

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 30th May, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

INVITATION TO NATIONAL PRAYER BREAKFAST

Mr. Speaker: Order! Hon. Members, I have one Communication to make to the effect that tomorrow, Thursday at 7.00 a.m. we shall hold the Annual National Prayer Breakfast at the Safari Park Hotel. All Members of Parliament are invited to be present at the prayer breakfast. We will use this occasion to connect with our maker.

Thank you.

PAPERS LAID

The following Paper was laid on the Table:

Third Quarter Budget Implementation Report for Financial Year 2011/2012.

(By the Assistant Minister, Ministry of State for National Development, Planning and Vision 2030 (Mr. Kenneth) on behalf of the Minister, Ministry of State for National Development, Planning and Vision 2030)

QUESTION BY PRIVATE NOTICE

NON-PAYMENT OF TAXES BY KINGSWAY TYRES AND AUTOMART LTD

Dr. Khalwale: Mr. Speaker, Sir, I beg to ask the Minister for Finance the following Question by Private Notice.

(a) Is the Minister aware that M/s Kingsway Tyres and Automart Limited, PIN P000609825C and VAT NO. 0021199L, owe a whopping Kshs. 2,639,210,836.00 and Ksh. 270,074,978.00 as tax arrears in form of uncollected income tax and VAT respectively as of 30th April, 2012?

(b) What is the reason for the failure by Kenya Revenue Authority (KRA) to collect these taxes?

(c) What is the Minister doing to ensure that the money is collected with immediate effect?

Mr. Speaker: Minister for Finance! Minister for Finance! Order, hon. Members! We will treat this Question with a bit of exception; we will come back to it because of its significance. Member for Turkana Central.

ORAL ANSWERS TO QUESTIONS

Question No.1319

Mr. Ethuro asked the Minister for Education:

(a) which criteria is used by the Jomo Kenyatta Foundation to award scholarships to students;

(b) if he could provide the identities by name, duration, school and amount per annum of the bursary/scholarships awarded to students from Turkana County and the amount of money and number of beneficiaries to all the other counties since independence; and,

(c) what steps the Minister has taken to ensure compliance with regard to marginalized communities and affirmative action in the award of bursaries by the Government in general, and the Jomo Kenyatta Foundation in particular.

Mr. Speaker, Sir, I am yet to receive a copy of the answer.

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, I hear that the hon. Member has not received a copy of the answer. This answer was brought to Parliament as far back as 15th May, 2012. So, I do not know what happened.

Mr. Speaker: Proceed, Prof. Olweny.

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, I be to reply. The criteria for awarding scholarships---

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. I indicated that I am yet to get a copy of the answer. The Assistant Minister alleges that he sent it to Parliament in May, which is quite some time back.

Mr. Speaker: Order, Member for Turkana Central! I can see some movement at the Clerks' desk. There is a copy of the answer for you there. Would you like to follow as the Assistant Minister delivers the answer; if you find that you still, perhaps, need more time then we will see if we can accommodate you?

Mr. Ethuro: Mr. Speaker, Sir, the Assistant Minister is my former teacher and I was his good student. I am sure we can connect. He can proceed.

Mr. Speaker: Prof. Olweny, you may proceed and, perhaps, you want to confirm if hon. Ekwe Ethuro was a good student.

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, he was a wonderful one.

(Laughter)

Mr. Speaker, Sir, I beg to reply.

(a) The criteria for awarding scholarships to students by Jomo Kenyatta Foundation (JKF) is as follows. A beneficiary must be a Kenyan boy or girl and gender parity applies; must be a poor orphan; must be a poor boy or girl with disability; must be a child from a family with an extremely poor background; must have documentary record of good discipline as attested by

the headteacher or the management of the primary school last attended; must have sat for KCPE or its equivalent in a primary school and attained at least 70 per cent of the maximum marks attainable; must be due to join Form I or already in a public secondary school.

(b) The details of scholarship award to students from Turkana County since Independence are not available due to lack of data. However, the list of scholarship beneficiaries in Turkana County from 2001 to 2012 is attached. I hope the Member of Parliament has a copy there.

(c) The constituency bursary allocation is based on constituency poverty indices, and students enrollment in the public secondary schools as follows: The constituency poverty Index divided by the national poverty index times constituency enrollment times national bursary allocation divided by national student enrollment. In line with the new Constitution, the JKF is reviewing its scholarship policy and operational structures, especially the eligibility and selection criteria. In January, 2012, the JKF awarded the scholarships to students based on the county needs. The Foundation is also in the process of establishing an endowment fund from other sources to ensure sustainability and support of the scholarship programme.

Mr. Ethuro: Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer. However, you will note that he stated that the data for Turkana is not available until the year 2001. He said there is no data. But I want to put it that it is because there was no awarding of scholarships.

Having recognized that, if you look at the time now when they avail the data, from 2001 to 2012, they have been on average taking two children from Turkana; some of the schools are not national schools.

Part (c) of the Question says that the new Constitution has mandated the Government to consider affirmative action, especially from marginalized areas. What specific actions is he taking to ensure that these kids--- Last year, only five kids qualified to go to national schools and he could afford to give bursaries to only two. The rest had to go back to the local schools, because they could not afford national schools. This was wasting a serious and knowledgeable personnel from my place. What specific action is he taking not only for Turkana County, but also for all areas that have been marginalized, so that all the kids who qualify to go to the national schools, on the merit he has mentioned, can get an opportunity join them due to provision of scholarships?

Prof. Olweny: Mr. Speaker, Sir, first of all, the Jomo Kenyatta Foundation Bursary is fairly limited. I just wish to tell the House that the hon. Member is not right to say that we have been giving scholarships to an average of two. It varies. For example, in 2003, we took four; in 2004, we took another four and in 2005 we took four. Then in 2011, we took four and this year we took four. The number of bursaries that the Jomo Kenyatta Foundation gives countrywide depend on the available money; that is the money it has at any given time.

As regards taking care of students who qualify to join national schools, all constituencies have the bursary from the Ministry of Education, and hon. Members are a party to it in that either they are on the committee themselves or they are represented in the committee. So can he also use the bursary from the Ministry of Education, which goes to every constituency and it is calculated based on the poverty index. Turkana will benefit a lot because of that aspect. That takes care of the hon. Member's concern.

Mr. Koeh: Mr. Speaker, Sir, I want to applaud the role of Jomo Kenyatta Foundation in helping the extremely poor children in the Republic of Kenya. One of the criteria that we notice in the advertisements is that a student should have scored a minimum of 370 marks in order to

apply. Some of these notices are so short and are in newspapers. Some of the students from the marginalized places do not necessarily read the newspapers to be able to apply for bursaries. Could the Assistant Minister consider lowering the minimum requirement to even 300 marks, so that children from marginalized areas can access the same? He should also ensure that the applications are sent through the District Education Officers instead of having them in Nairobi.

Prof. Olweny: Mr. Speaker, Sir, that is a good suggestion as regards reaching out to the potential beneficiaries. I have taken note of that. It is a good idea which we can put into practice. As regards the qualification, I have said that the Jomo Kenyatta Foundation is reviewing some of these issues, so that they are in line with the new Constitution. So, that will be considered.

Mr. Mbadi: Mr. Speaker, Sir, Turkana is one of the poorest counties in this country. What affirmative action is the Minister taking to ensure that they are given more slots through specific affirmative action as opposed to treating them like the rest of the country?

Prof. Olweny: Mr. Speaker, Sir, we have talked about poverty index which takes care of the issues the hon. Member is raising. It is even repeated here. Part (a) (ii), (iii) and (iv) of my answer takes care of Turkana which is one of the poorest counties in this country. You will realize that this year, Turkana got four while other counties could not even be having one.

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. The point raised by Mr. Mbadi was that Turkana County being the poorest, starting with my constituency, the criteria given fits the bill. That is why we are asking why the Assistant Minister is only allowing two on average. He is using averages. But when you look at averages every year, they are basically two and they are not even going to national schools. If he is looking at the Kenyan boy, that is a Turkana boy. If he is looking at a poor orphan, that is a Turkana boy. If he is looking at extremely poor family background, that is a Turkana boy. If the Turkana County children fit the bill, why is not giving them more than the two slots he is giving? That is the question, Mr. Speaker, Sir.

Mr. Speaker: Order! That amounts to a question. So, I will treat that as the last question. Prof. Olweny, you may answer.

Prof. Olweny: Mr. Speaker, Sir, I said that the number of bursaries that JKF can give depends on the money available at that particular time. Also, the number of beneficiaries per county will also depend on who applies. Furthermore, if the poor child from Turkana applies, that does not rule out the chance of another poor child applying from Central Province. Even Central Province has also children from poor background. So, they are all considered.

Mr. Olago: On point of information, Mr. Speaker, Sir.

Mr. Speaker: Prof. Olweny, do you want information from the hon. Member for Kisumu Town West?

Prof. Olweny: I do not know what kind of information it is, but I will allow him.

Mr. Speaker: Proceed!

Mr. Olago: Mr. Speaker, Sir, the Assistant Minister has set out the facts about Turkana very clearly, but he needs to be informed that Turkana receives the highest amount of Constituencies Development Fund (CDF). That may help in reducing the problem.

Mr. Speaker: Fair enough! Prof. Olweny, I think that may add value to your answer. Next Question by Mr. Lagat.

Question No.1345

FAILURE TO COMPLETE STAFF HOUSES AT KAPSABET DISTRICT HOSPITAL

Mr. Lagat asked the Minister for Medical Services:-

(a) whether he is aware that there are staff houses, started 22 years ago in Kapsabet District Hospital which have stalled; and if so why; and,

(b) how much money had been set aside in the 2011/2012 Financial Year for completion of the staff houses,

(c) when they will be completed.

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

(a) I am aware that there are stalled staff houses at Kapsabet District Hospital. They stalled following a dispute with the contractor which we took to court in the early 1990s. The contractor passed on before the dispute could be resolved. The contract was later terminated. Thereafter no funds were allocated to complete the project. After the 2002 General Election, when the NARC Government came to power, it initiated a stalled projects programme under the Ministry of Public Works. We had expected this project to be completed within this framework. However, we have recently learnt that it was not among the projects funded under the stalled projects programme that the NARC Government initiated.

(b) No funds have been set aside in the 2011/2012 Financial Year for completion of stalled houses.

(c) The Ministry plans to have the pending works quantified and cost before seeking funding from Treasury to complete the project, possibly in 2012/2013 Financial Year.

Mr. Lagat: Mr. Speaker, Sir, the Minister says he will consider allocating money for completion of this project in the Budget for 2012/2013 Financial Year. I want him to assure this House that this project will be completed because it has stalled for the last 22 years.

Prof. Anyang-Nyong'o: Mr. Speaker, Sir, I would like to give my undertaking to the hon. Member and also plead with him that the Ministry has already directed the hospital to work with the Ministry of Public Works officers locally to quantify and cost all the pending works. That exercise is very important because it is only after it is completed that the Ministry can seek funding from Treasury. Since it has stalled for a long time and because of wear and tear of the buildings, when it stalled, it was about 80 per cent complete. But our estimate after many years of stalling, it is about only 60 per cent complete. So, it means that there is much more substantial work to be done and we need to get that information by the Ministry of Public Works in Kapsabet. We are working with the hospital so that we have accurate figures and not to start a project which shall stall again.

Mr. Koech: On a point of order, Mr. Speaker, Sir. The Minister, in his initial answer, indicated that he is going to consider this project in the 2012/2013 Budget which is already in progress. He has further said that he is only going to do it after doing the real costing. Is he in order to contradict himself? What is the right position?

Prof. Anyang-Nyong'o: Mr. Speaker, Sir, I am not contradicting myself. The hon. Member knows that our Ministry is usually given very little money in terms of the Development Budget. So, what we do is to supplement the Government of Kenya, Treasury Exchequer Funds with funds from development partners. Development partners would like us to show what the commitment of the Government of Kenya is. So, we may put a sum of money in the Budget, but it may not be enough to complete the project. That is the reason why I am saying that the exercise in Kapsabet between the Ministry of Public Works and the hospital is very important. We might put a sum of money in the Budget, but between here and then, it may not be enough. We do not want to start the project and it stalls again. That is the logic of what I am saying.

Mr. Chanzu: Mr. Speaker, Sir, when the NARC Government took over in 2003, one of the immediate commitment that was made was to complete these stalled projects because they were so many. I do not know whether the Minister has checked to find out, this being a very important project, why it was missed out or whether it was a case of neglect.

Prof. Anyang-Nyong'o: Mr. Speaker, Sir, I really do not know why it was missed out by the Ministry of Public Works, but it was missed out. That is the fact. So, I would rather deal with the facts as they are, but not as I would have wished them to be. The fact is it was missed out, never budgeted for and still staring us in the face. So, our responsibility is to find ways and means of completing it.

Mr. Kapondi: Mr. Speaker, Sir, it is important for the Minister to tell the House how much money had been sunk into the project and what is the projection now if the construction has to resume.

Prof. Anyang-Nyong'o: Mr. Speaker, Sir, that is a very good question. The initial cost of the entire project was about Kshs7 million and that was in the early 1990s. As the project progressed, it was escalated to about Kshs16 million when the last assessment was made by the Ministry of Public Works. It is at that point in time that the then contractor; Tang Tingna Construction Company, abandoned the project, then we went to court to settle that dispute. Unfortunately, the sole propriety of Tanga Tingna Construction Company died in a road accident. The administrators of the estate were not willing to go to court for this thing to be settled. With the passing of time, nothing has been done. So, rather than trying to pursue that case in court, which lies dormant and there is no interested party to pursue it, we have decided to ask the Ministry of Public Works and the hospital to assess what is needed to complete the project and do the work. That is as it is today. As of now, until the Ministry of Public Works does an assessment, I do not really know how much it will cost to complete it.

Mr. Chepkitony: Mr. Speaker, Sir, the Minister has mentioned that he may put aside some money in the Financial Year 2012/2013. I know he may not be able to finish within that financial year. How much has he set aside, particularly for these houses in Kapsabet in this financial year?

Prof. Anyang-Nyong'o: Mr. Speaker, Sir, what usually happens in such matters is that the Ministry's budget line for development funds is a budget line, the Ministry then decides based on merit how the budget line is going to spend case by case. Depending on how much donor funds may be available in completing certain projects because the Development Budget is very small in our Ministry. Therefore, I would not at this point in time know exactly how much has been allocated to this project until such time that we get that information from the Ministry of Public Works and the hospital, so that my officers would know exactly how to allocate development funds to various development projects that face the Ministry which are much more than the Development Budget given to us by the Treasury.

Mr. Lagat: Mr. Speaker, Sir, I also want to ask the Minister whether he is aware about the status of the buildings because when a building stalls for over 20 years, the status might not be okay. So, we would also want him to assure us about the status of the building.

Prof. Anyang-Nyong'o: Mr. Speaker, Sir, the status of the buildings is nothing to write home about. They are in very poor conditions. You know iron rarely rots so the pillars are still standing and the superstructure is still recognizable. The cement face has been eroded for sometime but because the basic superstructure is still there, I think you can build on it. That is why it is so important that the experts in public works should do a very careful assessment of the condition of the buildings, what they are worth and how much we need to complete them. We

are still waiting for that information from the Ministry of Public Works in Kapsabet and the hospital. As soon as that is available, then we shall be able to know exactly what their conditions are and what we need to complete them. I urge the hon. Member to help us speed that process.

