

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 20th June, 2012

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Vote on Account for Financial Year 2012/2013.

(By the Minister for Finance)

NOTICE OF MOTION

VOTE ON ACCOUNT

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion.

THAT, in accordance with Section 222 of the Constitution of Kenya, the withdrawal of Kshs424,666,046,946 representing one-half of the total net Estimates of Recurrent and Development Expenditure made up in the manner set out in the Vote on Account Schedules laid in the House, be authorized for the purposes of meeting expenditure necessary to carry out the services of the Government of Kenya during the year ending 30th June, 2013, until such time that the Appropriation Act for the year comes into operation.

Mr. Deputy Speaker, Sir, His Excellency the President has given his consent to this Motion.

QUESTIONS BY PRIVATE NOTICE

KILLING OF MR. PETER KARIUKI BY HIPPO IN THIKA

Mr. Kabogo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) Is the Minister aware that a rogue hippopotamus killed Mr. Peter Kariuki (ID No. 13841054) and critically injured Mr. John Gathuri Kimani (ID No. 4920819) on 9th of June 2012, who is currently hospitalized at Naidu Hospital, Thika?

(b) Is the Minister further aware that the said hippopotamus has been terrorizing residents of Del Monte Dam area near River Athi and has since killed 7 people?

(c) What measures will the Minister take to ensure that the animal is captured to avert any further attacks and could he consider compensating the victims?

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that a rogue hippopotamus killed Mr. Peter Kariuki, ID.No.13841054 and critically injured Mr. John Kathuri Kimani, ID No.4920819 on 9th June, 2012 who is currently hospitalized at Naidu Hospital, Thika.

(b) No, I am not aware that the said hippopotamus has since killed seven other persons as no further injury or death arising from a hippopotamus attack has been reported from this particular dam after the incident of 6th June, 2012.

(c) My Ministry, through the Kenya Wildlife Service (KWS), is committed to the protection of people and property anywhere in the country. The following measures have been undertaken by the KWS to ensure that the people of that area are safe:-

(i) The KWS has an office with a district warden, deputy warden and four control rangers plus a vehicle. This team is mandated and deployed to patrol the Del Monte and Athi River wildlife prevailing areas on a daily basis.

(ii) I have instructed the KWS to take immediate measures to capture and eliminate the rogue hippopotamus. My Ministry will also compensate the bereaved victims as well as the other injured victim who is currently hospitalized. Compensation claim forms for processing of compensation are available at the office of the district warden.

May I also take this opportunity to express my sincere condolences to the families of the two victims.

Mr. Kabogo: Mr. Deputy Speaker, Sir, besides the condolences sent by the Assistant Minister, it appears from this answer that the core business of this Government is to protect the lives of animals instead of the lives of Kenyans. The issue of hippopotamus has come to this House several times. Kenyans are losing lives because of this hippopotamus and yet he casually comes and says that he has ordered the KWS to hunt these animals and kill them. This is something that recurs month after month.

Mr. Deputy Speaker, Sir, regarding part (b) of the Question, the answer given by the Assistant Minister says “nothing has been reported since.” That is not the Question. The Question was; “Is the Minister further aware that the said hippopotamus has been terrorizing residents of Del Monte dam area near Athi River and has since killed seven people? He has not answered that Question. Could you ask him to answer it?”

Mr. Deputy Speaker: Order, Mr. Kabogo! The Assistant Minister says that he has not heard reports since. “Since” is now a follow up to your own Question which asked whether he is further aware that seven people have since been killed. This means that subsequent killing and injury of Mr. Peter Kariuki and the injury of one John Kathuri. He has said that he is not aware.

Mr. Kabogo: Mr. Deputy Speaker, Sir, the Question was not “since” but “it has been”; a continuous process. It has been terrorizing residents. What immediate measures is the Ministry going to take to make sure that no other Kenyan loses life through the attack of these animals?

Mr. Deputy Speaker: That is the question you should have asked.

Mr. Nanok: Mr. Deputy Speaker, Sir, I want to share the sentiments of Mr. Kabogo over this particular incidence. Indeed, we value the lives of Kenyans that are injured by wildlife. That

is why as soon as we received this report, because this dam is within a private land, Del Monte, we deployed a team to work on a daily basis to track down this animal with instructions to kill it.

In addition, just as we did, I remember two years ago when we had a similar problem with crocodiles in the Seven Forks Dam, Kindaruma, Masinga, we applied a similar tactic by putting in place emergency measures to protect the place where people were fetching water from. That basically reduced the injuries and the deaths that the crocodiles were causing. What I can assure you is that we will work closely with Del Monte to see to it that a trench is dug around the dam immediately.

We have already started sensitization. I believe that if the hon. Members can help us also-

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Mr. Mbai: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House that he has put a fence along Masinga Dam while there is nothing? I am the Member of Parliament of that area.

Mr. Nanok: Mr. Deputy Speaker, Sir, when I talked about the Seven Forks Dam, it was as a result of a question that was brought to this House by Mr. Musyimi for specific areas that he has pointed out and not the entire dam. These were specific areas where people were fetching water and the crocodiles were a menace.

Back again to the initial question which was being asked by Mr. Kabogo, you will realize that hippos come out to feed in the very early morning or late evening. One thing that we want to urge the public is to desist from moving around these water bodies at that particular time. That can also help. Meanwhile, we will work with Del Monte to make sure that we put a trench around the dam.

Mr. Twaha: Mr. Deputy Speaker, Sir, this problem is not just in Juja, but even in Lamu, we are losing people to hippopotamus, snake bites and so on. The process of making claims for compensation is very long and the amount paid is very small. What action is the Assistant Minister taking to make the processing of claims more efficient? He should also consider raising the amount of compensation.

Mr. Nanok: Mr. Deputy Speaker, Sir, as I have said here before, we always expect the process to take about three months, but sometimes there are delays experienced basically because we are depended on Treasury to give us funds to sent electronically to the districts. We will try as much as possible to fast-track it. I know the problem of human-wildlife conflict is everywhere in the country. As has been said, the amount paid is small. I agree with you and that is why in the proposed Bill, which I hope is coming here, we have reviewed that amount and increased it to Kshs1 million in case of death.

Mr. Affey: Mr. Deputy Speaker, Sir, this problem is not only in Juja. In fact, just two days ago in Ndilimanyani Area of Wajir County, for the information of the Assistant Minister if he is not already informed, a rogue hyena entered the town and killed two young girls of class five. As I speak now, there are two young boys in the same case in critical condition. There are also four adults in critical condition in that area. This is as a result of an attack by a hyena. He says they have sent wardens there, how prepared are they to deal with rogue animals who come to kill and destroy property of innocent citizens?

Mr. Nanok: Mr. Deputy Speaker, Sir, in every county we have a KWS warden with rangers stationed there. They may not be adequate enough because of the financial constraints we are experiencing. Ever since I was posted to this Ministry we have only done a recruitment once of 400 rangers in early last year. Also communities are being sensitized and informed on how they can contact the KWS office in Wajir or anywhere else in the country. The moment they

get any information they are supposed to notify the rangers. If you realize that those officers are not acting on that information, I am always a very good attendant in Parliament, we can always discuss, so that I make them do their job.

Ms. Amina Abdalla: Mr. Deputy Speaker, Sir, is it in order for the Assistant Minister to mislead the House by saying that they are in the process of increasing the compensation yet they have issued a signal, stopping compensation for snake bites?

Mr. Nanok: Mr. Deputy Speaker, Sir, I am not aware of any stoppage of compensation for snake bites. As far as I am concerned, as long as all the compensation forms are filled up properly, and they meet the required standards, the processing begins right from the District Compensation Committee and moves upwards up to the Ministry Compensation Committee. Once approval has been given in respect of the amount to be paid, we wire the funds electronically to the District headquarters, where it is paid out by the District Commissioners.

Ms. Amina Abdalla: On a point of order, Mr. Deputy Speaker, Sir. I have evidence to the effect that there are people who had been beaten by snakes, but whose compensation has been stopped. There is a memorandum from the Ministry to all the offices to stop processing compensation claims for snake bites. I can provide him with the evidence.

Mr. Nanok: Mr. Deputy Speaker, Sir, if such information is available, and I do not have it, she can share it with me, so that we can follow up the matter and provide her with feedback, because that is not the policy. The policy is that so long as anyone has been killed or injured, he is entitled to compensation. The policy has never changed. As the Assistant Minister for Forestry and Wildlife, I can attest here that that is the official position. The substantive Minister is also sitting here with me, and he shares the same position with me.

Mr. Njuguna: Mr. Deputy Speaker, Sir, given the admission by the Assistant Minister that John Kathuri Kimani is currently hospitalised at Naidu Hospital, Thika, could he consider taking over the medical bills being incurred by this victim of animal attack?

Mr. Nanok: Mr. Deputy Speaker, Sir, that is a matter we may look into.

On the person that was killed, the Kenya Wildlife Service (KWS) provided a vehicle for the body to be taken to the mortuary. Subsequently, the KWS vehicle took the body back home for burial. In addition, the KWS facilitated the family with Kshs10,000 to buy coffin for the deceased person.

On the hon. Member's request regarding the patient who is in hospital, this is a matter which is not yet covered by the law but it is something we can look into, so that we can assist that particular individual.

Mr. Kabogo: Mr. Deputy Speaker, Sir, those hippos have killed seven people in the last three years. For the record, I want to table a memo from the District Office, which gives the details of the people who have died. If it was a Minister or an Assistant Minister who was killed by those hippos, I tend to wonder what the Government would have done. This Government does not take the life of a peasant seriously. Considering the events of the last few weeks, if it was a Minister or an Assistant Minister who had been killed, all of us would have gone there and gotten rid of those hippos.

(Mr. Kabogo laid the document on the Table)

Mr. Deputy Speaker, Sir, I also want to table photos of the deceased person and the injured person, so that the Assistant Minister can have an idea of how painful this incident was. He has actually said that they will compensate people for deaths and injuries, and that they will

pay the hospital bills for the person who is in hospital. I have the bill showing the expenses incurred as of yesterday. I hope that the Ministry will cater for this bill and foot the bill relating to the burial expenses and pay compensation for the body that is in the mortuary.

(Mr. Kabogo laid the photos on the Table)

Mr. Deputy Speaker: Assistant Minister, for the benefit of the Chair, did you say that there were no seven people who were killed by hippos since this particular incident took place?

Mr. Nanok: Mr. Deputy Speaker, Sir, I think my colleague, hon. Kabogo, has just made a statement. He has not asked a supplementary question.

In his original Question, he claims that seven people have died since the time the first two persons were mauled down by hippos, during which one of them died. To this Question, I responded that from the records we have, there was none. However, I want to agree that in the general area of Kilimambogo, and not Del Monte area; we have had incidents of a similar nature before.

Mr. Deputy Speaker, Sir, we have eliminated some hippos but I understand that there are quite a number of them. So, what I want to assure the hon. Member and the people living within Thika and around that dam is that we will hunt down those hippos and make sure that we kill them. Secondly, we will work with Del Monte to make sure that we put a trench around that particular dam, so that the animals can be trapped.

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. Hon. Kabogo's Question is on two people but since the Assistant Minister has admitted that seven people have died as a result of attacks by hippos, and since we have all agreed that when it comes to death, Kenyans are more important than animals, can he also commit himself to compensate the other seven families which, in the last two years, have had their relatives killed by a hippo, who is supposed to be under the care of the Ministry?

Mr. Deputy Speaker: For the benefit of the Chair, hon. Questioner, is it the same hippo that has been doing all this damage or is it a series of them?

Mr. Nanok: Mr. Deputy Speaker, Sir, we are not talking of one dam. There is also the general area of Kilimambogo, where there are other dams. From the records I have, for deaths that happened in 2006, 2007 and 2008, compensation has already been paid. We have paid compensation for four deaths actually. What is remaining is compensation for the two victims relating to the particular incident at hand, which is also being processed.

Mr. Deputy Speaker, Sir, I want to make an undertaking once again that we will make sure that we track that hippo and any other hippo within that dam, and put up a trench around the dam, so that we can reduce the human-wildlife conflict in that area.

Mr. Deputy Speaker: Assistant Minister, have you been able to disable any hippo over the period of time you have said deaths have been occurring? Have you killed any of the hippos?

Mr. Nanok: Mr. Deputy Speaker, Sir, from the records that I have from my officers who have been tracking the animals, we have killed about three hippos. However, since we are not able to categorically state that it is one hippo that has been doing all this harm, we have given instructions to the rangers to eliminate on the spot any hippo that will emerge from the dam.

Mr. Kabogo: On a point of order, Mr. Deputy Speaker, Sir. I asked the Assistant Minister to confirm whether they will settle the bill for the patient who is in hospital. At the same time, could he give an undertaking to Kenyans that no other human life will be lost due to attacks by hippos in that area since they have game rangers stationed there for 24-hours a day? Could he

make that undertaking to the House and to the general Kenyan public, and confirm whether they will pay this bill? When will he visit this site with me, so that he understands what it is he is talking about?

Mr. Nanok: Mr. Deputy Speaker, Sir, indeed, I cannot give an undertaking that is outside the law to compensate what is not possible. But we are rushing the new reforms in the wildlife sector and a new Bill will be coming to this House. I have already said that we have known that there is an anomaly in the law which will be corrected. I hope that as soon as that piece of legislation reaches this House then it will be upon the House to decide what level of compensation and what level of undertaking in terms of payment of hospital bills incurred by people injured by wild animals will be included in the law to be enacted by the this House.

Mr. Kabogo: Mr. Deputy Speaker, Sir, I have requested the Assistant Minister to give assurance to Kenyans by way of undertaking that there will be no further deaths by way of hippopotamus in Kenya Cannery Dam. I said that because he said there is 24-hour surveillance by the Kenya Wildlife Service (KWS). Could he give that undertaking?

Mr. Nanok: Mr. Deputy Speaker, Sir, we do promise that we will do what we can to make sure that no other deaths or injuries occur. Equally, as I have said, let the Members of the public realize that hippos normally come out of water to feed early in the morning and late in the evening, and they should as much as possible desist from visiting these water bodies at those particular times. If we do that, then we will not only shift the burden to the Government alone but I believe that they will also take the responsibility not to be within those water bodies during early morning and late evening.

Mr. Deputy Speaker: Next Question.

CONSTRUCTION OF BRIDGE ON TETU-KAHIGA ROAD

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

(a) Is the Minister aware that the bridge along Tetu-Kahiga Road has been swept away?

(b) What urgent measures will the Minister take to ensure that the bridge is reconstructed since the Bill of Quantities (BQ) are ready in the Ministry?

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

(a) I am aware that the bridge along the Tetu-Kahiga Road has been swept away. This was an old colonial structure that was overdue for replacement.

(b) Estimates for the above bridge have been forwarded to the Ministry and it is estimated that a total of Kshs9 million will be required to be able to restore the bridge.

Further, we have allocated a similar amount and within the next one month we should be able to complete the tendering process so that we can be able to commence the construction of this section of the bridge.

Mr. Gaichuhie: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister because he has given an undertaking that he will give the Kshs9 million that the BQ quoted. However, I want to tell the Assistant Minister that in 2008 we prepared a BQ of Kshs7 million and this Ministry agreed to fund that bridge. In 2009, we did a review. We also did a review in 2010 and 2011. Could he assure this House that he will avail those funds this financial year? The Assistant Minister knows very well that that is an agricultural area, and he is one person who wants to be

the Governor of that area. So, I am sure that he will assure me that he will do that bridge before we vote him in.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, it is true that we had done the estimates before but we did not have the finances to be able to commence the procurement. In the current financial year, we already have the money and I want to assure the hon. Member that we will commence the procurement.

Mr. Deputy Speaker: Mr. Gaichuhie, I hope you are satisfied.

Mr. Gaichuhie: Mr. Deputy Speaker, Sir, the Assistant Minister has given me the assurance that he will do it within two weeks. But I also want to ask him that when they start doing the bridge, can he give us, at least, Kshs1 million so that we can do a diversion because that is the only major bridge that we use and we need funds to do a diversion when he will be constructing the bridge because I know it will take so long. Or, rather he should give me an undertaking how long it will take.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I do not have the exact details of the duration it will take. However, I am aware that the contract includes the cost of the diversion for the period when the bridge will be under construction. That, therefore, is well taken care of. Also bearing in mind that this is one of the most productive areas within that constituency, we will ensure that transport is not interrupted.

Mr. Deputy Speaker: Next Question.

Mr. Twaha: Mr. Deputy Speaker, Sir, although I have not received a copy of the written answer, I beg to ask Question No.1584.

ORAL ANSWERS TO QUESTIONS

Question No.1584

DELAY IN DRILLING BOREHOLES/WELLS DUE TO NEMA DEMANDS

Mr. Twaha asked the Minister for Environment and Mineral Resources:-

(a) whether he is aware that a development partner, Mr. William from Netherlands has offered to drill several boreholes/wells in the Wetemere area in Lamu West Constituency;

(b) whether he is further aware that NEMA is demanding Kshs50,000 for each well to grant its approval and what action he will take to facilitate the drilling of the boreholes; and,

(c) when he will introduce a Bill in Parliament to realign the functions of NEMA in view of provisions of Part II, Section 10 of the Fourth Schedule to the Constitution.

Mr. Deputy Speaker: The Chair does, indeed, have a communication from the Minister for Environment and Mineral Resources. The Minister is out of the country. The Assistant Minister is also out of town. The Chair directs that this Question be listed on the Order Paper on Wednesday, next week in the morning.

In the meantime, the Chair also directs the Clerks Department to make sure that the hon. Questioner is furnished with a copy of the written answer. This is an ordinary Question and you are entitled to a copy of the written answer well in advance.

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

(Question deferred)

Question No.1153

TARMACKING OF ROADS IN IJARA DISTRICT

Mrs. Noor asked the Minister for Roads:-

(a) how much money has been allocated for repair and maintenance of roads in Ijara District for the past three years;

(b) whether he can confirm that all roads in Ijara and Hulugho Districts are not tarmacked and, if so why; and,

(c) when the Government will tarmac the roads.

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

(a) My Ministry, through the Kenya Rural Roads Authority (KERRA), allocated a total amount of Kshs152,461,992 for the repair and maintenance of roads in Ijara and Hulugho districts in the last three years.

(b) It is true that the Ministry has not tarmacked any of the roads due to funding constraints. Nevertheless, we have continued allocating funds for road maintenance in order to keep the roads motorable.

(c) In view of the above, I cannot give an assurance as to exactly when the roads in the two districts will be tarmacked. Nevertheless, the Government has undertaken a feasibility study under LAPSET; that is Lamu Port South Sudan Ethiopia Transport corridor project, and my Ministry is, therefore, sourcing for funds for detailed design for the development of the Lamu - Garrissa Road. A substantial part of the road will traverse through Ijara District thus opening up the entire Ijara District for social and economic development.

Mrs. Noor: Mr. Deputy Speaker, Sir, it is very sad to hear that after 49 years of Independence there is no one kilometre of tarmac road in Ijara and Hulugho districts. If you look at the money allocated, you will realise that only Kshs20 million has been allocated per district for the maintenance of roads. It is really unfortunate and I would like to ask the Assistant Minister; what exactly does he have for this year because we have approved more than Kshs200 billion for roads? What is the budget that he has for Ijara and Hulugho districts? Could he do affirmative action to improve the roads because the people of Ijara are always stranded when it rains? For six months they have been unable to travel in the whole country. So, what will the Assistant Minister do to improve the roads in Ijara and Hulugho districts in the current year?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, as I have indicated, in our development budget we do not have any firm commitment on these roads. However, I want to correct the hon. Member when she says that only Kshs20 million has been sent for both districts. That is incorrect because the figures we have here as I indicated are different.

However, the LAPSET project which is the Government's top priority project is about to take off. As the hon. Member is aware, it will pass through Ijara. I am sure as we implement it, we will be able to get funding for that. The LAPSET project is not funded directly through the Ministry. Therefore, we will be able to get special funding through the Government's plan with other donors.

Thank you.

Mr. Twaha: Mr. Deputy Speaker, Sir, if it is true that the money set aside for roads is Kshs200 billion, and we divide it per constituency we should get an average of Kshs1 billion. If it is divided per county we should get about Kshs4 billion per county. Is the Assistant Minister satisfied that the Government is being fair to these marginalized areas?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, the allocation of Kshs200 billion is incorrect. I think the correct amount is around Kshs120 billion. Much of this money goes towards the completion of the already existing projects, many of which are all over the country; they are spread from Thika Road to places like Mombasa and many other places.

I think in 2009 this House decided to divide the monies that we had for maintenance equally across all constituencies. We know what happened for the constituencies that are most deserving, because they end up getting the same as those that have everything. So, the idea of dividing the money we have with the number of constituencies or the number of counties has not worked in the past. I am sure the hon. Member is aware of that.

Ms. Shakila Abdalla: Mr. Deputy Speaker, Sir, it is very unfortunate to see that there are some constituencies in this country which do not even have one kilometer of tarmac like Ijara and Lamu. What are the criteria of building roads in this country by the Ministry? What criteria do you use in saying we are doing this area and not this area? It looks like if it was not because of the port, we would not even have those roads. Can you consider building those roads even before the port is ready in the areas which are suffering?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, the hon. Member is absolutely correct, that development in this country has tended to follow, basically, the railway line from Mombasa all the way to Kisumu. You find that towns or cities away from that railway line have not actually been able to develop. It is for this reason that the Government has now come up with another corridor that is going to be the new line for development, not just in roads but in everything. So, when you talk of affirmative action, I think the Government is way ahead; we appreciate that without a clear programme on how we can be able to do this, we will not be able to move forward. Therefore, we are not just talking about roads. We are talking about railways, power, tourism and everything. LAPSSET is all about that.

Mr. Ethuro: Mr. Deputy Speaker, Sir, Ijara is part of the North Eastern Province. From the time I came to this House and since Independence, North Eastern Province had only 11 kilometers of tarmac. The Assistant Minister is telling the hon. Member that she should wait for LAPSSET project which is under Vision 2030, and which is not even part of his docket, as if he is evading the Question; some of us will wait for Vision 2030 but other parts of Kenya do not have to wait for Vision 2030; they are expanding their roads even as I speak. Is the Assistant Minister fair to this House by discriminating against certain regions or expecting them to wait for 2030 when the road to his home in Nakuru has been tarmacked and expanded?

Mr. Deputy Speaker: Assistant Minister, what fairness is there in your management of public resources?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, as I have indicated, the pattern of development in this country has tended to follow the railway. Nakuru just happens to be part of that pattern. All that I am trying to say is that we need to change that. More importantly, there is a clear and deliberate shift from where we have been in the past. The Budget, unlike in the past when it came from the Treasury, much of it is from here. The hon. Member, with all the good ideas he has, should have been able to present them to our Committees, so that our Ministry could be able to implement the affirmative action that he is proposing now.

Mr. Mungatana: Mr. Deputy Speaker, Sir, the Assistant Minister is trying to convince us that the Government is way ahead in terms of affirmative action. However, we are not asking about railways and other infrastructure. We are asking about roads. Can the Assistant Minister table a formal policy paper that says these are the roads we are building, and these are the roads we are building under affirmative action? Tana River County also falls under the same category. We have only one tarmacked road which has remained uncompleted for a very long time.

I want to ask the Assistant Minister; when will you table a proper commitment from the Government that says these are the roads we are building normally and these are the roads we are building under affirmative action?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, we came up with the road sector investment programme, and I am sure that is what the hon. Member is alluding to. I am ready to table that maybe within the next two weeks and also to assure the hon. Member that our commitments will only materialize if we continue getting sufficient funding from the Treasury through this House and the Budget Committee in particular. So, I will be able to present that, but a lot of it is also subject to continued funding by us and also by our donors. It is possible for us to be able to table a priority listing of what we expect to do in the next five years and also ten years.

Mr. Deputy Speaker: Last question, Mrs. Noor.

Mrs. Noor: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister repeatedly saying that they were following the railway line, and that the Sessional Paper No.10 of 1965 is still in place and active, and that is how they are planning their development in the Ministry of Roads. Is the Assistant Minister aware that we have changed and we are under a new Constitution and a new era, and Sessional Paper No.10 went with the old Constitution? The Ministry of Roads has the responsibility to share equally the resources. What are you going to do in sharing resources and giving some to Ijara and Hulugho districts this financial year?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, in the current financial year all the monies that have been allocated are specific to certain roads and certain projects. Therefore, for me to be able to give any commitment within the current Budget ---

Mr. Mututho: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to talk about this financial year with very specific requirements ignoring the plight of what the Member has said, that kids who were born in that part of the world in the last 2,000 years have never ever seen tarmac? Can we even have a demo tarmac on even one kilometer in that particular area?

Mr. Deputy Speaker: Assistant Minister, you have heard the hon. Member.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I am yet to hear the point of order. In the meantime, I want to assure the hon. Member that, indeed, we will ensure that we consider that part of the country. As we move towards the new dispensation, which the hon. Member has alluded to---

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead this House that he will consider these roads when he has not confirmed to this House that he has already done the designs? That is the only way the Government will give a commitment. From the answer he has given, he has not even designed the roads. At least do the designs and then we will know they are in your programme of work!

Mr. Deputy Speaker: Assistant Minister, consideration entails certain preliminary works.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I have already indicated that through the LAPSET project, we are already carrying out detailed design survey for the area. The

preliminary designs are already complete. I am sure the hon. Member would want to have a look at it. It is already available.

Mr. Deputy Speaker: Next Question; Question No.1406 by Mr. Magwanga.

Question No.1406

PLANTING OF TREES IN FORESTS IN
KASIPUL KABONDO CONSTITUENCY

Mr. Magwanga asked the Minister for Forestry and Wildlife:-

(a) what measures the Ministry is taking to ensure that enough funds are availed for more trees to be planted in the depleted Nyasore, Koderu and God Wire forests in Kasipul Kabondo Constituency;

(b) whether he is aware that there are only two forest guards in God Wire forest and, if so, what plans the Ministry has to increase the number of guards, considering that people are destroying these forests; and,

(c) what participatory forest management approach the Ministry is putting in place with the help of the local communities and other stakeholders to participate in management of Koderu, Nyasore and God Wire forest resources as provided for by the Forest Act, 2005.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Deputy Speaker, Sir, I beg to reply.

(a) My Ministry has budgeted and since September 2011 to date, has been implementing at a cost of Kshs3 million development and maintenance in Nyasore, Koderu and God Wire forests in Kasipul Kabondo Constituency. These forests are part of the larger Rachuonyo Forest Zones. Specific activities undertaken include protection of existing exotic and natural forests against fires, diseases and unauthorized human activities.

(b) Currently, God Wire Forest has four forest guards and not two as has been reported by Mr. Magwanga. Further, the Ministry has requested additional funds to recruit more forest guards.

(c) In accordance with the Forest Act, 2005, my Ministry is spearheading the concept of participatory forest management by the communities residing within forest zones. The communities including those residing in Rachuonyo forest zone are being sensitized and assisted to form community forest associations so that they can actively participate in sustainable management of forests with the ultimate aim of improving their livelihoods and also as a way to guaranteeing the sustainability of the forest for the benefit of their future generations.

The Kenya Forest Service (KFS) is collaborating with the local community to also appoint scouts who shall be mandated to detect and quickly report forest fires and suspicious characters bent on forest destruction. The participatory forest management is essentially a modern forest management approach which deliberately involves forest adjacent communities and other stakeholders in management of forests within a framework that contributes to communities' livelihoods.

Mr. Magwanga: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for attempting to answer this Question. These forests were planted in the 1960s and 1970s. I recall that the Prime Minister of the Republic of Kenya came and launched the restoration of Koderu Forest where we planted over 70,000 trees. Through the support of the Constituencies

Development Fund (CDF) we did what we could to plant all these trees. We sourced some even from Lake Victoria Water Services and other donors, including BAT. Up to now, I want to say that all those trees which we planted are now in the bush. A number has been destroyed. What is the Ministry doing in order to ensure that the trees which were planted are cared for and protected in order to grow?

Mr. Nanok: Mr. Deputy Speaker, Sir, I want to thank the hon. Member for bringing this Question and, indeed, for having participated in the planting of this forest block. This is essentially a forest block under the ownership of Karachuonyo County Council but managed in trust by the KFS. Indeed, I acknowledge this matter, that we have allocated Kshs3 million amongst other many activities of re-forestation and maintaining the forests. We would also want to engage the local community. The process of establishing community forest associations is ongoing. In some of the forest blocks, for instance, the Kasipul Forest, that process of establishing the forest association has already been done. It has been registered and what is being worked out now is a forest management plan. In the other forests, Koderia and Homa Hills, that process is on course and we will be working closely with these associations to make sure that seedlings that have been planted at that early tender age are maintained and ensure that they reach a level that they can grow on their own.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I think this is a very noble initiative and effort by the Ministry and the local communities. For example, in Maragoli Forest, the communities are willing to participate and plant because it is supposed to be a multifaceted approach in order for us to cover the country with forest. What is the Ministry doing to improve on the rate that they are paying if they were to purchase the seedlings from locals who take the initiative to plant so that they can supply them to the forestry department to plant in the forest?

Mr. Nanok: Mr. Deputy Speaker, Sir, I think that is a matter we are looking into and I hope that when my Ministry's budget comes to this House for approval, there will be proactive participation and effort to make sure that the funds we have sought are provided. You will realize that a week or two ago when I was answering a similar Question that was asked by Ms. Karua in this House, I said that the KFS had sought to be allocated Kshs6.5 billion for us to do our job in the forest sector. Unfortunately, that amount was slashed down to Kshs3 billion which is barely enough for us to do much, but we will work closely and see that, at least, effort is made so that this can be improved where possible. Where it is not possible, I think we can still discuss with communities but so far, I am being informed that the rates paid for seedlings is not a bad one but it can be improved based on additional resources since we have a commitment to ensure that the provision of the Constitution of 10 per cent forest cover is achieved. Right now, we are at 5.6 per cent but we hope that in a few years to come, we will reach that minimum required of us by the Constitution.

Mr. Deputy Speaker: Last supplementary question, Mr. Magwanga.

(Mr. Ogindo stood up in his place)

What is your interest, Mr. Ogindo? I realize that you are a neighbor of Mr. Magwanga.

Mr. Ogindo: Mr. Deputy Speaker, Sir, Koderia and God Wire forests are in Homa Bay County and they are very critical for the rainfall in that area.

Mr. Deputy Speaker: Fair enough. Proceed!

Mr. Ogindo: Mr. Deputy Speaker, Sir, Kenya is a signatory to this understanding that we make sure that Kenya has 10 per cent forest cover. The KFS is today harvesting forests. They are

able to generate revenue to ensure that they plant, tender, maintain and sustain the forest. Wire Forest and Koderia Forest have continued to shrink. What is the KFS department doing to ensure that they expand these forests so that the country can achieve the 10 per cent forest cover?

Mr. Nanok: Mr. Deputy Speaker, Sir, as I have enumerated before, we wanted to enter into an engagement with communities by establishing the community forest associations so that this responsibility is not only the Government's alone but of the citizenry living within those forests. Secondly, we are developing and as soon as the Koderia and Wire forest associations are registered, we will be using them to produce seedlings for---

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to avoid my question? I sought to know what the KFS is doing and not what they intend to do. The forests are shrinking. Could he let Kenyans know what they are doing to ensure that we achieve the 10 per cent forest cover?

Mr. Nanok: Mr. Deputy Speaker, Sir, as I said, we cannot do this single handedly; we have to do it with communities engaging in a very formal way. That is why we have rolled out a programme of establishing community forest associations. In some areas, we have moved forward faster than in other areas, particularly, in Wire and Koderia. Right now, those associations are in the process of being registered. As soon as they are registered, they will have equitable responsibility alongside the Government, through the KFS, to manage those forests and make sure that degraded areas of those forests have been restored.

Mr. Magwanga: Mr. Deputy Speaker, Sir, could the Ministry undertake to provide some funds to enable the people to weed the already planted seedlings and also for the bushes to be cleared to enable them to grow? Otherwise, the entire forest will actually be destroyed before the community forest association becomes functional.

Mr. Nanok: Yes, we will do that.

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

Question No.1395

REVIVAL OF IRRIGATION SCHEMES IN KENYA

Mr. Deputy Speaker: Is the hon. Mwaita out of the country on any official business?
Question dropped!

(Question dropped)

Next Question, Dr. Khalwale!

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir. I am sorry I was consulting the Assistant Minister for Information and Communications.

Question No.1398

REVAMPING OF TOURIST SITES IN KAKAMEGA

Dr. Khalwale asked the Minister for Forestry and Wildlife:-

(a) whether he is aware of the potential of Kakamega Forest Reserve and, if so, when the forest will be demarcated, fenced and the facility upgraded to a full fledged national park so as to bolster tourism in Kakamega County; and,

(b) what the Government plans are for the Ilesi area so as to secure the scenic *Ikhongo Murwi* (the Kakamega Crying Stone) as a tourist site.

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware of the potential of Kakamega Forest Reserve as a tourist destination site. However, it should be noted that the entire ecosystem covers an area of 19,792 hectares, of which the northern part comprising of 4,468 hectares is managed by Kenya Wildlife Service (KWS) already gazetted and the rest is under the direct management of Kenya Forest Service (KFS). The national reserve in the forest was gazetted in 1985 under Wildlife Management Act, Cap.376, while the forest boundaries were recently re-established in 2006 by KFS and therefore, the area is 19,792 hectares. Further, I wish to state that the local community benefits immensely from the forest reserve since the ecosystem serves as a source of timber, fuel wood, building materials, not to mention medicine, food in terms of honey and, of course, pasture. My Ministry would like to advise against demarcating, fencing and upgrading the forest facility to a national park, because this will fundamentally change its status legally and also administratively. This is because under the Wildlife Conservation and Management Act and the National Park Management Regulations, entry into the National Reserve and utilization by the communities and plantations, development activities are not allowed under these circumstances. This will, therefore, alienate the local community from accessing the forest products for their livelihood.

(b) My Ministry will work with the Ministry of Tourism to popularize the scenic site of Ilesi under the auspices of the Western Tourist circuit. The private sector will also be encouraged to partner with the local community leaders and stakeholders to promote tourism in the entire region. However, it is important to note that this scenic site is, of course, outside the gazette forest land.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I want to thank the Minister for that candid answer but I want to remind him that our local community does not get any timber from Kakamega Forest, whatsoever. However, since the Constitution provides that local resources within communities, a percentage will be left for use by the local community, could he tell us what he is intending to do to ensure that the full potential of this forest is realized including carbon trading and the proceeds of tourism that this particular resource attracts and how these resources will go to the local community of the people of Kakamega?

Dr. Wekesa: Mr. Deputy Speaker, Sir, Kakamega Forest is very unique. It is unique in the sense that it is almost 90 per cent indigenous forest. Therefore, it is quite possible under the present circumstances to create the whole of it as a carbon cycle concentration centre. Therefore, it is quite possible that the local community can benefit immensely, if the whole forest is preserved and we start carbon credits within the forests. It is also possible that the exercise can be started immediately, because there is some experimental work going on in some of the areas, where communities are already benefiting from the carbon credits.

Mr. Deputy Speaker: Last supplementary question on the same, Dr. Khalwale.

Dr. Khalwale: Mr. Deputy Speaker, Sir, hon. Wekesa is an old boy of Kakamega High School. He knows the scenic Ilesi area.

Mr. Deputy Speaker, Sir, the Government has been very kind to tourism in our area in the sense that they gave us money to build a modern traditional stadium at Marinya. This entailed

moving members of the local community. I have asked by the people of this area that I request the Minister to give us money to move a few of the residents around Ilesi Crying Stone area so that we can protect it for it to start generating income for the tourism. Could he confirm that he will give us some little money, how much and when?

Dr. Wekesa: Mr. Deputy Speaker, Sir, this is entirely an issue that can be addressed properly by my colleague; the Minister for Tourism. However, since we provide the products of tourism, wildlife is a product and forest is a product, I am willing to work very closely with the Minister to ensure that we create the Western circuit. Currently, the Minister for Tourism and Wildlife and ourselves are developing what we call the western circuit; that is right from Lambwe valley through Kisumu, through Kakamega, through Mt. Elgon towards Turkana. We are working on this circuit and I will advise the Member and also Members of Parliament from that area to sensitize people in the area about the importance of creating this tourist circuit. One way of doing is if we can convince some of the people living around the Crying Stone, the Government will be willing to look at the possibility of moving these people so that we can create a reserve around the Ilesi Crying stone so that this can attract more tourists. Thank you.

Mr. Deputy Speaker: Next Question by hon. David Koech.

Question No.1486

LACK OF REGISTRAR OF DEATHS IN NANDI NORTH DISTRICT

Mr. Deputy Speaker: Is hon. Koech out of the country on any parliamentary Business?

