

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 9th October, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

UNILATERAL FREEZING OF CDF ACCOUNTS

Dr. Nuh: Mr. Speaker, Sir, I beg to ask the Minister of State for Planning, National Development and Vision 2030 the following Question by Private Notice.

(a) Why has it taken the Minister too long to appoint a substantive Chief Executive Officer (CEO) to the Constituency Development Fund Board considering that the current CEO and heads of departments in the board have been in acting capacity for more than a year?

(b) Why has the Minister directed unilaterally the freeze of all CDF Constituency accounts by 4th December, 2012?

Mr. Speaker: Minister of State for Planning, National Development and Vision 2030.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. I am sorry I am not a Minister but Mr. Oparanya was unable to get any colleague. So, he asked that this Question comes at the end of the Question Time because he has been delayed in some function.

Mr. Speaker: Fair enough, Member for Ikolomani. But there is a more respectful way that you will have dealt with that. Perhaps, you need just to note and next time you can improve on how you deal with a matter like that.

Member for Kilome, please, proceed.

ORAL ANSWERS TO QUESTIONS

Question No.1784

PAYMENT OF FEES TO PRIVATE LAWYERS BY CBK

Mr. Speaker: Order, hon. Members. I have just received information now that there is agreement between both the Minister and the Questioner - Member for Kilome - that so as to avail all the requisite information, this Question be deferred. Although it is on the Order Paper, I think both of them, on reasonable grounds which are in writing, are unable to be here this afternoon.

So, on that basis, we will defer this Question to two weeks away by the concurrence of both the Minister and the Questioner.

(Question deferred)

Member for Wajir South, please, proceed.

Question No. 1292

EMPOWERING OF YOUTH THROUGH APPOINTMENT
TO COMMISSIONS/TASK FORCES

Mr. Speaker: Mr. Sirat is not here? Anybody with an idea as to what may have happened to Mr. Sirat? There is none from his neighbourhood? At least, this time, I am prepared to be very accommodative. Question dropped!

(Question dropped)

Member for Yatta, please, proceed!

Question No.1679

NON-DISBURSEMENT OF LOANS TO STUDENTS BY HELB

Mr. C. Kilonzo asked the Minister for Higher Education, Science and Technology why the Higher Education Loans Board (HELB) is not giving loans and bursaries to students abroad.

Mr. Speaker: Minister for Higher Education, Science and Technology. It would appear that even for the Frontbench, the weekend was, perhaps, too hectic. Minister of State for Public Service, are you able to hold brief for the Minister for Higher Education, Science and Technology so that you give us some indication on what we can do with this Question?

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I have no idea why both the Minister and the Assistant Minister are not in, but I could undertake to pass the information to them on the serious manner in which the Speaker takes these issues.

Mr. Speaker: Yes, indeed. So, for the time being, we will defer the Question and revisit it towards the end. Maybe you will have a stronger position to indicate to the House.

Next Question by the Member for Molo!

Question No.1752

REHABILITATION OF LARE-NAISHI CEREALS BOARD DEPOT

Mr. Kiuna asked the Minister for Agriculture:-

(a) what measures the Government is taking to ensure that farmers in Nakuru County are protected from exploitation by middlemen or brokers, considering that many are expecting a bumper harvest this year;

(b) when the Ministry will rehabilitate the Lare-Naishi Cereal Board Depot; and,

(c) how many cereal depots the Ministry will open to buy all the cereals in the county.

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

(a) The Government, through the National Cereals and Produce Board (NCPB), is buying maize for Strategic Grain Reserve (SGR) to cushion farmers from exploitation by middle men.

In addition, the Government is implementing warehouse receipt system in which farmers can store their maize to sell at their own time.

(b) The NCPB is in the process of identifying a suitable storage facility. I would like to request the hon. Member to be there on Thursday this week at 10.00 a.m. The Managing Director of NCPB will be there with his team and the provincial administration trying to identify a place where they can buy maize from. The facility at Lare-Naishi is on a temporary arrangement since the buying center's facility was completely damaged beyond rehabilitation.

Mr. Speaker, Sir, if we were to build a store in a hurry now, it would cost about Kshs8 million. The NCPB does not have money now. However, they have put it in their budget. They will construct it in the coming financial year. In the meantime, Lare-Naishi farmers are advised to get services from the Elburgon Depot.

(c) The county has six operational depots which include Nakuru, Solai, Subukia, Naivasha, Elburgon and Olenguruoni. All of them are open to buy maize from farmers.

Mr. Kiuna: Mr. Speaker, Sir, I am very grateful to the Assistant Minister for that answer. I have also received the good news he has just mentioned. I am very much ready to go back home and welcome the Managing Director of NCPB. However, although the Assistant Minister has taken that step, could he also accompany us so that he can see the problems that my farmers are going through? We are expecting to have the biggest harvest we have ever had in five years. I would like the maize to be bought directly by NCPB.

Mr. Ndambuki: Mr. Speaker, Sir, I would have really liked to accompany him. However, I have a farmers' field day on that day. He will, nonetheless, have enough officers who will be accompanying the Managing Director and the hon. Member's problem will be sorted out that day.

Mr. Chanzu: Mr. Speaker, Sir, in part "a" of the answer, the Assistant Minister said that the Government is purchasing the maize through NCPB, I would like to know from him how much the NCPB is paying per bag and whether in that pricing, the NCPB is taking into account the cost of the inputs to the farmers.

Mr. Ndambuki: Mr. Speaker, Sir, currently, the price is Kshs3,000 per a bag of 90 kilogrammes. Over and above that, the farmers are also getting subsidized fertilizer. So, I think they are fairly compensated.

Mr. Mututho: Mr. Speaker, Sir, how much money has the Ministry set aside for the purchase of maize in Lari area specifically because I could go there and buy a few bags?

Mr. Ndambuki: Mr. Speaker, Sir, as you are aware, the buying is being done by the Ministry of State for Special Programmes. I do not have the actual figure of the money that the Government has allocated that Ministry to buy the maize. However, I know they will buy maize because, at the moment, we have only 2 million bags and they have to buy more maize to reach the required levels.

Mr. Koeh: Mr. Speaker, Sir, the Ministry over time, has been delaying the payment of cereals deposited by farmers. In fact, even the fertilizer he is talking about came after the farmers

had actually planted. What strategy do you have to make sure that you buy all the maize; aware that your interest is to ensure that farmers plant, sell and are able to plant again?

Mr. Ndambuki: Mr. Speaker, Sir, I know that in the previous season, it is true that the fertilizer was delayed. The delay was because we got the money late. I can assure Members that now we have the fertilizer in regions where they are supposed to plant. The fertilizer has been supplied and is in the godowns.

On buying maize, as I said, it is not the Ministry of Agriculture that is doing so. It is the Ministry of State for Special Programmes for the Strategic Grain Reserve (SGR).

Mr. Mureithi: Mr. Speaker, Sir, I am grateful to hear the Assistant Minister say that he is going to buy the bumper harvest that is expected in Molo. I would like to get the assurance of the Assistant Minister that in other areas like Nyandarua and Ol Kalou Constituency, which have experienced a bumper harvests unlike many years in the past--- What measures has he put in place to make sure that they are not exploited by middle men?

Mr. Ndambuki: Mr. Speaker, Sir, all the depots of NCPB are open. In fact, in some areas where the crop is ready, they are buying. I can assure the hon. Member that we will try as much as possible to buy as much as we can afford.

Mr. C. Onyancha: Mr. Speaker, Sir, with full knowledge that there may be a shortage of maize this year considering the disease in South Rift, Nyamira, Kisii and Transmara, could the Assistant Minister tell us what measures he is taking to enable those farmers produce maize as soon as possible?

Mr. Ndambuki: Mr. Speaker, Sir, it is true we lost a bit; not a lot. We are still going to get over 35 million bags. The Ministry has been giving subsidized certified seeds to those areas and also fertilizer to help them get back on their feet and grow more.

Dr. Munyaka: Mr. Speaker, Sir, in the South Eastern area of Kenya, we are expecting the short rains. In the past, we have been able to assist poor farmers to get free seed. What plans do you have to assist them this season?

Mr. Ndambuki: Mr. Speaker, Sir, already, certified seeds are in all the districts of South Eastern area, ready for distribution to farmers.

Mr. Speaker: Last question, Member for Molo.

Mr. Ndambuki: Mr. Speaker, Sir, I would like the Assistant Minister to reassure this House that whatever recommendations that will be made by the directors and farmers of Lari Division will be implemented. I will never ask this Question again in the course of this year.

Mr. Ndambuki: Mr. Speaker, Sir, already, they have been there. They were there last week and they are going to be there again this week. They are waiting for you to assist them identify a place to use as a temporary store in order to buy maize. The maize will then be transported to Nakuru. It will be sorted out once you go there. If you have one store, you can donate it yourself.

Mr. Speaker: Member for Migori, next Question!

Question No.1795

TARMACKING OF KAKRAO-OGWEDHI-MIGORI-
NYARONGI-MACALDER ROAD

Mr. Pesa asked the Minister for Roads:-

(a) what plans the Minister has to tarmac Kakrao-Ogwedhi-Migori-Nyarongi-Macalder road cutting across Migori and Nyatike Constituencies; and,

(b) how much money the Ministry has set aside to carry out a feasibility study on the said road in the 2012/2013 Financial Year.

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

(a) My Ministry, through the Kenya Rural Roads Authority (KERRA), is in the process of carrying out a feasibility study and detailed engineering design for Kakrao-Ogwedhi-Migori-Nyarongi-Macalder road. Thereafter, we will source for funds for its upgrading.

(b) Kshs20 million has been set aside for carrying out the feasibility study on the said road.

Mr. Pesa: Mr. Speaker, Sir, I want to thank the Assistant Minister for giving that good answer and indicating that they have taken this road on board.

But we have very bad sections of this road, especially the one between Mikindo and Mtave School over River Nyasarara. We cannot pass from one side to the other.

Secondly, Mr. Speaker, Sir, we have the other road between Kona Kogwang and Ogwethi which needs emergency attention. What plans and funds has the Assistant Minister put in place to ensure that these sections of the road are repaired with immediate effect, so that people will not continue suffering?

Dr. Machage: Mr. Speaker, Sir, the said roads have continuously been improved using the 10 per cent and the 22 per cent Road Maintenance Levy Funds. However, I have allocated a further Kshs10 million to address the said parts of the road that the hon. Member has alluded to.

Mr. James Maina Kamau: Mr. Speaker, Sir, I would like the Assistant Minister to tell us how long it takes for the actual construction to be undertaken after a feasibility study has been done. We know of cases where feasibility studies have been done for quite a lot of roads, but the actual construction takes ages to commence.

Dr. Machage: Mr. Speaker, Sir, there is actually no fixed time set aside for implementing the reports of road assessments. After those reports, we begin seeking funds from the Government and donors to implement the said projects. So, it also depends on the availability of funds in the Government and with our friends.

Mr. Ochieng: Thank you, Mr. Speaker, Sir. The road between Kisii and Kakrao is very narrow although the traffic on this road is very heavy, including the tractors that haul cane to Sony Sugar Factory. When will the Ministry expand this road so that it can accommodate the volume of traffic that uses it?

Dr. Machage: Mr. Speaker, Sir, I am very much aware of the said road; indeed, it is narrow. But in the last one year we have tried to expand the roads by making sure that the shoulders are quite useful in case of meeting the tractors on the road. As I said, this road is at the design stage. This road is very much on the list as a prioritization for improvement and expansion as an A1 project in that area.

Dr. Khalwale: Thank you, Mr. Speaker, Sir. The Assistant Minister has repeated what he has said many times in this House; that they will source for funds. Many roads in the country are waiting for them to get those funds. Could he tell us what criteria they use in the Ministry or as a Government to decide which road will receive these funds as a priority because we know that certain parts of this country have enjoyed more kilometres of tarmacked roads than other areas. For example, if you go to Central Province, roads are very well done. Recently roads in Nyanza Province are very well done. Could he tell us the criteria they use to prioritise construction of roads in this country?

Dr. Machage: Mr. Speaker, Sir, let the truth be said because roads can never be hidden under the table. It is true that some parts of this country have, not only a better road infrastructure than others---. That is really the truth. I do not have to say otherwise to this House. This anomaly is as a result of history. Unfortunately, not much can be done about that history. But the Ministry has---

Mr. Speaker: Order, Assistant Minister! There is a point of order. What is it, the hon. Member for Dujis?

Mr. Duale: Mr. Speaker, Sir, could he confirm to the nation that certain parts of this country will never know of good roads? Is he in order to say that history will judge us harshly because there is nothing much the Government can do about it?

Mr. Speaker: Order! Assistant Minister, you need not respond to that; it does not pass the test.

Proceed with your answer.

Dr. Machage: Thank you, Mr. Speaker, Sir. The Ministry has not---

Mr. Speaker: Order, Assistant Minister! There is another point of order.

What is it, the hon. Member for Gichugu?

Ms. Karua: Thank you, Mr. Speaker, Sir. Did you hear the Assistant Minister say nothing can be done about history, whereas it is quite clear that Article 204 of the Constitution compels the Government to set up a fund to redress these imbalances? Is he in order to mislead the House and the nation that nothing can be done?

Mr. Speaker: Assistant Minister, that is valid.

Dr. Machage: Mr. Speaker, Sir, the honorable gracious lady---

(There was a technical hitch)

Mr. Pesa: Thank you, Mr. Speaker, Sir. We expect this road to be tarmacked because there are no funds to tarmac Road C13. This road will help so many people in that area. How soon will the feasibility study on this road take to be completed, so that we get it tarmacked?

Dr. Machage: Mr. Speaker, Sir, it is true Migori County has very poor infrastructure in terms of bituminized roads. That is a fact. Apart from the A1 Road that traverses to the Tanzanian border to Mwanza, there is no other road. It is also true that C13 has slackened in progress because of the National Environment Management Authority (NEMA), who interfered with the progress of building C13 because of the so-called breeding grounds near the Mara River. That is yet to be solved, but we have decided to re-plan the road. This road we are talking about will be part of the branches of the Northern Transport Corridor. We are soon getting donors for this road. I expect the feasibility study for this road to be finished by the end of the second quarter of this financial year.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: The hon. Member for Nyatike.

Question No.1461

EXPENDITURE ON SECURITY ROADS IN NYATIKE DISTRICT

Mr. Anyanga asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he could provide details of the security roads in Nyatike District, indicating the distance, area covered as well as how the maintenance and rehabilitation of the said roads have been undertaken

(b) whether he could provide the names of the companies that have been carrying out maintenance and rehabilitation of the roads from 2010 to date; and,

(c) how much money has been voted for the security roads in Nyatike in the last two financial years.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Khang'ati): Mr. Speaker, Sir, I beg to reply.

(a) The following is a list of security roads in Nyatike District and their corresponding lengths. One, Muhuru-Kuwait Beach in Echo Olasi is 7.5 kilometres. Bande to Tito is 3.5 kilometres. Muhuru-Wothu-Woki (White Rock) is six kilometres. Guka-Nyamenga to Oodi Beach is four kilometres.

Mr. Speaker, Sir, a total of Kshs2 million had been allocated for the construction/rehabilitation of Muhuru to Kuwait Beach to Echo Olasi Road on 27th March, 2012; that is during the Financial Year 2011/2012, vide Authority to Incur Expenditure (AIE) number A654677.