Question No.1429

PROJECTS UNDERTAKEN BY MINISTRY OF WATER
AND IRRIGATION IN ASALS

Mr. D. Muoki asked the Minister for Water and Irrigation:-

(a) whether she could provide a list of all major projects that have cost Kshs50 million and above undertaken by the Ministry in the Arid and Semi Arid Lands (ASAL) Districts of Eastern and North Eastern provinces, in the past ten years, indicating their location and cost of each project; and,

(b) whether she could inform the House the major water and irrigation projects the Ministry has undertaken in Mwala Constituency for the past ten years and which ones were earmarked for implementation in the 2011/2012 financial year.

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, I beg to reply.

(a) A list of major projects costing over Kshs50 million that my Ministry has undertaken in Arid and Semi-Arid Lands (ASALs) districts of Eastern and North Eastern province over the last ten years is attached and a copy has already been given to the hon. Member.

(b) My Ministry has undertaken major water and irrigation projects in Mwala Constituency over the past ten years. My Ministry is also undertaking a number of projects in the constituency during the current financial year, 2011/2012. These details are also attached and we have given him a copy.

Mr. D. Muoki: On a point of order, Mr. Speaker, Sir. In the Question, I sought to be provided with a list of all major water projects. I described what major referred to namely, projects which cost Kshs50 million and above. Looking at the list for Mwala, none of the projects provided would qualify under my description. Besides, most of these projects were built long time ago and other than maintenance, they are not projects done in the last ten years. Is the Minister in order to mislead the House?

Mrs. Ngilu: Mr. Speaker, Sir, I am aware that some of the water projects that we have done in the Member's constituency, namely, Mwala, do not cost Kshs50 million and above. I showed everything to him. However, if you look at this Question, it is rather a very unique Question in the sense that the Member is asking about all ASAL areas of Eastern and North Eastern provinces. It is rather large and the projects that we do sometimes do not necessarily have to originate from his constituency to get water. It may be originating from somewhere else and we ensure that we give the people of Mwala and other places water. So, this Question has been answered in the spirit within which it has been asked.

Mr. D. Muoki: Mr. Speaker, Sir, for quite a long time, the Ministry has been undertaking studies on the waters of Athi River at Kayata Area. We have been promised year in, year out that soon the water project will start to irrigate a large part of the constituency. When does the Ministry plan to complete the feasibility studies and implement the project?

Mrs. Ngilu: Mr. Speaker, Sir, I do not remember the Ministry promising anything because everything that we do is within the Budget projections. I want assure the Member that

we can look into that and see whether the Ministry can undertake the studies and the development of the project that he has talked about. Otherwise, I do not have that in the books and in the studies that I have in the Ministry.

Question No.1477

STATUS OF CONSTITUTIONAL BILLS

Mr. Speaker: I have information that the Member for Bura, Dr. Nuh, is away on Parliamentary business, urgent in his constituency though. So, this Question is deferred until Thursday next week at 2.30 p.m.

Minister, please, note.

(Question deferred)

Question No.1580

REHABILITATION OF ROADS IN GWASSI

Mr. Mbadi asked the Minister for Roads:-

(a) whether he is aware that most roads in Gwassi constituency have been destroyed by the recent flash floods which affected the constituency including bridges and culverts; and,

(b) how much money he will urgently provide as emergency funding for the reconstruction of the roads.

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

(a) Yes, I am aware that a number of roads including bridges and culverts have been severely damaged in the recent flash floods in Gwassi Constituency and are in great need of urgent repair.

(b) My Ministry is assessing the damage caused by the ongoing rains in the whole country, Gwassi Constituency included, after which we will determine the resources required for the urgent repairs. In the meanwhile, the Kenya Rural Roads Authority has set aside Kshs50 million for the repair and maintenance of Mbita-Karungu Road otherwise referred to as D210. I also urge the Constituency Roads Committees to prioritize current emergencies in their allocation of funding for road maintenance.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Mbadi: Mr. Deputy Speaker, Sir, first of all, let me take this opportunity to thank the Assistant Minister for this answer. My constituency was the first casualty of the recent flash floods where we lost ten individuals, crops, animals and our roads. I am happy that he is giving attention to D210 Road, namely, Mbita-Magunga-Karungu Road which is our major road. The rains have subsided and the roads are impassable especially from Nyadedi in the Ruma National Park to Magunga, which is completely impassable. When is this Kshs50 million which the

Government has graciously agreed to give us going to be availed, so that the works on the road begins?

Dr. Machage: Mr. Deputy Speaker, Sir, this is urgent. We are just waiting for the soil structure to be firm enough for construction for our machinery to move in immediately.

Mr. Pesa: Mr. Deputy Speaker, Sir, I ask for your indulgence so that I can expand this Question to cover the entire country because we have a national problem as a result of the good rains that are all over this country. Could the Assistant Minister tell us the policy of the Government in ensuring that most of the roads, including a road in Migori which is also used by people travelling to Gwasssi, namely, the road from Kakrao through Ayiego to Opapo Polytechnic are repaired? How are we going to get funds to repair these roads which are now impassable? Could he give us the broad policy concerning how he is going to address this current weather?

Dr. Machage: Mr. Deputy Speaker, Sir, indeed, roads in the whole country are in dire need of repairs due to the escalating rains. We usually have an Emergency Fund in the Ministry that is used for this kind of work which is completely inadequate taking cognizance of the amount of the rain we received this year. However, we have to curtail some projects when funding to handle the emergencies that may need to be looked into urgently. It is true Migori and Gwasssi share the same soil infrastructure, namely, acid type of soil, and we have a major problem in this area. May I take this opportunity also to assure the Member for Gwasssi that the Sindo-Keihabuya Road otherwise referred to as E114 has also received Kshs4,435,990. We also have the Sindo-Kombe Road, R23, which has also received Kshs919,440 to just look at the immediate necessary repairs.

Mr. Chanzu: Mr. Deputy Speaker, Sir, the floods that occurred in this country recently have caused a lot of damage not only in Gwasssi Constituency. It is almost all over the country and it is still ongoing. In the course of the Assistant Minister looking for money to remedy this situation, has he identified the projects which have suffered because of compromised standards and quality and the ones which have generally suffered from these floods, so that in future, we can prepare particularly when we are designing and constructing roads? There is a lot of compromise in the standards and quality of construction work in this country.

Dr. Machage: Mr. Deputy Speaker, Sir, most of the roads that are constructed are constructed under the specifications given to the contractor and are examined as so. So, I may not be able to know what the Member means by compromised quality. But I will be happy if he would furnish me with information on a road that he thinks was not built according to specifications.

I have instructed all Constituency Road Committees to furnish the headquarters with a report of their road infrastructure and the amount of destruction that has been caused by the rains. Already, I am receiving reports and I will take action.

Mr. Olago: Mr. Deputy Speaker, Sir, God is not to blame for the destruction of our roads by the rains. God is the giver of rain.

Mr. Deputy Speaker, Sir, maybe, the rains we have had this season was a little high than was anticipated. But it is not out of the normal and the Ministry should have been prepared for it.

Mr. Deputy Speaker, Sir, it is not true that the problems we have had with our roads is because of rains. It is because of poor designs and lack of proper drainage in our roads. We have a road in Otongwe in Kisumu which is causing havoc to the market simply because the people who designed the road were not able to define areas where water can drain off the roads. The

shoulders are not properly kept. So, is it not true that, under those circumstances, the people to be blamed is not God? It is the designers from the Ministry of Roads.

Dr. Machage: Mr. Deputy Speaker, Sir, clearly, I have not blamed God anywhere in my answer. Indeed, I think, sometimes, God gets confused on what Kenyans want. When there is a lot of rain, we cry and pray for sunshine. When there is drought, we cry and pray for rains. I may not defend the people who are inadequate in their knowledge on design. It is true that, over the years, we have had such characters designing some of the roads. We have taken cognisance of the fact and we are addressing it.

Mr. Mbau: Mr. Deputy Speaker, Sir, while I thank the Member for Gwassi for raising this matter of the state of dilapidated roads in his constituency, I wish to bring to the attention of the Assistant Minister that heavy rains and flash floods have caused havoc and destroyed the road infrastructure across the country. I have in my possession official data from the Minister's Office stating that the damaged road network that is usually catered for by Kenya National Highways Authority (KeNHA) will require only Kshs500 million to repair.

As at 16th May, the road network that was damaged by the rains under the Kenya Urban Roads Authority (KURA) will require Kshs2.6 billion to repair across the country. The damaged road network under Kenya Rural Roads Authority will require Kshs7.5 billion for repairs. All those damaged roads are across the country.

Mr. Deputy Speaker, Sir, to be fair to everybody and every part of country where rains came in abundance --- The Minister has talked about the existence of an emergency kitty. If the kitty is not sufficient to take care of the cumulative sum of Kshs10 billion---

Mr. Deputy Speaker: Order! The Chair is giving a lot of leeway to the Chair of the Budget Committee. Could you conclude and ask your question?

Mr. Mbau: Those are emergencies. The Ministry of Roads takes the second highest allocation from the Treasury. Could the Assistant Minister re-prioritize or rationalize from the projects that have received huge sums with a view to ensuring that, that minimal sum of only Kshs10 billion, which caters for damaged roads across the country, is actually allocated with a view to sorting out the mess that has been caused by the rains?

Mr. Machage: Mr. Deputy Speaker, Sir, I may not know the authenticity of the information and statistics given to me by the Member. However, I have noted his request and I will consider.

Mr. Deputy Speaker: The last supplementary question, Mr. Mbadi.

Mr. Mbadi: Mr. Deputy Speaker, Sir, when we did an assessment of those roads, three roads stood out as the most affected. One of them is now receiving attention – that is B210 – although the improvement of that road to bitumen standards should have started in the last financial year. Actually, it is this financial year and it has not started. But that is a question for another day.

There are two other roads, E114 - that is Tusindo- Kisegi- Nyandia-Kiabuya Road, which is 33 kilometres. The Assistant Minister has talked about allocating it Kshs4.4 billion. Then, there is Kigoto-Tati road, which is equally important. It accesses the bread basket of Gwassi and feeding Karungu area.

Mr. Deputy Speaker, Sir, if one of those roads cannot be done, could the Assistant Minister consider increasing emergency allocation to E114 - that is the Sindo- Nyandiwa-Kiabuya Road from Kshs4.5 million upwards, so that it receives due attention? That road is very expensive to repair.

Could the Assistant Minister consider increasing the allocation to that particular road for its improvement?

Dr. Machage: Mr. Deputy Speaker, Sir, I am not only looking at 33 kilometres of E114 Road. but I am looking at 44 kilometres of that road. I believe I will do that which is necessary.

Question No. 1413

FUNDING OF HELB

Mr. Washiali asked the Minister for Higher Education, Science & Technology:-

(a) how much money has been loaned to each needy university student by the Higher Education Loans Board (HELB);

(b) whether he is aware that the amount is not sufficient to sustain the students, in view of the inflationary trends in the country; and,

(c) whether he could consider allocating more funds to HELB to enable it meet the intended objectives.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Ministry of Higher Education, Science and Technology support students pursuing university education through loans, bursaries and scholarships that are administered by the Higher Education Loans Board (HELB). Higher education loans are awarded to students differentially as follows:-

The poorest get Kshs60,000, then Kshs55,000, and all the way to Kshs35,000. Kshs35,000 is the lowest. In addition to that, HELB awards a bursary scheme of up to Kshs8,000 to the most needy students to supplement the Kshs60,000.

(b) Yes, I am aware that, in view of the inflationary trends in the country, the amount may not be sufficient. However, the Government policy on financing higher education is based on cost-sharing, where the Government gives partial tuition fees support, and the student is expected to meet the balance.

The HELB loans are meant to cushion the most vulnerable students who are from households that cannot afford fees.

(c) This has been the objective of the Ministry; to source for more funds to support the increasing student numbers and also increase the amount given as loans to students.

Mr. Deputy Speaker, Sir, in view of this, every financial year, the Ministry puts a request to Treasury to allocate additional funds to HELB. However, owing to the non-competing needs, Treasury is not in a position to give all the funds requested. In addition, the Ministry and HELB are in the process of identifying other sources of financing university education.

Mr. Washiali: Mr. Deputy Speaker, Sir, I would like to take this opportunity to thank the Assistant Minister for the answer. However, he has not considered the catch word, which is “needy.” He contradicts himself in the manner he answered this Question. First, he is in agreement that these funds are not adequate. He goes ahead to say that he is able to support the needy students. Does he know that in the category of “needy,” we have orphans who have no parents to cost-share with the Government?

Mr. Kamama: Mr. Deputy Speaker, Sir, that is a good question. I have categorized the amount given to students according to poverty levels. The highest amount is Kshs60,000. This is

given to those students who have lost both mother and father. They are real orphans. In addition to that, we give them an extra Kshs8,000.

Mr. Deputy Speaker, Sir, I know that orphans have a lot of problems. We are also considering increasing the amount, but the resource envelope does not allow us to do so. The figure of Kshs60,000 was arrived at after thorough consultations with quite a number of stakeholders. So, at the moment, that is the figure, but we are considering increasing it upwards.

Mr. Twaha: Mr. Deputy Speaker, Sir, students who are studying courses such as medicine and those who are pursuing their studies in institutions which are domiciled in countries other than Kenya incur costs which are much higher than the average students in Kenya. What measures is the Assistant Minister taking to accommodate the needs of such students? These are the students studying in institutions overseas and those pursuing courses such as medicine. What about “boom?”

Mr. Kamama: Mr. Deputy Speaker, Sir, all students are treated equally, whether they are doing engineering or medicine. This is because in terms of allocation, students who are doing medicine are allocated something close to Kshs400,000 to Kshs500,000. Of course, that is the contribution of the Government. For the students who are studying abroad, we have a bursary of 1,000 Pounds per student. At least, for those who apply, whose papers are looked at and they qualify, they get this amount. But they have to apply through our respective embassies and they are given that amount. This has been the policy for a very long time. But when this economy improves, we also intend to increase this amount upwards.

Mr. Twaha: On a point of order, Mr. Deputy Speaker, Sir. Could the Assistant Minister clarify which pounds he is referring to; Kenyan pounds or British pounds?

Mr. Kamama: Mr. Deputy Speaker, Sir, these are British Sterling Pounds.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I think for this country to develop and to achieve Vision 2030, education is very important. Apart from the fact that the money allocated for the loan is not sufficient, what measures has the Ministry put in place to make sure that the prospective beneficiaries of this scheme get information on time, so that they are able to apply on time in order for them to benefit because they are always cut off in terms of time? So, they need adequate time. What steps or measures are you putting in place to ensure that they get information on time and they are able to apply, so that they can benefit?

Mr. Kamama: Mr. Deputy Speaker, Sir, I will invite the hon. Member – my good friend – to the website of HELB. If he looks at the website, he will see that they have an elaborate system of how they normally interact with the people who took loans and when they are supposed to pay.

Mr. Chanzu: On a point of order, Mr. Deputy Speaker, Sir. With the website, it is only for those who have got access to websites in urban areas. But those people in the rural areas where we do not have these facilities – you know the way Kenya is – that is the clarification I want the Assistant Minister to make. Even in his constituency, I do not know how many of them can access websites.

Mr. Kamama: Mr. Deputy Speaker, Sir, at least, for Baringo East, since I came to Parliament, things have improved. My people can access websites through the normal ways.

But, Mr. Deputy Speaker, Sir, apart from the website, we have a way of communicating through letters and also through their employers. So, this is being done. We do not usually harass the people who took loans from HELB; we inform them in good time. What I would only advise all Kenyans who took loans is that they should pay these amounts so that other young Kenyans can benefit from this facility.

I thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Ask your last question on the same, hon. Washiali.

