

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 21st February, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

WELCOME TO DELEGATION FROM PARLIAMENT OF VICTORIA-AUSTRALIA

Mr. Speaker: Hon. Members, I have the following Communication to make. I wish to introduce to you and welcome, this afternoon, a Delegation from the State Legislature of Victoria, Commonwealth of Australia, who are seated at the Speaker's Row.

They are as follows:-

1. The hon. Bruce Atkinson, MLC, President of the Legislative Council
2. The hon. John Lendas, MLC, Leader of the Opposition in the Legislative Council
3. The hon. Philip Davies, MLC, Member of the Legislative Council
4. The hon. John Pandazopolous, MP, Member of the Legislative Council
5. Mr. Wayne Tennecliffe, Clerk of the Legislative Council
6. Ms. Jessica Lalor, Executive Assistant to the President

Hon. Members, the Delegation is on an official visit to our Parliament between 18th February, 2012 and 22nd February, 2012. In the course of their visit, the delegation will share their ideas and experiences on the Bicameral Parliament System with their counterparts and in particular the operations, interactions and legislative process in a two-chamber Parliament.

The Delegation has already had fruitful meetings with Members of the Parliamentary Service Commission (PARLSCOM), parliamentary officers from various departments and they will be meeting Members of the Procedure and Rules Committee later on today.

On behalf of the House and on my own behalf, I wish the delegation a fruitful and happy stay in Kenya.

Thank you.

(Applause)

PAPERS LAID

The following Papers were laid on the Table:-

The Audited Annual Accounts of the Kenya Broadcasting Corporation for the year ended 30th June, 2009 and the Certificate thereon by the Controller and Auditor-General.

(By the Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima) on behalf of the Minister for Information and Communications)

The Financial Statements of the Town Council of Kandara for the year ended 30th June, 2010 and a Certificate thereon by the Controller and Auditor-General.

The Financial Statements of the County Council of Moyale for the year ended 30th June, 2009 and a Certificate thereon by the Controller and Auditor-General.

The Financial Statements of the Town Council of Maragua for the year ended 30th June, 2010 and a Certificate thereon by the Controller and Auditor-General.

The Financial Statements of the Municipal Council of Chuka for the year ended 30th June, 2009 and a Certificate thereon by the Controller and Auditor-General.

The Financial Statements of the Municipal Council of Embu for the year ended 30th June, 2009 and a Certificate thereon by the Controller and Auditor-General.

The Financial Statements of the County Council of Nyandarua for the year ended 30th June, 2009 and a Certificate thereon by the Controller and Auditor-General.

The Financial Statements of the Town Council of Ol Kalou for the year ended 30th June, 2009 and a Certificate thereon by the Controller and Auditor-General.

The Financial Statements of the County Council of Wajir for the two years period ended 30th June, 2009 and a Certificate thereon by the Controller and Auditor-General.

The Financial Statements of the Municipal Council of Kehancha for the year ended 30th June, 2010 and a Certificate thereon by the Controller and Auditor-General.

(By the Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima) on behalf of the Deputy Prime Minister and Minister for Local Government)

QUESTIONS BY PRIVATE NOTICE

MURDER OF MR. CLEMENT ATIANG' OPIYO

Mr. Ochieng: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice:

(a) Under what circumstances was Mr. Clement Atiang' Opiyo, a former teacher and a husband to the Chief of Agoro West location in Nyakach, killed at his home on or about 23.11.2011?

(b) Have any suspect(s) been arrested in relation with the murder and, if not, why?

(c) What measures has the Minister taken to ensure that security is enhanced in the location and its environs?

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

(a) On 23rd November, 2011 at about 12.30 a.m. Mr. Clement Atiang' Opiyo while in his house heard people talking outside. Since his 18 year old son, Moses Odiwour was unwell and

was sleeping in a different house within the homestead, the deceased and his wife decided to go out and find out what was happening. However, on opening the door, he was confronted by a gang of two who attacked him with crude weapons inflicting deep wounds on the left side of the forehead and abdomen killing him on the spot.

The police immediately visited the scene and commenced investigations. Thereafter, the body was moved to Kisumu Provincial General Hospital mortuary for post mortem where the cause of death was found to be multiple club injuries on the head and abdomen resulting in severe acute haemorrhage.

I wish to table a copy of the post mortem results.

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

Pap Onditi Police Case File No. Criminal 604/243/2011 was opened and to date no suspect has been arrested. However, police are following crucial leads which are likely to result in arrest and prosecution of the culprits. In this respect, I appeal to the residents of the area to volunteer any information that may lead to the arrest of the suspects. Mobile and foot patrols have been enhanced in the affected area and its environs and community policing initiatives have been revitalized to boost security.

Mr. Ochieng: Mr. Speaker, Sir, could the Assistant Minister confirm that the investigations being carried out at the moment are taking quite a long time and that at the end they may not arrest the culprit?

Mr. Ojode: Mr. Speaker, Sir, this is a murder case. We want the detectives to zero in on those who actually performed the act. I agree that it is taking some time, but I want him to be patient so that we get the real person who murdered this innocent Kenyan.

We will not leave anybody. I have crucial leads some of which I can share with the hon. Member after the House breaks. In a week's time or two weeks definitely we will get somebody who was behind this heinous act.

Mr. Ochieng: Mr. Speaker, Sir, could the Assistant Minister assure me once more that the Chief whose husband was killed, the late Mwalimu, would be offered proper security as she performs her duties as Chief of that particular area? Given that she was a target and her husband was killed and yet she is the one who takes care of the area, if her security is not enhanced then, obviously, the people may be living in fear. Could he confirm that security will be enhanced in that particular area?

Mr. Ojode: Mr. Speaker, Sir, I want to assure the hon. Member that security of this particular chief is guaranteed. She has the Administration Police within her domain. There is no cause for alarm. She need not panic. We are with the Chief.

OUTBREAK OF VIOLENCE IN ISIOLO/MOYALE

Ms. Karua: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice:

(a) What action has the Minister taken to ensure that persons responsible for the violence in Isiolo and Moyale are brought to book?

(b) What measures has the Government put in place to ensure that the violence does not recur in the said areas?

(c) What preventive measures is the Government taking to ensure that violence does not occur elsewhere in the country, especially in the run-up to the forthcoming general election?

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

(a) Following the outbreak of violence in Isiolo police moved in quickly to restore order and a total of 22 suspects were arrested and taken to court vide Isiolo CR421/14/2012 and CR421/48/2012 and charged with various offences of malicious damage to property, destroying evidence, offensive conduct, and taking part in a riot. All the cases are pending before court.

In the case of Moyale, the following suspects believed to be behind the violence were arrested and charged:-

1. Mr. Guyo Halake, a former MP
2. Mr. Gulicha Galgalo alias Goticha, Chairman of Moyale Town Council
3. Mr. Edin Wario Diba, Councillor of Heilu Ward
4. Mr. Haji Mohammed Dida Apicha, a businessman.

Mr. Speaker, Sir, further investigations are ongoing in the two cases and more suspects are likely to be arrested and arraigned before court in due course. We have crucial leads which will enable the police to arrest more suspects.

(b) To ensure that violence does not recur in these areas, the Government has put in place various measures which include among others: Establishment of a new operational security camp in Baraka, Gambela, Tractor and GSU Shaba Camp; deployment of more security personnel to the affected areas; prosecution of those suspected of involvement; enhanced collection of intelligence; and, revival of peace committees and holding of regular peace barazas through provincial administration to ensure peaceful coexistence.

(c) The following measures are also being put in place to ensure that there is peace in the affected areas and within the county in general: Identifying conflict prone areas in the country; establishment of peace committees in conflict prone areas and holding of peace barazas by provincial administration; enhanced collection of intelligence to proactively deal with conflicts before they turn violent; sustained foot and mobile patrols in areas prone to conflict; and conducting regular cordon and search operations to recover illegal arms.

Mr. Speaker, Sir, we are also reactivating community policing in the whole entire country.

Ms. Karua: Mr. Speaker, Sir, I am a bit disappointed with the answer especially noting that we are moving towards the election period and how the Government deals with incidents of violence in Moyale and Isiolo will be instructive in what happens in the rest of the country. So, the answer which is a standard sort of factory production approach may not be good.

Could the Assistant Minister tell us the cause of conflict in Isiolo noting that this is a recurrent matter? We had a similar incident last year yet it appears to catch the Government unawares. Also tell us the cause of conflict in Moyale then we can be able to judge whether the charges brought or the investigations are sufficient.

Mr. Ojode: Mr. Speaker, Sir, the matter itself is in court. It is a *sub judice* case. I want to say that it is in this House where I did mention that incitement to residents of whatever area will be tantamount to chaos. Politics is one of the conflicts.

Mr. Speaker: Order, Mr. Ojode! The hon. Member for Gichugu has asked you a fairly straight forward question. Could you tell the House the cause of conflicts in Isiolo and Moyale?

Mr. Ojode: Mr. Speaker, Sir, I was saying that those are very volatile areas and I want to say that in some of these areas conflicts are due to political differences. There are some clans who want their own to be a governor or a senator. There are some small things. I would like to request that I go on with investigations in order for me to arrest some of these guys without coming with the problems facing that particular area. There is certain information that I would not want to divulge for the purpose of getting those who we are targeting. I think if I am given some time, it would be prudent for me to arrest those suspects first before I spill the beans.

Mr. Mureithi: Mr. Speaker, Sir, one of my concerns about these conflicts in Isiolo is that it is not only confined to the local population. There are teachers there who come from our areas. Sometimes, they have been forced to spend the night outside because of insecurity in the area. I would like the Assistant Minister to tell us, in addition to what he has told us about conflicts due to clanism, what he is doing to protect professionals who have gone to work in those areas and feel very insecure.

Mr. Ojode: Mr. Speaker, Sir, I have actually beefed up security in that area. Currently we have a number of security personnel within Isiolo, Mandera and Moyale. We do not have any security problems in those areas.

Mr. Imanyara: Mr. Speaker, Sir, Isiolo is one of the most cosmopolitan towns of this country and soon will be a resort city. Six of the people who were killed last weekend come from the neighbouring constituencies of Tigania and Meru. You have heard the Assistant Minister say that some of the people who have been arrested and prosecuted are former Members of Parliament and politicians. Could he agree with me that what is happening in Isiolo is ethnically inspired cleansing to remove certain communities? These are not incidences of thuggery as he would like this House to believe. If so, what active measures has he taken to involve the Commission that was specifically set up after the post-election violence of 2007/2008 to visit that area and take concrete measures to ensure that there is no repetition of the post-election violence we saw in this country in 2007/2008?

Mr. Ojode: Mr. Speaker, Sir, I want to say in this House that the Commission has actually visited the area. It is compiling its report and it is yet to release the report to the Commissioner of Police. It is true that there are clans who are fighting one another but what we are to do is to negotiate and agree on the way forward in order for us to maintain peace, law and order. We also have Members of Parliament from that area talking to each and every grouping or clan to maintain the peace that we require.

Mr. Duale: Mr. Speaker, Sir, Isiolo and Moyale are part of the larger northern Kenya where the pastoral communities inhabit. For a long time, conflicts in this region used to be based on resources like water and pasture. I want to confirm to the House that it is now not the same. We now have enough water and pasture. Could he confirm to this House because in Isiolo and Moyale in the last eight months, we have lost more than 200 people? Could he confirm to the nation that the conflict in Moyale and Isiolo is politically instigated? It is about politics. What is he doing about it because it might spill over to other constituencies? Could he confirm whether county politics are involved?

Mr. Ojode: Mr. Speaker, Sir, I confirmed here that, yes, indeed, politics is involved. If you look at the people whom I have arrested, they are politicians who were basically inciting their grassroots supporters. I want to assure this House that I am still continuing. I am going to arrest more. Forget about this councillor and the former Member of Parliament, I am going to arrest more. Read my lips! I am going to arrest more!

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to dodge answering the question deliberately when it is in the public domain that the people he has arrested are simply scapegoats and the real big politicians are the ones who are competing for county positions? There is an ambassador from the Gabra community and a Member of Parliament from the Borana community. Can you answer the Question?

Mr. Ojode: Mr. Speaker, Sir, I mentioned here and I want to confirm that I am still continuing to arrest. I am going to arrest more people especially those who are inciting their supporters. You will read from the newspapers once I have arrested them. I am going to arrest!

Mr. Njuguna: Mr. Speaker, Sir, with the admission by the Assistant Minister that serious violence has taken place in this area, could he in addition, inform the House what humanitarian assistance the Government is extending to the many families affected by this crisis?

Mr. Ojode: Mr. Speaker, Sir, we already have people on the ground and all our security teams are on the ground. They will come up with what they want us to supply and as Government, we are ready to supply whatever they require on the ground.

Mr. Linturi: Mr. Speaker, Sir, I am really very uncomfortable with the manner which the Assistant Minister tries to react to matters that touch on security of Kenyans. This Parliament has given a lot of money to the National Security Intelligence Service (NSIS) and I am sure one of the duties of this department is to give information to the Government. I want to know from the Assistant Minister whether the NSIS in this country is giving them information so that before these attacks take place, the Government can move with speed to arrest such situations.

Mr. Ojode: Mr. Speaker, Sir, at the very beginning, I said that we have enhanced the collection of intelligence. It is through this organ that we get information that there will be tension. If there was no intelligence collection, so many people would have died. I want to say that they are doing a very good job and that is why we could be able to apprehend before it spilled. I want to assure this House that we have enough detectives on the ground. We also have enough security on the ground. Hopefully, more investigations will be done in order for us to arrest those who have been inciting those people.

Mr. C. Kilonzo: Mr. Speaker, Sir, one of the problems that we in the northern frontier part of the country face is shortage of police officers. Could the Government consider redeploying those officers who have been attached to Ministers because some of them have close to five or six bodyguards and relocate them to Moyale, including the one attached to the particular Assistant Minister?

Mr. Ojode: Mr. Speaker, Sir, as at now, I do not have any shortage of security officers but if need be, there are two things which I will do; I will withdraw the security of Mr. C. Kilonzo in order for me to take them to Moyale. We are in the process of advertising for recruitment of more police officers.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to threaten an hon. Member that they will withdraw security services assigned to them in order to provide security while in the same breath he is saying he has enough security. Is that in order? Right now he has no problem with security but he is threatening to withdraw the security of Mr. C. Kilonzo.

Mr. Ojode: Mr. Speaker, Sir, if you heard me correctly, I said "if need be". In other words, if I want more security officers, I will have no choice but to withdraw those of my colleagues who are having four or five security officers.

Mr. Litole: Mr. Speaker, Sir, I have mentioned in this House before that at one time we visited Isiolo and found out that the Government decided to arm one community against the

other. Could he confirm that it is the Government that is fueling the tribal clashes and not politicians?

Mr. Ojode: It is not true. What we have done is that we had forceful disarmament and where we have disarmed, we were replacing with Kenya Police Reservists (KPR). That is the trend that we are still going to use in order for that particular area where we have disarmed to have enough security officers. We are also beefing up security detectives within those areas where we have disarmed. The Government is doing a commendable job to make sure that law and order is obeyed.

Mr. Ethuro: Mr. Speaker, Sir, if you listen to the Assistant Minister, you might think that this country is completely safe. This question is extremely important and he must give specific measures. If you look at part (c) where it is talking about measures in Moyale where one or two communities are being targeted, this also applies in other areas, for instance, Lorhoni and Kapedo areas where there is a lot of insecurity and people cannot even access pasture. Is the Assistant Minister going to ensure that indeed there is sufficient security in all the parts of the country including the areas that I have mentioned in Turkana County?

Mr. Ojode: Mr. Speaker, Sir, indeed, it is true that we received information that tension was building up especially in Kapedo area. What have we done as a Government? We have ferried the General Service Unit (GSU) personnel and not just the regular police and Administration Police (APs) last night. If we were to go to Kapedo today, you will come and congratulate me.

Mr. Speaker, Sir, we have no problem in Kapedo now although there is tension---

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to say that I should be happy when the bandits even shot a chief in an AP lorry? Even a chief who is a Government officer is not safe in a police vehicle!

Mr. Ojode: Mr. Speaker, Sir, ordinarily, those are hotspot areas. I am saying that I have already taken the GSU to Kapedo to patrol that area. So, we are monitoring the situation. If we need to add more officers, we will do it this evening.