(The Clerk consulted the Chair)

Hon. Koech is out of the House today on parliamentary business. Therefore, this Question will be listed on the Order Paper on a day he will be in a position to prosecute it.

(Question deferred)

Next Question by hon. Mututho.

Question No.1388

SETTING UP OF TRAUMA MANAGEMENT CENTRE AT KNH

Mr. Mututho asked the Minister for Medical Services:-

(a) whether he could clarify if Kenyatta National Hospital (KNH) has an expanded Trauma Management Centre and support to allow good management of medical evacuations from within the country and the region; and,

(b) whether he could consider immediate procurement or lease of an advanced trauma management equipment to run hand in hand with the current military interventions.

The Assistant Minister for Medical Services (Mr. Kambi): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I wish to clarify that Kenyatta National Hospital (KNH) does not have an expanded

Trauma Management Centre.

(b) As regards consideration for immediate procurement of trauma management equipment, I wish to enlighten hon. Members on the following scenarios. One, a well equipped trauma management centre will cost not less than Kshs4 billion. My Ministry is allocated approximately Kshs350 million per financial year towards procurement of medical equipment for all the 275 hospitals in the country. Given this budgetary allocation and considering the estimated cost of a well equipped trauma centre, which is above Kshs4 billion, it will be practically unrealistic to promise this House that immediate procurement is going to be achieved.

(b) I wish to comment on the second option of leasing, as put forward by the hon. Member. My Ministry is considering engaging development partners through the public-private partnership in order to improve on service delivery. This is focused particularly towards areas of infrastructure development and improvement as well as provision of medical equipment. In this regard, we are in dialogue with various interested parties in order to find a lasting solution. However, the trauma management centre remains a priority and the Government has to look for resources.

Mr. Deputy Speaker, Sir, in line with this, I also wish to urge the hon. Members to actively support my Ministry's desire to be allocated more funds towards purchase of medical equipment to enable us acquire these crucial facilities that still remains a priority to us.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Mututho: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for, at least, that open admission that we do not have that nature of equipment. In the foreseeable future and in order of priority, could he tell this House which equipment he is likely to procure? There are some equipment which are really necessary because of the accidents which are too many these days. Do you have a list of the equipment needed in that advanced trauma centre? What kind of equipment are we thinking about even before asking for additional money?

Mr. Kambi: Mr. Deputy Speaker, Sir, a trauma facility will require the following.

1. Telestar MR Machine;
2. One 256 Light CT Scan;
3. Two Radox Moveable sliding X-Ray Machines;
4. Five Ultra Sound Machines;
5. Three well equipped pesters;
6. 10 Critical Care Beds complete with ventilators and monitors;
7. 20 High Dependence Unit beds complete with ventilators and monitors;
8. Tissue typing DNA Machine, which is a very, very expensive machine;
9. Infrastructure to house these equipment;
10. Three fully equipped CCU Ambulance;
11. One Air Ambulance Helicopter;
12. Well equipped laboratories; and,
13. Adequate and well trained personnel to the unit.

Mr. Mungatana: Mr. Deputy Speaker, Sir, what the Assistant Minister is describing is a very high quality trauma management facility or centre. But I am aware that along the hotspots of accidents, for example, the Mombasa-Nairobi Highway, Voi, Nairobi-Nakuru Highway and other places, there were plans to set up maybe downscaled trauma management units. How far has the Government gone in setting up those units along places where so many Kenyans are having accidents in order to save lives?

Mr. Kambi: Mr. Deputy Speaker, Sir, in 1970, there was a report which was done by the World Health Organization (WHO). One of its recommendations was that a trauma hospital be build along Mombasa Road around Voi. They also recommended such facilities be put up in Naivasha Town and along Sagana-Nyeri-Nairobi Road.

Mr. Deputy Speaker, Sir, due to the budgetary allocations which are not enough, we, as a Ministry, are in discussion with development partners to see whether we can do this through the public-private partnership financial arrangement. In this regard, a Bill will come to Parliament. So, I hope this House will support me once that Bill comes so that we solve this problem once and for all.

Mr. Deputy Speaker: Hon. Mututho, ask the last supplementary question on this one.

Mr. Mututho: Mr. Deputy Speaker, Sir, could the Assistant Minister consider the additional budgetary allocation from the Budget Committee to repair the air ambulance which they said required only Kshs20 million so that, at least, we know that of the critical equipment, one item is knocked off the list?

Mr. Kambi: Mr. Deputy Speaker, Sir, I would like, first, to thank the Budget Committee for giving extra funds to my Ministry to address some of these issues.

Mr. Deputy Speaker, Sir, we still do have a problem, particularly in KNH. I would like to urge this House, if possible, to give me extra funds to meet the pending bills left behind by patients who have already been discharged. We need about Kshs100 million to settle these pending bills.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead this House that the Ministry is grateful for the provisions by the Budget Committee of this House? We would like to give him the Kshs20 million for the air ambulance which is good for Turkana and the rest of northern Kenya. Last year, we gave them a provision for three cancer machines. Up to now, they are yet to buy them for KNH and the other hospitals in the country. Cancer is killing almost one million people per annum in this country.

Mr. Kambi: Mr. Deputy Speaker, Sir, the money which was supposed to buy those equipment was, once again, redirected to the Ministry of Finance due to our problems of the war that we are handling. But this time, we are going to purchase these equipment.

Mr. Deputy Speaker: Next Question by hon. Jeremiah Kioni.

Question No.1280

REHABILITATION OF NYERI-WIYUMIRIRIE-NYAHURURU ROAD

Mr. Kioni asked the Minister for Roads:-

(a) what measures he is taking to ensure that the entire Nyeri-Nyahururu road is carpeted; and,

(b) when the repair work on the road will start and be completed.

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

(a) My Ministry through the Kenya National Highways Authority (KeNHA) has completed the rehabilitation of the Nyeri-Wiyumiririe section of the Nyeri-Nyahururu Road (B5). The remaining section from Wiyumiririe to Nyahururu is currently ongoing.

(b) The works commenced in February 2012 and the completion date is expected to be November 2013. The entire road is a total of 102 kilometres, that is, Nyeri-Nyahururu, but a

section of it had already been done, that is, Nyeri-Wiyumiririe. The section between Wiyumiririe and Nyahururu, which is 40 kilometres, was advertised on 23rd September, 2011 and tenders for periodic maintenance were opened on 7th November, 2011. The commencement date is 9th February, 2012 and the contract sum is Kshs1.476 billion awarded to G. Isaiahs and Company Limited. The contract period is for a total of 21 months.

Mr. Kioni: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for the answer, although it is not quite accurate. It is true that the works on the road are going on, but they did not commence in February. They commenced much later, perhaps, towards the end of March. But even as they proceed, could the Assistant Minister ensure that the areas that will be covered towards November, 2013 are also made passable as we await the completion date? This is because the area near Nyahururu Town is completely impassable, unless the contractor is instructed to take some remedial measures on the road.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, since the contractor took over the site, the terms of contract include maintaining the other section that is not yet repaired to a motorable condition. Therefore, the concerns by the hon. Member are well taken care of.

Mr. Mungatana: Mr. Deputy Speaker, Sir, I just want to seek a clarification. In the previous Question, when we were asking about Ijara District and Tana River County, this House was told that there is no money. In this Question about the re-carpeting, we are now being told that there is Kshs1.6 billion and the work will start in a few months time. Is the Assistant Minister fair to this country? Is it equitable?

Mr. Deputy Speaker: Mr. Assistant Minister, are you sure that the road that you are talking about is on the railway corridor as you put it before?

(Applause)

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I am aware that the Question you are prosecuting is specific to this road, but now I see that the hon. Members want to merge the two Questions. But I think what is important, and I really want to state this for a fact, is that even before we start making new roads, if we do not maintain the roads that are already in existence, then we will start new roads and by the time we come back, the old infrastructure will already be lost. Our biggest asset in this country is our road network. So, as a Ministry, our policy is not to start new roads while leaving the old ones to collapse. So, we have a responsibility to maintain them.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is responsible for maintenance. He also says that the greatest asset in this country is roads, but that asset is not applicable to Ijara in North Eastern Province. Are you saying that Ijara is not part of Kenya?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I really want to be very clear that if the hon. Members want us to leave the already existing roads and go and put up new roads, then that will not work. The road between Nyahururu and Nyeri is an old road. All we are doing is to restore it to a condition that is motorable. As I have said, we are going to put a lot of money when we come to the LAPSET. Do we want to leave that road and go and do other new roads? We must maintain our old roads, even as we seek to get new ones.

Ms. Karua: Mr. Deputy Speaker, Sir, we are in agreement with the Assistant Minister about maintenance, but we also must open new roads where there are none. So, where is the road

for Ijara and other places where there is no tarmac whatsoever? What plans does the Ministry have to comply with Article 202 of the Constitution on equity?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I doubt that it is fair for us to go back to a Question that had already been concluded and a satisfactory answer given. Therefore, I beg that--

Mr. Deputy Speaker: Order! Order, hon. Assistant Minister! You are not only addressing your colleagues in Parliament, but also the nation. So, proceed and answer the question. You can be held responsible for what you said before. When a Minister says something in the House or even outside the House, it is Government policy. So, proceed and answer the question on the merits and demerits that you obtain.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I indicated that we have an affirmative action and we will be tabling here a Roads Sector Investment Programme that clearly indicates the areas where we would want to put our efforts. In that Roads Sector Investment Programme, you will realize that much of our attention is now shifting towards the LAPSET Corridor. I am sure that when we get there, the hon. Members will appreciate. But in the meantime, as I have said, our policy is to ensure that the roads that have already been constructed are maintained to a motorable condition even before we go to the other levels.

Mr. Bahari: Mr. Deputy Speaker, Sir, as we went round during the public hearings on the Budget, actually the issue that is being raised by the hon. Members was also raised by the members of the public; that 50 years after Independence---

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members! Can hon. Bahari's supplementary question be heard in silence?

Mr. Bahari: Mr. Deputy Speaker, Sir, thank you for your protection. The members of public, when they looked at the budget of the Ministry of Roads, found a lot of money. But they were complaining that 50 years down the line, they have not seen those roads. The people in Ijara, Isiolo and all over the country are on off-roads. Could the Assistant Minister give a concrete plan, for example, that within the next three years, all Kenyans will have tarmac roads? Could he come out with something concrete for every county? We are in a new dispensation.

(Applause)

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I want to give an undertaking that if we are given all the money that we require, we will ensure that every part of this country has a tarmac road, as the hon. Member has said. But, at another level, the Roads Sector Investment Programme has all the issues that the hon. Members are actually asking. I think it will be important for us to table it here, so that we can also benefit from the inputs coming from the hon. Members.

Mr. Deputy Speaker, Sir, lastly, I know that the issue of Ijara *versus* other places in the country is, of course, an issue that we would want to address. But, as a Ministry, we also have to look at where we put our money *vis-à-vis* the returns. This is what the Roads Sector Investment Programme is all about.

Mr. Deputy Speaker: Are you sure that the cows, camels, goats and sheep from North Eastern Province do not bring any returns?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I hope that some of the hon. Members here have had the opportunity to travel outside Nairobi. The road connecting Ethiopia and Kenya, for many years, was the only link that was missing in the entire Cairo to Cape Town. But we now only have 120 kilometres that are remaining. Talk to the hon. Members from that section of the country and you will find that it is true. I think what we need to appreciate is that more than any other time, now Kenyans believe that roads can be built. Before, even if you asked, you did not know whether or not it would be built. But now because Kenyans have confidence that the Ministry and Government is working, we really appreciate the demand for more roads.

Mr. Deputy Speaker: Last question, hon. Kioni!

Mr. Kioni: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for the answer. I also sympathize with the people of Ijara, Tana River and other parts of the country. But I am also disappointed with the hon. Members because they do not see the need for supporting people from Ndaragwa. They should also make a point of travelling across this country and I invite them to come to Ndaragwa. We also have difficulties of transportation, just like in other areas. The fact that we are in Central Province does not mean that we actually have benefited like others. So, I am a bit disappointed to hear the hon. Members hijacking my Question and taking it all the way to Ijara and Tana River, and failing to help me deal with the problems of Ndaragwa. Could the Assistant Minister tell this House what he is going to do to ensure that the areas that are impassable are passable before the completion date of November, 2013? Hon. Members, it is important that we appreciate that even in Ndaragwa, we also pay taxes.

Mr. Mututho: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to accuse this House of hijacking Questions when in all your previous rulings, you have stated categorically that Questions are the property of the House? Furthermore, as the Chairman of the Departmental Committee on Agriculture, Livestock and Co-operatives, I can confirm that the livestock sector contributes 44 per cent of the GDP in the agricultural sector. Therefore, it is as important as any other sector of the economy. Is the hon. Member in order?

Mr. Deputy Speaker: Mr. Assistant Minister, can you proceed and answer the question?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Thank you for seeing me although belatedly. I do not know whether you heard what the Assistant Minister said, implying that there were no returns from Ijara. When they need people to help them govern this country; for instance, when they wanted a Minister of State in the Office of the President for Provincial Administration and Internal Security, they went to Ijara. When it comes to tarmac roads, as far as they are concerned, there is nothing good that can come from Ijara. That came from none other than an Assistant Minister of this Government.

Mr. Deputy Speaker: Mr. Assistant Minister, could you answer the question?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I am sure you agree with me that there is no point of order there. However, allow me to say that the road that is in question, which is the subject of this debate even as we proceed with the contract, we will ensure that the road is restored to a motorable condition and that the great farmers from that area will not be disadvantaged.

Lastly, the reason why this road has deteriorated very fast is because when they want to transport their agricultural produce to Mombasa and the trucks want to escape the Gilgil Weighbridge Station, they use this route. This has meant that the road that was initially to carry 20 tonnes is now carrying 30 tonnes, 40 tonnes and 50 tonnes. Therefore, we will be instructing the Kenya National Highways Authority to put a mobile weigh bridge on that road and also to

sensitize the road users and especially the cargo transporters to ensure that we do not damage these roads even after we have spent so much.

Question No.1616

FINANCIAL STATUS OF TOURISM TRUST FUND

Mr. Lessonet asked the Minister for Tourism:-

(a) whether he could give the financial status of the Tourism Trust Fund;

and,

(b) what action he intends to take in order to regularize the financial position of the Fund.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Deputy Speaker, Sir, I have looked at the answer that I have and I am not comfortable with it. I think it is very inadequate for the hon. Member of Parliament. So, I seek the indulgence of this House to allow me to bring the answer on Wednesday afternoon.

Mr. Deputy Speaker: Hon. Lessonet, are you comfortable with that? I am sure that you have had some consultations with the Assistant Minister.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Deputy Speaker, Sir, I have consulted with the Member.

Mr. Lessonet: Mr. Deputy Speaker, Sir, it is true that we have consulted with the Assistant Minister and I am in agreement that she can bring the answer next week.

Mr. Deputy Speaker: Fair enough. The Chair directs that this Question be listed on the Order Paper on Wednesday, next week. In the meantime, the Chair also directs that the Member be furnished with a copy of the written answer before the day he is supposed to prosecute the Question.

(Question deferred)

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

Mr. Deputy Speaker: On the same? Why on the same and yet the Question has not even been prosecuted?

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir, for allowing me. Since I sit in the House Business Committee, I suspect that the House could go on recess---

Mr. Deputy Speaker: Order! Order!

Dr. Khalwale: In view of this---

Mr. Deputy Speaker: Order! Hon. Bony Khalwale, the moment the Speaker says "order" and stands on his feet, if you do not freeze and proceed addressing the House, the Chair will take stern action against you. The Chair knows that you cannot anticipate anything in this Parliament. The tradition of the House is that you do not anticipate debate, Motions or any position that the House will take. So, do not share the business of the House Business Committee. There is the Leader of Government Business in the House and there is no provision for his "shadow" or someone coming from the Back Bench who basically represents another institution. You are there as a part of the Government.

Next order!

POINT OF ORDER

CLARIFICATION ON REPORT OF BUDGET COMMITTEE ON ESTIMATES OF REVENUE AND EXPENDITURE FOR FINANCIAL YEAR 2012/2013

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

Mr. Deputy Speaker: Are you rising to seek a Statement?

Mr. Mbadi: Mr. Deputy Speaker, Sir, this is on a serious matter concerning procedure.

Mr. Deputy Speaker: You want to seek a Statement?

Mr. Mbadi: Mr. Deputy Speaker, Sir, I want to seek the Speaker's ruling.

Mr. Deputy Speaker: On what?

Mr. Mbadi: Mr. Deputy Speaker, Sir, today, we received a letter from the Treasury addressed to the Budget Committee. There are two letters here. The first one is dated 20th June, 2012, which is today and the other one is dated 19th June, 2012. These letters----

(Loud consultations)

Mr. Deputy Speaker, Sir, could Members consult in low tones so that I prosecute and execute my matter?

The letter that is addressed to the Chair of the Parliamentary Budget Committee is with regard to the report on the Estimates of Revenue and Expenditure for the Financial Year, 2012/2013. This letter from the Treasury reads as follows:-

“I am writing to you in reference to the report of the Budget Committee on Estimates of Revenue and Expenditure for 2012/2013, which you presented to Parliament on 6th June, 2012. We commend the Committee for being thorough in its review of the expenditure so that taxpayers can be assured of value for their money.”

The letter goes on to say:-

“The Treasury is in principle agreeable to the recommendations made by hon. Members of Parliament. However, we have noted that some of the proposed expenditure cuts while implementing the Budget could have adverse effects on the ability of the Government in delivering some critical services.”

This letter is purporting to instruct Parliamentary Budget Committee that whatever this House passed on 6th June cannot be implemented by the Treasury. This is clearly a violation of the Constitution and it is unacceptable. We cannot have the Treasury writing to Parliament to tell us that what we legislated, we did in vain.

Further, the same Ministry has written to the Clerk of the National Assembly indicating that today, they will introduce Vote on Account for the Financial Year, 2012/2013. There is even a court ruling which is very clear on page nine and which I will table in the House. The Judge ruled last year that a Vote on Account can never be introduced in the House unless there is an Appropriation Bill before the House. If you allow me, I will just go through two paragraphs of the ruling. Let me go straight to the last paragraph of the ruling of the Judge. The judge was Justice Majanja of the High Court.

I, therefore, hold that for there to be compliance with Article 222 of the Constitution, which is Vote on Account, there must be an Appropriation Act in place. It was in breach of the Constitution to proceed to withdraw money from the Consolidated Fund without the existence of the Appropriation Act.

Mr. Deputy Speaker, Sir, last year when the Vote on Account was introduced in the House, I objected. The House, however, continued to debate and approved the Vote on Account before an Appropriation Bill was introduced in the House. Some members of the civil society went to court and the court ruled that what the House did then was unconstitutional. It advised that in future that should not be done. This letter from the Minister is doing exactly what the Government did last year which the court ruled against. I would like to table the ruling.

(Mr. Mbadi laid the document on the Table)

Mr. Deputy Speaker, Sir, these two letters, one to the Clerk of the National Assembly and the other to the Parliamentary Budget Committee, are acts of impunity and a violation of our Constitution. I, therefore, urge that the Chair finds the Minister grossly out of order in attempting to make this House do something that is unconstitutional.

Mr. Deputy Speaker: Can you table the two letters?

Mr. Mbadi: Mr. Deputy Speaker, Sir, I have already tabled the two letters. I have also tabled the ruling of the High Court in the case of Jane Mate and Davis Atieno against the Attorney-General and the Minister for Finance. The Attorney-General is here and I had even had an informal discussion with him on this matter, and he was clearly agreeable with me. I would like to hear his position on this matter because it is very important and critical.

Mr. Deputy Speaker: Hon. Member, indeed, you are raising a very weighty issue.

(Mr. Mbadi consulted loudly with other hon. Members)

Order! You do not stand on a point of order to seek the direction of the Chair and then you engage in an animated discussion with another Member of Parliament. Listen to what the Chair has to tell you. You have raised matters that are fairly weighty and understandable. At the same time, we transact our business based on traditions, precedents as well as the Standing Orders, the Constitution and the statutes of this country. I do not have on the Order Paper today an order on Vote on Accounts. Nonetheless, the Chair is going to study this and will give direction on the same tomorrow.

DEPLOYMENT OF OFFICERS TO COUNTY GOVERNMENTS

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I wish to seek a Ministerial Statement from the Minister of State for Public Service regarding the Government officers who will be employed to work in the county governments once they get in place next year after the general election. I would want the Minister to clarify the following: Which Government departments have posted officers in an acting capacity in preparation for the county governments? Second, have the Budget lines for the preparation of the Government departments to operate in an acting capacity been approved? Has the Government set any structural framework for county government public service commission? Has the Ministry set up any guidelines for the hiring of county government officers for the discipline of county government officers and promotion or any general terms of service for county government public service commission? Finally, could the Minister give directions, generally, on how the county governments will start functioning immediately after elections on the 5th March, 2013?

We want these county governments to hit the road running. The new President will be here - he will be operational on 5th March, 2013. We want to know what preparations the Public Service has made for the county governments.

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

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

Mr. Shakeel: Mr. Deputy Speaker, Sir, I just want to enrich his request. Can I enrich it?

Mr. Deputy Speaker: No! We have not had a situation where a Member demanded to enrich what was demanded ages back.

Minister, please, respond.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Deputy Speaker, Sir, I will bring this Statement on Thursday next week.

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. About three or four weeks ago, I requested a Statement from the Minister for Transport in respect of the Egypt Air mishap. Last week, we raised this issue again; we asked that the Statement includes the recent helicopter mishap. You promised that the Statement would be delivered on Tuesday.

The Minister for Transport (Mr. Kimunya): On Tuesday.

Mr. Shakeel: Tuesday. Okay. Thank you.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Gender, Children and Social Development on access and benefits of Free Primary Education (FPE) enjoyed by children and also the progress that was reported by the Ministry during the celebration of the Day of the African Child on 16th June, 2012.

In the Statement, the Minister should state:

1. the measures the Ministry has put in place to ensure that children with disabilities, including physical and mental disabilities, have access to FPE;

2. indicate whether the Government has an elaborate policy on children with special needs, specifically on non-discrimination, considering that only 1.7 per cent of the estimated 1.5 million children with disabilities have access to formal education in the country.

The Assistant Minister for Gender, Children and Social Development (Mr. Keya): Mr. Deputy Speaker, Sir, I undertake to bring a Statement on Thursday, next week.

Mr. Ethuro: Mr. Deputy Speaker, Sir, mine is a reminder for a Statement I sought over six months ago on the noise pollution by the Lions Eye Hospital. Every weekend at night, the hospital is turned into a disco hall, yet it is in a residential area. People are, therefore, unable to sleep. The Minister for Environment and Mineral Resources has even had an occasion to say that because of the passing on of the other Minister--- The Speaker ordered him to bring an answer. I can only assume that the Minister is evading to bring the Statement. Could he be part of the disco? Why else is he taking this long while we suffer sleepless nights?

Mr. Deputy Speaker: Leader of Government Business, this Ministerial Statement was sought ages back. As you can see, the hon. Member has issues with what is going on.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I will communicate the message to the Ministry of Environment and Mineral Resources to bring the answer next week. I think that is all we can do for now. I know there is a lot of work going on now with regard to the Rio +20, and the Ministry could be engaged in that. So, next week, please.

Mr. Deputy Speaker: To the best of the recollection of the Chair, we have communication that the Minister or the Deputy Minister can only be in a position to transact business in the House on the 27th. I do not know whether on that 27th you will want to give a definite day on this instead of just giving a generalized next week. Given the benefit of the fact

that the Minister will be here on the 27th, you can give an undertaking on the day that you wish the Ministerial Statement to be issued.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, can I then settle for the 27th?

Mr. Deputy Speaker: Fair enough. It is so directed.

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

Mr. Deputy Speaker: On the same?

Mr. Ethuro: Mr. Deputy Speaker, Sir, it is just a follow up. One is that if they responded at the time they agreed, we could not have been caught up with the real convoy but what can they do in the meantime as we wait for that magical date of 27th? Can they instruct the National Environment Management Authority (NEMA) to ensure that there is no more noise pollution emanating from that hospital from today until further notice?

Mr. Deputy Speaker: Minister, do you wish to do that?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, we will communicate the sentiments of the hon. Member to NEMA and see what can be done to avoid the noise although he described it as music. I am not sure whether it is music or noise but we will work on that and see whatever needs to be sorted out between now and in the future.

Mr. Deputy Speaker: Next Order!

PROCEDURAL MOTIONS

EXTENSION OF SITTING TIME

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

THAT, notwithstanding the provisions of Standing Order 20(2) this House resolves that the time of today's sitting be extended until conclusion of business appearing on the Order Paper.

Mr. Deputy Speaker, Sir, hon. Members will note that we have some very critical business appearing today. We have the Statute Law (Miscellaneous Amendments) Bill which when you look at the volume of the amendments could take us quite a while and it could be desirous of us to complete that law. Following all the amendments of the hon. Members in this House and what we agreed in our *Kamukunji*, it would also be desirous of us to dispose of at least the Second Reading of the constitutional related Bills ahead of a potential adjournment of the House tomorrow which the hon. Members have also been requesting because they need a break.

So, when you look at this from the House Business Committee (HBC), we thought that the best way is if hon. Members are agreeable, we work extra hours today and we clear the business appearing on the Order Paper and then we also be coming to you for an extension of time tomorrow so that by the time we go home, should the hon. Members decide to do so, that we have left behind enough work to be concluded when we are away.

Mr. Deputy Speaker, Sir, this is a Procedural Motion and when you look at the business, we have tried also to be very lean in terms of what we are bringing today. We believe that the two Bills that are appearing today are clearly straightforward and hon. Members can be able to transact them today. There is also the issue of the National Hospital Insurance Fund (NHIF) which hon. Members felt that it will be good to clear it today, one way or another and hence, we

are asking hon. Members in their usual magnanimity and resolution that today we burn the midnight oil, we finish what we have to finish today and then tomorrow we finish what we have to finish tomorrow and then we can take a well deserved break to go and do constituency matters as we prepare.

Mr. Deputy Speaker, it is important to note that the committees will require time to go and sort out matters to do with the Budget and they need to be out of the House because it is very important for the Budget Committee and others to give them four weeks to sort out Budget issues. So, this is the request that we are putting before the House today. If we are agreeable, we extend our sitting time and then we are able to transact the kind of business that we need today.

With those words, I beg to move and I will request hon. Martha Karua who is a Member of the HBC to second.

Ms. Karua: Mr. Deputy Speaker, Sir, I rise to support the Motion having been ambushed by the hon. Member but, yes, it is true. We considered that hon. Members would want to go on recess and we thought there is business we ought to try and transact before that. So, if hon. Members find it appropriate, it would be nice to extend the sitting so that we can finish the business before us today which is critical business to issues of the Constitution as you may see on the Order Paper.

I beg to second.

(Question proposed)

Dr. Nuh: Mr. Deputy Speaker, Sir, I want to support the Motion but with an amendment. Many a times we have been called upon as a House to burn the midnight oil for reasons which sometimes we cannot comprehend. Although the Minister is calling for magnanimity which we want to offer but at times we think the HBC unreasonably loads business on this House that sometimes cannot be sustained until hon. Members are drained and then we are blamed outside there because of maybe passing defective laws and things that are not up to date.

Mr. Deputy Speaker, Sir, I want to read the amendment which I propose. It reads:-

THAT, the Motion be amended by inserting the words “as Order Nos.8, 9, 10 and 11” after the word “appearing” on the last line”. Hence the amended Motion would read:-

THAT, notwithstanding the provisions of Standing Order No.20(2), this House resolves that the time of today’s sitting be extended until conclusion of business appearing as Order Nos.8, 9, 10 and 11 on the Order Paper.

(Applause)

Mr. Deputy Speaker, Sir, it is because that is what is reasonably able to be transacted in this House. We know we have a Miscellaneous Amendment Bill that we want to put so much in. Even the fact that the Government attaches not much importance to all the other Bills, except the Statute Law (Miscellaneous Amendments) Bill can be verified by the text message I got from the Chief Whip. We were whipped to come to this House to pass no other law than the Miscellaneous Amendment Bill and, in fact, hon. Members can also attest to it if they received such a message. So, the same Government does not see the Teachers Service Commission Bill, the Public Service Commission Bill and this Motion on the Departmental Committee on Health important. They would have circulated messages to tell us to come and support all the four or seven Motions appearing on the Order Paper rather than limit to just one.

Mr. Deputy Speaker, Sir, all we are saying is that, that is what we can reasonably do until 10.00 p.m. or 11.00 p.m. Let us dispose of Order Nos.8, 9, 10 and 11 and then hon. Members can have a rest so that we can still come back tomorrow and do other business.

(Applause)

Mr. Deputy Speaker, Sir, I call upon hon. Dr. Bonny Khalwale to second.

Dr. Khalwale: Mr. Deputy Speaker, Sir, indeed, I want to support the amendment for the simple reason that when we sat in the House Business Committee and thought that there should be an extra sitting tomorrow, we had not realised the big number of amendments that are in the Statute Law (Miscellaneous Amendments) Bill. The amendments are so many that if we attempt to do otherwise, the quality of the work that will come after the disposal of the Statute Law (Miscellaneous Amendments) Bill will not be of as high value as we would want it to be. It will also be very difficult for us to find hon. Members here tomorrow morning.

With those remarks, I support.

*(Question, that the words to be inserted
be inserted, proposed)*

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I wish to support the Motion with the amendment.

I wonder why the Government is so eager to push the House to pass laws up to very late into the night when hon. Members have not had adequate time to look at the Bills. Hon. Members need to look at these important Bills when they are not tired. Keeping hon. Members here until midnight and expecting them to pass the Teachers Service Commission Bill is not tenable. What will happen is that by the time it gets to 10.00 p.m., there will be less than 20 hon. Members in this House. The entire Government will be gone to sleep. So, to avoid having the Government going to sleep before the conclusion of business, it is good that we proceed up to Order No.11 and adjourn.

With those remarks, I beg to support.

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

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, after listening to hon. Members, I rise to support the amendment.

As Government, we have confidence in the ability of hon. Members to do their work. Therefore, I am agreeable that today we limit ourselves to Order No.11. So, if we can make progress, you can put the Question.

(Several hon. Members stood in their places)

Mr. Deputy Speaker: Order, hon. Members! Hon. Members, on the one hand, you cannot complain that there is going to be too much load. On the other hand, even when there is unanimity on both sides of the House, you all want to contribute to the amendment. So, the Chair decides that we should dispose of this amendment.

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

(Question of the Motion as amended proposed)

*(Question of the Motion as amended
put and agreed to)*

Resolved accordingly:

THAT, notwithstanding the provisions of Standing Order No.20(2), this House resolves that the time of today's sitting be extended until conclusion of business appearing as Order Nos.8, 9, 10 and 11 on the Order Paper.

HOLDING OF EXTRA HOUSE SITTING

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

THAT, pursuant to the provisions of Standing Order 20(3), this House resolves to sit on Thursday 21st June, 2012, commencing at 9.00 a.m. to 12.30 p.m.

Mr. Deputy Speaker, Sir, as hon. Members are aware, Thursday morning is not a regular sitting day but the House has the power to create extra sessions. Again, this is based on the explanations given earlier. I am very thankful that we have extended the sitting time for today, but we recognise the fact that we can only proceed up to Order No.11. We will still have the Public Service Commission Bill. We anticipate having the Vote on Account tomorrow.

(Loud consultations)

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I will appreciate if hon. Members could give me some more audience.

Mr. Deputy Speaker: Order! Order! Hon. Nuh and hon. Charles Kilonzo, now that the amendment you were seeking has been carried by the House, can you allow the Deputy Leader of Government Business to move the Procedural Motion?

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Deputy Speaker, Sir. Why I am explaining this is because hon. Members are not privy to the discussion that we had in the House Business Committee.

As I said, we would wish to proceed on recess tomorrow but before doing so, it is important that we pass the Vote on Account to enable the Government access funds from 1st July, 2012.

Secondly, the other day this House passed a constitutional Motion, extending the period for the passage of the County Government Bill and the Public Financial Management Bill by only five months, which ends on 27th July, 2012. If we go on recess tomorrow, we will take four weeks and come back on 24th July, 2012, and we will be cutting it too thin to then pass the constitutional amendment Bills.

If we dispose of the constitutional Bills tomorrow, we will only need to come back for Committee of the whole House and conclude on them, to comply with the constitutional requirements.

So, we need to have time tomorrow morning, which we will dedicate to the Public Financial Management Bill, a suggestion the Members of the Departmental Committee on Finance, Planning and Trade said they are happy with. Tomorrow afternoon, we can get back to our regular business, in terms of the Vote on Account and Motion for Adjournment, each of which requires three hours.

Mr. Deputy Speaker, Sir, with those works I beg to move and ask hon. Khalwale, who is another seasoned Member of the House Business Committee, to second the Motion.

Dr. Khalwale: Mr. Deputy Speaker, Sir, indeed, this is a very good afternoon when we are agreeing with hon. Kimunya.

Therefore, I second the Motion.

(Question proposed)

Mr. Ruto: Mr. Deputy Speaker, Sir, unfortunately, I rise to oppose the Motion.

The Government is telling us to sit on a Thursday morning because it is completely oblivious of the work that Members of Parliament have to do in the Committees of this House. We have scheduled Committee work for tomorrow. For example, the Committee on Justice and Legal Affairs, in which I sit, will be meeting the Independent Electoral and Boundaries Commission (IEBC). Other Committees could be scheduled to do other jobs.

Mr. Deputy Speaker, Sir, it is our responsibility to ensure that the Government functions. It is our oversight responsibility that we perform when we are not on the Floor of the House. The Government now wants to eat into our time yet they do not publish Bills in time. The Government has not even published the Bills that they promised to publish to meet the constitutional deadlines. Why are they telling us to sit tomorrow morning?

We are willing to stay on next week and complete whatever business we will not have completed by the end of business tomorrow afternoon. We are not going to allow the Government to rush us to pass the Vote on Account or the Public Financial Management Bill. We want to scrutinise the Public Financial Management Bill because it is a very important Bill in terms of effecting devolution.

Mr. Deputy Speaker, Sir, therefore, I beg my colleagues to oppose this particular move. Hon. Kimunya should appreciate that we still have enough time. We can deal with his issues at a later hour other than tomorrow.

Thank you.

Mr. Mbadi: Mr. Deputy Speaker, Sir, I also rise to oppose this Motion.

Listening to the Minister, I am even convinced more that we probably do not need to sit tomorrow morning. If what the Minister is telling is what the Government wants to do tomorrow, then it is important that we give this Government an extra week. Honestly speaking, we cannot debate the Vote on Account tomorrow because we need to have the Appropriation Bill in place and debate it. That is the constitutional provision. That is the court ruling that I have just tabled, and the Speaker is supposed to make that ruling tomorrow. I would rather this Government listens. We are in a new constitutional dispensation. This Government should not apply impunity even where it should not.

Therefore, I urge the hon. Members of this House to vote against this Motion, so that we can have enough time to scrutinise the Bills before us. This Parliament is not a conveyor belt. We are here to do serious business, and not just to pass Bills before we have even read them.

Thank you.

Mrs. Shebesh: Mr. Deputy Chairman, Sir, I rise to oppose the Motion because I am simply not convinced by the Leader of Government Business. I am not convinced that we need to give up Committee work to come here to do work that the Government should have brought earlier. The afternoon sitting suffices. We can still extend our time. We do not have to go on recess tomorrow, if the Government feels that its work is very important.

With those remarks, I beg to oppose.

Ms. Karua: Mr. Deputy Speaker, Sir, I rise to support the Motion and plead with the House that we think about the country and not about the Government versus the Opposition, or Back Bench for that matter because Opposition is very minimal. It is myself and one or two others. The rest are Members of the Government. So, I want to say that if we think about the country, we will think about the agenda before us and we will think about the Bills we must complete according to the Constitution. I do not see any harm whatsoever with the request that we sit tomorrow morning to do the business we are paid to do.

We have been complaining and I remember last week standing here and castigating the Government for delaying Bills. We now cannot start saying we are being forced to work. I want to plead that this is not the Back Bench versus the Front Bench but it is about the country. I plead with hon. Members that let us support this Motion.

Mr. Midiwo: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Motion. I want to agree with the Official Leader of Opposition that we must put the country first.

I want to disagree with hon. Isaac Ruto---

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear my good friend, hon. Jakoyo Midiwo referring to hon. Martha Karua as the leader of Official Opposition when it is on record that when Mr. Namwamba was trying to bring a Bill on the leader of Official Opposition one of the people who were opposed was hon. Martha Karua. So that position does not exist in a coalition Government.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. The *de facto* position of Leader of the Official Opposition cannot be denied. Whether or not there is a Bill the position does exist in our Standing Orders. So, nobody can stand here and deny that there exists the vacancy of Leader of Official Opposition and I am that *de facto* leader of the Opposition.

