

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 13th December, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

CONSTITUTIONALITY OF DEPLOYMENT OF THE KDF IN BARAGOI AND GARISSA

Mr. Speaker: Hon. Members, you will recall that on Wednesday, 21st November 2012, the Member for Gem Hon Jakoyo Midiwo rose on a point of order seeking the guidance of the Speaker on the constitutionality of the involvement of officers of the Kenya Defence Forces in Baragoi in Samburu District and in Garissa.

In summary, the Hon Member sought guidance as follows:-

(a) whether the involvement of officers of the Kenya Defence Forces in Baragoi and Garissa did not require the prior approval of the National Assembly as it amounted to assistance and cooperation with other authorities in situations of emergency or disaster within the meaning of Article 241(3)(b) of the Constitution; or

(b) whether the involvement of officers of the Kenya Defence Forces in Baragoi and Garissa required the prior approval of the National Assembly as it amounted to a deployment to restore peace in an area affected by unrest or instability within the meaning of Article 241(3)(c) of the Constitution.

The Minister of State for Provincial Administration and Internal Security Hon. Katoo Ole Metito on a Ministerial Statement issued in the House on 21st November, 2012 contended that the National Security Council on 13th November, 2012 directed the deployment of the Defence Forces to assist in Samburu County and other areas, alongside the Kenya Police Service, for purposes of assistance and cooperation pursuant to Article 241(3)(b) and did not require the approval of the National Assembly.

The Member for Gem was of the contrary view and contended that the deployment of the Kenya Defence Forces in Baragoi and Garissa required the prior approval of the National Assembly as it amounted to a deployment to restore peace in an area affected by unrest or instability.

Article 241 of the Constitution, which is in contention, in this case, provides:

“The Defence Forces—

(a) are responsible for the defence and protection of the sovereignty and territorial integrity of the Republic;

(b) shall assist and cooperate with other authorities in situations of emergency or disaster, and report to the National Assembly whenever deployed in such circumstances; and

(c) may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly.”

Hon. Members, as I observed on Tuesday 4th December, 2012 last week, it is in the public domain that the issue as to whether or not the involvement of the Kenya Defence Forces relates to one or other scenario envisioned under Article 241(3) (b) and (c) of the Constitution, is a matter that is currently pending before the High Court in High Court Petition No 538 of 2012 (Washington Jakoyo Midiwo versus The Minister of Internal Security, The Minister of Defence and the Attorney-General).

As I promised then, I would only be in a position to pronounce myself on the matter raised by Hon. Midiwo, after perusal of the pleadings in Court bearing in mind the principle of *sub judice*.

Hon. Members, may I take this opportunity to remind the House of the principles of national security as set out in Article 238, (2) (a) and (b) of the Constitution which are as follows:

“(2) The national security of Kenya shall be promoted and guaranteed in accordance with the following principles-

(a) national security is subject to the authority of this Constitution and Parliament;

(b) national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.”

The Constitution has, in order to safeguard the rule of law, democracy, human rights and fundamental freedoms, laid a clear process on how our Defence Forces may be deployed. It behoves all State organs to be alive to these principles in the deployment of the Kenya Defence Forces. The issues raised by Hon. Midiwo are weighty and the manner in which they are dealt with will set the precedent and form a firm basis on how such deployment should be undertaken.

Article 241(3)(b) and (c) anticipate that it is for the National Government after assessing the security situation to either deploy the Defence Forces to assist and cooperate with other authorities in instances of emergency or disaster and report to the National Assembly or deploy them to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly. The National Assembly will, using its Rules of procedure, facilitate the National Government to have the matter deliberated upon by the House.

Turning to the matter in Court, in his petition dated the 22nd of November, 2012, the Hon. Midiwo (petitioner) seeks the following declarations, amongst others, from the High Court:

(a) A declaration that the 1st, 2nd and 3rd respondents have contravened the provisions of Article 241(3)(c) of the Constitution of the Republic of Kenya by deploying the Kenya Defence Forces to Baragoi, Samburu, Turkana and Marsabit areas without obtaining Parliamentary approval for the deployment;

(b) A declaration that the 1st, 2nd and 3rd respondents have contravened the provisions of Article 241(3)(c) of the Constitution of the Republic of Kenya by deploying the Kenya Defence Forces to Baragoi, Samburu, Turkana and Marsabit areas in the absence of any evidence of actual unrest, instability or civil disobedience in those areas to justify the use of military force.

Hon. Members, I note that the issues raised by the Member on 21st November, 2012 are exactly the same issues which are pending for determination before the High Court in the aforesaid case.

I will pause for a minute to allow Members at the entrance to walk in.

(Hon. Members walked into the Chamber)

Hon. Members, going back to where I was, Standing Order No. 80 contains the rules on how this House determines whether a matter is *sub judice* or not because paragraph (1) of the said Standing Order in particular prohibits reference to any matter which is *sub judice*. Under paragraph (2) of the said Standing Order, a matter is considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

Is the current matter active within the meaning of Standing Order 80 (2)? Under paragraph 3 (c) of Standing Order 80, civil proceedings are considered to be active when arrangements for hearing, such as setting down the case for trial have been made, until the proceedings are ended by judgment or discontinuance.

The daily Cause List of the High Court indicates that High Court Petition No 528 of 2012 has been listed for hearing commencing on 10th December, 2012 before Justice Majanja. The matter having been listed for hearing as stated above is therefore active within the contemplation of Standing Order 80(3) and any pronouncement on the matter by Mr. Speaker may prejudice its fair determination by the Court.

I also note that the HANSARD proceedings of the House on Wednesday, 21st November, 2012 are part of the record of pleadings filed in Court. This is indeed a testament of how the proceedings of this House may very well prejudice fair determination of the matter in court.

Hon. Members, as I have stated in my previous Communications relating to matters in Court, in the Commonwealth tradition, the *sub judice* rule arose out of a desire by Parliament to exercise restraint such that its comments and debate do not influence Courts to the detriment of litigating parties and witnesses in court proceedings. The doctrine is additionally premised on the Constitutional principle of separation of powers by which Parliament should not be seen as trying to deal with issues that properly belong to the Judiciary.

This is not to say Parliament cannot express itself on a matter in Court - far from it. Indeed, in my ruling made on 10th September, 2009 on the matter relating to the appointment of the Director and two Assistant Directors of the then Kenya Anti-Corruption Commission which was being jointly considered by the Committee on Justice and Legal Affairs and on Delegated Legislation, I stated:

“It must be noted that court proceedings are presided upon by judicial officers properly trained in law and who have taken an oath to discharge the functions of their office without fear or favour and without extraneous influences being brought to bear on their work.”

In the same ruling, I made the following observation:

“I take the view that as a general proposition, this House, in line with the precedents from other similar jurisdictions, should not abandon a matter over which it is seized on the ground only that the matter has become the subject of litigation in a court of law. Indeed as my learned predecessor, Speaker Kaparo, had occasion to say on 13th April 1995: “The effectiveness of the National Assembly will be seriously undermined if Members should pre-empt debate on matters before the House by resorting to court.”

Hon. Members, if this House, as happened in the present case, begins to consider any matter before it is the subject of litigation, the House will not give up jurisdiction of the matter easily or at all, for the reason only that some litigation has subsequently commenced on the matter. To hold otherwise would be to invite every person who is apprehensive of the action that this House might take on any matter to rush to court and thereby gag the House from

further deliberation on the matter. This surely cannot have been the intention of the *sub judice* rule. The Chair will guard carefully against the abuse of the procedures of this House in that manner.”

Whereas I cannot hesitate to deliver a ruling on a matter of great public interest that has been raised in the House, two issues constrained me from making any ruling on the matter raised by Hon. Midiwo.

One, the fact that the issues raised by the Member on 21st November 2012 are exactly the same issues which are pending for determination before the High Court under High Court Petition No. 538 of 2012.

Hon. Jakoyo Midiwo, after raising the matter in the House, went to court to seek determination and, in particular, sought constitutional interpretation of the matter. The High Court under Article 165 (3) paragraph (b) of the Constitution has jurisdiction to hear any question respecting the interpretation of the Constitution, and specifically the question whether anything said to be done under the authority of the Constitution is inconsistent with, or in contravention of, the Constitution. The hon. Member for Gem has, after raising this matter in the House, proceeded to seek the interpretation of the High Court under Article 165(3) paragraph (b) of the Constitution.

Hon. Members, bearing in mind the foregoing circumstances and in particular that the hon. Member for Gem, the originator of the matter in this House, is one of the parties in the High Court case, I decline to give a considered ruling now on the matter raised by the hon. Member, and leave it to determination by the court, with the legitimate expectation that the same will be expedited given its import with regard to interpretation of the Constitution.

I thank you hon. Members.

(Applause)

Hon. Members, obviously you understand what that means. If you believe in yourselves, do your business here.

Next Order

PETITIONS

RETIREMENT BENEFITS FOR MILITARY PERSONNEL

Mr. George Nyamweya: Mr. Speaker, Sir, I rise under Standing Order No.206 to present and table a petition on behalf of the retired military personnel.

Mr. Speaker, Sir, in accordance with the Standing Orders, the petition has been signed by over 40 servicemen and 26 officers from the rank of Major-General to Captain. The petitioners seek the indulgence of the National Assembly of Kenya in regard to their retirement, pension, medical care and the way they can be inducted back into civilian life.

Mr. Speaker, Sir, we make a great deal of efforts in training our military personnel and soldiers; in that sense we make them a disciplined force. When they retire we do not have a programme on how to induct them back into civilian life. The retired officers are so miserable that you really wonder why a country which should honour its military personnel should really

subject them to bad treatment. I can tell you here, that the average retirement pension is probably something in the region of Kshs3,000 - Kshs4,000 shillings.

Mr. Speaker, Sir, the petitioners seek that this National Assembly and the Government honour their services, and improve their terms of retirement, so that they are able to live a life of dignity and respect, commensurate to the service that they have offered the country.

Mr. Speaker, Sir, in many countries retired military personnel are actually engaged in very useful service in civilian life commensurate to their qualifications and training. Unfortunately, it seems that the Republic of Kenya does not wish to treat its own retired military personnel in a manner befitting the amount of resources we put into training them, and the qualifications and experience they get are left unutilized. In that way, in a sense, we actually squander in totality the investment that we put into them. I will be urging on behalf of all the retired officers that urgent action be taken by the National Assembly or the Department of Defence, which is in charge of this matter, by perhaps setting up a commission of inquiry either by the Government itself or by the relevant departmental Committee of the National Assembly to look into the grievances of the retired military personnel.

Mr. Speaker, Sir, you may also realize that some of these officers and soldiers, who have been retired for lack of gainful employment may have even turned to criminal activities. For example, we are aware that the alleged leader of the Mombasa Republican Council is, in fact one of the retired military officers. We just wonder whether if they were meaningfully engaged, they would have got into such things.

Mr. Speaker, Sir, countries honour, from time immemorial, their soldiers who stand to protect their sovereignty and independence. It will be a wonderful thing for the Tenth Parliament to stamp its approval of authority and get the Government--- In this case we are almost dissolving this House and going home;, but, perhaps, the National Assembly could require, as per the Standing Orders, the Ministry of State for Defence to take immediate and expeditious action to address the grievances of the long suffering officers and soldiers, who have served our country so well.

Mr. Speaker, Sir, with those very few remarks, I would wish to table the humble petition of our soldiers and officers, who have served our country with dignity, respect and honour. We, indeed, remember and see how proud we are; they have served us in the recent exercise in Somalia, where they are restoring peace and stability. This ultimately will also enable us to have a stable and peaceful country; our country will grow its economy and create employment---

Mr. Speaker: Order, hon. George Nyamweya. You have had a field day so far. I did not want to interrupt you but you now want to exceed the reasonable limits. I think you have done your job

. Does any Member wish to speak to this petition? We have just about two minutes.

*(Mr. George Nyamweya laid
the document on the Table)*

Yes, hon. Kioni

Mr. Kioni: Mr. Speaker, Sir, I want to support that petition by recognizing that our armed forces have a history of having protected the Governments that we have had since Independence. This has not been the case with other armies within the region. We have had armies within the region try to overthrow governments. That has not been the case with us.

Mr. Speaker, Sir, I also note that military officers retire much earlier than it is the case with other Government employees. It is important for us, as a nation, to be seen to take care of those of our own who put their lives on the line just to protect this country. It is unfair, if we are seen to have neglected them.

Thank you.

Mr. Speaker: Very well, I will direct that this petition be committed to the Departmental Committee on Defence and Foreign Relations. The Committee is chaired by the hon. Adan Keynan. Please, inquire into this matter and comply with Standing Order No.207 by responding to the petitioners and tabling your report on the petition in the House within the next 21 days. But because of where we are, hon. Adan Keynan, you are present in the House, and I am taking advantage of that; so, you may want to speed up this matter, so that you complete it before we finally adjourn.

We will want to take the Member for Bura.

PENDING RESPONSE TO PETITION ON LAND ALLOCATION
AND ISSUANCE OF TITLE DEEDS TO LAMU RESIDENTS

Dr. Nuh: Mr. Speaker, Sir, there is a petition on land allocation and title deeds for Lamu. It has been pending with the Departmental Committee on Land and Natural Resources for the last six months. Since the Standing Orders dictate that petitions be reported to the House within 21 days, I am at a loss. The last time you gave a direction that this petition be tabled was before we adjourned last time. So, I would humbly seek your guidance on this matter; the people of Lamu are still in anticipation of what the report contains and this House has the right to that report.

Mr. Speaker: Hon. Members, I recollect that when that petition was presented and, indeed tabled, I committed that matter to the Committee on Land. We then gave further direction as the Member for Bura has intimated, and the Committee appears not to have carried out what it is expected to do. I saw the Committee Chair here; he walked in a few minutes ago. I do not know if it was in anticipation that this matter would be raised, that he appears not to be in the House any more. Is there any Member of the Committee in the House? Is there any Member of that Committee who can speak to this matter and give the necessary assurances to the House? We are actually putting very critical entries on your score sheets, hon. Members. If you do not perform at this point, then it is unlikely that we will be saying kind things about you to enable your re-election.

In these circumstances, I would want to put it on record, and it is accordingly directed, that the Chairman of the Committee on Land and Natural Resources will give a report to the House on what the position is on Thursday next week. He is under duty to actually give a progress report to the House, if not table the report on the petition. It is so directed.

Hon. Ethuro, Member for Turkana Central.

Mr. Ethuro: Mr. Speaker, Sir, I have a different matter but on that one of the Chairman of the Departmental Committee on Lands and Natural Resources, I know that on the Government side sometimes some Members help to look for others; could I volunteer to look for the Chairman for the Departmental Committee on Lands and Natural Resources, at least in the course of today, so that he can give an undertaking to the House?

Mr. Speaker: Please do so, but I have concluded the matter. I have given directions on how we will proceed. Please do seek and find him and tell him that his attendance is obligated on Thursday next week. It is obligatory if not compelling. Okay? Confirm that you will do so.

