

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 19<sup>th</sup> June, 2012

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

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

*(By Mr. Baiya)*

Sessional Paper No.4, of 2011 on the National Agricultural Extension Policy.  
Sessional Paper No.1, of 2012 on the National Food and Nutritional Security Policy.

*(By The Assistant Minister for Agriculture (Mr. Mbiuki)  
on behalf of the Minister for Agriculture)*

NOTICES OF MOTIONS

ADOPTION OF SESSIONAL PAPER NO. 4 OF 2011  
ON NATIONAL AGRICULTURAL EXTENSION POLICY

**The Assistant Minister for Agriculture** (Mr. Mbiuki): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motions.

THAT, this House adopts the Sessional Paper No.4 of 2011 on National Agricultural Extension Policy laid on the Table of the House on Tuesday 19<sup>th</sup> June, 2012.

ADOPTION OF SESSIONAL PAPER NO. 1 OF 2012  
ON NATIONAL FOOD AND NUTRITIONAL  
SECURITY POLICY

THAT, this House adopts Sessional Paper No.1 of 2012 on National Food and Nutritional Security Policy laid on the Table of the House on Tuesday, 19<sup>th</sup> June, 2012.

## QUESTIONS BY PRIVATE NOTICE

### KILLING OF MR. PETER KARIUKI BY ROGUE HIPPO IN THIKA

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

(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 the 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 seven people?

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

**Mr. Deputy Speaker:** Mr. Kabogo is not with us. He has communicated the same to the Chair. The Chair directs that this Question be listed on the Order Paper tomorrow morning.

*(Question deferred)*

### NON-PAYMENT OF COPY RIGHT COMPENSATION CLAIMS TO ENOCK ONDEGO BY KBC

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Is the Minister aware that Mr. Enock Ondego alias Mr. Hassan Rashid, aged 82, a freedom fighter from Kisauni, Mombasa County, is in urgent need of medical care which he cannot afford due to failure by Kenya Broadcasting Corporation to pay him compensation claims for copyright violation?

(b) Is the Minister also aware that the freedom fighter who sung many freedom and patriotic songs, including “*Kenya Yetu*” and “*Kenya ni ya Ajabu*,” has lost his eyesight?

(c) When will he be paid his dues?

**Mr. Deputy Speaker:** Is the Minister for Information and Communications not here? We will leave this Question until the end. Let us move on to the next Question.

### DELAY IN COMPLETION OF KARATINA MARKET

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

(a) Is the Minister aware that the construction of Karatina Market has stalled for over six months and if so, why?

(b) When will the market be completed and handed over to the Council?

(c) Could the Government consider compensating the traders and the Council for the loss of business and suffering due to delay in completion of the market?

**Mr. Deputy Speaker:** Is the Minister for Local Government not here? Let us move on to the Ordinary Questions.

## ORAL ANSWERS TO QUESTIONS

*Question No.1401*

### DELAY IN COMPLETION OF OLENGURUONE-KIBUNJA ROAD

**Mr. Speaker:** Is Mr. Kiuna not here. We will leave his Question until the end. Let us move on to the next Question.

*Question No.1296*

### ISSUANCE OF ID CARDS TO YOUTHS IN WAJIR SOUTH CONSTITUENCY

**Mr. Affey** asked the Minister of State for Immigration and Registration of Persons:-

(a) whether he is aware that youths in Wajir South Constituency lack National ID cards;

(b) how many cards have been issued in the constituency since 2008 and whether he could provide a per-administrative location list of recipients; and,

(c) what urgent measures he has taken to register residents of the constituency.

**The Assistant Minister, Ministry of State for Immigration and Registration of Persons (Mr. Baya):** Mr. Deputy Speaker, Sir, I seek your indulgence here. For today, I have an answer, but it is not what Mr. Affey is asking. Could I, therefore, request this House that I answer the same tomorrow?

**Mr. Deputy Speaker:** I heard the hon. Member say that this is the second time the Question is appearing on the Order Paper. What did you say, Mr. Affey?

**Mr. Affey:** Mr. Deputy Speaker, Sir, this is the second time the Assistant Minister is giving the same excuse. Last week, this Question was on the Order Paper. So, I do not understand why he has come with a separate answer.

**Mr. Deputy Speaker:** Mr. Baya, the Order Paper is definitely circulated to you and is also on the internet. So, why do you have a different answer?

**The Assistant Minister, Ministry of State for Immigration and Registration of persons (Mr. Baya):** Mr. Deputy Speaker, Sir, I must admit that this is a result of inefficiency in the office because the answer I was given is different from the Question listed on the Order Paper. I understand his Question was to appear on the Order Paper on Wednesday. The answer I have here with me is for a Question by the hon. Member for Mosop. That is the reason why there is that mix-up.

**Mr. Deputy Speaker:** Mr. Baya, the Chair gives you the last chance on this. If you do not live up to the expectations of the House, the Chair will undoubtedly take action against you and your Minister!

The Chair directs that this Question be listed on the Order Paper tomorrow morning and you should have the answer with you then. Is that okay with you?

**The Assistant Minister, Ministry of State for Immigration and Registration of persons** (Mr. Baya): Much obliged, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Next Question.

*Question No.1462*

PROVISION OF DETAILS OF BOAT ACCIDENT IN LAMU

**Mr. Deputy Speaker:** Is Mr. Yakub not here? We will leave that Question until the end then.

*Question No.1322*

UPGRADING OF ITHOOKWE AIRSTRIP IN KITUI COUNTY

**Mr. Deputy Speaker:** Is Mr. K. Kilonzo not here?

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, I thought that the Clerk's Office should have informed you that he is away on parliamentary duties.

**Mr. Deputy Speaker:** Outside the country?

**Mr. C. Kilonzo:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** In the circumstances, the Chair directs that this Question be listed on the Order Paper at the time when Mr. K. Kilonzo is around.

*Question No.1460*

MEASURES TO CURB DELAYS IN HEARING OF  
CRIMINAL APPEALS CASES  
IN NAIROBI

**Dr. Nuh** asked the Minister for Justice, National Cohesion and Constitutional Affairs:-

(a) if could he provide a list of all criminal appeal cases currently pending before Kenyan appellate courts up to and including the 2012, indicating the respective years the appeals were filed;

(b) what the average time a criminal appeal takes to be heard and determined is, after filing in the Kenyan justice system; and,

(c) if could he confirm that only one judge is assigned to hear criminal appeals in Nairobi, hence precipitating the delays and, if so, what the Ministry is doing to remedy the situation.

**Mr. Deputy Speaker:** Minister for Justice, National Cohesion and Constitutional Affairs!

Mr. Wamalwa, have you since resigned from the position of being in the Cabinet?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Deputy Speaker, Sir, I ask for your indulgence. I am just sharing the answer with the hon. Member.

**Mr. Deputy Speaker:** Are you seeking the indulgence of the Chair, so that you can answer a bit later?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Fair enough!

*Question No.1608*

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

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

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

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

**The Assistant Minister of State for Defence** (Mr. Musila): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the criminal complaint report dated December, 2010 by Michael Ranneberger and/or the Government of the United States of America (USA) alleged that Eastleigh Air Force Base in Nairobi was used as a processing and packaging facility for heroine which is then shipped out of the base using military vehicles and escorted by Base property.

(b) The Moi Airbase in Eastleigh is a gazetted restricted area under the Protected Areas Act, Cap.2004 – Laws of Kenya. Entry into and out of the Base is restricted and subject to clearance. All vehicles, including military vehicles leaving or entering the place, are inspected and searched by sentries as a standard procedure. Therefore, no evidence of transporting of drugs using military vehicles or any other privately owned vehicle has been detected.

Mr. Deputy Speaker, Sir, I want to add that these procedures are very strict and commanders of all levels routinely carry out inspections of premises and areas within their command and no evidence whatsoever of a drug processing or packaging facility in the Base has been found.

**Mr. Mwau:** Mr. Deputy Speaker, Sir, these are extremely serious allegations, and a direct affront against the Government of the Republic of Kenya, that its facility, especially the Air Force Base is used for drug-trafficking. Could the Assistant Minister confirm what action was actually taken by the Ministry of State for Defence or the Government in respect of such serious allegation?

**Mr. Musila:** Mr. Deputy Speaker, Sir, the role of the Ministry of State for Defence, after receiving these allegations, was simply to cross-check and ensure that all procedures of security

in the base are as strict as they ought to be. As I said, we found the allegations to be baseless as no evidence was adduced to confirm any of those allegations.

**Mr. Affey:** Mr. Deputy Speaker, Sir, this is a serious matter, particularly because these allegations were made by a foreigner. If, indeed, the Assistant Minister has established that the information given by this foreigner is not true, why did he not ask the Ministry of Foreign Affairs to do a protest note to show displeasure on this kind of rumour-mongering? What did they do as a Government?

**Mr. Musila:** Mr. Deputy Speaker, Sir, after realizing that those allegations were false, the Ministry of State for Defence communicated to the relevant Ministries in connection to this matter. It was upon the Ministry of Foreign Affairs to take it from there. But as far as the Ministry of State for Defence is concerned, we made it very clear that these allegations were false. No evidence was adduced by the person who made the report and, therefore, we dismissed it. We informed the Ministry responsible for communication with the complainant, who is the Head of Mission of the USA.

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, the report issued by the USA Government discredited and injured the image of this country. What is the Ministry doing to make sure that the image of this country is protected and cleaned?

**Mr. Musila:** Mr. Deputy Speaker, Sir, these were allegations. Obviously, it was contrary to diplomatic etiquette for a diplomat to make these false allegations. However, after investigations, we found more evidence. As far as we are concerned, the allegations against our bases had no credibility whatsoever. We still stand by that. We have even continued to check day after day and ensure that all the procedures of entering and leaving the base are strictly followed. We, therefore, dismiss the allegations by any other person.

**Mr. Kigen:** Mr. Deputy Speaker, Sir, considering the seriousness of these allegations which have put the name of our country, particularly our military, to question in terms of credibility, what is the Assistant Minister going to do to ensure that his counterpart in the Ministry of Foreign Affairs does what he must do to protest the allegations made by such a senior representative?

**Mr. Musila:** Mr. Deputy Speaker, Sir, as I said, the Ministry that communicates with the foreign governments is the Ministry of Foreign Affairs. My colleague has information which I accept.

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** What is your information, Mr. Onyonka?

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** Mr. Deputy Speaker, Sir, the matter was raised with the Ministry of Foreign Affairs, and we immediately issued a protest note to the individuals. The matter, according to us, has been clearly stated.

**Mr. Yakub:** Mr. Deputy Speaker, Sir, the issue here is a very sensitive one regarding drugs. The Assistant Minister has agreed that there was a process that was undertaken by the embassy of the USA. Could the Assistant Minister inform us who the other stakeholders were, who were allowed to go and see the process was done properly? This will assure us that such type of drugs were taken out of this country, or was this done as a private process involving the embassy of the USA and one of our Ministries? We need to know the other stakeholders who were allowed to see this process was done properly and the drugs taken out of this country.

**Mr. Musila:** Mr. Deputy Speaker, Sir, if I understand the question by hon. Yakub correctly, my answer is that no other stakeholder are allowed in a military base to do any

investigations. We have checks and balances within the military bases; in this case it was the Eastleigh Air Base. I want to confirm to this House that there was absolutely no possibility of any criminal enterprise as the one alleged to have been carried out in the base. Therefore, we will continue to do continuous investigations by all the organs of the military. No evidence has been detected of the base being used as a conduit for drug trafficking or processing.

**Mr. M.H. Ali:** Mr. Deputy Speaker, Sir, the Assistant Minister for Foreign Affairs said here that the Ministry has done a protest letter to the USA Embassy. I think it will be in order if he tables the documents in the House for reference by the Members of Parliament.

**Mr. Musila:** Mr. Deputy Speaker, Sir, this Question was directed to the Minister of State for Defence. In my view, I have adequately answered this Question as far as it is necessary. The issue of what action was taken was a supplementary one and it was answered so effectively by my colleague. He confirmed, in fact, that a protest note was sent.

**Mr. Koech:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister allowed his colleague to give him information which he did not deny. Is he in order to try and avoid answering the question: Could the Assistant Minister table the evidence? Is he in order?

**Mr. Musila:** Mr. Deputy Speaker, Sir, I do not have the document. It was the Assistant Minister for Foreign Affairs who confirmed that they had sent a protest note to the embassy of the USA. It did not come from me. So, is the Question now being answered by two Ministries?

**Mr. Deputy Speaker:** How do you send a protest note to an embassy which is headed by the ambassador and it is the ambassador himself who has made the claims?

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Does the Assistant Minister want your information?

**Mr. Musila:** Yes, Mr. Deputy Speaker.

**Mr. Deputy Speaker:** Proceed and inform him.

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** Mr. Deputy Speaker, Sir, I would just like to inform my colleagues that under international protocols any correspondence between two nations shall not be disclosed publicly.

**Mr. Mwau:** Mr. Deputy Speaker, Sir, if I heard the Assistant Minister for Foreign Affairs clearly, he said that any information between a country and another should remain confidential. These allegations, which were made by Michael Ranneberger, actually contained matters that affected the dignity, and human rights of Members of this House. It cannot be true that any correspondence relating to such allegations is confidential. Is it, therefore, in order for me to ask that the Assistant Minister be ordered to table the letter that was sent and the reply thereto?

**Mr. Deputy Speaker:** Hon. Assistant Minister, in line with the rules of diplomacy and international relations, an ambassador in a country cannot go out there to criticize the internal dynamics of another country and actually make a report publicly on a crime as opposed to a suspected criminal activity. Why would that one become so public and the response by the Kenya Government become so private?

**Mr. Musila:** Mr. Deputy Speaker, Sir, I want to seek your indulgence. Parts (a) and (b) of this Question relate to the issue of the allegations as made against a military base and it was directed to the Ministry of State for Defence. In my view, and you will agree with me, we have answered this Question satisfactorily. Should the hon. Member want to know more about the relations between Kenya and the USA, he should file another Question to the Ministry of Foreign Affairs.

*(Mr. C. Kilonzo stood up in his place)*

**Mr. Deputy Speaker:** What is your point of order, Mr. Charles Kilonzo?

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to refuse to provide information? This House is not saying that he must table it now but surely on the basis of collective responsibility, that document can be availed later.

Is it also in order for the Assistant Minister for Foreign Affairs to mislead this House that communication between governments is secretive while this House has received letters on policemen who were sacked, a letter from the American Ambassador addressed to the late Minister of State for Provincial Administration and Internal Security, letters from the American Embassy addressed to the then Minister for Industrialization, hon. Kosgey regarding maize, which were tabled here and letters from the American Embassy on the Charter House Bank. Is it that now when you write your letters to them, that these letters are now not subject of this House knowing what you communicated?

**Mr. Musila:** Mr. Deputy Speaker, Sir, I want to seek your indulgence again that this Question is shifting from the Ministry of Defence. As far as we are concerned, we have answered this Question satisfactorily and if the hon. Members have diplomacy issues which they want to raise with the Ministry of Foreign Affairs, they should feel free to do so through a Question, but this Question has been satisfactorily answered.

**Mr. Mwau:** Mr. Deputy Speaker, Sir, I will still seek your indulgence on this matter, on the fact that the genesis of the Question is underpinned on allegations against the Government of the Republic of Kenya and those allegations are extremely serious. The Ministry should not only have investigated and established the falsehood or truth of those claims; they should have gone a step further and asked the filer of the criminal complaint to provide evidence relating to the allegations. If they did not do so, they are actually condoning this illegal act. So, that is why I am trying to ask that, if you find it proper, that you order that, possibly, they actually table any information that they sought from the maker of the complaint.

