

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 10th August, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTION BY PRIVATE NOTICE

SHORTAGE OF SUGAR IN THE COUNTRY

Mr. Kiptanui: Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that the price of sugar in the country has risen astronomically in the past few weeks due to country-wide shortage?

(b) What is the cause of the current shortage of the commodity?

(c) What measures has the Ministry put in place to cushion consumers from the escalating prices of the commodity?

The Assistant Minister for Agriculture (Mr. Mbiuki): Mr. Speaker, Sir, I would like to seek the indulgence of this House to answer this Question next week. That is because the answer I have just received is not satisfactory. I have consulted the hon. Member and agreed that because the matters raised are so weighty, the answer is below my expectations.

Mr. Kiptanui: Mr. Speaker, Sir, indeed, the Assistant Minister has consulted me. I do agree, although he should bear in mind that the commodity is being used by majority of Kenyans. The issue of pricing should be addressed as soon as possible. So, I agree that he can answer the Question next week.

Mr. Speaker: Very well! I will defer the Question to Wednesday afternoon next week.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.978

DELAYED CONSTRUCTION OF MITIHANI HOUSE

Mr. Koech asked the Minister for Public Works:-

(a) why the construction of the New Mitihani House, which started 25 years ago, has not been completed; and,

(b) when the project will be completed.

The Minister for Public Works (Mr. Obure): Mr. Speaker, Sir, I beg to reply.

(a) The construction of the New Mitihani House has not been completed since its commencement on 3rd March, 1987 due to under-funding over successive years. It is in this context that the project was mutually wound up in 2003 on “as is” basis and placed under the Stalled Projects Completion Programme. The project is being implemented in a phased programme comprising five phases due to inadequate budgetary allocations. I want to report that Phase 1 and Phase 2 were completed and handed over to Kenya National Examinations Council in May 2006 and the facility is in use. The initial cost of the project at conception in 1987 was Kshs248,925,596.10. As I said, the project stalled in July 1989 at sub-structure level for the main office tower and super sub-structure level in respect to the printing factory and overall percentage progress largely because of inadequate budgetary allocations from the Treasury.

(b) I want to assure the hon. Member and Members of this House that if the Treasury can avail the requisite funds on the basis projected, that project will be completed in its entirety by December 2012.

Mr. Koech: Mr. Speaker, Sir, I want to thank the Minister for being candid and open by telling this House and the entire nation the real status of Mitihani House, which is a very important facility for the Republic of Kenya. According to the Minister, the initial cost of the project, 25 years ago was less than Kshs300 million. The projected cost, as per today, is Kshs1.7 billion; meaning that the Government of the Republic of Kenya will pay Kshs.1.4 billion over and above what it should have paid earlier on. He wants to finalize the project by 2012. Could the Minister confirm to this House how much has been budgeted for the same in this financial year, and what works will be completed before the end of this financial year?

[Mr. Speaker left the Chair]

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

Mr. Obure: Mr. Temporary Deputy Speaker, Sir, in this financial year, work is already in progress to complete Phase 5. We expect to complete Phase 5 by 1st December, 2011. When that particular phase is completed, we expect it will have cost a total of Kshs934,299,450. Out of that amount, the Ministry of Public Works has Kshs650 million. It is expected that the balance will be provided to us from the Ministry of Education and negotiations are on-going to source for those funds.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Minister, I am told that this Question was actually answered and you are only giving relevant information. So that should do it!

Next Question!

Question No.974

ACHIEVEMENTS OF PERFORMANCE CONTRACTING
IN PUBLIC SERVICE

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

(a) what achievements have been made since the introduction of performance contracting in public service in the year 2005/2006; and,

(b) what mechanisms are being put in place to ensure improvement in service delivery in the public service.

However, I have not received a written answer to the Question.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, we sent the answer to the House. But this is a very detailed answer that I wish the hon. Member had, had a chance to look at. I can, however, go ahead and give the answer and then provide him with a copy. But I do not know if that will be sufficiently fair in the circumstances.

The Temporary Deputy Speaker (Mr. Imanyara): Would that be okay with you, Mr. Chanzu?

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, what the Minister has said is what I was going to say. It is a very detailed answer for a very important Question. I would like to have time to go through the answer so that I can interrogate it.

The Temporary Deputy Speaker (Mr. Imanyara): How much time?

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, if he can give it to me, he can answer the Question at the end of this session.

The Temporary Deputy Speaker (Mr. Imanyara): No! How much time do you want to look at the answer that you have been provided with?

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, we can do it tomorrow.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Minister, is tomorrow all right?

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I am sure the hon. Member can read the answer. I can answer it at the end of the session today, instead of coming back tomorrow. That is because reading two pages, however detailed it is, should not be a problem. He has that capability.

Mr. Temporary Deputy Speaker (Mr. Imanyara): Give him the answer and it will be on the Order Paper tomorrow afternoon.

(Question deferred)

Next Question by hon. David Njuguna.

Question No.1024

FAILURE TO PAY CONTRACTOR

Mr. Njuguna asked the Minister for Education:-

(a) whether he is aware that M/s Kariuki Construction Co. Ltd. was contracted by Nairobi School to construct Nairobi School "Junior House" in 2006/2007;

(b) whether he is also aware that the final contract value of determination by both parties was Kshs.6,389,431.90, but the contractor was paid only Kshs.4,252,500.00; and,

(c) when the school will pay the contractor the balance of Kshs.2,136,931.90.

The Assistant Minister for Education (Mr. Mwatela): Mr. Temporary Deputy Speaker, Sir, I beg the indulgence of the House.

(Loud consultations)

If only the consultations could be lowered! I beg the indulgence of the House. I got a very inadequate answer and I plead for more time so that I can address this Question in depth. Furthermore, the Principal of Nairobi School is out of the country. He is in Canada. I would like to visit the school and meet him, so that I get a proper answer than this.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Njuguna, is that all right with you.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I would also like to bring it to your attention that I have not received the answer. Secondly, the request by the Assistant Minister is neither satisfactory nor appropriate. He is aware that the contractor has been demanding for his funds for the last four years.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Njuguna, you do not even have the answer. So, how long would you give the Assistant Minister?

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, a week.

The Temporary Deputy Speaker (Mr. Imanyara): Is a week okay, Mr. Mwatela?

The Assistant Minister for Education (Mr. Mwatela): Mr. Temporary Deputy Speaker, Sir, I would really not have minded had it not been the situation that the Principal of the school is out of the country and he is a key person.

The Temporary Deputy Speaker (Mr. Imanyara): How long is the Principal away?

The Assistant Minister for Education (Mr. Mwatela): Mr. Temporary Deputy Speaker, Sir, two weeks would be adequate.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Njuguna, I think the Assistant Minister needs two weeks.

Mr. Njuguna: I agree, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): It is also the Chair's old school and so, I am going to indulge the Assistant Minister. That Question is deferred by two weeks!

(Question deferred)

Question No.1064

KILLING OF FATUMA FARAH IN GARISSA TOWN

Mr. Affey asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he could explain the circumstances that led to the death of Ms. Fatuma Farah in Garissa Town on March 25, 1994 and whether he could state the findings of Inquest File Number 3/95;

(b) what action the Government has taken against the police officer who shot and killed the woman; and,

(c) what measures the Government has taken to ensure that the family of the deceased is compensated.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, if you look at this Question and look at the HANSARD, it was answered on 8th June, 2011. I have the HANSARD here and it was Question No.929. Our Standing Order No.43(4) disallows Questions which had already been dispensed of to be repeated within six months. So, I do not know whether I can go ahead and answer the same thing which I had answered on 8th June, 2011.

The Temporary Deputy Speaker (Mr. Imanyara): Let me hear Mr. Affey first because I am aware of it; I was in the House when that Question was answered.

Mr. Affey: Mr. Temporary Deputy Speaker, Sir, the Question I had asked on the date the Assistant Minister has given referred to Inquest File No.2 of 1995. But the Question this afternoon is on Inquest File No.3. So, there are two files. The one he answered was Inquest No.2 and I am asking about Inquest File No.3 of 1995. So, it is a different Question!

The Temporary Deputy Speaker (Mr. Imanyara): Order! I have been briefed by the Clerks-at-the-Table and, indeed, the Question was substantially similar to the one that was answered. This has been confirmed by the HANSARD. So, it ought not to be on the Order Paper.

Mr. Affey: On a point of order, Mr. Temporary Deputy Speaker, Sir. The answer given to the House by the Minister concerns a different date in terms of the reporting done in Occurrence Book (OB) and the inquest file opened in Garissa. In the answer the Minister gave on Inquest File No.2 of 1995 he did not have the name "Fatuma". In the Inquest File No.3---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Affey! The Chair's ruling is that this is substantially the same Question that was answered and it ought not to be on the Order Paper. I have confirmed with the Parliamentary staff and that is the Chair's ruling.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not know whether you can recall that day you were---

The Temporary Deputy Speaker (Mr. Imanyara): Are you revisiting the same matter?

Dr. Nuh: Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): You are out of order! Next Question by the Member for Emuhaya!

Question No.1077

REDUCTION OF REA BUDGET

Dr. Otichilo asked the Deputy Prime Minister and Minister for Finance:-

(a) why the budget allocation to Rural Electrification Authority (REA) was reduced from Kshs.3,574 billion in 2008/09 to Kshs.3.050 billion in 2009/10 and Kshs.1.142 billion in 2010/11;

(b) whether he is aware that the reduction has led to a reduction in constituency allocation by REA, from Kshs22.3 million in 2008/09 to Kshs.14.4 million in 2010/11, hence stifling the Rural Electrification Programme and, consequently impeding the implementation of *Vision 2030*; and,

(c) whether he could confirm that there is a reduction in 2011/2012 Budget allocation to an average amount of Kshs4 million per constituency after all expenditure consideration and, if so, what other plans the Government has to source funds for REA.

The Assistant Minister, Office of the Deputy Prime Minister and Minister for Local Government (Mr. Nguyai): Mr. Temporary Deputy Speaker, Sir, I was meant to answer this Question, unfortunately, the Question was forwarded to my office but I was not aware until a few minutes ago. I have indulged the hon. Member and I am requesting him to agree so that we answer this Question on Tuesday afternoon.

The Temporary Deputy Speaker (Mr. Imanyara): Dr. Otichilo, what do you have to say to that?

Dr. Otichilo: Yes, Mr. Temporary Deputy Speaker, Sir, I have agreed that he answers the Question on Tuesday.

The Temporary Deputy Speaker (Mr. Imanyara): The Question is deferred to next week on Tuesday as requested!

(Question deferred)

Next Question by Mr. Mbuvi, the Member for Makadara!

Question No. 1080

FUNDING OF YOUTH PROGRAMMES

Dr. Nuh on behalf of **Mr. Mbuvi** asked the Minister for Youth Affairs and Sports:-

(a) whether he could state all the programmes established by the Government to address youth unemployment since 2003;

(b) which development partners have funded the activities of the programmes in (a) above and how much money each has contributed; and,

(c) what measures are in place to ensure that the programmes observe efficiency, accountability, transparency and ensure participation by the target group.

The Minister for Youth Affairs and Sports (Dr. Otuoma): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a)The programmes established by the Government to address youth unemployment since 2003 are as follows:-

(i) The youth empowerment employment scheme.

- (ii) Youth training and skills development.
- (iii) Talent nurturing and development.
- (iv) Exchange programmes for youths.
- (v) Kazi kwa Vijana.
- (vi) Kenya Youth Empowerment Programme.
- (vii) Revitalization of youth polytechnics and provision of equipment and tools.
- (viii) Sports programmes.
- (ix) Youth empowerment centres.
- (x) Entrepreneurship training for youth out of schools.
- (xi) Affirmative action policy for the youth through the introduction of green house farming technologies in youth polytechnics.
- (xii) Increasing access to quality training through payment of subsidized tuition.
- (xiii) Recruitment of instructors on contractual basis.

(b) The development partners and the amount of money they have contributed is as follows:-

- (i) The Youth Employment Scheme, jobs for the unemployed and marginalized young people by the International Labour Organization (ILO) to the tune of US\$106,000.
- (ii) Life skills through guidance and counselling, promoting youth health done by UNICEF and UNFPA at the cost of around US\$50,000.
- (iii) The National Youth Talent Academy at the cost of just around US\$8,700.
- (iv) Youth Exchange Programmes through UNDP at US\$181,000.
- (v) The National Youth Volunteer Scheme through UNDP at US\$37,000.
- (vi) Kenya Youth Employment Programme/KKV by the World Bank at US\$60 million---

The Temporary Deputy Speaker (Mr. Manyara): Order, Minister! How long is that list?