Mr. Ethuro: Mr. Speaker, Sir, I will do so because I am meant to be with him tomorrow.

Mr. Speaker: Fair enough; proceed on your own matter.

PENDING RESPONSE TO PETITION ON OIL
EXPLORATION IN TURKANA COUNTY

Mr. Ethuro: Mr. Speaker, Sir, mine is also a petition on the petroleum issues in Turkana County, which have been pending for the better half of the year. I am glad now that the Minister for Energy is here in person. Maybe, he is more than ready to give it to me.

Mr. Speaker: Member for Turkana Central, to whom was your petition committed?

Mr. Ethuro: Mr. Speaker, Sir, it was committed to the Minister for Energy, and that has been the position; it has not changed.

Mr. Speaker: The Minister for Energy is in the House. Minister, perhaps, you want to give us some assurances on how you are proceeding on this petition.

The Minister for Energy (Mr. Murungi): Mr. Speaker, Sir, that petition was actually addressed to the Minister for Environment, but subsequently there was a request for a Ministerial Statement. The request for the Ministerial Statement was made after I had made an extensive tour with the hon. Member to both Nigeria and Ghana. All the issues that he was raising were raised during that tour, and I thought the Member of Parliament was satisfied. But I have been ready with the Statement that the hon. Member requested. I do recall that I came to consult you because the day when I was supposed to give it, the Member of Parliament was not here; his approach of this matter is a rather casual and pastoralistic manner.

So, if I am given a date, I will come---

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

Mr. Speaker: What is it, Member for Turkana Central? Order, Minister!

Mr. Ethuro: Mr. Speaker, Sir, the hon. Minister for Energy is a good friend of mine, but on this one he will know I am a true pastoralist.

Mr. Speaker, Sir, you cannot allow the Minister for Energy to get away with the words like: "I am behaving in a pastoralist manner," implying that an entire community of the Republic Kenya, which has a big population and occupies 80 per cent of our land mass, is casual. As a matter of fact, the day he claims to have been ready, it is true he was ready. I was here and he was here. But because of the workload on that particular day, you allowed him another day. He has never appeared again. When I was making reference to the Government Ministers assisting other Ministers, it was in reference to the hon. Minister for Youth Affairs and Sports, who volunteered the other Tuesday to look for the hon. Minister and he came. When it came to the time for the petition, the time when I knew he would deal with the petition, he disappeared. I never disappeared. I had gone to take tea during Question Time, while waiting for the proper time of the Statement to be arrive. When that Order was called, which is the most appropriate way of conducting business--- That is not casual. That is the most orderly Parliamentary business that this pastoralist adheres to; but this agriculturalist does not know how to behave.

Mr. Speaker: Order, Member for Turkana Central. Before I give any directions, I want to hear the Minister; among other things, are you saying a pastoralist is not an agriculturalist? I

think that may not be quite sound. Minister, you want to make a response before I give directions? Let us hear the Minister.

The Minister for Energy (Mr. Murungi): Mr. Speaker, Sir, I did not use the term “pastoralist” in any derogatory manner. I meant that a pastoralist, as a person, moves from one place to another place. It was in that context; it should be used the same way he used the word “agriculturalist” So, it has no derogatory meaning. My friend should be proud.

Mr. Speaker, Sir, regarding the petition, I still insist, and this can be confirmed from the HANSARD, that the petition was addressed to the Minister for Environment and Mineral Resources. Regarding the Ministerial Statement, I was ready with, but I do not carry it with me all the time. If I am given a date, when both the Member of Parliament and I should be here, I will be ready to come and deliver the Ministerial Statement.

Mr. Speaker: Very well, Minister; so that we use our time well, will you be ready to deliver that statement on Wednesday next week in the morning?

The Minister for Energy (Mr. Murungi): Mr. Speaker, Sir, could you make it Wednesday in the afternoon?

Mr. Speaker: Wednesday afternoon, we will do the best we can, but I was just being careful, so that we, perhaps, do not have very heavy business during Prime Minister’s Time and we do not get to your statement

The Minister for Energy (Mr. Murungi). We can just take my statement because it is of interest.

Mr. Speaker: Fair enough, we will take the Statement then on Wednesday afternoon. Member for Turkana Central, make sure you will be there then to receive the statement.

You still want the microphone; I do not think it is necessary on this one. Member for Imenti, I think you will be having tea but, please, be there on Wednesday afternoon, at 2.30 p.m.

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

Mr. Speaker: Order, Member for Turkana Central! We will not give you the Floor again. I think that matter is done. I do not find anything out of order in the Minister for Energy using the word “pastoralist” in reference to you because given the figurative manner in which he put it, it is possible that you had gone to attend to some other matter when he was ready to make the Statement. Pastoralists would behave like that. Pastoralists generally look for grass for their animals. So, occasionally, they will move from a place where there is less pasture to a place where there is more pasture. That does not mean that they are nomads. Not necessarily.

Yes, Member for Ndaragwa.

PAYMENT OF BENEFITS TO FORMER KCC EMPLOYEES

Mr. Kioni: Mr. Speaker, Sir, I wish to table a petition by former employees of former Kenya Co-operative Creameries (KCC) Limited. The petition is directed to the Ministry of Co-operative Development and Marketing.

Mr. Speaker, Sir, on 10th November, 1997, over 6,000 employees of the then KCC raised issues regarding the management of the company because they had a feeling that it was being mismanaged. However, instead of their grievances being addressed, they were all dismissed on 20th November, 1997. On 24th December, 1997, they went to court and a Mr. A.K. Nyaga was directed to investigate into the matter but they were not satisfied with what was recommended by Mr. Nyaga of the Ministry of Labour. So, the union went to court in 1998. What was held was

that all those who had been dismissed should be treated as persons whose termination had come to an end through normal procedure as opposed to summary dismissal.

The union then filed a petition in court and it was held that even the payments that were due to the petitioners be paid by KCC, which had since been wound up. They went to court again and the court ruled that the petitioners be paid an amount of Kshs126,152,052 as retirement benefits. An amount of Kshs92,539,725.75 was to be paid to them as deductions for the then Maziwa Sacco shares. A further amount of Kshs2,027,622.55 was to be paid to them as proceeds of their pension.

Mr. Speaker, Sir, this matter was on the Floor of this House before. We had raised it through Question Time. The Minister undertook to make payments but it was not done. It is actually out of that frustration that these petitioners have petitioned the National Assembly, so that the issue can be pushed in line with the Standing Orders, to the Ministry. We have over 42 signatures from counties across the country. It is important to note that this issue has been dragging on since 1997. The courts have pronounced themselves on it but the Government has been slow in even giving them a hearing or even agreeing to pay these dues as ruled by the court.

I hereby table the petition.

(Mr. Kioni laid the document on the Table)

Mr. Speaker: Member for Ndaragwa, in your prayers, are you asking the House to look into the matter or do you want the relevant Government Department to do so?

Mr. Kioni: Mr. Speaker, I want the relevant Government Department to do so, which is the Ministry of Co-operatives Development and Marketing.

Mr. Speaker: In that case, we will commit it to the Ministry of Co-operatives Development and Marketing, who will then be expected to make a response within 21 days?

Mr. Kioni: Yes, Mr. Speaker, Sir.

Mr. Speaker: Fair enough. I can see a request from the Member for Imenti Central. Do you want to make a contribution on this petition? Please, carry on.

Mr. Manyara: Mr. Speaker, Sir, it is not a contribution. I rise on a point of order to seek your guidance because hon. Kioni has said that the matter came before the House and that there was an undertaking by the Minister that the payments would be made. In those circumstances, really, is it not necessary to send the matter to another Committee? In fact, our Standing Orders provide for it to be taken to the Implementation Committee since an undertaking has already been made in the House by the Minister.

Mr. Speaker, Sir, I am just seeking your direction to find out whether the direction we have taken is correct, given that the hon. Member said that the matter was before the House and the Minister undertook to effect payment.

Mr. Speaker: Member for Imenti Central, I did hear all that but you will note that I sought to know from the hon. Member where he wanted this petition directed to because our Standing Orders are silent on where a petition will stand committed to, except that the Speaker has to look at the circumstances and all the facts and determine whether to commit it to the relevant Government Department or the House or a Committee of the House. That is why I wanted to find out where the hon. Member feels that he will best get a remedy at the earliest and the hon. Member seems persuaded that the relevant Government Department will provide that remedy soonest. Of course, now that the petition is tabled in the House, the House will be monitoring to see what progress is being made, Member for Imenti Central.

So, in those circumstances, I think the committal to the Ministry is right.

We will take the next concern under Order No.3. The Chairman of the Departmental Committee on Lands and Natural Resources is here. I will want to give him the Floor. We were just about to move away from that Order.

Mr. Musyimi: Thank you, Mr. Speaker, Sir, for indulging me. I wish to apologise. I was out of the Chamber when the matter came up. I wish to promise that I will table the Report, latest, Thursday next week.

Mr. Speaker: Yes, indeed. Please, give your Report to the House on Thursday afternoon. I am glad you heard me and got immediately concerned. As I indicated, at this point, in our operations as the Tenth Parliament, it is very critical that you finally acquit yourself. Otherwise, your score sheet may begin to reverse, notwithstanding the commendable work that you have done so far.

Mr. Musyimi: I stand guided, Mr. Speaker, Sir.

Mr. Speaker: Very well. I am glad you do. So, we will go to the next Order.

PAPERS LAID

The following Paper was laid on the Table:-

The Report of the Investigation into the Authenticity of Documents on allegations linked to the United Kingdom relating to the International Criminal Court, referred to as the “ICC Dossier”

(By Mr. Keynan)

Mr. Speaker: Yes, Chairman of the Budget Committee.

POINT OF ORDER

DELAY IN PRESENTATION OF BUDGET POLICY STATEMENT BY TREASURY

Mr. Mbau: Mr. Speaker, Sir, I want to pick up from where you have just commented on my colleague, Mr. Mutava Musyimi. I rise on a point of order to seek your guidance as well as bring some information to your notice.

When we congregated for this sitting, you indicated that we have up to 20th of December to transact business, so to speak. I have, on behalf of the Budget Committee and Parliament, been waiting to receive the Budget Policy Statement from the Treasury or the Ministry of Finance up to this particular moment. That is the reason I cannot sit.

Mr. Speaker, Sir, if you look at the Public Finance Management Act, Section 37 which with your indulgence I will seek to read---

Mr. Speaker: Just read it so that we all become aware.

Mr. Mbau: Mr. Speaker, Sir, you will find that Section 37 (7) which section is about the submission of budget estimates and related documents for approval. It says:-

“The Cabinet Secretary shall ensure that the budget process is conducted in a manner and within a timeframe sufficient to permit the various participants in the process of budget making to comply with the requirements of the Constitution and this Act”.

Mr. Speaker, Sir, if we are to have sufficient time to prosecute the Budget Policy Statement, then time is of the essence and I do not see it. Then of course, Section 35 of Public Finance Management Act talks about stages in the budget process. It states as follows:-

“The budget process for the National Government in any financial year shall comprise the following stages---“

I only want to mention the stage that brings Parliament into play. Sub-section (c) reads:-

“(c) Preparing overall estimates in the form of the Budget Policy Statement of national Government revenues and expenditures.

(d) Adoption of the Budget Policy Statement by Parliament as a basis for future deliberations.

(e) Preparing budget estimates for the national Government”

Mr. Speaker, Sir, my concern is raised because if you look at Section 25, it reads as follows and I am only reading the parts that are relevant to this House.

“25 (1) (ii) The national treasury shall prepare and submit to the Cabinet the Budget Policy Statement for approval.

(iii) The national Treasury shall submit the Budget Policy Statement, approved in terms of sub-section (1) to Parliament by the 15th of February in each financial year”

Mr. Speaker, Sir, by 15th of February this Parliament will have had its life come to an end. If indeed, according to another sub-section once the Minister for Finance submits the Budget Policy Statement which gets committed to all the departmental committees to engage Ministries, agencies and departments to make and help Parliament make its input so that within 14 days the Budget Committee is able to table for discussion, adoption and debate to this House the Budget Policy Statement Report which, when adopted, forms the framework for further deliberations towards Ministries doing their proposals for budget or revenues or expenditure by 30th April. Then it means as our days of the House come to an end, there is no time for departmental committees to have engaged with the Ministries, to have made their input into this process. I fear that the Ministry of Finance is going to do the “dishonourable” thing one of these days. It may just bring the Budget Policy Statement, table it here and say it has done its part without due care of the time frame that Parliament ought to take in order to prosecute that agenda effectively. Of course when we go on recess it shall be difficult for Members to be found to come and do that duty.

My request is that when I look at the calendar of days left, even if that statement was to be submitted today, if Members of the House would be kind enough, the only days left cannot be enough to allow us prosecute effectively on behalf of Kenyans. My calendar tells me that the 14 days that we have, if indeed the 14 days that are mentioned include Sundays and Saturdays, then we would have to do a return by the 28th of this month; that is if we include Christmas day. That, is assuming the statement came today which statement must come before the Government proceeds to plan and process its budget, we must approve.

Mr. Speaker, Sir, therefore, I am finding it that you may have to consider whether again assuming the 14 days in the Act are actually not inclusive of Sundays and Saturdays then we have only working days that can take up to 10th January as the latest day when we can probably reconvene after the recess to come and prosecute that agenda. If we do not prosecute that agenda, I am telling the Executive and I see the Deputy Leader of Government Business seated across,

we are on a crisis in so far as spending and funding crucial, critical operations of the Government is concerned. I see it like the many statements I have raised even when we have had occasion to launch sector working groups, the so called initial stages towards national budget making process, have not been taken so that we can be informed.

Lastly, Section 205 (4) of the Public Financial Management Act is on miscellaneous provisions and it requires that the Cabinet Secretary may make regulations not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act for the carrying out of and giving effect to this Act. Sub-section (4) says regulations under sub-section (1) shall not take effect unless approved by a resolution passed by Parliament.

Mr. Speaker, Sir, these regulations are about how the county governments shall spend, receive and disburse monies that shall have been appropriated. These regulations, once again have not come. If they do not come, even if we go to elections then it means that we shall not have passed these regulations and county governments will not be in a position to benefit from the resources from the county governments.

Mr. Speaker, Sir, I conclude by urging you to give this matter the due import that it deserves. I know I have raised it elsewhere but I think it is time for me to bring it to your attention.

I thank you very much for your indulgence.

Mr. Speaker: Fair enough, Chair of the Budget Committee.

In essence, hon. Members and Deputy Leader of Government Business, I allowed the Chairman of the Budget Committee of Parliament who is also the Member of Parliament for Maragwa to proceed under Order No.4 because what he is calling for and expressing concern over are Papers which the Ministry of Finance is obligated to table in the House and which then are transmitted to the Committee for consideration. These papers are not forthcoming and yet the Member sees that the calendar is running pretty fast and yet these are statutory requirements, if not constitutional.

