your seat for a moment. The hon. Member for Gichugu says that this matter has finally been determined by the court up to appellate level. Will you be prepared to comply with the court order when and as it is supplied to you?

Mr. Bifwoli: Mr. Speaker, Sir, you are a lawyer and you know very well that it is the courts that should sign the transfer and we shall just do it. There is no problem about that.

Mr. Speaker: Very well! You will be furnished with the order by the hon. Member for Gichugu. This matter will reappear on the Order Paper six weeks hereafter for you to confirm compliance. That is all what you will do.

Mr. Bifwoli: Yes, Mr. Speaker, Sir.

RECOGNITION/HONOUR TO KENYAN SOLDIERS IN SOMALIA

Mr. Gitari: Mr. Speaker, Sir, I beg to ask the Minister of State for Defence the following Question by Private Notice.

(a) What arrangements, if any, has the Government made to recognize and honour the Kenyan soldiers deployed in Somalia under the auspices of AMISOM following the successful capture of Afmadow Town?

(b) What assistance will the Government extend to those soldiers who have been injured while on duty in this peace-keeping mission?

The Minister of State for Defence (Mr. Haji): Mr. Speaker, Sir, I beg to answer.

(a) The Ministry of State for Defence has already initiated creation of medical in commemoration of the campaign "*Operation Linda Nchi*" to honour all Kenya Defence Forces personnel who have taken part in that operation. The medal is not specific to Afmadhow, but to the whole mission area. KDF is also recommending the activity of the campaign to be released in a book. The *Al Shaabab* Campaign Book will be a document of posterity containing memoirs of significant events and activities by individuals and groups who contributed in the fight against *Al Shaabab*. Monuments erected in honour of fallen soldiers will be constructed in each unit or barracks. That process has begun; and 14th October, 2012 has been set aside as the KDF Day as it was the date on 2011 that KDF for the first time in our history got involved in a war across the border in defense of the Republic.

(b) The terms of engagement for AMISOM provide for compensation to soldiers who die or are injured during the conduct of their operations. Therefore, any member of KDF who is injured or suffers permanent disability or dies will benefit from that arrangement. The personnel in AMISOM have mobile medical services attached to each unit. Cases requiring referral services are facilitated by a comprehensive evacuation programme in place using integral air transport ability.

A medical insurance scheme is available to cater for treatment for any retired service personnel who choose to be a member before retiring and become fully paid up after retirement. The scheme has worked quite well since its inception in 2001. Over 15,000 members have received treatment at various times and in various accredited hospitals around the country. Any member who is disabled at retirement also gets Government disability allowance.

Further, KDF has established extensive “post war” counseling for all troops taking part in the peacekeeping operation in Somalia and elsewhere. The programme is aimed at integrating the soldiers back to normal peacetime environment by offering “*Post-Traumatic Stress Order Counseling.*”

Mr. Speaker: Order, hon. Members! Before we move on, I would like to say that the Minister for Local Government as well as his assistant are at liberty to come to the House, so that they have an opportunity to proffer an explanation as to why they were not there to answer the Question which appeared on the Order Paper yesterday. The sanctions meted out yesterday lapsed at the end of the sitting day. So, the Minister and Assistant Minister may come back, but they will have to proffer an explanation as to why they were not here yesterday.

Mr. Gitari: Mr. Speaker, Sir, Kismayu is the war trophy in the fight against Al Shabaab. We have about 4,600 Kenyan soldiers. Could he maybe stagger the rewarding of our Kenyan soldiers such that when they capture one of the towns like Afmadhow or Baldad, they get some order before they get to Kismayu as an incentive to encourage them?

Mr. Haji: Mr. Speaker, Sir that is not possible because the war is ongoing. We cannot give 10 or 20 medals for the same operation. So, that is not possible.

Mr. Njuguna: Mr. Speaker, Sir, while thanking the Minister for the very tangible response that he has given, I would like to request him to inform the House now that we have lost some soldiers in this war, what quick response is the Ministry giving to the families who have lost their breadwinners in this war?

Mr. Haji: Thank you very much, hon. Member for Lari. As I said earlier, we have so many schemes in which we compensate our soldiers under the workmen compensation as well as insurance because they have been insured. Therefore, their interest is adequately taken care of.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Affey: Mr. Deputy Speaker, Sir, I want to begin by congratulating our forces for a job well done so far in their engagement in Somalia. The end result is to empower the local communities in that part of Somalia to reclaim their lives, their dignity and their own institutions. Apart from the military engagement, what arrangements has the Government put in place to allow the community that live in lower Juba, particularly to come back with their dignity and establish their institutions?

Mr. Haji: Mr. Speaker, Sir, there are quite a number of arrangements. As the hon. Members might have read in the media, whenever our soldiers capture a given area, they assist people with medical services and whatever that can be given. Unfortunately, the countries that provide humanitarian assistance have been reluctant to give us any food that we can give to the community in that area. However, we have been appealing to various countries to come and assist whenever possible.

Mr. Deputy Speaker: Mr. Minister, I think the hon. Member meant putting up civilian structures in place. That is something that will basically take off at the local authority or civilian institutions. Is that what you meant, Mr. Affey?

Mr. Affey: Yes, Mr. Speaker, Sir.

Mr. Haji: Mr. Deputy Speaker, Sir, actually that is not the responsibility of the Government of Kenya. It is up to the Transitional Federal Government (TFG) to establish their own structure to administer their area. However, as soon as an area is liberated, we call the local community and we ask them to appoint elders to oversee the interests of the community and work together with the Kenya Defence Forces (KDF).

Mr. Lagat: Mr. Deputy Speaker, Sir, I want to thank the Minister for the answer he has given. I think since this war started, we have lost quite a number of our soldiers. There is the issue of insurance which the Minister said is adequate. How much is payable to a family which has lost a soldier? There were some soldiers from my constituency who died. Is the insurance payable immediately?

Mr. Haji: Mr. Deputy Speaker, Sir, this amount has not been quantified yet. As we proceed with the agreement, we will be able to answer that question.

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I was interested in the same question and I thank hon. Lagat for asking it. The Minister cannot say that the Government has not quantified the amount because where there is permanent disability or death, the figures are well known. Is the Minister in order not to clarify in the case of death as requested by hon. Lagat the exact figures that the soldiers get?

Mr. Deputy Speaker: Order, hon. Members! I am not sure if you really want to politicize an institution involved in national security. This is a national security matter that the Chair has responsibility to protect. Americans are in Afghanistan and everywhere else. You do not read their compensations in the Newsweek or the New York Post. This is a matter that essentially should be protected. It is not like any other sector of the economy like workmen in industries or schools or universities. This is something that we need to protect. We have to be patriots in a way. These are matters over which you can approach the Minister or see him at the Committee level and then discuss the matter.

Mr. Gitari: Mr. Deputy Speaker, Sir, I read a very touching story about how our KDF are operating. The person who wrote the story said that sometimes they spend nights with snakes. From that particular station to the nearest one where they can be treated for snake bites, it is about 50 minutes by flight. What is the Ministry doing to protect members of the KDF?

Mr. Haji: Mr. Deputy Speaker, Sir, all units and detachments that go on patrol or that are engaged in a fight have doctors with them. Therefore, the question of snake bites cannot be an issue that cannot be dealt with by our doctors.

FACILITATION OF SCHOOLS IN TURKANA TO PARTICIPATE IN NATIONAL MUSIC FESTIVALS

Mr. Ethuro: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that pupils from nine primary schools in Turkana Central District which qualified for the National Music Festivals scheduled to take place from 29th June to 9th July, 2012 are unable to travel to Narok due to lack of funds?

(b) How much money has the Ministry been allocating to the district for extra-curricular activities every year in the last three years?

(c) Could the Minister confirm that they will be facilitated with money to travel and participate in the event?

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that there will be National Music Festivals to take place in Narok as from 29th June, 2012 to 9th July, 2012. However, I am aware of the following:

The National Music Festivals is scheduled to take place in Meru from 6th August, 2012 14th August, 2012 and not in Narok. There will be a provincial music festivals for Rift Valley Province scheduled to take place in Narok with effect from 29th June, 2012 to 9th July, 2012. Nine primary schools, that is St. Monica Lorwa Girls Primary, Loyo Primary, St. Michael Kawalase Primary, St. Mary's Primary, Lodwar Mixed Primary, Kalokol Mixed Primary, Kanamukimere Primary, Napuu Primary and Napolong'u Primary qualified to go and participate in the Rift Valley Province Music Festivals in Narok University. The first six schools out of the nine mentioned above are travelling to Narok. However, the last three schools are unable to travel to Narok due to inadequacy of funds.

(b) The Ministry has been allocating Turkana Central District Education Office for the last three years the following funds for extra curricula activities: In 2009/2010, Kshs440,000; 2010/2011, Kshs400,000; 2011/2012, Kshs400,000. The total comes to Kshs1,240,000 for the last three years. In addition, every school is given a capitation of Kshs50 per child for curricula activities up to the district level. However, these funds are not adequate. That is why the Ministry is advocating for increased capitation in Free Primary Education (FPE) and Free Day Secondary Education (FSDE) in the budget allocation.

(c) The District Education Officer (DEO) has provided Kshs100,000 to transport the six schools and to facilitate the pupils to Narok for the music festivals.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for the answer. However, in part (c) of the answer, which is critical to me, he has provided Kshs100,000 for six schools to enable the pupils to travel all the way to Narok for those many days. He says that he is facilitating those pupils to travel. Mr. Assistant Minister, do you know where we come from? From Turkana to Narok, you have to go to Kitale, Nakuru and then all the way to Narok. Out of the nine schools that qualified only six schools have the chance to go while three cannot make it because of inadequacy of funds. What arrangements is he going to make to ensure that all kids who qualified to go are actually facilitated adequately to be able travel and participate? All these hon. Members will tell you - I am sure even your good self has experienced this – that we were being asked to contribute. We have contributed until we have exhausted all our money. When is the Government going to ensure that extra curricula activities are fully funded?

Prof. Olweny: Mr. Deputy Speaker, Sir, as far as the Ministry is concerned, the money allocated is adequate. In fact, they have been using that amount of money every year to transport students to the music festivals. There are even students from schools that are further away from Narok than those from Turkana.

So, the amount that we have given is the amount that the Government has given to us for capitation.

Mr. Deputy Speaker: Minister, do you have an indication of how many pupils are coming from these nine schools?

Prof. Olweny: Yes, I have, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: How many are they and for how many days were they supposed to participate in the music festivals?

Prof. Olweny: Mr. Deputy Speaker, Sir, well, the number of pupils coming are as follows: From Saint Mary's we have 42 pupils; Lodwar Mixed has 60 pupils; Kalokol Mixed has 42 pupils; Kanemukemere, 60 pupils; St. Monica Girls, 72 pupils; St. Michael Kawalase, 24 pupils; Nabelimu Primary, 24 pupils; Lodwar Primary, 42 pupils, and Napuu did not qualify.

Mr. Deputy Speaker: And how many are they in total?

Prof. Olweny: Mr. Deputy Speaker, Sir, I did not add up the numbers.

Mr. Deputy Speaker: I think they are close to 400 if my small mathematics or arithmetic gets me right. Are you telling me that you need Kshs100, 000 to bring 400 students from Turkana and keep them there for a number of days and take them back? Are you saying that is adequate?

Prof. Olweny: Mr. Deputy Speaker, Sir, we have done it year in, year out and they have managed with this amount of money. If anything, Turkana has got the highest allocation this financial year as compared to other districts in the country. So, they have managed with this amount. It is so little and that is why we have always been presenting our case to Parliament and to the Treasury to give us more allocation, but we have not managed to get. If you could help us be allocated more money, we shall avail more money.

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, what is called extra-curricular activity is actually the child's right as enshrined in the Constitution and the Children's Act. The Assistant Minister must be the only stranger in Jerusalem who does not know that Members of Parliament pay for these trips to music festivals and other extra-curricular activities. It is not only in Turkana. I personally have been paying for schools in Mbita. Is it in order for the Assistant Minister to discriminate against schools which may not be able to get money and, therefore, they are not able to participate in the festivals merely because they cannot get the requisite money? In fact, in his answer, whereas he is saying that the money is enough, he has mentioned three schools that he is saying are not able to go because there is no money. So, he is actually contradicting himself. So, what is the Ministry doing to ensure that all students who qualify can attend or otherwise you suspend it until such a time that you are able to accommodate everyone? Otherwise, you are discriminating.

Prof. Olweny: Mr. Deputy Speaker, Sir, as a matter of fact, I have said that the actual schools that qualified were eight. Napuu did not get the minimum number of marks that would have made them qualify but they said they would sponsor themselves. However, what we do under such a situation?

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. Listening to the Assistant Minister, he says that, that particular school he is referring to did not qualify and then he comes around and says that they are going to sponsor themselves to attend. How would they attend if they did not qualify?

Prof. Olweny: Mr. Deputy Speaker, Sir, if a particular school had participated in the district festivals and just missed the marks by one or two but insists on attending, they can be given the option of attending using their own funds. But in a situation where we have nine schools like Turkana - it is across the country - because of lack of funds, we will take a given number and leave the rest. That is what we have done here; that out of eight schools from Turkana that met the minimum number of marks, we have taken eight and we are going to sponsor them but because of lack of funds, we cannot sponsor the rest.

Mr. Koech: Mr. Deputy Speaker, Sir, music is not an extra-curricular activity. It is a core curricular activity meaning that it is mandatory that the children of the Republic of Kenya are given an opportunity to participate in music and explore their talents. This House having realized that this money given for Free Primary Education (FPE) is not enough, resolved and passed that this amount be doubled so that the children of the Republic of Kenya can access and actually go through and acquire quality education. This Government has committed itself to giving FPE to our children. Now that from Turkana to Narok takes not less than two days, it means that those children will require more money to be able to participate because of the distance. Could the Assistant Minister inform the House what commitment he is making to this House that all the children in the Republic of Kenya who qualify for provincial and national events do actually go and participate so that they can be able to fully utilize their talents and be able to be exposed at the same time? Is the Government actually committed to offering free education?

Prof. Olweny: Mr. Deputy Speaker, Sir, I am committed to ensure that all children go and participate and give us their potential in these festivities but I can only do with the resources availed to our Ministry. I have here with me the amount of monies given to each district and Turkana Central is having the highest allocation this financial year because of the distance.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I am on record that the Assistant Minister is my former teacher and I would not want to deal with this issue unnecessarily in an adversarial manner. But is he in order to persistently mislead this House that Turkana Central gets the highest allocation whereas the figures he has given me is that Turkana Central with an enrolment of 24,684 at a capitation of 50, he is still giving us Kshs400,000 only, when we should almost be getting on average Kshs750,000? He is not even giving us what he should be calculating with his own formula and I do not want to go that way. He is busy saying that he has given us the highest but more fundamental, Turkana to Narok is from one extreme end of Rift Valley to the other end and he is saying that there are other schools that are travelling from further places than those ones. Which are those? Do you know this country?

Prof. Olweny: Mr. Deputy Speaker, Sir, I am not misleading the House. Turkana Central with an enrolment of 24,684 has Kshs400, 000 this ending financial year.

I will give you another example of Kwanza District, with an enrolment of 59,923, which was allocated Kshs350,000. So, Turkana Central is at the top in terms of allocations.

Mr. Deputy Speaker: Last supplementary question, hon. Ethuro.

Mr. Ethuro: Mr. Deputy Speaker, Sir, the Constitution of Kenya says, in Article 53(2) states:-

“53(2) A child’s best interests are of paramount importance in every matter concerning the child.”

The Assistant Minister is responsible for our children in school. As the Chairman of the Departmental Committee on Education, Research and Technology also stated, participating in these activities is not actually an extra-curricular, but it is the core activity that children engage in. Therefore, we want the Assistant Minister to ensure that children in each school get the opportunity to participate. He must allocate sufficient funds, so that this matter is not just left to those who can afford or those who are willing to participate. It should be part of the education policy. So, we want him to be very categorical on what he is going to do.

Finally, we have holidays in the school calendar. You have one week at the county level. In order for children to move from Turkana County to Narok, they need three days of travel. I am sure that they stay there for another four days or a whole week, and another three days to travel back. So, we are talking of about two weeks of school time being used on such activities. We

know that these activities are important but why can they not come at a time when schools are not in session?

Prof. Olweny: Mr. Deputy Speaker, Sir, as regards the timing of those activities, we have always been undertaking them during school days, so that children can also have a break from learning. During the regular breaks, teachers also go for their in-service training. There are those who go to the universities and those who go to various colleges. So, they need to have their full break.

Lastly, let me tell the hon. Member that we always ensure that children reach the venue of the activities. The Provincial Directors of Education (PDEs) ensure that schools pool resources, so that it can be cheap for them to travel. Schools pool resources, so that they spend less than when each school team travels on its own. They pooled transport using school buses. So, it makes it cheaper for them to travel. You may find teams from two schools in one bus.

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is talking about schools pooling transport resources together. Given the big number of children participating from Turkana County alone, they require a number of buses, and not just one or two buses. He keeps on talking about pooling of resources as if to suggest that schools in neighbouring constituencies pool together, and that they may need five buses, for example. Is it in order for him to mislead the House, instead of committing himself to put in more resources in this particular sector to enable schools to give service?

Mr. Deputy Speaker: Did you make a statement or did you ask a question, hon. Kigen?

(Loud consultations)

Mr. Deputy Speaker: Much as the Chair is absolutely lost, he is wondering whether this Assistant Minister is serving his Ministry or what he is doing. For him to come here and say that 400 students who are going to travel for almost 1,000 kilometres would need only Kshs100,000 for their upkeep and facilitation is, really, unacceptable. However, the Chair cannot move, hon. Ethuro! You are in the Speaker's Panel! You do not sit back there and say "yes, yes". You know how to rise on such an occasion and demand the right thing for the Chair to make direction! The Chair cannot make directions out of nowhere! The Chair has no ears! He does not hear! He does not see! Any matter has to be prodded by the plenary.

Anyway, let us proceed to the next Question, hon. Fahim Twaha.

(Laughter)

Mr. Twaha: Mr. Deputy Speaker, Sir, before I ask the Question, I would like to draw your attention to the fact that I have been denied the courtesy of a written reply.

LIST OF FAMILIES FACING IMMINENT DISPLACEMENT DURING
CONSTRUCTION OF LAMU PORT

Mr. Twaha: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Could the Minister provide a list of all the families which will be displaced by the construction of the Lamu Port?

(b) When will the Minister issue the affected families with ownership documents in order to facilitate the process of compensation?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, I beg the indulgence of the House.

Mr. Deputy Speaker: Why always the indulgence, Assistant Minister for Lands? The Chair has observed that you seek for indulgence too often. If you want the Chair to give you a few minutes as the other Questions are disposed of, the Chair can do so.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, imagine, I have been given the answer while on the Floor. So, I need even a week to go through it.

Mr. Balala: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to come to the House prepared to answer an hon. Member's Question, and then say that he has just been handed over the answer? Is it in order for a Minister to misbehave?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, I am not misbehaving. You witnessed when I was given the answer.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Our understanding is that hon. Bifwoli is an Assistant Minister for Lands, and that the Minister of State for Defence does not share offices with the Ministry of Lands. It is shocking that the Assistant Minister for Lands arrives here and then he is given an answer from the Ministry of State for Defence. What is happening in the Front Bench of the Government side?

The same Assistant Minister who has said that he cannot answer the Question now has been complaining about being driven in a Pick-Up vehicle all over the place, and that he has no official Government transport. What could be happening with the Ministry of Lands?

Mr. Deputy Speaker: Mr. Assistant Minister for Lands, are you sure that you need the security machinery of the Kenya Defence Forces to answer a question on land? Do you need the Minister of State for Defence, for that matter, to help you?

(Laughter)

The Minister of State for Defence (Mr. Haji): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Proceed. Mr. Minister! I am sure that the Assistant Minister wants to be informed!

The Minister of State for Defence (Mr. Haji): Mr. Deputy Speaker, Sir, unfortunately, the Minister for Lands does not have a helicopter. So, I have the facility, which can bring the answers.

(Laughter)

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, I want to confirm that I am no longer using a Pick-Up vehicle. I have been given the right vehicles that I wanted!

Mr. Deputy Speaker, Sir, I still want the indulgence of the House because I have just received the answer. The House has to be fair to me. I am going to be interrogated by hon. Members on this Question. Since I have just been given the answer, it will be unfair for the House to question me on it. That is why I am asking for extension of time.

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

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, I need two weeks.

Mr. Deputy Speaker: Assistant Minister, clearly, that will not be good test. The Chair or the Plenary is not allowed to anticipate debate, but we have a Motion of Adjournment on the Order Paper today. You are asking for two weeks yet the matter comes under Question by Private Notice. Ordinarily, a Question by Private Notice is supposed to be attended to within 48 hours of its filing. Therefore, the Chair will give you a few more minutes while a few other Questions by Private Notice are disposed of. Study that answer and then you will have to answer the Question.

(Applause)

COMPENSATION TO OWNERS
OF COWS KILLED BY LION

(Mr. Mwaita) to ask the Minister for Forestry and Wildlife:-

(a) Is the Minister aware that a rogue lion killed three dairy cows in Kipngochoch Location on 7th June, 2012?

(b) Is the Minister further aware that the said lion has been terrorizing residents of Sacho Division?

(c) What measures will the Minister take to ensure that the animal is captured so as to avert any further attacks, and could the Minister consider compensating the owner of the cows?

Mr. Deputy Speaker: Next Question, hon. Mwaita! Is hon. Mwaita not here? The Question is dropped.

(Question dropped)

Mr. Deputy Speaker: Next Question, hon. Shakeel.

DISPOSAL OF PROPERTIES BY
CITIES/MUNICIPALITIES

Mr. Shakeel: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that Kisumu City Council advertised for sale of a property situated in Kisumu Municipality/Block 9/111 on 19th March, 2012, in contravention of the provisions of the Transition to Devolved Governments Act, 2012?

(b) Is the Minister further aware that Nairobi and Mombasa City Councils, and Eldoret Municipal Council, among other local authorities, are in the process of disposing of their properties?

(c) What urgent measures will the Minister take to stop the disposal of councils' assets and ensure that the officer(s) involved in illegal transactions are arrested and arraigned in court?

The Assistant Minister for Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, first, let me apologize for not being in the House yesterday. I had attended a funeral and the

Minister was meant to answer the Question. By the time he was getting here, he was late and by that time, the Question had been asked. So, I apologize.

Mr. Deputy Speaker: Fair enough! Your sanctions had been lifted earlier on!
Proceed!

The Assistant Minister for Local Government (Mr. Nguyai): Thank you, Mr. Deputy Speaker, Sir.

I beg to reply.

(a) I am aware that the property in question; that is, Kisumu Municipality Block 9/III was advertised for sale on 19th March, 2012 by the Kisumu County Council and not by the Kisumu Municipal Council as stated in the Question.

This was done to enable the council to pay off their debts owed to the statutory creditors subject to the compliance with the relevant laws.

The disposal was approved by the then Deputy Prime Minister and Minister for Local Government in accordance with the requirements of the Local Government's Act, Cap.265. The sale was approved by the full council meeting on 3rd February, 2012.

(b) I am not aware that Nairobi, Mombasa together with Eldoret municipal councils, among other local authorities, are in the process of disposing of their properties. My Ministry has given clear indications that all assets belonging to them should not be disposed of.

(c) The local government confers the authority of approval of disposal of council assets on the Minister for Local Government. In this regard, I assure you and all hon. Members that I will at all times safeguard all the council's assets for the benefit of the current and future generations.

Any officer of a council who is found to have engaged in illegal transactions will be dealt with in accordance with the law.

Mr. Shakeel: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for his answer. However, he has not answered the Question as to why this is in contravention of the transition to Devolved Governments Act of 2012, which was in effect as from 30th March, 2012. I brought this matter to the Minister well in time. Why was it still thought the council property must be sold in contravention of that particular Act?

Furthermore, the Minister has said he is not aware of any other city council including Nairobi, Eldoret and Mombasa. It is in public domain that properties are being leased out for 20 years by councilors, the municipal council and the city councilors. The 20 year lease or even a two year lease is tantamount to sale. So, I am not very clear as to what the Assistant Minister has said. He has said that it is within the authority of the Minister while it is clearly not. The transition to Devolved Government was designed so that no property shall be sold in the transitional period. Why is the Assistant Minister misleading us now?

Mr. Nguyai: Mr. Deputy Speaker, Sir, the Transition Act obviously came into place prior to the approval for this position was granted because that was done on 3th February, 2012. As such that law cannot be applied retrospectively.

Further, this particular council has certain statutory debts which pertain to obligations that are due to statutory creditors such as the Pension Fund and the NSSF. As such, those debts need to be disposed of. The only way the council found it suitable to dispose of those debts was by the disposal of assets because, obviously, those debts are meant to pay for the welfare of the staff of Kisumu Municipal Council.

Further to that, as I had said before, any illegal disposition of the council assets will be dealt with in accordance to the law.

Mr. Hassan: Mr. Deputy Speaker, Sir, I want to seek assurance from the Assistant Minister regarding many properties in many parts of Nairobi in particular in my constituency which have been sold off by the City Council of Nairobi. Many of these properties have been public utilities like markets, clinics and school playgrounds. One particular case of private/public sector partnership which the City Council has been involved in is, for example, selling the Eastleigh Market, the Eastleigh Chief's Camp and the Eastleigh Social Hall. It includes the playground and the land of Kamukunji Secondary and many other situations of that kind. Is the Assistant Minister aware that many of these were public utilities that have been given away under the cover of the public/private sector partnership? What action has he taken to ensure that the City Council does not sell secretly many of these public utilities and properties owned by the City Council?

Mr. Nguyai: Mr. Deputy Speaker, Sir, one, let me assure all hon. Members that any information that they bring to our notice, and we have already given a circular that any illegal disposition of any public utility through our local authorities will be dealt with the firm hand of the law---

Further to that, the Member for Kamukunji has raised substantial issues which I am not able to address over here but I would like him to come to my office with the details so that I can address them to the full extent and take the relevant action.

Mr. Kabogo: Mr. Deputy Speaker, Sir, it is an open secret that at this time of transition, councils, more so where I come from, Thika and Ruiru are busy sub-dividing even pathways where pedestrians walk and giving them out as kiosks. Could the Assistant Minister undertake to communicate to all councils to stop this menace because this is happening because elections are next door? When devolved governments come into place, this will be a huge problem.

Mr. Nguyai: Mr. Deputy Speaker, Sir, I do undertake to further communicate once again because through a circular of 8th February, 2012, we did---

Mr. Deputy Speaker: Including Thika.

Mr. Nguyai: Mr. Deputy Speaker, Sir, including Thika where the hon. Member is. We will be able to do that.

Mr. Shakeel: Mr. Deputy Speaker, Sir, this property was worth over Kshs100 million but it was sold for a paltry Kshs30 million. After they took the commissions and everything else, it was less than Kshs25 million. The Assistant Minister is now telling us that the law was not broken when, in fact, it was broken. The Assistant Minister has said that the then Deputy Prime Minister and Minister of Local Government gave the permission in accordance with the requirements of the Local Government Act. Was he not aware that his Ministry had sponsored the Transition to Devolved Government's Act and he was aware of those restrictions? Is it another case of the cemetery that things are being sold for peanuts or overpriced by the former Deputy Prime Minister and Minister for Local Government?

Mr. Nguyai: Mr. Deputy Speaker, Sir, one, this was an open bid. It was advertised in the local dailies and there was an invitation for bids in which there was a whole tender process. The highest bidder was for Kshs42 million and the lowest was for Kshs30 million. The evaluation process took place before the disposal took place. I want to assure the hon. Member that it was an open process from the beginning to the end and there is nothing sinister about it. I can give him the relevant information and documentation.

Mr. Deputy Speaker: Order, hon. Members! Mr. Twaha, can you ask Question No.4 by Private Notice again?

LIST OF FAMILIES FACING IMMINENT DISPLACEMENT DURING
CONSTRUCTION OF LAMU PORT

Mr. Twaha: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Could the Minister provide a list of all the families which will be displaced by the construction of the Lamu Port?

(b) When will the Minister issue the affected families with ownership documents in order to facilitate the process of compensation?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, I have consulted with the Questioner and I still feel that we should check the files. We are asking for more time.

Mr. Deputy Speaker: Ordinarily and as expected under the doctrines of separation of Power, the Government which has a collective responsibility is supposed to do its own home work before it comes to the Floor of the House here to account to Members of Parliament and the public of Kenya at large. Be that as it may, if, indeed, you have agreed with the hon. Member on the same, the Chair is prepared to give you one last chance. But for God's sake, let this be the last time the Ministry of Lands is coming to seek the indulgence of the Chair.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, with due humility, I beg to ask for your indulgence.

Mr. Deputy Speaker: Mr. Fahim Twaha are you comfortable with that and how soon do you want the Question answered?

Mr. Twaha: As soon as possible, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: How much time do you need?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, let it be the first Question on the Order Paper when we come back.

Mr. Deputy Speaker: Do not anticipate business. Do you want it next week?

The Assistant Minister for Lands (Mr. Bifwoli): Next week, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Fair enough, the Chair directs that this Question be listed on the--- Mr. Twaha, are you okay with next week?

Mr. Twaha: Yes, Mr. Deputy Speaker, Sir. Thank you very much.

Mr. Deputy Speaker: When next week; Wednesday?

Mr. Twaha: Tuesday or Wednesday is fine, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: The Chair directs that this Question be listed on Wednesday morning next week. For God's sake do your work on Monday and Tuesday, so that on Wednesday morning you are ready; that is if the House does not adjourn.

Next Question No.1608 by Mr. Harun Mwau.

ORAL ANSWERS TO QUESTIONS

Question No.1608

STATUS OF INVESTIGATION INTO AMBASSADOR RANNEBERGER/USA
GOVERNMENT COMPLAINTS ABOUT HEROINE
PACKAGING AT MOI AIR BASE

Mr. Mwau asked the Minister of State for Defence:-

(a) whether he is aware that the criminal complaint report dated December, 2010 by Michael Rannerberger and/or the Government of the United States of America alleged that Eastleigh Air force Base in Nairobi was used as a processing/packing facility for Heroine, which was then shipped out of the Base using military vehicles and escorted by Base property; and,

(b) what action the Government has taken to investigate the complaints since 17th February, 2011, when the Report containing the said allegations was tabled in the House.