The Minister for Youth Affairs and Sports (Dr. Otuoma): Mr. Temporary Deputy Speaker, Sir, I am finishing. There are only two more.

- (vii) Infrastructure Development Supply of Tools through KDP at US\$5 million.
- (viii) Rehabilitation and equipping of youth polytechnics at US\$130,000 through ADB.
- (ix) Sports Programmes through UNICEF at US\$250,000.

Mr. Temporary Deputy Speaker, Sir, those are the main sponsors or partners that have been in this youth programme. The other parts of the programme have been sponsored by the Ministry and were funded by the Government of Kenya through the Exchequer and the list is as provided in our Vote Books which have already been provided to the House.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, in the programmes the Minister enumerated, there seems to be billions of shillings involved towards creation of employment for the youth. With all these funds channeled towards alleviating unemployment of the youth, could the Minister give us the substantive number of youths, courtesy of this programme, who have got employment today? To what percentage has the unemployment rate among the youth decreased because of such programmes?

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, that could be a different question. However, we know that with the increasing young labour force which is providing about 25 per cent of the labour market and 75 per cent which is approximately

750,000 youths who are still unemployed, we are very much aware that through some of these programmes like the Youth Enterprise Development Fund (YEDF) more than 150,000 have benefited. Through the programme of subsidized tuition in youth polytechnics, around 75,000 youths are already in the programme.

On youth employment outside the country, this is a programme that has been very slow. So far, the only record I have is 3,000 youth while the target was 10,000 youth annually. We all know the economic downturn that was there the previous year which affected the programme and also the legal structures that are still being worked out. A Sessional Paper is being developed and once adopted by the Cabinet, it will be brought to this Parliament so that there is a clear programme on how Kenyans can be employed outside this country.

Mr. Temporary Deputy Speaker, Sir, you are very much aware of what has been happening to some of our young men and women who have gone to seek jobs abroad only to end up being given jobs they did not anticipate or being subjected to working conditions that look like slavery. This would require Parliament to pass the legal framework through which these schemes can be implemented. That is still being worked on.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to evade the question? There are over 20 programmes listed here and my question was very direct; how many youths, courtesy of these programmes, have got employment? To what percentage has the unemployment rate been reduced by these programmes?

The Temporary Deputy Speaker (Mr. Imanyara): But he did indicate to you that, that indeed, is a separate Question although he was willing to---

Minister, what do you have to say?

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, as I said, that is separate Question. I was just talking about what each programme has done. However, if you ask me that specific Question, then I can bring the information on the numbers that have been employed.

Mr. Chachu: Mr. Temporary Deputy Speaker, Sir, among the programmes being established by the Government to address youth unemployment in Kenya is one that is called Affirmative Action Policy for the Youth. I have never heard about that programme. I would like the Minister to inform us more about it. What kind of affirmative action is he talking about? Where is that programme being implemented in our country?

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, if you recall very well, sometimes back, we had a *Kamukunji* here, where we had called Members of Parliament to educate them on the issue of Kenya Youth Employment Programme. The Chair was here and contributed during that time. I am sure if the hon. Member had bothered to attend that meeting, he would have updated himself on how the programme is being piloted in around eight areas. It is already being piloted in those areas. There were questions why it was being piloted in those areas.

Mr. Temporary Deputy Speaker, Sir, you are aware that all that was answered during the forum that we had. So far, there are about eight areas where we are pioneering that programme.

Mr. Chachu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to evade my question? My question is very direct. I want to know more about that programme and where it is being implemented in the Republic of Kenya. It is very simple.

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, during that Speaker's *Kamukunji* the areas presented were Kiambu, Machakos, Coastal areas, parts of Migori and parts of North Eastern Kenya like Wajir. Those are the pioneer areas where the project is being piloted in terms of affirmative action. I may not have all the details at hand, but I can pass the document to the hon. Member so that he can update himself on exactly the areas and the criteria that was used to select those areas.

Mr. Washiali: Thank you, Mr. Temporary Deputy Speaker, Sir. The Minister has talked about accessibility to polytechnics. Everybody knows that the availability of institutions of higher learning, including polytechnics is skewed in this country. We have more polytechnics in some areas more than others---

The Temporary Deputy Speaker (Mr. Imanyara): Ask your question.

Mr. Washiali: Mr. Temporary Deputy Speaker, Sir, the question is: What is the Ministry doing to ensure that all youths have fair access to polytechnics?

Mr. Otuoma: Mr. Temporary Deputy Speaker, Sir, as I said, through this Technical and Vocational Education and Training (TIVET) Programme, we are in the process of reviving polytechnics. Some were called village polytechnics and we have taken them up. We have also developed a curriculum with the National Education Council - if I am not mistaken. So far, we have taken over 500 youth polytechnics. We have ensured that they are spread out in every constituency. As I speak now, we are in the process of gazetting more youth polytechnics. I have been telling Members to liaise, in their constituencies, with the Youth Development Officers, to ensure that, at least, two or three youth polytechnics can be gazetted and put under that programme. However, so far, the numbers we have registered are slightly over 500 youth polytechnics. The number of youths whom we have put under that programme is around 75,000. We are already subsidizing them at a cost of Kshs15,000 per youth. We are also giving equipment. So far, we have given over 100 youth polytechnics equipment to help them do that. You are also aware that we are recruiting instructors and this year alone, we recruited 2,000 instructors on contractual basis. We will be sending them out to youth polytechnics. I am sure that this year, we will also be recruiting more instructors to help in reviving some of those youth polytechnics. We will also be giving more equipment to some of the already gazetted youth polytechnics.

We are also working with development partners like African Development Bank (ADB). We announced the other day where we will be upgrading more polytechnics through the ADB Loan. I think that was also advertized in the newspapers to show the areas that will benefit from the programme. We will be taking more areas as time progresses.

Dr. Monda: Mr. Temporary Deputy Speaker, Sir, the programmes that the Minister has talked about have been going on since 2003. However, they have not been able to address the unemployment problem in this country. The numbers are still swelling. What are the alternative programmes that you are adding to alleviate unemployment among the youth? We want to see the numbers reducing instead of rising.

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, as you are aware, the issue of unemployment cannot be sorted out by the Ministry of Youth Affairs and Sports alone. We know that one of the root causes of unemployment is lack of skills by the youths. That is where we are trying to give them skills using the youth polytechnics. If some of the youths have access to some loans or funds through the Youth Enterprise Development Fund, they could become entrepreneurs and, in the process, also create employment. However, we all know that the best employment creation is achieved when the economy is growing. So, there are various indicators that need to show that the economy is growing to be able to absorb the large number of youths who are joining the labour market. However, there is a special segment of the youth population who my Ministry is mandated to take care of; those are the youths between 18 and 35 years.

Ms. Leshomo: Bwana Naibu Spika wa Muda, ningependa kumuuliza *Minister* mambo ya polytechnics. Kuna sehemu ambazo zina shida ya polytechnics kama vile Samburu. Sehemu hii ina shida ya *polytechnics* kwa sababu makanisa yamechukua vituo hivyo. Sijui wako na mpango gani kuhusu sehemu kama hizo. Pia ningepeda kuuliza swali kuhusu wachungaji misituni. Ningependa kujua Waziri ako na mipango gani kuwahusu.

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, I need your guidance on whether I should continue in English or change to Kiswahili.

The Temporary Deputy Speaker (Mr. Imanyara): Choose!

Dr. Otuoma: Ahsante. Bwana Naibu Spika wa Muda ameniambia nichague, na mimi nimechagua Kiswahili. Kuhusu vijana Samburu ambao wanahusika na ufugaji wa ng'ombe, mpango wa *youth polytechnics* utasambazwa katika kila maeneo ya ubunge. Kuna sehemu ambazo zilikuwa na polytechnics nyingi kuliko sehemu zingine. Katika sehemu ambazo hazina, tunajaribu kutumia mpango wa *affirmative action* ili kuziwezesha kuwa na youth polytechnics. Katika *youth polytechnics*, kuna *programmes* ambazo zimewekwa ambazo zinalenga vijana wanaotoka eneo kama hilo. Kama wangependa kujifunza jinsi ya kuendesha biashara, mipango itawekwa kulingana na hayo. Kama wanataka fedha ili waweze kuendesha biashara yao, mikakati itawekwa kulingana na matarajio yao. Kitu cha muhimu ni kuwahimiza Wabunge kwamba, katika wakati huu tunaposajili youth polytechnics--- Ikiwa kuna eneo halina, huu ni muda mzuri wa kuja kwetu, kufuatilia na kujua ni youth polytechnics gani ambazo zimewekwa katika mipango ya Serikali. Kama kuna zile ambazo hazijawekwa, itakuwa vizuri ukituletea kupitia kwa Youth Development Officer na DDC ili tujue ni zipi tutaweza kusajili. Nafikiri hilo ni jukumu kubwa la waakilishi wa wananchi.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, listening to the Minister, he has elaborated on so many programmes that if well managed they can really help the youth of the Republic of Kenya, who actually constitute 60 per cent of the Kenyans. We are not sure how he handles some of his programmes like the exchange programmes for the youth. While thanking the partners, I note that the total expenditure by them is US\$66 million, which is approximately Kshs7 billion. Could the Minister inform the House of the percentage of the Kenyan participation in this, and what he is doing to ensure that the loyalty of the youth in the Republic of Kenya is to this country?

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, hon. Koech is quite right. That is the figure. It is around Kshs7 billion, but we are also aware of our vote books. The Ministry of Sports and Youth Affairs' budget is very clear. You can see the amount of

money that we are getting for each programme and purpose. You are also aware that in this year's Budget, we are also getting Kshs1.8 billion to support directly some of these programmes. There are also other programmes that are completely outside this Question, and that was what I was saying. An example is the National Youth Service (NYS); our target was to recruit 10,000 youths every year; but because of some financial constraints, last year we recruited only 5,000 and this year, maybe next month, we are also going to recruit another 5,000. We have the capacity to recruit even 10,000 if given the opportunity to do that. I am sure one of the committees has really been trying to push for that, especially in terms of food production. If hon. Mututho was here, he knows we are working on something like that.

Then we can recruit more youths for such kind of programmes. We have also small-scale irrigation, rain water harvesting and green houses that we have been talking about. These are some of the programmes that we are trying to target for job creation and food production; These programmes must be tailor-made to assist the country. We are also looking at most developing countries currently which have not developed maybe because of lack of higher education. It is because of the polytechnics and technical colleges that people get skills that provide the necessary skills within the areas where they come from. That way, we have seen that productivity per individual youth becomes quite efficient. As I have said, the Ministry of Sports and Youth Affairs cannot complete this programme alone. The overall economic indicators have got a very big impact on the achievements of some of these programmes. This is not a programme we are rolling out in Kenya. I know that through the African Youth Charter and the United Nations Charter for the Youth, this is an obligation that we have given to the country to work towards the Millennium Development Goals (MDGs) that we must be able to achieve.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, on the list of the development partners who are supporting this country in this programme, the Minister has avoided to indicate the programme that was being driven by the former US Ambassador. Is he saying that this was not monitored by the Government? If it was monitored by the Government, how much money was the then ambassador pumping into the programme and which programmes was he supporting?

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, as you are aware, Dr. Khalwale is very well versed in parliamentary issues and some of the programmes that the Government engages in. Members passed an Act here, the National Youth Council Act of 2009, which clearly stipulates what programmes the youth and the Government prioritize in terms of what we want to achieve. There must be a framework to deliver that. However, that does not stop private individuals from also coming up with their own programmes and drive them, so long as they are allowed in the country. That programme was not channeled through the Ministry of Sports and Youth Affairs or any other youth organization through which we could have captured it officially. There are so many and not just by the United States Government.

There also so many Non-Government Organisations (NGOs) with various other programmes, but they are doing them in their private capacity, so long as doing so is not illegal in the country; I think that is permissible. We only deal with programmes which are within our national youth policy programme, which we think is in line with what we envisaged when we passed the National Youth Council Act. It is very unfortunate that the elections were taken to court and they could not take place. Otherwise, what I am saying

now is supposed to be driven by that National Youth Council Act, with the Government just playing a facilitative role. They are free to engage some of the development partners in their private capacity rather than through bilateral relationships that are required if we have to do things as a government.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I commend the Minister for the reply; could he inform this House what the Ministry is doing about the poorly remunerated instructors in our polytechnics?