Ms. Karua: Mr. Speaker, Sir, the way the Assistant Minister deals with the security issues in those two areas – Isiolo and Moyale – is really what will define whether we have a peaceful year and peaceful elections. Among the measures that the Assistant Minister mentioned, I would like him to tell us what he has done about disarmament, which is even across the border and it is not favouring any one community; about increased police posts, especially at Isiolo, where it is recurrent; about reshuffling police officers and intelligence people especially at Isiolo, where this has been recurrent and, also, reigning in on impunity. It is not right that the Assistant Minister promises that he will act when we know that top politicians in and out of Parliament, are walking free and, therefore, are encouraged to continue inciting the people? What has the Assistant Minister done about that?

Mr. Ojode: Mr. Speaker, Sir, I did mention here that I am not going to act. I am saying that I have already started. We are acting. We are going to the ground and arresting people. I even mentioned to my colleagues that those top politicians they are talking about will be arrested in order for us to have law and abiding---

Hon. Members: When? When?

Mr. Speaker: Order, Mr. Ojode! Address the House!

Mr. Ojode: Mr. Speaker, Sir, in order for us to have law abiding citizens. I would also like to ask my colleagues that they should also know what to say where. This is because as my colleagues, if we see a magnitude of people, we normally go overboard and say something which

will amount to incitement. I would not like to say here what I will do but the Government will take action against those who are out to incite people. I want to repeat that the Government will take action. Hon. Olago---

(Mr. Ojode pointed a finger at Mr. Olago)

(Mr. Olago stood up in his place)

Mr. Speaker: What is it, Mr. Olago?

(Mr. Olago gestured at Mr. Ojode)

(Laughter)

Order, the Member for Kisumu Town West! You will have to apologise to the House because we do not allow gestures like that from hon. Members!

Mr. Olago: Mr. Speaker, Sir, I apologise. Hon. Ojode started it by pointing a finger at me.

(Mr. Olago gestured again at Mr. Ojode)

(Laughter)

Mr. Speaker: Order! You do not apologise and repeat it!

Mr. Olago: Mr. Speaker, Sir, I apologise and withdraw.

Mr. Speaker: Please, restrain yourself!

Mr. Olago: I apologise, Mr. Speaker, Sir. Is it in order for hon. Ojode to say that the Government is serious about this issue when even among those who have been arrested - including the politicians who have been arrested - all of them have been charged with very minor offences and nobody has been charged with murder when six Kenyans lost their lives?

(Applause)

Mr. Ojode: Mr. Speaker, Sir, it is in the public domain that I do not charge people but I only arrest. The Director of Public Prosecution charges people! The hon. Member is a lawyer and he knows that I only arrest. I will arrest anybody who incites any supporter or clan, and I will do it. Let my colleagues also try so that they see that I have the power to arrest. I will arrest!

(Laughter)

ORAL ANSWERS TO QUESTIONS

Mr. Speaker: Yes, hon. Millie Odhiambo-Mabona!

Mrs. Odhiambo-Mabona: Thank you, Mr. Speaker, Sir, for indulging me. I beg to ask Question No.964 on the Order Paper.

Question No.964

IMPLEMENTATION OF SECTIONS 53 OF
EMPLOYMENT ACT

Mrs. Odhiambo-Mabona asked the Minister for Labour:-

(a) when the Minister will make regulations under Section 53 of the Employment Act on activities that are deemed harmful to the health, safety and morals of a child between 13-16 years of age; and,

(b) what is considered "light work" that a child can undertake under the law.

The Minister for Labour (Munyeyes): Mr. Speaker, Sir, I beg to reply.

(a) I will make the rules and regulations under the Employment Act, 2007 once the review on the Act is concluded. My ministry along with other key stakeholders including the Kenya Law Reform Commission and our tripartite partners, Federation of Kenya Employers and COTU have begun a process to review the Employment Act, 2007 to conform with the new Constitution. We have prioritized this activity and have set a date of 20th June deadline. I will then immediately embark on making rules and regulations to operationalize the Act.

(b) Within the provisions of the Labour Laws, any work assigned to the children should be guided by the general principle that it should not be harmful to the child's health and development nor prejudice his or her attendance at school or participation in vocational orientation and training programmes.

Mr. Speaker, Sir, I want to assure this House that once the review of the Employment Act is complete, I will make the relevant rules and regulations to safeguard our children from engaging in activities that may prejudice their health and general development.

Thank you very much, Mr. Speaker, Sir.

Mrs. Odhiambo-Mabona; Thank you, Mr. Speaker, Sir. I will need the guidance of the Chair. This Question has appeared on the Order Paper almost five or six times, and in the past, the Minister has promised to bring regulations and, indeed, the last time the Speaker directed that the Attorney-General tables the regulations when he comes. But today, the Minister has given another long answer without complying with what the House had directed.

Mr. Speaker, Sir, I would like your direction as to whether the rules should be given in whatever form because that is what the House had directed.

Mr. Speaker: Mr. Minister, that is legitimate! When will you make the rules?

Mr. Munyeyes: Mr. Speaker, Sir, this matter has been pending at the Attorney-General's Chambers and with the direction of the Attorney-General, we have been advised that we should review the laws before we draft these regulations. Therefore, I want to appeal to the hon. Member to give us until June this year for us to formulate efficient rules and regulations that will help us curb this problem.

Mr. Speaker: What is it, Member for Central Imenti?

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. I seek your guidance on this because Section 6 of Schedule 6 of the Constitution for the benefit of the Minister reads as follows. Section 7 (1):-

"All law enforced immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring them into conformity with this Constitution."

So, by operation of the Constitution, we are expected to read all existing laws as subject to this provision of the Constitution. Therefore, is it in order for him to tell us that he cannot make rules because he is waiting to review laws which have already been reviewed under Section 6 of the Sixth Schedule to the Constitution?

(Mr. Munyes stood up in his place)

Mr. Speaker: Order, Mr. Minister! Just resume your seat for a moment.

Apparently, this is the third time that this Question is appearing on the Order Paper, and you have previously been directed and you have, in turn, undertaken to ensure that the regulations are ready and gazetted. But, now, you are taking a completely different position and, yet, even the law as the hon. Member for Central Imenti has kindly referred you to permits you to proceed and make those regulations.

Mr. Munyes: Mr. Speaker, Sir, he is right. But you know I drafted the laws and they were pending for gazettment by the Attorney-General. But, later---

Mr. Speaker: The Attorney-General is not very far from you! Why do you not consult?

Mr. Munyes: Later, we decided that we will review the laws so that they are in conformity with the new Constitution. That is a requirement that we want to persuade the House; that, yes, the law---

Mr. Speaker: Order, Mr. Minister! Why would you make a decision like that clandestinely when you have a Question pending before the House and you have made certain commitments?

I am not satisfied, Mr. Minister, that you are prepared to deal with this matter finally!

Mr. Munyes: Mr. Speaker, Sir, I have finalized or finished drafting the laws and it is the Attorney-General to gazette them. However, according to the Attorney-General who is sitting here, we need to make them conform with the new Constitution. I have no problem using those laws.

Mr. Speaker: Mr. Minister, I do not take this kindly! You know, you are not helping us to use the time of the House optimally. Under the circumstances, I will defer this Question and, hopefully, for the last time, I will allow you until Wednesday, next week in the morning to give a satisfactory answer to the House. Maybe you should even come with a Gazette Notice to say that you have gazetted them!

(Applause)

That is the way I want us to proceed!

Mr. Munyes: Mr. Speaker, Sir, that is okay. I think what I will do is that I will persuade the Attorney-General to gazette these laws and then continue reviewing them.

Thank you very much, Mr. Speaker, Sir.

Mr. Speaker: Very well. The Question is deferred until Wednesday, next week at 9.00 a.m.!

(Question deferred)

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

Order! Mrs. Odhiambo-Mabona, please note that!
Yes, the Member for Mandera East!

QUESTIONS BY PRIVATE NOTICE

UPSURGE OF INSECURITY IN LAFEY DISTRICT

Mr. M.H. Ali: Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that teachers in Lafey District are currently deserting schools citing insecurity in the area?

(b) What measures will the Minister take to avert the situation?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I beg to reply. As I give my reply, may I just say to the hon. Member that the Ministry shares the grief with the families of the late Yusuf Godhana and the late Hassan Ali Mohamed. It was really a sad affair and a wanton killing by people who are happy with peace in this country.

(a) Yes, I am aware that teachers in Lafey District temporarily deserted schools while others sought transfers following the recent sad incident in which the District Education Officer, Lafey District, Mr. Yusuf Godhana and the head teacher, Lafey Secondary School, Mr. Hassan Ali Mohamed, were killed by bandits while on the way to collect the 2011 KCSE papers.

(b) Senior Ministry officers namely the Secretary of the Teachers Service Commission (TSC) and the Kenya National Union of Teachers (KNUT) officials held consultations with the Provincial Administration and other Government security agents regarding the security situation in the area. Teachers were then assured of their security, that of the school children and the area residents after the security agents promised to beef up security in Lafey District and North Eastern Province as a whole. Therefore, I wish to inform the House that teachers have now reported back to their duty stations and learning is back to normal in the district.

Thank you, Mr. Speaker, Sir.

Mr. M.H. Ali: Mr. Speaker, Sir, I wish to thank the Assistant Minister for condoling the families of the late DEO, Yusuf Godhana and the Principal of Lafey Boys Secondary School, Hassan Sheikh Ali.

Mr. Speaker, Sir, there were two other Kenyans Councilor Derek Mohamud and Mr. Waweru who was the driver of the vehicle. All these Kenyans perished as a result of *Al Shabaab* attacks on a vehicle that was going to Mandera to collect exam papers. I appreciate the answer given by the Assistant Minister. However, since this Question was filed, a number of other teachers have also deserted schools, including Arabia Schools in Mandera East, not necessarily in Lafey District. Whereas a few have returned following consultations between the Kenya Union of Teachers (KNUT), the Teachers Service Commission (TSC) and Ministry officials, still quite a number of them have not reported back to their stations. What assurance is he giving to the residents of Mandera East and to this House that children from this area get their rights to education? It is not their responsibility or duty to fight inside Somalia or *Al Shabaab*. They have the right to learn and they have to be attended to.

Mr. Mwatela: Mr. Speaker, Sir, I really appreciate the concerns of the hon. Member. We, as a Ministry, are committed to making sure that all children get access to education. We know we are faced with a difficult circumstance of fighting *Al Shabaab*, but the Government is up to the task. I want to assure the hon. Member and, indeed, the House, that the Government has

taken the matter very seriously. We will do our best. If necessary, we will have more consultations to ensure that we beef up security, so that all children can continue attending school.

Mr. Ruto: Mr. Speaker, Sir, listening to the answer given by the Assistant Minister, it is clear that it falls outside his purview considering that it is calling upon the increase of security. However, he is clearly at pains to give any concrete guarantees on security for the teachers or even the pupils. Would I be in order to say that there ought to be a clear answer from the Minister in charge of security because apparently the Assistant Minister for Education cannot give any guarantees?

Mr. Speaker: Mr. Assistant Minister, what is your reaction to that?

Mr. Mwatela: Mr. Speaker, Sir, indeed, that is why we have involved the Provincial Administration. However, I would not mind going by the view of the hon. Member that the Provincial Administration be given the mandate to give an answer regarding this particular security situation.

Mr. M.H. Ali: Mr. Speaker, Sir, whereas I agree with Mr. Ruto, this issue also relates to assurance by the Ministry of Education that teachers will be available. Despite the role of the Ministry in charge of security, we also need the assurance of the Ministry of Education that teachers will be available subject to security being provided.

Mr. Mwatela: Mr. Speaker, Sir, further to the view held by the two hon. Members and the other hon. Members, maybe this Question could be cross-cutting and may be necessary to involve the Office of the Prime Minister in giving assurance that there is an issue of provision of teachers as well as an issue of security. So, we may have to refer this Question to the Office of the Prime Minister.

(Mr. M.H. Ali stood up in his place)

Mr. Speaker: Order! In those circumstances, I will direct that this Question is referred to the Office of the President and in particular the Ministry in charge of internal security to furnish an answer not later than Thursday, next week.

Mr. M.H. Ali: On a point of order, Mr. Speaker, Sir. With due respect, I will be out of the country on Thursday this week. Probably, next week will be okay with me.

Mr. Speaker: I said Thursday, next week!

Mr. M.H. Ali: Mr. Speaker, Sir, thank you very much!

Mr. Speaker: Thursday next so that even the Office of the President has time to get and gather all the information. So, this Question is deferred to Thursday, next week in the morning.

(Messrs. Imanyara and M.H. Ali consulted)

Mr. Speaker: Order! Mr. M.H. Ali! Mr. Imanyara, if you wish to volunteer some advice or help to the Member for Mandera East, you may do so safely in the backroom. It is so directed!

(Mr. M.H. Ali stood up in his place)

Order, Mr. M.H. Ali!

(Question deferred)

ACUTE WATER SHORTAGE IN KILELESHWA ESTATE

Mr. C. Kilonzo: Mr. Speaker, Sir, I beg to ask the Minister for Water and Irrigation the following Question by Private Notice.

(a) Is the Minister aware of the acute water shortage in Kileleshwa Estate, Nairobi?

(b) What measures is the Government taking to ensure that the supply of water in the estate is restored?

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

(a) Yes, I am aware of acute water shortage in Kileleshwa Estate, Nairobi. In the recent past, we have witnessed some significant change of land use in Kileleshwa where single dwelling units have been converted into multi-dwelling units, some getting occupied by over 20 families. This has strained the water supply infrastructure in the area mainly by reducing the pressures in the pipelines due to high demands of water beyond the current carrying capacity.

As a result of the reduced water pressures, some of the elevated areas including areas along Sugut Road, Makueni Road, Laikipia Road, Olkajiado Road and Kandara Road in Kileleshwa experience water supply shortage part of the week. In order to ensure supply at sufficient pressures, a weekly water distribution programme aimed to build pressure in the supply line is being implemented. This regrettably involves rational isolation and rationing of supply zones which is the best alternative in the current circumstances.

(b) In order to ensure that water supply in the estate is restored, my Ministry has undertaken the following measures.

(i) We have placed staff responsible for operation and maintenance on high alert to ensure damage resulting from the ongoing road construction works is repaid immediately.

(ii) We have installed sectional valves in several locations within Kileleshwa to enable isolation of damaged sections and facilitate quick repair and reduce water losses.

(iii) My Ministry has also repaired the Ruiru Dam and Kabete Water Pipeline which had been vandalized. This has raised water production at Kambiti Water Treatment Plant and assisted in maintaining supply pressures in Kileleshwa Estate.

In order to boost water availability at Kabete Reservoirs, construction of a second pumped line from Gigiri to Kabete transfers an additional 40,000 cubic metres per day of water to Kabete for supply to upper Nairobi zones, including Kileleshwa, is under implementation and will be completed in November 2012.

In the medium-long term, Athi Water Services Board under the Ministry is finalizing a water master plan to guide the development of water resources for Nairobi City and metropolitan areas. From this master plan, Athi Water Services Board is already on course to fast track implementation to meet the 2017 water demand.

In addition to the Athi Water Services Board, we are concluding a network modeling and design for the distribution system in Nairobi to ensure equitable supply to all areas.

Once these measures are actualized, the water supply and distribution system will match those in the First World cities.

Mr. C. Kilonzo: Mr. Speaker, Sir, the situation in Kileleshwa currently is horrible. All the high-rise apartments have no water. It is actually turning to be a health hazard. What is the Government doing to ensure that water reticulation is improved in the estate, because all what the Assistant Minister has proposed here does not include the pipe network within that estate?

Mr. Waititu: Mr. Speaker, Sir, it is actually true that there is a big problem in Kileleshwa. But we have put our staff on alert to be repairing every pipe burst because of road construction in the by-passes and ring roads in Kileleshwa, between Yaya Centre and James Gichuru Road.

Mr. Mwathi: Mr. Speaker, Sir, occasionally, we have problems in many estates. Does the Ministry have a mechanism of assessing the problems that it has regarding water issues around all estates? Does the Ministry have a mechanism for informing the residents on what to do during such crisis?

Mr. Waititu: Mr. Speaker, Sir, I know that it is in the public domain that, occasionally, we inform the public through the media where there will be water disruption. However, there are cases of water bursts that need to be attended to immediately and we have no sufficient time to inform the public. But the mushrooming flats everywhere in the City are putting a lot of pressure on the supply lines, because initially the pipes that were in place were not meant for the big flats.