The Minister of State for Defence (Mr. Haji): Mr. Deputy Speaker, Sir, on Tuesday I was directed by the Chair to produce the protest note which the Assistant Minister for Foreign Affairs claimed to have written. The following morning I wrote to my colleague, Prof. Ogeri the, Minister as follows:-

“On Tuesday 13th June, 2012 I was expected to lay a copy of the protect note in respect of Question No.1608. The Assistant Minister for Foreign Affairs, Mr. Richard Onyonka, indicated as a matter of information that the Ministry of Foreign Affairs had issued a protest note to the individual, in this respect referring to Michael Rannerberger, who was then the American ambassador.

This matter came up again on Tuesday 26th June and the Speaker further ruled that the protest note must be produced in Parliament. I am, therefore, requesting that you comply and send me a copy for me to lay it in Parliament. I attach herewith a copy of the HANSARD for your information”.

Mr. Deputy Speaker, Sir, that letter was delivered that same morning after I wrote it to the Minister and this is the reply that I got.

“Reference is made to your letter number---, regarding the above subject. We have referred to the HANSARD record on the remarks made in connection with the Question No.1608 by the Assistant Minister for Foreign Affairs, Mr. Richard Onyonka. It is also noted from the HANSARD that before and after he made those remarks the Assistant Minister, Ministry of State for Defence, Mr. Musila, stated that no evidence of transporting of drugs using military vehicles or any other privately-owned vehicles had been detected at Eastleigh Airforce Base, or its use as a processing, packaging facility of drugs.

Further the Minister of State for Defence communicated this matter to the concerned Minister for Foreign Affairs and the Minister of State for Provincial Administration and Internal Security. We are unable to trace any communication from your Ministry in line with the above, hence we also are unable to trace any record of communication with the United States Embassy on the same”.

Mr. Deputy Speaker, Sir, therefore, I am at a loss as to what to do. I am not able to produce the letter because the Ministry responsible is saying that they do not have that record.

Thank you.

Mr. Deputy Speaker: Can you table the letter that was from the Minister responsible and it be brought to my attention here?

(Mr. Haji laid the document on the table)

Mr. Mwau: Mr. Deputy Speaker, Sir, the allegations here are extremely serious. It is a friendly Government that accuses the military, especially the Air force, of using the airbase for drug trafficking, alleging that commanders were involved in their transportation; also it alleged that military vehicles were used for drug trafficking. This is a very serious allegation from a friendly Government. So, it is not difficult for the Government of the Republic of Kenya to enquire, seek or demand from the United States Government, Michael Rannerberger or the ambassador, to provide the facts and information supporting the allegation against the democratic Government of the Republic of Kenya. That is all what we are asking.

Mr. Deputy Speaker: Leader of Government Business, this is a situation in which claims of a magnitude that will probably be the most difficult to deal with in my own history as the Deputy Speaker and Chair in this place---; an allegation was made by a foreign Government and an hon. Member, in line with his own responsibilities and mandate of seeking accountability from the Government, asked a Question on the same. There seems to be a ping pong game going on here to the extent that the Ministry of State for Defence tells us that its hands are tied.

Indeed, I must commend the Ministry of State for Defence because it immediately responded. We have communications from the Ministry of State for Defence. They copied to us the communication sent to the Ministry of Foreign Affairs . The Ministry of State for Defence itself is saying: “We are unable to move forward because we do not have the right response from the Ministry of Foreign Affairs”.

What is happening to your Government? Is the Government, indeed, accepting responsibility or liability for this very serious claims against a Government institution, that the military was engaged in drug trafficking in the country? Minister, proceed and give us the information that you think will allay the concerns of the House.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, let me start by saying that the Government of Kenya, or any of its organs, would not be involved in activities that it considers to be criminal. Therefore, I think that suffices for the purposes of allaying the fears as to whether the military can be involved.

In terms of the coordination of the issue between the Ministries---

Mr. Mwau: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister confirming that the Government of the United States and the ambassador actually lied and published a false report?

Mr. Mbuvi: On a point of order, Mr. Deputy Speaker, Sir. In this bogus report that was tabled in this House, I am the person who was alleged to be using the processing plant within the Moi Airbase in Eastleigh. It was further alleged that I used military vehicles in transporting heroine. Can the Government confirm whether these allegations were true, or it was just a matter of defaming my name politically and that of our soldiers in Eastleigh?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I was saying that as far as the Government of Kenya is concerned, none of its organs can be involved in that kind of criminal activity. Two, the so called report was not a report of the Kenyan Government; so, its authenticity and what it contained is not really the subject for us to debate because it was not our report.

The other issue, which is more fundamental in terms of the coordination between what comes from the Ministry of Foreign Affairs and the Ministry of State for Defence, I think this House, and the Chair has directed, that an issue that goes beyond one Ministry be directed to the office of the Prime Minister as the co-ordinator of the Government Ministries. I think that has

been the practice and that is one of the things we should do so that we get this coordinated response.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: I am afraid that does not seem to help much.

Ms. Karua: Mr. Deputy Speaker, Sir, thank you. Now that this matter keeps on resurfacing in different shades and the Government is unable to tell us who the drug traffickers are but only tells us who the drug traffickers are not, could the Government then confirm that there is something they are hiding and that the actual drug traffickers have roots within the system?

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

Mr. Deputy Speaker: Who do you wish to inform? Ms. Karua, do you wish to be informed by Mr. Mbuvi?

Ms. Karua: No, Mr. Deputy Speaker, Sir.

Mrs. Shebesh: On a point or order, Mr. Deputy Speaker, Sir. I think we owe due respect to our colleagues who passed away recently because it is through their pronouncements that this issue came to the Floor of this House. The Government now, with all due respect to Mr. Kimunya, is obviously hedging on this issue. It is out of due respect for those colleagues that the Government must come clean. It is out of respect for those colleagues and this House. Knowing how sensitive this issue is; knowing that hon. Members in this House were mentioned; knowing that there is information within the media circulation wherever we go that there is high speculation of Government involvement in drug trafficking, is this House being used as a scapegoat instead of looking deeply into the whole system of the Government that is engaged in drug trafficking?

Mr. Yakub: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to avoid the question that was raised by Mr. Mwau on the issue that the Government should come clean and say in day light that what the USA Embassy has said is total lies? It is this Government which endorsed a dossier which was brought here by the same Ambassador of that country. Could the Minister, please, try not to avoid the question by Mr. Mwau?

Mr. Deputy Speaker: Mr. Kimunya, the Deputy Leader of Government Business, you are on record as saying that this matter does not concern the Government of Kenya because it is not addressed to the Government of Kenya. The content of the Question is:-

“Is the Minister aware that the Criminal Complaint Report dated December, 2010 by Michael Ranneberger and/or the Government of the United States of America alleged that Eastleigh Air Force Base in Nairobi was used as a processing/packing facility for Heroin which is then shipped out of the Base using military vehicles and escorted by Base property?”

Then the Minister of State for Defence in answering that said:-

“Yes, I am aware that Criminal Complaint Report dated December, 2010 by Michael Ranneberger and/or the Government of the United States of America alleged that Eastleigh Air force Base in Nairobi was used as a processing/packing facility for Heroin which is then shipped out of the Base using military vehicles and escorted by Base property.”

This claim is made against your Government and your Government says that, indeed, this claim was made and it is on the strength of that that Kenyans and the House want to know the

extent. Silence can also be construed to be complicity. If you tell me that you will not respond to this, ordinarily even a simple report that is made by somebody on the streets on a matter as grave as this one would be responded to by the Government by carrying out investigations. Why do you want to give the impression that the Government just wishes this thing away?

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. This is a very serious matter as you have rightly said. When this matter was here last week but one, I stood on a point of order and stated that in the ongoing TV series, a former member of this Government, in full glare of the whole nation stood and said: "It is the Government that is involved in drug trafficking." I was mentioned in this House in that same report yet the Deputy Leader of Government Business wants us to go home satisfied that the Government is not involved in drug trafficking, whereas the report says it is involved. Would I be in order to ask that the Government tables the evidence of the people they have questioned to show that they investigated this matter? What is the Government hiding? In the absence of that, this Government is a drug dealing Government!

Mr. Koeh: On a point of order, Mr. Deputy Speaker, Sir. When this matter came to the Floor of the House two weeks ago, the Government confirmed to the House through the HANSARD that the Government had communicated; it had written a letter and I requested the Chair to defer this Question so that that letter is tabled before the House. Today, the Government is running away from a commitment that they made in the House. I seek your indulgence for direction on the same. Is it that the Government is now withdrawing the first statement that they had actually written a letter to the USA Embassy? Now that the Government is implicated, what is the position of the Government on this matter?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I wish to refer you to the HANSARD of that day on page 6. These were the words of Mr. Onyonka, when he was informing the Assistant Minister, Ministry of State for Defence, Mr. Musila.

He said as follows:-

"Sir, this matter was raised with the Ministry of Foreign Affairs and we immediately issued a protest note to the individuals. This matter, according to us, has been clearly stated."

That is the Government speaking. From the same Ministry, in the last paragraph of the letter, they say:-

"We are unable to trace any communication from your Ministry in line with the above, hence we are unable to trace any record or communication with the USA Embassy on the same."

In the first place, the Ministry of State for Defence never communicated with the Ministry of Foreign Affairs. Secondly, the Ministry of Foreign Affairs never communicated with the Embassy of the USA clearly because they know the truth very well. In the absence of the Government not coming clean on this matter, could I request that this matter be deferred until the Government comes clean and the Ministry of Foreign Affairs comes here to tell us the true position?

Mr. Deputy Speaker: If the Chair's memory serves him right and to the best of my recollection and now as confirmed by the HANSARD, indeed, the Assistant Minister for Foreign Affairs said that "we responded". That the Government responded immediately by sending a protest note. Here is now the same Ministry of Foreign Affairs which says that they are unable to trace any communication between the Ministry of Foreign Affairs and the American authorities.

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. Indeed, the communication from the Chair is correct because it is me who requested the Minister of State for Defence and

then there were some interjections by the Assistant Minister from the Ministry of Foreign Affairs. Ordinarily, the Government communicates through instruments. One of it is the *Note Verbal* and the other is a *Protest Note*. The Protest Note is made when there is displeasure and in this case, the Government was supposed to have shown displeasure in the manner the American Ambassador had commented. And there is a confirmation from none other than the Minister for Foreign Affairs that, indeed, that displeasure was communicated and he said that on the Floor of the House.

So, there is no way the Government can run away from this responsibility. It must happen. If they have done it, they must show prove. If they have not done it, then it is a sad day for the country.

Mr. Deputy Speaker: Hon. Minister and Leader of Government Business, clearly, that will be an assumption inferred by Kenyans and the plenary too; that you have something to hide. I do not think the Government will want to get into a situation where it looks like it is acting in a manner that is tantamount to admitting that it is actually involved in a matter of this magnitude. Under the circumstances, the Chair directs that this Question be listed on the Order Paper in a week's time and directs that the Prime Minister - as you have put it - comes out in the open and clears the air about this.

So far, the performance of the Government outside the House as well as inside the House leaves a lot to be desired. The conduct is wanting.

(Question deferred)

Mr. Mwangi: Mr. Deputy Speaker, Sir, this is astonishing! First, the Government has admitted that it took action. The Minister for Foreign Affairs--- Is it in order for the Minister for Foreign Affairs or the Minister of State for Defence to go scot-free, after having come to the House and told the entire nation that they took action? Now, they have not taken action. Are we giving them a free ride to come to this House and mislead the nation? Were our military forces used to carry drugs? That is the answer we want.

Mr. Outa: On a point of order, Mr. Deputy Speaker, Sir. This matter has been in this House for too long. Truly, to be true to Kenyans, we have active Ministers who have been dealing with this matter.

Mr. Deputy Speaker, Sir, I do not really want to go against your ruling. Will I be in order to ask that the Ministers who have really been in charge of this matter to bring to this House a full Statement, so that we can make a conclusion on what is going on? So, there is no need for the Minister for Foreign Affairs to toss it to the Office of the Prime Minister and yet, he is still there and can be held liable to this House.

Mr. Deputy Speaker: Clearly, the Chair is actually convinced that there is a ping-pong game. The ping-pong game is one Ministry trying to throw it to the other Ministry. In any case, it is abundantly evident that action was only seriously taken by both sides only after the matter was brought to the Floor of the House. That is because the Communication was done very promptly by the Ministry of State for Defence to the Ministry of Foreign Affairs asking the Ministry of Foreign Affairs to furnish it with the protest note. It was dated 27th June. So, it is worrying. I am sure everybody in this country is worried today that this matter is what it looks like.

(Mr. Mbuvi stood up in his place)

The last point of order and then we move on to the next Question. In any case, the Chair has given a direction on the same.

Mr. Mbuvi: On a point of order, Mr. Deputy Speaker, Sir. I concur with hon. Shebesh that the names of the five MPs mentioned in the report were used as scapegoats, while the real drug dealers, including the senior most police officers and other big personalities were spared.

Mr. Deputy Speaker, Sir, the moment you do a follow up on these matters, you are threatened with death. That is how senior politicians in this House and junior police officers have met their deaths.

Mr. Deputy Speaker: Deputy Leader of Government Business or the Minister of State for Defence, I have already given a direction on the same. Could you say something?

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

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

Mr. Koech: Mr. Deputy Speaker, Sir, if you listened to hon. Sonko, he has made very serious allegations that some Members of Parliament and police officers have met their death. Could he substantiate that for the House?

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

Mr. Mbuvi: Yes, Mr. Deputy Speaker, Sir. I can do that.

Mr. Deputy Speaker: Order. Yes. What is your point of order!

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, "Mr. Sonko" has, in fact, made a very serious allegation, bearing in mind the fact that the inquiry into the death of hon. Saitoti and hon. Ojode has been frustrated by the Government up until the investigators, who the Saitoti family brought here from South Africa, had to go back. That is because the Government has refused to co-operate to an extent that when they asked to be allowed--- And this, if I am given time, I will be able to demonstrate here that they came from South Africa, they have been here for a week, they have gone back--- When they asked the Permanent Secretary in the Ministry of Transport to visit the site accompanied by Government investigators, they have been reluctant. Could hon. "Sonko" substantiate those allegations?

Mr. Mbuvi: Thank you, Mr. Deputy Speaker, Sir. Our point number one, there is a junior police officer, SP. Erastus Chemorei, who was the custodian of the drugs safe key, of the heroine that was detained within the GSU camp.

Mr. Deputy Speaker, that officer was brutally murdered under a hail of 400 bullets by the police. I hereby table a report of the post-mortem that was conducted by Dr. Caslas, a forensic pathologist.

(Mr. Mbuvi laid the document on the Table)

Mr. Deputy Speaker, Sir, there was an inquiry that was held in an Eldoret Court. The ruling of that inquiry - the outcome - it was ruled that all the senior officers implicated in Chemorei's murder should face the law. They should face murder charges. But, instead, the Commissioner of Police has promoted all the suspects. They have been transferred in different counties. They are PPOs now. What kind of a Government is this? I table the inquest No.28 of 2007

(Mr. Mbuvi laid the document on the Table)

Hon. Members: Toboa toboa!

Mrs. Shebesh: Mr. Deputy Speaker, Sir, as I support what hon. Mbuvi has said, I have brought to your attention - and I am sure it is in front of you - a Motion to form a Select Committee.

Mr. Deputy Speaker, Sir, as I stand here, I have a lot of information. But I want to provide this information under the safety of a Select Committee of this House, following the rules and guidelines, because of the sensitivity of the issues which we are talking about. Hon. "Sonko" has enumerated some of them. But mostly because of threats to people's lives--- But I can assure you that we have notice and said a third of what we know was behind the deaths of our two colleagues and some of the information we are getting is worrying.

In fact, it could be, in short, a thing that can shut down this Government. So, we need also to know: Where is the Motion of forming a select Committee of this House to investigate this matter without having to deal with speculation, as we are doing now, and we brought that Motion over three weeks ago?

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. You have just heard what the hon. Rachel Shebesh has said. Having said she has a lot of information, will it not be in order for the House to give her protection, pending the inquiry?

(Mr. Mwau stood up in his place)

Mr. Deputy Speaker: Yes, hon. Mwau. Hon. Deputy Leader of Government Business, can you wait until hon. Mwau rises on his point of order. Yes, hon. Harun Mwau

Mr. Mwau: On a point of order, Mr. Deputy Speaker, Sir. From the debate in the House, it is quite clear that there is a serious conspiracy.

Mr. Deputy Speaker, Sir, I want to concur with hon. Martha Karua that the Government is telling us who are not drug peddlers, but it is not telling us who are. That is a correct position. The two comrades who left us were serious investigators of the drugs issue. They brought various reports in this House and, maybe, the conspirators could have decided to silence them.

Mr. Deputy Speaker, Sir, as we continue, the hon. Members who were adversely mentioned through falsehood--- It is possible that there could be a conspiracy. They could go further and eliminate those Members of this House who were mentioned wrongly in a conspiracy. If that happens, the allegation will be that the drug traffickers are eliminating each other. These are conspiracies. This matter is extremely serious and the Chair must be able to protect Members from unwarranted falsehoods by either foreign Governments or by any person. The foreign government is outrageous enough even to accuse the Government of the Republic of Kenya.

Mr. Deputy Speaker, Sir, the report that was tabled here on the 22nd of December, 2010, did not only contain the names of the four hon. Members who were mentioned. It contained names of nine hon. Members of this House, including the name of our President. It is unquestionable for a foreign Government to scandalize the name of our President. We are told that they have failed to mention those names because they do not want to continue propagating this falsehood.

Mr. Deputy Speaker, Sir, it is important that the Government takes a stand and ensures that the US Government responds to the allegations and provides facts. If not so, a protest note should be written. Even if it means to withdraw our embassy from their country, let it be so. Just for the mere fact that we are poor and receive donations from the USA, does not mean we allow our dignity to be violated this far.

Thank you, Mr. Deputy Speaker.

(Applause)

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, you have already made a ruling and given direction in terms of how this matter will be handled by the Office of the Prime Minister. You expect the Prime Minister to bring a co-ordinated response in terms of what the Government has done on this matter.

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

Mr. Deputy Speaker: Orders! Mr. Kimunya, is basically responding to a point of order.

The Minister for Transport (Mr. Kimunya): Yes, Mr. Deputy Speaker, Sir. Perhaps it is a bit worrying that we are using the privilege of this House to turn it into a House of speculation, whereas we have already created the framework---

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. You have heard hon. Kimunya saying that we are turning this House into a House of speculation. Information has been tabled here and we expect him to deal with real issues.

(Applause)

We are not speculating. We are saying that drugs are being sold in this country.

Mr. Mbuvi: By the Government itself!

Mr. Kabogo: Mr. Deputy Speaker, Sir, names have been mentioned in this House---

Mr. Deputy Speaker: Order! Order! It had actually escaped the attention of the Chair. Indeed, hon. Kimunya, did you say that this House is being turned into a House of speculators?

(Applause)

Hon. Members: Yes, he did!

The Minister for Transport (Mr. Kimunya): Yes, indeed, Mr. Deputy Speaker, Sir. I did mention that this House is being turned into a House of speculation. There are very sensitive allegations that have been made, including speculation on the very unfortunate incident---

(Loud consultations)

Mr. Deputy Speaker: Order! Order!

An hon. Member: Out! Out!

Mr. Deputy Speaker: Order! If there is anybody who is speculating or allowing room for speculation, it is the Government headed in this House today by none other than you!

(Applause)

You have your Ministers standing on the Floor of the House and saying that one arm of the Government is unable to furnish them with information. Is that speculation?

Mr. Mbuvi: *Tupa yeye nje!*

Mr. Deputy Speaker: We need to deal with this Business in a serious manner or with the seriousness it deserves!

Mr. Mbuvi: *Toka nje!*

Mr. Deputy Speaker: The Chair, the House and the rest of this Country has a right to know the truth!

Mr. Mbuvi: *Mwizi wewe!*

Mr. Deputy Speaker: That is the sense of---
Order! Hon. Mbuvi, Order! Is it you?

(Laughter)

We are all getting amused! Indeed, as I said from the beginning, to me, this is the saddest day of my 20 odd years in politics. We have had situations in which we are asking for change; but we have never had a situation in which we are worried whether our country has been turned into a drug country. If it is true that Government assets were used for this thing, the Minister should make an undertaking that investigations will be carried out and assure the nation that, indeed, the culprits will be brought to book. So, it is the responsibility of the Government side to do so. The hon. Members merely have a responsibility to hold you accountable and to scrutinize your actions as the Government. That is how the separation of powers or the doctrine of separation of powers works. In any case, I have given direction on this. I have directed the Prime Minister to deal with this matter. I have seen the lackluster manner in which the other Members of the Government here are dealing with these things.

(Applause)

We cannot have a game of ping-pong here with the Ministry of Foreign Affairs or the Ministry of State for Defence. The Minister of State for Defence comes here and says they did not have information on any protest note that was made by the Government. The Minister for Foreign Affairs confirms that they did which, indeed, was confirmed here by none other than the Assistant Minister for Foreign Affairs himself.

So, the Chair will put this to rest.

(Mr. Haji stood up in his place)

Yes, what is it, Minister of State for Defence?

The Minister of State for Defence (Mr. Haji): Thank you very much, Mr. Deputy Speaker, Sir. I concur with your position that this matter be referred to the Prime Minister. But I am standing on a point of order on the serious allegations which were made by hon. Sonko, who produced some documents which we are not aware whether they are authentic or not.

He also made an allegation of politicians or MPs who have been murdered. Could he produce the documents to substantiate his allegations?

Mr. Deputy Speaker: Order! Order!

(Several hon. Members stood up in their places)

Order! For the benefit of the Chair, the ruling, the proceedings of the inquest as well as the report of the post mortem are admissible as provided for by the Standing Orders because all of them are signed and do bear the name of the officers. Indeed, in one case, it bears the name of Prof. Koslovs of the Moi Teaching and Referral Hospital. In the other case, it bears the name of

the Senior Principal Magistrate, A. A. Onginjo in Eldoret, where the inquest was carried out. So, they are both admissible.

(Applause)

The Minister of State for Defence (Mr. Haji): Mr. Deputy Speaker, Sir, what I am raising is whether in the post mortem report, it was alleged that these people died because of drug trafficking---

(Loud consultations)

Mr. Deputy Speaker: Order! Order!

Hon. Members, I will have no option, but to defer the other Questions. Mrs. Shebesh, the Chair clearly regrets that your own Question by Private Notice escaped the attention of the Chair and will be deferred to the earliest opportunity most acceptable to you. Question No. 7 by Private Notice by Mrs. Shebesh is deferred.

QUESTION BY PRIVATE NOTICE

BREAKDOWN OF COOLING MACHINES AT CITY MORTUARY

(Mrs. Shebesh) to ask the Minister for Local Government:-

(a) Is the Minister aware that the cooling machines at the City Mortuary have not been working since 9th June, causing great discomfort to the mortuary staff, bereaved family members and surrounding neighbourhoods?

(b) Is the Minister further aware that pathologists seconded to the facility withdrew their services due to the stench from the decomposing bodies?

(c) What measures will the Minister take to ensure that all cooling machines at the facility are repaired immediately?

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1552

LACK OF ELECTRICITY IN BURA CONSTITUENCY

(Question deferred)

Question No.1517

SUPPLY OF WATER TO MOMBASA RESIDENTS

(Question deferred)

Question No.1511

BENEFICIARIES OF YEDF/SCHEMES IN KEIYO SOUTH CONSTITUENCY

(Question deferred)

Question No.1527

PROVISION OF DETAILS ON RESETTLEMENT OF IDPS

(Question deferred)

Question No.1389

LACK OF SPEED GOVERNOR ON LORRY INVOLVED IN ACCIDENT

(Question deferred)

Question No.1442

NON-PAYMENT OF SALARIES TO YOUTH POLYTECHNIC STAFF

(Question deferred)

Question No.1603

GENERATION OF GEOTHERMAL POWER FROM MENENGA CRATER

(Question deferred)

Mr. Deputy Speaker: Hon. Members, all these Questions are deferred to Wednesday morning and afternoon; and Thursday next week. All of them should take priority over other Questions that are still in the pipeline.

On Question No.1608 by Mr. Mwau, I have already given a direction; that the Prime Minister tackles it on Wednesday afternoon.

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. In light of what has transpired in respect to Question No.1608---

Mr. Deputy Speaker: Order! Order! We have passed that now. I have already given direction on that.

Mr. Kigen: Mr. Deputy Speaker, Sir, something very small in respect to the security of the people who have---

Mr. Deputy Speaker: Order! Order! Thank you very much for reminding the Chair. The Chair directs the Sergeant-at-Arms to immediately liaise with the security machinery in Parliament itself - we have our own police in Parliament – for hon. Shebesh to be furnished with adequate security of her own choice. She will have to ask for officers who she is comfortable with and has to be given protection round the clock.

Mr. Mbuvi: Mr. Deputy Speaker, Sir, you are forgetting hon. Mwau, hon. Kabogo and I.

(Laughter)

Mr. Deputy Speaker: Order! Order! Order!
Next Order!

POINTS OF ORDER

NON-FACILITATION OF INVESTIGATORS OF THE SAITOTI/OJODEH PLANE CRASH

Mr. Konchella: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement on a matter of national concern.

Mr. Deputy Speaker, Sir, indeed, it is now about three weeks since the death of Prof. George Saitoti, hon. Orwa Ojode and four police officers in a helicopter crash. The Minister for Transport set up an inquiry, under the Civil Aviation Act, to investigate the cause of the accident, but investigators have been frustrated by the Ministry, by not providing the required assistance and facilitation. The investigators representing the family of hon. Prof. Saitoti left the country last night due to frustrations. This delay is likely to be challenged in the future, that the helicopter did not meet civil aviation standards. Prof. Saitoti's lawyer has now advised that a public inquiry, under the Public Commission Act, be held to establish all the circumstances likely to have caused the tragic loss of lives.

Mr. Deputy Speaker, Sir, could the Minister explain whether this is a deliberate effort to obstruct the truth? Could he also explain why necessary assistance and facilitation has been deliberately withheld by the Ministry to enable the investigators carry out their duty?

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Is it on the same matter?
What is it, hon. Karua?

(Mr. Kimunya stood up in his place)

Mr. Deputy Speaker: Order! Order! They intend to enrich the Ministerial Statement that is sought from you. Listen first!

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. Could the Minister, when making the explanation, also give us the progress report, if any, of the inquiry? Having told this House that the inquiry would take one month, could he also tell us where the inquiry is sitting and whether it is open to the public? Why is the Government not moving with speed in respect of Members of Government and this House who met their tragic death? Their families, Kenyans and even us, as a House, want to know the truth about this matter.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Further to that, could the Minister tell the House who the first person to buy this helicopter from the Eurocopter factory was and when that was? Could he also tell the House the full address and contacts of the first person who bought it from the factory? Could he also provide the full specifications of the

helicopter on delivery? We would also like to know where it flew to when it was sold. Could he also tell us if it was converted, who converted it before it got to Kenya and in which factory? When it got to Kenya, how much did it cost Kenyans? What was the actual price from Eurocopter?

Mr. Kabogo: Mr. Deputy Speaker, Sir, in addition, it will be important for the Minister to tell the country the training that was done to the two pilots, who checked them out and how many hours they had on that particular plane. Also, it is important to know the people who were in that hangar on Friday and Saturday night before the flight that was taken by hon. Prof. Saitoti and hon. Ojode, including the civil aviation records that cleared that plane when it was first brought into Kenya, so that it was licensed to fly here in Kenya.

Mr. Wambugu: Mr. Deputy Speaker, Sir, could the Minister, when giving the Statement, also include the criteria that was used in selecting the members of the investigation team of that helicopter crash that took the lives of our beloved brothers?

Mr. Mwau: Mr. Deputy Speaker, Sir, the Statement should also include details on whether the pilots had been actually taken through the drill of using emergency evacuation. Could he also tell the House whether the probe includes the members of the family, because they were supposed to be included, and so far, none has been included? Could he also confirm whether the aircraft was insured, and if it was, by how much, when and by which insurance company?

Mr. Deputy Speaker: Deputy Leader of Government Business!

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, the reason I was standing up earlier is because I was coming to brief the House on the progress of this very matter even before it was raised. If you allow, I could actually do it.

Mr. Deputy Speaker: Proceed!

MINISTERIAL STATEMENT

STATUS OF INVESTIGATION INTO POLICE HELICOPTER CRASH INVOLVING THE LATE HON. PROF. SAITOTI/MR. ORWA OJODE

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I wish to make the following Statement on the fatal police helicopter crash that occurred on 10th June, 2012, at Kibiku, Ngong, that led to the death of two Ministers, two pilots and two security officers.

Mr. Deputy Speaker, Sir, the investigation into the probable causes of the accident began immediately; indeed, within one hour after the crash, through the accident investigation officials of the Ministry of Transport. The investigations team has been working tirelessly since the crash and all the necessary arrangements have been made. I want to emphasize that all the necessary arrangements have been made, including the assistance being provided to the foreign investigators who were brought by the family.

The Government has instituted a public inquest led by hon. Lady Justice Kalpana Rawal to take over the investigations into the circumstances surrounding the helicopter accident as provided for by the Civil Aviation Act Cap.394. This inquiry team was sworn in by the Chief Justice, Dr. Willy Mutunga, on Wednesday 20th June, 2012, and on the same day the Chairperson of the inquest team, the hon. Lady Justice Kalpana Rawal convened the team's first meeting after which they visited the site accompanied by some of the families' representatives. The inquiry team has been visiting the site for mapping and examination of the wreckage. The team has been

meeting at the Ministry of Transport Headquarters to review the observation and the data that has been collected.

This morning, His Excellency the President, following consultations has since scaled up the inquiry into a full Commission of Inquiry in accordance with the Commissions of Inquiry Act Cap.102 Section 3. Members of the public will have the opportunity to participate in the Inquiry through hearings that will be conducted at the Kenyatta International Conference Center (KICC) from Monday, next week. All the information that has been provided by Members here will now best be handled within the framework of the Commission of Inquiry which will have the full mandate, tools and apparatus to authenticate and test all that information and give us the report within that framework. We have done this to accommodate and avoid any speculation as to what could have happened because we all want to know the truth.

As of this morning, we proceeded within the framework of the Commission of Inquiry and we have now moved away from Cap.394 of the Public Inquest for purposes of ensuring that we have a public inquiry into this matter starting from Monday at the KICC. With regard to all the other arrangements, I would like to confirm to this House that I, personally, met the investigators from South Africa who represent the family. I handed them over to the Chief Investigator and they visited the site. They have been working together and they said that they only needed to be in the country for three or four days, gather information, go back to South Africa, prepare their notes and then come back and present themselves in the inquiry. So, it is absolutely unfounded to say that they have been frustrated by anyone. I have been following the progress on this and I know that there has been no frustration on any of the people who want to be enjoined as a party to this inquiry starting on Monday at the KICC. The Chairlady of this inquiry, Lady Justice Rawal will be there to enable anybody to participate.