Leader of Government Business, perhaps you want to make an indication on when these Papers will be ready to be tabled in the House so that they are looked into.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, indeed, I want to thank the Chairman of the Budget Committee for raising this matter and highlighting the situation we are in. But I also take the view that this House continues to sit constitutionally until 14th January, 2013. It is a view that we have been discussing within the House Business Committee to see whether, indeed, the earlier date of 20th December, is realistic as our cut-off point.

It is becoming increasingly clear that we still do have other issues that also need to come in on devolution and the supplementary budget which will also unlock money for devolution and several others. I am aware that the Minister for Finance is working on all those issues; we will try to get all that in by Tuesday; this will fit in within the remaining days. That is about the most we can do; it is a unique situation; we are required to do it now because of having to go. Ordinarily, there would have been more time, but it is just that we do not want to leave it to the new Parliament; we do not know when it will sit to actually dispose of the matter.

But we will do our bit and try to get in within Tuesday, and then plan our schedule accordingly.

Mr. Ethuro: Mr. Speaker, Sir, I just wanted to remind the Government side that the issues we are raising are constitutional, statutory and a matter of procedures. If this Government is committed to the rule of law, they are under duty and obligation to look into these matters.

I wanted to add to the contribution by the Chairman of the Budget Committee. It is also a requirement that towards a general election the Government must bring to this House a pre-election fiscal and economic report. This is a requirement we endeavoured to put in our Standing Orders and in the law, so that the electoral mischief, especially theft of public funds during election period, can be curtailed. The Government is yet to comment on it.

He has alluded to the two important Bills we are also waiting for in terms of ensuring that---

Mr. Speaker: Order, Member for Turkana Central. I do not really wish to interrupt you, except that I must. You have made a statement to the effect that these documents must be tabled before the House, so that "theft of public funds is curtailed". That is very strong language. It means, ordinarily interpreted, that there is theft going on of public funds and these documents, if they are tabled, will curtail it. I think you have to put it better than that. You can only say theft be curtailed if you have evidence that there is theft that has either been ongoing or has gone on in the past. Do you understand, Member for Turkana Central? I would not allow that to go on the HANSARD unchecked.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, you know I stand guided by you; if I may explain what I meant--- My understanding of curtailing theft of public funds was that, one, if you look at Anglo Leasing it was related to the 1992 elections. If you look---

Mr. Speaker: Order, Member for Turkana Central. If you are properly guided by me, then what you should do is just find better language to canvass your point. You can make your point without putting in a word like "theft," unless you have evidence to that effect. You can use the words "to ensure proper usage of public funds". Please go ahead.

Mr. Ethuro: Mr. Speaker, Sir, those words you have just used--- You are beating me to submission because there is another point I wanted to make. I will go by those words.

The most important issue, which the Deputy Leader of Government Business has alluded to, and which I want to be explicit, is Article 218, under which two Bills are expected in order to make the county governments operational as soon as they get formed. These are the County Bill and the Revenue Bill. I would expect the Minister to go by the same requirement by the chairman; the Minister should make it very clear as to when these Bills will come to the House, taking into account the period that is remaining before the House is dissolved.

Mr. Speaker: I will hear two more hon. Members and then Mr. Minister, you will, perhaps, give a further response and we will close this matter, because we must close it.

Yes, Chairman of the Budget Committee.

Mr. Mbau: Mr. Speaker, Sir, I thank you that you have given us the indulgence. What the Minister has said is that they will do that which they are obligated to do. I need the House to note that this particular report will come anytime this week or next week; whenever it comes there will be no time for us to process it because we shall be on recess. Even though the Tenth Parliament will still be legally in place, it will mean the Speaker may have to consider in advance that at some point in early January, just before 14th January, he will need to reconvene Parliament, so that we can at least prosecute that agenda.

I am assuming that the Government is not interested, or is okay without having to bring Supplementary Estimates because the same were required to go through the same process. So far, they have not come. Therefore, Parliament does not have the opportunity to scrutinize, interrogate and pass the Supplementary Appropriation Bill, so that whatever deviations or expenditures the Government has gone into so far may be ratified prudently by Parliament. Since they have not come, we shall operate with the view that there has not been any need for

Supplementary Estimates and a Supplementary Appropriations Act for this particular Financial Year.

Mr. Speaker: Very well. Mr. Minister, you may make your final response and, really, the matter must rest now.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, as I said, we are committed to ensuring that we close the good work that has been the hallmark of this administration over the last 10 years by ensuring that we do not hand over to the new administration any issues that should be closed during our time.

As I said, yes, we had an indication that we would want to break early, but until the Motion for Adjournment has been passed by this House, there is no adjournment. So, it is up to the hon. Members to also look and see whether we need to go and leave some pending work. Obviously, I will not be keen to bring here a Motion when there is pending work. So, that is part assurance.

Two, in terms of the Division of Revenue Bill and the County Allocation Bill, this House did approve the Motion on the formula. What is left is drafting the Bills. I am aware that progress has been made on that. It is just a matter of bringing that in and also the Supplementary Estimates. So, let us see what happens between now and Tuesday, and then we will guide you accordingly after our Tuesday meeting of the House Business Committee, when we will have the programme for the remainder of the term.

Mr. Speaker: Order! Hon. Members, the matter which was raised by hon. Mbau who also serves as the Chairman of the Budget Committee of Parliament is obviously of great significance, particularly at the point where we are, bearing in mind the life of the Tenth Parliament. The term of this Parliament runs constitutionally and even by a decision of the court, up and until the 14th of January 2013 and there are matters that this Parliament can attend to if they are brought before it timeously before the 14th of January 2013. So, I just want to urge the Government and particularly the Deputy Leader of Government Business to ensure that those duties that are constitutional or statutory are discharged well in time before, as much as possible, we get to the 4th of January 2013. I say “4th of January 2013” because I am not certain that after the 4th of January 2013, the configuration of this House will be the same. Indeed, it is going to be a big challenge as to whether or not this Parliament can properly continue to transact business after the 4th of January 2013. Deputy Leader of Government Business, I just, therefore, want to put you on notice that be careful on how much business you can do, or at all, after the 4th of January 2013.

Secondly and insignificantly that you will notice that within that period between now and the 4th of January, we have holidays. We have the 25th and the 26th which are holidays by history and out of necessity and we have the 1st of January which is also a holiday. So, three days are out and then you take away the Sundays and I think you have just about five days left, clearly speaking. So, let us do what we should do, otherwise, I think there is danger. I see danger myself and I urge the Minister to similarly see that danger and hon. Members note that the numbers attending and transacting business is also on the decline. Exceptionally this afternoon, we have been doing 35 but I think that is the highest number that we have done over the past three weeks. It is likely that going into next week, we will hardly see ten Members of Parliament in the House.

So, Minister, please be aware of these realities. Be practical about it and ensure that you push the Government machinery to prepare all documents that must come to the House as much as possible earlier than 20th of December. It is a realistic forecast that we put before the House

and be practical even at the House Business Committee (HBC) on what you can do and what you cannot do. Those will be my directions.

Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON INVESTIGATION OF ICC RELATED ALLEGATIONS AGAINST THE UK GOVERNMENT

Mr. Keynan: Mr. Speaker, Sir, I rise to give notice of the following Motion:-

THAT, this House adopts the report of the Departmental Committee on Defence and Foreign Relations on the investigation into the authenticity of documents tabled in the House on 8th March 2012 on allegations against the United Kingdom related to the International Criminal Court (ICC) as laid on the Table of the House today, Thursday 13th December 2012.

Mr. Speaker: Fair enough. Hon. Members, before we take the next order you will notice that on time, because of matters that we had to deal with in this sitting, we are at quarter to four and so we may have to deal with Questions a little out of time and we will therefore go until 4.30 p.m. at most. So, please expedite the manner in which you ask or answer Questions as we get to Order No.6.

QUESTIONS BY PRIVATE NOTICE

REPATRIATION OF MS. ROSEMARY W. NDUATI FROM SAUDI ARABIA

Mr. Kabogo: Mr. Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice:-

(a) Is the Minister aware that Ms Rosemary Wariera Nduati is missing and had earlier complained of detention and mistreatment by her employer of phone number +966551782526 in Jeddah, Saudi Arabia?

(b) What urgent measures is the Minister taking to ensure that she is traced, released from her exploitative employer's custody and repatriated?

(c) What is the Government doing to ensure that Kenyans living and working in the Middle East are safe from such dehumanizing occurrences?

Mr. Speaker: Is the Minister for Foreign Affairs not here? Hon. Members, the Minister does not appear to be in the House but I have indication that the Minister for Energy may be ready to deal with this matter. The Minister for Energy is not in the House. Hon. Kabogo, you are seeking intervention.

Mr. Kabogo: Mr. Speaker, Sir, the Minister has just walked out and said that hon. Kimunya will deal with the matter. In any event, it is a matter of just disposing of this Question. If you can allow me to ask, then it will just end in a minute or two.

Mr. Speaker: Carry on.

Mr. Kabogo: Mr. Speaker, Sir, I beg to ask the Minister for Transport the following Question by Private Notice:-

(a) Is the Minister aware that Ms Rosemary Wariara Nduati is missing and had earlier complained of detention and mistreatment by her employer of phone number +966551782526 in Jeddah, Saudi Arabia?

(b) What urgent measures is the Minister taking to ensure that she is traced, released from her exploitative employer's custody and repatriated?

(c) What is the Government doing to ensure that Kenyans living and working in the Middle East are safe from such dehumanizing occurrences?

With the indulgence of the Chair, could Mr. Kimunya, the Deputy Leader of Government Business hold brief? This lady has already come back to the country and so---

Mr. Speaker: Order! You asked the Question and I call upon the Minister to give an answer. The Minister for Foreign Affairs is not in the House, so the Deputy Leader of Government Business will hold brief and tell us what is happening or not happening.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, from information supplied by the Questioner, it is true that, indeed, he has the answer now to his Question; that the individual who is the subject of the Question has now returned to the country and what is now required is perhaps some further investigation and sorting out some issues in-house which, as a Government, we will do as part of some of the duties of the Government.

Mr. Kabogo: Yes, indeed, Mr. Speaker. Not that I have the answer to my Question. That would beat the purpose of asking Questions but I want to confirm that Rosemary Wariara is back in the country with 17 others. As a matter of fact, she is a guest of Parliament to try and thank the Speaker and the House because of the hard work the House has done to bring her back but I would want to request the Ministry that they follow up her pay, belongings and everything else including the others so that they may be brought home.

Mr. Speaker, Sir, let me also mention that it is important for our Minister to tell this House the truth. From the HANSARD of that day, the Minister had said that the Permanent Secretary (PS) had travelled to Saudi Arabia to get this girl and others and that is not true. So, it is important for the Deputy Leader of Government Business to make sure he alerts the Minister for Foreign Affairs not to be "mischievous" with the House, for lack of a better word; but Rosemary appreciates the assistance of this House and the hon. Members who have contributed to this matter.

Mr. Speaker: Very well, Mr. Kabogo. On behalf of the general membership of the House, I appreciate your commendation and indeed it is our duty to do just that – to represent without fear or favour and so I am grateful that we have done our duty.

Minister, do you want to finalize this matter by confirming that you will follow up on the entitlements of this lady?

The Minister for Transport (Mr. Kimunya): Yes, Mr. Speaker, Sir. Indeed, I had already confirmed that as the Government we will do what we need to do as part of finalizing that process.

Mr. Speaker: Yes, that is very well, Deputy Leader of Government Business and please note and I want to give you these directions – that please even as we continue with this matter, there are others that are pending that appear to attract a bit of contradiction from the Government. You need to do some housekeeping because even on this matter, we have been given excuses that are not tenable in parliamentary parlance. That, for example, the Minister is not able to be in the House because he is attending a meeting. The next excuse is that the Assistant Minister for Foreign Affairs is not able to be here because he has traveled to his constituency. Then we have received in Parliament a copy of a protest letter by the Permanent

Secretary in the Ministry of Foreign Affairs. So where is it? It will appear like the Minister, the Assistant Minister and the Permanent Secretary are all driving in different directions. Please, put your house in order!

Confirm that you will do so!

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, indeed, the house is in order. The players may be moving in different directions within the house, but the house is in order. If you look at the bigger picture, a lot has been achieved and we hope that the small issues that are still of concern will be cleared, so that they do not spoil the bigger bag of apples.

Mr. Speaker: Fair enough! Deputy Leader of Government Business, you have heard us, all the same.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I just wanted to bring to your attention that the Minister was contravening the Standing Orders by contradicting you. You had clearly indicated that the House is not in order, but he is claiming that it is. Is he in order?

Mr. Speaker: Order, Mr. Ruto! Of course, I heard the Minister. He did not contradict me. He said that his officers, in the Ministry of Foreign Affairs, including the Minister, The Assistant Minister and the Permanent Secretary, although they may be driving in different directions, they are within the House. So he is going to keep them in order in the House, so that they stay in there and perhaps drive in the same direction. So, I see no contradiction.

BAN ON GMO FOODS IN KENYA

Dr. Otichilo: Mr. Speaker, Sir, I beg to ask the Minister for Public Health and Sanitation the following Question by Private Notice.

(a) Could the Minister state the criteria, credible scientific facts and evidence that informed the decision by the Government to ban the importation and use of the Genetically Modified Organisms (GMOs) foods and products in the country?

(b) Is the Minister aware that the ban on GMOs will adversely stifle the ongoing biotechnology research in the country and consequently compromise future food security?

(c) Was the National Biosafety Authority (NBA) involved in the decision to ban the importation and use of the GMO foods and could the Government consider lifting the same?

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): Mr. Speaker, Sir, I want to ask for the indulgence of the House. I have just received an answer from the technocrats in my Ministry and I feel very strongly that it is not adequate. I, therefore, want to sit with them and get a proper answer to this Question. I have discussed with Dr. Otichilo and we have agreed that I can answer this Question on Wednesday afternoon.

Mr. Speaker: Fair enough; Dr. Otichilo, is that the position?

Dr. Otichilo: Mr. Speaker, Sir, as much as we have discussed with the Assistant Minister, this Question is by Private Notice and it was asked three weeks ago. Because of the ban on GMOs, the NBSA's activities have been paralyzed. The activities of the Kenya Agricultural Research Institute (KARI) have been paralyzed and many other programmes in the universities. For that reason, I want him to move with speed and provide the right answers to this Question. Otherwise, he should lift the ban, so that the activities of these organizations can go on.

Mr. Speaker: Do I have your concurrence for Wednesday afternoon?

Dr. Otichilo: Mr. Speaker, Sir, I will only agree if the Assistant Minister is not going again to change. He must come to this House with a concrete answer and not the one that he came with which is inadequate and not well researched.

Mr. Speaker: Yes, Dr. Otichilo, the Assistant Minister has heard you. We will allow him until Wednesday afternoon at 2.30 p.m. to bring an adequate answer to the Question. Assistant Minister, please, note.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.912

GOVERNMENT EXPENDITURE ON ADVERTISEMENTS

Mr. Mututho asked the Minister for Information and Communications:-

- (a) whether he could provide a breakdown of Government expenditure on advertisements in each media house per year and cumulatively from 2005 to-date;
- (b) whether he could provide the list of top 20 Ministries in spending in each of the media entities in descending order; and,
- (c) whether he could also table all the contracts that were used in procuring those advertisements and/or promotions?