Mr. Washiali: Thank you, Mr. Deputy Speaker, Sir. Recently, we heard a case where AK 47 guns were found in a hostel in the University of Nairobi. We have also been following cases of prostitution from students who have to make ends meet. Does the Assistant Minister not think we are over-exposing these students to such a dangerous living?

Mr. Kamama: Mr. Deputy Speaker, Sir, on the issue of guns in the universities, I think that falls squarely under the province or the purview of the Ministry of State for Provincial Administration and Internal Security. So, that Question should actually be directed to that Minister because it is a serious matter. For us, as a Ministry, we will also inform him through our own channels, so that we can get to the bottom of this issue, because getting guns when students are supposed to be reading and learning in that institution is really not tenable.

Mr. Deputy Speaker, Sir, on the issue of prostitution, I think we have not really got substantive reports on specific students, but we just read in newspapers that prostitution is actually prevalent in some of our institutions. But when we get substantive reports, we will deal with this matter appropriately.

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

Mr. Deputy Speaker: Order! Order! This Question has had ample time, hon. Washiali. What is your point of order?

Mr. Washiali: Thank you, Mr. Deputy Speaker, Sir. I have a feeling that the Assistant Minister has not got the spirit of what I have asked.

Mr. Deputy Speaker: Which is?

Mr. Washiali: Mr. Deputy Speaker, Sir, I was not questioning the availability of guns, but I was just asking about the trend. This is because of the small amounts he gave under the HELB loans that have exposed our students to thuggery and prostitution in order to make ends meet. It is not that I want to accuse someone for not discovering guns in hostels, but just the exposure we are putting our students through because they have to make ends meet as a result of the low amounts we give them through HELB.

Mr. Kamama: Mr. Deputy Speaker, Sir, I want to confirm to the hon. Member that students who keep guns in their institutions or universities are doing it illegally and they will be dealt with according to the law. Most university students get the same amount and they do not possess guns. So, these students are criminals who are trying to commit crimes in their institutions. The way to go about it is to deal with them in accordance with the law firmly and quickly.

Mr. Deputy Speaker: Next Question by Dr. Khalwale.

QUESTION BY PRIVATE NOTICE

Dr. Khalwale: Mr. Deputy Speaker, Sir, for a second time, I beg to ask the Minister for Finance the following Question by Private Notice.

NON-PAYMENT OF TAXES BY KINGSWAY TYRES AND AUTOMART LTD

(a) Is the Minister aware that Ms Kingsway Tyres & Automart Limited, PIN P000609825C and VAT No.0021199L owes a whopping Kshs.2,639,210,836.00 and Kshs.270,

074, 978.00 as tax arrears in form of uncollected income tax and VAT respectively as of 30th April, 2012?

(b) What is the reason for the failure by the Kenya Revenue Authority (KRA) to collect these taxes?

(c) What is the Minister doing to ensure that money is collected with immediate effect?

Mr. Deputy Speaker: I am reliably informed that, indeed, the Minister for Finance sought the indulgence of the Chair to have this Question deferred to next week. Given the sad circumstances under which the Minister has been exposed to in the last couple of weeks, I think it is only fair that we give him up to next week. The Chair directs that this Question be listed on the Order Paper on Wednesday, next week in the afternoon. Is that okay with you, Dr. Khalwale?

Dr. Khalwale: Most obliged, Mr. Deputy Speaker, Sir.

(Question deferred)

Mr. Deputy Speaker: It is the Prime Minister's Time now.
Yes, Mr. Ochieng.

PRIME MINISTER'S TIME

Question No.005

MEASURES TO MITIGATE FLOODS IN THE COUNTRY

Mr. Ochieng: Mr. Deputy Speaker, Sir, I beg to ask the Prime Minister the following Question.

(a) What is the Government doing about the floods in the country considering that the floods have caused damage to bridges, roads, homes and serious soil erosion?

(b) How many people have been displaced by floods countrywide?

(c) What immediate steps and long-term measures does the Government intend to put in place to avert the flood menace?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I would like to seek the indulgence of the House. This Question is cross-cutting and requires a lot of information gathering. So, I would like to plead with the hon. Member to give us time so that we can answer this Question substantively next week.

Mr. Deputy Speaker: Is that okay with you, hon. Ochieng?

Mr. Ochieng: Yes, I am very okay with that.

Mr. Deputy Speaker: The Chair directs that this Question be deferred until Wednesday next week during the Prime Minister's Question Time.

(Question deferred)

Nonetheless, I am informed that the Prime Minister has a statement to make; a statement of which copies have been distributed or circulated. The Rt. Hon. Prime Minister, could you proceed to and issue the Statement on the Progress of the Implementation of the New Constitution?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I rise to update the House and the general public on where we are on the implementation of the new Constitution. But, before I do so, I would like to speak, briefly, about the state of our national security.

STATE OF OUR NATIONAL SECURITY

As I mentioned to this House last week, Al Shaabab's capability to wage conventional warfare is greatly degraded. The militia has, therefore, resorted to guerilla tactics. This includes the use of grenades, improvised explosive devices and sporadic shootings to attack business premises, security forces and members of the public. We experienced such an attack on business premises along Moi Avenue in Nairobi on Monday, this week.

Let it be clear to the whole world that the Government and the people of Kenya have unwavering commitment to protect their sovereignty, safety and property against any internal and external threats. We value our freedoms, rights, peace, stability and prosperity as enshrined in our Constitution and we will not surrender those values and ideals to terrorists.

In order to guarantee maximum security to all Kenyans and visitors, the Government has taken the following measures to improve the security architecture:

- (1) A well programme to install CCTV cameras in major urban areas is being rolled out.
- (2) Security agencies are conducting 24-hour area surveillance on sensitive areas. We have increased the number of patrols and inspection of speed boats and merchant ships.
- (3) Additional security personnel and motor vehicles have been deployed to the Anti-Terrorism Police Unit.
- (4) Security agencies conduct constant supervision of vital installations including markets, shopping malls and hotels and we are stepping up our surveillance and conducting stop, search and detain operations across the country.

External vigilance by Members of the public and security agencies remains the best shield against terrorism. This calls for close cooperation between members of the public and the security agencies by way of information sharing. Fighting terrorism requires a combination of legal and operational capabilities to be effective. The time is now, to put in place a robust legal framework to better enable our security agencies to confront and defeat terrorism. It is now time to soberly debate and enact an Anti-Terrorism Bill; combining effective anti-terrorism techniques which respect the rule of law, human rights and freedoms.

I wish to appeal to all Kenyans to learn to stay away from scenes of terrorist attacks. Presence of huge crowds around such scenes compromises the ability of emergency services to rapidly respond to the situation. Crowds also render scenes contaminated for purposes of investigations. Some terrorist attacks are sequenced such that the first terrorist attack is to attract more people to the scene before more terror is unleashed. I want to inform the international community that Kenya is still a safe place to visit for pleasure or business.

We urge all friendly nations to refrain from issuing travel advisories to their citizens with respect to Kenya. Kenya is experiencing terrorist attacks due to its role in standing up to the terrorists that threatened the national peace and prosperity. We are under attack for defending the international community against terrorists.

PROGRESS ON THE IMPLEMENTATION OF THE NEW CONSTITUTION

I will now turn to the implementation of the new Constitution. The implementation of the new Constitution goes beyond enacting laws and establishing constitutional commissions. It involves living in the new Constitution both in words and deeds by all citizens.

The people of Kenya, state officers and state organs must all practice constitutionalism through the respect of the rule of law and our values and principles by obeying our laws. Members will recall that Schedule 5 of our Constitution gives various statutes and their timeframe for their enactment. Chapter 15 of our Constitution establishes various constitutional commissions and independent offices.

Mr. Deputy Speaker, Sir, of the statutes to be enacted before the next general elections, this august House has enacted the following laws: Kenya Citizenship and Immigration Act; Kenya Citizens and Foreign National Management Services Act; The Commission on Administrative Justice Act; The Kenya National Commission on Human Rights Act; The National Gender and Equality Act; Ethics and Anti-Corruption Commission Act; Elections Act; Independent Electoral and Boundaries Commission Act; Political Parties Act; Power of Mercy Act; The Supreme court Act; Industrial Court Act; Environment and Land Court Act; Judicial Service Act; Vetting of Judges and Magistrates Act; Urban Areas and Cities Act; Land Act; National Land Commission Act; Land Registration Act; Transition to Devolved Government Act; The Inter-Governmental Relations Act; National Police Service Act; Independent Policing Oversight Authority Act and Salaries and Remuneration Commission Act.

Mr. Deputy Speaker, Sir, some very important pieces of legislation remain pending. Those aspects of the Constitution that are affected in this respect include the heart and soul of our new Constitution; that is, devolution. The County Governments Bill, the Public Finance Management Bill and the Public Participation Bill require urgent attention by this House to entrench the gains of devolution.

Mr. Deputy Speaker, Sir, equally important among the pending Bills are the Leadership and Integrity Bill and Assumption of Office of the President Bill which have a direct bearing on the upcoming general elections. The National Security Council Bill, the National Intelligence Service Bill and the Kenya Defence Forces Bill remain pending but urgent in order to reform our national security architecture. The Teachers Service Bill and the Public Service Bill are also pending.

Mr. Deputy Speaker, Sir, the independent offices of Auditor-General and the Controller of Budget have been competitively filled. The Kenya National Human Rights Commission (KNHRC), the Gender and Equality Commission, Independent Electoral and Boundaries Commission (IEBC), Judicial Service Commission (JSC), Parliamentary Service Commission (PSC), Commission on Revenue Allocation (CRA), Public Service Commission (PSC), Salaries and Remuneration Commission (SRC) and the Teachers Service Commission (TSC) are functional. The National Police Service Commission and the National Land Commission remain to be established.

Mr. Deputy Speaker, Sir, the scorecard looks cautiously impressive but more work remains undone in the very important areas of devolution, public sector, finance reforms, police reforms and land reforms. It is important that we now move with speed to complete the pending work.

Thank you.

Mr. Langat: Thank you very much, Mr. Deputy Speaker, Sir. I want to start with the first statement by the Prime Minister. It started in some bar in Tom Mboya Street. It went to some church somewhere in Parklands, The other day, it was in Moi Avenue. The same measures

were set by the Government. There is nothing that has been mentioned by the Prime Minister that is extraordinary in terms of the measures that need to be taken. They are the same measures that have been there. Could the Prime Minister tell us what measures will be taken in a very strategic manner that are not reactive to the situations? This is because the measures that are given, for example, the Closed Circuit Televisions (CCTVs) installations will only help you to identify the culprits after the event has occurred because nobody will carry a bomb when everybody is seeing. It will only identify the people who are in the building.

So, I was expecting the Prime Minister to tell us in terms of intelligence services what has been done in details on these things. Are people carrying out checks in all the buildings and churches so that we avoid these problems? So, could the Prime Minister tell us any extraordinary measures that the Government will take to ensure that this situation is arrested? Otherwise, it shall continue.

Mrs. Shebesh: Thank you, Mr. Deputy Speaker, Sir. The Prime Minister is aware that when this explosion occurred, three different arms of Government quickly rushed to the scene and gave three different conflicting statements. The most saddening and shocking one was that from the Commissioner of Police when he said it was because of an electrical fault. This being the top honcho of our security system, how do you expect Kenyans and especially Nairobians to have confidence in what you are saying here and what this Government continues to say when the Commissioner of Police can mistake a bomb that was devised within our own system using fertilizer as the FBI has told us? Who can confuse that for an electrical fault? How do we then have confidence and how do you then tell us that we should be confident in the security system of this country?

Mr. Twaha: Thank you, Mr. Deputy Speaker, Sir. As far the implementation of the Constitution is concerned, we are nine months to the general election and yet in some parts of the country, we do not know where the governors and the county Assemblies will be sitting. Is there any budgetary provision in the next Budget to put up this infrastructure before the elections?

Mr. Mungatana: Thank you, Mr. Deputy Speaker, Sir. The Prime Minister in his Statement about the implementation of the Constitution said that it is not only the implementation of the law but the spirit of the Constitution. I want the Prime Minister to refer to Article 248 of the Constitution. In this Article, the following commissions which he referred to have been set up under the Constitution: The Kenya National Human Rights Commission; the National Lands Commission; the IEBC and all the commission of the Constitution including the independent offices like the Auditor-General and the Controller of Budget. The clarification I wanted this Government to give us in terms of regional ethnic balancing is that; how many chairmen or vice-chairmen from all these commissions have come from any of the six counties that used to form the initial Coast Province? If the Prime Minister can check his facts, none of these independent office holders from the Controller of Budget, the Auditor-General, the Attorney-General and all these commissions – none even the chairman or the vice-chairman is coming from the former Province known as Coast Province. Is the Government aware of this fact and what is it doing to implement the spirit of the Constitution that there must be regional and ethnic balancing in the appointments of this country?

Mr. Deputy Speaker: Prime Minister, can you respond to those clarifications sought?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, the Member of Parliament for Ainamoi was wondering what new measures are being put in place to deal with the security situation. He was saying that CCTV, for example, will only deal with the situation after the act. He asked what extra-ordinary measures are being put in place.

Mr. Deputy Speaker, Sir, there are several other measures being put in place. First, we are getting more used to the terrorist attacks. I want to inform the hon. Member that CCTV does not only capture the image of a person after the act. Once the security forces have an image or a photograph of a suspect, it is fed into the CCTV system. When that suspect gets to any other place, the message is received by the CCTV system and this is communicated straightaway. The security personnel are alerted. So, it is very easy to apprehend somebody, if there is a CCTV system in place.

So, the CCTV system we are putting in place is not just for image capturing. The system we are trying to put in place is much more sophisticated than merely giving the physical imaging of a suspect. It is a system that will be tracking a suspect on a 24-hour basis. It will also be using a combination of mobile telephoning. Hon. Members have seen that the photograph of the character who was involved in Monday's incident has already been published in the media. You can see his image on the newspapers. If there was a CCTV system in place, that image would have helped the police to track that character. He would have been apprehended immediately.

Mr. Deputy Speaker, Sir, hon. Rachael Shabesh was concerned about the conflicting statements that emanated from three arms of the Government. I would like to assure her that the statements were made sporadically. They were basically made on the instant impression that those individuals had received. It was not as a result of comprehensive investigations of the incident.

It is like the story of the five blind men who went to touch an elephant. They touched different parts of the body of the elephant. One man touched the leg and thought that it was the trunk. Another one touched the task, and it was smooth, *et cetera*. So, it depends on the position from which the Commissioner of Police was standing when he made that statement.

Mr. Speaker, Sir, I arrived at the scene some minutes later and got access to the premises. I found the bomb experts in the process of their work. They showed me the area of detonation. I saw a crater on the floor. Looking up, I was shown how the force of the explosion had shattered the roof and the windows of the adjacent building. From my own engineering training, I assumed that it must have been a very heavy explosion indeed. I asked the bomb experts whether it was as a result of a TNT device, which is one of the explosives that emit that kind of force.

So, I was basically merely speaking from a technical point of view. Since then, more investigations have been carried out and the police are very close to a much more informed conclusion. So, I would like to urge the hon. Member not to be very harsh on the Commissioner of Police because the Commissioner of Police might not have seen the crater that I saw.

Mr. Deputy Speaker, Sir, hon. Twaha is concerned about the preparations ahead the introduction of the devolved system of government. He believes that we are behind schedule since he has not seen the Governor's office or the Governor's residence in his county. We are making arrangements. Provision has been made in the coming Budget for installation of some of the key requirements such as the offices of the devolved units, including the Governors' residences, and so on.

In case the buildings will not be ready by the time of rolling out the system, there is financial provision for renting of some premises, so that the devolved units can start to operate almost immediately after the elections. I just want to say that the appointment of the County Commissioners is not part of that preparation. The appointment of the County Commissioners is another matter altogether.