However, due to the logistical challenges involved in tendering for the intended works, the funds were returned to the Ministry Headquarters at the closure of the financial year without meeting the purpose for which they had been voted. This is a matter which is regrettable, but we have made arrangements for the said Kshs2 million again to be re-voted to construction/rehabilitation of the same road in 2012/2013. The hon. Member has seen me. I have already spoken to the accounting officer with a view of having these funds released as early as possible so that these roads can be put in good condition and be used by all motorists.

Finally, Mr. Speaker, Sir, I am not able to provide the names of the companies that have been carrying out maintenance and rehabilitation of the roads from 2010 to date, as the hon. Member had requested, since these security roads have not been rehabilitated.

Mr. Anyanga: Thank you, Mr. Speaker, Sir. The Assistant Minister has confirmed to this House that the money totaling to Kshs2 million was taken back to the Ministry. He has confirmed again that it is regrettable. Could he, please, confirm to this House when they will start the construction of this particular road where Kshs2 million has been allocated?

Mr. Khang'ati: Mr. Speaker, Sir, we have agreed with the accounting officer that the works should commence before the end of this month.

Mr. Njuguna: Thank you, Mr. Speaker, Sir. While thanking the Ministry for putting up some security roads in my constituency, mainly at Gituamba Location, what plans do they have to continuously maintain these roads?

Mr. Khang'ati: Mr. Speaker, Sir, my Ministry's concern is that all security roads which have been identified should be in good condition. Unfortunately, we have limitation of funds. As I am speaking now, we had requested for Kshs500 million from Treasury, so that we could maintain a total of 176 roads in the whole country. Unfortunately, the Treasury only gave us Kshs100 million. Therefore, it becomes difficult to use Kshs100 million for work intended to be done by Kshs500 million. So, I cannot, at this point in time, confirm that in his constituency, where we have already spent some money, we will commit further funds. But should sufficient funds be voted, then this consideration will be taken seriously.

Mr. Pesa: Mr. Speaker, Sir, security roads are very useful, especially for the security personnel in areas where there are incidents of cattle rustling, for example, Migori. Could the Assistant Minister tell us the policy the Ministry has, especially in constructing roads in such areas where cattle rustling takes place?

Mr. Khang'ati: Mr. Speaker, Sir, the responsibility of construction and maintenance of roads does not fall under my Ministry, but lies entirely with the relevant agencies under the Ministry of Roads. But on the advice of our security agencies, we undertake to make certain roads passable for purely our operational purposes.

Mr. Koech: Mr. Speaker, Sir, the Assistant Minister alluded to the fact that he cannot provide names of companies that did some of these roads. Some of these companies sometimes mess up the roads. Could he give us the names as at last year or tell us a comprehensive reason he cannot disclose these companies?

Mr. Khang'ati: Mr. Speaker, Sir, I was strictly answering the Question which he asked me. He asked me to give the names of contractors who undertook maintenance of roads in Nyatike District between 2010 and 2012. I cannot give the names of the contractors who have not done any roads in Nyatike. I have acknowledged here that we have not done any road in Nyatike in the said period. So, if we have not undertaken any works there, logically, no contractors have been involved. So, there is nothing that we are trying to hide.

Mr. Anyanga: Mr. Speaker, Sir, allow me to thank the Assistant Minister because he has accepted to start the construction of Muhuri-Kuwait Beach-Echo Olasi Road. Knowing very well that Nyatike District borders Tanzania and Uganda, could he consider giving us money for the construction of Bandetito, Muhuru-Woth-Woki (White Rock) and Guka-Nyamenga-Oodi roads? Those are very technical names.

Mr. Khang'ati: Mr. Speaker, Sir, as a matter of fact, the Member has dialogued with me. We have talked. I have already given an undertaking that we will start by doing 7.5 kilometres; that is Muhuri-Kuwait-Beach-Ibencho-Obasi Road. His constituency, being a border constituency and more specifically being the most immediate constituency to Misingo Island, I will endeavor, together with my Accounting Officer, to look for some additional funds to do possibly one more road.

Question No.1800

TERMINATION OF SERVICES OF DR. BERNARD K. ROP

Ms. Karua asked the Minister of State for Public Service why Dr. Bernard Kipsang Rop, a former Commissioner of Mines, was interdicted and eventually terminated from service.

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I beg to reply.

Dr. Bernard Kipsang Rop, former Commissioner of Mines, was interdicted and his services eventually terminated on account of gross misconduct. His case had been presented to a Ministerial Human Resource Management Advisory Committee for investigations. The Committee, after investigations, recommended his interdiction with effect from 17th August, 2010. His case was subsequently submitted to the Public Service Commission (PSC) on 15th December, 2010. The PSC terminated his services with effect from 17th August, 2010.

It should be noted that this is an officer who had retired from the mainstream Civil Service on the 50 year rule and had gone to work with the universities, but had been re-engaged on a three year contract on the basis of expected expertise that was required by the Ministry.

Ms. Karua: Mr. Speaker, Sir, this is a very sad case which calls into question the fairness of the processes of both hiring and firing, not just within the Government, but of the PSC. The Minister has just said that his services were terminated for gross misconduct. This is a very senior officer, hired as a Commissioner of Mines and with a very distinguished resume. The truth of the matter is that he was fired because he differed with the Permanent Secretary. In fact, he insisted on following the proper procedures to license miners.

Could he tell us what misconduct was alleged on the Dr. Rop and the processes that were employed to verify the allegations?

Mr. Otieno: Mr. Speaker, Sir, the investigation was into seven acts of misconduct. I beg to read them.

(i) Misinformation to the Ministry of Environment and Mineral Resources on matters of gold mining by Kilima Pesa Mining Company, which led to the Ministry giving wrong and misleading information to the Government. This was on a matter of estimates for gold reserves available in Kilgoris and Kuria areas. The estimates Dr. Rop gave were way out of what would later on be approved. When the investigators questioned him on this matter, he said that he had given the role to another junior officer who gave him the wrong estimates.

(ii) Poor leadership of the department evidenced by allegations of documents officially submitted and received disappearing from applicants' files in the department.

(iii) Creating unnecessary disputes and delays in the processing of applications for mining rights and being insensitive to time important export applications.

(iv) Promoting corrupt practices like hiding files of applicants.

(v) Causing discontent among staff due to poor interpersonal relationships and movements of staff in unclear circumstances.

(vi) Practising nepotism in the recruitment of casuals and assignment of duties.

(vii) Revocation and appointment of officers vide gazette notices without following due procedure.

These are the seven areas of misconduct that led to the recommendation for the interdiction of this officer who had been re-engaged on a three year contract on the basis of anticipated expertise, but the kind of manner in which he managed the department left a lot to be desired.

Mr. Ngugi: The Minister has said that Dr. Rop was retired under the 50-year rule and then re-engaged on a contractor for a further three years. For all the time that he worked, did he not exhibit the misconduct that he is now being accused of?

Mr. Otieno: Mr. Speaker, Sir, I did not say that he was retired. He retired under the 50-year rule. He opted to retire, joined the university and was re-engaged on contract. When you are re-engaged on contract, contract terms expect specific standards of performance. However, at the higher level of Commissioner of Mines, his performance was below expectations.

Mr. Bahari: Thank you, Mr. Speaker, Sir. Given that the Minister has enumerated the purported misdemeanor on the part of the Commissioner, could he produce evidence of warning letters that have been issued to this officer before a final decision was made to terminate his services?

Mr. Otieno: Mr. Speaker, Sir, Members should appreciate that this was an officer serving on contract. After being engaged on contract terms in the department, he was then

promoted to be the Commissioner of Mines. It is normal that some people may be promoted beyond their level of competence. When you are serving on a contract and you are accused of very many different areas like seven, which are subject to investigations--- He and other officers were interviewed. He was allowed to defend himself because a three-year contract could be terminated. The procedures for terminating a contract are different from the procedures for terminating a permanent and pensionable employment because he had resigned under the first scheme of service.

Mr. C. Kilonzo: Mr. Speaker, Sir, it is amazing to note that when it comes to a small man like Dr. Rop, nepotism is a very big issue while in certain corporations, which the Minister knows, there is serious nepotism--- It is also interesting to note that somebody can be sacked for giving wrong information in the same Government that is busy giving farmers, especially those in arid and semi-arid areas wrong information on rainfall but nobody sacks them. That said and done, I want to hear whether Dr. Rop was given fair hearing with regard to these allegations.

Mr. Otieno: Mr. Speaker, Sir, I have said in my answer, that a Ministerial Human Resources Advisory Committee was constituted to investigate these seven charges and he was called to defend himself on each and every charge. Witnesses were summoned to give evidence on each and every charge. Each of the seven charges was proved satisfactorily. I have looked at the file, and as much as I knew Dr. Rop and expected better performance from him, I could not help being convinced by the report in this particular file. The line Minister was equally convinced that this officer, having been re-engaged on contract, was not delivering on the performance specific to the contract terms. That is why the three-year contract was terminated. The treatment of an officer serving on contract on the basis of specialized knowledge and experience, when the performance is below capacity, based on the charges I have read to the House---- definitely, you do not expect a different action.

Mr. Speaker: The Member for Gichugu, you caught my eye for two things. First, you appear to want to raise a point of order and secondly, you ask the last question. So, do both; raise your point of order first and then ask your last question after.

Ms. Karua: On a point of order, Mr. Speaker, Sir. This is an officer who had worked for the Government almost up to the retirement age of 50 years. Therefore, they must have hired him on the basis of his competence. Secondly, he was re-engaged in 2009 and worked under one Permanent Secretary, Lenaiyapa, for a whole year. The following year, when a new Permanent Secretary came in, there was allegation of incompetence. Is it in order for the Minister to mislead the House by not disclosing that the then Permanent Secretary is the one who had conflict of interest in the issue of granting a mining licence, and that he was the main complainant? He was also the one who set up the committee that examined Dr. Rop and, therefore, Dr. Rop never got any fair hearing. The Minister is misleading the House by claiming that there was a fair hearing.

Mr. Speaker: Order! You cannot make that finding. You can only ask but I will make the finding.

Mr. Minister, that is a legitimate challenge. Are you misleading the House?

Mr. Otieno: Mr. Speaker, Sir, that is an allegation; that there was a conflict of interest between the officer and the new Permanent Secretary. I do not have the evidence to this effect. If the hon. Member has this evidence, she can table it because it has not been included as one of the basis of this termination. If I have that evidence, I will be very happy to investigate further on the matter, all along, taking into account that this was an officer on contract.

Mr. Speaker: The Member for Gichugu, you have the last chance to ask the last question.

Ms. Karua: Mr. Speaker, Sir, you have heard the Minister ask whether I have evidence and evidence is available. However, because the Minister does not appear to have all the facts, I feel that this Question cannot be fully answered in the House. I seek the Speaker's guidance that the Question should, perhaps, go to the Committee on Equal Opportunity. First, because we are talking about an officer who served the Government, retired and then was re-engaged. Purporting to sack him on incompetence is ruining the career of Dr. Rop. Dr. Rop is not looking for a job. He is back to the university but is scared for his name. May I seek your guidance that this matter goes to the Committee on Equal Opportunity to give this distinguished Kenyan a chance to have his side of the story heard and let the House get the truth about the practices that are going on within the civil service and in the Public Service Commission?

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to carefully avoid the gist of the so-called gross misconduct by referring to small matters when he knows that in the file that he has, he has a letter dated 5th August, 2010, written by the Permanent Secretary, Ali Mohammed to Dr. Rop? The letter is referred to as confidential and the Permanent Secretary was trying to arm twist Dr. Rop to award a mining licence to a company called "Cris Cross Mining Company"; a company that had been recommended to the Tender Committee by the same Permanent Secretary? Is he in order to punish a Commissioner of Mining and Geology who was upholding the law and in the process protect a Permanent Secretary who was pushing the same Commissioner to break the law by awarding the tender to the wrong company?

Mr. Otieno: Mr. Speaker, Sir, the information I have does not indicate that the issue of conflict of interest was ever alleged by Dr. Rop during the investigations. If he had tabled the documents on all the seven charges against him, for which he was being investigated to show that they were really minor and that the real reason why he was being interdicted was this and that, it would have appeared in that report. The report I have looked at has not included the allegation of victimization on account of differing with the Permanent Secretary over the award of a particular contract. It was up to Dr. Rop, during the investigations to table his feelings as to the true reasons for his interdiction. If he did not table it or if he did but it was not included in the investigations report, then he is free to do so now and it is possible for the Equal Opportunities Departmental Committee to look into the details of the matter. However, this was an officer, as I have indicated, who was on a three-year contract and what was terminated was the three-year contract that he was serving at that time. Those differences could be factors in the discontinuation of that contract.

Mr. Speaker: Order! Order! Hon. Members, the Question, as appears on the Order Paper, is really, fully answered, as I see it; but the Committee on Equal Opportunity, obviously, has the liberty to inquire into any matter where they believe it falls within their mandate or that any citizen has been treated in a manner that is in breach of equality. So, I will not order the Committee to investigate, but it is within its mandate to do so. If they deem it appropriate to do so, they are at liberty to proceed.

I want us to go back to the Question by the Member for Bura.

QUESTION BY PRIVATE NOTICE

UNILATERAL FREEZING OF CDF ACCOUNTS

Dr. Nuh: Mr. Speaker, Sir, I beg to ask the Minister of State for Planning, National Development and Vision 2030 the following Question by Private Notice.

(a) Why has it taken the Minister too long to appoint a substantive Chief Executive Officer (CEO) to the Constituencies Development Fund (CDF) Board, considering that the current CEO and Heads of Departments in the Board have been serving in acting capacity for more than a year?

(b) Why has the Minister directed unilaterally the freeze of all Constituency Development Fund Committee (CDFC) accounts by 4th December, 2012?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, first of all, I would like to apologise for coming late.

Mr. Speaker, Sir, I beg to reply.

(a) The position of the CEO of the CDF Board fell vacant when the immediate former CEO was sworn in as the Controller of Budget on 27th August, 2011. In addition, various senior positions fell vacant at around the same time due to resignations. By that time, the term of the CDF Board had expired and the Ministry was in the process of reconstituting a new one, an exercise which was completed in September, 2011.

The new CDF Board advertised the position of the CEO and other senior officers on 27th January, 2012. The process took slightly long because the Board had to advertise and receive applications within 28 days, hire a consultant through a requisite procurement process to do the short-listing and conduct preliminary interviews. The CDF Board conducted interviews for the CEO's position on 4th July, 2012 and those for other senior positions between 14th and 22nd August, 2012.

Following the interviews, three names of short-listed candidates for the position of CEO were forwarded to me on 3rd August, 2012. The Ministry then, as required, wrote to the National Security Intelligence Service (NSIS) as part of the normal vetting process, prior to formal appointment on 28th August, 2012. The Ministry received a response from the NSIS on 8th October, 2012. We are, therefore, in a position to finalise the process of appointment of the CEO.

On other senior positions, the Board has already approved the results of the interviews and made appointments with effect from 5th October, 2012.

(b) From the onset, let me state that I have not given a directive that all CDF bank accounts should be frozen by 4th December, 2012 but the Ministry and the CDF Board are keen to ensure a smooth transition of CDF activities and operations as we transit to the next Parliament, as per The CDF Act, 2007.

During a Constituencies Development Fund Committees (CDFCs) and CDF Board retreat held between 3rd and 5th August, 2012, it was made clear that all CDFC accounts should be closed three months before the general election, which comes into effect from 15th January, 2013. It was also noted that only non discretionary expenditures such as salaries, utility bills, rents and bursary payments shall be allowed during the freeze, subject to the written approval of the CEO.

Finally, it was noted that no new commitments shall be allowed during the period of the freeze.

Mr. Speaker: Yes, Dr. Nuh.