(Applause)

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

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Dr. Khalwale has the Floor.

Dr. Khalwale: Mr. Deputy Speaker, Sir, is hon. Martha Karua in order to mislead the House that she is the *de facto* leader of the Official Opposition when she knows that our Standing Orders provide that the Chairman of the Public Accounts Committee is the one who is the designated *de facto* leader of the Official Opposition?

(Applause)

Can we then use this opportunity so that I am pronounced the leader of the Official Opposition to start enjoying all that goes with that office?

(Laughter)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Is Ms. Karua and Dr. Khalwale in order to claim to be the *de facto* leaders of the Opposition when Ms. Amina Abdalla declared that I am the one who speaks the most and, therefore, the *de facto* leader of the Opposition in this House.

(Laughter)

Ms. Amina Abdalla: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Dr. Khalwale and Ms. Karua, both Members of the Party of National Unity officially to declare that they are the *de facto* leaders of the Opposition despite the fact that it is well known that although PNU is in the Government it is dead?

(Laughter)

Is it in order for Millie Odhiambo who is in ODM to declare because she is the noisiest that she is the Official Leader of the Opposition? The Chair has to rule. If ODM is dead and PNU is dead, they do not have to claim those positions.

(Laughter)

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Is Ms. Karua in order to behave like a camel? When we invited her to come and sit at the Back Bench she has just done what the camel did; put the head, the whole body to replace the entire Back Bench and to purport that she is the only Opposition in the House?

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. Firstly, I appreciate the remark equating me to the entire Back Bench. I really do appreciate that from Mr. C. Kilonzo. But I am just wondering whether Ms. Amina Abdalla is in order. The law is very clear. I am not a Member of any party called “PNU” which she claims. I am the leader of NARC(K) and by law a member of NARC(K) by Section 30 and Section 2 of the Political Parties Act, 2007, which we set in the Political Parties Act, 2011. Is she in order to claim I am a member of PNU?

Ms. Amina Abdalla: On a point of order, Mr. Deputy Speaker, Sir. It is one thing that the whole House is scared of Ms. Karua, to tell her she is in the Gazette Notice a Member of PNU. So, is it in order for Ms. Karua to continue intimidating the rest of the House not to tell her the truth that she was gazetted as a Member of PNU?

(Applause)

Mr. Ngugi: On a point of order, Mr. Deputy Speaker, Sir. I want your guidance here in view of the exchanges here. As the Chairman of the small parties, am I not the one entitled to be the leader of the Opposition?

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Is Ms. Amina Abdalla in order to suggest that ODM is dead when we all know ODM is reloaded?

Mr. Deputy Speaker: Order! Hon. Members! The Chair will not help you to determine who is the *de facto* or *de jure* leader of the Official Opposition in this House. But one thing that the Chair can tell you is that none of the hon. Members who stood up qualifies to be in the Official Opposition because in line with the Standing Orders NARC (K) is in the Government. Mr. Kamama is from NARC(K). It is only hon. Jirongo who can claim to be in the Official Opposition and even Mr. Jirongo does not have the mandatory numbers in the House. So, clearly, there is no Official Opposition. But nonetheless having given that, could the Chair proceed now and put the Question on this Procedural Motion? Clearly, Ms. Karua, we want to be seen not as a *de jure* but the *de facto*. That I think I will have no debate with.

Mr. Midiwo had the Floor.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I am sorry I created the controversy. Thank you for clarifying the issues.

I was saying that I wanted to disagree with the hon. Members who said that they want tomorrow morning to do Committee work. This is especially Mr. Ruto and Mrs. Shebesh.

We decided to do this, so that they can go to the Constituencies; as you know we are nearing elections. Nothing stops us from doing Committee work next week when we are on recess. Nothing in our Standing Orders stops us from doing that unless we are directed otherwise by the Speaker.

Mr. Deputy Speaker, the other thing is that the Member opposing, Mrs. Shebesh, is a nominated Member from Nairobi. She has no constituency. She will just be around Nairobi just reloading. They can let us follow the law and meet the Constitutional requirements, which is our mandate, and then some of us can go to Gem, some can reload; that will be up to them.

I support.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I rise to support the Motion. I am supporting because we passed the earlier Motion where we reduced the business for today. If we continued with the previous Motion, then we would not even have been available for tomorrow morning.

Secondly, because of the amount of work we need to do, and this country needs to appreciate this Parliament, we actually have gone beyond the call of duty. We have been able to work past the time that is required of us. This is all because we want to achieve something. However, in achieving that I want to warn the Executive that bringing business too late in the day should not make it automatic on our part that we always bend backwards to accommodate it. I am willing to accommodate them for tomorrow and also to ensure that the Committee work--- This is a ruling that the Chair should assist us with as we support this Motion. The Committee work should also proceed as planned, because between now and tomorrow we may not be able to ask those who were coming to appear before the Committee, including the CFC, that there is no meeting.

I support. I am not reloading because I have not lost credit.

Mr. Ngugi: Mr. Deputy Speaker, Sir, I also want to add my voice to supporting this Motion. My reasons are very simple. I am not one of those whom every time we want to adjourn, want us to extend sittings and stay here. We have constituencies to go and engage with. We have devolution to preach. We have conferences to go and attend. It is so important that anytime that we are in Nairobi we use maximum time to finish the business that is before us.

For these reasons, I fully support this Motion.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Deputy Speaker, Sir, I rise to support this Motion. This is because many of us here who have constituencies have a lot of work.

We have money that was increased by the CDF to Kshs17 million that we need to go and get and put into good use. We need that break to go and do work in the constituency.

I support.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. We all know that Cecily Mbarire is an Assistant Minister. It is on record that Assistant Ministers actually have no work in their dockets. They are not allocated anything and they have been complaining. The Ministers give them nothing to do, and so they think Members of the Back Bench have nothing to do.

Mr. Deputy Speaker: Did you oppose or---

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Deputy Speaker, Sir, I supported.

Just in case Mr. Ruto does not know, the Ministry of Tourism is the busiest Ministry after the Ministry of Foreign Affairs. Therefore, I have a lot of work, Mr. William--- Isaac Ruto. I am sorry; are you William or Isaac Ruto?

(Laughter)

Mr. Mungatana: Mr. Deputy Speaker, Sir, I rise to oppose this Motion.

Hon. Members: Ooh! You are alone.

Mr. Mungatana: I may be alone, Mr. Deputy Speaker, Sir, but I want to request that the House hears what Mr. Mbadi has said. Mr. Mbadi said that the Appropriation Bill must be passed by this House before we can have the Vote on Account. Mr. Mbadi tabled a High Court ruling by Justice Majanja.

Mr. Deputy Speaker, Sir, now that we have a clear direction as far as interpretation of the law is concerned, and as far as the mistake that was done last year was interpreted by a High Court Judge, will it be correct for us to purport to debate the Vote on Account when we now know that there is a problem, and we need to bring here the Appropriation Bill first?

I urge the House that we do not move in a rush and commit the same mistake that we committed last year. I am speaking as a Member of the Budget Committee. I am saying that it will not hurt us if the Government brings the Appropriation Bill; we then do the Vote on Account the way it should be done, so that we are not the first people as Parliament to be accused of impunity. I urge the House to reject this Motion. Let us not do what we want to do because it is not right.

I thank you, Mr. Deputy Speaker, Sir.

Mr. Mbau: Thank you Mr. Speaker, Sir, I have been trying to catch your eye for quite some time and I thank you that now I have the chance.

Before we can support this Motion, I would like the Leader of Government Business to make a clarification. He seeks or wants the Minister for Finance to move the Vote on Account tomorrow, so that we can access resources to deliver Government services, but Article 221 (6) of the Constitution reads as follows:-

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

Mr. Deputy Speaker, Sir, Article 222 (1) states as follows:-

“If the Appropriation Act for a financial year has not been assented to, or is not likely to be assented to, by the beginning of the financial year, the National Assembly may authorize the withdrawal of money from the Consolidated Fund”.

Therefore, as of now, this National Assembly on 6th of this month actually debated, approved and adopted as a resolution unanimously the Budget Committee Report, which is supposed to be used to inform the Minister when bringing the Appropriation Bill for debate here. It is only when the Bill is here and after failure to be assented by the President within time that we can have access to the Consolidated Fund. I want the Leader of Government Business to inform us and try to make us understand how that resolution of this House in that Report is going to be used. If we pass or debate the Vote on Account tomorrow should the Appropriation Bill, as per the Constitution, come before or after the Vote on Account? Can we, as a House allow, agree to debate it after the horse has already bolted? That is my concern, otherwise, I have no problem with Members who are desirous of going on recess tomorrow or whatever time.

Mr. Deputy Speaker, Sir, we stand here to defend, protect and safeguard the Constitution and we should not allow any other individual, organization or civil society, any Government officer or State officer to break the Constitution. Without the Appropriation Bill here I am unable to reconcile my conscience with what we are doing.

Mr. Deputy Speaker, Sir, we must note that there are five parliamentary sitting days. Within these days, up to 30th June, 2012, we could do justice to this matter. Five more days to the end of the financial year will not make a huge difference in terms of going to the constituencies. I also note that when this matter was brought to your attention earlier, you undertook to make a ruling tomorrow. Before tomorrow comes, of course, the Minister is indicating desire for us to discuss this particular item. May I also tell you that the letter of notice to discuss or lay this Motion was brought to Parliament at 1.10 p.m. today. This is tantamount to ambushing Parliament. This is tantamount to assuming that hon. Members these days do not know what they are doing. So I want to seek your direction and guidance before we can say we support that which is being proposed in this particular Motion.

Mr. Deputy Speaker: Order, hon. Members! Clearly, the issues that were sought; the direction and ruling that was sought by Mr. Mbadi which is what essentially Mr. Mbau is now advancing and arguing, is a matter that the Chair is going to give a Communication on tomorrow. But right now, the matter before is whether you can have that morning sitting or not. So, Leader of Government Business, proceed!

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I want to clarify one or two things. The first one is that, the time we are seeking for to sit tomorrow is not to discuss the Vote on Account in the morning but to complete the discussion on the Public Financial Management Bill which has a bearing including on how we then sort out the budgeting cycles. It will be very desirous of us, once we have done that, because we will help even in terms of moving forward in the Budget process.

The second thing is obviously that we have cut short our programme for today and moved the Public Service Commission and the Teachers Service Commission bills to tomorrow morning or afternoon. Hon. Members are also desirous and have come to us and said that they also want to have a break. The Committee on Budget also wants to call the various stakeholders to discuss the estimates and the Budget. I think it is an issue that we need to recognize. We are in between a transition. We have the tradition through which we have always passed the budgetary process and before an Appropriation Bill is introduced in the House, hon. Members will recall that we have the individual Votes being discussed by this House and hon. Members select which

Votes the House needs to interrogate and the Ministers come and appear before the House. They interrogate those and after that, then we are given the authority as the Government to introduce into the House the Appropriation Bill. The Constitution anticipated that the process of the finalization of the Appropriation Bill may well pass beyond the 30th June which means come 1st July, the whole Government and all institutions including Parliament would have to close down if there is no money to finance expenditure beyond 1st July. In all probability between now and 30th June, there is no way you are going to have an Appropriation Bill. So we would then need to make sure that we have a mechanism which is what was authorized within the Constitution to access a Vote on Account which gives a temporary access to funding before this House has passed the Appropriation Bill. Whether we sit tomorrow morning or not, I can almost guarantee you that even the time you require to publish the Bill, have it mature and debated, 30th June will find us without that Bill. But tomorrow morning what we need is the time to clear the Committee Stage on the Public Financial Management Bill which will also help us in unlocking the process of budgeting under the new constitutional dispensation. I think once we sort out the morning session, then when we come to the afternoon on the Vote on Account, we will be guided by the ruling by the Speaker and also the debate that we will be having here whether we will have the Vote on Account tomorrow or not. But that will be in the afternoon and not in the morning.

Mr. Okemo: On a point of order, Mr. Deputy Speaker, Sir. Just following up on what the Chairman of the Budget Committee has said, we need to understand the procedure as provided under the new Constitution. The Budget Estimates were presented by the Minister for Finance on 26th April, 2012 following which they were passed on to the Budget Committee so that they could interrogate them and also undertake public participation and take the views of the public, come with amendments and then come with the report to this House. That has happened following which the Budget report came to this House with recommendations from the public.

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

Mr. Okemo: I am on a point of order, Mr. Deputy Speaker, Sir.

Mr. Keter: Okay! I did not know that.

Mr. Okemo: Hold your horses. So, the Budget report came here with recommendations incorporating the views of the public and it was passed by the House as a resolution of Parliament, meaning that Parliament having adopted the recommendations of the Budget Committee, they ought to have been incorporated in the actual estimates by the Minister. That has not happened and that is the biggest problem we have.

Mr. Deputy Speaker: Order, Mr. Okemo! Much as what you are advancing clearly is a very weighty matter and you are an expert in that area, what has that got to do with whether the House should sit tomorrow morning or not? The issue is that, we want to dispose of this Procedural Motion and a Procedural Motion should not take such a long time.

Mr. Okemo: Mr. Deputy Speaker, Sir, unfortunately, there is a big linkage between the two because if we know that we cannot be able to dispose of the Motion on the Vote on Account tomorrow, then is it really worthwhile talking about having a Special Session tomorrow? We know that if we go on recess and we do not have the Vote on Account, the Government will grind to a halt because we are coming back in July. However, that does not mean that we should contravene the provisions of the Constitution. I think what we must spend our efforts to do here, is to see how to cure this constitutional contravention.

Mr. Deputy Speaker: On the matter of the Vote on Account, which is essentially all these issues you are advancing now, they were raised by Mr. Mbadi. The Chair is going to give

direction on that. It is not the first time it is happening. In any case, the Constitution and other provisions are---

Mr. Okemo: Mr. Deputy Speaker, Sir, I will support the Motion provided that we must deal with these issues tomorrow and I can tell you that one of the things that must happen is that we must have new and reprinted estimates. I do not know whether that can happen tomorrow and you cannot discuss the various Votes for the various Ministries unless we have new reprinted estimates. Until we have done that, you cannot have an Appropriation Bill because an Appropriation Bill will follow after we have approved the reprinted estimates. So if that can happen tomorrow, I support the Motion.

Mr. Keter: On a point of order, Mr. Deputy Speaker, Sir. I want to agree with what my colleagues are talking about but the issue is on Order No.9. I thought that despite the fact we can even discuss Order Nos.12 and 13 tomorrow, the other business tomorrow is not only the Budget, so why do we not pass that Motion? If we carry the day, fine, but if not, then we proceed so that we can come in the afternoon. I thought you will make a ruling tomorrow afternoon. We may decide not to go on recess tomorrow so that we can finalize the issues which the Budget Committee is raising. So why can we not proceed on that?

Mr. Keynan: Mr. Deputy Speaker, Sir, there are two critical issues here. I want to agree with what hon. Okemo and the able Chairlady of the Budget Committee have clearly stated. One is under Article 222 about the role of Parliament. It is fair that our colleagues also hear this. The role of Parliament in the budget-making process is clear.

Mr. Deputy Speaker, Sir, the tabling of the Budget Policy Statement was delayed for obvious reasons, just to make sure that Members of Parliament did not get an opportunity to participate. We were sent on recess. When we came back, we were given less than four or five days after the estimates were tabled for Committees to interrogate the entire Budget. We worked very hard just to make sure that we met the deadline. Why the process is stipulated in this particular manner is to enable the public to clearly participate in the budget-making process.

Mr. Deputy Speaker, Sir, you are also aware that this is the first time the Kenya Parliament is being part and parcel of the mid-term expenditure review framework. I attended as an *ex-official* Member of the Budget Committee. There is a letter from the Ministry of Finance asking for the Vote on Account to be done tomorrow, without having tabled the reprinted estimates. The reprinted estimates would have enabled the Members to interrogate and make sure that the recommendations of the Budget Committee as adopted by the House on 7th June are clearly captured.

Mr. Deputy Speaker, Sir, I want to urge my colleague that we can achieve both. I want to propose that there is no harm in having a special session tomorrow morning. But we are putting the Government on notice. That should you bring a Motion on Vote of Account tomorrow afternoon without printing the Appropriation Bill, then be prepared. We will shoot it down. That is the message you are getting from the Chairladyman of the Finance Committee. Therefore, could we---

Mr. Deputy Speaker: Order, hon. Keynan! Hon. Keynan, the Standing Orders are very clear. You cannot anticipate debate and contribute on the basis of the anticipated debate on the Floor of the House. If you want to oppose that Motion, then oppose it at the appropriate time when the House is seized of it. Right now, the issue is: Do we have a morning session tomorrow or not?

I will allow just two more interventions, that is hon. Prof. Anyang'-Nyong'o, hon. Wetangula and, finally, hon. Kiunjuri then I will have to put the Question.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, earlier in the day this afternoon, I heard you make a ruling when hon. Dr. Khalwale was making a contribution; that we should not anticipate debate on anything in the House. I think hon. Khalwale was saying that tomorrow we might have an adjournment.

Mr. Deputy Speaker, Sir, you ruled that, that is anticipating debate. I, therefore, assume that having an adjournment should not limit or predicate our discussions on the agenda of the House. Therefore, I also want to empathise with my colleagues on the other side that given the matter that is coming before us tomorrow morning is to do with Vote on Account and that, Members genuinely and constitutionally - as the Chairladyman of the Budget Committee has shown - have serious concerns about that procedure on Vote on Account, I would like both sides to agree that the issue of going for an adjournment is not crucial. I think the issue - as hon. Mungatana said - of doing quality work in this House is much more important. So, I think the thing that we should agree on is that when the House Business Committee met yesterday and proposed Procedural Motion, as is on the Order Paper, it was to ensure that the things on this Order Paper today are all completed because they are all urgent and they remain urgent.

So, Mr. Deputy Speaker, Sir, as one who is really concerned about Agenda Item No.13 today, I think all these items on today's Order Paper should be expeditiously disposed of by the House, without prejudicing time for discussion on the Vote on Account tomorrow. So, I would rather that we agree that we shall discuss tomorrow morning, but not discuss with intention of terminating the work of the House at the end of the day. We should discuss with the intention of terminating the work of the House when these urgent matters are completed, and when the Vote on Account is completed qualitatively by the House. So, I think we need not go too far. The issue of adjournment should be kept at bay. As hon. Okemo said, if the Government will not have done its work properly tomorrow morning and present proper documents for Vote on Account, that should be done and time should be allowed for the House to debate it.

I beg to support.

The Minister for Trade (Mr. Wetangula): Mr. Deputy Speaker, Sir, I support the Procedural Motion and also place on record that the very cogent arguments placed forward by hon. Mbau, hon. Okemo and all the other colleagues are valid. But they are clearly not in the right place. What we are talking about is whether we can sit tomorrow morning or not.

The Government may very well bring---

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

The Minister for Trade (Mr. Wetangula): I do not need it.

The Government may very well bring a different format tomorrow for us---

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

Mr. Deputy Speaker: Has your point of information metamorphosed into a point of order now? Proceed. It had better be a point of order.

Mr. Ruto: Mr. Deputy Speaker, Sir, I have dropped the point of information I am on a point of order. I am wondering whether the Government is in order, especially the last Minister who has spoken, to impute that it is the Back Bench that is anticipating debate about the Vote on Account when it is, in fact, the Government. It is the Government that is telling us that it wants to bring it, it is not us. It is the Leader of Government Business who actually informed us that he wants us to do that. We did not bring that. It is them. So, please!

The Minister for Trade (Mr. Wetangula): Mr. Deputy Speaker, Sir, even if the hon. Deputy Leader of Government Business said that, the Government can still re-arrange business as it wishes and bring it to the House. What I urge is that we can agree to sit tomorrow. If the

issues being raised are not addressed, we can advocate them tomorrow. This House has the right even to reverse decisions that it makes. So, let me urge that, instead of eating into the very valuable time that we have extended; so that we do not sit until midnight, you make a ruling or put the matter to vote and we go to the business of the day and tomorrow, when it comes, we shall cross the bridge.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Even if the Leader of Government Business, based on his own privileged position as being in the House Business Committee does advance here information based on anticipation of debate, he is still out of order. It must have skipped the attention of the Chairlady at that moment. Otherwise, it should have been brought to the attention of the Chairlady that, indeed, he was out of order.

The Minister for Trade (Mr. Wetangula): You are so right, Mr. Deputy Speaker, Sir. You should have stopped him at the time he was advancing that argument.

Mr. Deputy Speaker: Fair enough. Mr. Kiunjuri will have the last chance.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, you have already stated clearly that you will make a ruling on the issue tomorrow. Therefore, there is no use of anticipating debate or acting as if you know the ruling that you will make tomorrow.

Secondly, this Parliament is known to be very hardworking. In fact, it is the most hardworking Parliament. The days that we have extended the Sittings of this House--- No other Parliament has ever done that. Now that we have so many other Bills that are coming up--- Even if we do not go for recess tomorrow, there is still a lot of work that Parliament can continue doing. It is only important that we continue with the morning Sitting tomorrow.

Mr. Deputy Speaker, Sir, even if there is a certain agenda that cannot be discussed tomorrow, we can continue with other agenda. We are also agreeing that the best we can do is not to adjourn tomorrow and come next week, so that we can meet the constitutional requirements. If there is any Bill that can be brought before this House to avoid it being unconstitutional, that will be fine. So, it is important that we pass this Motion. We support it. Let us come tomorrow and work. If possible, we can extend the Sitting tomorrow up to midnight again.

I support.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chairlady]

IN THE COMMITTEE

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

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we are now in the Committee of the House to consider The Statute Law (Miscellaneous Amendments) Bill, Bill No. 14 of 2012.

(Clause 2 agreed to)

Clause 3

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, following the undertaking that I gave to the House, I move to delete this provision.

(Question of the amendment proposed)

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

(Clause 3 deleted)

Schedule

The Revision of the Laws Act (Cap.1)

(Provisions relating to the Revision of the Laws Act (Cap.1) agreed to)

The National Assembly (Remuneration Act (Cap.5)

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I similarly wish that this part of the Schedule be deleted.

(Question of the amendment proposed)

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

(Provisions relating to The National Assembly (Remuneration Act (Cap.5) deleted)

The Finance Act, 2012 (No.4 of 2012)

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I similarly wish that this part of the Schedule be deleted.

Dr. Khalwale: On a point of order, Madam Temporary Deputy Chairlady.

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

Dr. Khalwale: Madam Temporary Deputy Chairlady, it is just on a small matter of procedure; we seem to be not following the debate very well. We have a copy of the Statute Law (Miscellaneous Amendments) Bill and we have just finished the National Assembly

(Remuneration) Act. After it, it is not the Finance Act; it is the Appellant Jurisdiction Act, Cap. 9. Could we be clear? We want to be on the same page.

The Temporary Deputy Chairlady (Dr. Laboso): That is the only one, hon. Members, that seems to have been misplaced. All the deleted ones should have come together, but they have been separated. So, I think the order will follow after this.

Dr. Khalwale: Okay, Madam Temporary Deputy Chairlady.

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

(Provisions relating to Finance Act 2012 (No.4 of 2012) deleted)

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. I just need your direction because you have indicated that the provisions relating to the Finance Act be deleted. The provisions the hon. Attorney-General has moved are the ones that, following the ruling of the Speaker, will be dropped; he stood them down. So, I would like to get directions because part of the Speaker's ruling had to do with dropping provisions that are unconstitutional. If, therefore, in the view of the hon. Attorney-General, those are the only provisions that are unconstitutional then I think I would need your ruling on provisions that are deemed unconstitutional. I just want guidance from the hon. Attorney-General if those are the only provisions that he deems unconstitutional.

(Mr. Abdikadir stood up in his place)

The Temporary Deputy Chairlady (Dr. Laboso): Could the hon. Attorney-General make it clear and clarify exactly what we are deleting?

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, the provisions we have deleted are the provisions appearing on page 1106. These are provisions relating to the Constitutional Offices (Remuneration Act (Cap.423). These are the only provisions I had given notice that I would drop. It would appear to me, therefore, if other constitutional questions arise, they are to be addressed as we move sequentially through the Bill.

(Applause)

Mr. Abdikadir: On a point of clarification, Madam Temporary Deputy Chairlady. There are very many Bills in one. We have a very large document. In view of the complexity and in view of the fact that they are moving very fast and something could move without hon. Members getting fully focused, is it possible that either the Chairlady or one of the Clerks reads the page number, so that we follow very clearly?

(Applause)

The Temporary Deputy Chairlady (Dr. Laboso): Okay! That will be taken care of.

Mr. Namwamba: Madam Temporary Deputy Chairlady, my apology for taking you back a step. I know you have ruled that we will deal with the constitutional issues or questions touching on the respective provisions as we go along.

Madam Temporary Deputy Chairlady, I do have serious constitutional questions that touch on a raft of these proposed amendments; a minimum of five. I want to seek your indulgence whether it would not be appropriate for you to allow those of us who have these serious questions of constitutionality on a number of amendments instead of doing it one by one in a scattered fashion; whether we could canvass collectively on all of them together.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I think we will follow the order in which they have been presented. The only one that had a mistake was the one with the deletion of both the National Assembly and Finance Bill. But from now henceforth, it is going to follow sequentially and you shall bring your concerns when we arrive at that particular provision.

*(Provisions relating to The Appellate Jurisdiction Act
(Cap.9) agreed to)*

The Magistrates' Courts Act (Cap.10)

The Temporary Deputy Chairlady (Dr. Laboso): There are two proposed amendments. Hon. Baiya, you will follow after hon. Ethuro.

Mr. Ethuro: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Schedule to the Bill be amended-

1) in the amendment proposed to section 5 of the Magistrates' Courts Act (Cap. 10),-

(a) in paragraph (a), by deleting the word "ten" appearing at the beginning of the paragraph and substituting therefor the word "twenty";

(b) in paragraph (b), by deleting the word "eight" appearing at the beginning of the paragraph and substituting therefor the word "sixteen";

(c) in paragraph (c), by deleting the word "six" appearing at the beginning of the paragraph and substituting therefor the word "twelve";

(d) in paragraph (d), by deleting the word "four" appearing at the beginning of the paragraph and substituting therefor the word "eight"; and

(e) in paragraph (e), by deleting the word "two" appearing at the beginning of the paragraph and substituting therefor the word "four".

Madam Temporary Deputy Speaker, Sir, essentially, I am looking at areas like where I come from, where the High Court is very far and even the Chief Magistrate is not available. In this day and age, this kind of money that we are talking about for civil cases is not a lot. So, it should be dispensed at the lower courts, so that we can access justice near our locations. That is the fundamental issue.

(Question of the amendment proposed)

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I regret that I have to oppose this proposal. I want to remind the hon. Members, with profound respect that these proposals emanate from the Judicial Service Commission (JSC) itself. The JSC is Chaired by the hon. Chief Justice and we must assume, in favour of this Commission, that it has deliberated on what it can manage and how it can manage its own officials. A sum of Kshs20 million is a lot of money in many jurisdictions. Many judicial officers who have not yet achieved

the rank of Chief Magistrate would, in the view of the JSC, still not be ripe to handle those matters. I would like to persuade the hon. Members that, to the largest possible extent, we should go with the advice that the JSC has rendered.

Mr. Ruto: Madam Temporary Deputy Chairlady, I am persuaded by the arguments by hon. Ethuro. I find the argument that the Attorney General is pushing forward, emanating from the JSC, a little bit demeaning for the junior ranks of the Judiciary. This is because their argument is that the lower levels are more prone to corruption; that when you ask a junior person to handle Kshs10 million or Kshs5 million, he is more prone to corrupt practices. Is corruption a preserve for the senior levels? I am not quite persuaded, although my Committee had suggested a little enhancement.

Madam Temporary Deputy Chairlady, I support hon. Ethuro's amendment.

Mr. Baiya: Madam Temporary Deputy Chairlady, I do not support the amendment by hon. Ethuro, more so, because the Committee on Justice and Legal Affairs has made an amendment to slightly lower the figures from what the JSC has actually recommended.

Madam Temporary Deputy Chairlady, it is important to bring to the attention of the House the fact that our Judiciary is in the process of going through reforms. It is also good to bear in mind that the figures have been raised from very low levels to what is being proposed. It is good to challenge our systems incrementally and not raise the figures dramatically. The more legal and vital issues become more complex, the more the stakes as far as the parties are concerned. So, to that extent, the Law Society of Kenya (LSK) also is supporting the same proposal that we are recommending. These figures are also reviewable. If it is found that they are working, they can always be reviewed upwards, but it would be more dangerous to expose the institution to more challenges by doing so without measured tempo of increasing the amount.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Attorney General, can I just hear your view on this? Remember hon. Members, we need to decide. If hon. Ethuro's amendment goes through, then hon. Baiya's amendment falls. So, we have to make a clear decision on where we are. Are we adding or reducing?

The Attorney General (Prof. Muigai): Madam Temporary Deputy Chairlady, we are maintaining the number proposed by the Chief Justice.

Mr. Ethuro: On a point of order, Madam Temporary Deputy Chairlady, if you look at a county like Turkana, the best that we have ever gotten is a Resident Magistrate. If the Attorney General of the Republic of Kenya can keep his word and the Minister for Justice, National Cohesion and Constitutional Affairs confirm to us that every county will have a High Court, then I will have no problem. I will be able to maybe withdraw my amendment and support the one of the Committee.

The Temporary Deputy Chairlady (Dr. Laboso): Are you withdrawing?

Mr. Ethuro: Madam Temporary Deputy Chairlady, once they confirm that request.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I think that there was the launch of the transformative framework for the Judiciary and it was a pity that many of the hon. Members did not attend it. But the programmes and plans of the Judiciary were set out clearly, to ensure that we progressively ensure access to justice by all Kenyans in all counties. We intend to have High Courts in every county. You will be surprised to know the amount of money given to the Judiciary. It is aimed at ensuring that this access to justice is actually made a reality. So, I want to assure the hon. Ethuro that Turkana County will have a High Court.

Ms. Karua: Madam Temporary Deputy Chairlady, in view of the wish to withdraw by the hon. Member, I do not have much to say. But we have 47 counties and the High Court currently has 50 Judges and they are set to increase the number. So, there can be no reason under the sun not to give every county a Judge.

Mr. Ethuro: Madam Temporary Deputy Chairlady, if it were those days when hon. Karua was the Minister for Justice, National Cohesion and Constitutional Affairs, I would have listened to her, but now she is with me on this side. But the new *manyanga*-looking Minister has assured us that every county will have a Judge, and I will have no problem. My problem is that people from Mandera, Wajir and Moyale should not travel 300 or 500 kilometres just to settle a dispute on money. For your information, we have a lot of money and we will have oil soon.

The Temporary Deputy Chairlady (Dr. Laboso): Have you withdrawn your amendment?

Mr. Ethuro: Madam Temporary Deputy Chairlady, I have withdrawn my amendment.

(Mr. Ethuro's proposed amendments withdrawn)

Mr. Baiya: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended in the Schedule—

(a) in the proposed new section 5 of the Magistrates Act (Cap. 10), by—

(i) deleting the word “ten” appearing in paragraph (a) and substituting therefor the word “seven”;

(ii) deleting the word “eight” appearing in paragraph (b) and substituting therefor the word “five”;

(iii) deleting the word “six” appearing in paragraph (c) and substituting therefor the word “four”;

(iv) deleting the word “four” appearing in paragraph (d) and substituting therefor the word “three”;

Madam Temporary Deputy Chairlady, this amendment is not substantially different from what the Judicial Service Commission has proposed. All we are saying is that we can get to the level they have proposed after we are through, especially with the judicial reforms that we are carrying out. This is also being felt by the key stakeholders including the Law Society of Kenya and so on.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, in view of the strong views expressed by the hon. Chairman of the Committee, I want to indicate that we would be conceding to the proposals.

*(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)

*(Provisions relating to The Magistrates' Courts Act
(Cap.10) as amended agreed to)*

The Advocates Act (Cap. 16)

Mr. Baiya: Madam Temporary Deputy Chairlady, I consulted with the Attorney-General and I wish to withdraw the amendments relating to the Tribunal and the Disciplinary Committee. I wish to withdraw those amendments.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. I would like the Chairman of the Committee to kindly explain because these are Committee amendments and he cannot consult with the hon. Attorney-General and withdraw without consulting and informing the Committee on what basis they are being withdrawn. We received a memorandum from the Law Society of Kenya on why they did not want a tribunal as opposed to the committee that they have and this has issues to do with the independence of lawyers and self regulation. There is a court where when you find erring lawyers you can go to. I would like the Chairman of the Committee to clarify on what basis he can withdraw Committee amendments without the approval of the Committee.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, the changes proposed by hon. Members are on the nomenclature defining this body. It does not go to the powers of the body and it does not go into how the body functions. I was Chairman of this body for seven years. This body was known as the Advocates----

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. I know that the hon. Attorney-General is responding to substantive issues that go to the issue of the amendments but I have raised a procedural issue. So, with your guidance, if you could deal with the procedural issues and then the lawyers would like to contribute on the substance of the amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Okay. The hon. Chairman of the Committee, can you explain that?

Mr. Baiya: Madam Temporary Deputy Chairlady, the Committee's position which was reinstated when we adopted this report was at a meeting where some of my colleagues were not present. It was pending and a rationale given by the Attorney-General why this proposal was being done. The Committee's sentiments were that if this amendment was going to affect the self regulation mechanism of the profession of advocates, we would oppose it. That is precisely what the Attorney-General is doing. If they do not go along with that, then they would possibly consider objecting to the position that I am taking that we may not need to oppose this amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Hon Attorney-General, could you conclude your explanation?

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, the amendments proposed by the Committee were only amendments that---

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! Your level of consultations is too high.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, the amendments proposed by the Committee only went to the name of this body. This body was previously called "The Advocates Disciplinary Committee". I have proposed that it should be called "The Advocates Disciplinary Tribunal". We are changing it from a committee to a tribunal.

The history of this matter, very briefly, is that the advocates used to self regulate when the profession was first corporatized in the 1940s. Two members would sit together as a committee to hear disciplinary complaints against their members. As we have evolved as a profession, we now have what is really a *quasi*-judicial body and it is a tribunal. It has a prosecutor and the person brought before it can bring his or her advocate and we are just getting the nomenclature correct. I would urge Members to allow it.

(Mrs. Odhiambo-Mabona stood up in her place)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Millie, you have just contributed. Remember, this is the Third Reading and we cannot take too long.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I know that it is the Third Reading and even in the Third Reading, I have a right to speak.

The Temporary Deputy Chairlady (Dr. Laboso): No one said you did not have a right!

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I just want to indicate that I do not agree with the hon. Attorney-General on the Law Society of Kenya's Act. The Law Society of Kenya gave us views and it was not of the view that this is an issue of a name. Indeed, in the hon. Attorney-General's contribution, he indicated that this was not an issue of a name and that they are taking control of the work that the Law Society of Kenya does. Given that the Chairman has substantively withdrawn, the only thing I want to indicate is that as a Member of that Committee, I am opposed to what the Chairman has done. Until I am persuaded that there are minutes, I do not know how the Chairman came up with those suggestions. I do not agree with what my Chairman has done.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Chairman of the Committee, can you just clarify whether you are withdrawing from (i) to (xx)?

Mr. Baiya: Yes, Madam Temporary Deputy Chairlady. The effect of all those amendments was the same. They related to the name of the committee and they, therefore, go all the way to xx.

Mr. Namwamba: Madam Temporary Deputy Chairlady, there is a procedural question that you have to address your mind to unless you are telling us that we can raise this matter substantively when Mr. Speaker is in the Chair because we know the procedure of the House. We know the procedure of the Committee. When amendments come here as Committee amendments, they are not treated or handled as individual amendments but they are amendments of the Committee. Therefore, if the Committee has proposed specific amendments and hon. Members are ambushed from the blues on the Floor by reason of mysterious consultation that has not been endorsed by a resolution of the Committee, unless it is tabled here, a resolution of the Committee supported by minutes where the Committee voted by majority or unanimity to withdraw this amendment, then this withdrawal will fly in the face of the Standing Orders of the House. It is unprocedural. We cannot move as if that procedural anomaly has not arisen. It is a critical anomaly. Can anybody purporting to represent a Committee act on behalf of the Committee without a resolution?