**Mr. Deputy Speaker:** Ordinarily, Mr. Assistant Minister, such devastating and very serious allegations from the head of a foreign mission should have our Government rise up in arms!

**Mr. Musila:** Mr. Deputy Speaker, Sir, I want to confirm again that when this allegation was received, we carried out all investigations as the Ministry of State for Defence to ensure that those activities of drug trafficking and processing as it was alleged did not take place at Eastleigh Airbase. We communicated that to the other arms of Government – the Ministries concerned – the Ministry of Foreign Affairs and the Ministry of State for Provincial Administration and Internal Security. Therefore, again I want to seek your indulgence that the Ministry of State for Defence has successfully answered this Question. Any other issues relating to other Ministries should be referred to those Ministries.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to withhold information to this House? An allegation from a friendly country like America by the American Ambassador is a very serious allegation. In the absence of any official communication tabled in this House by the Kenyan Government to the American Embassy, it is a clear indication that indeed these allegations could be true. So, is it for the Assistant Minister to tell us that he has answered the Question satisfactorily or is it for the Chair to decide that the Question has been answered to the satisfaction of this House?



I still insist that in the absence of this letter which was written by the Ministry of Foreign Affairs to the American Embassy, there is nothing this House can really trust this Government on, because this Government is known on many occasions to mislead the citizens including this House. The Ministry is on record to have done that on many occasions.

**Mr. Musila:** Mr. Deputy Speaker, Sir, I did not say I answered. I requested the Chair to rule that I had answered the Question satisfactorily and I still request that because all the matters that were asked by hon. Mwaui have been covered satisfactorily in my view and there is nothing else remaining. But if they want further information from the Ministry of Foreign Affairs or the Ministry of State for Provincial Administration and Internal Security, then hon. Members are, of course, free to do so.

**Mr. Deputy Speaker:** Hon. Assistant Minister, the Question is to the Government and the Government has got a collective responsibility and clearly with such claims; the head of a foreign mission saying that a Government department is dealing in this thing, ordinarily you would have a Government that does very exhaustive investigations that involve other arms of the Government and action taken against the ambassador like insisting on him being recalled. So, for you to very casually and in a lackluster manner try and treat it like any other Question----! Hon. Assistant Minister!

**Mr. Musila:** Mr. Deputy Speaker, Sir, it is through the collective responsibility that my colleague, the Assistant Minister for Foreign Affairs has given the House information, that following this, a protest note was sent to the United States of America Embassy.

**Mr. Deputy Speaker:** You do not send a protest note on the Ambassador to the Embassy!

**Mr. Musila:** Whatever, Mr. Deputy Speaker, Sir. The Assistant Minister has said that he sent a protest note and I think that was in the spirit of collective responsibility which has been exercised fully on the Floor of this House today.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. I do not think the Government should be left to get away with this! We are asking to see that protest note! This is because we are suspecting that indeed there is none. So, if indeed it is there, then it is up to the Government to come and bring to this House that protest note so that we know that this Government does not deal in drugs but in its absence, then it is very clear. Who knows? Maybe the Department of Defense (DOD) said: "It is not us dealing with heroine but somebody else".

**Mr. Musila:** Mr. Deputy Speaker, Sir, I will ask my colleague, the Assistant Minister for Foreign Affairs to do that because I do not have it in my possession. It is the Assistant Minister for Foreign Affairs who has it.

**Mr. Affey:** On a point of order, Mr. Deputy Speaker, Sir. This House must teach the Government how the Government works. It is very clear that when a protest note is made particularly by the Ministry of Foreign Affairs, it is courteous that the Ministry of Defence is informed. If in the event it has not been informed, could he seek that protest note from the Ministry of Foreign Affairs so that we know that the Government is serious? When they sent a protest note to Eritrea, it was known that the Kenyan Government actually protested about the engagement of Eritrea, what then is so special about the United States of America ambassador in this country? Submit the protest note and we will believe you! In the event you do not submit it, then we will not believe your answer.

**Mr. Koeh:** On a point of order, Mr. Deputy Speaker, Sir. This is a very serious matter. An allegation has been made to the effect that an airbase of the Republic of Kenya has been used in the production and packaging of heroine and military vehicles used to escort drugs. According

to the Standing Orders, when a Minister allows a colleague to give information, he is responsible for the information given. Given the circumstances - because we want to be clear as a House - would I be in order to ask you to defer this Question? Let the Assistant Minister get a copy of this letter and table it in this House.

**Mr. Deputy Speaker:** Order! Hon. Assistant Minister, indeed, it is very sad not just for Parliament but for the nation, for such a serious allegation by the head of a foreign mission to disparage an institution like the military of this country and say that the base is used for processing heroine in the country, to be responded to in a manner that it has now been.

Is one week enough?

**Mr. Musila:** Mr. Deputy Speaker, Sir, I want to understand what the Chair wants me to do. If it is a question of the protest note, I can undertake to seek it from the Ministry of Foreign Affairs and bring it to the House. As far as the investigations are concerned, they were completed, and I have given an answer. So, if it is the protest note that hon. Members are asking for, I will avail it.

**Mr. Deputy Speaker:** How soon will you be in a position to rest the fears of the House? You have heard all the issues that were raised by hon. Members.

**Mr. Musila:** Mr. Deputy Speaker, Sir, I will do so on Tuesday.

**Mr. Deputy Speaker:** The Chair directs that this Question be listed on the Order Paper of Tuesday, next week.

*(Question deferred)*

**Mr. Deputy Speaker:** Next Question, hon. Chanzu!

*Question No.1557*

DISMISSAL OF BENSON O. AMBUNI

**Mr. Chanzu** asked the Minister of State for Public Service:-

(a) under what circumstances Mr. Benson O. Ambuni (PF No.1989006740) was dismissed from the Civil Service on 8th December, 2011; and,

(b) whether he could consider reinstating him.

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

(a) Mr. Benson O. Ambuni (PF No.1989006740) was dismissed from the Civil Service while serving in the Ministry of Public Works on 8<sup>th</sup> December, 2011 after it was discovered that he had deserted duty with effect from 1<sup>st</sup> December, 2008 and his whereabouts were unknown.

Mr. Ambuni appealed to the Public Service Commission (PSC) against the dismissal vide letter dated 12<sup>th</sup> January, 2012 but the appeal was disallowed at a meeting held by the Commission on 25<sup>th</sup> April, 2012. The PSC has, however, advised that Mr. Ambuni has a right to apply for a review of that decision, in accordance with the PSC procedures.

(b) It is, therefore, premature to consider reinstating Mr. Benson Ambuni as the Commission had just conveyed the outcome of their decision to the authorised officer and he is yet to exercise his right to a review of the case.

Mr. Deputy Speaker, Sir, I am sure that the hon. Member is aware that any reinstatement is subject to the authority of the Commission after exhausting the disciplinary procedures. In this case, the avenue for any review would be the appeal to the Commission with adequate evidence to substantiate the need for a review and his reinstatement.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, this is one of the few cases where lower cadre staff in the Civil Service are victimised by their bosses, who then turn to the PSC because they know that the channel of redress is very long. I believe the Minister is aware that this fellow was in the Union of Kenya Civil Servants (UKCS), and that he did not desert duty. He was on duty as a union representative. So, I would like him to tell this House whether he is aware that Benson Ambuni was one of the officials of the union representing civil servants, and that he was out of his work station, taking care of the welfare of fellow civil servants, which they are calling “desertion”.

**Mr. Otieno:** Mr. Deputy Speaker, Sir, I came to be aware after Mr. Ambuni raised the issue that for the periods he was absent from the office, he was attending to his union duties as First Deputy Secretary-General of the UKCS. However, three years with no record of presence at his duty station is far in excess of what would be required by an officer to attend to union duties.

Therefore, the only avenue through which we can address this matter is if every application for leave to attend to union matters can be substantiated before the PSC to establish whether it was appropriate. The investigation was commenced, in this regard, after we got letters from civil society members, who were very aware of this officer’s behaviour of being absent. There was alleged collusion with his immediate supervisor, so that he may be absent for prolonged periods, far beyond what was necessary for his duties as a union official.

**Mr. Affey:** Mr. Deputy Speaker, Sir, this is a clear case of the Minister being punitive. He is dealing with this officer in this manner because the officer represents his fellow civil servants in a joint struggle. Can he then inform us what disciplinary measures they had taken against the officer before they dismissed him? Could he tell the House whether they had provided the officer with an opportunity to defend himself, in terms of serving him with a “show cause” letter, which is the normal practice in the Civil Service? Can he table communication of that nature before they finally sacked him?

**Mr. Otieno:** Mr. Deputy Speaker, Sir, there was a “show cause” letter issued to Mr. Ambuni but he came to allege that the letter was addressed to an address he had stopped using a long time ago, and that he had not received it. That is one of the grounds for his appeal. The appeal he made did not contain sufficient details. That is why it was declined. Now that he is asking for a review of the disciplinary action taken against him, he has an opportunity to present a complete case, with all the necessary evidence.

**Mr. Affey:** On a point of order, Mr. Deputy Speaker, Sir. The Minister should be truthful to the House. I asked him to show evidence of communication between Mr. Ambuni and the Ministry, and the post office box to which the letter was sent and the one to which it should actually have gone, so that we can know whether he is giving this House true facts. So, could he table the letter determining that case? We want evidence.

**Mr. Otieno:** Mr. Deputy Speaker, Sir, I have the “show cause” letter. The letter dated 11<sup>th</sup> August, 2011, whose subject is “Desertion from Duty”, partly says:-

“It has come to the attention of this office--- You are hereby called upon to show cause why disciplinary action should not be taken against you.”

Mr. Deputy Speaker, Sir, the address that was given at that time was Box 111, Suna, Migori, but the officer said that he had stopped using that box number. That is the address that was in our files.

**Mr. Deputy Speaker:** Can you table the letter, Minister?

*(Mr. Otieno laid the document on the Table)*

**Mr. Affey:** On a point of order, Mr. Deputy Speaker, Sir. This letter was written on 11<sup>th</sup> August, 2011, and the Minister said that the process of disciplinary action against Mr. Ambuni must have started in 2008. Is it normal practice in Government to wait for up to three years before a “show cause” letter is written? Is it normal practice to wait for three years to lapse and then establish that an officer was actually not working?

**Mr. Otieno:** Mr. Deputy Speaker, Sir, this officer was serving in Mt. Elgon District. I did mention that the process of disciplining this officer beginning with an investigation as to whether he has been absent from duty or not was triggered by a whistle blower from the civil society who wrote to the Ministry and to the Anti-Corruption Commission alleging that there is an officer who is not on duty and has been absent for a long period but no disciplinary process is being taken.

**Eng. Maina:** On a point of order, Mr. Deputy Speaker, Sir. Since the Minister says that he sacked this man because a whistle blower from the civil society informed them, it looks like the Civil Service is being run by whistle blowers and the civil society. Justice, therefore, can hardly be done. Could the Minister tell us why the Government should rely on outside and bogus agencies to discipline its own officers?

**Mr. Otieno:** Mr. Deputy Speaker, Sir, I did not want to read this letter. However, I will do so because this letter is what provoked investigation on the behaviour of this officer. We then sent two human resource officers to go all the way to Mt. Elgon and verify whether it is true that in the name of serving the Kenya Civil Servants Union this officer has been absenting himself for periods far too long and are not justifiable on the basis of the services to the union.

Economic crime reminder of the letter of 20<sup>th</sup> May, 2011, addressed to the Anti Corruption Commission and copied to the Permanent Secretary, Ministry of Public Works. The letter states as follows:-

“Reference to the above, I would like to put to your attention that Mr. Benson Oyugi Ambuni of Personal No.1989006740 – telephone number given - of the Ministry of Works, Mt. Elgon, absconded from duty from December, 2008 and has been out of his work station to date. What concerns us, as Kenyans, through a reliable source is that Mr. Benson Ambuni has been receiving his monthly salary and even getting hardship allowances for services not delivered to the Government. From the same source Mr. Benson Ambuni has been doing this in collaboration with the District Works Officer of Mt. Elgon, the Ministry of Public Works. As a concerned Kenyan and an institution – mentioned - to bring the communication free from that, I will be looking forward to see what action you will be taking before we forward this to the media.”

Mr. Deputy Speaker, Sir, I have made four copies of this letter for all the four hon. Members to look at and satisfy themselves that when we set up an inquiry, we had good cause to do so.

*(Mr. Otieno laid the documents on the Table)*

**Mr. Njuguna:** Thank you, Mr. Deputy Speaker, Sir. Now that the Minister has informed the House that the Public Service Commission has allowed a review on this dismissal case, what clear steps has the Government taken to inform the suffering civil servant? Could the Minister table documentary evidence on this?

**Mr. Otieno:** Mr. Deputy Speaker, Sir, I do have the document. It is dated 25<sup>th</sup> April. It states as follows:-

“I am directed to inform you that the Public Service Commission has disallowed an appeal against dismissal from the service on account of dissention of duty submitted by Mr. Benson Oyugi Ambuni, the former Clerical Officer I in the Ministry of Public Works. Please inform him of his rights of application for a review accordingly. His three personal files are returned for your intention.”

So, the Public Service Commission has already written to the officer through the Permanent Secretary, who is the authorized officer, requesting the Permanent Secretary to inform Mr. Ambuni that he has a right to apply for a review. That is where I advise that he should do a comprehensive review to constitute a basis for reconsideration of this termination.

I hereby table the document.

*(Mr. Otieno laid the document on the Table)*

**Mr. Koeh:** Mr. Deputy Speaker, Sir, while the whistle blowers can be doing a good job for this country, you have heard the Minister claim that it was after three years that a whistle blower was able to alert the Government that an officer was not performing his duties. Definitely, this is not how to run the Government. Could the Minister tell this House who was his immediate boss and what action has he taken against the immediate boss if truly he thinks this offence was committed?

*(Applause)*

**Mr. Otieno:** Mr. Deputy Speaker, Sir, the two immediate supervisors at that time were Mr. Philip Owade and Mr. Simeon Chuma. The full salary paid to this officer amounting to Kshs568,797.05 for the three years of abscondment have been surcharged to the two officers and they are repaying, which means they also knew their faults on this matter.

*(Applause)*

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, if you have listened to the answer that the Minister has given on this Question, you can see that the action taken by the Ministry is an afterthought. The Government and the head of department have been sleeping on the job for three years. Could I request the Minister, now that there is a lot of doubt on this case, to have this gentleman reinstated to his job as investigations go on because they were not done properly?

**Mr. Deputy Speaker:** Mr. Chanzu, are you sure what you are saying is designed to assist the same Ambuni when you say that the Government has been sleeping on the job and this officer presumably was not at work for three years?

**Mr. Chanzu:** But Mr. Deputy Speaker, Sir, you can see that this is from 30<sup>th</sup> December, 2008 to December, 2011. Those are three years. They were not responsible at all. It is doubtful

that the Government was doing the right thing. This is why I am saying that the Minister should have this gentleman, Ambuni, reinstated to his job.

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

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

**Mr. Shakeel:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for my friend, Mr. Yusuf Chanzu, to continue to waste Parliamentary time on what is clearly a case of an offender and an absconder?

**Mr. Deputy Speaker:** Order! Mr. Shakeel Shabbir, it is not your responsibility to determine what time of Parliament is wasted or what time is used properly. The word itself is unparliamentary; can you withdraw and apologize?

**Mr. Shakeel:** I beg your pardon. I apologize but I do also say that---

**Mr. Deputy Speaker:** Order!

**Mr. Shakeel:** Thank you. I apologize.

**Mr. Deputy Speaker:** Minister, can you answer the last question by Mr. Yusuf Chanzu?

**Mr. Otieno:** Mr. Deputy Speaker, Sir, I want to mention here that the kind of absenteeism that has been exemplified in this particular case happens many times in the districts where the officers collude with one another to give each other leave for prolonged periods; they agree that one goes away for two months as the other remains in the office; once he comes back, the other one goes away. We are aware that these arrangements are made in the districts. So, when it is done in collusion with the immediate workmates and supervisors it is very difficult for us to catch them.