Mr. Konchella: On a point of order, Mr. Deputy Speaker, Sir. While the Minister may seem to be talking rightly, this was the beginning. But what has subsequently happened is that the Ministry has made sure that it locks them out when they ask for facilitation. This week, they asked for a 40-foot container to be purchased so that they can relocate all the material into the container, seal it and make sure that everybody has a key so that nobody gets to interfere with it for future investigations. However, they refused to buy the container. Indeed, the Permanent Secretary was not in the office the whole day. He refused to answer to any phone calls and they had to go because there was nothing that they could do any more. This is because they could not relocate the material for safe keeping so that they can investigate in future. So, is the Minister in order, therefore, to mislead the House?

Mr. Deputy Speaker: You will have to respond to all of them. Just take the points down.

Yes, Ms. Karua.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I would like to respond to them but I would like to ask that ---

Mr. Deputy Speaker: Order, hon. Kimunya! You do not have the Floor. You take notes of all the clarifications being sought by the hon. Members and then you respond to all of them at once. You are not new in this House.

Ms. Karua: Mr. Deputy Speaker, Sir, the Minister has not answered a question that was asked by Captain Wambugu regarding the criteria of choosing members of the inquiry. This was a subject of a request for a Ministerial Statement by hon. Imanyara which I supported in this House. Also, these investigations, having gone on for two weeks from the date that the Minister stated that the investigation team had been picked, could he provide the House with a

preliminary report? There must be some work they have done for those two weeks so that as we wait for the public inquiry, we have a preliminary report of what actually happened.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, the Minister should take these points of order very seriously when we stand here to speak, particularly hon. ole Lankas, Mr. Konchella and myself. This information is important for the Minister to know. We have had meetings with the families and we are talking from what the families and those investigators have told us. We are talking about departed colleagues and this is not a political matter. Therefore, the Minister must take it seriously. Imagine this can happen to any of us and our families and the country would really like to know what happened. We have just asked questions and the Minister conveniently has not attempted to answer any of the questions that I have asked with regard to when this helicopter was manufactured, who bought it and how it went. If he has no information at the moment, could he assure the House that he will bring the information and stop treating the House with the usual arrogance that he shows when people are discussing serious matters?

Mr. Ruto: Mr. Deputy Speaker, Sir, could the Minister tell us why these particular professionals who had started the investigation had to be frustrated so that it can give way to a purported upgrading of the inquiry? Must you stop the professionals from performing, for example, from preserving the parts and the evidence? They were asking for a 40-foot container so that they could store the parts there. These parts are now exposed to the vagaries of the weather and I do not know what else can happen in that forest. We may never get hold of this information and then you will open a public inquiry at the KICC where rumours will be spread around. The Minister is not doing a professional job. Must he send away the professionals by refusing to see them and facilitating them? Why did we start in the first place if there was no money for them to stay in hotels? They have all gone away. Is the Minister's information convincing?

Mr. ole Lankas: Thank you, Mr. Deputy Speaker, Sir. In the same vain I want to encourage the Minister to take this matter very seriously because from the way he is behaving, he is taking this matter lightly. From what has transpired, he has seen that it has even generated more debate than there was before. Could the Minister, through the Chair, confirm to this House that after the crash, there was interference at the scene of the accident? Can he further clarify that he said that there would be reconstruction of the scene and has that been done before the experts visited the scene as he said twice? Could he confirm where the wreckage that was taken away is being kept up to now?

Mr. Midiwo: Mr. Deputy Speaker, Sir, there is a saying that if it smells like a skunk, there must be a skunk or it must be a skunk. When this accident happened the Government Officials, the Prime Minister and the fraternity of the Government said that we should not rush into speculations and that they would conduct a thorough investigation to reassure Kenyans or to give them the truth underlying this crash. This country has seen many deaths which have never been explained. This country, including this Government, has conducted many investigations including the one for Grand Regency. The other Government conducted one on devil worship but we have never seen the results or the reports so that we can know the truth.

Now the Minister purports, without telling us that something has been degazetted, that another process seems--- It seems they are trying to initiate a parallel process. We have been told to stop speculation. What happened on that Sunday; people are talking about it in the streets. There are all kinds of theories. This country deserves to know. Only two or three months ago the police were going after me for saying that there were assassination plots on the life of the Prime Minister. We are not new to machinations of forces of the Executive on the lives of Kenyans. We

want to know what prompted the President in the last two weeks only to ignore a negotiated process to come up with the so-called “public inquest”. What was wrong with the one which was established only a few days ago?

Mrs. Shebesh: Mr. Deputy Speaker, Sir, maybe, the Minister would like to tell us something about one of the biggest questions Kenyans are asking. This, again, is with a lot of respect and we are really regretting for talking about our colleagues just a few weeks after their death. Who were the first people on the scene?

The Minister for Transport (Mr. Kimunya): The Prime Minister!

Mrs. Shebesh: The Prime Minister was not the first person on the scene. The Commissioner of Police was the first person on the scene. He then walked away when the Vice-President arrived. The question Kenyans are asking is: If today your boss was to suffer the kind of accident that happened to hon. Saitoti and hon. Ojode and you are the Commissioner of Police and you arrive at the scene, but leave without having secured the scene, and leave the Vice-President to answer questions when the person lying there is your boss--- The question is whether this Government is working together or against each other. We go back to the question: Was there a grand scheme within Government to do away with our colleagues?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, we are discussing some very serious matters. I mentioned earlier on that we are turning this into a House of speculation. We have established a public inquiry to establish the truth as to what happened. We are now, before cameras, telling Kenyans what we think happened rather than letting that be the subject of inquiry.

Mr. Deputy Speaker, Sir, we have rules. If we want to continue discussing this matter I would like to say that, perhaps, we need to move with caution and also empty the galleries. Otherwise we are creating discomfort even for the families. This is because we are now telling them that, perhaps, this is not what would be the subject of the inquiry, but what hon. Members know and are talking about here.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. The hon. Minister came to the House and said that he wanted to update us. He said that after he did so he would be able to take questions, which questions he is not even answering. I would ask you to tell the Minister not to play with this case and the fears of Kenyans. We are talking of a scenario where six Kenyans unnecessarily lost their lives. It could have been avoided!

Mr. Deputy Speaker: Hon. Minister, you are supposed to take in the concerns as further clarifications are sought. Indeed, the House is not competent enough to talk about the inquest. There are areas of concern that are preliminary and which any Government would want to take on board. I keep saying that to allay the concerns of Kenyans, indeed a credible process is under way.

Hon. Minister, nobody has come up here to say that you are responsible for the death of the Ministers. What these hon. Members are saying is that there are these concerns. In all fairness, you are supposed to be taking in that information; you are not supposed to be having a problem with the information. It will help you to get to the bottom of these things even at that preliminary level.

So, I will take one point of order given the fact that two hon. Members of this House, and four other equally distinguished members of the Kenyan society, lost their lives. The Chair has a responsibility to allow the seeking of as many clarifications as possible. The House does not have to look like it is pushing something under the carpet.

For the hon. Members, I would like to urge you to seek clarifications that will help us in unraveling the mystery of the deaths of our colleagues and the other distinguished Kenyans. I am only going to take two more clarifications. After that the matter will rest. The Deputy Leader of Government Business will make a small statement and then we will go to the next Order.

Dr. Laboso: Mr. Deputy Speaker, Sir, I want to confirm to the House that the Minister really needs to take this matter very seriously. I speak here as a member of the family which was affected by a similar incident four years ago. I want to confirm that to date we have not been told how Lorna and Kipkalya died. Even as you assure us that there is a Commission of Inquiry, after the inquiry, what information will come out of that inquiry? So, Minister, take this matter seriously so that we can once and for all get to the bottom of this matter, and ensure that no more Kenyans are killed unnecessarily and at the end we do not get answers to the questions we ask.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, with a lot of respect to hon. Kimunya, is it possible for the Government to appoint another Minister to specifically deal with this matter?

Mr. Deputy Speaker: Order, Mr. C. Kilonzo! That is not a matter to be deliberated on the Floor.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, let me revise it. Is it possible for the Minister to excuse himself from this matter and allow the Government to appoint another Minister to deal with it? I do not want to go into specifics, but that is the feeling out there in the public.

Mr. Njuguna: Mr. Deputy Speaker, Sir, outside there we have very serious talk about this tragedy. Could the Minister, considering the accusations that the Ministry of Transport was non-committal and non-co-operative, give this House the fullest assurance on co-operation?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I want to say here what I have said before. We have given every support. At 9.50 a.m. when the accident was reported, in accordance with Cap. 394--- Once an air accident occurs, there is a procedure to be followed. The accident has to be reported to the inspector in charge of air accidents investigations. From the moment this accident was reported, they moved to site, secured it and started investigations. They handed over the investigation to Justice Rawal. All the issues that are being raised here that they are being denied storage and so on, I want to state categorically that---

Mr. Deputy Speaker: Order, hon. Minister! You have just gone on record and having said that we are not a commission of inquiry, we should not delve into it. What we are basically discussing is the matters or the information that is supposed to come out of the inquiry. As a Minister, you can only promise the House that you will give the fullest co-operation to responses and, so be it! You cannot say what went wrong and what went right and how things were done. There is a competent body which has been formed by the Government to do that. So, can you give an assurance to Parliament and the Government that you are going to do all that it takes to make sure that this thing is acted upon?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I am not going into the details of the investigations. I am explaining the process and how we have provided the co-operation contrary to the view that is being given that we are frustrating the investigations and the inquiry. As we speak, like I said, Lady Justice Rawal has already been to the site. She has already identified the site where the wreckage will be stored. She has been facilitated to ensure that, that happens and has been facilitated to secure the premises at Kenyatta International Conference Centre (KICC) for purposes of the public inquiry.

Mr. Deputy Speaker, Sir, I also want to confirm that although hon. Members are saying they are speaking for the families, I am also in touch with the families and we are discussing all these things. So, I am not sure who is closer to the families and is purporting to speak for the

families when I am also in touch with the families and I am taking their concern as we move on board. Part of the reason why we have scaled it up from an inquest under Cap394 to a public inquiry under Cap102 is to accommodate the request of the family.

I also want to confirm that the team was appointed in consultation with the families and the same team has been reappointed as the commissioners. So, we are not losing anyone. We are not even adding anyone. We are retaining the same team that was conducting the inquest to conduct the commission of inquiry because that was the team that had been agreed on with the families. So, let us give the commission of inquiry its time and the opportunity to carry out this investigation and come out to tell us what happened and then we shall altogether be wiser. However, as of now, anything else we say here is---

Mr. Konchella: On a point of order, Mr. Deputy Speaker, Sir. The Minister should really weigh his words very carefully because this is a matter of national concern. These were Kenyans who died while serving the nation. Nobody else can get in touch with the family other than through a lawyer, Ngatia, who is the family lawyer. All the information I have here is from him direct and I have an e-mail from him and I was with him yesterday. So, let us not also try and justify what we are not doing by pretending that we are doing it

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I wish to confirm that I have actually discussed with the family.

Mr. Deputy Speaker: Order, hon. Minister! Hon. Minister, the Chair expected you again not to discuss the details. You do not divulge any information. You have the concerns raised and as the Minister all you need to say is that: "We have heard the concerns; indeed, everything will be above board and we will get to the bottom of this in the best manner possible." However, when you begin now saying---

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Deputy Speaker, Sir. I heard what was going on over the radio and I felt I should say something about this. I am saying it because many lives have been lost including those of hon. Members of this House and no answers have come out at all. We cannot continue to be in a situation where we are only good at giving assurances but everything that we do leads to the opposite direction. So, whereas I agree that the Government will do everything possible in order to unravel the cause of these deaths, I know that in every investigation, it is very dangerous to dismiss any theory until you know what has happened. The only way that you can dismiss all the theories is by knowing what happened. So, I know it behoves on us as Government to resolve because if you do not resolve, then you must live by the theories that are out there.

I am saying this because I took part in the trial of the murder of Dr. Ouko and the trial of Julie Ward where in one case in the murder of Julie Ward, the theory that was there which was being fronted was that Julie Ward had killed herself and put herself on fire. The same theory was also followed in the Ouko murder. So, I think as the Government now, we should be open to all theories. In fact, one of the things that annoys me today is that it looks like Saitoti is gone and gone and life continues. I mean it is really something very bad. That Ojode is dead, then life continues and then the next day it will be somebody else. So, I just want to plead as a House - because even the House itself may not come out with solution, but we can help in preserving evidence - that we do not dismiss any theory until we can tell somebody that we know that this is what happened. That is what I wanted to tell the House.

Thank you.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Information is power. I just wish the Minister could listen. He does not have to have all the answers. We have asked

specific questions like the ones about how this helicopter was bought and the details of the helicopter. If he does not have them, it is not a crime to say: "I will go back and get information and then come back." He insists that he knows everything and draws conclusions. Can the Minister be humane enough and know that we also appreciate his limitations?

Mr. Deputy Speaker: Order, hon. Minister! I think the Chair will have to direct on this. Suffice to say that there is a public inquiry. Hon. Minister, when you stand on the Floor of the House and say that the scene was secured and another hon. Member stands and says that the scene was not secured, this is a matter that has got to be investigated by the probe team. It is not a matter that you can put into finality. Every moment I give you to put this to rest, you inflame more passions within the House. So, the Chair directs that this matter be put to rest. Indeed, if any other hon. Member has got information, then you will know how to go and make this information available to the competent authority.

For purposes of taking the country forward and resting the fears of Kenyans, I have already directed that the Prime Minister is going to give a statement on the same, being the coordinator and supervisor of the Government functions, on Wednesday.

Hon. Members: That was on drugs!

Mr. Deputy Speaker: Order! That was on a different matter but having said that, I think we have come to the end of this matter and we have to go to the next Order.

Mr. Midiwo: On a point of information, Mr. Deputy Speaker, Sir. The Minister has made an allegation or has informed the House that the family was consulted. I have just received a message from a family member of hon. George Saitoti that they were not consulted. That is good information. He needs to know that the family is not feeling good about it. I have the text message.

Mr. Deputy Speaker: Indeed, this is the information that is going to be handled by the commission of inquiry.

Mr. Mbuvi: Another point of information, Mr. Deputy Speaker, Sir.

(Laughter)

Mr. Deputy Speaker: Hon. Members, given the fact that we are discussing the way forward, we will have to get to the bottom of the deaths of our own beloved two colleagues.

You realise the predicament the Chair is in. I do not want it to look like I am handling this matter like any other issue; in a manner that I can dismiss it and say "let us go to the next Order" but, because we have deliberated on these things for so long, I will take only two more points of order. For God's sake, make sure that those points of order are going to carry this country forward.

Mr. Mbuvi: On a point of order, Mr. Deputy Speaker, Sir. We just heard hon. Shabesh say that the Commissioner of Police was among the first persons to get to the scene but he never did what he was supposed to do.

Mr. Deputy Speaker: Order! Order!

Mr. Mbuvi: Mr. Deputy Speaker, Sir, let me finish. I have a point. Can the Government consider suspending all the mentioned suspects, including the Commissioner of Police, the Air Traffic Controller who was on duty on that day, and any other senior Government officer, to pave way for proper investigations to be carried out?

Mr. Ruto: Mr. Deputy Speaker, Sir, we asked a simple question which the Minister did not answer. Did his Permanent Secretary (PS) facilitate the people who were doing the inquiry or

did he not? Did he assist in the preservation of evidence or did he not? Has the group from the Republic of South Africa gone back or have they not? Can he confirm whether they have gone back? If they have gone back, what is the reason?

Mr. Deputy Speaker: Order! Order, hon. Ruto! The information you are seeking is information that is supposed to be advanced at the Commission of Inquiry. We cannot turn the plenary of this House into a commission of inquiry.

Next Order!

POINT OF ORDER

PREVAILING CRISIS IN FISHING INDUSTRY

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

Mr. Deputy Speaker: On the same matter?

Mrs. Odhiambo-Mabona: No, Mr. Deputy Speaker, Sir.

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

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I had a Ministerial Statement that was due today from the Ministry of Fisheries Development on an issue of a prevailing crisis in the fishing industry. The request is urgent. There is a strike in the fishing industry. It is not only teachers who strike. There are fishermen who also strike. The fishermen are on strike, and the Ministerial Statement needs to be made urgently.

Mr. Deputy Speaker: Mrs. Odhiambo-Mabona, are you demanding the issuance of a Ministerial Statement you had sought earlier or are you seeking one now?

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I sought one yesterday, and the Chair directed that I be given a Ministerial Statement today because it is urgent, given that fishermen are on strike.

Mr. Speaker: Is the Minister for Fisheries Development not here? Deputy Leader of Government Business, where is the Minister?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, he was around. I believe that he could still be within the precincts of Parliament. In the event that he is not here, he can issue the Ministerial Statement at the next earliest opportunity.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. The Minister for Fisheries Development was here. I do not know where he has just walked out to. Without pre-empting debate, we are likely to adjourn today. Would I be in order to request that the Minister for Fisheries Development accompanies me to Homa Bay County to deal with the crisis? There is an extreme situation that is facing fishermen in that area. Fish prices have fallen to unprecedented low levels, and this is affecting the lives of women and children. So, can the Minister accompany me to Homa Bay County to deal with that issue? It seems that, in this country, we do not take the issue of fisheries seriously.

Mr. Deputy Speaker: Hon. Millie-Odhiambo, if the Minister is not here, who can give a commitment on his behalf?

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, the Deputy Leader of Government Business can do so.

Mr. Deputy Speaker: Deputy Leader of Government Business, can you make an undertaking to attend to the issue?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I will communicate to the Minister to accompany hon. Millie-Odhiambo to her constituency to see what is happening.

(Mr. Musyimi stood up in his place)

Mr. Deputy Speaker: Yes, hon. Mutava Musyimi.

TABLING OF FORENSIC AUDIT REPORT ON
DEMOLITION OF BUILDINGS IN NAIROBI

Mr. Musyimi: Mr. Deputy Speaker, Sir, I stand to give a Statement on the evictions and demolitions that took place in October/November, 2011, in Syokimau, Kiang'ombe/Maasai Villages, KPA, Mitumba, Eastleigh and Kitui.

Mr. Deputy Speaker, Sir, you directed that the Joint Committee on Lands and Natural Resources, and Administration and National Security---

The Minister for Regional Development Authorities and Acting Minister for Local Government (Mr. Gumo): On a point of order, Mr. Deputy Speaker, Sir. Yesterday, my Assistant Minister and I were barred from transacting business in this House.

Mr. Deputy Speaker: A ban which was subsequently lifted?

The Minister for Regional Development Authorities and Acting Minister for Local Government (Mr. Gumo): Yes, but I want to apologise, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Fair enough. Your Assistant Minister has also apologised on your behalf.

The Minister for Regional Development Authorities and Acting Minister for Local Government (Mr. Gumo): Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Proceed, hon. Musyimi.

Mr. Musyimi: Mr. Deputy Speaker, Sir, I was about to say that, pursuant to the demolitions, a Joint Committee was formed, comprising Members of the relevant Departmental Committees of Administration and National Security; Lands and Natural Resources; Local Authorities, and Transport, Public Works and Housing, to investigate the evictions and demolitions. The Joint Committee, under my chairmanship, tabled its Report in this House in December, 2011, and that Report was adopted.

Amongst the recommendations in that Report was that an independent forensic audit be undertaken to look into this tragedy. Work on the independent forensic audit started in March, 2012. It was supposed to take 60 days but it was not completed within that period. We got an extension from the Chair and I am pleased to report this morning that my Committee received the Report from the Auditor-General, who was supervising the independent forensic audit.

Mr. Deputy Speaker, Sir, I now wish to request this House to give the Joint Committee three weeks to study the Report and table the Report from the Auditor-General, together with the recommendations of the Joint Committee.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Are you seeking the indulgence of the Chair to give you the extension or does it have to be done by leave of the House?

Mr. Musyimi: Mr. Deputy Speaker, Sir, I am seeking the indulgence of the Chair to, first of all, indicate that the Report was received today but we cannot table it without the benefit of the recommendations of the Joint Committee.

Mr. Deputy Speaker: Can that happen within three weeks?

Mr. Musyimi: Three weeks is okay, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Very well. The Chair directs that you be granted three weeks and then you can table the Reports.

Mr. Musyimi: Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Yes, Deputy Leader of Government Business.

MINISTERIAL STATEMENT

BUSINESS FOR THE WEEK COMMENCING 3RD JULY, 2012

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, hon. Members will notice that in today's Order Paper, we have scheduled a Motion for Adjournment of the House to 31st July, 2012 to pave way for a well deserved recess. During the debate on that Motion, hon. Members will have the opportunity to speak on the many socio-economic and governance issues affecting our nation, among other sectors.

Recounting the achievements of this House since we reconvened on 17th April, 2012, we managed to realise commendable progress with regard to passage of constitutional Bills, amongst which are the following: The Land Registration Bill, 2012; The National Land Commission Bill, 2012; The Land Bill, 2012; The Memorandum from His Excellency the President on the County Government Bill, 2012, which was disposed of successfully; The Public Financial Management Bill and The Public Service Commission Bill. The Teachers Service Commission Bill has been dealt with up to the Second Reading stage to allow further consultations with stakeholders.

Mr. Deputy Speaker, Sir, accordingly, we have not scheduled any business for the coming week because we expect that hon. Members will be keen to take a break. In the event that this does not happen, the House Business Committee will meet and schedule the business of the House accordingly.

Thank you.

Mr. Deputy Speaker: Hon. Members, I now want to direct that we shift to the Supplementary Order Paper, which has been circulated.

An hon. Members:---(off-record)

Mr. Deputy Speaker: It must be there, hon. Members. If you failed to see it, it is because you did not pick a copy from the Serjeant-at-Arms at the entrance to the Chamber.

Next Order!

Deputy Leader of Government Business, could you move the Procedural Motion.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

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

[Mr. Deputy Speaker left the Chair]

[Mr. Speaker took the Chair]

Mr. Speaker, Sir, the rationale for the extension is to facilitate the disposal at the Committee Stage of the Memorandum from the President, the Appropriation Bill as well as the pending Motion on the National Hospital Insurance Fund (NHIF) which hon. Members are keen to have disposed of. After that, we will still have our three hours to discuss the Motion for Adjournment.

This is a procedural matter and I believe that the House will live up to its usual spirit so that we can dispose of all the pending business and then proceed to take our break to go and do constituency-related matters that we need to do.

Mr. Speaker, Sir, I beg to move and request that Prof. Anyang'-Nyong'o seconds the Procedural Motion.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I beg to second.

(Question proposed)

Mr. Ruto: Mr. Speaker, Sir, it has become common for the Government to tell us to sit until midnight and then propaganda is spinned by the media because they are not aware of what we are discussing. I do not know whether the Government should learn this and stop telling us to stay up to midnight. Anyway, because I think we need to break for recess, I will support. However, I want to ask the Government to reduce these requests and in future avoid asking us to make these extensions. This should be the last one and we would like the Leader of Government Business to organize himself in such a manner that he does not keep telling us to extend time.

Mr. Speaker, Sir, I support.

(Question put and agreed to)

COMMUNICATIONS FROM THE CHAIR

PRESIDENTIAL MEMORANDUM ON STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Mr. Speaker: Hon. Members, before we move to the next Order I have three Communications to make. First, as you will recall yesterday, Wednesday, 27th June, 2012, I gave communication on the matter of the refusal by His Excellency the President to assent to the Statute Law (Miscellaneous Amendments) Bill, 2012 and his submission of a memorandum thereon. This communication followed the earlier communication I made on Tuesday, 26th June, 2012, in which I detailed the procedure for the disposal by this House of a Presidential Memorandum.

Hon. Members, subsequent to these communications, I did receive yesterday a proposal supported by several hon. Members seeking to put forward for the consideration of the House a proposed amendment to the President's amendment as set out in the memorandum in respect of Section 51 of the Political Parties Act.

I have carefully considered the proposed amendment in question in the context of Section 46(5) of the former Constitution which sets out the options for the House in considering a Presidential Memorandum and Standing Order No.55 which disallows the amendments which in the opinion of the Speaker represent a direct negative of the question proposed. I have come to the conclusion that the proposed amendment is inadmissible.

Therefore, I accordingly direct that the Committee of the whole House considers the proposed amendments as set out in the Order Paper and that the House will proceed to deal with the Presidential Memorandum in terms of Standing Order No.125(6) and Section 46(5) of the former Constitution.

Thank you.

VETTING OF NOMINEES TO THE NATIONAL POLICE SERVICE COMMISSION

Hon. Members, the second Communication is as follows:-

You will recall on Thursday 8th, March, 2012, in a communication from the Chair I informed hon. Members that by a letter dated 7th March, 2012, from the Permanent Secretary to the Cabinet and Acting Head of Public Service, the National Assembly had been advised by His Excellency the President in consultation with the Prime Minister that they had nominated the following persons for appointment to the National Police Service Commission. They are:-

Amina Ali Masoud	-	Chairperson
Esther Chui-Colombini	-	Member
Ronald Musengi	-	Member
James Atema	-	Member
Dr. Maj. Muia Shadrack Mutia	-	Member
Mary Auma Owuor	-	Member

These names, the accompanying curriculum vitae of the nominees and the report of the selection panel were forwarded to the Departmental Committee on Administration and National Security for consideration by the Committee prior to approval by the House. On 15th May, 2012, the Chairperson of the Departmental Committee on Administration and National Security, Mr. Kapondi, laid the report of the Committee on the vetting of the nominees to the National Police Service Commission on the Table of the House and gave notice of Motion for the adoption of the report.

On Tuesday, 22nd May, 2012, in the course of debate on the report of the Committee, the hon. Ababu Namwamba rose on a point of order under Standing Order No.47(3)(b) and raised a number of questions. The hon. Member sought to know whether the Departmental Committee on Administration and National Security had acted outside its mandate by going beyond the list of names submitted to it through the Office of the Clerk of the National Assembly by the letter dated 7th March, 2012.

In this regard, he observed that the Committee in its report had stated that it had invited all persons who had been short-listed for the position of chairperson to appear before it despite the fact that these persons had been interviewed by the selection panel. He further observed that

the names of some of the persons who had appeared before the Committee were not among the names that had been forwarded by His Excellency the President to the National Assembly for approval prior to appointment.

Mr. Namwamba further sought to know whether the Committee had exceeded its mandate by conducting actual interviews as opposed to vetting the nominees as was required by law. The Member took the view that the Committee may have engaged in a re-interviewing process, or in an audit of the work of the selection panel and that the Committee may have served as an appellate tribunal for the candidates who had previously been interviewed, and who had not been nominated for appointment to the Commission.

Mr. Namwamba, therefore, urged the Chair to find that the report of the Committee could not be considered by the House in the form in which it had been tabled owing to the procedural anomalies that he had observed. He argued that to proceed with the consideration of the report would be an illegality and would be unconstitutional.

A number of Members rose to contribute to the matter, among them Mrs. Odhiambo-Mabona, Mr. Kapondi, Dr. Khalwale, Mr. Mbadi, Mrs. Shebesh and the Attorney-General, Prof. Githu Muigai. The issues they raised included the following:-

(a) that there was no consultation between His Excellency the President and the Rt. Hon. Prime Minister in forwarding the names of the nominees to the National Assembly, and, therefore, the report of the Committee was not properly before the House.

(b) That the report is unconstitutional in recommending to the President the appointment of persons other than those nominated by the President.

(c) That there is no unconstitutionality or illegality in the Committee recommending the names of the persons it considered ideal for appointment and that this is not binding on the President.

I will pause so that those Members can walk in.

(Several hon. Members entered the chamber)

Hon. Members, following the above arguments, the Chair issued interim directions to the effect that the Departmental Committee on Administration and National Security had extended its mandate and powers, and that consequently the Motion was inadmissible and that debate could not proceed on it. In the interim directions, the Committee was directed to go back and re-do its work, re-do its report and bring it back to the House in line with the National Police Service Commission Act and the Constitution of Kenya. In the meantime, the Chair undertook to deliver a communication on the way forward in the matter.

Hon. Members, arising from the interim directions issued from the Chair, a number of questions have been raised with the Speaker as to the import of those directions, the current status of the Committee report and the way forward in this matter. Questions have been raised as to whether the report of the Committee could be removed from the House when it had already been laid before the House, notice of its Motion and the Motion on the report moved.

The Chair of the Departmental Committee has also sought directions on what exactly is expected of his Committee. The present communication seeks to give further clarification and directions on these matters.

Hon. Members from the contributions made to this matter, and further to the directions given by the Chair on Tuesday the 22nd May, 2012 the issues that remain for my determination are as follows:-

(i) whether or not the Committee overstepped its mandate in its consideration of the nominees for appointment to the National Police Service Commission;

(ii) if so, the manner in which the Motion for the adoption of the report of the Departmental Committee on Administration and National Security on the vetting of the nominees to the National Police Service Commission should proceed.

Hon. Members Section 6 of the National Police Service Commission Act (Act. No.30 of 2011) sets out in elaborate detail the processes attendant to the appointment of the chairperson and members of the National Police Service Commission. The Act provides for a multi-disciplinary selection panel whose mandate is to invite applications from interested persons, consider the applications received, shortlist the applicants and eventually interview the shortlisted applicants and forward the names of the successful applicants to the President. The President is then required to select the chairperson and the members of the Commission from the names forwarded to him by the selection panel, and to forward the names of the successful applicants to the National Assembly for approval. The role of the National Assembly is provided for in subsection (6) of Section 6 of the Act as follows:-

“The National Assembly shall within 21 days of the day it next sits after receipt of the names of the applicants under subsection (5) vet and consider all the applicants, and may approve or reject any or all of them”.

Hon. Members, on 8th March, 2012, the names of the nominees were committed to the Departmental Committee on Administration and National Security for vetting in terms of Section 6(6) of the Act. In its report the Committee has indicated that it not only considered the nominees of His Excellency the President to the position of chairperson of the National Police Service Commission, but that it interviewed all the ten candidates who were shortlisted by the selection panel for the position.