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, as you can see, that is a different Question, but as I said earlier, we advertised the other day and came up with a salary scheme for the instructors. Maybe hon. Njuguna can go back and look at it and say whether that remuneration is enough. This is because what he is talking about is a problem we have already worked on. The instructors who are being recruited now, their remuneration is very clear. It was approved. They are also being employed on contractual basis while still seeing how best we can have them employed on permanent basis.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, could the Minister consolidate all these programmes under one umbrella, so that in the long run we do not lose them and their continuity by the Government?

Dr. Otuoma: Mr. Temporary Deputy Speaker, Sir, if I heard Dr. Nuh clearly, most of these programmes are domesticated in the Ministry of Sports and Youth Affairs, and that is what I said. There could be other programmes that are privately driven; we do not have much to say about them. But the ones which are in the Ministry are catered for in various departments; they are under one ministry but the departments could be different, depending on what the specifics are. For example, we have the Department of NYS, Department of Youth Training and Department of Youth Development, but all are under one umbrella of the Ministry of Sports and Youth Affairs; already they are domesticated in it.

The Temporary Deputy Speaker (Mr. Imanyara): Next Question by Mrs. Noor

Question No.1085

POSTING OF MEDICAL PERSONNEL TO NORTH EASTERN PROVINCE

Mrs. Noor asked the Minister for Medical Services:-

(a) whether he could table a list of medical doctors, dentists and pharmacists who have been employed in the country since January 2009; and,

(b) how many of each category have been posted to North Eastern Province.

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

(a) The list of medical doctors, pharmacists and dentists who have been employed in the country since January 2009 is hereby tabled.

(b) The following have been posted to North Eastern Province under each category: medical officers 26, dentists 2, pharmacists, 6. The total number of staff posted to North Eastern Province is 34.

(Mr. Kambi laid the document on the Table)

Ms. Noor: Mr. Temporary Deputy Speaker, Sir, I have not had an opportunity to look at this list. It is big as you see. I am begging that I am given time so that I will be able to look at it so that I can engage the Minister.

The Temporary Deputy Speaker (Mr. Imanyara): What time do you require?

Ms. Noor: Mr. Temporary Deputy Speaker, Sir, tomorrow will be okay for me.

The Temporary Deputy Speaker (Mr. Imanyara): Is tomorrow afternoon okay with you?

The Assistant Minister for Medical Services (Mr. Kambi): Much, obliged, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): The matter will be revisited tomorrow afternoon in order for you to interrogate the answer.

Next Order!

MINISTERIAL STATEMENTS

SALE OF BUSIA SUGAR COMPANY LAND

The Minister for Agriculture (Dr. Kosgei): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to make this Statement. However, I need to apologize and also explain---

(Loud consultations)

The Temporary Deputy Speaker (Mr. Imanyara): Order, Members! Please, consult in lower tones so that the Minister can give her Statement.

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Speaker, Sir, I apologise for not being here yesterday to give this Statement. The circumstances are that I was in the House on Thursday to give it, but the Speaker informed me that it had been deferred. Between that time and yesterday, I did not get any chance to issue the Statement because the person who had requested it was absent. I did not know why he was absent. Therefore, I was not able to know when he was going to be available again.

Mr. Temporary Deputy Speaker, Sir, the question has to do with the saga between Mumias Sugar Company and Busia Sugar Company. The background is that Mumias Sugar Company claims to be owed Kshs105,316,821.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. This matter was raised by hon. Okemo. Since he is the local MP he has specific issues and I notice he is not around. I request that we defer until he comes, so that we take the Statement.

The Temporary Deputy Speaker (Mr. Imanyara): That is not a valid point of order, continue, Minister!

The Minister for Agriculture (Dr. Kosgei): Thank you, Mr. Temporary Deputy Speaker, Sir. The money was lent to Busia Sugar Company----

Dr. Khalwale: He is the local MP!

The Minister for Agriculture (Dr. Kosgei): Do not worry hon. Khalwale. I will explain to Dr. Okemo!

The Temporary Deputy Speaker (Mr. Imanyara): Minister, please, address the House.

The Minister for Agriculture (Dr. Kosgei): The year 2006, Mumias Sugar Company lent money to Busia Sugar Company to pay its farmers because it was said not to be solvent at that time. In the year 2009, the Kenya Sugar Board resolved to appoint an auditor to verify the claim of Mumias Sugar Company. From the verification exercise, a number of issues were outstanding requiring the board to address. The issues included the fact that no sugar factory was commissioned at Busia Sugar Company and Busia Sugar Company owed substantial amounts of money to various creditors; the largest of them being Mumias Sugar Company.

Mr. Speaker, Sir, the Kenya Sugar Board eventually placed Busia Sugar Company under protective receivership to secure creditors' assets. It then allowed Mumias Sugar Company to pay the farmers directly and also to work on Busia Sugar Company's nucleus estate to recover the unpaid amounts. However, money realized by Mumias Sugar Company while managing Nasewa land indicated no cess to Mumias Sugar Company resulting in the move to go to court as the last measure to recover the said money.

Mr. Temporary Deputy Speaker, Sir, on 8th July, this year, Mumias Sugar Company went before the High Court at Bungoma by way of originating summon suits, No.66 of 2011. The basis of the suit was that Mumias Sugar Company claims to hold a charge over Busia Sugar Company nucleus estate. Busia Company had defaulted in redeeming the land, and a public auction could not raise a purchaser, and according to Mumias Sugar Company it had no choice but to sell the private land to a private company.

Mr. Temporary Deputy Speaker, Sir, Mumias Sugar Company sought an order to sell the Busia Sugar Company nucleus estate, whose number is, Bukhayo, Nasewa 1500 measuring approximately 341.2 hectares valued at about Kshs92,500,000 as per valuation by Tyson Limited of 12th May, 2011. The application exhibited a charge made by Mumias Company on Busia Sugar Company nucleus estate to secure a principal amount of Kshs100 million which it said had been created in June, 2006.

Mr. Temporary Deputy Speaker, Sir, on 11th July, 2011, the advocate for both parties recorded an order by consent allowing Mumias Sugar Company's suit as presented. The consent that is between Mumias Sugar Company and Busia Sugar Company was presented to the court on 11th July. On the same day the Deputy Registrar of the High Court in Bungoma actually allowed this land to go ahead to be sold. There was no court decision, however, on the matter.

Mr. Temporary Deputy Speaker, Sir, finally, the Ministry learnt about the order on 26th July, 2011 from hon. Okemo. We moved quite swiftly and immediately instructed the Kenya Sugar Board to take action and put caution on the sale of land to Kaplony Enterprise Limited. We have since been informed by Kenya Sugar Board that the transfer of the land has been stopped and I table their letter to me. In saying that the sale has been stopped, the Kenya Sugar Board has also investigated and found out that the land has actually not been transferred. I also table that document.

Mr. Temporary Deputy Speaker, Sir, in conclusion, we are still using all the arms of the Government to actually make sure that this land does not get transferred and then Mumias Sugar Company, Busia Sugar Company, Kenya Sugar Board and the involvement of the Ministry may then help the farmers of Mumias not to lose their land. Our aim is that they should not lose this land.

The Temporary Deputy Speaker (Mr. Imanyara): I will take three clarifications and then I will go to the next step, starting with hon. Okemo.

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, first, I wish to express my appreciation for the quick action that the Ministry of Agriculture took immediately we learnt of this purported transfer.

Mr. Temporary Deputy Speaker, we are worried because earlier indications were that the Kenya Sugar Board was actually going to pay Mumias Sugar Company for the outstanding loan, and actually the Ministry of Agriculture had authorised that. They had gone ahead to ask Kenya Sugar Board to appoint auditors to ascertain the actual loan outstanding. That had gone as far as the point where the auditors had produced the report. The report showed that Mumias Sugar Company owed considerably less than Kshs100 million. In fact, Kshs20 million or thereabout, and I suspect that is what must have prompted Mumias Sugar Company to do what they did and they did it in a very clandestine and illegal manner. Even the documents I have here show that Busia Sugar Company had no legal mandate because there are prohibitory orders which had been put on the title deed. Therefore, it had no capacity either to accept or consent in a court of law for the land to be sold. So, the clarifications I would like to get from the Minister is whether the Kenya Sugar Board will still pay the loan as they had committed themselves earlier. If so, what would be the necessity for Mumias Sugar Company to go to court seeking orders to sell land for which the Government has already committed itself to pay?

Secondly, Mr. Kidero is a member of the Board of Directors of Kenya Sugar Board where the decision was made and he was present. Why then did he have to go and swear an affidavit in court authorising the sale of Busia Sugar Company? Lastly, who are the shareholders of Busia Sugar Company? Does the Government hold shares? If so, how much shareholding?

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Okemo! You cannot get away with the saying “secondly” every time you want to seek more clarifications.

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, finally, we would like to know the future of the Nasewa land because the farmers are very much anxious. What the Minister has described here is a temporary situation. We would like to know the long term permanent situation. Will that land revert back to the people of Nasewa and Bukhoyo? Will a sugar factory be built on it as has been promised by many members of the Government, including the Deputy Prime Minister and Minister for Finance, who said it here during one of his Budget speeches?

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, when coffee farmers had a problem in this country the Government intervened. Whenever drought hits the livestock farmers, usually the Government intervenes and helps them to restock. We want to find out what crime the sugar-cane farmers committed against this Government, so that the Government goes to our people and begs them to leave their homes; homes they did not want to leave so that they can give us a factory. It is sad that once that was done, they

now want to clandestinely give out that land to private people. Could she undertake to transfer that title deed into the name of the farmers of Bukhayo who gave this land until a factory is built?

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Speaker, Sir, Mr. Okemo needs a clarification on who said they would pay and so on. Let me say from the outset that his aim is the same as that of the Ministry. We must not allow people to descend to more poverty. If the land is theirs, they must not be deprived of that land. I would have liked to come here and say categorically that we can do this today or tomorrow. However, as the hon. Member is aware, we do not have a sugar board right now because the elections took place and we were taken to court because women were not elected. We are trying to find out how to take care of that.

I need the board to sit to authorize what we, as a House and the Ministry, are asking for. I do not want to take a unilateral decision. However, if the board is not available for a long time then we will have to do so.

I would like Mr. Okemo to work with me because I think what he is trying to do is a duplication of what we are doing. We do not want the farmers to lose their land for nothing.

As for the building of another factory, at the moment, we are in a very bad place. The hon. Member is the chairman of the Committee that does privatization. There was an effort to privatise various sugar companies in this country, but as we are aware, the board has not been able to meet. That is not under the Ministry of Agriculture. Nevertheless, if it is not going ahead, we have to work on getting an investor or ask the Government to avail funds for the construction of this factory.

Mr. Temporary Deputy Speaker, Sir, with regard to the future of the land, in my view and that of the Ministry of Agriculture, the land should go back to the people who owned it from the beginning. So, we are not in contradiction. What I want to do is not to work on the rumours that I have picked. I want to make sure that, first of all, the land has not been transferred. Even if it has been transferred, it can still be re-transferred.

This is what we are working on. I have sent numerous people since I got the information last week to check in courts in Bungoma, but there is nothing of that sort. However, the rumours are that somebody may have transferred. I am using the Government machinery to ensure that this land is not transferred, so that we can sort out the debt of Mumias and Busia. That to me is a very different matter from that of the land. We should separate the two and clearly understand that the land belongs to the people.

As for coffee and sugar-cane farmers, this is an issue which has now come to us as a problem for Busia. We are trying to handle it in the best way possible for the people there. Any other problems in the sugar industry, we have tried to get new directors, so that they can, probably, be more revolutionary or active in trying to help to do something in this industry. But as I said, that matter is in the court. We want to follow the regulations which are laid out. However, I sympathize and I hear you that sugar-cane, pyrethrum and sisal farmers, just like farmers of other crops deserve assistance. That is what I hope I can give.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Okemo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I had raised issues. There is one issue that the Minister has not addressed. That was the fact that the Government had already approved the settlement of that debt by Busia Sugar

Company to Mumias Sugar Company. Mr. Kidero is a member of the Kenya Sugar Board. Why then did he have to go and sign an affidavit to go to High Court? He is a member of the board which is responsible.