Ms. Karua: Madam Temporary Deputy Chairlady, in spite of these agreements by the Committee, we know that the Committee is a creature of the House. The matter is before the House. So, let arguments be finished. Let us not be treated to sideshows by the Committee. Let us proceed. As a matter of contribution, the word "tribunal" and "disciplinary committee" nothing will change on that. If any hon. Member has seen any clause which makes it different,

then they would help this House by contributing and showing that difference. However, if known is shown, I plead that we decide the matter as a House.

Mrs. Shebesh: Madam Temporary Deputy Chairlady, lawyers have a very good habit here of playing with words and our minds. If there is no difference between a “committee” and a “tribunal” why are you changing it? There must be a reason for changing from “committee” to “tribunal”. So, please, do not take us for children’s simplicity. If the Departmental Committee has brought an amendment here, please, Attorney-General, explain in a better way, but do not tell us that there is no difference because then you would not be changing it.

Mr. Abdikadir: Madam Temporary Deputy Chairlady, we are at the Committee Stage. It is neither the First Reading nor the Second Reading. It is not debate time and we really need to be making progress. It is a matter of decision-making. The proposal from the Committee is there. Chairpersons are sometimes requested even on the Floor and they make decisions. As hon. Karua said it is a matter for decision-making. Let us make the decisions now. The debates have been undertaken.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, all amendments in the Third Reading are brought in the name of hon. Members according to Standing Order No.116(2). It states thus:

“No amendment shall be moved to any part of a Bill by any Member other than the Member in charge of the Bill, unless written notification thereof shall have been given to the Clerk before the commencement of the sitting at which that part of the Bill is considered in Committee.”

This particular amendment has been received in the name of hon. Baiya. Therefore, hon. Members, we shall proceed as hon. Baiya has---

Mrs. Shebesh: On a point of order, Madam Temporary Deputy Chairlady. Can you be clear? Are you, therefore, saying that hon. Baiya is moving this amendment not as is written on the Order Paper, that is, “Notice is given that the Chairperson of the Departmental Committee on Justice and Legal Affairs---” Are you saying that this is his amendment now and not that of the Departmental Committee on Justice and Legal Affairs? If that is the case, Madam Temporary Deputy Chairlady, please, be clear because there are very many things here that hon. Baiya will be bringing which will not be on behalf of the Departmental Committee on Justice and Legal Affairs.

Dr. Khalwale: Madam Temporary Deputy Chairlady, I want to speak as a Chairman of a Committee. My understanding of being the Chairman of a Committee is that you hold that position in trust for the entire membership of the Committee. It had better be clear that when a Committee has passed a resolution, the Chairman can come here and change it without reference to the Committee. If then that becomes the standard, we will then be using it. All we want to know is if it is true that the Committee supports the amendment by hon. Baiya. The least you can do so that you incorporate the thinking of hon. Karua, which I respect, is that you should allow Members of that Committee to speak on it, so that the rest of us can listen to them and then make a decision based on the merits and demerits arising from their presentations.

The Temporary Deputy Chairlady (Dr. Laboso): Chairman of the Departmental Committee on Justice and Legal Affairs, are these amendments from the Committee or are they your personal amendments?

Mr. Baiya: Madam Temporary Deputy Chairlady, I want to first of all clarify what the Committee’s position was. We went through the various amendments in separate meetings. When it came to the issue of the meaning of this “committee” questions were raised why the

Attorney-General was making this proposal. We had to arrange a meeting with the Attorney-General with a view to getting an explanation, but owing to the time limits, that never happened. As of the last minute, we indicated that we would stand opposed to the amendment pending an explanation being given. However, the only concern the Committee expressed was whether or not the independence and safe regulation mechanism of the Law Society of Kenya (LSK) would be affected.

When we had our last meeting, these explanations were given and, therefore, we are not in a position--- As of now we do not have ground to object to the amendment as proposed.

The Attorney-General (Mr. Muigai): Madam Temporary Deputy Chairlady, I want to supplement that by confirming that I received written communication from the Committee. It requested me to appear before it and give explanations. I confirmed my availability. In the morning, it was cancelled. These issues that are being raised as substantive issues are issues that I was ready to explain at the earliest possible opportunity. When I met the Chairman of the Departmental Committee on Justice and Legal Affairs, I gave that explanation.

Mr. Bahari: Madam Temporary Deputy Chairlady, this Committee has problems and has wasted the time of this House and country. Indeed, we will consider next time how to disband it. Having said that, I propose that we go along the line of hon. Martha Karua, so that this House can debate the matter, the pros and cons and then we make a decision. That way, they will stop wasting our time.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we have ventilated enough.

*(The Temporary Deputy Chairlady consulted with
the Clerks-at-the-Table and Mr. Kimunya)*

Hon. Baiya, could you, please, clarify that you have withdrawn the amendment so that we do not get confused?

Mr. Baiya: Madam Temporary Deputy Chairlady that is the position I took. That in view of the fact that I do not have the grounds for opposing the amendments as proposed, I am withdrawing the proposed amendments.

Mr. Mbadi: Madam Temporary Deputy Chairlady, I suspected that hon. Kimunya was going to mislead the Chairlady and I have just confirmed it.

The issue we are handling here is an issue of procedure. It is not the question of the substance of that amendment; it is the procedure. Can the Chairman of the Departmental Committee, on his own, withdraw an amendment of the Committee? If you look at the amendments proposed here, you will realize that for this particular one it is by the Chairman of that Departmental Committee. The best that can be done is: Let the Chairman of the Departmental Committee move that amendment, however loosely he is going to do it, and then allow others to ventilate on it. After that, the Attorney-General should convince the House and then we defeat the amendment. Procedurally, you cannot withdraw an amendment of the Committee. We are going to set a bad precedent where Chairmen of Departmental Committees can go and cut deals with the Executive and then come here to push things down the throats of the Committee.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I do not think we have come here to sort out the issues of the Departmental Committee on Justice and Legal Affairs. We need to make progress because we have a lot of business before us.

(Proposed amendment by Mr. Baiya withdrawn)

The Law Society of Kenya Act (Cap.18)

THAT, the Bill be amended in the Schedule-

(b) by deleting the proposed amendment to Section 2 of the Law Society of Kenya Act (Cap.18)

Madam Temporary Deputy Chairlady, it is the same position.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. I just want to go on record that as a lawyer I cannot sit and be part of the Committee. Indeed, I actually want to tell you that contrary to what people believe in this House, this Committee has been functioning well but when we raise an issue of procedure, it is an issue of procedure and I cannot sit here as a lawyer and be pulled along things that we did not agree as a Committee. Indeed, the hon. Attorney-General has confirmed that we had set certain things pending confirmation from the Attorney-General but he did not come. He never came. So, because we are doing things unprocedurally, I want to go on record in the HANSARD that I am not part of what the Committee is doing. If anything, it is not even the Chairman, it is a fake chairman.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I think you ought to grant me an opportunity to clarify that position. An impression has been created that I was summoned by the Committee and I failed to turn up. I made it quite clear; I indicated to the Committee that I was available and the Committee cancelled the meeting. I think it is really very clear here. The amendments speak for themselves. They say: "where it says "committee" put "tribunal" for all 20 of them." I think we are wasting time.

Ms. Karua: Madam Temporary Deputy Chairlady, I think you got to help the House to move forward. Whether the Attorney-General went or not, if the amendment has a problem, let the hon. Member who knows the problem inform us so that we are able to make a decision and make progress.

I support the amendment.

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

The Temporary Deputy Chairlady (Dr. Laboso): What is your point of order? We need to make progress.

Mr. Ogindo: Madam Temporary Deputy Chairlady, we need to make progress but in the right direction. There is a very fundamental question that is being brushed aside here. This is a matter of procedure and under your watch, we need to create a precedent that we are able to live with tomorrow. The fundamental question here is: Does the Chairman have the right to withdraw an amendment on behalf of the Committee? That question requires your considered ruling so that we proceed knowing very well that the Chairlady has ruled on this thing and it becomes a precedent. We do not want a situation where this window is going to be abused. We run a risk of creating a window that will be abused when it is favourable and locked when it is unfavourable. So, it is very important that the Chairlady makes a very definite ruling on this. I invite you.

Mr. Duale: Madam Temporary Deputy Chairlady, we need to follow the procedure and the Standing Orders of this House. This matter has passed through a number of processes. It went through the First Reading, Second Reading and it is no longer the business of a Committee of the House. If you have any objections even among yourselves, you have the liberty to say, no or yes or to give your justification. So, we are wasting a lot of time. We do not want this House to be involved in the Committee's disputes. So, let us move on. In this House the procedure is that

Chairpersons of the Committees are the ones who represent their Committees on the Floor of the House. So, if you want to raise constitutional matters, you cannot even raise them at this stage. We are at the Committee Stage.

Mr. Ruto: Madam Temporary Deputy Chairlady, I think we are diverting from the core business that we are in at the moment. If, indeed, there are issues which our Chairman needs to explain to our Committee, we will prosecute that at our own committee meetings failure to which if we have any problem, we shall bring it to the Speaker during normal sessions for guidance, if need arises. As of now, the House is bigger than the Committee and, therefore, if there are other divergent views, let them be on the Floor, failure to which let us proceed.

Mr. Ethuro: On a point of order, Madam Temporary Deputy Chairlady. I think we will grant those ones who have raised procedural issues their wish but you can commit yourself that you will make a ruling. To be safe, just dispose every matter before you so that the House will have resolved the matter and it should neither be the Chairlady nor the Members of the Justice and Legal Affairs Committee. We know how far they have brought us. We are not going to grant them that wish on this Floor.

The Temporary Deputy Chairlady (Dr. Laboso): Let us have another Member of the Committee. Hon. George Nyamweya!

Mr. George Nyamweya: Thank you, Madam Temporary Deputy Chairlady. Perhaps hon. Members might wish also to listen to those of us who have been rather silent on this issue. The issue is not about the Justice and Legal Affairs Committee. Those who attend meetings will know what transpired. Those who absent themselves will not know what transpired. If the Committee has presented a report, now this is a Committee of the whole House, the House can decide to reject the Committee's report, as they did when we were setting up the Ethics and Anti-Corruption Commission or adopt it. We were unanimous and the whole House rejected that report. Nobody then objected to that list. When it came the other day, the Chairman alone was supporting the Committee's position. Members of that Committee went aside to support that one. They cannot now come here because it is inconvenient and say: "No, we must now support procedure and when it suits us, we will not support that procedure." Please let us go and do our own little things elsewhere. Let us progress with the work of the House.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, therefore, we will let the House make the decision. I, therefore, put the Question that the provisions of the Law Society of Kenya Act (Cap 18) be part of the Bill.

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

*(Provisions relating to The Law Society of Kenya Act
(Cap. 18) as amended agreed to)*

The Civil Procedure Act (Cap.21)

Mr. Baiya: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended in the Schedule –

(d) in the proposed new section 59A of the Civil Procedure Act (Cap. 21), by—

(i) deleting the word "two" appearing in subsection (2)(c) and substituting therefor the word "one";

(ii) deleting the word “seven” appearing in subsection (2)(d) and substituting therefor the word “eight”;

(iii) inserting the following new subparagraph immediately after subparagraph (vii) of subsection (2)(d)—

“(viii) the Federation of Women Lawyers (FIDA - Kenya)”

Madam Temporary Deputy Chairlady, basically the purpose of this amendment is to add in a representative from FIDA-Kenya and generally to ensure--- This proposal has come from the Committee and it is basically in line with all the other proposals. For those who are going to be proposing candidates for the mediation process, we believe that this is one of the key stakeholders.

So, we are reducing the nominees from the Law Society of Kenya from two to one and allocating that position to the body of women lawyers.

(Question of the amendment proposed)

Mr. Bahari: Madam Temporary Deputy Chairlady, it is only fair that when such a substantive amendment is brought to the House, the Chairman of the Departmental Committee at least explains the reasons behind that amendment. There are lots of professional institutions that have been left out. Why this NGO in particular?

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order! Order, hon. Members! The consultations are too loud.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, there were consultations between the Chairman of the Departmental Committee and myself, and I have no objection to this particular amendment.

Ms. Karua: Madam Temporary Deputy Chairlady, I wish to support the amendment. I think with the constitutional requirement of gender inclusivity, when the LSK shares its two slots with FIDA, members of FIDA who are also members of the LSK will help to nominate the female gender. So, the amendment is in line with our constitutional framework.

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

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Bahari! You have already spoken on this one. What is your point of order?

Mr. Bahari: Madam Temporary Deputy Chairlady, I want to contribute. The last time I spoke I was on a point of order.

Madam Temporary Deputy Chairlady, as much as I have nothing against FIDA – in fact, they are very friendly – I am sure that the professional institutions that have been listed there have enough women who can be nominated to that body. It is a constitutional requirement. Therefore, we do not need to reinforce it through here.

With those remarks, I beg to oppose.

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

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

Mr. Ethuro: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Schedule to the Bill be amended-

(2) in the amendments proposed to the Civil Procedure Act (Cap. 21)-

(a) in paragraph (d) of the proposed new Section 59A(2)-

(i) by deleting the word “seven” appearing at the beginning of the paragraph and substituting therefor the word “eight”; and,

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

“the Central Organization of Trade Unions”.

(b) in the proposed new Section 59B(1)-

(i) by inserting the word “or” at the end of paragraph (b); and,

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

(c) where the law so requires.

Madam Temporary Deputy Chairlady, the simple reason for this amendment is to ensure that even the workers are fully represented. The only responsible organisation for the workers of Kenya, as we know now, is the Central Organisation of Trade Unions (COTU).

Thank you.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ethuro, let hon. Members know where to find your amendment on the Order Paper.

Mr. Ethuro: Madam Temporary Deputy Chairlady, the amendment is on page 3673 of the Order Paper. In the Bill, it is on page 1094.

(Question of the amendment proposed)

Mr. C. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady. So that we move together, can I suggest, as has been the practice, that whoever stands up to move an amendment, he tells us the page on which the amendment is on the Order Paper and in the Act? He can then explain to us the rationale for the amendment. Hon. Members do not even know what hon. Ethuro has just said. Can he, kindly, repeat?

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I hope that you have all taken note of that request. Anybody with an amendment, please, make sure that you mention the pages on the Order Paper and in the Act, so that other hon. Members can follow.

Hon. Ethuro, can you, very briefly, allow hon. Members to understand your amendment before I put the Question?

Mr. Ethuro: Madam Temporary Deputy Chairlady, I need hon. Members’ support. The amendment is found on page 3673 on the Order Paper. In the Bill, it is found on page 1094. After the “Federation of Kenya Employers”, I am adding another organisation known as “COTU” to represent the workers of the Republic of Kenya. So, since this is an addition, instead of “seven” the other one has also become “eight”.

Thank you.

Mr. Hassan: Madam Temporary Deputy Chairlady, I thought we had agreed that we should move sequentially. We have suddenly jumped several pages to go to the other amendment that has been moved by hon. Ethuro.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Hassan, it is the Bill that is being followed, and not the Order Paper.

(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)

(Provisions relating to The Civil Procedure Act (Cap.21) as amended agreed to)

(Provisions relating to the Bankruptcy Act (Cap.53), The Public Order Act (Cap.56), The Penal Code (Cap, 63) and The Protection of Aircraft Act (Cap.68) agreed to)

The Criminal Procedure Code, Cap.75

Mr. Linturi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended in the Schedule by inserting the following new amendments in their proper numerical sequence—

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
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Criminal Procedure Code (Cap. 75)

s. 87 Delete all the words appearing after the word “discharged” in paragraph (a) and substitute therefor the words “and any further or other proceedings against the person on account of the same facts may only be instituted within six months following the discharge”.

Madam Temporary Deputy Chairlady, the amendments are on page 3668 of the Order Paper.

Madam Temporary Deputy Chairlady, why I am proposing this amendment is to align this particular Act to the Constitution because Article 50 of the Constitution makes it a right of every Kenyan citizen charged in a court of law to have a trial commence and concluded within very reasonable time. At the same time, Article 47 of the Constitution makes it a right of every person that is subject to have administrative action that is expeditious, efficient, lawful and within reasonable time.

Madam Temporary Deputy Chairlady, when suspects are released under Section 87(a) I want to make it clear that the prosecution has to provide evidence within, at least, six months just in case they have any fresh evidence that warrants the proceeding of that particular suspect being in court. In the event that they do not bring in the fresh evidence, then this particular suspect should remain discharged because suspects have been having cases hanging on top of their heads for years and it is traumatizing without the prosecution really taking this matter seriously.

(Question of the amendment proposed)

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I will have to oppose the proposal. The reason why Section 87 is used by the prosecutor is because there may be many defects in the case as pleaded before the court at the time. The charge sheet may be defective. There may be for the time being, unavailability of a witness. There may also be other

technical reasons for that. I do not think it is necessary for us to bind the hands of the prosecutor. He may wish to withdraw the charge to change the name of the suspect or the accused. He may also wish to withdraw it to change the amount, the time, the place of the offence or for a million other technical reasons. There is no reason to stop him from charging the following day and so on.

The worries that the hon. Member may have, have already been addressed by the High Court. The High Court has said repeatedly when the prosecutor applies to withdraw the court will record the reasons and may refuse if it believes it is an abuse of the court process. I think we should leave the powers of the prosecutor as they are.

Ms. Karua: Madam Temporary Deputy Chairlady, I appreciate the concern of the hon. Member but I want to oppose this amendment for the simple reason that it cuts both ways. Consider if a murder is committed today, a suspect is taken before the court and the prosecutor realizes they have no evidence but 20 years later concrete evidence is found, and we have seen this in many jurisdictions, it means, forever, you cannot go after that person. We ought to have protection for the suspect in a speedy trial Act. But if you close prosecutions for people discharged under Section 87(a) you might then close very serious offences against the public. It cuts both ways and I would plead that the amendment be rejected.

Mr. Ruto: Madam Temporary Deputy Chairlady, I rise to support the amendment because I am aware that this particular provision of Section 87 has been used in the past to actually harass and suspend certain situations. Six months is adequate enough for new evidence to emerge. If it does not emerge then probably that was a framed-up charge.

Ms. Karua mentioned an extreme case. I do not think the prosecutors will be using the *nolle prosequi* for a murder case. They would investigate much more seriously or postpone the trials. But they cannot just rush to court and say *nolle prosequi* on a murder case. That is too serious. I want to suggest that we agree that six months is enough to complete prosecution.

Mr. George Nyamweya: Thank you, Madam Temporary Deputy Chairlady. The reason I will oppose this is because what we are trying to do now is to try and manage the court itself. The law now does require that before a prosecutor can withdraw any charge, it must be with the concurrence of the court. So, if we are now going to say, as Parliament, that you must do it within six months, we are actually taking over the functions of the court, and yet we are saying that the courts should be independent. Truly, we understand what my friend is saying and many of us have faced similar circumstances previously. That abuse has been handled. In fact, I would like my good cousin here to withdraw this one.

The Assistant Minister for East African Community (Mr. Munya): Madam Temporary Deputy Chairlady, I also oppose the amendment and I plead with my brother, Linturi to withdraw it. These are complex matters that should really be left to the judge who can make a decision on the basis of the application by the prosecutor. So for us to give a timeline is really trying to tie the hands of the court. We may commit injustice by trying to give time limits when sometimes certain investigations and evidence can take many years before the evidence comes out and justice may not be done.

So in this case, I oppose the amendment.

Mr. Baiya: Thank you, Madam Temporary Deputy Chairlady. I also wish to contribute by opposing this amendment. The reason for allowing the Director of Public Prosecution (DPP) to exercise power under that is that there are many circumstances under which this may arise. I believe the proposed amendment has focused only on one aspect, and that is with regard to the rights of the accused person. However, the main idea here is to provide for a mechanism of

administration of justice, and the court system under our Constitution has an overriding supervisory role in the way the prosecutorial power is exercised. As legislators, rather than trying to anticipate all these circumstances, we are much safer to subsume them to the mechanism of court protection where provisions have been validly made. I would, therefore, plead with the Mover of this amendment to kindly withdraw it.

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

*(Provisions relating to the Criminal
Procedure Code (Cap.75) agreed to)*

*(Provisions relating to the Evidence Act (Cap.80),
The Registration of Persons Act (Cap. 107),
The Armed Forces Act (Cap.199),
The Kenya Literature Bureau Act (Cap.209),
The Public Health Act (Cap.242),
The Science and Technology Act (Cap.250),
The Medical Practitioners and Dentists Act (Cap. 253)
and The Kenya Red Cross Society Act (Cap.256)
agreed to)*

The Pyrethrum Act (Cap. 340)

Mr. Mututho: Madam Temporary Deputy Chairlady, the Committee on Agriculture, Livestock and Cooperatives proposed the amendment, but we have since then consulted with the Attorney-General. I have communicated with the Attorney-General and the Minister for Agriculture, and it is generally agreed that the Ministry of Agriculture is consolidating 131 statutes affecting the entire sector into one four viable volumes. Subsequently, we are withdrawing all the amendments touching on agriculture until we come to the main law.

The Temporary Deputy Chairlady (Dr. Laboso): Attorney-General, do you have anything to say?

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, we have reached an understanding with the Chairman of the Committee on Agriculture, Livestock and Cooperatives that I shall withdraw all the proposed amendments relating to the agricultural sector. He and his Members will withdraw all the amendments thereto. We will present to the House a comprehensive agricultural reform Bill.

The Temporary Deputy Chairlady (Dr. Laboso): Attorney-General, are you, therefore, withdrawing the whole of the Pyrethrum Act from the Bill? We just need that clarification; are you withdrawing all amendments or all amendments relating to the agriculture sector?

(Several hon. Members stood up in their places)

Order, hon. Members! We cannot all be upstanding.

Mrs. Shebesh: Madam Temporary Deputy Chairlady, yet again I would like to ask for the same clarification I sought earlier, whether Mr. Mututho is seeking to withdraw the

amendments as an individual or as the Chairman of the Committee. In your earlier ruling, you said this is business of the House. I believe if you are going with that earlier ruling this is something that we can be allowed to debate if we do not agree with Mr. Mututho's withdrawal.

Ms. Karua: On a point of order, Madam Temporary Deputy Chairlady. It would be grossly unfair and unprocedural for the Attorney-General to withdraw things he never gave notice of. We have amendments and this now is the property of the House. Whatever agreement he has with Mr. Mututho relates to the Mututho amendments. I have two amendments, one to the Tea Act and another to Sugar Act, and they are now the property of the House. We debated them and we must be allowed to prosecute our amendments. That is the procedure.

The Temporary Deputy Chairlady (Dr. Laboso): Attorney-General, allow Members to get further clarifications.

Mr. Kioni: Madam Temporary Deputy Chairlady, I was just going to propose that the Attorney-General deals with specific Acts as we come across them, instead of a blanket withdrawal. He should now deal with the Pyrethrum Act. If he is withdrawing that and we are in concurrence, as a House, then we move on.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members and Attorney-General, upon guidance you cannot withdraw amendments wholesale.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I was going to clarify that what I was informing Members about was that a certain agreement had been arrived at, but I was going to leave the procedure in your good hands. I agree entirely that we should go item by item. Now we are on the Pyrethrum Act.

Mr. Chepkitony: Madam Temporary Deputy Chairlady, I am a Member of the Committee on Agriculture, Livestock and Cooperatives and I am the Vice-Chairman. I want to support the views given by my Chairman because we are currently undertaking a review of all the agricultural Acts. What the Chairman has said is correct.

Mr. C. Kilonzo: Madam Temporary Chairlady, in as much as we appreciate the sentiments by the Attorney-General, the Committee Chairman and the Vice-Chairman--- I do not know whether I have the ears of the Chairlady. In as much as we want to go by their sentiments, I think the Chairman and his team should, at least, be courteous and inform other Members who had amendments to these particular Acts; they should not just come and ambush other Members. As earlier stated, let us move one by one; if Members have issues we will consider them. If the Attorney-General wants to withdraw his amendments, that is up to him.

Dr. Kones: Madam Temporary Deputy Chairlady, I do not want to go into the debate of the Committee. I do not think it is right for the Attorney-General, at this time, to withdraw the amendments which are here. Concerning the amendments to the Tea Act, I remember the Minister for Agriculture had said she was waiting for the Miscellaneous Amendments Bill that we passed last time to come into effect. For the Attorney-General to, again, withdraw those amendments which are meant to make the law operational, I think it is going to be dangerous to the sector.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I think it is important for the House to appreciate one fact, that the Statute Law (Miscellaneous Amendments) Bill has been brought to amend specific pieces of legislation that were thought important to amend at some particular point in time. Now, since its publication a number of things have been overtaken by events, including within the agricultural sector. A decision has been taken that all the agricultural laws must be comprehensively reviewed and brought as one law to this House. Therefore, it does not help to use the time of Parliament now to make an

amendment that will tomorrow be redundant when we then pass the comprehensive law. It is on that basis that---

Ms. Karua: On a point of order, Madam Temporary Deputy Chairlady. Is it in order for Mr. Kimunya to anticipate debate? We have not moved any amendment.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I was not anticipating any debate. I was explaining the rationale for removal of some of the amendments. This is a Government Bill; the Government brought these amendments because at that time it was felt that there was need to amend certain laws. Since then that need has been overtaken by events, and now the decision is to bring here a comprehensive Bill---

Mr. Kabogo: On a point of order, Madam Temporary Deputy Chairlady. I think we need to come back to what it is we want to do. The issue is an amendment by Mr. Mututho. If he has withdrawn that amendment and anybody is against it let them say why they are against it. The Attorney-General has withdrawn his amendment to the Pyrethrum Bill and we should move on.

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! Attorney-General, we have been guided that you cannot withdraw amendments on the Floor, but you can move a Motion to delete. We are going item by item. It is not a blanket withdrawal.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chair, I welcome your guidance on this matter. As regards the proposed amendments to Section 16 of the Pyrethrum Bill, I beg to move that it be deleted.

(Question of the amendment proposed)

Mrs. Shebesh: On a point of order, Madam Temporary Deputy Chair. I want again to get clarity on your ruling earlier when Mr. Baiya withdrew in concurrence with the Attorney-General. You have now introduced another method of withdrawing. Can you just make it clear whether you are changing your ruling from earlier ---

(Mr. Kimunya consulted loudly)

I am talking to the Chair and not to Mr. Kimunya. Hon. Kimunya, I do not take advice from you; I take from the Back Bench. Can you make it clear why you are changing your ruling twice on how the Attorney-General with his chairmen who he was talking to last night can withdraw things here when committees have not agreed?

The Temporary Deputy Chair (Dr. Laboso): Your point of order has been made.

Mr. Mututho: On a point of order, Madam Temporary Deputy Chair. Here, we have hon. Members, we do not have a Mr. Kimunya in the first instance. Could the hon. Member appreciate that it is hon. Kimunya, and if she has any issues with him, then she should come up and say and proceed from there.

The Temporary Deputy Chair (Dr. Laboso): A clarification, hon. Members. The earlier ruling was on hon. Baiya's proposed amendment and not on the provisions of the Act. This Statute is the property of the Attorney-General.

Mr. Kioni: Madam Temporary Deputy Chair, I want to support that amendment by the Attorney-General – the deletion of that amendment – because in essence, we are looking for liberalization of the pyrethrum industry and this amendment intended to control it further. So we support the deletion of that amendment.

Mr. Ruto: Madam Temporary Deputy Chair, I further wish to support the withdrawal of all these Bills because all these agriculture issues are matters that have to be addressed with the clear understanding that agriculture is a function of the counties. It is no longer an issue of the Central Government. I think it is proper that all of them be withdrawn so that we relook at the entire sector.

(The proposed amendment to provisions relating to The Pyrethrum Act was deleted)

The Tea Act (Cap. 343)

Mr. Mututho: Madam Temporary Deputy Chair, I want to plead with hon. Members to be patient with each other. You cannot have it all your way just to push your own things. Just understand it this way, Mrs. Shebesh. You have even tried to imply that I do not consult my Committee and the Members are here. We take collective decisions and we stand by our decisions. We are not in the Departmental Committee on Justice and Legal Affairs where you keep on quarreling every other day. We take a position that all these laws must be consolidated and we have one viable law here which will be functional and it is a waste of Parliament's time to come and tamper with these things yet we are coming to look again at the 131 statutes that have been consolidated.

With those remarks, I beg to withdraw.

(The proposed amendment by hon. Mututho to provisions of the Tea Act withdrawn)

Ms. Karua: Madam Temporary Deputy Chair, I have an amendment to the Tea Act but if the Minister says that he is deleting because my amendment was deleting, I will have no problem so I will let him come first.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chair, I would wish that the proposed amendments to the Tea Act be deleted for the reasons that have already been given and further amplified by Mr. Kimunya. These proposals were made before the agriculture sector had settled on its reform agenda. It has now finalized; Bills are ready, they are about to be published and they are comprehensive Bills.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chair, I also wish to support the deletion and in supporting the deletion, I want to agree with the Attorney-General on his sentiments. And further, I want to encourage committees not to waste our time and bring amendments which are not necessary. Like the Departmental Committee on Agriculture, Livestock and Cooperatives should not bring us unnecessary amendments and also waste paper.

Dr. Kones: Madam Temporary Deputy Chair, I was going to oppose the deletion but---

(Loud consultations)

The Temporary Deputy Chair (Dr. Laboso): Order, hon. Members! The consultations are too loud.

Dr. Kones: Madam Temporary Deputy Chair, I was going to oppose the proposal by the Attorney-General but he has clarified that Bills have already been published because the amendment that has been proposed here to give effect to the Act which we passed in this House last year is so urgent. If indeed it is true that those Bills have been consolidated and soon they are going to be in this House, then I have no problem with that.

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

(The provisions relating to The Tea Act were accordingly deleted)

*(The provisions relating to The Prevention of
Cruelty to Animals Act agreed to)*

The Animal Diseases Act (Cap. 364)

Mr. Ethuro: Madam Temporary Deputy Chair, you can assist me on the page of the Bill.

The Temporary Deputy Chair (Dr. Laboso): It is page 3674 on the Order Paper and page 1105 in the Bill.

Mr. Ethuro: Madam Temporary Deputy Chair, I beg to move:

THAT, in the amendment proposed to the proviso to section 12(1) of the Animal Diseases Act (Cap. 364) by deleting the words “one-half of its” appearing after the words “notifiable disease” and substituting therefor the word “the”.

The simple reason is that, when the State kills the animals on the basis of notifiable diseases and these are diseases that should not be there in the first place, it is, basically, a failure by the Government to ensure surveillance and to ensure that these animals are free from disease. This mainly affects the pastoralists’ areas. So it is for the Government to give value. But when it is just mere suspicion, they give full value but these ones would have been killed. We want the responsibility and the pain of failure by the Government which has done for a long time---

(Loud consultations)

The Temporary Deputy Chair (Dr. Laboso): Order, hon. Members! The consultations are too high.

Mr. Ethuro: Madam Temporary Deputy Chair, I am just trying to protect the pastoralists’ livestock that notifiable diseases are diseases that should be eradicated in the first place. Secondly, the Government is under obligation to ensure they do not even appear in any country. So, the liability on the Government should be so severe that they will take the earliest opportunity to ensure that all those animals are vaccinated so that in the unlikely event that they die from notifiable diseases, then the Government must compensate full value because they will have to kill all of them.

Mr. Mututho: Madam Temporary Deputy Chairlady, there are over eight serious diseases which are not listed as notifiable diseases. It is for these, among very many other reasons, that those laws that are generally said to be archaic, including Cap.320, which demands that here in Nairobi, you cannot sell eggs between 6.00 and 6.00 if you are an African. I have said this one before. All agricultural sector laws are being consolidated within the next two

weeks. The notifiable situation, which the hon. Member has brought around, has been dealt with, even in greater depths by that particular aspect. I would like to plead with the House to give – and I do not speak for the Executive – these new laws a chance. It takes into account more punitive measures for people who meddle around with notifiable diseases, identify all of them--- There are over 30 to 60 new notifiable diseases and so forth.

In that respect, I would like to plead with hon. Ethuro to withdraw that particular amendment and give us just this vacation and then we will have a new law on notifiable diseases.

Mr. Ethuro: Madam Temporary Deputy Chairlady, I have a lot of respect for the Chairman of the Departmental Committee on Agriculture, Livestock and Co-operatives. But these proposals were not brought by him. I am dealing with the Bill. I am not amending his proposals. So, my amendment stands.

(Question of the amendment proposed)

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

(The provisions relating to the Animal Diseases Act (Cap. 364) agreed to)

The Constitutional Offices Remuneration Act (Cap.423)

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, in accordance with the undertaking I had made to the House earlier, this is one of the proposed changes that I would like to delete.

I propose that this should be deleted.

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

(The provisions relating to the Constitutional Offices Remuneration Act, Cap.423 were accordingly deleted)

(The provisions relating to the Prevention of Fraud (Investment) Act, 1997, the Narcotic Drugs and Psychotropic Substances Act, 1994 and The National Crime Research Centre Act, 1997 agreed to)

The Kenya Information and Communications Act, 1998

Mr. Ethuro: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Act be amended by-

(a) inserting the following new amendments before the amendment to section 25-

S.2 Insert the following new definitions in their proper alphabetical sequence-

“act of vandalism” means any wilful, negligent, reckless or malicious act of stealing, destroying, damaging or breaking into telecommunication apparatus, lines, installations, hardware, software or plant used for telecommunication services and systems.

“vandalize” means to commit an act of vandalism.

(b) by inserting the following new amendment after the amendment proposed to section 27(2)-
S.32

Delete section 32 and substitute therefor the following new section-
32-

A person who willfully, with intent to-

- (a) prevent, obstruct or delay transmission of any message;
 - (b) interfere with the management or operation of a telecommunication apparatus; or
 - (c) unlawfully intercept or acquaint himself or herself with the contents of any message; vandalizes, damages, removes, tampers with, touches or in any other way whatsoever interferes with any telecommunication apparatus or telecommunication line, post, or anything whatsoever, being part of or used in or about any licensed telecommunication system, commits an offence and shall be liable, on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than ten years or to both.
- (d) by deleting the proposed new section 32A and substituting therefor the following new section 32A-

Severing with intent to steal **32A.** A person who, with intent to steal, severs any telecommunication apparatus or other works under the control of a licensee, commits an offence and is liable, on conviction, to a fine of not less than five million shillings or to imprisonment for a term of not less than ten years or to both.

I wish the House really appreciates what some of us are doing. You cannot make us work hard to come and defeat our amendments. Anyway, the Bill proposes the kind of punishment to give in terms of vandalism. But the Bill itself has not gone ahead.

The Temporary Deputy Chairlady (Dr. Laboso): Give the page to the Members so that they can follow.

Mr. Ethuro: My amendment is on page 3674 of the Order Paper and the Bill that the amendment is proposing to amend is on the Bill 1108 - Kenya Information and Communications Act.

Basically, we are taking it a bit further than what the Minister had proposed. That is because he captured the spirit. But we want to give it the real teeth in terms of the sentence. It should not be less than Kshs5 million and not more than Kshs10 million. We are reducing from life imprisonment. We have also defined the kind of acts that will constitute vandalism in the definition of the Act.

Madam Temporary Deputy Chairlady, this is good for the crop owners but where livestock is concerned, *sio sawa*.

(Question of the amendment proposed)

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I want to congratulate the Member for refining these very good ideas. I want to say that we concur and have no problem with that proposal.

*(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)*

*(Provisions relating to the Kenya Information and Communications Act, 1998 as amended,
agreed to)*

(Provisions relating to the Children Act, 2001 agreed to)

The Sugar Act, 2001

The Attorney-General (Prof. Muigai): Madam Temporary Chairlady, as I indicated earlier to the House, and for those reasons, I move to delete this proposed amendment.

Ms. Karua: On a point of order, Madam Temporary Deputy Chairlady.

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

Ms. Karua: I would like to seek to be given time to move my amendment on the Sugar Act before the deletion by the Attorney General - whatever wishes to delete.

The Temporary Deputy Chairlady (Dr. Laboso): Yes, I will give you permission to explain what you want to do.

Ms. Karua: Madam Temporary Deputy Chairlady, my amendment is on page 3672 and it relates to Section 31 of the Sugar Act.

Dr. Khalwale: On a point of order, Madam Temporary Deputy Chairlady.

Ms. Karua: I am also on a point of order. My colleagues cannot anticipate. I have not even said what I am moving.

The Temporary Deputy Chairlady (Dr. Laboso): Ms. Karua is on a point of order, hon. Khalwale. Are you moving or you are on a point of order?

Ms. Karua: Madam Temporary Deputy Chairlady, I have an amendment to the Sugar Act and the deletion will affect the amendment. I want to state on this point of order what the amendment says so that the Chair can give a ruling.

