

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 2nd March, 2016

The House met at 2.30 p.m.

[The Speaker (Hon. Muturi) in the Chair]

PRAYERS

PETITION

DUMPING OF SOIL ALONG THE BANKS OF NGONG RIVER

Hon. Speaker: Hon. James Mwangi Gakuya, the Member for Embakasi North, you have the Floor.

Hon. Gakuya: Hon. Speaker, I beg to read the following Petition on behalf of the residents of Lunga Lunga Village in Nairobi County and St. Elizabeth Primary School community.

I, the undersigned, on behalf of the residents of Lunga Lunga Village in Nairobi County and the St. Elizabeth's Primary School community draw the attention of the House to the following:-

THAT, in the last five years, there has been continuous dumping of soil along the banks of Ngong River on Reuben side opposite St. Elizabeth Primary School which is causing massive destruction to the environment, property and possess serious health hazard to the St. Elizabeth Primary School community.

THAT, the dumping is causing the riverbank to narrow consequently triggering floods into the school compound and parts of the Lunga Lunga Village during rainy seasons.

THAT, on 26th December, 2012, Ngong River banks broke and brought down the school's perimeter wall.

THAT, the soil being dumped on Ngong River spills onto the school playing ground leaving pupils with no space to play.

THAT, on several occasions, the petitioners have raised the matter with the Ministry of Environment and Natural Resources and other relevant Government agencies but no action has been taken.

FURTHER, noting that the issues in respect of which the Petition is made are not pending before any court of law or any constitutional or legal body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Environment and Natural Resources:-

- i. Recommends immediate halt of dumping of soil in the school compound and Ngong River.
- ii. Recommends that the Ministry of Environment and Natural Resources intervenes and restores broken sewer lines and river bank.

iii. Makes any other order and/or direction that it deems fit in the circumstances of the case.

And your Petitioners will ever pray.

I conclude the Petition and request to table it.

(Hon. Gakuya laid the document on the Table)

Hon. Speaker: The Petition is referred to the Departmental Committee on Environment and Natural Resources. The Committee is reminded that it has 60 days within which to report on the Petition. What are these interventions for?

Yes, Hon. Yusuf Chanzu.

Hon. Chanzu: Thank you, Hon. Speaker. I just wanted to say that the Petition by *Mheshimiwa* is a very important one because dumping in this country has become a nightmare. People, contractors included, are breaking the law by dumping waste. This is the case and yet contractors normally budget for where they will dump the soil they excavate. When they find that dumping is done locally, they take advantage of that. Dumping is happening all over and not only in Embakasi. It is a very important Petition which should help us address the issue of dumping in big towns like Nairobi and many others. If you go to a place like Kisumu now, you will find that dumping is happening there because Kisumu is expanding very fast. So, this is a very important Petition.

I support the Petition.

Hon. Maanzo: Thank you, Hon. Speaker. I would like to support this Petition. When this soil is dumped, it blocks sewers which eventually burst. They end up in River Athi which passes through my constituency and poisons many people downstream.

I urge the country to take the matter very seriously. This is not the first time we are having environmental health issues related to rivers in Nairobi. This has been raised before. We have to come up with a mechanism of enforcing whatever Parliament decides through these petitions so that this vice is not repeated.

Thank you.

Hon. M'uthari: Thank you, Hon. Speaker. As the Committee considers this, it should also look at the agencies that are bestowed with the responsibility of caring for the environment and how soil and other wastes are managed so that it can be more inclusive in terms of what is happening at the end of the day.

In fact, we have had incidents of dumping of both waste and soil when there is construction even in Meru Town. Maybe the Committee should ask how the National Environment and Management Authority (NEMA) handles its responsibility that has been bestowed to it by this House through legislation.

Thank you.

Hon. Speaker: Very well. Hon. Members, usually, this is just for very minor comments. If it is Lunga Lunga and then we bring Makueni, Meru and Eldas, it loses direction. It was just for few comments and clarifications. Just look at your own Standing Orders. This is not an opportunity for debate. Let us proceed with the business on the Order Paper.

Next Order!

PAPERS LAID

Hon. Speaker: Who is representing the Leader of the Majority Party? Yes, Deputy Majority Whip.

Hon. Washiali: Hon. Speaker, on behalf of the Leader of the Majority Party, I beg to lay the following Papers on the Table of the House today, Wednesday, 2nd March, 2016:-

Reports of the Auditor-General on the Financial Statements in respect of Independent Policing Oversight Authority; Kenya Literature Bureau; National Commission for Science Technology and Innovation; Kenya National Safety Net Programme; Kenya Electricity Transmission Company Limited; Registration of Certified Public Secretaries Board and State Corporations Appeal Tribunal for the year ended 30th June, 2015 and the certificates therein.

The Annual Report of HIV and AIDS Tribunal, January, 2015.

Thank you.

(Hon. Washiali laid the document on the Table)

Hon. Speaker: Let us have the Chairperson of the Departmental Committee on Environment and Natural Resources.

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday, 2nd March, 2016:-

The Report of the Departmental Committee on Environment and Natural Resources on the inquiry into the alleged lead poisoning at the Owino Uhuru village in Mikindani, Mombasa by Metal Refinery EPZ Limited and Max Industries Limited.

(Hon. (Ms.) Abdalla laid the document on the Table)

Allow me to highlight something that should be brought to the attention of the Chairperson of the Committee on Implementation because we have put a time-bound recommendation. The days are counted upon laying of the Report. Should I go ahead?

Hon. Speaker: Yes, Proceed. Also give us the directors of those companies. I have looked at the Report, as you know I normally do, and you have not disclosed who the owners of these companies are and whether they are still in existence.

Hon. (Ms.) Abdalla: Hon. Speaker, that is the very reason I want to highlight to the Chairperson of the Committee on Implementation that this Committee, in its recommendation No.5, is urging the national Government to fast-track the gazettelement of the 1999 Regulation requiring proponent of projects to deposit a security bond with NEMA. The regulation should be forwarded to the National Assembly as per the provisions of the Statutory Instruments Act within three weeks of the tabling of this Report.

As you rightly mentioned, the directors of these companies have gone underground and there is no one to hold accountable. Because this regulation does not exist, the national Government and the county governments will have to go into their pockets to do rehabilitation and compensate those persons. If this regulation was in place, there would be some security bond that would have now been recalled to pay for the same.

The NEMA has appeared before our Committee several times promising that these regulations would be brought. However, they have never come and I am worried that there are

bigger environmental calamities in the pipeline by bigger institutions that have not placed these security bonds.

I want the Chairperson of the Committee on Implementation to take notice that after three weeks, she should follow these people.

Thank you.

Hon. Speaker: Is that to say that the Registrar of Companies cannot give you the names of the directors?

Hon. (Ms.) Abdalla: Hon. Speaker, even if the Registrar of Companies provides the names which is rumoured to include a Member of this House, they will have to go to court because that security bond does not exist. If we do not have that security bond, even if I know that person "X" is a director, then NEMA has to go through the process of taking that company through the entire judicial process and you know the speed of our Judiciary. So, why do we not take precautions by forcing NEMA to bring the regulations to this House so that we have regulations that compel every proponent of any project to put a security bond?

Hon. Speaker: Very well. Anyhow, you have held the companies therein responsible for some of the sufferings that the residents of Owino Uhuru Village have suffered. I thought that perhaps if you had gone on to lift the veil to indicate the owners of those companies, perhaps it might be easier if the residents were also to pursue civil litigation. I am not privy to the information that you have just said that they are rumoured to be Members of this House. Of course, even Members of this House owe a duty of care to residents who they ought to have in their minds when undertaking certain industrial activities. There is a rule. Hon. Olago Aluoch will remember the ruling in *Donoghue vs. Stevenson*. They ought to have those residents as neighbours; the neighbour principle.

Nevertheless, Hon. Soipan, fortunately, is present. I am sure she will be looking at this Report immediately to see how far it can be pursued. Many Kenyans who watched that situation in that village sympathised with those citizens.

NOTICES OF MOTIONS

INITIATIVE TO PROMOTE CLEAN ENVIRONMENT

Hon. (Dr.) Ottichilo: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that Article 42 of our Constitution accords every person the right to a clean and healthy environment and that Article 69(1)(d) mandates the State to encourage public participation in the management, protection and conservation of the environment; deeply concerned that our homes, roads, public and private premises, work places, recreation areas and general environment are littered with plastics, solid and liquid waste as well as lacking good general environmental aesthetics, this House resolves that the Government declares one Saturday of each month be dedicated by every Kenyan household, organized groups, public and private institutions and corporate organizations to cleaning and beautifying their immediate environment and public places and also initiates a proactive programme in all our schools to inculcate the culture of keeping our environment clean and healthy.

DEVELOPMENT OF NATIONAL SOILS SURVEY POLICY

THAT, aware that soil productivity is dependent on its type and fertility levels among other factors; further aware that soil fertility in most of our country's high potential areas has been significantly eroded due to long-term and continuous use of chemical fertilizers which have led to the general acidification of the soils and consequently drastic decline in food production per unit area; concerned that the current Government food security strategy is focused mainly on increasing food production through identified use of traditional chemical fertilizers regardless of their type and long-term impact on the soils; aware that the Government plans to establish a fertilizer factory in order to fast-track the achievement of the said strategy; further aware that there is increasing use of organic rather than chemical fertilizers in food production; this House resolves that the Government formulates policies for undertaking of a comprehensive national soils survey to determine their current status which will then inform the types of remedial measures to be taken to improve soil fertility and which types of appropriate fertilizers can be used to sustainably improve the production of diversified food crops in different areas.

ESTABLISHMENT OF SELECT COMMITTEE TO INVESTIGATE
MATTERS RELATING TO GMOS

THAT, aware that the Government banned importation of Genetically Modified Organisms (GMO) imports in 2012; further aware that the Ministry of Health which initiated the ban has consistently maintained that GMO foods are not safe for human and animal consumption; considering that no tangible evidence on the same has been provided; cognizant of the fact that local and international scientific institutions and stakeholders have consistently endorsed the use of GMO foods as a necessary measure for the present and future food security in the country; concerned that the National Bio-Safety Authority (NBA) established under the Bio-Safety Act was not involved in the decision to ban the use of GMO foods in the country; concerned that the country continues to lose millions of shillings monthly in lost business opportunities related to GMO products; further concerned that research on bio-technology and bio-safety has stalled; this House Resolves to establish a Select Committee to comprehensively investigate and inquire into all matters relating to GMOs, consider and review all related research findings and make recommendations and table its report within ninety (90) days and approves the following Members to constitute the Committee:-

- (1) Hon. (Dr.) Wilber Ottichilo, MP - Chairperson
- (2) Hon. Japheth Kareke Mbiuki, MP
- (3) Hon. (Ms.) Rachael Amolo Ameso, MP
- (4) Hon. Njogu Barua, MP
- (5) Hon. Sunjeev Kaur Birdi, MP
- (6) Hon. Timothy Bosire, MP

- (7) Hon. Joyce Akai Emanikor, MP
- (8) Hon. (Prof.) James Wambura Nyikal, MP
- (9) Hon. (Ms.) Florence Kajuju, MP
- (10) Hon. (Dr.) Robert Pukose, MP
- (11) Hon. (Ms.) Cecilia Chelanga Ngetich, MP
- (12) Hon. (Ms.) Florence Mwikali Mutua, MP
- (13) Hon. (Ms.) Rachael Koki Nyamai, MP
- (14) Hon. Francis Chachu Ganya, MP
- (15) Hon. Harrison Garama Kombe, MP
- (16) Hon. Ferdinand Wanyonyi, MP
- (17) Hon. Richard Katemi Makenga, MP

Hon. Speaker: That is, obviously, an appreciation of the industry. Next is Hon. Amina Abdalla.

ADOPTION OF REPORT ON LEAD POISONING AT OWINO UHURU VILLAGE

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to give notice of the following motion:-

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on the Inquiry into the Alleged Lead Poisoning at the Owino-Uhuru Village in Mikindani, Mombasa by Metal Refinery EPZ Limited and Max Industries, laid on the Table of the House, today, Wednesday, 2nd March, 2016.

Hon. Speaker: Next Order!

STATEMENTS

BUSINESS BEFORE THE PROCEDURE AND HOUSE RULES COMMITTEE

Hon. Cheboi: Hon. Speaker, I rise to give a brief on the business before the Procedure and House Rules Committee. The Committee has been considering proposals to Standing Orders. Pursuant to Standing Order Nos. 262 and 263, amendments can be proposed by the Committee or through the initiative of a member.

In the course of the 11th Parliament, various issues have been noted which require review of the Standing Orders. The House has successfully amended the Standing Orders twice in this Parliament regarding the issue of the Public Accounts Committee (PAC) and the Public Investments Committee (PIC), and on the introduction of Question Time.

The Committee currently is considering the following proposals:-

1. The proposal by Hon. Samuel Chepkong'a to amend Standing Order No. 176 to allow the House to approve any proposals for discharge of members from Committees.
2. Proposals by Hon. Aden Duale to amend Standing Order Nos. 108 and 109 to provide for graduating penalties for members guilty of gross misconduct. This also includes providing for the place of the Mace in rules of procedure.
3. Other proposals that are being considered in the Committee include:-

- (i) Procedure initiating the process of declaring a vote of no confidence against the Speaker as stated under Article 106(2) of the Constitution.
- (ii) Procedure for removal of a Cabinet Secretary provided under Standing Order No. 66 with necessary modifications, taking into account court rulings on the removal of speakers in county assemblies and impeachment of governors.
- (iii) Whether the House sitting hours should be extended or in the alternative, adding more sitting days to be considered.
- (iv) The need to complete review of the architecture and modalities of dealing with money Bills, including amendments proposed by members.
- (v) Development of a mechanism on how to deal with Bills from the Senate which have a money Bill aspect, bearing in mind the provisions of Articles 109 and 114 of the Constitution on the introduction of such Bills.
- (vi) Elaboration of the meaning of “public participation” and ensuring keeping of records of participatory process. This should include guidance on whether the Senate should repeat public participation on a Bill the National Assembly has already involved the public.
- (vii) Provision of what happens if a Mediation Committee fails to agree within 30 days. In addition, the Standing Orders should clearly state when the 30 days should start. Is it when the members are appointed by respective Houses or when they first sit?
- (viii) Stating the ideal number of Members in a Committee, considering if there is need to increase the number of Committees and review their mandates. This includes Sessional Committees or Committees established for the life of a Parliament.
- (ix) Need to state the quorum and operation of sub-committees of a Select Committee to improve Committee efficiency and cut costs through division of labour or specialisation.
- (x) Need to clearly provide on how the cases of attendance are considered by the Powers and Privileges Committee given the implication of powers of courts to review such processes.