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Speaker, Sir, I tried to respond to that question to tell the hon. Member that we are on the same side. As I speak right now, the Sugar Board is not in place. We are not beholden to the point of one person. You are not surely telling me that if we have decided as Members in the House and also at my level in the Ministry that we have to assist the farmers, one person in the Sugar Board will change that. He will not. I have given you an undertaking and I will make sure that this is sorted out.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister should still answer the question because she is hiding in the fact that a new board is being formed when she knows that when elections were called the same old directors won the elections. So, the same ones who were being controlled are still the same ones who won the elections and, therefore, we as leaders of sugar-cane farmers, we do not expect any progress. Can she tell us how the Government will intervene?

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Speaker, Sir, I find that rather strange. The Ministry does not elect the board members. They are supposed to be elected by the farmers. Is the hon. Member right to try and suggest to me that I have the power to change the will of the people? If we are talking about the land issue, I have undertaken to look into it, so that the farmers do not get disadvantaged. As to the way these people were elected, I do not cast a vote there. They were elected by the farmers.

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

[Mr. Speaker resumed the Chair]

Mr. Okemo: On a point of Order, Mr. Speaker, Sir. As much as I appreciate that the Ministry is on the same side as ourselves, I am still a bit baffled. The Ministry of Agriculture had approved that the loan be paid by KSB. I want a categorical commitment that the approval that was given by the Ministry of Agriculture to pay that loan still stands irrespective of whether we have a new board in place or not.

The Minister for Agriculture (Dr. Kosgei): Mr. Speaker, Sir, what I said and I want to say it again, we will sort out the matter. You are telling me about the board and I told you there is no board. We would have liked to follow the regulations which include the concurrence of the board. But I am telling the hon. Member there is no board and, therefore, we will have to take an administrative decision to sort out the matter. How else should I put it?

Mr. Speaker: Very well. That should close that matter.
Proceed, Prof. Anyang'-Nyong'o.

UNSAFE DRUGS ALLOWED BY PHARMACY
AND POISONS BOARD

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Speaker, Sir, I would like to make a Ministerial Statement on allegations that the Pharmacy and Poisons Board clears unsafe drugs for sale to the Kenyan public. This allegation has appeared in the Press and it is being discussed in the ---

Dr. Monda: On a point of order, Mr. Speaker, Sir. The matter the Minister is issuing a Statement on is a matter that the Committee of Health which I chair has already got seized of and we have already held a number of meetings with some of his officers and the Efficiency Monitoring Unit (EMU). We are heading to a position where the Minister himself will appear before the committee. Would I be in order, therefore, to ask that the Ministerial Statement be deferred until the Minister appears before the Committee and we write a report that we will present to this House that will have dealt with this matter comprehensively?

Mr. Speaker: Very well! Dr. Monda, before the Minister responds, I will want to hear you. Can you provide the House with the full details, by way of a Statement, on what exactly the Committee is inquiring into?

Dr. Monda: Mr. Speaker, Sir, when this matter was brought out by the media---

Mr. Speaker: Order! Just respond to my concern. What is the subject of the matter that the Committee is inquiring into?

Dr. Monda: Mr. Speaker, Sir, we are inquiring into what happens with the regulatory body; the Pharmacy and Poisons Board that allows the flow of unregistered drugs and counterfeits into the country and into the market, exposing Kenyans to unsafe drugs. This is what we are looking into.

Mr. Speaker: Very well! Is the Minister aware that that is the subject of your inquiry as a Committee?

Dr. Monda: Mr. Speaker, Sir, we have summoned some of his officers through his Ministry. Therefore, we expect that he should be aware of this. I am looking at a situation where the Minister could be pre-empting what we are headed to uncover.

Mr. Speaker: Order! That is not the right way to go. The word "pre-empt" is imputing improper motive on the part of the Minister. So, I am afraid you will have to withdraw the word "pre-empt" in the context of this matter. Just withdraw that word and leave it there.

Dr. Monda: Mr. Speaker, Sir, I withdraw the "pre-empting" and indicate that the Minister is headed to where we are headed. We have already summoned the Pharmacy and Poisons Board to appear before us on Tuesday.

Mr. Speaker: Will you stop there because you have done well? Minister, of course, if your officers have been summoned, then you will be aware that this inquiry is going on by the Committee.

The Minister for Medical Services (Prof. Anyang'-Ny'ong'o): Mr. Speaker, Sir, I have no letter on my desk and no information from the Committee that my officers have been summoned. I have been following this matter ever since it appeared in the Press as is my responsibility and I think the Committee would benefit a great deal to listen to me and to use the information I will give them for their further inquiry if, indeed, they are

doing so. But on my desk, I have absolutely no information that such an endeavour is being undertaken.

Mr. Speaker: Very well, Minister! You have now heard it and we must take the word of a Member of Parliament, including yourself as a Minister, to be factual until proved otherwise. So, given the provisions of our Standing Orders, now that the matter is under inquiry by the Committee, you cannot be allowed to issue a Statement until the Committee has completed its inquiry. Of course, Hon. Minister, if the Committee summons you, you will live within the provisions and spirit of the Standing Orders and act appropriately.

The Minister for Medical Services (Prof. Anyang'-Ny'ong'o): On a point of order, Mr. Speaker, Sir. Will it be in order for me to request that the Committee informs the Minister when his officers are summoned to appear before the Committee so that we can be on the same wave length? Unless I have official information, either from the Clerk or the Committee, I would not know what is happening in Heaven or on Earth.

Mr. Speaker: Dr. Monda, you do not have to respond to that. Minister, if your Ministry is functioning regularly in accordance with the standards of governance practice, then your officers will not come to attend a Committee meeting in Parliament without you being put on notice. So, there is something that you need to sort out in-house at the Ministry and not here, certainly.

Minister, please, allow this matter to rest where it is. Before you are requested to attend the Committee, you will be given adequate notice through the Clerk's office so that we give you time to prepare and you will be treated with all courtesies that you deserve.

ADOPTION OF SOMALIA/ERITREA MONITORING GROUP REPORT BY UN

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, last week, the Member for Budalangi, hon. Namwamba, had sought a Ministerial Statement from the Ministry of Foreign Affairs on the situation in Somalia. This morning again, we made a commitment that we would issue the Ministerial Statement this afternoon, but unfortunately, there are two reasons why that statement is not ready.

First, some of the information that hon. Namwamba wanted had not arrived at the Ministry of Foreign Affairs and, therefore, I would seek your indulgence to postpone the issuance of that Statement.

Secondly, there have been very critical developments in Somalia and as a result, I wanted up to date information, so that I do not mislead the House or we are not able to inform the House effectively.

So, with a lot of humility, I am requesting that the Statement be delivered on Tuesday next week.

Mr. Yakub: Mr. Speaker, Sir, in fact, this was my request, but nonetheless, even if hon. Namwamba contributed, I am willing to wait until Tuesday.

Mr. Speaker: If it was your request, then the HANSARD record is accordingly corrected.

Mr. Yakub: Mr. Speaker, Sir, it was my request and I am willing to wait up to Tuesday next week.

Mr. Speaker: You are happy to wait up to Tuesday afternoon?

Mr. Yakub: Yes, Mr. Speaker, Sir.

Mr. Speaker: It is so directed! We will now take requests for Statements.

POINTS OF ORDER

DEATHS OF FOUR CHILDREN AT THIKA LEVEL FIVE HOSPITAL

Mr. Kabogo: Mr. Speaker, Sir, I wish to seek a Ministerial Statement from the Minister for Medical Services concerning the deaths of four children at the Thika Level Five Hospital between 5th and 6th August, 2011. In the Statement, the Minister should state the real causes of the deaths and whether they were due to lack of oxygen as claimed, and or, there was negligence on the part of the hospital staff. I would also want the Minister to state what action the Ministry has taken to address this issue in order to avert further deaths in the future.

Mr. Speaker: Minister, when will you make this Statement?

The Minister for Medical Services (Prof. Anyang'-Ny'ong'o): Mr. Speaker, Sir, I will issue the Statement to the House on Tuesday next week.

Mr. Speaker: Very well! It is so directed.

Mr. Ruto: Mr. Speaker, Sir, I wish to request for a Ministerial Statement from the Minister for Foreign Affairs.

Mr. Speaker: Order, hon. Ruto! I have no notice that you will be requesting for a Ministerial Statement. Of course the Standing Orders tell you what you need to do.

Mr. Ruto: Mr. Speaker, Sir, under the Standing Order No.1 since you---

Mr. Speaker: Order! You cannot.

SUMMARY DISMISSAL OF 400 EMPLOYEES OF AFRICAN SAFARI CLUB

Mr. Yakub: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of Labour on the summary dismissal of 400 employees of the African Safari Club in Mombasa who have been camping every day, for 24 hours, at the premises of the proprietor of the club since 4th August, 2011, following their dismissal.

In the Statement, I would like the Minister to:-

(i) State whether he is aware of the incident and, if so, indicate whether the due process was followed by the employer before sacking the employees.

(ii) Indicate the measures he will take to ensure that all the laid off staff are paid their dues as required by the labour laws.

(iii) Give us a timeframe as to when the employees will be paid all their dues.

Mr. Joho: On a point of order, Mr. Speaker, Sir. On the same matter, I would like to seek further clarification from the Minister whether he is aware that there was a court ruling on the same issue of about Kshs50 million. What does he intend to do to ensure that these Kenyans, who have been sleeping in the rain and in the sun throughout the week like hon. Yakub has said, are paid in time?

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

Mr. Speaker: Do you want to supplement that request, Member for Ikolomani?

Dr. Khalwale: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well. Proceed.

Dr. Khalwale: Mr. Speaker, Sir, the matter of the African Safari Club has been coming here. I believe this is the third time it has come here. Could the Minister, when he comes with the Statement, also indicate the total indebtedness of the African Safari Club to the workers, so that should he choose to agree with them that they should be laid off, he tells us what he intends to do to ensure that these people are paid what they are owed?

(Mr. Imanyara stood up in his place)

Mr. Speaker: Do you want to add to that request?

Mr. Imanyara: Yes, Mr. Speaker, Sir.

Mr. Speaker: Okay, proceed.

Mr. Imanyara: Mr. Speaker, Sir, because this matter has been coming to this House so many times, could the Minister also disclose when answering that question, who the owners of the African Safari Club Company Limited are? This is because they appear to be getting away with impunity. So, could the Minister tell the House who the proprietors of this company are?

Mr. Speaker: Yes, Minister for Labour! He is not around? Minister for Justice, National Cohesion and Constitutional Affairs, can you hold brief for your colleague? It is an urgent matter.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, it is, Mr. Speaker, Sir. I will inform my colleague. Could the Ministerial Statement be issued on Wednesday next week, with your permission?

Mr. Speaker: It is so directed!

Yes, hon. Affey!

PERSONAL STATEMENT

CORRECTION OF MISSREPORTING BY *THE DAILY NATION*

Mr. Affey: On a point Order, Mr. Speaker, Sir. I rise under Standing Order No. 76 to issue a personal statement.

Yesterday, this House approved the nomination of Rev. Kobia to be a member of the Judicial Service Commission. I stood here to support the nominee of the President. I thanked the Committee for being emphatic and united in this nomination. I was surprised that a section of the media, particularly *The Daily Nation*, this morning reported that I was the only hon. Member of this House who rejected that nomination.

Mr. Speaker, Sir, the media have a responsibility to be factual and truthful in their reporting. I have a copy of the HANSARD here, and it confirms that I supported the Motion. I was very clear in my mind that Rev. Kobia qualifies and deserves the position. I think he will be useful to the Judicial Service Commission.

I want to plead with the Chair that this matter, which has been reported negatively and without any basis of truth by *The Daily Nation*, be corrected in a very prominent way. I take this opportunity to request Rev. Mutava Musyimi, who is my Departmental

Committee Chairman, to personally look for Rev. Kobia and apologise to him; Rev. Musyimi was here when I spoke yesterday. The Vice-Chairman of this House's Constitution Implementation Oversight Committee has great respect for Rev. Kobia and the nomination. Therefore, I would like the Chair to direct that *The Daily Nation* corrects this impression and apologises to me, to the House and to Rev. Kobia.

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

Mr. Speaker: On the same matter hon. Affey has raised?