I am introducing a Section 3(A) to the Sugar Act. It is a new Section. I am suggesting that the judgement of a Sugar Tribunal be executed. It should be filed in the High Court and executed as a judgement of the Court. Even though the Minister is moving and he is going to bring a comprehensive Act, it is a very terrible situation that all the sugar farmers cannot execute judgement against the sugar company and they have lots of judgements. So, I am asking the Attorney General to let this go on because asking the sugar farmers to wait for another three to four months on an unpublished Bill, which probably has not even gone through Cabinet--- It is not fair. I am, therefore, asking for your direction that I be allowed to move my amendment before the Attorney General's deletion. Then, he can delete the balance of his amendments.

The Temporary Deputy Chairlady (Dr. Laboso): Ms. Karua, the procedure is that the Attorney-General moves first. Once he has moved and the House passes it, it is a deletion and it will stand deleted. Therefore, you will not be able to move your amendment. If the House passes

it as it is, then it shall stand deleted. So, allow the Attorney-General to move the amendment first.

Ms. Karua: Madam Temporary Deputy Chairlady, I want to seek your guidance. Is it possible even if he deletes it to introduce the section 3(a) based on his earlier proposal? I have no issues with the sections he is deleting because mine is a new introduction. Is it possible to debate it after his deletion?

The Temporary Deputy Chairlady (Dr. Laboso): The Attorney-General has already moved the deletion. Therefore, it will not be available to be amended.

Dr. Khalwale: Madam Temporary Deputy Chairlady, I want to support the Attorney-General's intention to delete this. I recall that only a few weeks ago, the Kenya Sugar Board held a workshop for all hon. Members of Parliament who were willing to attend, especially for those of us who come from the sugarcane belt. They walked us through an intended amendment Bill that will address the problem globally. So, I would rather that we go the Attorney-General's way to have a comprehensive review.

Madam Temporary Deputy Chair, I support the Attorney-General.

(Applause)

(Question of the amendment proposed)

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

(The provisions relating to the Sugar Act were accordingly deleted)

(Provisions relating to the Anti-Corruption and Economic Crimes Act, 2003 agreed to)

The Sexual Offences Act, 2006

Dr. Khalwale: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended in the proposed amendment to the Sexual Offences Act, 2006 Act (No. 3 of 2006) on page 1116 by deleting the proposed amendment to section 38.

Madam Temporary Deputy Chairlady, this amendment is on page 1116 of The Statute Law (Miscellaneous Amendments) Bill and on the Order Paper is on page 3673. The intention of this Bill is to delete Section 38 of the Sexual Offences Act---

The Temporary Deputy Chairlady (Dr. Laboso): You need to explain the import of your deletion.

Dr. Khalwale: Madam Temporary Deputy Chairlady, I want to draw your attention to the provisions of the Sexual Offences Act. This is the section that provides insulation against prosecution of people who want to approach the court based on false allegations.

(Applause)

Madam Temporary Deputy Chairlady, with your permission, the insulation reads as follows.

“Any person who makes false allegations against any other person---”

(Loud consultations)

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

Dr. Khalwale: Thank you, Madam Temporary Deputy Chairlady. It provide as follows:-

“Any person who makes false allegations against another person to the effect that the person has committed an offence under the Sexual Offences Act, is guilty of an offence and shall be liable to punishment equal to that of the offence complained of.”

(Applause)

Madam Temporary Deputy Chair, I am begging the House to realize the import of this; that if we allow people who have no basis in their accusation, very many women will be falsely accused of having attempted to rape boys and very many men will be falsely accused of having attempted to rape women. We would like people who approach court for this kind of offence to be guided purely by fact. I, therefore, move that this amendment be deleted.

(Applause)

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Thank you, Madam Temporary Deputy Chairlady. It is my pleasure to go on record as opposing that amendment. In opposing the amendment by Dr. Khalwale, I want to indicate that I have worked several years with children. I founded the CRADLE, a Children’s Foundation. I want to say that a majority of cases of rape are of children that are aged between 12 and 14 years. The majority of the people who are raped are our children, they are not women. The women who are raped are the minority.

Madam Temporary Deputy Chairlady, I want to indicate that it is very exciting to come to the House and make exciting statements saying “let us deal with the women,” but majority of the people who are raped are children.

Indeed, I want to indicate that I, on two occasions, have received letters where I have been threatened with prosecution for defending a seven-year old child whose mother took the case to court because the child was defiled.

Madam Temporary Deputy Chairlady, there are laws where when people actually commit perjury under our criminal law, they can be accused. What this law has done is that when you have children who are raped, the mothers do not come forward. Unfortunately, I was not here when you were moving the Second Reading. I wanted to bring the statistics with cases of people with children who had been raped.

I beg to oppose.

The Minister for Nairobi Metropolitan Development (Mr. Jamleck Kamau): Madam Temporary Deputy Chairlady, I think it is important for us to understand what this Section 38 talks about. Section 38 is purely on false allegations and nothing else. If somebody is accused by somebody else of defiling or raping falsely, he must be held liable. So, there is no way we can delete that section.

Madam Temporary Deputy Chairlady, I support Dr. Khalwale’s amendment.

Ms. Karua: Madam Temporary Deputy Chairlady, I want to agree with hon. Jamleck Kamau, but oppose Dr. Khalwale's amendment.

Madam Temporary Deputy Chairlady, the reason this House should support the amendment by the Attorney General as it is, is that already we have sufficient laws. Anybody who gives false information in court is charged with an offence called perjury. Whether you accused somebody of murder, rape, defilement or any other offence, you will be guilty of perjury. If you lie to a police officer to cause them to act against any other person, you are also guilty of giving false information to a police officer. Section 38 of the Section Offences Act, as it stands today, is unconstitutional. It is subjecting those complaining of sexual offences to double jeopardy. Already, there are offences dealing with it. It is discriminating against those who complain of sexual offences, while all other complainants of all other offences are not being put to the same threshold. Let us think of our children and all the sexual predators who are lying loose; raping mothers and grandmothers and defiling and damaging children. I want to plead with the hon. Members that we have sufficient laws dealing with them. Let us allow this Section to be deleted and oppose Dr. Khalwale's amendment.

The Minister for Trade (Mr. Wetangula): Madam Temporary Deputy Chairlady, I agree with hon. Karua and hon. Millie.

Madam Temporary Deputy Chairperson, we have very comprehensive laws on perjury. Read the Evidence Act and you will see what it means. The amendment that brought the Section that the Attorney General is deleting was brought by hon. Justin Muturi and we had very serious arguments on the Floor. We opposed it then and supported the deletion today. This is because we should not make it impossible for aggrieved persons to step forward and give information. The line between false information and a collapsed case is very thin. People legitimately go to complain and good lawyers come and destroy the case, then you turn on them and say that you gave false information because they were destroyed in court, this is not fair.

Madam Temporary Deputy Chairlady, I oppose the amendment proposed and support the Attorney General's amendment deleting the Section.

Mr. Duale: Madam Temporary Deputy Chairlady, I support Dr. Khalwale's position.

Madam Temporary Deputy Chairlady, let us not misinform the nation and House. We are talking about giving falsehood and sex predators have no exclusive gender parity. We have sex predators from both sides of the gender. There are those who use the law for their mischievous gains. We have seen cases where somebody goes to court and uses the media to defame another person. So, if you go to court, and I agree with my friend, hon. Wetangula, and give falsehood and it is proved so, you must suffer the consequences, just like the other person.

Madam Temporary Deputy Chairlady, I support the amendment by Dr. Khalwale.

Mr. Abdikadir: Madam Temporary Deputy Chairlady, while I respect Dr. Khalwale very much, on this occasion I must disagree with him.

Madam Temporary Deputy Chairlady, laws deal with solving problems. We have an epidemic of rape. We do not have an epidemic of people accusing others falsely. At the point in time when that becomes a problem, we will deal with it. In any event, we have laws to deal with it. So, let us aim towards caution on the side of giving young people and women and those who are victims the ability to be supported by the law.

Madam Temporary Deputy Chairlady, I oppose.

Mr. Mbadi: Madam Temporary Deputy Chairlady, I also oppose Dr. Khalwale's amendment.

Madam Temporary Deputy Chairperson, I think we need to approach this thing with a sober mind. The issue of rape in this country is just alarming and we must put our feet on the ground. The moment you start criminalizing giving information and terming it false information, you are going to discourage honest people who feel offended by acts of criminality and want to report these cases. I would urge my male colleagues to avoid this male chauvinism and think about our daughters. This male chauvinism will not take us far.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I rise on this occasion to support Dr. Khalwale.

Madam Temporary Deputy Chairperson, it is important that the hon. Members appreciate that when this amendment was brought in this House – and it is important to use institutional memory – it was the deal breaker in terms of the passage of the Sexual Offences Act. This is because the Sexual Offences Act came with some very severe penalties and handling of people who have been accused and the hon. Members said that we are exposing either men or women to anyone they disagree with. There was even the issue of chemical castration. As a result, when we sat in this House, we said: “What is the only safeguard available for people who use this law maliciously to get other people to suffer, when they have not committed those offences?” I know that the issue of perjury has been brought in and it is important that we appreciate that unless and until a similar amendment has been brought regarding the issue to do with perjury, so that people feel protected, then I suppose---

(Loud consultations)

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

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, let us have this Act staying as it is, because so far, we have been deterred from giving false information and nobody has been denied the opportunity to actually do what he is supposed to do.

The Temporary Deputy Chairlady (Dr. Laboso): Order! Can we allow the Attorney General to explain?

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairperson, I was making my point and I am happy that we know that this law was passed by this very House and it is with the wisdom with this House that we are now challenging it.

The Attorney General (Prof. Muigai): Madam Temporary Deputy Chairperson, I need to explain something. First, I must appreciate being on the same side as hon. Millie and hon. Mbadi on this issue.

Madam Temporary Deputy Chairperson, my predecessor, hon. Amos Wako, upon the coming into force of this Sexual Offence Act, set up a Committee chaired by a retired Judge of Appeal, the Lady Justice Effy Awour. This Committee has been investigating the question of operationalising the Act and reported to me---

(Loud consultations)

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

Continue, hon. Attorney General!

The Attorney General (Prof. Muigai): Madam Temporary Deputy Chairlady, I have your protection.

Madam Temporary Deputy Chairlady, it became very clear, from all the research done by this very distinguished committee, that this provision, which was enacted in good faith, had become a hindrance. In many police stations in many places where victims of sexual assault got to complain, they are told by the officers receiving their complaints: “Do you know that if you do not have enough evidence on this case, you will go in for the period that your attacker could have gone in for?” This is a very serious issue. Therefore, I want to assure hon. Members that we did not pluck this proposal from the air. This is a proposal that is based on empirical evidence by a distinguished committee.

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I want, of course, to oppose the amendment by hon. Dr. Boni Khalwale and also bring to the attention of this House that apart from the fact that this anomaly affects children, if you look at the Report that was written by the women’s organizations after the post election violence, you will see that the main victims of rape during this time are women who continue to live in camps; they identified police officers who were only moved from one police station to another. This is a true reflection of why this particular provision has been misused by police officers.

The Minister for Trade (Mr. Wetangula): On a point of information.

Mrs. Shebesh: I will accept the information.

The Minister for Trade (Mr. Wetangula): Thank you, Madam Temporary Deputy Chairlady. I would like to inform the hon. Member that this is tantamount to wrongly profiling sexual offences. There is not a single criminal act in this country, in any law, where there is a provision that when you complain that a crime has been committed, you stand a risk of going to jail equal to the criminal you are complaining against except this one. This is wrongly profiling a crime.

(Applause)

Mrs. Shebesh: Madam Temporary Deputy Chairlady, I accept that information and I am glad. However, I would like to say and emphasize that that provision, as the Attorney-General has said, is currently being misused by the security system in this country and that is on record in terms of investigations.

Mr. Namwamba: Madam Temporary Deputy Chairlady, I am really shocked. I am flabbergasted by the attitude of hon. Members to this amendment. It is shocking to hear hon. Kimunya, a senior respected Member of this House, justifying this by reason of a history that has been overtaken by our new Constitution. I want to oppose this amendment and urge the House to wake up to the realities of new Kenya. The fears that are being expressed about arrested and accused persons--- They need to know that the Constitution provides excellent protection in terms of arrested persons. If you look at Article 48, with regard to access to justice and Article 49 on the rights of arrested persons, you will see a whole raft of protection that would speak to any fears that may have informed the history that hon. Kimunya may want us to use to make a decision on this matter. There is also Article 50 on fair hearing, and we have no reason to fear to stand up for women and girls in this country who are victims of sex pests.

This House has a grand opportunity to stand up and speak for the voiceless thousands out there who are waiting for a firm voice that can bring the realities of the new Constitution into their lives.

I oppose this amendment, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I think we have ventilated on this issue. This is Third Reading.

Yes, the Chairman of the Committee on Equal Opportunities.

Mr. Affey: Madam Temporary Deputy Chairlady, I want to thank you because you have recognized me as the Chairman of the Committee on Equal Opportunities.

I oppose this amendment completely. Anybody who supports this amendment attempts to intimidate the women of this country and, perhaps is a potential rapist. These are potential rapists.

(Loud consultations)

Yes, they are potential rapists.

Mr. C. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady. Is it in order for a Chairman of a Committee to say that anybody opposing his view is a potential rapist? He either withdraws or---

The Temporary Deputy Chairlady (Dr. Laboso): The hon. Chairman, you need to withdraw that statement. It is not fair for you to call Members---

Order! Yes, the hon. Minister for Justice, National Cohesion and Constitutional Affairs.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I wish to oppose the amendment. In a country where almost every day you are reading of a rape case--- If you did not see the story of a priest raping--- Last week there was another story of another priest defiling a little girl. To come forward to lodge a complaint that you have been raped is not an easy thing. However, to make it so dangerous for you to report, the burden becomes too much on the victim. We are saying that the answer lies in perhaps strengthening the provisions on perjury---

Hon. Attorney-General, there is genuine concern from Members that the law on perjury might be weak but that should not translate into putting such a burden on the victims of rape whom we have in this country every day.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we cannot go on with one amendment for too long. Allow me to put the question. I have given you enough time to ventilate.

Dr. Khalwale: Madam Temporary Deputy Chairlady, very important issues have been raised by hon. Members some of them who are prominent lawyers. Allow me to persuade them. I am one of the least people who can turn against women because in my own family, God has blessed me with many girls. I know the challenge of this. However, speaking about what hon. Wetangula spoke about as a lawyer, on the issue of perjury, the lawyer knows that he is misleading us. The punishment that accompanies perjury is a mere six months or so but the point that he has missed is that in Section 38, the one we are debating does not contemplate a situation whereby punishment would be meted to anybody who approaches a police station or a court based on facts. It only punishes lies.

(Applause)

Number two, the Attorney-General has complained that unless he removes Section 38 he would not know how to deal with rogue police officers. I want to refer you to Section 47(a) of the Sexual Offences Act. Section 47(a) which is right where you are gives you and the Chief

Justice an opportunity to draw rules and regulations that can guide the kind of officers like those who are misleading. So, the law is adequate the way it is.

Finally, when this law was brought by hon. Justice Njoki Ndung'u, at that time, rapists were still being jailed. The reason why she thought of bringing this law is because we wanted to raise the bar. We supported it and thought that now that the standard was very high, we had better put in an insulation mechanism.

The Assistant Minister for Tourism (Ms. Mbarire): Madam Temporary Deputy Chairlady, my concern here is that hon. Dr. Khalwale is misleading this House. You know very well that rape never happens in public places. Most of the rape happens in private places; in bushes. If you will say that if you lie and the person to determine that lies--- Anybody can come and say that you are lying. A little girl can be raped in a bush on her way from her school. That is a sexual offence and this young girl has to prove beyond any reasonable doubt that she was raped. The man would just say that it is a lie. Suppose the court takes it to be a lie and the girl is in trouble, what are we doing? This is intimidating people from reporting cases because we know that rape happens in privacy.

Even Dr. Khalwale's child might be raped and she has to prove that she is not lying, yet this was done in private. How would she prove that? Can we protect the girls of this country, the little boys of this country and the women of this country? Let us not allow ourselves to think narrowly. It could be your daughter, son, or wife, for God's sake! Now, for heaven's sake do not make it impossible for us to deal with this heinous crime of rape because of little fears.

Dr. Khalwale: Madam Temporary Deputy Chairlady, on that point of order, I want to agree with the hon. Member entirely.

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

Dr. Khalwale: You will inform me after I make my point. I want to agree with hon. Cecily Mbarire entirely when she says that rape takes place under the cover of something. Most of the criminal activities are not normally done in public. People murder others in private; people steal in private; and people do many things in private, so that they are not caught. That is why these things are called crimes!

Secondly, hon. Mbarire cannot attempt to mislead the House that if you rape a woman in your car you will not be discovered. Be up to date! You are a dot com! You must know that there is something called DNA test evidence. This kind of evidence will sort out all these things.

I would like to be informed by hon. Charles Kilonzo.

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, I want to inform my good friend, as I support, that contrary to what the hon. Minister Wetangula has said, that there are other laws to punish people who give false evidence, even before this Sexual Offences Act came into force, indeed, rapists were being sentenced and locked up.

Secondly, I want to inform the hon. Member that particular hon. Members who are here now are the ones who were in the forefront in the last Parliament to suggest that men be castrated, starting with none other hon. Cecily Mbarire. We must also think about the boy child. This is because girls are on record making false allegations. So, it is very simple.

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! We have ventilated on this enough. It is not debate time. It is Committee Stage. I will, therefore, put the Question for the House to decide.

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

*(Provisions relating to The Sexual Offences Act,
2006, agreed to)*

The Energy Act, 2006

Mr. Ethuro: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Schedule to the Bill be amended-

in the amendments proposed to the Energy Act, 2006 (No. 12 of 2006)-

(a) by inserting the following amendments before the amendment proposed to section 23(1)-

S. 2 Delete the words “and vessels” appearing in the definition of the term “apparatus” and substitute therefor the words “vessels, pipeline, electrical plants and equipment”.

Insert the following new definitions in their proper alphabetical sequence-

“act of vandalism” means any willful, negligent, reckless or malicious act aimed at destroying or damaging an apparatus.

“vandalize” means to commit an act of vandalism.

(b) by inserting the following amendment after the amendment proposed to section 23(1)-

64(4) Delete sub-section (4) of section 64 and substitute therefor the following new sub-section-

(4) A person who willfully or with intent to interfere with the management or operation of the apparatus of a licensee-

(a) extinguishes or causes to be extinguished, any public lamps;

(b) vandalizes or damages any works of or under the control of a licensee;

(c) steals or, with intent to steal, breaks, throws down or damages any works of or under the control of a licensee; or

(d) steals, illegally trades or improperly uses any of the electrical energy supplied by a licensee,

commits an offence, and shall be liable, on conviction, to a fine of not less than five million shillings or to imprisonment for a term of not less than ten years, or both.

95(3) Insert the following new paragraph after paragraph (b)-

(c) diverts for sale in Kenya goods destined for other markets;

100(1) Insert the following new paragraph after paragraph (e)-

(f) being the owner or operator of a bulk storage facility for petroleum products, service station, filling station or storage depot, hoards petroleum products;

(d) by deleting the proposed new section 64A and substituting therefor the following new section 64A - Severing with intent to steal

64A. A person who, with intent to steal, severs any conductor, transformer or part thereof, insulator, tower, reactor, jumper or other installations under the control of a licensee, commits an offence and is liable, on conviction, to a fine of not less than five million shillings or to imprisonment for a term of not less than ten years, or to both.

Madam Temporary Deputy Chairlady, this is for the same reasons that I articulated in the Kenya Information and Communications Act.

(Question of the amendment proposed)

The Attorney-General (Mr. Muigai): Madam Temporary Chairlady, again, I want to thank the hon. Member for very thoughtful proposals and for the same reasons I gave earlier, we are in entire agreement with him. We support this proposed amendments to the amendment.

(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)

(Provisions relating to the Energy Act, 2006, as amended agreed to)

Witness Protection Act, 2006

Mr. Baiya: Madam Temporary Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule-

(e) by deleting the proposed amendment to section 3A of the Witness Protection Act, 2006 (No. 16 of 2006);

The reason is that the amendment seeks to exempt the Witness Protection Agency from the procedure of accountability. The Witness Protection Agency requires confidentiality for purposes of discharging its day to day mandate, but not for the purpose of accountability to the public. For that reason, the amendment is not helpful and we are opposing it.

(Question of the amendment proposed)

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

*(The proposals relating to the Witness Protection Act,
2006, were accordingly deleted)*

(The proposals relating to the Labour Institutions Act, agreed to)

The Constituencies Development Fund (Amendment) Act, 2007

Mr. Ethuro: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Section 1 of the Constituencies Development Fund (Amendment) Act, 2007 be amended by deleting the words “1st December, 2007” and substituting therefor the words “30th October, 2007.”

This is for the same reasons the Attorney-General explained in his amendment. But I wanted to be sure of the timelines and because the publication date is an automatic one compared to the 1st December he is putting.

(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 provisions relating to the Constituencies Development
Act as amended, agreed to)*

The Truth, Justice and Reconciliation Act, 2008

The Minister for Justice, National Cohesion and Constitutional (Mr. Wamalwa):
Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended in the proposed amendments to the Truth, Justice and Reconciliation Act, 2008 on page 1118 by deleting the proposed amendment to Section 52(1).

Madam Temporary Deputy Chairlady, the amendment is on page 3661. That will give back the winding up period as provided under that section to remain three months instead of the 45 days we had proposed. So, I am proposing that this be deleted. As we speak, the TJRC is currently in the process of writing their report. They were supposed to have handed in this report on 3rd of May but they were unable to do that and they are asking that time be extended which will be three months from May and by deleting this, after the three months, it will allow them to have the winding up period of three months.

(Question of the amendment proposed)

Mr. Baiya: Madam Temporary Deputy Chairlady, we had as a Committee the same proposal and I am happy that the Minister has decided to proceed and we are agreeable.

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

*(The provisions relating to the Truth, Justice and Reconciliation
Commission Act, 2008, as amended agreed to)*

The National Cohesion and Integration Act, 2008

Mr. Ethuro: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by deleting the amendment proposed to Section 10 of the National Cohesion and Integration Act, 2008.

Madam Temporary Deputy Chairlady, this is on page 3676 on the Order Paper. I ask hon. Baiya to assist me.

Mr. Baiya: Madam Temporary Deputy Chairlady, the same proposal by hon. Ethuro has also been carried by the Committee. It is on page 3663 on the Order Paper and it is also on page

1118 of the Statute Law Miscellaneous Bill. In this amendment, the Attorney-General seeks to change the re-appointment. It is proposing a re-appointment under sub-section 1, which shall be by the President by a notice published in the Gazette. That is for the members of the National Cohesion and Integration Commission. We are saying that we are objecting to that mode of appointment on the basis that it is not constitutional in terms of independent bodies. They are supposed to be competitive, open and transparent.

(Question of the amendment proposed)

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, the thinking behind this was that these persons have already been vetted by this House and they are being reappointed to a further term. If they have misconducted themselves during their first term, there are provisions for their removal. So, the assumption was that if they have conducted themselves properly to the end of their first term and deserve re-approval, it can be done simply by the President because it is not a fresh taking. In any event, if there were any disciplinary issues as I have explained, they could have been taken care of. That is the thinking but it is up to hon. Members.

Mr. George Nyamweya: Madam Temporary Deputy Chairlady, you will recall that this House, when the question of reappointing Justice Ringera for a second term to the Ethics and Anti-Corruption - or whatever it was called at that time - came up, there was never any issue about the competence or diligence of Justice Ringera. It was simply that the President did not have the constitutional mandate to give somebody a second term without the House itself again going through the appointment process. So, the question will be: This House is bound by its own decision that came up at that time and said: "No, that person has to subject himself to a new competitive term". I just wonder whether we can overrule our own decision without a substantive Motion to overturn our own resolutions.

Mr. Midiwo: Madam Temporary Deputy Chairlady, this is a fundamental issue. You realize the powers that this Commission has and the reappointment of it without public participation will not let us assess what they have done. Even this morning you saw hon. Kiraitu and hon. William Ruto being taken to court for alleged hate speech. You remember the case of hon. Kapondi, hon. Machage and hon. Kutuny. We cannot let this Commission, especially in an election year, not be vetted publicly so that we know that they are people who are above board and not people who think others have used hate speech and others have not. We need to vet them and we shall vet them. To me, whoever thought of that was being more mischievous than not, because there should be a rule for all the appointments, and not a rule for one particular appointment.

Thank you.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, first, I wish to clarify that this is not one of the constitutional Commissions. We need to clarify that bit from the outset. It is also important to note that the life of this Commission will expire in around September, 2012. We are going into an election. We have the Kenya National Human Rights Commission, whose term is also coming to an end around the same time. As we go into the election, these Commissions are important. The term of the Truth, Justice and Reconciliation (TJRC) is also coming to an end.

So, the purpose of this proposed amendment is really to ensure that as we go into the election, we have these Commissions in place and functioning. The amendment that we have proposed is really for the purposes of allowing for that re-appointment at a very crucial time.

Mr. Ethuro: On a point of order, Madam Temporary Deputy Chairlady. Is it in order for my good friend, the Minister, to mislead this House that because we are approaching an election, we can throw away all the principles and the standards that we have established as a House? In the case of Justice Ringera, he was not heading a constitutional Commission.

More importantly, who tells the Government side that they can only renew appointments of Commissioners after the expiry of their terms? The Government can start the process many months before September; so that by September, the Commissioners can know whether they will be continuing to serve or it is the end of their term and others have to take over.

(Mr. Sugow stood up in his place)

The Temporary Deputy Chairlady (Dr. Laboso): Yes, hon. Sugow! I am sorry; I do not have my glasses on me.

The Assistant Minister, Ministry of State for Public Service (Mr. Sugow): Madam Temporary Deputy Chairlady, I think it is for the same reason that the Joint Chief Whip suggested that I actually oppose this amendment. He indicated that over the period that this Commission has been in existence, its members have stepped on many toes. It is for the same reason that we feel that we should actually cut on the bureaucracy to subject its members to fresh vetting again by the same people whom we feel they may have stepped on their toes. So, we need to oppose this amendment. We need to introduce an amendment to deny the President an opportunity to de-gazette the members of this Commission.

(Mr. Keter stood up in his place)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Keter, your amendment is slightly different. Are you contributing or moving your amendment?

Mr. Keter: Madam Temporary Deputy Chairlady, I want to talk about my amendment, which is relatively similar to the one we are dealing with.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Keter, just allow us to dispose of the amendment at hand and then we can come to your amendment.

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

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Mbadi, in the interest of making progress, let me put the Question.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. I want to raise an issue of procedure.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, really, this is---

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

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

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, first of all, I want to indicate that, personally, I have confidence in this Commission. If it was my choice, I would want the entire team back.

Having said so, I am a stickler to procedure. I want to say that this House has a previous ruling on the issue of Justice Ringera. We cannot purport to be putting the Question when an

issue of constitutionality has been raised. Indeed, the substantive Chair had raised that issue. At every occasion, I have also raised the issue with the Speaker and, as recently as a week ago, he affirmed the same position.

Madam Temporary Deputy Chairlady, if the Attorney-General applied his mind more creatively, he would still save the Commission, if he wants to; but he should do it procedurally. I am told that it is the Minister for Justice, National Cohesion and Constitutional Affairs who is responsible for the Commission. So, if the Minister wants, he can be innovative legally and still save this Commission. I am sure that if he puts his mind to it, he can do it, but right now, it is not about putting the Question. We need your ruling because it has been agreed before that when something is unconstitutional, it should not be voted on.

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

The Temporary Deputy Chairlady (Dr. Laboso): what is your point of order?

Mr. Mbadi: Madam Temporary Deputy Chairlady, you have been asked to make a ruling. There are two issues of constitutionality here. Number one, if you go by this amendment then you will negate the very principle of the Constitution which is public participation. We need Kenyans to give views whether they want these commissioners or whichever commissioner to continue doing the work. Two, you will treat this Commission differently from others. What is so special about this Commission? If the term is coming to an end, follow the procedure of appointment as it was before.

So, this is not a question of debate but it is a question of the Chair's ruling.

The Assistant Minister for Industrialization (Mr. Muriithi): Thank you, Madam Temporary Deputy Chairlady. I disagree that if the House has made a decision at one point in time, that the same House cannot vary its mind. The Statute Law (Miscellaneous Amendments) Bill is about the House improving on laws that we have, in fact, made in the past. Therefore, to suggest that simply because at one point in time either the Chair or the House made a decision in a certain way; that we can never ever revisit that question, is to negate the very purpose for which we exist.

Madam Temporary Deputy Chairlady, I support the position of the Attorney-General that these commissioners have, in fact, been through a very public process or a process where the public has participated in their appointments. I also support the position by Maj. Sugow that we, the political class---

Hon. Members, it is good to be fair both to ourselves and to the country. It is because of us that this commission is sitting in part and putting the spotlight on us about our behaviour as we go to this election. Therefore, to suggest that it is better for us to re-vett them is to ensure that we muzzle this commission so that when we go around preaching ethnic hatred, that we will be able to get away with it.

The Assistant Minister, Ministry of State for Defence (Maj.-Gen. Nkaisserry): On a point of order, Madam Temporary Deputy Chairlady. This is a straightforward issue. Either this House wants to surrender its power to the Executive or it wants to retain the power on behalf of Kenyans.

So, I support the amendment brought by the hon. Member because it is a straightforward thing. Just put the question and we deal with it.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Kimunya.

The Assistant Minister for Industrialization (Mr. Muriithi): I was interrupted by a point of order, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): It is not debate time, Mr. Muriithi.

The Assistant Minister for Industrialization (Mr. Muriithi): I oppose the amendment, Madam Temporary Deputy Chairlady.

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

The Minister for Transport (Mr. Kimunya): Just so that hon. Members appreciate, I believe the amendment that has been brought by the Attorney-General is trying to fill in a gap that we did not provide for when we passed the National Cohesion and Integration Act. Just for the information of hon. Members, Section 19 reads as follows:-

“The chairperson and the commissioners shall hold office for a term of three years and shall be eligible for reappointment for a one further term of three years.”

What is missing is how this reappointment will be done for it to be effective.

Dr. Eseli : On a point of order, Madam Temporary Deputy Chairlady.

The Minister for Transport (Mr. Kimunya): I have not finished, Madam Temporary Deputy Chairlady. Contrary to what we had---

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

Dr. Eseli: On a point of order, Madam Temporary Deputy Chair. Is the hon. Minister in order to suggest that there is no method of appointing that Commission? It talks of “re-appointing”; that means appointing the same way it was done before? That is what is assumed.

The Minister for Transport (Dr. Laboso): Madam Temporary Deputy Chair, I was only providing the information that they are eligible for re-appointment, but the procedure is not provided. If Members feel that the procedure being proposed by the Attorney-General is different, then it is up to them to make the decision. That was basically the whole point.

Mr. Midiwo: Madam Temporary Deputy Chair, it is fair to put the record straight. The section of the law that the hon. Minister has read only means that whoever the holders of the office are, they are eligible to be reappointed when the law is followed in another reappointment. It does not mean that they have an automatic right.

Mr. Nyamweya has given a good example of Justice Ringera, when we said the President did not have a constitutional mandate to do it. The thing is purely unconstitutional.

Madam Temporary Deputy Chair, let me just remind Members, if this person is not properly vetted the powers I see this Commission having--- Members of this Parliament shall live to regret. They will come to your constituency and choose your opponent and say you are barred from running because of a, b, c, d. We must do this thing right. Please, I plead with you Members of Parliament.

Mr. Abdikadir: Madam Temporary Deputy Chair, I appreciate the need to renew this Commission as soon as possible. That is true but the rules are that this Commission was appointed in a certain format. To appoint it again by direct appointment through the Executive without the process that was followed before is not appropriate. Having said that, it is very critical that we renew the term of this Commission as soon as possible. I understand that we are going to an election and it is a very critical Commission. We appreciate that.

Having said that, the procedure cannot be that the President goes ahead to appoint because it is a very critical Commission.

The Temporary Deputy Chair (Dr. Laboso): Hon. Members, we have ventilated. Let the House decide.

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

(The provisions relating to the National Cohesion and Integration Commission were accordingly deleted)

Hon. Members, all the other amendments have now fallen.

Mr. Keter, your amendment has fallen as a result of the vote by the House. This is because the proposal has been deleted.

Mr. Keter: Madam Temporary Deputy Chair, to be on record I want to say that the import of the amendment is the same as that of Mr. Ethuro, and I am very comfortable with that.

(The provisions relating to the Anti-Counterfeit Act, 2008, agreed to)

Merchant Shipping Act 2009

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chair, I propose to move the following amendment on page 1119 of the Bill at the bottom.

Madam Temporary Deputy Chairlady, we propose that the amendments relating to the Merchant Shipping Act, 2009, be amended in the proposed 4(1) (2) (a) by deleting the words “Kshs2 million and three years” and substituting thereof “Kshs10 million and ten years”, respectively.

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

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

Mr. Temporary Deputy Chairman, Sir, the import of this is to harmonize the fines prescribed within the main Act to the fines in the regulations where the maximum is ten years and Kshs10 million. So that is the amendment and I believe the Committee had also attempted to do the same in a different way but this is more comprehensive.

(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. Baiya, you will note that since we have adopted the one of the Minister’s which was higher, yours is---

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, yes, I would say that the proposed amendment by the Committee is already taken care of by the amendment moved by the Minister and I am, therefore, withdrawing mine.

(Proposed amendments by Mr. Baiya withdrawn)

(Provisions relating to the Merchant Shipping Act as amended, agreed to)

(Provisions relating to the Counter Trafficking in Persons Act agreed to)

The Vetting of Judges and Magistrates Act, 2011

The Temporary Deputy Chairman (Mr. Ethuro): There are a couple of amendments, so the Minister for Justice, National Cohesion and Constitutional Affairs, move your amendment first.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Mr. Temporary Deputy Chairman, Sir, page 3661 is where the proposed amendment is. After consultations we have decided to withdraw that amendment.

(Proposed amendment by Mr. Wamalwa withdrawn)

The Temporary Deputy Chairman (Mr. Ethuro): Now we will go to Ms. Karua who also had an amendment but I think she is out of the House.

Ms. Noor: Mr. Temporary Deputy Chairman, Sir, I will move on her behalf.

The Temporary Deputy Chairman (Mr. Ethuro): Ms. Noor, you cannot move an amendment because Ms. Karua did not give any written indication to the Chair and so it is dropped.

(Proposed amendment by Ms. Karua dropped)

Mr. Baiya, do you have an amendment?

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, we are proposing that the proposed amendment be deleted which is on page 3663. I am speaking to the Statutes Law on page 1120; the Vetting of Judges and Magistrates Act.

There was a proposal that this be deleted. The Minister has moved that it be dropped. He has reversed that decision. So, he seeks to retain and we agreed with him. But we are moving a further amendment to make provision--- What the Minister sought to do--- He sought to remove timelines within which the Vetting Board is supposed to carry the---

The Assistant Minister for East African Community (Mr. Munya): On a point of order, Mr. Temporary Deputy Chairman, Sir. I am wondering what we are discussing. If the amendment has already been withdrawn, what is the Member amending?

Mr. Baiya: Hon. Munya did not hear me. But what I am saying is that we are retaining. So, we have agreed with him that we retain what he intended to delete. He is not deleting it now. What he wanted to delete is being retained. But we are making an additional amendment - a provision to the same provision that we want retained. That is what I am explaining.

The Temporary Deputy Chairman (Mr. Ethuro): Just for clarity to hon. Munya. The Minister withdrew his amendment. He did not withdraw the law. So, the Chair of Justice and Legal Affairs Committee had certain amendments, which he is proceeding with.

Mr. Baiya: If you listen to me, you will really see we are moving together even with the Minister. What the Minister had sought to do initially was to remove the timelines within which the Vetting of Judges and Magistrates was to take place. But we have retained those timelines.

In addition, we are asking that the Board proceeds to carry out the vetting in three sets in panels, which is the provisions we are seeking to provide within Sub-section 2. Therefore, the whole idea is to expedite the vetting of judges and magistrates within the timelines provided. For purposes of vetting magistrates, we are proposing that the process be done by the Judicial Service Commission to expedite the process within one year, as had been envisaged in the Constitution. The Constitution wanted the vetting of judges and magistrates to be completed within one year. If this amendment is carried, that process will be taken care of within one year.

(Question of the amendment proposed)

(Prof. Muigai stood up in his place)

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Attorney-General. You cannot stop the Chair from moving but you can intercept. I have already made the proposal. It is before the Floor.

The Attorney-General (Prof. Muigai): On a point of order, Mr. Temporary Deputy Chairman, Sir. I think there is a small confusion because there are two issues currently with the vetting process. One is that vetting of Court of Appeal judges has taken place. The period within which they could have whatever conclusion was reached reviewed has lapsed and needs to be taken into account so that the Board has that authority. So, we must be sure that we have taken--- I am talking in that respect.