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Speaker, Sir, I rise to seek your guidance on this particular Question. This is the third time that it is appearing on the Order Paper. When it appeared the first time, I gave an answer that did not provide the data that was required from all the 42 or so Ministries. I requested that the Question be re-routed to the Office of the Prime Minister because he is the only one in a position to obtain that information from all these Ministries. You ordered me to liaise with the Office of the Prime Minister and answer the Question. We have tried in the last three weeks since the Question appeared for the first time and up to now we do not have information from all the Ministries as requested by the Member. So, I want to seek your guidance that, maybe, this Question should be redirected to the Office of the Prime Minister for the Member to get the answer.

Mr. Speaker: I have heard you, Mr. Assistant Minister. Deputy Leader of Government Business, you are present in the House. Information cannot be obtained by a Ministry from other Ministries and so, the Assistant Minister is re-emphasizing a request that the Question be directed to the Office of the Prime Minister. Is that the way you want us to go?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, on this matter, we had agreed that the matter be redirected to the Office of the Prime Minister. So, perhaps it is appearing on the Order Paper by mistake.

Mr. Speaker: When you say “we”, who are talking about? The Assistant Minister says that I directed him to access information and come and answer the Question. If that is accurate, then, obviously, the “we” you are referring to does not include me or the Assistant Minister.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, as a House, including the Chair. But be that as it may, it seems natural that we should place it on the Order Paper on Wednesday next week to be answered by the Prime Minister’s Office.

Mr. Speaker: Fair enough! Since I appear to have consensus on that from, at least, you, the Deputy Leader of Government Business and the Assistant Minister, I, therefore, direct that the Question be sent to the Office of the Prime Minister. And Deputy Leader of Government

Business, please, take up the matter even hereafter as we formalize the steps to have the Question go to the Office of the Prime Minister, which we will do.

(Question deferred)

Question No.1261

LACK OF CULTURAL CENTRE IN MUTITO CONSTITUENCY

Mr. Speaker: I understand that the Member for Mutito has difficulties getting to Nairobi today. So, I will defer this Question to Thursday next week at 2.30 p.m.

(Question deferred)

Question No.1836

DELAYED PAYMENT OF DUES TO UNICEF
SUPPORTED PROGRAMME EMPLOYEES

Mr. Speaker: The Member for Molo, unless he is in the House now, I understand that he also had difficulties getting here this afternoon. So, I will defer this Question to Wednesday next week in the morning. Hon. Gaichuhie, you will be the one to carry this message to hon. Kiuna. Kindly, confirm that you will do so.

Mr. Gaichuhie: Mr. Speaker, Sir, I will do so.

Mr. Speaker: Very well!

(Question deferred)

Question No.1803

EXPENDITURE ON DROUGHT MITIGATION IN WAJIR DISTRICT

Mr. Sirat asked the Minister for Finance:-

- (a) how much money was slashed from each Ministry and/or department for drought mitigation in the 2011/2012 Supplementary Budget;
- (b) how the money was spent and whether he could provide itemized expenditure; and,
- (c) how much money was spent on drought mitigation in Wajir South Constituency.

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, this Question has been redirected to the Ministry of State for Development of Northern Kenya and other Arid Lands. We were only to give information on part (a), which we have done. The Question may be directed to the Ministry of State for Development of Northern Kenya and other Arid Lands. Except for part (a), the other parts fall under that Ministry. So, we have decided that to give that information.

Mr. Speaker: Fair enough. You have furnished that information with regard to part (a) to the Minister?

The Minister for Finance (Mr. Githae): Yes, Mr. Speaker, Sir.

Mr. Speaker: Mr. Sirat, in those circumstances, we want to defer this Question to Wednesday next week in the afternoon. Is that good for you?

Mr. Sirat: That is good enough, Mr. Speaker, Sir.

Mr. Speaker: Fair enough. It is so directed, so that the Question appears on the Order Paper on Wednesday next week in the afternoon.

(Question deferred)

Question No.1762

IRREGULAR DISCLOSURE OF DEPOSITORS' INFORMATION TO KRA BY
FORMER CHARTERHOUSE BANK INTERNAL AUDITOR

Mr. Mwau asked the Minister for Finance:-

(a) whether he could confirm that an Internal Auditor at Charterhouse Bank Ltd, pursuant to an agreement entered with Kenya Revenue Authority (KRA) to provide details of bank accounts with unpaid taxes, for a reward, provided information/documents of over 800 account holders to KRA between 2004 and 2006, and if so, give a list of the accounts, copies of documents and information forwarded to KRA;

(b) whether he could give details of the unpaid taxes of each individual account as calculated then by the auditor Mr. Peter George Odhiambo, including the details of the person who received the documents and information, who paid him and details of the reward promised; and,

(c) how much money was paid to the auditor and whether he could table copies of the payment voucher to the said auditor.

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, again I do not know what answer is required because I have already answered this Question. The Question that was deferred was the one asking about the legal fees and advocates and the amount of money that has been spent by Central Bank of Kenya (CBK) on all the cases dealing with Charterhouse Bank. I think they listed the wrong Question because this was answered.

Mr. Speaker: Fair enough! Mr. Mwau, is that the operational position?

Mr. Mwau: Mr. Speaker, Sir, it is true that the Minister answered the Question, but on part "b" he admitted that Peter George Odhiambo took to Kenya Revenue Authority (KRA) account details and bank balances of customers. So, we he was asked to produce those particular bank details which were taken to the KRA.

Secondly, in the answer, he said that Peter George Odhiambo was not under any contract with the KRA for rewards but in part "c" it is clear that KRA paid Odhiambo Kshs450,279. So, it is this information which was asked; for what purpose was the reward given? So, there are two issues; the details of the accounts taken to KRA which resulted into the reward. That is what the Minister was supposed to bring to the House.

Mr. Speaker: Minister, you can see that there were some residual aspects of this Question.

Mr. Githae: Mr. Speaker, Sir, I am sorry about that. I thought the Question had been answered. Starting with the latter, Mr. Odhiambo was paid Kshs450,279.20 under Section 5(a) of the KRA Act which provides that the Commissioner- General may upon the recommendation of a Commissioner reward any person for information leading to the identification or recovery of unassessed taxes or duties. This provision is available to every Kenyan and not necessarily to Mr. Odhiambo. So, Mr. Odhiambo exercised his right to avail information to the KRA under this section. Many others have also done so. Let me also take this opportunity to encourage Kenyans that if they have any information on somebody who is not paying his or her taxes, please, refer the matter to the KRA and you will get a reward. We need to get revenue as much as possible.

Regarding information that Mr. Odhiambo gave to KRA, I clearly said that what he did was just to send bank balances. Bank balances, and I emphasize that, does not necessarily mean that there is any tax which is not paid. It does not even mean that there is any tax which is even assessed.

Mr. Mwau: On a point of order, Mr. Speaker, Sir. The Minister is going round in circles. All that he is saying is that an employee of the bank went and looked at customer's statement and took those balances to the KRA which by itself is prohibited under the law. No person has a right to go and disclose the account details of a customer of a bank. So, the Minister must then admit that that is what the KRA encouraged Mr. Odhiambo to do. If he did so, and those balances resulted to a reward because taxes were recovered, then we are asking the Minister to produce---

Mr. Speaker: Order, the Member for Kilome! You have stood on a point of order to challenge the information that the Minister has supplied because there is breach on his part on some Standing Orders. So, your point of order as prosecuted so far, I am afraid, does not amount to a point of order and you seem to be continuing infinitely. So, do you want to try again to raise your point of order? Let us hear you.

Mr. Mwau: Mr. Speaker, Sir, my point of order is that the Minister is supposed to do only what is in accordance with the law. The Minister has admitted that balances were taken. I would like him to confirm that.

Mr. Speaker: Order, the Member for Kilome! Even as you sit, I would let that pass but I want you to just take a few minutes and walk to the hon. Member for Mbita because I can see where you are going but the manner in which you are going there is just not in accordance with the Standing Orders. As the Minister responds, if you walk to the hon. Member for Mbita, he will assist you.

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

Mr. Speaker: Order!

Mr. Githae: Indeed, I have confirmed that Mr. Peter George Odhiambo, took account details and bank balances of customers of Charterhouse and gave them to the KRA and said that those were the taxes that were not paid. Upon perusal by KRA they realized that all that he had done was just to state the account name and the bank balance. He was clearly told that a bank balance is not evidence of unpaid tax. It is not even evidence of unassessed tax. So, the KRA did not use that information because it was not helpful. He was not alleging that certain taxes had not been paid.

Mr. Gaichuhie: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to avoid giving the account details or the information that was given by Mr. George Odhiambo? He is only taking us round in circles. The hon. Member wanted the Minister to give the details that were given by Mr. George Odhiambo.

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

Mr. Speaker: Order, the Member for Chepalungu. The Minister is going to respond to a point of order and we have moved on with technology. I can see the request by the hon. Member for Turkana Central, the hon. Member for Chepalungu and Mr. M’Mithiaru. I can see all those requests. Hold your horse and do it with decorum.

The hon. Member for Imenti Central, your request is not an intervention. So, you do not want to rise on a point of order like the hon. Member for Turkana Central. That is the difference.

Mr. Githae: Mr. Speaker, Sir, I would like hon. Members to understand the dilemma. First of all, the information that is given to the KRA under Section 5(a) is based on the fact that it will be treated in utmost confidentiality. That is the only basis on which people give that information. If we disclose the bank balances of customers, again, we will be revealing confidential information which again is against the Banking Act. Suffice it to say that I am admitting that what Mr. Odhiambo did was simply to extract bank balances and take them to the KRA and state that those are the taxes which were not paid. He was told that bank balances was not evidence of unpaid tax. It is not even evidence of unassessed tax. Therefore, that information itself was meaningless and worthless. If we go more than that, then we will be revealing customer details of bank customers and as you know banking is an industry based purely on confidence.

Mr. M’Mithiaru: Mr. Speaker, Sir, is the Minister in order to say that the information given by Odhiambo was worthless and yet he was paid money by the Kenya Revenue Authority (KRA) for the work?

Mr. Githae: Mr. Speaker, Sir, after the KRA received that information and other information from the Revenue Protection Services (RPS) which is a police department under the KRA, the Ethics and Anti-Corruption Commission, the CID and the police, it did an audit of the customers. For example, I can tell you that the amount recovered was from the bank balances that he had paid. In fact, the KRA recovered less than Kshs11 million. The KRA received information from spirited Kenyans and we are encouraging Kenyans to do that. The KRA received information from the police, the lands office and informers. It received all sort of information. For the purpose of this question, the hon. Member should be satisfied that I am confirming that all that Odhiambo did was to extract bank balances of customers of Charterhouse Bank, took them to the KRA and said that those were the unpaid balances. He asked for his 5 per cent based on that. I confirm that bank balances is not evidence of unpaid tax or assessed tax. It just means bank balances and nothing else.

Mr. Imanyara: Thank you, Mr. Speaker, Sir. The Minister has told us that there is a policy on the part of the KRA to reward those who give information and that this gentleman was paid Kshs450,000 pursuant to this policy. What is the criteria for determining how much is paid, and in this case, why did they pay the sum of Kshs450,000 if, indeed, there were no benefits accruing to the KRA?

Mr. Githae: Mr. Speaker, Sir, it will be good if I quote the basis upon which this payment was made. Section 5(a) of the KRA Act states as follows:-

“(1) The Commissioner-General may, upon the recommendations of a Commissioner reward any person for information leading to the identification or recovery of unassessed taxes or duties provided that this section shall not apply to any officer of the Authority.

(2) The reward payable under Subsection 1 shall be;

(a) In case of information leading to the identification of unassessed duties or taxes, one per centum of the duties or taxes so identified or Kshs100,000 whichever is less.

(b) In case of information leading to the recovery of unassessed duties or taxes, 5 per centum of the taxes or duties so recovered or Kshs2 million, whichever is less.” In this case, Odhiambo was paid Kshs100,000 which was less.

The KRA got information that there are people with bank balances in Charterhouse Bank. They also looked at their tax records and identified two companies that in their view, from their turn over and from the taxes they were paying may not have been proportionate. They then went and did an audit. It is from that audit that they assessed the amount payable. However, Mr. Odhiambo was paid because he brought this company to the attention of the KRA. We encourage Kenyans to do so.

Mr. Speaker: You have said that already, Mr. Minister.

Let us have the last question from the Member for Kilome!

Mr. Mwau: Mr. Speaker, Sir, I want the Minister to confirm that any employee of any bank in Kenya can take bank balances to the KRA for reward.

Mr. Githae: Mr. Speaker, Sir, under the Banking Act and under the Central Bank of Kenya Act, any person who reveals information of any customer to a party that is not authorized is liable to an offence. That is why when the KRA received this information they had to go an extra mile to carry out their own investigations. We are not encouraging bank officials or bank clerks to be taking bank balances. In fact, let me say that even if they did that, they are worthless. As I said, bank balance is not evidence of unpaid tax. That simply means that you have some money in the bank. That is all. It is up to the KRA to do an audit if they think that it is necessary to do so. We do not want bank officers and bank clerks to take information related to bank balances to the KRA because the Authority has its own method of assessing tax. In the case of Mr. Odhimbo, the fact that one had Kshs10 million or Kshs100 million, that was evidence of unpaid tax. We are saying that he was wrong and he should not have done this. I said that even the other time, as far as we know, this man is a conman. He has even sued the Kenya Government for more than Kshs20 billion in the US. That action is being defended by the Attorney-General.

The Attorney-General (Prof. Muigai): Vigorously!

Mr. Githae: Vigorously as I am being told by the Attorney-General. To conclude, it is illegal for bank clerks and officers to reveal any information of their customers because this privilege is confidential. As I have said, Mr. Odhiambo should not have done that. However, once the information went to the KRA, it was upon the Authority to see what value they could get out of it. As I said, they did an audit and only two companies were found not to have paid the rightful taxes. Otherwise, all the other information was worthless.

Question No.1846

REPOSSESSION OF IRREGULAR FIREARMS FROM
MEMBERS OF THE PUBLIC

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

(a) how many firearms are in the hands of the members of the public irregularly; and,

(b) what measures he will take to ensure that all the members of the public who possess firearms irregularly surrender them to the Government.

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

(a) A national estimation of illicit small arms and light weapons is, indeed, a very challenging task to speak with a firm clarity. However, mapping and survey exercise conducted between April and October, 2010 by the Kenya National Focal Point on Small Arms and Light Weapons in conjunction with Geneva-based Small Arms Survey Institute estimated that, at least, 170,000 to 210,000 households own illegal firearms. Kenya shares a border with many countries like Somalia and South Sudan which have had protracted conflicts. This has led to the problem of proliferation of small arms and light weapons. These firearms account for high incidences of cattle rustling and general insecurity in the country.

(b) The following measures have been put in place:-

(1) Since 2003, the Government has been implementing disarmament programmes to mop up the illicit arms. This includes massive disarmament operations code named *Dumisha Amani* I and II conducted in 2005 and 2007 respectively.