Mr. Olago: On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister say that part of the water problem in Kileleshwa is because of the water pipes which are either old or too small. One would expect that when plans are submitted for approval for construction of high-rise buildings, they cannot be approved unless provision has been made for supply of power and also water. How come that these building plans are approved when water services are not rendered equally?

Mr. Waititu: Mr. Speaker, Sir, it is true that the City Council has been approving plans without considering the provision for supply of water. That is one of the problems that we are experiencing because of lack of coordination between the plans at the City Council and service delivery agencies.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. The Assistant Minister is giving us, in my view, very substandard answers. First, he has told us that he expects water in the long term, I believe around the fulfillment of the Vision 2030, yet it is clear that we want an immediate solution to the shortage of water. He is telling us about old pipes and lack of planning. That is really not an answer to the question of shortage of water. We want immediate short-term plans on how to supply water; within which people can live in a civilized manner in the City. If the Assistant Minister does not have answers---

Mr. Speaker: Order! Member for Chepalungu, you have made your point; that the Assistant Minister is not effectively answering part "b" of the Question.

Mr. Assistant Minister, do you want to respond to that point of order?

Mr. Waititu: Mr. Speaker, Sir, so far, Sasumua and Ndakaini dams have water, but the supply lines from there are not enough to supply some areas like Kileleshwa which have big flats, when the lines on the ground were designed for single dwelling units. So, we are closing some valves so that we can generate pressure to supply different areas. That is why we have some rationing. I think the problem is that some residents there do not know when water comes to their side. We have to isolate some areas, so that we can build pressure and supply the other side.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Is the hon. Assistant Minister in order, first, to say that there is no coordination between the Ministry of Water and Irrigation and the Office of the Deputy Prime Minister and Ministry of Local Government, when we have the Prime Minister who is in charge of supervision and co-ordination? Secondly, is he in order to accuse the residents of Kileleshwa for not understanding? The only thing that Kileleshwa residents do not understand is why they have a Government which does not understand that

when you approve new estates, you are supposed to provide for new pipe network or water reticulation. They do not want to hear about rationing.

Mr. Speaker: Order! Member for Yatta, you have not prosecuted that effectively as to fall within the ambit of a point of order. Maybe you want to ask the last question.

Mr. C. Kilonzo: Mr. Speaker, Sir, I did put the message. We want to know when the Government is going to put in place new pipes to serve the increased population, because we are still using the pipes which were fixed during the colonial time. Nothing in the Assistant Minister's answer here says that they are going to put any new pipes. He is only talking about water rationing.

Mr. Waititu: Mr. Speaker, Sir, in part "iv" of section "b" I had clearly indicated:-

"In order to boost water availability to Kabete reservoir which supplies Kileleshwa, construction of a pumped line from Gigiri to Kabete to transfer an additional 40,000 cubic metres per day, will be completed by the end of this year."

Mr. Speaker, Sir, I think by then we shall increase the water supply to the upper areas which include Kileleshwa.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. I wish I could speak his own mother tongue, because I would have probably explained to him what I meant, but I will try again. The pipe network was put during the colonial time. So, even if you increase the water, there will not be enough space for that water to flow within the estate. What residents and I are asking you is: Why do you not put new and bigger pipes to serve this estate? When will you do that?

Mr. Waititu: Mr. Speaker, Sir, it is true that we are also putting new pipes in some areas to improve the ones that were put---

An hon. Member: Which areas?

Mr. Waititu: In the upper side of Nairobi, Mr. Speaker, Sir. There is not only one estate in the upper section of Nairobi; Kileleshwa is one them.

ORAL ANSWER TO QUESTION

Question No.1219

ILLEGAL ALLOCATION OF PLOT AT GATIMU SHOPPING CENTRE

Mr. Mureithi asked the Deputy Prime Minister and Minister for Local Government:-

(a) whether he is aware that the Government had set aside a plot of land for a community market centre at Gatimu shopping centre; and,

(b) whether he is also aware that, despite availability of Kshs200,000 from the CDF kitty for fencing and building of a toilet on the plot, the project has stalled due to illegal allocation of the plot.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, I would like to ask the indulgence of the House. I had discussed with the hon. Member; that the Question I have and the answer I provided, particularly the wording of the Question in part "b", is absolutely inconsistent with what the Question is on the Order Paper. As such, I would want to be given two weeks to come with an answer that is in congruence to the Question that has been asked.

Mr. Speaker: Very well! Member for Ol Kalou!

Mr. Mureithi: Mr. Speaker, Sir, the Assistant Minister has discussed with me, but I would like to ask him to consult the Settlement Fund Trustee which supplied all the public plots. If he wants more consultation, hon. Musila who was actually allocating these public plots, has the knowledge of the area when these were being subdivided for distribution.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I am sure you heard hon. Mureithi allege that hon. Musila was allocating some land. Could we get to understand how this happened and when? Did he do this when he was a Minister, Member of Parliament or has he at anytime worked in the Ministry of Lands to allocate this land? Could we get some clarification, because these things go on record?

Mr. Speaker: Order! Order, hon. Members! Since there is consensus between the Questioner and the Assistant Minister to accord the Assistant Minister more time to answer this Question, I would rather we leave those issues until the Question is properly asked, and we will deal with them. So, Member for Gwasi, you may want to sharpen your horn and raise those issues when the Question is answered. I defer the Question to Wednesday afternoon. Is that okay, Assistant Minister?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): That is in order, Mr. Speaker, Sir.

Mr. Speaker: Very well.

Hon. Members, that brings us to the end of Order No.6.

COMMUNICATIONS FROM THE CHAIR

Hon. Members, before we move to the next Order, I have two Communications to make.

DEADLINE FOR SUBMISSION OF AMENDMENTS TO DEVOLVED GOVERNMENTS BILLS

Mr. Speaker: Hon. Members, this is in respect of Order No.8 on the Order Paper, relating to the County Governments Bill, Bill No.1 of 2010. As hon. Members are aware, the House did yesterday conclude the Second Reading of this Bill and the Bill is now due for the Committee Stage, which will take place in the Afternoon Sitting tomorrow, Wednesday, 22nd February, 2012.

As hon. Members are further aware, the County Governments Bill, Bill No.1 of 2012 as well as the Bills at Order Nos. 9 and 10, namely The Intergovernmental Relations Bill, Bill No.2 of 2012 and The Transition to Devolved Governments Bill, Bill No.3 of 2012, are part of the legislation to implement the Constitution in terms of Article 261 of the Constitution. These pieces of legislation require to be passed by the House on or before 27th February, 2012.

Hon. Members, in order to facilitate the orderly transaction of the Committee Stage of the County Governments Bill, Bill No.1 of 2012 and subsequently of the other Bills on devolved government, I would like to request hon. Members who intent to propose amendments to these Bills to do so by or before 2.30 p.m. tomorrow, Wednesday, 22nd February, 2012 at the Office of Legal Counsel so as to facilitate the drafting of the same where necessary.

This will help eschew the situation as was witnessed at the end of August, 2011, where some amendments were not processed timeously, and were not on the Order Paper until they were moved in the House during the Committee Stage.

So, let that be clear. The Committee has intimated to me that they will be ready with their Report, which will, among other things, contain all the amendments that they have become aware of by tomorrow morning; in this case most of the amendments will be already processed by the end of the sitting tomorrow morning.

Thank you.

EXTENSION OF PRESCRIBED PERIOD OF ENACTMENT OF LAND
REGISTRATION BILL/NATIONAL LAND COMMISSION BILL

Hon. Members, the second Communication from the Chair is with respect to a request that I did receive from the Joint Committees, Constitution Implementation Oversight Committee and the Justice and Legal Affairs Committee. This Communication, therefore, is in respect of Order Nos.11 and 12 as appear on today's Order Paper relating to The Land Registration Bill, 2012, and The National Land Commission Bill, 2010.

Hon. Members, following the publication of these Bills, my Office received a letter from the Chairperson of the Constitution Implementation Oversight Committee, hon. Abdikadir, which indicated that at a joint meeting of the Constitutional Implementation Oversight Committee and the Departmental Committee on Justice and Legal Affairs held on 15th February, 2012, Members of the two Committees resolved for a number of stated reasons to request the Speaker to find that pursuant to Article 261(3) Paragraph (b) of the Constitution, there are exceptional circumstances necessitating extension of the period prescribed for the enactment of these Bills together with those relating to devolved governments, which are all due for enactment on or before 27th February, 2012.

The request by the Chairperson of the Constitution Implementation Oversight Committee, on behalf of the two Committees, was made pursuant to Article 261 of the Constitution, which mandates the National Assembly, by resolution supported by the votes of at least two-thirds of all the Members of the National Assembly, to extend the period prescribed for enactment of any legislation required to be enacted for the implementation of the Constitution in respect of any particular matter by a period not exceeding one year.

Article 261(3) provides that the power of the National Assembly to extend time may be exercised only once in respect of any particular matter and may be exercised only in exceptional circumstances to be certified as such by the Speaker of the National Assembly.

Hon. Members, the subjects of land and devolution are highly emotive and were at the heart of the clamour for a new Constitution. These matters have continued to attract significant interest from Kenyans, even after the promulgation of the new Constitution. Many Kenyans hold the view that the resolution of the myriad issues surrounding the land question and the implementation of the devolved system of government will resolve a number of social, economic and political problems that bedevil Kenya.

It is noteworthy that the land and governance issues constituted the core of Agenda Four items under the Kenya National Dialogue and Reconciliation Framework as agreed on 23rd May, 2008.

Hon. Members, concerning the processes of preparation of the legislation to operationalise the relevant provisions of the Constitution on the subjects of land and devolution, it may be noted that these processes have taken a considerable period of time owing to the complexity of the issues at hand and the divergent opinions thereon. The Draft Bills were

received in Parliament with only a few days remaining to the expiry of the timeline set out in the Fifth Schedule to the Constitution.

In keeping with the letter and spirit of the Constitution, Parliament requires time within which to engage the public on Bills, to study the Bills in Committee and to debate and pass the Bills in plenary. The time that is now remaining – barely six calendar days – will not be sufficient for Parliament to effectively discharge its mandate, particularly on such critical Bills.

Hon. Members, it is important to observe that Parliament has, following publication of the Bills, taken all steps necessary to diligently commence work on and process the Bills.

In the light of all these factors, I find that there are, indeed, exceptional circumstances as contemplated in Article 261(3) Paragraph (b) of the Constitution, making a case for extension of time in respect of The Land Registration Bill, 2012 and The National Land Commission Bill, 2012.

With respect to the Bills relating to devolved governments, I am satisfied with the progress so far made by the House and I am confident that this House is capable of meeting the constitutional deadline in respect thereof.

Hon. Members, I will therefore, be allowing a Notice of Motion seeking the extension of time to be given in respect of The Land Registration Bill, 2012 and The National Land Commission Bill, 2012 and thereafter for the Motion thereon to be moved during the Morning Sitting on Thursday, 23rd February, 2012.

Hon. Members, we thought that for the Motion to be approved, the Constitution requires that it must have the support of not less than two-thirds of all the Members of the National Assembly. It is further noted that under Standing Order No.60(2):-

“The Speaker shall direct a division to be taken in every instance where the Constitution lays down that a fixed majority is necessary to decide any question.

In addition, Standing Order No.68(1) requires that:-

“In every instance where the Constitution lays down that a fixed majority is necessary to decide any question, the House shall not proceed to a division on that question unless and until a number of Members equivalent to such fixed majority is present at the time for directing the division.”

Hon. Members, in the light of these provisions of the Constitution and the Standing Orders, it is clear that a Division on this Motion will require the presence in the House, at the sitting of Thursday, 23rd February, 2012, at least, two-thirds of the membership of this House, which is 148 Members at the time of directing the Division.

Considering the importance of the matters at hand, I urge the Government, the party whips and all hon. Members to make a special effort to be present to transact this critical business.

I thank you.

In a nutshell this Communication directs that we proceed and conclude transaction of the Bills relating to Devolved Governments. All Bills that have been moved by the Minister for Local Government who is also the Deputy Prime Minister will have to be concluded through Committee Stage not later than Thursday this week.

For the land Bills, you have that process to undergo and it entails quite some serious effort. It will, therefore, take the commitment of all the hon. Members to see to successful fruition of that Motion.

Thank you.

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

Mr. Speaker: Hon. Members, we will want to take Statements. First, the ones which are due and then we will take requests.

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

Mr. Speaker: Order, Member for Chepalungu. I am not inclined to revisit the two communications which I have made. I have taken trouble to even explain in summary what they mean.

Proceed, Minister for Medical Services.

MINISTERIAL STATEMENTS

TRANSFER OF DR. MAURICE WAKWABUBI TO KAPENGURIA DISTRICT HOSPITAL

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I rise to give a Statement that was requested by Mr. Eugene Wamalwa, the Member for Saboti regarding the transfer of Dr. Maurice Wakwabubi as the superintendent of the hospital at Kitale.

First, this was a normal transfer to Kapenguria District Hospital for the needed services there. Secondly, the surgeon and the gynecologist who were in Kapenguria left the station to join the University of Nairobi. Hence sadly we were left with no other option, but to get to Kapenguria a senior doctor, Dr. Wakwabubi since---

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. It was not my intention to interrupt the good professor. However, this Statement was requested by Mr. Eugene Wamalwa who is currently in the Justice and Legal Affairs Committee transacting business. The Statement sounds very specific. Probably, it would have benefited this House if the hon. Member who had requested for this Statement was present, so that we can benefit from what he knows about the issue.

Mr. Speaker: Order, Mr. Minister. Let me just take some institutional memory. I want to benefit from it before I give directions.

*(Mr. Speaker consulted with
the Clerk-at-the-Table)*

Mr. Minister, the rule of thumb, the general position would be that once Mr. Speaker has given directions for a Statement to be issued, it should be issued notwithstanding the absence of the Member who may have prompted it. However, in the circumstances of this particular request for a Statement by the Member for Saboti who was the originator of the request, is actually away by compulsion of the House to help a committee prepare a report that must be tabled in the House not later than tomorrow morning. So, it is not of his choice that he is away.

Under those circumstances, it is possible to make a distinction and defer this Statement until later on when the hon. Member is available. Maybe Mr. Minister, you want to deliver this Statement on Thursday?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, notwithstanding what you have said, Mr. Eugene Wamalwa and I already discussed and he knows the answer. He has absolutely no objection to the Statement being made in the House, so that it is part of the HANSARD, because he has no objection to that. So, I would oblige.

Mr. Speaker: The Member for Gwassi appeared as if he had implicit authority to ask for time.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, the Member for Gwassi as usual is assuming a knowledge that does not belong to his territory.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Did you hear the Minister for Medical Services insinuating that as usual I tried to read what is in the mind of people when what I raised was just a genuine concern of this Statement being specific in nature that I felt if the person who raised this was present in this House, then this House would have benefited from his knowledge of the substance of the debate.

Mr. Speaker: Order, so, that we save the time of the House, I think we will have to live with the directions that I have made. We will defer this Statement until Thursday afternoon. The Member for Saboti will be notified that he will need to be present.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I myself will not be here on Thursday. I will be on an equally important mission. So, the Statement may have to be made next week on Wednesday.

Mr. Speaker: Is Wednesday fine for you?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Perfect, Mr. Speaker, Sir.

Mr. Speaker: Very well. It is ordered to be delivered on Wednesday afternoon at 2.30 p.m.

Member for Chepalungu, what is it?

Mr. Ruto: Mr. Speaker, Sir, last week I requested a Ministerial Statement hinging on the question of the implementation of the Constitution and the commitment by the Government to the provisions of Article 261 and, therefore, that would drive the process and not lead Parliament to a situation where we are now. That required you to make that extra ordinary ruling. You had ruled that it be given today. I do not see the Leader of Government Business. I was only waiting; I am also supposed to be with Eugene Wamalwa in that other exercise. I am requesting that may be you can give directions so that I can be able to attend the other meeting.

Mr. Speaker: I think the relevant person here will be the Attorney-General to indicate when that Statement can be made.

Attorney-General, if you will kindly liaise with the Leader of Government Business so that the Statement is ready for delivery not later than Thursday morning.

The Attorney-General (Prof. Muigai): I undertake to do that, Mr. Speaker, Sir.