Hon. Speaker, it will be inevitable for us to engage the Rules and Business Committee of the other House as we amend the Standing Orders, especially in the area of joint rules. There is need to come up with a harmonised manner of dealing with issues of concurrence and those that require consideration by both houses. These areas include mediation process, Presidential Memoranda and Bills concerning county governments, procedure for alteration of the calendar, meting out punishments on members of the other House when they misbehave during a joint sitting or interrupt procedure of the other House, among others.

These are proposals under consideration. Standing Order No. 264 requires that the final review of the Standing Orders be done not less than six months to the end of the term of every Parliament. We, therefore, are calling on members with proposals to submit to the Speaker, pursuant to the provisions of Standing Order No. 263 before the preparation and presentation of the Committee’s final Report to the House by the end of this year.

I thank you, Hon. Speaker.

Hon. Speaker: Let us have the Chair of the Public Investments Committee. Hon. Keynan, before you give your update, let me recognise the following students from various institutions who are present: Students from Nyambaria High School from Kitutu Masaba Constituency, Nyamira County who are in the Speaker's Gallery; pupils from Ikombe DEB Primary School from Yatta Constituency, Machakos County; and Saint Simon Secondary School from Kibwezi West Constituency, Makueni County.

They are welcome to observe the proceedings of the National Assembly.

Proceed, Hon. Keynan.

STATUS OF PENDING BUSINESS BEFORE
PUBLIC INVESTMENTS COMMITTEE

Hon. Keynan: Thank you, Hon. Speaker. I take this opportunity to give the status of pending business before the PIC as of 2nd March, 2016. I am privileged to stand before the House to apprise it on the business of the PIC in this 4th Session. Before I do that, allow me to point out the mandate of the Committee so that Hon. Members and members of the public can also appreciate the work of this unique Committee.

The PIC is established pursuant to the provisions of the Standing Order No. 206 of the National Assembly. It is mandated to, among others, examine reports and accounts of public investments. Public investments in this case imply quasi-government institutions and State corporations.

Secondly, it is mandated to examine reports, if any, of the Auditor-General on public investments. That is special audit. This third role is one which many people, including the members, have not understood. It is to examine, in the context of autonomy and efficiency of the public investments, whether the affairs of public investments are being managed in accordance with sound financial or business principles and prudent commercial practice. The Committee has submitted the following reports.

The first Report after the Committee was constituted immediately after election of the 11th Parliament was a Special Report of the National Cereals and Produce Board (NCPB) on the Erad maize suppliers tabled before this House on 22nd October, 2013. This was a Special Report that examined the contract between the NCPB and Erad Supplies and General Contractors Limited for the supply of white maize. The Report was tabled and adopted by the House.

Secondly, there was a Special Report on the restructuring of the Kenya Petroleum Refinery Limited. The report was laid on the Table of this House and adopted. Thirdly, there was the report on the recapitalisation and the balance sheet of the restructuring of Telkom Kenya Limited, which was laid before the House and adopted. The fourth report was a Special Report on the procurement and financing of the construction of the Standard Gauge Railway (SGR) from Mombasa to Nairobi. The report was tabled and the House adopted it. The fifth report was a Special Report on procurement and financing of the National Social Security Fund (NSSF) Tassia II Infrastructure Development Project. The report is still pending before the House. The sixth report was a Special Report on procurement of the tender for the proposed Kenya Bureau of Standards (KEBS), Coast Regional offices and laboratories in Mombasa. The report is pending before the House. The seventh report is a Special Report on procurement and process of the Kenya Pipeline Company Line 1 Capacity and Heads project, which was laid on the Table of the House and adopted.

The tenth one is the 19th PIC Report on the accounts of the State corporations, which was laid on the Table of the House and adopted. The eleventh report was a Special Report on the Kenya Airports Authority (KAA) Duty Free Shops contract at Jomo Kenyatta International Airport (JKIA) and Moi International Airport from 1989 to 2015. It is one of the many reports before the House. The twelfth report is the 20th Report of the audited accounts of State corporations, which was laid on the Table of the House. It is pending before the House. It is one of the reports that I am very sure we will be dealing with. Thirteenth is the Report on the benchmarking visit to Washington DC, USA. The Report was laid on the Table of the House. The fourteenth report is the Report on the Twelfth Southern African Development Community Organisation of Public Accounts Committees meeting held in Seychelles between 7th and 12th December, 2015. The Report was laid on the Table of the House. The fifteenth report is the Third Annual International Public Accounts Committees Symposium held in London, which was tabled before the House.

Hon. Speaker, notices of Motions will be given today on the following: Adoption of the Special Report on Kenya Airports Authority Duty Free Shops Contract at JKIA and Moi International Airport from 1989 to 2015; Adoption of the 20th Report of the PIC on the Audited Statements of State corporations; Adoption of the Special Report on the Procurement and Financing of NSSF Tassia II Infrastructure Development Project and adoption of the Special Report on the Procurement Tender for the Proposed KEBS and Coast Regional Offices and Laboratories in Mombasa

On examination of the Auditor-General's reports, pursuant to his mandate under Standing Order No.206(7)(a) and (b), the Committee continually examines the reports and accounts of public investments, which are submitted to the House by the Auditor-general. The Committee had unprecedentedly examined and reported on accounts of State corporations of the first 72 State corporations in its 19th Report and 64 State corporations report in its 20th Report. I say "unprecedented" because you have been the Chair of this committee for two consecutive terms and it has never happened.

As we have stated earlier on, our desire was to conclude and clear all the backlog of the 256 State corporations which have been pending since 1988. Towards the end of our term, I will gladly report to the House that we have cleared the backlog. Those who will be privileged to serve in this Committee in the next Parliament will enjoy just like the Members of the Public Accounts Committee (PAC) are doing right now, courtesy of what Chairman Khalwale did in the last Parliament. This is something that is extremely difficult. It requires patience, resilience and hard work of the Members, without demeaning the support of your office and the Office of the Clerk for the continued performance of both Members and the secretariat. We will clear this backlog and ensure that the PIC of the 12th Parliament begins its programme with the most recent reports of the Auditor-General. This is one of the constitutional requirements – that all audit reports must be considered within the shortest time possible. Otherwise, we will be dealing with historical issues when the players have died, left offices or the circumstances have changed. This is one of the things that this Committee is attempting to achieve.

Hon. Speaker, some inquiries are also pending before the Committee as follows:-

1. Inquiry into the Youth Enterprise Development Fund regarding the loss of Kshs400 million. This is an issue which has been captured by the media today.
2. Inquiry into the tendering process of three projects, namely; Hazina Towers in Nairobi Central Business District, the Joint Venture Property Development along

Kenyatta Avenue in Nairobi County and Mavoko Municipality construction of 60,000 low cost houses by the NSSF.

3. Inquiry into the procurement process of tender KEBS 57 of 2014/2015, which was awarded to Quality Inspection Services Limited of Japan. This is an issue on which we have asked the Auditor-General to carry out forensic audit. I am sure that we have received the report, which we will be considering shortly.
4. Inquiry into the Geothermal Development Company Movement Contract. This is something that we have almost concluded. We are only waiting to write the report.
5. Inquiry into compensation of land owners affected by the construction of the SGR.
6. There is inquiry into the leasing of 50 megawatts wellhead geothermal generation tender by the Kenya Electricity Generation Company (KenGen).
7. Inquiry into the selection process of the construction of Phase One, which is the second container terminal at the KAA.
8. Inquiry into the sale of the Karen land of the Kenya Industrial Estates.
9. Inquiry into the procurement process of the Integrated Customs Management System by Kenya Revenue Authority.

Hon. Speaker, I want to take this opportunity to thank your office and the entire leadership of the House for their continued support.

Secondly, I want to thank the Members of this unique Committee for their support. As an individual and Member, I also want to thank the Members who have recently re-voted me as their Chair. That clearly demonstrates the confidence that the Members have in their leadership. I want to thank you because that will enable us to complete the task before us.

Finally, I want to thank our able secretariat headed by Miss Susan Maritim for the good work they have rendered to the Committee. I hope by the end of our term, we will say that we have cleared the backlog and those who will be privileged to serve in this Committee in the next Parliament will have very easy work to do.

Thank you, Hon. Speaker.

Hon. Speaker: Next is the Select Committee on Regional Integration. I have been informed that the Vice-Chairman will give the presentation. Is it Hon. Nakuleu?

BUSINESS PENDING BEFORE REGIONAL INTEGRATION COMMITTEE

Hon. Nakuleu: Thank you, Hon. Speaker. The Select Committee on Regional Integration has the following business before it:-

1. The East African Community (EAC) Creative and Cultural Industries Bill, 2015.
2. The East African Community Gender and Development Bill, 2015.
3. The East African Community Electronic Transactions Bill, 2014.
4. Report of General Purposes Committee on the Oversight Activity on the Legal Framework and Implementation of Policies on the Rights of Child in the East African Community Partner States Conference held between 22nd and 26th February, 2015.
5. Report of the Committee on Agriculture, Tourism, Natural Resources on Regional Parliamentarians Policy Workshop on Climate Change and Gender.

6. Report of the Committee on Communication, Trade Investments on the investment policies and strategies in the East African Community.
7. Report on the Resolution of the Assembly on congratulating the Republic of Uganda upon acquiring their third generation identity cards and encourage partner states which are still in the process to finalise the acquisition of third generation identity cards.
8. Report on the resolution to support the East African athletes from the Republic of Kenya and congratulate them for their exemplary performance in the World Athletics Championships in Beijing.
9. Resolution of the Assembly to call for urgent action to prevent trafficking in persons and protect victims of crime of trafficking in persons and prosecution of perpetrators of trafficking in persons in the East African Community.

Hon. Speaker, these reports and Bills were committed to the Committee on 5th October, 2015 and the Committee has considered them. The Committee is in the process of finalising and subsequently tabling them before the House.

The Committee on Regional Integration is also considering reports on:

- (i) The East Africa Community Appropriations Acts, 2003, 2004, 2005, 2006, 2007 and 2008.
- (ii) The East African Trade and Negotiations Act, 2008.
- (iii) The Summit Delegation of Powers and Functions Act, 2008.
- (iv) The Lake Victoria Transport Act, 2008.
- (v) The East African Customs Management Act, 2009.
- (vi) The Inter-University Council of East Africa Act, 2009.
- (vii) The Community Emblem and (Amendments) Act, 2009,
- (viii) The East African Community Budget Act, 2009.
- (ix) The Administration of East African Legislation Assembly Act, 20 12.
- (x) The East African Parliamentary Institute Act, 2012.
- (xi) The East African Customs Management Act, 2012.
- (xii) The East African Legislative Assembly Elections Act, 2012.

Hon. Speaker, these Acts of the Community were committed to the Committee on 16th February, 2016 and the Committee is in the process of considering them for onward tabling to the House.

Thank you Hon. Speaker. I beg to submit.

PENDING QUESTION ON TRANSFORMING AFC INTO FARMERS' BANK

Hon. Speaker: Very well. I have seen some intervention from Hon. Francis Kilonzo.

Hon. Kilonzo: Thank you, Hon. Speaker. I want to seek your assistance. In July, 2015, you approved a Question on transforming Agricultural Finance Corporation (AFC) into a farmers' bank and since then the questions I had asked alongside have been answered and this one has taken too long. May I get that answer following your intervention?

Hon. Speaker: A question?

Hon. Kilonzo: Yes. I had sought a Statement on the status of--- There was a promise by the Government to transform AFC into a farmers' bank.

Hon. Speaker: Was it through a resolution?

Hon. Kilonzo: It was through a Statement I had sought from the Departmental Committee on Finance, Planning and Trade.

Hon. Speaker: That was when we used to have committees responding on behalf of the-- We did away with that. Just put it by way of a Question which can be responded to by the Cabinet Secretary (CS) as they do on Tuesdays. The best thing is to revive it by way of a Question and then we refer it to the Ministry so that the CS can appear before the Committee to respond.

Hon. Kilonzo: You have already done that; you have approved it.

Hon. Speaker: Approved what?

Hon. Kilonzo: You approved my Statement I had sought from the CS through the Committee. The Question has not been answered.

Hon. Speaker: Just see the Director in charge of procedural services and he will sort out the issue.

Hon. Kilonzo: It is okay, Hon. Speaker. Thank you.

Hon. Speaker: Let us have Hon. Ali Rasso.

PENDING PETITION ON APPOINTMENT OF CHIEF IN
D'AKABARRICHA LOCATION

Hon. Dido: Thank you, Hon. Speaker. On 30th October, 2015, I presented a Petition to the House concerning the appointment of a chief in D'akabarricha Location to the Departmental Committee on Administration and National Security. So far, over three months have elapsed and I am yet to get any feedback.

Hon. Speaker: Did you say a petition through the Departmental Committee on Administration and National Security?

Hon. Dido: Yes, Hon. Speaker.

Hon. Speaker: Is it the case that Hon. Asman Kamama and Hon. Alois Lentoimaga are not there? They are both absent not desiring to be present. Hon. Rasso, raise your matter with the Office of the Clerk so that we can direct it to the Committee.

Let us have Hon. Wamalwa.

DELAYED GAZETTEMET OF NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND REGULATIONS

Hon. Wakhungu: Thank you, Hon. Speaker. I rise to seek your direction pertaining to a serious matter that is affecting our constituencies. As you are aware, the law pertaining to the management of Constituencies Development Fund (CDF) was changed. As I speak now, no operations are taking place at the constituencies because we do not have a committee in place. We are aware that the regulations are under the Attorney-General (AG) and they have overstayed. I am using Article 125 of the Constitution where you can summon anybody anywhere, to seek your direction in terms of getting these regulations so that the operations of CDF can continue. Many children have been sent away from school, construction of roads has stalled and these Hon. Members are miserable. So, we seek your direction on the way forward pertaining to the gazetting of regulations that have overstayed at the Office of the AG.

Thank you.

Hon. Speaker: Well, looking at these Hon. Members seated here including Hon. Soipan, Hon. Njuki Muthomi, Hon. Olago Aluoch and Hon. Nyikal, I do not see them being miserable.

(Laughter)

I do not know how you have arrived at the conclusion that they are miserable. However, your point is made. The other day you constituted the Committee. Using the same powers under Article 125, that same Committee should be the one to summon whoever it is that is supposed to formulate the regulations or even have them gazetted. Instead of us dealing with it in the plenary unless the Committee has been unable to--- Where is Hon. Lessonet? He has always been very active in that Committee.