Hon. Members, the Powers and Privileges Act, Cap.6 of the Laws of Kenya, and the Standing Orders empower a Committee to summon any person to appear before it. Section 14 of the Act provides that the Assembly or any standing Committee may, subject to the provisions of Sections 8 and 20, order any person to attend before it and give evidence or produce any paper, book, record or documents in the possession or under the control of that person. The Act further provides that these powers may be exercised by any other Committee which is specially authorized by a resolution of the Assembly to exercise those powers in respect of any matter or question specified in the resolution. From these provisions it is clear that it is open to a Committee, taking all matters into consideration, to invite any persons, including persons whose names are indicated as having been shortlisted, to appear before the Committee. In doing so, a Committee nevertheless, needs to remain alive to the principle of separation of powers and its application to the process of parliamentary approval of nominees for public appointment. It should be broadly understood that the mandate of making nominations for appointments belongs to the Executive, and that it is the role of the Legislature to determine the suitability or otherwise of the nominees and to make appropriate recommendations to the Executive.

Accordingly, just as the Executive cannot appoint persons who have not been approved by the House, the House too cannot originate the names of the nominees to be appointed. So long as this is recognized and accepted, a Committee may interview any persons it wishes in order for it to form a view on the suitability of both the persons nominated and the process undertaken by which the nominations were made. The Committee can also, in its report, make recommendations as to the suitability of the person nominated or of other persons all together. Therefore, in so far as a Departmental Committee may invite and speak to any person, and

further in so far as the recommendations of the Committee in relation to these latter persons as contained in its report do not bind the Executive, I am not persuaded that I can find unconstitutionality either in the process adopted by the Committee or in its outcome.

Hon. Members, the Committee in its report made a number of recommendations for consideration by the House, some of which relate to the matters raised by Mr. Ababu Namwamba in his point of order, and to the subsequent contributions by his colleagues. The Committee made some observations and recommendations on the constitutionality, or otherwise, of the process undertaken by the Executive; as I have ruled before it is not every claim, whether by a Committee or by an individual Member alleging unconstitutionality is so.

It may be that the Committee's view is not shared by the House and that Members of the House are able to urge and persuade a contrary view. Likewise, it may also be the case that when all the Members have read and interrogated the report of the Committee and have made their contributions thereon in debate, the claim of unconstitutionality is abandoned or it becomes apparent that it is unmeritorious. The point, therefore, is that unless the claim of unconstitutionality is apparent on the face of the record and further, unless the processes in the House cannot remedy such unconstitutionality, it may be well to allow the House to ventilate fully on the matter.

I will pause again for those at the door to come in.

(Hon. Members at the Bar entered the Chamber)

(Mr. Namwamba stood at the Bar)

Mr. Namwamba, this matter concerns you in a way, so please walk in!

(Mr. Namwamba entered the Chamber)

Hon. Members, I will continue from where I left. In the present case, I am not persuaded that a claim of unconstitutionality has clearly been made out so as to require that the report of the Committee be stopped from proceeding according to the procedures of the House at the preliminary level. I have also considered the possible outcomes of a debate on the Motion which are, of course, an approval of the report of the Committee with or without amendment or a rejection thereof. For the reasons I have recited above, the nature of the report of this Committee is such that none of these outcomes will have an unconstitutional result that is binding in its effect.

For all the reasons I have stated, I find that it is the prerogative of this House, which should not be denied without adequate ground, to exercise its collective wisdom and discretion and to determine the manner in which it proposes to dispose of the report of the Departmental Committee on Administration of Justice and National Security.

On the Motion of the Committee "THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the vetting of the nominees to the National Police Service Commission (NPSC) laid on the Table on Tuesday, 15th May, 2012", it is open to the House to approve and, therefore, agree *in toto* with the Committee in its report or agree with the report with such amendments as may be made by the House or reject the report of the Committee in its entirety. In making this determination, I wish to emphasize and draw the particular attention of the House to recommendation No.1 of the

Committee in its report which is to this effect and I quote: - “Recommendation No.1 - The nomination of the six persons to the NPSC was unconstitutional within the context of Articles 246(2) (a) (i) and 166(2) of the Constitution. Pursuant to Section 6(9) of the National Police Service Commission Act, 2011, the Committee recommends the names of the six nominees be referred back to the President to submit fresh nominations”. A very clear finding in recommendation which the House will agree or disagree with; approve or disapprove and, the consequences are obvious, are they not?

Hon. Members, I, therefore, urge and direct that the debate on the Motion for the adoption of the report of the Departmental Committee on Administration and National Security on the vetting of the nominees to the NPSC be proceeded with from the point at which it was interrupted. I direct that this business be placed on the Order Paper at the immediate next Sitting of the House.

Thank you.

(Applause)

Hon. Members, I wish to take the final Communication.

CONDUCT OF MPS, STAFF AND VISITORS IN PARLIAMENT PRECINCTS

Today after the rise of the House this morning, we held a *Kamukunji* at which security matters and conduct of Members of Parliament, staff and members of the public in the precincts of Parliament were discussed.

The meeting noted that all Members of Parliament, staff and visitors should adhere to the Speaker’s Rules and resolved that the Rules which derive their authority from the National Assembly Powers and Privileges Act, Cap.6 of the Laws of Kenya, should be enforced to the letter. Note hon. Members, that the Speaker’s Rules were first promulgated in 1963 and reviewed in 2002.

The meeting also resolved that the following Speaker’s Rules should be brought to the attention of the Members of the House:-

“General Rule

Rule 4 - No Member may bring any firearm or any other offensive weapon into the Buildings or Gardens. All such weapons must be deposited with the Serjeant-At-Arms at the time of entry, and collected at the time of leaving.

Rule 5 - Members are required not to enter the Chamber, Lounge or Dining Room without being properly dressed.” The details of dress are given as follows: “This means coat, collar, tie, long trousers, socks and shoes or service uniform, or decent national dress for men; and an equivalent standard for women with hats optional”. However, in the lounge or the dining room, Members or visitors may wear long trousers, clean shirts, socks, shoes or service uniform.

“Rule 6 - No stranger shall bring any firearm or other offensive weapon into the buildings or gardens. All such weapons must be deposited with the Serjeant-at-Arms at the time of entry, and collected at the time of leaving.

The meeting was called for proper control of admission to any part of Parliament buildings and gardens and that henceforth all visitors will only be admitted to Parliament buildings through visitors’ gates in the Main Parliament Buildings, County Hall and Continental

House, while the other entry points are strictly for Members of Parliament and staff who must wear identification badges all the time.

I am strongly advising all Members to be fully conversant with these Rules and any other orders that the Speaker may issue from time to time. In the same vein I am directing the Clerk of the National Assembly to ensure that the staff and all visitors adhere to Speaker's Rules and that the Rules are enforced without fear or favour.

I just want to re-emphasize that all our officers in office of the Serjeant-at-Arms and all other security agents, including the Parliamentary Police Station, have no reason to fear. They are protected by the law and they must execute their mandate without looking over their shoulders. You will be protected, because it is in the interest of all of us. If we are going to be secure, then we must comply. Otherwise, the enemy is in our midst. It behoves all of us to abide by the rules and set a good example to others.

I thank you.

Mrs. Shebesh: Mr. Speaker, Sir, I thank you for your rulings and I want to just comment on the last one.

Mr. Speaker, Sir, as a frequent visitor around the areas where we exchange ideas amongst ourselves, there are some security officials, who have no name or uniform. There are many visitors who hang around the area where we have tea, or even in the Members club. It will be good for us to clear the number of intelligence officers that hang around this Parliament. How are we supposed to be comfortable when we know that intelligence services are also sitting amongst us and continuously following us and tracking us, even within the precincts of this House?

Mr. Speaker: Fair enough. That is a legitimate concern. From this Communication, any persons of non-descript identity, if you point out as and whenever they appear, will be immediately removed from the precincts of Parliament. We have also further agreed - and it is apparent from the Communication - that these rules apply with equal force to strangers who may be invited by hon. Members of Parliament, inclusive of former Members of Parliament. They are bound by these rules and we will enforce them.

Mr. George Nyamweya: Mr. Speaker, Sir, I wish to seek your guidance in respect of your second ruling.

Mr. Speaker, Sir, there is something which has disturbed me, if I may say so. I have done a bit of research on it; whether it is really in order for a fundamental issue to be raised by a Member by way of a point of order. My understanding of a point of order is that you are pointing out something which is disorderly within what is going on in that particular debate. But can it really be used as raising a constitutional or substantive matter? Should it really not therefore be - and I am seeking your guidance on this - that if you want to challenge anything really, then you should have a substantive Motion which deals with that subject. Now, I am talking in the sense that the point you are referring to or giving a ruling on, arose from a point of order.

Mr. Speaker, Sir, I wish to remind you that, at one time, the Departmental Committee on Justice and Legal Affairs had been seized of the appointment of the Chief Justice, Attorney General, Director of Public Prosecutions and a few other appointments. It was raised in this House as a point of order. Indeed, the report from the Department Committee on Justice and Legal Affairs was, therefore, not even tabled. It was not given to Members to decide whether they want to reject it or approve it. Now, in this case, again, this issue has been raised as a matter of point of order. It is actually, in my respective view, giving the Speaker the role of actually doing the work of the House itself. It may be unfair; it may be proper, but I do not know. But I

do not suggest it is. I would have thought it is the cardinal duty of the House itself to deliberate on any form of report from its Committees and, in its own wisdom, reject or approve.

Recently, again, the Departmental Committee on Justice and Legal Affairs, in respect of the Ethics and Anti Corruption Commission, submitted a report which the House, in its wisdom, rejected. My understanding of the ruling that you have just given and the previous ruling appear as if they may well be, actually, contradicting each other. It will be useful in future for the House to really know whether it is the function of the Speaker to undertake such duties or, it is the function of the Members themselves to deliberate and agree on what to do with this.

Mr. Speaker, Sir, I would kindly wish to get some guidance on that.

(Several hon. Members stood up in their places)

Mr. Speaker: Order. I do not think I want this matter protracted. So, those of you who want to speak to it, you better be very brief. It is not normal to entertain points of order after you make a ruling. In effect, I am making clarifications, explaining or giving rationale in matters of law from the Floor. But you can always approach me from my Chambers and I will give you all the time that you need. I will give you guidance as much as you require. I will give you definitions such as in the case of my good brother and learned friend, the hon. Nyamweya.

A point of order, as you rightly said, addresses a matter that is out of step with the regular conduct, normal behaviour or procedural matters. So, if a point of order is speaking to a matter as not being in conformity or compliance with the law, then it is valid, obviously. But the timing of that point of order is important. You must raise it at the point when the matter is before the House. It is the business of the House at that point in time. You can raise a point of order on something that is either un-procedural or something that is irregular or something that is an antecedent to what is normal and contemporaneous as the Member for Sirisia assists me to find that word. It is not just matters of law. You could also raise a point of order on a matter of fact or on a matter of conduct. This is all set out there in our Standing Orders.

As to whether or not my directions today are at variance with my earlier directions that will be a different story. But each of us is entitled to their own opinion. I have given directions as I am entitled to in the opinion of the Speaker. The opinion of the Speaker is recognized by our Standing Orders at many points, including Standing Order No.47 which says that if, in the opinion of the Speaker a Motion is, for example, unconstitutional, then the Speaker may decline to approve.

You cannot exercise that in any other way, other than as it is provided in the Standing Order; that you may do so at any time when that matter is raised.

Hon. George Nyamweya and the rest of the membership, if you want further explanation, clarification or justification you are at liberty to have time with me in my Chambers.

Yes, Chief whip.

Mr. Midiwo: Mr. Speaker, Sir, I want to take this opportunity to thank you for issuing directions over this issue of the report of the Departmental Committee on Administration and National Security.

Mr. Speaker, Sir, I only wanted to say or ask that, when we do these reports, some of the issues that bring controversies in this House, or which lead us to ask you for directions, could be avoided at the clerical level or Committee level. I feel that much of the time we ask you to rule on issues which we could avoid in the main Chamber. In saying so, in this particular matter, if you read the report, it purports to have interviewed people on their suitability for this job, as

opposed to getting facts as enumerated by you, which is normal to our processes in legislation. It purports to say that the people who were brought before this House for vetting and approval or otherwise by the House were probably not the best but somebody else, who the President or Executive did not forward here was the best. That was the question which was canvassed in this House.

Mr. Speaker, Sir, I want to implore you to guide Members of Parliament and the staff of Parliament. That is because the law is the law. When we are asked to vet and we go and try to import people and not to get facts--- But to prove their suitability against the people that we were given, it is my opinion that mischief is involved.

I want to thank you for clarifying that. The people we shall be approving or disapproving are the six who were sent here to be vetted, away from the ones that the Committee tried to say were better suited. That was the controversy.

Mr. Speaker, Sir, I want to urge you to guide hon. Members and guide the secretariat of this Parliament.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well, Chief Whip! That is fairly well put!

Hon. Members, there is provision in the Standing Orders, and even in the Parliamentary Service Commission Act, as well as the Constitution, particularly the part pertaining to the Parliamentary Service Commission, that Parliament is under duty to employ professional officers who are competent. The duty of the Clerk of the Committee is not to carry paper and pen to a Committee meeting. A Clerk of a Committee is deemed and assumed to be professional. They must offer professional advice to the Committee.

(Applause)

Otherwise, they have no business remaining on the staff of Parliament. I am putting those clerks to Committees on notice. If we receive complaints that you are not executing your work as you should, we will have to send you home. That is where it will rest.

(Applause)

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

(Consideration of Memorandum from His Excellency the President)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we are now in the Committee of the whole House to consider amendments recommended by His Excellency the President to the Statute Law (Miscellaneous Amendments) Bill, Bill No.14 of 2012, pursuant to Section 46(4) of the former Constitution of Kenya which is saved by Section 3(2) of the Sixth Schedule of the Constitution.

We will also consider the Appropriations Bill, Bill No. 28 of 2012.

Provisions Relating to the Political Parties Act 2011

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the provisions relating to the Political Parties Act 2011 (No. 11 of 2011) on Clause 51 (1A) be deleted from the Statute Law (Miscellaneous Amendments) Bill as recommended by His Excellency the President.

The Temporary Deputy Chairlady (Dr. Laboso): Do you want to give some justification, hon. Attorney-General?

The Attorney-General (Prof. Muigai): Yes, Madam Temporary Deputy Chairlady. I will be very brief because the Memorandum of His Excellency the President to this House speaks on its face. It was the view of His Excellency the President that after the issues affected by---

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! Let us allow the Attorney-General to give the explanations.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, in view of the significance that the President attaches to the doctrine of separation of powers, that those issues should receive full ventilation before the Constitutional Court before this House can effect any changes to the law that is being impugned.

Madam Temporary Deputy Chairlady, I want to assure the House that the right of the House to make changes to law is a right that must be exercised in a manner that does not compromise any of the constitutional principles. That is the basis upon which His Excellency the President made that rejection.

(Question proposed)

Mr. George Nyamweya: Thank you, Madam Temporary Deputy Chairlady. I find it one of those days that I must very decisively disagree with my learned friend, the Attorney-General. The reason that he is advocating for this amendment is completely unfounded. He says the matter is in court and, therefore, the House cannot legislate on it. The practice is, and I shall read from some other jurisdictions, the right of the House to debate and legislate on matters without outside interference or hindrance is self evident. Circumstances could be such that, for example, Parliament decides to consider a change to the law to remedy a situation which is before a court or subject to court action.

Madam Temporary Deputy Chairlady, if, for example, there was, indeed, a crisis which could only be cured by legislation or by an Act of Parliament, it would then be completely irresponsible for the House to say "No, we cannot do anything about it; let us wait for the slow wheels of the law to take its cause." So, that cannot be the reason that we would want to support the President's proposal. There may well be other reasons, but not that one.

Madam Temporary Deputy Chairlady, I do not quite know when the Speaker ruled--- It is one of the questions I was seeking. Does the Speaker now become part of the House and that, therefore, he decides on behalf of the House? We were proposing to bring an amendment to the Presidential Memorandum. The House has three ways of dealing with the Presidential Memorandum; we can concur with it, veto it or override it or we can actually amend it. Now, when the Speaker ruled that, that is inadmissible, it really does put the House into a very strange situation. We are being simply told that either you accept or you reject it. That cannot really be the way separation of powers works.

So, Madam Temporary Deputy Chairlady, I would wish---

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. George Nyamweya! The Speaker has already pronounced himself on that matter. You cannot continue to discuss what has already been ruled on!

Mrs. Odhiambo-Mabona was next.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I support the proposed amendment by the President.

Madam Temporary Deputy Chairlady, in doing so, I would want to indicate that we have deliberated---

The Temporary Deputy Chairlady (Dr. Laboso): Are you supporting the deletion?

Mrs. Odhiambo-Mabona: Yes, Madam Temporary Deputy Chairlady.

Madam Temporary Deputy Chairlady, in supporting I wish to indicate that we deliberated on this issue as a Committee and whereas we are supporting, we do not agree with the reasons that are given in the Memorandum; largely, so that I am not repetitive, for the same reasons that have been given by hon. Nyamweya. This is because if that route were to be taken, then the House can be permanently gagged, if you have mischievous people. Whenever we bring any piece of legislation, any member of the public can go to court and thereby, stop us from legislating. It is a different issue when you are talking about a matter of *sub judice* and this House has pronounced itself on it. There are rules around it, which because of time, I may not go around, but we did not agree.

Madam Temporary Deputy Chairlady, again, our Committee raised an issue of concern, which is that as much as we do acknowledge that constitutionally the President has a right to refer back legislation, we were urging that the President uses this mandate advisedly and sparingly. This is because if we are not careful, we will have a situation where even if it is only one Member of Parliament who is displeased with something that is passed by Parliament, then you can go to the President and then, he will take it back. Out of respect or fear for the President, then you will fail to get the two-thirds majority. Therefore, we are urging the President to use this very sparingly and where it is absolutely necessary.

The Minister for Lands (Mr. Orenge): Madam Temporary Deputy Chairlady, I support the deletion, but not for the reasons that are in the Memorandum.

Madam Temporary Deputy Chairlady, it is only by extension of the reason in the Memorandum that I can come to the conclusion that there is some merit in the deletion, probably by the reasons given by His Excellency the President. What we should look at is not the fact that

there are issues pending in court, because the separation of powers stated clearly that on issues of legislation, Parliament is sovereign. That cannot be undermined. It is just like even on matters concerning settlement of disputes through the judicial process, where the courts are supreme. But the way that I find merit in the Memorandum that has been given by His Excellency the President is by looking at the reasons given in some of those petitions. Some of the petitioners have gone to court and are challenging the constitutionality of what is contained in the Bill that was proposed to be signed by His Excellency the President.

Madam Temporary Deputy Chairlady, I wanted to give only one reason and sit down. There is a chancellor in the United Kingdom who wrote a book about political parties. He said – and this is somebody who was sitting in the House of Lords – that up to the turn of the last century, the only three branches of Government which were known were the Judiciary, Legislature and Executive. But he added a fourth that, indeed, political parties are organs of governance. Where political parties do not work well, democracy cannot be effectively practised. For example, the head of the Anglican Church in England is actually appointed by the Prime Minister of England who is a head of a political party. Therefore, if we have political parties that do not themselves live by the principles of the Constitution, that the Attorney General was mentioning, then it will be very difficult to make democracy work.

Madam Temporary Deputy Chairlady, I fully support the deletion, but I think that the Attorney General should have come out very clearly, to say that these Bills were unconstitutional, instead of hiding behind the petitions which are before the court.

Ms. Karua: Madam Temporary Deputy Chairlady, I rise to support the Memorandum, but I also want to agree with those who have contributed; that these are not the valid reasons. If we take this as precedence, any single individual in Kenya can paralyze this Parliament.

Madam Temporary Deputy Chairlady, the reason I support the deletion is that the proposals contained in the Act which I opposed on the Floor of this House, are actually against the spirit of the Constitution. This is because when the political parties were mentioned in the Constitution and we were commanded by the Constitution to make a law to regulate political parties, it was to enhance transparency, accountability and nurture democracy. When you say that you belong to a particular party and it brings you to Parliament, and start cavorting with other political parties, you are not being accountable or promoting democracy. We need to stand up for democracy and it is for that reason that I support this amendment.

The Minister for Trade (Mr. Wetangula): Madam Temporary Deputy Chairlady, I fully support the Memorandum.

Madam Temporary Deputy Chairlady, in returning this Bill and clause to this House, the President is, in fact, shaping his legacy as a man who gave true meaning to constitutional democracy to this country. If we do not respect parties that sponsored us to come to this House, then we are being politically immoral. We cannot talk about integrity when we have Members of this House who stood for elections, lost and were nominated by parties and then, they abandoned those parties and said that they were dead. The President is so right. Those who want to hop out of parties, the democratic foundation is that you reconsider your position, go back to the electorate and seek a fresh mandate and show the public that you are thinking and acting in tandem with those who gave you the authority to come to this House.

Madam Temporary Deputy Chairlady, I support the President fully.

Mr. Ethuro: Madam Temporary Deputy Chairlady, I stand here to oppose the deletion.

(Loud consultations)

Madam Temporary Deputy Chairlady, I have the right to speak and I am opposed to this.

The Temporary Deputy Chairlady (Dr. Laboso): Order! This is a debating House; allow him to have his say.

Mr. Ethuro: Madam Temporary Deputy Chairlady, I am actually surprised that a President I voted for twice can decide that we should be put in some outfits known as political parties that, in the situation of Kenya, only belong to the party leaders. If you hear most of the Members who are speaking here, they are speaking on the erroneous assumption that because they are in charge of the political parties, they will always be the ones calling the shots. I want to tell them that your day of reckoning will also come and you will go through the kind of experience that I went through and know why I am speaking the way I am doing.

Madam Temporary Deputy Chairlady, these so-called political parties have been used as opportunities to create tribal enclaves. We have just translated our bad habits of ethnicity to tribal parties. Which political party in Kenya does not align itself to a particular region or community?

Mr. C. Kilonzo: On a point of information, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ethuro, do you want to be informed by hon. C. Kilonzo?

Mr. Ethuro: Madam Temporary Deputy Chairlady, he is my friend and will always inform me.

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, I might not agree with his debate, but I wish to inform the hon. Member that the entire Front Bench, from the Minister for Finance to the end, is purely made up of party hoppers.

(Prof. Muigai stood up in his place)

Sorry, with the exception of the Attorney General. My apologies!

(Mr. Kimunya stood up in his place)

The Temporary Deputy Chairlady (Dr. Laboso): Can we allow hon. Ethuro to complete his contribution?

What is your point of order, hon. Kimunya?

The Minister for Transport (Mr. Kimunya): On a point of order, Madam Temporary Deputy Chairlady. Is hon. C. Kilonzo in purporting to inform hon. Ethuro, in order to cast aspersions on hon. Members of this House who were voted in on one party and have remained faithful to that party and have not changed their allegiance? He cast aspersions on the entire Front Bench without exception to those Members who have remained faithful to the parties that brought them to this Parliament like me who came here on the PNU ticket and I am still a Member of the PNU.

The Temporary Deputy Chairlady (Dr. Laboso): Thank you. Hon. Kimunya has spoken.

Ms. Karua: He is misleading the House!

The Temporary Deputy Chairlady (Dr. Laboso): Who is misleading the House?

Ms. Karua: Hon. Kimunya!

Mr. C. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady. I was wishing it was hon. Wetangula defending the Front Bench because hon. Kimunya is a life

Member of NARC(K) whose party leader is none other than Ms. Martha Karua. Indeed, she can confirm that.

Ms. Karua: Yes, indeed.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ethuro, complete your submissions.

Mr. Ethuro: Madam Temporary Deputy Chairlady, one final point I would like the House to consider is that we are all interested in a democracy through the multiparty system. We are trying to develop parties but our parties are still at infancy. We were saying that particularly for this period, we are trying to get the law of the Political Parties Act to regularize the parties. We are funding them. So, while the State is trying to give them some capacity, there are still the old habits of people controlling parties and not giving the rest of us political rights of association as enshrined in Article 38. We were saying that for the purposes of the first General Election under this Act, if there are Transitional Clauses in the Constitution, why not in this particular one? I wish to oppose the President on this one.

Mr. Midiwo: Madam Temporary Deputy Chairlady, I stand to fully support the Memorandum from the President. But in supporting, I want to disagree with everybody who seems to think that the President is trying to misuse the rule of *sub judice*. I want to thank the Attorney-General for being smart because had this thing come any other way, it could have been amended and mutilated to mean the same thing. I want to say that you are smart because there were several other recommendations that the President could have made. You are a good adviser to the President on this one.

Lastly, let me also exonerate my good friend, hon. Kimunya, whom we rarely agree with. I want to say that he inadvertently did what happened even though he was not right in moving the amendment but it was not his intention.

I support, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Yes, hon. Kajwang. Hon. Members, please it is not debate. It is just a point or two points.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): I will be brief, Madam Temporary Deputy Chairlady. First, parties are not something called political parties. Parties are serious institutions that we created in the Constitution and must be protected and regulated. That is the first thing.

Secondly, if you decide to “grass hopp” please, do so within the rules because there are rules for grass hopping. If I want to belong to another party, I resign, I run in the party I like and I will become a Member of Parliament one more time. If I lose, I will try my luck in the next elections. Those are the rules. I want to thank the President because he referred this matter here. In fact, he did not even have to give reasons. The President can refer this matter here without reasons. He can refer it with reasons and he can refer it with a proposed amendments. So, on those three, he was right. Even if he were to give a reason which you do disagree with, the bottom line is; what is the proposal? The proposal is to protect the integrity of political parties.

I support.

The Temporary Deputy Chairlady (Dr. Laboso): Yes, hon. Benja---

Mr. Langat: Thank you very much, Madam Temporary Deputy Chairlady. I also stand to oppose the provision relating to political parties.

The Minister for Lands (Mr. Orengo): On a point of order, Madam Temporary Deputy Chairlady. Just as a matter of record, who is hon. Benja? I do not seem to know this?

The Temporary Deputy Chairlady (Dr. Laboso): This is hon. Benjamin Langat, the Member for Ainamoi.

(Laughter)

Mr. Langat: Thank you very much, Madam Temporary Deputy Chairlady. I am shocked that my friend, hon. Orenge, does not know me. I want to oppose the deletion on the section on political parties. We are saying that for the purpose of this transition and since our parties are now getting organized through the new Constitution, the section on Political Parties should take effect in the next elections. Political parties in Kenya are the party leaders. There is no difference between the party leader of this party and the party. What the leader says is what the party says. I think we should give time to political parties to grow.

The Assistant Minister for Public Works (Mr. Kiunjuri): Thank you, Madam Temporary Deputy Chairlady. I rise to support although my contribution is opposing.

The Temporary Deputy Chairlady (Dr. Laboso): Is it possible to support and yet your contribution is opposing? Then you are opposing.

The Assistant Minister for Public Works (Mr. Kiunjuri): Madam Temporary Deputy Chairlady, I find myself in a very strange situation because at the end of the day, we are not sincere. One, we all belong to these parties but we do not look at our background before we joined those parties. What were the agreements when we joined these parties? We cannot come here and pretend that there was anything that was laid down properly by the Registrar so that we can abide by the rules and conditions laid down by those parties. Anybody pretending that these parties are democratic is misleading. I would have said a "liar" but the parliamentary language is "misleading".

All these parties are led by dictators and I wish one of them could come here and prove the contrary.

Mrs. Shebesh: On a point of order, Madam Temporary Deputy Chairlady. Could the party leader of the Grand National Union (GNU) who has been swallowed by The National Alliance (TNA) who is, of course, an embarrassment to party leadership stop talking about other party leaders here because--- My point of order is that the hon. Assistant Minister cannot purport to speak for other party leaders when he, as a party leader, has already been subsumed by a party that was only born three days ago.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. C. Kilonzo, are you on another point of order addressed to Mr. Kiunjuri?

Mr. C. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady. Is the hon. party leader of GNU who has already confirmed that he is a dictator to assume other party leaders, including mine of Wiper, to be a dictator? Is he in order?

The Assistant Minister for Public Works (Mr. Kiunjuri): Madam Temporary Deputy Chairlady, I talked about sincerity. You know that hon. C. Kilonzo just came back to Wiper the other day and he has never been loyal to that party. He has been on record opposing his party leader in the House and out there in the full glare of the cameras. Is he in order, first of all, to raise that order?

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! In the interest of moving forward---

The Assistant Minister for Public Works (Mr. Kiunjuri): Madam Temporary Deputy Chairlady, I do not wish to respond to hon. Shebesh because she has always been trying to woo

me to her party which I cannot be accommodated. She is reloaded now because her party is already a shell. That is why they are reloading it.

The Temporary Deputy Chairlady (Dr. Laboso): Please, complete your submission. Do not provoke the hon. Members because we want to move on.

The Assistant Minister for Public Works (Mr. Kiunjuri): Madam Temporary Deputy Chairlady, for sure, you know that they have provoked me when I was only exercising my democratic right.

We need to look at facts and figures before we come here to propose amendments. If it were not for His Excellency the President, I would have opposed this amendment.

I support.

Mr. Ngugi: Thank you, Madam Temporary Deputy Chairlady for giving me this chance. I respect the President. I have a lot of respect for him. I must look myself in the mirror and ask myself: Is this really David Ngugi who was rigged out by PNU? If he had no chance to move to Sisi kwa Sisi Party he would not be here as a Member of Parliament!

The Temporary Deputy Chairlady (Dr. Laboso): You are partyless now, are you not, hon. Ngugi?

Mr. Ngugi: Although we are protecting parties, what measures are we instituting in those parties to ensure that there is internal democracy? We do not need people to be dictated to and favoured because of who they are or who they are not. I would have sincerely wanted to see this amendment being further amended to ensure that parties do not become dictatorial. They need to practise internal democracy.

I support because of my friend, the Attorney-General and the President.

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Chairlady, I stand to support the deletion as proposed by the President. You know we must have a disciplined democracy. We should not have a situation where you move from one party to another, stay there for a few seconds and then jump onto another one. At the end of the day, you will find that a Member of Parliament has moved to three parties. Even leaders of parties have moved to other parties – three of them – in less than a month. What kind of democracy is this? We are not going to use parties for window shopping. They are not shops where you simply go to look around and when you do not find the shirt or dress that you like, you move to another one.

I beg to support.

Mr. Ruto: Madam Temporary Deputy Chairlady, with due respect to His Excellency the President, I think the process that we are now adopting is dangerous. This is because we are now creating precedents. Every other day, we seem to want to make legislation by reverse gear. We move forward and then we are told to go backwards. When we want to move forward, we are told to get more force. This is wrong! The reasons given by the President are not correct also. The Attorney-General knows very well that this Parliament can legislate on any matter notwithstanding the fact that a matter is before court. This House can also turn itself into a court. The House of Lords usually makes decisions on judicial matters.