Dr. Nuh: Mr. Speaker, Sir, subsequent to the Minister being quoted in the Media regarding the 4th December deadline, I became privy to instructions from the Board that have gone to the Funds Accounts Managers (FAMs), informing them that CDF operations of accounts should cease by 4th December, 2012. When is the Minister, through the Board, going to rescind that decision and send the right information to the Fund Accounts Managers – that the CDF accounts should be running until 15th January, 2012?

Mr. Oparanya: Mr. Speaker, Sir, I am not aware of such directive from the Board. If the Board issued such instructions, I have now said clearly that CDF accounts should be frozen from 15th January, 2013.

Mr. Speaker: Yes, Member for Sotik.

Dr. Laboso: Mr. Speakers, Sir, subsequent to the Question asked, I would like to know when the second tranche for this financial year will be remitted.

Mr. Oparanya: Mr. Speaker, Sir, the allocation for this financial year was Kshs21.76 billion. We have received Kshs7 billion from the Treasury and Kshs14.763 billion is outstanding. So far, we have given 15 per cent of the allocation to 150 constituencies. We have been pushing the Ministry of Finance to release the balance because we had agreed that by the end of next month, all the allocations must have been released to the respective CDFs. So, we are waiting for the release of Kshs14 billion by the Ministry of Finance.

Mr. Speaker: Yes, Member for Mvita.

Mr. Balala: Mr. Speaker, Sir, I can see that the Minister is changing the goalpost for CDF. He is acting as if CDF has just come into being for the first time in this country when we had the CDF even in 2007. We did not freeze any of the CDF accounts in 2007. The Minister is now freezing CDF accounts as if we are not going to have Members of Parliament (MP) coming back to hand over. So, I wonder whether this is the appropriate way of dealing with CDF. The Ministry has employed full time Fund Managers to manage the resources, so that no MP can dominate the Funds.

Mr. Oparanya: Mr. Speaker, Sir, the decision was taken on the basis of past experiences. We experienced quite a number of problems previously. In the process, the CDF lost some funds. Members of the DCFC are here. They know that we lost some funds during the transition period last time. There were quite a number of fraud cases. As hon. Members know, the term of this Parliament ends on 15th January. Thereafter, none of us will be a Member of Parliament. However, we are allowing the CDFCs to continue serving until new MPs are elected. Since we have no financial controller, we are taking precaution and saying: "Let payment of salaries, rent and other utilities continue until a new MP is elected."

Dr. Nuh: Mr. Speaker, Sir, now that the Minister has received all the requisite reports for appointing the Chief Executive Officer (CEO), our hope is that he will make the appointment in the next one week. More importantly, because the Minister for Finance gave a commitment in this House that the Constituencies Development Fund (CDF) will not be scrapped and that Treasury will ensure timeous release of all the monies, apart from saying that we are urging the Minister for Finance, what active engagements is the Minister for Planning, National Development and Vision 2030 undertaking to ensure that the CDF Kshs14 billion is restored? As of yesterday, there was nil balance in the CDF account at the headquarters.

Mr. Oparanya: Mr. Speaker, Sir, we agreed with the DCFC and the Minister for Finance that this money must be released by mid next month. I am hopeful that the Minister will keep his word, so that we have the money by the middle of next month, but the engagement is on.

Mr. Balala: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to say that they will release it mid next month, yet in the next two months he is freezing all the accounts? How can the implementation of the projects work?

Mr. Oparanya: Mr. Speaker, Sir, we agreed on a time table. There is cash flow. It is not only CDF. There are other priorities. We agreed with the Minister that by 15th next month, all the funds of CDF should have been released. If you have made all your returns, by end of next

month, you will have got all the money. If all the money has gone to the projects, they will continue under the CfC.

Mr. Speaker: Hon. Members, that matter must rest there. If it is released by 15th next month, you will have two months to disburse it.

ORAL ANSWERS TO QUESTIONS

Question No.1679

NON-DISBURSEMENT OF LOANS TO STUDENTS BY HELB

Mr. C. Kilonzo asked the Minister for Higher Education, Science and Technology why the Higher Education Loans Board (HELB) is not giving loans and bursaries to students abroad.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Deputy Speaker, Sir, I would like to apologize for coming late.

Mr. Speaker, Sir, I beg to reply.

The Higher Education Loans Board (HELB) is not able to offer loans and bursaries to students in overseas universities because there is not enough money.

I would also like to make it clear that since 2011, with the increase of Budget allocation, we have been able to support students in East African universities. The only hope for us to support all the students who are out there is for us to get more money from Treasury.

Mr. C. Kilonzo: Mr. Speaker, Sir, is it possible for the Ministry to really look into this issue and ensure that more funds are allocated to this organization?

Dr. Mwiria: Mr. Speaker, Sir, that is the intention, but the Government also comprises of Parliamentarians who have to push that agenda. This affects all of us as Members of Parliament because we have young people outside the country from our constituencies. So, it is up to us to lobby for more money from Treasury to ensure that we have enough. Let us also not forget that even the students we have locally are too many and we cannot support all of them. Going to China, United States of America (USA) or Australia is by choice. Given the many universities that we have locally and which are cheaper, we would like to encourage many of our students to join local universities. We have universities all over the place; we have technical institutes in every county and there are possibilities of studying here, thus minimizing the cost and making it possible for us, together with other supporters like the CDF, parents, development partners, banks and other financial institutions, to be able to get the money required to support all the students. We would like to help them but our first responsibility as a Government is to support students who are in universities because they have been selected through the Government system. If one goes elsewhere by choice--- Sometimes it is more expensive. If there is any extra money, we will also look at these students because they are Kenyans.

Mr. Njuguna: Mr. Speaker, Sir, I would like to laud the Assistant Minister for that very clear answer. What is the Ministry doing to make sure that orphans admitted in our local and East African universities are facilitated to continue with their learning?

Dr. Mwiria: Mr. Speaker, Sir, the loan system is such that the level of support depends on need; orphaned students, students from single parents or parents who are not employed have different kinds of problems; these are given priority and are given more money than the other students. That is as much as we can do and is based on need. I would also like to say that beyond

the money that is available--- The maximum amount available is not even enough to solve the problem; it is important for us as Members of Parliament to go to CDF and local communities and find other ways of supplementing the money we have because even for orphans, their needs cannot be met 100 per cent.

Mr. Nyammo: Mr. Speaker, Sir, could the Assistant Minister indicate how effective the recovery process is from students who have completed universities or institutions of higher learning and are now working?

Dr. Mwiria: Mr. Speaker, Sir, I would like to give an example. In 2010/2011 the recovery was Kshs3.8 billion, and in 2011/2012 we recovered Kshs4.1 billion. This is still short of what we should recover because we could recover up to Kshs7 billion or Kshs8 billion. One of our problems is that most of our graduates are not yet employed, and until someone is employed, there is no way of recovering money because there is nothing to recover from. Secondly, the tracking system, that is being able to find all the students who have graduated and are in employment, has not been that easy; progress is being made as we partner with employers and other organizations. So, the recovery process is improving but we are not recovering even a half of what we should recover. This is partly because of unemployment and also because our system is still not good enough to find all students, including those in self-employment. I believe that in the next one or two years, we are going to do better and the money will go back to the pool.

Mr. C. Kilonzo: Mr. Speaker, Sir, in this country when you get a mean grade of B- (minus), you cannot be admitted to public universities. So, what is the Government doing - it appears your policy is to encourage students to go to local universities - to encourage establishment of new universities within the country?

Dr. Mwiria: Mr. Speaker, Sir, what is being done to expand opportunities is now common knowledge. Already, this year, we are going to upgrade nine constituent colleges to full universities. We have university campuses all over the country like in Kirinyaga, Kibabii, Kwale, Garissa, Kisii, Nyandarua and so on. We are opening institutions all over the place. There has been radical expansion of university education in the last two years.

Secondly, public universities themselves have a private wing which to me is better than going overseas. For Kshs150,000 or Kshs200,000 you are able to go to the University of Nairobi, Kenyatta University or any other university and get a degree at a much lower cost than when you go abroad. I must say that some universities in India or China still have lower cost than some in this country, and we are progressing towards that. I want to tell you that apart from prestige, there is no good reason for our young people to want to go to universities outside this country. We should encourage many of them to do it here because we are expanding. We now have day universities. You can now ride your bicycle or walk to a university. You can go to a rural place in Meru, Tigania or Garissa and live with relatives and friends as you go to university. It is becoming less expensive in this country. We should give much more of this information as Members of Parliament and encourage our students to register locally.

Secondly, we are now opening technical institutes in every county and they will offer diplomas and a possibility to continue to do a university degree. So, that is another opportunity we should take advantage of and again encourage our young people to appreciate that you can start at that level and still get a university degree of whatever type you like.

In our public universities, those who start doing a certificate course can rise from certificate level, diploma level to a university degree. So there are many more opportunities than we know and I think it is important to talk much more about this because we can drastically

reduce the cost of university education and make it possible for many more Kenyans to take advantage of available inexpensive opportunities.

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

Hon. Members, we will take the first Statement from the Office of the President.

MINISTERIAL STATEMENTS

ILLEGAL ACTIVITIES OF THE MOMBASA REPUBLICAN COUNCIL

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Khang'ati): Mr. Speaker, Sir, I wish to issue a Ministerial Statement on the recent activities of the Mombasa Republican Council (MRC) which have impacted negatively on the security within the Coast region and are targeting to disrupt important national exercises including the general elections and the national examinations. Furthermore, the group has gone ahead to attack security officers and senior Government officers including a Cabinet Minister. Besides what I have just stated above, our national economy which heavily depends on tourism as an activity is also in danger.

Mr. Speaker, Sir, on 4th October, 2012, hon. Amason Kingi, the Minister for Fisheries Development attended a youth *baraza* in Mdomodoni Village of Mtwapa Location, Kikambala Division, Kilifi District, Kilifi County. At around 4.00 p.m. when the meeting was starting, a young man walked to where the master of ceremony was and grabbed the microphone. In the ensuing confusion, one Mr. Stephen Kambani tried to wrestle him only to be cut with a *panga* on his head twice by an assailant who was behind him.

Three other young men wielding *pangas* charged to the high table from the flanks of the tent. One of them pointed at Retired Justice Stewart Madzayo shouting: "*Ni huyu!*" and suddenly he was slashed twice on his neck and fell to the ground. As he lost consciousness he said he heard them say: "*Si huyu. Huyu ni mwingine*" in reference to the Minister.

Some youth came to his rescue and escorted him to the neighbourhood for safety. Meanwhile the Minister's bodyguard tried to pull out his gun to save the situation. Unfortunately, his hand was slashed off. He was rushed to Jocham Hospital where he succumbed to the injuries. The security officers who responded to the distress call managed to safely secure the Minister's vehicle and recovered his bodyguard's *ceska* pistol serial number 1939 with 15 rounds of ammunition. Among the five attackers, three were lynched by members of the public while two managed to escape. Two mobile phones were recovered.

Mr. Speaker, Sir, the MRC is getting bolder and they have openly declared that they shall not allow elections to be held in Coast Province. They have vowed that anyone who is seen conducting campaigns or civic education must be stopped by all means. Further, we have received intelligence information that they also intend to disrupt the national examinations, both the KCSE and the KCPE.

The Government, in response, has already put in place measures to ensure that national examinations are not disrupted by any group bent on causing insecurity. In that regard, I wish to assure parents, teachers, pupils and, indeed, all the stakeholders that we will provide the necessary security to ensure that this important national exercise is not interfered with.

Mr. Speaker, Sir, among the incidents that are a strong pointer to the insecurity in Coast Province caused by MRC are: On Sunday 24th March, 2012, while the Independent Electoral and

Boundaries Commission (IEBC) was conducting a mock election exercise in Malindi Constituency, a group of suspected MRC members invaded one of the voting halls and attacked election officials. During the ensuing melee, one Administration Police Officer lost his firearm and another one was injured. Subsequently, 14 suspects were arrested and they have been arraigned in court.

Again, on 29th March, 2012, youth suspected to be MRC members attempted to disrupt a District Commissioner's *baraza* at Junju area in Kilifi District. Nine suspects were arrested and again arraigned in court.

On 9th April, 2012, suspected MRC youth attempted to burn a vehicle which was being used by the IEBC officials in Bahari Constituency. The officials were conducting a voter's education exercise. Further, on the night of 12th September, 2012, about 30 suspected MRC youths were reported to be camping in Dzombo Forest in Msambweni District. They were probably planning to conduct oathing and training exercises. A joint patrol team of police officers combed the forest and managed to arrest five of the suspects. Fourteen more suspects were later arrested at Lukore area and again arraigned in court.

Mr. Speaker, Sir, again on 14th September, 2012, at 0800 hours, a group of about 40 armed young men believed to be fleeing from Dzombo Forest were reported to have been spotted in Mkongani Location of Kubo Division, Kwale District. Administration Police officers pursued and managed to arrest seven of them. In the pursuit, one of the police officers was hacked to death by the assailants.

On Thursday, 27th September, 2012, at around 2.30 p.m. at Mariakani Division of Kaloleni District within Kilifi District, Kilifi County members of the public arrested two people who were suspected to be members of MRC. While being interrogated by the chief of the area, they attempted to flee. This prompted members of the public to beat the two.

Again on Thursday 27th September, 2012, at around 8.00 p.m. while security officers were patrolling Mitangoni Forest in Kaloleni District in Kilifi County after a tip-off, they encountered a group of suspected MRC members. A confrontation ensued during which one village elder who was guiding the security officers into the forest was stabbed to death while a security officer sustained knife injuries. Police officers shot dead one of the attackers and arrested seven others.

In the outskirts of the forest, police found two other bodies of suspected MRC adherents who had been killed by the public. Following these killings by members of the public, some other suspects ran towards Silaloni area in Kinango District, Kwale County.

Four of them were apprehended by members of the public and beaten to death. Others were arrested in Ganze District.

Mr. Speaker, Sir, while it is now obvious that not all residents of the coastal region support the MRC owing to the killings by members of the public, these incidences, nevertheless, have serious security implications. The Government is not relenting in its fight against this criminal gang and the acts of lawlessness being perpetrated in disguise of fighting for the rights of coastal people will not be tolerated. We will continue with the security crackdown targeting these criminals who are out to disrupt peace and tranquility which has existed in the region for a long time. It should be noted here that the Government has come up with strategies to address the social, economic and political grievances afflicting the people of the coastal region.

Indeed, today morning being the 9th October, 2012, we had a meeting of the Coast Parliamentary Group Members, which was attended by among others members of the security agencies to address both immediate and long-term concerns of the coast residents. We have

agreed to hold a leaders' forum in Mombasa on 15th October, 2012, with a view of ensuring that peace and security is maintained in the region. Thereafter, we shall arrange to have stakeholders' forums in each of the six counties in coast region with a view of bringing together religious, cultural and all other forms of leaders so that we have an inclusive process.

Mr. Speaker, Sir, I also wish to state here that some of the key leaders of the MRC were arrested on Sunday night and arraigned in court yesterday. Since we have information that the MRC group is heavily financed, we are also putting the financiers on notice, that such activities including financing and bailing out these people will not be tolerated.

Finally, I wish to invite all the stakeholders, including religious and political leaders to participate in the efforts being employed by the Government towards stabilization of the region.

Thank you very much, Mr. Speaker, Sir.