I can see Hon. Ochanda is not miserable. He wants to give you some hope. Hon. Ochanda, you can rise to the occasion.

Hon. Ogolla: It is not really in terms of being miserable or not. We did our elections yesterday and the Committee is up and running. The Chair was elected yesterday. So, it is just a few hours between the time we elected the Chair and when this matter is coming up on the Floor.

Hon. Speaker: Very well. You have a new Chair?

Hon. Ogolla: It is the same old Chair but we re-elected him yesterday.

Hon. Speaker: Now, he is the Chair of the Parliamentary Select Committee on the National Government Constituencies Development Fund (NGCDF)?

Hon. Ogolla: That is right.

Hon. Speaker: I see. Hon. Wamalwa, do not be miserable. That should be encouraging. Is there another intervention? I had seen Hon. Aluoch. Had you pressed your intervention button?

Hon. Aluoch: Thank you, Hon. Speaker. What I wanted to say in relation to Hon. Wamalwa is that certainly I am not miserable. At the expiry of the last Act, the Chief Executive Officer of the Fund issued instructions to the effect that projects that had been approved by the previous committees would proceed and disbursements would be made, except for new projects. As much as I appreciate the point, at least, if they were old projects, they are proceeding. As for the new ones, I would wish that the new Committee starts very quickly.

Thank you.

Hon. Speaker: Very well.

Next Order!

BILLS

First Readings

THE POTATO PRODUCE AND MARKETING BILL

THE COUNTY EARLY CHILDHOOD EDUCATION BILL

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

Second Reading

THE COMMUNITY LAND BILL, 2015

*(Hon. A.B. Duale on 1.3.2016)**(Resumption of Debate interrupted on 1.3.2016)*

Hon. Speaker: Hon. Members, I would like to alert you that, in keeping with the observations made yesterday, we gave directions and it is going to happen today during debate on this Bill. If it does not end today, it will be concluded at any other time. We will have researchers taking notes because some of the contributions by Members are very important. It is only fair that somebody take notes. At least, the Chairperson and the Vice-Chairperson of the Committee are present but I cannot see the Mover of the Bill. We must move away from assuming that when a mover of a Bill is called upon to reply, you just rise, thank Members for their contributions and tell them that you will take them on board during the Committee of the whole House. You say that, having heard nothing and you have not even had the benefit of looking at the HANSARD. Therefore, we have directed that, for purposes of giving value to the contributions, our own researchers who are attached to the Committees be present to take notes. The notes must be used to inform further discussions in the Committee as you sit to agree on proposals for amendments.

Listening to the contributions made yesterday, there are several issues that Members have raised. Unless we have a way of capturing such points at an appropriate time, we may get to the Committee of the whole House, where Members raise issues about proposals for amendment, and find that there is so much debate. If the Committee, in the subsequent sitting considered what Members had said, it would help the understanding of the Members' desire to propose amendments. We will proceed in that manner.

Hon. George Oner had a balance of eight minutes. Since I have been keenly listening to the debate, even though I was not on the Chair, I am aware that he was warned by the person who was on the Chair that he had to be present. He came very early. Hon. Oner, you have a balance of eight minutes.

Hon. Ogalo: Hon. Speaker, indeed, I came early as per the warning.

As I said yesterday, this Bill is a constitutional Bill. I sit in the Departmental Committee on Lands. It is a Bill we have dealt with for a very long time. We have considered very many drafts before arriving at what was finally published for debate in this House.

At the outset, I would like to say that the Community Land Bill, or the anticipated Community Land Act, is intended to replace the abused Trust Lands Act and the Land Representative Act. It emphasizes the principle of owning nothing and everything. This means that no individual can claim ownership on any piece of that land and every individual owns everything on that land.

Hon. Speaker, this Act could be a stopgap measure for most of what is community land now. Those who own land as communities may in future want to adjudicate their land and have private ownership within their community lands. I also want to indicate that this Act might remain to administer very few lands where only communal use is permitted. This means all lands that are under residential use within the community or private farming enterprises or commercial

use within the community land might eventually be adjudicated and owned privately, but with the authority of those communities. In short, we are removing adjudication of community land from being a Government driven process to a community driven process, so that a community can determine who is supposed to own private industries on their land.

The Bill before us is good. I have to state that we have taken a lot of time listening to many people, as a Committee. We now have a fairly straightforward understanding of where the contentious issues are. The attempts that we have made to correct those issues will be clear during the Committee of the whole House.

Hon. Speaker, we have, indeed, taken your guidance that we should, in our subsequent meetings, invite members of the public and meet caucuses to explain what we have been able to propose as amendment for incorporation into the Bill during the Committee of the whole House. Hon. Members have talked about definitions of “community”. Those are the things that we have dealt with.

Clause 6 is where the role of the county governments is given. It is very clear, under Article 63(4) of the Constitution, that vesting community land in the hands of the county governments does not give them any authority to transact in any manner with unregistered community land. That is the community land that was unregistered as at the time of the promulgation of the Constitution of Kenya, 2010 until when this Act is enacted. It is clear that any transaction that took place on unregistered community lands between the time of promulgation of the Constitution and time of the enactment of this law will be null and void.

Under Clause 7, we are insisting that the process of creating and registering a community capable of owning land must be procedural, transparent, inclusive and judicious. The process must accord every interested person the right to claim membership rights to that community. The way that clause is crafted would disfranchise many people. As a Committee, we have taken steps to strengthen it. Hon. Members will eventually be satisfied.

Under Clause 8, the process of identifying and demarcating the boundaries of community lands must also be very transparent to ensure that those who own land next to that community land, those who own other interests on that community land, and those who have customary rights on that land know that demarcation is taking place. The final determination and survey of that land must be as per the provisions of the survey Act, Cap 299 of the Laws of Kenya. I also note, under Clause 10, the creation of the register for community land. Those are all in order.

Under Clauses 15 and 16, we have found weaknesses in the way the community is administered. The management and administration of the community is lacking structures. As a Committee, we have received proposals from Pastoralists Parliamentary Group on how those communities should be administered. Indeed, we have proposed that we have a Community Assembly, which should be an assembly of all the members of that community, and a Land Management Committee that will hasten decision making and management. We also said that, any transaction resulting in the alienation of any community land or interest must be ratified by the Assembly. Only minor transactions that do not disenfranchise any member of the community can be handled by the Land Management Committee.

I will jump to Clause 21, on conservation and management of resources in community land. Indeed, we should underscore the provisions of Article 62 of the Constitution which classify all minerals and mineral oils as public land. I also agree with fellow members on the procedure for conversion of community land into any other type of land and insist that two-thirds of the Assembly must ratify any such decision.

My time is almost over. Clause 46 is the saving and transitional provisions clause. I want to indicate that the saving clauses must be subject to the powers of the National Land Commission (NLC) to review any dispositions and grants pursuant to Article 67. So, that any abuses of the Trust Land Act that enables people to disenfranchise communities can be reviewed and such abuses rectified. It must also be subject to the investigation of historical injustices, so that if a historical injustice happened in the alienation of community land it can be remedied. The saving clauses must be subject to Article 63(4) of the Constitution which outlaw any transaction between 2010 to date.

Thank you, Hon. Speaker. I support.

Hon. Speaker: Yes, Hon. Joyce Lay.

Hon. (Ms.) Lay: Ninashukuru sana Mhe. Spika kwa fursa hii ya kuweza kuchangia Mswada huu kuhusiana na shamba za jamii. Kama tujuavyo, shida hizi za mashamba zimetukumba haswa sisi wakazi wa Pwani, Taita Taveta ikiongoza. Ni vizuri tukiwa na Mswada ambao unaweza kuambatana na Katiba yetu ya mwaka 2010. Lakini vile vile pia, tutasubiri wakati ambao utafika wa kuweza kufanya marekebisho kwa sababu kunayo marekebisho mengi ambayo yanastahili kuongezwa kwa Mswada huu.

Nikiguzia kipengele cha sita, kuhusiana na nyadhifa za serikari ya Kaunti, lazima zibainishwe wazi ni vipi. Kwa sababu, mashamba haya ya jamii yako chini ya serikari ya kaunti. Kwa hivyo, ni vizuri iwe wazi pale, je majukumu ya serikali ya kaunti kuhusiana na haya mashamba yatakuwa ni yapi? Vile vile wakati wanashikilia haya mashamba ya jamii itakuwa ni kwa muda ngani? Na kama niwao watakaokuwa wakiweka hazina hiyo ama kuna wakati mwingine ambao kunauwezekano kwamba kamati inaweza tengenezwa ili kwamba mambo yote yanayohusiana na ardhi ya jamii yapitie hiyo kamati.

Vile vile, lazima iwe wazi kwamba kuna mashamba ya jamii ambayo hayajasajiliwa. Haya mashamba, je, wakati mtu amekuja kama mwekezaji katika kauti hiyo, ni nani ambaye atahusika katika maswala hayo? Ni vizuri kama itakuwa wazi ili mtu yeyote ambaye anakuja kueleza katika shamba za jamii, jamii hizo ziweze kuwakilishwa vilivyo. Manake wakati mwingine kuna mambo ya fidia, kwa mfano. Lazina tujue hiyo fidia ni nani haswa watakuwa wanaangazia.

Tukiangazia pia katika kipengele cha 37, tunaona kinazungumza kuhusu maswala ya ugawaji wa hiyo fidia. Ni vizuri wananchi wenyewe ama jamii ipatiwe nafasi, sauti na nguvu ya kuweza kuaamua kwamba ni nini haswa inataka kutoka kwa yule mwekezaji. Hii ni kwa sababu wakati mwingine hata si fedha labda zinatakikana; wanaweza kuamua kwa sababu huyu amekuja kueleza kwao waweke ombi kwamba awatengenezee barabara au awajengee hospitali. Mambo haya yanaweza kutoka kwa wananchi wenyewe.

Vile vile nikiangazia katika kipengele cha 46, kuna watu ambao wameweza kukaa katika mashamba haya ya jamii bila idhini au stakabathi ambazo zinatakikana. Ni vizuri pia tujue kwamba kabla ya huu Mswada haujakuwa sheria, je mambo yao yanaweza kuangaziwa ili wasije wakawa hawataweza kufaidika sheria hii ikipita? Vile vile kuna Waingereza ambao waliondoka na kuacha mashamba makubwa makubwa. Haya mashamba ni vizuri tujue kama yatarudishwa kwa jamii ama serikali. Inafaa jambo hili lifanywe wazi.

Nikimalizia, kuna watu ambao wanakuja kuwekeza kwa mfano viwandani. Ni vizuri wananchi waweze kueleza madhara ya kazi hiyo ambayo huyo kama ni mwenyenye amekuja kufanya. Hii ni kwa sababu tukiwa na uwazi utapata kwamba kukiwa na hatari yoyote ni vizuri hawa wananchi waweze kueleza na wao wenyewe wapate nafasi ya kuweza kuamua ni sawa

kiwanda kiwekwe hapo au si sawa. Mambo haya yote yakiangaziwa katika huu Mswada, wakati utaletwa kwenye Kamati ya Bunge ninafikiri utakuwa wa kufana sana.

Asante sana, Mhe. Spika.

Hon. Speaker: Yes, Hon. Ali Rasso.

Hon. Dido: Thank you, very much, Hon. Speaker. I wish to contribute to this Bill by saying that it is one of the progressive elements of the new Constitution. I believe this Bill gives effect to Article 63 of our Constitution. Through this Bill, we will put to rest the idea of the tragedy of the commons which has been associated with community land out there. Sixty per cent of the Kenyan land mass is community land. It is today the land that is considered empty and that successive Governments of this country will look at for development in terms of wind energy and agriculture without necessarily looking at who are the owners.

I want to say from the outset that Kenya is a unitary State. This Bill is good but we should not say that this land belongs to community "X" and the Government will not develop it. If we do that we are going to have serious conflict. If the Government wants to put up a major industry and a community believes that is their land and they do not want it there--- To an extent the Government will be strangled in its desire to develop maybe all parts of this country.

Land is capital and an asset. The French in Chad in the 1960s used to say "useful Chad" because it was good for agriculture and "useless Chad" because it was largely vast dry and arid land. During colonialism, Kenya was almost categorized along the same lines in terms of the useful Kenya and useless Kenya. Today, that has turned around and all land if properly utilized is useful in terms of development.

Hon. Speaker, we, the Members of the pastoralist communities, own most of the land in this country, but we are also the most disadvantaged people because we do not have titles to that land. We cannot claim it because even in terms of adjudication or demarcation, there is a serious bureaucratic process. Individuals own land and put their heart to it but it never belongs to them. They later die and pass it on to the next generation without having a simple paper called "title deed". Through this Bill, some of the desires of the pastoralist people can be achieved. I want to point out a few areas in this Bill.

First, is the issue of the county government. Devolution is a good thing. For those of us who come from the periphery of Kenya, devolution has brought a new dawn of independence. At the same time, devolution has its own challenges, particularly in those non-homogenous counties, where different communities live in one county. In such areas, the decision of the existing administration does not necessarily reflect the desires or interests of everybody within that county. From the foregoing, we see that the county government has memoranda of understanding (MOUs) with investors, transactions with multi-national companies and also undertakes development without necessarily allowing for public participation or involving the leaders. That is going to put leaders and communities at crossroads with their own counties. Marsabit, the county I come from, is currently considered as a haven for investment. But there is little participation or calling upon leaders, particularly the Members of Parliament (MPs). This is the case and yet we represent constituencies and communities. Such things are a recipe for disaster and conflict in Kenya. Therefore, during the Third Reading of this Bill, we must draw the red line on what the county may or may not do so that we can safeguard the future generations of those counties.

The other issue with this Bill and with many others that will come before the House is the idea of public participation. I do not see public participation as an issue just to do with interest

groups but as an issue of the public understanding and becoming aware of their fundamental rights in issues that will affect them today and tomorrow. When we pass laws in this House and tomorrow somebody goes to court and challenges it, it reflects badly on this House.

In recent times there has been something called “conservancy cropping up all over the arid lands of northern Kenya”. We do not know who owns the conservancy, under what laws it is operating, who governs it or who funds it. It is fundamental that, through this Bill, we identify what these conservancies are and who the people behind it are. If the resident communities do not benefit from the conservancy, it will also pose a big challenge to us.

Finally, I want to talk about boundaries. As you rightly know, one of the major sources of conflict in Kenya today is about land and boundaries. Because pastoralist communities move around grazing areas and water points, if you register land to belong to Community “X”, you will deny Community “Y” its source of livelihood.