Now, that I am on my feet Mr. Speaker, Sir, ---

Mr. Speaker: Order! What is it Attorney-General?

The Attorney-General (Prof. Muigai): That was done.

Mr. Speaker: Very well!

Member for Chapalungu, note Thursday morning.

Minister for Medical Services, I think you have a further Statement to deliver.

ISSUANCE OF STRIKE NOTICE BY KENYA HEALTH PROFESSIONAL SOCIETY WORKERS

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, thank you for giving me the opportunity to deliver this Statement. This Statement regards the strike threat by members of the Kenya Health Professional Society Workers (KHPS)

in the public health sector. It is important that the nation as well as the House be enlightened on this issue as indeed health matters are extremely important.

Mr. Speaker, Sir, the Health Professional Society is the umbrella body pursuing welfare interests of most health workers in the country. It is not a trade union. It is a society.

On the 9th of February 2012, the KHPS issued a 21 day strike notice to the Ministry of Medical Services. The notice was given on account of grievances touching on the manner of payment of extraneous allowances to the various health workers. The 21 days notice will expire on the 29th day of February this year.

Mr. Speaker, Sir, prior to the notice it should be noted that the two health Ministries had met representatives of the society on the 1st December 2011 and after extensive discussions agreed as follows:-

(i)The Health Ministries will consult with other Government agencies with a view to enhancing the basic salary for all health workers to the next grade with effect from the 1st of July 2012.

(ii)That discussion of review of house allowance will await the report of a housing survey to be conducted by the Kenya National Bureau of Statistics (KNBS). The KNBS report which is expected to be ready by March 2012 would inform the Ministry of State for Public Service on the cost of House rents and form the basis for review of house allowances in the public service.

(iii)That the Health Ministries would consider paying all the Members of the KHPS a uniform extraneous allowance of Kshs15, 000 per month effective July 2012.

(iv)That the Health Ministries will consider paying health workers a monthly hardship allowance of Kshs10,000 for extreme hardship areas and Kshs5,000 for moderate hardship areas regardless of grade and marital status with effect from July 2012.

(v)That payment of risk allowance should be extended to all health workers who hitherto had not benefited with effect from December 2011 and that the Health Ministries would seek to procure a risk cover for all health workers which should cover all risks involved.

(vi)That consultation be initiated by the Health Ministries with a view to pay KHPS members a non-practicing allowance. A report of the discussion be ready by March 2012.

(vii)That the society be involved in discussions on the proposed medical insurance cover for civil servants.

(viii)That nurses uniform allowance should continue being paid annually through the payroll. That the recommendation on nurses' uniform by the Nurses Grievances Task Force of 2008 be implemented.

(ix)That the uniform allowances for nutritionists be improved and paid through the payroll while other cadre should be provided with protective clothing.

(x)That health workers be considered for emergency call allowance with effect from July 2012.

(xi)That discussions aimed at paying all interns an internship allowance be conducted be conducted by March, 2012.

(xii)That all vacant positions be advertised for filing as early as possible.

(xiii)That outstanding promotion cases be fast tracked as a part of a rapid result initiative.

Mr. Speaker, Sir, prior to these agreements the doctors, pharmacists and dentists who were initially part of the larger group of dissatisfied health workers walked out of the negotiations opting to pursue their grievances under the auspices of Kenya Medical Practitioners Pharmacists and Dentists Union (KMPPDU).

Following the walk out, the Government negotiated separately with the union and reached agreement which was communicated by the Ministry of State for Public Service through a circular Ref. No. MSPS/2/1/3A vol.3 (77) dated 12th January 2012 providing as follows:-

(i) That doctors, pharmacists and dentists including clinical officers, anesthetists be paid monthly extraneous allowance in two phases at ranges ranging from Kshs30,000 to Kshs40,000. The first phase was payable from December 2012 and the second phase being paid from July 2012.

(ii) That all doctors, pharmacists and dentists deployed in hospitals be paid a monthly emergency call allowance of Kshs30,000 with effect from December 2012.

In addition, the Government provided Kshs200 million to the two Health Ministries to offset pending bills on training and the balance to be utilized for the training of health workers.

Mr. Speaker, Sir, in line with the agreement reached with the KHPS the Government has paid phase I extraneous allowance to members of the society as follows:-

(i) Kshs3,500 to Kshs15,000 to those in urban areas.

(ii) Kshs5,000 to Kshs17,500 for those in rural areas.

(iii) Kshs7,500 to Kshs20,000 to those in hardship areas.

Mr. Speaker, Sir, it should be noted that the Government paid these allowances to this cadre of health workers well in advance of the agreed date of July 2012.

The Government has further implemented the following:-

(i) Paid uniform allowance for nurses for 2011 through the December 2011 payroll.

(ii) Vacant positions were advertised on daily newspapers on 3rd of February 2012 for promotion of serving officers.

Mr. Speaker, Sir, in doing the above, the Government will spend approximately Kshs6 billion to address the grievances of doctors, pharmacists, dentists and other health workers. The financial implications of these commitments to health workers have been factored in the revised estimates for the 2011/2012 financial year and MTEF for 2012/2013. In this regard, I wish to enlist the support of the House in ensuring that funds are secured for this purpose.

I wish to clarify that extraneous allowance was paid at differentiated rates on the advice of the Ministry of State for Public Service. During our discussions, we clarified to the health workers that demands on salary increments can only be handled by the Public Service Salary and Remuneration Commission which is now operational. Discussions on the issue of risk cover for health workers previously held with the Ministry of State for Public Service are ongoing. At the time of discussion with the society, procurement of the medical insurance scheme for civil servants was at an advanced stage and was subsequently awarded before the end of December 2012.

Mr. Speaker, Sir, notwithstanding the fact that the society is not a trade union and therefore has no authority to call a strike, the two Health Ministries met its representatives on the 15th of February 2012 to try and avert the strike. During the meeting discussions on contentious and pending issues were held with the Ministries clarifying the status of implementation. However, no agreement was reached at the time. Instead the teams agreed to consult within themselves before holding further consultations. Despite the challenges the two Ministries face in meeting the demands of the society, we remain open for discussions. I am actively exploring possibilities of averting the strike through consultations with the other Government agency and the society. We anticipate that an amicable and lasting solution acceptable to all parties will be arrived at soon.

Mr. Speaker, Sir, finally, health care is an essential service. We shall continue to dialogue with all stakeholders for the betterment of service delivery to all Kenyans.

However, I will plead to health workers, it is not humane to threaten both the Government and the society of Kenya, with strikes on an issue that is being handled competently, and on an issue that dialogue and discussions can, indeed, settle democratically.

I thank you.

Mr. Shakeel: Thank you very much, Minister for your statement.

You ended your statement with something that seen as a stab on the health services workers as not being humane. You also said that humanity is only extended to the patients and the Government. Could the Minister clarify to us what he meant by that? Secondly, could he distinguish between societies and co-operatives? Where exactly have things gone wrong? Has this Government reneged on its promise to health workers? Let us call a spade, a spade. People claim that you made some promises that you have not kept. It is either you were not in the position to keep them, or you may not have made them. Could he be very clear on what promises he made in December before the strike by health workers was called off?

Mr. Speaker: There maybe a few more. Member for Machakos Town.

Dr. Munyaka: Mr. Speaker, Sir, I think the Minister knows that one of the reasons why the medical staff went on strike was the poor working conditions and lack of basic facilities. What is he doing to address this, apart from their allowances?

Mr. Speaker: Anybody else interested? The last one, yes, hon. Dr. Eseli.

Dr. Eseli: Mr. Speaker, Sir, the Minister has mentioned also the agreements they reached with the Kenya Medical Practitioners and Dentist Union.

Mr. Speaker, Sir, in that agreement, it was collectively agreed that this cadre of staff will be getting certain allowances. However, at the time of the implementation, the pharmacists were actually left out. Yet, at the time of bargaining and agreeing, the pharmacists had been included in this agreement. When did they sit again and decide to exclude the pharmacists, or was this a unilateral decision by the Ministry to exclude the pharmacists.

Thank you.

Mr. Speaker: Minister, you may now respond.

The Minister for Medical Services (Prof. Anyan'g-Nyong'o): Mr. Speaker, Sir, first, let me make myself very clear. When I said humane, I did not mean that health workers are not humane. All I said, and the HANSARD bears me correct, is that if you issue a strike notice for somebody who is sick in hospital, who is on palliative care and who knows that the next day, he may not have a health professional looking after them, it is much more serious to that person, to you issuing the strike. This is because palliative care stands between you and their life. That is exactly what I mean.

I meant that the health profession or any union engaged in the health profession is not like the mine workers union. Mine workers can go on strike, but gold and diamond will stay in the ground without changing colour or value for years. However, if health workers go on strike you know what the consequences are. Maybe, the first person, who goes on strike, is the one who will lose his mother, or his auntie, who is going to have a baby in the hospital. So, these issues should not be treated lightly in the health Ministry and in the health profession. We are really representative of the almighty on earth, given the power, and the ability to continue with God's creation.

So, I would appeal to Members and to the medical professionals really to travel an extra mile and in issue like this give dialogue and discussion more latitude than it is given in other union affairs.

Mr. Speaker, Sir, secondly, the whole purpose of reading this statement is to clarify so called promises that were not made. If the hon. Member was listening carefully, I gave dates, when certain agreements were to start. I have even said that some of those agreements, the Government has fulfilled before those dates.

What I would like members of the profession to understand is that if somebody has for some reason had a lapse of memory on exactly what this agreement entailed, we have a Permanent Taskforce between the Ministry and the health professionals to review these issues. We are very serious about this. We need the health professionals to deliver the services. Therefore, it behoves us to ensure that we treat the health professionals well.

When you come to conditions of services that Dr. Munyaka, MP for Machakos Town has talked about, I myself have said in House that this Government needs about Kshs85 billion in the next three to five years, to make sure that the delivery of health services is enhanced by putting in place infrastructure, equipment and environmental service that is in consonant to modern needs. I know that because of competing needs of the Budget we cannot get that Kshs85 billion instantly. However, we have made a baseline survey and our teams continue to visit hospitals to assess the situation. Indeed, the work of rehabilitation and equipping hospitals is going on every day. But it cannot be done overnight. Just like when we started Free Primary School education, it took some time to get far. Just as we started the CDF, it has taken sometime in our constituency to rehabilitate all our schools. The same is true in the medical services; the services have not been invested in effectively for over 25 years, with a tremendous backlog of work to do.

So, I will appeal to the nation, to the medical professionals let us be understanding, let us be patient, let us know the facts. Let us not run away from speculation and emotional statements, and deal with the condition as it obtained in our time.

Mr. Speaker, Sir, going to my friend Dr. Eseli, there has been statements made that pharmacists were left out. I read a statement very carefully that a certain category of allowances given to the professionals depending on station of work, grade and so on--- I would like to sit with the pharmacists given the agreements that we have signed with the Taskforce to get in detail in this and find out where the pharmacists are making claims that they were left out. I have avoided myself addressing these issues in Press conference, because I do not think that helps. However, I would ask the medical professionals, since we have established a Taskforce, dealing with these things, that whenever there is any disagreement in discussion with the Taskforce, they make an appointment to see me or the Permanent Secretary, and we shall settle the issue. My door is open. I am working full time and I am ready to serve.

Thank you.

Mr. Speaker: Mr. Minister for Planning, National Development and Vision 2030, proceed and make your Ministerial Statement.

[Mr. Speaker left the Chair]

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

THE FINAL AND OFFICIAL POPULATION CENSUS RESULTS

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to give a Ministerial Statement. Now, that you are the current Temporary Deputy Speaker, I do not know how you will behave.

Mr. Temporary Deputy Speaker, Sir, this Statement was sought by Dr. Khalwale, the Member of Parliament for Ikolomani and he wanted me to clarify the final and official position of the population of this country. He also wanted me to also give reasons that informed the initial nullification of the census results in the Turkana, Wajir and Mandera counties. Finally, he wanted me to clarify how this was going to impact on the planning for development in the country, especially with regard to the Commission on Revenue Allocation (CRA), the creation of 80 new constituencies, the allocation of the Constituencies Development Fund (CDF) money and other devolved resources.

Mr. Temporary Deputy Speaker, Sir, as the House is aware, the 2009 population and housing census preliminary results were released on 31st August, 2010 in a set of four volumes. These results were released in line with the United Nations (UN) principles and recommendations, whose professional ethics dictate that population figures from a census as enumerated and released gave a total population of Kenya as 38,610,097 people. On the occasion, I also indicated that the results for eight districts of Turkana, Wajir and Mandera counties had anomalies and had to be cancelled. Since the release of the results, further analysis has been carried out to correct coverage and content errors for the whole country, including areas where results were cancelled.

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

[Mr. Speaker resumed the Chair]

Mr. Speaker, Sir, this is a normal process recommended by the UN principles and recommendations for census taking, and is often undertaken after the release of preliminary results in all counties prior to the release of the final official results. This process, referred to as “smoothing of figures,” has given the new adjusted total population of 37,724,850 as per 2009, giving an overall difference of 885,247 compared to the preliminary results. The preliminary results of 2009 population and housing census of eight districts in northern Kenya were canceled due to serious inconsistencies noted in certain key indicators. Some of these inconsistencies detected included growth rates that could not be explained, enumerated figures falling way above the projected ones based on previous census, the age and sex deviation from the norms, significant growth observed in the household size without corresponding growth in the number of households, among others.

Mr. Speaker, Sir, the conduct of the census was in line with the Statistics Act No.4 of 2006, Section 17 which authorizes the Minister in charge of statistics to call for a census, while the cancellation of the figures was in line with Section 23 of the Act, which underscores the principles to be followed when releasing data to the public. The nullification of the census results for eight districts in northern Kenya triggered a court case, High Court Civil Application No.309 of 2010 at Nairobi, where an order was issued prohibiting the use of any census data other than the public data relating to Lagdera, Mandera East, Mandera Central, Mandera West, Wajir East,

Turkana North, Turkana South and Turkana Central constituencies. This order also implied that the same public population and housing census results be used in the determination of boundary review and or delimitation of new boundaries.

Mr. Speaker, Sir, as the House is aware, the court has now ruled against the Government's decision to nullify the census results of the eight affected districts, arguing that the Minister had no power to do so. The ruling of the court is to the effect that the preliminary population figures be upheld but be subject to democratic analysis. The Government was dissatisfied with the ruling and the Attorney-General has filed a notice of appeal against the said ruling as the reasons for cancelling the said results are still valid. Since the announced preliminary results were only provisional, further analysis has since been carried out using international demographic instruments and rationalisation of the figures has now been done to produce the final official 2009 population and housing census data. It is noteworthy that during this process, some variances were found in other areas that had not been cancelled, which have been rationalized as well. The evaluation process carried out was meant to get the accuracy of the data and help inform the users on the level of reliability of indicators generated. This standard practice has been carried out in all the previous census in the country.

Following this exercise, the census results have been smoothed for all provinces. The figures for the eight cancelled population figures have, therefore, since been smoothed as follows: Mandera West, preliminary results was 319,775. The smoothed one is now 191,721, giving a difference of 128,054. Turkana Central – the preliminary was 254,606 and the smoothed one is 254,423 giving a difference of 183. Lagdera – preliminary was 245,123, smoothed, 147,174, giving a difference of 97,949. Mandera Central – preliminary 417,294, smoothed 251,267, giving a difference of 166,027. Wajir East – 224,418 preliminary, smoothed 135,832, giving a difference of 88,586. Mandera East, preliminary, 288,687, smoothed 175,977 giving a difference of 174,710. Turkana North, 374,414 preliminary, smoothed 274,238. Turkana South, preliminary 226,379, smoothed 226,330, a difference of 49.

Mr. Speaker, Sir, from the smoothed information, it is clear that northern eastern areas had a big variance from the preliminary data, with a difference of 916,892, while the affected areas show a difference of 593,733. What is the impact? As hon. Members are aware, the court order prohibited the use of any census data relating to eight affected constituencies other than the public 2009 population and housing census results in determination of boundary review and delimitation of new boundaries. As the House is also aware, the court on 7th February 2012 ruled in favour of the applicants. Following the court order then, the Government had no choice but to use the 2009 preliminary population and housing census in allocating CDF and other devolved funds. Indeed, tentative CDF allocations for 2011/2012, which I have presented to this House in August 2011 are based on the provisional census results. The same data was forwarded to the Independent Elections and Boundaries Commission (IEBC), and could have been used in determination of boundary review and delimitation of new boundaries and in the creation of 80 new constituencies; it could also have been used in the work of the CRA to make county allocations.