The other one is that there was a feeling - and that is why when we negotiated this, we thought hon. Karua will be here to move her amendment - that we should cap the period. There is a feeling in the Judiciary that going into an election year before all the judges have been vetted is inappropriate.

The Temporary Deputy Chairman (Mr. Ethuro): Yes, we can clarify, but I am just asking the Attorney-General to make use of our time. You cannot come here and make your contribution and you give a chance to another hon. Member.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, the issue is that the Minister had proposed an amendment. The Chair agreed with him that, that be withdrawn, so that the Chair can make some proposals. But there is still some lacuna which we need to agree on how we are going to solve.

The Temporary Deputy Chairman (Mr. Ethuro): That is correct.

Mr. Abdikadir: That is the issue with the Attorney-General, because---

The Temporary Deputy Chairman (Mr. Ethuro): Let me just stop you there.

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

The Temporary Deputy Chairman (Mr. Ethuro): Why do you not agree on that because I heard the Chair of the Justice and Legal Affairs Committee talk about a further amendment, which is allowed? So, that should have been done before. We have been here for quite a long time!

Mr. Abdikadir: So, why do we not do that now, Mr. Temporary Deputy Chairman, Sir?

The Temporary Deputy Chairman (Mr. Ethuro): Yes, why do the three of you not consult? The Chair will grant you that as I listen to other hon. Members. Please do so quite quickly.

(Mr. Abdikadir and Mr. Baiya consult the Attorney-General)

Mr. Bahari: Thank you, Mr. Temporary Deputy Chairman, Sir. As they go to consult, I would like to ask them whether by putting them into three groups we will not dilute the effectiveness of that exercise to the extent that the skills are divided.

The Temporary Deputy Chairman (Mr. Ethuro): I am sure they are listening to you, but if you look at the proposals, there is also the time business, which I think is quite critical.

Mr. Chepkitony: Thank you, Mr. Temporary Deputy Chairman, Sir. I will oppose this amendment and support what hon. Bahari has said. When we have three groups, we might dilute their effectiveness. I think the way the three chairmen will conduct vetting will be very different. So, we need to have one vetting committee instead of having several of them because people do not behave the same. I do not know if they will all be subjected to the same vetting, so, we should have only one committee to vet.

Thank you, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Is there any other hon. Member willing to ventilate on this as we give Mr. Abdikadir time to consult?

Proceed, hon. Muriithi.

The Assistant Minister for Industrialization (Mr. Muriithi): Thank you, Mr. Temporary Deputy Chairman, Sir. This process of concluding reforms in the Judiciary is a critical process. The whole reason or part of the reason for the post-election violence was the fact that one contesting side felt that they could not trust the independence and impartiality of the Judiciary. So, concluding this process in a way that assists Kenyans is of utmost importance.

In addition, Mr. Temporary Deputy Chairman, Sir, reforming the Judiciary goes far beyond the mere process of vetting. This is where I think this House rose to its occasion in increasing the budget for the Judiciary to a significant Kshs16 billion or Kshs17 billion. This is because part of the challenge of reforming the Judiciary is ensuring, in fact, that we not only have the right persons, but we also have---

Mr. Ruto: On a point of order, Mr. Temporary Deputy Chairman, Sir. Are you aware that the hon. Member on the Floor has been talking non-stop for the last ten minutes?

The Temporary Deputy Chairman (Mr. Ethuro): He was talking non-stop?

Mr. Ruto: For ten minutes, Mr. Temporary Deputy Chairman, Sir. This is the Committee of the Whole House. He should just tell us in a brief way what he wants to say.

The Temporary Deputy Chairman (Mr. Ethuro): Okay. Summarize, hon. Muriithi!

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, I know that it is getting late and to hon. Ruto, 60 seconds constitutes 60 minutes. I have not been on my feet for more than a minute.

Madam Temporary Deputy Chairman, Sir, I was saying that, in fact, reforming the Judiciary is in part ensuring that we have enough numbers. One area that I think we must do better is ensuring that we also have enough prosecutors and not just judges. But the point about--

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir. I kindly seek your indulgence and request that if we could, please, be told which amendment we

are dealing with. This is because I have actually been consulting my other colleagues and even hon. Isaac and hon. Dr. Khalwale do not seem to know. They were giving me different things. Could we, please, just know which one we are talking about right now, so that we know what we will vote on?

The Temporary Deputy Chairman (Mr. Ethuro): Let me guide the House. The amendment is on page 3663. It is with regard to the provisions relating to the Vetting of Judges and Magistrates Act, 2011. The Minister for Justice, National Cohesion and Constitutional Affairs withdrew his amendment and hon. Karua was not here to move her amendment. So, we are here on the amendment by hon. Baiya, which is on that page. The Chair of the Constitutional Implementation Oversight Committee (CIOOC) and Attorney General also wanted to address that particular amendment. So, we granted them a few minutes to put their thoughts together and come up with a comprehensive amendment, and the Chair now is informed that they are very ready. Let us consider on the basis of the consolidated amendment and then, you can make your contributions.

The Assistant Minister for Industrialization (Mr. Muriithi): Can I conclude, Mr. Temporary Deputy Chairman, Sir?

The Temporary Deputy Chairman (Mr. Ethuro): Please, conclude!

The Assistant Minister for Industrialization (Mr. Muriithi): Thank you, Mr. Temporary Deputy Chairman, Sir, for your indulgence.

Mr. Temporary Deputy Chairman, Sir, speaking to this amendment on page 3663, we need not only to speed up or make sure that the process of vetting moves faster, but also allow sufficient time for the process to be completed.

Mr. Temporary Deputy Chairman, Sir, I think that these proposals are very much in order.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Attorney General, can you move the amendment? We will treat it as amending hon. Baiya's amendment.

The Attorney General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, my proposal is to insert a new Section 23(1) which ought to read as follows:-

“The vetting process, once commenced, shall be concluded not later than 28th February, 2013, save that the National Assembly may, at request of the Board, extend the period for not more than three months, and the review of the decisions of the Board shall be heard and concluded within the above period.”

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, “of the Board and the JSC.”

The Attorney General (Prof. Muigai): Sorry, Mr. Temporary Deputy Chairman, Sir. It is “of the Board and JSC.”

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir. I would really appreciate if the Attorney-General would listen, because this is addressed to his last amendment. I am very comfortable with the amendment as proposed, but I would want the Attorney-General to address himself to the issue of inclusion of the JSC, because I am informed that the magistrates are seeing that as conflict of interest. Therefore, I was actually more inclined to the earlier amendment that did not have---

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, on the contrary, it is the magistrates who have specifically requested that in order to fast-track and reduce the anxiety, the JSC should do their vetting.

Mr. Bahari: On a point of order, Mr. Temporary Deputy Speaker.

The Temporary Deputy Chairman (Mr. Ethuro): Just allow us to consult, hon. Bahari.

*(The Temporary Deputy Chairman (Mr. Ethuro)
consulted with the Clerk-at-the-Table)*

The Chair needs to understand. You are privy to the discussion but the Chair is not and you cannot proceed without the Chair's approval.

Mr. Bahari: On a point of order, Mr. Temporary Deputy Chairman. Mine is a point of procedure because I heard the hon. Attorney-General say that there is a new clause that he wanted inserted. I thought that this could be a further amendment to an amendment or something like that. Otherwise, if it is a new clause, I doubt whether it will---

The Temporary Deputy Chairman (Mr. Ethuro): Did he say this is a new clause? My understanding is that this is a further amendment to hon. Baiya's amendment. We want to proceed that way. For us to be very clear, we want to start the entire process. So, I will invite hon. Baiya to move his amendment and then the Attorney-General will move a further amendment to hon. Baiya's amendment. We are starting afresh for avoidance of doubt and for clarity.

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

Provision
s.23(2)

Amendment

Delete and substitute therefor the following new subsection-

“(2) The Board shall be divided into three Panels for purposes of vetting, and the three panels shall vet the judges simultaneously while the Judicial Service Commission shall vet the magistrates.”

(Question of the amendment proposed)

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Chairman, Sir, I propose a further amendment by inserting a new section 23(i) providing as follows-

The vetting process once commenced shall be concluded not later than 28th February, 2013, save that the National Assembly may, at the request of the Board extend the period for not more than three months. Any review of the decision of the Board and of the JSC shall be heard and concluded within the above specified period.

Mr. Ruto: Mr. Temporary Deputy Chairman, the Attorney-General's draft suggests dates at which there will be no Parliament in Kenya. The elections will be held on 4th March and this Parliament ceases to function as from 14th January, 2013. So, who will extend that time should the need arise? Why does he not make it to be some time in April, if he really wants this?

The Attorney-General (Mr. Muigai): Mr. Temporary Deputy Chairman, Sir, this is the date when the anniversary would have ended. Let me work on another shorter amendment to that one.

The Temporary Deputy Chairman (Mr. Ethuro): You could change the date.

(Loud consultations)

Attorney-General, we have given you enough opportunity. We will take whatever you have. Let it be either defeated or accepted.

The Attorney-General (Mr. Muigai): Mr. Temporary Deputy Chairman, the vetting process once commenced shall be concluded not later than 28th February, 2013. Any review of the decision of the Board or of the Judicial Service Commission (JSC) shall be heard and concluded within the above specified period.

(Question of the further amendment proposed)

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, I support the two amendments. This Board cannot be open-ended. There is so much anxiety in the Judiciary. We need to finish it and have magistrates and judges working without fear or any apprehensions as to what is coming.

(Question of further amendment put and agreed to)

(Question, that 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)

*(Provisions relating to the Vetting of Judges and Magistrates
Act as amended agreed to)*

The Independent Electoral and Boundaries Commission Act

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

THAT, the Bill be amended in the Schedule-

(j) by deleting the proposed amendment to section 5 of the Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011);

Mr. Temporary Deputy Chairman, Sir, this is on Page 3663 of the Order Paper and on Page 1120 of the Bill.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir. I just wish to seek your direction in relation to this amendment. Could the Attorney-General clarify? If you look at section 5, it says:-

“Insert the following new sub-section immediately after sub-section 4 “all nominations and appointments under this section shall”.

So, shall what? What are we amending? Could we get a clarification on what that is?

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

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

Madam Temporary Deputy Chairlady, I am informed by the Chair because he originally had not indicated why. That is why we are deleting because it does not make sense and in that case, I support the deletion.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): Order! The hon. Member needs to come out clearly. Hon. Baiya, your amendment is only relating to section 5 and not the schedules. Just clarify that before I put the Question.

Mr. Baiya: Madam Temporary Deputy Chairlady, that is precisely the case. We are proposing the amendment at that stage so that it will leave the old registration the way it was.

The Temporary Deputy Chairlady (Dr. Laboso): But you are deleting just Section 5?

Mr. Baiya: Yes, the amendment is to section 5. It simply reads: Insert the following new section immediately after section 4 and then it does not make sense. We could not get it and we could not allow an amendment whose meaning we could not really perceive.

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

(The provisions relating to the Independent Electoral and Boundaries Commission Act as amended, agreed to)

The Political Parties Act, 2011

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we have an order in which the amendments will come. Hon. (Dr.) Nuh Abdi will be the first one to move his amendment.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. Before we go into the amendments, I just wanted a clarification from the Attorney-General in relation to Section 35(1). If you look at Section 35(1), you will appreciate that it is a mirror of the parent Act, except for a sub-section that shall come into commencement separately from the Act. So, perhaps, he could just explain this, so that we can have an informed debate on the proposed amendments.

(Mr. Namwamba stood up in his place)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Namwamba, allow the Minister to respond to hon. Millie Odhiambo-Mabona's point of order.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, the proposals that are there are due to the fact that the process of appointing the panel had stopped. So, we are saying that we need to jumpstart that process by providing that, within 14 days of these amendments, the process can be jumpstarted. That is really the intention of the amendment.

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

Mr. Namwamba: Madam Temporary Deputy Chairlady, I just wanted to revisit an issue which was raised earlier, at the beginning. It was a question that had been directed to the Attorney-General, in terms of issues which---

(The Attorney-General consulted with other hon. Members)

The Temporary Deputy Chairlady (Dr. Laboso): The hon. Attorney-General, hon. Namwamba is seeking clarification from you.

Mr. Namwamba: Thank you, Madam Temporary Deputy Chairlady.

I was saying that earlier on, an issue was placed before the Attorney-General in terms of issues that had been flagged as being of a nature that raises constitutional questions. They are issues of constitutional character. The Attorney-General had indicated at the beginning; that he would be able to respond to those issues as each Statute comes up. Therefore, I want to find out whether there are any issues in relation to this particular statute that the Attorney-General has flagged, in view of the amendments that are already listed; as being of a nature that raises constitutional issues. We have a list of those issues. Does the Attorney-General have any issues with regard to this Act that raise constitutional questions?

The Temporary Deputy Chairlady (Dr. Laboso): The hon. Attorney-General, are you going to respond to the question generally?

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I just want to say very briefly that this entire Bill has been certified by the Speaker for this stage. Therefore, any issue that an hon. Member may feel that is of a constitutional character can be raised as one ground upon which he opposes the amendment, so that we can make progress.

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

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Namwamba, can you allow Dr. Abdi Nuh to move his amendment? You can raise your matters after the actual amendment has been moved.

Hon. Abdi, as you move the amendment, let hon. Members know on which pages of the Order Paper and the Bill the amendment can be found.

Section 14(3) – The Political Parties Act, 2011

Dr. Nuh: Madam Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule by inserting the following new amendments in their proper numerical sequence-

11) in the amendments proposed by the Political Parties Act, 2011, (No.11 of 2011), by inserting the following immediately before the amendments proposed to Section 35(1) of the Act.

S.14(3) Insert the words “within three days of the resignation” at the end of the sub-section.

Madam Temporary Deputy Chairlady, this is just some insertion at the end of Clause 14 of the Political Parties Act. The amendment is meant to compel the parties involved like the County Assembly Speaker or even Parliament or the authorities like political parties. We are saying when an hon. Member resigns on notice, it takes effect immediately. However, this information has to be submitted to the Political Parties Registrar for update in the register. So, we

are compelling the parties to submit notice of such resignation to the Political Parties Registrar within three days.

(Question of the amendment proposed)

The Minister for Trade (Mr. Wetangula): Madam Temporary Deputy Chairlady, if I may seek a clarification from Dr. Nuh. What would be the consequence of non-compliance with the three days? Supposing the resignation is done on a Thursday on the eve of Good Friday and you have Good Friday as a holiday, Saturday a non-working day, Sunday a non-working day and Easter Monday. I know that you can talk of information technology but we still have situations where a resignation must be in your own handwriting and the letter informing the registrar must be signed by the Secretary-General of the party or an authorized official of the party. How do you deal with that?

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

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Wetangula, do you want to be informed? Who are you informing, Mrs. Odhiambo-Mabona?

The Minister for Trade (Mr. Wetangula): I just sought clarification from Dr. Nuh that if we effect what he is asking, how do we deal with a situation like that? What is the consequence of non-compliance?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, the Constitution in the Schedule, I cannot remember which Schedule, actually clarifies the way you compute days. If it falls within a public holiday, it will not be affected.

The Temporary Deputy Chairlady (Dr. Laboso): I did not get from the Attorney-General whether you are fine with the amendment or the Minister for Justice, National Cohesion and Constitutional Affairs.

Mr. Abdikadir wants to give us the actual clarification.

Mr. Abdikadir: Madam Temporary Deputy Chairlady it says:-

“If a period of time prescribed by this Constitution for any purpose – and once in the Constitution, I think it is *mutatis mutandis* - six days or less. Sundays and public holidays shall not count when calculating the time.”

(Applause)

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

Section 14(7) – The Political Parties Act, 2011

Mr. Baiya: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended in the Schedule by inserting the following new provision in its proper numerical sequence-

Provision

Amendment

s.14

Insert the following new subsection immediately

after subsection (7)-

“(7A) A political party shall notify the Registrar of any member deemed to have defected from it to another political party, and such member may, if aggrieved by such notification, refer the matter before the Tribunal for determination.” This provision is made to provide for a procedure where a Member is deemed to have left a political party, directly or by interpretation, as to how that process will be dealt with. We recognize the role of the Registrar of Political Parties as well as the Tribunal. These two provisions make it mandatory to ensure that the role of the Registrar of Political Parties is, as it is now, to process that information but refer any dispute to the Tribunal, which will be the one to arbitrate.

(Question of the further amendment proposed)

Mr. Lang’at: Madam Temporary Deputy Chair, I want to oppose that proposed amendment by Mr. Baiya. This is because although the Member argues that it is giving a procedure, it is actually giving the Registrar of Political Parties sweeping powers without any procedure at all to deem somebody as having resigned from a political party. I think there must be a better procedure that will ensure justice to the Member and to the party. This is actually attempting to give the Registrar of Political Parties sweeping powers to determine whether a Member has actually resigned from a party or not.

Mr. Ruto: Madam Temporary Deputy Chair, I also beg to oppose the proposed amendment because I think it is the courts of law which have elaborate procedures for enforcing the law. If you allow political parties to start deeming members to have resigned from them--- Some of the political parties already have some dim view of democracy; therefore, you do not expect them to deem any other person. I, therefore, suggest that this deeming business be taken out of political parties. They should just be allowed to go through the normal courts of law.

Mr. Namwamba: Madam Temporary Deputy Chair, I have persistently been trying to get you to address this question of constitutionality. Perhaps, this is the right time for us to just pause and consider these issues of constitutionality.

Madam Temporary Deputy Chair, I am in possession here of a letter from the Commission for the Implementation of the Constitution (CIC). This letter is addressed to the Speaker of the National Assembly. This letter, which I will proceed to table---

A hon. Member: Where did you get it?

Mr. Namwamba: Those who are heckling in this House may want to refer to the Constitution and know that the Constitution guarantees every citizen of this land the right of access to information. Therefore---

(Mr. Duale approached the Dispatch Box)

The Temporary Deputy Chair (Dr. Laboso): Mr. Ababu, allow that point of order.

Mr. Namwamba: No amount of heckling can---

The Temporary Deputy Chair (Dr. Laboso): Allow the point of order by hon.---

Mr. Namwamba: But I am on a point of order.

The Temporary Deputy Chair (Dr. Laboso): Were you on a point of order? I thought you were contributing.

Mr. Namwamba; I rose on a point of order. This is a point of order, Madam Temporary Deputy Chairlady.

The point of order is whether we are in order to continue debating this matter before we consider the weighty constitutional issues that are attendant to this matter.

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

Mr. Namwamba: Madam Temporary Deputy Chair, I will table this document for your perusal.

(Mr. Namwamba laid the document on the Table)

For the benefit of hon. Members, let me just quote a section of the letter:-

“The Commission is, therefore, greatly alarmed by the proposals by the National Assembly to use the Statutes Miscellaneous (Amendments) Bill to amend crucial provisions of the Elections and Political Parties Act. Worryingly, some of the proposed amendments are clearly not intended for the purpose of reforming the law but rather aimed at the personal interest of currently serving Members of Parliament which is a direct contravention of Article 261 of the Constitution.

The CIC is particularly concerned by the proposal to introduce---”

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Allow him to read the text. It is not his words. There is somebody else who wrote it and he has already tabled the document.

Mr. Namwamba: Madam Temporary Deputy Chairlady, I am putting this on record and no amount of heckling will turn this House into a House of legislative banditry or legislative piracy.

“The purpose of this letter is to, therefore, to request you to reject any proposals to the Statutes Miscellaneous (Amendments) Bill to amend the law through a process contrary to the one set out by the Constitution and not to allow passage of any provisions in the Bill that conflict with the Constitution. I wish to point out that since the process being followed currently contravenes the requirements of Article 261(1) and (4) and Section 5 and 6 of the Six Schedule to the Constitution and since some of the proposed amendments contradict the letter and spirit of the Constitution, the CIC will be duty bound to seek court intervention in the event that Parliament passes the offensive provisions”.

(Loud consultations)

An hon. Member: *Waende huko!*

Mr. Namwamba: Madam Temporary Deputy Chairlady, we may heckle at the top of our voices but that does not take away the fact that this House is duty bound to listen to questions of constitutionality. Let me just remind you that in a ruling of the Chair dated Thursday, 17th February, 2011, the Chair had this to say on a similar communication from the CIC and I quote a ruling of the Chair:-

“I rule that the pronouncement of the CIC on a matter such as the present matter has relevance and are of persuasive value and should be considered carefully by the National Assembly and the Speaker.”

That is a ruling of the Chair that any communication of this nature--- Let me table this ruling too.

(Mr. Namwamba laid the document on the Table)

This House is duty bound to carefully consider – “carefully”, those are the words of the Chair – any communication touching on constitutionality from the CIC which is a constitutional organ mandated by the Constitution to oversee implementation of this Constitution. Therefore, I want to plead that we find a way to consider the issues of constitutionality that are on record and if you indulge me, I will proceed to give examples of some of the issues. Indeed, let me raise just one as an example.

The Temporary Deputy Chair (Dr. Laboso): No, we cannot have the full debate on this issue, just give us one issue.

Mr. Namwamba: Madam Temporary Deputy Chair, I will just raise one issue because I want this matter to go on record. It has been proposed---

(Several hon. Members stood up in their places)

The Temporary Deputy Chair (Dr. Laboso): Order hon. Members! Allow him the one example.

Mr. Namwamba: Madam Temporary Deputy Chair, I am on a point of order. Unfortunately for those who are fans of heckling---

I want to draw your attention to one particular amendment as proposed by hon. Mutava Musyimi as an example.

(Several hon. Members stood up in their places)

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

An hon. Member: That is useless!

The Temporary Deputy Chairlady (Dr. Laboso): Be careful Members. I will throw somebody out of the House, if you continue to heckle. We are going to hold ourselves in dignity and we are going to debate with decorum.

Hon. Namwamba, complete what you are saying but do not use hon. Musyimi’s example because we are going to debate it next. So, do not use that.

Mr. Namwamba: Madam Temporary Deputy Speaker, I have been challenged to give an example on the record. Hon. Musyimi’s proposed amendment is on record. I want to use it as an example.

The Temporary Deputy Chairlady (Dr. Laboso): You will get the chance to use it when it comes, hon. Namwamba.

Mr. Namwamba: Madam Temporary Deputy Speaker, in that case, therefore, will you allow me to raise a series of issues, which I believe raise weighty constitutional issues, which must, as of essence, invite a substantive ruling by the Chair?

Madam Temporary Deputy Chairlady, I wish to indulge you on that question; as at what point these issues must go on record. I wish you to indulge me on that.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Namwamba, allow the Chair of the CIOC to make his point. Please, address yourselves to the matters raised by hon. Namwamba, so that we can all---

Mr. Abdikadir: Madam Temporary Deputy Chairlady, the Commission for the Implementation of the Constitution (CIC) is an important institution under the Constitution and the Chair of CIC is a lawyer. But among the functions of the CIC does not include the supervision of Parliament.

(Applause)

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

Mr. Abdikadir: Madam Temporary Deputy Speaker, in the function of legislation and especially in the function of legislation dealing with political parties, the National Assembly and Parliament has plenary powers – unfeted powers.

Madam Temporary Deputy Chairlady, let me read you the Constitution:-

“Parliament shall enact legislation to provide for the regulation of political parties.”

Period! You can regulate them left, right, centre, up and down. That is Section 92(c).

Secondly, Section 92(i) says:-

“Any other matters necessary for the management of political parties,”

So, if this House, in its wisdom or lack thereof, decides to regulate political parties in one way or the other, there is nothing unconstitutional about that, whether it is two days notice, two weeks notice or two months notice. That is the National Assembly legislating. It is not subject to the Speaker. It is not subject to the Chair. It is not subject to CIC. It is not subject to the Executive. It is not subject to anyone other than the Constitution and that is the constitutional powers that were given.

Madam Temporary Deputy Chairlady the final point is this: The letter states and I quote:-

“That is aimed at the personal interest of current Members, which is in direct contravention of Article 116 of the Constitution.”

That Chairman does not even know that the whole of that Chapter is suspended. It is not in force. Now, the worst the Chair of CIC can do is to demonstrate his illiteracy about the Constitution to the National Assembly.

(Laughter)

It is important---

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

Mr. Abdikadir: It is very critical.

Madam Temporary Deputy Chairlady, it is important for the Chair of CIC and all Commissions to understand the Constitution gives them important mandate. But the Constitution has given legislative authority to the National Assembly. Period! The Constitution has given executive authority to the Executive. The Constitution has given judicial authority to the Judiciary. They cannot purport to decide what the Judiciary does for the Judiciary; what the Executive does for the Executive or what the Legislature does for the Legislature. Theirs are constitutional mandates that are unlimited. When they say they are doing this or that on behalf of

the people, the Members of this House were elected by more than 10 million Kenyans. No other institution in this land has the direct mandate of the people than this National Assembly has; not CIC, not the President, not the Speaker and, certainly, not any of the other individuals we are quoting here.

So, Madam Temporary Deputy Chairlady, we, as a Committee, say we are constituted, but the decisions in this House are decided by the majority at Committee. Let us move on; let us not try to use technicalities to stop things that we do not want. That is the way legislation is done. They say it is not beautiful. In fact, the saying is that you might not want to watch legislation or sausages being made because they are not tidy. But that is how legislation gets done!

(Applause)

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

(Several hon. Members stood up in their places)

Order, hon. Members! I have given the Floor to hon. Midiwo.

Mr. Midiwo: Thank you, Madam Temporary Deputy Chairman. I would like to seek one clarification from the Attorney-General, so that we move forward to whichever way. I agree with hon. Abdikadir that legislation is done in one way. But I want to seek one fundamental clarification from the Attorney-General.

(Loud consultations)

Madama Temporary Deputy Chairlady, could you, please, protect me from the noise makers?

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

Mr. Midiwo: Thank you, Madam Temporary Deputy Chairlady. The Constitution prescribes how the operationalizing Acts to the new Constitution are to find their way into this House. It says the State Law Office, which is really under the Attorney-General, in consultation with the Commission for the Implementation of the Constitution (CIC) are supposed to bring those legislation to the Floor of this House. Is it normal to use The Statute Law (Miscellaneous Amendments) Bill to---

An hon. Member: Yes!

Mr. Midiwo: You may say "yes," but this is a matter of clarification. So, the hon. Members may know, but I do not know. That is why I am asking. So, be fair to me. Is it normal that by way of The Statute Law (Miscellaneous Amendments) Bill, we amend the operationalizing Acts which we already passed in accordance with the Constitution? I think it is good to clarify that, so that Kenyans know that we are not violating the law. Particularly, I am of the opinion that there is more than meets the eye. I think it is very clear and that clarification should come to us.

The Temporary Deputy Chairman (Dr. Laboso): Order, hon. Members!

Hon. Members, this very matter that we are raising here was raised with the Speaker and he gave a ruling. So, that we put an end to what is going on now, allow me to just read what the Speaker ruled. It reads:

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

Hon. Members, that was part of the ruling of the Speaker. In the interest of moving forward, allow us to use the ruling of the Speaker and continue.

(Several hon. Members stood up in their places)

Order! Order, hon. Members!

What is your point of order, hon. Mbadi?

Mr. Mbadi: On a point of order, Madam Temporary Deputy Chairlady. I plead with you that this is a fundamental issue. The Speaker ruled that whenever the Constitution Implementation Commission (CIC) expresses doubts and reservations about the legislation that is brought to this House, it should be considered. In fact, I am so much disappointed by the Chair of CIOC. He is the Chair of the Committee which is supposed to ensure proper implementation of the Constitution.

(Mr. Abdikadir stood up in his place)

I have not even said anything. Why are you standing?

Madam Temporary Deputy Chairlady, if this is the way the Chair of the CIOC is going to ensure that the Constitution will be implemented, then this country is in problems.

Madam Temporary Deputy Chairlady, the Chair of the CIC actually said that this Commission is subordinate to Parliament. I want to let him know that the people of Kenya knew that there was Parliament when they did set up this Commission. I want to read the Sixth Schedule which says:-

“This Commission shall ensure that any impediment to the implementation of the Constitution is addressed.”

This is one of the impediments. The Political Parties Act and Elections Act are some of the legislations that were put in the Fifth Schedule. You could not bring these particular legislations unless they were processed through the CIC, the Attorney-General and the State Law Office. You can equally not bring an amendment without following the same procedure.

(Loud consultations)

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

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

The Temporary Deputy Chairlady (Dr. Laboso): Who do you want to inform?

Mr. Mbadi: Madam Temporary Deputy Chairlady, he can inform me. I accept the information.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, remember that this is the Third Reading. We are not debating.

Mr. Namwamba: On a point of information Madam Temporary Deputy Chairlady. I want to inform the hon. Member for Gwassi that the question he is canvassing received considerable attention in the ruling that you have just selectively read to the House because that is what you have just done. You have selectively read a ruling of the Chair to this House and I want to point out that---- This is selective in acceptable simple English. We want to defile the new Constitution. We will not allow anybody to defile the new Constitution.

Mr. Mbadi: Thank you for the information.

Hon. Members: On a point of order, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): I have stopped any further points of orders on this matter. Hon. Baiya, move your amendment.

(Loud consultations)

(Mrs. Shebesh stood up in her place)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Mrs. Shebesh. Get out of the Chamber!

*(Mrs. Shebesh withdrew from the Chamber escorted by
Mrs. Odhiambo-Mabona)*

(Applause)

The Assistant Minister for Industrialization (Mr. Muriithi): Madam Temporary Deputy Chairlady, I support and as I do, may I say the following. I am under the impression that the National Assembly of the Republic of Kenya cannot be intimidated or at any rate be threatened that if we do not do this, we will go to court and if we do that, we will go to court.

I support.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Nderitu, that matter is closed. I will now put the question.

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

Mr. Ethuro: Madam Temporary Deputy Chairlady, I beg to move:
 THAT, the Schedule to the Bill be amended –
 in the amendments proposed to the Political Parties Act, 2011 (No. 11 of 2011) –
 (a) in the amendment proposed to section 35(1) by deleting the proposed amendment and substituting therefor the following new amendment-
 S. 35 Delete
 (b) in the amendments proposed to the Fifth Schedule by deleting the proposed amendments and substituting therefor the following new amendment-
 Fifth Schedule Delete
 (c) by inserting the following new amendment immediately after the amendments proposed to the Fifth Schedule-
 Paragraph 1,
 Sixth Schedule
 Delete the words “The Selection Committee” appearing at the commencement of the paragraph and substitute therefor the words “The Public Service Commission”.
 Paragraph 2,
 Sixth Schedule
 Delete the words “The Selection Committee” appearing at the commencement of the paragraph and substitute therefor the words “The Public Service Commission”.
 Paragraph 3,
 Sixth Schedule
 Delete the words “The Selection Committee” appearing at the commencement of the paragraph and substitute therefor the words “The Public Service Commission”.
 Madam Temporary Deputy Chairlady, the import of this amendment is to simplify the process by which appointments are made. If the proposal is for a select committee, which I propose that we delete, so that this thing is done by the Public Service Commission which will nominate candidates for the President to bring to the House.

Mr. Mbadi: On a point of order, Madam Temporary Deputy Chairlady. You asked hon. Rachel Shebesh to walk out, but you did not say for how long. Can she come back?

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I want to clarify that hon. Shebesh has been sent away in accordance with Standing Order No.97(2)(a) for the remainder of the day’s sitting.

(Question 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)

Section 41(4) – The Political Parties Act, 2011

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Statute Law (Miscellaneous Amendments) Bill, 2012 be amended in the proposed amendments to the Political Parties Act, 2011 (No. 11 of

2011) by inserting the following immediately after the amendments proposed to section 41(4) of the Political Parties Act-

S.51 Insert the following new sub-section immediately after sub-section (1)-

(1A) Until after the first general election held after the commencement of this Act, nothing provided for in sub-sections (4), (5) or (7) of section 14 shall be construed as requiring a person to vacate his or her seat as a Member of Parliament or of a local authority, or as disqualifying any person from eligibility to contest in an election under this Act.

Madam Temporary Deputy Chairlady, I wish to commend this august House for enacting the law on political parties. It is a very forward-looking law. It is a law that will bring order and health. As we all know, democracies rely on political parties for their day-to-day activities. So, I stand to support this honourable House in enacting this law. I think it is a wonderful law. However, even as we commend this august House, might we also say that this nation is in transition and transitions are not easy things? I am not sure that many of us are fully aware of the changes that we are going through as a country.

I have looked at the activities within our political parties over the last one year; it is quite obvious that there are fundamental changes that are taking place in terms of party affiliation and organization.

(Loud consultations)

Madam Temporary Deputy Chairlady, could you, kindly, protect me? I can hardly hear myself.

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! The consultations are too loud. Hon. Musyimi, remember it is Committee Stage. You are not moving a Motion. Summarize your contribution.

Mr. Musyimi: Thank you, Madam Temporary Deputy Chairlady. I feel that we need to give the political parties and our people the necessary legal framework to negotiate their future and, therefore, the future of our people.

Jesus said: "Law was made for man and not man for law." If it is necessary to change the law, we change it. I believe in reforms and I have spent a good part of my life pushing for reforms. However, if we just push reforms without pushing the agenda for stability for providing predictability to society, then reforms will hurt us eventually. What we want is stability in terms of political engagements. I beg to move.

(Question of the amendment proposed)

Ms. Karua: Madam Temporary Deputy Chairlady, I stand to oppose the amendment.

(Applause)

It is a great shame that shortly after passing the Constitution – passing the Political Parties Act, 2011, we are now telling the country that; allow us as Members of Parliament, as the rest of Kenya obeys the Constitution and the law, to just misbehave just a little; allow us not to be faithful to the party that we have come to Parliament with. I think that we need to be disciplined. If one wants to change party allegiance, there is a mechanism for doing so but I think

let us not do that. I am saying that for Kenya to democratize, it is political parties that will help to change the governance of this country. We destroy parties today, we are destroying our country. I just want to go on record as vehemently opposing this amendment which is going to open a floodgate to indiscipline in political parties and what we call political promiscuity.

I oppose.

Dr. Duale: Madam Temporary Deputy Chairlady, I stand to support this amendment.

History will bear me out that the people who will oppose this amendment have changed parties more than five times.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. Is the hon. member in order to mislead the House that those who are opposing have changed parties? I have only been a member of the Orange Democratic Movement (ODM). I have never changed and I vehemently oppose.

Mr. Duale: Madam Temporary Deputy Chairlady, we are doing this in order to---

Dr. Nuh: On a point of information, Madam Temporary Deputy Chairlady.

Mr. Duale: I do not want to be informed. Madam Temporary Deputy Chairlady. Hon. Mutava Musyimi is exercising his legislative role of either amending or doing his oversight role that we create parties based on the Constitution. As we go to the new constitutional dispensation, we have parties where in the morning, evening and at night, are owned by individuals. For that, the way we have created many transitional authorities in this House both in the social, economic and political spheres, we must create a transitional period for us to leave parties that are full of dictators – parties that believe in regional politics and ethnic polarization and form a Kenyan political party. I think hon. Mutava Musyimi has created the avenue. He has brought an amendment where party hoppers can leave dictators and go to where democracy thrives.

Mr. Midiwo: Madam Temporary Deputy Chairlady, let me oppose this amendment. I am opposing the amendment, knowing that the people who are used to indiscipline shall win. However, I want to go on record as having said that this country is a multiparty democracy, and that there cannot be a thriving multiparty democracy where there is no political party discipline. Let me promise my colleagues that it does not matter how many political parties one hops from and to, in the final analysis, you will come back to this House. You shall only survive in politics if you believe in some ideology of some party, which you shall help to build. Otherwise, you will not be helping yourself, other than promoting gross political party indiscipline in our country.

I know that those who are supporting this amendment will win, and I wish them well.

The Assistant Minister for East African Community (Mr. Munya): Madam Temporary Deputy Chairlady, I support this amendment for one very key reason.

The Bill of Rights ranks at the top in the hierarchy of norms in our constitutional make up. A cardinal principle in the Bill of Rights is freedom of association. When you are restricting enjoyment of a fundamental freedom, you have to be extremely careful. When you tell people that if you have disagreed with your party or you no longer share your ideology with that party, you cannot move out, is unreasonably restricting your freedom of association, which is a fundamental principle in the Constitution. Especially in a country where parties are really shades, and not real parties, and where we have owners of parties who dictate within the parties; they will want to keep you in the parties, so that they can use you to negotiate for political power.

Madam Temporary Deputy Chairlady, I hold the freedom of association as being more fundamental than that people are trying to protect, where parties are really personalised outfits.

I beg to support.