Therefore, this is a good Bill. It is a progression in our Constitution but we need to be very careful when we look at it so that, both at the centre and the periphery, the interests of Kenya are taken into consideration.

Hon. Speaker: Let us now have Hon. Rose Nyamunga.

Hon. (Ms.) Nyamunga: Thank you, Hon. Speaker for giving me this opportunity to contribute to the Community Land Bill. I support it with few reservations.

Land has been a very emotive issue in Kenya. We all know that. For a long time, Kenyans or communities have lost heavily because of the fact that community land has never been registered. Currently, community land is held by county governments. County governments hold community land in trust for now. It is very important that the land is removed from the county governments’ hands and is registered in the name of the community to protect it from further loss. If there have been issues at the national Government, the same can be transferred to county governments. The Bill is very important because it is going to deal with the issue of community land once and for all.

Without registration of land, communities have found it very difficult when it comes to the Government acquiring some land for any form of development, for example, SGR, LAPSSSET and any other programmes that the Government has been keen on. Since the land is not registered in the name of any community it means that the community is disadvantaged and cannot negotiate with the Government. This is because any land which is not registered in your name or in a private person’s name is considered to belong to the State. The State can do whatever it likes with it. However, if it is registered in a community’s name, then it means that that community will have a say and can also negotiate with the Government so that it gets a better share of that land.

In the past, the Government, as I have already mentioned, just took public land for whatever programmes it wanted. If it is left like that, some powerful people within the counties or some corrupt officials within counties will grab it. It is very important that community land is set aside, registered and the community has a say on that land.

One of the pros of this Bill is that all community land is held by the county government. I have already said that. Clause 8(5) gives powers to the CS to make rules for land adjudication on community land. This will help in sorting out issues such as those of boundaries. We have issues of boundaries between Isiolo and Meru, and Kisumu and Vihiga.

Hon. Speaker, if the Cabinet Secretary is involved, rules that will solve issues of disagreement will be put in place, so that there is harmony.

Clause 21 of the Bill makes it mandatory for the community to protect its existing land based on natural resources. If any community has natural resources within its land, for example, oil in Turkana, the community will be part and parcel of protection of such natural resource.

The issue that should go for consideration is the fact that the Bill is silent on the transfer of community land to non-citizens. That should be looked into because it is not clear. With the number of fraud cases that we have in this country, leaving the CS to deal with them solely and making rules and regulations on adjudication of community land can create a loophole. The Bill does not streamline who is going to administer land on behalf of the community. That is another area which is a bit gray and should be looked into. There are already conflicts on boundaries as it has already been mentioned. Clause 7 of the Bill, which provides for the formation of societies to administer community land, is also set to cause conflict.

I support the Bill. It has been long overdue since several communities have suffered in the hands of powerful individuals and the Government. If it is streamlined, issues of land should be put to rest and everybody should feel that they own a say in community land in a structured and streamlined manner to benefit the larger community.

Hon. Speaker: Member for Turkana South, Hon. Lomenen. Is your constituency now called Lokichar?

Hon. Ekomwa: Thank you, Hon. Speaker for giving me this opportunity. I am the Member for Turkana South.

Hon. Speaker: Hon. Lomenen, before you proceed, I would like to take this opportunity to welcome students from Tangaza University College in Langata Constituency in Nairobi County seated at the Speaker's Gallery. You are welcome.

Proceed Hon. Lomenen.

Hon. Ekomwa: Hon. Speaker, I rise to support this Bill. This is an important Bill as far as pastoralists are concerned. We have been waiting for this Bill because we have been short-changed by many investors and groups interested in grabbing our land.

The first statement I want to make is that I support the Bill because everybody has been given an opportunity to take care of his or her resources. When people were busy selling their land and having title deeds, we were very patient as pastoralists because we have a philosophy of sharing resources. As far as pastoralists are concerned, the most important issue in this Bill, as provided by the Article 67 of the Constitution which is very clear, is that community land is communally owned. The authority and ownership rests purely on the community. This Bill must be very clear that in the pastoral communities no one has authority to sell or own land. The land is owned communally. The Bill should be clear that in the pastoral communities, no one has the mandate to sell any piece of land to anyone. The land belongs to the whole community. What remains is either for the county or national Government to strengthen ownership of this land by the community. Those who are involved must clearly know that we own land communally because we have a culture of using land communally. We graze and live together. For example, as a Member of Parliament, the land I live on is not mine. It belongs to the community. If I live somewhere that has good pasture and it happens that there is drought, all the people from the furthest corners will bring their animals there. You cannot stop them. So, when you say that a certain piece land has been registered to a specific people, you are denying individuals from other areas the right to own it. I want us to understand that in the pastoral areas land is owned communally. There are people who take care of these pieces of land on behalf of the others, so that any time we want to use it, we can. It cannot be owned by an individual.

When land is registered, who will own the title deed? Whose name will it bear? Will it be Lomenen, the chief or the whole community? It has to come out clearly that for pastoralist communities, land is communally owned. When it comes to usage of land, the community assembly comprising of elders, area Member of Parliament, governor and Members of the county assemblies (MCAs) will be responsible for protecting it. If they will want to give out a piece of land to an investor or the Government to build a health centre, they can call a meeting to discuss and agree to lease a specific piece of land, but not to give it permanently. It should be clear to all Kenyans that in Turkana, Mandera and other pastoral areas, we cannot have a title deed that gives someone a mandate to own that land. It is not possible. Investors like Tullow Oil Company or whoever they are should know that they cannot own that land.

Hon. Speaker, the Bill provides that the authority of unregistered land will be vested in county governments. Some county governments are misusing that authority in that once one is given an opportunity of being the governor or the CEC in charge of lands, they give out land anyhow without bearing in mind its importance. For the Turkana community, unregistered land is meant for grazing, performing culturally important functions and as water points. The authority should remain with the community. It should not go to the CS. The CS is in Nairobi and the governor cannot own our land. That land is purely under the community.

I support this Bill because it provides that all powers over this land rest with the community. You see people giving title deeds for a land they do not know where it is. You will have somebody coming to lobby with a title deed, but when you ask where the piece of land that he owns is, he says that he has been given in Nairobi. Let it be very clear that we wasted time, our rights and resources in taking care of this land.

Sometimes back, we did not know that we had oil under the land. We did not know that there is water under the land. This Bill has come at the right time. We want it to protect people who have been persistent and patient in taking care of their land. If there are people who have already used their land, let them go by ladders heavenwards as we go horizontally to make use of our land. Let it be clear that whatever oil, water or gold we have, if the Government wants to make use of the resources, it should come, we should sit down as a community and agree on the best way to do this. We should agree on the royalties and benefits and whether the Government can compensate us before it gets its oil. Let it be clear that the oil that the people are mentioning are the remains of our ancestors. It is the remains of our animals and our fathers. So, we have to enjoy it because it is our remains that made the oil. Let it be so clear to anyone. When you were making use of potatoes or sugar, the remains of our ancestors were decomposing making oil. So, there is no way we can be short-changed from the remains of our fathers and ancestors.

This Bill is so important. During the amendment stage, we will be clear whether it means that some areas will be so special. We should not be categorised as Nairobi or Mombasa. We should remain special and we should not interfere with traditional defence system of land.

I support.

Hon. Speaker: Hon. Andrew Mwadime.

Hon. Mwadime: Thank you, Hon. Speaker, for this opportunity. From the outset, this is a very progressive law. We are moving ahead. Since this Bill is actually very sensitive to our society, it is good that when we are writing such Bills, we should use simple straight forward language which everybody in Kenya can understand.

Land is very sensitive to all Kenyans because it determines lifestyles of certain communities. This is a very important and sensitive matter. When drafting a Bill like this, we should take consideration of all communities.

This Bill, as I have said, is progressive, but when we talk about community, we should be very clear. In some communities like in Taita Taveta, 24 per cent of the land consists of ranches and over 62 per cent is a national park. When we sum up the two, it comes to about 86 per cent. The Bill says that if you register a community like that of ranches, the powers are vested on the CS. At the same time, immediately after Independence, some pieces of land were given out by the whites, but communities did not know about the laws on land. They did not get their land. It was occupied by different people. In Taita Taveta, Mwatate Constituency, we have the Taita Taveta Sisal Estate. The estate was owned by the community living around there. If you add 86 per cent to the land which was given out after Independence which covers about 6 per cent, it would be about 92 per cent. That tells us that the Governor of Taita Taveta County can only control 8 per cent of the county. That is why I am saying that in this Bill, we have to be very careful. At the same time, we should be very serious and capture all the communities in the country. Otherwise, some governors will not have land to administer.

On audit transactions of land, the Bill should make modalities as per our Constitution which covers historical injustices. We should conduct an audit of all land transactions from early 1950s, 1960s up to now to uncover the ills that were committed then and the communities that were affected be compensated accordingly.

As I had said earlier, land is very sensitive to Kenyans. When we talk about it, we should always write in very simple language, so that, at least, everybody can understand. I urge that, if possible, a review of the Bill be done within a shorter period rather than the five years which has been stipulated here. Maybe for the first 20 years, it can be reviewed after three or four years and then after 20 years, we can go to 10 years instead of five years.

Land enables recognition of different cultures in this country. This Bill should be aligned in such a manner that it caters for all cultures within our country. If I were the one to rate this Bill, I would not have hesitated to give the Committee about 66 per cent for work well done.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. It is also fair to appreciate that the National Land Commission has been given the exclusive authority on its own motion or upon complaints in Article 67 to investigate present and past historical injustices and, indeed, even advise. They have a huge mandate. Your Committee should begin to hold it to account. Apart from just going out firefighting, they should also be working. We need to document this for purposes of ownership by this House.

Well spoken, Hon. Mwadime.

Hon. Robert Pukose. Absent, not desiring to be present. Next, is Mohamed Maalim. You very easily by chance follow each other.

Hon. (Eng.) Mahamud: Thank you, Hon. Speaker, for giving me this chance to contribute to this very important Bill. The Bill sets the legal framework for actualising Article 63 of our Constitution. In our Constitution, land has been divided into three namely, public land, private land and communal land. Land is the single most important asset this country has. Kenya has a landmass of 582,000 square kilometres. Similarly, within the 582,000 square kilometres is land which is inhabited by Kenyans of various backgrounds. Some are agricultural while others are pastoral. There are people who live in shrines and *kayas*. I come from the northern part of

this country, which forms one-third or two-thirds of the land mass of this country. Very few parts of our region are agricultural. Very few parts are also public land. Public land is where we have Government properties like Army camps and schools. The vast majority of that land is communal land. This land has not been managed and pastoralists are grazing their animals on the land. Ownership is by settling. When you have a house, then you say it is your place.

This Bill provides how that land is going to be managed, protected, utilised and administered. The task ahead of us, as a nation, is very hard. It is not going to be easy. Communities should be registered first and then their land should also be registered. This is totally a new phenomenon. In some parts of this country, people cannot understand it because communal land is very minimal compared to public and private land. This Bill is very important to the marginalised parts of this country, where development has never taken place and where land has been left for the people to manage on their own.

I do not know whether this has worked elsewhere. Maybe it has been borrowed from other jurisdictions. It is important that entities which are entrusted with implementing this law when it is passed are appraised of the difficulties that are ahead of us. The Bill attempts to provide how we can recognise, protect and register community lands and also how we can convert community land to public land. This Bill is very important. What my colleague from Turkana said is true. These marginalised areas now have a potential due to the mineral resources. It is important that before we embark on this registration, people are properly educated. There must be proper public participation, so that people are aware of what needs to be done. The danger is that while we are making this law, some guys are already registering communities. That could be a danger. Any registration for purposes of community land should be put on hold until this law comes into place. We should also give a grace period for people to be sensitised, so that no one will register these communities. Before you register land, you must have the communities registered.

What are communities? The definition here is very vague. This country has communities, tribes and clans. Do all these three words mean the same thing? There will be a lot of challenges, but it is the beginning and the right direction. We must be careful, so that we do not disenfranchise the very people we want to assist.

I support this Bill. The framers of our Constitution understood the need to manage our land properly. What we know clearly is public and private land. Before we reach this level, we would like our counties to be careful, so that they do not just go and deal with land and later on disadvantage communities. We want our land to be protected for our communities. Those who want to graze or farm or convert their communal land into private land should be free to do so. This is a milestone. It is the beginning of a long journey. Land issues are very complicated. You know what is happening in the Ministry of Land, Housing and Urban Development. We enacted a law and formed the National Land Commission (NLC). People are fighting for control instead of fighting about how to do the job in the best way. There are a lot of empire buildings. Everybody wants to be a controller of something. I hope this is not going to be another toll station which will confuse Kenyans. This Bill should bring clarity in the way we manage our land.

With those few remarks, I beg to support. I hope for a day when our land will be properly managed and some sanity brought to play within the land sector.

Hon. Speaker: Member for Kathiani.

Hon. Mbui: Thank you, Hon. Speaker, for this opportunity to contribute to this debate on community land. Members have contributed since yesterday and quite a lot has been said. In fact, a lot of ideas and errors that have been noted in the Bill have already been canvassed.

I have observed keenly that Members have extreme interest in this Bill, particularly Members from certain regions like pastoralist areas. Obviously, they have major problems concerning communal land. My observation is that land is a very important asset or resource in this country. In fact, of the factors of production that we learnt in Economics in school, in Kenya, land is above capital and labour. This can be seen in the fact that we have seen people in this country becoming instant millionaires and millionaires becoming instant paupers just because of issuance of a title deed or withdrawal of one.

The issue of land has also been a source of conflict in this country. We have seen leaders in land cooperatives being brutally murdered. We have seen communities that should exist in harmony constantly fighting over ownership of land and grazing rights. Recently, the President bought armoured personnel carriers to ensure that peace and harmony is brought among these communities. This equipment is used in the military for war. In our electoral cycle of five years from the time we started multiparty elections, we have noticed that every five years there are clashes in certain areas among some of our communities. The last one culminated in the 2007/2008 Post-Election Violence. Some people wanted to say that, that was to do with elections. However, the issue of land was at the bottom of that.

Kenyans have a solution to the land problem. This solution came in the year 2010 when we promulgated the new Constitution. This Constitution provides solutions. The Bill draws heavily from the Constitution of Kenya. In fact, I want to discuss this Bill on the basis of what the Constitution says about land. The guiding principles of this Bill are drawn from Articles 10 and 60 of our Constitution. Article 10 deals with values and principles of governance. These are issues to do with human rights, human dignity, equality and equity, social justice, non-discrimination and protection of the marginalised. It also talks about integrity, transparency and accountability. So, when those values and principles are applied to land issues in this country, then we will start to see solutions.

