

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 19th October, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:-

Mr. Sirat Mahamud Mohamed

COMMUNICATIONS FROM THE CHAIR

DELEGATION FROM PARLIAMENT OF GHANA IN SPEAKER'S ROW

Mr. Speaker: Hon. Members, I wish to introduce to you a delegation of the Finance Committee from the Parliament of Ghana who are seated at the Speaker's Gallery.

The delegation comprises the following honourable Members:

Hon. James Klutse Avedzii, MP – Leader of delegation

Hon. Dr. Okot Osei, MP – Member

Hon. Ignatius Awuah, MP – Member

Hon. Haruna Bayirga, MP – Member

The delegation is accompanied by Ms. Peace Fiawo Yife, Committee Clerk and Mr. Emmanuel Fordjour, a liaison officer from the Ministry of Finance, Ghana. The team is in the country to learn and share with their counterparts on the finance and budgetary processes. They will be with us until Friday, 22nd October, 2010.

Let me, on behalf of myself and that of all the hon. Members of this House, welcome them to Kenya. May I request that we all accord them the support they require.

(Applause)

ASSENT TO BILLS

Hon. Members, I have the following Communication to make.

As you are aware, Standing Order No.125 (5) requires that the honourable Attorney-General files a return to the Speaker of the National Assembly indicating the date and time a Bill passed by the House was presented to His Excellency the President for assent. Having now received the relevant returns from the Attorney General, I,

accordingly, wish to communicate to the House that His Excellency the President has assented to the following two Bills passed by the House:-

<u>Bill</u>	<u>Title</u>	<u>Passed Third Reading</u>	<u>Date of Assent</u>
1	The Appropriation Bill 2010,	1-9- 2010,	13-9- 2010
2	The Counter-Trafficking in Persons Bill 2010	15-7-2010	13-9-2010

PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Justice and Legal Affairs on the appointment of nominees to the Judicial Service Commission.

(By Mr. Namwamba)

NOTICES OF MOTION

ADOPTION OF REPORT ON APPOINTMENT OF MEMBERS OF JUDICIAL SERVICE COMMISSION

Mr. Namwamba: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the appointment of the members of the Judicial Service Commission laid on the Table of the House on the 19th October 2010.

APPLICATION OF GEOGRAPHIC DIMENSION REPORT OF 2005 IN ALLOCATION OF CDF/DEVOLVED FUNDS

Mr. Ogiendo: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, noting that the Kenya Integrated Household Budget Survey Report should be used objectively to determine poverty levels in the country in an effort to effectively tackle poverty; aware that Geographic Dimension of Wellbeing in Kenya Report published in 2005 contains the objectivity required for such Report as an accurate reflection of the reality on the ground; noting that the subsequent Kenya Integrated Household Budget Survey Report 2005/2006 published in 2007 shows marked changes in the poverty levels without any known interventions, and that it is not a reflection of the reality on the ground; mindful that the survey forms the basis of allocation of the Constituencies Development Fund and maybe used to allocate other devolved funds, which could result in skewed allocation of resources thereby further entrenching economic

marginalization of more deserving areas, this House resolves that the Government continues to use the Geographic Dimension of Wellbeing in Kenya Report published in 2005 in allocating the CDF and other devolved funds until a more objective and consultative survey is carried out.

ADOPTION OF FIRST LAFAC REPORT

Mr. Mwachugu: Mr. Speaker, Sir, I beg to give notice of the following Motion:-
THAT, this House adopts the First Report of the Local Authorities and Funds Accounts Committee (LAFAC) on:-

- (i) The Accounts of local authorities.
- (ii) Countrywide projects done by the Urban Development Department (UDD) of the Ministry of Local Government.
- (iii) The accounts for the CDF for the 2006/2007 and 2007/2008 financial years laid on the Table of the House on Thursday 14th October 2010.

COMMUNICATION FROM THE CHAIR

CIRCULATION OF AMENDMENTS TO THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION BILL

Mr. Speaker: Hon. Members, with respect to the business on the Order Paper this afternoon - I want to refer to Order No.8 in particular - there are amendments which I have acquainted myself with and approved as being suitable and in conformity with both the Bill, the Standing Orders and the Constitution. Those amendments will be circulated so that when we get to Order No.8, all hon. Members will be aware of what those amendments are. Note that they are not a Supplementary Order Paper. They are amendments that are in accordance with the Standing Orders.

Next order!

QUESTIONS BY PRIVATE NOTICE

NUMBER OF DEATHS CAUSED BY ILLICIT ALCOHOLIC BREWS SINCE 1999

(Mr. Mututho) to ask the Minister of State for Provincial Administration and Internal Security:-

(a) What is the number of deaths caused by illicit alcoholic brews from 1999 to date?

(b) Could the Minister provide the names of manufacturers and brand names of all alcoholic drinks and beverages sold in the country and details of chemical analysis of such drinks, indicating whether the respective drinks are acceptable (fit) for human consumption or not?

(c) Could the Minister also indicate the number of those prosecuted for brewing and distributing such illicit drinks and when the

Government will close down all the businesses manufacturing, distributing and selling alcoholic beverages that do not meet World Health Organization (WHO) standards?

Mr. Speaker: Hon. Members, the Member for Naivasha is not here, we will revisit that Question a little later.

Next Question!

DETAILS OF CLERKS INVOLVED IN VOTER
REGISTRATION IN BURA

Dr. Nuh: Mr. Speaker, Sir, I beg to ask the Minister for Justice, National Cohesion and Constitutional Affairs the following Question by Private Notice.

(a) Could the Minister provide details of Registration Clerks who worked for the Interim Independent Electoral Commission (IIEC) during the revision of Voters' Register exercise before the last Referendum in Bura Constituency, including the names of polling stations?

(b) How many days did each clerk work?

(c) Could the Minister confirm that the clerks have not been paid their dues and, if so, when will they be paid?

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Mr. Speaker, Sir, I beg to reply.

(a) Details of the clerks who worked per polling station for Bura Constituency for the IIEC during the revision of the Voter Register before the referendum are as per the list attached to this answer and marked "IIEC A".

(b) The total number of days worked by each clerk is set out in the attached list and marked "IIEC B".

(c) I have been advised by the IIEC that payments to the said clerks were effected yesterday, 18th October, 2010.

Dr. Nuh: Mr. Speaker, Sir, part c of the answer seems a bit non-committal. The Assistant Minister says he has been advised that payments were effected yesterday. However, as of yesterday the clerks in Bura had not received their pay for June. Could I get an undertaking from the Assistant Minister when the payments will be made?

Mr. Cheptumo: Mr. Speaker, Sir, I would like to confirm to the House and my colleague that at least by Friday this week all the clerks will have received their pay. The funds were directed to be disbursed to the various accounts yesterday.

Mr. Ngugi: Mr. Speaker, Sir, it is not only the clerks from Bura who have not been paid. Some clerks who worked in Kinangop have also not been paid. Could the Assistant Minister confirm when those clerks and others elsewhere in the country will be paid?

Mr. Cheptumo: Mr. Speaker, Sir, I would like to confirm to my colleague here that I will take the issue up with the Commission to see that the clerks from his constituency are also paid. I would like to appeal to all my colleagues that if there is any situation similar to the one in Bura and Kinangop, let me know. I am, however, going to follow up the matter with the Commission to ensure that we have no delays.

Mr. Speaker: Last question, Dr. Nuh!

Dr. Nuh: Mr. Speaker, Sir, we and other Kenyans even in the diaspora confirm that the IIEC has done a great job so far. It would be very unfortunate for issues of payments to clerks who worked for the IIEC to overshadow the good work that is being done and the high expectations we have as Kenyans. Could the Assistant Minister confirm that this incident is unfortunate and will never be repeated?

Mr. Cheptumo: Mr. Speaker, Sir, it is true that there has been a delay and I would like to agree with the hon. Member that we do not need it. I want to confirm that we are going to ensure that this scenario will not arise in future.

Mr. Speaker: Next Question!

IMPLEMENTATION OF INTERCONNECTION RATES
RECOMMENDED BY CCK

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

(a) Why has the Government not enforced the implementation of the Interconnection rates recommended by the Communications Commission of Kenya (CCK) that was to take effect from July 1, 2010?

(b) What steps is the Minister taking to ensure that the recommendation by the CCK is enforced?

The Minister for Information and Communications (Mr. Poghio): Mr. Speaker, Sir, I beg to reply.

Following a successful completion of the review of its network cost study, the CCK, pursuant to its mandate as stipulated in law, issued determination number two on interconnection rates for fixed and mobile networks, infrastructure sharing and call location and broadband interconnection. The determination which was effective from 1st July 2010 prescribed the applicable interconnection rates summarized in the following table. The table indicates that the mobile determination is supposed to reduce progressively, so that by the year 2013 we have 0.99 cents, and eventually we will not have to regulate. It is indicated there. On the fixed determination and transit, the figures are also given on the table, all ranging between Kshs2.2 and 0.99 cents.

The Commission will enforce uniform mobile and fixed interconnection rates by the year 2013, consistent with technological convergence taking place in the ICT sector. The determination was issued on 16th August, 2010 to all the affected fixed and mobile operators for immediate implementation. Upon the issuance of the determination, operators commenced the immediate implementation of the recommended rates, and it is evident that the impact of the implementation has been felt through the huge reduction on the retail rates charged by telecommunications operators in the market. The Communications Commission of Kenya, as mandated by law, will continue to enforce the glide path shown on the table.

(b) As indicated under “a” above, the implementation stipulated---

(Loud consultations)

Mr. Speaker, Sir, I need your protection! The consultations are very loud and I have to shout!

Mr. Speaker: Order, hon. Members! Please, lower the level of your consultations so that we can hear the Minister!

The Minister for Information and Communications (Mr. Poghisio): Mr. Speaker, Sir, (b) As indicated in “a” above, the implementation of the stipulated rates has already commenced. The Ministry of Information and Communications is confident that the Commission, guided by its mandate under the law, will continue ensuring that determination is fully implemented for the benefit of consumers and Kenya’s economy at large.

Mr. Outa: Mr. Speaker, Sir, the greatest blessings that this country has ever received was in this small garget called the mobile telephone. If you go to our villages today, you will find that most of our people in there have the garget. However, it has become a curse to many poor people in this country. You heard the Minister saying that as from 1st July, 2010, Determination No.2 of 2010 was meant to be effective. However, if you go through the answer that the Minister has given, you will see that he has gone through this issue in stages. I would like to ask the Minister why he finds it difficult to have determinations effected as prescribed by the CCK.

Mr. Poghisio: Mr. Speaker, Sir, I think it is very clear that members of the public would feel different because they are enjoying rates which are lower than the ones which are official. I thought that we wanted to have lower rates and not just to follow determination. The determination is standard; it is provided for; it can be reverted back to; it is the maximum, but if people are enjoying lower rates, we should just allow them to continue enjoying lower rates. That is basically what we have done.

Mr. Outa: Mr. Speaker, Sir, could the Minister tell the House--- At this juncture the rates are being lowered yet when we want to connect from Safaricom to Zain, you will find that the poor man cannot afford it because the interconnection rates are very high, and the other operator does not benefit from the interconnection rates. If the interconnection rates are not lowered to the level the Minister has indicated of 0.99 cents not many Kenyans will afford them.

Mr. Poghisio: Mr. Speaker, Sir, just a few months ago, the interconnection rates were very high. Right now, due to the research that has been done and the determination too, interconnection rates have been lowered drastically to Kshs2.2, down from anything between Kshs7 and Kshs12. That was just recently. Since there are contracts between operators and they have signed them, then they are bound by these rates. If they were to charge anything higher than these rates, then they would be held responsible by the CCK. The beginning of interconnection rate is now; it has already taken effect. We should now be hearing from the public if there are any complaints. I think there is a way to resolve those issues in the system provided for in the interconnection rates.

I need to clarify that the best way is to stagger these things downwards, so that in three years, we come to a uniform rate. However, for now we determine using the agreement and the range of Kshs2 and Kshs0.99; that is where the rates fall now. My belief is that the CCK have done the right thing by giving themselves a three-year timeline to bring the cost down to a uniform rate. However, it is much lower than what we have experienced in the past.

ORAL ANSWERS TO QUESTIONS

Question No.467

INCREASE OF LOW COST BOARDING
SCHOOLS IN ASAL AREAS

Mr. Litole asked the Minister for Education:-

(a) what plans the Government has to increase low cost boarding schools in arid and semi-arid areas in order to increase enrolment for school going children;

(b) to indicate the amount of money allocated to low cost boarding primary schools; and,

(c) to state whether the amount of money allocated to these schools is enough and how much money is allocated per pupil.

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry of Education has already made a request to the Treasury for additional funding for low cost boarding schools.

Mr. Outa: On a point of order, Mr. Speaker, Sir. I had asked a Question and it was still on the Floor.

Mr. Speaker: Order, Member for Nyando! The Minister completed his answer and sat down. You did not rise on your feet! That is not how we do business here. We have already moved on to the next Question.

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry of Education has already made a request to the Treasury for additional funding for low cost boarding primary schools.

(b) The amount of money allocated to low cost primary boarding schools is Kshs375 million annually.

(c) The amount allocated to the low cost primary schools has remained constant at Kshs375 million for the last seven financial years. However, the enrollment has grown steadily and this has led to the lowering of capitation from the---

Mr. James Maina Kamau: On a point of order, Mr. Speaker, Sir. Unless I am holding the wrong Order Paper, I do not know why we jumped from Question No.312 to--

Mr. Speaker: Order, hon. Member for Kandara! That area has a lot of precedents on it and I will not offer any response. Proceed, Mr. Assistant Minister!

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, the allocation to low cost boarding primary school has remained constant at Kshs375 million over the last seven financial years. However, the enrolment has grown steadily. This has led to the lowering of the capitation from Kshs4,000 per child per year, initially, to the current Kshs2,900 per child per year. Obviously, this amount is inadequate.

Mr. Litole: Mr. Speaker, Sir, I am satisfied with the answer given by the Assistant Minister. Therefore, I do not wish to ask any other question.

Mr. Speaker: Hon. Members, is there any Member who is interested given that the Member for Sigor is satisfied?

Mr. Mwangi: Mr. Speaker, Sir, if you listened to the last part of the Assistant Minister's answer, he has stated that the number of children has increased and the Government has reduced the allocation. Could he confirm to this House that the Ministry is able to give quality education when the allocation has been reduced?

Mr. Mwatela: Mr. Speaker, Sir, I have said the allocation to these schools has remained constant while the enrolment has grown. It is not that we have reduced the amounts. The enrolment has increased, while the allocation has remained constant. That is why we have requested the Office of the Deputy Prime Minister and Ministry of Finance to give additional funding for these boarding schools.