From all the operations, approximately 25,179 firearms and 505,848 rounds of ammunition have so far been recovered.

(2) In October, 2009, Kenya signed a joint cross-border disarmament plan of action with Uganda. This is a simultaneous disarmament operation to disarm the Pokot community in Kenya and the Karamojong community in Uganda.

(3) Swoops and raids guided by intelligence have been conducted in major towns like Nairobi, Kisumu, Mombasa and Nakuru, where various assorted firearms, grenades, petrol bombs and improvised explosive devices have been netted. Several vehicles have also been intercepted and a number of firearms recovered and suspects arrested and prosecuted.

(4) The Government has already developed Small Arms and Light Weapons Policy, which is awaiting approval by the Cabinet, so that it can be brought to Parliament for debate and approval.

(5) The Firearms Act, Cap. 114, Laws of Kenya, was reviewed in 2009 to incorporate stiffer penalties for illegal possession of firearms.

(6) The Government is also sensitizing members of the public on alternative means of livelihood rather than relying on livestock alone and, therefore, participating in cattle rustling.

(7) The Government has increased the recruitment of police officers in order to beef up security in all parts of the country. This year alone, a total of 7,000 police officers graduated from training and have already been deployed. Another 7,000 police officers were recruited last month, and have started training.

In conclusion, the problem of small arms and light weapons cannot be addressed by the Government alone. Therefore, I call upon all of us to join hands together and fight the menace by creating awareness on the dangers of such arms and impress upon members of the public to surrender voluntarily all illegal firearms.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Yes, Member for Nyakach.

Mr. Ochieng: Mr. Speaker, Sir, you have heard the Assistant Minister say that the last time they conducted a mop up of illegal firearms was between 2005 and 2007. About six years down the line, the Government has not done anything yet people holding firearms illegally continue to kill innocent Kenyans. Is he satisfied that the firearms mop up exercise they did between 2005 and 2007 will stop people from carrying illegal firearms?

Mr. Khangati: Mr. Speaker, Sir, I informed the hon. Member that in 2005 and 2007, we had two specific exercises code named *Dumisha Amani* I and II, respectively. I went further to inform him that swoops and raids, guided by intelligence, have been conducted in major towns. This is a continuous exercise. Most likely, even today, such an activity may have been undertaken. We search houses, erect road blocks and search vehicles.

So, I did not, at any one time, say that after carrying out Operation *Dumisha Amani* I and II in 2005 and 2007 respectively, we have not been carrying out other operations. In fact, we have intensified security operations. We have also entered into agreements with our neighbouring states, so that we can curtail this very dangerous illegal activity.

Mr. Speaker: Yes, Member for Samburu East.

Mr. Letimalo: Mr. Speaker, Sir, the fact that there are between 170,000 and 200,000 households with illegal firearms is confirmation that the Government is not providing adequate security and, therefore, people have to acquire illegal firearms for their own security. What is the purpose of disarming Kenyans when the Government is not able to provide adequate security to them?

Mr. Khangati: Mr. Speaker, Sir, I indicated that the Government has intensified provision of security. I said that last year, we had 7,000 police officers trained and deployed, and that further 7,000 police officers have been recruited and will start training soon. This is an indication that we take provision of security to all Kenyans very seriously. However, I confirm that the over 170,000 arms held by various households are being held illegally and being used for illegal activities. Therefore, these firearms must either be surrendered or be recovered by force. Thereafter, the country will be free of firearms and, therefore, the fear of one community having firearms and another one not having firearms and the one not having firearms feeling vulnerable; will not arise.

Mr. Speaker: Yes, Member for Turkana Central.

Mr. Ethuro: Mr. Speaker, Sir, the Assistant Minister is talking about firearms and households in the same vein. Can her confirm? The Question is about the number of firearms, and not the number of households with firearms. You can have one household with about ten guns. So, he needs to clarify that bit. That is, however, not my question. He said that he cannot talk about this matter convincingly. The Government of Kenya is a signatory to the Nairobi Protocol, which is the national focal point for co-ordination of efforts to eliminate small arms and illicit weapons in the country. How can he come to the House and say that he cannot speak about this matter convincingly when the Government of Kenya is a signatory to the Nairobi peace initiative?

Mr. Khangati: Mr. Speaker, Sir, most of the firearms are being held illegally. We all know that people do not volunteer information on the illegal activities they undertake. So, we can only speak with clarity on estimates. We know that this figure could be bigger or smaller because most of the firearms enter the country through "*panya* routes". They are not elements which are registered. So, if I stand here and say that this is what we have, it would not be fair.

Mr. Speaker: Last question, Member for Nyakach.

Mr. Ochieng: Mr. Speaker, Sir, the number of guns in the wrong hands is just too much. We are approaching elections shortly, and people are already in a campaign mood. Could the Assistant Minister confirm that some of the illegal firearms will not be used by rogue politicians to intimidate other people and whether the elections will be safe?

Mr. Khangati: Mr. Speaker, Sir, it has been stated by even His Excellency the President that the forthcoming elections will be peaceful. It is our intention and the intention of all the hon.

Members of this House that we have very peaceful elections. As far as we are concerned, the issue of using firearms to intimidate opponents is very unlikely to happen. I think the firearms are used for economic and political activities, including robberies. Incidents such as the one we had in Eastleigh, involving a hand grenade, can be regarded as a political activity. In terms of intimidating opponents, if that happens; of course, the person doing so will be dealt with in accordance with the law.

Mr. Speaker: Yes, Member for North Horr.

Question No.1810
NON-ISSUANCE OF IDENTITY CARDS TO YOUTHS
IN ILLERET LOCATION

Mr. Speaker: Member for North Horr is not here. Question dropped!

(Question dropped)

Next Question by the Member for Ndhiwa!

Question No.1860

COMPOSITION OF BOARD OF KENYA MARITIME AUTHORITY

Mr. Oyugi asked the Minister for Transport:-

(a) what the current composition of the Board of the Kenya Maritime Authority is;

(b) when the Board was last reconstituted; and,

(c) whether the current composition of the Board reflects regional and gender balance and if not, what steps the Minister is taking to correct the anomaly.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I beg to reply.

(a) The composition of the Board of the Kenya Maritime Authority is as follows:-

1. Board Chair - Col. (Rtd) Joseph Nguru.
2. Chief Executive Officer - Mrs. Nancy Karigithu.
3. Directors -
 - (i) Mr. Said Gulleid
 - (ii) Ms. Agnes W. Ndwiga.
 - (iii) Mr. Silvester Kututa.
 - (iv) Mr. Joseph Kamiri.

4. The Attorney-General.

5. The Permanent Secretary, Ministry of Transport.

6. The Permanent Secretary, Ministry of Finance.

(b) The Board was last reconstituted on 11th of October 2012 to fill two vacancies arising from resignations by members of the Board to seek elective offices.

(c) I consider that the Board reflects regional and gender balance.

Mr. Oyugi: Mr. Speaker, Sir, I would like to thank the Minister for a very good answer. However, I would like to raise issues with his answer to part “c”. In the Minister’s considered opinion, what is regional balance?

Mr. Kimunya: Mr. Speaker, Sir, I do consider that Kenya, following the new Constitution has 47 counties. These have been scheduled as the operational basis from where I would consider regions. In making any appointment, we now look through all those counties and ensure that there is representation from as many as possible of the counties. Most importantly there is also gender and professional skills within the board. It is quite a balancing act to actually get the right people you need. Out of the four, if we remove the institutional office holder which is dependent on who is occupying that office at that point--- In terms of the four Board appointments and in this case in terms of the two Board appointments the priority was to ensure you have two people representing the skills that are required, that needed to be replaced; the finance and shipping skills. They also had to come from counties that are not represented in that Board. That is how we go these names.

Indeed, it was unfortunate that for the people who retired we could not quite get a ready replacement. I had to talk to them and ask them if they were sure that was the right move. We could not get the right mix of the skill and gender to replace them. However, it is still something we are actively looking at to ensure that all counties are represented within the different boards.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I thank the Minister for his answer. However, he is very evasive in his answer. If you look at the response he has given on the regional balance, he is saying his opinion without telling us which regions those are. We are therefore left to guess. Could the Minister, tell this House which regions those people come from? He is leaving it to his own discretion so we cannot appropriately interrogate him as a House.

Mr. Kimunya: Mr. Speaker, Sir, the two appointments; Mr. Mohammed is a mix between Mombasa and somewhere in one of the counties within the North Eastern. It is difficult especially when people have migrated and lived in Mombasa throughout, Agnes Ndwiga is from Embu County.

If you go to the other directors---

Mr. Imanyara: Just say this one is from---

Mr. Speaker: Order, Member for Imenti Central!

Mr. Kimunya: Mr. Speaker, Sir, I believe Silvester Kituta is from Taita. It is within the Coast. Joseph Kamiri is from Nyandarua County. He is an insurance person. Kituta is versed in shipping. Agnes Wanjuki is from the accounting and finance field. Said Gulleid Mohammed is again within the port users stakeholders. He represents those stakeholders. Nancy Karigithu is an employee of the Board, I believe, serving her eighth year. She was hired and has been there. Therefore, there was no re-appointment.

The chairman has been there and I believe he is serving his second or third term. So there has been no reappointment and so that was not part of---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. Is the Minister in order to be very evasive? I have actually asked a very straight question which is; which regions do they come from? In one he said, "I believe but I am not too sure". In the others he is not stating the regions. He is telling us whether they are serving the first or second term. Could the Minister be clear and direct in his answer instead of giving the wrong answer to the question I have asked?

Mr. Kimunya: Mr. Speaker, Sir, I was actually coming to that. Mrs. Nancy Karigithu, to the best of my knowledge, originally came from Kirinyaga and was then married in Mombasa. So, I am not sure which is her county but she has been in Mombasa since the 1980s. Col.(Rtd.) Joseph Nguru, I am not even sure where his county is but he came from the military. He was the initial founder chairman of the Maritime Authority. He has been there. It is something I need to

check but I know he has lived in Mombasa virtually all his life. I believe that is why he was appointed. We needed somebody who is within Mombasa to take up that responsibility and somebody who had some military training. I actually believe that we have done what we needed to do. It is unfortunate that I lost one good member from Ndhiwa whom I had appointed and she decided to go to politics. I am hoping that she can reconsider and then I can fix her back because she was a very good member of this Board.

Dr. Otichilo: Mr. Speaker, Sir, I would want to know from the Minister whether the activities of the Kenya Marine Authority cover Lake Victoria and Lake Turkana. If that is the case why have people from the Lake Victoria zone not been considered in the board?

Mr. Kimunya: Mr. Speaker, Sir, as I had said, I deliberately sought a representation for somebody to be the link with that region and to represent all the stakeholders; she has resigned to seek elective office. I do not want to disclose her name for purposes of not jeopardizing her political future.

I have not had any representation from Lake Turkana. Because I could not get somebody to represent the maritime area, I actually ended up picking Prof. Muma who is from that area; I put him on the Board of the Kenya Airports Authority. So, it is with some balancing across the different parastatals to ensure that all regions are kind of represented rather than just looking at one as a stand-alone. I felt that I needed to also have stakeholders. So, when you have a meeting within the transport sector there is representation from the key stakeholders.

Mr. Oyugi: Mr. Speaker, Sir, I would like to thank the Minister for offering one of my constituents a job. In case he would consider taking up--- I will pursue the Minister differently.

However, Section 6 of the Maritime Authority Act does anticipate that the board members have various qualifications. What sort of qualifications did the last two board members have?

Mr. Kimunya: Mr. Speaker, Sir, as I said Mr. Said Gulleid Mohammed is a specialist and does business within the cargo handling area; the port exits for purposes of cargo handling. So, he brings in some insight as a representative of that sector. The other one is Agnes Ndwiga, who is an accountant and a banker. She represents the finance sector. She will bring finance and accounting knowledge to the board; this was lacking. Silvester Kututa is one of the most vocal technical people in the maritime sector. He has been of much help. Joseph Kamiri is a marketing cum insurance person. Maritime and insurance go hand in hand.

So, we looked at the various skills. I could go further into the age profiles. So, it is not just the number. We fit in gender, regions, skills and age profile to ensure that we capture people of various ages so as to have different experiences. It is something that we do in all the parastatals. That is why I am missing my colleague from Ndhiwa.

Mr. Speaker: That brings us to the end of Order, No.6---

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

Mr. Speaker: Order, Member for Vihiga! You know I have not even completed that statement. I could rule you out of order and apply sanctions and you will go nowhere.

Before I closed Order No.6, I had just said we had almost come to the end of Order No.6. I would like to recognize the Member for Vihiga before we close that Order.

POINTS OF ORDER

CONSTRUCTION OF FRESH PRODUCE MARKET IN VIHIGA

Mr. Chanzu: Mr. Speaker, Sir, on 4th October, this year I asked Question No.1753 to the Minister for Local Government regarding fresh produce market at Majengo in Vihiga. The Minister said that by 31st of that month the market would be complete; I said it would not be. Up to now, it is still at the level it was; it is less than 50 per cent complete. I wanted this matter to be revisited.

Mr. Speaker: Yes, indeed. That calls for a revisit of that matter. Deputy Leader of Government Business, we want to bring this matter back on the Order Paper on Thursday because the Minister actually gave an undertaking to the House that this matter would be completed by the 4th October, 2012. It should not be an undertaking in vain. So, I will direct that it comes back on the Order Paper on Thursday next week. Please alert the Minister to be available to give an appropriate response.

What else is there, Member for Vihiga?

ENCROACHMENT OF LAND BELONGING TO
EDAVAGA MUSLIM SCHOOL

Mr. Chanzu: Mr. Speaker, Sir, within the same period again there was a Question by Private Notice to the Minister for Education on encroachment onto land belonging to Edavaga Muslim School at Mbale in Vihiga. The Minister said he would get information. He had sent his officers to bring some information. So, I would also like this to be brought up again and we get an answer to it.

Mr. Speaker: Fair enough. That should have come back on the Order Paper. Maybe, it was lost somewhere along the line by an act of omission rather than commission.

So, Question by Private Notice to the Ministry of Education regarding the subject of encroachment onto land belonging to Edavaga Muslim School should be brought back on the Order Paper, possibly on the same Thursday. Again the Minister will be alerted by the Deputy Leader of Government Business to come and deal with it.

That then brings us to the end of Order No. 6.

Next Order!

BUSINESS FOR THE WEEK COMMENCING
17TH TO 20TH DECEMBER, 2012

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I wish to take this opportunity to give the following Statement with regard to the business for next week.

The House will deliberate on the following Bills that are at the Committee of the whole House stage: the Public Health Officers Training, Registration and Licensing Bill, Bill No.20 of 2009; it is long overdue. The Social Assistance Bill, Bill No.10 of 2012; the Public Benefits Organizations Bill, Bill No.15 of 2012, and any of the other Bills as we agreed that will have been cleared at the Second Reading and have no amendments; they will also be brought in on Tuesday.