Article 60, which is within Chapter 5 of the Constitution, is on issues to do with land and the environment. It talks about land being held, used or managed in accordance with these principles. Here we talk of issues to do with equality, access, security of land rights, transparency, cost effective administration and issues to do with gender, among many others issues. If the guiding principles that have been quoted in this Bill are followed to the letter, then we will begin to solve the problem of land. The Bill is anchored on Article 63 of the Constitution. I would like to look at one aspect of this Bill, which is an issue. I want to quote it because Members have mentioned it. This is Article 63 (3) of the Constitution, which says:-

“63(3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held”.

It also goes further to say that community land shall not be disposed of or otherwise used except only when the interests of the owners are taken into consideration. It is also quoted in Article 6 of the Bill.

Hon. Speaker, I am mentioning this because many Members have raised concerns about allowing county governments to take control of community land. I just wanted to point out that we cannot do much about it because it is in the Constitution. As we come up with amendments,

we must look for ways of making county governments to understand that they do not have a free rein on the usage of unregistered community land.

I come from Machakos County and the county Government of Machakos was the first county government in the country to invite investors to invest there. We are also the first county government to purport to be coming up with a new city. The most interesting thing is that what was being given as motivation and where that city is supposed to be built is community land. It is important for the county governments to understand that the interests of the communities must at all times be taken into consideration when they start talking about investments. My understanding of an investor is someone who wants to put in money, so that they can get returns. If we are going to create a situation where people will be given land for free, then what are they investing? People need to understand. If you want to invest, be ready to buy land, build on it and then equip it accordingly. I noticed in a recent newspaper an advertisement that the NLC has given authority to the county government to give out land for free.

I want to quote Article 68 of the Constitution, which gives Parliament powers to legislate on land. In Article 68, the Constitution partly says:-

“Parliament shall –

- (a) revise, consolidate and rationalise existing land laws; ...
- (c) (iv) to protect, conserve and provide access to all public land;”

As a Member of Parliament from Machakos County, it is in my best interest to ensure that we protect that land and ask the NLC to withdraw the advertisements in which they purport to be giving away community land. The community is up in arms against that move. I will do my bit in fighting to protect the interests of the community. I urge my colleagues to ensure that we go through this Bill keenly during the Committee of the whole House. As we propose amendments, we should review the entire Bill, clause by clause, word by word and letter by letter, so that by the time we are through with it, we can be sure that the interests of the people that we serve in this House are taken into consideration. This Bill is timely. It is one of the most important pieces of legislations that I have seen this year.

With those remarks, I beg to support.

Hon. Speaker: Member for Ndaragwa.

Hon. Nderitu: Thank you, Hon. Speaker for giving me the opportunity to contribute to this Bill. I am a Member of the Departmental Committee on Lands. I would like to happily report that we had numerous meetings during which we discussed the Bill with various interested parties.

A taskforce was formed under the Ministry of Land, Housing and Urban Development to come up with proposals to be contained in the Bill. The taskforce gave us recommendations. During the Committee of the whole House, we will introduce a lot of those recommendations. There is also the issue as to whether the taskforce Bill was ignored. I would like to report that the taskforce was formed under the guidance of the Ministry. When the Ministry drafted the Bill, they borrowed heavily from the taskforce’s recommendations. Most of the issues that arose were tackled in the taskforce. An example is the definition of “community”. We tried to go back and forth to identify the best way to identify communities. As most of the speakers said, there is need for an in-depth review of the definition of “community”, so that the rightful people can become the owners of community land. As it is rightly said in this Bill, there is the issue of preparing a register. The people living in an area together with the county government are mandated to identify the rightful owners of community land. They have the leeway of going further to engage

surveyors to demarcate the actual area that is going to be registered. So, this is a good move. I know that most of the suggestions that have been given to us will be carried forward during the Committee of the whole House.

We are very sure that the involvement of the county government has been a very controversial area because people were not very happy with the way the former local authorities utilised public land. There is a lot of fear that there might be misuse of public land. That is why most of the people who talked to us expressed concern. In this Bill, we are stating clearly the role of the county government. As far as the issue of using land is concerned, it is left to the community. There are many people who wanted us to give more roles to the county government, but that will be an issue to be considered during the Committee of the whole House.

The issue of whether the county government can alienate community land has been a thorn in the flesh. Most of the people we interacted with felt that the county government should not be given that right. There is also the issue of the right of use of land. We know very well that there is a transition period during which communities have to identify themselves for purposes of registration. There are people who asked what will happen to lands which have minerals. Most of them suggested that we introduce a transitional clause to allow the county government to guide the community on the use of national resources. That is, again, an area we shall have to look at further.

The involvement of the Government or the Cabinet Secretary in registration of community land is an area that has been a bit critical. We feel that the Government has a role in protecting communities. The community will identify itself. The only thing that the Government will do is to register the community. We have various registrars. This is an area which will have to be reviewed during the Committee of the whole House to ensure that the appropriate registrar is known clearly. There was a suggestion that communities register themselves as societies, but we had an in-depth look into the matter in terms of how to register communities in accordance with the law that we are enacting rather than referring to another law. Can we have a registrar of community land who will register that interest directly rather than it being registered as a society or a registered company? This will remove the ambiguity in registering communities.

On the issue of community register, the processes that should be followed are very well enumerated. This one will just have to be enforced, so that when a community comes up with delimitation of an area, they should identify a surveyor, so that they give the map, name, membership and the user, so that all the components of that land are included.

On administration, the decision of the assembly or the membership is very important. This is an area that we need to look at carefully because we said an abiding decision according to the Act has to be okayed by 50 per cent of the members present in a general meeting. So, there is room for distortion. This is an area that should be looked into properly. We will be bringing amendments as most of the people who brought us these issues are here like Hon. ole Ntutu, who feel that the membership of the full community should approve most of the decisions that are made. So, the issue of saying either two-thirds or 50 per cent is an area that we should look at, so that we confer this right to the right people and all decisions made should include everybody else.

On the issue of the rights to be enjoyed, the rights should be obsolete. Where the right is leasehold, all the conditions of leasehold should be enjoyed by the community as per the constitutional right of ownership. That is an area that has brought a lot of issues because when we talked to some people, it is like this Community Land Bill is in transition. Everybody, at the

end of the day, would like to have an individual ownership. As we hear from some of the communities, this Bill is there to stay as some communities would like land to be owned as such and indivisibly as community land as long as we live on this land. So, that is an area that we will explore and during the Third Reading, some of these stages will be properly effected.

There is the issue of conversion of land from community land to Government land. The Bill has enumerated very well how conversion will be done either through compulsory acquisition, transfer or surrender, but of utmost importance is that the community is not supposed to be deprived of their rights. So, that one should be taken care of. The Land Act, 2012, is the main Act dealing with land registration. There is no limit to that land as far as application of this community land is concerned.

The issue of personal interest is an area that is of interest. There are Members who were feeling that for this community land to protect each and every individual, it needs to be a bit expanded. We were just joking with my friend here and saying that today, if a girl got married to a gentleman in that community and this lady is not in the register of that community and she has a family, what happens? So, we need to go deeper and address the issue of interaction between communities, so that even new people coming in the communities are catered for.

So, the issue of review of the register has been proposed for five years, but we feel that five years is too long. If we gave it a term of two years, that would be practical so that whatever happens within a year or two can be included in that register.

So, the Bill has captured most of the aspirations of the people.

Hon. Speaker: Let us have the Member for Bondo.

Hon. Ogolla: Thank you, Hon. Speaker. I support the Bill in that it is addressing quite a bit of the legal historical issues that we have had around land and the extent to which it handles the general direction on how we have been handling trust lands in the past, given that it is only trust land that was clearly provided for in the old Constitution. This Bill addresses past challenges that were there in terms of ownership.

I am isolating a number of weaknesses that are in this Bill. The Bill categorises community land into two namely, registered and unregistered land. It shows elaborate ways in terms of how to manage and administer registered community land. It does very well in looking at how conversions can be done. It looks at the issues of rights in a very good manner.

However, on the second category of land that one can easily discern from the Bill in the name of “unregistered community land”, the Bill has not done very well. In my view, the Bill in every clause talks about registered community land and an addition of all those areas. For example, when we are talking about administration and management, it would have indicated very clearly how you administer and manage unregistered community land once you are through with the registered community land. When we are talking about issues of conversion, it would have done that very well for both. In a similar manner, all the subtitles that we have in the name of clauses could have been handled if we clearly gave a clear direction in terms of how to handle the issue of unregistered land.

Clause 6 gives county governments the trustee arrangement for purposes of unregistered land and that is very good. I did not want to interrupt Hon. Lomenen when he was saying that county governments can transact land. That is disallowed in Clause 6(2). It disallows county governments from transacting land. However, when that happens, there is the issue of use. I want to differentiate between transaction and use. As a trust, the county government will place unregistered land to some use. This Bill needed to have clearly indicated what a county

government can or cannot do when it is holding unregistered land in trust. It says that you cannot transact, which means that you cannot change use or alienate. However, what happens to townships that are coming up in unregistered areas such as markets? In my view, this is one thing that the Bill has not looked at very clearly and needs to be brought out in a better way.

The other problem that the Bill is not dealing with very clearly is the whole issue of transition. How are we moving from where we were into this Bill? One area is that the transactions that have been done before particularly on trust lands were done by the county councils and town councils. There are many others that have got into some kind of lease arrangements with some other parties. I want to bring a point here from my constituency on the Yala Swamp area, which is a trust land. The Bondo County Council and Siaya County Council got into an arrangement with external investors and they have a contract. They have leased it. How does that come in, in terms of this Bill?

If we went ahead as Siaya or Bondo after the Bill is adopted and formed a community land and went ahead and registered that area, how then do we relate, as a newly registered land, with an external actor contracted by the former county council? That, in my view, is an area the transition mechanism needs to look into in a clearer manner.

Another thing that we need to consider is the fact that about three quarters of the land we have in this country was trust land. This runs all the way from Turkana County to the Coast. There will be difficulties in registering a huge chunk of land as community land. Small areas like what used to be cattle dips or riparian areas are very easy to handle. You can mobilise communities, bring them together and register them. What happens to areas like Turkana, Marsabit, Wajir and Garissa? How do you get people to come together and appreciate that all the land belongs to them? How do you get all of them to come together for the purpose of registering the entire area as a community land? That is one thing this Bill needs to look into. How do you sensitise and mobilise communities for them to form a community that can register land in vast areas like the ones in northern Kenya?

The other issue is practical challenges. As I mentioned, where we have small areas like what used to be cattle dips and which were trust areas, people need to come up as a community and register it. That is simpler and can easily be done than when we talk about huge tracts of land in some parts of this country. This Bill lays out a proper arrangement for registering community land, but it does not do much in terms of unregistered community land, particularly where it gives the authority of trust to the county government. We might end up having that trust abused in the same manner the former local authorities did.

With those remarks, I beg to support hoping that the issues that we have highlighted will be looked into.

Hon. Speaker: Member for Kajiado West.

Hon. ole Sakuda: Thank you very much, Hon. Speaker, for giving me this opportunity to make a few contributions to this very important Bill. It is also good for me to mention that I am the Vice-Chair of the Departmental Committee on Lands and I am also a pastoralist. This is, therefore, a very important Bill not only to me, but to the community I represent here because we still have a number of community land parcels in Kajiado County.

I would also like to thank the House Business Committee for bringing this Bill forward. In the last four months, it has been appearing as Item Number 16 or 18. We are grateful that, at least, it has seen the light of the day.

The principal objective of the Community Land Bill 2015 is to provide for a legislative framework to give effect to Article 63 of the Constitution and provide for the four pillars that seek to recognise, protect and administer community land. With the four pillars, this Bill seeks to put to rest a lot of issues that the Members have been raising. As a Committee, we assure Members that we invited many stakeholders including the PPG caucus to bring amendments which we have since considered. I encourage Members to look at the proposed amendments that are before the Committee. We have adopted the amendments for introduction to the Bill during the Committee of the whole House stage. One of the most critical provisions of the Bill is that it seeks to revert back the ultimate authority over community land to the people.

Clause 6 gives the county government authority to hold unregistered community land in trust on behalf of the communities. A number of our Members have expressed fear due to lack of consultation by the county government when it comes to investment on community land. We have handled a lot of cases. The Ministry and the NLC informed the Committee about a number of cases where governors, without consulting the communities, sign memoranda of understanding with investors and enter into deals involving natural resources that are within community land. This Bill seeks to put to rest that difference between holding in trust on behalf of the community and the community having a say as to what should be done with their land. When it comes to investment or exploitation of resources from a community land, the community shall have a bigger role to play in making the final decisions.

Hon. Speaker, Part IV of the Bill provides for the nature of community land title. It contains provisions that set out interests conferred on a community upon the registration of community land. The rights of the community, as the proprietors, are of registered community and the conservation and management of resources in community land.

Part V of the Bill contains general provisions relating to conversion of community land. It provides for the process through which community land may be converted to either public or private land *viz-a-viz* the process through which public or private land may be converted to community land. This part also provides for the setting aside of community land for purposes of public use. During the previous dispensation, we saw how local authorities abused the trust vested in them as far as land is concerned. Instead of setting aside trust land for the public, they gave it away for private use. This Bill seeks to put such issues to rest, so that public utility land can strictly be used for the intended purposes.

Part VII of the Bill contains provisions relating to the management of the environment and natural resources within a community and the benefit sharing rules and by-laws. In our amendments, we have flagged out this area and made it clearer and simpler in terms of the benefit sharing criteria and who will own the names that appear in the title. We have deliberately gone a step further to ensure that all this is included.

This is a very important and timely Bill. As I have said, on behalf of the Committee, we have made room for several amendments. We also welcome any Members who have any private amendments. We were even suggesting that before the beginning of the Third Reading, if it would be possible, we hold a *Kamukunji*. This is a very critical Bill, so that we can go clause by clause and sentence by sentence with the Members for them to be comfortable that some of their proposed amendments and fears are carried.

As I said, we also want to encourage Members to read the amended version, so that when we will finally be passing the law, all the concerns will be put in place. Again, I completely support this Bill. We have taken a lot of time to look at it. We look forward to it being a law that

will put to rest the conflicts that come during resource sharing between the county governments and the community.

Hon. Speaker, with that I support.

Hon. Speaker: Hon. Wilber Ottichilo.