Mrs. Odhiambo-Mabona: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well; you may proceed.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I was in the House yesterday and today I was surprised to see in *The Daily Nation* the name of hon. Affey as having opposed the Motion. The House yesterday unanimously endorsed the nomination of Rev. Kobia. So, I request that the concerned media House be reprimanded and asked to apologise very prominently in the newspapers.

Mr. Speaker: Order! Order, hon. Members! I have heard the sentiments of hon. Affey as articulated on a point of order and supported by Mrs. Odhiambo-Mabona. Those concerns, obviously, are very legitimate. I have previously given directions with respect to reportage by the media, and the minimum I expect is that the media will be responsible, and that they will report accurately and, further, that they will be user friendly to all stakeholders, who include Members of Parliament.

We are supposed to be serving a common purpose with the media although occasionally the media does not agree with us. In governance matters, we ought to be aiming to achieve the same goal. So, this, obviously, is not very interesting. I want to leave it to the concerned media House, which is the Nation Media Group, to take corrective measures. If they fail to do so, I shall then make a further communication, which will include possible sanctions against the concerned media House. They are, therefore, on notice to try and manage themselves. I have heard many times the media contending that they have internal control mechanisms. Let us leave that long rope to them and see if they will take measures to correct this wrong impression.

Yes, Member for Chepalungu.

POINT OF ORDER

SAFETY OF KENYANS RESIDING IN LONDON IN THE WAKE OF VIOLENT RIOTS

Mr. Ruto: On a point of Order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Foreign Affairs on the safety of Kenyans residing in London as riots continue uncontrollably there. The police appear to be a bit unruly as well. Could the Minister also tell us whether he intends to issue a travel advisory to Kenyans not to visit that particular country?

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order! Order, hon. Members! Member for Chepalungu, you had made a request, which I approved, and which is fine, except that you have introduced substance in your request which I did not approve. So, I want you to immediately withdraw the words alluding to the police being unruly. Stick to the substance I approved

because, under Standing Order No.36, Paragraph 3, you are supposed to notify the Chair an hour before of the substance of your request. The content you have put in is partially not correct. I did not have part of that substance before me. Can you withdraw those words?

Mr. Ruto: Mr. Speaker, Sir, I withdraw the part that deals with the police as I expect the Minister to include it in his Statement.

Mr. Speaker: Be specific!

Mr. Ruto: I withdraw the words “the police are unruly”. I have no evidence.

Mr. Speaker: Just withdraw those words and stop there.

Mr. Ruto: Mr. Speaker, Sir, I withdraw the words “the police are unruly” but I expect the Minister to---

Mr. Speaker: Order! Order, Member for Chepalungu!

Minister, when will you deliver the Ministerial Statement?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, I would like to tell my comrade that that is actually a very weighty matter right now. The Ministry is seized with it. The Ministry of Foreign Affairs will issue an official Statement on Tuesday. We are carefully and systematically making sure that we monitor the situation. At least for now we have not received any report of any Kenyan who has been injured.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: It is directed that the Statement be delivered on Tuesday afternoon. Yes, Member for Rarieda.

STRUCTURES/STAFFING LEVELS AT IIEC

Eng. Gumbo: Mr. Speaker, Sir, on Thursday, 4th August, 2011, I sought a Ministerial Statement on a matter I thought was not only urgent but also of national importance. That is on the wrangles at the Interim Independent Electoral Commission (IIEC). The Leader of Government Business had assured us that the Statement would be brought to the House today. I have not heard of the Statement being brought and I was just wondering if you could so direct.

Mr. Speaker: Minister for Justice, National Cohesion and Constitutional Affairs, the request for a Ministerial Statement on the IIEC was directed to you.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, can I issue the Statement on Wednesday next week, please?

Mr. Speaker: Member for Rarieda, is that okay with you?

Eng. Gumbo: Mr. Speaker, Sir, this matter is extremely urgent, and that is the basis upon which the Leader of Government Business undertook to bring the Statement today. Surely, Wednesday is a long time to come. Most of the information we need should be sitting at the databank of the IIEC.

Mr. Speaker: Minister, can you do it on Tuesday afternoon? You have a whole weekend to prepare.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I will do so, Mr. Speaker, Sir.

Mr. Speaker: It is so directed, and that brings us to the end of that Order.

Next Order.

COMMUNICATION FROM THE CHAIR

NOTICE OF SPEAKER'S *KAMKUNJI*

Mr. Speaker: Order, hon. Members! A matter has come to my attention that we should have attended to just before we go to Order No.8. It suffices for me to remind all hon. Members that there will be a Speaker's *Kamukunji* tomorrow from 10.00 a.m. All Members of Parliament are urged to attend that *Kamukunji*.

We have indication from both the Front and Backbench that they will all be present. There may be important decisions to be made. It is critical that you are part and parcel of whatever decisions will be made.

Next Order!

BILL

Second Reading

THE KENYA NATIONAL HUMAN RIGHTS COMMISSION BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, with your kind permission, I rise to move:-

THAT the Kenya National Human Rights Commission Bill (2011) be now read a Second Time.

The main purpose of this Bill is to provide a very urgent legislative framework for promotion and protection of human rights. In establishing this framework, the Bill seeks to restructure the Kenya National Human Rights and Equality Commission so as to establish a Kenya National Human Rights Commission as the successor thereof. You will find that in Clause 3(2).

Mr. Speaker, Sir, the Constitution of Kenya expressly identifies respect for human rights as one of the national values and principles of governance. I do not have to refer you to Article 10 of the Constitution. The Constitution further affirms that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings. That is so ably put in Article 19(2).

Further still, it is now a fundamental duty of the State and every organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. Again, this is very well put in Article 21(1) of the Constitution. This is in keeping with modern Constitutions which guarantee human rights. In addition, several international and regional treaties commit States to protect rights within their borders.

The protection of human rights and gender equity along with the constitutional governance is an indispensable and integral part of the enabling environment for economic, social, religious, political and cultural development. Through the international treaties, Kenya has undertaken to protect human rights and the Constitution requires in Article 25 and Article 26 that this and other international obligations be implemented.

These include the rights of women and children to which the Act directs special attention. We, therefore, have an obligation to examine and review the socio-cultural factors that promote various forms of discrimination and recommend improvements to ensure and secure equal rights for all our people.

Clearly, the State is not concerned merely with formal guarantees of rights---

(Loud consultations)

Mr. Speaker, Sir, I wish you could protect me from the far too heavy consultations going on, because this is a very important subject. I would like hon. Members to hear the position we are advancing.

The State is required to examine and remove practical obstacles to human rights such as poverty, corruption, police brutality or arbitrary acts by the Government administrations. Indeed, our constitutional provisions on human rights are now more than ever complex and comprehensive. I have heard the wild words of foreign dignitaries, foreign institutions like the United Nations Human Rights Commission (UNHRC) saying clearly that Kenya's Bill of Rights is now among the most advanced in the world.

Mr. Speaker, Sir, these provisions are not casual. They require to be supplemented and reinforced by not only international treaties which impose obligations on the State but also other entities and, particularly, a legal infrastructure in the country whose function and focus is to protect those rights and to establish machinery for supervision where necessary, on national implementation of these obligations. Hence, with pride, my Ministry and the Government presents this proposed statute. In essence, the human rights in our constitutional fabric define and limit the scope of State powers and provide guidance for exercising those powers. They declare national values and express the purpose of our State.

In this regard, Article 4 of the Constitution comes early enough for all of us to take notice. In addition, human rights are no longer a matter only of concern or interest to the State. I emphasize that there is an elaborate international and regional system of rights binding all States consisting of international norms and treaties whose implementation is supervised by international and regional committees. Therefore, the sooner we restructure our own committee and commission to be able to meet the challenges, the better.

Mr. Speaker, Sir, the sad reality is that although in most cases these international and regional committees, while able to interpret State obligations, are unable to enforce their decision. Therefore, by implication, they have to rely on our own legal infrastructure. As a result, each country, and Kenya particularly, must strengthen its internal mechanisms through specialized organizations and commissions such as we are advancing this afternoon and we will be advancing further in the course of the week.

Such specialized bodies supplement the limitations of the judicial protection and enforcement of rights by ensuring that the State honours its international and regional reporting obligations. Indeed, this Bill establishes a human rights commission which must observe and respect all treaties and conventions which have been ratified by Kenya. You will find that in Clause 7(c) of the Bill. The Commission will also act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights. That is in Clause 8 (f) of the Bill.

Mr. Speaker, Sir, this Bill also sets out very high qualifications and standards particularly on experience for the chairperson and members of the Commission. The chairperson must have knowledge and, at least, 15 years experience in matters relating to law and human rights in addition to proven integrity. You will find that in Clause 7. I strongly recommend this to this House and the country at large.

You will notice that those are the same standards and qualifications that we require for persons seeking to serve in our Supreme Court. We have also proposed an extremely transparent and competitive recruitment process with a selection panel drawn from the public and private sector, as well as from professional bodies and representation from special interest groups. I encourage hon. Members to look carefully at Clause 11(2) of the Bill and improve the Bill by making any comments or recommendations that may be forthcoming.

Mr. Speaker, Sir, because this is a subject that one can say is bespoke. The country has gone through an enormous amount of debate over the last 20 years on the Bill of Rights, starting with issues touching on detention without trial, the problems that the country has gone through - and if you can recall - such as torture, we are now beginning to see cases being filed in court by those who suffered those atrocities. We are a country that has been challenged on issues such as extra-judicial killings. We are a country that has been challenged and received adverse reports from such organizations like Amnesty International. I do not want to appear to be preaching to the choir. Hon. Members in this House, this afternoon, will appreciate the historic moment that we have now, coming barely 11 months after the promulgation of the new Constitution. Therefore, permit me to state that this Bill provides an important milestone in our efforts to protect and promote human rights. The Bill will, definitely, give life to the fundamental rights by establishing a body that will ensure that all state organs respect and protect human rights.

I urge hon. Members to consider and enact this Bill into law because that is what our Constitution demands. Indeed, even if the Constitution did not demand it, I would still have brought this Bill because the time for it has come. Should Members find that they want to propose any amendments to it, I will be available, I am always available and I will continue being so, so that once we pass the law, it reflects the broad spectrum of peoples' views. I want to conclude by asking hon. Members to look carefully at Article 59 and recognize that we have now started, as a Ministry and as Government, the policy of bringing to life - and particularly to implementation - the provisions of that very important Article of the Constitution.

I beg to move. My very good friend, hon. James Orengo, a man who, at one time, suffered a broken arm arising from violations of the Bill of Rights, has kindly agreed to second the Bill.

I beg to move.

The Minister for Lands (Mr. Orengo): Thank you, Mr. Speaker, Sir, for giving me this opportunity to second the Bill. I thank the Minister for bringing this Bill in time; in any case, before 27th August this year as required by the Constitution of Kenya and, particularly, the relevant schedule. I would like to thank the Minister for saying, right from the outset, that should there be any part of the Bill that Members are not happy with, then during the Third Reading, amendments can be discussed. This is a very important Bill and everything possible should be done to ensure that we have a Bill that will help the country move forward from the past, and transit from the period where we had an

authoritarian system into a new republic, where democracy and human rights become part of the culture of governance in this country.

Mr. Speaker, Sir, having said that, I think it is important to look at where this Bill is flowing from. That is because it is a very important Bill. This Bill flows from the Constitution itself and not from the relevant sections that the Minister has cited as establishing the Commission. The very centrality of this Constitution is actually reflected in this Bill. I would like to say, without any fear of contradiction that, with the new Constitution, in creating a new democratic republic, the issue of human rights has become a central structure and framework in our new constitutional order. Indeed, I may say that it is the basic foundation and pillar of this Constitution. Without it, we cannot really say that we have a new constitutional order that is democratic and is protective of human rights. Democracy without human rights cannot be democracy. Indeed, what we have seen happening in the Arab World and even in the First World--- We have seen what is happening in the UK. It shows very clearly – if I may comment without going into the internal affairs of what is happening out there in the First World – that part of the conflict and commotion that is leading to unrest is lack of adequate concern for rights of the citizens. The rights of the citizens are not given by Governments. They are not granted by any Government. They are inherent in every individual. As it were, if you are religious, they are God given. To that effect, the provision in the Constitution on governance and culture - this is a very unique Constitution that makes provisions for the role of culture in our system--- But I want to say that in this new Constituency, everything else; governance, culture--- This is just part of the super structure. But the foundation and basic pillar of our second Republic that was proclaimed by the President on 27th August, last year is based on the dignity of man and respect for human rights. If you agree with me on this one or you do not agree with me, you just have to look at Article No.10 which deals with National Values and Principles of Governance, part of which include respect for human rights, human dignity and non-discrimination. These are central things in any Bill of Rights. Indeed, if you go through our Bill of Rights as contained in Chapter 4, you will find all these provisions that relate to human dignity, human rights and non-discrimination.