Mr. Deputy Speaker, hon. Mungatana has asked a very complicated question. I would want to say that I do not have the names at hand. Neither do I have the details of the counties

from where the chairpersons of the Commissions that have been established come from. However, I want us to go beyond the former regions. Let us also look at the counties generally. We have got 47 different counties.

It is true that the Constitution talks of regions and counties. We are not yet through with the appointments of the chairpersons of the Commissions since other appointments are still on the way. I want us to look at the way in which appointments to those Commissions have been carried out. You begin, first, by setting up a fairly representative panel to carry out the interviews, after the Public Service Commission has carried out the advertisement and the short-listing.

Mr. Deputy Speaker, Sir, those who are qualified are interviewed by a fairly professional team. Once they have done the interviewing, they do the selection and make recommendations to the principals. The principals pick people from the list that has been forwarded to them by the team of experts who have carried out professional interviewing. Once consultations between the two principals have taken place, the names of the nominees are finally forwarded to this House for approval.

So, there may have been some misunderstanding. If there had not been some misunderstanding, probably, lately, we would have had somebody coming from the region that the hon. Member calls the "Coast Region". I want it to be known that there has been no deliberate attempt to marginalise or to ignore any part of the country in these appointments. We want to be as inclusive as possible but, as the principals, our hands are also constrained by the process. We are just a link in the chain of the process of appointment of members to the independent Commissions.

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. First, I want to appreciate the Prime Minister's response to some of the issues that have been raised but is it really in order for him to say that the Executive is constrained by the processes yet in many of the Commissions; the shared Executive has the sole prerogative of nominating the chairpersons? With the exception of the appointment of the Chairperson to the National Police Commission, which is hanging, the Executive has invariably left out the Coast Province.

Mr. Speaker, Sir, I am not speaking on my own. People are crying out there. Questions are being asked. Why is it that there is no chairperson or vice-chairperson of even a single independent Commission from the Coast Province? I expect the Prime Minister to go and do his research and do something about this, because these are the issues which are boiling in this country.

So, is it in order for the Prime Minister to say that the two principals are constrained by the appointment process yet he and the President are supposed to, jointly, nominate the chairpersons of some of the independent Commissions?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I think I was very clear. I said that we do nominate from a list that is forwarded to us. We do not have the latitude to look at the list of 50 or 100 people who may have applied initially for those positions. Once the applications have been received by the Public Service Commission, vetting is done and then a limited number is then forwarded to the panel of experts who are empowered to carry out professional interviews and then shortlist. Only three names are forwarded to the principals with respect of the chair to these commissions. Only three names are finally forwarded to the principals. Out of those three names, we are supposed to agree on one. Whereas, for example, in one case we did agree on one but, as hon. Members now know, a different name was actually forwarded to the House from the one that we had agreed on.

Mr. Deputy Speaker, Sir, we are able to iron out these matters here and if we get the name of a qualified person from the Coast, we will ensure that he is nominated because we do not want to discriminate.

(Applause)

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir. I have two short points of clarification. First, I want to thank the Prime Minister for the advice to the public that they should stay away from the scene of crime. It is a well known fact that politicians draw crowds. At the scene of crime, the most important thing is investigations and evacuation. Could the Prime Minister tell us what business political dignitaries, including himself, have in visiting those scenes and in the process they draw crowds into them? By the way, it is a very serious issue because as we saw in the bomb blast of September, 2011 in the USA, terrorists can strike, wait for five minutes and then strike again and wait for 30 minutes and strike again. So, as our leaders draw crowds into those areas, do they realise that they are drawing members of the public into the possibility of a second round of attack? What will the Prime Minister do to those leaders?

The second point is that the Prime Minister has discussed the issue of security as pertains to what happened along Moi Avenue. However, what disturbs me is the position of the Prime Minister, as one of our principals, on the Mombasa Republican Council. While with them he tells them that they are speaking liberation language which has always been his language. But when he is away in Nairobi he tells them that he cannot dialogue with foreigners. Is the Prime Minister and the Government waiting for this group which is merely fighting for social justice to turn violent before they take them seriously? We need to talk them out of thinking that what is happening to them is something special only to them. Instead, they need to know that the issue of social inequality obtains in most parts of the country.

Finally, when will the Prime Minister stop double standards in dealing with the MRC?

Mr. Deputy Speaker: Order! The Rt. Hon. Prime Minister, you will have to respond to the issues that were raised and are in conformity with the question itself. Hon. Members you need to understand the rules of engagement in the House. A clarification is sought on the content of a Statement. You do not introduce anything outside the Statement into the matter and turn it into a debate. Time and again the Chair has said respect, respond and protect the dignity of the House. By getting personal and calling your fellow hon. Member as practicing double standards on the Floor of the House is itself an “astonishment” to the dignity of the House.

Dr. Khalwale, the Chair is addressing the House but more so for you to listen to what the Chair is saying. The House has got a minimum standard of decorum. Do not abuse or accuse a fellow hon. Member of double standards without a substantive Motion.

So, the Rt. Hon. Prime Minister, you will respond to that on the basis of the rules that were set by the Chair and the Standing Orders.

Dr. Munyaka: Thank you very much, Mr. Deputy Speaker, Sir. In fact, in the past Kenyans have lost lives when foreign embassies were bombed. There is loss of lives by Kenyans when a foreign embassy is targeted like the 1998 USA Embassy bombing. Has there been any *ex-gratia* payment and compensation to the victims and the relatives so far?

Mr. Kiuna: Thank you, Mr. Deputy Speaker, Sir. It is in public domain that the issue of national security has affected our country. What action has the Government taken against our disciplined forces because we have already seen that some of them who are supposed to protect us are in the forefront in some corruption cases? What measures has the Government taken to

make sure that these officers are well-disciplined so that when they have been given that task, they will do it to the best of their knowledge?

Mr. Deputy Speaker: We will have Mr. Mbadi and then the last one will be Mr. Njuguna.

Mr. Mbadi: Mr. Deputy Speaker, Sir, I want to thank the Prime Minister for the two Statements. However, my clarifications will be on the progress of the implementation of the new Constitution. I am concerned about the two Bills that the Prime Minister has rightly pointed out that are at the heart of the constitutional implementation. They are the County Governments Bill and more specifically the Public Finance Management Bill because of the revenue funds for the county governments. These Bills had an 18 months deadline. These Bills are before the House but there is a requirement that we extend the time for us to be able to process these two Bills.

Mr. Deputy Speaker, Sir, I would like the Prime Minister to clarify the commitment of the Government, and what they are going to do to mobilize and lobby Members of Parliament to pass this Motion, which requires 148 Members of Parliament to be present to pass it, and when this will be done so that we have these two Bills passed? Otherwise, this House stands the risk of being dissolved.

Finally, I also want the Prime Minister to clarify to us, and the people of Kenya, what they intend to do, as the two Principals, to deal with cases where we see that a section of the Coalition Government does not believe in this Constitution from their acts. I would give examples of the appointment of the County Commissioners. It is clearly evident that one side of this Government does not believe in devolution.

Just yesterday, we had the Statute Law (Miscellaneous Amendments) Bill withdrawn from this House, after one section of the Government had made an attempt to introduce amendments which were clearly unconstitutional. This is a clear evidence that one section of this Government - of course the Prime Minister knows which section of the Government I am talking about - is not committed to the implementation of this Constitution. What is he going to do? I am asking him this because I believe in his reform credentials and history.

Mr. Njuguna: Mr. Deputy Speaker, Sir, let me start by thanking the Prime Minister for personally responding to the plight of the bomb blast victims at the scene and at the hospital.

Secondly, because of the new development affecting the security of this country, what preventive measures is the Government putting in place to, at least, preempt such attacks on the lives of Kenyans? Does the country have the necessary capability to rapidly respond to such attacks?

Mr. Deputy Speaker: Rt. Hon. Prime Minister, you can now respond.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, Dr. Munyaka was concerned about compensation for the victims of this bomb blast. As a doctor, he knows that compensation is normally provided by insurance companies. The Government can help, but it cannot have provisions all the time for accidents of this nature. Therefore, we need to educate our people, so that people do not make too many demands on the Government in the form of compensation. The Government cannot be compensating people all the time. Otherwise, there will be no resources available for other forms of development.

First and foremost, it is the responsibility of the insurance companies to provide compensation. The Government efforts are complementary to the responsibility of insurance companies.

Mr. Kiuna was wondering about the measures that the Government will take against officers who abuse the trust that has been bestowed upon them by the public. Very heavy

disciplinary measures are taken against officers who abuse this trust. However, as the hon. Member knows, we are in the process of reforming our police force. That is why we have come up with the Police Service Oversight Commission and the new National Police Service Commission.

Mr. Deputy Speaker, Sir, for the hon. Members' information, the Police Service Oversight Commission has already been sworn in and is shortly going to begin work. It is going to set the standards that must be met by officers in service; if officers do something that is offending, they will meet the full force of the law. More importantly, vetting of officers is going to be done just as is being done right now with the Judiciary.

Mr. Mbadi asked about the two Bills, the Public Finance Management and the County Government Bill. The Government is concerned, and that is why the Bills have been published. The Government will do its part. However, I want to urge the hon. Member to feel patriotic enough and see that these Bills are desirable.

Mr. Deputy Speaker, Sir, Members of this House who are patriotic do not need to be lobbied by the Government to move the amendment for extension. It is only Members who are anti the Constitution who will vote against these Bills. I want to appeal to the conscience and the patriotism of hon. Members of this House that when these Bills are brought before this House, there should be no problem. Getting the two-thirds should not be a problem. I want to believe that we will be taking for granted that we will get the numbers that we require.

Mr. Deputy Speaker, Sir, the hon. Member---

Mr. George Nyamweya: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Prime Minister of the Republic of Kenya to categorise Members into some who are patriotic, by implication, and others who are not patriotic, and also say there are those who are anti the Constitution? How can you be anti the Constitution when we have all sworn to protect and defend that Constitution? Is it in order for him to imply that there are some people who do not respect the Constitution?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I was responding to the question as put by the hon. Member for Gwasi, who urged that we should lobby Members, so that we get the numbers. I said that hon. Members are patriotic enough, and we do not have to go to the extent of lobbying them. I said that I will assume that getting the two-third majority will be a matter of course.

Mr. Deputy Speaker, Sir, I, however, said that only those Members who are not patriotic-- Only those Members who are anti the Constitution will vote against these two Bills. The hon. Member does not want to find himself in that position. That is what I said, so that I can be understood properly.

The hon. Member then further talked about the Statute Law (Miscellaneous Amendments) Bill, which was withdrawn and then the appointment of County Commissioners. My position on those two incidences is known. My understanding is that this is an administrative matter which should be done under the Provincial Administration Act and not under the new Constitution. As things stand right now, the relevant section of the Constitution has not yet come into force. Therefore, that could not have been the law that was being applied when the appointments were made.

Mr. Deputy Speaker, Sir, regarding the Statute Law (Miscellaneous Amendments) Bill, once again through consultations between myself and the Attorney-General, the Bill was withdrawn. It means that the Government is reading from the same page; both sides of the Government are talking the same language.

Mr. Njuguna, the Member for Lari wanted to know the preventive measures being put in place, including the enhancement of response capacity. I would like to inform the hon. Member that the Government is trying to be preventive rather than reactive. That is why we are putting a lot of money into modern equipment to be able to track the perpetrators of these crimes in our country, so that we can nip them in the bud before they carry out their deadly activities. So, I would like to assure hon. Members that everything possible is being done to enhance the capacity of our security forces to deal with these criminals.

Mr. Deputy Speaker, Sir, with regard to Dr. Khalwale's concern, yes, politicians draw crowds and I am also a politician. When I go to these scenes, I go to urge the people to stay away. Indeed, that is what I did the day before yesterday when I arrived at the scene; the first thing I told *wananchi* was to clear the area so that the security forces and experts including bomb experts could have an opportunity to do their work professionally. I also urged and informed them that by crowding and walking in the scene, they also interfere with the evidence. So this is what I did but I agree with the hon. Member that politicians should not walk close to the area. If a politician goes to the area, they should stand away and urge members of the public to move away from the scene because as I have said, all over the world, it is known that some of these attacks are programmed. They are programmed so that the first explosion is just aimed at drawing attention and drawing the public to the area. That is usually then followed by a second or even third more deadly explosion and that is the reason why it is important that our people should be properly educated so that they desist from accessing the scene of crime as soon as the crime has occurred.

With regard to the Mombasa Republican Council (MRC), my position has never changed. I spoke in this House here and I stated clearly then that we were ready to do dialogue, not only with the MRC but also with all the other organizations so long as they must first renounce violence as a means of resolving their issues. Secondly, with respect to the MRC, they should renounce the "*Pwani si Kenya*" slogan. That is what I said here and that is what I also said when I was Mombasa. When I was talking I only said that these people have genuine concerns because there are historical grievances. There are historical neglects which have taken place in our country, not only in the Coast but in other parts of the country. I said that we need to address this. I said that that is why we have been struggling all this time to deal with historical injustices. I said that in this country, there have been two forces pulling in two opposite directions; the forces for change and reform versus the forces for retention of the *status quo*.

[Mr. Deputy Speaker left the Chair]

[Mr. Speaker took the Chair]

Mr. Speaker, Sir, I have said that I belong to the first category of people and I said that we sit down and dialogue and talk. That is why we are organizing a forum where we are going to invite all various sections of the society in the Coast to come and air their grievances so that it can be recorded and then action taken. The time for rhetoric and talk is over and, therefore, I want the hon. Member to know that we are not saying this because it is campaign time. It is something that we are saying out of conviction, that, yes, these people have suffered. First there was injustice which was committed by the Arab landlords and that is why in those days of *Mwambao*, the coastal people were squatters. After that, the post-Independent regimes have continued to perpetuate the injustice which had been meted against these people by the colonial

regimes. That is why we find people living in their ancestral land; the land where their great grandfathers were buried and they are told: *Gema mnazi halafu ukaweke kawe kilalo*, but you cannot cut the tree because the land is not yours. It is very painful indeed and these are issues that we must deal with because other people have come and taken over from the Arab landlords. So we have continued to perpetuate the very same kind of injustices meted by the colonialists against these people by our own people.

So, I have said that if you are part of that problem, you cannot be part of the solution. I want to say that I am part of the solution to that problem.

COMMUNICATION FROM THE CHAIR

CONSIDERED RULING ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Mr. Speaker: Hon. Members, I have one Communication to make which I undertook to do this afternoon. This is with respect to The Statute Law (Miscellaneous Amendments) Bill of 2012 which today is appearing on the Order Paper.

Yesterday, Tuesday, 29th May, 2012, after the Attorney-General had made certain undertakings relating to how he proposed to proceed with prosecution of The Statute Law (Miscellaneous Amendments) Bill, I made a ruling to the effect that the Speaker will hold the Attorney-General to his word in respect of those clauses which, in his opinion, raised important questions of constitutionality and that, for all purposes, those clause specifically recited by the Attorney-General would stand withdrawn and the Attorney-General will not be permitted to move them in the Committee Stage on the Bill.

Several hon. Members subsequently stood on points of order contesting a number of other clauses in The Statute Law (Miscellaneous Amendments) Bill, 2012 and urging the Speaker to rule that the clauses are unconstitutional or otherwise inappropriate and should be similarly withdrawn. These hon. Members were Dr. Khalwale, Mr. Mbadi and Eng. Rege. I then promised to give a ruling today covering the concerns of these hon. Members as well as those aspects spoken to by other hon. Members last Thursday and in respect of which a ruling from the Speaker had been sought.