Mr. Pesa: Mr. Speaker, Sir, the quality of education in this country is very vital. The Assistant Minister has said that they are going to consider increasing the allocation. Could he tell us exactly when the Ministry will consider improving the quality of education by providing adequate funds to the low cost boarding schools?

Mr. Mwatela: Mr. Speaker, Sir, the Ministry of Education is at the mercy of the Office of Deputy Prime Minister and the Ministry of Finance which is the budgeting Ministry. We have regularly asked for increased funding, but it has not been forthcoming. I would like to request the Members that we all collectively fight to get extra funding for our children.

Mr. Murgor: Mr. Speaker, Sir, what steps is the Assistant Minister taking to increase the allocation, especially for the ASAL areas? These are children who stand the risk of being moved around if parents cannot afford the fees or when time comes for them to move around. Therefore, supplementing the situation is very critical.

Mr. Mwatela: Mr. Speaker, Sir, the Ministry is very concerned and is in agreement with the request that has been made by the Member. However, we need more money. We will definitely give priority to these particular areas, so that we can increase the allocation per child per year.

Mr. Njuguna: Mr. Speaker, Sir, the Assistant Minister has ably responded and indicated the measures he is taking to enhance enrolment and capacity. Could he also indicate to this House the number of the new schools that he is likely to establish and the expected enrolment increase?

Mr. Mwatela: Mr. Speaker, Sir, really, that is a challenge to me because it is a new Question. I need to go back to my officers and get the information that the hon. Member requires.

Mr. Speaker: Member for Lari, you may want to follow up that matter with the Assistant Minister later.

Question No.312

DISMISSAL OF WILLIAM NGUMI KIEMA
FROM EMPLOYMENT

Mr. Speaker: Member for Mutito! He is not here! The Question is dropped!

(Question dropped)

Question No.383

FUNDS FOR CONSTRUCTION OF NANDI NORTH
DISTRICT HEADQUARTERS

Mr. Speaker: Member for Mosop!

Mr. Keter: On a point of order, Mr. Speaker, Sir. The hon. Member for Mosop is out of the country on Parliamentary duties.

Mr. Speaker: Very well. In that case, we will defer the Question to next week on Thursday at 2.30 p.m.

(Question deferred)

Question No.453

MEASURES TO ADDRESS INSECURITY IN OLOLUNGA

Mr. ole Lankas asked the Minister of State for Provincial Administration and Internal Security what he is doing to address the insecurity that is rampant in Ololunga Location in Narok South District, in view of the frequent armed robberies and carjackings in the area.

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

Ololunga Location in Narok South District has experienced isolated incidences of carjackings and robberies in the recent past. To address the security challenges in the area, the Government has set up Ololunga Police Patrol Base and Ololunga Administration Police Camp. The establishment of the two police units will improve the patrol of both vehicle and foot. We have also enhanced intelligence information gathering in order to be pro-active. We are also deploying mobile flying squad personnel in order to deal with these criminals within these areas.

Mr. ole Lankas: Mr. Speaker, Sir, while I thank the Assistant Minister for the answer, could he tell this House how many arrests have been made so far following these spate of robberies and carjackings in this area and for what offences have they been made?

Mr. Ojode: Mr. Speaker, Sir, we have done some arrests. I would want to notify the Questioner that during the harvesting season, namely, between the month of July and September, we normally have such incidences. That is the time the harvesting of wheat is taking place. So far, we have arrested five people who are helping the police with investigations. I hope that once we deploy the flying squad, a thing like this will not be repeated at the same time.

Mr. Kigen: Mr. Speaker, Sir, in stating what he intends to do to reduce the rampant insecurity in Ololunga, the Assistant Minister has said that he will increase patrols, among other things. Similar incidences have arisen in Rongai and the police do not have vehicles and at times, they do not have fuel. What is he doing to ensure that there are enough vehicles to enable the police to conduct the patrols that he is talking about? This is an issue that we have raised several times.

Mr. Ojode: Mr. Speaker, Sir, it is true that some areas do not have enough vehicles to combat crime. This is as a result of inability to raise enough funds to purchase vehicles. However, we get vehicles to areas that do not have them from other camps. As at now, I do not have any problem with Olololunga because there is a vehicle used to patrol the area. Both the Officer Commanding Police Division (OCPD) and the Officer Commanding Police Station (OCS) have new vehicles for patrol.

Mr. C. Kilonzo: Mr. Speaker, Sir, the issue of insecurity particularly in my constituency is very serious. You do recall that I even brought a similar Question to the House. Immediately thereafter, my CDF offices and the water company offices were broken into. Last week, the district hospital was broken into and a doctor beaten up. As the Assistant Minister addresses the issue of insecurity in this House, what has he done to address the issue of insecurity in Yatta Constituency? This is particularly in Matuu, Kithimani, Katangi and Chua?

Mr. Ojode: Mr. Speaker, Sir, although that is a different Question I will reply it. It is true that Yatta and those other places that he has mentioned have had isolated cases of crime. We will deploy the Flying Squad officers to patrol those areas. There are certain incidences where the crime is organized by people who work in those institutions but we will soon arrest them so that they can assist the police with investigation. Once we post the Flying Squad officers there with a mobile unit, the insecurity in Yatta will be a gone case. However, I sympathise with the hon. Member.

Mr. ole Lankas: Mr. Speaker, Sir, Narok South District is one of those districts that were created in 2005. That is five years down the line. To date, it is only the District Commissioner amongst the members of the District Security Committee (DSC) who is there. There is no OCPD, SRC nor DCIO. Could the Assistant Minister inform the House why it has taken a long time to post these officers in spite of the insecurity problems that we have?

Mr. Ojode: Mr. Speaker, Sir, ordinarily, whether there is crime or not we post DCIO and other officers. The reason why we did not do that immediately was because some of our personnel were attending promotion courses. Once they complete the courses, I will take it upon myself to post some of them in the hon. Member's area.

Mr. Kigen: On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister say that they are waiting to promote some officers to post them but it is five years down the road. Some districts that were created later on have already received personnel including the OCPDs and DCs. Could the Assistant Minister tell us why he has not posted officers to Narok South District?

Mr. Ojode: Mr. Speaker, Sir, it is true that it is not possible for us to train all the officers at once because some of them have to be in the stations where they are required. So, we have been doing it on a piecemeal basis where we call like 100 officers, train, promote and post them. That is exactly what we will do even with the officers whom we will post to Narok South.

Mr. Speaker: Let us move on to the next Question!

Mr. Mureithi: Mr. Speaker, Sir, I seek your guidance because I have not received a copy of the written answer. Therefore, I am not in a position to interrogate it.

Question No.409

REPORT ON REHABILITATION OF DAMS IN OL KALOU

Mr. Mureithi asked the Minister for Water and Irrigation:-

a) whether she is aware that two engineers visited Ol Kalou constituency two years ago to study the rehabilitation of the dams in the constituency;

(b) whether she could inform the House what happened to their report, considering that there is no work going on with respect to the dams in the constituency; and,

(c) what action she will take to implement the said report.

Mr. Speaker: Let us hear the Minister.

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, I am sorry that the hon. Member has not received a copy of the written answer.

I beg to reply.

(a) I am aware that the two engineers visited Ol Kalou Constituency in August, 2008 to carry out an assessment on rehabilitation requirements for dams, particularly those that were constructed during the colonial era.

(b) A report was compiled on 36 dams that were identified for rehabilitation at a total cost of Kshs316.5 million to benefit 153,300 people and 197,500 livestock. One of these dams called "Gahi" has already been rehabilitated by the Ministry.

(c) In view of the large amount of funds required for rehabilitation a priority list of 16 dams was prepared that requires a total of Kshs151 million. The rehabilitation work on prioritized dams will be funded in phases starting the next financial year.

Mr. Mureithi: Mr. Speaker, Sir, considering the fact that this report was done in 2008, and considering the fact that there have been two financial years and enhancement of the budget for the Ministry of Water and Irrigation, I would like to find out from the Minister what action she has taken because people are suffering due to lack of water.

Mrs. Ngilu: Mr. Speaker, Sir, as I said earlier on since we have not allocated this project any funds during this financial year, this can only be done in the next financial year. As you can see, there are too many dams and we will have to prioritize them. I think the hon. Member can share with us his priorities.

Mr. Olago: Mr. Speaker, Sir, identifying dams, water holes, boreholes and shallow wells for rehabilitation is an issue that should involve the community. As a matter of policy, what has the Ministry done to ensure that engineers from the Ministry and those from the various water boards involve the community in the identification of dams to be rehabilitated?

Mrs. Ngilu: Mr. Speaker, Sir, one of our parastatals called "Water Services Trust Fund" actually helps to identify some of those communities and work with them in building capacity and educate them for sustainability purposes. Those are some of the things that the Ministry is doing. Whenever we are doing a water project, we ensure that we involve the communities around there so that they become part of what we are doing so that when the Ministry goes away after completing the project, they can own it.

Mr. Njuguna: Mr. Speaker, Sir, as I laud the Minister for the positive answer that she has given, I would like her to indicate to this House the criteria applied by the Ministry in determining development of dams in this country, and if they have plans to develop a dam in Lari District.

Mrs. Ngilu: Mr. Speaker, Sir, when identifying places to build dams, first of all, we do needs assessment of the communities. We do more in ASAL areas. In fact, I just learnt today that in the year 2005, there was a launch of a policy by the Government that the Ministry of Water and Irrigation needed to identify more needy areas than others. So, those are the ASAL areas, which everybody knows about. So, that is part of the criteria we use.

(Mr. Mbau stood up in his place)

Mr. Speaker: Minister, I notice that you have not answered some part of the hon. Member's Question, and he is legitimately up on his feet. Will you build a dam in Lari?

Mrs. Ngilu: Yes, Mr. Speaker, Sir, but it will depend on whether it is one of the more needy areas. Can you imagine that some constituencies have people walking for over 30 kilometres in search of water? Surely, as the Minister for Water and Irrigation, who do I give water first? Somebody who can get water a kilometre away or someone who has got to walk 20 kilometres to get water? Those are some of the things that all us hon. Members have got to understand. That is what I actually base my decisions on when identifying places to provide water.

Mr. Wambugu: Mr. Speaker, Sir, the Minister has said that they provide dams on a need basis. Most of the areas, especially on the eastern side of the Aberdares are hidden, but they have got many rivers, which the people are not able to utilise because of the nature of the terrain in that area. When is she going to do a proper needs assessment in those areas, so that we can have dams built along River Mathiyoia?

Mrs. Ngilu: Mr. Speaker, Sir, I will soon be launching a strategic plan that has a marshal plan for water for the whole country, so that I know where we have water and where we need to do more work than we have done. I also want to remind hon. Members that they may not remember that between the years 2007 and 2008, the Budget I found in the Ministry was only Kshs4 billion for development funded by the Government of Kenya, and Kshs5 billion for development funded by donors. Currently, we have much more than that. The amount has tripled. Therefore, we are providing water in more places than we did before. This will be captured in the marshal plan.

Mr. Mbau: Mr. Speaker, Sir, while appreciating the efforts the Minister for Water and Irrigation is making to supply households with piped water, may I also bring to her attention the fact that some of the corporations and organisations under her docket are being proactive? The Ministry does not apportion its Budget on a constituency basis as some other Ministries, like the Ministry of Roads, the Ministry of Energy and the Ministry of Education, do, so that each constituency knows in each financial year that a certain amount of money is going to benefit that constituency. In 2004, the National Water Conservation and Pipeline Corporation (NWCPC) undertook a feasibility study on how water can be provided to my constituency. It was my expectation that among the many lines and branches of water that were recommended, the NWCPC, being a corporation under the Ministry of Water and Irrigation, would take up one project and fund it. Would I be in order to call upon the Minister to consider whether she can fund one of those branches, if not all? Her corporation actually recommended them; for the eight years I have been there, I should be able to say that the Ministry of Water and Irrigation has funded a unit or a line of water.

Mr. Speaker: Order! Order, Member of Parliament for Maragua! You have taken too long to get to any question at all! What is the question you are asking?

Mr. Mbau: Mr. Speaker, Sir, I asked the Minister: Am I in order to invite her to read this report, so that she can consider which branch she can fund, so that we can say that we, too, benefitted from her Ministry?

Mr. Speaker: Minister, are you prepared to read the report? Simple question!

Mrs. Ngilu: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well!

Mr. Speaker: Member of Parliament for Kandara!

Mr. James Maina Kamau: Mr. Speaker, Sir, aware that water is a national problem, what is the Ministry doing to rehabilitate those dams which were in operation, but which are no longer in operation? For instance, in Kandara, there used to be a dam called “Mariga”, which was very useful to the people around there. There used to be another one called “Siranga Dam”. What is the Ministry doing to make sure that they are operational?

Mrs. Ngilu: Mr. Speaker, Sir, water is a big problem in this country. The bigger problem is having resources to do some of the work that has got to be done. However, I will continue asking Members of Parliament to help me get more resources, so that we can do the work that is before us, and give people more water. In fact, it affects me much more than anybody else, as a woman. The people who suffer most are women. So, I want to ask hon. Members to continue putting pressure on the Treasury to give the Ministry of Water and Irrigation more resources, so that we can do the work.

Mr. Mureithi: Mr. Speaker, Sir, I am grateful that an amount of Kshs151 million has been allocated to Ol Kalou. I would like to challenge the Minister to do a priority list, so that, that money will be released on the basis of that priority list. One thing which concerns me is the delay in rehabilitating those dams, which continue to create a lot of problems in terms of spreading diseases like amoeba, dysentery and other waterborne diseases. Could the Minister assure this House, and the people of Ol Kalou Constituency, that the money that has been allocated will be released once I submit the list of priorities?

Mrs. Ngilu: Mr. Speaker, Sir, monies allocated to projects are never released at ago. We start the project, and payments are made as it is implemented. So, we will not give Kshs151 million in one cheque, but the work will begin.

Mr. Speaker: Member of Parliament for Yatta!

Question No.433

EXPANSION OF ATHI RIVER-CHUMBI ROAD

Mr. Speaker: Hon. Members, I have information that this Question was previously answered. So, it is spent.

(Question dropped)

Mr. Speaker: Member of Parliament for Emuhaya!

Question No.445

MINERAL RESOURCES POTENTIAL IN KENYA

Dr. Otichilo asked the Minister for Environment and Mineral Resources:-

(a) what the mineral resources potential in the country is, which minerals are currently being mined, their annual turnover and value;

(b) to indicate how the local communities benefit from minerals mined in their areas; and,

(c) whether he could provide a list of local and foreign mineral prospectors and indicate their areas of operation.

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, I beg to reply.

(a) This country has got potential in mineral resources. Among the minerals that are found in Kenya in significant quantities are soda ash in Lake Magadi, fluospar at Kimwareri in Kerio Valley, and titanium in Kwale, Malindi and Lamu areas. There is also reasonable potential for gold in Kakamega, Vihiga, Migori, Trans Mara, Bondo, Siaya, Pokot, Turkana and Nandi.