The Assistant Minister for Lands (Mr. Rai): Bi Naibu Mwenyekiti wa Muda, ninaomba nianze kwa kusema kwamba haki iwe ngao na mlinzi, na kwamba maneno tunayozungumza ni lazima tuyapime tujue kwamba tunazungumza na Wakenya wanasubiri.

Kwa heshima yangu yote, ninataka ieleweke kwamba mhe. Martha Karua aliteuliwa kuja Bungeni kwa tikiti ya PNU lakini, hivi sasa, yeye ni Kinara wa Chama cha NARC-(Kenya). Bado hajajiuzulu. Anapigania kiti tena, na hapa anasema ni lazima demokrasia ifuatwe.

Ms. Karua: On a point of order, Madam Temporary Deputy Chairlady. Is it in order for my good friend, who appears not to have any understanding of the Political Parties Act, to mislead the House? It is true that I was forwarded to the PNU by NARC-(Kenya). I never became a member of PNU. The law allows me even now to define myself as a member of NARC-(Kenya) because it is NARC-(Kenya) that had become a corporate member of PNU. Is it in order for this good hon. Member, who is otherwise my friend, to mislead Kenyans on the law? We saved clauses 2 and 30 of the Political Parties Act. I am not a member of PNU. I am a member of NARC-(Kenya) and its head.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! Gonzi Rai, complete your contribution.

The Minister for Nairobi Metropolitan Development (Mr. Jamleck Irungu Kamau): On a point of information, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Do you accept the information, hon. Gonzi Rai?

The Assistant Minister for Lands (Mr. Rai): Yes, I do, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Proceed, Minister.

The Minister for Nairobi Metropolitan Development (Mr. Jamleck Irungu Kamau): Madam Temporary Deputy Chairlady, I happen to be the Vice-Chairman of the PNU, the party that is being said to be “Pnu”. The party is not “Pnu”. It is actually PNU. For the information of this hon. Member, I was actually in NARC-(Kenya), together with hon. Martha Karua. I was elected under the PNU, through NARC-(Kenya), just like hon. Martha Karua was elected. Therefore, she belongs in PNU.

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order hon. Members! Allow the hon. Member to complete his contribution.

Yes, Mr. Rai.

The Assistant Minister for Lands (Mr. Rai): Madam Temporary Deputy Chairlady---

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! We need to move. We know that this is a sensitive topic.

(Dr. Eseli stood up in his place)

Order, Dr. Eseli! Allow the hon. Member to speak.

The Assistant Minister for Lands (Mr. Rai): There is some information the hon. Member wants to give me, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Not more information! Mr. Rai, you will forfeit your time because you have no more to say.

The Assistant Minister for East African Community (Mr. Munya): Madam Temporary Deputy Chairlady, this amendment only gives hon. Members the convenience that the law gave to Martha Karua to be forwarded to PNU and forward herself back to NARC-(Kenya). So, I do not see anything wrong with it.

(Mr. Rai stood up in his place)

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Rai, you have now forfeited your time.

Dr. Eseli: Madam Temporary Deputy Chairlady, is the hon. Member correct to suggest that some of us are in PNU when we have come directly through other parties considering that PNU, as a medical doctor, I actually examined it and pronounced it dead? It died of constipation after eating its own children and adopting the neighbour's.

(Laughter)

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I know hon. Members may be looking for some hilarious moments here but is it in order for an hon. Member to stand before this House and talk of a political party which is supposedly dead when he has not even been a Member? I am the Secretary-General of PNU, a party that is in the coalition; the party that is ruling and a party that participates in this Government and is here sponsoring all these presidential candidates including Martha Karua. For the information of Ms. Karua, I would like to just inform her that Section 2 of the Political Parties Act of 2007 was not saved in the Political Parties Act that was repealed. Section 33 was saved but not Section 2. So, be very careful how you approach me as the Secretary-General of PNU!

(Laughter)

Mr. Namwamba: Madam Temporary Deputy Chairlady, as the dead bury their dead, I just want us to get back to---

The Temporary Deputy Chairlady (Dr. Laboso): Yes, but no debate, please.

Mr. Namwamba: No, Madam Temporary Deputy Chairlady. I wanted to seek some guidance from the hon. Attorney-General and in his absence, the Minister for Justice, National Cohesion and Constitutional Affairs is here. I just wanted to seek this clarification for the benefit of this discourse.

The essence of the amendment is to basically allow hon. Members to continue holding their positions even after vacating their political parties. However, I want to benefit from the Attorney-General who is not here but the Minister for Justice, National Cohesion and Constitutional Affairs could also do it. With respect to Section 3 of the Sixth Schedule to the Constitution, which provides that Sections 30 to 40; 43 to 46; 48 to 58 of the former Constitution

- the provisions of the former constitution concerning the Executive are extended which means they are still applicable--- The clarification I seek, therefore, is how this particular amendment would sit alongside Section 40 of the former Constitution whose applicability is extended by Section 3 of the Sixth Schedule. The said Section 40 of the former Constitution provides as follows:

This is Section 40 and I quote:-

“Vacation of seat in the National Assembly upon resignation from party - a Member of the National Assembly---

(Loud consultations)

The Temporary Deputy Chair (Dr. Laboso) Order, Members!

Mr. Namwamba: I do not know whether we are here to debate or to make noise and heckle. It states:

“A Member of the National Assembly who, having stood at his election as an elected Member with the support of or as a supporter of a political party, or having accepted appointment as a Nominated Member as a supporter of a political party either:-

(a) resigns from that party at a time when that party is a parliamentary party; or,

(b) having, after the dissolution of that party, been a Member of another parliamentary party resigns from that other party at a time when that other party is a parliamentary party shall vacate his seat forthwith unless in the meantime that party of which he was last a Member has ceased to exist as a parliamentary party or he has resigned his seat”

Madam Temporary Deputy Chair, I raise this matter because---

Mr. Abdikadir: On a point of order, Madam Temporary Deputy Chair.

Mr. Namwamba: I am on a point of order.

I raise this question because this Section 40---

Mr. Abdikadir: On a point of order, Madam Temporary Deputy Chair.

Mr. Namwamba: I am on a point of order myself.

Madam Temporary Deputy Chair, when pretenders to reforms suddenly show their colour and start demonstrating the worst possible traits of impunity---

The Temporary Deputy Chair (Dr. Laboso): Order, Mr. Namwamba! Continue with your contribution. Just stick to your points.

Mr. Namwamba: Madam Temporary Deputy Chair, would I be in order to seek the guidance of the hon. Attorney-General, who is back here now, as to how this amendment would sit alongside Section 40 of the former Constitution, whose application is saved by Article 3 of the Sixth Schedule of the Constitution, which is actually part of the Constitution? Would this provision, therefore, be valid?

Whether you make noise or not, we are a country governed by the rule of law not by the noise of man.

The Temporary Deputy Chair (Dr. Laboso): Minister for Justice, National Cohesion and Constitutional Affairs, please, proceed.

Mr. Abdikadir: On a point of order, Madam Temporary Deputy Speaker. Is it in order for the legislative function of this House to be subjected to the opinion of the Minister for Justice, National Cohesion and Constitutional Affairs? This House is legislating at Committee Stage; the views of the Minister, respectable as they are, do not supersede the functions of the House.

Madam Temporary Deputy Chair, the Standing Orders talk about a Motion. Standing Order No.47 talks about a Motion. We do not have before us a Motion. There is developing a habit in this House that everything is sent to the Chair or the Speaker for determination. It is not the Speaker or the Chair that makes laws. Absolutely not! It is the cardinal function of the House; it is the mandate of the House. It is not the mandate of the Speaker or the Chair. It is certainly not the mandate of the Minister for Justice, National Cohesion and Constitutional Affairs to make laws. Will I be in order to seek that we move ahead with the business of the House?

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Madam Temporary Deputy Chair, I stand to oppose the amendment. The guilty are afraid. All the people who are supporting this amendment are hoppers of political parties. We cannot kill democracy in this country. It is only in this country that we have selfish legislators; people who want to help themselves because you want to jump from one party to another so that tomorrow, you can survive. We cannot kill democracy because you want to move from party to party.

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! Complete your contribution.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Madam Temporary Deputy Chairlady, you can see a big shame tonight that hon. Members who have themselves to blame. We cannot kill democracy because you are political hoppers. We cannot allow that and, therefore, I oppose this amendment.

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): The House will decide. Mr. Namwamba sought an opinion and I will allow the Minister because he had stood up. Let us allow the Minister and then put the question so that the House can decide. Do you have an opinion? We are not bound by his opinion but we can benefit from it.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Chairlady, I think I want to concur with what Mr. Abdikadir said and I want to assure the hon. Member that we are available together with the Attorney-General to give him our considered opinion but if he has grounds on which he wishes to oppose this amendment on constitutional grounds, he is free to do so in this debate but we will be available to give him our considered opinion.

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

(Several hon. Members stood up in their places)

Hon. Members: Division! Division!

The Temporary Deputy Chair (Dr. Laboso): Hon. Members, we do not have 20 hon. Members standing. Mr. Kivuti's amendment, therefore, falls as it is similar to Mr. Musyimi's amendment.

(The provisions relating to the Political Parties Act as amended agreed to)

(The provisions relating to the Kenya Citizenship and Migration Act agreed to)

(The provisions relating to Urban Areas and Cities Act agreed to)

*(The provisions relating to The Kenya National Commission on
Human Rights Act agreed to)*

*(The provisions relating to the National Gender and Equality
Commission Act agreed to)*

(The provisions relating to Commission on Revenue Allocation Act agreed to)

The Environment and Land Court Act, 2011

Mr. Ethuro: Madam Temporary Deputy Chairlady, my amendment is on page 3676. I beg to move:-

THAT, Section 7(1) of the Environment and Land Court Act, 2011 (No. 19 of 2011) be amended by-

- (a) inserting the word “and” at the end of paragraph (a);
- (b) deleting the word “and” appearing at the end of paragraph (b); and
- (c) deleting paragraph (c).

If you look at the qualifications that are being proposed for a judge in the Environment and Land Court, it talks about the qualifications which are generally required of any judge, but it also gives the number of years that you have been in either academic or legal practice. Then it gives the aggregate of not more than ten. The Constitution provides for all and all. In this case, it does not do so. So, I am just making it compliant so that it comes to the same aggregates it is talking about.

(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)

(The provisions relating to The Environment and Land Court Act, 2011, as amended agreed to)

The Industrial Court Act, 2011

Dr. Khalwale: Madam Temporary Deputy Chairlady, for the information of Members, we are on page 1132 of the Bill. This is where the Attorney-General would like to amend the Industrial Court Act. My amendment is to the Schedule.

I beg to move:-

THAT, the Bill be amended in the Schedule by deleting all the amendments proposed to the Industrial Court Act, 2011.

Madam Temporary Deputy Chairlady, my amendment is intended to stop the Attorney-General - for now - from carrying on with this amendment. Hon. Members, the reason is as follows:-

That, if we amend the Bill the way the Attorney-General is proceeding, we will then be robbing the common man; the man who picks coffee in Kiambu; the man who picks tea in Kericho; the man who cuts sugar-cane in Mumias; the cook who cooks in your house and the watchman who works with G4S from having access to Industrial Court.

Madam Temporary Deputy Chairlady, currently, the Industrial Court is the most “Wanjiku friendly” court in Kenya. In that court, an aggrieved employee can approach the court without hiring the services of a lawyer. Using the simple procedures that are today in the Industrial Court, he or she can be able to argue their case successfully until he or she gets justice.

Madam Temporary Deputy Chairlady, what enables that man or woman to do that is the Industrial Court procedure rules. Those rules were made within the Industrial Court Act of 2011, which provides as follows:-

“That in any proceeding to which this Act applies, the Court shall act without undue regard to technicalities and shall not be strictly bound by the rules of evidence except in criminal cases.”

So, I am appealing to the Attorney-General—

The Temporary Deputy Chairlady (Dr. Laboso): Do not debate, hon. Khalwale. Just make your point very briefly.

Dr. Khalwale: Yes. I am appealing to the Attorney-General that we suspend this from this amendment so as to give an opportunity to the social players; namely, the Federation of Kenya Employers, Ministry of Labour and the workers through their trade unions to sit as envisaged in the International Labour Organization Convention, to which Kenya is a signatory, to agree on how best they can amend this particular Act, if it is necessary.

I do this in conclusion because I am persuaded that under the Constitution of Kenya, if we do not move like that, then we shall have negated Article 2 of the Constitution of Kenya. That Article provides that any law to which Kenya is a signatory or any treaty or convention forms part of Kenyan law. Kenya is a signatory to the ILO Convention that I am talking about.

Madam Temporary Deputy Chairlady, we shall also have contravened Section 162, Subsection 2 of the Constitution of Kenya, which provides that Parliament shall establish courts with the status a High Court to hear and determine disputes relating to employment and labour relations.

Finally, we will have contravened Section 165 of the Constitution, which gives the functions of the High Court. The Constitution emphasizes the following; that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts as contemplated in Article 162, namely, the Industrial Court. So, I am begging the Attorney-General to drop the amendment so that we can improve.

I thank you, Madam Temporary Deputy Chairlady.

(Several hon. Members stood up in their places)

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

(Question of the amendment proposed)

Mr. Ruto: On a point of order, Madam Temporary Deputy Chairlady. It is now 10.00 p.m. and we are hardly half way through this Bill. Could we go back to the practice of Committee Stage; that each hon. Member contributing should not exceed one-and-a-half or two minutes?

Hon. Members: Yes!

Mr. Ruto: Some of the contributions are reminiscent of the Second Reading Stage, where we debate.

The Temporary Deputy Chairlady (Dr. Laboso): Yes, that ruling stands; that each hon. Member shall contribute for one minute, so that we can make progress and we will start using the timing lights.

Proceed, hon. Attorney-General.

The Attorney-General (Prof. Muigai): I will take one minute, Madam Temporary Deputy Chairlady. I will oppose this amendment. I wish I was able to accommodate the hon. Member. These proposals came from the Judicial Service Commission (JSC) and it carried out intensive in-house re-evaluation of the statutes we passed.

In fact, Madam Temporary Deputy Chairlady, I must share with the House that the provisions of the existing law have already been found by the High Court to be unconstitutional to the extent to which we tried to transit the current members of the Industrial Court to become the new Industrial Court. This is a court of equivalent standing as the High Court, but it is not the High Court. Therefore, what we did with the Environment and Land Court is exactly what we are doing here. We are streamlining, harmonizing, ensuring that this jurisdiction is created by law but, above all else, we are taking the courts from the Executive. I always thought that, that is what the Back Bench always wanted. We are taking the Industrial Court from the Executive, returning it to where it should always have been – with the Judiciary – under the authority of the JSC and the Chief Justice.

An hon. Member: Well done!

The Attorney-General (Prof. Muigai): Thank you.

Mr. Namwamba: Madam Temporary Deputy Chairlady, re-organization and harmonization cannot be seen or amount to restricting access to justice. Article 48 of the Constitution is absolutely clear that every effort shall be made by the State to ensure that access to justice is broadened; is widened and is not restricted. The categories of citizens that Dr. Khalwale has mentioned are the lowest possible workers in this country.

(Applause)

Madam Temporary Deputy Chairlady, labour relations is one of those segments that is specifically protected under the Bill of Rights when you look at Article 41. Therefore, I want to plead with the Attorney-General to accommodate this amendment.

Madam Temporary Deputy Chairlady, what Dr. Khalwale is proposing is that you merely freeze this proposed move and engage more widely. The Attorney-General says that there were consultations, but they were in-house; that the Judiciary consulted in-house and re-evaluated its structures in-house. Could they now get out of the house and engage with these other stakeholders that Dr. Khalwale has mentioned, so that we can come up with a better law that broadens instead of restricting access to justice?

Madam Temporary Deputy Chairlady, I support the amendment.

Mr. George Nyamweya: Madam Temporary Deputy Chairlady, I wish to support this proposal because, really, the Constitution says so. What we are trying to do is allow access to justice and anything that impedes that movement, must really be removed. We could have the Attorney-General and those others involved go and find out other ways of doing their de-linking. But the point that we are making is that we want everybody to have access to justice. We do not want all these impediments put in the way.

The Assistant Minister for Tourism (Ms. Mbarire): Madam Temporary Deputy Chairlady, having listened to the arguments from both sides, I am persuaded that we go by hon. Dr. Khalwale's amendment. This is because I think whatever it is we do, must be what provides access of justice by majority of Kenyans. If the employees themselves have not been properly consulted on this matter, I think pending this amendment for a short while, just to allow for further consultations, does not hurt. This is because I think the majority of Kenyans require this Industrial Court. So, I would really beg the hon. Members that, for once, let us listen to Dr. Khalwale today.

Mr. Midiwo: Madam Temporary Deputy Chairlady, I rise to support Dr. Khalwale's amendment, because it is about access to justice. But just to put the hon. Members into the picture and plead with the Attorney-General to change his mind, if you take these matters to the High Court, your maid cannot afford a lawyer. Issues of labour relations are always resolved world over by the International Labour Organization (ILO) conventions through a tripartite arrangement. This one will only affect and help unscrupulous employers in Industrial Area, because our people will not move from where they are offended to where the courts are.

The Minister for Trade (Mr. Wetangula): Madam Temporary Deputy Chairlady, having listened to colleagues on this issue, I want to persuade my learned junior, the Attorney-General, to step down this proposal, so that he can consult a little more wider. All will not be lost if it comes back with wider consultations.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, let me start by correcting hon. Wetangula. The Advocates Act defines the seniority of advocates as follows:-

1. The Attorney General.

(Laughter)

I, therefore, for this purpose would like to address my learned junior, hon. Wetangula.

(Laughter)

Madam Temporary Deputy Chairlady, having heard the views of the hon. Members on both sides of the House, I do not wish to pursue the proposed amendment, until further consultations have been held, both within this House and elsewhere.

The Temporary Deputy Chairlady (Dr. Laboso): I will now put the question.

Ms. Karua: On a point of procedure, Madam Temporary Deputy Chairlady. If the Attorney-General has withdrawn, then what is being amended? That is the same thing you told me when I was moving another amendment to the Sugar Act. If the Attorney-General withdrew the amendment, there is nothing for Dr. Boni Khalwale to amend. We return to the same position

as we were before. We need to revert to the position that there is nothing for hon. Dr. Khalwale to amend. We should not have double standards.

The Temporary Deputy Chairlady (Dr. Laboso): There is no provision for withdrawal. I have been guided. Therefore, the Attorney-General needs to move a Motion to delete or adopt Dr. Khalwale's amendment.

The Attorney-General (Prof. Muigai): Madam Temporary Deputy Chairlady, I beg to delete the proposed amendment.

(Question that the amendment be deleted proposed)

(Question, that the amendment be deleted put and agreed to)

(The proposed amendment to the Industrial Court Act by the Attorney-General was accordingly deleted)

The Ethics and Anti-Corruption Act, 2011

Mr. Baiya: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended in the Schedule by deleting the proposed amend to Section 3(3) of the Ethics and Anti-Corruption Act, 2011.

The amendment on the Ethics and Anti-Corruption Act is on page 3664. The basic mischief we are seeking to correct is that the proposed amendment, while seeking to address issues of access--- The Commission is supposed to ensure access to its services in all parts of the Republic but the proposed amendment makes it mandatory that the headquarters of the Commission must be in the Capital City of Nairobi. Linking headquarters in Nairobi and access to services of this Commission nationwide are two unrelated things. We do not see why the two should be linked.

Secondly, a situation may be envisaged where the Commission may require to sit outside the city. The way this section is worded is such that if it were to sit and make decisions outside the City of Nairobi, it would be challenged because of where it has sat. So, we are not ready to carry that amendment and we seek that the amendment be deleted.

(Question of the amendment proposed)

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

Mr. Midiwo: Madam Temporary Deputy Chairlady, I wish to withdraw my amendment.

(Proposed amendment by Mr. Midiwo withdrawn)

(Provisions relating to the Ethics and Anti-Corruption Act were accordingly deleted)

Dr. Nuh: On a point of order, Madam Temporary Deputy Chairlady. I wanted to bring to your attention the fact that when the amendment by hon. Baiya was read, I was upstanding. I wanted to advise you that when you are staring at the House because you are a little bit in front, maybe, you need to look back so that you see some of us.

The Temporary Deputy Chairlady (Dr. Laboso): The message is taken. However, you were sitting behind, yet I only have eyes in the front.

The Elections Act, 2011

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

THAT, the Bill be amended in the Schedule by inserting the following new amendment in its proper numerical sequence—

Written Law Provision Amendment

**Elections
Act, 2011
(No. 24 of
2011)**

s.2 Insert the following new definition in its proper alphabetical sequence—
“name of a candidate” includes a nickname or other unofficial name that a candidate may use alongside his or her official name;

Insert the following new section immediately after section 31—

New use of unofficial names. 31A.

Notwithstanding any provision to the contrary in this Act or in any other written law, the Commission may accept and include in the ballot papers a nickname or other unofficial name that a candidate has indicated that he or she prefers to use alongside his or her official name.

Madam Temporary Deputy Chairlady, the purpose of this amendment is that if a candidate wishes to have a name, which he is popularly known by, it should appear alongside his official name.

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

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

In this regard, because I have some cheap and superficial interpretation, I wish to propose that we delete the word “nickname” and have that amendment approved. However, I want to say that this is purely personal. I have had a number of hon. Members who have told me that they are known by other names.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Eng. Maina! Your amendment is well spelt out and so I will propose the Question.

(Question of the amendment proposed)

Mr. Ogindo: Thank you, Mr. Temporary Deputy Chairman, Sir. I want to congratulate you for having good eyes.

I stand to oppose this amendment. It is imperative that if you believe in a name, please, swear an affidavit and adopt it as a true name.

I beg to oppose.

The Assistant Minister for Tourism (Ms. Mbarire): Madam Temporary Deputy Chairlady, I stand to oppose this amendment. I think we are in serious business. I do not know of anywhere where you seek for a job using your nickname. Let us stick to official names.

I oppose.

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

(Eng. Maina stood up in his place)

The Temporary Deputy Chairman (Mr. Ethuro): Order, Eng. Maina! One is that, you are allowed to stand but you need the numbers. You are only alone! Two, you need to call out the name “Division” and you did not. Hon. Dr. Nuh, proceed!

Section 10(2) – The Elections Act, 2011

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

THAT, the Elections Act, 2011 be amended by inserting the following immediately after the amendment proposed to section 10(1)-

S.10 (2) Delete.

Mr. Temporary Deputy Chairman, Sir, I am proposing a deletion of that section which proposes that the identification documents produced during voting used be the one you used during registration and I was asking that if you registered using a passport and you have an identity card and maybe you have misplaced your passport, if the identification of the person can be well proved beyond doubt because the passport and the identity cards are interchangeable, why would we want to force on a voter that he must produce an identity card if he registered using an identity card when he can produce a passport since maybe he lost his identity card? That is basically the rationale.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Hon. Dr. Nuh, you need to move all of them under the Elections Act. Deal with one first and then we will go to two.

Section 13(3) – The Elections Act, 2011

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

THAT, the Elections Act, 2011 be amended by inserting the following immediately after the amendment proposed to section 10(1)

S.13 (3) Delete all the words appearing after the words “its constitution and rules” and substitute therefor the words “which shall be at least forty five days before such election.”

Mr. Temporary Deputy Chairman, Sir, the section I am deleting is when it is giving the days when nomination is supposed to be done and it says:-

“Such nominations shall be done in accordance with the constitutional rules which shall not be more than 21 days after the date of publication of such notice.”

What we are basically saying here is that what should be definite is the date of the election and just as the nomination is a fixed date that should not be less than 45 days before the general election. I am proposing that rather than give a date that is ambiguous – that is not fixed and it will be for the IIEBC to determine, then you say 21 days after that date. If that date is set, then there is a danger of getting towards and closer to the day of the election. So, I am trying to align it with the previous provisions and say that we replace it with the words “a date which shall be at least forty five days before date of such election.”

Mr. Temporary Deputy Chairman, Sir, with respect to Section 21(3) and Section 21(4), I learnt that there were some corrections which were done because this was to correct the anomaly of the Acting Speaker and the Deputy Speaker. So, I wish to withdraw amendments 21(3) and 21(4).

The Temporary Deputy Chairman (Mr. Ethuro): So, Dr. Nuh, if the Chair heard you, you are withdrawing Sections 21(3) and (4) and still maintaining Section 10(2) and Section 13(3)?

Dr. Nuh: Yes, Mr. Temporary Deputy Chairman, Sir.

(Proposed amendments to Sections 21(3) and (4) by hon. Nuh were withdrawn)

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, we are deleting Sections 10(2) and 13(3) and proposing that we put “forty-five days before such election”. I have withdrawn the amendments to Sections 21(3) and 21(4).

*(Proposed amendments to S.21(3) and S.21(4)
by Dr. Nuh withdrawn)*

(Question of the amendment proposed)

Ms. Karua: On a point of order, Mr. Temporary Deputy Chairman, Sir. While moving the amendment, I heard the hon. Member talk about registering with an ID, but voting with a passport. However, looking at the amendment on the Order Paper, I see nothing talking about that proposal. So, could the hon. Member clarify where this proposal appears, so that we can follow the amendments? Otherwise, it is impossible to contribute to the amendment. Even in the Act itself, I am not seeing any such proposed amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, there is another clarification being sought by hon. Kimunya.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, indeed, Section 10(1) of the Act basically says that you use the same document that you used to register as a voter for purposes of voting. So, Dr. Nuh is basically saying that the document that you use to register need not be the one you will use for voting, and that you can be identified separately. Such an amendment could provide room for manipulation of the election.

Mr. Temporary Deputy Chairman, Sir, if you remember, when we were legislating on this law, we went through a very elaborate system to sort out these issues. The document that you use to register is the one that you are known by in the register. You cannot then come back – because of multiple registrations – and use another document to vote. It was at that point that we

actually removed the issue of voters' cards, which have always been used as an opportunity for buying voters. I am surprised that voters' cards are coming back.

Therefore, I have a further amendment to Dr. Nuh's amendment, to actually delete the clause that is seeking to re-introduce voters' cards, which we removed in this House with a lot of wisdom. We know that voters' cards are an avenue for rigging of elections. We should especially consider the budgetary constraints that the IEBC is in. It is unfortunate that whereas we are crying that we do not have money for elections, we are seeking to re-introduce voters' cards, which will cost so much money, despite the fact that we do not need them, and which this House, in its wisdom, had removed from the Statute.

Mr. Temporary Deputy Chairman, Sir, I want to introduce my amendment at this point.

The Temporary Deputy Chairman (Mr. Ethuro): What are you amending, Minister?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, it is a further amendment to Dr. Nuh's amendment.

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

THAT, Section 10(1) on the provisions relating to the Elections Act, 2011 and other references to voter's cards within the Elections Act, 2011, be deleted.

The rationale of this amendment is that when we were legislating on the Elections Act, 2011, we looked through this matter and said that voters' cards have previously been used for purposes of rigging elections.

The Temporary Deputy Chairman (Mr. Ethuro): Minister, conclude. You have convinced the hon. Members.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, if I have convinced the hon. Members, I need not speak any more. Let me just say that Section 10(1) of the Elections Act, 2011, be further amended by being deleted.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kimunya, that cannot be a further amendment to Dr. Nuh's amendment because you are dealing with Section 10(1) whereas Dr. Nuh is dealing with Section 10(2).

(Mr. Kimunya consulted the Chair)

Mr. Baiya: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): What is it, hon. Baiya?

Mr. Baiya: Mr. Temporary Deputy Chairman, Sir, I wish to support that amendment by the Minister. That is with regard to removing the voters' card as a requirement for registration and even for voting. Actually, it is not just for voting. It is not needed either for registration or for voting. That way, we shall be making the election more efficient, effective and less expensive. So, that has been the position. The Departmental Committee on Justice and Legal Affairs has also agreed with that position and we, therefore, support the amendment.

Mr. Ogindo: On a point of order, Mr. Temporary Deputy Chairman, Sir. First of all, would I be in order to request that this double bottle I am seeing here be found a better place because it is prohibiting me from catching your eye?

The Temporary Deputy Chairman (Mr. Ethuro): But you have caught my eye twice!

Mr. Ogindo: Thank you, Mr. Temporary Deputy Chairman Sir. Having said that, I think it is important that the point of order that was raised by Ms. Karua be disposed of. This is because we are looking at the Order Paper and we are not seeing the amendment 10(1) which

Mr. Kimunya seems to be amending further. So, can we have Dr. Nuh respond to this? If it is okay, then let me move ahead to oppose this amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Ogindo! You are on a point of order. You cannot go ahead and propose.

Mr. Kimunya's amendment is strictly 10(1) and Dr. Nuh will come with 10(2) and then 13(3).

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, I have been advised by some documentation experts and a few legal minds, who I think sought to know the few issues that entail getting an ID and a passport, that it is not the same information although I have one. But you know I am just among the very few from Bura who have the opportunity to have a passport. I am informed that it is not the same information which is on the passport that might appear on the ID and that might open room for fraud. Mine was only to facilitate the voters. However, if it opens avenues for corruption I want to be guided and I want to withdraw the amendment.

The Temporary Deputy Chairman (Mr. Ethuro): So, you are withdrawing 10(2) and 13(3)?

Dr. Nuh: I am just withdrawing 10(2), Mr. Temporary Deputy Chairman, Sir.

(Proposed amendment to Section 10(2) by Dr. Nuh withdrawn)

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, I just want to register my support for Mr. Kimunya and draw the attention of hon. Members to Article 38 sub-section---

The Temporary Deputy Chairman (Mr. Ethuro): Order! I will give you the chance. Let me then put the amendment properly. Mr. Kimunya, we can start with yours. Move the amendment.

Section 10(1) – The Elections Act, 2011

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Section 10(1) on the provisions relating to the Elections Act, 2011, and references to voters' cards in the Election Act, 2011, be deleted.

(Question of the amendment proposed)

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, I want to support Mr. Kimunya by making a reference to Article 38(3) of the Constitution, which provides that every adult citizen has the right, without unreasonable restriction, to be registered as a voter and to vote by secret ballot in any election or a referendum.

Since the Constitution talks of there being the total absence of unreasonable restriction, it reminds me of some of the voters who are not able to read and write. They usually get into a lot of confusion.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Dr. Khalwale, I can see where you are going; this is Committee Stage.

Dr. Khalwale: Thank you.

I support.

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

*(Provisions relating to Section 10(1) of the
Elections Act, 2011 were accordingly deleted)*

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Nuh, move the amendments on Section 13(3).

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I had an objection to the amendment by Mr. Kimunya but it seems you are going too fast for some of us.

The Temporary Deputy Chairman (Mr. Ethuro): That is why I am here, Dr. Nuh.

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, even if you give a chance to someone who supports, it might be good to hear the contrary view; I was a little disturbed. Now that this amendment is already gone I just want Members to digest a case where someone misses in the register and their missing is caused deliberately by the Independent Boundaries and Electoral Commission (IEBC) and you have nothing to prove that actually you went to the IEBC to register. I think that is for the digestion of the Members.

Mr. Temporary Deputy Chairman, Sir, I have moved the amendment to Section 13(3); so, I do not know what you want me to do. Just propose the Question.

The Temporary Deputy Chairman (Mr. Ethuro): Let me not put the Question so that at least we get one or two clarifications.

Ms. Karua: Madam Temporary Deputy Speaker, I oppose the amendment. Dr. Nuh himself has doubted it. If you allow people who are not in the register to vote, what will happen is that we will have hand written registers replacing the old ones. This is the method that has been used---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Karua! You are back to Section 10(1). We had finished that. That is Mr. Kimunya's---

Ms. Karua: No; Dr. Nuh is on Section 10(3).

The Temporary Deputy Chairman (Mr. Ethuro): No; he was complaining that I had denied him the opportunity earlier on.

Ms. Karua: No; I have nothing on Section 10(1). I thought we were on Section 10(3).

The Temporary Deputy Chairman (Mr. Ethuro): We are on Section 13(3)

Mr. Ruto: On a point of order, Mr. Temporary Deputy Chairman, Sir. The hon. Member was just about to tell us how elections can be rigged. You stopped her---

The Temporary Deputy Chairman (Mr. Ethuro): Yes, you must stop all rigging of election.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, you know very well that hon. Karua is an authority.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Ruto do not--- No! No! Order, Ms. Karua! You do not need to answer him.

Ms. Karua: Because of what he did in Chepalungu; 400,000 votes---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Ms. Karua!

Order, Members! The next time someone ignores the Chair, I will throw him or her out. I will now put the question in relation to the amendment by Dr. Nuh on Section 13(3)

(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)*

*(Provisions relating to Section 13(3) of the Elections Act, 2011
as amended agreed to)*

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

THAT, the bill be amended in the Schedule by inserting the following new amendments in their proper numerical sequence -

(ii) by inserting the following immediately after the amendment proposed to section 22(1)-

S. 22 Insert the following new sub-section after sub-section (2)-

(3) Despite the provisions of this section, a person who immediately prior to the first general election held under this Act held the office of member of Parliament or member of a local authority shall qualify for nomination as a candidate for election as a member of Parliament or as a member of a county assembly respectively in the first general election held under this Act.

S. 23(3) Insert the following new paragraphs after paragraph (c)-

a governor;
a deputy governor;
a member of a county assembly.

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, with respect to Section 23(3), I am again guided by the Constitution although I was seeing that even the Constitution has denied some rights to people who should have had it. But I want to withdraw because it is in contravention of Section 137 and Clause 2 and 3 of the Constitution. So, I withdraw amendment to Section 23(3).

(Proposed amendment to Section 23(3) by Dr. Nuh withdrawn)

The Temporary Deputy Chairman (Mr. Ethuro): The hon. Member has withdrawn the proposed amendment to Section 23(3) and so I will only propose Section 22.

(Question of the amendment proposed)

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

(Provisions relating to Section 22 of The Elections Act, as amended agreed to)

Sections 28 and 29 – The Elections Act, 2011

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

THAT, the bill be amended in the Schedule by inserting the following new amendments in their proper numerical sequence -

(iii) by inserting the following immediately after the amendment proposed to section 27-

S. 28 Re-number the present provision as sub-section (1).
Insert the following new sub-section after sub-section (1)-
(2) Despite sub-section (1), a political party shall inform the Commission of any changes made to its party membership list not later than fourteen days before the nomination day.

S. 29(2) Delete

The amendments are on 3678 on the Order Paper in respect of Section 28. The input of this is important because of the freedom of movement and association as enshrined in the Constitution. We have said in the Political Parties Act, for sanity of the register that will be used towards the nomination, we are saying that at least 14 days before nomination, any update to the register that is valid should be communicated to the Commission for them to determine who is in the membership list of the party and who is not.

As regards Section 29, I propose the deletion of both sections 1 and 2. In cases where parties might not have candidates even at the county level or should I say in the constituency, why would it be mandatory for them to be restricted to nominate members of other political parties or even an independent candidate where a political party does not have any person to nominate in the first place? So I am proposing a deletion of Section 29(2).

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Dr. Nuh, if you can just highlight the ones you think are significant, we can read the rest that are obvious.

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, as regards Section 31, we are talking of-

--

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir. I would really like to raise an issue of concern. Hon. Dr. Nuh has several amendments which he is dealing with all at once. In some of those amendments, we are not even aware of what we are passing. I think we will realise tomorrow that we do not know what we are passing. We need to look at those amendments one by one. We need to be informed of what we are passing.

We do not want to come back later and start giving excuses that we passed things in a hurry at midnight. Even if we are passing them at midnight, we need to know what we are passing at midnight.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, I think hon. Mrs. Odhiambo-Mabona has said it all. I think what is happening is either Members are fatigued--- We are now passing these laws without even understanding the implications. Like now, we have given a blanket waiver on qualification on Members of Parliament. When hon. Dr. Nuh was moving his proposed amendment, he never gave the rationale. So, we need to be very careful because we do not want to be accused of passing bad laws.

Mr. Temporary Deputy Chairman, Sir, to be very precise, it is wrong to be discriminatory, whereby we put qualifications for Members of Parliament, which are different from somebody outside there. Just to expand on that, it is one thing to say that the qualifications for Members of Parliament are exempt from that provision of post-secondary---

The Temporary Deputy Chairman (Mr. Ethuro): Except, hon. C. Kilonzo---

(Mr. C. Kilonzo interjected)

No! No! The Chair cannot allow you to do what is not permissible. We have already finished that. I think the argument by Mrs. Odhiambo-Mabona, which I thought you were going to fortify, was that we give more time per sections, which I am willing to allow.