Hon. Members, arising from the points of order raised by Mr. Mbadi last Thursday and endorsed with further observations by Mrs. Odhiambo-Mabona and the other points of order raised yesterday, the outstanding propositions on which I will rule are as follows:-

(i) That the scope of the amendments proposed to the various statutes under the Bill including, as an example, those to the Energy and Communications Act is such that there are substantive issues being canvassed in the Bill and they required, according to the Constitution public participation and separate publication in Bills, and further that introducing such substantive amendments in the form of a Statute Law (Miscellaneous Amendments) Bill would deny the people of Kenya their right to participate in the legislative process.

(ii) That some amendments proposed in The Statute Law (Miscellaneous Amendments) Bill, 2012, and specifically the amendments relating to the Elections Act and the Industrial Court Act are unconstitutional and should be withdrawn.

(iii) That when a claim of unconstitutionality is made, the House should not proceed with the debate or other proceedings on the business in hand until a determination by the Speaker has been made.

Hon. Members will recall that last Thursday, after listening to the representations of hon. Mbadi, Mrs. Odhiambo-Mabona and several other Members and after hearing the Attorney-General, I stated that although the issues canvassed were weighty and meriting of respective consideration, I was not convinced that I could find as at that point that I was persuaded to find that the Statute Law (Miscellaneous Amendments) Bill, Bill No.14 of 2012 is unconstitutional. I stated that I did not have adequate material before me from the arguments articulated to make that finding. I, however, indicated that I wish to accord myself an opportunity to reflect on the matter and give such further directions as will be necessary. It was on this basis that I allowed debate to continue making it clear that I will give directions before the Mover of the Bill was called to reply and before putting the question on the Bill.

I have now had the benefit of considerable reflection on the issues raised and the responses urged and I have come to the view that these issues can best be dealt with in two categories, namely; those that go to the question of appropriateness of the content of the Bill as a whole, the matter of its introduction and the procedure for its disposal and those which challenge the constitutionality of specific provisions of the Bill. In respect of the first category, I think it is pertinent to interrogate the scope and intent of a Statute Law (Miscellaneous Amendments) Bill. Generally in this country and elsewhere in the Common Wealth, the traditional - and I may add orthodox - role of this kind of Bill is to make minor amendments to the statutes. This, indeed, is the long title of the Statute Law (Miscellaneous Amendments) Bill, 2012. The rationale for this kind of Bill is to save the time of Parliament by making, in one Bill, all the minor amendments and corrections to statutes whose non-contentious and mundane nature will not merit the numerous amendment Bills that will otherwise be entailed. To borrow a classical example from Canada, the long title of the Miscellaneous Statute Law (Amendment) Act, 2001, provides that it is “an act to correct certain anomalies in consistencies and errors and to deal with other matters of uncontroversial and uncomplicated nature in the statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect”.

A Statute Law (Miscellaneous Amendments) Bill is not, and was never meant to be, an omnibus for substantive statutory amendments. It is, therefore, quite in order that questions have been raised whether the present Bill is compliant in this respect. This is a rule of practice of such notoriety that it comes close to assuming a legal status. I ask the hon. Attorney-General that he considers these concerns very carefully now and in the future. Amendments which are substantive in nature and which raise policy questions do not generally belong to this kind of Bill and should be brought as separate stand alone Bills. However, while some amendments may be unsuitable for inclusion in such a Bill and while the Attorney-General may be encouraged to bring such amendments in separate and stand alone Bills, I am unable to find nor am I prepared to go so far as to say that their consolidation and inclusion in a single Bill is unconstitutional. This therefore, deals with the concerns of Eng. Rege and any other Member with similar concerns.

It is, however, further important to observe that a Statute Law (Miscellaneous Amendments) Bill is a Bill like any other and the constitutional right of public participation in the legislative process is not taken away by the form in which statutory amendments are proposed. The publication period of such a Bill is the same and it is referred to a departmental Committee in the same manner as any other Bill. The public is free and is encouraged to engage

the Committee and the House as a whole in the same manner as with other Bills. For the convenience of the House, this Bill has traditionally been referred to the Departmental Committee on Justice and Legal Affairs. Its miscellaneous nature notwithstanding, there is, of course, no bar to any Member of this House attending the meetings of this Committee in its consideration of any aspect of the Bill.

This brings me to the second category of concerns raised by the hon. Mbadi and spoken to by other Members. This category relates to claims that specific proposed amendments are unconstitutional. Apart from the proposed amendments, which the Attorney-General has already withdrawn and to which I will make no further comment, hon. Mbadi draws specific attention to the amendments proposed to the Elections Act while Dr. Khalwale raised issue with the amendments proposed to the Industrial Court Act. In respect of the amendments to the Elections Act, after careful consideration, I do not find that I can agree with hon. Mbadi that these are unconstitutional. In fact, it is clear to me that the amendments seek to clarify the correct constitutional position in relation to by-elections which are held before the first general elections under the Constitution of Kenya, 2010. Some doubt has arisen and a lacuna appears to have been created after the passage of the Elections Act, 2011, which appear to bring such elections under the ambit of the new Constitution while the Constitution itself is clear at Sections 2, 3 and 7 of the Sixth Schedule that the applicable law should be the former Constitution and the law applicable before the passage of the Constitution of Kenya, 2010. The amendments are proposed to a Statute and not the Constitution. It is important to note that, that the amendments which are in the Statute Law (Miscellaneous Amendments) Bill are to a statute; the Elections Act and not to the Constitution. If they were to the constitution, then you will require a constitutional amendment. But because they are to a statute, you can amend through another statute. Hon. Mungatana will be useful to some of you who are around him. The amendments are proposed to the Statute and not to the Constitution. Although this should ideally be explained by the Mover of the Bill at Second Reading and in the Committee Stage, the Chair notes that the amendments seek to remove the anomalies and clarify the correct constitutional position and they are, therefore, not unconstitutional.

On the basis of his point of order and on the face of the record, I similarly have not found that I can agree with Dr. Khalwale that the amendments proposed to the Industrial Court Act, 2011, are unconstitutional. The reasoning will largely be the same.

Dr. Khalwale correctly observed that the Industrial Court Act is the court established by Parliament pursuant to Article 162 of the Constitution. Parliament can amend this statute from time to time as becomes appropriate, that is, that Parliament can amend the Industrial Court Act because it is a statute from time to time. You do not require a constitutional amendment to do that. While I agree that the provisions of Article 2(6) of the Constitution provide that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution, this must not be construed to mean that such a treaty or convention overrides the Constitution itself.

Hon. Members, the final question I have to address relates to the appropriate time for the Speaker to rule on questions of constitutionality, and is a crucial one. This issue was canvassed by the hon. Odhiambo-Mabona who drew the attention of the Speaker to precedence in rulings previously made, that matters of constitutionality could not be the subject of a vote.

Mrs. Odhiambo-Mabona also sought the direction of the Speaker on whether a claim of unconstitutionality needed to be first disposed of, or whether the House could proceed with the contested business and return to the question later. The issue is best answered by appreciating the nature of the defect that is alleged when a claim of unconstitutionality is made. It is the most

serious claim that a Member of this House can make. It is a caution to all Members that they could be proceeding on a nullity as contemplated by Article 2(4) of the Constitution. It draws attention to Article 3 of the Constitution, the obligation of every person to respect, uphold and defend the Constitution, Article 10 on the values and principles of governance, Article 259 on construing the Constitution, among many other provisions of the Constitution. It is, therefore, a claim that merits the most urgent and careful attention and action.

Standing Order No.47 of our Standing Orders emphasizes this point by providing that the Speaker, if he is of the opinion that any proposed Motion is contrary to the Constitution, without expressly proposing appropriate amendment of the Constitution, may direct either that the Motion is inadmissible or that notice of it cannot be given without such alteration as the Speaker may approve. That said, I must agree with the remarks of the hon. Attorney General made last Thursday that a conclusion that a provision of a Bill is unconstitutional should not be casually or hastily arrived at, without considering all the points of view. It cannot be the case that every claim of unconstitutionality suspends the proceedings of this House until a ruling is made by the Speaker. It may well be the case that the claim, on closer scrutiny, is made on account of an erroneous interpretation of the Constitution, or is, otherwise, unfounded. It is for this reason that the Speaker may allow other points of view to be advanced, or may allow proceedings to continue as he reflects on the claim of unconstitutionality. This was, indeed, the case in the present matter. I wish to urge Members, however, that points of order on the basis of unconstitutionality be carefully considered before they are raised. It is possible that the proceedings of the House could become adversely affected if, instead of points of argument being advanced in debate on the Floor of the House, and contrary views expressed in the same manner or by voting for or against specific provisions, matters are, instead, raised as challenges on constitutionality.

Hon. Members, following all the foregoing, I direct that debate on the Second Reading of the Statute Law (Miscellaneous) Amendments Bill, 2012 shall resume at the point at which it was interrupted, and the Bill shall be proceeded upon by the House in accordance with the law and the Standing Orders. Members will note that the withdrawn provisions may not be referred to in debate at the Second Reading or at any subsequent stage.

I thank you.

POINT OF ORDER

DELAY IN TABLING OF AUDITOR-GENERAL'S REPORT BY THE MINISTER FOR FINANCE

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. My point of order is on a different matter. The Public Audit Act is very clear that the Controller and Auditor-General, who is now the Auditor-General, shall prepare a report on audit conducted by his office and submit to the Minister for Finance. That is provided for in Section 9. Clause 10 says that the Minister shall lay each report, under Section 9, before the National Assembly not later than seven days after the National Assembly first meets after the Minister has received the report. I have information that the Auditor-General submitted that report to the Minister for Finance on 20th April, 2012.

Mr. Speaker, Sir, I believe that, that report has not been tabled in the House up to today, which is way past the seven-days deadline.

Mr. Speaker, Sir, Sub-section 2 of Section 10 says that if the Minister fails to lay the report before the National Assembly as required under this Section, the Controller and Auditor General shall forthwith submit a copy of the Report to the Speaker of the National Assembly to be presented by him to the National Assembly. So, I am urging the Chair to take advantage of that provision so that we can have the advantage of having the Auditor-General's report tabled in the House to be committed to the Public Accounts Committee for the eventual disposal by the House.

Mr. Speaker: In the absence of a Minister from the Finance portfolio, Attorney General, that seems to be a serious constitutional matter. Maybe, you want to make some undertaking so that we will be able to know how to proceed.

The Attorney General (Prof. Muigai): Yes, Mr. Speaker, Sir. I would like to undertake that this information will reach the relevant Minister and I do hope that a timeous answer will be brought before the House.

Mr. Speaker: It is an act that the Minister is expected to ensure is undertaken. I think there is a timeframe. So, shall we give the Minister 10 days, Attorney General?

The Attorney General (Prof. Muigai): Two weeks, Mr. Speaker, Sir.

(Dr. Khalwale stood up in his place)

Mr. Speaker: Two weeks, fair enough. What is it Member for Ikolomani.

Dr. Khalwale: Mr. Speaker, Sir, I think the Attorney General is missing the point. The point is that the law specifies it is seven days. The law creates a window for you to take advantage of that window so that the process can continue moving. The Minister---- If hon. Mbadi is right that the report was given to the Minister on 20th of April, 2012, it means that the Minister has already lost his seven days. So, it is now up to the Chair to decide whether he wants to take advantage and be seen to be respecting the law or, you will then use your usual wisdom to tell us how we can navigate this issue because it is for real. The Attorney General has no point in this one.

Mr. Speaker: Order, Member for Ikolomani. In so far as the Speaker is concerned, I have always respected the law. But if there is a breach already, then remedial action must be proceeded with cautiously, so that you do not compound or aggravate the breach.

Attorney General, do you want to say anything more?

The Attorney General (Prof. Muigai): Mr. Speaker, Sir, you have said it all. I thought your ruling was intended to provide an opportunity to the Minister:-

- (a) To correct what has gone wrong; and,
- (b) To explain himself to the House.

Mr. Speaker: Indeed, Member for Ikolomani, please, stand guided.
Next Order!

PROCEDURAL MOTION

HOLDING OF EXTRA HOUSE SITTING

Mr. Speaker: Leader of Government Business. Yes, I understand the Chief whip will do this on behalf of the Leader of Government Business.

Mr. Midiwo: Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of Standing Order 20(3), this House resolves to sit on Thursday 31st May, 2012 commencing at 10.00 a.m. to 1.00 p.m. for the purpose of electing Members to the East African Legislative Assembly.

Mr. Speaker, Sir, this is a straight forward Motion---

(Dr. Khalwale stood up in his place)

Mr. Speaker, Sir, I can see that my ever-opposing friend is up on his feet. This is a pretty straight forward Motion. We are expected, as a country, to forward our elected Members to the East African Legislative Assembly (EALA) within the next few days. As I gather, they must be there by next week. So, this is an obligation on this House to---

Dr. Khalwale: On a point of order!

Mr. Speaker: Order! Order! Order, hon. Midiwo! Please, resume your seat for a moment.

(Dr. Khalwale stood up in his place)

Order, hon. Member for Ikolomani! Order! Indeed, I am aware; I have been put on notice that there may be certain concerns which, perhaps, you want to raise. But in my considered opinion, those matters are best raised after we dispose of Order No.8. This is because disposal of Order No.8 is merely procedural; the meat will come after disposal of Order No.8.

So, Proceed, Chief Whip!

Mr. Midiwo: Thank you for saving me, Mr. Speaker, Sir.

As I was saying, that it is a pretty straight forward procedure. It is expected of us and we must act, even after listening to our friend. I, therefore, want to ask hon. Wamalwa to second this Procedural Motion.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Thank you, Mr. Speaker, Sir. I beg to second this Procedural Motion. As the honorable Chief Whip has said, this is purely procedural and for purposes of complying with the requirements of the East African Community (EAC) and the Treaty.

Mr. Speaker, Sir, we do know that many Kenyans are waiting anxiously to see these names being placed before this House and this House approving them, so that we can send our representatives to EALA. We have the women of Kenya who have been fighting for positions, and also persons with disabilities and they are anxiously waiting for this.

We are asking that we be allowed to sit tomorrow morning for purposes of approval of these names only.

Thank you, Mr. Speaker, Sir. I beg to second.

(Question proposed)

Mr. Speaker: Proceed, Mr. Musila.

The Assistant Minister, Ministry of State for Defense (Mr. Musila): Thank you, Mr. Speaker, Sir. I stand here to oppose the Motion on the account that, as you are aware, tomorrow is a National Prayer Day. All hon. Members are invited to Kasarani for prayers for the nation

where His Excellency, the President is expected to be. The timetable reads like 8.00 a.m. to 10.00 a.m.

Mr. Speaker, Sir, I do not think it will be possible for hon. Members to be in Kasarani---

Mr. Speaker: Order, hon. Musila! I do not wish to interrupt you---

(Mr. Musila remained standing at the Dispatch Box)

Please, resume your seat for a moment.

Earlier on this afternoon, I did make communication from information that I had received in my capacity as the Patron to your National Prayer Breakfast; that it will commence at 7.00 a.m. You are now giving a different time. I do not know what your source of authority is.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Speaker, Sir, I am the Vice-Chair of the Committee that is organizing the National Prayer Breakfast. I would have no problem if we adjusted the time upwards, just to be on the safe side. The reason why I say this is because it is a very important exercise---

Mr. Speaker: Order, hon. Musila! You know this matter is important. I have communicated to hon. Members and the rest of this country that the National Prayer Breakfast will commence at 7.00 a.m. In fact, we have taken care of protocol, including that of his Excellency, the President, the Prime Minister and the Vice-President. Do you want to disrupt all this? What you are saying may appear minor, but it has serious implications. We cannot summon a nation on two different timings! Hon. Musila, you may want to deal with that.