**Dr. Nuh:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Minister, do you wish to be informed by Dr. Nuh?

**Mr. Otieno:** We have taken so long on this Question; can you give me the information privately but not here?

**Dr. Nuh:** Mr. Deputy Speaker, Sir, I want to inform the Minister that, in fact, these arrangements usually take place; civil servants do it a lot. They give themselves some offs. Even Ministers in this House have been absconding the duty of responding to Questions in Parliament, basically because they follow what their juniors do.

**Mr. Deputy Speaker:** Minister are you sure you are not supposed to lead by example as Minister?

**Mr. Otieno:** Mr. Deputy Speaker, Sir, if you check with the Speaker's office whenever I am out of the country my letter will be in the Speaker's office, together with my travel clearance, confirming to the Speaker that I will be out of the country for a certain duration. For four years, I have never been out without such communication to the Speaker. As for other Ministers not being present in the House, the duties of Ministers in the House are not the same as the duties of civil servants in service delivery out there. So, their duties are totally different from those of civil servants. We go for effectiveness and it is up to the Speaker to sanction our absence.

**Mr. Deputy Speaker:** You have made your point, Mr. Minister!

Question No.2 by Private Notice by Dr. Bonnie Khalwale.

## QUESTIONS BY PRIVATE NOTICE

### NON-PAYMENT OF COPYRIGHT COMPENSATION CLAIMS TO ENOCK ONDEGO BY KBC

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, for the second time I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Is the Minister aware that Mr. Enock Ondego, alias Mr. Hassan Rashid, aged 82, a freedom fighter from Kisauni, Mombasa County, is in urgent need of medical care which he cannot afford due to failure by the Kenya Broadcasting Corporation to pay him compensation claims for copyright violation?

(b) Is the Minister also aware that the freedom fighter, who sang many freedom and patriotic songs including “*Kenya Yetu*” and “*Kenya ni ya Ajabu*” has lost his eyesight?

(c) When will he be paid his dues?

**Mr. Deputy Speaker:** Minister for Information and Communications! Deputy Leader of Government, where are your Ministers?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I want to apologize for their absence. I actually do not have information on where they are, or why they are not here. However, I will trace them; I will get them to answer this Question tomorrow.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. We do remember the information which was passed to Mr. Dalmas Otieno; this matter of Ministers not showing up in the House to deal with matters of Parliament and they do not even have the courtesy to inform the Chair is not new. They are still waiting for the ruling of the Chair, which we were told was to be today. For the Deputy Leader of Government Business not to be aware of where the person is, is not strange, considering the Question we are dealing with; they did not know where Mr. Ambuni was for three years. We are pleading with the Chair to, for once, perhaps, consider throwing the Deputy Leader of Government Business out, so that he can take his work more seriously. He should know where all the Ministers are before he comes to the House.

**Mr. Deputy Speaker:** Deputy Leader of Government Business, ordinarily, all Government business in Parliament should, one way or the other, be under your very powerful supervision. Why are these Ministers not here today?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I am not sure whether the Member for Yatta wants me to be thrown out for being honest. I could have come and concocted a story about where they are, but I am being honest with the House that I actually do not know where they are. They have not informed me where they are. I will try to make sure I trace them wherever they are and make sure they come to the House to answer the Question.

**Mr. Deputy Speaker:** When?

**The Minister for Transport** (Mr. Kimunya): Tomorrow.

**Mr. Deputy Speaker:** Tomorrow in the morning or tomorrow in the afternoon?

**The Minister for Transport** (Mr. Kimunya): Tomorrow in the afternoon.

**Mr. Deputy Speaker:** Fair enough. The Chair directs that this Question be listed on the Order Paper---

Dr. Bonnie Khalwale, are you comfortable with tomorrow morning?

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I am very much comfortable with tomorrow; but I wanted to tell you that this Question is intended to cause the Government to extend some form of humanitarian relief to this freedom fighter, who is also blind and requires to go to hospital. In the meantime, could the Minister ensure that food is taken to the old man in Kisauni, and that he is taken to Aga Khan or Mombasa Hospital, since he was a freedom fighter, as we wait for the answer?

**Mr. Deputy Speaker:** Ordinarily, only if you are willing to give an undertaking you can do that. I will not force you to do it, because for all intents and purposes the Question has not been asked yet. So the Chair directs that this Question be listed on the Order Paper tomorrow morning.

*(Question deferred)*

Question No.3 by Private Notice by Eng. Maina.

#### DELAY IN COMPLETION OF KARATINA MARKET

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

(a) Is the Minister aware that the construction of Karatina Market has stalled for over six months and if so, why?

(b) When will the market be completed and handed over to the Council?

(c) Could the Government consider compensating the traders and the Council for the loss of business and suffering due to delay in completion of the market?

**The Assistant Minister for Local Government (Mr. Nguyai):** Mr. Deputy Speaker, Sir, on the outset I want to apologize that I was not here when Question No.3 by Private Notice was asked the first time. That was because there is an accident near Westlands that caused me to be delayed in traffic.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that the construction of Karatina Market has stalled.

(b) The project was scheduled to be completed by 14<sup>th</sup> July 2012. However, it will be delayed by three months because the contractor did not execute the project as fast as it had been scheduled. The project consultants, Ms. Costbill Systems, issued a default notice on 13<sup>th</sup> March, 2012. That was followed by a stakeholders meeting held on 3<sup>rd</sup> April, 2012 in which the contractor undertook to complete the project by 27<sup>th</sup> October, 2012.

My Ministry is monitoring the progress of the project closely to ensure that it is completed as agreed.

(c) My Ministry is not considering compensating the traders since it erected a temporary market for the traders to continue with their business for the period the project was to be under construction. My Ministry has, therefore, already considered the plight of the traders.

**Eng. Maina:** Mr. Deputy Speaker, Sir, I must say from the outset that nothing is true in all these answers. First of all, the Assistant Minister says the construction of the market has not stalled, yet in his second answer he says that they issued a notice. This is in itself contradictory. One would wonder why there was a need for a notice if the construction of the market had not stalled.

Thirdly, on the third part of the Question the Assistant Minister should tell this House how much money they spent in setting up the temporary market, whose cost was shared between the Karatina Municipal Council and the CDF offices. We actually had to put the people somewhere else because the Government had not considered what to do with the people. I would like the Assistant Minister to come out and tell us more; the President actually personally visited this market. We walked through the market and he promised the people that the market would be completed by August this year. During the last handing over of Nyeri Market, the former



Minister and the Permanent Secretary promised the President in my presence that this market would be completed this year, yet nothing has happened for the last six months. Could the Assistant Minister come out and tell us what proof he has that the market is still being constructed, and that it will be completed by October, as he is promising?

**Mr. Nguyai:** Mr. Deputy Speaker, Sir, the default notice that was issued was as a result of the fact that the period that it was meant to have completed construction was on 14<sup>th</sup> July and the project had gone at a slow pace. At present, the market is 54 per cent complete and only 54 per cent of the payment has been done. That is why a default notice was issued which was then followed by a stakeholders' meeting and the contractor undertook to complete this work by 27<sup>th</sup> October.

On the second part of the question, yes, the temporary structures were built in conjunction with the Constituencies Development Fund (CDF) and my Ministry through the Council. I do not have the specific figures because this was a Question by Private Notice, but specifically, the temporary structures are there and they are continuing to operate.

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, the Assistant Minister has just confirmed that there was a three months' delay. What action has he taken on this contractor for non-compliance with the contract?

**Mr. Nguyai:** Mr. Deputy Speaker, Sir, the project consultant, M/s Costbill Systems, has already issued a default notice which was done on 13<sup>th</sup> March, 2012. During the stakeholders' meeting which was held on 3<sup>rd</sup> April, 2012, the contractor undertook to complete the project. The only other action that would be taken would be drastic and would even delay the project further.

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, I think by the trend that we have been going through here, there must be something drastically wrong with the markets department in the Ministry, and I think it has to look into it. For example, even the one we are asking about the Economic Stimulus like in Majengo, but specifically on this one which was a contract of two years, only 54 per cent has been implemented. How will the Ministry make sure that the remaining 46 per cent of the work is done within the short time that he is saying? If they have done only 54 per cent, yet it was supposed to be a two years' contract, how will they realize that?

**Mr. Nguyai:** Mr. Deputy Speaker, Sir, the actual construction period was meant to be two years, which is a total of 104 weeks. The contract extension was given an additional three months which is an additional 12 weeks. If 54 per cent has been completed, the consultant with the contractor agreed on how the time schedule will be done. I do not have the time scheduling here but I believe it was done within the time frame that the contractor and the consultants were satisfied.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, ordinarily, it is such delays which occasion cost overruns. Could the Assistant Minister confirm that the taxpayer is not going to incur any extra costs as a result of this extension?

**Mr. Nguyai:** Mr. Deputy Speaker, Sir, yes, I would want to confirm that there will be no additional costs because of the delays. If anything, the penalties on the performance will be imposed and as such, the Government will not lose any money.

**Eng. Maina:** Mr. Deputy Speaker, Sir, the way this Question has been answered contains untrue information bordering on lies.

**Mr. Deputy Speaker:** Order, Eng. Maina! "Lying" is un-parliamentary and "untrue" is equally un-parliamentary. Use the word 'misleading'.

**Eng. Maina:** Okay, Mr. Deputy Speaker, Sir. In the Bible, there is very little difference between “untrue” and “lie”. They are actually the same. As you know, in our vernacular, we do not have this superfluous vocabulary, therefore---

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. Eng. Maina well knows that this House is not governed by the Bible and that the only book we use here is the Standing Orders for procedures. So, is he in order not to withdraw the word “lies” on the basis that he found no difference in the Bible when he should go by the Standing Orders?

**Mr. Deputy Speaker:** Eng. Maina, in this place here, we go by the Standing Orders.

**Eng. Maina:** Mr. Deputy Speaker, Sir, I believe my friend is aware that even the Quran is the same but for the benefit of procedure today, let me say that what the Assistant Minister is saying is untrue; it is not correct. Therefore, I would request that he goes back, finds out the truth, comes with it and gives us the way forward because this is an important market and people are suffering, besides losing business. It actually serves a whole region. The President himself has given his undertaking and it is a pity that the Assistant Minister cannot take that seriously enough to come with true information. Therefore, I would beg that you order that the Assistant Minister goes back and comes with true information.

**Mr. Nguyai:** Mr. Deputy Speaker, Sir, I have given specific information. I have said that the project delayed. I have said that a default notice was issued. I have said that a stakeholders’ meeting was held on 3<sup>rd</sup> April, 2012 and I have also said that the contractor undertook to complete this project in October 2012. I am not sure what the hon. Member really wants, more than that.

*(Eng. Maina stood up in his place)*

**Mr. Deputy Speaker:** Order, Eng. Maina!

**Eng. Maina:** On a point of order, Mr. Deputy Speaker, Sir. The issue here is about facts. The Assistant Minister has been on the Floor saying that only 54 per cent of the work is done yet two years are nearly over. The time left between now and October is only about four months. If within two years only 50 per cent of the work has been done and only four months are left, surely, the Assistant Minister is just misleading this House by saying that this project will be completed and the President will commission it before he retires. Therefore, I still beseech you that the Assistant Minister goes back and comes with legitimate information which befits the dignity of this House.

**Mr. Deputy Speaker:** Assistant Minister, indeed, you indicated that only 54 per cent of the work is done and that has taken you about two years. If only four months remain, are you confident that you can finish what is left; the 46 per cent, in four months?

**Mr. Nguyai:** Mr. Deputy Speaker, Sir, I am looking at the alternatives that are available as far as this project is concerned. The first alternative is to continue and pressurize through that work schedule with the contractor who is there. Failure to that - and the clock has started ticking towards that - the other alternative would be to terminate the contract, re-tender and re-issue. For sure, for that, we would be talking about next year. So, I am looking at the better of two alternatives and since there has been an undertaking, unless there is another alternative that I am not aware of, I think we are on the right track. I agree that this contractor is working within constraints of time but because there is a project consultant who agreed with the contractor on a work schedule and the contractor has since put various materials on site, that is the best alternative.

**Mr. Chanzu:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is not telling the truth. First, the answer he has given is wrong and secondly, terminating a contract is not going to compensate the people.

**Mr. Deputy Speaker:** The Assistant Minister has said that he is looking at many options and effectively he came to the conclusion that it is only better to allow this contractor because of the undertaking to try and finish the job within the stipulated time. So what is your point of order?

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, the Assistant Minister should put in place damage recovery, so that some money is recovered from the contractor towards the benefit of the people. This would be better than saying that he is going to terminate the contract.

**Mr. Nguyai:** Mr. Deputy Speaker, Sir, in my answer, I said that in accordance to the performance, penalties will be levied because of time delays.

**Eng. Maina:** On a point of order, Mr. Deputy Speaker, Sir. The issue here is not what is in the mind of the Assistant Minister. The issue is what is on the ground. The reality is that what he is saying is not practical. It is not true. Therefore, I beg your indulgence that instead of misleading this House, he goes and comes back with the true information.

**Mr. Deputy Speaker:** What is your position?

**Mr. Nguyai:** Mr. Deputy Speaker, Sir, I am looking at the best of two evils. If we went with the second alternative, we will then proceed towards terminating the contract. According to the contract, that would still take a period of time. Then we would have to re-advertise and retender and that would still take a period of time. For sure, if we take the second alternative, the contract will not even commence before the end of the year, which is not what this particular Member wants. If he wants to provide a solution, let him suggest it, but I have not given this one.

**Mr. Deputy Speaker:** Hon. Maina, the Assistant Minister has given his position. The only other alternative, if you are dead sure that indeed, the undertaking he has given will not be achieved, you have the Committee on Implementation.

**Eng. Maina:** On a point of order, Mr. Deputy Speaker, Sir. My point is that nobody would be interested in how the Assistant Minister conducts his Ministry. The point is that what he has said does not appear practically possible because I have told him that there is only four months. I think, and I do not want to go into this subject, that there are other issues and he would be better briefed. There are other difficulties and issues and how he solves them, that is why he is an Assistant Minister and that is why he earns more money than most people around here. Therefore, I still demand that we are entitled, as a House, to the right information. His answer to parts (a), (b) and (c) are untrue. He has not addressed the issues that I raised. Therefore, I am only demanding that he comes back here and gives the right information. Whatever else is in his mind and he wants to do, he can consult me if he wishes, but I am not here to work for him.

**Mr. Deputy Speaker:** Hon. Assistant Minister, you have heard the Member's concerns. It is up to you to make the effort to consult him, proceed and try and address his concerns.

**Mr. Nguyai:** Mr. Deputy Speaker, Sir, we work for the Kenyan people together with him, I will urge him to come and give me whatever facts that are different from the ones I have given and we will work it out. As far as I am concerned, this Question is adequately answered.

*Question No.1401*

DELAY IN COMPLETION OF OLENGURUONE-KIBUNJA ROAD

**Mr. Kiuna** asked the Minister for Roads:-

(a) how much money was allocated for the tarmacking of Olenguruone-Kibunja Road in Molo Constituency and how much has been spent so far;

(b) whether he is aware that there are potholes on the tarmacked sections of the road already and yet it has not been completed and what the Ministry is doing about it; and,

(c) when the project will be completed.

Mr. Deputy Speaker, Sir, I want to apologize for coming late. I was out on Parliamentary business this morning and was delayed on the way back.