Mr. Speaker: Order! Mr. Assistant Minister, you will notice that contrary to the very strong indication you made to me, you have lasted 14 minutes instead of five minutes! Maybe you want to just explain that. Next time, commit yourself to live within timelines.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Khang'ati): Mr. Speaker, Sir, my apologies. At the time I was giving my commitment, I had a shorter version. Subsequently, another version was brought to me with a little bit more details. That is why I have taken much longer than I had promised to do.

Mr. Speaker: Really; because everybody including the Government and the Back Bench has other business to transact. Please, ensure from the Front Bench that you do not last more than seven minutes delivering a Statement. Anything beyond seven minutes is really unreasonable!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Khang'ati): It is noted, Mr. Speaker, Sir.

Mr. Speaker: Yes! We want to take requests for clarifications and we will restrict them to five. I have about 11 requests, but I will restrict them to five beginning with hon. Millie Odhiambo.

Mr. Assistant Minister, keep notes!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, only recently, a joint Committee of Parliament was in the coast region looking into the issue of the MRC. In one instance, three quarters of the members of the public in the hall said that they were MRC members. Could the Assistant Minister tell us whether the Government has distinguished whether the MRC, which says that it is a group that is validly pursuing genuine grievances for the Coast is different from, perhaps, an arm that may be politically instigated, that may be causing violence? Has he discovered whether there may be such an incident?

Mr. C. Kilonzo: Mr. Speaker, Sir, obviously, the Government is comfortable dealing with postmortem reports every now and then. When it comes to the public taking the law into their own hands and lynching the so-called members of MRC, where is the Government, always?

Dr. Eseli: Mr. Speaker, Sir, as the Assistant Minister explained those tragic events that involved the Minister for Fisheries, it is clear that the police officer, one Maitha who lost his life, laid down his life actually for the survival of the Minister. Given that bodyguards are laying down their lives for the people that they protect, what is the Ministry doing about the backlog of payments to the police officers, who were promised an increment and have not received it? It is now clear that actually these police officers are even laying down their lives for our survival.

Mr. Yakub: Mr. Speaker, Sir, first of all, I would like to send my condolences to the bodyguard of our Minister, hon. Kingi and the other four people who were killed on that day in

Mtwapa. I would like to inform the Assistant Minister on the allegation that the MRC members will disrupt the national examinations. This is not true. I sat down with some of the officials on Saturday and they confirmed to me that this is information which is being used to ruin their organization. So, there is no issue of disrupting national examinations for both primary and secondary schools.

Lastly, has the Assistant Minister invited the officials of MRC on 15th when he is supposed to go to the Coast Province so that he can hear from their side?

Ms. Amina Abdalla: Mr. Speaker, Sir, I would like the Assistant Minister to tell the House whether their investigations have unearthed who the “funders” of MRC are, considering that all illegal groupings in this country are usually funded through extortion and other means, and yet we have not yet heard from him whether MRC is involved in such activities? Could he tell the House whether their investigations have clarified where the MRC is receiving its funding from?

Mr. Speaker: Mr. Assistant Minister, you may now make your responses.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Khang’ati): Mr. Speaker, Sir, I will start with the question raised by hon. Millie Odhiambo. It is regrettable that a number of people are publicly agreeing that they are members of the MRC. Basically, today when we had a meeting with the Coastal Members of Parliament, they told us that, indeed, all of them share the same views as MRC, regarding the grievances being faced by the coastal people. However, what they do not agree with the MRC is the means the organization is using to solve their grievances. So, I am not surprised that the hon. Member was in a room where quite a number of people said that they were MRC members. There are certain grievances which the coastal people have such as landlessness, unemployment and so on. As a Ministry, we are not only trying to deal with the issue of insecurity, but we are also looking at the long-term solutions to some of the problems that have become the basis for the MRC members to incite innocent youths. So, yes, there are some who have some genuine causes and we are ready to listen to those causes but there are also others who are just misguided and violent.

Hon. C. Kilonzo indicated here that it will appear like the Government is only receiving post-mortem reports.

(Mr. C. Kilonzo consulted with other Members)

Hon. C. Kilonzo, if you are listening to me, there is a concerted effort and the security cannot only be ensured by one group. The public is also concerned. There are children who are being misled and misused and, therefore, they are taking action. But you will also realize from our report that we have been involved. That is why we have made arrests of not less than 50 people. Even some of the MRC people have been hunted out of their hide-out in the forest and they are now scattered all over and fleeing in different directions. So, the Government, while appreciating what the public is doing, is also taking measures. I have also indicated that there are other measures we are taking, including *barazas* that we are going to hold starting from Monday in the coastal region.

Hon. Dr. Eseli, yes, I share your grievances about the loss of life of police officer, Maitha. I also share your concerns that these police officers who are protecting us should be properly remunerated. I want to assure this House that the matter of delayed salary arrears of police officers is being addressed with the urgency it deserves. We are going to deal with it in the

shortest time possible. So, it is one of those things that we have taken up. As a matter of fact, if the Treasury today releases the necessary funds, we will be able to pay the arrears. We do not want police discontent to reach the levels that we have experienced elsewhere. Today, I was supposed to have taken my morning flight from Kisumu to Nairobi. I am told the KQ pilots are also protesting. Their salaries are not good enough. I had to stay at the airport for three hours. So, we are alive to those concerns.

Hon. Yakub, I want, on behalf of the Government to appreciate your effort to meet some of the leaders of the MRC and for the effort you made to persuade them not to disrupt national examinations. I also want to encourage you and every other Kenyan of good faith to engage MRC leadership so that they desist from whatever they are doing. The meeting we are going to hold on 15th and other subsequent meetings are intended to bring on board everybody who can help us solve the problem. At this moment, we do not want to discriminate the people who will attend our meetings as MRC, but they are basically leaders in their own right. If we came out specifically and said we are holding a meeting with MRC, then we will be running the risk of the Government being accused of direct engagement with the MRC. But since we know that a lot of those leaders might be sympathetic to the MRC cause, that engagement will be sufficient.

Mr. Speaker, Sir, finally, hon. Amina Abdalla was concerned, as to whether we have any knowledge about individuals or associations involved in funding of MRC and other legal organizations, yes, at this point, we have some information. Unfortunately, this type of information is purely scanty. It might not be very useful for me to divulge it at this point in time. We have information that whenever the MRC people are arrested, some rich people run there and bail them out; whatever amount of bail is required. So, those are the financiers that we are putting on notice.

Thank you very much.

Mr. Speaker: Very well. Hon. Members, we will want to take any other statement. There maybe a brief one away from the Office of the President. It will appear there is none.

Then we will take requests for Statements. Hon. Shebesh!

POINTS OF ORDER

DEATH OF WATCHMEN IN KAYOLE THROUGH UTTERANCES OF HON. WAITITU

Mrs. Shebesh: Mr. Speaker, Sir, I rise to request for a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the fracas that took place at Kayole on Monday, 24th September, 2012, involving some watchmen and residents of the area that led to the death of a hand-cart operator, in which it was alleged that one person was killed as a consequence of hon. Waititu's utterances.

Mr. Speaker, Sir, the Minister should in his answer:-

1. Clarify whether or not there was a death that occurred following utterances by hon. Waititu.

2. State the police station where the death was reported and the mortuary where the body was taken and confirm if the affected family was notified.

3. Clarify whether the National Cohesion and Integration Commission has investigated the real cause of the disturbances that occurred, the date the hand-cart operator died and what the report indicate as the cause of tension among the residents of this area.

Mr. Speaker: Minister, when shall we have the Statement?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Khangati): Mr. Speaker, Sir, I seek your permission that I give this Statement on Thursday next week since there are quite a number of issues that I need to verify before I come back here.

Mr. Speaker: Hon. Shebesh, are you comfortable with that? The Assistant Minister wants until Thursday next week to give you exhaustive information.

Mrs. Shebesh: Mr. Speaker, Sir, yes, I will be comfortable with Thursday.

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

Yes, Member for Juja!

DELAY IN DELIVERY OF STATEMENT

Mr. Kabogo: Mr. Speaker, Sir, I rise to seek the indulgence of the Chair. I had requested for a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs on an organization called Uongozi. He had promised that that Statement will come on Thursday. It did not come on Thursday and I was hoping that that it will be delivered today. So, I seek your help to find out when this Statement will be delivered.

Mr. Speaker: Hon. Wamalwa, that is genuine.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Speaker, Sir, I had the Statement, but when that Order was called, the Member was not in the House. So, I had wanted to deliver it tomorrow.

Mr. Speaker: Fair enough, tomorrow morning. Member for Juja, will you be here in the morning?

Mr. Kabogo: Mr. Speaker, Sir, as usual, every Wednesday morning, I will be here.

Mr. Speaker: It is directed that the Statement comes tomorrow morning. Minister, please, be here and deliver it.

Yes, Member for Yatta!

DELAY TO GAZETTE NEW MANAGING DIRECTOR FOR KENYA TEA ZONE DEVELOPMENT CORPORATION

Mr. C. Kilonzo: Mr. Speaker, Sir, I am seeking a Ministerial Statement from the Minister for Agriculture on the failure to appoint a Managing Director for Kenya Tea Zone Development Corporation. In the statement the Minister should clarify the following:

1. To confirm if due process was followed in the recruitment of the Managing Director and, if so, to provide more details.

2. Why has the Government failed to gazette the newly recruited Managing Director appointed by the Board despite notification on 26th June, 2012.

3. Could the Minister confirm that the Managing Director will be gazetted without undue delay?

Mr. Speaker: Minister for Agriculture, when will this Statement come? Minister for Justice, do you want to hold brief for your colleague?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Speaker, Sir, I think I will inform her to see if we can respond on Thursday.

Mr. Speaker: Thursday this week. It is so directed.

Yes, Member for Vihiga!

STATUS AND LEVEL OF MAINTENANCE OF KENYAN
AIRPORTS AND AIRSTRIPS

Mr. Chanzu: Thank you, Mr. Speaker, Sir. Sometime in August, I asked for a Ministerial Statement from the Minister for Transport about the status and level of maintenance of airports and airstrips in the country. That statement has never been forthcoming.

Mr. Speaker: Which Minister is it?

Mr. Chanzu: The Minister for Transport.

Mr. Speaker: The Minister for Transport is in the House.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, the Statement is ready for delivery and I expected my Assistant Minister to give it, but he is not here.

Mr. Speaker: Could you deliver it tomorrow morning? We have a little more time tomorrow morning.

The Minister for Transport (Mr. Kimunya): Yes, tomorrow morning.

Mr. Speaker: It is so directed. Member for Vihiga, please, note and be present tomorrow morning.

That brings us to the end of Order No.7 and we want to take the next Order.

BILLS

First Readings

THE PROHIBITION OF ANTI-PERSONNEL MINES BILL

THE ENGINEERING TECHNOLOGISTS AND TECHNICIANS BILL

*(Orders for First Readings read – Read the First Time and ordered
to be referred to the relevant Departmental Committees)*

MOTION

APPROVAL OF THE DRAFT ELECTIONS (REGISTRATION OF VOTERS)
REGULATIONS, 2012

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Speaker, Sir, I beg to move:

THAT, Pursuant to Section 109 (3) of the Elections Act No. 24 of 2011,
this House approves:-

The Draft Elections (Registration of Voters) Regulations 2012.

Mr. Speaker, Sir, Section 109(3) of the Elections Act requires that the IEBC drafts regulations and submits the proposed draft regulations to this House for approval before those regulations become the regulations that are to be used for purposes of registration of voters. We tabled three sets of the documents here, and we are grateful to the Members of the relevant Departmental Committees that have gone through these rules and the proposed regulations. They

have so far been able to finish the Draft Regulations on Voter Registration. They have also assured us that the other regulations will be ready in due course, but for our purposes, it was extremely urgent that we have in place regulations touching on the voter registration. This is because the IEBC has made very elaborate preparations for the next general election. They have already entered into a contract that will see the BVR equipment delivered to this country.

I have just returned from a seminar in Mombasa where the Chairman of the Commission confirmed to us that some of the equipment has already arrived in the country and some of the kits are going to be used in the preparation of the trainers of trainers. We believe that by end of this month, all the equipment will be here and this will help in preparing Kenyans for registration which is set to kick off on 1st November, 2012.

Mr. Speaker, Sir, before this registration starts, we are requesting the House to approve the proposed regulations; the Election (Registration of Voters) Regulations, 2012, that will now guide the process of registration. These proposed regulations have provided for the following. In Part I, we have the interpretation. Those are just the preliminaries. It has also provided for the administration, including the registration centres, the registration officers and the assistant officers. In Part III, we have the principal register of voters. In these regulations, we are also making a provision for registration of voters both in Kenya and outside our borders. We know that Kenyans in the diaspora have been very keen not to be left out in the historic elections that are coming and to be registered as voters for the coming general election. In these regulations, we are providing for how the process will be done, how the registration will take place and how the registers will be managed.

I want to thank the Committees for having gone through them for they have done a wonderful job under the chairmanship of my good friend, hon. Amina Abdalla. We will be asking this House, having tabled these regulations several weeks ago--- We hope Members have had time to go through them and we are asking that the same be approved, so that we can commence the registration process with a clear framework for regulation of the same. This is what I am laying before the House, and I kindly ask the House to approve the same. If there are amendments, we will be dealing with them as they come up.

Mr. Speaker, Sir, with those few remarks, I beg to move and ask my good friend, hon. Amina Abdalla, to second.

Ms. Amina Abdalla: Mr. Speaker, Sir, I beg to second that this House approves the Report of my Committee. Upon tabling of the regulations by the Minister on 30th August, 2012, we realized that the timelines in the Election Act were too short and so we requested the House, and our request was subsequently granted, that the timelines for approval of these regulations be four months to the elections.

The tabling of these regulations took a lot of effort by the House to pressure the IEBC to provide them. The Joint Committee that looked at this document noted with concern the poor editorial quality of the document tabled by the IEBC. Secondly, the document tabled left out important aspects that we will subsequently ask the House to put in for purposes of clarifying matters.

[Mr. Speaker left the Chair]

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

Upon the Joint Committee's meeting, it was decided that the registration of voters be given first priority given that the powers to scrutinize regulations are vested, under Standing Order No.197, in the Committee on Delegated Legislation. The Committee met and we are proposing amendments that fall into four categories.

First, we are looking at whether the regulations are consistent with the Constitution. Secondly, we are looking at whether they are consistent with the parent Act, namely, the Elections Act of 2011. Thirdly, we have looked at whether there are issues that the stakeholders have given us input on, but have not been included in the regulations. Fourthly, we have looked at issues that are of topographical or sequence in nature.

Madam Temporary Deputy Speaker, in the category of issues that are not consistent with the parent Act, we are proposing the deletion of the regulation that allows for mobile registration of voters outside the voting area. It is believed that this would be equated to an election offence and it would be equated to transportation of voters.

Poling clerks are an important component of an election process and were not included in the Elections Act nor in these regulations. So, the appointment of the same and the scrutiny of the persons who have been appointed by political parties is also something that we have put in the amended regulations. The Committee found that the two regulations regarding registration, namely, relating to the diaspora and to the national registration, covered the same areas. As such, we did not require the two regulations. We, therefore, are proposing the collapsing of the two and setting up a special component to deal with the diaspora voting *vis-as-vis* the areas that are specific to diaspora registration and not voting.

Having collapsed the two, we have also proposed amendments to deal with the appointment of returning officers. The current regulations only cover the appointment of county returning officers and do not talk about the recruitment of constituency returning officers and their deputies. As I mentioned, we are also dealing with issues about polling clerks. I have already included the aspect of polling clerks.