On Motions, the House will consider a Motion urging the House to approve an increase in external borrowing ceiling from US\$9.3 billion to US\$14 billion, and also a Motion to approve a Sessional Paper on Kenya Government guarantee of a loan of US\$93 million, which is equivalent to Kshs7.9 billion from the European Investment Bank to Kenya Airports Authority for the rehabilitation and expansion of Jomo Kenyatta International Airport.

The House Business Committee on Tuesday resolved to move a Procedural Motion to extend the sitting time of the House to 8.30 p.m. to avail Members extra time to cover crucial business before the House.

I wish to take this opportunity to thank hon. Members for having approved the same last week and having stayed back to approve some very critical Bills. I was very happy to see the quality of the debate and the commitment of the hon. Members who stayed behind. We want to put our thanks on record for that.

Mr. Speaker, Sir, priority will also be given to business that will not be concluded on the Order Paper today. Finally, we will also meet again on Tuesday, 18th December to consider business for the rest of the week.

Thank you, Mr. Speaker, Sir.

DISBURSEMENT OF CDF FUNDS TO VARIOUS CONSTITUENCIES

Mr. Imanyara: Mr. Speaker, Sir, several months ago the Minister of State for Planning, National Development and Vision 2030 informed this House that disbursement of the Constituencies Development Fund (CDF) to the various constituencies would be by 30th September and that, indeed, the 100 per cent allocation would be in various constituencies by 30th September. It is now three months since that undertaking was given, and less than half of the funds have been disbursed so far. I seek a Ministerial Statement from the Minister as to when this will be done, and whether, indeed, they intend to disburse the remaining funds to the various constituencies as undertaken in this House.

Mr. Speaker: Deputy Leader of Government Business.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Speaker Sir. The Minister for Finance came to the House and indicated that the money is being released in tranches based on the approvals being given by the CDF Board. So, whatever is approved by the CDF Board is then taken to the Treasury and they are releasing those monies. So, it is not dependent on the quarterly releases but on the demand by the CDF Board. So, that could be the missing link but if the hon. Member would want us to provide a Ministerial Statement, I would be happy to get the Minister for Finance to actually come and shed further light on this matter.

Mr. Speaker: Can he do this on Wednesday morning?

The Minister for Transport (Mr. Kimunya): Yes, Mr. Speaker, Sir.

Mr. Speaker: Fair enough. It is so directed. Hon. Sirat!

PENDING BILLS FROM CONSTRUCTION OF WATER PANS BY EWASO NGIRO NORTH DEVELOPMENT AUTHORITY

Mr. Sirat: Mr. Speaker, Sir, three days ago I sought a Ministerial Statement from the Minister for Regional Development Authorities regarding pending bills from the construction of water pans by Ewaso Ngiro North Development Authority amounting to Kshs450 million. Twice, the Attorney-General was asked to tell the Minister to come and issue the Ministerial Statement but up to now nothing has been done. When will that Ministerial Statement be issued?

Mr. Speaker: That is supposed to be the Minister for which Ministry?

Mr. Sirat: Mr. Speaker, Sir, the Ministry of Regional Development Authorities. Yes, at some point he was indisposed but we have seen him severally at many functions. So, hon.

Dalmas Otieno, can you get Fred Gumo to be here? I see the Deputy Leader of Government Business is engaged in something else.

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I will draw his attention to this matter.

Mr. Speaker: And we want to say Wednesday morning because we have a little more latitude on Wednesday morning. That is why I am deferring this Ministerial Statement to Wednesday morning.

The Minister of State for Public Service (Mr. Otieno): Fine, Mr. Speaker, Sir. Hon. Chanzu!

STATE OF PORT AND AIRSTRIPS

Mr. Chanzu: Mr. Speaker, Sir, the Minister for Transport has not issued a Ministerial Statement on the state of the port and airstrips. I think it has been outstanding for a long time.

The Minister for Transport (Mr. Kimunya): Yes, Mr. Speaker, Sir. Indeed, I came with the Ministerial Statement. I was to issue it last week but I was advised that because the hon. Member was not in the House, I should wait until we agree on a mutually agreed date when he will be in the House and I will be in the House.

Mr. Speaker: Can you issue it on Tuesday afternoon?

The Minister for Transport (Mr. Kimunya): Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well. It is so directed, Minister. Order! Hon. Members, that then brings us to the end of Order No.7 and before we move to the next Order which is Order No.8, I have indication coming to my office that amendments to Order No.8 (v) are not yet in final form. As we speak, some amendments have found their way into the Legal Directorate and so we will not be able to proceed with Order No.8 (v) on that basis because amendments really have to be in final form, approved by Mr. Speaker and circulated. So, Order No.8 (v) is deferred to Tuesday afternoon at 2.30 p.m.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE ELECTIONS (AMENDMENT) BILL

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, we are now in the committee stage and with regard to 8(a), you will recall that the only matter really remaining under 8(1) is the re-committal of Clause 2. So, there is very limited business that we have under that Order.

Re-committal of Clause 2

Clause 2

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

THAT, Clause be amended by deleting the proposed new subsection (3A) and substituting therefor the following proposed new subsections-

“(3A) Despite subsection (3), a citizen who has attained the age of eighteen years and has registered for an identification card and is in possession of an acknowledgement of registration certificate shall, upon application, be registered as a voter using the acknowledgement of registration certificate, but may only vote using an identification card.

(3B) For purposes of this section, an acknowledgment of registration certificate means a certificate issued by a registration officer under the Registration of Persons Act to a person who has applied for an identification card, pending the issuance of that card.

The Temporary Deputy Chairman (Mr. Imanyara): It is not on the Order Paper but it has been circulated.

Mrs. Odhiambo-Mabona: Yes, it has been circulated, Mr. Temporary Deputy Chairman, Sir.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Imanyara): Millie, maybe you can just explain because it is not on the Order Paper.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, what the amendment seeks to do is to clarify that anybody who has attained the age of 18 years and who has attained a waiting card can register as a voter and within three months, once they receive their identification card then they can vote so that we do not lock out many young people who do not have identification cards within this period. The earlier amendment did not clarify also what this document was because it referred to it as a provisional identity card and if you look at what is issued, it is very clear. It is written “acknowledgment”. It is not an identity card. So, we have provided a further provision that clarifies for the purposes of the section that “The acknowledgement of registration certificate means a certificate issued by a registration officer, but it is not an identification card that you are given pending the issuance of this card”.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, this amendment has been necessitated because I think there was an earlier provision that this would be a provisional identity card popularly known as a waiting card but it was brought to our attention after consultation with the Deputy Leader of Government Business that this is definitely not a provisional identity card. It is actually an acknowledgement of registration. So, we have called it that instead of a provisional identity card. I think the amendment is now calling it “acknowledgement of registration certificate”. Then we have said that although you will register with that certificate, you cannot vote with it. What we are trying to do is to give those people who will register sufficient time up to the time when we will be voting; in about three months to be able to obtain the identity card so that we do not block them out but we give them an opportunity to vote. If by that time they will not have gotten the

identity card, then unfortunately they may not be able to vote but we hope that everybody who had registered will probably have an identification card on the voting day.

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

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

(Clause 2 as amended agreed to)

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Oyugi, you now move that we report.

Mr. Oyugi: Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Elections (Amendment) Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

THE POLITICAL PARTIES (AMENDMENT) BILL

Re-committal of Clause 2

The Temporary Deputy Chairman (Mr. Imanyara): We will now move to The Political Parties (Amendment) Bill. Again, it is a re-committal of Clause 2. Who is moving these amendments at the re-committal stage? Mr. Oyugi, there are no proposals for amendments, so you can move.

Mr. Oyugi: Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Political Parties (Amendment) Bill and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

THE AGRICULTURE, LIVESTOCK, FISHERIES AND FOOD AUTHORITY BILL

*(Resumption of consideration in Committee
interrupted on 11.12.2012)*

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, we now proceed to The Agriculture, Livestock, Fisheries and Food Authority Bill. I do not know who was on the Floor on that one. We had done up to Clause 16, so we are starting with Clause 17.

(Clauses 17, 18, 19 and 20 agreed to)

Clause 21

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, we have two proposals for amendment that is by Mrs. Odhiambo-Mabona and by Mr. Mututho. First, may I ask whether the two are separate and distinct and, therefore, we can do them separately?

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I just wanted to confirm whether you have the agreed amendments and whether they have been supplied to the Members. What appears on the Order Paper today is not what we are moving.

The Temporary Deputy Chairman (Mr. Imanyara): We do not have them here. I do not have them with me here. If what is on the Order Paper is not what you are moving, then we do not have those amendments. Mr. Mututho, it has just been brought to my attention that we have, indeed, circulated your proposals for amendment on Clause 21. I have that one now. This is the one you are deleting the word “may” and substituting it with the word “shall”?

Mr. Mututho: Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Imanyara): So, proceed and explain because the Members may not have copies of this document which has just been circulated now.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, if you look at Clause 21 as proposed by, among other people, Mrs. Odhiambo-Mabona---

The Temporary Deputy Chairman (Mr. Imanyara): What I have is the proposal to amend it as I have just indicated to you. I do not have any by Mrs. Odhiambo-Mabona. It is just one proposal by you to delete the word “may” and substitute it with the word “shall”. That is the only amendment that I have here.

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

THAT, Clause 21 of the Bill be amended in sub-clause (1) by deleting the word “may” and substituting therefor the word “shall”.

The rationale is that---

The Temporary Deputy Chairman (Mr. Imanyara): Let us get this clear because it is not on the Order Paper.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, that is what I am trying to explain.

The Temporary Deputy Chairman (Mr. Imanyara): Let us get this correct. What is in the Order Paper is not what you have circulated. What has just been brought to me is not what is on the Order Paper.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, then I can read what is on the Order Paper.

The Temporary Deputy Chairman (Mr. Imanyara): The only amendment on the Order Paper is the one by hon. Odhiambo-Mabona and not by you.

Mr. Mututho: Okay. Let me read mine then.

The Temporary Deputy Chairman (Mr. Imanyara): I think what you want to say is “the amendment as circulated” because it is not on the Order Paper.

Mr. Mututho: Thank you, Mr. Temporary Deputy Chairman, Sir, for your guidance. I beg to move:-

THAT, Clause 21 of the Bill be amended in sub-clause (1) by deleting the word “may” and substituting therefor the word “shall”.

The rationale is to strengthen the functionality by substituting “may” with “shall”.

(Question of the amendment proposed)

*(Question, that the word 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)*

The Temporary Deputy Chairman (Mr. Imanyara): We will now come to Mrs. Odhiambo-Mabona’s.

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

THAT, Clause 21 of the Bill be amended in sub-clause (3) by inserting the words “and fishing” immediately after the word “agricultural”.

The amendment seeks to include fisheries. When you look at the definition of “agriculture, it tends to exclude fisheries. So, we had agreed to mainstream fisheries in the amendment. So, that is what it seeks to do.

(Question of the amendment proposed)

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

(Clause 21 as amended agreed to)

Clause 22

The Temporary Deputy Chairman (Mr. Imanyara): Once again, there are two proposals, namely, one by Mr. Mututho and one by Mrs. Odhiambo-Mabona. Have you agreed on the order in which you want to move them?

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

THAT, Clause 22 of the Bill be amended-

(a) in sub-clause (1) by deleting the word “may” and substituting therefor the word “shall” and inserting the words “and aquatic resources” immediately after the words “agricultural land”.

(b) in sub-clause (2) by-

(i) deleting the words “regulate, control or prohibit” appearing in paragraph (c) and substituting thereof the words “advise on the control or prohibition of”.

(ii) deleting the words “regulate” appearing in paragraph (d) and substituting thereof the words “advise on”

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, I trust that you have the document that has been circulated, particularly by the Minister for Agriculture, so that we are reading from the same script. It is not on the Order Paper.

The Minister for Agriculture (Dr. Kosgei): I do not have them, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Mututho, even the Minister does not seem to have your amendments and the Members have not seen them.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I do not know what happened.

The Temporary Deputy Chairman (Mr. Imanyara): In that case, you have to explain in detail. You have to read and explain exactly what it is, so that the Minister may follow you.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I will explain in detail. The amendment to Clause 22 as circulated seeks to delete the word “may” in sub-clause 1, just like we did in Clause 2 and substitute with “shall”. It also seeks to add “and aquatic resources” immediately after the word “agricultural land”, which makes it to comfortably cover both fisheries and agriculture. That is the essence of that amendment.

You will recall that the contentious word was “regulate” and that has been knocked off now and replaced effectively with the words “advice on control or prohibition”. Secondly, we are deleting the words “regulate” appearing in paragraph (d) and substituting with “advice on”. That is essentially what made us adjourn last time.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Minister, are you comfortable with that?

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, I am very comfortable with it.

(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, put and agreed to)

(Clause 22 as amended agreed to)

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

THAT Clause 22 of the Bill be amended in sub-clause (2)-

(a) by deleting the word “may” appearing in the opening paragraph and substituting therefor the word “shall”;

(b) by inserting the following new paragraphs immediately after paragraph (f)-(g) provide for *ex situ* fish breeding to supplement *in situ* fish breeding and thereby outlaw seasonal bans on fishing;

(h) provide for efficient and effective fishing methods that are sensitive to the socio-economic status of local communities;

(i) provide for technical and other assistance to fishing communities to enhance their socio-economic development, especially that of vulnerable groups, including women.

In part “a”, I am seeking that we replace the word “may” with the word “shall” with the same reasons the Chair gave in sub-clause 1 so that there are certain standards in the regulations.

Secondly, in part “b” I am providing a method that has been used in places like Naivasha where you do *ex situ* breeding so that you do not have the seasonal banning of fishing that affects

socio-economic status of many people and there are always many complaints when fishing is banned.

This is also to provide for efficient and effective fishing methods that are sensitive to the socio-economic status of the local communities and to provide technical assistance to those communities especially to do away with the issues of sex for fish which affects women.

(Question of the Motion 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)*

(Clause 22 as amended agreed to)

Clause 23

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

THAT, the Clause be amended in sub-clause (i) by deleting paragraph (e) and substituting therefor with the following new paragraph-

(e) prohibiting, restricting or controlling the use of land for any agricultural purposes excluding livestock.

I wish to move the amendment to Clause 23 as circulated. If the Clerks-at-the-Table could please organize so that we have adequate copies for everybody.

The essence of this is to take cognizance of the provisions under Schedule 4 of the Constitution and that is what brought about that particular piece of amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Imanyara): Madam Minister, are you comfortable with that?

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, I confirm that I am comfortable with it.

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

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

(Clause 23 as amended agreed to)

Clause 24

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 24 be amended by-

(a) renumbering the existing provisions as sub-clause 1 and inserting the words “on the advice of the authority” immediately after the words “the Cabinet Secretary may”;

(b) by inserting the following new sub-clauses

(2) “by establishment of the county government, the Cabinet Secretary shall seek to advise contemplated in sub-section (i) from the county executive committee member responsible for agriculture;

(3) The county governments shall provide technical support for the eradication of noxious and invasive weeds as part of their constitutional functions for the plants and disease control.