Mr. Speaker, Sir, in conclusion, the Government's position has been to undertake a repeat census for the affected areas to obtain credible data. In fact, this process would have been undertaken were it not for the court order. The Ministry sought the Treasury's assistance for this purpose and had Kshs400 million allocated for the repeat census in the affected areas. Meanwhile, the Government will make use of the smoothed figures which will soon be

published as adjusted final 2001 population data for all planning purposes. The court ruling is also agreeable to the adjustment of the figures. These are the figures that should, ideally, be used in determining any additional constituencies that will be created before the next General Election.

In the same respect, the confirmed final 2011/2012 allocation for Constituency Development Fund as well as Revenue Allocation under the Devolved Government by the Commission for Revenue Allocation (CRA) should be based on the rationalized population figures.

Mr. Speaker: Are there Members who need to seek clarifications?

Yes, the Member for Ikolomani!

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. A statistic variance that I want to use to advance my argument using Mandera as the example applies to Mandera, Wajir, Lagdera and Turkana. It is curious that the smoothed figures for Mandera that the Minister has given us are around 627,000 people and the statistical factor I want to introduce is the adult registered voters. In the same districts, there are a total of 81,000 registered voters. These are voters for 627,000 inhabitants of those districts.

Mr. Speaker, Sir, I would like you to compare this with what obtains in your county, Vihiga. Vihiga as more or less the same population of just about 600,000 people and the registered number of voters is 242,000 people. My apologies are to the people of this area because they think that this question is targeting them. Because there are only 81,000 registered voters, it seems like by using the census figures, you have denied other areas in the country constituencies they deserved because under the proposed Independent Electoral Boundaries Commission (IEBC) recommendations, this area stands to get six new constituencies. Since the Minister has indicated that the Attorney-General has given notice for appeal, could he freeze the allocation for these constituencies until this decision is made? They are the same Government. Hurry up the process so that it is made in good time for the constituencies to be given out fairly. The people of Malaba Constituency, Kwale and the people of Kanduyi have been denied constituencies when they have five or ten times the population which is here.

Mr. Speaker: Mr. Minister, please, take notes.

Yes, the Member for Bura!

Dr. Nuh: Mr. Speaker, Sir, the Minister seems to suggest that if they were allowed by the court to conduct a repeat census, they would be in a position to have a credible perception of the populations in these area or constituency. Since the Minister knows that demographics change and populations change with time, would a repeat census in these areas not prejudice the populations and give a wrong data because it is being conducted at a different time in a different season and year?

Mr. Mbadi: Mr. Speaker, Sir, indeed, it is a really a sad moment for this country to listen to the Minister for Planning, National Development and Vision 2030 telling us about such wide variations in the statistics which were compiled by his Ministry. However, the question I want to put to him is, what will he do given the fact that he has acknowledged that his Ministry failed especially in the eight districts and probably many others? What action will be taken against the Kenya National Bureau of Statistics because if you read the court ruling, it says very clearly on page 50 that secondly, it is clear that the first and second respondents which were the Minister and the Bureau of Statistics made a promise that introduced legitimacy expectation that they would carry out a credible exercise to the satisfaction of all citizens of this country? What will the Minister do? Will he apologise to the people of this country and take action against the

Kenya National Bureau of Statistics together with its management and the officers of that department because this is unacceptable?

Mr. Ethuro: Mr. Speaker, Sir, as the Minister apologizes to the people he wrongly accused, including Turkana Central which has only a variance of 183 which is statistically insignificant, could he also confirm that the statistics used by hon. Dr. Khalwale do not necessarily hold when you talk about the population viz-a-viz the registered voters because for you to be a registered voter, you must have a national identity card and he knows that northern Kenya does not have sufficient identity cards? They are being denied those documents.

Mr. Pesa: Mr. Speaker, Sir, the Minister has been talking about two sets of figures. The originally disputed figures by the Government and what he termed as smoothed figures. What parameters did he use to come up with the smoothed figures? Could he tell Kenyans how he came up with this?

Mr. Ngugi: Mr. Speaker, Sir, I want to thank the Minister for that attempt to try and smoothen the figures to get a fair position. However, it is a known fact that where you have almost ten registered voters the population would be three times. That is the projection that the Ministry uses. In a place like Kinangop, we have 87,000 registered voters and yet the population to our surprise and dismay came to only 192,379. This is the case and yet Kinangop is the migration area for people from Rift Valley and Central provinces who want to buy land. We do not know how it could have had a 2.2 per cent increase. Will the Minister also smoothen Kinangop's population upwards?

Dr. Otichilo: Thank you, Mr. Speaker, Sir. I would like to know from the Minister what caused such a great variance in the populations in the eight districts?

Mr. Speaker: Very well. Mr. Minister, you may now respond to all the requests.

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Thank you, Mr. Speaker, Sir. I will start with the first one on registered voters versus the actual population. As you are aware, in this country, it is not compulsory for one to register as a voter. So, you cannot compare the registered voters with the actual population. Furthermore, when people are registering as voters, they are free to register anywhere. People from rural areas will register in Nairobi and vice versa. When they are being counted, they can be either side. You also know that to register as a voter, you must have an identity card. Some people are adults but they do not have identity cards. So, you cannot compare the registered voters with the actual population.

The Member for Bura talked about the repeat exercise. We had decided, as a Government to repeat the exercise immediately and that was after one year. However, it was not possible because of the court order. Since it has now taken a while that is why we have now smoothed the figures after demographic analysis and the repeat exercise will not be necessary. So, we will no longer carry out a fresh repeat exercise.

The Member for Gwassi wants to know the action that we will take.

Dr. Nuh: On a point of order, Mr. Speaker, Sir. I would not have wished to interrupt until the Minister finishes, but I am surprised he has not answered my question. Even after that one year when the Ministry had decided to conduct a repeat census and if they were not barred by any court decision, they were conducting the repeat census at a different time, one year down the line, would it not prejudice the populations because they are being counted at a different season?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, after one year, there would have been no much difference.

Furthermore, we were going to count actual people one by one at a particular time. Otherwise, that would not have been used to compare with the other census that was carried out in 2009.

With regard to the action we are going to take against the Kenya National Bureau of Statistics, there is none because the problem was the people who were employed to do the exercise. These people were mainly locals and we realized that there was a lot of collusion. We realized this when we were doing the analysis. So, it has become very difficult to take action against the KNBS because they are the ones who discovered that there were significant differences from the projections. I have answered hon. Ethuro's question. The smoothened figures are the ones that we are going to launch. With regard to hon. Khalwale's query, we have adjusted those errors using some scientific methods. In fact, there are six of them. Since this is not a class of statistics, there are six different methods that are used. In fact, we used all of them and we took one that we thought was more accurate. So, we have used a scientific method to smoothen the figures. This is acceptable internationally.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Is the Minister in order to allude to the fact that they used scientific methods to arrive at the figure and in the same breadth admit that there was collusion amongst local clerks? Would it not be in order that he owns up and tells the Republic of Kenya that he does not know the population of Kenya; he was unable to count Kenyans?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, I never said that they colluded. I said that they may have colluded. The two are different. I never said that they colluded. I need to clarify that. The actual population of Kenya is 37 million people and there were only differences in eight districts, which we have now narrowed down to only five because we discovered that there were no errors in Turkana after further analysis.

On Kinangop, the Member has said that the registered voters are 89,000 versus 192,000 real population. There is no relationship between the registered voters and the final population.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Is the Minister in order to play around with words and run our heads round? At the beginning, he told us that the Attorney-General has given notice for appeal of the ruling. Therefore, if they are convinced, as the Government, that there was nothing wrong, why have they given notice for appeal? Is he in order? He should own up that he does not know the population of Kenya.

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, the appeal has nothing to do with the figures of the population. The Members should read the judgement. Mr. Mbadi has the judgement and I saw him refer to it. We have appealed because they have said that the Minister has no powers to cancel the population census. That is the appeal. Otherwise, the judge has agreed that we carry out an analysis which we were doing, and we have come out with the correct figures which I have just reported here. So, it has nothing to do with the population.

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to mislead this House that out of six formulas, he found one that could smoothen figures? Then why can he not use the same formula every census? Why does he have to conduct a population census every ten years?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, the Member has even worked in the Ministry of Planning and he knows what happens there. We have projections that we carry out and now we have projected

our population up to 2030 under the Vision 2030. We know roughly what the population will be in 2030.

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

Mr. Speaker: Order, Member for Kinangop! Please let us hear the Minister respond to that point.

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, we know roughly what the population will be in 2030. We can even project 50 years, but we carry out a census just to confirm because of changes in ages and so on. That is why we conduct a census every ten years. It is required by the Statistics Act, 2006 that we carry out a census every ten years.

Mr. Ngugi: On a point of order, Mr. Speaker, Sir. I agree with my classmate. We did some courses together. It is a known fact that if you go to a home anywhere in the rural areas, you will find two adults and no less than four children. So, there is a correlation between the two parents who are registered and the three, four or five children who have not even reached the voting age. Two, the Minister has said that he used one of the six formulas. I agree, but the same formula could adjust those figures that were low upwards and those that were up downwards. If you look at the projected figures---

Mr. Speaker: Order, Member for Kinangop! Do you realize that you have caught my eye on a point of order?

Mr. Ngugi: Mr. Speaker, Sir, let me raise the point of order.

Mr. Speaker: Move quickly to indicate to the House where the Minister is out of order.

Mr. Ngugi: Mr. Speaker, Sir, is the Minister in order to mislead the House that the formula he used is correct when the projected figure for Kinangop was 200,000 plus yet he arrived at 192,379 through the census?

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

Mr. Speaker: Order, Member for Bura! I indicated last week that we must go back to the rules. When there is a valid point of order raised, the Minister or the person answering or responding must be given an opportunity to do so before you rise on another point of order.

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, I have clearly said that there is no correlation between the registered voters and the final population of an area. I have given the reason that in Kenya, it is not compulsory to register as a voter. Two, not all adults in this country have identity cards. The fact that they do not have identity cards---

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

Mr. Speaker: Minister, the Member for Bura wants to inform you. Do you accept information from the Member for Bura?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): No, Mr. Speaker, Sir.

Mr. Speaker: That must rest it there.

Mr. Keynan: On a point of order, Mr. Speaker, Sir. I want to refer to the Standing Order No. 80(3) (d), and I am glad the Attorney-General is here. This issue has been determined by the High Court and indeed, I am aware that the Government has appealed. I want to read what the Standing Order No.80 (3) (d), It says that:-

“Appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgement or discontinuance”. Will I be right to seek the guidance of

the Chair since the Government has appealed and going by this, this issue is still active in court and, therefore, will this not translate into *sub judice*?

Secondly, the Minister has talked about the issue of smoothening and he has made reference to the ruling by the High Court judge. Will I be right to ask him to share with the House which section of that particular ruling talked about smoothening of the census?

Mr. Speaker: Order, Mr. Keynan! All the matters you raise, in fact, were articulated by the Minister in the first part of his answer. It is just that you were not here, so you did not have the benefit of the Minister's presentation.

Otherwise, as he piloted through the answer, I was satisfied that he was awake to the rule of *sub judice*. He referred to parts of the judgment what the judge said with respect to demographic correction analysis. If that is what is in the judgment and I take his word to be truthful, then there would be nothing *sub judice* about it because the judgment permits him to do what he has done. If you are more sure than that, then, of course, you only manage it by referring to the judgment.

Mr. Keynan: On a point of order, Mr. Speaker, Sir. I followed the statement by the Minister. The essence of an appeal is based on the merits and demerits of the decision of that particular court. I am glad that you are a seasoned lawyer. Therefore, if that does not constitute *sub judice* then I do not know what it means. This is because the essence of a group appealing means they were not with the contents, the merits or demerits of that particular case. Therefore, I stand guided if that does not constitute *sub judice*.

Secondly, we will not rely on the goodwill of him. We want him to table the sections or paragraphs of the judge's ruling talking about smoothening. That is the bit he should share with us otherwise if we operate on his goodwill, then we are treading on very dangerous grounds.

Mr. Speaker: Order! You know the rules! You know at best that would become a supplementary question. You have caught my eye on a point of order. Really, as it is, you missed the train because the Minister has even explained what the Government has appealed against. The Government has appealed against the finding that he has no power to cancel the outcome of a census. That is what he said. If that is so, then the matters in issue as prosecuted by hon. Members here and in particular Dr. Khalwale would not be *sub judice* because they are not matters in issue in the appeal. Do you understand? I have made that distinction very carefully! In fact, I was awake to all these matters even as he prosecuted his answer.

(Mr. Keynan stood up in his place)

Order, Mr. Keynan! Refrain from engaging us in an argument where it is not completely warranted but I will hear you, that notwithstanding.

Mr. Keynan: Mr. Speaker, Sir, I accept as guided. However, will I be right then to demand from the Minister to table the judgment so that, at least, we can ascertain that what he has told the House is the true position?

Mr. Speaker: That would be legitimate. But again, really you are straying into a grey area. You are asking a question: Could the Minister table a copy of the judgment? However, you are on a point of order. We will accommodate you, but you certainly know that you are not living within the spirit of the Standing Orders. Mr. Minister, do you have a copy of the judgment with you?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, I do not have a copy, but Mr. Mbadi has one and so they can share

that if the hon. Member does not mind.

Mr. Speaker: Order! Mr. Oparanya, it is your obligation! You are the one making the assertions.

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, I did not carry a copy, but I can table it tomorrow.

Mr. Speaker: Very well! I will direct that you table the judgment!

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, I want to clarify one issue and bring my fellow hon. Member on board. We have appealed that the judge ruled that I had no power to cancel the census, but he said in his judgment, that I could have done that after a demographic analysis which we were doing as required by the UN Standards. So, while he was making that judgment, we had already done the demographic analysis which I have now presented here. But we have appealed because Section 24 of the Statistics Act gives the Minister the power to cancel any census or to carry any census in any part of the country. So, I think that is now clear.

Mr. Speaker: Very well, Mr. Minister! Except that, perhaps, in the interest of the country, I am wondering why you published those census results when you had projections that were at variance with the results and yet you proceeded and published them.

(Applause)

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, it is a UN requirement which we use that you publish figures as they are; as you get them. Even if you get that this is 50 and it is supposed to be four, you publish as they are and then you carry out an analysis using the six methods I have said. That is why the enumerated figures were released then.

(Mr. Ethuro stood up in his place)

Mr. Speaker: What is it Mr. Ethuro?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, let me clarify!

Mr. Speaker: Order, Mr. Minister! If I allow a Member to raise a point of order---

Mr. Ethuro: Mr. Minister, I have been granted an opportunity to interrogate you.

In addition to what you have requested him as to why he went ahead to publish which he says that “figures that were given”, given by whom? Those were his officers! In addition to that, the census was conducted in August 2009. The results were published in 2010; one year down the road. He took another year to smoothen the figures, what he calls demographic analysis. Could he confirm that the word “smoothing” is cooking figures?

Mr. Speaker: Mr. Minister you may respond and that will be the last that we do on this matter.

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, the census exercise is quite involving. The material used is quite bulky. In fact, we had over 14 million forms which were completed and sorting them out took a year before we got the preliminary results. That is why it took too long! In fact, previously, it used to take three years. This was the fastest that we have ever had which took one year. Using this chance, I have the court ruling here which I now table.

(Mr. Oparanya laid the document on the Table)

Mr. Speaker: Proceed!

(Loud consultations)

Order! That is not procedurally correct! Those hon. Members who are interested in the judgment can obtain a copy from the Clerks-at-the Table and we will endeavour to produce as many copies as are necessary.

(Mr. Keynan stood up in his place)

Order, Mr. Keynan! That matter must now rest there! Mr. Attorney-General, do you have a Statement?

The Attorney-General (Prof. Muigai): Yes, Mr. Speaker, Sir.

Mr. Speaker: How long is it going to be?

WITHDRAWAL OF FUNDS FROM
THE CONSOLIDATED FUND

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, it is a very short Statement. It is a further Statement made at the request of Mr. Mbadi seeking a Ministerial Statement from the Attorney-General on the withdrawal of funds from the Consolidated Fund.