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

(a) The tarmacking of Olenguruone-Kibunja Road was awarded at a contract sum of Kshs742,290,000. So far, the contractor has been paid a total of Kshs285,483,000.

(b) I am aware that some sections of the road have developed potholes. This is due to overloading mainly by tracks ferrying timber logs. I have instructed the implementing authority to ensure that the affected sections are repaired. My Ministry has also deployed a mobile weigh bridge in the area in order to check overloading by the tracks.

(c) The expected date of completion for this road has been extended to September, 2012.

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, I appreciate the answer given by the Assistant Minister. Having admitted that some sections of that road are in a deplorable condition, what action has he taken to ensure that the contractor has done satisfactory work? As he has said, what has been done is not satisfactory.

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, this road is classified as D316 and its design is to carry the weight of up to 10 tonnes. As I have indicated, some of the trucks that are ferrying logs from the forests are carrying up to 40 tonnes and thereby damaging the road as it was not designed to carry this kind of load. I have also indicated that we have installed a mobile weigh bridge on this section of the road, but it is not possible to have weigh bridges in every section of the road or roads in the entire country. Therefore, we will be asking people to honour the weight limits on these roads.

**Mr. Kiuna:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead this House that he has installed a mobile weigh bridge on that section of the road? I have been there and many people who use that road have never seen any mobile weigh bridge. He has also misled the House by saying that trucks ferrying logs use that road. From which forest do they harvest timber, so that they can use that road?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, when we talk of a mobile weigh bridge, it simply means that it is not permanent. What happens is that one morning, they will go to a particular road and every vehicle will be weighed. For the Member to say that he went there recently and did not find one, that clearly, is not consistent. Secondly, as to which forest the logs are coming from, it is not within our mandate to know where the cargo is originating from or even where it is going. All we are saying is that there is overloading on this section of the road and it has compromised the work that is being done.

**Mr. Mututho:** On a point or order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that indeed, there are loggers who are misusing that road without saying which forest they are coming from? In that whole zone, no forest is being harvested and whatever he has alleged is completely out of his imagination. Is he in order?

**Mr. Deputy Speaker:** Hon. Assistant Minister, the Member says that you are misleading the House that no forest there is being harvested.

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I have indicated that the destination or the source of these logs is really not our responsibility. We have assessed and seen that trucks and trailers are carrying logs using this section of the road. As to where the forest is, it could be found within or the private farms. All we are saying is that there is gross overloading on this section of the road.

**Mr. Mbuvi:** Mr. Deputy Speaker, Sir, now that the rainy season is over, what urgent measures is the Ministry going to take to ensure that all the roads which have potholes are repaired countrywide? This is not only in hon. Kiuna's constituency, but also in my constituency in areas like Buru Buru, Maringo and South B.

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, when the rains started about two months ago, we suspended much of the repair works because it was not possible to continue with the repair works for the potholes, while it was raining.

Mr. Deputy Speaker, Sir, since the rains have subsided and stopped in some sections, we have already started the works and I am sure the hon. Member is aware. We have also advertised, including in today's paper, for most of the works within Mombasa Municipality and many other areas. Lastly, we are currently doing an overview of the damage that was caused by the rains so that we can be able to come up with a remedy package to ensure that the roads are restored to a motarable condition.

**Mr. Deputy Speaker:** Hon. Kiuna, could you ask the last supplementary question on the same?

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, in the Assistant Minister's answer, he has said that he has instructed the implementing road authority to ensure that the affected sections are repaired. Mr. Assistant Minister, have you gone to the ground to verify that the instructions you gave have been implemented because there is nothing going on, on the ground?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I personally have not been there. But the report that we have, as I indicated earlier, is that the contract is not over. In fact, we have only paid Kshs280 million out of the Kshs740 million that we ought to pay. So, there is enough money for this contract to be completed and once it is completed, we will be able to give an assessment.

Mr. Deputy Speaker, Sir, more importantly, we have a defect liability period of 24 months, so that even after the contractor has finished this section, for 24 months, he has to ensure that the road is in the state as indicated in the contract. Therefore, I want to assure the hon. Member that we will do everything possible to ensure that the work is done according to specifications.

**Mr. Kiuna:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to evade answering my simple question? He has said that he has sent his officers to go and repair the affected section. Have they gone to repair that section?

*(Dr. Nuh stood up in his place)*

**Mr. Deputy Speaker:** Could you confirm or deny that? The Assistant Minister is, indeed, responding to a point of order.

*(Dr. Nuh stood up in his place)*

No! Order!

Proceed, Mr. Assistant Minister.

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, there is a Resident Engineer in this particular contract and therefore, the Ministry is represented there on a daily basis until the contract is over. So, I am saying we are in control. As you may be aware, this section of the country rains almost every day. So, when it was raining alot, the work was suspended a little bit. But I want to assure the hon. Member that we have an officer; a resident engineer, and the works are going to be done according to the specifications.

**Mr. Kiuna:** On a point of order, Mr. Deputy Speaker, Sir. Why is the Assistant Minister misleading this House, because this road is in Nakuru County yet it is being supervised by the Regional Roads Engineer from a neighbouring County Council? Is he in order to say that the engineer, who is supervising that road, is working when I know very well that he is not on the ground and he has never been there? Is he in order to mislead this House?

**Mr. Deputy Speaker:** The hon. Member says that the Resident Engineer whom you actually say is there on the site, or the site engineers, whatever you want to call, is not there.

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I want to just say that the hon. Member, who sits in this House, has many duties to do. He cannot be the one to tell us when the engineer is there and when he is not there. We have actually a register.

Mr. Deputy Speaker, Sir, there is no contract that can go on when the Resident Engineer is not there. He is the one who certifies all the payments. So, to say that our Resident Engineer has never been there is incorrect.

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. Awhile ago, the sister Ministry; that is, the Ministry of State for Public Service, had just told us of a situation where two officers who were supervising an officer were not aware that he was missing from duty for three good years. This is about supervision. I think hon. Kiuna has put the question to the Assistant Minister whether he is aware that the works have been going on or not. It is upon him to say that he has been to the place and he knows what is going on or he has contact.

Mr. Deputy Speaker, Sir, two months ago, hon. Franklin Bett visited Bura, Garsen, and Galole constituencies. We visited the constituencies by road and the complaint was that there were heavy trucks which were destroying the road network in that area. The Minister ordered the Kenya National Highways Authority (KeNHA) to redeploy a weigh bridge immediately on the road but it has not been done to date, two months down the line. So, when hon. Kiuna asks whether the Assistant Minister is aware that works are going on, these are about supervision issues. They are real. Let him not evade the question and tell us he has the facts that the road is ongoing.

**Mr. Deputy Speaker:** But that is what the Assistant Minister has said. Do you have facts that contradict that? In any case, even if you have facts that contradict that, the House or the Chair is not in a position to arbitrate on that. You will have to use the relevant Parliamentary Committee to go and authenticate whatever the Assistant Minister has said and what the Member has maintained.

The next Questions Nos.1462 and 1460 are deferred to tomorrow morning.

Hon. Members, next Order!

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. I seek your indulgence. I have been diligently sitting here since 2.30 p.m., and when I raised the Question, the Minister was not in the House but now that he is in the House, could you---

**Mr. Deputy Speaker:** Order! The Chair directs that the two Questions be listed on the Order Paper tomorrow morning and they should take precedence over other Questions. So you had better be here both of you very early in the morning tomorrow at 9.00 a.m. for one to ask the Question and the other one to answer.

*Question No.1462*

PROVISION OF DETAILS OF  
BOAT ACCIDENT IN LAMU

*(Question deferred)*

*Question No.1460*

MEASURES TO CURB DELAYS IN HEARING OF  
CRIMINAL APPEALS CASES IN NAIROBI

*(Question deferred)*

### **POINTS OF ORDER**

CHANGE OF MEMBERSHIP OF SPEAKER'S PANEL

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

**Mr. Deputy Speaker:** What is your point of order? Are you seeking a Ministerial Statement? Okay, proceed.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I wish to just seek direction from the Speaker on an issue of interest to me as a parliamentarian and maybe of interest to other parliamentarians. I was just wondering whether there is a change in the Speaker's Panel, because I have seen, on a few occasions, when other Members of Parliament, other than the Speaker, Deputy Speaker and Members of the Speaker's Panel have represented Parliament in functions. So, perhaps, you can guide us whether we have a "kitchen Speaker's Panel."

**Mr. Deputy Speaker:** Hon. Mrs. Odhiambo-Mabona, you will have to see me. Approach me in my own Chambers and discuss the same.

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. This matter is touching on Members of Parliament especially the Backbenchers. It is a maxim that no representation without consent. I think this is a property of the House and not between you and the Member, who is raising it.

**Mr. Deputy Speaker:** Order! Order! To begin with, hon. Isaac Ruto, you better get your wordings right. It is not between you and the Member. It is between the Chair and the Member--- When you say "you"---

*(Laughter)*

The Chair has given a direction on the same. Hon. Millie Odhiambo is going to meet the hon. Deputy Speaker in his own office and discuss the same. The Chair, as a tradition, does not

discuss the conduct of the Speaker, Deputy Speaker and Speaker's Panel or how the institution of the Speaker has managed itself. But when you deal with the Government, there is always a Minister here to protect and defend the Government. There is also a Back-bencher to demand---

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

**Mr. Deputy Speaker:** Order! The Chair is talking! The Chair is addressing the House.

*(Laughter)*

When you want to hold the Government accountable, there is always the Government Minister from the Government side to, indeed, put the record straight. But when you want to hold the Chair accountable other than for the decision of the Chair when the Chair is on the Chair for the activities or the management of the functions of the Chair outside the Chair, then, of course, there is nobody else here to defend the Chair. So, you must go and approach the Chair in the Chair's Chambers.

**An hon. Member:** Outside the Chair!

**Mr. Deputy Speaker:** When I say that, it is strictly the Speaker and the Deputy Speaker.

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

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

**Dr. Nuh:** Mr. Deputy Speaker, Sir, it is on the same. Our Constitution demands the issue of gender balance. Would we, as gents on this side, nominate hon. Isaac Ruto to accompany Mrs. Odhiambo-Mabona to your office to discuss this matter because it is also important to us?

**Mr. Deputy Speaker:** Order! Order!

*(Laughter)*

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

**Mr. Deputy Speaker:** Not on the same! What is your point of order, Mrs. Odhiambo-Mabona?

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I appreciate your ruling that I see you in your office. I did not want to be candid, but the issue of concern to me is whether the Executive is actually lording it over on Parliament---

**Mr. Deputy Speaker:** Order! Whatever it is, do not discuss the details of whatever you want to see the Chair about. The Chair has already given direction on the matter. So, the matter rests there.

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

**Mr. Deputy Speaker:** On what?

**Mr. Mbuvi:** Mr. Deputy Speaker, Sir, on what Mrs. Odhiambo-Mabona has raised.

**Mr. Deputy Speaker:** Order! Order! You are out of order, Mr. Mbuvi!

*(Several hon. Members stood up in their places)*

Hon. Onyonka, do you have a Ministerial Statement?

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** From whom?



**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): It was sought by Mr. Mbuvi.

**Hon. Members:** He is hon. Mbuvi!

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): I am sorry; my apologies. It was sought by hon. Mbuvi on the death which occurred in Juba, South Sudan, recently.

**Mr. Deputy Speaker:** When was the Ministerial Statement sought?

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): It was sought last week and the condition was---

**Mr. Deputy Speaker:** Fair enough! But the Chair will only entertain one Ministerial Statement today.

Hon. Nanok, what is your Ministerial Statement about and who sought it?

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Deputy Speaker, Sir, it was sought by Ms. Karua on 30<sup>th</sup> of May on the killing of two people by wildlife in Laikipia.

**Mr. Deputy Speaker:** Fair enough! That is the only Ministerial Statement that the Chair will entertain today.

*(Prof. Muigai stood up in his place)*

Attorney-General, I think the Chair is very versed with the one you have. But, nonetheless, for the benefit of the House, yours was sought by hon. Imanyara?

**The Attorney-General** (Prof. Muigai): I thank you, Mr. Deputy Speaker, Sir. I just want to go on record as confirming to the House that the Ministerial Statement sought by the hon. Member for Imenti Central, hon. Gitobu Imanyara, is ready and I was ready to give it. But as directed by you, I will be happy to give it tomorrow afternoon.

**Mr. Deputy Speaker:** Fair enough! You will have to give it tomorrow afternoon because hon. Imanyara is not in the House now. For the one which was sought by hon. Mbuvi, you will have to give it tomorrow morning.

Hon. Nanok, proceed and give your statement. Please, be brief.

**Mr. Mbuvi:** On a point of order, Mr. Deputy Speaker, Sir. I will be in court in the morning, so if you can ask him to give it in the afternoon---

**Mr. Deputy Speaker:** Fair enough! Then it will be delivered tomorrow afternoon.

**Mr. Mbuvi:** Much obliged, Mr. Deputy Speaker, Sir.

## MINISTERIAL STATEMENT

### ATTACK ON RESIDENTS OF LAIKIPIA BY LIONS

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Thank you, Mr. Deputy Speaker, Sir. on 30<sup>th</sup> of May, 2012, the hon. Member for Gichugu Constituency, hon. Martha Karua, requested for a Ministerial Statement on the reported mauling of residents of Laikipia County by Lions; what measures the Ministry of Forestry and Wildlife has taken to avert such incidents, assist families of the people mauled or killed by wild animals, create public awareness of human/wildlife co-existence and facilitate compensation by private game reserve owners to families mauled or killed by wild animals based in the private game reserves.

On 28<sup>th</sup> May, 2012, a lion strayed into a fenced *boma* at Indika Village, Kinamba Location, Nyahururu District. At around 11.00 a.m., it attacked and injured two women, namely Susan Wanjiku Kamutu and Esther Kibani Ewoi. The victims were taken to Nyahururu District Hospital where they were undergoing treatment. Upon receipt of this mauling incident report, my Ministry dispatched a team of Kenya Wildlife Service (KWS) Problem Animal Control Unit Rangers based in Olmoran and Rumuruti to track the rogue lion and eliminate it. The lion was subsequently tracked and killed at 17.45 hours. The team also established that the rogue lion had strayed from the neighboring Laikipia Nature Conservancy.

Two other people have, in the recent past, been mauled by animals. These were Martha Nduta Karanja, who was attacked by a lion on 11<sup>th</sup> July, 2011, while fetching firewood; and Jane Wairimu, who was most unfortunately attacked and killed by an elephant on 25<sup>th</sup> December of the same year. The female lion was tracked and eliminated by the KWS Rangers while the elephant was immediately captured and translocated to Aberdares National Park.

Laikipia County is a wildlife dispersal area that enables movement of wildlife from Aberdares/Mt. Kenya to the Isiolo/Samburu wildlife ecosystem. This traditional wildlife movement corridor causes interaction that sometimes results in unfortunate human death incidents, human injuries, predation, property and crop destruction. My Ministry has, therefore, proactively taken the following measures to minimize the negative effects of wildlife on the people in Laikipia County:

(1) The KWS has strategically established two outposts in Mwenje and Olmoran in Laikipia with a ranger strength of 13 personnel equipped with Land Cruisers and motorbikes. The area is also co-ordinated from the KWS Office in Rumuruti.

(2) Education on wildlife conservation awareness to the public is a continuous exercise in this area. In Laikipia County, a number of public *barazas* have been organized by the KWS in collaboration with the Provincial Administration, other Government agencies and Non-Governmental Organizations (NGOs). To date, four community awareness meetings have been organized this year alone around the Laikipia Nature Conservancy where this issue has been raised. Fencing along the conservancy, wildlife and people security were discussed. The primary outcome of the meeting was that the stakeholders and the community agreed that a 29-kilometre elephant solar fence along the conservancy between Mwenje and Olmoran be rehabilitated. To date, seven kilometers of that fence have been done and the rest of the work continues. This is basically being funded by the Laikipia Nature Conservancy.