This again takes cognizance of provisions under Schedule Four and strengthens the position by the county government. For any action to be taken by the authority, they have to seek concurrence with the executive officer in charge of agriculture at the county level.

(Question of the amendment proposed)

Mr. Oyugi: Mr. Temporary Deputy Chairman, Sir, I would like to withdraw my amendment because it has been taken by the Chair of the Committee and improved.

(Proposed amendment by Mr. Oyugi withdrawn)

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

(Clause 24 as amended agreed to)

Clause 25

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 25 of the Bill be amended in sub-clause (1) by inserting the words “or an interest” immediately after the word “control” appearing in the opening paragraph.
This will widen the number of people who can report a noxious weed.

(Question of the amendment proposed)

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

(Clause 25 as amended agreed to)

(Clauses 26 and 27 agreed to)

Clause 28

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 28 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(4) Where the noxious or invasive weed is of such a nature or proportion that it cannot be cleared by an individual or community, the government shall take steps, within six months, of such notice given by an individual to the government, to clear the noxious or invasive weed.

(Question of the amendment proposed)

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

(Clause 28 as amended agreed to)

Clause 29

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

THAT, Clause 29 of the Bill be amended in sub-clause (3) by inserting the words “on the advice of the Authority’ immediately after the words “Cabinet Secretary”

Mr. Ethuro: Mr. Temporary Deputy Chairman, Sir, in order to move faster, you may need to advise the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives that once he says he is moving the amendment as circulated, we can read the amendment for ourselves.

(Question of the amendment proposed)

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

(Clause 29 as amended agreed to)

*(Clauses 30, 31, 32, 33, 34, 35, 36, 37, 38, 39,
40, 41 and 42 agreed to)*

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Oyugi, I will give you a chance now to move your new clause but before I come to you, I will first allow the Chairman. First of all, confirm to me that the two are separate and not related. Have you looked at hon. Oyugi’s proposal?

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, this was his idea at the Committee stage.

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Oyugi, I would like to confirm, for purposes of the HANSARD, that you are withdrawing the proposal of your amendment.

Mr. Oyugi: Mr. Temporary Deputy Chairman, Sir, I withdraw my amendment since the Chairman has taken it up.

(Proposed amendment by Mr. Oyugi withdrawn)

New Clause 39A

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by inserting the following New Clause 39A-

Participation of farmers

39A. (1) For purposes of ensuring effective participation of farmers in the governance of the agricultural sector in Kenya, there shall be close consultation with all registered farmers organizations in the development of policies or regulations and before the making of any major decision that has effect on the agricultural sector.

(2) The Cabinet Secretary shall make rules-

(a) to ensure that any agreements, including any agreement with regard to contributions by farmers to their organizations, entered into between the farmers and the farmers organizations to which such farmers belong shall be respected by any third parties

(b) to provide the procedures for internal democracy in the farmers organizations.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new Clause be read a Second Time, put and agreed to)

*(The new clause was read a Second Time)
(Question, that the new clause be added to the Bill, put and agreed to)*

New clause 40A, 40B, 40C

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by inserting the following new clauses immediately after Clause 40-

Measurement of weight

40A. The unit of measurement of the weight of all produce subject to regulation by the Authority shall be the kilogramme and each single package shall not exceed a weight of 50 kilogrammes.

Prohibition of export of some raw produce

40B(1). A person shall not export raw cashew nuts, raw pyrethrum, raw bixa or

raw macadamia except with the written authority of the Cabinet Secretary issued with the approval of the National Assembly.

Competition in the sector
No. 12 of 2010

40C. In the discharge of its functions under this Act or any other written law, the Authority shall ensure that there are no dominant undertakings in the sector as defined in section 23 of the Competition Act No.12 of 2010.

Question of the new clauses proposed)

(New clauses read the First Time)

(Question, that the new clauses be read a Second Time, proposed)

(Question, that the new clauses be read a Second Time, put and agreed to)

(The new clauses were read a Second Time)

(Question, that the new clauses be added to the Bill, put and agreed to)

First Schedule

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the First Schedule to the Bill be amended-

- (a) in definition of the expression “former institution” by-
 - (a) deleting paragraph (ix);
 - (b) deleting paragraph (x);
 - (c) deleting paragraph (xi);
 - (d) deleting paragraph(xiv);
- (b) in sub-paragraph (2) of paragraph (4) by inserting the words “on the advice of the Authority and the Transition Authority” immediately after the words “Cabinet Secretary”.

(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)

(First Schedule as amended agreed to)

Long Title

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

THAT, the Bill be amended by deleting the long title and substituting therefor the following new long title-

AN ACT of Parliament to provide for the consolidation of the laws on the regulation and promotion of agriculture generally, to provide for the establishment of the Agriculture, Fisheries and Food Authority, to make provision for the respective roles of the national and county governments in agriculture excluding livestock and related matters in furtherance of the relevant provisions of the Fourth Schedule to the Constitution and for connected purposes.

(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)*

(Title as amended agreed to)

Clause 1

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

THAT, the Bill be amended in Clause 1 by deleting the words “the Agriculture, Livestock, Fisheries and Food Authority Act, 2012” and substituting therefor the words “the Agriculture, Fisheries and Food Authority Act, 2012”.

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)*

(Clause 1 as amended agreed to)

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

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, we were seeking re-committal of Clauses 2, 4 and 5.

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Mututho, it has just been brought to my attention that what you are actually proposing to re-commit under Clauses 2 and 3 are identical to what the House approved. That it is only clause 2 which actually requires re-committal. Is that the position?

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, the essence of Clause 2 as agreed was to exclude livestock from ALFFA. This was after months of negotiation. At the point when we were discussing, we thought that the amendment did not sail through. So, we wanted to re-commit that particular clause, so that the whole Bill could be harmonised. Otherwise, we will be forced to re-write the whole thing again to include ALFFA livestock in each of the other clauses. The Minister for Agriculture has understood that position. Perhaps, she can elaborate further on that particular aspect. That is why we are seeking re-committal.

The Temporary Deputy Chairman (Mr. Imanyara): Just before I call the Minister to elaborate further, what I was pointing out has just been pointed out to me here at the Table that what you are trying to do in Clauses 2 and 3, in fact, is what the House did. So, it is redundant. You can, therefore, withdraw it.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, can I approach you, so that I can be sure?

The Temporary Deputy Chairman (Mr. Imanyara): I think hon. Isaac Ruto wants to say something on it.

Mr. Ruto: Thank you, Mr. Temporary Deputy Chairman, Sir. I will be proposing that we also re-commit a few other clauses, namely, Clause 10, 16 and 21. So, I do not know at what stage you would want us to request for them to be recommitted.

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Isaac Ruto, just for your guidance, from the document that has been circulated by hon. John Mututho, which you may look at, the clauses he seeks to re-commit are Clauses 4, 5 and 11. Clause 10 has already been taken care of. He is seeking to re-commit just those three clauses. We do not have anything from you.

Mr. Ruto:---(off-record)

The Temporary Deputy Chairman (Mr. Imanyara): We have, indeed, looked at Clause 16, but it is exactly what the House passed. So, it is not necessary. You can confirm that from Mr. Mututho. So, Mr. Mututho---

Mr. Ruto: ---(off-record)

The Temporary Deputy Chairman (Mr. Imanyara): Let me go through it again for your benefit. They are Clauses 4, 5 and 11. Clause 10 is the same. So, there is no need to re-commit it. Clauses 11 and 16 are the same. So, Mr. Mututho, you may proceed under Clause 4.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I seek to recommit Clause 4 as indicated in circulated document. The idea here---

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Mututho, I hope you have cleared with the Minister, because she would have to agree with you since she is the one who will move it, subject to re-committal of your clauses. So, you need her concurrence before you move it. Otherwise, it will be an exercise in futility. Have you got her concurrence? Madam Minister, maybe, I should give you the opportunity to comment. They are seeking to re-commit Clauses 4, 5 and 11.

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, we have agreed on these issues because we discussed them. So, this is the way it should be.

The Temporary Deputy Chairman (Mr. Imanyara): Thank you very much. That is all I needed to get from you. So, Madam Minister, when you move, you will do so, subject to the re-committal of Clauses 4, 5 and 11.

It is now your opportunity to do so.

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Agriculture, Livestock, Fisheries and Food Authority Bill (Bill No.61 of 2012) and its approval thereof with amendments and subject to committal of Clauses 4, 5 and 11.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, we now go to The Crops Bill.

THE CROPS BILL

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, let just point out that Mr. Mututho has circulated a series proposals for amendment. So, I will not be requiring him to read them out since they have been approved and circulated to hon. Members.

Hon. Ethuro will take us through this Bill.

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

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

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, we are in the Committee of the whole House. We will consider The Crops Bill (Bill No.59 of 2012).

Clause 2

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

THAT, Clause 2 of the Bill be amended in the definition of the expression “scheduled crop” by inserting the words “on the advice of the Authority” after the words “Cabinet Secretary”.

(Question of the amendment proposed)

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

(Clause 2 as amended agreed to)

(Clauses 3 and 4 agreed to)

Clause 5

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

THAT the Bill be amended in Clause 5 by inserting the words “specified in the First Schedule” immediately after the word “crops”

(Question of the amendment proposed)

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

(Clause 5 as amended agreed to)

Clause 6

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

THAT Clause 6 of the Bill be amended in sub-clause (1) by deleting paragraph (a) and substituting therefor the following new paragraph-

- (a) the Authority, on behalf of the national government, shall be responsible for licensing and charging of levies and breeders royalties on all scheduled crops on condition that the total sum of the levies charged by the Authority shall not exceed ten per centum of the gate value of the produce.

(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)*

(Clause 6 as amended agreed to)

Clause 7

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

THAT, Clause 7 of the Bill be amended in sub-section (2) by inserting the word “other” immediately after the word “any”

(Question of the amendment proposed)

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

(Clause 7 as amended agreed to)

Clause 8

The Temporary Deputy Chairman (Mr. Ethuro) We have two amendments to Clause 8.

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

THAT, Clause 8 of the Bill be amended-

(a) in paragraph (a) by inserting the words “specified in the First Schedule” immediately after the word “crops”;

(b) in paragraph (c) by deleting the words “or State Department”; and

(c) by deleting paragraph (g) and substituting therefor the following new paragraph—

(g) in consultation with the National Biodiversity Authority, advise the government on the introduction, safe transfer, handling and use of genetically modified species of plants and organisms in the country;

(d) by inserting the following new paragraph immediately after paragraph (l)—

(ll) formulate policies and guidelines on dealing with other crops.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Oyugi, proceed!

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

THAT, Clause 8 be amended by inserting the following new paragraph immediately after paragraph (l)—

(mm) promote and advise on strategies for value addition prior to the export of crops from Kenya;

(nn) recommend general industry agreements between farmers and processors of scheduled crops;

(oo) prescribe the minimum period within which farmers are to be paid for crops delivered and penalties for delayed payments.

The Temporary Deputy Chairman (Mr. Ethuro): Order! I stated that there are two amendments; one by your good self and the other one by Mr. Mututho. I gave Mr. Mututho the first chance so you were to speak to Mr. Mututho’s amendment. I submit that since you were eager for yours, you had nothing to add to Mr. Mututho’s.

Mr. Oyugi: Thank you very much, Mr. Temporary Deputy Chairman, Sir. I wish to propose that---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Oyugi! You need to acknowledge that you spoke sooner than required.

Mr. Oyugi: Mr. Temporary Deputy Chairman, Sir, I apologize for speaking earlier than required. I anticipated that the Chair was requesting me to move my amendment. But having been given this consideration, I thank you very much.

(Question of the amendment proposed)

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

(Clause 8 as amended agreed to)

Clause 9

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

THAT, Clause 9 of the Bill be amended-

(a) In sub-clause (2)-

(i) by deleting paragraph (a);

(ii) by inserting the following new paragraph immediately after paragraph (c)-

(d) funds appropriated by Parliament for this purpose;

(b) in sub-clause (3) by inserting the words “with the approval of the National Assembly” at the end of the sub-clause.

(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 be inserted,
put and agreed to)*

(Clause 9 as amended agreed to)

(Clause 10 agreed to)

Clause 11

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

THAT, Clause 11 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “may from time to time identify” and substituting therefor the words “shall with the advice of the Authority develop rules for identifying”;

(b) by inserting the following new sub-clause immediately after sub-clause (2) –

(2A) The county governments may from time to time, through the relevant county executive committee member, identify land suitable for the production of each of the scheduled crops.

(c) in sub-clause (3) by deleting the words “Cabinet Secretary” and substituting therefor the words “the county executive committee member responsible for agriculture.”

(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)*

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13 (Pg 2948)

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

THAT, Clause 13 of the Bill be amended in sub-clause (1) by inserting the following new paragraph immediately after paragraph (i)-

(j) value addition

Mr. Temporary Deputy Chairman, Sir, just for clarity there was a typo in the original Bill; we have two Clauses 13. That is why we have put in the page to guide the House. There is Clause 13 on page 2948 and another one on page 2949.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mututho! Unless somebody seeks clarification the assumption is that they understood the amendment as per the Order Paper.

(Question of the amendment proposed)

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

(Clause 13 as amended agreed to)

Clause 13 (Pg 2949)

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

THAT, Clause 13 of the Bill be amended—

(a) in subsection (1), by inserting the words “and any other organisation representing the interests of sugar farmers” immediately after the word “institution” appearing in paragraph (c);

(b) by inserting the following new sub-clause immediately after sub-clause (2).

(3) Where a farmer has entered into an agreement with an organization representing the interest of such farmer, the Authority and every dealer in crops shall respect and enable the carrying out of the terms of such agreements, including the remission to the farmers organisation of any contributions that may, pursuant to such agreements, be deductible from the farmer.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Mututho, do you want to contribute to it, or your request is just for the next one?

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I support what Mr. Oyugi is putting across because it is strengthening the initial thinking from the Committee.

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

The Temporary Deputy Chairman (Mr. Ethuro): Madam Minister, I notice you have a request.

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, it has been overtaken by events.

Clause 13 (Pg 2949)

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 13(sic) of the Bill be amended-

By inserting the following sub-clause immediately after sub-clause (2)

(3) Where a farmer has entered into an agreement with an organization representing the interest of such farmer, the Authority and every dealer in crops shall respect and enable the carrying out the terms of such agreements, including the remission to the farmers organization of any contributions that may, pursuant to such agreements, be deductible from the farmer.

(Question of the further amendment proposed)

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

(Clause 13 as further amended agreed to)

(Clause 14 agreed to)

Clause 15

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 15 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “and be licensed by”;

(b) in sub-clause (2) by deleting the words “and licensed”;

(c) by inserting the following new sub-clause immediately after sub-clause (2).

(2A) The Cabinet Secretary shall, in consultation with the relevant county executive committee member responsible for agriculture, prescribe regulations providing for the procedure for registration of dealers and the regulations shall also set out the appeal process in case of refusal or denial of registration.

(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
be inserted, put and agreed to)*

(Clause 15 as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Mututho, if you do not even support your own amendments they might fall. It is important for the Chair to hear the voices.