Hon. (Dr.) Ottichilo: Thank you, Hon. Speaker for giving me this opportunity to make my submission on this Bill. Overall, it is good and it is going to solve quite a lot of issues particularly with regard to community land which has been in dispute for quite along time.

Having said that, I have quite a number of comments to make regarding the Bill and specifically the issues that I am going to flag out that need to be given due consideration. The first thing has to do with the terminologies used in the Bill. They must be very clear. For example, the definition given of “community” needs to be re-looked into. The way it is may be very confusing and could cause a lot of problems later during the implementation process of the law. A “community” is defined as an organized group of users of community land. What we need to ask ourselves is: In practice, do all the people use community land in an organized way? Do they behave in an organised manner in terms of land use? The issue of a group of users is very important and, therefore, we must look at the definition. I find this definition not very particular and clear.

Also, when it comes to “community land”, it has been defined in the Constitution under Article 63(2), but we need to go further and give what we mean when defining community land. Otherwise, we may land in a lot of problems. The definition of “community” and “community land” need to be looked into and more consultation should be done. Equally, there is this term “community reserve land”. Again, this is very confusing and opens a lot of interpretation. If I read it, this is how it has been structured:-

“Community reserve land” means any land set aside for communal or land allocated by the registered community for individual occupation and use”.

I want us to look at the issue of individual occupation and use. That can bring a lot of problems. As we look at this Bill, we must look at the practical aspect of it and go back to history to see what happened. I am happy some of the Members in this House come from those eras. We used to have Group Ranches Act, which was, indeed, to implement what this Bill is expecting to implement. The Group Ranches Act provided that people can be given small parcels of land for settlement. Later on, members of the group ranches started agitating for sub-division of group ranches. I can remember very well the way group ranches were structured and demarcated and they took into consideration all the ecological considerations.

They looked at the grazing systems and were real ecologically viable entities. But what happened when they became group ranches and when we brought in families or clans together? Immediately, there were fights. People started wanting to have their own land. There was even the issue of land use. Some families said that they did not have large stocks of livestock and, therefore, the other families were overusing the land more than them. In that scenario, disputes arose. That is why when you go to Narok and Kajiado, all these group ranches have been sub-divided. Therefore, we must be very careful because this law could be a way of opening a Pandora’s box whereby we will end up sub-dividing all the range lands which are not sustainable in terms of arable land use.

The other terminology which again I want to be re-examined is “fragile ecosystem”. It is defined as:-

“Fragile ecosystem” means an ecosystem hosting threatened biodiversity.

This is not true and is not a good definition. I know what “biodiversity” and “fragile ecosystem” mean. So, this definition is obviously wrong. We must re-define what we mean by “fragile ecosystem.” A fragile ecosystem must not necessarily have threatened species or biodiversity. Most of our arid areas are defined as fragile ecosystems because if you practice certain land uses, you destroy the ecological integrity of the areas. For example, if you start doing extensive farming in those areas, the way we have gone to Galana, in the long-run, we are going to run into major ecological problems. The first ecological problem that we are going to run into is salinity. The soils are going to become saline and, therefore, there will be no growth of vegetation. Eventually, it becomes a desert. Definitions are very important.

Another issue that I need us to look into is that of community lands. We know very well these community lands are the Arid and Semi-Arid lands (ASAL) of Kenya. We know the type of land use in these areas. They are suitable for pastoral land use systems. The moment we start to sub-divide these lands, we are not going to sub-divide them to a level where they have an ecological integrity, so that they can be self containing. If we do so, we will end up sub-dividing lands that will not be ecologically viable for even pastoral land systems. We need to look at the type of land use. When reading this Bill, I have not seen a clause which says the type of land use as we sub-divide this community land. Consideration must be given to the potential the land has that can be put into particular uses and not other uses. These are very serious issues that we have to look into. My biggest fear is that we are going to pass this Bill, but its implementation will be a nightmare and will cause a major rift among major communities in pastoral lands.

With regard to the issue of natural resources, the Bill clearly states that natural resources must be identified in those areas and conserved. It is very clear in this Bill that they must be identified before the registration of the land, so that we already know that these natural resources must be conserved for everybody’s welfare. Otherwise, identifying them later on will be very difficult.

I support this Bill, but we need to propose a number of amendments for it to be operationalised.

Hon. Speaker: Hon. Sakwa Bunyasi.

Hon. Bunyasi: Thank you, Hon. Speaker. I rise to comment on this Bill.

I have a lot of interest in it because I have observed these issues since the mid-60s when we began with the processes, particularly in Maasailand at that time. Kenya has learnt a lot, must have learnt a lot or should have learnt a lot on how this process works in dynamic settings.

My first concern about this Bill is that it is a bit ambivalent about changing society. It has defined “community” in a static, backward-looking manner and not one that is accommodative of the future. It is unclear what the rights of the new entrants would be like. It says in Clause 2 ““community” means an organized group of users of community land who are citizens of Kenya and share any of the following attributes- (a) common ancestry; (b) similar culture; (c) socio-economic or other common interest; (d) geographical space; or (e) ecological space. ” It amplifies in many ways what ethnic groupings are, which may well be the first order of presence as we see in our communities, but communities are very dynamic. In areas like Narok, for example, if there is anybody who is older than 50 years, they would have seen the tremendous change that has occurred. I am sure there are tensions as a result of it, but there are also important changes that have occurred in terms of land use, growth in incomes and quality of lives. This definition of “community” is looking back and is not accommodative of the changes that are occurring very rapidly.

Clause 3 says that community land can be held under customary, leasehold or freehold systems. It goes on to say that every person shall have the right, either individually or in association with others, to acquire and own property in accordance with any description and in any part of Kenya. That for me describes the ambivalent nature of this Bill. We accept, because of the details in the Constitution and as a growing society, that we want freedom to buy, settle and conduct any activity in any part of this Republic, but the first definition is not very accommodative of that. In theory, you can go anywhere that you would like. I just wonder whether anyone can settle in any part of the country. Is it one or the other? Both, if held tightly, would not allow for free movement that is very typical of Kenyans now.

My other concern with this Bill is the issue of acquisition, including compulsory acquisition of land. On the issue of acquisition of land, it says that there will be just compensation. I do not understand. The word “just” is not defined. To me it is not an obvious term. In fact, it is a very complicated term. What is “just”? We know that it should be fair in accordance with market conditions. The value of land must mimic approximate market conditions. That I and other people can understand, but the word “just” is something else. Who determines what is just? In areas of forceful acquisition, the public sector determines what is just using fake valuations that are done by Government valuers; somebody who just sits in some corner. For example, if you took the whole of western Kenya and Nyanza put together---

(Loud consultations)

I need your protection, Hon. Speaker. One valuer sitting in Kisumu goes round to all places and has no notion of prevailing conditions. Another valuer may sit in Nanyuki and is in charge of the whole of North Eastern. They are very few and do not have a good grasp of the generally accepted standards for valuation. The term “just compensation” is vague. We need compensation that mimics market values. If we do not do that, there is essentially going to be a one-way determination of values, which will be by the public sector. The word “compensation” will be a misnomer since there can only be an acquisition.

There are a number of other areas that I would like to focus on. Clause 18 in Part IV deals with the issue of rights once acquisition has occurred. In the ordinary exchange of goods and services, once you pay a just price, you take it over and it becomes yours. But as you read these paragraphs, it says that the land only belongs to you for a specific purpose. Once you say that, it will mean that once you no longer need it for that specific purpose, without it being explicit, it will revert to the owners. There is a mention somewhere in Clause 23 of reversionary interest. These are very explosive issues. Because they will apply far into the future, we can make all kinds of promises. If you look at the lands that have completed their 99-year lease, for example, and have reverted back to the community, the purpose for which they were intended is perhaps no longer realisable. It is true in the sugarcane-growing areas particularly in the Nyando Basin, but it is also true in tea-growing areas and in many other areas around the country including conservancies that were talked about earlier. Are we really serious that communities will have the first right of recall on reacquiring this? That will be what is implied in the definition of “reversionary interest”. We need to make this quite explicit in full realisation of the implications of these kinds of provisions in this law.

The problem I have with this law is that it is vague in many ways because after all, the critical points will be crossed in the future. We still need a substantive amount of work and a

rethink and not just an amendment done in a rush when there are 20 Members in the House during the Third Reading. It would make sense that we use the words “in case of a compulsory acquisition” instead of the words “for a specific purpose”. For as long as it is for a purpose that is in public interest, such land should remain in public domain for as long as that is needed. So long as you imply that the land would revert back to the community once that purpose is no longer needed, then very many parcels of land would go back. It should not be midstream when the contract has been agreed that the public sector can then redefine what they need it for or what has changed in that interest. If that is the case, then, we should simply say that the Government could acquire the land for as long as it is in public interest. The public interest dynamic and can go on forever.

Hon. Speaker, we know what has happened in areas like Nairobi when the 99-year leases have expired. There are other risks inherent in this. Community land can be held as communal, family, clan or reserved land. If people can take a little interest in understanding the history of land transformation in Maasailand, particularly in Narok and Kajiado over the last 50 years, they would see how this moved into community land with communal interests into clan and individual holdings which were captured by the elites. This would cause enormous tension. In the northern areas because of the absence of water, there are large movements and as investments in water occur, there will be more sedentary activities and those who will stay will acquire those lands. The more powerful are the ones who will dictate.

As I conclude, amendments in the Third Reading Stage will not be enough to make this a quality Bill on a very important area.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Kibra.

Hon. Okoth: Thank you, Hon. Speaker. I appreciate this opportunity to contribute to the Community Land Bill.

[The Speaker (Hon. Muturi) left the Chair]

[The Temporary Deputy Speaker (Hon. (Ms.) Mbalu) took the Chair]

This is an important Bill. It is trying to bring the gains, opportunities and hopes in our Constitution. I represent Kibra Constituency and, as it has already been said by several Members, the definition of who can be an owner of community land and registered group will matter very importantly. A lot of debate has focused on the interests of people in pastoral and rural areas, but very little has been contributed in this debate on the interests and realities of communities that live in urban areas such as the Nubian people of Kibra Constituency; for whom the question of community land is important.

When we first came to this Parliament, I asked about the interests of the Nubian people on the community land in Kibra. While there was a political goodwill to resolve the issue and grant them their rights and a sense of justice when it comes to ownership of land in Kibra, it was not clear under what legal framework. The law under which the title to be granted by the Government and who the owners would be at that point was not clear. I am happy that we have reached a place where we can set a proper legal framework for the Nubian people and other people living within Kibra to know the framework under which that land can be given to the Nubians and the protection for the non-Nubians who live there.

When I look at this Bill, I go back first to the Constitution which talks about community land very clearly. The Constitution states that community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. That is very important. The answer might be here to what many colleagues have asked on the definition of “community”. We should go back and see the angle that the framers and authors of our Constitution were going for on the basis of ethnicity. My argument and thought will be to try and persuade this House to restrict the definition of “community” in a serious and clear way to the identified and well known ethnic communities of Kenya. The Bill talks about the definition of “community” beyond what community land is described in the Constitution. It talks about a community being an organised group of users of community land who are citizens of Kenya and share any of the following attributes:- Common ancestry, similar culture, socio-economic or other common interest and geographical or ecological space.

Hon. Temporary Deputy Speaker, there is one risky part of that definition that I would urge to be taken away. When you look at part (c) on socio-economic or other common interest, you cannot equate people who are clearly identified by a common ancestry such as the Maasai, Turkana, Nubi, Luo or the Digos to alumni of Alliance High School, Kenya High School or the Kenya Golf Association. Those are communities of common interests. Can we equate them to the same interests in community land as we would the Maasai, Turkana, Samburu, Luo or the Nubi or any other ethnic community of Kenya? I do not think so. Part (c) needs to be taken out in this definition that tends to stretch and broaden it a little bit too much for comfort.

Hon. Temporary Deputy Speaker, the issue of community members registering interests is a matter that is very important. As we go to the Third Reading Stage and make final amendments, we should put in a clear definition of the community to include women who are born in the community or those that are married into the community. In many cultures, women do not own land and if this is not clearly addressed, they may lose out on the benefits of community land. There is a section of this Bill that talks about community assemblies to be put together to decide how land will be governed, dispossessed or its usage changed. When we look at the gender aspect, our culture and history, that is a very risky proposition unless we include here some principles of our Constitution; the principles of equality and equity, that women born into a community, girls, daughters, women who have settled there and those who have been married into the community benefit the same as men and have an equal voice when it comes to community land.

Secondly, when it comes to the management of community land, where in many of Kenyan cultures it is the male voices that are heard, we must make sure that in the Third Reading Stage, the amendments made to this Bill will make it clear that there must be women representation in the management of community land. The interests, purposes, benefits or risks of women when community land is well managed or mismanaged are very high compared to the patterns, priorities and prerogatives that you might consider where it is exclusively male leadership of that land.

The Bill should address who is eligible to register as a community. This touches on the first point I stated. Who is eligible to register as a community and what criteria must they meet in order to register as a community? Will those people be registered under the Registrar of Companies or under a special registrar of community land?

As I conclude, I would like to keep my contribution brief; with a final thought that this Bill and the debate we are making on it today comes at a very interesting time. Order No. 12 on

our Order Paper is about the Report on the term of the Transitional Authority (TA). The Community Land Bill speaks very importantly about the role of county governments in holding land in trust and managing some of the unregistered community lands. Some of those trust lands were held as assets of the former county and municipal assemblies. When you think about the TA being out of business in the next 48 hours when the law expires on 4th March 2016, I wonder if the county governments will take control of those community land assets that were under the control of the county and municipal authorities that were then transferred to the TA. It is one of those things where time is against us. I wish we had a proper mechanism in place. In this transition period, as we debate this Bill and come out with mechanisms, you might find out that in some of the county governments, assets currently held in trust on behalf of the communities by the TA will go into limbo, or it will not be clear who is in charge. You will find that returning those assets back for the benefit of the community from private owners who might have bought them at throw-away prices will be very difficult.

I hope that at the Third Reading Stage, many Members would have brought in all those important amendments that we want and we will have a Bill that lives up to the aspirations of Kenyans.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, Member for Kibra. You support the Bill. Let me have the Hon. Member for Molo, Hon. Jacob Macharia.

Hon. Macharia: Thank you very much, Hon. Temporary Deputy Speaker. As I rise to support the Community Land Bill, thousands of constituents have their land or title deeds caveated because of a dispute involving the community land of the Ogiek people. This Bill is very fundamental especially in ensuring that the Ogiek people, who largely reside in my constituency, will finally have a right to community land as they have agitated for it for a very long time in their life.