(3) My Ministry considers that the current Wildlife and Conservation Management Act, Cap.376 of the Laws of Kenya are not adequate enough to fully address the various challenges affecting Kenya's wildlife sector. For example, there is also no policy under the current law compelling the private ranchers who keep wildlife to erect electric fences around their facilities to avert human/wildlife conflict. My Ministry, nevertheless, proactively erects fences in identified hotspots and areas of high human/wildlife conflict to protect people and their properties from wildlife damage. My Ministry is, in addition, currently working on the creation of new conservancy regulations to provide for and regulate the formation, registration, operations, including bearing the cost of utilizing and benefitting from wildlife on their land. This will ensure that Kenyans who bear the brunt of human/wildlife conflict are duly compensated from wildlife injury or loss of life.

Mr. Deputy Speaker, Sir, Kenyan individual communities and group members are currently benefitting from conservation without bearing the cost of wildlife conservation. However, due to the lack of conservancy regulations under the current Wildlife Act, the benefits

that are accrued are not streamlined in a uniformed and adequate framework to fully benefit the surrounding communities. It is the Government, through allocations from Treasury that bears the cost of deaths and injuries caused by negative interactions between wildlife and people. My Ministry will, therefore, compensate the victims mentioned above for loss of life and injuries as currently provided for by the law.

As the law currently stands, there is no compensation for livestock, crops or property damaged or destroyed by wildlife and payments of medical bills incurred by persons injured or killed by wildlife. My Ministry has in this respect taken action to initiate a review of Cap.376 of the Wildlife Conservation and Management Act of 1989 with a view to explore sustainable and realistic options for compensation for wildlife damages. The draft Wildlife Bill and legislation has, in this respect, been forwarded to the Cabinet and is awaiting discussion and subsequent approval by this House. The proposed policy and Bill further makes provisions that require registering all wildlife sanctuaries and persons keeping wildlife. The regulations shall have conditions amongst, which is for the wildlife keepers, to convince the Government on management of wildlife within the sanctuaries and how they shall address the human/wildlife conflict.

Mr. Deputy Speaker, Sir, I wish to assure Kenyans that with the new proposed Bill, the mitigation procedures and responsibilities shall be shared accordingly between the wildlife keepers and Government. More so, compensation shall be enhanced and a more comprehensive framework on conflict management is to be provided to take care of the expenses incurred. The mauling of the two Kenyans in Laikipia County is highly regretted.

Thank you, Mr. Deputy Speaker, Sir.

**Ms. Karua:** Mr. Deputy Speaker, Sir, it is unfortunate that the Assistant Minister gives the impression that wildlife is superior to human life. These are people killed and the two women mauled by the lion recently. The conservancy, the Assistant Minister may wish to confirm, is owned by one Cooky Gagman. There is, even without any further law, the ordinary civil law; the law of tort, which allows a citizen to sue for compensation from anybody who is harbouring a dangerous thing. Could the Assistant Minister stand there and say that they are waiting for a law, while it is the Ministry that is licensing the conservancies and can, therefore, give a condition that unless if a person or group can contain the animals with an electric fence, such a group should not be allowed to harbour wildlife, especially when the wildlife is coming to the people's farms? These women were on their own farms and the animals came from the conservancy to maul them when they were going about their business. What is the Assistant Minister going to do? Will he put that condition in the conservancy agreement?

**Mr. Letimalo:** Mr. Deputy Speaker, Sir, the Assistant Minister has said, in his Statement, that there is no compensation when wildlife destroy crops or livestock. Could he tell the House whether it is, therefore, an offence for people to kill wildlife in defence of their property or lives?

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, any person who is licensed to handle potentially dangerous objects or machines is required by law to take an insurance cover. So, if you own an aeroplane or a vehicle, you are required to take a cover. Now, if the Government has licensed these conservancies, which have a potential to harm people, why has the Assistant Minister not required them to take an insurance cover upon which these two women would have naturally been compensated?

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, the two women that we are talking about are ordinary peasants – poor people – and this is a Government of Kshs1.5 trillion. Could the

Assistant Minister, in view of the peasantry life of these people, undertake to underwrite the bill at Nyahururu District Hospital?

**Mr. Mututho:** Mr. Deputy Speaker, Sir, from 2008, we have sat and listened to the same Assistant Minister tell us stories on how they are going to amend that law. Now, it is four-and-a-half years down the line and they are still talking about that law being amended and compensation being streamlined. What effort does the Assistant Minister and Attorney-General, who are both present in the Chamber today need to amend that law, so that people now can be compensated in relation to the damage done by wildlife?

**Ms. Leshomo:** Asante sana, Bw. Naibu Spika. Ningependa kumuuliza Waziri Msaidizi kama binadamu ni wa maana kuliko wanyama pori. Wakati ndovu wanauwawa na kutolewa pembe ama wanyama wengine wanauwawa, maofisa wa Kenya Wildlife Service (KWS) wanawahangaisha sana na hata kuwaumiza wananchi. Je, wakati mwananchi ameumizwa na mnyama pori hakuna sheria inayomlinda? Hawa wanyama wamewauwa watu wengi na hakuna sheria ama pesa ambazo zimelipwa kwa jamii za wale wanaouwawa na wanyama wa pori. Ukweli unafaa kujulikana kwa sababu watu wetu wanaumizwa sana hasa wakati ndovu wameuwawa.

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, about two years ago, again, I raised an issue about an old man in Maragoli Hills who was injured by a wild animal and the Assistant Minister promised compensation but, up to date, it has not been done. I do not know whether he can also include that in whatever he is presenting on the same issue.

**Mr. Ruto:** Mr. Deputy Speaker, Sir, the first duty of a government is to protect the lives and property of the citizens and not animals. It is a fact and that is the reason we elect any government. The moment the Government reneges on this, it has no business spending our taxes and lording over us. Could the Assistant Minister tell us what this Government is going to do to compensate these Kenyans and protect them, as a first duty, as opposed to having a first duty to animals?

**Mr. Mbuvi:** On a point of order, Mr. Deputy Speaker, Sir. There are some wildlife rangers and politicians who feed these animals on *cannabis sativa* to go and fight in contests. What is the Government doing to stop this?

(Laughter)

**Mr. Deputy Speaker:** If, indeed, there are politicians who feed wildlife with *cannabis sativa*, which is---

**Mr. Keter:** On a point of order, Mr. Deputy Speaker, Sir. Could hon. Sonko clarify who these politicians are?

**Mr. Deputy Speaker:** Substantiate!

**Mr. Mbuvi:** Mr. Deputy Speaker, Sir, I have said that it is wildlife rangers and some politicians.

**Hon. Members:** Which ones?

**Mr. Mbuvi:** They are not in this House, Mr. Deputy Speaker, Sir.

(Laughter)

**Mr. Deputy Speaker:** Hon. Sonko, indeed, whether they are wildlife rangers, politicians, ranch owners or businessmen, if there are any Kenyans who give drugs to the animals, either to

fight between themselves or others, that is very sad and a serious allegation. You should probably go and report to the Commissioner of Police.

**Mr. Mbuvi:** Mr. Deputy Speaker, Sir, even aspirants are politicians! I did not mean that they are necessarily hon. Members!

**Mr. Deputy Speaker:** Proceed, hon. Assistant Minister.

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Deputy Speaker, Sir, let me begin with the clarification sought by hon. Martha Karua. Indeed, the conditions in the agreement signed with the conservancy should have been looked into when this agreement was drawn and when they were being given the licence. However, I can also tell the hon. Member that the law that had been established by this House sometime in 1989 did not look at that provision. That is why, essentially, when we sought feedback from various stakeholders - in the last three years, the new Bill which fortunately is being processed through the Attorney-General's Office, will be tabled before the Cabinet and will be brought to this House for discussion - we have looked at that matter amongst very many other reforms that will be enacted. That issue has been looked into and it will clarify a number of the inadequacies that were in the current law.

With regard to the clarification sought by hon. Letimalo on whether it is an offence to kill wildlife, yes, it is. As an Assistant Minister for Forestry and Wildlife, I can say that it is an offence to kill any wildlife. It is also an offence for the wildlife to kill human beings. The reason why my Ministry has held the services is because we had to put a balance and make sure that we minimize as much as possible the human/wildlife conflict. Of course, you need to understand the challenges we experience. You will realise that a number of dispersal areas and wildlife corridors that were for wildlife have been inhabited by human beings. These are the challenges we face, as a Ministry, as we go along. But nevertheless, we will try as much as possible to start sensitization programmes with communities and put up electric fences in the very hotspot areas that have been identified. Above that, we will come up with a team of patrol almost all over the country who can be contacted and they will respond. If any Member here has any information about any area where our Kenya Wildlife Services (KWS) have not been responding, I think the only reason I am in this House is to assist them so that I can make them do their job.

With regard to the clarification sought by hon. Mungatana on insurance, yes, indeed, I think that is a factor we have looked into. This is not considered in the current law. However, in the coming one, we have even proposed that issues of compensation should be handled much more by an insurance firm. Those conservancies that earn money from wildlife that belongs to the Government of Kenya should contribute towards compensation and make sure that they reduce the human/wildlife conflict. I hope that when that Bill comes to this House, we will make sure that we relook at these issues so that we make sure that the inadequacies that have been identified by my Ministry and all the stakeholders are addressed.

On the issue raised by hon. Khalwale about underwriting the bills, I remember one time when hon. Imanyara brought an issue about underwriting a bill in this House, we relooked and felt that it was not possible under the current law. However, my Ministry through the Kenya Wildlife Service (KWS) has tried to help where it can. Probably, this is an issue we can discuss and see how best we can assist. However, the current law is completely inadequate as I said in my Statement because it does not look at the compensation with regard to underwriting of these bills. But I hope that we can look at this when that law comes here. I hope that before the life of this Parliament comes to an end, that Bill would have been finalized. It is already out of our

hands, it is in the Attorney-General's Chambers and we hope that it will go through the other processes and be tabled in this House.

With regard to the issue raised by hon. Mututho, yes, I think I have already addressed that. As far as we are concerned, we have already finalized the draft and presented it to the Attorney-General. We hope that in a couple of weeks, it will go to the Cabinet and then, it will end up in this House.

With regard to the clarification sought by hon. Leshomo, yes, wildlife is protected under the Laws of Kenya, both in the Act and in the Constitution. It is also protected under the Cites Treaty which Kenya is a partner to.

With regard to the clarification sought by hon. Chanzu on Maragoli compensation, yes, I will ask him to give me the details. I will check for him whether that processing has been done. Similar to this case, the processing of this begins at the district level where certain compensation forms are received from the KWS within the district or county. Through a compensation committee chaired by the local District Commissioner, that process begins. Ideally, it takes about three to four months and sometimes there are delays because of funds being given to us from the Treasury but we will always do the best we can to process it faster. So, I would like the hon. Member to give me the full details of that particular case, I will follow it up and give him an answer.

With regard to the clarification by hon. Isaac Ruto, yes, I want to agree with every hon. Member here that the lives of Kenyans and, indeed, of human beings are important but equally so, the lives of wildlife are equally important to my Ministry.

**Ms. Karua:** Equally?

**The Assistant Minister for Forestry and Wildlife (Mr. Nanok):** Mr. Deputy Speaker, Sir, not equally but they are of importance to my Ministry. You will realise that wildlife is also important because the tourism industry---

**Mr. Deputy Speaker:** Hon. Assistant Minister, we have time constraints. Can you complete?

**The Assistant Minister for Forestry and Wildlife (Mr. Nanok):** Mr. Deputy Speaker, Sir, I am almost finalizing. You will realise that the tourism industry brings a lot of revenue to this country because of the importance we attach to the protection and conservation of wildlife.

Lastly, I want to react to the allegation raised by hon. Mbuvi. If he has details about it, could he share them with us so that we can investigate that matter fully and get to the bottom of it? However, as far as I know, we have never had any report of people using *cannabis sativa* to feed the animals. That remains an allegation unless he provides us with the full details of this incident so that we can look into it and find out.

**Mr. Deputy Speaker:** The Chair will allow hon. Martha Karua to seek one last clarification. Proceed, hon. Martha. Karua.

**Ms. Karua:** Thank you, Mr. Deputy Speaker, Sir. Could the Assistant Minister tell the House when he will compensate these two ladies because he said he will compensate them?

**Mr. Deputy Speaker:** Mr. Assistant Minister, could you be very precise on that?

**The Assistant Minister for Forestry and Wildlife (Mr. Nanok):** Mr. Deputy Speaker, Sir, I said that if the process can be started by them or their immediate family members in the district, then it will take about three to four months to go through. The maximum period is three months but there might be some slight delays but we will try and push for this compensation to be processed as quickly as possible.

Thank you, Mr. Deputy Speaker, Sir.

## COMMUNICATION FROM THE CHAIR

### DEFERMENT OF COMMITTEE OF THE WHOLE HOUSE THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL 2012

**Mr. Deputy Speaker:** Order! Hon. Members, before we proceed to order No.8, I have the following communication to make.

Order No.8 (ii) is the Committee Stage for the Statute Law Miscellaneous (Amendment) Bill of 2012. Numerous proposals for amendments have been received.

Indeed, some proposals for amendment have come in as late as one hour before this sitting started. Hon. Members, as you are aware under Standing Order No.116(2), no amendment can be moved to any part of a Bill by any Member other than the Member in charge of the Bill unless written notification thereof has been given to the Clerk before the commencement of the sitting at which that part of the Bill is to be considered in Committee. The purpose of this Standing Order is not only to allow the necessary drafting of the amendments to be done, but also to give adequate notice of the amendments to other Members of the House, so as to enable them debate the amendments from a position of information. It is, therefore, necessary that reasonable time is allowed between the lodging of proposed amendments to the Office of the Clerk and the time when the House will proceed to the Committee of the Whole House.

In the case of Statute Law (Miscellaneous Amendments) Bill, owing to the diverse subject matter with which it deals, a requirement for reasonable notice is particularly important. Arising from this, it has become necessary to defer the Committee Stage for the Statute Law (Miscellaneous Amendments) Bill, 2012 under Order No. 8(ii) to tomorrow Wednesday, 20<sup>th</sup> June, 2012 in the afternoon sitting in order to allow for all the amendments that have been received to be processed and put on the Order Paper.

In the meantime, I have directed the Office of the Clerk to circulate to all Members the proposed amendments already received. I additionally direct that all Members who still have amendments which they wish to propose to the Bill may submit them not later than the rise of the House today.

I thank you, hon. Members.

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

**Mr. Deputy Speaker:** On the same?

**Mr. Keter:** Yes, Mr. Deputy Speaker.

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

**Mr. Keter:** Mr. Deputy Speaker, Sir, while agreeing with your ruling, why can we not proceed? I have seen situations where the amendments are done when we are at the Committee Stage, so that---

**Mr. Deputy Speaker:** Order! Order! You are a senior Member of this House, hon. Charles Keter. The Chair has considered all that you are talking about and has given a communication and direction on this matter. So, this matter rests there.

Hon. Members, I also have further Communication to make with regard to Order No. 10, which is on the Departmental Committee on Health, is deferred to tomorrow afternoon because the hon. Minister, given the situation of mourning we were in, is still in Nyanza Province and is not in a position to participate in this debate. So, the Chair has also directs that this be placed on the Order Paper tomorrow in the afternoon.