Just proceed and make your important point; I do not think that is the important point.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Speaker, Sir, I certainly have no serious objection to this. I was only alerting the Chair that this is an important matter we are coming to deal with and it involves voting. Therefore, a delay for hon. Members for some reason, it may cause some---

Mr. Speaker: Order, hon. Musila! You previously sat on this Chair. The Speaker is disinterested, one way or the other. So you alert the House; you do not alert the Speaker! Correct that part, hon. Musila; it is important. We must get our procedure correct!

The Assistant Minister, Ministry of state for Defence (Mr. Musila): Mr. Speaker, Sir, I beg your pardon on that, but I do not want to appear like I am opposing--- I was only saying that it may not be possible, and it is possible that some hon. Members may miss the very important task of electing the Members to EALA. Therefore, I was simply saying that; could there be an amendment to up the time, so that there will be enough time because there is the traffic and Kasarani is not very near?

So, Mr. Speaker, Sir, instead of 10.00 a.m., is it possible, maybe, to push it up to 11.00 a.m. or even 12.00 p.m.? We can even meet late in the evening.

Mr. Speaker, Sir, I beg to oppose.

Mr. Speaker: Hon. Musila, that notwithstanding, you have not done very well. If you wanted to change the time, you would have moved an amendment to the Motion. You have given me a lot of pleasure having to guide you on procedure when you served as the Deputy Speaker for five years.

What is it, hon. Member for Ikolomani?

Dr. Khalwale: Thank you, Mr. Speaker, Sir. I just wanted to inform the hon. Member that, that is not the way to amend the Motion, and you have told him so.

(Laughter)

Mr. Speaker: Very well, hon. Member for Ikolomani. Thank you for re-emphasizing it.

(Question put and agreed to)

(Dr. Khalwale stood up in his place)

What is it, hon. Member for Ikolomani?

POINT OF ORDER

ADHERENCE TO EAC TREATY/EALA NOMINATION RULES BY POLITICAL PARTIES

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. I am rising on a point of order to request the Chair to give a directive on how we want to proceed with this very important matter of electing Members of EALA.

Mr. Speaker, Sir, I am doing it now and not tomorrow, when the Motion will be before us, because the issues I want to raise are time bound. They should happen before those names that we are going to be voting on will be brought to the House.

Mr. Speaker, Sir, I have the following points which I would like you to consider. That the Constitution, the nomination rules and the Treaty that gave effect to the EAC have put a very high standard, as far as the nomination rules are concerned. The highest standards are found in Rule 5(2), 6(1) and 6(2) where they insist that to be seen to be a fair and transparent process, the decisions of political parties should be made public.

(Mrs. Shebesh stood up in her place)

Mr. Speaker: Order, hon. Member for Ikolomani! What is it, hon. Rachel Shebesh?

Mrs. Shebesh: On a point of order, Mr. Speaker, Sir. I need your guidance on procedure. The matter that hon. Khalwale is canvassing was already canvassed earlier in the morning, seeking a similar ruling from the Chair. I just want to get guidance on whether you can ask for a ruling on the same matter on the same day and on the same issue because he had already asked for this ruling and the Deputy Speaker spoke on it and made a ruling on the same.

Mr. Speaker: Order, the Member for Ikolomani! Until I hear the Member for Ikolomani fully, I am not certain that I can make that finding. However, after I have heard him, obviously, he knows the rules.

Dr. Khalwale: Thank you, Mr. Speaker, Sir. Section 6(2) puts a very high standard that the names we take to the East African Legislative Assembly (EALA) must capture political party interest, regional balance, shades of opinion, gender issues and special interest groups, and especially provides that we must have one-third of the nominees being women. The weight of this matter is such that the Constitution of Kenya goes ahead in Article 56(a) and talks about what we are doing, where it is trying to safeguard the interests of the minority and marginalized groups. In Article 100 of our Constitution, again, this matter is re-emphasized and this is the Article that provides that representation of marginalized groups must be promoted. Article

232(1)(g) of the Constitution, again, speaks about this, and this is the section that deals with the values and principles of public service. Here, the Constitution emphasizes the need when one is looking for public office to be subjected to fair competition and merit as a basis for appointments and promotions.

Article 27(8) of our Constitution which deals with equality and freedom from discrimination, again, speaks about the highest standard. When this is read together with the Treaty for the establishment of the East African Community, Article 50--- Article 50 is actually identical to rule 6(2). This is not the first time this Parliament is giving positions to Kenyans. This Parliament, right from the day we started with the appointment of the Chief Justice, has been going through this exercise of vetting which is similar to this. In all those stages, when the House was making those decisions, at no time was the House presented with one name. The House was presented with enough names to choose from.

Finally, I am requesting that we respect this high standard because I have looked at the nominees given by two political parties. The Kenya African National Union (KANU) has given one name while the Orange Democratic Movement (ODM) has given nine names. In so doing, they have given us a mere 12 plus nine names which give a total of 21 and denied us an opportunity to choose from a total of 3 times nine which is 27. I am inviting you and requesting you that you allow the Kenyans, out of the 117 who were advertized as having qualified to be given an opportunity to know why they missed out so that the process of knocking them out is made public in this House.

Secondly, I am requesting that you consider urging both KANU and the ODM to bring in the other Members they left out so that KANU can have, at least, three which we can choose from. The ODM should bring the balance of six which we should choose from. Personally, I am prepared to vote for some of these names but I am uncomfortable that Kenyans who thought that they went into a competition are losing without knowing what was taking place behind this.

The Prime Minister (Mr. Raila): On a point of order, Mr. Speaker, Sir. I am taken a back. The hon. Member is referring to KANU. To my understanding there is PNU and ODM. I do not know whether the hon. Member is referring to the PNU or to the Kenya African National Union; *mama na baba*.

Dr. Khalwale: Thank you, Mr. Speaker, Sir. For the information of the Prime Minister, I have a document here that shows how the ballot will be tomorrow. The ballot is telling us that Sarah Bonaya will have no competition. We will vote “Yes” or “No”; the reason being that the PNU side of his Government is trying to protect the interest of KANU. So, if they want to do that, we have no problem. However, they can allow KANU to give us two more names so that we be seen to be voting rather than look like we are being taken to the bad old good days when we used to vote for one President by saying “Yes” or “No”. That was not the intention of the new Constitution.

Mr. Speaker, Sir, this is to the direction of the Prime Minister. His party, the ODM has only nine names. We expect that since you have five slots and you had many candidates, 65 of them, we expect that you give us 15 names from which to choose from and the criteria that you used to drop the other people so that Kenyans are not subjected to the whims of political party leaders. We want Kenyans to be subjected to a uniform standard.

With those remarks, I move that you make a ruling.

Mr. Midiwo: Mr. Speaker, Sir, you took us through a ruling this afternoon that urged Members to get used to interpreting the law properly. On 16th May, Members were called and taken through the rules. By that time, the rules had not even been tabled in this House. Rule No.6

is very clear and it says that we could pick a minimum of three but not more than 15. I may be directed otherwise but my understanding of the Standing Orders---

Mr. Ogiendo: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Chief Whip, do you want information from the hon. Member for “Nyatike”?

Mr. Midiwo: Yes, Mr. Speaker, Sir.

Mr. Ogiendo: Thank you, Mr. Speaker, Sir. The information is coming from the Member for Rangwe. I am a Member of the Departmental Committee on Defence and Foreign Relations and Rule No.6 which was adopted by this House says that parties for every slot shall nominate not more than three candidates. That is the information I wanted to pass on to the Chief Whip.

Mr. Midiwo: Mr. Speaker, Sir, not more! Not more! However, the rules of this House are also clear and I want to plead with Dr. Khalwale. Just like when we elect the members of House committees, you cannot subject us or we cannot subject our nominees to your vote because we do not belong to the same party with you. We have to find a way and, in fact, for you to say that you want to choose for Kenya African National Union (KANU) which is an affiliate member of the Party of National Unity (PNU) and you do not belong to a parliamentary party, that in itself, to me is asking for too much because---

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

Mr. Midiwo: You do not belong to a parliamentary party. You are playing a game which you will not doctor.

Mr. Speaker: Order, hon. Midiwo! I have discretion to allow a point of order notwithstanding that you are on a point of order particularly when you slip into an area where you begin to get a bit passionate.

(Laughter)

Mr. Speaker: Hon. Dr. Khalwale, what is it?

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Is the Chief Whip in order to mislead the House that because I am not a Member of his party, his nominees will not be subjected to my vote when we know that when we shall be voting tomorrow, Members of Parliament will carry nine votes? They will vote for nominees from all the political parties that have succeeded. Is he in order to mislead the House?

Mr. Midiwo: Mr. Speaker, Sir, that is an important point to clarify to this House. If you see the position of KANU, where Sarah Godana has been listed, the House can only reject or accept and that is a fundamental issue. It is fundamental because the leeway hon. Khalwale is trying to ask for is that leeway which will have him choosing for that particular party and yet the rules of the House are very clear.

Mr. Speaker, Sir, for whatever he is asking, it is important for you to make this point very clear; that even the nine nominees provided by this House, the House has a leeway of rejecting but cannot import a name from somewhere else and choose for Orange Democratic Movement (ODM) or PNU and vice versa. The Standing Orders are very clear. We cannot be entreated to change them just for reasons and convenience of certain hon. Members of this House because I do not think we will be doing the right thing. How many Members would New Ford Kenya have anyway?

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. I am trying to follow up on what hon. Khalwale has raised. I was begging for your ears because the meeting of 16th of May, 2012

was called as a Speaker's *Kamukunji* for us to consult and agree on a way forward and I was given the honour to chair that meeting. I just want to say that I am disappointed by both sides of the coalition because our agreement then was very clear that we shall deal with hon. Muthama on one side to bring 12 names as the Government Whip on that side of the coalition and then we shall deal with hon. Midiwo to bring us 15 names on this other side of the coalition. I want to say I am disappointed because the same question was raised here on the Floor of the House during that *Kamukunji* and hon. Ojaamong was there amongst others and we were asking ourselves: "Why should we subject the House to voting when the two sides of the coalition can agree on nine names and we come here and simply affirm so that we are not subjected to bothering by other people canvassing for votes"? We got legal counsel on the Table here who was in attendance and he told us that this will violate the Treaty because the ruling by the East African Court of Justice (EACJ) was that we must vote and it will be safer for all the political parties to bring the 12 and the 15 names.

Mr. Speaker, Sir, I am just bringing to the attention of the House that we sit here and agree that we will do things in a certain way and then they are not done in that certain way and then we now have this discussion which we should not have had in the first place if we stuck to our agreement. So, we are guilty. On the side of the coalition of PNU, we ought to have had the 12 that we agreed on and on the side of the coalition of ODM, we ought to have had the 15 that we agreed. So, I do not know how we shall proceed. Maybe we have been overtaken by events because we must produce these names but it is good for us to know.

Mr. Ogindo: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Order! Hon. Mungatana, do you want information from hon. Ogindo?

Mr. Mungatana: Yes, Mr. Speaker, Sir. He is my friend.

Mr. Ogindo: Thank you, Mr. Speaker, Sir. I was in the *Kamukunji* where hon. Mungatana sat and we agreed there that the PNU side was to bring not more than 12 nominees. Similarly, we agreed that the ODM side was to bring not more than 15 nominees. This was founded on Rule No.6 which says: "Each party for every slot shall nominate not more than three names." Not more than three names would range from one to three and the ODM side has brought nine names which are not more than 15 and the PNU side has brought ten names which is not more than 12. So, all this is in compliance with the rule and I remember during my submission that we indicated that there are dynamics of political parties here which needed to be harmonized ahead of the nominations and I believe each and every parliamentary party harmonized their positions.

Mr. Mungatana: Mr. Speaker, Sir, I think we need to be honest with ourselves because when we sit here as a *Kamukunji* we try to make things easy for all of us so that things fly smoothly. In fact, that was why there was that suggestion of us agreeing outside on the nine Members which was overruled by the counsel. So, I do not know how you are going to guide us through this but we must admit to ourselves that both sides of the coalition have not lived up to the agreement that was there. That notwithstanding however, I think we need to find a way to go forward because we agreed again that we are not going to hold up the swearing-in of the Members like we did last time for a whole year. We want Kenya this time not to be in that category.

Mr. Speaker, Sir, so, I think you just need to guide us but we need to admit that we have not done as we ought to have done.

Mr. Speaker: Hon. Members, I would like that we try and manage ourselves well so that we do not have too many contributions on this matter. So, those of you who are still left, please

Speak to aspects which have not been raised up to where we are. Anything which is repetitive, I am sorry, I will have to stop you before you finish.

Mr. Mbadi: Mr. Speaker, Sir, fundamental as the issues raised by hon. Khalwale are, I want to remind the Chair that we are not working in a vacuum. We have the law with us. We have the rules.

Mr. Speaker: Order! You may continue, except for the use of the words “remind the Chair.” Unless you have very good grounds to use those words, I will rule them unparliamentary. For referring them to the Speaker, I am afraid I will rule them out of order.

Mr. Mbadi: Mr. Speaker, Sir, I said that because it was your ruling which was sought.

Mr. Speaker: Order! Reminding me that we are not working in a vacuum, what is that?

Mr. Mbadi: Mr. Speaker, Sir, let me then remind the House that we are not working in a vacuum. We have the rules with us – rules which were passed in this House. I would have expected that hon. Khalwale and hon. Mungatana would have raised the concerns that they are raising today when we were debating the rules because the rule is very clear that a party shall nominate for election under these rules any number of candidates not exceeding three times. So, as long as the number you have brought to us is not more than three times your slot, then you are perfectly within the rules.

Mr. Speaker: Order, Member for Gwassi! You know, the Joint Chief Whip, the hon. Jakoyo Midiwo, Member for Gem, very ably went through that argument and cited Rule No.6. So, you are being repetitive.

Mr. Mbadi: Mr. Speaker, Sir, finally, I want to address the issue that hon. Bonny Khalwale addressed with regard to fairness and competitiveness.

In terms of fairness, I remember that this exercise started by placing adverts in the media, inviting applications from members of the public. In the advertisement, it was indicated specifically that if you want to represent the ODM side of the Grand Coalition, you must apply, indicating so. So, interested parties were required to apply, specifying which political parties they wanted to represent. That is openness.

Mr. Speaker, Sir, a number of Kenyans applied. Sixty-five people applied to represent the ODM and 47 or so other people applied to represent the PNU, being a junior party in terms of numbers. After the applications were received, the process started. The Clerk’s Office did the short-listing and forwarded the names to the various political parties. My political party, ODM, carried out a thorough short-listing. We constituted a panel. After that, the ODM Parliamentary Group was summoned on Thursday, last week, at 6.00 p.m. We sat and we were given nine names, in accordance with the law.

Therefore, as expected, hon. Bonny Khalwale cannot know the process that the ODM used, in terms of competitiveness. Unless he is getting information from the renegade and rebel Members of the ODM, who do not attend the party’s meeting---

Mr. Langat: On a point of order, Mr. Speaker, Sir. The Member for Gwassi has said that there was an ODM Parliamentary Group consultation. The ODM gets many slots because of the number of Members of Parliament, but the so-called Parliamentary Group consultation did not include a majority of the party’s Members of Parliament. Therefore, the list of nominees from the ODM is not out of consultations, as the hon. Member is telling the House.

Mr. Speaker: Order! Order! Member for Ainamoi, that is very good contribution but, as a point of order, try to put the Member for Gwassi in order. I am sorry; it does not pass the test. So, Member for Gwassi, please, do not speak to that matter.