Coal is found in Mwingi and Mutitu areas, and is a subject of a current investigation by the Ministry of Energy, in conjunction with my Ministry, to establish its viability for exploitation.

Iron ore occurs in parts of Taita, Meru, Kitui, Kilifi and Samia Hills, where there are efforts by the Ministry, as well as by private prospecting companies, to undertake its evaluation.

Manganese ore occurs in Ganze and Mrima Hills in the Coastal region, where a number of exploration companies have shown interest.

Other mineral occurrences include diatomite at Kariandusi near Gilgil, pharmacolite (?) at Kinyigi Hill, gypsum in Elwak in Garissa, Tana River, Kajiado and Turkana areas. Natural carbon dioxide has also been found at Kereita in Kindu and a variety of gemstones are found in Taita, Kwale, Kitui, Mwingi, Kajiado, Isiolo, Pokot, Turkana, and Marshabit areas.

I have also outlined as requested, a table showing the quantity and value of the mineral production for the period, 2006 to 2009. In spite of the known mineral deposits currently, Kenya is still largely under explored and there is a possibility of discovering even more minerals through systematic exploration in the country. This constitutes a potential investment area for mineral exploration companies as well as the Ministry.

(b) My Ministry encourages mining companies to undertake infrastructural development in their areas of operation as part of corporate social responsibility. Other services that are encouraged include provision of support to schools, health facilities and water, among others. There is evidence that a number of companies do offer a range of corporate responsibility services. There are also employment opportunities, of course, and mining companies are encouraged to employ locals as a priority.

Apart from remuneration, such employment opportunities also provide development and technology transfer to the local communities. In addition to this, local communities also engage in small-scale mining activities. That is what we call “the artisan mining” especially of gold and gemstones in the areas that I have outlined. These

provide alternative sources of livelihood. They also increase business opportunities to the locals in provision of goods and services in the mining areas in terms of provision of other services like food as centres expand.

In the new Constitution, however, I would like to stress that Section 69 (1)(a) makes a provision for equitable sharing of accruing benefits. We expect that this will include the benefits to the communities. At the moment, my Ministry is finalizing the Mines and Minerals Bill which will take account of all provisions and in particular the benefits that will go to the communities, what will accrue to Government and what will go to the prospectors.

Very soon that Bill will be before this House and I would like to invite Members at this early stage that when the Bill is brought before the House, they read carefully so that they strike a good deal for the communities. The Bill will make provisions for every beneficiary from mining. This is contrary to the old law on mining where all minerals belonged to the Government.

(c) I have also outlined in the answer a list of local and foreign prospectors and their areas of operation in Kenya. The list is very long and it is in the document that I have forwarded to the Clerk and to the respondent. We have companies to the tune of 161 that are prospecting in various areas. We also have a list of exclusive prospecting licences which are held by our local investors. We also have a list of special prospecting licences--

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(Loud consultations)

Mr. Ochieng’: On a point of order, Mr. Speaker, Sir. Members are consulting very loudly and we cannot follow what the Assistant Minister is reading.

Mr. Speaker: Very well! Hon. Members, please let us hear the Assistant Minister!

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, the last table that we have given in the answer is a list of mining leases held by local investors. I think hon. Members can access all this in the document that I have tabled.

Dr. Otichilo: Thank you, Mr. Speaker, Sir. First, I want to take this opportunity to thank the Assistant Minister for giving a very comprehensive answer to my question. Secondly, I also want to thank her for being frank that this country has a lot of potential in the mineral industry but it is not doing anything. Why has her Ministry neglected such an important industry in this country for a long time?

I would also like to know why the Department of Mines and Geology has no capacity, no modern equipment and, therefore, cannot carry out its functions well. Finally, when will we have the new Mining Bill because the last Mining Act was enacted in 1940?

Prof. Kamar: Thank you, Mr. Speaker, Sir. I would like to say that the mining industry has not been neglected. I think the procedure has been very long. One of the things that a country that wants to venture into exploration does is capacity building. Now Kenya has enough geologists to do exploration. This is starting. The other point is that there was need to change the current Act on mining. That is why there has been a review of the Mining and Minerals Bill.

The current Draft Bill was done in 2006 but as soon as the mood of changing the Constitution came in, it became necessary for the Ministry to delay that Bill because of what was expected to go into the Constitution. What the Constitution has done is quite major because it now recognizes ownership of minerals by communities which was not in the previous law. So, I assure the Member that we already have a task force that is dealing with all the laws in our sectors. They have given the first priority to the Mining and Minerals Bill which will be brought to this House very soon.

Mr. Njuguna: Thank you, Mr. Speaker, Sir. As we laud the Assistant Minister for that very positive reply, I would like her to indicate to this House the steps they have taken to guarantee local communities do not fight for the profits realized from the mineral resources as it has been noted in other countries in the continent.

Prof. Kamar: Mr. Speaker, Sir, that is a very important question because we have had areas where prospectors have been issued with licences and we have seen conflicts between the communities and the prospectors. As I said earlier on, the best protection for our communities is about to be reflected in the new revision of the Mining and Minerals Act. Currently, the communities do not get the proceeds because by law, it is the property of the Government. However, in the new Constitution, and that is why we are in a hurry to get this Bill through Parliament, once that is done, it will be stipulated clearly in the law how much will go to the communities. I can only assure Kenyans that since the Bill will be brought to this House, let us wait because we have been patient for a very long time without exploring minerals. We will benefit from this Bill together.

Mr. Mwadeghu: Thank you, Mr. Speaker, Sir. From the list tabled by the Assistant Minister, two-thirds of the miners are mining in Taita Taveta County. Could she be kind enough to tell us how many water facilities, schools and dispensaries have been accorded by the miners? Secondly, can she confirm or deny that there are special people mining in Tsavo East and Tsavo West National Park, which is against the law?

Prof. Kamar: Mr. Speaker, Sir, I am not able to give him the figure of the number of schools because that is different from what the Question was asking. If you would like us to have that, I can always prepare a list of how many schools and what has been done by each of these companies because some have shown. I also want to point out that in my answer I said that they are being encouraged. Being encouraged is very different from what the new law is going to do. The new law is going to share equitably whatever accrues from the mining and that is when the communities and the Government will have a right. So, that is the difference but we can avail that information if he would like to have it.

On the issue of special people, I do not want to call them that because all prospectus are prospectus. In the old Act, there is a provision that gives the Government the power to allocate any area for prospecting. So it is not that they were outside the cluster of who was approved but they were approved using the old law. The new law is going to streamline and change that completely so that we can openly talk of where the gold is, who is mining and so forth. Therefore, there are a number of things that we are going to overhaul in the new law.

Dr. Khalwale: Mr. Speaker, Sir, the Assistant Minister has told us that the Americans, Canadians and people from Barbados are currently exploiting gold in Kakamega. Could she tell us the gross annual earnings that these people realize in mining

gold in Kakamega and tell us how she ensures that this mining is safe for the local miners and what compensation they give whenever these miners die as they do?

Prof. Kamar: Mr. Speaker, Sir, I may not be able to say much about the gross earning right away. What we have – I have given a list – is the quantity and value of the mineral production for the period as was asked by Dr. Otichilo, and gold is one of them. I have shown from the year 2006 to 2009 the amounts as they are. What we have not done here because that was asked was to distinguish which was from Kakamega and what was coming from the other areas but we know that it is the sum total of gold coming from Kakamega, Vihiga, Migori and Trans Mara. If there is need for that information, we have it segregated because we were only able to put them together in this document.

The other important question the hon. Member has asked is about compensation. We know that collapsing of mines is something that is international. Recently we had a case where people were buried for over a month and thank God they successfully came out. What we do not have in our law is how that protection is done. I would like to accept it and these are some of the things that we would like to add in the new law. That is why I mentioned that to us, in the Ministry of Environment and Mineral Resources and specifically the docket of mineral resources, this is our priority Bill and we shall be here very soon to ensure that all of us contribute and make sure that we protect everybody as we go into the major exploration and mining.

Mr. Anyanga: Mr. Speaker, Sir, I have gone through this detailed list and I have realized that the Assistant Minister ignored Macalda Mines which is known for its gold and it is in Nyatike District. Could she confirm to this House why she decided to ignore or not include Nyatike District in this list?

Prof. Kamar: Mr. Speaker, Sir, I apologize for ignoring Nyatike. We do not mean to leave out anything because we have only given the broad areas that have large quantities. I know that Nyatike has it and we will make the correction.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. The Assistant Minister has just admitted that she is sorry for leaving out Nyatike. To me, that means that the answer is inaccurate. What other areas has she left out? Could she clarify whether she thinks she has omitted many other areas so that she gives us an appropriate answer?

Prof. Kamar: Mr. Speaker, Sir, I think it is only Nyatike. I am sure every hon. Member who has looked at that list can see that it is very comprehensive. As the hon. Member was talking, I was looking for that specific area but I think we have been very exhaustive.

Dr. Otichilo: Mr. Speaker, Sir, given that most of the mining apart from gemstones is undertaken by international companies which are not based in Kenya, what conducive investment environment are they creating for Kenyans so that they can get involved in the business of mineral mining rather than having Australians and other companies coming to take over our natural resources?

Prof. Kamar: Mr. Speaker, Sir, as I said earlier, for Kenyans to do the exploration, the first thing they need is capacity building and ownership of their own geologists. This was the area that was lacking in the country because one of the biggest problems in mining is that if you do not have your own geologists, you do not know whether somebody is mining one mineral and covering another underneath. So one of the things that is being done in the country is encouraging capacity building in geology. Most of our universities are now offering that course so that anybody at the national level who

would like to do exploration will be able to easily get personnel to do that. The law that is coming will make it very flexible for exploration to be carried out by nationals.

Question No.461

HOLDING OF UNCLAIMED ASSETS BY
FINANCIAL INSTITUTIONS

Mr. Speaker: Hon. Members, this Question is deferred to Wednesday next week at 2.30 p.m. The hon. Member is held up in an insecurity situation that has resulted in a number of deaths in his area. Maybe the Minister of State for Provincial Administration and Internal Security should note and attend to that.

(Question deferred)

Question No.451

IMMINENT TAKE-OVER OF MUKURU COMMUNITY CENTRE

Mr. Waititu asked the Minister for Education:-

(a) whether he is aware that Mukuru Community Centre, a community school, was constructed through a donation from Kenya Airways;

(b) to confirm whether he is aware that there is a scheme by the school management and some Ministry officials to grab the school and register it as a private school and if so, what measures the Government is taking to avert the imminent take over; and,

(c) when the Ministry will register the school as a public school so that it can start receiving Government support through the Free Primary Education funding?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I seek the indulgence of the Chair and the House. I was provided with an answer which I considered to be very inadequate this morning. I need to get better details so that I can give an adequate answer. I need a week to do that.

Mr. Speaker: Very well! Mr. Waititu, are you comfortable with that?

Mr. Waititu: Yes, Mr. Speaker, Sir.

Mr. Speaker: Wednesday next week?

Mr. Waititu: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well! It will be at 2.30 p.m. Wednesday next week; it is so ordered!

The Assistant Minister for Education (Mr. Mwatela): Thank you, Mr. Speaker, Sir.

(Question deferred)

Question No.468

LIST OF VIHIGA TEACHERS SACCO DEBTORS

Mr. Speaker: Mr. Chanzu is not here, so this Question is dropped!

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

Mr. Speaker: We will now go back to the Question we intimated we will revisit which is the first Question by Private Notice. Member for Naivasha!

NUMBER OF DEATHS CAUSED BY ILLICIT
ALCOHOLIC BREWS SINCE 1999

Mr. Mututho: Mr. Speaker, Sir, I apologize and I seek your indulgence. I was travelling from Mombasa; we have been doing the Harambee SACCO inquiry report and my flight just touched down about an hour ago.

However, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) What is the number of deaths caused by illicit alcoholic brews from 1999 to date?

(b) Could the Minister provide names of manufacturers and brand names of all alcoholic drinks and beverages sold in the country and details of chemical analysis of such drinks, indicating whether the respective drinks are acceptable (fit) for human consumption or not?

(c) Could he also indicate the number of those prosecuted for brewing and distributing such illicit drinks and when will the Government close down all the businesses manufacturing, distributing and selling alcoholic beverages that do not meet World Health Organization (WHO) standards?

Mr. Speaker: That is not a very good explanation; I will just urge other hon. Members not to follow your example.

(Laughter)

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, as a matter of fact, Mr. Mututho will agree that we had discussed with him the fact that there are certain things that are being done in connection with this Question, in the light of the new Act which has just come into place and that he needed to give me two weeks to gather the necessary materials to give him a substantive answer. I, therefore, seek your indulgence that you agree to what Mr. Mututho and I had discussed and I hope he will not recant his words.

Mr. Mututho: Mr. Speaker, Sir, that is the position they have indicated to me and I did see the extent to which they are doing their research into the subject and I, therefore, concur with him on his request.

Mr. Speaker: Mr. Minister, how long hereafter?

The Minister of State for Provincial Administration and Internal Security
(Prof. Saitoti): Mr. Speaker, Sir, I believe after two weeks, we will definitely have done the necessary and be in a position to answer.

Mr. Speaker: Very well! I will defer this Question to two weeks from today.

(Question deferred)

Order, hon. Members! That brings us to the end of Questions.
Next Order!

POINT OF ORDER

GRANTING OF EXTENSION TO COMMITTEE INVESTIGATING MYSTERIOUS KILLINGS IN ELDAMA RAVINE/LARI

Mr. Kapondi: Mr. Speaker, Sir, on Thursday 30th September, 2010, the Deputy Speaker referred the matter of the mysterious killings of persons in Eldama Ravine and Lari in Baringo and Kiambu Counties, respectively to the Committee on Administration and National Security. The matter came to the Floor of the House through a Question by Private Notice filed by hon. Lessonet, and a supplementary question by hon. Njuguna, the Member for Lari. The Members sought to know from the Minister of State for Provincial Administration and Internal Security the circumstances surrounding the mysterious deaths of youth in the constituencies in the recent past.

Mr. Speaker, Sir, in this regard, the Committee undertook a fact-finding mission to Eldama Ravine and Lari as directed by the House. It visited Lari on Monday 11th October and proceeded to Eldama Ravine on 12th October, 2010. There is a preliminary report to that effect. However, it is the view of the Committee that in order to come up with a comprehensive Report, there is need to visit other areas where similar incidents have been reported. There have been claims that similar killings have taken place in other areas in Nairobi, Nyanza and Coast provinces.

Mr. Speaker, Sir, the Committee considers the preliminary report inconclusive and, therefore, seeks for an extension of time for it to come up with a more comprehensive Report. If the House gives us an extension, the Committee intends to visit the said areas from 18th to 29th October, 2010, so that we can have a more conclusive Report to table before the House.