Next order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*  
*(Mr. Deputy Speaker left the Chair)*

IN THE COMMITTEE

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

THE COUNTY GOVERNMENTS BILL

*(Consideration of Memorandum from His Excellency the President)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, we are now in the Committee of the Whole House to consider amendments recommended by His Excellency the President to the County Governments Bill, 2012, and further amendments by the Chairman of the Departmental Committee on Local Authorities pursuant to Section 46 (4) of the former Constitution of Kenya, which is saved by Section 3(2) of the Sixth Schedule of the Constitution.

*Clause 30*

**The Assistant Minister for Local Government** (Mr. Nguyai): Madam Temporary Deputy Chair, I beg to move:

THAT, Clause 30(2)(1) of the Bill be deleted

*(Question of amendment proposed)*

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

*(Clause 30 deleted)*

*Clause 54*

**The Assistant Minister for Local Government** (Mr. Nguyai): Madam Temporary Deputy Chairlady, I beg to move:-

THAT Clause 54 of the Bill be deleted and replaced with the following new clause –

**Structure of decentralization** 54. There shall be such further structures of decentralization as may be provided for in county legislation.



*(Question of the amendment proposed)*

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

THAT the amendment proposed to Clause 54 of the Bill be amended by renumbering the proposed Clause 54 as subclause (1) and inserting the following new sub clauses-

(2) There is established for every county a forum to be known as the county intergovernmental forum which shall be chaired by the governor or in his or her absence, the deputy governor, or in the absence of both, a member of the county executive committee designated by the governor.

(3) The county intergovernmental forum shall consist of-

(a) the heads of all departments of the National Government rendering services in the county; and

(b) the county executive committee members or their nominees appointed by them in writing.

(4) The intergovernmental forum shall, pursuant to the Fourth Schedule (Articles 185(2), 186(1), 187(2)) of the Constitution, be responsible for-

(a) harmonization of services rendered in the county;

(b) coordination of development activities in the county;

(c) coordination of intergovernmental functions; and

(d) such other functions as may be provided for by or under any law.

(5) The governor shall chair such other committee or other forum as may be established at the county level pursuant to Articles 6(2), 189 (2) and 239 (5) of the Constitution.

(6) The governor shall receive regular briefings from the county security committee referred to under section 41 (1)(d) of the National Police Service Act, 2011.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Ngugi, can you, please give a bit of an explanation with regard to the amendment?

**Mr. Ngugi:** Madam Temporary Deputy Chairlady, the amendment proposes to restructure the so-called Provincial Administration, which contravenes Section 17 of the Sixth Schedule of the Constitution.

The Committee noted that Parliament had not contravened the Constitution as alluded to by the President as the Constitution provides that the national government shall restructure the Provincial Administration within five years of the effective date. The National Assembly is part of the national Government and had acted in accordance with the Constitution when it gave Provincial Administration work to do in the transition period.

Further, because the Constitution demands that to reject the President's Memorandum, you need legislation supported by 65 per cent of all Members of Parliament, the Committee agreed to amend the President's Memorandum to realize almost the same objective.

*(Question of further amendment proposed)*

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I really want to thank the Chairman of the Committee. If you look at the proposal that the Committee has brought, it is actually an improvement because the governor will in a wholesome way be looking after all

these departments. I think, as a House, we should support this. It is a big improvement on what the President had proposed. I urge the House that we support this amendment by the Departmental Committee.

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, I also want to congratulate the Chair of this Committee. I was very worried about this particular recommendation from the President. I could not imagine a situation where members of the public elect a governor popularly and when he reaches his office in the county, he becomes impotent. Now that we have found a way round it without necessarily having to go into division is a sign that this House is made up of men and women who are up to the task.

I support.

**Mr. Ruto:** Madam Temporary Deputy Chairlady, I also rise to support the Committee's recommendation because---

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Members, please, note that we are looking at the two together; the Minister's proposal as well as the Committee's.

**Mr. Ruto:** Madam Temporary Deputy Chairlady, I support the two and note that actually the President's Memoranda was ill-advised considering that Schedule Six actually gives the county governments as one of its functions, the organization of locations and the local communities in participation of governance and does not have anything similar to what is in Sub-section 14 of the Sixth Schedule. There is no such function given to the Central Government. This is just a misdirected advice but we go by the amendments specifically those of the Committee.

**Mr. Ethuro:** Madam Temporary Deputy Chairlady, I have no contrary views. According to the Deputy Leader of Government Business, we support the amendment by the Committee. If you look at what the President proposed and which we appreciate, he said: "There will be five further structures of decentralization" but the Committee went actually and defined those kinds of structures. So, that is why you will hardly hear a structure about the President because he gave us a window of opportunity which we were to use and the Committee has put it to good use. The only small thing is that this structure has left a very important office of the Senator so that it could also be part of the forum.

Thank you and I support.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, let me also support the amendments. As hon. Ethuro has rightly put it, this proposal by the Minister has actually given us a window through which the Committee can then propose this amendment. But just allow me to say that I hope it will be understood by the Executive that counties are actually governments – it is a level of Government. Let the Executive not treat counties as the babies of the national government. So, I support the amendments proposed by the Committee.

**The Minister for Transport (Mr. Kimunya):** Madam Temporary Deputy Chairlady, I want to join this Committee in saying that I support the amendment by the President and the further modification of the same by the relevant committee and to say that as a House, we should be thankful to the wisdom of the President in identifying that there was something that needed to be done and further to record the wisdom of the Committee in taking on that and further refining so that we can have devolution taking root in this country.

I support this and hope that we can close this chapter on devolution.

**Mr. Njuguna:** Madam Temporary Deputy Chairlady, I also rise to hail the amendments by the Committee and the President because both amendments will now make the governors more responsive to all the affairs in their own counties. I, therefore, fully support.

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

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

*(Clause 54 as amended agreed to)*

**The Assistant Minister for Local Government** (Mr. Nguyai): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Memorandum by His Excellency the President on the County Governments Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Mr. Ethuro) in the Chair]*

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE COUNTY GOVERNMENTS BILL**

**Dr. Laboso:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Memorandum by His Excellency President on the County Governments Bill and approved the same with amendments.

**The Assistant Minister for Local Government** (Mr. Nguyai): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Assistant Minister for Tourism** (Ms. Mbarire) seconded.

*(Question proposed)*

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, let me just congratulate the House for doing what they have done. By amending the clause, it, therefore, effectively means that the so called County Commissioners are irrelevant and that the governor will have all the powers as we have always asked.

Thank you.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, note that these are considerations from the Memorandum from His Excellency the President. So, we have gone through all these other motions.

**Mr. Ruto:** Mr. Temporary Deputy Speaker, Sir, it is true and it is proper that we have passed those specific recommendations from the Committee and I want again once to remind the

Government to read properly the Constitution in particular, for example, Part II on the allocation of duties to the county governments. I think it is Chapter 11 of the Constitution.

It says:-

“Part of the functions of the county is ensuring and coordinating the participation of communities and locations in Government at the local level and assisting communities and locations to develop their administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.”

Mr. Temporary Deputy Speaker, Sir, no such function is given to the Central Government. Let the Attorney-General advice the President properly from now henceforth.

*(Applause)*

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I just wish to congratulate the House and especially the Committee for bringing amendments to further strengthen what is provided for in the Constitution and caution certain elements within the Executive to desist from misleading the President and making Parliament do double work.

I beg to support.

*(Applause)*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, first of all, I want to congratulate the House for passing the amendments that have been negotiated and agreed on. That is the way forward.

Secondly, I want to put on record the fact that the Treasury supports devolution. We will do all that is possible to ensure that the economic development of this country is achieved. The failure or success of this country depends on the way we will constitute the county governments. If we want to succeed, let the county governments be supported and given adequate resources and capacity. If we want to set up an experiment for failure---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Minister! Who else has capacity to give resources to the county governments, if not you?

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I declared from the start that the Treasury will support devolution to the fullest extent possible, but if county governments become employment bureaus, they will be a disaster for this country.

Thank you.

**Mr. Balala:** Mr. Temporary Deputy Speaker, Sir, I want to also congratulate the House for passing these brilliant amendments. The spirit of the Constitution is devolution. The minute we will legislate to centralise the system of government, we will have a problem. If a governor is elected by the majority of the people in a county, he should have the executive mandate to rule and govern that county.

Thank you.

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Temporary Deputy Speaker, Sir, I also want to congratulate my colleagues on the Front Bench, the Back Benches and Members of the Committee for having brought the amendments that this House has just approved – amendments which enhance and strengthen the powers of the devolved units of Government.

The amendment that has been done to Clause 54 is actually an endorsement by this House that the intergovernmental forum, under the leadership of the county governors, will be the ultimate government that will oversee all governance activities within the counties. This will go a long way in ensuring that devolution does not fail, as it did immediately after Independence.

Thank you.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I am, indeed, very happy this afternoon. I am equally encouraged by the remarks made by the Minister for Finance. Since it takes time to put up buildings, it is important that the Deputy Leader of Government Business makes it clear this afternoon, now that this law is in place; that the offices presently occupied by the former Provincial Commissioners (PCs) and in some areas, by former District Commissioners (DCs), are automatically offices for the governors where it obtains, so that it occurs to these officers that their business is now over. *Kwisha kabisa!*

Mr. Temporary Deputy Speaker, Sir, they should know that the mindset of Kenyans is now different. The business of the PC of Western Province being at the Provincial Headquarters is over.

*(Mr. Githae stood up in his place)*

**The Temporary Deputy Speaker** (Mr. Ethuro): What is it, hon. Githae? Dr. Khalwale, the Minister has a right to stand on a point of order.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I am just wondering whether it is in order for the hon. Member to mislead the House by calling upon the Leader of Government Business to make an illegal declaration and order that all the houses and offices currently occupied by PCs should be handed over to the governors yet we have the Transition Authority in place, whose main job is exactly what the hon. Member has suggested. So far, we have no governors in this country, unless Dr. Khalwale wants to resign and become the Acting Governor of Kakamega County.

*(Laughter)*

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for guiding me but quite seriously, knowing how this Government has operated in the past, if we are not categorical, things may not work out well. The PCs are gone. If he does not know, I am now reminding him that the PCs are gone. You might find that civil servants in the counties have re-arranged themselves and occupied those premises, and are calling them theirs. Let them know that those premises will be reserved for the governors.

Mr. Temporary Deputy Speaker, Sir, those of us who come from Kakamega County are very clear in our minds that the resources that would have to be used to construct a special office for the Governor will be put into other use. Instead, the office of the former PC will be hon. Soita Shitanda's office as the Governor of Kakamega County.

**The Temporary Deputy Speaker** (Mr. Ethuro): Yes, hon. Mungatana.

**Mr. Mungatana:** Mr. Temporary Deputy Speaker, Sir, there has been confusion and even fears about the position of the County Commissioners who were posted recently, leading to the emergence of a controversy. With the establishment of the intergovernmental county forum, which will be chaired by the Governor by law, it is very clear that in as much as the County Commissioners will have some other duties, there will be only one head of Government co-

ordinating issues in the county. The creation of the intergovernmental forum is the best way we could have solved the potential conflict that could have been there. So, I am very happy.

Mr. Temporary Deputy Speaker, Sir, I pray that the same spirit of co-ordination between the National Government and the County Governments shall persist with the passage of these amendments and the improvement on the Presidential Memorandum.

Thank you.

*(Several hon. Members stood up in their places)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Members. I see that there is a lot of interest by hon. Members on this business but I am also constrained by the nature of the business. I will, therefore, make the declaration that we will have the three hon. Members standing and conclude with the Chairman of the Departmental Committee.

Yes, Minister for Trade.

**The Minister for Trade** (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, I am also happy to see that we have come this far on devolution. I now want to urge the Treasury and other arms of the Government, like the Ministry of Public Works; that, as we start the county governments, we should have an irreducible minimum for every county. We should have in place proper Governors' offices and residences, and all auxiliary services, so that the Governors in Tana River, Nairobi and Turkana Counties can start operating at the same level, so that people can see the value of devolution and the uniformity and equity that we want our country to have.

Thank you.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, we will have the Member for Lari and conclude with the Chairman of the Committee.

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, the amendments that we have just passed will give the incoming administrations the necessary muscle to set firm foundations for their own governments. With this in place, the desire of Kenyans, as displayed during the national referendum on the new Constitution, will be realised.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Mr. Ethuro): Final contribution, hon. Ngugi.

**Mr. Ngugi:** Mr. Temporary Deputy Speaker, Sir, I want to thank the hon. Members for supporting the amendments. I want to say that if other amendments or Presidential Memoranda that come to this House are handled in this manner, we can go a long way.

When the Committee received the President's Memorandum, it summoned officials from the Ministry of State for Provincial Administration and Internal Security; the Ministry of Justice, National Cohesion and Constitutional Affairs; the Ministry in charge of Local Authorities; the Office of the Attorney-General and the members of the Constitution Implementation Commission (CIC), from whom we received views. The amendments that we have just passed are as a result of those consultations.

Mr. Temporary Deputy Speaker, Sir, therefore, I want to thank those Ministries, on the part of the Executive; Members of the Committee and fellow hon. Members for passing the amendments. I also want to say that it is good to hear the Minister for Finance say that they will ensure that there is enough money for devolution. I say so because we are worried. The Transition Authority had been allocated only Kshs200 million in the Budget for the next financial year. It is Parliament which increased that allocation by another Kshs100 million. If you look at the enormous work that the Transition Authority has to undertake, you will

appreciate that even Kshs1 billion is not enough for the Authority. Therefore, I hope that the Minister for Finance will walk the talk.

Mr. Temporary Deputy Speaker, Sir, finally, I appeal to all the presidential candidates to enjoin Ms. Karua in supporting the devolution fully.

*(Applause)*

That is the only way this country can get out of the malaise it has had. It is our country.

Thank you, Mr. Temporary Deputy Speaker, Sir.

*(Question put and agreed to)*

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

## **BILL**

### *Second Reading*

#### THE PUBLIC FINANCIAL MANAGEMENT BILL

*(The Minister for Finance on 18.4.2012)*

*(Resumption of Debate interrupted on 18.4.2012)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Mr. Mbadi, you had the Floor. You have 15 minutes to continue.

**Mr. Mbadi:** Thank you, Mr. Temporary Deputy Speaker, Sir. I will try to make my contribution within that time even though time has lapsed since then.

Looking at this Bill, I was particularly concerned with how it respects Cap.12 of the Constitution and two, how fateful it is to devolution.

I want, first of all, to start by saying that there are quite a number of provisions in this particular Bill which I feel are not respecting the provisions of the Constitution. I will just give notice that I will be moving a number of amendments to align this Bill to what I consider to be in line with the provisions of the Constitution.

If you look at the responsibilities of the Budget Committee which is on Part 2 of the Bill and that is particularly Section 7, you will find that it attempts to say that the Budget Committee will be reviewing the Budget Policy Statement and Budget Estimates. If you look at the Constitution concerning the Budget Estimates, you will realise that it is supposed to be discussed and reviewed. The word “discussed” is very important because that would involve public participation.

Therefore, when it comes to Committee Stage, I will be splitting that particular provision into two to take care of discussing and reviewing the Budget Estimates and making recommendations to the National Assembly after seeking representations from the public. I think we need to bring the constitutional provision to this Bill so that it is in line and it does not cause confusion.

Mr. Temporary Deputy Speaker, Sir, further, I have noticed that the Treasury is trying to give powers to the Cabinet Secretary that the Constitution took away. One of those is under that same article, Section 17(g)(ii). It says that the Budget Committee will, apart from tabling other information and their report, table in the National Assembly a report containing the views of the Cabinet Secretary in Subparagraph (1).