There are a lot of registers that are to be produced by the IEBC. They have provided for the publication of the same in the gazette. But in compliance with Article 35 of the Constitution, we will be doing a lot of amendments to allow for publicization of the published list.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): On a point of order, Madam Temporary Deputy Speaker. This is on a matter of procedure. I thought hon. Amina Abdalla was seconding and you put the question before we go to the Committee. I noticed that she is now going to---

The Temporary Deputy Speaker (Dr. Laboso): That is precisely what hon. Amina Abdalla is doing.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Madam Temporary Deputy Speaker, I notice that she is going to the nitty-gritty of the issues that should come up in the amendment in the Committee Stage. So, I needed your guidance.

The Temporary Deputy Speaker (Dr. Laboso): Continue seconding, hon. Amina Abdalla.

Ms. Amina Abdalla: Madam Temporary Deputy Speaker, whereas I appreciate that hon. Musila was my Deputy Speaker in the Ninth Parliament, I just want to tell him that I am going through the broader issues. The amendments that we are proposing are over 70. So, if I went to the nitty-gritty, I will, probably, sleep on the Floor.

Having raised the issues, they are in four categories and they will come in the amendment process. I just wanted the Members to note that there are issues that the IEBC did not cover in the regulations that we have done.

I want to highlight three important issues regarding the issue of diaspora voting that had not been addressed by the IEBC, which we have dealt with as a Committee. First, the IEBC said that the areas of voting for the diaspora shall be determined in a guideline. We have provided that, that should be covered in the amendments and the amendments will speak to that.

Because it is clear that hon. Musila is impatient, I want to stop there and move to the nitty-gritty. I just did not want the Members to say that we have ambushed them with the amendments that are here because they are very many and detailed. We wanted to give the Members the broad picture of what is in those regulations.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Dr. Laboso): Hon. Musila!

The Assistant Minister, Ministry of Defence (Mr. Musila): Madam Temporary Deputy Speaker, I beg your pardon. I did not ask for the Floor. If I did, it was by mistake.

The Temporary Deputy Speaker (Dr. Laboso): You have actually asked for both intervention and the Floor. Hon. Members, I see nobody wanting to make any contribution on this. You have one hour to contribute on these regulations.

Hon. Members, I see no interest in making contributions to this, I will, therefore, put the question.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[Madam Temporary Deputy Speaker
(Dr. Laboso) left the Chair]*

IN THE COMMITTEE

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

CONSIDERATION OF THE DRAFT ELECTIONS (REGISTRATION OF VOTERS) REGULATIONS, 2012

Regulation 2

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed Regulation 2 be amended by inserting the following definitions in the proper alphabetical sequence.

“Commission” has the meaning assigned to it in the Act;

“foreign representative of Kenya” means a public officer serving in a Kenyan foreign mission abroad.

The word “Commission” needs to be defined because it is mentioned throughout the Regulations, but it is not defined. Secondly, having collapsed the two regulations, it was necessary to define “foreign representatives of Kenya”, who are mentioned in the collapsed regulations.

(Question of the amendment proposed)

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

(Regulation 2 as amended agreed to)

(Regulations 3 and 4 agreed to)

Regulation 5

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT the proposed regulation 5 be amended in sub-regulation clause (3) by inserting the word “officer” immediately after the words “assistant registration”.

Madam Temporary Deputy Chairlady, Regulation 5 seeks to add a word, “officer” because the regulation speaks of assistant registration but does not speak about an assistant registration officer. We are proposing the addition of the word “officer.”

(Question of the amendment proposed)

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

The Temporary Deputy Chairlady (Dr. Laboso): There was a further amendment by Eng. Gumbo. Where is he? The amendment is dropped!

(Amendment by Eng. Gumbo dropped)

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. I was just wondering whether the Minister would agree to move Eng. Gumbo’s amendment because it is good.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Millie, we have already dropped the amendment! I wish you had just spoken a little earlier. If there is a subsequent one, the Minister can look at them and if you are in agreement, he can go ahead and move them.

(Regulation 5 as amended agreed to)

Regulation 6

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed regulation 6 be amended by inserting the words “polling station, ward and “immediately after the words “his or her”.

In this amendment, we are amending Regulation 6 by inserting the words polling station and ward in appreciation that registers emanate from polling stations, wards and then constituencies. The current form of this regulation only covers constituencies.

I beg to move.

(Question of the amendment proposed)

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

(Regulation 6 as amended agreed to)

Regulation 7

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed regulation 7 be amended-

(a) in the marginal notes by deleting the words “Registrations areas” and substituting therefor the words “Registration areas and Registration centers”.

(b) In sub-regulation 7(c) by inserting the words “vessels or vessels” immediately after the words “vehicle or vehicles”.

(c) In sub-regulation 7(d) by inserting the words “and publicise through electronic and print media of national circulation and other easily accessible medium” immediately after the words “Gazette”.

(d) In sub-regulation 7 (d)(iii) by inserting the words “vessels or vessels” immediately after the words “vehicle or vehicles”.

(e) by inserting the following new paragraphs immediately after paragraph (c) –

(ca) designate such areas outside Kenya, in which registration is to be held, as a single registration area;

(cb) declare the entire territory of the foreign country or any part of a foreign country, to be a registration area;

(cc) declare a region consisting of more than one foreign country to be a single registration area; and

(f) by inserting new sub-regulations immediately after sub-regulation (2) as follows-

(2A) The Commission may use facilities of Kenyan foreign missions abroad, free of charge, for the purposes of voter registration or polling, as the case may be;

(2B) The Commission shall, in respect of each registration area appoint a registration officer to be responsible for the compilation of a register for the respective area;

The second one is in appreciation of the fact that in certain areas, we will be using mobile registration units that could be vehicles or vessels. This will take care of things like boats and vehicles. In “c”, this is in appreciation of Article 35 of the Constitution that the IEBC should go beyond publishing but also publicize the registers once they are established. In “d”, we again use the word “vessels” so that we cover all forms of mobile registration units.

Part “e” is in appreciation that the regulations will be collapsed and that we will be dealing with the diaspora registration.

Mr. Ruteere: On a point of order, Madam Temporary Deputy Chairlady. On “7b”, I can see the word “vessels” but not “vehicles.”

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, the word “vehicle” is already there. So, we are just adding the word “vessel” or “vessels.”

The Temporary Deputy Chairlady (Mr. Ruteere): Mr. Ruteere, this is an amendment. We are only adding in this amendment.

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, in Part “e”, the amendments there are for providing registration areas for registration of voters in the diaspora and Part “f” is also providing for specific locations where registration will take place and this is basically in the Kenya Foreign Missions.

Those are the proposed amendments to Regulation 7.

(Question of the amendment proposed)

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

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

(Regulation 7 as amended agreed to)

Regulation 8

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed regulation 8 be amended by deleting the word “FORM A” and substituting therefor the word “FORM C” immediately after the word “set out in”

Regulation 8 is in relation to the Form that will contain the details of a registered voter. The regulations tabled by the Minister did not have a “Form A” but we have subsequently

established that it is “Form C” that has those details. So, we propose the replacement of “Form A” with “Form C.”

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Thank you, Madam Temporary Deputy Chairlady. I want to support that amendment. Indeed, the manner in which the regulations have been prepared was quite hurried because of the pressure. There were some forms which were missing and I want to appreciate the contribution of the Committee by including the missing forms.

Madam Temporary Deputy Chairlady, I support.

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

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

(Regulation 8 as amended agreed to)

(Regulations 9 and 10 agreed to)

Regulation 11

Eng. Gumbo: Madam Temporary Deputy Chairlady, I beg to move:-

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

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): You are using the wrong side of the Dispatch Box. There might have been an announcement over lunch time and you now belong to the Government. Go to the right side.

I hope that the points of order by both of you were about the position he was moving his amendment from.

Eng. Gumbo: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Regulations be amended in Regulation 11 by inserting the words “and district “immediately after the word “division”.

This is just to clarify because it talks about divisions only but there are some constituencies that are districts. This is to give it clarity.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I actually thought that it was the one that we had passed earlier. Otherwise, I do not oppose this amendment.

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

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I rise to support the amendment because it

adds value. It brings clarity. With the Bill that was brought here by hon. Boaz Kaino on turning every constituency into a district, which we passed; the amendment adds value to the Rules.

So, I beg to support.

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

(Regulation 11 as amended agreed to)

Regulation 12

Ms. Amina Abdala: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed Regulation 12 be amended in Sub-Regulation (4) by inserting a new paragraph (d) as follows-

(d) by having in place an electronic register which may be accessed on a website, via mobile phone and such other electronic media as the Commission may determine.

Madam Temporary Deputy Chairlady, you remember that in the last elections, we were able to confirm by mobile phone and the website whether we were registered voters or not. So, this provision is just to regularise the favour that was done for us in the previous election.

(Question of the amendment proposed)

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

(Clause 12 as amended agreed to)

Regulation 13

Ms. Amina Abdala: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed Regulation 13 be amended by deleting in Sub-Regulation (3) and substituting therefor the following-

(3) the registration officer shall, for the purpose of registration, collect such biometric data, which include palm print and facial impressions of the persons applying for registration, as the Commission may determine.

Madam Temporary Deputy Chairlady, this is in appreciation of the fact that we are going to register this year and the Regulations had not taken into account the collection of biometric data. So, this amendment intends to provide for that function.

(Question of the amendment proposed)

Mr. Ogindo: Madam Temporary Deputy Chairlady, I wish to support the amendment but, in doing so, I want to bring to the attention of the Minister the fact that there has been an earlier response in this House by his Ministry to the question of operationalisation of the newly

created 80 constituencies. The verdict was that those constituencies were not valid for the purposes of the next general election unless hon. Mutula's amendments were carried.

Maybe, at the point of responding, the Minister can tell this House, and the nation at large, whether preparations are underway for all the 80 new constituencies to be operationalised, notwithstanding the fact that those amendments are still in abeyance.

I beg to support.

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

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, we support the amendment. It adds value in terms of ensuring that the technological advancement we will be making in these elections, by doing electronic voter registration, is properly covered in the Regulations.

I know that already this equipment has started arriving. As I told the House earlier today, I just came from a workshop in Mombasa, where the Chairman of the Independent Electoral and Boundaries Commission (IEBC) confirmed that some of the equipment is already in the country. Training will start soon. We have 5,000 kits to enable us start off. Therefore, it is important that these Regulations take into consideration the BVR equipment that we will be using in our registration.

Madam Temporary Deputy Chairlady, I will be responding substantively on the issue raised by the Member for Rangwe, because it is a matter on which we have already been asked to issue a Ministerial Statement; as to the state of preparedness, including for the 80 new constituencies, and the timetable up to the 4th of March, 2012.

Thank you.

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

Mr. Njuguna: Madam Temporary Deputy Chairlady, this is a very healthy amendment. It will dispel the fear that has been circulating in the country concerning the availability of the BVR equipment.

I support.

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

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

(Regulation 13 as amended agreed to)

(Regulations 14, 15 and 16 agreed to)

Regulation 17

Ms. Amina Abdala: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed Regulation 17 be amended by re-numbering the existing provision as sub-regulation (1) and inserting a new sub-regulation as follows--

(2) A claim under sub-regulation (1) shall not be made ninety days to a date of a general election or referendum and sixty days before a by-election.

Madam Temporary Deputy Chairlady, this relates to a person claiming that they are not on the register, and that the Registration Officer needs to insert him back. This amendment is intended to deal with situations where the register is closed. So, this is 90 days to a general election and 60 days to a by-election. So, it would cover situations where the register is closed.

(Question of the amendment proposed)

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

(Regulation 17 as amended agreed to)

*(Regulations 18, 19, 20, 21, 22,
23, 24, 25 and 26 agreed to)*

Regulation 27

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed regulation 27 be amended in sub-regulation (2) by inserting the words “and through other easily accessible medium.” immediately after the word “nationwide circulation”.

Madam Temporary Deputy Chairlady, this amendment is just increasing the availability of the documents from the IEBC to easily accessible media, mainly the internet.

(Question of the amendment proposed)

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

(Clause 27 as amended agreed to)

Regulation 28

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed regulation 28 be amended in sub-regulation (1) by deleting the word “26” and substituting therefor the words “27” immediately after the word “regulation”

Madam Temporary Deputy Chairlady, this is just a sequencing issue. The numbers were not following each other.

(Question of the amendment proposed)

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

(Question, that the words to be inserted in

place thereof be inserted, put and agreed to)

(Regulation 28 as amended agreed to)

Regulation 29

Ms. Amina Abdala: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed regulation 29 be amended by deleting paragraph (b).

Madam Temporary Deputy Chairlady, this is a provision for the electoral body to do new registers for specific constituencies. This situation does not arise because new registers are done for all constituencies at the same time. When there is a by-election, the previous one is used. So, this matter does not arise. So, we propose the deletion of paragraph (b) in regulation 29.

(Question of the amendment proposed)

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

(Regulation 29 as amended agreed to)

Regulation 30

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT the proposed regulation 30 be amended by deleting sub-regulation (4).

That sub-regulation is in relation to notices for specific constituencies having new registers. The issue does not arise and we propose a deletion of the same.

(Question of the amendment proposed)

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

(Regulation 30 as amended agreed to)

Regulation 31

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT the proposed regulation 31 be amended -

(a) in sub-regulation (2) by deleting paragraph (a).

(b) in sub-regulation (2) (b) by deleting the word “close” immediately after the word “may” and substituting therefor the word “transfer”.

(c) In sub-regulation (3) by deleting the word “closes” immediately after the words “if the registration officer” and substituting therefor the word “transfer”.

Madam Temporary Deputy Chairlady, we are deleting paragraph (a) of regulation 31. This is an important amendment because this is one of the proposed regulations that are inconsistent with the parent Act by allowing for mobile registration of voters outside constituencies. We think that, that amounts to an election offence. So, we are proposing the deletion of the same.

On part (b), it calls for giving the powers to a registration officer to close a registration centre knowing the way Kenyans wait for the end of the period, so that they can rush. So, the closure of such a registration based on numbers will not be fair. So, we are proposing to allow them to transfer that unit within the registration area but not to close it.

So, amendments of parts (b) and (c) are to allow for transfer within the registration area instead of closing of the same.

I move that we amend regulation 31.

(Question of the amendment proposed)

Mr. Wamalwa: Madam Temporary Deputy Chairlady, we discussed this matter with the Chair of the Committee and it is, indeed, a good amendment to avoid any room for mischief, or any irregularities that might arise during the registration process.

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

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

(Regulation 32 agreed to)

Regulation 33

The Temporary Deputy Chairlady (Dr. Laboso): Ms. Amina Abdalla, before you talk about the new part, do you have another amendment to regulation 33 that is not about the new sub-regulations?

Ms. Amina Abdalla: Yes, Madam Temporary Deputy Chairlady, the amendments to regulation 33 that are on page 4268 of the Order Paper are in relation to expanding the places where the Independent Electoral and Boundaries Commission (IEBC) will provide the register for inspection. They are expanding it from constituency IEBC office to registration centre, ward and constituency commission. So, there are amendments that are not new. Shall I go ahead?

The Temporary Deputy Chairlady (Dr. Laboso): Yes, go ahead.

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT the proposed regulation 33 be amended -

(a) in sub-regulation (1) by deleting paragraph (a) and substituting therefor the following-

(a) by making the relevant register available for inspection at the respective registration centre, ward and constituency Commission offices; and

(b) in sub-regulation (1) (b) by deleting the words “headquarters of the division” immediately after the words “at a place at the” and substituting therefor the words “the Commission’s website, constituency offices, registration center and ward”.