Mr. Mbadi: Mr. Speaker, Sir, if I am not going to speak to that matter, then I have concluded my contribution.

Mr. Speaker: I have ruled it out of order. So, you cannot speak to it.

Mr. Mbadi: Mr. Speaker, Sir, I am obliged but these rebel Members of ODM should be attending Parliamentary Group meetings, if they still want to be considered when the ODM is making decisions. Nobody will help them when they are out there, and when they do not attend Parliamentary Group meetings.

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

Mr. Speaker: What is it, Member for Eldama Ravine?

Mr. Mbadi: Mr. Speaker, Sir, we do not even know whether some of them are still in ODM---

Mr. Speaker: Order! Order, Member for Gwassi! There is a point of order by the Member for Eldama Ravine.

Mr. Lessonet: Mr. Speaker, Sir, is it in order for the Member for Gwassi – the arrogant Member by the name of hon. Mbadi – to continuously refer to others in this House as “rebel Members of ODM”? To the best of our knowledge, there are no rebels in this House. Is he in order?

Mr. Speaker: Order, Member for Eldama Ravine! You know, for those of us who have had a bit of exposure to the law, there is a doctrine that is so cardinal in law: That, he who comes to equity must come with clean hands. He who seeks equity must do equity. So, Member for Eldama Ravine, the Member for Gwassi may have referred to a section of Members of Parliament as “rebels” in a given party but you went on, on your point of order, to refer to him as “arrogant”. So, that just cancels each other. I will make no directions.

Yes, Member for Dujis.

Mr. Duale: Mr. Speaker, Sir, whether you are a rebel or a remnant, you will vote as a Member of Parliament tomorrow. So, even the “rebels” are entitled to vote.

Mr. Speaker, Sir, having said so, I want your direction. You must give direction on this matter. This matter has come of age. This matter came up as a result of the ruling of the East African Court of Justice (EACJ), while sitting in Arusha. The EACJ ruled that Kenya did not follow the treaty for the establishment of the East African Community in terms of the election of her representatives to the East African Legislative Assembly (EALA) in 2001. Kenya lost taxpayers’ money. Business in the EALA was completely disjointed as a result of the actions of Kenya, as a country. That is why we were told that this time round, we must follow Article 50 of the treaty.

We have no issue with the names presented by the different Grand Coalition partners but, as Members of Parliament, under the new dispensation, we must safeguard and protect the due process. That is why we have an issue, which we want you to address. Rule Nos.4, 5 and 6 spell out the process that political parties must follow. This House must be alive to the spirit of the Constitution. Out of the people we are going to elect tomorrow, is there a young man, as provided for under Article 55(b) of the Constitution, which says:-

“The State shall take measures, including affirmative action programmes, to ensure that the youth-

(b) have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;”

Mr. Speaker, Sir, 117 Kenyans applied for these jobs. Sixty-five of them were from one section of the Grand Coalition. The remainder were from the other side of the Grand Coalition.

Under Article 35 of the Constitution, the Kenyans who applied for these jobs are entitled to be told why they are not amongst the persons whose names have been brought to this House. What was the gauging principle? Was the nomination based on loyalty? Was it based on qualification? We are not talking for the sake of talking. We want to protect and defend this process, which will culminate in hon. Duale getting nine ballot papers and voting for the nine Members of Parliament who will represent this country in the EALA.

As a country, our guiding principle should have been the Constitution, and the Elections Act. Under the treaty for the establishment of the East African Community, political parties must have convened – which I believe they have done – Parliamentary group meetings where minutes were taken, information collected and analysed, and conclusions made as to why one group selected nine people and the other group selected 12 people.

Mr. Speaker, Sir, Kenyans out there are in the dark. Failure to satisfy the provisions of Article 35 can make a Kenyan go to court and demand the information.

Lastly, today these names went through a vetting process by a Parliamentary Committee of this House, which looked at the CVs and integrity of the individuals. The Committee will bring its Report to this House before we go into election of this country's representatives to the EALA.

Mr. Speaker, Sir, in your direction, I want you to give us an opportunity to scrutinise the Report of the Parliamentary Committee that has been vetting those individuals since morning, looking into their qualifications, integrity; looking into issues of regional balance, gender balance and whether marginalised groups, disabled people and the youth have been incorporated in the list that has been brought to this House.

Finally, I plead that you give us direction before the D-day tomorrow on how we should go.

Mr. Speaker, Sir, in an election, the cardinal principal is choice. You must be given a choice. When you are told there is a choice of one that you either say "Yes" or "No" that negates the fundamental principle of democracy. If the treaty says "not more than three" the political parties should be very honest to this country and give us 27 members for us to elect nine out of them.

With those remarks, I humbly ask for your direction on this matter.

Mr. Speaker: Order, hon. Members! I shall just take two more. I will begin with hon. Dalmas Otieno, then come back to this side and take one more and that will be it.

The Minister of State for Public Service (Mr. Otieno): Thank you, Mr. Speaker, Sir. I think it is clear to all hon. Members that when you say "party interest", and in addition to that you say "not more than a multiple of three," mathematically you are conveying that there is an opportunity for absolute party interest where absolute party interest will not give you any multiple of the numbers. If you have one slot, you give one name and if you have five slots you give five names. That is absolute party interest.

The next criterion that says "not more than a multiple of three" allows relative party interest. "Relative party interest" now means that the party gives opportunity to the House to accommodate its interests and determine other candidates over and above the absolute number. That is why it is not more than a multiple of three.

In other words, in the case of ODM, if we would go by absolute party interest we would have just given five names. We are allowing the House not to moderate that party interest. So, it is absolute five. The rules allow that a party should express relative party interest and allow the House to make a choice between the absolute number of five and the additional nominees that

you may have. So, ODM gave nine. So, our party interest was not absolutely determined. We said relatively it will be determined by the vote of the House picking any of the nine and giving five.

Mr. Speaker, Sir, my second point is that you cannot have your cake and eat it at the same time. There are hon. Members who remain technical members of ODM by choice but have declared non-participation in ODM parliamentary group meetings, meaning they have no intention whatsoever of subjecting themselves to the ODM party whip. When it comes to obeying the ODM party whip they say “No” but when it says counting themselves as ODM members they say “Yes”. The rules require expression of party interest. The party interest goes beyond the 110 Members of ODM technically or legally in this House. The party interest goes beyond to the general population of the party membership. So, if you deliberately select to belong to the party legally but refuse to obey the party whip, you have already decided that there is an amount of benefit you will claim and beyond that there is an amount of benefit you will lose. That is the truth in this particular situation.

As long as we have not more than 27, there is adequate choice and there is sufficient reflection and conveyance of party interest in the choice. What now remains for the House is to moderate the choice of the nine to absorb all the other criteria taking in the youth, gender and ethnic balance because nine only cannot fully express the ethnic diversity of this Republic. Again, nine only cannot reflect all other interests and groups in this Republic beyond the party interests already accommodated. So, the voting can take place tomorrow for the nine and the input of the Assembly will be sufficient to comply fully with the rules for the election for these posts.

Thank you.

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

Mr. Speaker: He has finished. He has concluded his submissions.

Yes, the Member for Eldama Ravine.

Mr. Lessonet: Mr. Speaker, Sir, I want to start by making reference to Article 81 of the Constitution of this country; the general principles for the electoral system. If you look at Article 81(e), you will find that it talks about free and fair elections. For the political parties to come up with nine names for ODM and 12 names for PNU, they must have conducted some form of in-house election. For them to eliminate from 65 to nine I want to believe that they must have done some bit of election within their party.

I want to ask myself, did those elections which were conducted within those parties meet this attribute of 81(e) of free and fair elections which must be by secret ballot and is free from violence? It is possible that the reason why my Chief Whip did not invite me, for example, is because---

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

Mr. Speaker: Order, Member for Eldama Ravine! There is a point of order for you from the Member for Kisumu Town East.

Mr. Shakeel: Thank you, Mr. Speaker, Sir. My colleague from Eldama Ravine seems to relay the election rules in respect of the Parliamentary Group selection. Election rules require that the Members who are applying meet the minimum criteria in education and qualification. So, when he asks; how did it go down from 65 to whatever, maybe 90 per cent of them were not even qualified. I think that is what the Member of Parliament must bear in mind.

Mr. Lessonet: Thank you, Mr. Speaker, Sir, because I have not really heard any point of order from---

Mr. Speaker: Order! That is not your prerogative. It is for me to decide.

Mr. Lessonet: Mr. Speaker, Sir, I was talking about Article 81(e). Article 38 of the Constitution specifically talks about political rights. That is the Constitution which I want to believe is more superior than the rules we even made in this House towards the nomination of the EALA Members of Parliament.

Article 38(3)(c) says:-

“to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.”

What that tells you is that all the 65 applicants for ODM, if they are eligible the only thing that can stop them from assuming that office is election. We want to do that---

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

Mr. Speaker: Let me hear him a little more.

Proceed, Mr. Lessonet.

Mr. Lessonet: Mr. Speaker, Sir, I was talking about Section 38(3) (c). The way I interpret it, it only means you cannot hold office if elections stop you. It is only elections that can stop an applicant.

Mr. Speaker, Sir, let me read again. It says:

“to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office”.

That shows you it is only elections that can stop that person from holding office. We want to be given the opportunity to stop them from holding office through elections.

Mr. Ochieng: On a point of order, Mr. Speaker, Sir. I have been listening very keenly to the contribution of the hon. Member. However, I wonder whether it is in order for him to talk about elections or Parliamentary Group meetings for ODM yet he is not a Member of the ODM. He is a Member of URP. He has gone public in all public forums to say he does not subscribe to the ODM Party. Is he in order?

Mr. Speaker: Order! Member for Eldama Ravine, that is a legitimate challenge; it is only you who has the facts.

Mr. Lessonet: Mr. Speaker, Sir, I am up to that challenge. That has even been confirmed by the Registrar of Political Parties, that she has no communication to the contrary about myself and other members in relation to the party called ODM.

Mr. Speaker, Sir, as I conclude my contribution, I want to go back to Article 81(b) of the Constitution which says “not more than two-thirds of the members of elective public bodies shall be of the same gender.” The way we are going to do the ballot tomorrow--- If we go ahead with the process as it is now, we are not sure whether it will give us a third of either gender. We want women to compete against women, at least for a third. We will then have guaranteed seats for women and men; it is how we should conduct the election tomorrow.

With those remarks, I want to request that you send back this list to the political parties to enhance the numbers to 15. We were saying “up to three” in the rules in anticipation that there might be less than 27 applicants.

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

Mr. Speaker: What is it, Member for Rangwe?

Mr. Lessonet: Thank you Mr. Speaker, Sir. I have completed my contribution.

Mr. Speaker: Order, Member for Rangwe! It is too late now. The Member for Eldama Ravine has completed his submission.

Hon. Members, I have followed the points of order raised first by the Member for Ikolomani, Dr. Khalwale, and contributed to by many other Members, beginning with the Member for Garsen, the Chief Whip, who is also the Member for Gem, the Member for Gwassi, Mr. Mbadi, the Member for Dujis, the Member for--- I think I am under a duty to acknowledge all the Members who have spoken on this matter.

There was the Member for Rongo, Mr. Dalmas Otieno, who is also the Minister of State for Public Service, and finally the Member for Eldama Ravine and, indeed, as supplemented by many spirited points of order. Significantly standing out was the Member for Rangwe.

Hon. Members, I have applied my mind to those issues as very ably canvassed by those hon. Members. I am able to give directions, more so given the urgency of this matter. The process that we are undergoing derives its legitimacy, first, from Article 50 of the treaty for the establishment of the East African Community. I would want to read the relevant portion of Article 50 in extenso.

Article 50 of the treaty provides as follows:-

“The National Assembly of each partner State shall elect---” Please note; it says, “The National Assembly of each partner State shall elect”. It does not say “the political party shall elect”.

“The National Assembly of each partner State shall elect, not from among its members, nine members of the Assembly, who shall represent as much as it is feasible, the various political parties---”

Note the proviso there. It says, “who shall represent as much as it is feasible, the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in that Partner State, in accordance with such procedure as the National Assembly of each Partner State may determine”.

Therefore, the treaty delegates its provisions to the National Assembly to determine which rules of procedure shall apply. This Parliament was obligated to make rules that would apply to this process. From the information I have, which hon. Members have also spoken to, such rules were passed by this House on the 9th of May, 2012. Subsequently, they were gazetted on the 11th of May, 2012. After gazettelement they became public. Therefore, all Kenyans and all stakeholders then became aware that those were the rules that would govern elections to the East African Legislative Assembly.

Subsequently, there was a briefing aimed at ensuring that all Members of Parliament were sensitized on the rules. This briefing took place at the Speaker’s *Kamukunji* on the 16th of May, 2012. Perhaps, while at this point, note hon. Members that the import of resolutions at the Speaker’s *Kamukunji* has the significance of aligning Members to act in a particular way. It is the duty of the different parliamentary political parties to ensure that the Members of those parties live up to those resolutions. If there is breach or default it is not the duty of the Speaker. The Speaker will not be sucked into agreements between different political parties in Parliament, because the Speaker is supposed to be impartial, non-partisan and, therefore, should not lean one way or the other in respect of political resolutions. I will stay away from being sucked into that area.

Hon. Members, the second matter that is important is with respect to the provisions of the Constitution, which the hon. Member for Eldama Ravine has very ably canvassed, including citing the most pertinent Article, which is Article 81 that relates to elections.

Hon. Members we are all obligated to uphold the provisions of this Constitution, among other things to ensure that elections are free, transparent and fair, and that they are conducted by secret ballot. The elections are due to take place tomorrow in accordance with the Constitution.

I want to believe from information that has been supplied to me because Mr. Lessonet cited an important provision with respect to gender, that one third of elected Members of any organ shall be of either gender. According to information that I have been furnished with from the relevant Departmental Committee, there are 19 nominees. Out of 19, 12 are men and seven are women. So, as far as I am concerned, from where I stand, up to where we are, that Article has been complied with.

(Applause)

If there will be breach, then you will be responsible for it because you will hold the election tomorrow but otherwise the process up to where we are, is compliant.

Hon. Members, the third aspect that one therefore logically has to go to is the rules passed by the House. These rules, as I said earlier, were publicized and passed by this House on 9th May, 2012 largely without amendments except for one minor amendment that was carried in the Committee of the whole House. These rules are now part of the laws of Kenya; they are subsidiary legislation published as Legal Notice No.31, pursuant to the provisions of the treaty for the establishment of the East African Community (EAC) Act. So, hon. Members, whatever transpires with respect to nomination and election of Members of Parliament from Kenya as a Partner State of the EAC must accord with these rules which you passed and which are now law. From the arguments advanced, I am unable to find that so far there has been breach of any of the rules under the package as passed by this House.

The process that has been undertaken up to where we are, as I can see it, I am satisfied that it has fully complied with the rules. There may be issues such as whether or not the Committee has vetted candidates but that is addressed in Rule No.12. It is to this effect and I will read again in extensio:-

“The relevant Departmental Committee shall prepare a report of the meeting with the candidates for tabling before the National Assembly for its information but the report shall not recommend the election of any candidate.”

Rightfully so! The Departmental Committee will prepare a report and table it for information of hon. Members but it will not recommend an election of any candidate. That is left to Members of the House to determine who they want to elect.