Mr. Temporary Deputy Speaker, Sir, what is required is that once the Budget Committee is seized of the Budget Estimates it is the property of Parliament. The Cabinet Secretary will just make presentations like any other Kenyan because that is what the Constitution says. I do not see why it should be mandatory to have the views of the Cabinet Secretary become a requirement to be tabled in Parliament. If anything, he is not even a Member of Parliament. So, we do not need his views to be tabled in the House. He just needs to convince the Budget Committee.

Further, you realise that Section 12 talks about the responsibilities of the National Treasury. These are areas where I feel this particular Bill violates the provisions of the Constitution. If you look at Section 12(1)(b) it gives us one of the responsibilities as “to manage the level and composition of national public debt, national guarantees and other financial obligations of national Government within the framework of this Act and develop a framework for sustainable debt control”. There is no mention of county government, and yet county government is an interested party in public debt and national guarantees. Therefore, I will be proposing to include that there must be consultation with the county governments when the National Treasury manages the level and the composition of the national debt.

Part (e) of that particular section talks about designing and prescribing an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution. This Article requires a stand-alone legislation. You cannot do it through rules and regulations. This proposal by the Treasury in this Bill to have such a task being carried out through regulations is unacceptable.

Mr. Temporary Deputy Speaker, Sir, I also wanted to talk about the same Section 12(2) parts (c) and (d) where it talks about the role of the Treasury. That it is to “co-ordinate the preparation of annual appropriation accounts and other statutory financial reports by the national government and its entities”. If you look at the Constitution clearly, you will realise that this is now a function of Parliament. It is supposed to come out. Once the Executive has prepared the Estimates, that is the end of it. All the other functions of the Appropriation Bill should now come to Parliament.

Part (d) says “prepare annual estimates of revenue of the national government and co-ordinate the preparation and adoption of the budget of the national government”. There is no way you can have the Treasury co-ordinate adoption of the Budget because that is the work of Parliament. I think the Treasury needs to understand that they have no way of co-ordinating adoption of the report.

Mr. Temporary Deputy Speaker, Sir, there is a particular provision in this Bill that I feel this House needs to give a lot of attention. That is Section 17(6) and (7). It states, “The Intergovernmental Budget and Economic Council shall agree on a framework for the preparation and rationalization of cash flow projections---”

If you allow the cash flow projections to be determined from elsewhere - if you do not provide for cash to flow directly to the counties - there are high chances that you will starve counties of resources. This is a provision that needs to be removed. This is a provision that is likely to be against the provisions of our Constitution with regard to devolution.



I also wanted to address Section 37. This is a very interesting one. If you look at this particular Section, 37(2), you will find that it gives the procedure for preparing the Budget. This is where I have had a problem with the Ministry of Finance ever since this Constitution came into effect. It says

“The Cabinet Secretary shall submit to the National Assembly, by 30<sup>th</sup> April in that year the following documents-

- (a) the budget estimates excluding those for Parliament and Judiciary;
- (b) documents supporting the submitted estimates;
- (c) the Appropriation Bill---“

You cannot table before Parliament both the estimates and the Appropriation Bill. What you are then telling us is that the consideration by the Budget Committee and Parliament is just but ceremonial. This is because once you have the Appropriation Bill, how then would we be able, as a Parliament, to change the estimates?

Therefore, this provision that the Cabinet Secretary will submit the Appropriation Bill is unconstitutional and it should not be brought at this stage. The Appropriation Bill comes much later after Parliament has discussed, adopted and approved the budget estimates.

That also goes for sub-section 3(a) that says “submit to the National Assembly the budget estimates for Parliament, including proposed appropriations”. In my view, this is trying to retain the powers that the Executive has at the moment. I see the Executive suffering from hung-over and trying to retain the powers. The Treasury wants to retain the powers that have already been delegated to Parliament. I think it is important, as a Parliament, to take note of this and act appropriately.

My final contribution will be on two areas. Under Section 38(2) “The nature of information that is to be presented in the budget estimates and the form of its presentation shall be prescribed in regulations and the regulations shall be tabled in Parliament for approval”.

Mr. Temporary Deputy Speaker, Sir, it is very clear in the Constitution under Article 221(2)(b) that there must be a legislation to prescribe the form and the content of the budget estimates. This is a requirement that is expressly stated in the Constitution. You cannot do it through rules and regulations as the Treasury is proposing in this Bill.

The other interesting one is Subclause 39(2) that says,

“Before the National Assembly considers the estimates of revenue and expenditure, the relevant Committee of the National Assembly shall discuss and review the estimates and make recommendations to the National Assembly, taking into account the views of the Cabinet Secretary on the proposed recommendations”.

If you look at the wording of the Constitution, where “Cabinet Secretary” is put there was “public”. Why is the Treasury replacing “public” with “Cabinet Secretary?” This is a clear attempt to make the Cabinet Secretary’s voice in budget making process more important than even the public’s participation.

It goes on to say “The National Assembly may amend the budget estimates of the national government only in accordance with the Division of Revenue Act and the resolutions adopted with regard to the Budget Policy Statement---”. Then in (b) it talks of a proposed reduction in expenditure.

Mr. Temporary Deputy Speaker, Sir, this is clearly limiting the powers of Parliament in legislation. You cannot limit the powers of Parliament in terms of legislating, and then you give a condition that the views of the Cabinet Secretary must be taken into consideration by the Budget Committee. What you are telling Kenyans is that what they did when they voted for this

new Constitution to take powers of the past from the Treasury to the people through Parliament--  
- You are taking it away and giving it back to the Cabinet Secretary by wording this Bill in a way that is going to take away the powers of Parliament of approving the Budget.

I want to conclude by saying the following; first, as Parliament what we need to give much attention to is how faithful this Bill is to the Constitution. I have just cited a few cases; more will come through various proposed amendments. Secondly, is to find out how this Bill respects devolution. I have also mentioned very clearly and categorically that once the Constitution has stated that a certain amount must go to the counties, that amount must go to the counties. There should be no conditions as to whether there is cash flow or not. If we give these powers to the Cabinet Secretary you start hearing excuses like “We did not have enough cash and so we delayed disbursement to the counties”. In this way you will kill the counties because the only way to kill counties is to starve them of resources. Once you starve the counties of resources the counties will come down tumbling; they will collapse.

Mr. Temporary Deputy Speaker, Sir, as a House we must make sure that we make corrections in this Bill. We must move amendments to this Bill to stop the Treasury from giving the Cabinet Secretary powers that were actually taken away by the Constitution.

With those few remarks, I support.

**The Minister for Medical Services** (Prof. Anyang’-Nyong’o): Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity to contribute to this Public Financial Management Bill, 2012. Thank you very much for according the opportunity to my dear friend Mr. Mbadi to make his very eloquent contribution, particularly to Part II of this Bill, which is titled “*Parliamentary Oversight of National Finances – Responsibilities of Committees of Parliament*”.

I appreciate Mr. Mbadi’s concern and I would be the last to deny Parliament the oversight role on national finances. One of the principles of the present Constitution, which will hold and is fundamental to constitutional government, is the issue of separation of powers. We are still a Republic in which the Government is constituted by three branches, the Executive, Legislature and Judiciary. Those words are very specific in their meaning. The Legislature means the body that is sovereign in law making. Once laws are made then they must be executed, in other words implemented, by the Executive wing of the Government. In the event of any controversy over the manner in which laws are implemented there is the Judiciary, which is an umpire to decide on disputes, implementation and meaning of laws and so on.

Mr. Temporary Deputy Speaker, Sir, when it comes to finance there is a famous saying that came from the rise of American constitutionalism and liberalism, which was always quoted when the American colonies rebelled against their British masters in the words “No taxation without representation”. Therefore, the role of Parliament when the Executive levies taxes is to ensure that as representatives of the people one, these taxes are levied constitutionally and legally, and secondly that they are used accountably and transparently.

I am trying to help the Minister for Finance but he is competing with me in terms of volume of voice, which makes me very confused as to where his loyalty lies. Could I appeal to you to protect me against my dear colleague, whom I am trying to---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Members! Ordinarily, I would protect Prof. Anyang’-Nyong’o, but since the distraction is coming from somebody you are supporting obviously he does not appreciate the support, and the recourse is to withdraw your support.

Proceed, Professor.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I was saying I do share the concern of my dear friend, Mr. Mbadi, but I would like to caution him that this is not a competition between the Executive and the Legislature over the role of the Executive to propose how resources are raised and used, and to give the Legislature the opportunity to oversight on behalf of the people.

Secondly, we are going to have a bicameral legislature, the Senate and the National Assembly. The Senate's role under the present Constitution is very clear, that it shall be the watchdog over matters concerning revenues and finances of the counties. That is in the Kenyan Constitution. Mr. Mbadi's fear that the Government can at any time starve counties of their resources would completely make nonsense of the existence of the Senate. Indeed, if you look at this particular Part II, there are very specific provisions for the role of the Senate in ensuring that revenues raised or monies that will go towards counties are guaranteed in every Budget as by the Constitution established.

Mr. Temporary Deputy Speaker, Sir, I would like just to comment on a few areas where Mr. Mbadi raised our concern; I would like to say his fears are not warranted. The Minister for Finance in proposing certain responsibilities for the Cabinet Secretary; by doing so, he is not actually usurping the power of Parliament or the power of the Budget Committee, but is actually allowing Parliament to know how the Executive proposes to raise revenues. Before that is done, it is the responsibility of Parliament to ensure that there shall be no taxation without representation. In other words, Parliament's role is to put the final stamp of approval on these proposals. These proposals are not there to compel Parliament to adopt them, lock stock and barrel. Part II says in various sections that, indeed, Parliament is there to comment and make its own proposals regarding the proposals of the Executive.

Mr. Temporary Deputy Speaker, Sir, secondly, it is said in this Part II, and I cannot quite remember where but since it is here as I have read it – by the way I came to the House particularly to make contributions to this Part II because I think it is very important. It says in Part II that before the proposals of the Cabinet Secretary are implemented, they shall be submitted to Parliament either through the Budget Committee of Parliament or Parliament itself and that is the oversight role of Parliament. Let us also remember that the Budget Committee of Parliament does not have the technocracy or technology to do the kind of things that the Executive can do with regard to determining how revenues are raised through taxation and other means. Therefore, precisely because the Budget Committee of Parliament does not have this technocracy or technology, it would be overburdening the Budget Committee to expect it to make certain proposals about taxation and about revenues which is beyond its capability.

Therefore, it actually will be a help to the Budget Committee if, indeed, these proposals come from the Government after they have been thoroughly looked into by the technocracy and technology in Government. For example, if you are going to raise taxes, it is not an arbitrary thing that you just wake up and say: "We shall put more money on beer or that we shall levy sin tax." There are various things you must look into in terms of how this is going to affect the market and to what extent it is going to affect other forms of taxation that you are proposing.

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. With difficulty I would want to interrupt the debate by Prof. Anyang'-Nyong'o who I am very sure is more learned or educated. My concern was not about the policies of the Government because I see the hon. Member misrepresenting my concern. My concern was with regard to the wording of this particular provision which is lifted directly from the Constitution but where the Constitution says "public" it puts "Cabinet Secretary" and uses the word "shall". So it is conditioning Parliament

that it must take into consideration the views of the Cabinet Secretary. If what the Executive wanted was to ask Parliament to listen to the Cabinet Secretary, it should word it in a different way.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, I am much obliged to my friend but that is exactly what I am saying; that if you read Part II in *toto*, you will find that the Cabinet Secretary is not speaking *ex cathedra*. The Cabinet Secretary is speaking after consideration of all these other sources like the public, technocracy and so on because the public can be wrong. I am very worried about the interpretation of the Constitution. There is a tendency to interpret the Constitution in very populist terms where we think that all powers of the Government have been surrendered to Parliament or all powers of the Government have been surrendered to the public. The reason we have a representative Government is that the public has the responsibility to elect representatives and to elect a Government to which they surrender their powers to make day to day decisions about such things, either to the Executive which forms the Government or to Parliament which represents them.

So, there are a lot of provisions in our Constitution, obviously, that give opportunities for publics – it is called stakeholders – to make views known but surely we cannot have a Government run by stakeholders. The Government definitely must listen to stakeholders but stakeholders cannot hold the Government hostage to making certain decisions or proposals. So I am just cautioning that we should not go too far in a populist interpretation of the Constitution that surrenders a Government which is elected democratically to do its job precisely because it gets its mandate from the people to rule democratically. By ruling democratically, it means that as I said earlier, that taxation will only be legitimate if there is representation. Representation is there to ensure that there is effective oversight responsibility by the Government to make sure that the way in which the Government is proposing to raise revenues is both legal and constitutional and that it is going to go a long way to serve the interests of the people. That is what I am saying and I think this is the assumption and the foundation of this Part II which tells you: “Look, yes, we are going to do this but we are now prescribing how you can systematically follow your oversight responsibility so that there is a symbiotic relationship between the Cabinet Secretary or the Treasury and Parliament. That is the point I am making.

Now let me just illustrate my point by looking at some of the issues that you raised. In Section 12(a), I think my friend, Mr. Mbadi said that this is unacceptable but let me just read it so that we understand what we are talking about. I was worried when my colleague and hon. Member said in no uncertain terms that these proposals are unacceptable. But let me read it:-

“Subject to the Constitution and this Act, the National Treasury shall-

(a) make, monitor, formulate and implement macroe-conomic policies involving expenditure and revenue.”

Did I get you right, that you said it was unacceptable?

**Mr. Mbadi:** Go to (b)!

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, okay, I will go to the one which he said was unacceptable. It says:-

“Subject to the Constitution and this Act, the National Treasury shall-(b) manage the level and composition of national public debt, national guarantees and other financial obligations of the national government within the framework of this Act and develop a framework for sustainable debt control.”

Who do you want to do that?

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister is misrepresenting what I said. I said that this should be done in consultation with the county governments and I explained why I would require county governments to come in; they have a stake. County governments are not passengers; they have a stake.

**The Minister for Medical Services** (Prof. Anyang' Nyong'o): Mr. Temporary Deputy Speaker, Sir, I accept that but if my friend was patient, somewhere in the same Part II - I read but I cannot quite remember - there is a provision for the Senate to do this. I know that the Treasury manages the level and composition of national public debt, national guarantees and other financial obligations of the national government because even counties before they undertake some of these loans extraterritorial, that is, beyond the Government, we need sovereign guarantors.

The problem in South Sudan, for example, at the moment, is that the Southern Sudanese State which has the same powers, if they try to go and get a loan from Germany, their sovereign guarantee is not respected. So neither the state government nor the national government can get these loans. In the final analysis, it is the Treasury that must make sure that there is sovereign guarantee. I think that is the management they were saying but when it comes to the counties being able to do this, the Senate shall guarantee them. I am speaking this as a prospective senator for Kisumu County. So I am also very conscious of that.

Secondly on that, I want to make a few clarifications to my dear friend, Mr. Mbadi, so that when we come to amendments, we do not put the Minister for Finance in unnecessary jeopardy. I am just saying this so that we are all together. He had some misgivings about 12(2)(c) which says

“The National Treasury shall have, in addition to the functions-  
co-ordinate the preparation of annual appropriation accounts and other statutory financial reports by the national government and its entities”. Surely, if, indeed, the counties are going to present their appropriation proposals to the Senate and so on, someone has to co-ordinate at the national level. Even the Budget Committee of Parliament is going to call the Cabinet Secretary in charge of finance to question him about the proposals of the Government about these things; he really must get the materials from somewhere. So I am wondering why he is uncomfortable coordinating the preparation of annual appropriation accounts. But you see the Government must see that these things are there and it is the duty of the Budget Committee of Parliament to interrogate - just as I was the Chairman of the Public Investments Committee (PIC), the audited accounts of the parastatals came to me as the Chairman of my Committee and I had to question these people but in the presence of the Auditor-General Corporations and to ask him: “How did you arrive at this, can you explain?”