Article 19 of Chapter 4 says that the Bill of Rights is an integral part of Kenya’s democratic State. It is an integral part. That is a statement that is not found in many Constitutions. But in this Constitution, we have said: “For the avoidance of doubt, wherever you are performing any Government functions - you may be a magistrate, a policeman or a Member of Parliament - you are fore-warned that the Bill of Rights is an integral part of Kenya’s democratic State. If you are talking about this Republic, its centrality lies in human rights and it forms the basic framework for social, economic and - I dare say – even cultural policies. So, if you make any laws - and in fact, some judges have found--- If any law is enacted by any parliament as of right, even if it is not clearly stated in any of those provisions, you must read in the provisions that relate to human rights. That is because once you declare yourself a democratic state that observes human rights, you need not, in every law, state that there shall be respect for human rights and all that.

The Constitution, itself, in that same Article 19(2), talks about the constitutional objective of making human rights a central pillar and foundation of the Kenyan system of governance. It says, and I will not quote word for word: “It is for the protection of human

rights and to preserve the dignity of individuals and communities. Right now, as we suffer from famine and as we see hungry people all over in the Republic, this is not a matter of concern, sympathy or even charity.

It is already stated in our Constitution that the social and economic rights entail the provision of basic services which include food, clothes, shelter and all that, so that the dignity of individuals also entails the dignity of communities. I think this is not your ordinary western kind of liberal democracy where human rights normally are retained by individuals, as expressed in the Bill of Rights. Our Bill of Rights also recognizes communities as entities that should be given certain basic human rights.

Mr. Speaker, Sir, the second component of the constitutional objectives includes the promotion of social justice and the realization of the potential of all human beings. The American Constitution says that one of the foundations of the American Constitution is the pursuit of happiness. Some people take that statement for granted, but we must have governments which are ready to allow Kenyan people to pursue happiness without interference; that you can only do by showing respect to dignity and the realization of the full potential of man. As I have said before, in our new---

Mr. Imanyara: (Inaudible)

Mr. Speaker: Order, hon. Orengo! Proceed and make your contribution. Do not be distracted by Mr. Imanyara.

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I can chew gum and walk at the same time.

Mr. Speaker: Proceed! Is that the impression you are giving now? I know hon. Imanyara was your comrade in arms, but proceed.

The Minister for Lands (Mr. Orengo): Thank you, Mr. Speaker, Sir. I was saying that these rights were not granted by the State and are not limited to those that are enumerated in Chapter 4; that should be well understood because some people are fond of just waiving the Bill of Rights, and thinking that is all there is. At least in the Constitution that we had before its amendment when we were saying discrimination on the ground of sex was unconstitutional, or was not within the dignity of man as expressed in many of the universal instruments; the tendency was to say that it was not provided in our Constitution. People took the position that this Bill of Rights contained all the rights, but the current Bill of Rights tells us that not all the rights are in it, and they could be elsewhere. They could be in international instruments like the Universal Declaration of Human Rights and all that. So, I think this Constitution has done a good job in trying to put the human rights in their appropriate perspective. The Bill that we are debating is one of the mechanisms to ensure that the respect of human rights is part of the culture of our democracy, and there are institutional mechanisms to make sure that there is the fullest enjoyment of human rights in this country.

Mr. Speaker, Sir, one of the things which, again, the current Constitution has departed from is on the derogation of human rights in contra distinction with the old Constitution. The old Constitution gave latitude to courts and other people who were concerned with dominating our political life, and were oppressive in their manner and conduct to emphasise derogations rather than rights. In reading the provisions relating to human rights, they would enforce the derogations rather than the rights themselves; I think there is an appropriate balance in this, particularly as read with Article 24 of the

Constitution; that shows how that balance can be addressed when you are faced with the question of limitations as opposed to human rights.

So, I want to say that one of the things that I am happy about this Bill is that things happened in this country when there was no method of intervention. If you just relied on the police or a Member of Parliament to come to make some intervention on behalf of somebody who was in prison---. I remember that at one time when I was nearly dying in Naivasha prison, there was a Member of this Parliament who came and, despite the fact that I was in isolation, the officers thought that I was dying; hon. Abuya Abuya got information and raised hell in this Parliament. Within 24 hours I was taken to a medical institution for two days for a check-up. We now have a mechanism. It was there in the statute that we had in place that controlled the affairs of the previous body; the body we are establishing is a successor body.

It was extremely difficult for them, for example, to go to police stations. If there was a complaint, there was no way they could enter a police station to find out the conditions, or if a prisoner was being held there without being taken to court. In fact, I remember one of the commissioners who came to me, because he had gone to one of the police stations to wave the legislation and say that the Kenya Human Rights Commission had authority under the law to inspect the police station. The police officer told him that: "You may have the law but I have the power. So, you can wave your law but so long as I have the power, I am not going to allow you to enter the police station".

Now, in this Bill now we have a mechanism through which this Commission can enter any institution. I think it is good; although some of the commissioners may have wanted authority to go into police stations and other institutions ordinarily without a warrant or without a court order. However, I think the fact is that there is a requirement that in certain instances they go to court and get court orders. That is not to say that the power is limited; it is simply to say that we do not want frivolous complaints that are made; once they can go before the court and demonstrate that there is need to enter any premises---. They do not investigate crimes. They just investigate human rights violations. They will then have access to records and to such institutions.

Mr. Deputy Speaker, Sir, now the history of this country - sometimes, if you want to remember what has happened before and the many tragic events that have happened - is very interesting. That is why this body is important and must remain. We may be well behaved now, but in another 20 to 50 years, we do not know what is going to happen. There was a time when you could not go back to your house for anything you had said in this Chamber. I know Mr. Gichohi, who is the clerk here now, knows very well many of us, for what we stated in this House, as we stepped out of the precincts of this National Assembly, instead of going home or to your favourite restaurant or outfit somewhere, you would end up in a police station. You would not be able to go to that outfit if you wanted to enjoy a conversation. I know hon. Imanyara knows that many times, when we met in public places like libraries and everywhere, we would talk in whispers and look behind to see whether there was somebody monitoring us. Sometimes actually people who were in that system, and are here in this Parliament, still have some of those fears. When they want to talk to you, they look behind, and I know some of you know who they are.

There was a time when this country was, indeed, another country. So, this is to promote a new culture of tolerance and respect for human rights. The reporting will be to Parliament, so that if any Government institution is not living up to its constitutional

mandate in respect of human rights, then there are so many avenues in reporting to the National Assembly and authorities. Their reports will be accessible to international institutions that are supposed to have a role to play in human rights cases.

Mr. Speaker, Sir, I will not finish my contribution without remembering many gallant Kenyans who died and should not have died in this struggle. I think this Bill could be dedicated to them. The young man called Adungosi. It could have been you or me. I am sure if I was a student leader in the University at that time because I was there earlier, but I am sure, if I was there at his time, I would have been the one who would have died or it would have been hon. M. Kilonzo. By the way hon. M. Kilonzo was my host in Dar es Salaam when I was being chased around here. I was running away from arrests. He was the Chairman of Kenya Students Union. At that time, he was more of a Marxist. He used to wear khaki clothes and was ready to go to the bush or any other place.

Mr. Imanyara: On a point of information, Mr. Speaker, Sir.

(Mr. Imanyara stood up in his place)

Mr. Speaker: Order! Member for Ugenya, do you want information from the Member for Imenti Central?

The Minister for Lands (Mr. Orengo): Yes, Mr. Speaker, Sir.

Mr. Imanyara: Mr. Speaker, Sir, I want to inform my good friend that hon. M. Kilonzo hosted him, but after he came back here, he did not live up to the expectations of those days. He justified some of the worst atrocities that were perpetrated by the Moi regime.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, let us not live in the past. These Bills are being brought by hon. M. Kilonzo. He is playing a very fundamental role.

Mr. Speaker: Order, Member for Ugenya. You conceded to be informed.

The Minister for Lands (Mr. Orengo): I do not want just to swallow it.

With those few remarks, I beg to support.

(Question proposed)

Mrs. Shebesh: Mr. Speaker, Sir, I rise to support this Motion.

Mr. Speaker, Sir, as I start to contribute I want to say that I was a little surprised that the Minister did not speak about the recent events surrounding these Bills, that are currently under debate.

Mr. Speaker, Sir, as you know, we, as a House, went to discuss the viability of having these Bills come as three Bills, two or even one. I do not know whether he deliberately avoided talking about it for his reasons or because maybe, he is not convinced, what the consensus was in Mombasa that we have two Bills, one for the Kenya Human Rights Commission, and one for the Gender Commission.

Mr. Speaker, Sir, on the background of that was the argument that the Kenya National Human Rights and Equality Commission had been formed. It is important as this debate goes on that we do realize that the Constitution has already put in place the Kenya National Human Rights and Equality Commission. Therefore, what we are doing is using another provision within this Constitution to then break up this bigger body into

smaller Commissions whose mandate I believe is still constitutional. Most importantly, it is not to negate the gains that women have gotten over the years; specifically issues of separating the Human Rights Commission with the Gender Commission.

Having said that, let me say that the Kenya National Human Rights Commission as we knew it before, has done excellent work. The Minister has already said this Bill is a bit shallow. I believe he has said so, because comments have already reached him that the feelings amongst many members is that it is kind of shallow. I know that the Constitutional Implementation Oversight Committee (CIOC) is currently looking at these two bills. We will be bringing substantive amendments to these Bill. However, the lack of substance in this Bill does not negate the importance of the Bill. Therefore, I want to support this Bill on the Kenya Human Rights Commission. Our consensus during the Mombasa meeting was that we reduce from three to two Bills. This will bring the administration of Justice Bill back under the Kenya Human Rights Commission.

Mr. Speaker, Sir, as I conclude, we need to see more concretely the Kenya National Human Rights Commission which will now be reporting to Parliament being given the due recognition that it deserves. For the Commission to report to Parliament, it means they are reporting to the people of Kenya, rather than to the Executive. I think that is a good provision. My recommendation to the Minister when it comes to the number of Commissions - I know it was reduced. This was reduced because of the number of commissions. However, now that we have agreed to merge these two, I would recommend that the Commissions go back to the number that is recommended in the Constitution. I believe it is important to retain the number of commissioners recommended in the Constitution.

Mr. Speaker, Sir, I do not know where we get this continuous issue of 15 years experience, at least, on human rights issues. I may not have worked in this field for long. With my five years experience in the civil society, I believe I can be a Chair. Really, this issue of 10 years, 15 years, is just an old way of thinking. Young people in this country have been managing human rights issues. Therefore, I would suggest we go for ten years experience for the Chair and five years for the other Commissioners. This should suffice.

With those few remarks, I beg to support.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Speaker, Sir, I stand to support this Motion. A Human Rights Commission is an important institution in the social economic and political development of any nation. A time has come for us to walk the talk. We must defend the human rights of our people.

Days are gone when human rights organizations used to be like an NGO. They used to be like an arm of the civil society. They used to be an arm of the donor community. We want to establish a human rights organization, or Commission that lives up to the Constitution and implementation of the Bill of Rights.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I am coming from a background where for many years, in many successive governments - the Government of the first President, the

second president and the current Government - human rights violations for specific segments of the population of this country were carried out. Even under the current Constitution, members of the Muslim and members of the Somali Community, majority of whom I represent, their rights are violated contrary to the Bill of Rights.

Article 20(1) says:-

“The Bill of Rights applies to all law and binds all States organs and all persons”.

Today, you will find institutions of Government that violate this Constitution and article of the Bill of Rights. Today, under the guise of fighting terrorism, security agents can wake up in the wee hours of the night and raid residential houses of Kenyans. Today, you will see in this country, a segment of the population, the Muslim community being denied their fundamental right to acquire registration documents. If your name is Mohamed or Khan you need to go through a specific procedure outside the Constitution, and outside what ordinary Kenyans go through for you to get an identity card, a passport and a job opportunity in this country.

Mr. Temporary Deputy Speaker, Sir, we want a human rights commission that lives up to its mandate of protecting the articles within the Bill of Rights.