Mr. Speaker, Sir, further to my Statement before this House on 22nd November, 2012, I wish to add the following: Hon. Mbadi wanted a clarification as to whether this House could give authority to withdraw funds on account without prior approval on the Estimates and before the Appropriation Bill had been introduced in the House and published, as was the case in the last financial year.

Mr. Speaker, Sir, I alluded last time to the provisions of Article 222(1) of the Constitution. The Constitution provides for two situations in which funds may be withdrawn from the Consolidated Fund in these circumstances, that is, where the Appropriation Act has not been assented to and where the Appropriation Act is not likely to be assented to. The monies in question were withdrawn on 14th June, 2011. As of the said date, the Appropriation Act for the financial year 1st July, 2011 to 30th June, 2012 had not been assented to as provided under Article 222 of the Constitution. The Government sought authority from Parliament through a Vote on Account Motion dated 14th June, 2011, and Parliament gave its approval on 26th June, 2011. The consent of His Excellency the President was sought and obtained for this particular Motion that was debated and approved by this House on 16th June, 2011.

Mr. Speaker, Sir, the legality of this move was questioned in a matter that was filed in the High Court of Kenya, in the Constitutional Division, this being, Jane Mati and another versus the Attorney General and another, High Court Petition No.108 of 2011. The High Court found that for there to be compliance with Article 222, there ought to be an Appropriation Act or Bill in place, and it was in breach of the Constitution to proceed to withdraw money from the Consolidated Fund without the existence of an Appropriation Act or Bill. However, the High Court found that there had been substantial and good faith compliance with the Constitution and

the Constitution and its values had not been threatened by the act of the Government. In the circumstances, the High Court declined to grant the declarations sought in the petition. The High Court further stated:-

“To grant those declarations would insist on the austerity of tabulated legalism.”

Mr. Speaker, Sir, it is further worthy of note that on 7th June, 2011, you gave directions on how the Budget process was to proceed in the interim transition period, that is, in the life of this Parliament. I want to thank hon. Mbadi for drawing my attention to this matter. I wish to state the Government considers itself bound by the findings and ruling of the High Court. These findings and ruling have been brought to the attention of the Treasury and we would hope that this irregularity will not be repeated in the future.

Thank you.

Mr. Speaker: Very well! Member for Gwasi, that should really rest the matter, seriously.

Mr. Gwasi: Mr. Speaker, Sir, even though the Chair is trying to---

Mr. Speaker: Order! The Chair is not trying to do anything that is partial.

Proceed!

Mr. Mbadi: Thank you, Mr. Speaker, Sir. I will take that, but I still have clarifications to seek from the Attorney General. With your permission, I will proceed.

Mr. Speaker: Carry on!

Mr. Mbadi: Mr. Speaker, Sir, the main reason this matter was raised--- I wish that the Government had listened to me then, because the matter would have not even gone to court.

Mr. Speaker, Sir, Article 222 which the Government based its decision on to introduce a Vote on Account, envisages that this House should have passed the Appropriation Bill and that the Vote on Account can only be given if the assent of the President has not been given. But be that as it may and having recognized that the court has made a ruling affirming the position which I informed the Government on earlier enough, I would like the Attorney General to answer these two questions:-

1. Could he confirm that the Government, through the Attorney General's Office, and the Ministry of Finance, misled Parliament into legislating an illegality, by passing a Vote on Account which, therefore, compromised the watchdog role of Parliament?
2. What then would be the consequences of breaking the Constitution? How do we deal with the Government departments and Ministries which deliberately violate the provisions of the Constitution and break the law?

The Attorney General (Prof. Muigai): Mr. Speaker, Sir, first, I want to point out that at the time that these unfortunate events happened, I was not the Attorney General. But I do not wish to apportion blame. The Office of the Attorney General is an institution and we take responsibility for the error that was committed.

Mr. Speaker, Sir, I believe that this was never a deliberate intention to mislead Parliament and the Government. From all the evidence that has been available to me on file, it would appear that it was an error that was inadvertent. It was a failure other than a commission. I have undertaken to the hon. Member that we shall be more vigilant, and that this sort of thing will be processed in a more professional manner in the future.

Mr. Speaker, Sir, the question of consequences was handled very well by the court. Hon. Justice David Majanja, in his judgement, made a very clear distinction between failure to implement constitutional provisions, that rendered those actions necessarily liable to be repudiated and those that were errors that were within jurisdiction and not necessarily called upon to be repudiated. The errors in this case, the Judge found, were of the latter category. So,

there are no consequences, except that this Parliament, Treasury, my office and all of us involved must be more vigilant.

Thank you.

Mr. Speaker: Member for Gwasi, now it must rest there, really. We all must play our role to ensure that we implement the Constitution to the fullest. Bear in mind those judgements which have been very helpful; that implementation of the new Constitution is not a one-day event, but a process.

Mr. Mbadi: Mr. Speaker, Sir, I would only request that the Government listens to some of us when we challenge some decisions, because then we would stop them. If this was done on 14th June, probably, we would not be discussing this issue.

Mr. Speaker: That is now what hindsight benefits you. Respect the Attorney General. He has handled it with a lot of humility and given an undertaking to be vigilant, just as he has appealed to you and, indeed, the Speaker and the rest of us, to be vigilant. On my part, I will be vigilant. So, Member for Gwasi, confirm that you will also be vigilant.

Mr. Mbadi: Mr. Speaker, Sir, I confirm that I have always been vigilant.

Mr. Speaker: You will continue to be! Sustain it!

Hon. Members, we will now take requests for Ministerial Statements. I think we have a few.

Member for Makadara, I thought you had a request for a Ministerial Statement.

Mr. Mbuvi: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the raid of the Gerilla Administration Police Camp, and subsequent abduction of four Kenyans, among them a District Officer, who is my neighbour, a District Registrar of Persons and two Administration Police officers on 19th January, 2012. In the Ministerial Statement, the Minister should:

1. outline concrete steps the Government has taken to trace the four missing Kenyans;
2. confirm that the four kidnapped persons are safe and that they will be released expeditiously;
3. indicate when they will be released, so that they can join their family members, and
4. confirm that the Government is alive to the militants' threats that they will continue to raid towns inside Kenyan territory and carry out killings and abductions; if so, state what measures the Government has put in place to avoid killings and abductions in future.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well! Deputy Prime Minister and Minister for Local Government, in the absence of the Minister in charge of internal security, can you indicate when the Ministerial Statement will be forthcoming?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, the Ministerial Statement will be available next Tuesday.

Mr. Speaker: It is so directed. Is there any other hon. Member with a request for a Ministerial Statement?

Ms. Karua:---*(off-record)*

Mr. Speaker: Member for Gichugu, what would that be? You know, you have to live within the Standing Orders. You cannot make a request at the spur of the moment because there has to be approval.

We will go to the next Order.

Hon. Members, Orders 8 and 9 are already concluded in the sense that the Second Reading has already been done. So, we will go to Order No.10.

BILL

Second Reading

THE TRANSITION TO DEVOLVED GOVERNMENTS BILL

(The Deputy Prime Minister and Minister for Local Government on 21.2.2012, Morning Sitting)

(Resumption of Debate interrupted on 21.2.2012, Morning Sitting)

Mr. Speaker: Deputy Prime Minister and Minister for Local Government, you were moving debate on this Bill and you had done seven minutes.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Yes, Mr. Speaker, Sir.

Mr. Speaker, Sir, I want to continue and highlight Clause 6, on page 119 of the Transition to Devolved Governments Bill, 2012. It deals with the qualifications of the chairperson of the Transitional Authority as well as with the qualifications of the members of the Authority.

Clause 7 of the Bill is very important because it focuses on the functions of the Authority. I would like hon. Members to look at this Clause very comprehensively because it gives very detailed and itemised functions of this Authority; we want the transition to be smooth and be in accordance with the Sixth Schedule of the Constitution.

Mr. Speaker, Sir, it is a very detailed process. Maybe, I should just highlight one or two aspects. Subclause (2)(a) of Clause 7 says that the Authority shall facilitate the analysis and phased transfer of the functions listed under the Fourth Schedule of the Constitution to the national and county governments and determine the resource requirements of each of the functions. This is very important because, as we said, functions should not be assigned to the county governments yet they are not adequately resourced. So, this is a very thorough programme; it indicates what should be done.

We can look at Paragraph (e), for instance, which says that the Authority must prepare and validate the inventories of all the existing assets and liabilities of the Government and other public entities and local authorities, make recommendations for the effective management of assets of the national and county governments, and also provide mechanisms for the transfer as well as the criteria that should be used in determining the transfer of such assets, liabilities and even the staff of both the national Government and the local authorities. Therefore, the functions of the Authority, as spelt out in the Bill, are extremely important and hon. Members should scrutinise them thoroughly for improvement.

Mr. Speaker, Sir, Clause 8 deals with the powers of the Authority. One can see that this Authority is being given the power to gather all relevant information, including requisition of reports, records, documents or other information from any source, including State Departments or public entities, and compel the production of any information required for the performance of its functions as and when necessary. It also highlights that it can interview all persons or any organisation as it may desire in order for it to carry out its functions.

This power is important. One will see later that it will be an offence to hinder the functions of this Authority, or even to conceal or withhold any information that will be vital for this particular Authority. So, if somebody, for instance, decides to hide an asset and make sure that it does not appear on record, and this is later found out, it will be a very serious offence which that person will have committed. The provisions for the appropriate penalties for such offences are contained in this Bill.

Clause 9 deals with the Secretary of the Authority, who shall be the Chief Executive Officer. The qualifications of the Secretary and the process through which the Secretary shall be appointed are also provided therein. Clause 10 deals with the removal of the Secretary from office. Clause 12 provides for what needs to be done to replace an officer or a member who has been removed from office; it also provides for the removal of the chairperson or a member of the office in this particular institution.

Mr. Speaker, Sir, I would like to move all the way to Clause 14, which is on the guiding principles that must be adhered to as the Commission carries out its mandate. These include non-partisanship and so forth. As provided for under Clause 16, the Authority shall issue guidelines to State organs, or public entities, for the preparation of transition implementation plans. This is important because each entity will have to prepare a transition plan on how it will intend to move from a centralised system to a devolved system. So, this is critical. It is mandatory. It is a legal requirement and it could generate penalties if that State organ or public entity does not produce those transition plans.

Clause 17 deals with the staff of the Authority and other appointments that may go with it. Clause 18 deals with the oath of office. Clause 19 deals with the election of the vice-chairperson. Under Clause 20, the Authority can also create various committees and co-opt members into those committees where, perhaps, they need some specialised skills.

Speaker, Sir, as hon. Members look at what is expected in terms of the functions, criteria and even the phases that we have to go through, which are part of the Schedule to this Bill, they will realise that it is a highly technical Authority and, therefore, it will require a lot of expertise from different areas.

Article 23 says that the Authority shall identify its functions which may be transferred to the County Governments immediately after the first elections under the Constitution.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, after the first elections, it is clear that County Governments will have been put in place. However, their capacities in terms of human resource and technical capacity could be varied in different areas. So, this authority will have to undertake preparations to be able to come out and explain that certain counties are ready immediately after the election to continue with certain functions, but others may have to be prepared appropriately as they move along. It cannot be a free for all. There could be some serious disparities and that can generate disillusionment at the very outset in terms of the implementation of devolution.

After that, we move on to Article 24 on page 130. This is the criteria that will be used for the transfer of functions. Again, I would like to urge hon. Members to look at this very carefully. If a county government does meet this criteria, it could definitely delay the adoption of certain functions in that given area. Issues like whether there is existence of legislation relating to that particular function that is applied for, whether the framework for service delivery has been put in place to implement the function, the aspects that would require to show that the financial systems and all that is necessary have been put in place. So, there is some criteria there. It is not exhaustive because it says this function shall include--- Which means there could be broader and the authority can look at what additional issues may be necessary to facilitate the transfer.

Part 4 is on progress and annual report. I was talking to one of our hon. Members earlier in the morning and under Article 25 because this is something that needs to be monitored very closely it says:-

“The Authority shall in every three months submit a progress report to the President, Parliament, the Commission for Implementation of the Constitution and the Commission on Revenue Allocation. The progress report shall include status on transfer of functions to county governments, any impediments to the transition programme, recommendation to address specific concerns identified by the authority and any other information of concern relating to the functions of the authority. The authority shall publish its progress report in the gazette and in such other accessible manner as it may determine.”

Mr. Temporary Deputy Speaker, Sir, I am reading this because this authority is not an authority that operates in a vacuum. It has to be monitored by Parliament. Parliament is the one that will have to eventually know whether they are fulfilling their mandate or not. The only way to do so, is to have regular reports because it is a transition period of only three years. So, they must be put on their toes to show progress and if there is no progress, they must explain why. That is why this particular clause is extremely important because then it provides for serious mechanisms of accountability on the part of the authority. So, these are not people who will be sleeping in a bed of roses. They are people who will have to work extremely hard with very tight timelines. Those timelines will have to be monitored by Parliament, the Commission of Revenue Allocation and the Commission for Constitution Implementation because their work will have implications on the budgetary process, resource arrangement and so forth. So, it is a very serious undertaking.

Under Article 26, it will also cause the annual report to be prepared and submitted to Parliament.

Under Clause 27, any person may also request the authority for any information relating to its functions. This again is in conformity with Article 35 of the Constitution where the citizens have the right to information. So, these people when undertaking their tasks they must be alive to the fact that the public can demand or request for any information to show the progress that they are undertaking.

Part 5 deals with the financial provisions. These are really standards provisions that go with any authority that is established by this House. So, these are not going to be very different. Indeed, they are not any different from the financial provisions of other authorities that Parliament has established. Therefore, I need not dwell too much on that.

I would therefore, want to move straightaway to the Miscellaneous Provisions under Part 6. Here looking at Article 33 there is the duty of every officer to co-operate with this institution. We are recommending this provision because we do not want any public officer or any State organ that will be involved in the process of either transition and so forth delaying the process

for reasons that may be selfish. Therefore, there will be an obligation to co-operate. This is to compel people to ensure that whatever is required by this authority, they make it available so that the transition process can be undertaken.

Under Article 34, there are penalties for those who may want to offend this Act. It comes out very clearly that there could be a fine of up to Kshs500,000 or to imprisonment for a term not exceeding two years, or to both. This is useful because when you are dealing with transition here there are going to be audit reports, assets, people will have to produce a register of assets, others may want to play around with those assets and so forth. So, we are making it very clear that upon discovery that you have tried to mislead or conceal information then the penalty is quite harsh and it will definitely land people into serious trouble. So, I would like hon. Members to look at that.

There is Article 35 for dispute resolution. Here we say that where there is a dispute this can also be undertaken in the law relating to inter-governmental relations which hon. Members debated on earlier today. Clause 36 is also very important because it puts a moratorium on the transfer of assets. It says that a State organ, public office, public entity or local authority shall not transfer assets and liabilities during the transition period. This is very important because during that period of transition that is where there could be window for people to play around with the assets, either of the national Government or even the assets of the local authorities as they migrate into the County Government.

So, we are making it clear that it will be illegal and we also phase out what procedure and what is the exception. That comes under 36(2). If at all there is going to be a transfer maybe for the public good or an asset is being set aside for a hospital or for a university or school, then the procedure is also very clear as to what approvals and stages it has to go through before that is done.

Under article 36(3), the authority may also on its own motion, or upon a petition by any person, review or reverse any irregular transfer of assets or liabilities in contravention to subsection 1.

Mr. Temporary Deputy Speaker, Sir, this is also important because in case something has slipped through and there is sufficient evidence to show that the transfer ought not to have taken place, this Authority can take corrective measures during that period.

Clause 37 deals with regulations. Clause 38 is on the dissolution of this Authority. Members will recall that this is a transitional Authority and the transition period is envisaged as a three year period. We are saying that the Authority shall stand dissolved three years after the first General Elections under the Constitution or upon the full transition to full county governments whichever is earlier. However, the National Assembly, may by resolution, extend the period specified in this subsection for a further period not exceeding one year.