(c) in sub-regulation (1) by inserting a new paragraph (d) as follows-

(d) by having in place an electronic register which may be accessed on a website, via mobile phone and such other electronic media as the Commission may determine.

The amendment is similar to what Eng. Gumbo was proposing in Regulation 11, where we are saying that in addition to division and constituency offices, these registers should be available at registration centres, wards and constituency Commission offices. That is basically in the import of that amendment. This also further strengthens the accessibility of the register from the electronic media. Those are the amendments on page 4268 which I propose for the House to adopt.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairlady (Dr. Laboso): I can see that Eng. Gumbo has an amendment that is similar to this. Could it be dropped if it is similar to what the Committee has recommended?

Eng. Gumbo: Madam Temporary Deputy Chairlady, I do not think they are similar and I wish to propose that the amendment be included. She is actually expanding, but for purposes of eliminating vagueness, I think it is important to say that division and/or district. For the reasons that I explained earlier, some constituency headquarters are now divisions and others are districts.

The Temporary Deputy Chairlady (Dr. Laboso): In essence, she has covered it. She has only expanded it as you have said.

Eng. Gumbo: Her amendment is by all accounts a much more expanded amendment but I would be satisfied if the word “district” was included.

Eng. Gumbo: Madam Temporary Deputy Chairlady, I beg to move:-

THAT the regulations be amended in sub-regulation (1) of regulation 33 by-

(a) inserting the words “and district” immediately after the word “division” appearing in paragraph (a);

(b) inserting the words “and district” immediately after the word “division” appearing in paragraph (b);

Madam Temporary Deputy Chairlady, for the reasons that I explained earlier, I think it is important to understand that constituency headquarters could now be district or divisional headquarters. The purpose of my amendment is just to infuse that clarity.

(Question of the further amendment proposed)

Dr. Khalwale: Madam Temporary Deputy Chairlady, thank you for the chance. I want to support Eng. Gumbo because it is very important that we make it very clear. The little experience we have had in politics is that there is usually chaos in the morning when we are going to vote. You will find that women are told that they are not registered there and they should go somewhere else. That is simply because they did not have an opportunity to inspect the register. This is not just a problem of illiterate people because even a presidential candidate once upon a time found that his name was not in the register.

Mr. Koech: Madam Temporary Deputy Chairlady, I think we need a bit of guidance here because the proposed amendment by the Chair of the Committee has already gone through. This means that it has carried the day. There is no word “division” as proposed by Eng. Gumbo.

My understanding - I want some clarification from my colleague - is that the headquarters of the division has now been deleted and it has been substituted by the words “commission’s website, constituency offices, registration centre and ward.”

I do not know where you place districts in our new Constitution. I need some guidance on that.

The Temporary Deputy Chairlady (Dr. Laboso): That is why I clearly said before Eng. Gumbo that your amendment has been carried by what Ms. Abdalla said. If Ms. Abdalla’s amendment had gone through, then your amendment to (a) would then fall. Up to this point, the districts still exist. So, your part (b) would hold but part (a) of it would then fall because of Ms. Abdalla’s amendment. Is that clear?

Eng. Gumbo: Madam Temporary Deputy Chairlady, as long as Ms. Abdalla’s amendment gives the clarity that we need because what we want to avoid is a situation where an important matter like this is emasculated in some sort of vagueness. Unfortunately, I have not quite followed that. Could Ms. Abdalla explain, please?

Ms. Amina Abdalla: Mr. Temporary Deputy Chairlady, the amendment removes the word “division” because a division is not a unit of the electoral register. A unit of the electoral register is the registration centre. There is the ward, then the constituency.

A district is, however, a unit of an electoral register because there are people vying for positions that are district or county-based. In fact, your amendment is covered because where people need to go and look at the register is where they are registered and then to look at the bigger register to ensure that the sub-sect of the constituency register is actually reflected in the constituency. So, I would beg that your amendment has been covered by this amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Both parts of the amendment?

Ms. Amina Abdalla: Yes, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, I see you want to intervene.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): I just wanted to persuade my good friend, Eng. Gumbo, to accept that Ms. Abdalla’s definition is wider because his amendment was pegged on the word “division”. It makes sense as long as the word division was there. We should have had districts, but now that the word division has been amended and Ms. Amina Abdalla’s amendment widens the net, I think it is okay.

The Temporary Deputy Chairlady (Dr. Laboso): Eng. Gumbo, I hope you are persuaded so that we can move on.

Eng. Gumbo: Madam Temporary Deputy Chairlady, Sir, I would just like to seek some little clarification. Does that apply to part (a) or part (a) and part (b)?

The Temporary Deputy Chairlady (Dr. Laboso): Both of them would then be dropped because they have been covered.

Eng. Gumbo: Madam Temporary Deputy Chairlady, Sir, she proposed the amendments in both (a) and (b) in a similar version? If she has then I---

The Temporary Deputy Chairlady (Dr. Laboso): That is what the Minister and the Chair of the committee have done.

Eng. Gumbo: Madam Temporary Deputy Chairlady, Sir, if that is what has been done, then I have no problem.

The Temporary Deputy Chairlady (Dr. Laboso): So, your amendment has been dropped in view of what the Committee has recommended?

Eng. Gumbo: Yes, Madam Temporary Deputy Chairlady.

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

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

(Regulation 33 as amended agreed to)

New Part VII A Regulations 33A, 33B, 33C, 33D, 33E and 33F

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed Regulations be amended by inserting a new Part immediately after regulation 33 as follows-

PART VIIA- REGISTRATION OF KENYAN CITIZENS RESIDING OUTSIDE KENYA

Registration of Kenyan citizens residing out of Kenya. 33A (1). The Commission shall, at regular intervals, publish the names of countries in which registration and voting of is scheduled to take place.
(2) a decision by the Commission to register Kenyan citizens residing outside Kenya or to conduct elections outside Kenya shall be based on-

- (a) The presence of a Kenyan Embassy, High Commission or Consulate; or
- (b) Other logistical considerations.

Registration particulars of Kenyan citizens residing out of Kenya. 33B. A register of voters who are Kenya citizens residing outside Kenya shall contain the particulars set out in Form AA in the Schedule

Application 33C. A Kenya citizen residing outside Kenya shall apply for

for registration as a voter in the Form set out in Form BB in the Schedule
registration
by Kenyan
citizens
residing out
of Kenya.

Eligibility to vote 33D. A Kenyan citizen residing outside Kenya shall apply for registration as a voter upon production of a valid Kenyan Passport or National Identification Card.

Registration personnel 33E. For the purpose of registration of Kenyan citizens residing outside Kenya as voters, the Commission may use the services of any foreign representative of Kenya who shall not be the Ambassador, Deputy Ambassador, High Commissioner or the Deputy High Commissioner of a Kenyan mission.

Type of elections 33F. A Kenya citizen residing outside Kenya shall only participate in a presidential election or a referendum.

As I mentioned while seconding this Motion, we have proposed the collapse of the registration of voters' regulations for diaspora and that for local into one. So, we are, therefore, proposing a new part of the regulation on local to have a sub-section that deals with registration of Kenyan citizens residing outside.

1. We have given the discretion to the IEBC to publish the names of the countries where voting would take place. That is the proposed Regulation 33A(1).

2. We have told them that their decision should be guided by the presence of a Kenyan embassy in that country and other logistical considerations.

3. The next regulation that we are proposing is that a format of what particulars the Kenyan citizens residing outside would need.

Madam Temporary Deputy Chairlady, Regulations 33B and 33C deal with the ambiguity of what documents the Kenyans residing outside would be using. We are saying that they would be using the same documents and forms that the Kenyans voting in this country will be using mainly the valid ID and valid passports. This is a decision that the IEBC had not made.

In sub-regulation 33D, we are saying that they would use valid passports and national identity cards. In "e", we are saying that the IEBC might use workers in the Kenyan embassy abroad as registration officials but cannot use political appointees to do the same; mainly the ambassadors and their deputies or the High Commissioners and their deputies. That is the import Regulation 33E.

In Regulation 33F, we are saying there are types of elections. The IEBC was not able to make a decision and state clearly in the regulation what elections the people in the diaspora are going to be involved in. So, we have said that the type of elections are only presidential and referendum for this coming general election.

That is the import of the proposed new regulations that the Committee would want the House to adopt.

Mr. Koech: Madam Temporary Deputy Chairlady, first of all, I want to commend the Committee for proposing this because you have to be very clear on how Kenyans in the diaspora are going to vote. We must be very sure that the Kenyans outside there---

Mr. Ogingo: On a point of order, Madam Temporary Deputy Chairlady. Being a new clause, I thought this one required seconding. Would I be in order?

The Temporary Deputy Chairlady (Dr. Laboso): We do not need to second the regulations. For the avoidance of doubt, there is no problem if we can have a seconder to the regulations.

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, considering the shoddiness of the work done by the IEBC, I would like to urge the Minister responsible for the IEBC to appreciate the good work we have done by seconding this amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, may I begin by saying I second this proposal. I want to really appreciate what the Chair and her team have done, first of all, by bringing the two documents together so that we have one set of regulations guiding both the registration of Kenyans within Kenya and outside our borders. This is to ensure that when we are talking about registration of Kenyan citizens as voters, it should include all Kenyans, whether in the diaspora or here. We want to agree with the Committee's proposal that we introduce a New Part VII A that will now bring the issue of registration of Kenyan citizens residing outside Kenya within the ambit of these same regulations. I just want to appreciate also the proposals that have been made to ensure that Kenyans who are outside Kenya are not left outside or are also part of the historic election that is coming.

Just this afternoon, I was talking to a lady who runs a radio in Boston and she said Kenyans outside want to be registered as voters. They want to be told where they will register. They want to be told what they will need to be registered with; whether it will be their passports or whether they have national identity cards. All this has been provided for in this Part VII. This shows that once we pass these regulations, those Kenyans outside Kenya will be part of the historic elections of 4th March if they are registered according to these regulations.

Madam Temporary Deputy Chairlady, I want to appreciate the work of the Committee. I support and second this amendment.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I want to thank the Committee for bringing these amendments.

Madam Temporary Deputy Chairlady, I have a problem with regulations 33A (2) (b) where you say that one of the considerations for registration of Kenyan citizens will be "other logistical considerations," especially because you are doing this for the very first time. This may be susceptible to abuse. If I am part of the Commission and there is a certain group that I want or there is a group that is sympathetic to this party, then the logistical consideration will be to consider this area and not the other area. Part (a) is not subjective, but (b) is very subjective.

I also have a problem with regulation 33D. It is okay where you talk about "valid Kenyan passport". However, when you talk of "national identity card", I do not know whether we are talking about the old one, because most of the people in diaspora do not have the national identification cards. But because they have travelled with passports, I think it will be better if we

just put “passports” as opposed to “national identification cards,” because we are using a new generation identity cards.

Finally, if you look at regulation 33E, you will find that we are saying that we are not going to use Ambassadors, Deputy Ambassadors and High Commissioners or a Deputy Commissioner of a Kenyan mission. However, we are saying that we may use services of any foreign representative. How is this foreign representative appointed? Who is she/he? So, when you have a person whose appointment is not very clear, then it is also amenable to abuse.

Madam Temporary Deputy Chairlady, I do not know whether hon. Amina Abdalla could just respond to that to make me feel a bit more comfortable, because I am very uncomfortable with those three.

The Temporary Deputy Chairlady (Dr. Laboso): Let us have a few more people making comments.

Yes, Mr. David Koech!

Mr. Koech: Madam Temporary Deputy Chairlady, I would like to, first of all, commend the Committee, because our main concern, as Kenyans, is to ensure that genuine Kenyans outside there do vote.

I have two issues here. First, I want to plead with the Chair to consider deleting as indicated by hon. Millie Odhiambo, that any Kenyan outside there who is validly in that country must be having a valid Kenyan passport. If we include the national identity card, we are actually allowing “illegal” Kenyans, who are illegally in those countries to vote in our embassies. That means that our embassies are going to allow “foreigners” to go and vote there. So, I am really requesting the Committee to consider deleting “national identification card.”

Secondly, I totally agree with us not using our Ambassadors, Deputy Ambassadors, High Commissioners or Deputy High Commissioners. It is important to use Kenyans who are in those embassies. This is because the Independent Electoral and Boundaries Commission (IEBC) did share with us that they want to use somebody whom they can hold accountable to any malpractices. So, to use any foreign representative, that foreign representative cannot and will never be accountable to the Kenyan group.

Madam Temporary Deputy Chairlady, I really want to request that you delete the two and we shall be together.

Mr. Ogindo: Thank you, Madam Temporary Deputy Chairlady. I rise to support these new regulations in the amended forms.

Madam Temporary Deputy Chairlady, I want to propose that regulation 33(a) be considered in its amended form by deleting “(2)(b) other logistical considerations.” When we talk about Kenyans in the diaspora, we are saying that we will have Kenyans in Somalia, Uganda, Tanzania and far apart. When you bring in other logistical considerations, they vary with every country. It is liable to abuse, particularly when we are just indulging in this for the first time.

Madam Temporary Deputy Chairlady, the second one is on 33(d). I wish to propose that it be considered in its amended form by deleting “or a national identification card,” so that we remain with “a valid Kenyan passport,” as the only form of identification. We want to be sure that the people we are dealing with are people who travelled outside this country legally and are capable of travelling back legally.

Madam Temporary Deputy Chairlady, the other one that I want to make a contribution on is regulation 33E which says that the Commission may use services of any foreign representative of Kenya. I think that “using” is a little loose. Maybe we could have said “may hire” so that the

person that is charged with the responsibility in the diaspora is, indeed, accountable and answerable to the Commission.

I want to plead with Madam Amina that if she is agreeable with those proposed amendments, I think they will improve these regulations which are subject to review with time. However, as a starting point, maybe we would be cautious enough to take in the amendments that I have proposed. I want to ask Dr. Khalwale to second.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ogindo, I think the Minister wants to take over some of those amendments. There are several amendments. Can we consolidate them?

Let us listen to hon. M. Kilonzo first!

The Minister for Education (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I want to salute the Committee for a truly revolutionary approach to this very fundamental area and hope that they will continue investigating it.

Madam Temporary Deputy Chairlady, as my colleagues, hon. Ogindo and Koech, have said, I totally agree with them that the recognition of a Kenyan outside the territory should only be by passport to confirm that they are truly out in exercise of their right to travel. An identity card will expose us to many problems.

Madam Temporary Deputy Chairlady, if you look at regulation 33(f), you will find that the right to vote is a very difficult right to limit, partly because it is in the Bill of Rights. Therefore, whilst I accept these recommendations at this point, it must be important to bear in mind two things. There are a number of countries in the world that limit the influence that the diaspora vote has on a presidential election for good reason. I would rather leave this to the Committee to continue discussing and debating, because this right is supposed to be exercised and applied progressively.

The other aspect is that you have to remove these logistical considerations in regulation 33(a), otherwise, you will be creating an enormous problem for the IEBC.

My recommendation is that in due cause, the country must finalize mapping of its citizens so that we know where they are for purposes of elections.

I beg to support subject to the amendments that my learned friend, the Minister has agreed to adopt.

The Temporary Deputy Chairlady (Dr. Laboso): Dr. Khalwale, we will give you the last chance, then hon. Amina and the Minister to move the amendments.

Let us just hear the comments.