Today Kenyans will remember that over the last 47 years of Independence, a community in northern Kenya has suffered human rights violations. You can remember the Wagalla Massacre, the Burning of Garissa, the burning of human beings and their property in Malkamari in Mandera. We do not want to see a human rights commission that works at the whim of the western powers; that listens to donors. We want a human rights commission that draws its obligations from this House; that reports to this House and that will make sure all State organs will implement the Bill of Rights.

Article 32(1) of the Constitution gives every person the right to freedom of conscience, religion, thought, belief and opinion. We must make it very clear under the Bill of Rights that no time will come under this Constitution that a Muslim will be segregated, discriminated, terrorized and criminalized for believing in his faith, having a long beard or wearing the *kanzu*. There are those who say that when you have a long beard and you wear a *kanzu* then that is symbolic of a terrorist.

Mr. Temporary Deputy Speaker, Sir, Article 21(1) says:-

“It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.”

This nation has come of age. This nation has enacted a new Constitution. This nation must protect the rights and fundamental human dignity of its citizens across the board without fear, favour or discriminating against one section.

Today, under this new Constitution, Kenyan Muslims are languishing in jails in Uganda just because the Ugandan Government feels that those Kenyan Muslims participated in a terror attack. We have no problem, but those Kenyans can be tried in their own country under their own judicial system.

You remember in 2007, in the wee hours of the night, Kenyan Muslims were taken to Ethiopia. You remember even last week the anti-terror police raided residential houses even in the Holy Month of Ramadan in Mombasa and took Muslims into custody on suspicion that they were members of terror networks within the Kenyan society.

We say: Enough is enough! We, as the leadership of the Muslim community, are ready to stand by the Constitution. We are ready to support the establishment of a human

rights commission. However, we want a human rights commission that will stand for all the segments of the Kenyan society, including the Muslims.

Finally, I want to say here that those who died in the Wagalla Massacre, those who died in Garissa and Malkamari; their blood will not go to waste. A time will come when we shall make sure those who committed those atrocities pay for it with the new human rights commission.

I beg to support.

Dr. Khalwale: Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to congratulate Mr. M. Kilonzo for the work he has put into this Bill and start by saying that I strongly support it.

As I support this Bill, I am reminded that Kenyans have come a very long way. On that long journey, we have had very many sad moments. If this kind of law was there, I believe Josiah Mwangi Kariuki would not have been assassinated like a dog because he was fighting for social justice. I believe that Dr. Robert Ouko would not have been assassinated because he was fighting corruption. I believe that Tom Mboya would still be an old man living in this country if the issue of human rights was respected. For this and many other reasons I strongly believe that the Bill of Rights in our new Constitution which we are now giving effect to, is actually one of the many reasons why Kenyans overwhelmingly supported the introduction of the new Constitution. It is the reason why Kenyans continue to celebrate the new Constitution. Therefore, this House cannot fail them. We must give them this piece of legislation, so that their hopes are actualized.

Mr. Temporary Deputy Speaker, Sir, when I was a small boy at the University of Nairobi, I do not know whether I should say with nostalgia, but I remember that early morning in August, 1982, when we left the campus and went to the streets because we wanted to expand the democratic space in this country. It is sad that as we left Hall 4 with my brother Titus Adungosi, we all went out there, danced in the streets, did what we did, came back to the hall, we were chased away, but after arrest, Titus Adungosi was murdered.

I hope that the TJRC will be true to its name and calling and ensure that the death of Titus Adungosi is addressed with the weight that it deserves. I also wonder what history will write about the chiefs who for one and a half years, after we had been expelled from the university because we were fighting for expanded democratic space, jailed us at chiefs' camps where we used to go and work like slaves.

Mr. Temporary Deputy Speaker, Sir, this Parliament must remember the work that the current Speaker in the Chair did. However, we must also remember that we have other politicians who are not lucky enough to be in this House, who did a lot of work. I remember as a member of the NCEC one evening when Prof. Kivutha Kibwana, former Member of Parliament of this House in the last Parliament, came to address people in Western Province. Later, we had to cover him up so that he looked like a woman; we then took him to the Akamba Bus, so that he could come back to Nairobi at night. These are gallant sons of this country who we must really honour.

Before I forget, I also want to celebrate hon. James Orengo. I remember as members of *Mageuzi*, there was a day when we wanted to go to Busia to address people there with hon. Orengo, hon. Mukhisa Kituyi and the late hon. Enock Nyankieya Magara. Our vehicles were taken away from us and we walked on foot for 30 kilometres to reach the rally so that we could address Kenyans there.

I say these things because I know that this Parliament is up to it, but how about future Parliaments? I want this to be in the HANSARD; that future Parliaments must guard jealously the gains that we are making this afternoon. At no time in future should a parliamentarian come with a careless amendment that can take away even the smallest of the little gains that we are making this afternoon. Future Parliaments must remain true to the letter and spirit of this Bill.

Mr. Temporary Deputy Speaker, Sir, I firmly believe that as we pass this particular legislation, the culture of post-election violence after every general election will be confined to the dustbin of history. I would like to end my submission by making a special appeal to the Government. The Government must now rise to the occasion and demonstrate that it is going to be committed to social justice. We would like the Government, led by the President himself followed by the Deputy President, to lead by example, to ensure that every Kenyan enjoys a dignified life. The Government must make it its business to make sure that every Kenyan has food as required by the Constitution.

The President, his Deputy and the Government must go out of their way to ensure that all Kenyans have got decent housing. It is a pity that every time we address the plight of people in the ASAL areas, we always talk about food and water, but rarely do we stop to ask ourselves: Where do these people sleep? Where do those little children of the poor sleep? They sleep without blankets or warm clothes in the manyattas. The Government must now make sure that housing is a priority and all Kenyans must be given proper housing.

Indeed, under the Bill of Rights, I expect that the Government will rise to the occasion and make sure that all Kenyans have access to education. I do not understand why some countries, especially Cuba, can have 100 per cent literacy rate, while in Kenya, we have the kind of low literacy levels that we see in North Eastern Province and the upper Eastern Province of this country.

Finally, as I support this Bill, I want to urge this Government and future governments to ensure that the provision of healthcare is treated as truly what it is; a human right. It is a human rights issue. This can be done because we have examples from small countries like Israel. Without any resources whatsoever, all Israelis enjoy free health services. I do not see why we cannot achieve this in Kenya.

With that, I wish to support.

The Assistant Minister for Education (Mr. Mwatela): Asante sana, Bw. Naibu Spika wa Muda. Ningependa kuanza kwa kumpongeza Waziri M. Kilonzo, ambaye anafanya kazi yake kwa bidii sana, kwa kuleta Mswada huu ambao, bila shaka, tutaupitisha kuwa sheria.

Bw. Naibu Spika wa Muda, sikumbuki ni mwaka upi, lakini utakumbuka nilikuja kukuona hospitali ukiwa umefungwa pingu na umefungiwa kwenye kitanda, tukiwa na jirani yako, Dr. Kiriti. Hali hiyo ni ya kudunisha ubinadamu. Mswada huu ni kama kilele cha vita dhidi ya kukosa heshima kwa utu. Ninaunga mkono wale ambao walitangulia kuzungumza, lakini pia ningetaka kuongeza kuwa wengi waliochangia sana katika kufikia hali hii ni watu wa hali ya chini kimasomo ambao walijitolea. Walikuwa akina mama na hata vijana. Wakati tunaposema kuwa ni lazima mtu awe na shahada ya chuo kikuu ndio aketi kwenye Tume hii, haifai. Wakati wa kupigana hivi vita, tulikuwa

tukitumia kila mtu lakini wakati tunapounda Tume hii, tunawaweka nje. Ningemuomba Waziri aangalie sehemu hiyo.

Bw. Naibu Spika wa Muda, ni kweli tunahitaji watu walio na uwezo wa kuelewa mambo, lakini shahada ya chuo kikuu haiwezi kuwa ni lazima. Inawezekana kabisa kuwa mtu wa kawaida tu ambaye amesoma mpaka sekondari lakini ametumika kikamilifu kupigania haki hizi. Kwa hivyo, tuangalie sana mahitaji ambayo tunayaweka ili tusije tukawaweka watu wetu ambao walijishughulisha sana kutafuta hali hii nje. Ningeomba kuwa wakati tunapoangazia matakwa mengine, tuhakikishe kuwa tumehusisha jamii yote ili tuwe na upande wa vijana, wazee na akina mama. Tutakapounda Tume hii, iwakilishe jamii kwa jumla.

Kwa hayo machache, ninaunga mkono Mswada huu.

Mr. Shakeel: Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support the Bill in general, although there are many questions about specifics.

Before I say anything, I am privileged and humbled that I had the opportunity of rubbing shoulders and meeting those heroes who have fought for human rights. We have seen them and we saw how they suffered. We have seen hon. Orenge, Dr. Khalwale, you and many others. I wonder whether I can even begin to put myself on the bottom of the last page in this aspect. What they have done and the Constitution that we have given to this country, we have the privilege of being part of. There are questions being raised, such as: If the Bill of Rights had been there earlier, would we have suffered or not?

Mr. Temporary Deputy Speaker, Sir, I want to say very clearly today that I come from an area that was denied its rights and was suppressed. We were not given anything and even as late as 2007, 87 Luo youths were shot dead like dogs. In Luo Nyanza, Kisumu, used to be the crown of this Republic. However, due to previous wrongs, this position was reversed. I wish I was able to turn back the clock; I would have liked to see this Constitution at that time. We fought for the Constitution and we are very pleased that it is here.

When I read the Constitution in part 5, it clearly talks about the Kenya Human Rights and Equality Commission. When I read the Bill that has been presented, it talks about the Kenya Human Rights Commission Bill.

Mr. Temporary Deputy Speaker, Sir, we were in Mombasa, where we were taken through not only The Kenya National Commission on Human Rights Bill but also The National Gender and Equality Commission Bill. What came out very clearly then was that the new Constitution, which we will protect with our lives, says, at Article 59(4):-

“59(4) Parliament shall enact legislation to give full effect to this Part, and any such legislation may restructure the commission into two or more separate commissions”.

Mr. Temporary Deputy Speaker, Sir, the key words here are “Parliament shall enact”. The Constitution does not say that it should be done in any other way. Therefore, I feel that it is unconstitutional to have two Commissions set up in this manner. Article 59(1) of the Constitution establishes the Kenya National Human Rights and Equality Commission. Article 59(4), that I have just quoted, vests the power in Parliament to legislate.

I am wondering whether the Bills that were sent to the Minister and the alternative Bill that was sent for his perusal make any impression on him, and whether, in fact, he has covered some of those items. I will be very keen to know whether he has or has not. One issue which was brought out very clearly in Mombasa was that for whatever reason,

the Kenya National Human Rights Commission has some sort of recognition from the United Nations Treaty on Human Rights, and that it is an “A” class accreditation.

Mr. Temporary Deputy Speaker, Sir, it was felt that if, perhaps, we dilute it, we may lose that particular accreditation. That does not matter. What matters is whether we are breaking the Constitution. Are we against the Constitution, which says very clearly what I have quoted? Are we in violation of the Constitution? The Minister is a guru in this area. He knows very well. So, perhaps, he can tell me, because I am concerned. Are we passing something which, in fact, may be seen not to have been provided for by the Constitution?

Having said so, I would like to appeal to this House not to approve this Bill in its present form. I hope that the Minister will consider the remarks I have made, and other presentations made by the Kenya National Human Rights Commission and other bodies.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Minister for Gender, Children and Social Development (Dr. Shaban): Mr. Temporary Deputy Speaker, Sir, I want to start by congratulating the Minister for having thought it prudent to restructure the Kenya National Human Rights and Equality Commission as envisaged in Article 59 of the new Constitution.

I have heard our colleague wonder whether what we are doing is unconstitutional. On 27th August, 2010, when the new Constitution was promulgated, the Kenya National Human Rights and Equality Commission automatically came into place. The National Gender Commission became unconstitutional at that time. So, from 27th August, 2010, what has been in operation is the Kenya National Human Rights and Equality Commission but now Parliament has been given powers through Article 59(4) to restructure that body, so that it can operate fully on the mandate it is going to be given.