I am particularly pleased that Part II of this Bill in Clauses 4 to 14 has given recognition of community land. Therefore, the Bill has recognised the rights, ownership, tenure and protection - and this is key to the group that I am particularly speaking about.

Part V, Clauses 22 to 27 shows how community land can be converted into public land, how public land can be converted to community land and how private land can be converted to public land. This is key because the community I am talking about has no ownership of the land of their ancestors. Their land has been encroached. The agitation that has led them to court is because most of their community land was allocated to private developers and disputes arose.

I am also very pleased with Part VII which has Clauses 36 to Clause 39. It puts clear management of natural resources within community land. The Ogiek Community in my constituency lives in a huge forest reserve and yet, they have not benefitted from that natural reserve. They have been actually watching in awe as other people from other areas come and benefit and there is a stand-off.

While I am on this Bill, it is also very important for me to put forward the request of those people. They should be regarded as the 44th community in Kenya. I support the Community Land Bill because it has addressed the plight of the Ogiek Community in my constituency.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Narok West, Hon. ole Ntutu.

Hon. ole Ntutu: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to also contribute to this very important Bill. I begin by saying that I rise to support this Bill. This is one of those Bills that have constitutional timelines. Members are aware that we postponed it last year and I am very sure that we have done a very good job.

I begin by thanking the Departmental Committee on Lands because of the very good work they have done, particularly in consulting various stakeholders in the country. The version that will be brought for the Third Reading will be comfortable for everybody. The objective of this Bill is to provide for a legislative framework to give effect to Article 63 of the Constitution.

When you look at this Bill, it goes to the core of what community land is. It has defined “community land”. There are four pillars - as one of my colleagues before me has said. There is recognition of what community land is. It then provides for the protection of the people who own that land. It is in line with the management of community land and administration. This Bill has tried to define who owns that land. It has gone a long way in talking about how the community will be using the land. For a long time, since Independence, land registrars in our various sub-counties have taken advantage of those communities that still have huge tracts of land. They have taken advantage by registering other people who do not own that land. I come from one of the constituencies that still have huge chunks of land. I am very happy with this Bill because it has defined how we can now go a long way in registering community land members and after that, it has catered for the right of the community as members of that land.

The other issue that this Bill has brought out are the resources that are available in that particular land. This is a very good Bill because, for so many years, the resources that are available in community land have been taken advantage of by the rich, the Government or outsiders. This Bill will now protect those resources so that they go to the right people.

The other very important issue that the Bill has brought out is the role of the county governments. We felt that the county governments should just hold it in trust for the community. They should not have any say so that community members have a big role to play with regard to their land.

The other issue is the equal enjoyment of the right of use, access and prohibition of discrimination on any ground, be it race, colour, marital status or gender, even though most of us from pastoralist communities have an issue there. But I will bring an amendment. It is the issue of gender. Some of us feel that the issue of gender must be addressed in the pastoralist communities. We will deal with it when time comes.

The other issue that I wanted to bring out is this: I know that the Departmental Committee on Lands has done a lot of work. Most of the land that is available in this country belongs to pastoralist communities. We must look at it properly so that, when it comes to the Third Reading, we will bring many changes and amendments. I am sure that my good friend, ole Sakuda, will bear with me. There are many things that we have asked communities and they have told us that they want their land to be managed in this way or that. We will bring amendments to make sure that community land is taken care of.

I remember that even my great-grandfather told me that where this Parliament is used to be Maasai land. I am still working on it with my lawyers to see whether I can own this particular land. It is very important.

(Hon. Kabando wa Kabando interjected)

My good friend Kabando wa Kabando, it is true because history can show that. We are going to claim Nairobi. This is just the beginning of things to come. We will also claim the whole of Karen. So, very soon, I will come for rent for those particular areas.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Do not address him, address me! He is addressing the Member. Let me get the Member for Samburu East, Hon. Raphael Letimalo.

Hon. Members, please, let us ensure that we carry our cards. Gender has been taken care of. I have seen gender as he comes to the Dispatch Box. They were very happy with our proposal of the amendment. I cannot see the Leader of the Majority Party, but I can see someone is taking care of them.

Hon. Letimalo: Thank you, Hon. Temporary Deputy Speaker. I must apologise for not having the card. I had it. It is only that it has problems. I gave it to the reception and they are still working on it.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): We are aware of that. I was just giving a caution and a communication.

Hon. Letimalo: At the outset, I really appreciate you for giving me the opportunity to contribute to this Motion. I support this Bill.

I will start with Clause 5 about the role of the Cabinet Secretary (CS). I have no objection to the conduct of our adjudication in the counties, as it is enumerated. The CS is there to regulate the adjudication process of community land.

I will talk about Clause 10, specifically about updating the members register. Clause 10(c) says that a register of members of the registered community shall be updated after every five years. I consider that to be a long period. A lot of things can happen in between. We can have experienced officials of co-operative societies sneaking in names of their members and relatives such that, by the time the annual general meeting is held, the register already has a lot of complaints. I recommend that instead of taking five years to update the register, it should be reduced to, at least, three years, so that members will have fresh information on the happenings of their registered community land.

Clause 13 says that a registered community may recommend any portion of land for any purpose or use. This is important. In my view, any portion of land has its good and bad side. Land is a resource. We cannot say that only agricultural land has potential because of agricultural activities. Even those of us who come from Arid and Semi-Arid Lands (ASAL) have a lot of mineral resources in such lands. That land can be converted into community-based conservancies, which will make members of such lands benefit. It is important for the community to be given the responsibility to apportion any piece of land that they think may be beneficial to them. We want to avoid a situation like the one of the defunct local authorities, which used to apportion some land for any public use without the knowledge of the community that resides in that land.

Part V of the Bill, and specifically Clause 19, talks about certificate of title issued by the registrar upon registration. It says that it is a certificate that determines the ownership of that land. For those of us who come from pastoral areas where people still live in a communal life, the land is registered in group ranches. It is actually a huge chunk of land. It becomes difficult for the community to raise funds to pay for the cost of land to get title deeds. What we would like to request the Government, which should actually be included in this Bill, is that it should come with a way of giving some kind of provisions so that members of registered group ranches

can acquire title deeds. For example, the cost of rates should be subsidised. That will help them get certificate of titles so that they can claim ownership of the land.

Clause 21, which is in the same Part V, talks about conservation and management of resources in community land. What I am concerned about here is that some ecosystems have rivers which cover so many areas. You will find that there are diversions of water upstream to the extent that those rivers dry and the communities that depend on them downstream suffer a lot. I have an experience of the Ewaso Nyiro River, which transverses Nyandarua, Laikipia, Samburu and Isiolo counties. Due to the diversion of water specifically in Nyandarua and Laikipia, the communities in Samburu and Isiolo normally suffer scarcity of water due to the waters of that river being used upstream. Those at the downstream really suffer. As much as the diversion of water may be useful particularly for farming activities, those people should be protected by the relevant bodies, specifically by the Department of Water.

Clause 23 of the Bill deals with conversion of land. I have mentioned this area as being beneficial to the pastoral communities. The local authorities or the county councils that were there before the new Constitution brought in the devolved governments had absolute responsibility of apportioning portions of land for public use. They did it without consulting the community. They acquired land arbitrarily without involving the major communities. I am saying so because it is a problem we have currently, particularly in Samburu East, where over 100,000 acres of land was acquired by the Government through the Kenya Defence Forces (KDF). That land was set aside for use by the military forces. While we have no objection whatsoever on the use of that land because we need our defence forces to carry out military trainings, what is really affecting us now is that they do not clear the fields after carrying out their military exercises. They have left a lot of live ordinance. This being a pastoral area, people go and graze their animals. Many people have been injured and they do not take any responsibility at all. They do not even take those people to hospitals or compensate them. When it comes to acquisition of land, the involvement of the community is actually important.

We need to look into the issue of acquisition of land. It is important. This is one thing we need to bring amendments to during the Committee of the whole House stage. Clause 29 talks about the usage of land. More importantly, this Bill recognises that pastoralism is just like any other economic activity. All of us cannot practise agricultural activities. There are communities that entirely depend on livestock. That is why pastoralism is critical. Going by the customary and cultural rights of those people, it is important that this Bill addresses the economic activities that are carried out by pastoralists.

Clause 8 deals with settlement of disputes. I agree that alternative dispute resolution mechanism should be applied. Traditional leadership systems should have structures just like we have council of elders. Prominent leaders in the society can do the mediation because when every case is taken to court, it takes a long time before it is determined. It is also expensive and encourages corruption. Alternative dispute resolution mechanism is really encouraging.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Mary Seneta, you are the first one on my request list. I cannot see your card. I do not know what is happening to the system.

Hon. (Ms.) Seneta: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this very important Bill. We are aware that in the Republic of Kenya, there are many conflicts which are brought about by land, as a resource. Land is a very important

resource to many communities. In many cases, we get communities fighting and having endless disputes because of land.

I support this Bill because it proposes ways of reducing misuse of community land. If communities could be sensitised to come together, register community land and be given the right to manage, protect and use their land, there will be sanity in terms of how community land is used. There are cases where community land has been misused by powerful individuals within some communities, as well as by the previous local authorities and the national Government. We have cases, especially in Kajiado and Narok, where the Government picked community land for a certain project. When the project wound up, the ownership of the land did not revert back to the community. We also have cases where group ranch officials come together and take over community land and misuse it.

This Bill is coming up with a mechanism of ensuring that a community can register a community trust which can hold land in their trust. The community has been given power to decide on how their land can be used and when it can be used. However, there are some issues I would like to point out on the same Bill – the issue of checks and balances. In the Group Ranches Act, group ranches officials used to buy off the community members' shares. Community officials or group ranches officials, like in the famous Shompole Nguruman Group Ranch buy off shares from other members and sell the community land alone. So, there is need for checks and balances to be put in place to make sure that the community assemblies that will be formed to hold trust on behalf of the community land are checked most of the time, so that they do not sell land on behalf of the community.

There is also need for the Bill to come up with ways in which community members will benefit from community land. We have many cases where community land is taken by an investor or the Government for a certain project, and the benefits of the projects are only given to officials or a few people who are well informed within the community. There is need to make sure that every member of the community benefits from proceeds accruing from the lease of community land. There is also need for us to come up with stiff penalties against people who will sell community land. We have people who have sold community land. Even when such people are taken to court, they are set free. The community loses land through very dubious deals.

There is also need for the community to register a trust. They should make sure that they have a trust or a way of registering their land. We cannot trust the county governments to hold trust on unregistered community land because those are individuals who have their own different interests.

Another thing that the Bill should bring out clearly is in a case where a community has registered a piece of land and it is used for a project for some time. There must be measures to make sure that after a certain time, that piece of land is reverted back to the community so that the community can renew the lease of the extended period of the project.

There is also need for the Cabinet Secretary in charge of the Ministry of Land, Housing and Urban Development to appoint registrars who come from those particular counties when they start registering community lands. One of my colleagues has just said that some of the community land is lost because of land registrars who go to the ground and give title deeds for inappropriate land sizes without knowing exactly where the land is or even gathering background information on the land.

I support this Bill. It is timely. We also need to come up with very strong amendments to make sure that we have proper checks and balances in the areas that seem to have some

vacuums. We also need to see that the implementation of this Bill is taken very seriously to safeguard the interests of community land.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Well spoken. Let us have the Hon. Member for Rongai Constituency.

Hon. Moi: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Bill. I am a member of the Departmental Committee on Lands. I thought I might not have time to speak, but thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You are blessed with height. So, try to be closer to the microphone.

Hon. Moi: This Bill is extremely important because it affects a lot of people, particularly community members who do not have a say on how their land is managed. It is important because an institutional framework has been laid on how community land shall be owned, registered and managed.

We need to categorically state that community land shall be owned by the community. It is vested in the community and it can be held under the following tenure systems: Customary law, leasehold or freehold. This is important because most of the people affected are from the pastoralist communities and those people govern themselves according to customary law. We have given customary law the force of law. It is no longer a village law, but it is backed by the Constitution and has the force of law. Therefore, it will protect and empower those communities. We should know the role of counties. They have a very important role, but a minimal one. They are trustees of unregistered community land. They are caveats to that. They cannot dispose of that land. They cannot lease that land and they cannot sub-lease it to any other individual. They can only hold it in trust for the people of that area.

Once community land is registered, then that trusteeship is resolved. Registration of a community as the proprietor of land shall vest in that community the absolute ownership of that land and hence, they can even submit plans to the county governments on how they can develop, manage and use that land.

In order to protect this community from illegal land conversions, when the time comes for them to want to allocate a certain individual from that community land or to change a private land to a community land or community land to private land, they must have a 50 per cent of two-thirds of community members. So, it will be extremely difficult. It will not be a thing that can be done in the back rooms. It would require 50 per cent or two-thirds of the entire community. That is a very large number and it will require their voice and approval. The Bill also empowers the community with powers to allocate land to individuals and groups in the community who may want to use the land for other purposes, other than what the community used the land for.

In the area of natural resources found within those communities, it is clear in the Bill that those resources will be managed for the benefit of that community and future generations. On the issue of settlement of disputes, we all know that on land issues, there will be disputes. There has been that traditional way of sorting out issues that has been provided, and which has the force of law. So, whatever the outcome of those meetings or traditional ways of solving conflicts, it will have the force of law. We are happy for that because those people respect customary law.

Finally, the Bill entirely seeks to protect the rights of members of that community.

So, I support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Let us have the Hon. Member for Budalang'i.

Hon. Ababu: Thank you, Hon. Temporary Deputy Speaker. One of the reasons that motivated this country to pursue a new constitutional order was land, the desire to ensure that we re-engineer, take a fresh look at the manner in which we manage, administer and utilize land in a manner that is beneficial to the people and, ultimately, to the country. This law, therefore, in so far as it seeks to operationalise Article 63 of the Constitution, is a very important piece of legislation. In fact, it is one of those pieces of legislation that has been eagerly awaited by members of the public and Kenyans out there. This is one of those instances you would have expected this House to have been overflowing with enthusiasm for informed and substantive debate on such a key piece of legislation, that is operationalising such an important part of our Constitution. Without belabouring on too many issues that our colleagues have substantively and ably debated, I want to draw your attention to two issues.

First, is Clause 6 of the Bill where responsibility is handed to county governments to hold in trust all unregistered community land on behalf of communities for which it is held. This is pretty much a throwback to the previous arrangement where local authorities held similar responsibilities over land - what we called trust land. Not surprisingly, therefore, among the transitional clauses of this Bill is to get rid of what has traditionally been called the Trust Lands Act.