Dr. Khalwale: Madam Temporary Deputy Chairlady, I will support the amendments and speak to, first of all, 33(F). I just want to be educated a little bit by the hon. Minister, because of your legal background and maybe, hon. M. Kilonzo because of the good work he has been doing in this area since we started the journey of getting this new Constitution. To my understanding, I believe the Constitution contemplated a situation whereby Kenyans in the diaspora will have an opportunity to participate in the general election. But this seems to give the impression that the Constitution wanted them to participate in part of the general election. So, I would like you to clarify to my mind whether this particular regulation will not be open to legal challenge from the many Kenyans who are very keen on reading this fairly new Constitution.

My second concern is 33(E), where I want to commend you without any reservations about knocking the ambassadors and the other big boys and girls in the embassies. But do not forget that the staff who work in those embassies usually follow the bosses. The bosses are the ones who talk to the Minister and with all due respect, then they say, "I will send you my

person” and stuff like that. That is why, if you go to an embassy where there is a Luhya ambassador, chances are *watu wa mkono*; the casual workers, you might find, the majority are from that particular community. So, you might not be curing entirely.

Madam Temporary Deputy Chairlady, there is an experience in Brazil where they use students as clerks and staff like that. Maybe, you want to explore, I do not know. Is it possible that patriotic Kenyan students in those respective countries can then be allowed to work for us and earn a small salary? It will be useful to them. It will also remove bias because students just go outside the country to study. They do not go there on patronage.

Madam Temporary Deputy Chairlady, the final point is the issue of 33(A)(2b), where I want to agree with hon. Ogindo, hon. Odhiambo-Mabona and the Minister M. Kilonzo that we remove other logistic considerations. It must not be lost to us that we should not make this first exercise too complicated to implement or too easy to be abused. If you move it away from the embassy, because of other considerations, then you will start getting ghost workers and stuff like that. Let us keep it simple. Then if we succeed, five years later, we can improve on our learning.

I support.

Mr. M’Mithiaru: Madam Temporary Deputy Chairlady, let me also add my voice to commend the Committee for the good job they have done especially for introducing Part VII on registration of Kenyan citizens residing outside the country. I agree fully on the deletion of the other logistical considerations.

Madam Temporary Deputy Chairlady, also on the issue of the national identity cards, we know for sure that anybody going outside Kenya will carry a passport and not an ID card. So, really, the ID here may be subject to abuse. So, we should delete that.

Then, on the Kenyans who are voting for the Presidential candidates, I also agree fully on 33(F), in that, if at this stage we allow Kenyans out there to vote even for the ward representatives and Members of Parliament, it could be a tall order really to know in which wards they were registered when they are outside the country. But I think if we start off with them, voting for the Presidential or any referendum, I think that is a good starting point for us to gain confidence on Kenyans to vote when they are out there.

However, I have only some quarrel on 33(E) where we are saying that we are going to use foreign representatives of Kenya and already in 33(A) we are saying that we are allowing Kenyans who are serving at the Kenyan embassy or High Commission or consulate. This means that actually we are recognizing that institution to be more or less the centre. So, if that be so, I do not see anything wrong really with giving that responsibility to the ambassador of the High Commission or even to appoint a representative for that purpose.

We are sure that this time round even the High Commissioners or ambassadors will be subject to approval by this House. So, if that be the case, then that person must be held responsible in the event of any wrong doing. Such a person should bear the consequences. So, I would like to propose a further amendment that we make use of the ambassadors there, or whoever they appoint to carry out this exercise.

I support.

Mr. Njuguna: Madam Temporary Deputy Chairlady, very quickly, indeed. Let me indicate that fraudsters in this country have been able to produce our IDs and even title deeds. Therefore, it is possible for the same fraudsters to produce the same for those residing outside this country and their numerical strength may interfere with the pattern of votes in the country.

Therefore, I will support the removal of the ID and retain passports.

On 33(A), our people in the diaspora should participate as indicated on the amendment.

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I wish to support some of the amendments proposed. We put 33(A) (2b) so that we give some discretion to the Commission. But if you fear this discretion, I will welcome the deletion. Other logistical considerations were taking out some of the very detailed and very biased considerations that the IEBC had put in the diaspora registration. So, I will be happy if the House so feels, that we delete (b).

Madam Temporary Chairlady, on 33(D), there is an issue there that constitutionally and the Elections Act, allows a Kenyan to use both ID and passport. But although we were convinced that it will be good for those in the diaspora to only use valid passports, we thought that since the Elections Act allows for IDs, then if they have valid IDs, they could do the same. But that is for the House to decide. I am not strongly against the issue.

Madam Temporary Deputy Chairlady, 33(E) was the main reason why I wanted to stand. I think there is a typographical error there. We wanted to say “any person who works for our foreign missions outside Kenya” and not any foreigner because as you know there is a real issue of holding somebody accountable for election offences. So, this is in relation to workers in our foreign missions.

33(F) is a tough one because we appreciate that these things must be progressive. So, we felt that the IEBC is leaving Kenyans in the diaspora guessing what they will be voting for and we wanted to be clear that for this election, that progressiveness is confined to Presidential and future referenda.

I do support the amendments.

The Temporary Deputy Chairlady (Dr. Laboso): For ease and to understand you, Amina, are you saying that we delete the word “foreign”?

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, yes, and just have “any representatives of Kenya” because we have a proviso that deals with the political appointees. So, I will propose the amendments as stated by hon. Ogindo.

The Temporary Deputy Chairlady (Dr. Laboso): We can actually formally have those amendments. There have been discussions on them but we will ask the Minister to move the amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I want to thank Members for their contribution and particularly hon. Ogindo for the proposed amendments which Members seem to unanimously agree with, that they be deleted.

Madam Chairperson, I would like to propose that the proposed Regulations be amended by deleting sub-regulation 2(b) of the proposed Regulation 33A. This will do away with “Other logistical considerations” so that we only have (a) which is “The presence of a Kenyan Embassy, High Commission or Consulate”. Kenyans know in which country we have an embassy, a High Commission or consulate and in which one we do not have them. So, there will be a clear basis for where the voting will take place. This will bring clarity and avoid any confusion. That is the proposed amendment that I wish to move.

I also wish to move another amendment--- Should I move them one by one?

The Temporary Deputy Chairlady (Dr. Laboso): I do not know whether you want us to amend them one by one or we just do all of them as we have done before?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, because they were moved together, I wish to make amendments to 33A by deleting (b) and then we move to the next one, which is 33D and

delete the words “or National Identification Card”. With regard to 33E, I propose that we delete the word “foreign”. This will leave it to read: “...may use the services of any representative of Kenya.”

Madam Temporary Deputy Chairlady, that is because with regard to 33F, Dr. Khalwale had raised issues on why we should only deal with the Presidential elections and whether this will be open to challenge. I think he had a lot of valid argument; we must expect challenges. However, the principle is very clear that it has to be progressive. So, those challenges will come, but I think the courts are clear on the principle of progressiveness.

For a start, our compatriots out there can start with the Presidential elections. The logistics of having to have all the elections, including up to the ward representative, would be a logistical nightmare.

QUORUM

Mr. Zonga: On a point of order, Madam Temporary Deputy Chairlady. I think what we are discussing is a very urgent matter, but I wonder whether we have a quorum. I think we need a lot of input into this matter; if we do not have a quorum then we need consultations.

Ms. Karua: He is only wondering!

The Temporary Deputy Chairlady (Dr. Laboso): Are you calling for quorum?

Mr. Zonga: Madam Temporary Deputy Chairlady, we have our Standing Orders and my point should be taken seriously. Do we have quorum in order to go ahead with the proposed amendments?

The Temporary Deputy Chairlady (Dr. Laboso): Clerks, could you confirm whether or not we have quorum in the House?

Hon. Members, we do not have quorum in the House. Serjeant-At-Arms, please, ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, please, settle down. We now have a quorum. The quorum bell can be stopped.

(Question of the further amendment proposed)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, whereas I support the proposals by the Minister, I have raised an issue and I do not know how he would want to address it in the amendments in 33E. The 33E is only deleting “foreign”, which therefore, means that it will read:

“For the purpose of registration of Kenyan citizens residing outside Kenya as voters, the Commission may use the services of any representative of Kenya who shall not be the Ambassador---”.

My concern is how we select this any representative. Who does it because when we leave it discretionary, we will be setting up the commission for crash? So, I do not know how he wants to put it.

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I am wondering if the Member is concerned about “who”. The “who” is the Commission which has been defined as the

commission mentioned in the IEBC Act, which is the IEBC itself. So, it is the IEBC that may appoint and may use the Kenya's representatives apart from the political appointees. So, it is the Commission.

Ms. Karua: Madam Temporary Deputy Chairlady, my understanding of this is just like it happens locally. The IEBC is the one that chooses the returning officers and the presiding officers. Once they are told they will choose, and normally if there is anything unsuitable any voter can complain, we have to reach a stage where we have to have some basic trust in that body to do certain things. Then we have the residue right to point if anything is going wrong.

I support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, for the sake of clarity and to address the concerns of hon. Odhiambo-Mabona, there will be no harm if we were to add "any representative of Kenya who shall be appointed by the IEBC".

The Temporary Deputy Chairlady (Dr. Laboso): It will be repetition. It is already said "the commission".

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, the Commission may use the services of any representative of Kenya.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, is it not just fine? That representative will be the Commission.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, it is clear that it is appointed by the Commission.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, the Minister is moving a very important amendment, which is to use the word "appoint", because 'appoint' puts certain obligations. But when you say "use", I can decide to pick my relative who stays in whichever country. If the Minister could just move the amendment and we insert the word "appoint", it would be better.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, your third amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, let us see if it makes sense. Regulation 33E will now read as follows:-

"For the purpose of registration of Kenyan citizens residing outside Kenya as voters, the Commission may appoint any representative of Kenya who shall not be the Ambassador, Deputy Ambassador, High Commissioner or the Deputy High Commissioner of a Kenyan mission".

I think that makes sense. We are saying that instead of "use", the Commission may "appoint". But you hire services. You do not appoint services.

I beg to move that the proposed New Regulation 33E be amended by deleting the words "use the services of any foreign" and inserting thereof the word "appoint".

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I want to support that amendment. Its import is to delete the word "use" and insert the word "appoint". Then delete the word "foreign". Then we will cover the concerns raised by hon. Odhiambo-Mabona.

I support the amendments on 33E.

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

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

(New Part VII A as amended agreed to)

Regulation 34

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT the proposed Regulation 34 be amended by deleting sub-regulation (2) and substituting therefor the following-

(2) The registration officer shall require, satisfactory proof that a voter's card has been lost or destroyed.

The import of this is that the discretionary language that was used in 34(2) gave too much discretion to the registration officer on whether to replace a card or not.

(Question of the amendment proposed)

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

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

(Regulation 34 as amended agreed to)

(Regulation 35 agreed to)

Mr. Ogindo: Madam Temporary Deputy Chairlady, I think you are moving very fast. Your screen may not be in front of you because we are making interventions and they are just going. You have just ruled and yet we wanted to make interventions. We do not know what to do.

The Temporary Deputy Chairlady (Dr. Laboso): At what point did you want to intervene?

Mr. Ogindo: Madam Temporary Deputy Chairlady, you have already ruled. How do I go back?

The Temporary Deputy Chairlady (Dr. Laboso): I will be more vigilant with my two assistants here.

Regulation 36

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT the proposed regulation 36 in paragraph (a) be amended by inserting the words "at least seven days to the date of hearing" immediately after the word "sent".

This is with regard to the registration officer giving notice. We are introducing that the notice should be provided, at least, seven days to the date of the hearing. That is the amendment.

(Question of the amendment proposed)

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

(Regulation 36 as amended agreed to)

(Regulations 37, 38 and 39 agreed to)

Regulation 40

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed regulation 40 be amended -

(a) By deleting the words “incapacity” immediately after the words “physical” and substituting therefor the words “inability”.

(b) by deleting paragraph (c).

This is basically replacing the word “incapacity” with the word “inability” because we thought the word “inability” will specify the issue better. We are also proposing the deletion of “c” because we have already provided for signification of a person who does not have hands or thumbs in another sub regulation.

(Question of the amendment proposed)

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

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

(Regulation 40 as amended agreed to)

Regulation 41

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the proposed regulation 41 be deleted –

We are saying that this should be deleted because it has been overtaken by events because we have collapsed the two regulations into one. Therefore, the regulations apply to the registration of Kenyans in the diaspora. So, I propose that Regulation 41 be deleted.

(Question of the amendment proposed)

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

(Regulation 41 deleted)

(Regulation 42 agreed to)

Schedule

Ms. Amina Abdala: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Regulations be amended in the Schedule as follows-

(a) by deleting reference to FORM A and renumbering the rest of the schedule in proper alphabetical order.

(b) by inserting the following new form immediately after FORM BB

FORM BB [Regulation 35 A]

APPLICATION FOR REGISTRATION BY A VOTER BY A KENYAN RESIDING OUTSIDE KENYA

1. FULL NAME:

- (a) Surname.....
- (b) Other names.....
- (c) Passport Number, Date and place of issue, passport expiry date.....
- (d) Identity Card Number, Date and place of issue,
- (e) Date of birth

2. CITIZENSHIP

- (a) Country of Birth.....
- (b) Citizen by birth/ registration.....
- (c) if by registration, date of registration (dd mm yyyy)

3. COUNTRY OF RESIDENCE.....

4. PHYSICAL ADDRESS.....

5. CONTACT ADDRESS.....

- (a) Telephone (country code, telephone number)
- (b) Email.....
- (c) Postal Address.....

6. APPLICANT'S LAST RESIDENCE IN KENYA

- (a) Constituency-----
- (b) Ward.....
- (c) Address.....
- (d) Cell phone number.....

7. DURATION OF STAY IN COUNTRY OF RESIDENCE

- (a) Years.....
- (b) Months.....
- (c) Days.....

8. Disability (if Any):.....

9. Whether you will require to be assisted by any one during voting.....

I, the applicant, hereby apply to be registered in the Principal Register of Voters for the following elective positions:

- (a) Presidential
- (b) Referenda

DECLARATION

I declare that:

- (i) I am qualified to be, and not disqualified from being, registered as a voter under the Law in respect of the class or classes of election for which I now apply for registration.
- (ii) I am in possession of a Kenyan passport with the number indicated in this application.
- (iii) The particulars entered on this form (which I have entered, read or have had read to me) are in every respect true and correct.

Dated: 20 ...

.....
Signature or thumbprint of Applicant

Declared before me:

Registration Officer/Assistant Registration Officer

Official Stamp:

(c) by deleting FORM C appearing therein and substituting therefor with the new FORM C as follows-

FORM C [Regulation 13 (1)]

APPLICATION FOR REGISTRATION AS A VOTER

To the Registration Officer -----

constituency

County:----- Ward..... Registration centre.....

Surname:.....

Other names.....

Identity card no./Kenyan passport no:.....

Date of birth:.....

Sex.....

Residential address:.....

Contact Telephone.....

Postal address:.....

Email:

Disability (if Any):.....

Whether you will require to be assisted by any one during voting:.....

I, the above named applicant, hereby apply to be registered in the Principal Register of Voters in accordance to the Constitution and the Elections Act.

DECLARATION

I,..... declare that at the date of this application:

- (i) I am qualified to be, and not disqualified from being, registered as a voter under the law in respect of the classes of election for which I now apply for registration.
- (ii) I am in possession of a national identity card or Kenyan passport with the number indicated in this application.
- (iii) The particulars entered on this form or submitted to the Commission (which I have entered, read or have had read to me) are true to the best of my knowledge.

Dated:, 20

.....
Signature or thumbprint of Applicant

Witnessed by:
Registration Officer/Assistant Registration Officer
Official stamp.