Mr. Speaker: How much more time do you require?

Mr. Kapondi: Mr. Speaker, Sir, we require two more weeks, given the procedural issues of inviting witnesses, which normally takes seven days. One of the two weeks that we were given by the Deputy Speaker was consumed by the matter of inviting witnesses before we embarked on the mission on the ground.

Mr. Speaker: Very well! We will grant you an extension of 23 more days from today. There will be no further extension.

Mr. Kapondi: Thank you, Mr. Speaker, Sir. Much obliged.

Mr. Speaker: Very well!

Next Order!

MINISTERIAL STATEMENT

COMMITMENT OF GOVERNMENT TO ICC

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I do have a Ministerial Statement to make in response to such a request by the Member for Garsen. This is on the International Criminal Court (ICC).

Mr. Speaker, Sir, on Tuesday 28th September, 2010, hon. Mungatana, Member for Garsen, rose on a point of order seeking a Ministerial Statement on the commitment of the Government to the ICC. In the Statement the hon. Member sought to know whether:-

- (i) the Government is committed to fully co-operate with the ICC on the investigation of the post-election violence;
- (ii) the Government has afforded the ICC all the facilities they require to carry out their mandate;
- (iii) the Government has failed to give information and necessary minutes of security meetings that were held during and after the post-election violence;
- (iv) with the passing of the new Constitution, the Government will still co-operate with the ICC or it has changed its position; and,
- (v) the Minister could table the agreement between the Government and the ICC.

Mr. Speaker, Sir, I wish to state as follows: It is on record that Kenya held the national General Elections on 27th December, 2007. Upon the announcement of the Presidential election results, violence erupted in five provinces and continued in some areas until after the signing of the National Accord Agreement on 20th February, 2008 by the two Principals.

After calm was restored, His Excellency the President constituted the Commission of Inquiry into the post-election violence, popularly known as the Waki Commission. The Commission made a Report and presented it to His Excellency the President and the Panel of Eminent African Personalities in October, 2008.

Mr. Speaker, Sir, among the recommendations made by the Waki Commission is the constitution of the special tribunal for Kenya. In the event that the special tribunal fails to be established or commence functioning or if started, the functioning was subverted, then the special Prosecutor of the ICC would proceed with an investigation; prosecuting the persons suspected to bear the greatest responsibility for crimes falling within the jurisdiction of the proposed Special Tribunal. The National Assembly was unable, on repeated occasions, to enact legislation to establish the Special Tribunal, thus bringing into play the special prosecutor of the ICC, as prescribed by the Waki Report in Chapter 13, Recommendation No.5, page 476. Consequently, on 31st March, 2010, the pre-trial Chamber authorized the Office of the Prosecutor of the ICC to conduct investigations in Kenya.

Mr. Speaker, Sir, the ICC has since made several requests for assistance and co-operation from the Government. These requests range from provisions of the various documents and records, the taking and recording of evidence from various Government of Kenya officials, the production of certain security documents and minutes and security service to ICC officials while in the country. In particular, by their letter or request dated 15th July, 2010, the ICC requested the provisions of minutes of certain security committee

meetings. Upon receipt, the Government sought for clarification from the ICC and requested them to be specific on which minutes or information they required. The seeking of clarification is provided for under Section 24 of the International Crimes Act No.16 of 2008. The ICC responded to the Attorney-General's letter on 24th September, 2010, and specified the documents they sought to be transmitted to them. The Government has since initiated the retrieval of minutes for the period in question and perused them in order to identify the relevant minutes, pursuant to Article 72 of the Rome Statute. The exercise is ongoing.

On the request for the interview of the named Provincial Commissioners and Provincial Police Officers, I wish to confirm that the Government, through the Cabinet Sub-committee coordinating the ICC matters, pursuant to provisions of Section 23 of the International Crimes Act, authorized the interview to proceed and the identified officers were instructed to attend.

Mr. Speaker, Sir, I would however, try to point out that persons appearing to give evidence, produce documents or to be questioned by the ICC have rights and privileges both under the International Crimes Act and the Rome Statutes, including the ICC Rules which provide, among others, protection against self incrimination, legal representation and non-disclosure of information that may jeopardize national security.

The rights are provided for under Section 152 to Section 155 of the International Crimes Act and Article 72 and Article 93 of the Rome Statute. The rights are also enshrined in the Constitution of Kenya. Following the submission by the officers who appeared for interviews by the ICC investigators on Monday 27th and 29th September 2010, the Attorney-General wrote, pursuant to Section 78 of the International Crimes Act, to the Chief Justice and requested him to appoint a judge of the High Court to take evidence from the identified Government officials. The hon. Chief Justice has since appointed Lady Justice Kalpana H. Rawal for that purpose.

Mr. Speaker, Sir, further, in the discharge of my mandate, and in conjunction with the Cabinet Sub-committee coordinating the ICC matters, I am in the process of finalizing drawing of rules, pursuant to Section 172(b) of the International Crimes Act, to provide for the envisaged procedure. At this juncture, I can report that I expect the necessary gazettelement will have been finalized to appear this coming Friday, the 22nd October 2010.

Mr. Speaker, Sir, on 3rd October 2010, an exchange of letters on the privileges and immunities of the ICC was executed and delivered. The same has since been gazetted. These include the agreement necessary for the independence and effective functioning of the ICC in the country, in accordance with the Kenya's obligation under the international law. I wish to once again assure the House that the passing of the new Constitution does not in any way change the Government's term on its legal obligation to cooperate with the ICC.

Indeed, under Article 2 of Sub-articles 5 and 6 of the new Constitution, the general rules of the International laws and Treaties or Conventions ratified by Kenya form part of Kenya's law.

Mr. Speaker, Sir, Kenya is one of the very few African countries that have enacted international crime legislation to give effect to the Rome Statute. We have facilitated the smooth process, which is a pre-requisite for cooperation and fosters Kenya's better cooperation with the ICC. Indeed, as late as 11th October 2010, the ICC

took the opportunity to thank the Kenya Government for its cooperation with its investigation.

Finally, I wish to assure this House and Kenyans in general that the Government is committed to cooperation with the ICC in the ongoing investigation to the full extent as by law required. I hereby table the agreement between the Government and the ICC on the privileges of the ICC.

(Prof. Saitoti laid the document on the Table)

Mr. Speaker, Sir, the agreement is contained in the formal exchange of letters between the Registrar of the ICC and the Minister for Foreign Affairs.

Mr. Speaker: Let me get Members seeking clarifications beginning with the Member for Garsen!

Mr. Mungatana: Mr. Speaker, Sir, first I want to really thank the Minister for being very elaborate. I was listening to that Statement clearly, thanks to the electronic transmission. Maybe one of the things that Kenyans are interested in knowing and which the Minister needs to clarify is that, there have been allegations and rumours flying from one side of the country to another as to the fact that prominent Kenyans are possible suspects of this indictment in the ICC. In fact, there have been allegations that even colleagues of the Minister in the Cabinet where he sits could be possible guests of the ICC when the process begins.

Mr. Speaker, Sir, what assurance is the Minister giving to Kenyans that his office and the Government will not protect Ministers or senior people who might be mentioned or required to be charged at the ICC? What assurance is he giving to this country in terms of full cooperation in keeping with the agreement that he has tabled, that they will surrender their Cabinet colleagues if charged by the ICC? What assurance is he giving to this country that the Government will cooperate?

Mr. Speaker, Sir, this is based on the fact that this same Government did not cooperate when it came to executing warrants of arrest of the President of a neighbouring country, when we knew there were warrants in force. What assurance is the Minister giving us that they will execute warrants when it comes to executing them within this country when your own colleagues are mentioned?

Dr. Khalwale: Mr. Speaker, Sir, hon. Members of Parliament have held very interesting press conferences in this country where they have almost bordered on confessions. They have indicated that they attended meetings which had minutes that could help the process. What is the Minister doing to help the ICC to access the minutes of the meetings by the Pentagon of the ODM?

Mr. Speaker, Sir, could the Minister also clarify whether during the cooperation by the Government, members of the National Security Committee (NSC) including the Chairman, Chief of General Staff, the Director-General of the National Security Intelligence Service (NSIS), the Secretary to the Cabinet, the Minister of State for Provincial Administration and others will also cooperate and give evidence through Justice Rawal?

Finally, could the Minister tell this House whether it is the intention of the Government or not to sacrifice Provincial Commissioners (PCs) and Provincial Police

officers on behalf of those who bear the greatest responsibility and who gave them the directives that they were effecting?

Mr. Waititu: Mr. Speaker, Sir, we appreciate the Government's promise that they will cooperate with the International Criminal Court (ICC). However, we are worried that justice might not be done. What happened after elections is something that everybody saw in this country. We saw people calling for mass action. Those who were calling for mass action wanted people to destroy other peoples' properties, and that is exactly what happened. We are worried that the Report that was written by the ICC did not mention those people who called for mass action. Could the Minister confirm that those people who called for mass action - in the Kenyan context this means those people who fought other people and destroyed their properties, are being targeted by the ICC. What about the ones who fought back? I happen to have seen an ICC Report a month ago. That Report appears to be targeting the Mount Kenya region people.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. I just need to seek your guidance. I am wondering whether the hon. Member is seeking a Ministerial Statement, asking a clarification or making a confession.

Mr. Speaker: The hon. Member for Embakasi may have taken advantage of my consultations with the Attorney-General.

Mr. Waititu: Mr. Speaker, Sir, now that you are attentive, I am talking from a point of view that there was a lot of violence in the Dandora area of Embakasi. We saw exactly what happened and I can give you an example of events. I wish the Office of the ICC was near town. This is not something that we were told. We saw exactly what happened. Violence in Dandora was as a result of people listening to---

Mr. Speaker: Order, Member for Embakasi! You are quickly moving off course. The Minister of State for Provincial Administration and Internal Security has given a statement, stating certain things in respect to the ICC. You are now giving us your own version. I think your clarification must emanate from the statement by the Minister.

Mr. Waititu: Mr. Speaker, Sir, I am sorry. Could the Minister clarify whether those people who called for mass action are targeted, or being investigated, by the ICC?

Mr. Kigen: Mr. Speaker, Sir, the Minister of State for Provincial Administration and Internal Security has said that the minutes of the security meetings are being vetted and they will be given to the ICC team. I would like to request him to tell the House what security risks are involved in giving out the minutes as they are to the ICC. Could he tell us what risks the Ministry of State for Provincial Administration and Internal Security would run into if the security meetings minutes were given out the way they are?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, if you allow me, I will deal with these clarifications from the bottom. I would, therefore, like to address the clarification sought by hon. Kigen. He would like to know why we should not give out the minutes the way they are. Let me put it this way. The initial letter that came to us, as a sub-committee, from the ICC asked us to give to them all minutes, which, of course, had been stated. However, after reading carefully the International Crimes Act, which I referred to, I realized that there was a provision that when the ICC requests some information, the State has a right to ensure that its own national security is not endangered. The provision made further to that one is that we do not just, indeed, merely say that security will be jeopardised. We have to ensure that this matter is looked at by the Government. The security meetings that were

held before and during the time of the violence, and even thereafter, were not entirely devoted to the violence. There were many other things that were happening. We have to ensure that those other issues that are not relevant to the ICC investigations are not divulged because that would cause us more problems. That is the issue here. Incidentally, that is the tradition in all states. There are certain matters which are privileged; privileged in the sense that they have nothing to do with the ICC. The ones which have to do with the ICC investigations will be handed over to them. We are in the process of compiling them.

Hon. Waititu made a statement while seeking a clarification. He said that he was of the view that the ICC may not be doing justice to Kenyans. He said that those who were calling for mass action are not contained in the ICC Report. I do not know what Report he is referring to; it would be very important if this matter were clarified.

Mr. Waititu: On a point of order, Mr. Speaker, Sir. Some two weeks ago, I presented a Report to the Minister, who is at the Table, and he said that he would verify whether the Report was from the ICC. I personally presented the Report to him.

Mr. Speaker: You personally presented the Report to him?

Mr. Waititu: Yes, I presented it to him.

Mr. Speaker: Order! Mr. Minister, the hon. Member has said that he personally passed on a Report to you. For purposes of the record, Mr. Minister, you are not at the Table but on the Floor.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, let me clear that bit, for the comfort of hon. Waititu. It is, indeed, true that sometime back, I cannot remember exactly when, hon. Waititu presented a document to me. He wanted to know whether, at all, I knew anything about it. I told him that it was the first time that I was seeing the document. I also told him that I would do a search to establish whether the document was authentic or not. I can inform this House as follows. I liaised with my colleague, the Minister for Foreign Affairs, and he requested the Kenya representative to the United Nations to ascertain whether there was such a document.

Mr. Speaker, Sir, this is the position. We were told by the Ambassador that such a document was prepared by the United Nations and kept under an embargo. It was not circulated and never sent to the ICC. Therefore, that document is not a report of the ICC. The information in our possession is that after the violence in this country, the ICC requested several bodies and organizations working here by then, to give them any report they may have prepared during that time. Those are the facts.

I will now proceed with other clarifications which have been sought by hon. Members. Dr. Khalwale talked about the minutes of the Pentagon. I want to make it quite clear that we produced what we were requested by the ICC. We were not requested to send them the minutes of the Pentagon. However, if, indeed, a request is made, we will look for them and send them, if they are there. If they are not there, we will tell them so.

Another question that was raised was whether members of the several security committees at the various levels would co-operate with the ICC to give evidence. Such a request has not been conveyed to us. There will be no reason for us not to give evidence if required. So, it is presumptuous now to start believing that some people will fail to turn up or co-operate with the ICC. That is a strange anticipation.

The allegation that the Provincial Commissioners (PCs) and the Provincial Police Officers (PPOs) are being sacrificed is not true. I want to inform the House that there is no such sacrifice of the officials. The Government has got no such intention. Much more important, when the ICC made a request to interview them, they stated that they also wanted to exercise their right as it is enshrined in the Constitution and requested to be accompanied by their lawyers. We never told them that they could not be accompanied by their lawyers because we know very well that, that is their right.

Secondly, even when they are accompanied by their legal counsels, they also made it very clear that they were not going to give evidence unless they did so before a judge of the High Court. We did not deny them that right. Thirdly, even in the appointment of the judge, the Attorney-General had consultations with the Chief Justice. As I said in my Statement, already a judge of the High Court has been appointed in accordance with the law. However, certain rules and regulations need to be set out. I have informed this House that the Cabinet Sub-Committee that I chair has gone through the various drafts of those rules and we finalized them this morning. It is my hope that I will gazette them by Friday.

Mr. Speaker, Sir, the other issue was raised by hon. Mungatana that there are allegations that prominent Kenyans are suspects. I am not in a position to answer that allegation because the ICC has kept that information jealously confidential to themselves. So, I cannot, therefore, be in a position to make a speculation. I do not want to do so. Indeed, hon. Khalwale went on to say that some of my colleagues are likely to be possible guests of the ICC. Well, I do not know.