My concern is that we have not taken sufficient time to flush out the responsibilities of county governments in respect of unregistered community land. The Bill says at Clause 6(2) that:-

“Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.”

My concern is that while the Bill is saying that transactions will be dealt with in accordance with the provisions of this Act, no details have been provided as to how county governments will be expected to deal with that unregistered community land. One would have expected some specificity in terms of what is expected of county governments in terms of the responsibilities of county governments and certain irreducible minimum guarantees to communities while this unregistered land is held in trust by county governments.

My concern is even more amplified when you look at that issue in relation to the whole of that Clause 6. The only caveat that is very specific and clear is Clause 6(4), which stops county governments from disposal of that land. That means that any other kind of transactions could be undertaken by county governments to the detriment of communities if specific details are not provided.

I would like to urge the Committee responsible to go back and provide a little more detail in terms of effecting Clause 6(2). I would want them to be clear that it will cause absolutely no harm and provide in detail the specific transactions envisaged in Clause (6)(2), exactly on how community interest will be secured and protected in relation to the power of county governments.

I also invite the Committee to take note of the fact that county governments are expected to be guided by the provisions of this law and any other applicable law. Any other applicable law is a *carte blanche* – it is a blank cheque – which means that if you do not provide specificity or give clear provisions and guidelines, any other law other than this important law that we are

debating could also be used by county governments in relation to handling unregistered community land. Let us also be alive to the fact that county government are not local authorities; they are far much superior units of government which have legislative authorities. County governments can legislate and they mirror the three traditional responsibilities of legislation, representation and oversight. So, do not put it beyond county governments to interpret that provision of the law, to proceed and legislate in a manner that may not necessarily reflect the initial agenda, dreams or vision of Article 63 of the Constitution, and the vision that we are seeking to give meaning to through this Bill.

The Committee also needs to be alive to Article 63(5), which specifically tells this House to enact this law. Parliament shall enact legislation to give effect to this Article. In giving effect to this Article as required by that Article of the Constitution, we need to go the extra mile and ensure that we do not leave anything to conjecture. Remember that we are dealing with an issue that has given us a headache since the foundations of this nation were laid. Let us not leave anything to chance.

My final point has to do with what I noticed to be the very old absolute silence on the role of the National Land Commission (NLC). Nowhere, from the first page to the last, do you find the expression "NLC" in this Bill. I find that odd. The Constitution in its wisdom has granted NLC a mandate that is of an oversight character. One would have expected that this Bill appreciates and acknowledges that responsibility for NLC, especially in terms of Article 67(3), which says that the NLC may perform any other function prescribed by national legislation. In the spirit of giving the NLC that due recognition and providing a platform for the NLC to continue offering that oversight responsibility, I would invite the Committee to explore the possibility of strengthening that Commission. It is an important Commission and has some very specific responsibility in the Constitution. Its responsibilities are more explicit when you look at the management of public land. But I do believe that it still has residual oversight over all matters of land. May the Committee see how that oversight responsibility of the NLC can be handed over to the Commission, especially in Article 67 where you see express mandate handed to it in terms of policy guidelines and policy support to all matters of land.

Hon. Temporary Deputy Speaker, with those remarks, I support and hope that we can strengthen the Bill through amendments during the Committee of the whole House.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. Member. I am sure the representative of the Leader of Majority Party is here to take notes. Of course, in the Third Reading and Committee stage, we have chances for us Members to make some amendments and contributions. Let me have the Member for Dadaab, hon. Duale. Not the Leader of Majority Party, but hon. Mohamed Duale. Are you a doctor?

Hon. M.D. Duale: Yes. Thank you, Hon Temporary Deputy Speaker for giving me this opportunity. From the outset, I want to thank the Committee which has come up with the Bill. As has been mentioned, this is one of the Constitutional Bills which had a deadline that was extended last year. Due to that, it is very important that this Bill is disposed off.

Land in this country is a very emotive issue and is one of the greatest assets that people can have. For me, my concern with this Bill is the issue of the northern part of Kenya, which has large land mass and where most of it is currently trust land. In the Bill, we are talking about community land which may be held as communal land, family or clan land, as reserve land or any other category of land.

For those areas which have not had any legal framework of ownership of land, what the Bill lacks is that it talks about community land registration. But it does not talk about community registration for purposes of ownership of land. That, in effect, means that, for those areas - and knowing what Kenyans can do - this becomes a challenge because they already face a lot of challenges and conflict because of border issues. If it is not made very clear in this Bill how the community will be registered, we could have proliferation of people coming up with what they call communities, but which might not be true communities in terms of homogeneity and what is described. This can create community land which might not be sustainable in terms of purpose and how those lands are being used. My fear is that if this is not made very clear, then we might have a serious conflict.

I also want to note that currently in North Eastern, I know of two issues which have really affected us. In that part of the country, we do not have a national grid. For the first time, we had hopes that the grid would reach Garissa, extend to Wajir and then Mandera. Even though there is no legal framework in terms of community land ownership, we have had challenges of the grid not reaching Garissa because of people claiming ownership of the tract of land on which the grid was to pass. That has caused the people of Garissa and beyond not to have power supply which I believe was going to be a gateway to development.

Recently, we had a problem in Garissa where some people accused Kenya Defence Forces (KDF) of grabbing land and, personally, I do not believe that is true. That is because the military camp currently in Garissa is in the middle of the town and many times, what happens is that when there is an insecurity threat, there is a lot of gun-fire within the town. That has been very scaring. This land, which people purportedly say was grabbed by the Kenya Defence Forces (KDF), is actually a trust land, which has no ownership. People in Garissa County were very happy that the military had acquired land, which they would use for their work and would have moved out of Garissa, so that they do not have that perpetual fear of being shot whenever there is slight insecurity. This Bill, once approved, will sort out those kinds of issues for us.

With those few remarks, I support the Bill. I hope we shall propose amendments to rectify those anomalies.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us have the Member for Tinderet Constituency.

Hon. Melly: Thank you, Hon. Temporary Deputy Speaker. I rise to support the Bill. This Bill is very important constitutionally as it operationalises Article 63 of our Constitution. It is a Bill that actually tries---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kabando wa Kabando, it is not yet your turn. Let him contribute first.

Hon. Melly: Thank you, Hon. Temporary Deputy Speaker. This Bill operationalises Article 63 of the Constitution. It is trying to solve a number of issues that are affecting this country. Land issues in this country are very emotive. Looking at some of the problems that this country has faced since Independence, the central part of it has been land.

Part II, Clauses 4 to 14, elucidate community land rights. It shows how community land is supposed to be owned, the ownership, the tenure system and when and how a community shall possess and dispossess land. It outlines how community land can be protected under registration of community land and rights. A number of communities in this country have had their land dispossessed. They have been dispossessed because of lack of knowledge, information and because they lack the know-how. They do not understand their rights as pertains to land

ownership. This Bill, if enacted, is going to entrench the rights of those communities. A number of communities have lost their land just because they lost their rights to individual land ownership rights.

Clauses 15 and 16 provide for the administration and management of community land. In fact, in some instances, if those clauses are not provided for, some communities have been dispossessed of their land by individuals within the community, who are more knowledgeable and have an understanding of how to use their land.

I want to commend the inclusion of Clauses 22 to 27, especially on the conversion of community land to public land or private land. This is where the bone of contention has been. The more knowledgeable members in the community, in most instances, have taken advantage of the less knowledgeable and less fortunate members, to convert land in a way that is beneficial to them. In this case, the rights of the minorities or the less educated in the communities are protected. In fact, the law has clearly spelt out how that land is going to be converted from community land to public land or private land. It has spelt out how the community is supposed to be involved in all those conversion levels.

The rights of the individual, as a community member, are clearly spelt out in Clauses 28 to 35. Previously, individual community members, especially in group ranches and other type of land ownership, have, at times, been overshadowed by the more prominent and powerful group members.

Hon. Temporary Deputy Speaker, in this case, the individual has been singled out and the Bill is very clear on how the individual has to enjoy equal rights and access to land. It prohibits discrimination on any ground, including race, gender, sex, marital status, ethnic and social origin. In a number of pastoral communities, women have lost their rights to ownership of land because of their gender. This clause indicates that any member, irrespective of gender, age or social standing shall enjoy particular rights in a particular community land ownership. The other land rights in the community are clearly indicated that, where the individual is a member of that group, he or she shall enjoy those rights.

I would like to talk about the part where an individual has a role on the conversion of lands not as a person or his station of life, but as part of the owners of that particular group. When this Bill comes into effect, it will assist a number of communities to benefit and own land. It will also reduce land disputes because it is clear how they will be solved. Clause 40 of the Bill sets out rules on how to settle disputes relating to community land. If a dispute arises between members of two registered communities, Clause 2 states that the disputes will be resolved using any of the internal dispute resolution mechanisms as set out in the respective community constitutions. I would like to indicate that such a clearly spelt out way of settling disputes will enhance peace and stability in this country, which we have had problems with. We have had instabilities caused mainly by land. Such a well set out way in which disputes are brought to a conclusion amicably will assist our nation. In fact, you will find that in counties with large community land, groups have conflicts over ownership. But with this Bill, all those issues will be solved.

Clause 17 of the Bill is clear on how community land will be given a title deed or ownership. It has spelt out how those communities can get title deeds and certificates of ownership. Earlier on, a number of communities have lost their land because they had no title deeds. Unscrupulous individuals could come up, demarcate the land, give themselves titles and the larger community was left with nothing. In some instances, they have curved almost the

whole of it leaving out a large group of individuals without land. In this case, the community as a society that owns the land can have their title deed registered and directed on how to own it.

This Bill is going to stabilise our nation. It will give our people the rights they deserve.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Member for Jomvu, Hon. Bady Twalib.

Hon. Bady: Ahsante sana, Mhe. Naibu Spika wa Muda, kwa kunipa nafasi hii nichangie Mswada huu. Jambo la kwanza, nataka kuunga mkono Mswada huu kwa sababu swala la ardhi, hasa kwa sisi ambao tunatoka Pwani, takribani karibu watu asilimia 80 wanakumbwa na jambo hili kwa njia moja ama nyingine. Vile vile, kwa wenzetu katika jamii ya wafugaji, jambo hili linawakumba.

Ningependa kusema ya kwamba Mswada huu umetambua walemavu, akina mama na jamii ya watu wadogo wadogo yaani *marginalised community* kuwa ni lazima wapate haki sawa sawa. Katika kipengele cha 31 cha Mswada huu, kinasema kuwa kila mmoja ana haki sawa ya kumiliki ardhi katika ardhi za kijamii. Kwa hivyo, Mswada huu unawapatia nguvu wale wakaaji ama wenyeji ambao wako katika ardhi hizo katika maamuzi yoyote yanayotaka kufanyika katika ardhi hizo. Vile vile, tunaona kuwa ikiweza kufanya hivyo, itaweza kutoa nguvu kuwa jambo lolote, hata likiwa ni la kukeza, watu wenyewe washauriwe halafu kisha baada ya kuweka maamuzi, ndio tuone kwa namna gani mipangilio ile itaweza kufanywa.

Jambo kama hili mimi binafsi limenifurahisha nikiwa Mbunge wa Jomvu kwa ajili kuna sehemu kadhaa katika sehemu yangu kama vile Aldina, Maganda na sehemu nyingine za Bangladesh, KCC na Ganahola. Tukiangalia katika sehemu ya Aldina, wenyeji walikaa hapo takribani tangu Kenya haijapata Uhuru. Vile vile, Tume ya Kuchunguza Mambo ya Ardhi - *National Land Commission* - ilikwenda pale. Waliweza kuweka jopo na wakasema yule anayedai kuwa mahali pale ni pake ajitokeze. Hawakujitokeza.

Huu Mswada unatupa nguvu kuona kuwa wale mabwenyenye ambao wanakuwa na makaratasi ya kumiliki ardhi na wenyeji wakiwa wanaishi mahali hapo hapo, itaweza kuwapokonya nguvu. Pia, nikiangalia hali hii ya wenyeji, ni lazima wahusishwe. Ni muhimu kwa shauri nikiangalia mradi mkubwa sana wa reli unaofanyika, watu katika sehemu yangu ya Maganda, ambapo inapitia walipewa makaratasi, yaani *allotment letters* kusubiri hati miliki zao. Unaona mradi ule unafanyika, mtu anapigiwa hesabu za nyumba yake, lakini hapigiwi hesabu ya ardhi. Jambo kama hilo si jambo la sawa sawa. Ni muhimu sana watu watambue wenyeji na wawapatie hati miliki za ardhi ili ziwafanye kuwa na nguvu ya kudai haki yao katika sehemu hiyo.

Tukiangalia jambo kama hili, limetuadhiri Pwani nzima. Watu wengi katika jamii zao wanasongezwa kando na wale wawekezaji. Hatimaye, watu kama hao hawapati haki yao.

Naunga mkono Mswada huu na nampongeza ndugu yangu Mhe. Alex Mwiru na Kamati yake yote ya Ardhi kwa kufanya kazi na kuleta mambo ambayo tunayazungumzia katika Bunge hili leo. Kwa sababu zamani tulikuwa tunawaita “walala hoi”, sasa tutawaita “walala hai” kwa shauri watakuwa na ukweli wa kuona watakuwa na haki ya kumiliki ardhi katika sehemu zao.

Tukiangalia, kuna wale wa jadi. Kama sehemu yangu, kuna sehemu inaitwa Kwa Shehe. Wenyeji wa pale walitoka sehemu ambazo hazijapimwa na mpaka leo, wanalipa malipo ya ardhi katika kaunti. Jambo hili si la sawa sawa. Ni muhimu wenyeji kupewa hati miliki za ardhi.

Mhe. Naibu Spika wa Muda, ningependa kuunga mkono Mswada huu, lakini kuna mambo ambayo nayapinga. Napinga Kipengele cha 35, ambacho kinasema kwamba mtu akiwa

amechukua ardhi ya mtu mwingine kabla ya kupitishwa kwa Mswada huu, mtu yule ndiye atakayetambuliwa, baada ya kupitishwa kwa Mswada huu, kuwa mwenye ardhi hiyo. Nasema vizuri sana kwamba tutaupiga msasa Mswada huu, ili tuone kwamba waliochukua ardhi za wenyewe kabla ya Mswada huu---

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Ahsante sana, Mhe. Bady. The time is over. You will have your five minutes to speak on this Bill.

Hon. Members, it is time to interrupt our business. The time being 6.30 p.m., this House stands adjourned until Thursday, 3rd March, 2016 at 9.30 a.m.

The House rose at 6.30 p.m.