Clause 16

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 16 of the Bill be amended-

(a) in sub-clause (1), by deleting paragraph (c) and substituting therefore, the following new paragraph;

c. customs duties and other duties on import of agricultural and aquatic products.

(b) by deleting sub-clause (4) and substituting therefor the following new sub-clause-

(4) The Cabinet Secretary shall, using the structures established under the Intergovernmental Relations Act, 2012, put in place mechanisms to avoid double taxation of agricultural and aquatic products by the two levels of governments.

(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)*

(Clause 16 as amended agreed to)

Clause 17

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

THAT, Clause 17 of the Bill be amended in sub-clause (3) by deleting the words “Cabinet Secretary or” appearing in the opening paragraph.

(Question of the amendment proposed)

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

(Clause 17 as amended agreed to)

(Clause 18 agreed to)

Clause 19

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

THAT, Clause 19 of the Bill be amended in sub-clause (4) by inserting the following new sub-clause immediately after sub-clause (4)-

(4A) The total fees charged under sub-clause (4) shall depend on the turnover of the dealer and shall not overburden small scale dealers and the cumulative total of all levies and fees payable shall in any event not exceed ten percent of the gate value of the agricultural or aquatic product.

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

(Clauses 20, 21, 22, 23 and 24 agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Mututho, the Chair notices that you have taken over even the amendments that are meant to be moved by the Minister. But well done.

Clause 25

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

THAT, Clause 25 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(4) A county officer appointed under sub-section (1) shall liaise with the county executive committee in the discharge of its functions.

(Question of the amendment proposed)

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

(Clause 25 as amended agreed to)

(Clauses 26, 27, 28, 29, 30, 31 and 32 agreed to)

Clause 33

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

THAT, Clause 33 of the Bill be amended-

(a) by renumbering the existing provision as sub-clause (1) and “deleting the words “shall have power to” and substituting therefor the word “may”;

(b) by deleting paragraph (c) and substituting therefor the following new paragraph-
c. offer extension services for irrigation farming;

(c) by inserting the following new sub-clause immediately after the renamed sub-clause (1)-

(2) Despite any other provisions of this Act and paragraph (c) of sub-clause (1), the National Irrigation Board established under the Irrigation Act, Cap. 347, shall continue carrying out its functions as set out under that Act for a period of one year from the date of commencement of this Act.

Mr. Temporary Deputy Chairman, Sir, I will seek your indulgence here because I would like to delete the last part of the circulated amendment by proposing an amendment to Clause 33 up to (b) as circulated and omitting (c). For clarity (c) reads as follows:-

“by inserting the following new subclause immediately after renamed subclause (1).

The Temporary Deputy Chairman (Mr. Ethuro): So, you are proposing that your proposed amendment will have (a) and (b) and then (c) is to be deleted in its entirety?

Mr. Mututho: Yes, Mr. Temporary Deputy Chairman, Sir.

(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)

(Clause 33 as amended agreed to)

(Clauses 34, 35, 36, 37 and 38 agreed to)

Clause 39

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

THAT, Clause 39 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (p)-

(q) the procedure for processing of toxic crops.

Mr. Chachu: Mr. Temporary Deputy Chairman, Sir, what is the import of this particular amendment?

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, we are trying to recognize provisions in Schedule Four of the Constitution. As you may recall, in the last one week, hon. Members have raised concern that the national Government might be going a step beyond the limit defined by the new Constitution. That is the whole essence of that amendment.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, I support the position taken by the chairman of the committee. For example, if you read what Clause 39 originally said, you will understand the import of this amendment. It says: -

“The Cabinet Secretary may, in consultation with the Authority, make regulations for the better carrying into effect of the provisions of this Act, or for prescribing anything which is to be prescribed under this Act.”

This means the Cabinet Secretary will be applying the functions given to the county government by issuing regulations and directives as if he will not recognize the existence of the functions under Schedule IV.

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, just to confirm what the Chairman of the Committee on Agriculture, Livestock and Cooperatives and also what hon. Isaac Ruto has said, we have debated this issue. The importance of this new clause is actually to strengthen the original law as drafted. When it was drafted, there was not enough power if you like even to the devolved Government and we are essentially about to embrace the devolved Government. Let me convince you that it is richer now and better than it was initially.

The Minister for Medical Services (Prof. Anyang' -Nyong'o): Mr. Temporary Deputy Chairman, I think the point that my colleagues have made is very point because there seems to be an assumption in certain quarters that when the national Government makes laws, it should exclude itself from any happening in the county governments. What is important is what hon. Isaac Ruto said in a situation where according to Schedule Four states the powers of the county government, that when the national Government makes certain laws that will touch on the county government, the element of consultation and concurrence should be there. It means that the national Government cannot make any law because, in any case, it is a county government that forms the nation. I think there are certain quarters which have misunderstood this and have gone ahead to say that any law made when powers are in the county government, the national Government should completely keep off. I mean a state or nation cannot work like that. So, I really fully support that amendment to bring out that issue.

(Question of the amendment proposed)

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

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

THAT, Clause 39 be amended in sub-clause (2) by inserting the following new paragraphs immediately after paragraph (p)—

- (q) the relationships between farmers and other dealers in crops;
- (r) the formula for the pricing of scheduled crops;
- (s) the regulation of standard industry agreements.

The import of the amendment is to increase the purview of the regulations.

Mr. Mututho: Mr. Temporary Deputy Chairman, what we are trying to do is like the case of sugar payment formula where the farmers will be involved in crafting the formula for payment. That is the import of the amendment.

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

(Clause 39 as amended agreed to)

Clause 40

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

THAT, Clause 40 be amended in sub-clause (2)-

(a) by deleting paragraph (d) and substituting therefor the following new paragraph-

(d) fees, levies and all other charges imposed under the repealed laws shall cease to be chargeable upon the expiration of a period of six months from the date of commencement of this Act;

(b) by deleting paragraph (e) and substituting thereof the following new paragraph-

(e) subsidiary legislation issued under the repealed laws shall continue to apply up to the 30th June, 2013.

(Question of the amendment proposed)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Chairman, while I support the amendment totally, let me appeal to the Minister, my colleague here, that on these levies, now that the farmers are going to be engaged in determining how much they should be charged and so on. Please, let them be used for developing the areas where the farmers are. The infrastructure in the sugar area is really pathetic. One wonders where the levies and the cesses go. I just hope that in the new dispensation, there will be a mechanism for ensuring that the infrastructure where these crops are grown, the levies are used prudently.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, while I really support what Prof. Anyang'-Nyong'o has indicated, it should be noted that in the past levies have become a problem to the farmer. Some of them have actually killed certain crops for instance pyrethrum. They have actually killed a whole sector. So, we are saying that in the new dispensation, there will be better consultation and the purposes for the levies will be agreed on in a consultative forum as provided for by the Constitution.

Also, I would like to remind my friend Professor that it will be his responsibility as a Senator since I am meant to understand he wants to become one to ensure that this actually happens. It will no longer be a matter for the Cabinet Secretary to do. It will be your responsibility as a Senator to ensure---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Isaac! I have reason to believe that you will not cause effect to that assertion since you are not a voter in Kisumu County, but I suppose you wish him well.

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

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

(Clause 40 as amended agreed to)

(Clause 41 agreed to)

Clause 42

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

THAT, Clause 42 be amended by inserting the words “and the county governments “immediately after the word “Authority”.

(Question of the amendment proposed)

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

(Clause 42 as amended agreed to)

(Clause 43 agreed to)

New Clause 39A

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

THAT, the Bill be amended by inserting the following New Clause 39A immediately after Clause 39—

Dispute resolution

By arbitration.

39A. For the purposes of ensuring expeditious resolution of disputes arising between farmers and other crop dealers the Cabinet Secretary shall make rules to provide the procedure for arbitration of such disputes.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be
read a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

First Schedule

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

THAT, the First Schedule to the Bill be amended-

(a) by italicizing all the words in the second column, except the expressions “spp” and “L”;

(b) in Part 1 by-

- (i) deleting the words “Sacharum ssp” and substituting therefor the words “*Saccharum ssp*”;
- (ii) deleting the words “*Helianthus annuus L.*” and substituting therefor the words “*Helianthus annuus L.*”;
- (iii) deleting the words “*Phaseolus Vulgaris L.*” and substituting therefor the words “*Phaseolus vulgaris L.*”;
- (iv) deleting the words “*Zae mays S.*” and substituting therefor the words “*Zea mays L.*”;
- (v) deleting the words “*Triticum spp.*” And substituting therefor the words “*Triticum aestivum.*”;
- (vi) inserting the following new crop in Part 1 of the Scheduled crops-
“Wheat (pasta)..... *Triticum monococcum L.*”
- (c) in Part 2 by-
 - (i) deleting the words “*Desmodium intorium (miller)*” and substituting therefor the words “*Desmodium intorium (Miller).*” ;
 - (ii) deleting the words “*Setaria anceps*” and substituting therefor the words “*Setaria spp.*”;
 - (iii) deleting the words “*Brachiaris ruziziensis*” and substituting therefor the words “*Bracharia spp.*”;
 - (iv) deleting the words “*Ipomea batatas*” and substituting therefor the words “*Ipomeea batatas*”
- (d) in Part 3 by-
 - (i) deleting the words
“*Sisal.....Agave spp.*” And substituting therefor the words
“*Sisal.....Agave spp.*” ;
 - (ii) deleting the words “*Lycopersicon esculentum P. Mill*” and substituting therefor the words “*Solanum lycopersicon*” ;
 - (iii) deleting the word “*Coconut.....*” and substituting therefor the words
“*Coconut.....Cocos nucifera*”;
 - (iv) deleting the word “*Guava*” appearing in the last item in the list and inserting the following new item in the list “*Guava.....Psidium*”

(Question of the amendment proposed)

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

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

(The First Schedule as amended agreed to)

Second Schedule

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
 THAT the Second Schedule to the bill be amended by-
 (a) deleting item 9 (National Cereals and Produce Board Act (Cap.338);

- (b) inserting the following new item-
15.The Irrigation Act, (Cap.347)

(Question of the amendment proposed)

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, while I agree that we can let these institutions operate, they should operate for a short while. Their functions must be anchored with the new Constitution. They should not continue to become a drain on the national resources while their efficiency is doubtful. So, I do not know for how long the Minister intends to let these organizations operate. I would have preferred a situation where they are given a timeline, so that the restructuring would be done quickly.

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, we had initially thought of one year. We thought to put it in, but I was not brave enough to do so, because I suspect that with a new Government, new interviews for secretaries and so on, it might be necessary to take a slightly longer time. But we can, of course, decide that we give it a maximum of one or two years. It definitely has to be done.

Mr. Ruto: One year!

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, that is what we had. It is written somewhere in this Bill and we have said one year for the transition.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I think one year is okay. Parliament will have enough time to come and legislate and also do a further realignment. This is in respect to the National Cereals and Produce Board (NCPB).

Mr. Sirat: Mr. Temporary Deputy Chairman, Sir, I concur with my Chairman in respect to the NCPB, but for irrigation---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Sirat! What do you concur in respect to the NCPB?

Mr. Sirat: Mr. Temporary Deputy Chairman, Sir, I agree with the Chairman's proposal of one or two years in respect of the NCPB. But for irrigation, for the first time in 50 years, we have benefited from the National Irrigation Board (NIB). We are pleased with its work and it should be left indefinitely.

Mr. Ruto: On a point of order, Mr. Temporary Deputy Chairman, Sir. Would we be in order to appear to amend provisions of the Constitution to allow institutions that have no national function to do a national function? Irrigation is either a county or a regional function. It cannot possibly be a national function other than the policy on irrigation. So, I do not know whether the Member is proposing that we amend the Constitution.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Ruto, you saw that the Chair had a lot of difficulties with that contribution because Mr. Mututho only brought (a) and he deleted (b) on the Second Schedule. So, definitely, the issues of the Irrigation Act and the NIB are not part of this discussion. But given where he comes from, I allowed him a bit leeway because it is a mission for the NIB to reach the four corners of the Republic. So, it is unnecessary.

*(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)

(Second Schedule as amended agreed to)

(Third Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Crops Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we have cleared the Committee of the whole House, that is Order No.8, Items (i), (ii), (iii) and (iv). Item (v), which is The Public Private Partnerships Bill, 2012, has been deferred. So, that brings us to the end of the Committee of the whole House.

(The Public Private Partnership Bill deferred)

(The House resumed)

*[Mr. Temporary Deputy Speaker
(Dr. Laboso) in the Chair]*

REPORTS, CONSIDERATION OF REPORT AND THIRD READINGS

THE ELECTIONS (AMENDMENT) BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered The Elections (Amendment) Bill and approved the same with amendment.

Mr. Oyugi: Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Mrs. Odhiambo-Mabona seconded.

(Question proposed)

(Question put and agreed to)

Mr. Oyugi: Madam Temporary Deputy Speaker, I beg to move that The Elections (Amendment) Bill be now read the Third Time.

Mrs. Odhiambo-Mabona seconded.

(Question proposed)

(Question put and agreed to)

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

THE POLITICAL PARTIES (AMENDMENT) BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered The Political Parties (Amendment) Bill and approved the same without amendment.

Mr. Oyugi: Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Mrs. Odhiambo-Mabona seconded.

(Question proposed)

(Question put and agreed to)

Mr. Oyugi: Madam Temporary Deputy Speaker, I beg to move that The Political Parties (Amendment) Bill be now read the Third Time.

Mrs. Odhiambo-Mabona seconded.

(Question proposed)

(Question put and agreed to)

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

THE AGRICULTURE, LIVESTOCK, FISHERIES AND FOOD AUTHORITY BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered The Agriculture, Livestock, Fisheries and Food Authority Bill (Bill No. 61 of 2012) and approved the same with amendments.

(Dr. Nuh consulted with Mr. Ethuro)

I need your protection from Dr. Nuh.

The Temporary Deputy Speaker (Dr. Laboso): I am informed that there was a recommittal which you should have mentioned at this point.

Mr. Ethuro: Madam Temporary Deputy Speaker, I stand corrected. That is why I needed protection from you from Dr. Nuh.

Let me repeat.

Madam Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered The Agriculture, Livestock, Fisheries and Food Authority Bill, Bill No. 61 of 2012 and approved the same with amendments subject to recommittal of Clauses 4, 5 and 11.

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

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Dr. Laboso): We will not have a Third Reading for this Bill until we address the recommittal. We will now move to the next Bill which is The Crops Bill.

THE CROPS BILL

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered The Crops Bill, Bill No.59 of 2012 and approved the same with amendments.

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

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Agriculture (Dr. Kosgei): Madam Temporary Deputy Speaker, I beg to move that The Crops Bill be now read the Third Time.

The Minister for Higher Education, Science and Technology (Prof. Kamar) seconded.

(Question proposed)

(Question put and agreed to)

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

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, it is now time for interruption of business. The House is, therefore, adjourned until Tuesday, 18th December, 2012, at 2.30 p.m.

The House rose at 6.30 p.m.