The other thing is that, perhaps, the Kenya Government will fail to honour the warrant of arrest for those who will be indicted to go to the Hague. That is speculation. It will be remembered that when the Chief Prosecutor of the ICC first came to this country and met the two Principals, namely, His Excellency the President Mwai Kibaki and the Right Hon. Prime Minister, Raila Odinga, they made it abundantly clear that the Government will co-operate with the ICC. They did not do so in private. They actually stated that publicly, not only for the Kenyans to hear, but also for the international community.

Mr. Speaker: Order, hon. Members! We will take one more Ministerial Statement, which by its nature is fairly urgent, from the Ministry of Higher Education, Science and Technology.

TERMINATION OF PROF. SAMMY KUBASU'S SERVICES
BY MASINDE MULIRO UNIVERSITY

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Thank you, Mr. Speaker, Sir. I beg to give this Statement that was requested by hon. Wamalwa regarding the firing of Prof. Okubasu from Masinde Muliro University.

Prof. Kubasu was appointed Chairman of department by the university, the main reason being that he was seen as one of the senior members of staff, who would be able to guide teaching and research responsibilities of the university. This is generally the tradition where the university selects from senior lecturers, persons holding the position of senior lecturer and above. However, Prof. Kubasu declined the offer for a number of reasons. Firstly, he said that he is the National Chairman of UASU, and in that capacity,

he still had responsibilities to carry out, including continuing negotiations with the Government and universities regarding employment terms for the UASU members.

Secondly, he also said that for personal reasons, he did not want to take up this position. After giving those reasons, the university fired him. He did, however appeal because he said that there were no reasonable grounds given for him to be fired. The matter of his appeal is with the University Council and I hope that the Council will come up with a conclusion that does not discriminate against Prof. Kubasu.

Mr. Speaker, Sir, first, I would like to say that by refusing to take up the appointment, he gave up some benefits amounting to Kshs33,000 a month. The letter of appointment also allows you to either take up or decline the appointment. As a matter of fact, this is what the letter says: "If you accept the appointment on conditions of this letter, please sign on the space provided below and return one side copy of the letter to the undersigned as soon as possible." Below it clearly says: "I accept or do not accept." So, he took the option of not accepting. So, the letter itself gave him that option.

Secondly, in refusing the appointment, the professor did not refuse to continue with his other duties as a professor. He is teaching and researching. More importantly, if you are a member of a university staff union, it is actually good for the university management and the academic staff because you will provide a link or an opportunity for dialogue between academic staff members, students and the administration. The UASU is in fact supportive of the university management. I hope the council will listen to this matter and will not punish Prof. Kubasu because punishing him would be taking us back to those days of impunity.

Mr. Speaker: We will now take clarifications, starting with the hon. Member for Saboti.

Mr. Wamalwa: Mr. Speaker, Sir, I am happy that the Assistant Minister agrees with most of us that there was no basis or any ground for the sacking of Prof. Kubasu. Part of the clarification is to request for the Assistant Minister's intervention to ensure that Prof. Kubasu's constitutional rights under the new Constitution are not violated.

Mr. Mungatana: Mr. Speaker, Sir, I regret that the Ministerial Statement by the Assistant Minister does not help us at all. Masinde Muliro University is a public institution and that is why we brought the matter before him as Parliament, expecting action. The Government, through the taxpayers, pays a huge amount of money. Surely, the Government through the Assistant Minister must have a say. He has not told us that as an Assistant Minister, this country should wait for a university council to correct an obvious injustice. Could the Assistant Minister give direction - he is executive, for Christ's sake! - for the reinstatement of the professor because it is obvious on the face of the record that there is gross violation of his constitutional rights? That is why we brought the matter before the Assistant Minister.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, in line with what Mr. Mungatana has said, there are very many young qualified Kenyans looking for jobs. What has the Assistant Minister done to dismiss the persons who have dismissed Prof. Kubasu and give their jobs to more progressive Kenyans who know that we have a new Constitution?

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, both Mr. Wamalwa and Mr. Mungatana have raised the issue of why the Ministry should not intervene. I would just like to remind this House that since 2004, we allowed universities to be autonomous institutions. As a matter of fact,

even chancellors of universities are not government officials any more. So, there is that autonomy. Of course, we have a supervisory role because universities also depend on the Government but that role only needs to be administered if due process has not taken place. Right now the matter is with the university council. If the university council upholds a decision that is clearly faulty then, as a Government, we will have no alternative but to intervene. On the case of dismissals, those cases have to be addressed in a better way unlike in the case of Prof. Kubasu's. I do not think it is necessary to think about dismissing anybody at this time. In any case, university positions are advertised and it is up to the council, again, to take decisions. If the council does not take appropriate decisions, then you can count on the Ministry to take action to remind university administrators who still live in the past that this is a new Kenya.

Mr. Speaker: Hon. Members, that then brings us to the end of Ministerial Statements.

Eng. Gumbo: On a point of order, Mr. Speaker, Sir. On 28th September, I rose on a point of order to seek a Ministerial Statement---

Mr. Speaker: Order, the hon. Member for Rarieda! Please resume your seat. I think this will apply to the rest of the hon. Members. You must be active and vigilant all the time. After the responses by the Minister on Statements, those who had other concerns under this head should have been on their feet, seeking to raise their points of order and not to wait until the Speaker calls the next Order then they are prompted to their feet.

Eng. Gumbo: It is on a different point of order, Mr. Speaker, Sir.

Mr. Speaker: Is it under Statements?

Eng. Gumbo: Yes, Mr. Speaker, Sir.

Mr. Speaker: That is exactly what I am saying. That we do not lose time waiting until the Speaker calls the next Order and then you stand on a point of order on the Order that we are just exiting from. So, the very least you could do is apologise then I would consider allowing you to raise your matter.

Eng. Gumbo: Mr. Speaker, Sir, I apologise.

Mr. Speaker: Proceed!

POINT OF ORDER

STATE OF SOCCER IN THE COUNTRY

Eng. Gumbo: Thank you, Mr. Speaker, Sir. On 28th September, 2010, I rose on a point of order to seek a Ministerial Statement from the Minister for Youth Affairs and Sports on the state of soccer in the country. The Minister was not in the Chamber at the time but his colleague, Mr. Henry Kosgey undertook to inform him to deliver the Statement on 5th October, 2010. Subsequent to that, the Minister informed me that he would be on an official duty in India for about a week. Indeed, the Speaker's Office wrote to the Minister confirming that given the duties and official engagements out of the country, he would deliver the Statement today on 19th October, 2010. I have a copy of your letter and I was just wondering because I want to believe that this commitment from the Speaker's Office came after an undertaking from the Minister.

Mr. Speaker: Very well! I do not see the Minister for Youth Affairs and Sports or the Assistant Minister. Maybe the Deputy Leader of Government Business, could you hold brief for the Minister? This matter is obviously urgent.

The Minister for Agriculture (Dr. Kosgei): Mr. Speaker, Sir, I will get in touch with them today.

Mr. Speaker: Could the Ministerial Statement be available on Thursday, this week?

The Minister for Agriculture (Dr. Kosgei): I will try my best to get them to issue the Statement.

Mr. Speaker: Tell them it is so directed and it better be available because this is an urgent matter.

COMMUNICATION FROM THE CHAIR

DEFERMENT OF ORDER NO.9 AND ORDER NO.10

Mr. Speaker: Hon. Members before we move to the next Order, Order No.8, I wish to direct as follows:

That business at Order No.9 will stand deferred because both the Minister for Agriculture and the Chairperson of the Committee on Agriculture as well as Members of that Committee have not been able to get up to transact that business. I, however, want to direct the Minister to note that soon after a report of a Committee is tabled, that matter is presumed to be fully investigated. So, it will not be a reasonable ground for the Minister to want a postponement on the basis that there is need for consultation to take place. If anything, those consultations ought to have taken place as the Committee proceeded with its investigation or inquiry. It will, therefore, not be tenable ground for deferment so that the Minister has time to consult the Committee or even for that matter, to prepare a response. It is expected that the Minister will prepare a response contemporaneously as the matter is debated in the House. So, please, note those directions, Minister.

For the Committee, note, because you have also put these sentiments on paper. You require time to consult with the Minister; and you also require further time for Committee Members to get ready. Obviously, those are not tenable grounds. You must carry out your consultations and investigations before you put the Report in final form. The moment you table a report in the House, there is a presumption that you have concluded that matter, and that the Committee is ready to move the report.

If the Chairman of the Committee is unable to move the report, then any other Member of that Committee can move the report. So, you will not be permitted to carry out further investigations or consultations after a report is tabled.

A very dangerous indication in your communication to the Speaker's Office is that some changes to the Report are envisaged. You cannot make changes to the Report after it is tabled in the House. The House takes custody of it, and the House may deal with the report either by adoption or rejection or amendment. So, please, be directed accordingly.

For the moment, Order No.9 is deferred to a later date and the House Business Committee will determine time that will be suitable for it.

MOTION

ADOPTION OF REPORT ON CHALLENGES FACING SUGAR SECTOR

THAT, the House adopts the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on hearings on the challenges facing the sugar sector in the Country, laid on the Table of the House on Wednesday, 13th October, 2010

(Motion deferred)

Mr. Speaker: Order No.10 will similarly be deferred until such time that the House Business Committee will give it space on the Order Paper, on the grounds that the Deputy Prime Minister and Minister for Finance has indicated to the Speaker's Office, that the amendments to the Bill, which were being processed are not yet completed. This is largely on the ground that the Minister for Finance himself was away, transacting business on behalf of all of us in New York. So, he was not able to complete the requisite amendments that would have entailed meetings with the Committee.

BILL

Second Reading

THE FINANCE BILL

(Bill deferred)

Mr. Speaker: However, I want the Leader of Government Business, and Members of the Front Bench, to note that any indications or commitments you make on the Floor of the House must be respected. I would want to hold you to statements that you make in this House. We will want to hold you to them and expect you to live by them. I say so because the Assistant Minister in the Office of the Deputy Prime Minister and Ministry of Finance last week, on Thursday, indicated that the Ministry would be comfortable to proceed with this business today.

It is, therefore, not obviously palatable for an explanation to be given that the Ministry has not completed amendments when, in fact, we expect that the Assistant Minister was aware that amendments were being processed even as he gave that commitment.

So, that would be the position as we proceed to the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE COMMISSION FOR THE IMPLEMENTATION
OF THE CONSTITUTION BILL

Clause 2

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

THAT, Clause 2 of the Bill be amended-

(a) in the definition of “chairperson” by deleting the words “Section 7” and substituting therefor the words “Section 8”;

(b) in the definition of “Commission” by deleting the words “Paragraph 5” and substituting therefor the words “Section 5”;

(c) in the definition of “Parliamentary Select Committee” by inserting the words “Section 4 of” immediately after the words “established in accordance”;

(d) in the definition of “Secretary” by deleting the words “Section 13” and substituting therefor the words “Section 14”.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I welcome the amendments.

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

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

(Clause 2 as amended agreed to)

(Clause 3 agreed to)

Clause 4

Eng. Gumbo: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 4 be amended in paragraph (d) by deleting the words “report regularly” and substituting therefor the words “report at least once in every three months”.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Chairlady, I welcome the amendment, even though I was quite happy with the word “regularly”. I accept it.

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

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

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. I wish to notify the Chair that I had a similar amendment. Since this particular amendment has passed, I wish to drop it.

The Temporary Deputy Chairlady (Dr. Laboso): Thank you.

(Proposed amendment dropped)

(Clause 4 as amended agreed to)

Clause 5

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

THAT, the Bill be amended by renumbering the existing provision as Subclause (1) and inserting a new Subclause as follows:-

(2) At least five of the Commissioners including the Chairperson shall serve on a full time basis.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I welcome the amendment. I have discussed this with the Chairman and I accept it.

Dr. Khalwale: Madam Temporary Deputy Chairlady, I would like to support the amendment, but how nice it would have been for the Committee if you were to consider the possibility that we could have a body, a group of people and very powerful individuals who would try to obstruct the work of the Commission! Probably, it would have been nice for us to introduce an allowance, or a provision, for penalties so that it deters people completely from attempting to block this wonderful Commission.

However, I support the amendment so that we can move on.

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

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

Clause 7

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 7 of the Bill be amended by deleting subclauses (7) (c) (i), (iii), and (iv) and at Subclause (7) (d) by inserting the following new words and subclauses after the word Constitution:

“and in particular must have:

- (i) Not violated any provisions of the Constitution or any other written law;
- (ii) Personal integrity;
- (iii) Honesty in dealings;
- (iv) Not been associated with practices that, depict bias, favoritism or nepotism;
- (v) Competence and suitability for the job
- (vi) Not been adversely mentioned in or convicted of an economic crime
- (vii) No personal interest that, may potentially conflict with the public duty
- (viii) Discipline and commitment to public service
- (ix) Not have behaved in private or public in a manner that, might compromise public interest in favour of a personal interest or in a manner that, demeans the office holder before the public.

And in Clause 7 (e) by adding the following words after the words respective fields “which may include either academic or practical experience or both”.

The Temporary Deputy Chairlady (Dr. Laboso): Is there any other amendment? Yes, Mr. Namwamba!

Mr. Namwamba: Madam Temporary Deputy Chairlady, I beg to move that Clause 7 be amended-

- (a) by deleting Subclause 1 and substituting therefor the following new sub clause-

7.(1) A person is qualified for appointment as the Chairperson or a member of the Commission if such person-

- (a) is a citizen of Kenya;
- (b) is the holder of a degree from a recognized university;
- (c) has knowledge and experience and has had a distinguished career of not less than 10 years in any of the following fields-

- i. law;
- ii. public administration;
- iii. economics;
- iv. human rights; or
- v. government;”

(d) meets the requirements of Chapter Six of the Constitution

(b) in sub clause (3) by deleting paragraph (a) and substituting therefor the following new paragraph-

(a) is a State officer, other than a member of a Commission or the holder of an independent office to which Chapter 15 of the Constitution applies.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, can we start with the Committee amendment first?

Mr. Ethuro: On a point of order madam Temporary Deputy Chairlady. I just want to seek a clarification. Between hon. Namwamba and hon. Mrs. Odhiambo-Mabona, who represents the Committee amendments because both of them are members of both Committees.

Mr. Namwamba: I am the *bona fide* Chair of the Justice and Legal Affairs Committee and Mrs. Odhiambo-Mabona can vouch for that. So, what I have submitted to the House were amendments proposed by the committee on Justice and Legal Affairs.

The Temporary Deputy Chairlady (Dr. Laboso): Thank you. I believe that is the position.