In matters of political parties, we should be allowed to enjoy the freedoms enshrined in Article 38 of the Constitution unhindered. There should be a process. We had in the past moved-- - If we had not allowed party hopping in the previous Parliament, even the hon. Members who are in ODM would not have got where they are. This is because we were in ODM-Kenya and then wiper chased us away. We then went to ODM and then we were able to be elected. This

thing ought to be allowed. Anyway, the reasons the President has given are not enough, but since the Constitution gives him the power, I will allow him to get away with this one this time.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Njuguna. We will have two more and then we close. Hon. Martin Ogindo, why do you insist on sitting where I cannot see you?

(Mr. Ogindo stood up in his place)

Mr. Njuguna: Madam Temporary Deputy Chairlady, I want to say without hesitation that I fully support the memorandum by the President because in my view he applied his wisdom and constitutional right in rejecting the submitted Bill.

Secondly, I am the party leader of the People's Party of Kenya (PPK) and my party is like my family. I will not allow a situation where my party will be broken. So, we need to support our parties.

Mr. Ogindo: Madam Temporary Deputy Chairlady, I wish to support. The whole essence of political party democracy is so that we define the country in terms of ideological beliefs. In that connection, the citizens of this country need to identify and subscribe to parties that drive this country forward. What we were trying to do with this amendment was to take this country back to the dark days when this country did not believe in anything.

I support.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I have allowed you a little more latitude so that you can ventilate because this was a sensitive matter. However, we are closing.

Hon. Koech, one minute, please.

Mr. Koech: Thank you, Madam Temporary Deputy Chairlady. First of all, I want to appeal to those who give advice to His Excellency the President. One of the reasons given – a court case – is so dangerous for this House that in future, it will be very easy for anybody to go to court to stop a matter that is procedurally before the House. Secondly, the wisdom behind this amendment then was that we are in a transition. My good colleagues who are now partyless did not contemplate it. It is courtesy of the transition that we are in. We wanted to make it very clear that within this Parliament, it is not practically possible to be in your party if your party was to conform. I want to plead that for the future, reference to court cases--- I am saying this in the interest of this House and country. We should never ever refer to it. We have clear separation of powers and this Parliament must be allowed to do its job.

I support in this case.

The Minister for of State for Public Service (Mr. Otieno): Madam Temporary Deputy Chairlady, way back in 1997, I tried to limit by law the political parties to three. I was told that I should let them die natural deaths. There was a proliferation of political parties to an extent that they were no longer going to succeed as instruments of policy formulation due to the way in which they were formed, managed, guided and used. We cannot continue in this manner as a country. The next reform matter that is urgent is for the leaders to address the management and operations of political parties. We have succeeded in doing it across the whole country with the new Constitution and enabling statutes.

We should protect the parties. Fortunately for this amendment, regardless of whether the reasoning is adequate or not, we have an opportunity to start protecting parties. We have opening; if you are dissatisfied with parties, you can still come back here as an independent

candidate. Let us reform political parties and remove the elements of dictatorship the way they were removed from the affairs of the whole country. We need to gear the parties towards interaction with the citizens with a view to formulating the right policies for this country.

When I wanted – I was with Madam Karua – the parties to be limited to three, I looked at the manifestoes of the parties and found out that they were not different. They were all the same. The manifestoes were not relevant to the campaigns. After the elections, the manifestoes were forgotten. The reform area that we need to address is building strong and stable democratic political parties.

This deletion is most helpful. Thank you.

The Minister for Regional Development Authorities and Acting Minister for Local Government (Mr. Gumo): Thank you, Madam Temporary Deputy Chairlady, for giving me this opportunity. I also rise to support. We have had people who are not loyal. They are only loyal around election time – the moment they are allowed to stand on tickets of certain parties, but when they come to this House, they become wild animals. These characters should not be given a chance anymore because they cheat. Why should you say that you want to be a member of the party when you only want to stand and only use that party to win? Some of them cannot even win without those parties. Some of them use parties to win elections.

Mr. Ruto: On a point of order, Madam Temporary Deputy Chairlady.

The Minister for Regional Development Authorities and Acting Minister for Local Government (Mr. Gumo): Wewe wacha maneno mengi!

The Temporary Deputy Chairlady (Dr. Laboso): Order, Minister! What is your point of order?

Mr. Ruto: Madam Temporary Deputy Chairlady, hon. Gumo is well known together with hon. Dalmas Otieno to have been very powerful sycophants in KANU and they have carried forward that tendency to their new party.

The Temporary Deputy Chairlady (Dr. Laboso): What is out of order? Is it the sycophancy or he is out of order?

Mr. Ruto: He wants to continue with his sycophancy!

The Minister for Regional Development Authorities and Acting Minister for Local Government (Mr. Gumo): Madam Temporary Deputy Chairlady, that is why I cannot be bought because it not easy to buy me. They know that when Gumo decides, it is finished. So, that is why some of you who are not reliable are fighting to remain there.

So, I support and people must remain in one party and there must be discipline in each party.

(Question put and agreed to)

Provisions relating to the Elections Act

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the provisions relating to the Elections Act, 2011, on Clause 22(2), be deleted from the Statute Law (Miscellaneous Amendments) Bill as recommended by His Excellency the President.

The reasons are the same as I had already intimated to the House. Save, I would like to make this clarification: It has not been suggested by the President that each time there is a court case, Parliament cannot move with legislative business. There are four situations in which we need to ask the relevance of court proceedings.

Madam Temporary Deputy Chairlady, number one, if court proceedings are contemplated in a matter that the House has jurisdiction of, that is to say notice to file a suit has been given but no suit has been filed, this House can make any amendment that it wishes. That is not the case here.

Number two, where the matter is before court but the court has not become seized of the hearing, that is to say the matter is not before a judge. A judge has not heard arguments. A judge has not given interim orders. In the cases His Excellency the President has cited, the court is already seized of the matter. In some cases, I know the case relating to the hon. Ephrain Maina and hon. Mbuvi, these hon. Members actually have court orders in their favour and the President's view is that it would be wrong to interfere with a controversy that is alive before the court.

Madam Temporary Deputy Chairlady, the final situation is where the court determines a case in whatever way it desires. This Parliament can come back and say: "The court said X but Parliament believes Y and, therefore, that provision that the court interpreted, Parliament has amended it." So, once we are clear about that, our jurisdiction and sovereignty to make law has not been compromised in any way whatsoever.

I wanted to make that clarification. Thank you.

(Question proposed)

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, it is amazing that this particular amendment on section 22(2) which is basically about Members of Parliament being degree holders was actually a project of the Government because it was brought by the Leader of Government Business and drafted by none other than the Attorney-General for amendment. So, is it that the Government did not know what it was doing? Then what happened is that the Government realized they were fixing their own people because the Back Bench was not unhappy to wheel it.

The Attorney-General (Prof. Muigai): On a point of order, Madam Temporary Deputy Chairlady. You must allow me to clarify this. With tremendous respect, I have been the subject of a lot of vilification about things I am alleged to have done. The Bill brought by the Attorney-General speaks for itself. The amendments made by hon. Members in their wisdom are clear. I did not draft any amendment on the Floor of this House.

Mr. C. Kilonzo: Okay, let us give the credit to hon. Amos Kimunya but let us give you credit elsewhere. When the Government realized that they had fixed their political supporters - this is now where the credit goes to the Attorney-General - hon. Members aware that the section which we deleted; 22(3), was now forwarded in the Bill to the President. Something which comes from Parliament through the Attorney-General's office and the Attorney-General apparently could not see that the House deleted Section 22(3) and then it went to the Head of State. That credit can possibly only go to the Attorney-General.

The Attorney-General (Prof. Muigai): On a point of order, Madam Temporary Deputy Chairlady. I was going to beg you to allow me to make this clarification: I am in this House without the privilege of being elected by anybody and, therefore, I appreciate that I am a public

servant who has the distinct privilege of sitting with elected officials who have many constituencies that they may speak to. You must protect me because these same allegations were the subject matter of all the headlines in the news media the whole of last night and this morning. It is clear to any hon. Member who bothered that there was an error in the memorandum that inadvertently included a provision we have already deleted. What would have been the consequence of asking the House to delete something we had already deleted? We could have proceeded with it. What did I do? I went back to His Excellency the President and I told him: "There has been a typing error; this provision that you are proposing to delete, we already deleted it in the House. Please, Sir, give us a fresh memorandum." That is what I brought to the House. So, to allow an hon. Member to repeat the same accusations and innuendo, it would be very unfair to a person like me who has no forum to answer him back because I am not Member for---

The Temporary Deputy Chairlady (Dr. Laboso): Attorney-General, let the case rest there. Do not bring it up again.

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, especially when my colleague has told me that he may faint anytime, I do not want to be accused of having had the Attorney-General collapse. I will leave it there but today, let it be known that the mood in the country is very clear. They want a House which is moving with the other arms of the Government in terms of academic qualifications. So, let this be a warning to those of us who are here. If you know you have not done KCPE, this is the opportunity. Do KCPE and sit for Form Four examinations because in the next Parliament, we will not have President Kibaki in State House. Who knows, we might have a believer in education like hon. Amos Kimunya and Wetangula and I am sure they will be merciless. So, if you know---

(Laughter)

The Minister for Trade (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. C. Kilonzo, you continue to provoke Ministers. What is your point of order, Minister?

The Minister for Trade (Mr. Wetangula): Madam Temporary Deputy Chairlady, is the hon. Member in order to cast such aspersions when I am seeking the presidency of this country not to drag the country through mercy or lack of it, but through the Constitution and the rule of law?

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, I have just one minute to finish.

What I am basically saying is that the President has come to the rescue of us, politicians. Such opportunity will never be there again. So, let us make sure that we put our papers in order. It is very unfair to have the National Assembly with a membership of lesser academic qualifications than the Executive and the Judiciary. It is very unfortunate that this Bill has to come back.

With those remarks, I beg to support.

The Assistant Minister for Industrialization (Mr. Muriithi): Madam Temporary Deputy Chairlady, I am sure that the original mischief that the House sought to cure is that the House makes laws, and those laws are advocated upon by advocates, whereas judges sit to interpret those laws for purposes and in defense of the rights and freedoms of Kenyans.

It would, therefore, appear illogical that those hon. Members who, in fact, make the laws, would not be required to meet a certain threshold, while we require that judges should have graduated with law degrees and received further specialized training. In fact, one should practise law for a considerable period of time before one is eligible for appointment as a judge, yet the person who makes the laws that judges are expected to interpret shall not be held to a certain minimum standard. So, I am quite certain that this is the mischief that the House sought to correct in the first place.

I am quite sure that we cannot argue that it is discriminatory when we require that a doctor should have certain specialized training. I am sure that we cannot argue that it is discriminatory when we required that an advocate of the High Court should have certain educational qualifications. So, this matter is vexing. Perhaps the solution that the House came up with---

Mr. George Nyamweya: On a point of order, Madam Temporary Chairlady. Could my good friend tell us which particular degree course can be found somewhere in the world to prepare one to become Member of Parliament? I can understand the requirements for law, medicine, and so on, but which professional discipline prepares people to become Members of Parliament? I would like to go to that particular university, if there is one.

Mrs. Shebesh: On a point of order, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Nderitu, you can take that one as the second point of order.

Mrs. Shebesh: Madam Temporary Deputy Chairlady, just as he continues, many of us here are young. We probably never saw the President at his best debating. I am told: "Watch this man. This was Kibaki at his best when debating, in mannerism and articulation." I think it would be important for history lesson.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Nderitu, please, proceed and complete your submission.

The Assistant Minister for Industrialization (Mr. Muriithi): Madam Temporary Deputy Chairlady, what is required is not a specific degree such as Bachelor of Arts degree or Bachelor of Science degree. What is expected is intellectual acumen and intellectual capacity to understand issues, debate and create laws that can serve the Republic.

Even though this matter was canvassed in the debate, to say that everybody else – for example, the President, the Governor, and so on – would be required to have degrees, but not Members of Parliament; to me, would be discriminatory. That is why I support the Memorandum. To have said that only those persons who are in office today would not be required to meet a certain minimum threshold of educational qualifications, again, to my mind, is discriminatory because there are millions of other Kenyans out there with similar qualifications. So, we must have the same threshold for everybody.

Madam Temporary Deputy Chairlady, that is why I am supporting the Memorandum, but I fear that the original mischief that we had sought to cure remains uncured. Therefore, I look forward to us making a legislation that will cure that mischief.

With those remarks, I beg to second.

(Mr. ole Ntimama and Dr. Eseli stood up in their places)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Eseli, please, allow hon. Ntimama to contribute first.

The Minister of State for National Heritage (Mr. ole Ntimama): Madam Temporary Deputy Chairlady, I want to support the President's Memorandum very strongly.

Indeed, had he not come out this way, it would have been a disaster for some communities in this country. I can tell you that there would have been communities in this country whose Members of Parliament were brought to this House because of their popularity, who would probably not have seen Parliament again because of this little thing. I thank the President very much.

Madam Temporary Deputy Chairlady, I also want to say very briefly that this is a question of leadership versus intellectualism or professionalism, or whatever it is. Leadership is something that is given by God but you have to add wisdom, commitment and courage to be a leader of human beings. Leadership is a rare quality or rare "commodity".

Let me just give a few examples of leaders who were not academicians and who, probably, never made it to the academic or technological levels that may be required to become the greatest leaders of this world. Let me start with Africans in Kenya. There was a man called Harry Thuku, who started one of the biggest revolutions in this country, involving women, children and men. Harry Thuku was a man who started to show the world and the colonial office that we wanted independence.

Harry Thuku did not go to any school. If he went to some school somewhere in his village up to Standard One or Standard Two, that would probably be it, but he was an effective leader. He commanded leadership and led the people of this country. We will remember him as one of the people who, probably, would have led this country to get independence even before Jomo Kenyatta went to England to study and start the whole struggle for the Independence of this country.

Madam Temporary Deputy Chairlady, we can also talk about some other people in the world. Wilson Churchill, for example, never went beyond Grammar School. Those who have read the books of history know that Churchill never went beyond Grammar School, but he managed to become one of the greatest leaders in his country.

Take the Second World, for example. He led all the allies, who included America and Russia, to defeat Nazism, Fascism and some militarism in the East. He was really a great man but he never went beyond Grammar School, not forgetting the fact that he wrote so many books of history of warfare, which cannot be imagined by anyone else.

Madam Temporary Deputy Chairlady, Abraham Lincoln, a very important person who actually defined democracy in this world, was self-educated. He never went to any school although he ended up becoming one of the best lawyers in the world. You may remember the argument that he made with another man who was in another party. You know the way he grew up. He became the greatest leader of the United States of America by actually saving the black people.

Madam Temporary Deputy Chairlady, it is through Abraham Lincoln that we had the civil war in America of the north and the south. Abraham Lincoln actually saved the black man. The black man came across the Atlantic Ocean---

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ntimama, I have given you some latitude but really this is Third Reading.

Proceed to concluded.

The Minister of State for National Heritage (Mr. ole Ntimama): Madam Temporary Deputy Chairlady, give me a little more time. I am just finishing.

This is the man who emancipated the blacks and he called for a civil war. The north and the south fought and many Americans actually died in that war than in any other war including the Second World War when the black man was being emancipated.

So, he was a leader. He never went to any school. There is a Maasai called ole Gileshe whom all of you do not know because the colonialists did not put him in the books. He is the man who started resisting the white people. He is also the man who really stopped the movement of the Maasai. Anyway, what I am trying to say is that leadership is very important and I am glad it is like this.

Lastly, the reason why we are all in the Tenth Parliament, the qualification that has been wanted since we started an independent Parliament was only the proficiency of English and Kiswahili. They also tested you whether you can write an English sentence or probably a Kiswahili sentence. If you did that and spoke your English very well, then they said *huyu anafaa kuwa Mjumbe* and so, you went. They did not really ask you for certificates, degrees or anything. I am very grateful that, at least, now the wananchi will go and decide whether you are a leader or you are just an academician who wants to go and earn money in Parliament.

I think we should follow the qualifications, the language and probably a little interview to find out whether the guy can definitely speak the languages of English and Kiswahili which is in our Constitution.

Thank you, Madam Temporary Deputy Chairlady.

Dr. Eseli: Thank you, Madam Temporary Deputy Chairlady. With the words that Mr. ole Ntimama has spoken here, I was going to give him as one of the great leaders of this country who as you can see, the eloquence the old man has displayed here. That is a good example to us.

I think what the President has done is correct and I am in support of it. Most of the politicians especially, those who make it to this House have usually gone through the school of hard knocks. So, whoever is asking about which qualifications and which degree should a politician have to come here with, it is that school of hard knocks that we go through before we get here. That is qualification enough. In fact, sometimes, having very high qualifications could be a handicap rather than an asset in this House.

Madam Temporary Deputy Chairlady, remember Einstein was thrown out of school for being unteachable. This is because he kept on dreaming in class. When the teachers asked him what he was dreaming about, he answered them back in Mathematics and English and so, they could not understand what he was doing. They threw him out of school for being unteachable. That is the father of modern industrialization in the world.

When you remember people like Bill Gates and Steve Jobs, these people dropped out of college because their teachers were misleading them. So, they dropped out, went and did their own things. See how far they got. So, when we start talking about education, we should be careful.

The Prime Minister of the UK, John Major, was not a graduate. I think we need to be careful. In this country, we have a litany of examples including our own famous Tom Mboya who had not become a graduate by the time he came to Parliament. I think the President is very right and we all need to think along that line that we should allow those who are able to come and represent their people.

Thank you, Madam Temporary Deputy Chairlady.

The Minister of State for Defence (Mr. Haji): Thank you very much, Madam Temporary Deputy Chairlady. From the outset, I want to support the Motion. I totally disagree

with my colleagues who say that the President has done a favour to Members of Parliament. I think he used his wisdom as a great man who understands what this country is all about.

To demand qualifications like a degree is missing the point because as you all know, many times Members of Parliament go to compete in any election. In my case, I had more than four degree holders. But what do people look for? People look for integrity, wisdom, the ability and also the honesty of the person. They also look for somebody who is capable to look after their welfare. So, I would not like to repeat what has been said. I want to say that paper qualification is not enough for people to be elected.

Therefore, I do support the President.

The Minister for Transport (Mr. Kimunya): Thank you, Madam Temporary Deputy Chairlady. Let me say that I obviously support the amendment by the President because of the reasons that were given that at this point there were cases in court challenging the same and the President did give those examples---

Mr. Midiwo: On a point of order, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): What is your point of order, Mr. Midiwo? What is out of order in what Mr. Kimunya is saying?

Mr. Midiwo: Madam Temporary Deputy Chairlady, I rise on a point of order to ask you to implore Mr. Kimunya to apologise to this House and to Kenyans for having led us for one week of agony for trying to do something unconstitutional, uncalled for, a very bad thing for the country and we are now here in the middle of the night--- You should not even have given him a chance to talk because he is the culprit!

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Midiwo, every hon. Member in the House has an equal chance to speak.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I really did not want to say this but it is for such kind of interventions that my amendment would have become relevant.

The reason I gave and for those who have cared to look at the HANSARD, one day you will thank me for highlighting the issue. One day you will remember why I raised that issue. This House needs to be alive to this fact that salaries are determined based on your academic qualifications and your workload. There will come a time when the salaries of Members of Parliament will be challenged because you have set a certain threshold for other Commissions---

(Several hon. Members stood up in their places)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! Allow him to finish.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, there will come a time when the salaries of Members of Parliament will be challenged on account of the co-relation between the academic qualifications required for the job and the output of the job. When that time comes you will remember what I said in the HANSARD. I was very clear on the reason why I put that amendment on the Order Paper---

Mr. Ruto: On a point of order, Madam Temporary Deputy Chairlady. Is Mr. Kimunya in order to assume that all of us have the same drive for salaries as himself that he thinks membership to this House is only pegged on salaries? We are here to represent the Kenyan people and we are not here so that we can get higher salaries. This type of mindset is the one that

is damaging our names. Is Mr. Kimunya in order to bring up his own greed and presume that we all share it?

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chair, for the record, let it be known---

The Temporary Deputy Chair (Dr. Laboso): Mr. Isaac Ruto, that is an opinion.

Mr. Kimunya, I want the two points of order put, so that you execute them. In my view, Mr. Ruto's was not a point of order.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chair, is the hon. Member in order to be pre-empting and setting us up? This is because sometimes when a lie is told so many times, it looks like the truth. In this House, we have people with different qualifications; we have people with PhDs, we have people with two degrees like myself, we have people with one degree, we have people with none, we have people with one and a half degrees. Whereas I may be sympathetic to his position in future, not now, is it in order for him to be setting us up by saying that, that is the standard that will be used to fix salaries? What legal provision is he using? He is misleading the House.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chair, I think it is important--- First of all, let me dispose of the point of order by Mr. Isaac Ruto. I am on record in this House as being one of the very few Members who have opposed increases in benefits to Members of Parliament. I would be happy to even propose a reduction in the salaries of Members of Parliament. I would like to go on record on that. We are not here because of the greed. We are here to serve the people.

As for the point raised by Mrs. Odhiambo-Mabona, I am an expert in finance. She is an expert in law. When she brings something like offering free legal advice to the House, we cannot challenge it. When I give free legal advice to you as Members based on my financial background, I would like you to take it and take it seriously. This is because one day--- I am not saying it will be done but should that eventuality come, I would like you to be alive to that fact that we have said commissioners require a minimum of a degree plus. They have been put in a certain salary band because that job requires a degree, ten years of experience, plus, plus, plus.

(Mr. Kajwang' stood up in his place)

The Temporary Deputy Chair (Dr. Laboso): Are you on a point of order?

The Minister for Transport (Mr. Kimunya): Can I finish what I am saying?

The Temporary Deputy Chair (Dr. Laboso): I think that point is clear, Mr. Kimunya.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chair, so that I can finish, the other point I want to clarify, and is in the HANSARD, is that I raised this amendment on the understanding that the House had already ring-fenced for the first elections. I said to give room for everyone to acquire the qualifications, this should take place after the first elections.

Section 22 (3) was then deleted after Section 22 (2) had been accepted. It would be unfortunate for Members to then start coming to me and blaming me for raising the bar when it was for a totally different reason.

Madam Temporary Deputy Chair, I want to be on record and say that it is still my desire that we should encourage and send messages to kids in school that education is good.

We recognize that there have been good leaders who did not have education. I do not even want to name any of those leaders, but I want Members to be alive to the changes that have

been made to the Constitution in terms of the role of the Member of Parliament. The Member of Parliament has been changed from being the leader to being a full time legislator, who will represent the community. We are asking every community to look for the best representative to come to this House and represent them in making legislation, overseeing the Government, vetting all the political appointments, setting the standards of the people who should serve the entire country, reviewing the Budget and changing it as proposed by the Executive. Surely, it is not the leaders we are talking of. The days of saying leaders do not require education--- We have put that leadership at the county assembly level with the governor. Indeed, if the argument was right, we should be saying the governor will not require a degree to be the leader at that level.

Madam Temporary Deputy Chair, let it be known that this amendment was made in good faith. I appreciate what the President has done, and I know that at some appropriate stage when we reconvene next in this House, we shall then define the standards for the future.

I support.

The Temporary Deputy Chair (Dr. Laboso): Hon. Members, we are trying to give everybody a chance to speak. Some of you had spoken earlier; so, let those who have not spoken do so.

Mr. Mbau: Madam Temporary Deputy Chair, in supporting this amendment, I wish to say that it is known and clear that many Members have contributed. Higher education may be necessary but it is not sufficient. We have had very many people, who were very learned, run for elections but never found their way to this debating chamber.

I want to agree with those who have quoted very powerful and great leaders in the past both in this country and internationally, who had never acquired higher education, nevertheless they became great leaders.

Madam Temporary Deputy Chair, I support.

The Temporary Deputy Chair (Dr. Laboso): If we took a minute each, then we would all get a chance.

Mr. Otieno, please, proceed.

The Minister of State for Public Service (Mr. Otieno): Madam Temporary Deputy Chair, my Ministerial portfolio is on human resource management and development. We are all created with different gifts right from birth. Our performance and contribution to society will depend on which of those gifts we develop. It is obvious to everybody that even if you are a runner, you can develop running skills and improve on them.

At present, the problem is the Kenya Member of Parliament is a jack of all trades. So, it is so difficult to measure his performance. You have to develop so many other criteria. After we left here when Mr. Kimunya raised the matter of salaries, I had to go to the Salaries and Remuneration Commission and ask for the criteria they have developed which will give so much weight to education for a job that up to now is for a jack of all trades. They told me they had actually not developed such criteria up to then. Even if they did it, as of now, it would be challenged.

Madam Temporary Deputy Chair, it remains a fact that as organs of governance in this country specialized more and more for higher productivity standards, educational background will be necessary in the performance of all sorts of jobs. The legislators are role models in our society. They perform a multiplicity of duties that require different talents and capabilities; even if the education criteria in terms of weight in determining their remuneration will come last, it will be obvious that in future, we will need such standards. I believe in values and principles, but also that values, principles and standards but they must be moderated by pragmatism.

I was personally shocked - I supported this threshold - that it was too high when I discovered that 80 of our colleagues, some of whom I rate very highly as leaders, forgot to get those papers in time. If any lecturer were to evaluate them as of now they would not even need to sit in a classroom. They should just be given a degree after writing a few papers based on their own performance. So on the basis of pragmatism, I am happy the President brought this back to us. Please, be considerate. Is your timing right? It looks as if you are going ahead of your time. We must accept that the world is going towards the knowledge economy. The future legislation is going to be a lot more complicated. We need all types of professional qualifications, which put together would lead to the better leadership in the exercise of our oversight authority as a National Assembly. We need all types of professional qualifications which, put together, would lead to a better leadership in the exercise of our oversight authority as the National Assembly in accordance with the new Constitution.

I support but we should be understood in the right context.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairlady (Dr. Laboso): I think Mr. Otieno has really summarized what you all need to say. Allow us to put the Question.

(Question put and agreed to)

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Memorandum by His Excellency the President on The Statute Law (Miscellaneous Amendments) Bill, Bill No.14 of 2012, without amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we will continue with The Appropriations Bill and report at the end. It is only a few amendments so be patient because we are finishing the Committee of the Whole House very shortly. It is just three amendments.

THE APPROPRIATIONS BILL

(Clauses 2 and 3 agreed to)

(Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of The Appropriations Bill, Bill No.28 of 2012, without amendments.

Hon. Members: No!

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I will therefore put the Question.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I am putting the Question on the amendments. There have been no amendments. Are you in agreement with that?

Hon. Members: No!

Mr. Okemo: Madam Temporary Deputy Chairlady, we thought we were still on The Statute (Miscellaneous Amendment) Bill and that is why we were trying to recoup. .

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I clearly announced that we have finished and the only---

Mr. Okemo: We did not hear and we apologise.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, there was a miscommunication!

Mr. Okemo: Madam Temporary Chairlady, I think this is unfair on the part of the Minister because we have been working with him the whole morning.

Mr. Midiwo: It is mischievous!

The Temporary Deputy Chairlady (Dr. Laboso): Order, Hon. Members.

Mr. Okemo: This is unfair! Why did they put us through this exercise? We have spent the whole day.

The Temporary Deputy Chairlady (Dr. Laboso): Order, Hon. Members. Let us get organized. The information before me here, I completed The Statute (Miscellaneous Amendment) Bill and said before going to report, we will finish with The Appropriations Bill because it only has three clauses with no amendments and then move on.

Hon. Members: No!

The Temporary Deputy Chairlady (Dr. Laboso): Order, Hon. Members. We read it out but I can I hear from the Chairman of the Budget Committee?

Mr. Mbau: Madam Temporary Deputy Chairlady, our expectation when you finished as is the tradition was that the Chairlady would rise and the Speaker would go and sit on the Speaker's seat so that the relevant Minister is able to report. We then expected the Next Order would be called. The Minister knows there have been amendments. This was occasioned when the Minister was directed by this House and the Deputy Speaker this morning, to carry out an extended engagement and discussions with the Budget and Finance Committees, with a view to ensuring amendments that we had recommended as a House are taken in. It is very bad for the Minister to stand here and purport to say that there are no amendments when he knows we have been sitting since morning.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairlady (Dr. Laboso): Order, Hon. Members. Let us be organized.

Mr. Midiwo: Madam Temporary Deputy Chairlady, the point we are raising here is of utmost importance. What the Minister is trying to do is to shortchange the ruling or the directions given by the Speaker in the morning. We have been sitting since morning to find out if the Minister accommodated the recommendations of this House, through the Budget Committee. True to my suspicion this morning, what we found was that the Treasury was trying to short change the Budget Committee and its recommendations and the whole of this House. We have been sitting since 10.00 a.m. We have come up with recommendations and we agreed that we are bringing a corrigendum and that is what the Minister should have been tabling now and not an Appropriations Bill which does not accommodate those amendments. This is a constitutional issue.

The Temporary Deputy Chairlady (Dr. Laboso): Okay, your point has been made.

(Several hon. members stood up in their places)

Order, Hon. Members! Let us be clear; under normal circumstances you would have a Supplementary Order Paper which, if there were any amendments, would then have been included in that Supplementary Order Paper which is prepared much later than the normal Order Paper. So, what we have before us here is a list simply showing that there were four amendments which have been passed or no amendments rather, to the clauses that have been presented, which I read out including the Title.

Mr. Midiwo: Madam Temporary Deputy Chairlady, maybe we need to go to the full House and canvass this issue. This is a constitutional matter and we need to revisit the direction of the Chairlady in the morning because here is a scenario where the Minister---

The Temporary Deputy Chairlady (Dr. Laboso): Order! I think you have spoken on that issue. Your point has been made.

The Minister for Trade (Mr. Wetangula): Madam Temporary Deputy Chairlady, I want to recollect how I heard the proceedings go. When we finished with the previous amendment on The Statute (Miscellaneous Amendment) Bill you announced that instead of the Minister seeking to report, you will move to the next Committee. We were conversing very loudly so many hon. Members may not have heard but you said that.

I also want to put it on record that I was sitting here and at no time did I hear the Minister for Finance inform you or the House that there are no amendments. I did not hear that. If he said that, I did not hear. If we have made a mistake, instead of acrimony, we ask the Minister to re-commit the Bill and we go through the Motions like we did the other day other than now throwing words at each other, casting aspersions at the Chairlady while I know you have acted absolutely innocently and professionally and also casting aspersions at my learned friend who said nothing in the matter. I suggest that you allow the Minister to move for re-committal then we go through the Bill if there are issues. I think we all want to have things done correctly.