Mr. Temporary Deputy Speaker, Sir, this is clear. This is not supposed to be a permanent entity. It has a specific mandate. If that mandate has not been completed, the maximum they can get of additional time is one year but only by resolution of Parliament. At the same time, that clause then provides for what happens to the assets upon dissolution of the Authority and the preservation of records that they will be having because as Members will recall, once this Authority has expired, the Inter-Governmental Relations Summit and the secretariat that is set up there would then take up any subsequent functions that this Authority would require. Apart from what is spelt out, the rationale here is that under the Inter-Governmental Relations, the new county governments will be having teething problems initially. They will not be able to focus in detail on aspects of transition. You need a body that will dedicate itself to really preparing the

transition process; the details that would be required because the Governor will be busy consolidating himself, trying to get his assembly to function smoothly, trying to recruit staff in other areas and, therefore, he will not have the time to focus fully on matters of this nature. That is why we are saying, a specialized body to cover that area would be very important.

On page 139, we have the procedure for the appointment of members of the Authority. Members can look at that and see whether we can improve on it.

The Second Schedule deals with the procedure for the conduct of affairs of the Authority.

The Third Schedule deals with the oath and affirmation of the office of the Chairperson and members and the secretary. Then we have the Fourth Schedule on page 144 which deals with the transition phases. These are very detailed aspects or activities that must be covered by this Authority. Again, I invite Members to look at this very carefully. There is the phase I and phase II which is a very detailed account of some of the activities that must be undertaken.

Mr. Temporary Deputy Speaker, Sir, in reality, I wish to state that we are actually behind schedule, in my view. This Authority should have been in place to start preparing profiles of counties, dealing with the assets and liabilities, working out on what kind of civic education programmes will be required and so forth. They should be looking at the capacity of the county governments and even at the National Government where there are shortfalls. Therefore, we are late bearing in mind that if the elections are held in December, the county governments should be in place by January. The Governors will need to have some help because as they move in how are they moving in, where are they moving in, how are they setting up? This Transitional Authority is supposed to think through all these processes so that there is a sinless movement of the Governor and the new entities as they transit into the devolved government. It is a very serious exercise in my view. I would really plead with hon. Members that as they polish this Bill, they should bear in mind that we will need to have this Authority in place very urgently.

Even if we look at the process that the Minister for Finance and the Parliamentary Departmental Committee on Budget will be working through, we need to have this Authority in place for them to even give some projections that will be necessary to allow a fairly accurate determination of what should be put in the budget for purposes of facilitating the county governments. We should not leave that as a vacuum. We need to know the kind of human resource that will be required and so forth. So this Authority has got a mammoth task in my opinion and I would like to urge Members to support this Bill so that we can be able to get going on aspects of devolution.

I beg to move. I would like to request Mr. Nanok to come forward and second.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Thank you Mr. Temporary Deputy Speaker, Sir, for having been given this chance to second this Bill. Indeed, as articulated by the Minister, this is a clearly thought out Bill. As he has just said, this Bill is late in coming. It should even have come last year, many months before the constitutional deadline comes to an end so that the preparatory work for county governments can be put in place.

While I agree with most of the information contained in the Bill, there are however, certain aspects of this Bill that can be improved on by this House so that we can give Kenyans who have been yearning for devolved government, a much better law and when county governments will be in place, they would have better guidelines to be able to transit themselves from the centralized system of governance that this country is used to; a system that gives power and resources down to the grassroots.

Mr. Temporary Deputy Speaker, Sir, I want to mention that the focus of devolution should have been two-front. Essentially if you look at the county government, we are looking at

devolved Executive powers and devolved Legislature. However, looking at Clause 5 of this Bill, you find that there is heavy membership from the Executive on this, forgetting that the county assembly is a legislative arm of the county government. I will urge this House and the Minister, by extension, to relook at this so that the legislative arm here, be it Parliament or whatever, should be represented in the composition of this Authority so that the county assembly legislative functions are taken care of when it comes to issues of transferring some of these powers.

I also find that the composition of this Authority is too heavy on the National Government. The Bill proposes a total of 17 members; seven are already pre-determined. These are the principal secretaries of the different Ministries responsible for the relevant sectors. One will be the secretary appointed by the Authority. Only nine members will be appointed by the President in consultation with the Prime Minister.

Mr. Temporary Deputy Speaker, Sir, this may end up being the same problem we will be fearing before; that probably only one arm of the Government that is going to determine this transition. I think we have to be very careful here so that at least when we are giving other stakeholders outside the National Government the possibility of being participants of this, will be useful. I am worried because when the Bill was published, I did not hear the provincial administration that is dominant all over talking and making a lot of noise. May be they have a way in which they want to get themselves into this Transitional Authority to determine and make sure that the things that this country abolished through enacting a new Constitution are brought back again by controlling this Authority. So, I would like the Minister to relook into this so that we do not have heavy national membership on this particular body. There is heavy national membership on this particular body.

Mr. Temporary Deputy Speaker, Sir, the other issue is about the reporting lines and the role of the legislature. Devolution is not a matter that can be left only to the Executive. If you leave it to the Executive alone, they are going to mess it up. Parliament has to play a role. Indeed, Members, plus the Chairman of this Authority have to go through vetting of this House. If there have to be acceptability of the work they will do, then those members have to be vetted by this House.

What is the point of saying in Clause 12(3) a petition to remove a member can only come through Parliament, yet Parliament has not been given the authority to vet and approve the members of this Authority. This is something the Minister should look into so that this is corrected so that Parliament is given its powers to be able to vet and approve these nominees, so that accountability is to this House.

Also, in terms of reporting lines, I see a deficiency, Clause 8 on the powers of the Authority. I have not seen anywhere in this Bill that this Authority is supposed to be reporting to anybody. It is not reporting to Parliament. It is not reporting to the Executive. It is just there on its own. I think things have to be very clear here. If it is to the Executive, could this abrogating the Cabinet Secretary in charge of devolved Governments the powers to control County Governments. These powers are not spelt out in the Constitution. I think we have to relook into this so that we make sure that we do not give individuals certain powers that the Constitution does not abrogate them. My suggestion would be let this transitional authority report to Parliament.

The Temporary Deputy Speaker (Mr. Imanyara): Have you looked at Clause 25?

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Yes, Mr. Temporary Deputy Speaker, Sir, I have looked at it.

Let this Authority report to Parliament so that Parliament through its established House Committees are able to check on this Authority and make sure that no particular individual have the larger control.

Mr. Temporary Deputy Speaker, Sir, having said that, I will urge my colleagues to relook at this and see that the few amendments that maybe required be looked into so that at least, this Authority can be in place as soon this law is enacted. As it was pointed by the Minister these County Governments really need to be up and running after elections are conducted. It is, indeed, essential for this particular Transition Authority to be in place as soon as this law in enacted, so that we do not delay the preparatory work that is supposed to be there.

With those many comments, I would like to second.

(Question proposed)

(Ms. Karua stood up in her place)

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Martha Karua, just before you commence, may get some indication on the Members who want to contribute to this Bill so that we can manage our time in a manner that is fair to all.

(Several hon. Members stood up in their places)

Okay, Ms. Karua, you can proceed, I now have some indication. So, please, as indicated by the Speaker earlier on, this is a Bill we need to pass within the next two days, so bear that in mind as you make your contributions.

Ms. Karua: Thank you, Mr. Temporary Deputy Speaker, Sir, I rise in support of this Bill. I am looking at it and seeing that, yes, it may have a foundation in the transitional provisions. But the only body known by the Constitution to oversee implementation is the Commission on Implementation of the Constitution (CIC). We should always bear that in mind. Therefore, this Bill, although it acknowledges that in some places, it is not well co-ordinated to acknowledge the role of CIC everywhere.

This Authority is by the legislative power of the Assembly. It is, therefore, not a creature of the Constitution. Every action of this Authority must be tied to consultations with the CIC. This will avoid a stalemate.

I have been looking at this Bill and I have seen on Clause 5(A) that will have eight members appointed by the President and the Prime Minister, and 8 other members from the Ministries. If you count them down, they are about 8 others, plus the Secretary, it is nine. So, it is half and half. What I want us to realize from the outset is that this is a creature that will be appointed by the Executive and heavy with the Executive. Knowing and conscious that the Executive is not a very willing partner in the change agenda, because we are asking them to cede power. You have seen the struggle between Treasury and the Office of the Prime Minister and Ministry of Local Government in bringing these Bills. We, therefore, need an arbitor who is not part of the Executive. That arbiter is the CIC.

I am, therefore, asking that we sit a clause that will clearly say that this Authority must consult with the CIC. That is the only way we can get faithful implementation of the devolution.

The Constitution gives in the Sixth Schedule three years within which the functions must be transferred to the County Governments. It does not give what gets transferred when. I have

seen this Bill is proposing of a phased implementation. I would suggest myself that phase one be the period between now and the time we elect the County Governments. That should mark the end of phase one and we should be very emphatic. Phase two would begin after the new County Governments are sworn in.

I am suggesting that we should only give 12 months, within which to transfer all functions. Remember that we are transferring the functions. We are also looking for the staff and the Budget. If it is something that the Central Government or the National Government has been doing, it is not a new outfit that is being looked for. We are transferring the budget and also seconding staff before the County Government employs its own staff. There is absolutely no reason, why any function should not be transferred within 12 months. We should give this Authority 12 months within which to make sure that all functions are transferred. If there is any special reason why any function should not be transferred, then they should come for authority from the National Assembly. If we do not do that then, we are going to make those resist change and who want to retain power to themselves to remain with the functions that should to the County Governments for more than it is necessary. Remember that it looks likely that we are going to elections in December. The next Parliament will adjourn before August because that is when the elections are. So, the next Parliament will have four and half years, utmost. So, the next Parliament will have four and a half years at the most. If you allow this Transition Authority or anybody to delay the ceding of the functions to the county government, then the Governor may end up only having two years or one year; remember the buck will stop with the Governor. If water service was not transferred and the county has a messy water service, who is going to be blamed? It is not the Transitional Authority, but the Governor. There will be no devolution without the functions being devolved. This authority must be time bound. All the functions must be with the county governments within the first year; as I said, all the consultations must be with the Commission for the Implementation of the Constitution (CIC). This is a phased approach; Phase 1 will be taking an inventory of the assets, and maybe also doing auditing.

Mr. Temporary Deputy Speaker, Sir, we need not spell it out here, but the authority may find that it will want to audit all the county councils that have existed, so that they can know their debts and liabilities. That will be a phase at which they can outsource and complete all the audits in the 47 units before the end of this year, that is before the elections, and we immediately go into Phase 2. We will be in Phase II when we go for elections. I have seen very many areas where we could keep on mentioning the CIC, but instead of inserting it in ten to 12 places, it is better to have a clause earlier on that clearly states that they will work in consultation with the CIC, so that we know that they are following the Constitution, and that we are looking to the one body that is not made of the political class – a body that represents Kenyans, and a body that has been pricking this Government and other organs when they delay in implementation. They are actually supposed to put everybody on their toes. They have done well so far. Let us not take away the mandate given by the Constitution. In any event, any law that is inconsistent with the Constitution is null and void. Let us, therefore, pass a law that is within the Constitution.

Mr. Temporary Deputy Speaker, Sir, those are the two issues I wanted to add onto, but I want to say that this Bill is necessary and, yes, we need the authority.

I beg to support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, allow me at the very outset to congratulate the hon. Deputy Prime Minister and the Minister for Local Government for a phenomenal piece of work; this as well as the other two Bills already passed, reflect the spirit of the new Constitution.

You, among other Kenyans, have been in the forefront in fighting for a new constitutional order. A new constitutional order will not be realized until we have a fully functional devolution in the country in all the counties and everything. Therefore, in addition to congratulating the hon. Minister and the Ministry, allow me also to congratulate the two committees, that is the task force headed by my good friend, Prof. Mutakha Kangu as well as the steering committee, that have developed these Bills.

Mr. Temporary Deputy Speaker, Sir, it will be recalled that at the very initial stages, the discussions in these task forces had isolated close to eight Bills that required to be enacted in order to bring into force the function of devolution; but thanks to listening to the rest of the country and consultations. They recommended only these three Bills at this particular time. I think it is something that must be said at this time, long before this House considers the debate that is emerging for extension of time. Every day that you spent before passing this legislation exposes the Constitution to non-performance. It exposes the desire of the Kenyan people to realize the benefits of the Constitution that they gave themselves. These Bills have received enormous consultations; although I hear hon. Martha Karua say that the CIC ought to be included here, if we include the CIC we must also include the Commission on Revenue Allocation (CRA).

Ms. Karua: It is already there.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you very much. It is already there.

I share the view that we must recognise the role of the CIC, so that when this organ comes into being, it does not all of a sudden start going into unnecessary conflicts and arguments, so that the commission can appreciate the steps that the authority will be taking for purposes of implementing devolution. Therefore, my plea to this hon. House is to follow the same theory that we have followed over the last three years, and to refuse to waste time; we should enact these laws as quickly as possible, so that before our national leadership retreats into what I have been calling premature elections campaigns, the country can have a legal framework for purposes of implementing the Constitution.

Mr. Temporary Deputy Speaker, Sir, with regard to the transfer of functions that my good learned friend, hon. Martha Karua has referred to, it must be realized that the Constitution has already defined the functions that are to be transferred, but the process also requires that the capacity for each county for handling those functions be also recognized; therefore, to see that we are debating these Bills towards the end of February is, to me, a disappointment. I would have preferred that we had enacted this law as early as December last year, so that we could create the atmosphere, mechanisms and the capacity building for the counties. If elections are held in December--- I suggest to my country, with respect, that the time to start listening and looking at my Bill for amending the Constitution is now, so that we eliminate this doubt, and everybody knows what they are talking about when they talk about the elections date.

Mr. Temporary Deputy Speaker, Sir, it is essential that this body be in office preferably before mid-March; all of us have counties. I happen to see leaders sitting here who have already expressed interest to be governors, senators and all manner of leaders. It is essential that they know I salute them, and I want to express my satisfaction with the interest that the political leadership has shown towards the fundamental offices of senator and governor. The people who are declaring their interest are people whom I have learned to respect, so long as they remember that we do not want to transfer the corruption at the national level down to the county. We do not

want to transfer impunity from national Government to the county level. We do not want to transfer incompetence from the national level to the county government.

Mr. Temporary Deputy Speaker, Sir, I would like to request that the Bill be enacted as soon as possible, all things being taken into account. I know hon. Mudavadi is listening very carefully. You will see the criteria for the transfer of functions in Clause 24. I am proud to have been involved in the preparation of these laws; I do not think it is fair to continue bashing the Executive; the Executive have done enormous consultations. You will remember that hon. Members of Parliament holding a retreat in Naivasha, where these Bills on this particular area were discussed. You will see in Clause 30 the annual estimates and procedures – very nicely laid out, so that our counties become the governments that we intended in the Constitution. We have even created offences in Clause 34 for the senators, governors and others, who think that this is going to be an easy ride. It will not. Above all in Clause 36, there is a detailed resolution mechanism, so that we will avoid the enormous numbers of injunctions and orders that we are getting.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

The Temporary Deputy Speaker (Mr. Imanyara): So that the Deputy Prime Minister can listen, I will allow you to respond at 6.20 p.m. I will give the Member for the Committee the last opportunity after the Member for Ainamoi, Benjamin Langat and Mr. Mungatana. We will then have the Member for the Committee, Mr. Shakeel, but he should conclude by 6.20 p.m.

Mr. Langat: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. I want to thank the Deputy Prime Minister for coming up with this very detailed Bill. I want to say that moving from the former Constitution to the current one will require many stages. I want to thank the Minister for coming up with this Bill which is fairly detailed in terms of how to move. I will not speak much but if you look at the Authority itself, under Clause 6 the Minister says that for you to be appointed the chairperson, you must have a Masters Degree which I think is exclusionist.

Usually, we set the minimum criteria and those who will recruit will check on the other details. I propose that the Minister considers that the person to be appointed as the Chairman should have a minimum of a degree from a recognized university and not a Masters Degree because we are excluding others. You cannot say that for you to be appointed as the Chairman, you must have a Masters Degree and the members should have a first degree. I think we should fairly equalize the Chairman because any member can become the Chairman at some point and if we regulate that one must have a Masters Degree it will not be fair.

I want to agree that the first phase which has been talked about should be implemented between now and before the first elections and the Minister should consider putting details as to what will happen in that phase. This is because there are many things that must happen before the General Election and immediately thereafter. For example, if we go into the elections on 14th March the next day, the Governor will be in office. The County Assembly will also be in office. It is fair to say that we need to build the capacity for the first occupants of that office in terms of the premises for the Governors and the First Clerk for the County Assembly. How will the first county assemblies meet and how will they elect the Speaker? The first phase must indicate the functions of these authorities to ensure that they build the capacity so that the first day of the elections, we have somewhere where the Governor will go and the County Assembly can assemble fairly with some rules like the Standing Orders so that we transit to the county system smoothly.