(Question of the amendment proposed)

Mr. Ethuro: Madam Temporary Deputy Chair, I rise to contribute to the amendment by bringing a further amendment. On 7 (1) (c) where the hon. Namwamba introduced a figure of 10 years, I would like to reduce that figure to five years.

I want to convince the House why I am considering the experience of five years. This country needs to make a commitment to the youth of this country. At least five years should be reasonable for purposes of our youth.

(Question of the further amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Kilonzo): Madam Temporary Deputy Chairlady, I welcome the amendment by the Chair of the Committee so that we insert ten years. Hon. Ethuro was very kind to share this with me and I am sorry I oppose it. I fully appreciate and identify myself with the empowerment of the youth of this country but this is a Commission like no other Commission. Therefore, since there is an enormous amount of empowerment of the youth in the rest of the Constitution that we seek to implement, let us focus on particularly the distinguishment of the career and experience. This is because it is also common, and it is not my fault, that you will find some people spending even more than five years on the tarmac and not getting the sort of experience that is envisaged by this Constitution.

I beg to support the proposal by the Committee and oppose the proposal by my very good friend, hon. Ethuro.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ms. Karua, is that a new amendment?

Ms. Karua: No, Madam Temporary Deputy Chairlady I want to support Mr. Ethuro's amendment by pleading with the Minister and with colleagues here, that all the Clause is saying is 'at least five years'. It is not a must that everybody elected to this Commission have five years experience. They can even have 50 years experience but when you put ten years, you are permanently barring the youth! I want to remind Members that in the Constitutional review, we have been led by two very able young men who are youthful and who continue to lead us in very weighty matters in this House. I

really want to plead, when we say “not more than five years” we do not mean that everybody elected to that committee will be of five years experience. Some will be of 50 years but then we will not be guilty of barring exceptional talent as has been exhibited in this House.

(Mr. Kabando wa Kabando stood up in his place)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Kabando! Is it on the same further amendment?

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Yes, Madam Temporary Deputy Chairlady. I rise to support the further amendment by hon. Ethuro. As much as we want to emphasize on experience, we have also to deal with the reality in this country; that sometimes experience may not always be positive. We need to look outside the box, that there are a lot of young and vibrant intellectuals as has been very well exhibited by my year-mate hon. Abdikadir Mohammed and, my junior in college, hon. Namwamba.

I am just making a quick arithmetic here. To finish university with a first degree, you are above 23 or 24 years old. By the time you finish your Masters you are 26 years old. If you go for extensive research for PhD, you will be around 32 to 34 years old. If you add five years you will be 38 or 39 years old. So, if you look at the average of even the hon. Members that I mentioned here, they are around 40, 41 or 42 years old. In fact, one of them is below 40. It is important for us to look out of the box to harvest those who are able to input. If you look at the American universities, or European universities, you will find that many lecturers and heads of departments of technical courses, science and law are very young and vibrant Kenyan people whose experience of five years far much surpasses the experience of ten years which sometimes may be too conventional and yet a new dispensation is calling for dynamics and unconventional ways.

I strongly support hon. Ethuro’s further amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I am persuaded and I withdraw my objections.

(Applause)

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

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

(Question of the further amendment put and agreed to)

(Clause 7 (1)(c) as amended agreed to)

The Temporary Deputy Chairlady (Dr. Laboso): That means that that Clause has been changed to “at least five years”; that is the understanding.

Clause 7(3) (a)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move that Clause 7(3) (a) be amended by deleting all the words after the words “is a state officer” - “other than a member of the commission or the holder of an independent office to which Chapter 15 of the Constitution applies”. The reason being that a “state officer” already defines all those people and to insert “other than a member of the Commission” may create a window for conflict of interest that is unnecessary.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. M. Kilonzo, hon. Members seem to be a bit confused! Could you clarify?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, at page 2 of the Notice you will find that it comes with 7(1); we have now dealt with (1) (c) but if you go further down, you will find a (b) on the left and it says in Subclause 3 by deleting paragraph (a) and substituting the following new paragraph. I accept that new paragraph but I say in (a) of that new paragraph we end at “officer” and just say it is a state officer. I shared this with the Chairperson of the Committee and Mrs. Odhiambo-Mabona and I think it is the right thing to do.

Ms. Karua: On a point of order, Madam Temporary Deputy Chairlady. Could the Minister go over it again so that we pass it with full information and not with hazy minds?

Mr. Kabogo: On a point of order, Madam Temporary Deputy Chairlady. It is equally important for the Minister to enlighten the House on what it is that made him change it so that it looks like this. Why the change of mind? What is it that he wants to correct?

Mr. Namwamba: On a point of order, Madam Temporary Deputy Chairlady. I just wanted to clarify - because this is an amendment that came from the Committee – the rationale; why we had proposed an amendment to 7(3) (a) because it is an amendment to 7(3) (a) in the original Bill. You will notice that 7(3) (a) was very specific to Members of Parliament and we thought it was limiting and targeting a particular class of state officers. So we wanted to widen that to cover all other state officers. After discussing this with the Minister, we thought that there was no necessity to remove members serving on commissions and independent officers. We thought that it would serve the intended purpose if we just stayed with the term “state officer” which would cover both Members of Parliament and other state officers and we are in agreement.

(Question of the amendment to the amendment proposed)

Dr. Khalwale: Madam Temporary Deputy Chairlady, I want to support it because further to what Messrs. M. Kilonzo and Namwamba have said, my mind is telling me that this Commission is going to outlive the next General Election and after the next General Election, new officers will start coming in. For example, there will be officers under the County Assemblies and so if you had just talked about Members of Parliament, you would have focused on the Senators and Members of Parliament. But now, when you

open it up the way the Minister has said, you now lock out other state officers like the County Assembly representatives and I, therefore, support.

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

(Clause 7(3) (a) as amended agreed to)

Clause 7(1) (c)

Eng. Gumbo: Madam Temporary Deputy Chairlady, I beg to move-
THAT, Clause 7 (1) (c) as amended be further amended by deleting paragraph (c) and replacing it with the following new paragraph-
(c) Has knowledge and experience of at least ten years in public administration, human rights and governance.

The reason for proposing this amendment is that, the provisions of public administration, human rights and governance are actually provided for in the Constitution and that by including law and economics, there is no rationale. I also think it goes against the Bill of Rights because then we will ask why, for example, are engineers like myself being excluded from the Commission; why are scientists being excluded and a whole lot of other professionals?

The Temporary Deputy Chairlady (Dr. Laboso): Eng. Gumbo, could you clarify to the hon. Members that what you are seeking to delete is the provision on law and economics? Is that what your amendment is seeking?

Eng. Gumbo: Yes, Madam Temporary Deputy Chairlady. The amendment I am moving is to allow Clause 7 (1) (c) to go as per the provisions of the Constitution which provides that the people to be appointed have knowledge and experience of, at least, ten years in public administration, human rights and governance and exclude law and economics as in the proposed amendment.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I agree with the hon. Member. We should be very careful that what the Constitution gives is not taken away by Statute. Eng. Gumbo says what the Constitution has given is being taken away by this Bill. So, he is making a lot of sense because it can be challenged.

I, therefore, support what he has said.

Mr. Ethuro: Madam Temporary Deputy Chairlady, first, I want to confirm the status of my previous amendment. This amendment, while it may be concentrating on public administration, human rights and governance, the Chair needs to guide us. It has nothing to do with the period which we have already determined. So, that must be made clear.

Madam Temporary Deputy Chairlady, secondly, if the Constitution provides for public administration, human rights and governance, then the enabling legislation actually goes ahead to specify--- I know in law you can also do human rights. While I have no serious objections, especially from my good friend, Eng. Gumbo, I think given those observations, we need clarification.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Minister or Attorney-General, can we get guidance?

While we are waiting for guidance, let us hear Ms. Karua and then Maj-Gen. Nkaisserry.

Ms. Karua: Madam Temporary Deputy Chairlady, although the Constitution provides, as hon. Ethuro has said, lawyers, in a matter of implementation, are what an architect is to construction or a civil engineer to civil works. It is not possible to list all professions. I agree that the Constitution is not only a matter of law, but I think that the drafters were right in the way they have specified. It does not necessarily lock anybody out.

Section 250(3) of the Constitution provides that to be appointed, a person shall have the specific qualifications required by this Constitution or national legislation. We are well within our mandate to add additional qualifications. However, we cannot remove the ones given by the Constitution.

Madam Temporary Deputy Chairlady, I beg to support.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Madam Temporary Deputy Chairlady, I support the proposal by Eng. Gumbo. It is dangerous for us to get away from the Constitution. It is very important that we stick to what is in the Constitution. In fact, they say that it is dangerous to attempt to weaken the strong in order to strengthen the weak. What we are trying to do is to remove experience for the sake of bringing in some people to get into the future.

Madam Temporary Deputy Chairlady, while I take what hon. Karua said to be very true, we can put an addition, but we cannot take away what is already provided for in the Constitution. So, I think we had better be careful about what Eng. Gumbo said.

Madam Temporary Chairlady, I support the proposal.

The Attorney-General (Mr. Wako): Madam Temporary Deputy Chairlady, I want to support the draft as it is. I want to also state that the draft as it is, is consistent with the Constitution. This is because the provision that you are referring to---

An hon. Member: Are you opposing the amendment?

The Attorney-General (Mr. Wako): Madam Temporary Deputy Chairlady, I am opposing the further amendment and supporting the proposed amendment as appears on the Order Paper and moved by Hon. Namwamba. This is because if you read Regulation 5(3)(A) carefully, it does not state that the members of the Commission shall be composed of people with experience in "a", "b" and "c". If it said that, then you have to confine yourself to the qualifications enlisted in that Section. All it says is "shall include." When you use the words "shall include" it does not preclude. When you read the other section which says "qualification can also be put in the legislation," then I think it is in order that the legislation gives more detailed provisions regarding what the qualifications are.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I would like the hon. Members to look at page 362 of the Bill, Clause 7(1)(c) which my good friend, Eng. Gumbo, is proposing to delete. You will observe that if we do so, we will, in fact, not be complying with the requirements of the Constitution that we give the qualifications of the person who is qualified. Clause 7(1)(c) of the Bill says:-

"A person is qualified for appointment as the chairperson or a member of the Commission if such person has knowledge and experience of, at least, ten

years in matters relating to any of the following fields: Law, public administration, economics, gender, human rights and government.”

Madam Temporary Deputy Chairlady, if you look at the proposed amendment by my good friend, Eng. Gumbo, he wants all that to be deleted and then replaced simply with the words “as knowledge and experience of at least five years in public administration, human rights and governance.” If we do so, then we will not actually set out qualifications as required by the Constitution because public administration in and of its own, is not a qualification. The same applies to human rights and governance. Therefore, we are required to produce somebody who, at least, knows Law. Public Administration is clearly covered.

Madam Temporary Deputy Chairlady, I want to persuade my good friend, Eng. Gumbo, to see that public administration is already included in the Bill. Human rights is also included as “(v)”. Government is included in “vi” at page 363. I would like to submit without fear - because there are political scientists sitting here - that Government includes governance. You cannot study Government and not learn governance. Therefore, I would humbly and very firmly suggest that the Bill should be left the way it is. I would also like to agree with the Attorney-General because we are required to spell out the qualifications and the qualifications Eng. Gumbo is bringing forth are already covered in Clause 7(1)(c).

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, my problem is with the fact that the qualifications in terms of the Constitution are much broader. What we are doing other than in terms of the amendments which hon. Namwamba had advanced and Eng. Gumbo is advancing, is limiting the qualifications to a smaller category. The Constitution merely says that those to be appointed as members of the Commission---

Mr. G.O. Nyamweya: On a point of order, Madam Temporary Deputy Chairlady. I am just wondering, can a Member speak twice on the same issue?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I am looking at page 194 of the Constitution. It says:-

“The members of the Commission shall include---“

It says “shall include” which means it is broader and expansive. So, other than having the professions of the categories of the people listed in the Constitution, the Constitution allows a broader basis for those who qualify. Those who are mentioned are public administration, human rights and government. The Constitution, therefore, says it is mandatory to have at least a commissioner with experience in public administration, another one probably with human rights and another with government. However, that does not mean you cannot have an engineer. So, if you continue to categorize and spell out qualifications, you are limiting what the Constitution is--- In fact, according to me even a priest can be a member. A member of Legio Maria can also be a member. But for purposes of the Constitution to ensure that the process is what it is designed to be, it is mandatory to have people from these three categories.

Madam Temporary Deputy Chairlady, we should leave it as it is in the Constitution. We should not even consider it in the Bill because the Constitution already tells us who qualifies. When we begin to limit people, then the point Eng. Gumbo was making about exclusivity, discrimination would then come in. The Constitution is not restrictive. It is expansive and inclusive.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we need to conclude this matter because we have several other amendments.

Mr. Nyamweya, please, proceed!

Mr. G.O. Nyamweya: Madam Temporary Deputy Chairlady, when the Constitution itself invites us to legislate further, what is it asking us to do if we are to confine ourselves to the argument that whatever the Constitution has set out, that is it? We are supposed to give flesh to the Constitution. The Constitution can only give us the principles and boundaries of the broad aspects. It is for us now to do the details.

What is this Implementation Commission expected to do? What would be their principle purpose? It is to help in preparing Bills and laws for the National Assembly to legislate. If so, then surely would you not need some person with some experience in law? Would you not need somebody with experience in economics in the sense of what it is going to cost us? I do not think we are in any way going against the Constitution. I think we are helping it.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I have a suggestion, Madam Temporary Deputy Chairlady. I would like to invite hon. Members to look at the Bill itself and see whether this will answer the question. Clause 7(1) (c) of the Bill says:-

“A person is qualified for appointment as a member if such person has knowledge and experience of at least ten years in matters relating to, but not limited to the following fields”.

Madam Temporary Deputy Chairlady, I beg to move that Clause 7 be further amended---

The Temporary Deputy Chairlady (Dr. Laboso): Order, Minister! Could we then ask Eng. Gumbo to withdraw his amendment so that we can pick up the amendment by the Minister?

Eng. Gumbo: Madam Temporary Deputy Chairlady, usually I am a slow thinker and I would have loved more time to think about it. However, looking at the mood of the House--- What I was against is why, me, as an engineer should be excluded from this Commission. I believe engineers can serve in this Commission. My good friend the Minister is saying, “including but not limited to the following”. That now includes me and I am okay.

I beg to withdraw the amendment.

(Proposed amendment withdrawn)

The Temporary Deputy Chairlady (Dr. Laboso): Minister, could you please formally put your proposed amendment forward?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I propose that Clause 7(1) ---

The Temporary Deputy Chairlady (Dr. Laboso): Order! It is Mr. Ababu Namwamba’s proposed amendment and so you are further amending it?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, Madam Temporary Deputy Chairlady, I am further amending it.

Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 7(1) (c) of the Bill be further amended by inserting a “comma” and the words, “not limited” after the word, “relating”.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Minister, you are reading the Bill yet we are looking at the amendments!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I am now reading as per the notice of amendment to Clause 7(1) (c). It should read as follows:-

“Has knowledge and experience and has a distinguished career of not less than five years in, but not limited to the following fields”.

(Question of the further amendment proposed)

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): On a point of order, Madam Temporary Deputy Chairlady. Just for the sake of clarity, when you say, “And has had a distinguished career” and then you come and bring in the issue of five years experience, what distinguished career can somebody without experience have?

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Member, that has already been passed! So, can we please move on?

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

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I wish to withdraw the proposed amendments to Clause 7(c) (i), (iii) and (iv) because they have already been dealt with.

(Proposed amendments withdrawn)

I, however, wish to propose amendments to Clause 7(d) ---

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! The consultations are a bit high! Could you please, allow Mrs. Odhiambo-Mabona to speak?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I wish to propose a further amendment to Clause 7 (d) and (e). I would like to borrow from the Good Book of the Lord, I think it is I Joshua 1:8, which says that:

“This book of the law shall not depart from your heart but ye shall meditate on it daily that ye shall be careful to do according to what is written in it”.

As a country we keep forgetting what is written, not only in the Good Book, but also in the Constitution. Therefore, even though it is provided under Chapter Six of the Constitution, on leadership and integrity, we want everybody who applies the Constitution to be guided.

Madam Temporary Deputy Chairlady, in relation to Clause 7(e), the words which may include, “either academic or practical experience or both” take into account that now we have young men and women of distinction. I know of a young woman who got her Doctor of Philosophy (PhD) degree at the age of 25 but she may not have got the practical experience!

I beg to move.

(Question of the further amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Kilonzo): Madam Temporary Deputy Chairlady, I congratulate my student for thinking very well.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I just wanted someone to help me, because I did not have time to frame what I have a problem with. If it is an attempt to translocate what is in the Chapter on Leadership and Integrity in the Constitution to this Bill, then hon. Odhiambo-Mabona should go back to that Chapter on Leadership and Integrity. For example, the issue of corruption is dealt with very firmly in that chapter.

Mrs. Odhiambo-Mabona: It is under Chapter Six!

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, that is an economic crime. There is a wide distinction between economic crime and corruption. They are not the same. Even the statutes we have in place contain a distinction between economic crimes and corruption.

I am trying to say that these proposals leave lot of that in the other guidelines and qualification found under the Chapter on Leadership and Integrity. I would rather that you refer to the Chapter on Leadership and Integrity, or if you want it to be translocated to the Bill, then repeal it in its entirety, so that nobody will have a basis.

My second position is this part (i) which says:

“Not violated any provisions of the Constitution or any written law.”

I was just picking on any statute, like the one on the sale of goods. There is a provision about performance of a contract; in that law you are under certain duties. If you violate that law, which is simply a civil contract, you will be judged on the basis of a matter which is quite foreign to what the Chapter on Leadership and Integrity is all about. I do not think that anybody will qualify, because even good judges break contracts. We need to clean it up together with the language.

Part (iii) talks about honesty in dealings; the word “dealings” is not very articulate in statutes. What is “dealing”? I have a little problem with that. You are better off saying that you must comply with the Chapter on Leadership and Integrity, and leave it there; or, if you want full compliance with that chapter, you have to faithfully reflect on everything that is contained in that chapter.

Mr. Namwamba: Madam Temporary Deputy Chairlady, I want to call our attention to the proposals in my notice. You will notice that under 7(i)(d) we have made a very direct reference. These amendments have already been carried. We have said that one of the qualifications is that a person has to meet the requirements of Chapter Six of the Constitution.

The Temporary Deputy Chairlady (Dr. Laboso): So, is it covered?

Mr. Namwamba: Madam Temporary Deputy Chairlady, in my humble opinion, that takes care of the concerns.

The Temporary Deputy Chairlady (Dr. Laboso): What is your response, Mrs. Odhiambo-Mabona?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I would like to inform the Minister for Lands that I went through the entire chapter, and all that I have indicated here is from Chapter Six. Nonetheless, I was informing my approach basically from the Bible; that this book of the law shall not depart--- However, I shall be comfortable if we go by the earlier amendment. I, therefore, withdraw.

(Proposed amendment withdrawn)

The Minister for Lands (Mr. Orengo): On a point of order, Madam Temporary Deputy Chairlady. Did you hear what hon. M. Kilonzo said? He said that he taught the gracious lady well. However, the gracious lady surpasses the teacher! So, I do not know who---

(Laughter)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, he taught me law!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, we teach students so that they can surpass the teachers. That is the essence of teaching!

The Temporary Deputy Chairlady (Dr. Laboso): Hon. learned friends in the House, kindly allow us to continue with the business of this House.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I just wanted them to clarify the point, because I did not know that when a Kamba teaches you, you have to fight hard!

(Laughter)

(Question, that the words to be left out be left out,

put and agreed to)

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

(Clause 7 as amended agreed to)

Clause 8

Mr. Namwamba: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 8 of the Bill be amended –

- (a) in Subclause (4), by deleting the semi-colon at the end of the subclause and substituting therefor a comma and the words “and shall forward the shortlisted names to the President and the Prime Minister for nomination;
- (b) by deleting subclause (5) ;
- (c) by deleting subclause (6) and substituting therefor the following-
 - (6) The President in consultation with the Prime Minister shall, within seven days of the expiry of the period prescribed under subsection (4), nominate one person for appointment as Chairperson and eight persons for appointment as members of the Commission, and shall forward the names of the persons so nominated to the National Assembly.
- (d) in subclause (7) by inserting the words “of the receipt of names under subsection (6)” immediately after the words “within fourteen days”;
- (e) in subclause (12), by inserting the words “of receipt of names from the Speaker” immediately after the words “within seven days”;
- (f) in subclause (13), by deleting the word “Parliament” and substituting therefor the words “National Assembly”.
- (g) by deleting Subclause (14).

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I welcome the amendment. I had an opportunity to discuss this with the Chair and Members of the Committee. I accept it.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I would like to propose that Clause 8 be further amended by inserting the following words: “that due diligence shall be given as much as possible to regional balance and inclusion of youth, persons with disabilities and other marginalized groups”.

I am persuaded to drop this proposed amendment, because there is a constitutional principle to its effect. But I want to go on record that even when we have constitutional principles in application, people always forget.

(Proposed amendment withdrawn)

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

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

(Clause 8 as amended agreed to)

Clause 9

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

THAT, Clause 9 of the Bill be amended –

- (a) in Subclause (1) by inserting the words “and members” immediately after the word “Chairperson”;
- (b) by inserting a new Subclause (4) as follows-
“(4) In the absence of the Chairperson, the Vice-chairperson, and in the absence of both, a member elected by the Commission shall act as Chairperson”.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I have had the privilege of discussing the amendment with the Committee and I welcome it.

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

(Clause 9 as amended agreed to)

(Clause 10 agreed to)

Clause 11

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

THAT, Clause 11 of the Bill be amended in Subclause (1) by deleting paragraph (c) and substituting therefor the following new paragraph-

- (c) is guilty of any of the circumstances specified under Article 251 of the Constitution and Chapter Six of the Constitution.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I have discussed this with the Chairman and I accept and welcome the amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Odhiambo-Mabona, you had an amendment to Clause 11.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairlady, I withdraw my proposed amendment.

(Proposed amendment withdrawn)

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

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

be inserted, put and agreed to)

(Clause 11 as amended agreed to)

Clause 12

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 12 be amended in Subclause 12 (1) by adding the words “in consultation with the Prime Minister” after the words “the President” and before the words “Shall nominate a member for approval by the National Assembly”.

In Subclause 12 (2) by adding the words “in consultation with the Prime Minister” after the words “The President” and before the words “may select a nominee from a list provided”.

This is for uniformity and in line with the National Accord. In other parts in the Bill, we have said “President in consultation” and in others, we have said “President” alone. So, for uniformity and in line with the National Accord, can we, please, have “President, in consultation with the Prime Minister”?

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I have discussed this with hon. Odhiambo-Mabona. I accept and welcome the proposal.

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

(Clause 12 as amended agreed to)

Clause 13

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

THAT, the Bill be amended by deleting Clause 13.

I am also aware that the Minister has something to say on this proposed amendment.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I wish to oppose the proposed amendment. The reasons are simple and I have shared them with the wonderful Committee and the Chair. If you look at the way we have designed Clause 13 in the Bill, you will realise that we say that a person is disqualified from being elected or holding any elective office under the Constitution at any time within the five years immediately

preceding the date of election if the person has served as a chairperson or member of the Commission.

We have used that principle severally in the past. It is only limited to an elective office. We are not limiting these people to anything else. That is why we are recommending that they serve on full-time basis because it is a very important position, so that they are not taking this position so that they can go and oppose His Excellency in waiting, hon. Wamalwa, when he seeks the Presidency, merely by creating a position for themselves by virtue of this particular job that they are doing. Therefore, my discussions with the Chair were that the proposed amendment in the notice be dropped.

Mr. G.O. Nyamweya: Madam Temporary Deputy Chairlady, I am a Member of the Committee and the thinking here relates to the earlier one. If this Commission's sole purpose is to help us in formulation of legislation, how does it help any of their members? What advantage would it give to any of the members in terms of an electoral position? One can understand the argument about the Electoral and Boundaries Review Commissions where you can see that there is conflict of interest in the sense that they may curve out something that might be advantageous to themselves. But in terms of ordinary legislation the Commission, in my understanding, is supposed to help Parliament implement the new Constitution. Therefore, it would be punitive to say that a person who has served in that Commission should be barred from seeking an elective office. This is really what we are driving at and it may even be on the borderline as to whether it is constitutional or unconstitutional to disqualify them.

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

(Clause 13 deleted)

The Temporary Deputy Chairlady (Dr. Laboso): That effectively means that we have deleted Clause 13.

Clause 14

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

THAT, Clause 14 of the Bill be amended by deleting Subclause (2) and substituting therefor the following new Subclause-

(2) The Secretary shall be the Chief Executive Officer of the Commission and the Head of the Secretariat and shall be responsible to the Commission for-

- (a) the day to day administration and management of the affairs of the Commission;
- (b) the co-ordination of the studies, research and evaluations of the Commission;
- (c) the recording of the proceedings of the Commission;
- (d) the custody of all records and documents of the Commission; and
- (e) the performance of such other duties as may be assigned by the Commission from time to time.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I welcome and accept this proposed amendment.

Dr. Khalwale: Madam Temporary Deputy Chairlady, whereas I support this particular amendment, I am just wondering whether hon. M. Kilonzo and the Committee have exercised their minds on one point; that in appointing this Secretary to the Commission, he will be essentially the Chief Executive Officer (CEO) of the Commission, yet in this Bill, we have not bothered to describe his qualifications. Do you not think that it would have been necessary for us to add whether we need the CEO to have a degree and what kind of degree and if he has a degree, how many years of experience he should have? Should we just leave it open to the risk of having a non-qualified person becoming the CEO of the most important Commission in the implementation of the Constitution? Probably, hon. M. Kilonzo could shed some light on this.

Eng. Gumbo: Madam Temporary Deputy Chairlady, I had suggested that to avoid conflict with the Commissioners, this Parliament should define the roles of the Chief Executive Officer (CEO) because we have seen these conflicts. I am sure you must have seen what appeared in the public about two months ago about the conflicts in the Interim Independent Boundaries Review Commission (IIBRC). I would beseech the Minister that as Parliament is making the enabling law, we should have gone a step further to define the qualifications of the Secretary and also his role as the CEO so that we avoid conflicts with the Commissioners. Right now at the Interim Independent Electoral Commission (IIEC) the Minister has to know the roles of the Chairman and the CEO. The roles of the Chairman or the CEO are not well defined. This is because we did not define what the roles of the Secretary should be. I thought the Minister should have gone a step further to define the qualifications and the roles of the Secretary of the Commission.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I sincerely welcome this interest that the House is showing in this because it is a very important thing. I would like to say that in drafting this law, we were mindful of the fact that even the Constitution itself in appointing the Secretary, did not require Parliament to spell out his or her qualifications. On page 366 of the Bill, we have provided in Clause 14 (3) that the Secretary shall be appointed by the Commission through a competitive recruitment process. We expect, and I stand to be corrected, much as I appreciate the sentiments of the House, it is at that point that the Commission will spell out the qualifications of the Secretary who is coming on board so that through the competitive process, they get a person who can meet the requirements of the Commission. Therefore, we felt that to start spelling out that he or she should have an LLB degree, we will fall into the same trap that Eng. Gumbo pointed out in Clause 7. We left that for the Commission to spell out the sort of Secretary they want and the qualifications that they require through a competitive process.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Namwamba, I hope you are the last one on that so that we can make progress.

Mr. Namwamba: Madam Temporary Deputy Chairlady, I just wanted to clarify that the sense of the amendment that I proposed actually goes to specify the responsibilities of the Secretary. The reason why we have not gone into details of setting out the qualifications, as explained by the Minister, is that we also need to be careful not to over-legislate. Once we have the broad guidelines or principles, we also need to leave some latitude for administrative actions, especially after knowing that we have set very high standards for the Commission. We do not expect that the Commission will stoop too low below the standards that we have already set in the administrative action that they will take in the appointment of the Secretary. We are confident that this provision is efficient.

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

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

(Clause 14 as amended agreed to)

(Clause 15 agreed to)

Clause 16

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 16 be amended in Subclause 2 by deleting the words “co-opt into the membership of committees established under Subsection (1) other persons” appearing after the words “The Commission may” and after the words “whose knowledge and skills are found necessary” and replacing with the words “hire as experts or consultants”.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I accept and welcome the amendment.

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

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

(Clause 16 as amended agreed to)

(Clauses 17 and 18 agreed to)

Clause 19

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 19 be amended in Subclause 2 by adding the words “Salaries Review” after the words “in consultation with the” and after the words “and Treasury, may determine”

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I welcome the amendment.

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

(Clauses 20, 21, 22, 23, 24 and 25 agreed to)

Clause 26

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 26 be amended in Subclause (1) by deleting the word “six” after the words “a progress report every” and before the words “months and submit the report” and replacing therewith the word “three” and by adding the “and the Prime Minister” immediately after the words “the President”

Madam Temporary Deputy Chairlady, I propose an amendment that we reduce the time for reporting from six to three months. We are working here late so the other organs must also work.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I accept and welcome the amendment.

Mr. Ethuro: Madam Temporary Deputy Chairlady, I just wanted to agree with the amendment; that in the spirit of getting this process completed in good time then three months is a better proposal than six months.

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

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

(Clause 26 as amended agreed to)

Clause 27

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 27 be amended in Subclause (2) by inserting the words “and the Prime Minister” immediately after the words “the President” and before the words “and Parliament”

Madam Temporary Deputy Chair, I move an amendment under Clause 27 as per the Order Paper for the same reasons that I have given above.