The Temporary Deputy Chairlady (Dr. Laboso): Let us hear the Minister.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, you will recall that when the Clerk gave me this Report to read, I returned it. I said it is for the Attorney-General. We were still thinking that we were on the Statute Law (Miscellaneous Amendments) Bill. Then, she gave it back to me again. I said: "I am not the one who is---" You read it. So, I think to amend it--- Because, really, we have been working since morning on these amendments. That is why when I was given this, I returned it twice and still the Clerk said: "No! No! I

thought, maybe, it is the Attorney-General who does not have the Report of the Committee. So, the best way is to recommit Clauses 1 and --- It is basically the Schedule. We recommend the Schedule, so that I can move the amendments.

The Temporary Deputy Chairlady (Dr. Laboso): So, on Clauses 2 and 3, there are no amendments.

The Minister for Finance (Mr. Githae): There are no amendments. It is only the Schedule.

The Temporary Deputy Chairlady (Dr. Laboso): It is the Schedule that has the amendments, according to the Minister.

The Minister for Finance (Mr. Githae): Yes, it is the Schedule. It is the Schedule which has the amendments.

(Mr. Ogindo stood up in his place)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ogindo, let us hear each other out so that we can sort out whatever problem there is.

Mr. Ogindo: Madam Temporary Deputy Chairlady, I thank you for this opportunity.

Madam Temporary Chairlady, we were granted leave by this House to go and look at the Appropriation Bill. In the spirit of give and take, we have been able to entertain Treasury and Treasury has been able to entertain us.

Madam Temporary Deputy Chairlady, we agreed on a set of amendments. We agreed to amend the Appropriation Bill, Paragraph 2(2).

An hon. Member: It is the Schedule.

Mr. Ogindo: Paragraph 2(2) is not a Schedule.

Madam Temporary Deputy Chairlady, Clause 2(2) says:-

“The sum granted out of the Consolidated Fund by subsection 1 includes a sum of Kshs424,666,046,946 authorized by the National Assembly on 21st June, 2012, in accordance with Article 220 of the Constitution.”

This House, indeed, approved that Vote on Account. But when you multiply that amount that was approved by the House, it gives you a total printed estimate of Kshs849,332,093,892.

Madam Temporary Chairlady, what this Appropriation Bill seeks authority from this House for is to allow for the withdrawal from the Consolidated Fund a sum of Kshs849,183,146,779, a sum that shall be deemed to have been appropriated from 1st July, 2012 for the services and purposes specified in the Schedule.

Madam Temporary Deputy Chairlady, what that means is that this House is about to authorize the withdrawal of the said amount. In Article 2(2), it is purported that we gave not more than 50 per cent as required by the Constitution. On close scrutiny, you will realize that what this House granted is more than 50 per cent of the Printed Estimates. For that reason, that approval was unconstitutional. To that extent, we agreed that this portion be amended by deletion, so that we can rationalize all the figures to agree with the total amount that this House now wants to grant the Minister for Finance.

Madam Temporary Chairlady, it becomes very mischievous--- It will be in the interest of this House that we finalize this matter in a most sober manner. We have invested a lot of energy in this. What we are asking the Minister to do does not hurt a fly.

Madam Temporary Deputy Chairlady, we agreed that the Committee was to come and move this amendment. But we later changed our mind and said it will be tidy if the Minister

takes up this amendment so that he moves his Appropriation Bill in an amended form. I think if we go that way, we will be saving a lot.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I think we have all recognized that, perhaps, due to the high levels of consultations, we may have missed some steps. But thankfully, our Standing Orders have created a leeway for what happens, should that happen. We picked that up and said that as we close it, let us bring that Bill for a recommitment so that the amendment--- I was aware that the Minister has amendments. I have been alive to the fact because we have been discussing this matter. I was alive to the fact that there are amendments. When he was given the Schedule without amendments, we said quickly, we still need to come back to the House to recommit so that those amendments can be reflected.

So, nothing is lost. I want to assure the House that there was no mischief because in any case--- I think just for the record--- So, what we need to do now is, let us proceed. We close the Committee. We then report to the House. We will be given authority to recommit and then we go through the various amendments as agreed between the Minister and the Committee. We then give the Kenyan people the Appropriation Bill that was agreed. So, I think let us not belabour the point as if there was any mischief because it was occasioned by the loud consultations. We have an avenue to sort it out. So, I think let us make progress. Let us not debate. I know everything is being done in good faith, and that we have an avenue for moving in the same way that we wanted to achieve.

The Temporary Deputy Chairlady (Dr. Laboso): I think the Minister seems to be in agreement. We just need to do the procedural--- You know, how we retrace our steps because we have already moved forward. Otherwise, I believe--- Are the figures going to change? The Minister is aware that there is going to be some changes in the figures.

The Minister for Finance (Mr. Githae): Yes, Madam Temporary Chairlady, I was aware of that. But, again, as I said, when I was given this one on clause 2, I had not been given any amendments. But the amendment is actually acceptable. So, I will agree with the amendment by Martin Ogindo.

Madam Temporary Deputy Chairlady, I had already proposed that we recommit the Bill to the House. That was my proposal.

The Temporary Deputy Chairlady (Dr. Laboso): Could you tell us which clauses are being recommitted?

The Minister for Finance (Mr. Githae): It is Clause 2 and the Schedule.

The Temporary Deputy Chairlady (Dr. Laboso): Committee, is that okay? Is that what was agreed on Clause 2 and the Schedule?

The Minister for Finance (Mr. Githae): Yes.

The Temporary Deputy Chairlady (Dr. Laboso): So, now, let us do the procedure of recommitting.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Appropriation Bill and its approval thereof without amendments subject to re-commitment of Clause 2 and the Schedule, pursuant to provisions of Standing Order No. 121, back to the Committee of the Whole House today.

(Applause)

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Mrs. Odhiambo-Mabona) in the Chair]*

REPORTS

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Dr. Laboso: Madam Temporary Deputy Chairlady, I beg to report that the Committee of the Whole House has considered the Memorandum of his Excellency the President on The Statute Law (Miscellaneous Amendments) Bill, Bill No. 14 of 2012, and approved the same without amendments.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Finance (Mr. Githae) seconded

(Question proposed)

(Question put and agreed to)

THE APPROPRIATIONS BILL

Dr. Laboso: Madam Temporary Deputy Speaker, I beg to report that the Committee of the Whole House has considered the Appropriation Bill, Bill No. 28 of 2011, and approved the same, subject to the re-committal of Clause 2 and the Schedule, pursuant to Standing Order No. 121 back to the Committee of the Whole House today.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Attorney-General (Prof. Muigai) Seconded.

(Question proposed)

Mr. Ogindo: Thank you, Madam Temporary Deputy Speaker. I want to thank the Minister for the re-committal of Article 2 of the Appropriation Bill and the Schedule.

Madam Temporary Deputy Speaker, it is important that we take into account the public participation that is a requisite of the Constitution. I look forward to seeing him making amendments that bring into effect those said public suggestions.

Madam Temporary Deputy Speaker, I thank you.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[The Temporary Deputy Speaker
(Mrs. Odhiambo-Mabona) left the Chair]*

IN THE COMMITTEE

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

THE APPROPRIATION BILL

(Resumption of Consideration interrupted in Committee today)

Clause 2

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 be deleted.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, is it the whole of Clause 2?

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Section 2 of Clause 2 be deleted.

Mr. Temporary Deputy Speaker, Sir, the reason is that once we approve the Appropriations Bill, then we really do not need the Vote on Account.

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

(Clause 2 as amended agreed to)

Schedule

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Schedule be amended as follows:-

RECURRENT EXPENDITURE

Vote R108 – Ministry of State for Defence

The amount of Kshs70,040,420,100 be deleted and substituted with Kshs70,290,420,100

Vote R112 – Office of the Deputy Prime Minister and Ministry of Local Government.

The amount of Kshs1,421,992,100 be deleted and substituted with Kshs1,471,992,100.

Vote R118 – Ministry of Gender, Children and Social Development

The amount of Kshs4,732,702,436 be deleted and substituted with Kshs5,232,702,436.

Vote R126 – The Judiciary

The amount of Kshs11,630,816,925 be deleted and substituted with Kshs12,130,816,925.

DEVELOPMENT EXPENDITURE

Vote D110 – Ministry of Agriculture

The amount Kshs9,480,048,125 be deleted and substituted with Kshs10,180---

Mr. Ogingo: On a point of order, Madam Temporary Deputy Chairlady. I am seeing an amendment to Vote R203.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, if we could use the Appropriation Bill itself, so that we move together. If I have left anything, the Chairman of the Budget Committee and Chairman of the Committee on Finance, Planning and Trade are here. After it is proposed, you can make an amendment.

DEVELOPMENT EXPENDITURE

Vote D110 – Ministry of Agriculture

The amount of Kshs9,480,048,125 be deleted and substituted with Kshs10,180,048,125.

Vote D116 – Ministry of Trade

The amount of Kshs519,750,000 be deleted and substituted with Kshs819,750,000.

Vote D119 – Ministry of Livestock Development

The amount of Kshs4,010,212,924 be deleted and substituted with Kshs4,110,212,924.

Vote D130 – Ministry of Energy

The amount of Kshs25,557,972,380 be deleted and substituted with Kshs25,807,972,380.

Vote D131- Ministry of Education

The amount of Kshs6,453,147,070 be deleted and substituted with Kshs7,053,147,070.

Vote D160 – Ministry of Industrialization

The amount of Kshs2,992,155,960 be deleted and substituted with Kshs3,292,155,960.

RECURRENT EXPENDITURE

Vote R203 – The Independent Electoral and Boundaries Commission

The amount of Kshs21,729,498,660 be deleted and substituted with Kshs17,529,498,660.

Vote - R211 – The Auditor-General

The amount of Kshs1,479,287,709 be deleted and substituted with Kshs1,749,287,709.

(Question of the amendment proposed)

Mr. Ogindo: Madam Temporary Deputy Chairlady, this could have been a slip of the eye but I do not know. Under Vote---

The Temporary Deputy Chairlady (Dr. Laboso): Use the Bill. We are following the Bill better than that one.

Mr. Ogindo: Madam Temporary Deputy Chairlady, on D113 there was a proposed amendment to delete the figure of Kshs44,851,200,000 and replace it with Kshs45,231,200,000.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, yes, indeed, that is why this House has people who have eyes and do not get tired. That is true. It has just been confirmed that it had been agreed upon with the Treasury and, therefore, I want to propose a further amendment. This is on D113 – Ministry of Roads.

Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the figure stated on D113 – Ministry of Roads, of Kshs44,851,200,000 be deleted and substituted with Kshs45,231,200,000.

The total figures remain the same.

The Temporary Deputy Chairlady (Dr. Laboso): Committee Members, are you together with the Minister on D113? Is the Committee in agreement? We want everybody to be in agreement.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, let me repeat so that everybody is clear. The new figure should read, Kshs45,231,200,000.

Mr. Okemo: Madam Temporary Deputy Chairlady, I hope that we are using the same document. Mr. Minister, look at that document and look at D114. We increased that figure by Kshs200,000,000. Just cross check.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, I have confirmed that it was not agreed upon. It was left out.

The Minister of State for Public Service (Mr. Otieno): Madam Temporary Deputy Chairlady, you have seen what we have gone through. This is our second year in trying to get it right within the letter and spirit of the new Constitution. Budgetary issues will be very important and the budget making role of Parliament cannot be compromised in any way. However, it would help for the benefit of all the other Members that there is a document that guides the new

budgetary process which every Member is able to read and not just read the Constitution and so on. We will get lost. So, by the time the next Budget comes, the Budget Committee should have worked on a comprehensive document; understanding the budgetary process in Parliament. This will really help in future.

Mr. Mbau: Madam Temporary Deputy Chairlady, it is, indeed, true that what hon. Dalmas Otieno would wish to see happen in the future should happen. I want to assure him and the other Members that the path we have been taken through by the Treasury has been very rough. It has been a very rough path for us. We appreciate that the Minister for Finance is new and he is familiarizing himself with the new office. We further appreciated that all of us were in a transition and some things were grey. We would like to see the Ministry of Finance, in future, ensure that the requisite documents are submitted to Parliament in time. You know that this did not happen. Of course, you know that as at last night, Members of Parliament did not know that we were going to meet a new Order Paper with the Appropriation Bill.

As of Monday, we did not also know that the Minister for Finance would lay on the Table the Vote on Account. Nonetheless, for the interest of the country I want to thank Members of the Budget Committee and the Members of the joint Committee on Finance, Planning and Trade because of the extra effort that we have put in order to facilitate the Minister for Finance to achieve the milestone that we have achieved today. In future, that may not happen. For today, we support as we move forward.

Thank you.

Mr. Okemo: Thank you, Madam Temporary Deputy Chairlady. I just want to emphasize the fact that if there is more interaction between the relevant Committees of Parliament and Ministries, we can achieve a lot and we can do it in a very short while. This was a big problem. In fact, it was a crisis. We even challenged the Vote on Account here. However, the fact that we have spend the whole morning and most of this afternoon with the Treasury officials, we have agreed on these numbers and we have solved two problems at once. One was to have the approved Estimates and these are the approved Estimates. At the same time, the need for the Vote on Account has disappeared. At the same time, we have passed the Appropriation Bill. We have done all that today just by that simple exercise.

The amount of work we have done as the Departmental Committee on Finance, Planning and Trade and the Budget Committee is a lot, and we have achieved so much together. I think the Minister really must appreciate the effort we have put in. He has to appreciate.

Thank you.

Mr. Mwaughu: Bi Naibu Mwenyekiti wa muda, naomba nichukuwe nafasi hii kusema kwamba kazi ambayo imefanywa na ndungu zangu hapa inaridhisha. Tusingefika hapo ikiwa Wizara ya Fedha isingekuwa na heshima kwa kamati za Bunge. Kwa maoni yangu, kama hundi hii ingeletwa awali iangaliwe kwa utaratibu na ichambuliwe ikizingatiwa kuwa Katiba imegeuka, huu mjadala haungefika hapa ulipofikia.

Kama tunavyokumbuka ilikuwa ni Wizara ya Fedha--- Baada ya Bunge kukubaliana kwamba makadirio yangukuwa hivi na hivi wameenda wakachapisha Mswada wao ambao ulikuwa tofauti kabisa na yale makadirio ambayo yalikubaliwa na Bunge. Ni nini Wizara ya Fedha inaficha? Lazima iwe na uwazi.

Natumaini kwamba Waziri, ijapokuwa wewe bado ni mwanamwali na ubishi unao, sasa umekomaa na umeshika ukakamavu, na kuwa utatenda kazi kulingana na Katiba mpya. Yale yaliyokuwa yakitendwa na Wizara ya Fedha ya kuona kuwa katika kutayarisha makadirio ya pesa ni wao wenyewe wana utaalamu, ufasaha, na sifa zote za kuleta makadirio ya pesa hapa,

hayo yaishe. Naomba ushikane na kamati za Bunge. Wizara ikishikana na kamati za Bunge, angalia ile kazi imefanywa. Angalia hivi vipengele vitatu tumevikamilisha. Ule utata ambao ulikuwako sasa umeisha.

Kwa hayo mengi naomba tu nikome hapo.

Mr. Wambugu: Madam Temporary Deputy Chairlady, I stand to support the Appropriation Bill with the amendments that have been tabled by the Minister. As I do that, let me say that the concerns that are being raised by hon. Members are very important. It is high time the Government realized that this is not a Government of a few people; rather it is the Government of the people. The Constitution states very strictly and clearly about public participation and respect for the Committees. We wish to commend the Minister for Finance, hon. Githae.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Wambugu, we are not debating. You are just to make a few remarks!

Mr. Wambugu: Madam Temporary Deputy Chairlady, as I sit down, it is good to follow up and ensure that what we have recommended here is implemented. This is because there are projects which have been put in the Budget from 2009, yet up to now they have never been implemented.

Mr. Lessonet: Thank you, Madam Temporary Deputy Chairlady. I want to thank my colleagues in the Budget Committee, and equally the team on the other side, the Executive, for the time we have put in today to arrive at this consensus.

Of course, we all want to understand that there is the Executive, Parliament and the Judiciary. We are all independent arms of the Government. I hope you are going to allow us in the future to perform our duty of looking at the Budget. Also, you should be able to comply with the report of this House to the extent of the resolutions passed; for example, a resolution was passed a while ago. I believe that we all have the interest of this nation at heart. We represent people. Of course, on your side you might be having your other interests, but we, as Members of Parliament, represent *wananchi*.

With those remarks, I say thank you.

The Assistant Minister for Industrialization (Mr. Muriithi): Thank you, Madam Temporary Deputy Chairlady. I want to really appreciate the Committees for the work that has been done. I wish we could just be patient with each other. This period of transition--- For example, in the next Budget, there will be no Executive residents in the National Assembly. So, we are in transition and if we are patient with each other--- We are all learning how to do new things under the new Constitution. I think we will be able to do great work for this country.

Thank you.

Mr. C. Onyancha: Thank you, Madam Temporary Chairlady. I also wish to stand up and thank the committees for a job very well done but also the Minister, my friend, who is no longer new whose Budget has been a very hard process but there is one thing I wanted to say; that the Back-bench has no trust in the Executive. The only fortunate thing is that this Minister is trusted by the Back-Bench and I think that we want more Ministers to come forward and be forthright on where they have had problems and mistakes.

Let me conclude by saying that I am very happy with this and I support.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, some of you will get an opportunity at the end of the Third Reading when the Speaker is on the Chair. So, allow us to move on.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Chairlady, I beg to report that the Committee doth report to the House its consideration of the Appropriation Bill and its approval thereof with amendments

The Minister of State for Public Service (Mr. Otieno) seconded.

(Question proposed)
(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker
(Mrs. Odhiambo-Mabona) in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE APPROPRIATION BILL

Dr. Laboso: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Appropriations Bill, Bill No.28 of 2012 and approved the same with amendments.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister for Industrialization (Mr. Muriithi) seconded.

(Question proposed)
(Question put and agreed to)

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, I beg to move that The Appropriation Bill, Bill No.28 of 2012 be now read the Third Time.

The Assistant Minister for Industrialization (Mr. Muriithi) seconded.

(Question proposed)

Mr. Langat: Madam Temporary Deputy Speaker, I wish to, firstly, congratulate the Minister. This is the first time we have passed the Appropriation Bill in a record time. I believe that we are ahead of the others.

I also want to thank Members of the Budget Committee and the Committee on Finance because this is the only time that the views of Kenyans, which were collected by Members of the Budget Committee, have been taken into consideration. In terms of the Budget-making process, this time round, Parliament never acted in vain. Whatever Parliament said was done.

Therefore, I want to congratulate Parliament as well as the Minister.

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Speaker, I wish to congratulate the Members of the Joint Committee, who pointed out some of

these things. I do not know whether they are computer errors or mistakes like the ones we had the other year.

I would like to tell our officers at the Treasury that it is high time they put us in a position to trust them. They are technocrats. They know what they are supposed be doing there. We just cannot have all these errors.

An hon. Member: They are not errors!

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Speaker, they may be whatever they are but can you imagine the amount of money that we have put here in the form of amendments? It is Kshs200 billion.

Thank you.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I would like to take this opportunity to, first of all, congratulate the Minister. This is the first time in the history of this country---

The Temporary Deputy Speaker (Mrs. Odhiambo-Mabona): Hon. Members, I am reminding you that, at this point, you are supposed to be very brief.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, this is the first time in the history of this country that we are going to start a financial year with a fully approved Appropriations Act.

My congratulations also go to this House. That is in addition to the constitutional Acts that earlier on, today, I reported as having been enacted by this House since its resumption in April. We can go on recess today, patting ourselves on the back, as hon. Members of this House, as having made a major breakthrough in legislation.

Madam Temporary Deputy Speaker, I also want to record my special thanks to the Departmental Committees of this House. Although it may have been put in as if it was just simple amendments that were made to the Bills that we have passed, I am aware of the amount of work that has been done by the Committees from the time they started calling for public participation to the negotiations that took place.

The Temporary Deputy Speaker (Mrs. Odhiambo-Mabona): Order, hon. Minister! This is not Second Reading.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, let me just finish what I am saying because the Members of this Committee require appreciation. They put in a lot of work. The pulling and pushing that happened was not necessarily a bad thing. It was negotiation. All is well that ends well. We should all go home, feeling that we have achieved what is good and in the best interest of the people of Kenya.

Mr. Ogindo: Madam Temporary Speaker, allow me to, first of all, thank the Minister for his tolerance and understanding that this process is most tedious and most demanding. Allow me to also thank the Joint Committee.

Having said so, I want to say that this House has done itself proud. For the first time, public participation has been taken into account in the Budget-making process. This will go a long way in instilling confidence in this House. At this point, I want to request the Minister to seriously embark on the printing of consolidated Printed Estimates, so that members of the public can go through it and see for themselves that, indeed, the projects that they proposed have been incorporated in this year's Budget.

With those remarks, I beg to support.

Mr. Hassan: Madam Temporary Deputy Speaker, first of all, I want to congratulate the Minister for being humble and a good listener. He has particularly contributed to the making of this particular Budget at a difficult time for him.

I also want to congratulate the House. This is my first Budget in Parliament. I have also been listening and learning. I was impressed by the co-operation that existed across party lines, with hon. Members working together as Kenyans. That is a very good idea. I think it was wonderful to see this Budget approved.

Thank you.

The Temporary Deputy Speaker (Mrs. Odhiambo-Mabona): Hon. Members, I will take only two more hon. Members who have probably not spoken for some time.

Mr. Ngugi: Madam Temporary Deputy Speaker, I want to congratulate the Minister and the Committee. Having said that, I want to look at the lessons learnt. If we had to do so much work, what about when we move to county governments? We need to start preparations now so that when we have the county government system we do not have to have this push and pull and everybody would have been well prepared. This is why we need substantive Ministers. This issue of acting Minister will not take us forward.

With those few remarks, I support.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, let me take this opportunity to thank, first, the Chairman of the Budget Committee, Elias Mbau, the Chairman of the Departmental Committee on Finance, Planning and Trade, Chris Okemo, all their Members and the Members of the National Assembly and also the Treasury officials for a job well done.

Yes, it is true I have rushed the Budget Committee but it was with good intentions. We have now made history that since we attained Independence this is the first Appropriation Bill that has been approved by the National Assembly before the end of the Financial Year. Meaning from 1st July all the Ministries will have their full allocation. They will not even use the 50 per cent that you had approved previously. So, that is the reason I was rushing because I wanted to make history and I think I have made history.

Secondly---

The Temporary Deputy Speaker (Mrs. Odhiambo-Mabona): Hon. Minister, you are reminded this is not the Second Reading.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, secondly, if I had some *ingokho* I would have slaughtered it for the two chairmen for a job well done. I am told that *ingokho* is too small for the job they have done. Therefore, I will look for a bull and slaughter it for them because, really, they were wonderful. They worked late and never took lunch. They would work at night to achieve what we have achieved.

With those remarks, I beg to move.

Mr. Ruto: On a point of order, Madam Temporary Deputy Speaker. I just want to remind the wonderful Minister for Finance that he has done a good job. But nevertheless the moment he starts offering bulls, I smell a rat.

(Laughter)

I do not know whether that is in order because even the Chairman will have to surrender it to the State because it is unconstitutional.

The Temporary Deputy Speaker (Mrs. Odhiambo-Mabona): Mr. Ruto, that is not in order.

Mr. Minister I presume you have finished.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Mrs. Odhiambo-Mabona): Next Order!

MOTION

ADOPTION OF REPORT ON IRREGULARITIES IN CIVIL SERVANTS OUTPATIENT MEDICAL INSURANCE SCHEME

THAT, this House adopts the Report of the Departmental Committee on Health on alleged irregularities of the rolling out of the civil servants out-patient medical insurance scheme, volumes I and II, laid on the Table of the House on Tuesday 5th June, 2012.

(Dr. Monda 13.6.2012)

*(Resumption of Debate interrupted
on 28.6.2012)*

The Temporary Deputy Speaker (Mrs. Odhiambo-Mabona): Chairman, Departmental Committee on Health, you were on the Floor. You have a balance of 20 minutes.

Please, proceed.

Dr. Monda: Madam Temporary Deputy Speaker, I thank you and want to indicate that this is the fourth time I am rising to conclude moving this Motion. It would be important for me to indicate at this point that in future, reports should be allocated sufficient time, and given priority so that moving a Motion on a report will be done at one time for coherence and for Members to understand because you will be addressing one audience.

Madam Temporary Deputy Speaker, when we stopped today in the morning sitting we were at the point of discussing the non-existing facilities, and we dealt with what the Ministry of State for Public Service did not do, or did to allow the non-existing facilities to be paid for services they were unprepared to provide.

*[The Temporary Deputy Speaker
(Mrs. Odhiambo-Mabona) left the Chair]*

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

Madam Temporary Deputy Speaker, I move to---

The Minister of State for Public Service (Mr. Otieno): On a point of order, Madam Temporary Deputy Speaker. The Chairman keeps repeating the same mistake; the Ministry of State for Public Service is the client in this case and had no power to appoint, contact or terminate any health care provider. Do not confuse it with the Medical Services or Public Health and Sanitation Ministry.

We appointed and had a contact with the Fund. It is the Fund that decided to appoint any other healthcare provider. We have no access to that contract, let alone the powers to interfere. We complained when the services were inadequate. In the morning I tabled our own report of visitation of all these outlets, which included the non-existent outlets.

My point of order is; he is saying the Ministry of State for Public Service did not stop payments for non-existent healthcare services. Our payment is to the Fund, and not to the clients of the Fund.

The Temporary Deputy Speaker (Dr. Laboso): So, he has made the clarification.

Dr. Monda: Madam Temporary Deputy Speaker, I would seek your protection because I have just made the first statement and the Minister has made a narration on what he believes I should have said.

Madam Temporary Deputy Speaker, I am reporting on behalf of a Committee and I would wish that the House listens to my presentation. If the Minister or Ministers want to give or file their defence, they will do so at the opportune time.

The Ministry of State for Public Service, having known that there were no facilities in some of the areas where public servants would have expected to obtain the service--- The Ministry, as a client representing the beneficiaries and members, simply wrote a letter which we have in our volume II of the Report; it did not push properly the NHIF to protect the interest of the public servants. This is what we are saying as a Committee.

Madam Temporary Deputy Speaker, we have the Ministry of Medical Services, which in piloting of the outpatient scheme for public servants in 2010, made use of two facilities as the key piloting service providers, the Meridian and the Clinix health providers, which we have mentioned earlier.

The Meridian was paid over Kshs54 million and Clinix over Kshs96 million for piloting the scheme for the same Ministry under the leadership of the Acting Minister for Medical Services then, who is also the Minister of State for Public Service. When he appeared before the Committee, he informed the Committee that if we used the method I defined earlier - the method of capitation - the outpatient scheme had to crumble. I am quoting the Minister. That is was in 2010! Down the line in 2011, the same Minister for Medical Services together with the Minister of State for Public Service were happy to roll out a scheme of the outpatient service while they well know and having stated so before the Committee that it will crumble. They went ahead and signed a contract for provision of these services. The Minister for Medical Services is represented in the National Health Insurance Fund (NHIF) Board by none other than the Permanent Secretary and also the Director of Medical Services.

Madam Temporary Deputy Speaker, while this was known by the Ministry as I have indicated earlier, further, the non-existence of facilities was well known by the Director of Medical Services and he did so in writing by informing the NHIF where he himself sits as a member of the Board. He wrote and indicated the non-existent facilities. Therefore, that was done early in January and February but later on having informed the NHIF where the Director sits and as the Registrar of the Medical Practitioners and Dentist Board, the Minister and the

NHIF went ahead to pay for the non-existing facilities. The Permanent Secretary did not advise the Minister nor did the Director of Medical Services.

It is on this basis that there was, indeed, negligence on the side of the two Ministers, the Director and the Permanent Secretary, Ministry of Medical Services. There was negligence on the part of the Board of the NHIF together with the CEO then. The non-existent facilities were paid for using public money while the Ministers knew that the money they paid was not for service that was to be provided to the beneficiaries.

(Mr. Ruto consulted loudly)

Madam Temporary Deputy Speaker, can I be protected from Mr. Ruto? If you can ask him to sit a little far behind there, he will still hear me.

(Laughter)

The Temporary Deputy Chair (Dr. Laboso): Mr. Ruto, will you stop harassing the Chairman of the Departmental Committee on Health?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): On a point of order, Madam Temporary Deputy Speaker. While I respect the Chairman of the Departmental Committee on Health, is he in order---

(Dr. Monda consulted Mr. Ruto)

The Temporary Deputy Chair (Dr. Laboso): Dr. Monda, you are not listening to the point of order from the Minister.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): On a point of order, Madam Temporary Deputy Speaker. Is the Chairman in order just like my friend Mr. Otieno said, to imply and mislead the House that the Minister for Medical Services knew that money was being paid to non-existent facilities when the Minister of State for Public Service has said very clearly that payment was based on capitation to the service providers and not to facilities? That is the principle of capitation and the Minister for Medical Services does not micromanage the NHIF in its daily operations.

The Temporary Deputy Speaker (Dr. Laboso): Are you in order, Mr. Chairman? Continue with your contribution!

Dr. Monda: Madam Temporary Deputy Speaker, I do not know whether you want to me respond to the point of order or not. But I do not want to withdraw because the Minister is very aware that, indeed, he got excited at the point when the out-patient scheme was rolled out. Together with his counterpart in the Ministry of State for Public Service, they were everywhere in the media announcing a gift for a new year in 2012. How come now, the Minister wants to run away and claim no responsibility, when the same Minister knows very well that he has appeared before the Committee that I chair and told the Committee how well the capitation method will serve the country. Kenyans are watching. It is not about the Committee of Health. It is not about anyone of us. It is about the provision of health services to public servants.

Madam Temporary Deputy Speaker, another one---

Mrs. Shebesh: On a point of order, Madam Temporary Deputy Speaker---

Dr. Monda: Madam Temporary Deputy Speaker, could I be protected.

The Temporary Deputy Speaker (Dr. Laboso): Why do you not allow him to finish hon. Shebesh, so that we can make progress? What is your point of order, hon. Shebesh?

Mrs. Shebesh: Madam Temporary Deputy Speaker, I think we have a procedure. The Chair is going through the Report of the Committee after which, we should be allowed to debate. Is it in order for the Chair to start debating the Report, which he has not even completed giving? He has started to give his own opinions and not what is stated in the Committee Report, which we have all read? Some of the things he is saying are not reflected in the Committee Report.

The Temporary Deputy Speaker (Dr. Laboso): Okay, Chair, you are just merely the Chair of the Committee and, therefore, if you are giving your own opinion and not what is in the Report, really, then you will be out of order.