So, Parliament through the Public Investments Committee was holding the Government to account as an oversight body. If we think that somebody else is going to co-ordinate this, I do not think the Budget Committee can do it. They do not have the technocracy or the technology or the organizational capacity nor is it their responsibility constitutionally. Let us be a little bit sober about these proposals because I do not think they are meant to usurp the powers of Parliament or the Budget Committee. They are meant to enforce and make the work of the Budget Committee easier, so that the materials that you need to interrogate are prepared by somebody who has the means and the resources to do so, and the information. These things require a lot of information.

After Clause 17(6) that my friend raised, I will stop because the others follow *mutatis mutandis*. Clause 17(6) says that:-

“The Intergovernmental Budget and Economic Council shall agree on a framework for the preparation and the rationalization of cash flow projections for the disbursements of funds allocated to the national government and county governments”.

To my friend, hon. Mbadi, this must be read in conjunction with the responsibilities of the Senate as found in the Constitution because if one sees the responsibility of the Senate, you will find that the Intergovernmental Budget and Economic Council shall agree on a framework for the preparation and rationalization of cash flow projections. Agreeing on a framework will mean that they consult bodies like the Senate and other relevant bodies. The framework must be presented by the Government. How do you do this?

Clause 17(7) says:-

“The Intergovernmental Budget and Economic Council shall agree on a disbursement schedule on the basis of the cash flow projection prepared under subsection (6) and the schedule shall be published and used for the disbursement of available revenue from the Consolidated Fund to the national government and county governments taking into account the provisions of Article 219 of the constitution”.

That is the point I wanted to make. In fact, this makes the process even more transparent because all parties are involved. There is a framework that is known, it is published, it follows Article 219 of the Constitution and, therefore, it makes governance more accountable and transparent.

Again, the worries of my friend, hon. Mbadi, can be laid to rest if, indeed, he treats this section with regard to the provision of the Constitution that gives certain responsibilities to the Senate and with regard to Article 219 of the Constitution. I rest my case.

**Ms. Karua:** Thank you, Mr. Temporary Deputy Speaker, Sir. I stand in support of this Bill. This Bill is absolutely necessary so that it shares out the responsibility of managing money matters to the county governments and about oversight to the National Assembly and the Senate. I have seen that the Bill is doing what it is supposed to do and also minding the provisions of the Constitution. When one looks at the proposed Section 46, the overall responsibility of the Cabinet Secretary includes advising the county governments on how to prepare their budgets and helping them to build their capacity. It is quite clear as has been enumerated here before, that in addition to the duties given in the Constitution the Cabinet Secretary will oversee the formulation of the overall economic and financial policies of the Government.

When one looks at the Constitution, these are the very things that have been enumerated by Articles 225 and 114 of the Constitution. All money Bills will take into account the view of the Cabinet Secretary responsible for finance. So, both the Constitution and the Bill are taking into account that the policy direction in any given year will come from the Executive of the day. Therefore, it is the Cabinet Secretary responsible for finance, who will on behalf of the Government or the Executive, give that policy direction and also throughout the year, ensure that all Government entities, both national and county, are following that policy direction. That is why in Article 114 of the Constitution, all money Bills will require the views of the Cabinet Secretary to be taken into account. Therefore, when this proposed Bill is talking about the views of the Cabinet Secretary being taken into account in Clause 36, it is repeating wording that is already in the Constitution.

I want to agree that although we have two levels of Government, the country is one. Therefore, the overall management direction is coming from the national government and certain responsibilities devolved to the county governments. So, once we understand that it is one, then we will not be so concerned that the Cabinet Secretary is being given a chance to give his or her

views to the Parliamentary Committee before they come out with their direction. This will assist the National Assembly or the Senate for that matter, to make their decision from an informed view because then the Cabinet Secretary will be able to point out what the views of the Government of the day are and Parliament is not stopped from referring to the Constitution to see whether there is any conflict when they give their decision.

We must realize that although we are having devolved governments, the 47 counties are part of the whole. Therefore, there has to be some synergy between the national and the county governments. This cannot be there if in the planning stages, including in Parliament, the voice of the Executive is locked out entirely. How then can they even negotiate or try to convince each other of the differing positions that they hold? I, therefore, want to laud the proposals in the Bill for providing an avenue for continuous engagement between the National Government and the National Assembly in the process of Budget making. We should remember that the buck stops with the President and her Cabinet. It is therefore, important that the Executive, headed by the President, has access to discuss and push its view before the National Assembly before they firm up the Budget proposals either by making amendments or altering what has been proposed by the Government. I notice that the Act has taken care of all the areas that would worry someone. It has given us in Clause 12 the general responsibilities and the powers of the National Treasury, which is again backed by the Constitution. When one looks at the Constitution, the Cabinet Secretary is given powers to stop any disbursements to a county if the money is not being used in accordance with the Constitution. These are things that may worry somebody who looks at this proposed Bill without synchronizing with what is in the Constitution. What comes out is clearly that the National Government through the Cabinet Secretary has the overall control of money matters, which is, again, given by the Constitution. It is mainly in policy direction and prudent use of the money following the policy direction and legislative directions given by the laws that we have made.

This Bill is also bringing transparency. For the first time, all matters will be laid bare to the public. If it is the National Debt Management Office, there will be the national debt and how it is going to be managed. There will be Public Debt Management Office. They will be able to account for and give the account of how the national debt is being managed to ensure that it is managed in a sustainable manner, unlike today where the public debt is rising without Parliament or public being able to know the levels of our national debt. Even when the law says that Parliament should approve the debt ceilings, this is not being adhered to. This law is putting a responsibility on public officers to ensure that they comply with the laws relating to public resources. This is in Clause 79. I will propose that at Committee Stage, this clause must have penalties for public officers who fail to comply. We hear too often of Permanent Secretaries overspending beyond the authorized limits and it becomes an audit query by Public Accounts Committee (PAC) year in, year out without any changes.

We, therefore, need penalties on any public officer who mismanages public resources, or who conducts public business without regard to the laws. I think it is only personal responsibility accompanied by penalties that will bring a change in culture, where we all learn to obey the law, where we all learn to go in accordance with our Constitution and the laid down procedures.

Mr. Temporary Deputy Speaker, Sir, I think that overall, from what I have been able to look at in the Bill, the Bill is good and it is time that we passed it and whichever areas we feel should be strengthened, we shall be able to do that at the Committee Stage.

With those few remarks, I beg to support.

**Mr. Njuguna:** Thank you, Mr. Temporary Deputy Speaker, Sir. I will be very brief in my remarks.

Let me start by thanking the Minister for moving well this Bill in the House. On Clause 51 concerning borrowing National Government entities, I note that the Finance Secretary will have absolute powers to approve borrowing by the county governments. My fear will be where an application is made by county governments and there is delay in giving approval. I will suggest that there should be time limit on approval. This borrowing by the county governments must be directed to critical projects to lay firm foundation in the county governments. We realize that these young governments will require a lot of funding and therefore, payments of resources from the central Government must be effected quickly.

Mr. Temporary Deputy Speaker, Sir, it is also important that the county governments must be encouraged to engage in local or domestic borrowing so that even the local banks can also participate in funding the new and young county governments.

Mr. Temporary Deputy Speaker, Sir, concerning loan guarantees to the county governments, it should be noted that it will be after careful consultations that loan guarantees to county governments will be considered and approved; only when the funds are required for capital projects and not funds for salaries, water and electricity bills.

On Clause 78, the Kenya Revenue Authority is now mandated to be more serious because the resources required by the 47 counties must be collected by this Authority. Before I move on, let me recognize the good work that is being executed by the Kenya Revenue Authority (KRA). The Authority must devolve services to all the 47 counties so that they will also participate in the collection of taxes. To realize adequate collection on taxes, one area that the Authority must direct itself is to seal off where fake currencies have been made and circulated in this country. Cases of fraud have taken ages in this country to prosecute. It is, therefore, important for the incoming new blood in the KRA to seal off some of these loopholes. Imports of illicit brews must also be discouraged completely and more particularly on importation of motor vehicles, cigarettes and even drugs. It is important that we learn from the Euro zone, where most of the countries in Europe are really now struggling and crying for bailout. Therefore, we will not want the new governments to start crying immediately after formation in 2013. It will therefore be very important to make sure that the Cabinet Secretary in charge of finance will be able to release funds to county governments in good time. Time must be stipulated so that projects in the county governments will be implemented for the well being of citizens.

Mr. Temporary Deputy Speaker, Sir, to conclude, I urge the Minister to make sure that he will not continue to delay the release of funds to our primary and secondary schools because continued delay of these funds will compromise quality learning in our schools. The performance in our schools at the end of this year is not likely to be better if funds are not released immediately.

With those few remarks, I fully support the Bill.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Members! Since there are no more contributors, I will call upon the Mover to reply.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I will be very quick.

First of all, I would like to take this opportunity to thank hon. Members for all their contributions. They were very valuable and we will consider the amendments proposed. I am also happy to report that the Budget Committee of Parliament has also gone through the Bill and



has also come up with its amendments. We now just want to reconcile our amendments with theirs.

Mr. Temporary Deputy Speaker, Sir, as I said, we now want a new spirit, spirit of co-operation between the Executive and Parliament. We do not want any confrontation. So, we will be able to reconcile our amendments and the amendments of the Committee.

Mr. Temporary Deputy Speaker, Sir, let me just say the three things that came up. The first one was from hon. Karua on the need for penalties for financial mismanagement. This is actually already provided for in Part VII of the Bill. So, that has been taken care of. I must also appreciate the very positive comments that were made by hon. Karua; particularly on the need for co-ordination between Parliament and Treasury, particularly the fact that views of the Cabinet Secretary on finance must be listened to by the Committee. It is the Cabinet Secretary who will be able to inform the Committee on Government priorities and particularly on implications.

The Committee has recommended that grants to Government be reduced by 50 per cent. On the face of it, it is a very good and innocent statement. But when we, as Treasury, went to look back at the implication of reducing Government grants to parastatals and other agencies, we found that it was actually the Constituencies Development Fund (CDF). So, the Committee was actually recommending that we deduct 50 per cent from CDF. This is because they did not look at the implications. There are many such examples where the implication, again, is not clear for the Committee.

Mr. Temporary Deputy Speaker, Sir, again, if I give an example of the current Budget recommendations on fuel lubricants, they recommended that 30 per cent of the amount be reduced only to discover that if we reduce 30 per cent from the Prisons Department, it will not be able to ferry prisoners from the cells and remand homes or jails to the various courts. So, again, there is that implication. So, I think it is important that the views of the Cabinet Secretary be sought so that, then, the Committee can be informed of the implications of some of those recommendations.

Mr. Temporary Deputy Speaker, Sir, Ms. Karua talked about borrowing powers and that they need to be carefully looked at. Again, I would like to inform this House that the Bill specifically provides that county governments and even the National Government can only borrow for development purposes and not for consumption. So, again, that is taken care of by the Bill.

Now, turning to the other issues that were raised by hon. Mbadi; that the county governments require to be informed by the National Government on loans and guarantees, again, it is Parliament that will be setting the national ceiling. From there, that ceiling will refer to both county governments and National Government and, therefore, it is Parliament that will set these ceilings as per Section 50(2). But concerning loans and guarantees, the Bill rightly says that this is the responsibility of the National Government because, at the end of the day, it is one country and one Government. When other countries are dealing with Kenya, they will not be dealing, say, with the county of Nairobi, Machakos or whichever else; they will be dealing with the sovereign Republic of Kenya. So, it is important that the loans and guarantees be the responsibilities of the National Government. Again, if you are issuing a sovereign guarantee, it is the country that will issue it, not the individual counties.

But even further, Mr. Temporary Deputy Speaker, Sir, the Bill provides that the issuance of loans and guarantees will be discussed by the Intergovernmental Budget and Economic Council. So, the views of the county governments are already provided for.

Thirdly, Mr. Temporary Deputy Speaker, Sir, there is need for having prudent debt management. So, this must be left to one institution; it cannot be left to many because there will be conflict. There will also be the danger of having unsustainable debt. Therefore, that has been taken care of by the Bill.

Mr. Temporary Deputy Speaker, Sir, it is also important that when Parliament is reviewing the estimates, it should also take into account the views of the Cabinet Secretary, because he or she would have looked at the priorities at the Government and this will inform the Committee better.

In conclusion, Mr. Temporary Deputy Speaker, Sir, I would like to, once again, thank hon. Members for their very wonderful contributions. We shall take them positively and come up with amendments. But let me put it on record that Treasury supports devolution. Treasury will go out of its way to make sure that county governments perform. This is because if they do not perform, the whole country will not perform. So, I do not know where this notion came from that Treasury does not support devolution. It is wrong notion because we support devolution. It is in the Constitution and it is our job and responsibility to support it. Even in this Budget, we have put aside Kshs3 billion to help the county governments, particularly for those counties which have no headquarters. I can hear the hon. Member for Kipipiri saying that in Nyandua, they do not have county headquarters; that their headquarters is in another county.

There is money to provide for construction of governor's residence, offices and the debating chambers for county representatives. So, Kshs3 billion has been set aside. The Equalization Fund has also been set aside. This shows that the Treasury actually supports county governments. In addition, we are training people who will be able to open up county treasuries because without a county treasury, the county government will not be able operate.

With those remarks, Mr. Temporary Deputy Speaker, Sir, I beg to move.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Next Order.

## MOTIONS

### ADOPTION OF REPORT ON IRREGULARITIES AT CIVIL SERVANTS OUTPATIENT MEDICAL INSURANCE SCHEME

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

**The Temporary Deputy Speaker** (Mr. Ethuro): The Chairman is here, but the indication I have is that this particular Motion was deferred. We defer it for now until tomorrow.

*(Motion deferred)*

ADOPTION OF REPORT ON ACCOUNTS OF  
LOCAL AUTHORITIES/UDD/CDF

THAT, this House adopts the First Report of the Local Authorities and Funds Accounts Committee on the accounts of local authorities, countrywide projects done by the Urban Development Department (UDD) of the Ministry of Local Government and the accounts for the CDF for the 2006/2007 and 2007/2008 financial years laid on the Table of the House on Thursday 14<sup>th</sup> October, 2010.

**The Temporary Deputy Speaker** (Mr. Ethuro): Where is the Chairperson of the Local Authorities and Funds Accounts Committee? Is there any hon. Member of that Committee? We shall also defer that one.

*(Motion deferred)*

ADOPTION OF REPORT ON RESETTLEMENT OF IDPS IN KENYA

THAT, this House adopts the Report of the Parliamentary Select Committee on the resettlement of the Internally Displaced Persons (IDPs) in Kenya laid on the Table of the House on 25<sup>th</sup> April, 2012.

**The Temporary Deputy Speaker** (Mr. Ethuro): This one shall also be deferred. But I want to put it on record that I would have been available to prosecute it, but now I am on this other side.

*(Laughter)*

So, we will defer it to tomorrow also.

*(Motion deferred)*

ADOPTION OF REPORT ON AGREEMENT TO  
COMBAT TERRORISM IN INDIAN OCEAN

THAT, this House adopts the Report on the Agreements between Kenya and International Partners on Combating Piracy in the Indian Ocean laid on the Table of the House on Wednesday, June 23, 2010.

**The Temporary Deputy Speaker** (Mr. Ethuro): Is the Chairman of the Committee on Defence and Foreign Relations not here? Is there any Member of the Committee on Defence and Foreign Relations?

We will also defer it to tomorrow.

*(Motion deferred)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, since we have exhausted the business on the Order Paper for today, the House is, therefore, adjourned until tomorrow, Wednesday 20<sup>th</sup> June, 2012, at 9.00 a.m.

The House rose at 6.07 p.m.