(Applause)

Hon. Members, with respect to numbers and this argument was carried by Mr. Lessonet and to some extent by Mr. Duale and Dr. Khalwale, that we ought to have seen more nominees than in one case. One, in the case of KANU and that the argument by Mr. Lessonet is that if there were, for example, 65 candidates applying on the ODM slot, then we should have had more than the number that is here. But as it is, Rule No.6 which has been cited very ably by the Chief Whip is clear. It says that a party shall be entitled to nominate for elections under rules any number of candidates not exceeding three times the figure arrived at. So the figure arrived at in the case of ODM as far as I know was five. So you multiply by three and you get 15. It says the number shall not exceed three times. So if the ODM has nominated nine, they fall within the

rule. I do not see any breach there and certainly it would be, in fact, a breach of the rules if the ODM nominated 65 candidates. So, Mr. Lessonet, your argument is actually misplaced; it is lost.

With respect to the fine argument by Dr. Khalwale, the KANU candidate as nominated on the list falls under the ambit of PNU because KANU is for purposes of this Parliament treated as an affiliate of the PNU divide. So KANU had a right to claim against PNU to ask for its right and then KANU is given its right by being allowed to nominate one from among four. They undergo a nomination process which the Speaker is a stranger but which, as I see, complies with Rule No.6 because they are supposed to nominate up to three times the entitlement. So if they nominate one and you interpret this English; up to and not exceeding, one is not exceeding; it falls within the *proviso*, I am afraid. It would be up to the House then to elect or not elect that nominee.

The process of election, I have agonized over it because the rules do not say how many hon. Members will have to be in the House to elect. The quorum of the House is 30 and so if we have 30 hon. Members in the House when the election is called tomorrow, the election can proceed. If this Member does not garner more than 50 per cent of the votes of those hon. Members present and voting, then she will not have been elected. That is the verifying process. Simple! I understand it and as far as I am concerned, it is straightforward.

Interests that are represented in the candidates nominated; that, as I deliver this ruling, I am unable to know which candidate is what age and so I cannot speak to youth or otherwise but it is the duty of hon. Members to ensure that even as they proceed to vote tomorrow, they have the requisite information and it may be the basis on which they can vote for or vote against any given candidate. So that in a nutshell is my finding that up to where we are, the process of election is fully compliant with the rules as enacted and as passed by this House. It is fully compliant with the provisions of the treaty establishing the EAC and it is fully compliant with the provisions of the Constitution. I so find and rule!

Thank you.

POINTS OF ORDER

STATUS OF REPORT ON APPROPRIATION ACCOUNT/PUBLIC ACCOUNTS

The Attorney-General (Prof. Muigai): On a point of order, Mr. Speaker, Sir. With your permission, I want to make a clarification. At your request, I undertook to have a word with the Minister for Finance, hon. Githae, arising out of a Question raised by hon. Mbadi. At that point, I was made to believe from the information available to me that the report of the Auditor-General on the Appropriation Accounts and other public accounts and the accounts of the Funds of the Republic of Kenya for the year 2010/2011 had not, as required by law, been laid before the Floor of the House. I have now been made aware that this, in fact, did happen on 26th April, 2012. Therefore, I do not think it will be necessary for me to alert the Minister to do so any more I want to share the copy that is available with the Member for Gwassi, who I would imagine intends to interrogate the same at some point.

Mr. Speaker: Very well! Attorney-General, you may table that report. Member for Gwassi, you are at liberty to look at it. Apparently, it was tabled earlier on as the Attorney-General has indicated.

(Prof. Muigai laid the document on the Table)

Fair enough. Chairman of the Committee on Defence and Foreign Relations, you have a Paper to table?

REPORT OF COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS ON CANDIDATES TO EALA

Mr. Keynan: Mr. Speaker, Sir, we have been working very hard today from morning to now to make sure that our EALA candidates meet the requirement of the treaty and now here, I wish to table the report of the Committee on the candidates for the election as Members of the East African Legislative Assembly.

(Mr. Keynan laid the document on the Table)

Mr. Speaker: Fair enough. Because of the urgency of the matter, I have allowed the tabling, but that report shall not be circulated until I have had an opportunity to peruse it. Mr. Chairman, you know that procedurally, that is how we act, but because of the urgency of the matter, I have not had time to peruse it. So, it will not be circulated until I have looked at it and I will do so within the next two hours. It may then be circulated.

COMMUNICATION FROM THE CHAIR

ELECTIONS OF MEMBERS TO EALA

Hon. Members, before we take the next Order, I have Communication to make pertaining to the elections. As you are aware, the House has resolved, pursuant to the Procedural Motion listed on the Order Paper at Order No.8, that it will sit tomorrow beginning from 10.00 a.m. to 1.00 p.m. for the purpose of electing Members to East African Legislative Assembly. I communicate and direct that the election shall commence at 10.00 a.m. and actual voting will proceed up to 12.00 noon. It will be from 10.00 a.m. to 12.00 noon. After 12.00 noon, the Returning Officer and his team will retreat to count the votes. As much as possible, you are aware the way we vote in the House, these votes will be counted in a transparent manner. The outcome will then be known. We will announce the results and close the exercise at 1.00 p.m. as resolved in the Motion.

Next Order!

BILL

Second Reading

THE KENYA SCHOOL OF LAW BILL

*(The Minister for Justice, National Cohesion
and Constitutional Affairs on 29.5.2012)*

(Resumption of Debate interrupted on 29.5.2012)

Mr. Speaker: Order, hon. Member for Vihiga! Did you have the Floor?

Mr. Chanzu: Mr. Speaker, Sir, I had the Floor just before 6.30 p.m. yesterday evening.

Mr. Speaker, Sir, thank you again for this opportunity to continue with my contribution.

Mr. Speaker, Sir, I was saying that this is a very important Bill. If you look at the history of Kenya School of Law, it was started in 1964. But it was only in 1995 when, according to Section 3(3) of the Act, it provided:-

“The School shall be a successor of the Kenya School of Law established under the Council of Legal Education Act of 1995.”

Here, it was just under the Act of 1995. This has taken time from 1964. This Bill now is going to legitimize the Kenya School Law completely. It is important considering that even in the new Constitution, or even the Constitution that we had before, for us to be able to implement what is in the Constitution you must be able to adhere to the law. So, it is very important that we have a school which is formerly created the way this law is creating it, although it has taken quite a bit of time. Laws play a very important role in our society every time.

I can see the Minister and the Attorney General are here. I would like to commend their offices for coming up with this Bill. Ultimately, this Bill is supposed to bring order and discipline in the legal profession and practice. That means that the training at the Kenya School of Law must, as much as possible, be able to anticipate the kinds of acts that those who have been trained are likely to encounter. They are supposed to deal with acts of commission or omission. So, the law should be as comprehensive as possible, taking into account that it will not be very easy to come up with a law like this within a short time. The school was established in 1964. But it was only in 1995 that it was established under the Legal Education Act. It has taken us from 1995 to date to come up with this law.

The training should be able to look into the multiplicity of issues that affect the law. That is because like I said yesterday, there are occasional undue influence activities or actions. There is occasional collusion. I say that in the case of those who practise law, advocates and other interested parties like auctioneers. They collude so that out of the proceeds that the auctioneers realize, they give back to the lawyers. So, it should be able to anticipate all that. We should also look at the society because it is getting sophisticated every time. We should be able to train people with the full capacity to be able to address this issue.

Mr. Speaker, Sir, I was just imagining a situation of the educational and the professional qualifications that people attain. In every profession, it is the best or those who are very knowledgeable in areas, or those who are very qualified and experienced who eventually bring in bad habits. We do not see this happening in offices of very junior people. They do not get themselves involved in corruption or bad practices like planning to steal from clients. I think it is done by people who are very knowledgeable and experienced. So, I was just imagining a situation where we have had institutions which are supposed to aid these professionals to work. For example, we have had the Complaints Commission in this country where individuals who are aggrieved are supposed to report their grievances. However, I do not think these institutions are strong enough to address the complaints that are raised. Sometimes these complaints are thrown away without a thorough follow up. I think this is so because of lack of capacity. Otherwise, if we can discipline these individuals who practise law, other people will be careful when dealing with them. There should be very good linkage between this profession and others

so that whoever involves himself in the acts of omission or commission is thoroughly punished. Such kind of punishment will make other people refrain from such activities.

Mr. Speaker, Sir, I said that for us to achieve Vision 2030, we must have proper laws in place. If we will continue with corrupt practices without proper laws which can apprehend these activities, then I think we shall be working in vain.

Mr. Speaker, Sir, the professional practice is what I want to address here. There must be the element of practice and the practical aspect where they are exposed to what has happened, what is likely to happen or what is happening, so that they are also well versed in what they are likely to encounter because there are also temptations. For example, in many premises we are told not to leave our valuables unattended to. This is because if we were to leave them, for example, in a vehicle which is not attended to, we will tempt people to break it. So, there are temptations which we can only guard against with this kind of law in place.

So, I want to commend, at least, the Ministry and the Office of the Attorney-General for having come up with this Bill. At least, it is an indication that we, as a country, are willing and ready to change. We are ready to leave behind the past and forge ahead.

So, with those many comments, I beg to support the Bill.

Mr. Njuguna: Thank you, Mr. Speaker, Sir. I will also contribute very briefly on this Bill. Let me start by thanking the Minister for moving his second Bill in this House and overwhelmingly support the establishment of this new school. With the new school, the country will experience sanity, sobriety and even value and morals from the people who will be trained there. In this country, we have seen lawyers and people who have not really gone through the correct system masquerading as advocates. The end result has been citizens being given---

Mr. Speaker: Order, Member for Lari! There is a matter you have just asserted that does not appear to be correct and I will not let it remain on the HANSARD as such. That, in this country we have lawyers masquerading as advocates. Lawyers become advocates, and so you cannot say that lawyers masquerade as advocates. You can only talk about unqualified persons masquerading as advocates. So, you must withdraw that part and correct it. Articulate it properly.

Mr. Njuguna: Most obliged, Mr. Speaker, Sir. I correct it by saying that there are some lawyers in this country who have not been performing well while executing their mandate in our courts of law. I think with the establishment of the new school, the training will be able to produce and deliver to the country qualified lawyers.

The new school will be expected to have a Board of Directors. In my view, the membership of the Board of Directors misses membership from the private sector and Central Organization of Trade Unions (COTU). I think these are bodies that should be represented in the composition of the Board.

Concerning the Chief Executive Officer of the Board, it is clearly indicated that this will be a competitively selected Chief Executive Officer. Being a school just like the University of Nairobi or any other institution, it is important that we have an assistant or somebody to deputize the Chief Executive Officer in case of something. That one is also missing. In my view, with the Chief Executive Officer and the Deputy Chief Executive Officer, it will be imperative that we consider gender balance in the membership of the Board. The new school will be expected to solicit or get funds or grants from donors. This Board will be expected to utilize those resources for the benefit of our country.

The admission to this school will be expected to be expansive to allow more admissions with the rising population of our people in this country. Therefore, admissions should also be

open and wide so that all areas of this country will be given opportunity. There should be students in this school even from the marginalized area.

With this establishment, the Government, therefore, will be expected to pump in more resources because this will be the main School of Law in this country, the way we started the Royal College in this country. The school will be expected to have more resources and as the institution grows, it will be expected to devolve campuses to all the counties in the country so that the citizenry can be served in their own counties.

The lawyers who will come out of this institution will be different from those lawyers that we have seen in practise in this country. We have seen even the Law Society of Kenya (LSK) disciplining some members because at times they are found to have been misappropriating clients' money. So, this institution will be expected to produce the most qualified lawyers to meet the demands of a new Kenya – a Kenya that has been yearning for better services from this school.

With those few remarks, I fully support this Bill.

Mr. Mututho: Thank you very much, Mr. Speaker, Sir. I rise to support this Bill and very quickly, I will say it is long overdue because in itself and its entirety, it standardizes the practice of those who are in this noble profession. You noticed that in the last Constitution there was general bashing of people who were in this profession. It is only them who had to go through this issue of vetting and the general discomfort in public was a manifest of some of the lawyers who may have tried to do exactly what is not prescribed in this noble profession. For it to glitter again, we need this school like yesterday.

Mr. Speaker, Sir, however, since this is a standardization law, for those ones who fall short of that standard grossly - you will recall that in this honourable House once in a while we also fall short of the expected standards - there should be a good punitive measure. The measure will prescribe preferably under Clause 20(b) that such people who have hitherto qualified and for health reasons like too much alcohol or drugs or something like that, continued to do things which are ordinarily not very noble for this profession; there should be a clause there created that will allow a recall clause for the award from that school such that such a person does not continue practising or enjoying the services and facilities that are supposed to be as empowered under the awards under that particular clause. That is there in all professions. In all legal professions that is quite normal.

I also take comfort for your acceptance of a paralegal team in this school. You are looking at everybody and you have given them a very good chance. It also gives you a very good opportunity to check up to Form Four to see what a student attained. At that point, I am sure the school will also be able to check again how true that qualification is. We are aware that there have been so many points. There are bogus scholarships and for those who took a shortcut by going overseas and other places, you have a chance to make sure that they do not get admitted there because your minimal requirement at stage two does not apply.

I support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Thank you, Mr. Speaker, Sir. I just want to thank all the hon. Members who have contributed to this Bill and who have supported it. It is going to set new standards in legal training in our country. The concerns raised, I think are matters we are going to look at, particularly the concern raised by hon. Karua about fees in terms of making legal education accessible and affordable to all Kenyans. These are some of the concerns that we will be addressing as Government as we move forward.

With those few remarks, I move.

(Question put and agreed to)

Mr. Speaker: Next Order!

Second Reading

THE LEGAL EDUCATION BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Speaker, Sir, I beg to move that The Legal Education Bill, Bill No.63 of 2011, be read a Second Time.

Mr. Speaker, Sir, the Bill on legal education seeks to separate the Council of Legal Education (CLE) from the Kenya School of Law. The Bill seeks to give new statutory powers to the CLE and create a body that is legally competent and financially viable, with full regulatory and oversight mandate – powers and functions over all aspects of legal education and training in Kenya.

These include paralegal training, university legal training, post-university professional training, and continuing legal education. This will go a long way in equipping our trainees in law with proper knowledge. It will also provide policy direction to all providers of legal education at the tertiary level with further overall objectives of improving the quality and delivery of legal services in Kenya.

Mr. Speaker, Sir, the major highlights of this Bill include, firstly, to supervise and control legal education and training; and, secondly, to advise the Government on matters relating to legal education and training. As we said while moving The Kenya School of Law Bill, there has been a proliferation of institutions training people in legal education. We need a regulatory body to regulate and set standards in legal training, and carry out a supervisory role.

This is the role that the CLE is going to be playing. The Council shall be responsible for setting and enforcing standards of legal education in the country in areas such as the recognition and licensing of legal education providers; accreditation of legal education providers, and the harmonisation of legal education programmes, amongst other functions.

Mr. Speaker, Sir, the CLE shall, in consultation with the Commission for Higher Education (CHE), make regulations for persons seeking to enrol in legal education. Those programmes will then be controlled, regularised and standardised. The CLE will also establish criteria and mechanisms for monitoring and valuation of foreign institutions offering legal education.

Apart from setting standards, the CLE will also ensure that all those who have trained outside Kenya are also evaluated to ensure that foreign legal institutions do not give us half-baked lawyers. Those lawyers who come from foreign institutions can only come to our law schools through a proper evaluation process that will ensure that we maintain standards, nationally and internationally.

Mr. Speaker, Sir, these are some of the functions that the CLE will be playing. We have a history of people who have probably failed exams in this country and gone to foreign institutions and come back to become lawyers.

Mr. Speaker: Order, Minister! We have come to the end of our time today.

ADJOURNMENT

Mr. Speaker: Hon. Members, the House stands adjourned until tomorrow, Thursday, 31st May, 2012, at 10.00 a.m.

The House rose at 6.30 p.m.