I would also like to remind the House that this Bill could not be discussed yesterday for one simple reason; that all the amendments were to be published and circulated. They were at the Reception for the purposes of Members looking at them against the Bill and against the statutes themselves so that, by the time we come here, we already know what we are talking about. That time was given. But I am willing to consider the amendments to be moved per section.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, what I am getting is this: We have the Statute Law (Miscellaneous Amendments) Bill here which had given the requirements. So, we have abandoned it and gone directly to the proposed amendments by individual Members. What I would have suggested is we do them together. If this happens, then we will agree. We cannot just leave what is provided for because there was a provision on qualification under the Statute, which was never called.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order, hon. Members. My head is very clear on this one. We have followed everything according to the sections of the Bill. The amendments are in the light of the sections of the Bill. I think if one or two Members may not be following, that is not a good reason to assume that all of us are not following.

Mr. Ogindo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I have a small point of order on procedure. I was very keen on this amendment by Dr. Nuh that seeks to lower the qualification requirements.

Mr. Temporary Deputy Chairman, Sir, when you put the Question - and the HANSARD will bear me out - you did not propose the Question. You went straight and put the Question. That is how we missed it. I was up on my feet.

The Temporary Deputy Chairman (Mr. Ethuro): Order Members! What we have before us are Sections 23 and 29.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): On a point of order, Mr. Temporary Deputy Chairman, Sir. I think hon. C. Kilonzo has raised a very serious matter. This House must be responsible to this nation. This House should not pass laws in its own interest. We should pass laws for the sake of posterity.

(Applause)

Mr. Temporary Deputy Chairman, Sir, we are moving from county councils now, which are smaller institutions, to county governments. If we are going to have a governor with high qualifications and with some of the councillors as you know them today, we will not have proper county governments.

An hon. Member: Exactly!

The Minister for Medical Services (Prof. Anyang'-Nyong'o): So, Mr. Temporary Deputy Chairman, Sir, I think this is something that whatever we have done---

(Several hon. Members stood up in their places)

The Temporary Deputy Chair (Mr. Ethuro): Order, hon. Members!

Mr. C. Kilonzo: On a point of information, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! Order, hon. C. Kilonzo! Let me be very clear, hon. C. Kilonzo; you will ask to inform an hon. Member and it is the Chair to ask that hon. Member if you can inform them. I did not allow you to inform that hon. Member and I think my job is to ensure that you follow the procedures.

Prof. Anyang'-Nyong'o, you are right! However, you should have done it when the proposal was before us. I cannot go backwards, Prof. Anyang'-Nyong'o!

(Applause)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): I cannot! There are procedures in which you can even revisit; that is up to you to look at them. But for now, we are on Section 28 and we will proceed accordingly.

(Several hon. Members stood up in their places)

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

Hon. Members: That is being deleted!

The Temporary Deputy Chair (Mr. Ethuro): That is being deleted, is it not? I am repeating; I therefore, wish to put the Question---

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I kindly beg you to listen to me. I know that people are tired, but we are following the Bill. We have not dealt with Section 22 in the Bill and Section 27 in the Bill; we are already up there. That is where the confusion arose. We are following the actual Bill, but you are following the amendments as they appear on the Order Paper. So, we had no way of even knowing what you were calling. We are not in guillotine; you proposed an amendment which is not in the Bill itself.

(Loud consultations)

The Temporary Deputy Chair (Mr. Ethuro): I think hon. Midiwo may be having a point. The question is that we have a section 10(1) which we disposed of; we went to Section 22(1) which was disposed of. Where are we? Are we on Section 29?

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, I think we are having a convoluted process. This is because if you look at what---

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Wetangula, I hope that you have the Bill because that is where we are following the amendments.

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, I do have the Bill and know why I stood up.

The Temporary Deputy Chairman (Mr. Ethuro): So, you have to give us the page number because actually, I am trying to dispose---

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, let me finish. If you look at page 3678 of the Order Paper, we have passed hon. Dr. Nuh's amendment

on Section 22. But on the Bill, we also have an issue on Section 22. I do not know if we will go back to that, because you ought to have dealt with the Bill--- When you finish with the Bill, you go to the hon. Members' amendments. That is normally the procedure.

Mr. Temporary Deputy Speaker, Sir, secondly, when you have a raft of amendments, like Dr. Nuh, he has to deal with one after the other. He says: "This is my amendment and this is what I want" then, we debate or vote and move on, otherwise, we may be at cross-purposes in what we are doing.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, I am very glad that my good friend, hon. Wetangula, has really made the case for me. We were doing very well until we got to Section 10(1) and then we stopped following the statutes to the Bill. We are expected to go by the Bill and if there is something related to that from the hon. Members' amendments, we will look at it, but not through the Bill. We went straight to the Order Paper.

*(The Temporary Deputy Chairman (Mr. Ethuro)
consulted with the Clerk-at-the-Table)*

The Temporary Deputy Chairman (Mr. Ethuro): Let me just clarify one thing. I am advised that the procedure has been that, first, we deal with the amendments which are proposed by the hon. Members. If you heard actually, the language is: "The provisions relating to the Elections Act"--- I have not put the overall Question, where the amendments that we have accepted plus the provisions that are already on the Bill itself can now all become part of the Bill. The provisions of the Bill that have no amendments will have to be carried the way they are. Agreed?

What is it, Prof. Anyang'-Nyong'o?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Chairman, Sir, I would really need some guidance in this House. This is because if you look at the amendments by Dr. Nuh, they go through almost the whole Act. Maybe you should guide us from now on and maybe we should establish a precedence which will help the House. When an hon. Member is proposing so many amendments to an Act of Parliament, would it not be a better procedure for that kind of thing to go, first, to the Legal Committee, so that they can scrutinize these things in detail, so that when the House comes to discuss them, it is guided by the Legal Committee? If an hon. Member is only suggesting one amendment, it is easier for the House to deal with it, but if he sits down alone and makes 1001 amendments to an Act of Parliament, he ought to submit them to the Legal Committee.

Mr. Keter: On a point of order, Mr. Temporary Deputy Chairman, Sir. There was also an amendment by hon. Chanzu to Section 22 which you did not even table. You moved to Sections 28 and 29 without ventilating on all the amendments which are dealing with that section. Just like we have been dealing with all the sections, you should clear all the amendments so that you adopt it as it is. So, I beg that we go back to Section 22, clear all the amendments and then move on.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, let me proceed. The argument by hon. Anyang'-Nyong'o is fine. However, once we reach here, any Member including your good self can bring an amendment and you cannot go back to the Committee. It is up to the House to decide. Whether you are a lone ranger amending the entire Bill, that you

cannot take away from an hon. Member. In fact, you should be congratulated for attempting to do so.

On the one for hon. Keter, we should have mentioned that once we adopted the one for Dr. Nuh then the one for hon. Chanzu collapsed because it is basically the same. The only valid point now is that there is an amendment to Section 13 by hon. Ms. Martha Karua who should have come between 10 and 22. So, we can move to that and then we move in that order.

Yes, Ms. Karua.

Section 13 – The Elections Act, 2011

Ms. Karua: Thank you, Mr. Temporary Deputy Chairman, Sir. I am on page 3672.

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

THAT, the Bill be amended in the Schedule as follows:-

(d) in the amendments proposed to the Elections Act (No.24 of 2011), by inserting the following new amendment immediately after the amendment proposed to section 10-

Section 13

Insert the following new subsection immediately after subsection (1) –

(1A) In nominating candidates for an election under subsection (1), a political party shall ensure that not more than two-thirds of its nominees are of the same gender.

The rationale for this is that the Constitution says that not more than two-thirds shall be of one gender, either in the National Assembly, in the County Assemblies or in the Senate. Members will recall that we have a 349 chamber, according to the Constitution. If we leave it for women to be nominated to make the one-third, we are likely to end up with a Parliament of over 400 Members. That chamber has been renovated for 350 Members. Instead of waiting for women to come through nominations, let political parties give them a chance to fight for seats. However, nobody will dictate to the parties where those women will be. Each party will check where they have strong women candidates. Therefore, I beg to move this amendment.

(Question of the amendment proposed)

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, this is the strangest of all the amendments. Anyone can see that. It says that in nominating candidates for an election under subsection (1), a political party shall ensure that not more than two-thirds of the nominees are of the same gender. To whom is this amendment addressed? It is the citizens of this country who will vote during the nomination day and they will decide who the nominee will be; a woman or a man that is up to the electorate to decide in an electorate area. You cannot direct.

Therefore, I beg to oppose.

Mr. Kathuri: Mr. Temporary Deputy Chairman, Sir, I stand to strongly oppose. It is very strange. Embu is not going to know what Nyanza is doing. How do you expect to know whether or not a woman will be nominated in Embu and another one in Kisii. It is not going to work.

I oppose.

Dr. Laboso: Mr. Temporary Deputy Chairman, Sir, I want to support strongly this proposal. I think that if there is one thing we have been grappling with on how to meet the no more than two-thirds rule, it is the constitutionality of it. Again, we have been talking about how

constitutional our Parliament is going to be. This is a window of opportunity for us to address that problem. If all political parties bring nominees---

An hon. Member: On a point of order!

Dr. Laboso: What is your point of order?

(Laughter)

Mr. Temporary Deputy Chairman, Sir, are you allowing the point of order?

The Temporary Deputy Chairman (Mr. Ethuro): I am definitely not allowing it and I am also not allowing you to continue because you have assumed a role that is not yours for now.

Hon. Jakoyo Midiwo.

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I rise to support this amendment. In doing so, I want to say that this country is grappling with how to implement the not more than two-thirds rule. I think Parliament could give directions. Even if it was not this way, we must do something to bring women on board.

I want to support.

Mr. Lagat: Mr. Temporary Deputy Chairman, Sir, though I respect the one-third rule, I think hon. Karua should, at least, be more creative and bring something that is actually workable. Parliament cannot act in vain; the nomination process is an election process; this is not something where you elect people.

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

(Several hon. Members stood up in their places)

(Loud consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, let us not argue with the Chair. You do not have the numbers. Let us proceed.

Hon. Ruto, you have an amendment.

Mr. Namwamba: On a point of order, Mr. Temporary Deputy Chairman, Sir. I am concerned and my concern arises right from the clause we have just voted upon. Indulge me to remind the House that there is, indeed, a Bill on this gender matter before this House. I have just been looking at a ruling which was delivered by the Chair on 30th May, 2012. This ruling is on matters that should constitute, ordinarily, a Statue Law (Miscellaneous Amendments) Bill. Please, allow me just to quote a few Sections of this ruling.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Namwamba. We have really passed that stage. Secondly, I thought you were actually in agreement when the Attorney-General pleaded with you that the issues that you may consider unconstitutional could be part of your petition to the House to support your cause. So, let us just proceed.

Mr. Namwamba: Mr. Temporary Deputy Chairman, Sir, this is a matter of procedure.

The Temporary Deputy Chairman (Mr. Ethuro): And my predecessor had also communicated on that.

Mr. Namwamba: Mr. Temporary Deputy Chairman, Sir, let me make my point. Indulge me to put this on record.

The Temporary Deputy Chairman (Mr. Ethuro): No. Hon. Namwamba, I get the case but you are talking to a matter that we had already determined.

Mr. Namwamba: Mr. Temporary Deputy Chairman, Sir, this is a new one; with your indulgence.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Hon. Namwamba, you run the risk of being disorderly. I do not want to do what you are inviting me to. Take leave. Mr. Ruto!

Section 22 – The Elections Act, 2011

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

THAT the Schedule to the Statute Law (Miscellaneous Amendments) Bill, 2012 be amended in the amendments proposed to the Elections Act, 2011 (No. 24 of 2011) by inserting the following immediately after the amendments proposed to section 22 of the Elections Act-

New section 22A

The Elections Act, 2011 is amended by inserting the following new section immediately after section 22—

Nomination for more than one elective seat.

22A. (1) Notwithstanding any other provision of this Act and for the avoidance of doubt, a person who is nominated as a candidate for election as President or Deputy President is nevertheless eligible for nomination and may contest as a candidate for any other elective seat in the same elections.

(2) If a candidate for election as President or Deputy President is elected as such and is also elected for any other elective seat in the same elections, a vacancy shall thereupon be declared for that other elective seat and a by-election to fill such seat shall be held in accordance with this Act.

Mr. Temporary Deputy Chairman, that is on page 3666. The intention of this amendment is to ensure that democracies are allowed to continue to mature and that succession is allowable. We are all aware that, for example, in America, you can stand for President while you are a Senator. You then quit the office of Senator once elected. If you are not elected you continue as a Senator. I am suggesting here that, for example, the next President and Deputy President be allowed to, for example, also vie for Senate. If they win the presidency then they relinquish the lower seat.

Mr. Temporary Deputy Chairman, Sir, you have seen what is happening in Uganda. Besigye---

The Temporary Deputy Chairman (Mr. Ethuro): Order! I think you have made your case, hon. Ruto.

Mr. Ruto: Do not destroy the young cubs just like the lions do. Once they get into a herd they kill all the young cubs. These Presidential aspirants like Ms. Karua are useful.

(Question of the amendment proposed)

Mr. Muthama: Mr. Temporary Deputy Chairman, Sir, frankly speaking there is no way that someone can stand and have three ballot boxes. You are voted for as President, Senator and Governor. Where are we going? That person vies for three positions and then he or she has to relinquish one of them. It should be one position as per one ballot box.

I oppose.

Ms. Karua: Madam Temporary Deputy Chairman, Sir, I stand to oppose the amendment. We agreed in this House that one vote per person and the Commission on Implementation of the Constitution has reminded us that this amendment is actually unconstitutional. So, among the many unconstitutional things we have done this evening, let us not add another one.

I oppose.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): What is it, Dr. Nuh?

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, whereas I do not support the amendment by hon. Ruto, is hon. Martha Karua in order to always make reference to the CIC? The letter that was written by the CIC Chairman, Mr. Charles Nyachae, says, in the last sentence of the first paragraph:-

“The Commission for the Implementation of the Constitution has reviewed the proposed amendments to the Statute Law (Miscellaneous Amendments) Bill that were discussed by the Committee of the whole House on Tuesday, 19th June, 2012.”

Mr. Temporary Deputy Chairman, Sir, Tuesday, 19th June, 2012 was yesterday. Hon. Members can recall that no such Statute Law amendments were discussed in this House yesterday. Are we going to make reference to letters written by people who are bound to only make conclusions based on hearsay? If anything, Mr. Charles Nyachae was in the loop and in communication with his other Commissioners. He would have known that no such Statute Law amendments were discussed yesterday.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order, Dr. Nuh! You have made your point. That is something you should have done when hon. Namwamba raised the matter.

Proceed, Mr. John Pesa.

Mr. Pesa: Mr. Temporary Deputy Chairman, Sir, I rise to oppose this amendment.

Mr. Temporary Deputy Chairman, Sir, we should believe in the principle of one man, one job or one woman, one job for that matter. If we are talking of ourselves, as the Members of this House, to occupy two or three positions, what about the councillor down there? Is he going to be allowed to vie for councillor and Member of Parliament? We will balkanise this country, if we go that way. I would rather we unite this country. Let Kenyans be given a chance to those who they want, from the few Kenyans that will present themselves for election.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, let me get an opinion that is in support, since I have been told to balance.

Yes, hon. Moses Lessonet.

Mr. Lessonet: Mr. Temporary Deputy Speaker, Sir, of course, I stand to support the amendment by hon. Ruto. As hon. Ruto said, my main reason for supporting the amendment is that we still want the serious Presidential candidates to be with us in this House. For example, in the event that the Prime Minister does not make it to State House, we know that he will still make sense to this House and to this nation.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order, hon. Members! Order, hon. Lessonet!

Mr. Lessonet: I am on the Floor, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Order! I will, therefore, put the Question.

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

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members. Let us go to the next amendment. Hon. Affey, you have an amendment. Is hon. Affey in the House?

An hon. Member: No!

The Temporary Deputy Chairman (Mr. Ethuro): The amendment is dropped.

(Proposed amendment by hon. Affey dropped)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Baiya, you have an amendment to Section 28 of the Elections Act, 2011.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, we need you to assist us. You have said Section 28 of what, where, which page? You can guide us.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Baiya's amendment is on page 3664 under Section 28 the third paragraph. But he is not here to move it and so the amendment is dropped.

(Proposed amendment by hon. Baiya dropped)

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, may I seek your guidance? Are the amendments by the Committee or by Mr. Baiya in his individual capacity?

The Temporary Deputy Chairman (Mr. Ethuro): That is a good issue but it is not for the Chair because you would assume if it was for the Committee there would have been another hon. Member. So, since neither the hon. Member himself nor any other person that he delegated to and he did not mention, the Chair will assume they were just his personal amendments. Even if they were for the Committee and the Committee is not there to prosecute them, we have no choice but to drop them.

Mr. George Nyamweya: Mr. Temporary Deputy Chairman, Sir, you know this problem arose from earlier rulings when it was said that although the Chairman of the Committee was moving it, when he was withdrawing he was allowed to do it and the Committee had difficulties and so on. So, it is not that there are no hon. Members of that Committee but it is the ruling that we are following.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Nyamweya! Thank you for that input, but I want to remind you that even an ordinary Member bringing his or her own amendment can in writing ask another hon. Member to propose the same amendment. So, as the

chair of the committee, he would easily have given it to a Member of the Committee. So, it is not because of the earlier ruling.

Mr. Baiya: I am Sorry, Mr. Temporary Deputy Chairman, Sir, I was out. This is on page 3664 of the Order Paper.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Baiya! The chair had actually dropped your amendment. So, let us make progress.

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

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

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Baiya, your amendment has been overtaken by events.

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a point of order, Madam Temporary Deputy Chairlady. We have not disposed of that amendment by Mr. Baiya. We were just waiting for it. I came to that Table and the then Chair told me that we are going to S.28, and that is what we are waiting for. So, we have not disposed of that amendment.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Chairman, Sir. I do not know whether rules of the House would apply selectively. The rationale for a Member of Parliament asking another Member to move an amendment on his behalf and giving the notice to the Speaker as an individual Member of Parliament is that---. However, a Committee of the House is an institution. There is a Vice-Chairperson of the Committee, and there are Members who can hold brief for the Committee. This situation should not be equated to one where if the Chair of a Committee went out for a specific reason, then unless he delegates and there is a notice to such effect by the Chair, then no other Member can move an amendment.

I do not see the rationale because a Committee is an institution, and because of collective responsibility, if an issue was discussed as a Committee then any Member of the Committee should be given the leeway to move an amendment in case the Chair is missing.

Madam Temporary Deputy Chair, I seek for your guidance.

Madam Temporary Deputy (Dr. Laboso): Hon. Members, I shall be magnanimous and allow the hon. Chairman of the Committee a chance. As the ruling was being made he was entering the Chamber; therefore I will allow him a chance and he should really do it quickly.

Mr. Baiya: I am most obliged by the magnanimity shown by the Chair.

The Temporary Deputy Chair (Dr. Laboso): Order!

Allow us to dispose of the amendment on Mr. Ethuro's Section 27 before we come to the Chairman of the Committee.

Section 27 - The Elections Act, 2011

Mr. Ethuro: Madam Temporary Deputy Chair, I beg to move the following amendment to Section 27 of the Elections Act:-

(a) in the amendment proposed to section 27 by deleting the word "three" appearing at the end of the amendment and substituting therefor the word "two";

Those are two months or 60 days. If you look at its relation with the other amendments I am bringing to the other section--- The party has two months to bring the nominations rules before they bring the nominees and candidates. It is only because of this particular transition period.

(Question of the amendment proposed)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Madam Temporary Deputy Chair, I am not opposing for the sake of it. I just need clarification because changing from three to two also appears in another amendment that I think is proposed to this section. I would like to know the rationale for reducing it from three to two.

One of the reasons why I am saying so is because the original drafters of this Act must have looked at the time frame very carefully with regard to the elections schedules and what the Independent Electoral and Boundaries Commission (IEBC) ought to do within a certain time period. If we are just amending it in the interest of parties that is a caution that I was putting to the House, that please let us not amend these things in our own interest, but let us look at a wider picture. I just want to see whether this is really in line with the election timetable and consideration; this is the consideration of the job that the IEBC is doing and not just consideration to one party to the elections, which are the political parties and politicians.

Thank you.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chair, I am looking through the Bill and seeing the sequence of events; you have the election which is preceded by nominations, which are preceded by nomination rules.

Madam Temporary Deputy Chairlady, I do recall that when we were doing this the last time, the issue of six months was brought to this very House. That you need six months for political parties to give their nomination rules, for the Registrar of Political Parties and the IEBC and for the members themselves to know the rules under which the nominations will be held so that people do not end up with nomination rules being presented on one day, the nominations are the next day and then people are rigged out through the political parties because of the rules. Six months was very clear for purposes of transparency. The Attorney-General has reduced it to three months. Reducing it any further below three months would compromise the nomination procedure and we will end up with a situation where candidates are all over and nobody would ever know under what rules you would be nominated. So I would rather we stick to the three months and I would like to urge Mr. Ethuro to consider withdrawing his amendment so that we stick with three months then after that we can make progress. Otherwise, we will have very murky nominations.

Mr. Ethuro: Madam Temporary Deputy Chairlady, I agree with him. I listen and it is only a fool who cannot change his mind. The Deputy Leader of Government Business has convinced me; it is just another one month and I hope he will also listen to my advice in the subsequent amendments of 45 days to the General Election.

I withdraw the amendment.

(Proposed amendment by hon. Ethuro was withdrawn)

Section 28 – The Elections Act, 2011

Mr. Baiya: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, the Act be amended thus -

s.28 Delete the words “three months before the nomination of the candidate”
and substitute therefor the words “two months before the date of the general
elections.

The rationale is, of course, to ensure that the period when this list of party members is forwarded to the Registrar does not become too long before the actual nominations of parties and even the General Elections, because political activities are more heightened around the time of the General Elections and it is not realistic to lock out members from registering when there is more political mobilization. I therefore, seek to move.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I oppose because it has been moved un-procedurally.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Madam Temporary Deputy Chairlady, I rise to support. History has shown in this country that there is a tendency of rigging candidates during nominations. That is not a secret! We should give the candidates ample time to move to other parties because we know very well that sometimes people even give money to buy the nominations. We lock out candidates who are popular with the people just because somebody used money to buy the nomination. So as far as I am concerned and fairness calls for people to be free to contest if Kenyans want them. Therefore, I support that we have ample time for people who have been rigged out to go to other parties and contest.

Mr. Lessonet: Madam Temporary Deputy Chairlady, I stand to support that amendment and the main reason is that parties in Kenya are still owned by individuals. They are still private entities. You will have noticed that the democracy within parties is only at the lower levels; the constituency, district and county levels but at the national level, it is until that leader stops contesting for the presidency.

So, we really want to have leverage. We really want to move when we see dictatorship in parties; when we see tendencies that parties are about to rig you out just like hon. Waititu said. So, we support that amendment.

Mr. Mbuvi: Madam Temporary Deputy Chairlady, as the official leader of all the partyless Members of Parliament, Assistant Ministers and Ministers, I support. That is because all the Members who are going to be rigged out are going to join my party.

(Prof. Anyang'-Nyong'o stood up in his place)

Mr. Ruto: On a point of order, Madam Temporary Deputy Chairlady. I rise on a point of order to ask whether it is in order for hon. Anyang'-Nyong'o, who is one of the owners of political parties, and one who is likely to actually rig us out, to actually be allowed to contribute to this one.

(Laughter)

The Temporary Deputy Chairlady (Dr. Laboso): He is a Member of Parliament. The Member for Kisumu Rural!

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Madam Temporary Deputy Chairlady, maybe, it is getting rather late in the night and the hon. Ruto is losing the control of his senses. But that is neither here nor there.

Madam Temporary Deputy Chairlady, this point is very important. All these reasons that Members have given about owning parties and what not will not even be affected by reducing this thing to two months. All those variables you have mentioned will stay the same. So, those are not very good reasons to put here about one way or the other. They are not related at all. They are not correlated to anything. But let me make this point. Let us realize that at this particular time, we are nominating candidates, women representatives, assembly men, senators, Governors and MPs. It is a huge task. If you reduce the length of time that is required for political parties to submit all these things to the relevant authorities and the Independent Electoral and Boundaries Commission and so on, you risk the fact that people will not even have time to file petitions to challenge political parties about the same things you are talking about. In fact, if you reduce this time, it is not the political parties' bosses you are talking about who will suffer. In fact, you make their work easier because you have no time to petition. So, I think that leaving these things for three months gives you much more room to exercise your rights and to petition than reducing it. In fact, you are arguing against your own interest. You do not understand what your interests are.

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

The Temporary Deputy Chairlady (Dr. Laboso): Who are you informing?

Mr. Ruto: Prof. Anyang'-Nyong'o.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): I do not need his information because I have finished.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I just want to let the House know that what hon. Baiya is attempting to do will actually go against the other provisions already in the Bill. The current Article 28 basically says a political party can nominate a person for any election, not just nominate you to come as a nominated member. It can nominate you for any election. It shall submit to the Commission a party membership list, at least, three months before the nomination of the candidate.

Now, if you look at Article 29, it says: The person who nominates a presidential, parliamentary, county governor and county assembly candidates shall be registered members of the candidate's political party. Now, for IEBC to confirm that the people who are nominating you are members of your political party, they need to have that list before the nomination takes place. What hon. Baiya is attempting to do is, first of all, to remove that the list will be given before nominations. That is to say the list will be given before the election. Now, two months before the election will be nomination time. At that point, IEBC, by the time they receive the nominations, will have no idea whether you are being nominated by members of a political party. The reason I want to bring this is this: We went through this process last time round and we sat with all the interested parties. We had the public participation that was required. It became very clear that the Constitution itself says that an independent candidate--- Nobody can stand as an independent candidate unless he has not been a member of a political party for three months.

Now, how will the Registrar or the Independent Electoral and Boundaries Commission (IEBC) know that an independent candidate has not been a member for three months when they have not been having that information? The three months period before nomination was picked

from the Constitution. It was brought into the Elections Act to facilitate the IEBC to have a credible election by them comparing that you have been a member or not a member of a political party because they have the register. So, let us not pass this amendment because it will contradict Section 29 of the Constitution. I would really urge hon. Njoroge Baiya being the Chair of the Justice and Legal Affairs Committee to consider withdrawing his amendment.

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a point of information, Madam Temporary Deputy Chairlady.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I think I am well informed without that information.

Madam Temporary Deputy Chairlady, I am pleading with this House, especially with the hon. Members of the Justice and Legal Affairs Committee because we had given them this responsibility to ensure that we do not pass contradictory laws. I have just given you an example. If we pass Section 28 without passing Section 29, we will have a contradiction within the same Act. So, I would rather you withdraw it and then we look at it and if need be---

Mr. Baiya: It is not mine; it is the Committee's amendment!

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I agree. If need be, we could always come back and amend this between now and the elections. But for now, let us not get contradictory amendments that will then force us into a situation where we are challenged legally.

Mr. George Nyamweya: On a point of order, Madam Temporary Deputy Chairlady. I believe that hon. Kimunya is correct in this respect because the Constitution is quite clear that a person who wants to be an independent candidate must not be a member of any party for three months before. If we reduce the period, in fact, this particular aspect would be unconstitutional because you will not be able to verify how a candidate can become independent. Since it comes from the Chairman of the Committee, in which I am a Member, I want to take the advice that hon. Kimunya has given us. Perhaps it would be wiser for us to withdraw it and look towards aligning all of these things maybe at a later date.

Mr. Ethuro: Madam Temporary Deputy Chair, I have subsequent amendments further in the line of argument that hon. Kimunya was taking which will negate his argument. But I just want to pick him on one; the one of the independent candidate being required by the Constitution to demonstrate that he was not a member of a party at least three months. Now, if this list was being submitted four months to the general elections, then the IEBC would have difficulty in determining so. We are talking about at least two months; one, parties are not under obligation, they will always bring it in the last minute like the Government. I am sure that a good party like PNU and URP will do it even six months. But once you get the list of the party membership in two months, you can determine in terms of independent candidates that this fellow was not actually a member of the party. So, it is actually to the contrary of his argument in terms of the independent candidate.

Mr. Ruto: Madam Temporary Deputy Chairlady, I want to clarify a few things to make it very simple to hon. Kimunya. We are talking about a party list being submitted, at least, 60 days before the elections. Nomination time is 45 days before the general election. There are two weeks for the Registrar of Political Parties to ensure that he has updated the list. These are electronically done even right now. What the Minister is talking about are the independent candidates who should not be members of any party. That is a different matter. We are talking about a political party submitting a list of its members to the Registrar of Political Parties. There is no need for us to submit a list three months before and yet, there are members who are moving

to new parties 60 days to the general election. You negate even what we had passed under hon. Musyimi. We have considered this and looked at the mathematics. It does not in any way contradict anything. In fact, it does not touch the Constitution. The Constitution only talks about the independent candidates, but not these hon. Members who are seated here. They can be in a new party and will be in the list, at least, 60 days before the general election. If you do anything else, then they will not be in the list. You will be a victim like hon. Mbugua. You will be *Mbuguad* yourselves if you do not pass this law.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Madam Temporary Deputy Chairlady, I want to emphasize that right now we are in the computer age and all the membership is with the Independent Electoral and Boundaries Commission (IEBC). So, you just need to click to know where the list is. Even right now, you can just click IEBC/political parties and get where you are. It is simple. It is not a list to be compiled manually. So, the issue of the list should not arise.

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

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

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, with the passage of that amendment, it means that hon. Ethuro's amendment now falls.

Mr. Ethuro: Madam Temporary Deputy Chairlady, how does it fall from three to 60 and 60 to 45? Anyway, I will do it in my own Motion. I withdraw the amendment.

(The proposed amendment by hon. Ethuro was withdrawn)

(Provisions relating to Section 28 of the Elections Act, 2011 as amended agreed to)

Section 29(2) – The Elections Act, 2011

Dr. Nuh: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Section 29(2) of the Elections Act, 2011 be deleted.

S. 29(2) Delete

The rationale is that we are talking about independent candidates and how they should be nominated. We were saying that there could be very many political parties that do not have any nominee at a given time and because they are at variance and may not have anybody, they may not be in a position to support another political party because they do not have that understanding and they would want to support an independent candidate. At least, an independent candidate is a candidate who has no attachment to any political party. So, why deny an independent candidate the right to be nominated by people who belong to parties but who do not have anybody to support at the grassroots level? That is the effect of the amendment.

(Question of the amendment proposed)

Mr. Ruto: On a point of order, Madam Temporary Deputy Chairlady. I think that one is the most unconstitutional because the Constitution is very clear that an independent candidate will be nominated by independent persons. You cannot negotiate or legislate it here. This is the only correct one. The others were not correct.

(Laughter)

Dr. Nuh: Madam Temporary Deputy Chairlady, I stand guided and they can read the relevant Section of the Constitution to us. Why are they citing things in abeyance? I have no problem withdrawing.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, it is in the Constitution. Besides that, Section 29(1) of the Election Act says very clearly that the persons who nominate a Presidential, Parliamentary, County Governor, County Assembly Candidate shall be registered members of the candidate's political party. An independent candidate does not have a political party. The Constitution says that you cannot stand as an independent candidate as long as you belonged to a political party in the last three months.

Section 29(2) is a natural contrary to 29(1) that for avoidance of doubt--- You can delete 29(2) but 29(1) would still stand. But for avoidance of doubt because 29(1) basically says that whoever nominates you must be a Member of your political party, the contrary to that is that if you do not have a political party, nobody can nominate you. This was put here for avoidance of doubt. It was made very clear by the technical people. It may appear superfluous but we are doing it for avoidance of doubt. I suppose time is not on our side. We only have 15 minutes to midnight and if we could get rid of some of these things before debating them, then we could make progress. Deleting 29(2) will be going contrary to the Constitution and we will not be giving the independent candidates any advantage because they will not be supported by a political party member.

Mr. Ogiendo: Madam Temporary Deputy Chairlady, I think what the Constitution envisaged is a situation where there will be certain members of society who are independent. At nomination level, your constituency is your political party, or lack of it. So, if we delete this, we will be denying members of a political party the right to exercise their mandate within the confines of their constituency. When we leave it open, then that person who is nominated by a combination of members of various political parties is not, indeed, an independent party.

Madam Temporary Deputy Chairlady, I beg to oppose.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Madam Temporary Deputy Chairlady, I would like to put this matter to rest and support all those who have opposed it. Let me read Article 85 of the Constitution on eligibility to stand as an independent candidate. It states that any person is eligible to stand as an independent candidate for election if the person: (a) Is not a member of a registered political party and has not been a member for at least three months immediately before the date of the election; and (b) satisfied the requirements of Article 99 and so on and Article 193 of the same Constitution. So, it is very clear what those articles are saying. What the hon. Member is saying is contrary to the Constitution.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, in opposing, I want to thank hon. Prof. Anyang'-Nyong'o for reading the Constitution and giving the correct position.

Indeed, today, I was actually shocked when I heard my very able Chairman whom I deputize, hon. Abdikadir, indicating that while we are legislating on the Political Parties Act, we are free to do whatever, say, legislate in, out, left, right, centre and so on. We cannot do that! We have to legislate as per the law. I was even shocked to hear hon. Isaac Ruto suggest that he can be the women's representative. We must regulate as per the Constitution and as per the law. I do not know whether today we are making *githeri* or passing the law, but I am really shocked and astounded about what we are doing here.

I oppose.

Mr. Ethuro: On a point of order, Madam Temporary Deputy Chairlady. Let us defeat or support an amendment on its own merit. It is completely misleading for two serious personalities in this House, in fact, three of them whom, naturally, on the face of it, I will take their arguments even without thinking twice. They are the Deputy Leader of Government Business, hon. Kimunya; Prof. Anyang'-Nyong'o; and my good friend, hon. Isaac Ruto. There is nothing about constitutionality in any person who may be a member of a party wanting to nominate or vote an independent candidate. For some reason, this fellow has no faith in his or her candidate who belongs to the party. What the candidate of a party is required of is that that candidate can only be nominated by members of the same party. There is no exclusion, lawyers, whether junior or learned friends or otherwise!

Dr. Nuh: Madam Temporary Deputy Chairlady, at least, I am glad that hon. Kimunya has not gone to any law school. Maybe that is the more reason he would want us to believe in his version of the interpretation of the Constitution; that is in his own imagination. I want to read. There are several sections that I have withdrawn because I have seen they are at variance with the Constitution. However, let us not just recap on this issue of "it is unconstitutional" or "it is at variance with the Constitution" when actually you cannot cite the specific provisions of the Constitution that a certain article contradicts. I want to read Article 99 that hon. Prof. Anyang'-Nyong'o has alluded to. It says about the qualifications of a Member of Parliament: "He is nominated by a political party or is an independent candidate who is supported by: (a) in the case of elections to the National Assembly by, at least, 1,000 registered voters in the constituency---" I repeat, 1,000 registered voters!

What we mean by registered voters in Section 29(2) because the provisions of 29(1) are such that if you belong to the Party of National Unity (PNU), you can only be nominated by members of that political party because your allegiance is to PNU. However, if your allegiance is to no party at all and we have several mongrel parties in your constituency or your senate area that do not have a candidate, what would prevent them from endorsing a candidate who has no allegiance to any party because they only think it is fair and it is in the middle?

Madam Temporary Deputy Chairlady, that is why I am saying we delete provisions of Section 29(2) and I did not tamper with anything on 29 (1). It does not have as a rider that if we endorse 29(1) then 29(2) has to follow. There is no such precedence and hon. Kimunya is not a lawyer.

Dr. Eseli: Madam Temporary Deputy Chairlady, of recent, we have been registering members into political parties. You will notice that actually the majority of voters in Kenya do not belong to any political party by the numbers that we have registered. Therefore, those ones can be considered as independent. Therefore, if they have a candidate that they want to field, that candidate should be independent and backed by them. They have enough people to back them. This issue here is the same mutilation that we have been doing but now we have gone further to

even mutilate reason. How can you be nominated by partisan people and call yourself independent?

So, I oppose this amendment totally.

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

PROGRESS REPORTED

THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report progress and seek leave to sit again tomorrow. As you note, we only have five minutes to midnight. We cannot sit again past midnight because the day will have ended and the permission we sought earlier from the House will have expired and we need the five minutes to actually do some reporting to the main House and then to get permission so that we can continue with this tomorrow in the morning.

I beg to move.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Mr. Ethuro) in the Chair]*

REPORT

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the proposals relating to the Statute Law (Miscellaneous Amendment) Bill, Bill No.14 and has instructed me to report progress and seek leave to sit again tomorrow.

Mr. Muthama seconded.

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

Mr. Muthama: seconded.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, it is now time for us to interrupt the business of the House. The House is, therefore, adjourned until tomorrow, Thursday, 21st June, 2012 at 9.00 a.m..

The House rose at 11.55 p.m.