Hon. Members: Point of Order! Point of Order!

Dr. Monda: Madam Temporary Deputy Speaker, that is exactly---

Madam Temporary Deputy Speaker, could I be protected? I request that you also protect me from the Chair? It is either I am allowed to present the Report, Members hear the content and debate. What are the Members debating before I finish giving the Report? I am asking for your protection.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Chair, the only thing is to avoid personal opinion. You just present the Report.

Dr. Monda: I have not given a personal opinion in my presentation.

The Temporary Deputy Speaker (Dr. Laboso): Continue, Chair.

Dr. Monda: Your experience in politics, hon. Members, will bail you out on this one.

Madam Temporary Deputy Speaker, NHIF together with the Ministry, knew that they presented a list of service providers who will give the outpatient services to members of NHIF. That, they know. They also know that out of that list, 56 were from the Clinix outlets and 18 from Meridian, while the two Ministries have captured service providers who were not in existence then. If that is what the Ministers want to run away from, it is captured in their own letters.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, you are making it longer for us to finish. Allow the Chairman to complete. Order, hon. Members! You will challenge what he has reported when the time comes; when he finishes.

Dr. Monda: I want to believe that hon. Members are not using points of order to waste my time.

The Temporary Deputy Speaker (Dr. Laboso): Continue Chairman. Do not provoke hon. Members any further. Just continue.

Dr. Monda: What is going on is un-parliamentary too.

Madam Temporary Deputy Speaker, I am sure the intention is exactly what it is. We, as a Committee, made various recommendations in this report.

I hope you will consider giving me more minutes because some of my time has been "eaten" by hon. Members as they raised various points of order. .

Madam Temporary Deputy Speaker, the Government lost money in this scheme. Because of that loss of public resources that were paid irregularly to facilities that were not in existence to give service, we recommended that the following persons be investigated. The Registrar-General for not ensuring that Clinix Health Care Ltd. was registered to do business in this country

properly. The Director of Medical Services who is also the regulator of service providers did not perform his functions effectively to advise the NHIF not to allow providers that were not licensed and registered by him to operate and be paid when they were, indeed, not in existence. The permanent Secretary of the same Ministry of Medical Services, who also sits together with the Director of Medical Service in the NHIF Board, be investigated. He did nothing to stop those payments to non-existing facilities. He did nothing to change that direction and approved payment by the NHIF Board. The Committee also recommended the Chief Executive Officer of the NHIF be investigated for the same reasons.

Finally, we recommended that both the Minister for Medical Services and the Minister of State for Public Service be investigated.

The Minister of State for Public Service (Mr. Otieno): For what?

Dr. Monda: Madam Temporary Deputy Speaker, regarding the possible misrepresentation by the CEO of Clinix Healthcare Ltd., Mr. Toddy A. Madahana, the Committee recommended further investigations by the Director of Public Prosecution to establish the facts about his identity and he be prosecuted if found culpable.

So as to ensure that the service or the scheme is seamless, we recommended that the NHIF and the Ministry of Medical Service and the Ministry of State for Public Service establishes appropriate structures to ensure that all members access health services at any accredited facility in the country under the scheme.

We further recommended that the NHIF decentralizes their services to the counties, including services related to the scheme and puts in place appropriate systems to ensure access to the service.

Madam Temporary Deputy Speaker, we also addressed ourselves to inspection and capitation rates in public facilities. Public facilities were capitated at Kshs1,500 and private facilities were capitated at Kshs2,850. We recommended that all facilities, be they public or private, be capitated at the same rate for the service provision since all of them are giving the same service and have similar capacities. The Ministry of Medical Services, the Ministry of Public Health and Sanitation and the NHIF Board should ensure that the public facilities are re-oriented to be able to fully participate in the scheme, considering their wider geographical spread than those that were paid, especially for the two service providers.

Madam Temporary Deputy Speaker, the capitation method needs to be relooked at so that we pay for service provided and service given rather than paying for service that has not been provided.

Madam Temporary Deputy Speaker, I beg to move and ask Dr. Eseli to second.

Dr. Eseli: Madam Temporary Deputy Speaker, I beg to second the Motion, as moved by the Chairman of the Committee on Health.

Madam Temporary Deputy Speaker, from the outset, I would like to give a brief history of the situation as we find ourselves in. Not very long ago, Ghana came and studied our National Hospital Insurance Fund (NHIF) system and actually went and rolled it out in Ghana. Right now, Ghana is giving a social healthcare service, covering over 75 per cent of their population.

Madam Temporary Deputy Speaker, it is important to note that this social healthcare system is a social network. For a capitalist society like Kenya, we do require such a healthcare system in order to cushion the most vulnerable of the society. Unfortunately, we have not had the funds to be able to roll out this sort of system. But along the way came the public service healthcare insurance system. After they tendered, they realized that the companies that were going to win this tender, if they were awarded, were actually going to contract NHIF to roll out

this programme. So, they wisely decided that this could be a chance to start rolling out a programme that the rest of the country, probably, could piggy-back on later on, or, perhaps, serve as a template to roll out social healthcare in this country. For that reason alone, despite our recommendations, I would still like to congratulate the two Ministers for biting the bullet and deciding to get moving on social health insurance.

Madam Temporary Deputy Speaker, however, in the process, certain rivalries cropped up. There was business rivalry involved, to the extent that some of those people who were contracted by the NHIF had participated in the capitation scheme. So, they knew exactly what it is, while the others who had not participated, did not understand it. In the process, business rivalries did crop up and several things happened. As this scheme was being rolled out, certain people decided to take advantage and be like carpetbaggers; to ride on the programme for reasons other than purely providing healthcare. In the process, when we were investigating, we found something very interesting, where the NHIF comes to the Committee and gives us material to show that they paid capitation based on the number of clinics available by each service provider. When the service providers came, they told us: "No, we were paid capitation according to the total number of people accredited to us." We started seeing the difference, which meant that there probably was somebody somewhere who was trying to benefit unfairly through the programme. Therefore, we got evidence from the service providers, that is Meridian Healthcare and Clinix Healthcare, who said: "We were capitated for the total number of people accredited to us." The NHIF gave us material saying that they capitated them according to the number of outlets that were available. The interesting thing was that when we looked at those outlets that were available, we found that some outlets were not functioning while others were non-existent. Even in the process of investigating, some service providers were still opening new outlets which, interestingly enough, had been licensed. You cannot license an outlet which is not functional, because outlets have to be inspected. The public health officer in an area inspects that outlet to show that it is fit to be a clinic, then they apply to the Medical Board, to be given the licence. This was a situation where some non-existent or non-functional outlets had licences.

That raised a red flag. We found that to be something that we did not expect to find. Something else that came up was that because this programme was being rolled out in a fast tracked manner, the fast tracking meant that proper controls had not been put in place. That is why we have recommended that an inter-ministerial committee be formed to ensure that they streamline these services.

Madam Temporary Deputy Speaker, we further recommended that the programme should not be stopped. We do not want the programme to be stopped. Many questions have been asked on why we did not recommend that Meridian and Clinix be stopped from rendering the services. As a Committee, we hesitated to do that because we felt that this would disrupt the services and if you disrupt the services of such a programme, then you would roll back and start all over again.

However, the group that was appointed to oversee the issue has already done that. They have done that and they are now going ahead to properly inspect the facilities and do proper accreditation. So, some of the things we are discussing today are already being implemented on the ground which is a plus. But we need to point this out because as we start to implement the new Constitution, many other such services will come up for implementation. When such services come up for implementation, there are those carpet baggers who will try to ride on the back of such services to gain unfairly and that is what the Committee was mainly looking at.

The other issue was really interesting. We had Clinix Healthcare which is owned by two companies. One of the companies that own Clinix Healthcare is registered in the Virgin Islands and up to today, we have not found the directors of that company in the Virgin Islands. We felt that was a danger to the whole of this country; that a company can come and trade in this place and yet we do not know its directors. They could be unsavory characters and they are allowed to do business in the country. We felt that was very dangerous for the country.

There is the issue of capacity of these clinics to render services. When we went round, we found that some of those facilities did not have the requisite personnel to render the services and some of their facilities were not up to date in the sense that you could find a laboratory squeezed in a corridor. The interesting thing was that the facility had been licensed. The licensing authority, therefore, is at fault and that is why some of our recommendations are that this issue needs to be looked at again.

Madam Temporary Deputy Speaker, as I conclude because I know it is late and Members are quite tired, I would like to propose that whatever Members feel about this Report, we should be careful whatever we do with it. Do not throw away the baby with the bath water. Look at it carefully and see that there are very good recommendations which will move healthcare in this country to the next level. We need to do that if we want to effectively implement the new Constitution. That we allow this programme to continue, and have it in such a way that most of the money that is going that way goes into the public facilities because we always complained that we do not have money to improve our facilities and buy equipment.

If this money is utilized properly in the public facilities, it can be used to buy the equipment, to enhance the services provided and to purchase additional drugs. That is why we are insisting that the Ministry of Medical Services looks at this programme and forms a unit, if possible, to see how they can benefit best from this money which is in terms of billions which the Ministry has been asking for and not getting but it is now coming through this public service scheme.

Hopefully, based on that, in the future, we will be able to roll out social health insurance without a problem.

Madam Temporary Deputy Speaker, we must agree that there was something that did not go right, or which was not done right with this programme and that is what needs to be rectified. It is important that we recognize one thing. We as Committee Members have exercised our oversight role and placed it so high and forgotten our facilitative role. As Committees of this House, we must also play the facilitative role to co-operate with the various Ministries and institutions to ensure that we actually assist them to achieve what they want. What I have based my seconding on has been more of the facilitative role than the oversight role, which at times we have used for vendetta and to score cheap points.

This is a very important programme and as we debate this Report I would like hon. Members to keep in mind that this system that has been started is so key that whatever we do and propose should be something that will facilitate this programme to succeed.

Madam Temporary Deputy Speaker, I beg to second.

(Question proposed)

The Minister of State for Public Service (Mr. Otieno): Thank you, Madam Temporary Deputy Speaker. This Report is recommending that I be investigated to ascertain the role my Ministry may have played in the irregularities. The only irregularity the Chairman of the

Departmental Committee has talked about is the non-existent outlets of some of the healthcare providers.

First, I want to explain the role the Ministry of State for Public Service played in this matter. Our role was the scheme design, obtaining Government approvals, handling the service procurement, and then monitoring and evaluating service delivery. There was no irregularity at all indicated by this Committee in the role of my Ministry as I have enumerated. There was nothing irregular in the performance of those duties. This is a scheme that had been promised to public servants in 2003.

Dr. Monda: On a point of order, Madam Temporary Deputy Speaker. You heard the Minister mention the roles he played as the Minister of State for Public Service and as the client. He cited the monitoring of the performance of the scheme. In our observations we indicated that the Minister noted that in his monitoring business he realized that there was no service provision because---

The Temporary Deputy Speaker (Dr. Laboso): What is out of order?

Dr. Monda: I am building on that, Madam Temporary Deputy Speaker.

The Temporary Deputy Chairlady (Dr. Laboso): No, you have to say what is out of order.

Dr. Monda: Is the Minister in order to argue that he had no role, and that there was nothing irregular when, indeed, his mandate was to monitor the performance of the scheme to ensure that, as a client, the public servants get the service? He represents them!

The Temporary Deputy Speaker (Dr. Laboso): Your point has been made. We are not arguing.

The Minister of State for Public Service (Mr. Otieno): Madam Temporary Deputy Speaker, I am glad he has raised that because my role in monitoring and evaluating the performance of the scheme was actually done and I tabled this morning an evaluation report which my Ministry did in February. I pointed out that this Committee took the terms of reference of that Committee report of my Ministry. In fact, the findings and recommendations are the same. The only difference is that he recommends what I would rather call a blame recommendation; that I failed in the duties. I tabled the report here. So, I performed my evaluation duties and the caretaker committee has not seen your report but they have used my committee's recommendation and they have implemented all this within one month. In other words, these things could have been done from February and by March all these recommendations could have been done, but the wrangling with the board and the management at the National Hospital Insurance Fund (NHIF) is what has been delaying its implementation. So, I performed all my roles including monitoring and evaluation and I have tabled the report that has recommended solutions. Your report has recommended more blame than solutions.

Madam Temporary Deputy Speaker, I want to say that this is a scheme that was promised by the Government in 2003 and up to 2008, nothing had been done. So, the union took me to the Industrial Court to show-cause why they should not go on strike for the Government having failed over five years to implement the medical scheme. They were being paid medical allowances at job group "A" of Kshs375 per month and at the top job group "T" only Kshs2,490. I said this is totally unfair being a Member of Parliament who is aware of the medical problems in this country from my constituents. I am a professional. I am the first African fellow of the Chartered Insurance Institute of London and the first million dollar agency manager in 1977 and I have a Bachelor of Science in Applied Economics – one of the few from Makerere at that time.

(Applause)

So, I went ahead and checked the medical underwriting market in the country. I got 14 companies which are underwriting medical. I checked the premiums which they were charging. A group had gone into micro-medical underwriting. When I compared the premiums being charged in the market and what our employees were being given as an allowance, I found that we could get our employees medical insurance charged by the Government doubling those allowances. I was able to put a paper to the Cabinet and I got approval. Initially, the Ministry of Medical Services and the NHIF, when the Cabinet approval came in, the chairman of the board of the NHIF complained that I was taking business which they should have given to the private sector and that they should be allowed to tender for this business. I said: "You can tender for the business but I am placing it to the market as a whole and not restricting it." In fact, the first tender was in June when the NHIF tendered through a broker, Eagle Insurance Brokers, but the broker came in ten minutes late and that is why their tender was not evaluated. When we evaluated the tender, the most responsive tender was asking for Kshs12 billion. I told them: "How do you charge me Kshs12 billion but I have figures of what you are charging in the market and they are not more than Kshs5 billion"? So, I cancelled the tender and retendered again. By the time we were retendering again, NHIF applied now with a consortium that was responsive and who had agreed to reduce the premiums from Kshs12 billion to Kshs4.3 billion. The problem arose that the exclusions which they had made on the scheme were not good enough for me. I called the chief executives of all the companies and I told them that I am also a medical underwriter and that I design these products and some of them have worked.

Why would you want a scheme like the Public Service Health Insurance Scheme to have a stop-loss clause which would say that if the losses exceed 70 per cent, they cancel the insurance? I told the chief executives that, for purposes of our public servants, I would rather they substituted the stop-loss clause with a premium review clause, so that if my employees are too sick and the claims are higher than 70 per cent, we review the next year's premiums based on actual claims. They told me that, that was a good idea but they could not do it because they had existing re-insurance treaties, whose other parties would not accept that arrangement. I asked: "How are you going to do it?"

Madam Temporary Deputy Speaker, that was when I discovered that this risk had been assessed to be 52 per cent outpatient, 30 per cent in-patient, 15 per cent life insurance and 3 per cent last expense; and that they intended to pass the 52 per cent outpatient component to the National Hospital Insurance Fund (NHIF). So, I said: "If you cannot reduce the exclusions, including the HIV/AIDS exclusion, and you want outpatient, which is the riskiest component, to be given to the Government parastatal, the procurement law allows me to negotiate directly with the Government parastatal without re-tendering."

So, we invited the NHIF to give us a technical proposal, which they gave and offered to cover families comprising of employee, the spouse and five children.

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

Hon. Members: Aah! Proceed, Minister!

The Minister of State for Public Service (Mr. Otieno): Madam Temporary Deputy Speaker, that was to be at a premium of Kshs4.7 billion. All I did was to negotiate and leave out one dependant to bring the premium to the amount that I had already got from the Cabinet. The Cabinet had approved that I should be given Kshs1,078,000,000 more to add to the allowances of the employees to be able to implement the scheme.

So, when the NHIF reduced the premium to what I could afford, I accepted the technical proposal. The contract was technically agreed on in November. What remained up to January was formal signing of the evidence document called the “contract”. The Committee talks of rushed and rushed implementation of the scheme. The NHIF wanted the business from the beginning. They were part of the tendering process and all the explanations from June. When I asked them: “Can you commence from 1st January?”, they said “yes”.

Madam Temporary Deputy Speaker, why did I ask the NHIF whether they would commence from 1st January? It is because I had been given Kshs1,078,000,000 more, away from the allowances. So, I could not keep that money a day more when employees were dying in Somalia, and others going to the Government for medical expenses reimbursements. Each of these employees was already a member of the NHIF. Their particulars were in the database of the NHIF.

One of the ways services can be rendered by the NHIF is by service for fee, which is what they are doing for in-patient, life insurance and last expense. The only service they decided to undertake under capitation was out-patient, and I have to explain the reason as to why they did so. The contract we signed was with the NHIF.

Madam Temporary Deputy Speaker, the contract provided that if my employees fell sick and got services from medical facilities, the NHIF would pay a number of listed benefits, all of which were based on the job groups of the employees. Due to the risk involved, capitation is a risk-sharing mechanism with healthcare providers. If it was fee for service, the NHIF would absorb the full risk of the medical cover. So, the NHIF chose capitation so that they may share the risk with the healthcare providers. They had done a pilot scheme for capitation. That pilot scheme was not done for the Civil Service Insurance Scheme. It was done for a universal healthcare scheme which would cover every Kenyan.

Madam Temporary Deputy Speaker, when I appeared before the Committee as the Acting Minister for Medical Services I told the Committee that a universal healthcare scheme covering each and every Kenyan; if that is what is intended to be commenced now, then the capitation pilot scheme is inadequate. I told the Committee that it needs to cover more areas to see whether the 40 million Kenyans whom it may wish to bring or 50 per cent of them can be accommodated under capitation. That is what this Chairman keeps saying that I condemned capitation but he does not want to say is inadequate for universal. I did not say it is inadequate for 221,000 civil servants for which it was adequate. Wherever there are any weaknesses, the fee for service option was still available. In the contract with NHIF the word “capitation” does not appear.

Madam Temporary Deputy Speaker, there are two contracts in this scheme. In my contract with the NHIF I pay the premium and you pay the medical expenses. On the contract between the NHIF and healthcare facilities, that contract, I am not privy to. I wait for performance at the end of that contract, whether my employees are satisfied or not. I did the survey and I tabled the report. The report they have given other than the recommendation that some people should be investigated, this is not superior to mine. Any hon.Member who wants can investigate what I did in February.

Dr. Monda: On a point of order, Madam Temporary Deputy Speaker. You have heard the Minister repeatedly talk about “this chair” and we are talking about a report of a Committee. Is he in order to be referring the report of a Committee to the person in the name of Dr. Monda or is he discussing the report?

The Temporary Deputy Speaker (Dr. Laboso): Hon Minister, please discuss the report.

The Minister of State for Public Service (Mr. Otieno): Madam Temporary Deputy Speaker, I said so because the area alleging that I deserve any investigation is not in the report. He added it when he was speaking himself.

(Laughter)

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

[Mr. Deputy Speaker took the Chair]

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

Mr. Deputy Speaker: Dr. Monda, you will have your moment for a point of order. Can you allow Mr. Wetangula to speak?

The Minister for Trade (Mr. Wetangula): Mr. Deputy Speaker, Sir, I have been sitting here quietly listening. I have gone through this before. I want to urge the Committee that there is no position to defend. You have placed a report on the Table. Allow us to debate it. Because when you look as if it is adversarial; something is on trial and you are defending a position it dilutes the debate. I want to urge the Chairman and his team to let a man against whom you have made very serious allegations to argue his case. I was denied that opportunity. Please do not deny him.

Dr. Monda: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to allege that---

Mr. Deputy Speaker: Which Minister? There are two Ministers who have spoken.

Dr. Monda: The Minister of State for Public Service. I do not know whether it is procedural for hon. Members to be heckling my speech in every statement I make.

Mr. Deputy Speaker: Order, hon. Members. Do not heckle.

Dr. Monda: Mr. Deputy Speaker, if they have a position they want to defend, let it be clear to Kenyans. The Minister is talking about the chair adding an investigation on him. I want that confirmed from the report. Where in the report is he citing that the chair added and not the Committee in his presentation?

The Minister of State for Public Service (Mr. Otieno): I will give you!

Dr. Monda: You are not the one to answer! It is the Deputy Speaker to talk.

(Laughter)

The Minister of State for Public Services (Mr. Otieno): You added your own opinion that this Minister failed to push the NHIF to stop paying their contracted healthcare providers. That I failed to push is not in the report. It was your own opinion.

Dr. Monda: Where do you get it?

The Minister of State for Public Service (Mr. Otieno): You said it and it is in the HANSARD.

Dr. Monda: I am asking where in the report the chair has added the investigation on the Minister. He cannot allege that I created a report yet I chair a Committee. Is he in order?

Mr. Deputy Speaker: Order, Dr. Monda! Hon. Members, when you are debating on the Floor of the House, you wait until a Member says all that they want to say. If he is grossly out of

order then you draw the attention of the Chair to that. In the meantime, each of you has an opportunity to contribute or to revert later on and say that this is not true or this is misleading and proceed and give your version.

This is not a market where when somebody talks somebody else has to shout loud and say, "No, no, it is not true". No, that is not the way you carry out debate in a dignified House like this one. Everybody is a hon. Member of Parliament. The Minister will proceed. You will say your piece. The other Members will also stand up and have opportunity to say their pieces.

Can you proceed?

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

Mr. Deputy Speaker: Dr. Monda, you have a right of reply; can you use that right of reply at the appropriate moment?

Minister, proceed.

Dr. Monda: Mr. Deputy Speaker, Sir, I am being accused.

Mr. Deputy Speaker: Order! You have been in this House for four years now. In the very least you understand how the thing is done. You will have your moment to rebut.

The Minister of State for Public Service (Mr. Otieno): Mr. Deputy Speaker, Sir, I read this report and ---

Mr. Deputy Speaker: Order, Minister! Dr. Monda, for the last moment I will draw your attention to the fact that you will have an opportunity to reply. You will have the longest time because you are the Mover of the Motion on the report. Take a pen and a piece of paper, record your notes. At the appropriate moment come and reply.

Proceed Minister.

The Minister of State for Public Service (Mr. Otieno): Mr. Deputy Speaker, Sir, I needed this point made because I studied this report, and the recommendation that I should be investigated was actually hanging without explanation in the body of the report. When I challenged the chairman, he said it was because we rushed the scheme, and two, I failed to push the management of the Fund to do so. It was important to note that, that was not my role.

My role was to monitor performance of the scheme. I did this and issued a report which any Member can read and compare with his. I have been vindicated now that the caretaker board which has implemented that report within one month has rectified all these things. The Committee's report has not gone there. It is my report that is there. This means my report was adequate. I performed my monitoring and evaluation duties, and used the right channels to get the response of the board.

I want to emphasize that the due diligence that I was due to do in appointing the hospital insurance fund was actually done. They are already handling 6.6 million Kenyans in the medical area. My employees were only 221,000 and all their information is already in that database. They have a powerful software that allows them--- You can actually see your photograph and particulars when you go to any accredited healthcare facility. So they were capable of doing so. However, the capitation method gave opportunity for new business people to rush and try to take advantage of the scheme that brought Kshs8 billion into the health sector.

The Kshs8 billion which used not to go to the health sector is now being taken; Kshs4.3 billion is being taken by the civil servants, another Kshs4.6 billion is going to be taken by the teachers. Initially I had designed the scheme for both teachers and civil servants but the teachers requested to negotiate their own directly with the health care.

Mr. Deputy Speaker, Sir, because we have brought Kshs8 billion to the health sector, initially some of the traditional health care providers, the big hospitals refused to accept

capitation. They wanted Kshs6,000 for capitation. I had said, if health care insurance is being sold in Kenya at less than Kshs3,000 why should you ask for kshs6,000? The same question I asked was: Why should you tender for Kshs12 billion when the rates you are charging do not exceed kshs4.3 billion? So the due diligence I was supposed to do was done. The evaluation I was supposed to do was done. The consultations with the Fund to make rectification of where there were problems were done and I have been vindicated by the current board. So, there is absolutely no basis why somebody should make a recommendation in a report that I should be investigated on my role as if he is imputing that I have committed any economic crime in this professional performance of my duties which is going to change health care services in the country.

I beg to oppose.

(Applause)

Mr. Ruto: Mr. Deputy Speaker, Sir, I also rise to oppose this report because of very clear reasons. First of all, I must congratulate the Minister of State for Public Service and the Minister for Health for moving in the right direction towards actualizing---

Mr. Deputy Speaker: Order! Is it the Minister for Health or Minister for Medical Services?

Mr. Ruto: Mr. Deputy Speaker, Sir, I must thank the Minister for Medical Services for moving in the direction of actualizing comprehensive medical care for Kenyans. The greatest nightmare we have in our constituencies is how to ensure comprehensive medical care for our constituents. We, Members of Parliament here, enjoy comprehensive medical care. Most of the executives in parastatals enjoy the same. The top executives in the private sector enjoy the same and Parliament, our own staff all enjoy it but *raia* are languishing in poverty and disease yet when Mrs. Ngilu attempted to bring this, she was harassed. Mr. Otieno is bringing the same---

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

Mr. Deputy Speaker: What is out of order, Mr. Lessonet?

Mr. Lessonet: Mr. Deputy Speaker, Sir, I am just rising on a point of order to request that we limit the time of every speaker to at least three minutes so that most of us can contribute. We have an interest in this matter and you can look at---

Mr. Deputy Speaker: Order, Mr. Lessonet! This is for you to determine your own timing.

Mr. Ruto: Mr. Deputy Speaker, Sir, I would like to give some more information. Mrs. Ngilu actually cried. She shed tears. She wept when she saw this policy being killed. It is very strange that in Kenya---

Mr. C. Kilonzo: On a point of information!

Mr. Ruto: Yes, please.

Mr. C. Kilonzo: I wish to inform my---

Mr. Deputy Speaker: Order, Mr. Ruto! You are not the one who authorizes---

(Laughter)

Mr. Ruto: I must apologize, Mr. Deputy Speaker, Sir.

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

Mr. Deputy Speaker: Do you wish to be informed?

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

Mr. Deputy Speaker: Okay. Proceed now!

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I wish to inform my good friend that Mrs. Ngilu did not shed tears. She actually cried and she had to be taken from the House to the car because the people who were opposing this scheme at that time had really prepared and they demonized the Minister herself.

Mr. Ruto: Mr. Deputy Speaker, Sir, I cannot put any better. We want to kill a policy that is going to sort out a lot of problems. We Members of Parliament can suspend medical provision but what does that mean to a patient undergoing dialysis? It is actually sentencing that patient to death. Can you do that for your own children? Can you do that to yourself? The medical policy has assisted civil servants. It has assisted teachers. I have in my constituency three teachers whom I know. One was paid for at the Moi Teaching and Referral Hospital Kshs970,000. One went to India and another to South Africa and the National Health Insurance Fund (NHIF) paid.

In this report the Committee failed to actually look at this---

(Dr. Eseli stood up in his place)

You have got your time.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. Hon. Ruto, with all due respect, I did not intend to interrupt you. But is the Member in order to mislead the House that the Committee intends to torpedo the scheme and yet, our first recommendation is that the Government ensures continuity of civil servants and members of the discipline forces' medical insurance scheme currently underway? Even in my contribution in seconding, I insisted that the programme is so important and we should not do anything to discontinue it.

Is the Member in order to mislead the House?

(Applause)

Mr. Ruto: Mr. Deputy Speaker, Sir, through selective release of information to the media, the Committee was able to drive Kenyans in the wrong direction. There was propaganda all over the place to the effect that there is a disaster at NHIF. Yet, the truth of the matter is that they just did not want to understand what capitation is. Some of them were saying: "Why are you paying before the service has been provided?" What is capitation? Why do you not try to understand first what capitation is? In fact, the hospitals did not even have to tell you about their outlets. The point was: "Did they choose? Were those civil servants given an opportunity? I have seen here advertisements telling civil servants: "Please choose where you want to be treated." Why do you ignore what is already availed to you and try to mislead Kenyans that there was a disaster at NHIF?

Mr. Deputy Speaker, Sir, we should, in fact, congratulate the Minister of State for Public Service. We should congratulate NHIF and the Minister for Medical Services and actually urge them to cover other Kenyans. I was shocked by the Secretary-General of Central Organization of Trade Unions (COTU) who was actually opposing the programme.

In my constituency, I have got workers at tea estates. I actually take their wives to hospitals when they are sick and yet, if they could contribute to this wonderful programme, all those problems would be sorted out.

Hon. Members: Why wives! Why wives?

Mr. Ruto: Women are our wives and they have the burden of taking care of the children at home. They are left at home and the workers go to the tea estates. We have got to take care of them. Even you, hon. Orengo, I know you take care of them.

(Laughter)

I do not know how, but I know you must take care of them.

Mr. Deputy Speaker, Sir, I simply want to say that we should be willing as Kenyans to pay more so that capitation and this particular policy can be extended to those who do not earn salaries. Members of Parliament should even pay Kshs10,000. Atwoli enjoys free medical care even abroad and yet, he is denying the people who vote for him to office proper medical care. This is double standards. It is shocking and I do not know what to say. But this policy is wonderful. It should be reinstated and, please, stop interruptions of this policy. Stop the interruptions in the provision of medical care.

Clinix and Meridian are actually providing medical care to staff in Parliament. In fact, some of the letters introducing Clinix and Meridian were from the National Assembly. Some of them are from Railways and City Hall. Those people are providing medical care. Why are we creating a monster - a scare - throughout the Republic over a non-existent thing, so that we can demonise people?

Mr. Deputy Speaker, Sir, I suggest that this report be thrown out.

Mr. Deputy Speaker: Order! Order! Hon. Members, because of the interest; the fact that it is getting late and we still have a Motion for Adjournment after this, the Chair directs that every hon. Member who is contributing, his time will be limited to five minutes.

Hon. Members: Two minutes!

Mr. Deputy Speaker: If you can make it two minutes, that will be better. But the Chair has directed you.

The Minister for Finance (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. Let me from the outset say this medical scheme is a good project. It needs to be encouraged because it has sorted out most of the problems that employees have.

However, Mr. Deputy Speaker, Sir, I think the only problem that the NHIF did not anticipate, or if they anticipated it they did not know, was when they introduced capitation what happened to the private clinics. I want to tell you what was actually happening. They went on a recruitment drive of employees. They involved brokers in this exercise. In their report, they are saying that if an employee registered with a clinic, you were given some cash. This is because they knew, at the end they were to recoup when they get those employees and the payment. That is why you find most of the major hospitals were not able to recruit as many employees as the others. That is what was really happening. But is that really the fault of the Minister? Is that really the fault of the NHIF? I think shrewd businessmen saw an opportunity and they took advantage. So, we should not demonize this scheme because of those few things that happened.