Mr. Temporary Deputy Speaker, Sir, I want to support the Bill.

Mr. Mungatana: Thank you, Mr. Temporary Deputy Speaker, Sir. I will also be very brief. First, I want to support the Minister because the Bill is very well drafted. Let us think together. Before this Authority comes into place, there is a procedure for the establishment of the Authority and this is contained at the back of the Bill which is curious because all the Bills we have interrogated here, the procedure is very clear and it is at the front.

However, my problem with this procedure for the appointment of the members of the Authority is the inclusion, in the First Schedule, Clause 10 on page 140 which says that the President in consultation with the Prime Minister will extend or may extend the time specified for the activities that need to happen. For example, within 14 days of the commencement of this Act, the Cabinet Secretary is supposed to publish this in the Kenyan Gazette. Now, we are saying that the President in consultation with the Prime Minister can extend the 14 days. Why and we already know that we are late? It also says that under Clause 3, when the panel within seven days of its consultation invites qualified people to start the processes of application and everything, again, the President in consultation with the Prime Minister may decide to extend this period. Why are we giving the two principals opportunity to delay the process that must start and continue to the end? I do not know why we want to tag all the timelines basically, in the process of recruitment. All of them are tagged to consultations between the Prime Minister and the President who may extend the time for what purpose?

The Minister has already told us that we are late and we ought to have been carrying out now the profiling of the counties. Let this process go on without the interference of this. I propose that we completely do away with Clause 10. We are comfortable with the way the Minister has handled this matter up to now, the way these Bills have been moved and the competencies within his Ministry. Let us not bring these politicians into this because they will start messing it up. They will also start travelling, going where and they will not meet to consult. We will start having a messy situation. Let the process just proceed without interference.

There is Clause 36 and the Minister should listen to this because there is a problem there. It is a small one though. Clause 36 talks about a moratorium. In his submission, he talks about Clause 36 but in the Bill, under the Memorandum of Objects and Reasons, Part 5 of the Bill at the end, talks about Clause 35 talking about the moratorium. That can be messy and we need to flag it off before it is time. However, the point that we need to make in terms of preservation of assets which I want to talk about a little connecting it to Phase I which comes into effect immediately we pass this law.

One of the things that the Minister has proposed that we do under this law is to completely have a moratorium under the transfer of assets which is a beautiful proposition so that we avoid people who want to bring about wastage. However, amongst the activities of the transition, which are in Phase I of the transition, there are many things which need to be done which are contained under Clause 1 in the Fourth Schedule on page 144. One of the things I thought is that we need to put a clause here that should compel the local authorities even now to start carrying out inventories. One of the activities that the Transitional Authority is supposed to do is to carry out audit of all the assets. My argument is that we could save sometime if right now we can put it into the law that they should expect this, and that there will be penalties against the treasurers of specific local authorities which will not have carried out proper inventories and kept the records properly so that when the Authority comes and carries out this exercise, this is done without problems.

Then there are other activities that are necessary. For example, the Commission on Revenue Allocation is already mandated in the Act that we passed here, that is law now, to

facilitate civic education. Why are we loading it again on this Transitional Authority? If we make too many activities on this, then they will move away from the core subject and start spending the money they will be given on other activities that are completely unnecessary. So, let this be done by other bodies. Let them remain professional and keep fixing their eyes on what needs to be done before.

Mr. Temporary Deputy Speaker, Sir, finally and very quickly, if you look at the real reason some of us are afraid of, this Transitional Authority, it is that this Authority is going to have so much power. If you look at Clause 23, it will have the power to identify which functions will be transferable to the county governments. These people, after they have decided in their own wisdom which functions they are going to transfer to the Tana River County Government, for example, will then require the governor to make an application in a prescribed form. Then they have been given discretion because when it is quiet, it means they can refuse. These people will be wielding so much power and we are afraid, particularly for those of us who have been marginalized from colonial time up to now, that there could be a tendency of continued marginalization. We want strong provisions there that will not have people seated in that Transitional Authority become kings over the governors that we will be elected in our counties. We want these functions transferred and we do not want people sitting in Nairobi here to determine the fate of how these functions will be coming. We want a closer look at that particular clause, so that we do not have people here marginalizing us the way it has been continuing for the last 40 years since Independence.

In that connection, we should have a clause that those in those six persons, there are people who are non-governmental, who should be appointed from counties that are considered marginalized. These should be persons who should come from such areas as northern Kenya and northern Coast, because they will be sensitive to the needs of the people down there. We do not want people who have lived in Nairobi with nice degrees, I do not know from which universities coming here and telling us that because we have not fulfilled this and that, they think we should stay until the third year for them to transfer the functions to us. Let us appoint people who have been in this business. They have suffered and have known what is happening. Let us avoid this thing of regional balance and, therefore, you bring in two Nairobi people, two people from counties which have done so well and then you leave only one person from North Eastern and one person from the Tana River County. The whole thing then becomes imbalanced again. I pray that we will put in something here and the Minister will look into how we can curve it such that people from marginalized counties, even without the county profiling, can have a bigger say in terms of how the transfer of these assets shall take place and how the composition of this Authority will be.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Shakeel, just let me make this clear because the Chair of the Committee had indicated that he is the one who is going to respond on behalf of the Committee. Now that he is here, I will allow you five minutes to make your contribution and then I will allow him because you are leading.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I did not see him and he was sitting next to me. My contribution will be much reduced.

The whole objective of this Bill and the objective of the new Constitution is devolution. This devolution must be seamless. This transition must be done well. We cannot allow shortcuts. I was a mayor for two terms and I found that the most amount of irregular and illegal activities took place during transitions, either during elections or thereafter. So, we want to be very clear.

This Bill has laid it down that there will be no such activities and we must be very clear as to how this will be done. The spirit of the new Constitution must be adhered to at all times. I spoke to the Minister earlier but he must admit that his audit team of the local authorities has not been able to capture the status of all local authorities. I know for a fact that over half or maybe even more local authorities' audited accounts are up to five to ten years in arrears. So, I am wondering how we are going to proceed with this. The only way possible, as an auditor, is perhaps doing a forensic audit. The Minister must know that even before the Transitional Authority is put in place, he has his audit team. He must start to work with the forensic audit to establish the true position on the ground and not on paper.

I want to voice the concerns of hon. Karua. Half of the members of this Authority are technocrats and the other half are Executive appointees. These technocrats are all in essence technocrats, but the devil is in the detail and unless you can re-organize this particular Transitional Authority, we do not want those technocrats to come and sabotage our activities, yet we do not want to throw out their experience. We do not want to throw away the baby with the birth water. The Provincial Administration has done its job over time in the 46 districts that were there. So, let us synthesize, synergize, concentrate and consolidate.

The third point that I wanted to bring to your attention is the issue of the two phases. The Constitution only gives three years for any transition. Here, we are talking about the first phase, which could be between the passing of the Bill and elections. That could be nine months and then another three years. Then it says that the President in consultation may extend one year more. My Committee has discussed this and is totally against this. We have a maximum of three years. I even feel that what hon. Karua has said about one year is appropriate. Finally, with regard to the penalties under Clause 34(c), Kshs500,000 is not enough for that penalty where assets have been squandered. We feel that it should be something like Kshs10 million or seven years.

With those few remarks, I bow to my Chairman.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Ngugi, as you speak, be mindful of the fact that Mr. Njuguna is willing to contribute. I had not noticed the Member for Lari, so, please, give him, at least, two minutes after your conclusion.

Mr. Ngugi: Mr. Temporary Deputy Speaker, Sir, I even do not intend to be too long because this is a Bill like the others that we have discussed, namely, the County Governments Bill and the Inter-Governmental Relations Bill, in which we have consulted quite heavily with the Minister. It is fairly well drafted and so, it does not have very much that needs improvement.

However, this is a very important Bill. It provides the legal and institutional framework to provide for a well coordinated transition to devolved governments. As you see, it also provides for the transfer of functions to the National Government and the county governments. The only thing that maybe we need to improve on is the time limit because this cannot be forever. This Bill also provides for a mechanism to ensure that the Commission for the Implementation of the Constitution has a reference point and can see that a certain body is implementing the Constitution as far as devolution is concerned.

Most important is that it also provides the requirement of national governments and county governments and makes proposals as to how those gaps can be filled.

So, Mr. Temporary Deputy Speaker, Sir, what we will be proposing in terms of amendment are few. The most fundamental is that this Parliament ought to be represented in some way in the authority that is being set up. In this respect, we will be proposing that the Clerk of the Senate should be among the people who sit in the authority.

The other things we have noted is that we have discriminated against the youth. The Chair requires having 15 years of experience in addition to the Masters degree. Maybe we could reduce that to ten years. The secretary requires having a Masters degree and ten years experience, maybe we could reduce that to five years.

The only other thing that we have added to the people who will serve in this authority is that they must meet Chapter Six of the Constitution in terms of leadership and integrity.

Other than that, the Bill is good. However, we feel that the penalties, especially for the transfer of assets, is not deterrent enough. We intend to enhance the penalties. We also intend to add a clause to the effect that any transfer done when this Bill is passed illegally, will be null and void. That way we will safeguard public monies.

Since other hon. Members have to have a minute or two, I support this Bill and I thank the Minister for the consultations we have had. We look forward to agreeing on the amendments.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mudavadi, it is up to decide whether you want to allow your colleagues a minute bearing in mind the time that you have. If you do, tell each of them.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I can respond in, at least, seven minutes, so if they can have a minute it, it is okay, starting with Mr. Njuguna. You will handle the rest!

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I will be very brief and first let me thank the Deputy Prime Minister for this gigantic work on the production of this Bill.

This Bill is critical in the formation of the county and national governments. Therefore, it will be expected to set a firm pace for political stability in the country, social growth and economic advancement. Those to be appointed to the transitional authority must be people dedicated, committed and patriotic Kenyans. Finally, those people whose records are tainted with corruption and impunity should not be given a chance to serve in this authority.

Finally, the benchmark for the chair of this authority is too high. I would suggest that we reduce that to ten years. On offences must be measurable. It should be Kshs1 million and not Kshs500,000 as indicated in this Bill.

Mr. Kathuri: Mr. Temporary Deputy Speaker, Sir, thank you. I also just want to make few comments. One, I support this Bill. It is very important for us to come up with this authority. But over and above that, I also want to add my voice to the fact that to be a leader, it is not proven through academics. Yes, a Masters Degree is good because it shows that you have the brain, but that is not the only quality that we should look for. For that reason, a Masters Degree requirement should be left optional. At least, if one has 15 years with a first degree which should be good enough. If you have a Masters Degree, then it shows that you have the capacity to absorb more and so we should now lower the threshold of the experience because you spent well your years in class while the other was gaining experience. It is good to balance the two by having 15 years if you do not have a Masters degree or you have a Masters and ten years' experience. That will balance after all those of us who went through secondary education know that graduates from the Kenya Science Teachers College were more competent than graduates from the Kenyatta University.

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, I would like to thank the Deputy Prime Minister for the time.

Mr. Temporary Deputy Speaker, Sir, I would like to make two or three points. On the issue of investments by the Authority, the funds that have been allocated are for the taxpayers. They should not be able to invest this money, because we will go back the same old good time

where money was allocated and no service was provided to the people. This ended with a lot of money going into collapsed banks. So, that should be removed. All the money must be spent as it is received from Treasury.

Mr. Temporary Deputy Speaker, Sir, the other issue is extension of time. The Constitution does not allow extension of time by Parliament. In fact, it says “three years.” So, we should go by what hon. Karua said. Then, there must be a role for them, like in the audit, for example, of all the 47 counties, to provide assets and liabilities. A report should come to Parliament before the end of the life of this Parliament for us to agree. We know that Garsen, for example, can only do A, B, C and D and, therefore, know the capacity requirement and funding to ensure that they can receive it within the next phase.

Mr. Temporary Deputy Speaker, Sir, the Bill says that a report must come to Parliament, but the ICC(?) should actually be the guiding organ, to ensure that they can audit and supervise these people. Then, Parliament should be extension through reports, get actually what they are doing, so that we can implement it.

Thank you.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I will just start at the point that hon. Konchella has left and draw the attention of hon. Members to Article 15, on page 127. This Article very clearly states that the Commission for Implementation of the Constitution should pursuant to Section 15(d) of the Sixth Schedule of the Constitution, monitor and oversee the transition process to devolved government. So, that particular clause ensures that this is monitored at every level.

Mr. Temporary Deputy Speaker, Sir, I heard hon. Mungatana raise an issue about Clause 10 on the schedule that deals with appointments. I would like to just plead with the hon. Member and the House, to remember that we have landed into problems with some of the other Bills where a certain timeline has been put in place, and then there is no room for extension and have to wait for them to come back to Parliament, for that amendment to be put in place. So, we were trying to take care of that provision. Maybe when we say that we should extend for a specified period, we can consider the kind of extension that they can grant. But we thought that we should not leave it completely a dead end because we have landed into trouble before. I think there are one or two other Bills where we have not completed appointment because of that particular issue.

Mr. Temporary Deputy Speaker, Sir, I have noted the issues about the offences. I think we will discuss that with the Committee. When I started moving the Bill, I had tried to give a rationale behind the number of public officers, but I will just recap. The whole idea where it might look like it is top-heavy on the Executive is because we realized that these Ministries, looking at the structure of the Government, are going to be very fundamental in terms of the devolution of assets. If you look at the Office of the President, for instance, we were looking at it in the context that the Secretary to the Cabinet is important in this Authority, so that he can also whip other Permanent Secretaries, to make sure that they are conforming and implementing what is agreed in this Authority.

Mr. Temporary Deputy Speaker, Sir, the issues of finance are plain and obvious. Also, you can imagine the issues that deal with human resource between local authorities and the county government. Now, if you do not have somebody who is well versed with these matters, we could land into some difficulty. So, many of the Permanent Secretaries that are itemized here are there for a very specific purpose. But the ones who will work on a full time basis are the nine

members who are not the Government officials. So, I hope that this will enable hon. Members to understand why we have those individuals there.

Mr. Temporary Deputy Speaker, Sir, I also want to confirm to hon. Members that this is also one of the Bills that have gone through the Constitution Implementation Commission processes very thoroughly. The Commission has looked at it and made its comments. The Commission has, indeed, made a lot of contribution to it and deleted a lot of things they felt were unconstitutional.

I also note the error that hon. Mungatana pointed out in the Memorandum of Objects and Reasons. We need to cross-reference accurately. Clause 36 is not properly reflected in the Memorandum of Objects and Reasons of the Bill.

Mr. Temporary Deputy Speaker, Sir, I want to touch a little on the Schedule. It may look simple. We have taken note of the fact that, maybe, some flexibility and greater objectivity needs to be brought in, so that the Authority does not become a stumbling block. That is true but I want hon. Members to appreciate that this is going to be a highly technical process.

When you look at the first phase and what is required, you will appreciate that these fellows will be looking at the assets of the national Government and the assets of the local authorities. They will then prepare criteria for the sharing out of these assets. They have to identify which assets will go to county governments, even though they had been created by the national Government, because they now lie in a given area.

Mr. Temporary Deputy Speaker, Sir, therefore, it is a process that will require a lot of consultations. It may not be as easy as it looks; perhaps, they will finish it in a matter of nine months. It could be extremely difficult. That is why after a lot of consultations, we felt that we should give them the maximum period provided by the Constitution – that is the three year period. They will have performance targets to meet and so forth. They may finish earlier if they work well and do outsourcing.

In the event that they will not finish earlier, it is only Parliament which can say: “You have given us a case, and we think it is valid. We can grant you an extension,” or you can just tell them: “Pack up and go.” So, it will be a very complicated process. It will require a lot of resources because it will be important for this to be done in a professional way. They will have to work very closely with the Auditor-General. All these are critical areas.

Mr. Temporary Deputy Speaker, Sir, we shall consider very seriously the proposals put forward jointly with the Committee. I am sure that at the Committee Stage, hon. Members will feel more accommodated.

With those remarks, 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)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, that brings us to the end of our business for today. Therefore, the House stands adjourned to tomorrow, Wednesday, 22nd February, 2012, at 9.00 a.m.

The House rose at 6.30 p.m.