(Question of amendment proposed)

(Consultations)

Mrs. Odhiambo-Mabona: Then I withdraw the amendment.

(Proposed amendment withdrawn)

Mr. Konchella: On a point of order, Madam Temporary Chairlady. I heard you clearly put the Question, that “Clause 26 be part of the Bill”. I thought the Question should be that “Clause 26, as amended, be part of the Bill.”

The Temporary Deputy Chairlady (Dr. Laboso): Was there an amendment to Clause 26?

Mr. Konchella: Yes, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, let us do a few corrections, starting with Clause 26 as amended.

(Clause 26 as amended agreed to)

(Clause 27 agreed to)

Clause 28

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 28 be amended by adding a new Subclause (2) as follows:

Any public officer who breaches any of the provisions of this law shall be deemed to be in contempt of Parliament and may be fined Kshs200,000 or jailed for a period not exceeding one year or to both such fine and imprisonment.

Madam Temporary Chairlady, we want to ensure that public officers comply by creating an offence called “contempt of Parliament”; this is actually in line with what is in other jurisdictions and practices such as in the United States of America (USA).

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I welcome and accept the amendment. As you can see, I have a wonderful team!

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

(Clause 28 as amended agreed to)

Clause 29

Eng. Gumbo: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 29 be amended-

(a) by renumbering the current provision as Subclause (1);

(b) by inserting the following new Subclause immediately after sub-clause (1)-

(2) The regulations made under subsection (1) shall be tabled in the National Assembly for debate and approval before gazettment by the Commission.

(Question of the amendment proposed)

Mr. Abdikadir: Madam Temporary Deputy Chairlady, while I see the mischief that hon. Gumbo is talking about, we already have an elaborate procedure on this issue in Parliament. We have the requirement that subsidiary legislation be tabled in the House within 21 days. We have a Committee of Parliament dealing with subsidiary legislation. Asking them to bring it and for us to debate is essentially defeating what the meaning of subsidiary legislation is. Basically, we are going to be amending the Act.

The procedure that the House has is better, in the sense that subsidiary legislation is to be tabled in the House. If there are any issues any hon. Member wants to raise, they can be raised. If there are none, they do not have to weigh down Parliament with an unnecessary process. So, I would persuade the engineer to withdraw this amendment, but I have noted the mischief issue.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Gumbo, are you persuaded? Let us hear hon. Khalwale, before we hear the Minister.

Dr. Khalwale: Madam Temporary Deputy Chairlady, I am not convinced. I think hon. Abdikadir should tell us more. We remember in this House, when we had the issue of the National Hospital Insurance Fund (NHIF), we were told that the NHIF Act does not provide for the tabling of regulations, and that was why the Minister did not bring them to the House.

Probably, if we do not have this amendment by Eng. Gumbo, we could have a situation like that of the NHIF, where when we required that we look at regulations, we would be told that the Act does not require the Minister to table them in the House.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, can we allow a few hon. Members to ventilate on the issue and then you can come in?

Mr. Ethuro: Madam Temporary Deputy Chairlady, I wish to support the amendment by hon. Gumbo. Although there are general provisions, it is still good to have this amendment, especially for this particular item, because the Commission has a purpose. So, we must inform this House of the regulations from the very beginning, so that we will all know what will be needed.

I beg to support.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, please, take note of the time, unless you want us to continue with it next time.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, not at all. In fact, I want to welcome the amendment. I accept it. So, let us move on.

Mr. Abdikadir: Madam Temporary Deputy Chairlady, can I then withdraw my objection, so that we move on together?

The Temporary Deputy Chairlady (Dr. Laboso): Okay.

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

(Clause 29 as amended agreed to)

(Clause 30 agreed to)

New Clause 31

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

THAT, the Bill be amended by inserting a new clause immediately after clause 30 as follows-

Criteria vetting approving appointments.	for or	31(1) Until Parliament enacts the law contemplated under Article 250 (2)(a),(3) and (4) of the Constitution, the criteria specified in the Schedule shall be used by Parliament or any of its committees for the purposes of vetting or approving appointments to public office under the Constitution or any other written law. (2) For the purposes of considering the applications, interviewing and shortlisting persons under this Act, the Public Service Commission shall apply the criteria set out in the Schedule.
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(2) This section shall lapse upon enactment by Parliament of the law referred to in Subsection (1).

Madam Temporary Deputy Chairlady, the rationale of this amendment, of course, is that we need criteria to guide the process in constituting all the organs that are envisaged under the new constitutional dispensation.

(Question of the new clause proposed)

The Temporary Deputy Chairlady (Dr. Laboso): We need a contributor!

Ms. Karua: Madam Temporary Chairlady, I beg to second, if it is necessary, so that we can move in uniformity, and in a guided manner, in vetting.

I beg to support.

(The New Clause read the First Time)

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

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

(The New Clause was read a Second Time)

(Question, that the New Clause be added to the Bill, put and agreed to)

New Clause

Mrs. Odhiambo-Mabona: The Oversight Committee have encouraged me that we are equal to the task of over-sighting the Attorney General, my able teacher and we shall ensure that the timelines are kept. I, therefore, withdraw.

(New Clause withdrawn)

(First Schedule agreed to)

New Schedule

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

THAT, the Bill be amended by inserting a New Schedule as follows-

SCHEDULE

**APPROVAL BY PARLIAMENT OF PERSONS NOMINATED FOR
APPOINTMENT TO PUBLIC OFFICE: QUESTIONNAIRE FOR NOMINEES
APPEARING BEFORE PARLIAMENTARY COMMITTEES**

Notes:

- a. This questionnaire applies to appointments to public office arising by or under the Constitution where parliamentary approval is required.
- b. The questionnaire shall be used by the relevant parliamentary committee to vet a nominee appearing before the committee in the process of parliamentary approval.
- c. The questionnaire shall be filled and submitted by the nominee to the relevant parliamentary committee through the Clerk of the National Assembly on or before a date set by the committee.
- d. The submission of false information in the questionnaire is an offence and may result in prosecution.
- e. Any form of canvassing by a nominee shall lead to disqualification.
- f. The nominee must answer all the questions.

1. Name: State full name
2. Position: State office to which you have been nominated
3. Sex
4. Date of Birth: State year and place of birth
5. Marital Status
6. Daytime phone number
7. Mobile phone number
8. Email Address
9. ID Number
10. PIN Number
11. Nationality
12. Postal Address
13. Town/City:
14. Knowledge of Languages: Specify Language
15. Education: List, in reverse chronological order, each university, college, or any other institution of higher education attended and indicate, in respect of each, the dates of attendance, academic award obtained whether a degree was awarded, and the dates on which each such degree was awarded.
Employment Record: List in reverse chronological order all government agencies, business or professional corporations, companies, firms or other enterprises with which you have been affiliated as an officer, director, partner, proprietor or employee or consultant.
16. Honours and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards and any other special recognition for outstanding service or achievement and in respect of each, state the date of award and the institution or organization THAT, made the award.
17. Professional Associations (where applicable): List all professional associations of which you are or have been a member and give them any positions held and the respective dates when each such position was held..

18. Membership: List all professional, business, fraternal, scholarly, civic, charitable or other organizations,(other than those listed in response to Question 16)to which you belong or have belonged.

19. Published Writings:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published materials you have authored or edited.
- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of any bar association, committee, conference or organization of which you were a member.

20. Public Office, Political Activities and Affiliations

- a. List chronologically any public offices you have held or are currently holding including the terms of service and whether such positions were elected or appointed.
- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities. Also include any linkage you have to a political party at present.
- c. Have you ever been dismissed or otherwise removed from office for a contravention of the provisions of section 75 of the Constitution?
- d. Have you ever been adversely associated with practices that, depict bias, favoritism or nepotism in discharge of public duties?

21. Deferred Income/Future Benefits: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships etc.

22. Outside commitment during service in office : Do you have any plans, commitments or agreements to pursue outside employment with or without compensation during your service in office If so, explain

23. Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and in the current calendar year.

24. Tax Status: State whether you have fully complied with your tax obligations to the State to date

25. Statement of Net Worth: State your financial net worth

26. Potential Conflicts of Interest:

- a. Identify the family members or other persons, parties, categories of litigation or financial arrangements that, are likely to present potential conflicts-of-interest when you first assume the position to which you have

been nominated. Explain how you would address any such conflict if it were to arise.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.
27. Pro-Bono/Charity Work: Describe what you have done by way of pro bono or charity work, listing specific instances and the amount of time devoted to each.
28. Have you ever been charged with a criminal offence in a court of law? If so, specify the nature of the charge; whether the matter is ongoing, the present status of the matter, where the matter is concluded, the judgment of the court or otherwise, how the case was concluded?
29. Have you ever been adversely mentioned in an investigatory report of Parliament or any other Commission of inquiry?
30. Have you any objection to the making of enquiries with your present employer/referees in the course of consideration of your nomination?
31. **References:** List three persons who are not your relatives who are familiar with your character, qualification and work.

The rationale for this is that we are entering a very exciting phase where this House is expected to play a very critical role of vetting appointments to all public officers of a certain rank as specified in the Constitution. Whereas since the year 1998 when this House first dealt with the issue of appointments to the Constitution of Kenya Review Act, this House has had opportunity to do vetting for the National Commission on Human Rights, for the Agenda 4 organs, the IIEC and the IIBRC, we have never had a clear instrument to guide that process. I believe that through the proposed schedule, we will be able to standardize the process of vetting by all Departmental Committees of the House for purposes of constituting the various organs anticipated under the new Constitution.

I beg to move.

(Question of the new schedule proposed)

(New schedule read the First Time)

(Question, that the New Schedule be read a Second Time, proposed)

Ms. Karua: Madam Temporary Deputy Chairlady, I second the proposal.

Dr. Khalwale: I would like to congratulate hon. Namwamba for their effort to bring this standard because I recall in this House, we were faced with this challenge and it was very difficult. I remember we made a momentous decision based on the social life of one of the nominees. Now that we have these standards, people will no longer have to fear to apply for jobs.

I support.

Mrs. Odhiambo-Mabona: Thank you, Madam Temporary Deputy Chair. I wish to support for the opposite reasons to what hon. Khalwale has said. The reasons are that issues of violence are criminal issues. They are not social and moral issues. It is now part of Chapter Six and it is part of the vetting process.

I support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I welcome this schedule because I am informed by the qualifications put in the section generating it; that is Clause 31. I welcome it. I suggest the committee will continue developing further, because this is only the first step.

I support.

The Attorney-General (Mr. Wako): Madam Temporary Deputy Chairlady, I just rise to be on record as supporting this particular Schedule. I think it will provide guidelines to other committees which will be engaged in the vetting exercise but it ought to be very clear that it may very well give additional questions. Do we have some room where we could, depending on whatever, have some additional questions? In other words, this should be basic but the law should permit the committee to have additional questions put into the questionnaire depending on what is being applied for. I hope you are following what I am trying to say.

However, I support the idea.

The Temporary Deputy Chair (Dr. Laboso): Can we allow hon. Wamalwa?

Mr. Wamalwa: Madam Temporary Deputy Chairlady, I think the schedule is just a guideline and it is provisional but we are, however, expecting there should be a vetting Bill coming to the House as soon as possible to provide for everything.

The Temporary Deputy Chair (Dr. Laboso): Hon. Members allow me to put the Question. Order, Mr. Nyamweya!

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

(The new Schedule was read a Second Time)

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

Title

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I propose that we amend the title, where it says: “And shall come into operation on the date of assent”. We should delete the words “on the date of assent” and substitute with the words, “two days after gazettment”. The reason for this is that Article 116 of the Constitution requires gazettment and if we leave it the way it is, it will lead to further delay of 14 days while awaiting that assent. So, that is my proposal.

(Question of the amendment proposed)

Mr. Namwamba: Madam Temporary Deputy Chairlady, we have consulted with the Minister on this matter and I am in concurrence with him.

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

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

(Title as amended agreed to)

Clause 1

Mr. Namwamba: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause One of the Bill be amended by deleting the words “and shall come into operation on the date of assent”

Clause I of the Bill will be amended with a further amendment in a manner that will now give us a clause that reads “And shall come into operation within two days after gazettment”.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, we have discussed this extensively. I welcome and accept it.

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

(Clause 1 as amended agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Commission for the Implementation of the Constitution Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION BILL

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Commission for the Implementation of the Constitution Bill and approved the same with amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Attorney-General (Mr. Wako) seconded.

(Question proposed)

(Mr. M. Kilonzo moved to the Dispatch Box)

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. M. Kilonzo! The Question was proposed by the Chair for purposes of contributions. Apparently, there are none!

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, I must voice two things: One is on Article 28. We should not have talked of charging somebody but rather conviction. So I am surprised why a senior counsel should avoid something like this because you are innocent until proven guilty.

Hon. Members: Where was he?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, the other one is the issue of five years experience. I want to put it on record that anybody who has been working anywhere for five years has no experience to do what we are expecting him to do here; it should be ten years. That is my point of view and I want it to be recorded.

Mr. G.O. Nyamweya: Mr. Temporary Deputy Speaker, Sir, I wish to put it on record that there is some matter which we should not have passed. If you look at the Schedule, particularly No.28, it asks: Have you ever been charged with a criminal offence in a court of law? So, it does not matter what we are doing today; if you were acquitted, it now becomes part of a record whereas my understanding of jurisprudence has been, it is a conviction which forms part of the record. I think it is really very sad that we are introducing this thing to our new dispensation.

Secondly, if you are adversely mentioned in a report---

The Temporary Deputy Speaker (Mr. Ethuro): Order, this is not the Second Reading!

Mr. G.O. Nyamweya: Mr. Temporary Deputy Speaker, Sir, I just wish it to be on record that this is opening a window which will be used for witch-hunting to disqualify people who will want to seek offices.

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Commission for the Implementation of the Constitution Bill be now read a Third Time.

I want to congratulate this hon. House for crossing a rubicon. This is a historical moment for the country to know that we now have the Commission for the Implementation of the Constitution as the people said "yes" so loudly on 4th August, 2010.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to second. I confirm to this House that in accordance with Section 261(4), I will be

working very closely with the Commission when it is constituted so that we even accelerate the time schedules which have been set out in Schedule 5 of the Constitution.

(Applause)

(Question proposed)

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, this is just to congratulate Parliament for passing this legislation. We have now put it on record as Parliament that we are ready, able and willing to speed up implementation of the Constitution. I beg to support.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! As you remember, it was directed by the Speaker that the subsequent Order Nos.9 and No.10 had been disposed of in the earlier ruling by the Chair.

ADJOURNMENT

Hon. Members, that concludes the business on the Order Paper. Therefore, the House stands adjourned until Thursday, 21st October, 2010, at 2.30 p.m.

The House rose at 6.30 p.m.