The only sad thing to me was what was happening at the NHIF Board; the chairman sacked the Managing Director (MD) and the MD sacked him; the Minister also sacked the directors and then they were reinstated and so on. I think that was not necessary. We need to avoid those kind of things so that things become credible. This is because when you do so, people will think that there are some things you are hiding. They will ask themselves: Why are you sacking, reinstating and sacking? In my view, that was not a very good picture. That was the only problem we need to avoid in future. I would say that the Ministers have learnt a lesson on

that. We need to avoid it. But this is a good scheme which needs to be encouraged.

(Applause)

It needs to be reinstated if it has been cancelled, Mr. Deputy Speaker, Sir, so that employees can continue to benefit.

Mrs. Shebesh: Thank you, Mr. Deputy Speaker, Sir. Let me just start by saying clearly that I oppose this report. It is very simple; you cannot have a report that speaks so highly about a scheme and then its conclusion is “sack all the people who came up with this brilliant scheme.” It just does not add up. It just tells you that there was a problem in the beginning of this investigation in the Committee. We saw how this Committee was conducting its investigation. There were cameras in that Committee Room. Prof. Anyang’-Nyong’o and hon. Kimunya suffered the same fate. They are on opposite sides of political divide but they are not liked. When you hear hon. Kimunya on one side and Prof. Anyang’-Nyong’o on the other, there will always be an agenda. That is, to me, the point that got the Committee confused. If you read their report, they say the scheme is good, but so and so should be investigated. What are they telling us? We all know that hon. Dalmas Otieno is so careful in what he does. He over-plans until he is boring; to pinpoint a mistake in his dealings is almost unheard of!

An hon. Member: He is a bore!

Mrs. Shebesh: Prof. Anyang’-Nyong’o was not even in the country when most of these things were being executed. We know that he did something that many Ministers in this country will not do; he talked about his health. We salute him for that. He spoke about his health, something that has changed the way healthcare is being looked at in this country, especially on the issue of cancer. Why do you want to bring this hullabaloo in the media because it excites us? But sometimes when we go back and sit in our Committees, we must be brave enough and say this scheme is good and it should be encouraged.

First of all, this Committee is split. For me when a Committee report comes here and the Committee Members are split, it is not a report even worth looking at.

Mr. Deputy Speaker, Sir, secondly, we are all in agreement that this scheme is not only excellent, but it is also like the free primary education. Today we have the free primary education, but we do not have enough teachers. Have we killed free primary education? We have not because we know that it is good for this country. So, we are struggling to ensure that there are more teachers and that there is more money given. It is exactly what we should be doing with this scheme. So, I am not even worried about the Committee or even the Chair. With due respect, this Chair is actually one of those serious chairs of committees. He is so passionate because he has been left with a committee report that has names and he does not know what to do with those names. That is why we are going to help him in this House by throwing out his whole report, because these names do not make sense. We can say it categorically on the Floor of this House that if this scheme succeeds - I am sure that it will succeed, just like free primary education has succeeded - many of the issues that we are looking at in terms of resource allocation in this country, will be a thing of the past. This is because when you have a healthy family, you have a productive country.

Mr. Deputy Speaker, Sir, I know that we can speak about people because the board has names. I am appalled at Mr. Atwoli. How Kenyans can continue listening to this man shocks me, because the day that this issue was brought up politically, because I believe that it started politically on Labour Day, we were in Naivasha with the Committee on devolution. We went for

breakfast and came out and Atwoli was still speaking, to a point where we asked: "What is Mr. Atwoli saying because he had been speaking for three hours." For three hours he had been threatening Prof. Anyang'-Nyong'o and talking about NHIF. He did not even talk about workers' concerns. He was only concerned about one thing; that workers were going to strike. I, personally, had asked Prof. Anyang'-Nyong'o to resign. People do not even know that. I told him: "You are not going to embarrass us. You are the Secretary-General of the party, what is this?" But since Backbenchers here think--- I went to the NHIF and asked to be explained about this scheme. I met a young man there, called Chacha, who heads a risk assessment division. Chacha could be the age of my son. He explained capitation which I had not even understood, and this scheme. He told us that there is even a bigger value that people are not talking about, which is the in-patient. He told us that people are being treated, just like we are treated as Members of Parliament. I do not know how Kenyans cannot be in a party mood on that issue. People do not even understand that when you go for out-patient services, you only find a desk, doctor and stethoscope. You do not find an X-ray machine behind you. But the Committee made it look like this Clinix is a fraud because it does not have an X-ray machine or mammogram, when you and I know that out-patient is out-patient. You will meet a doctor with a stethoscope on a desk.

Mr. Deputy Speaker, Sir, what am I saying? Within this NHIF scheme there are also professionals. I do not know who Kerich is, but I know Chacha. This young man explained to me what this NHIF scheme means and why these schemes have been fought worldwide. Even Obama is struggling with the same thing. When Mrs. Ngilu was crying here, we were outside there as civil society, supporting her. The big schemers, who make money from insurance, just need to do other business.

Mr. Deputy Speaker, Sir, let us throw out this report not even with bad intentions, but because we know and understand the good of this scheme to the country.

*(Prof. Anyang'-Nyong'o approached the Dispatch
Box carrying several documents)*

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, thank you very much for allowing me time to speak. Hon. Members, I am not going to read all these; do not be worried. I just put it here for the sake of having my ammunition next to me.

Mr. Deputy Speaker, Sir, I want to say the following. One, my friend, hon. Dalmas Otieno, is right. This scheme of the Civil Service was not part of the main agenda of NHIF. The NHIF had started as early as 2003 when I was the Minister for Planning and National Development, to work with us in the Ministry to develop a universal healthcare scheme.

In the year 2005, a Bill was brought to this House to start a universal healthcare coverage by my dear friend, hon. Charity Ngilu. Hon. Charity Ngilu and I worked very closely. We went to see the President and explained the Bill to him. We also explained the amendments that were proposed and when Parliament passed that Bill and sent it to the President, the President did not sign it into law. Why did the President not sign it into law? This is because it was argued at that point in time that the Exchequer could not afford to finance such a scheme.

Hon. Ngilu, therefore, said that if the Treasury cannot afford to finance the scheme, let us see how the National Hospital Insurance Fund (NHIF) can arrive at universal health coverage for all Kenyans. Two, arguments had been used against the NHIF. One, that is was not properly

constituted as an insurance firm and two, that in terms of management, it needed to improve itself.

The first thing that Charity Ngilu did in 2007 was to commission Alexander Forbes and Actuarial Company to overlook the actuarial capacity of the NHIF. Alexander Forbes came up with voluminous report which I want to show the House.

(Prof. Anyang'-Nyong'o laid the document on the Table)

This report from Alexander Forbes which is produced by a professional firm of actuarialists and not amateurs argued quite strongly that the NHIF was actually in a very good position to roll out universal healthcare coverage but, first and foremost, it had to roll out outpatient care. But before rolling out outpatient care, it had to undertake a pilot programme. It is that pilot scheme for outpatient care that I started when I came in as a Minister. I told the NHIF; please, implement the Alexander Forbes Report. They chose four facilities in Nairobi and another four in Busia.

After open tenders and the documents are there, Clinix and Meridian were chosen to implement that scheme and Thika Medical was also chosen in Nairobi plus a number of public health facilities to roll out that scheme. The sample that was used according to Alexander Forbes in a Report that Alexander Forbes submitted later proved to us and to the NHIF that the sample contrary to what my friend has said today, was big enough – and the report is here – for NHIF to assess accurately, given its membership – and Dalmas was right - at that point in time, not all Kenyans that the NHIF was capable of rolling out an outpatient healthcare under universal coverage. It is on that basis – the reports are here – that when the Minister of State for Public Service approached the NHIF, the NHIF was prepared to roll out an outpatient and inpatient cover for the civil service, the police and the disciplined forces. When the NHIF did that, one thing was very important. What formula were they going to use to serve the 200,000 plus civil servants in rolling out the scheme? They had to use their own service providers and the service providers for the NHIF are both the private sector service providers and the public sector service providers. Members of Parliament must know that in Kenya today, 50 per cent of healthcare is provided for by the private sector including the NGOs, mission hospitals and the public sector. So, when the NHIF gave out an open tender for people to apply, given the conditions under the contract with the Ministry of Public Service, those who applied had to meet the conditions and were chosen on that basis. Again, the documents are there for the NHIF to say so.

It was precisely because Meridian and Clinix did this pilot programme that they were much more prepared to respond to this tender than others. Secondly, Clinix and Meridian have done in the health sector what Equity Bank did in the banking sector. In other words, Clinix and Meridian realized that if you are going to roll out patient care scheme, take your services to the people where they are. Let it be close to the people. The second thing you do is make your consultancy fee affordable by the people.

Mr. Deputy Speaker, Sir, some of the private sector hospitals which did not do this could not do so, but later, they learnt the game. I will give you an example. Karen Hospital which refused the capitation arrangement earlier learnt the game later. Karen Hospital itself has started putting up its clinics in Meru, Nyeri, Nakuru, Naivasha and elsewhere. In actual fact, in Meru, Karen Hospital charges only Kshs200 for consultancy, whereas Aga Khan Hospital, which has a branch there charges Kshs1,000. Obviously, people will go to Karen Hospital and not Aga Khan – I am telling you.

So, it is a question of trade wars. What has happened in this whole hullabaloo is that we are witnessing very good trade wars in the health sector. The losers are fighting the winners and as usual in Kenya, when the losers are fighting the winners, they will go to Public Procurement Oversight Authority (PPOA), the Kenya Anti-Corruption Commission (KACC), Parliament and so on. Indeed, today, in another tender in Parliament, somebody has shown us a document of somebody who has gone to PPOA rather than wait until PPOA has made a decision. They are coming to Parliament to ask a parliamentary Question. Let us be frank with each other. When we see these trade wars and they are allege irregularities, let us establish competent bodies to look through the irregularities professionally. Indeed, that is what I recommended when I made my speech soon after that hullabaloo at NHIF. I said that I would like forensic experts, EACC, Kenya National Audit Office and the Efficiency Monitoring Unit (EMU) to go to the NHIF in order to establish the truth. This was because this Board was incompetent. If necessary, and if you want another private sector forensic firm, let them do it. However, we cannot guess in this kind of thing. Depending on guess work is making a lot of mistakes.

Mr. Deputy Speaker, Sir, I have gone through this Report. It is full of so many inconsistencies. I would go through them, but there is no time. I have, however, written them down and I can give them to any hon. Member.

First of all, the Report started by saying: "Key among matters that the Committee sought to investigate and establish are shown on Page 8 of the Report and are the following:

1. whether the NHIF accredited facilities run by the private health service providers that had requisite infrastructure and capacity to offer the services enlisted under the scheme were very good;
2. whether the civil servants and members were involved in the process were accorded opportunity to make a choice of the facilities from which they could access medicare, basic principle capitation model in healthcare provision---

There is evidence that, indeed, the NHIF working with the Ministry of State for Public Service offered civil service opportunities; it was advertised in the newspapers and there is a Report that has been done on it; you cannot deny facts;

3. whether the private health facilities had the appropriate geographical spread which they had;
4. whether the private health facilities accredited by the NHIF were actually located in the designated areas or were non-existent.

Mr. Deputy Speaker, Sir, this is something that---

Mr. Ruto: On a point of information!

The Minister for Medical Services (Prof. Anyang-Nyong'o): Go ahead.

Mr. Deputy Speaker: Proceed!

Mr. Ruto: Mr. Deputy Speaker, Sir, may I inform the Minister that the advertisements are actually here and they were provided to the Committee, but they chose to ignore them. Here is the Report. I can table it here. It was given to the Committee.

(Mr. Ruto laid documents on the Table)

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Deputy Speaker, Sir, let me deal with this---

Dr. Monda: On a point of order, Mr. Deputy Speaker, Sir. Once again, I request that you protect me from the hon. Members. Is the hon. Ruto in order to cite an advert whose contents he

is not able to read out to the House, so that it can hear and understand it? Will I be in order to ask hon. Ruto to read the contents of the advert he has talked about?

The Minister for Medical Services (Prof. Anyang-Nyong'o): The information was for me and I think I accept it.

Mr. Deputy Speaker, Sir, on the issue of existing and non-existent clinics or facilities, when this issue came out, I ordered the Medical Practitioners and Dentists Board as well as officers in my Ministry to go round the whole country and inspect all these facilities. All the facilities are accredited by the NHIF and registered by the Medical Practitioners and Dentists Board. The report is here and I will table it. This report shows that all these facilities were existent. Secondly, when any facility – Government or private is accredited by NHIF or contracted to do work for NHIF, that does not mean that they now have a moratorium and they cannot expand themselves elsewhere because that was their business. It is like telling me that once I roll out universal health care and it is being provided by public facilities, I should stop the development of dispensaries, health centres and so on because people might go there and find them not working. That is very poor logic. These things must expand as those which exist provide service and there is a report here by the Medical Practitioners and Dentists Board examining all these facilities and by their criteria of an outpatient service like hon. Shebesh said they exist and they can offer. That does not mean that the civil servants were compelled to choose all these facilities. The civil servants were told: “Here are the facilities on the website. Here are the facilities published in the papers and choose where you want. Let us know and we shall accredit you there”. Exactly, that was what was happening.

Mr. Deputy Speaker, Sir, I know that during the first two weeks, there were problems but after two weeks, they were rectified and if there were irregularities, they were, indeed, corrected. I table that report.

(Prof. Anyang-Nyong'o laid the document on the Table)

Mr. Deputy Speaker, Sir, finally, the hon. Eseli in seconding the Report and the hon. Chairman in tabling the report said that they have made recommendations but when we in the Ministry initiated a management audit of NHIF by the IFC and Deloitte & Touche. IFC and Deloitte & Touche read carefully the report by Alexander Forbes and they came up with very far reaching recommendations for us and what we should do to roll out universal health care. Those recommendations are much more comprehensive and professional than the recommendations contained in this report. Why should this House adopt these recommendations and not take those which I now will table which will be much more useful to this House and the Government than this Report?

Mr. Deputy Speaker, Sir, this is something that was done professionally over a period of time and what I am going to do as the Minister is to call Members of Parliament to a retreat so that we can go through these things and we can roll out universal health care professionally.

Finally, let me say one thing: I do not give up my constitutional rights simply because I am a Minister. When I appeared before the Committee, the Chairman, contrary to a letter he wrote to me, asked me an extempore question – a question off the cuff; whether I knew one of the public providers called Mr. Jayesh Saini and I told him that I knew him because he has come to my office. The Chairman himself has come to my office looking for business. So, why should I not know him but only the Chairman when he comes to my office looking for business? So,

when the Chairman asked me that and I told him that I knew him, I did not understand that it is a criminal act to know somebody.

Dr. Monda: Mr. Deputy Speaker, Sir, you have heard the Minister talk and act in a manner pointing at me, as the Chairman of the Committee; that I have been to his office, looking for business. Can he table evidence to the effect that I was, indeed, there, and that I looked for business? He told the Committee that Mr. Saini had been to his office severally, and that he had referred him to the Principal Procurement Officer, and to Kenya Medical Supplies Agency (KEMSA). That is what the Minister said when he appeared before the Committee. Is he in order? Can he table evidence to that effect?

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Deputy Speaker, Sir, my conscious is my evidence.

Mr. Deputy Speaker: Order! Order! Dr. Monda and Members of Parliament, you need to move a substantive Motion to discuss the conduct of an hon. Member, but that is in the event that he is imputing improper motive. The fact that an hon. Member can go and seek business in any place where business can be offered, in itself, is not a mistake. It is not a problem. Indeed, almost everybody---

The Minister for Lands (Mr. Orengo): On a point of order information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Whom do you wish to inform?

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I wish to inform the Minister for Medical Services, who is on the Floor.

Mr. Deputy Speaker: The Minister is not on the Floor right now, hon. Orengo. Nonetheless, proceed and inform the House. The Chair has allowed you to do so.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, when I heard the Minister talking about the Chairman of the Committee having gone to his office to look for business, contrary to what the Chairman of the Committee concluded, I understood the Minister as simply saying that Dr. Monda is a good businessman who cannot let an opportunity for business to pass. I would also follow Dr. Monda's footsteps. That is what I thought the Minister was saying.

Dr. Monda: On a point of order, Mr. Deputy Speaker, Sir. I sought your protection. The Minister has mentioned me adversely without moving a substantive Motion. He has also not produced any evidence to prove what he has said about me. Would I be in order to ask that you direct him to withdraw and apologise for mentioning my name adversely?

Mr. Deputy Speaker: Order! Order! It is only when there is imputing of improper motive on another hon. Member that a Member is directed to withdraw a statement and apologise.

Dr. Monda: (off-record)

Mr. Deputy Speaker: Order! Order, hon. Monda!

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Deputy Speaker, Sir, exactly, as hon. Monda said, when businessmen come to me, I send them to where they can get business. They can get business from the Principal Procurement Officer or the PS. They can also visit the NHIF or KEMSA, because that is where business is. That is exactly what I told hon. Monda. I said to him: "Go and see the Principal Procurement Officer and the PS", and he did. So, he cannot deny that fact. That is also exactly what I told the other businessman.

Dr. Monda: On a point of order, Mr. Deputy Speaker, Sir. I sought your protection but you are allowing the Minister to go on and impute improper motive on me. In what context is he dragging my name into this Report?

Mr. Deputy Speaker: Order! Order!

An hon. Member:---(off record)

Dr. Monda: No, it cannot be the Chair. It is a Report of the Committee. So, it cannot be the Chair, unless the Chair---

Mr. Deputy Speaker: Order! Order, hon. Monda! If you, indeed, think that the Minister is misleading the House, or you want to maintain that he is misleading the House because you never went to his office, then stand up and say: "I did not go to his office. He is misleading the House in giving that information." Other than that, he has not imputed any improper motive on you.

In the judgement of the Chair, for an hon. Member to say that another hon. Member went to his office to seek business, there is nothing wrong with that. All of you are businessmen. There is nothing wrong with an hon. Member seeking business. The Minister did not say that you went to his office to try and acquire business corruptly. He has not said anything to suggest that you did something wrong.

However, on the same breath, if you want to maintain that, going by what the Minister has said, he is misleading the House, proceed and say so.

So, can you proceed, Dr. Monda?

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

Mr. Deputy Speaker: Order! Hon. Monda is on a point of order.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Dr. Monda is on a point of order.

Proceed, Dr. Monda.

Dr. Monda: Mr. Deputy Speaker, Sir, we are debating a report and there is nowhere in the report where my name is mentioned.

Mr. Deputy Speaker: Order, Dr. Monda!

Dr. Monda: Let me conclude, Mr. Deputy Speaker, Sir. I want your protection and you allow me to conclude my---

Mr. Deputy Speaker: I will protect you.

Dr. Monda: Mr. Deputy Speaker, Sir, you have heard the Minister talk about me repeatedly. I am looking at the context in which my name has been introduced into his presentation. Is it a positive presentation or is it in his argument to sanitize his actions? That is what I am looking for.

Mr. Ochieng: On a point of order, Mr. Deputy Speaker, Sir. It seems as if we are not going anywhere. Could the Mover be called upon to reply?

(Applause)

Mr. Deputy Speaker: Order! I think we should approach this thing with a very sober mind. This is the property of the House and not the property of the Chair, the Committee, the Ministry of Medical Services or the Minister himself.

The way I understand it, you have said in your report or in one way or the other did indicate that the hon. Minister did admit that there is one Jayesh who went to his office. He volunteered that information to say that one Jayesh went to his office and he sent him to the relevant offices for business. There is absolutely nothing wrong with somebody seeking business. The Minister is saying that like anybody else who goes to him seeking business including the Chair, he sends them to the right offices for business. So, unless you want to say that what the Minister is saying that, indeed, you did not go to his office to seek business only then is when the Chair can come in. The rest of it the Chair does not---

Dr. Monda: But Mr. Deputy Speaker---

Mr. Deputy Speaker: Order! Hon. Dr. Monda, the Chair advises you to play your role, present your report in the most civil manner in line with the rules of the House. You will have your moment.

Could you conclude, Mr. Minister?

The Minister for Medical Services (Prof. Anyang-Nyong'o): Let me conclude, Mr. Deputy Speaker, Sir. I make this point because in the report, my so-called association is mentioned in many pages, from paragraph 233 to 236. I am even supposed to have had a business forum at the Crown Plaza Hotel. That business forum is non-existent. We have checked with Crown Plaza Hotel and we have checked with our Ministry, it is non-existent.

Finally, as hon. Dalmas said, the recommendations of this report do not follow from the analysis of the report.

So, I beg to oppose.

The Minister for Finance (Mr. Githae): I Just wanted to seek your guidance---

Mr. Deputy Speaker: Mr. Bett has the Floor.

The Minister for Roads (Mr. Bett): Mr. Deputy Speaker, Sir, you have advised very well that we approach this matter in a very sober manner. I want, therefore, to request that the Mover be called upon to reply.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I basically want your guidance because I know that after this, we have the other Motion of Adjournment that requires, at least, to be discussed for three hours unless there are no speakers. Now it is approaching 10.00 p.m. In our Procedural Motion we had said to the closure of business for today which ends at 12.00 O'clock. So, I am just wondering whether this is not really the right time for the Mover to be called upon to reply.

(Dr. Monda withdrew from the Chamber)

The Minister for Trade (Mr. Wetangula): Mr. Deputy Speaker, Sir, although I am anxious to speak, truly, if you look at what is going on in the House, nobody, apart from the chairman, has strongly and whole heartedly defended this Report.

Secondly, the chairman has, in a fit of anger, stormed out of the House. So we urge the Chair, with the greatest humility, to call upon the Mover or any Member of the Committee to reply, so that we vote on the Report. It is a Report that is very clearly convoluted in both content and conclusion.

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

Where is the Mover? Is there any Member of the Health Committee?

Proceed, Dr. Eseli.

Dr. Eseli: Mr. Deputy Speaker, Sir, since I seconded this Motion, I believe the onus of responding is upon me.

Mr. Deputy Speaker, Sir, I think in my private consultation with you, I suggested that you allow me to move an amendment, which, unfortunately, you did not find it prudent to allow.

Mr. Deputy Speaker: Order, Dr. Eseli! You do not come to the Chair at 9.30 p.m., when we have a Motion for adjournment, which we are supposed to dispose of before midnight, to seek to move an amendment. You understand the rules of moving an amendment. You should have come to my office well in advance. So, proceed and reply now. That matter is not on the table now. In any case, I can see the chairman.

Dr. Eseli: Mr. Deputy Speaker, Sir, I did not intend to cast your advice to me in bad light. I am sorry if I offended you.

Indeed, I have seen the mood of the House; definitely the Report has not gone down well with the Members of the House. However, I would like the Members of the House, even though they seem to be convinced that they should throw it out--- What I would have found most offensive is paragraph 6.

Now that you have decided to throw it out---

Hon. Members: How do you know? How do you know?

Dr. Eseli: Well, from the mood of the House. I am also intelligent and can gauge the mood.

I would request that we properly read the Report and ask the Ministers responsible to pick out some good things that are in it, and see if they can use them later.

With those few remarks, I beg to move.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, maybe most of us, including the Chair, might not have noticed it. Indeed, he has actually replied. So, can I suggest that you put the question?

(Dr. Monda returned to the Chamber)

(Question put and negatived)

Next order.

MOTION FOR ADJOURNMENT

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

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, beg to move that this House do adjourn until Tuesday, 31st July, 2012 at 2.30 p.m.

Hon. Members: Move!

(Messrs. Ruto and Midiwo consulted loudly)

Mr. Deputy Speaker: Order! Messrs. Ruto and Midiwo, if you want to find yourselves out of the House just before the Motion of Adjournment is carried, the Chair will gladly do that.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, this House has done wonders in the last Session as I indicated in my Statement earlier. I believe we all deserve this break to go and do what we were elected to do besides being in the House which is to carry out some constituency related matters. As I move this Motion, I want to thank hon. Members for the extra time they have put, especially in the last couple of days when we have been called upon to do some very serious duty for this nation and hon. Members have been here and we worked until midnight. As we go on this break, I want to wish all hon. Members the very best. Let everyone be safe and we come back here ready to then move to the next phase which is implementation of the second phase of constitutional Bills that we need to clear by August.

With those remarks, I beg to move and ask Mr. Orengo to second---

Mr. Deputy Speaker: Order, Mr. Kimunya, you need to read the Motion as it is listed. You just went on to contribute. Read it as it is word for word.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I actually read it but for avoidance of doubt, I want to re-read the Motion which is:-

I beg to move that this House do adjourn until Tuesday, 31st July, 2012 at 2.30 p.m.

With that, I beg to move and ask Mr. Orengo to second.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I second.

(Question proposed)

Hon. Members: Put the Question!

(Maj-Gen. Nkaisserry moved to the Dispatch Box)

Hon. Members: Ah! No talking!

Mr. Deputy Speaker: Hon. Members, this is going to be the first time in the tradition of this House in 50 years in which the Motion of Adjournment has no contributions except the Mover.

Proceed, Maj-Gen. Nkaisserry!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I sat in this House waiting for this Motion. I appreciate the Leader of Government Business which I am part of for moving this Motion. We need to go to our constituents but why I really wanted to stand here to support this Motion is, first of all, to thank the President for ensuring that the Constitution is defended by refusing to assent to a lot of unnecessary things which are going to rape and savage the Constitution.

Hon. Members: Imetosha!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): There is no *tosha!* No civilian can direct a general. So I want your---

Hon. Members: Tosha!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I am going to take my time because that is why I waited until this time.

Mr. Deputy Speaker: Messrs. Kimunya and Orengo, can you give peace to the General retired, Nkaisserry?

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, it is important that when we go home, we want the Minister for Finance, who promised on the Floor of this House that he is going to release 50 per cent of the Constituencies Development Fund (CDF) to do so immediately. We want to go and use that money during this recess.

With those few remarks, I beg to support.

(Mr. Onyancha stood up in his place)

Mrs. Odhiambo-Mabona: Ah!

Mr. Deputy Speaker: Order, Mrs. Odhiambo-Mabona!

Mr. C. Onyancha: Mr. Deputy Speaker, Sir, I wish to support the Motion of adjournment. In supporting it, I wish to also support what Maj-Gen. Nkaisserry has said. But I will not stop at 50 per cent release of CDF. We have just approved 100 per cent Estimates, and we would like to have a 100 per cent release.

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

(Mr. Outa knelt on the Bench)

Mr. Deputy Speaker: Hon. Outa, how are you? What have you done? Order! You are out of order. You do not stand on your knees on the Bench. What is your point of order?

Mr. Outa: Mr. Deputy Speaker, Sir, this afternoon, the Speaker made a ruling and also gave us the Speaker's Rules in this House. As we sit here, you can see hon. Mbuvi in the House. His name is also Sonko. It is an official name.

Mr. Deputy Speaker, Sir, I want to ask whether, according to those rules, Mr. Mbuvi is properly dressed in the House.

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

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

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I happen to have sat with hon. Mbuvi earlier and when the rules were being given, he was dressed exactly the way he was dressed. So, if the rules apply, really, they should apply later. That is because he was not aware of the rules.

Mr. Deputy Speaker: Hon. Mbuvi, could you stand up?

(Mr. Mbuvi stood up in his place)

(Laughter)

Mr. Deputy Speaker: Order, hon. Members! Members are required not to enter the Chamber, Lounge or Dining Room without being properly dressed. "Properly dressed" means coat, collar, tie, trousers, socks and shoes. I see everything else except a collar.

(Laughter)

Order! Hon. Members, it is not a joke, it is not humour and it not fun. It is the dignity of the House that needs to be protected. Hon. Mbuvi, you will remain out of the House for the

reminder of the “session” and let this serves as serious warning to you. That you need to uphold the dignity of this House as dignified hon. Member of this House. Could you, please, vacate the House immediately?

Order, hon. Mbuvi! Could you vacate from the Chamber and the precincts of the House? You go to the Bar, bow to the Chair and then vacate.

(Hon. Mbuvi withdrew from the Chamber)

Mr. C. Onyancha: Mr. Deputy Speaker, Sir, as I finish, I urge the Minister of Finance to consider having a 100 per cent release of CDF monies.

Mr. Deputy Speaker, Sir, finally, I want to congratulate the Minister of State for Public Service, hon. Dalmas Otieno, for his contribution, which was very professional. I want to confirm that I knew him in 1975 when I was his chief accountant in ALICO and that, what he has taught us today, I think---

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Deputy Speaker, Sir. I am not interrupting my very good Member in the House Business Committee, but Mr. Deputy Speaker, Sir, as you made your ruling on hon. Mbuvi, just for clarification, I think you may have said “session” to mean “sitting”

Mr. Deputy Speaker: Order! The Chair does not have the authority to send a Member out for the rest of the session. The Chair intended to make that clarity after hon. C. Onyancha had contributed. But it is for the reminder of the sitting.

Mr. C. Onyancha: May I conclude by congratulating him for giving us that education today. I wish everybody a very happy vacation and look forward to seeing all of you.

(Mr. Njuguna stood up in his place)

Mr. Deputy Speaker: You wish to contribute?

Hon. Members: No! No!

Mr. Deputy Speaker: Proceed, hon. Njuguna!

Mr. Njuguna: Thank you, Mr. Deputy Speaker, Sir. I recall that you said hon. Members should be given the opportunity to speak. Therefore, it is not really prudent to gag a Member who is interested in making a contribution, no matter how tired we are.

Mr. Deputy Speaker, Sir, let me start by thanking the Minister for Finance for the manner he has handled financial matters in this House. I also would like to thank the Prime Minister for the very ably manner in which he has been responding to various issues raised by hon. Members during Prime Minister’s Time.

I plead with the Minister for Roads to make sure that all dilapidated roads throughout the country which were destroyed recently by rains are done quickly.

Finally, Mr. Deputy Speaker, Sir, let me urge the Minister for Education to address the issue of shortage of teachers in our schools. I urge him to move with speed and employ the 10,000 teachers immediately.

Finally, Mr. Deputy Speaker, Sir, we have about 2,000 unsettled Internally Displaced Persons (IDPs). I urge both the Minister of State for Special Programmes and the Minister for Lands to address the plight of these suffering Kenyans.

Thank you, Mr. Deputy Speaker, Sir.

(Question put and agreed to)

ADJOURNMENT

Mr. Deputy Speaker: Order, hon. Members. It is now time for the interruption of business. Therefore, the House now stands adjourned until Tuesday, 31st of July, 2012, at 2.30 p.m.

The House rose at 10.03 p.m.