(d) by deleting FORM J appearing in Schedule and substituting therefor with the new FORM J as follows-

FORM J Form J [Regulation 33 (1)(b)]

NOTICE OF AVAILABILITY OF REGISTER FOR INSPECTION

Date of posting notice:

NOTICE is hereby given that the new preliminary register of voters for the

Constituency has been completed and is available for inspection fordays. The register may be inspected at the places listed in the Schedule.

How to make a claim:

A person who claims that he or she should be included in the register may make a claim to the registration officer within the period prescribed for inspection.

The claim must be made in the prescribed Form.

How to make an objection:

A person who is registered and who wishes to object to his or her own registration or the registration of another may make an objection to the Court within the period prescribed for inspection.

A person who is registered and who wishes to object to a claim of another may make an objection to the Court within the prescribed inspection period after the claim was posted.

An objection must be made in the prescribed form.

Dated the, 20

Registration Officer

Dated.....

SCHEDULE

Places where application may be made:

Dated the:

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): Yes, hon. Martin Ogindo.

Mr. Ogindo: Madam Temporary Deputy Chairlady, I was not following. I do not know to what extent the Schedule runs, but I want to get it from hon. Amina Abdalla, just for information. I was not here when this was being clarified. I am looking at Form C, APPLICATION FOR REGISTRATION AS A VOTER, where we have “Registration Officer, County, Ward and Registration Centre”. I am not seeing “Constituency”. I do not know the wisdom behind that omission. So, if the hon. Member could enlighten me and the House, please.

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, the beginning of that form starts with “APPLICATION FOR REGISTRATION AS A VOTER; To the Registration Officer ----- constituency.” So, the space for the constituency is the beginning. We then go to “County, Ward and Registration Centre”. So, it is there.

The Temporary Deputy Chairlady (Dr. Laboso): What is your point of order, hon. Khalwale?

Mr. Khalwale: Madam Temporary Deputy Chairlady, I have had an experience of an election petition and I know that in some instances, you will have to prove that a witness who

has come before the court is actually a voter. So, could the Minister clarify to me? If a witness does not have all the details as provided for on this Application Form, can he be challenged that he is not a voter? In an election petition, they normally ask for proof that you are registered voter. I know many supporters in Saboti Constituency who do not have e-mail or postal addresses. So, if the Minister could just clarify.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I think we are referring to the form and it provides for the constituency. That should be sufficient. I do not know which issue the hon. Member has with the form as it is. Mr. Ogindo was trying to improve on it, but it is very clear to the Registration Officer, Saboti Constituency. It will give other constituencies.

Ms. Amina Abdalla: Madam Temporary Chairlady, the issue raised by Dr. Khalwale is that which the Committee dealt with. It then realized that the debate we have been having about individuals having a voter's card or requiring it was an important one, since these forms will remain with the electoral commission. What receipt will the voter have to prove that he or she is a registered voter? That is why there has been a clear indication that the commission shall have to give a form of receipt, which is the voters' card, in the case of the voter who will need to prove that he or she is a voter in that constituency.

Ms. Karua: Madam Temporary Deputy Chairlady, my point is that although it is true that many Kenyans may not have personal post office boxes they use that of the nearest primary school, secondary school or church.

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

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

(Schedule as amended agreed to)

(Title agreed to)

(Regulation 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Draft Elections (Registration of Voters) Regulations, 2012--

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Minister, there is a point of order by Mr. Ogindo.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Draft Elections (Registration of Voters) Regulations, 2012 and its approval thereof with amendments subject to recommittal of Regulation 5 and Regulation 34.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Dr. Khalwale) in the Chair]*

REPORT

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered The Draft Elections (Registration of Voters) Regulation, 2012 and approved the same with amendments subject to the recommittal of Regulation 5 and Regulation 34.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[The Temporary Deputy Speaker
(Dr. Khalwale) left the Chair]*

IN THE COMMITTEE

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

THE DRAFT ELECTIONS (REGISTRATION OF VOTERS) REGULATIONS, 2012

(Consideration of recommitted Regulation 5 and Regulation 34)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we want to recommit Regulation 5 and Regulation 34.

Eng. Gumbo, we want to recommit your amendment. Could you now move your amendment?

Eng. Gumbo: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Regulations be amended in Regulation 5 by inserting the following new sub-regulation immediately after sub-regulation (3) -

(4) The recruitment and appointment of registration officers and assistant registration officers under this regulation shall be done competitively and transparently.

Madam Temporary Deputy Chairlady, this is a very good amendment. What is happening now is that registration, particularly the constituency election co-ordinators go through this exercise in a very whimsical manner where you find sometimes, like in my constituency, they send text messages to particular people; everything is opaque after people are appointed. There is no list showing who has been appointed. So, we want to increase the transparency and the competitiveness in this process considering the low employment rates in Kenya so that those who deserve are the ones who get.

In some places even the question of balancing within the constituency; like during the referendum in my constituency 80 per cent of the presiding officers came from one division. So, we want that transparency so that these things are done in a way that shows that we are committed to delivering a transparent election.

I beg to move.

(Question of the further amendment proposed)

Ms. Amina Abdalla: Madam Temporary Deputy Chairlady, I wish to support that amendment. It was an oversight on the part of the committee. Without anticipating debate, this has been a concern that we will be raising when we are discussing the recruitment of returning officers up to the polling clerks. So, it is an amendment that is really valid and I do support.

Mr. Ogindo: Madam Temporary Deputy Chairlady, I want to support this amendment. I think it will go a long way in addressing these issues including in foreign appointments. I also want to emphasize that we need to bring this in so that even at the village level where recruitment is done, cognizance is taken of the constitutional requirements, that there is a regional balance.

I support.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, this is a cardinal constitutional principle.

I support.

Mr. Chanzu: Madam Temporary Deputy Chairlady, the level of unemployment in this country is very high. This is where you get the problem of somebody who has got a chance to employ, importing people from far and taking all of them to one place. So, it is a valid recommendation.

Mr. Njuguna: Madam Temporary Deputy Chairlady, this amendment is calling for fairness and equity.

I support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I support and thank my honourable friend, Eng. Gumbo, for coming late, but ensuring that this has been passed. We live in an era of transparency and accountability, but sometimes we do not practise it. So, this amendment will add value.

Thank you, Madam Temporary Deputy Chairlady.

Mr. Nyambati: Madam Temporary Deputy Chairlady, while I strongly support this amendment, I am quite concerned that we are talking only of registration officers. I wish that this

is extended, so that it includes the returning officers, deputy returning officers and all those officers involved in the election exercise.

Mr. Nyammo: Madam Temporary Deputy Chairlady, this is a very valuable amendment. I beg to support.

Mr. Kaino: Madam Temporary Deputy Chairlady, I rise to support.

Madam Temporary Deputy Chairlady, while supporting, in most cases elections are done in primary schools. People should not be imported from one location to another. They should be restricted to that area.

Thank you, Madam Temporary Deputy Chairlady.

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

(Regulation 5 as amended agreed to)

Regulation 34

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I beg to move a further amendment; that Regulation 34 be deleted.

Madam Temporary Deputy Chairlady, this particular regulation deals with replacement of voters' cards. With the electronic voter registration, we will not have voters' cards. Although we have carried out further amendments to it - and I want to thank the hon. Chair - they are superfluous because we will not be having voters' cards. When you look at Form F on page 22 of the Regulations, you will see that we have a Voter Registration Acknowledgement Slip. So, as you register, you will be given that acknowledgement slip. All you will need to produce for you to vote is either your identity card or passport.

Madam Temporary Deputy Chairlady, I, therefore, propose that this particular regulation be deleted.

(Question of the further amendment proposed)

Dr. Khalwale: Madam Temporary Deputy Chairlady, I want to commend, once again, this amendment.

Madam Temporary Deputy Chairlady, the issue of carrying the voter's card and the identity card is a nightmare to the rural people. The old woman, for five years, keeps on using that voter's card to withdraw money and so on. But now she does not remember where the voter's card is. In the morning, she now has the identity card and she cannot get the voter's card. So, she cannot vote for me and you know how women like voting for me.

Madam Temporary Deputy Chairlady, I support.

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

(Regulation 34 deleted)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Draft Elections (Registration of Voters) Regulations, 2012 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Dr. Khalwale) in the Chair]*

REPORT, CONSIDERATION OF REPORT AND APPROVAL

THE DRAFT ELECTIONS (REGISTRATION OF VOTERS) REGULATIONS, 2012

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered The Draft Elections (Registration of Voters) Regulations, 2012 and approved the same with amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Education (Mr. M. Kilonzo) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Draft Elections (Registration of Voters) Regulations, 2012 be now approved.

The Minister for Education (M. Kilonzo) seconded.

(Question proposed)

(Question put and agreed to)

*(The Draft Elections (Registration of Voters)
Regulations were accordingly approved)*

The Temporary Deputy Speaker (Dr. Khalwale): Order hon. Members! By virtue of Standing Order No.20(2) I am ordering that this House will rise ten minutes late. This is because of the time we lost under quorum.

Ms. Karua: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Dr. Khalwale): Order, Member for Gichugu! The Temporary Deputy Speaker is on his feet.

(Laughter)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Temporary Deputy Speaker (Dr. Khalwale) left the Chair]

IN THE COMMITTEE

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

THE KENYA NATIONAL EXAMINATIONS COUNCIL BILL

(Clauses 2, 3, 4, 5, 6, 7, 8 and 9 agreed to)

Clause 10

The Minister for Education (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady I beg to move:-

THAT the bill be amended in clause 10(1) (a) by-

(i) Inserting the following words immediately before the word conduct –

“set and maintain examination standards”;

(ii) In clause 10 (1) (b) by inserting the following words after the semicolon –

“such certificates or diplomas, shall not be withheld from the candidate by any person or institution”;

(iii) Add a new sub paragraph (c) as follows:-

“Confirm authenticity of certificates or diplomas issued by the Council upon request by the government, public institutions, learning institutions, employers and other interested parties”;

(iv) Add a new sub paragraph “(d)” to read as follows:-

“issue replacement certificates or diplomas to candidates in such examinations upon acceptable proof of loss of the original”

(v) Renumber the other sub paragraphs.

(vi) That the bill be amended in clause 10(2) by inserting the following new subparagraph after (a):

b. “make rules regulating the confirmation of examinations results and for all purposes incidental thereto”;

c. “make rules regulating the conduct of issuance of certificates or diplomas and for all purposes incidental thereto”;

d. “make rules regulating the conduct of issuance of replacement certificates or diplomas and all purposes incidental thereto”;

This is very straightforward because it reflects the wishes of this House as expressed during the Second Reading.

(Question of the amendment proposed)

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Madam Temporary Deputy Chairlady, I want to commend the Minister and support strongly Clause 10(ii) in respect to withholding of certificates and diplomas. This is the problem that has bedeviled this country where students finish their examinations and their certificates are withheld by principals because they have fees balances. With the passing of this, students in Kenya will be free to get their certificates and look for jobs.

I support.

Mr. Koech: Madam Temporary Deputy Chairlady, I want to confirm that as a Committee we sat and we do agree with these proposed amendments. However, it is important to note that stopping the withholding of certificates might in the other ways affect institutions in the sense that principals will ensure that all the fees are paid before the students sit for examinations. That way, we will not have any problem thereafter.

Mr. Nyammo: Madam Temporary Deputy Chairlady, we agreed at the Committee Stage that this would be a very valuable addition to the Bill and we support it.

Mr. Ogindo: Madam Temporary Deputy Chairlady, I support.

Eng. Gumbo: Madam Temporary Deputy Chairlady, I support, but as I do that I want to commend very highly hon. David Musila for his consistency in this matter. I was just looking at the HANSARD and I saw that even in the previous Parliaments--- It is important that we expound this because some of us in our phones we have over ten messages of students who are asking to be helped to clear outstanding school fees which have made them be denied their certificates.

I support and highly commend hon. David Musila.

Ms. Karua: Madam Temporary Deputy Chairlady, I support. I think in every constituency in Kenya there are thousands of students who have passed very well and who are crying for their results. However, I want to caution the Minister. He better think of how to cushion the schools because they have debts which have been making them behave this way. We need another measure to counter-balance, but I strongly support.

Mr. Njuguna: Madam Temporary Deputy Chairlady, this will create the necessary access to certificates by our students, so that they can advance their knowledge. I support.

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

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

(Clause 10 as amended agreed to)

(Clauses 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40 agreed to)

Clause 41

The Minister for Education (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move:-

THAT the bill be amended in clause 41(2) as follows –

(i) In clause (2) by inserting the following words immediately after the word “strike” in the third line-

“during an examination period;”

(ii) In clause (2) (a) by inserting the word “such” immediately after the word “of;”

(iii) In clause (2)(b) by deleting the words “certain kinds of information” and inserting the following words immediately after the word “compromise”

“security information associated with such examinations;”

(iv) In clause (2) (c) by inserting the following words immediately before the semicolon-
“engaged in such examination;”

(v) In clause 2 (d) insert the word “such” after the word “of”

Madam Temporary Deputy Chairlady, the amendments are straightforward and, again, they reflect the concerns hon. Members stated during the Second Reading; it should not appear that we are violating the rights of persons to go on strike as provided for in Article 41 of the Constitution. We have limited this during examination periods and for purposes of ensuring that examinations are held when they are due.

(Question of the amendment proposed)

Mr. Nyammo: Madam Temporary Deputy Chairlady, we know how destructive the strikes have been to the education system. This is not to deny anybody their right to strike but to deny them the ability to destroy the lives of our children who cannot speak for themselves. What we require to do now is to define very clearly the examination period because if we leave it loose, it will be taken and be misinterpreted.

I support.

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

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

(Clause 41 as amended agreed to)

*(Clauses 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53,
54, 55, 56 and 57 agreed to)*

(Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Education (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Kenya National Examinations Council Bill, Bill No.50 of 2012 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Dr. Khalwale) in the Chair]*

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, there is a small clarification.

Hon. Koech, I think your concern has been addressed. Before the Committee of the whole House went to Clause 1, the Title was agreed to.

The Temporary Deputy Chairlady, can you now report to the House?

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE KENYA NATIONAL EXAMINATIONS COUNCIL BILL

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Kenya National Examinations Council Bill (Bill No.50 of 2012) and approved the same with amendments.

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister, Ministry of State for Defence (Mr. Musila) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that The National Examinations Council Bill (Bill No.50 of 2012) be now read a Third Time.

The Assistant Minister, Ministry of State for Defence (Mr. Musila) seconded.

(Question proposed)

An hon. Member: Put the Question.

The Temporary Deputy Speaker (Dr. Khalwale): I will not put the Question. I can see that somebody has a brief comment.

Yes, Millie Odhiambo.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I want to thank and congratulate the Minister, especially because he and his team have taken into account the issues that we requested to be considered for amendment. They have made our lives much easier. That is why I was not even commenting.

Congratulation!

The Temporary Deputy Speaker (Dr. Khalwale): Very quickly, Martha Karua.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, I would like to congratulate the Minister, the Committee and the entire House for passing this timely Bill, but I would also like to remind the Minister a related matter. The imposing of Value Added Tax (VAT) on *M-Pesa* transactions is going to adversely affect the education sector. That is how we send money to our children in schools for bus fare, and sometimes pay school fees. So, as we are doing one good thing with one hand, the other hand is withdrawing that good. Could he, therefore, liaise with his colleague to address those issues?

I beg to support.

(Question put and agreed to)

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

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, it is now time to interrupt our business. Therefore, the House stands adjourned until tomorrow, Wednesday, 10th October, 2012, at 9.00 a.m.

The House rose at 6.40 p.m.