Mr. Temporary Deputy Speaker, Sir, this Bill comes in at a time when the Kenya National Human Rights commissioners, prior to the promulgation of the new Constitution, had done a lot of work. They are internationally recognised. They have been carrying out universal periodic reviews at intervals under this umbrella. They have done all that work not alone but together with the National Gender Commission, which had been in place then. Article 59(4) now allows us to strengthen what they were already doing prior to the promulgation of the new Constitution, so that we can move on, and in order for them to do as much work as possible.

There is a robust Bill of Rights which runs in the new Constitution for 23 pages – from page 20 to page 43. The work load is heavy. The Kenya National Human Rights Commission already has so much on its hands, as per the new Constitution. So, the right way to go is to have the two Commissions in place, so that they can carry out their work as mandated in the new Constitution. What is important to note is that apart from the universal periodic reviews that the Kenya National Human Rights Commission will continue to do, as they were doing prior to the promulgation of the new Constitution, they will also start making Parliamentary Reports. That is very important because Parliament is home of the representatives of all Kenyans. It is, therefore, important for Parliament to know what the Kenya National Human Rights Commission will be doing.

Mr. Temporary Deputy Speaker, Sir, I cannot stop thinking as my colleagues who spoke here; hon. James Orengo, and hon. Khalwale made reference to what transpired at the time when we did not have the Kenya National Human Rights Commission, prior to the formation of the same body in 2003. I just want to add onto the list. We had

colleagues such as hon. Mghanga Mwandawiro and hon. Koigi wa Wamwere, who suffered. They had been banished in this country, and they had to seek asylum in other countries. Many people had suffered because we did not have a body which could monitor what was happening in this country in those dark years.

I cannot forget people in my constituency such as Eng. David Mnzirai, Mr. Aliko Meja and Mr. Mohamed Mwakio, who were also arrested and, finally, they had to run away from this country. To date, they are still trying to find their space and coming back to our country. They are getting scared. They are not so sure that the Kenya National Human Rights Commission will be able to continue the good work they have already started.

Mr. Deputy Speaker, Sir, when I was a student at the University of Nairobi, I watched with shock and dismay one Sunday morning as people were having peaceful prayers, when many students were beaten up. Those students suffered. Some of them got severe burns and their lives were derailed because they had to stay in hospital, some of them for longer than six months. From that, I knew it was important to have a human rights body, which can take care of the issues of violations of human rights. Some of those students were not so lucky. They lost their lives as they were having those peaceful demonstrations. One of my classmates, Dr. Patrick Litunya, was arrested. He was an innocent dental student, but he was arrested and arraigned in court. To date, when he remembers those years, he sheds tears because of the pain it caused him and his family members.

Mr. Temporary Deputy Speaker, Sir, looking at the functions of the Kenya National Human Rights Commission, they include, under Clause 7(a), acting as the principal organ of the State in ensuring compliance with the obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination.

What I am simply saying is that the Kenya National Human Rights Commission could not have come at a better time.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, you will permit me to allow hon. Members of the Islamic faith to speak first so that they can go to break the fast.

Mr. Affey, please, proceed!

Mr. Affey: Thank you very much Mr. Temporary Deputy Speaker, Sir, for that consideration. I think that is the right thing to do.

I rise to support this Bill. I want to thank the Minister for the manner in which he has been persistent in asking the country to support this Bill and other Bills that are underway. The issue of human rights is so critical that we, as a country, struggled to change the Constitution for over 20 years. One of the main reasons why we did this was the fact that we wanted to have a robust Bill of Rights in our Constitution. Over the years, basic human rights have been violated quite openly in total disregard of the law by the Government, particularly the police.

Mr. Temporary Deputy Speaker, Sir, as I support this Bill, I want to encourage the Minister because I know there will be a lot of complaints regarding basic rights violations--- In this Bill, I do not see an attempt to do some mediation. In the United

States of America (USA) where we visited a few weeks ago, we were able to visit several states. In those states, there were established human rights commissions which received complaints of one nature or the other. Those commissions had a role to play in mediation. It was quite obvious that before the commission did what it could have done to confront a particular abuse, an attempt was made to do some mediation. Whoever was complaining would be satisfied even before the matter goes to full hearing. I think that is needed as an effort to make sure that those who complain are satisfied at a fairly very early stage of their complaints.

Mr. Temporary Deputy Speaker, Sir, I am happy that the Minister has put under Clause 27 that this Commission can act like a court of law. It is quite important that after that is settled; if somebody is not satisfied, then he or she can still go to the other courts. Many things have been borrowed from the USA and I do not know whether the Minister has looked at this provision carefully in the manner that there is efficient authority to determine. If somebody is not satisfied, he can go to an appellant court. Lawyers can be allowed to appear before the Commission for both sides. I do not know whether the Minister has considered that.

However, when we went to the USA, we realized that the issue of human rights is so important that at every stage, some kind of determination is achieved. If you are not happy with this determination, you have the next level to move to. This can reduce the backlog of cases in courts of law. People do not have to go to court on certain abuses if they can be sorted out by the Human Rights Commission. I thought the Minister can equip this Commission to an extent that it can reach a determination in a very effective and efficient manner. If this quasi-decision authority is not enhanced, I will suggest that the Minister enhances it.

Mr. Temporary Deputy Speaker, Sir, we, in the North Eastern Province, have suffered these violations. We have suffered them even when the Constitution that we had did not allow us to suffer the violations. All the Constitutions we have had, including the Independence Constitution, it was not obvious that we were suffering. This Parliament and Parliaments before, in their own wisdom or lack of it, passed certain Bills – I have in mind the Indemnity Act – which as we know cannot be passed by any Parliament because the Constitution that we have is clear. In 1970, a Parliament in this country passed it. In a struggle to remove it, we brought it before this House and it was repealed. We expect the repeal to be made proper by the President assenting to it. Up to now, he has not.

I would urge the Minister for Justice, National Cohesion and Constitutional Affairs who has turned out to be extremely forceful in fighting for the rights of Kenyans to see how the President can assent to that Bill. Parliament has said it is no longer useful. It is illegal and unconstitutional. I am happy that Mr. Namwamba who had an opportunity to contribute to that Bill is here. He supported it very strongly. Parliament resolved but the President refused to assent to it. So you ask yourself: Who advises the President? Parliament in its own wisdom resolved that the Bill is illegal and unconstitutional, but up to now, it is still in our statutes. Parliament said, we are the ones who created the Bill so we undo it. The President says, “No, you cannot undo it!” Who is giving this advice to the President? I am sure that advice is not from his Minister for Justice, National Cohesion and Constitutional Affairs. The Minister was very explicit. The Attorney-General was wishy-washy and I thought that perhaps he could be here to defend it. However, that kind of Bill should never see the light of day. I suggest and urge the

Minister to plead with the President to withdraw it completely and sign it into law so that we do not have any Bill that contradicts the Bill of Rights and the Constitution. That law was illegal.

Mr. Temporary Deputy Speaker, Sir, I want to request the Minister to head hunt bold Kenyans. I do not know how you define “bold” but you must find a way of getting very bold Kenyans. A Commission like this one must have people who are fearless, who take the Government to account on daily basis and are ready to risk their own lives. When I looked at the qualifications, I did not see the word “bold”. I thought that that would be one of the qualifications of a commissioner of this nature. There should be a way to determine that boldness. Maybe if he has struggled or there is a history relating to that. We need that.

I am happy that the Minister himself, again, said that it is illegal to send Kenyans to Uganda to try them there. I was very happy that this came from him. However, we have an arm of the Government which is shipping Kenyans away every day. They are doing this illegally against the Constitution and our laws. We want a human rights commission that can be vigilant all the time. We have a possibility that, in future, we can get a Government Minister or Inspector-General of Police who disregards the Constitution and does what he thinks fit following advice from one sector of the Government or the other. We will require these commissioners to be vigilant.

I also support the commissions to be split. I might not have an opportunity to contribute to the next Bill that the Minister will move, but we require that split. The Gender and Equality Commission should be completely separate because the history of the country has shown that these two sectors suffered. I know there was particularly open discrimination against gender and marginalized groups. I am happy the Minister has found it fit to split it. However, on the other Bill, he needs to build not only on gender but also on equality issues. It is very weak on equality issues and we realized that we need to improve on that. In fact, it truly becomes gender and equality---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Affey! Do not anticipate debate! Keep yourself to this!

Mr. Affey: Mr. Temporary Deputy Speaker, Sir, I thank you so much for giving me this opportunity. I only thought that I should say this because I might not have an opportunity tomorrow.

I support this Bill and congratulate the Minister.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir for granting me this opportunity to contribute to this very important Bill. I will start by thanking the Minister for Justice, National Cohesion and Constitutional Affairs for the very unique enthusiasm he has shown in the implementation of the new Constitution. The new Bill will address some of the concerns that Kenyans have really laboured for and bothered about for the past 60 years.

This Bill is geared towards bringing faster prosperity to this country. Promotion of human rights, in totality, will be the key element in this Bill. You will realize that in our courts, files disappear and you get justice through buying. You will also realize that there have been cases - almost totaling to one million - that have not been heard. This is denial of justice to innocent Kenyans.

In our roads, there are many traffic police officers and yet, there are many accidents. What is really happening on our roads? Fake driving licences have been

issued. That should be addressed critically by the Commission. In our hospitals, expired drugs have been issued to innocent Kenyans. There is disappearance of drugs. The stolen drugs are peddled into private hospitals. At times, the poor who are admitted in Government hospitals are detained unnecessarily because they cannot raise hospital fees. That happens, particularly, at Kenyatta National Hospital. That is a very poor reflection of human rights in our society. Many people have disappeared in this country, only to be found later brutally murdered. We have allowed quack doctors in our health facilities to continue treating Kenyans. We also have quack dentists who extract teeth from innocent Kenyans.

With regard to our universities, the admissions should be done fairly to reflect the country. The leadership positions in the universities should be fairly distributed. This Bill will enhance and widen the democratic space in this country. There is apprehension, particularly when you look at the recruitment and appointments to Government offices. In both public and private sector, tribalism and ethnicity has been practiced in this country. There has been discrimination in allocations of jobs. That has been the order of the day. This Bill will address that issue.

In the labour sector, even today, in modern Kenya, many Kenyans are being underpaid and yet, they have families to support and educate. This is an issue that needs to be addressed properly.

With regard to the settlement of our people, it is important that street families and IDPs are given due attention and settled. That is because failure to allocate resources to that area is tantamount to denial of human rights.

When you look at the contributions that have been made in this country by the heroes and heroines in terms of liberating this country, we have not given them adequate attention and even recognition. Boxers like John Olulu and Phillip Waruinge are people who have marketed this country and they have not been rewarded. Athletes like Wilson Kipruto who ran in the 800 meters race in the Commonwealth Games is almost a forgotten hero. The *Mau Mau* freedom fighters are still languishing in poverty. They have no land. Those are people who suffered in the struggle for the independence of this country. We remember that those people were tortured and some were brutally murdered. Those who are alive must be accorded dignity and their rights. We all remember the role played by Kenneth Matiba and Charles Rubia to ensure this country regained multi-partism. It is important; therefore, even to remember our current Temporary Deputy Speaker in the House today. You experienced induced migraines. This is very sad. The Commission will guarantee that Kenyans will never experience those kinds of things in the years to come.

Clause 40 clearly indicates that the Chairperson will be a person with 15 years experience. I imagine the big number of graduates coming out of the universities. Those are the people who should be accorded those opportunities. It is, therefore, important to reduce the experience so that a bigger spectrum of those people is given that opportunity. The years of experience should be reduced to 10 years. It must be spelt out, clearly, that this position will be taken by a Kenyan because the space is very open. It is also indicated in Clause 40 that reappointment of members will be limited to six years. I am imagining somebody who was appointed at 30 years and given an opportunity to serve for six years. He would be retiring at 36. That is relatively a very young person. Therefore, reappointment must be reconsidered. Eligibility must be pegged where it is applicable,

and depending on the relative age of the applicants. This Bill will restore the human rights that have missed in this country in the last 60 years.

With those few remarks, I support the Bill.

Mr. Chachu: Thank you Mr. Temporary Deputy Speaker, Sir. From the outset, I would like to congratulate the Minister for this timely Bill. I think he is really up to the challenge. I support this Bill. I am not averse to any supportive amendments that can strengthen the Bill further. This Bill provides the meaning to the Bill of Rights, the Peoples' Chapter in our Constitution. This Bill also gives hope to the marginalized; those who do not have food on their table today, shelter and those who have not been able to live the Kenyan dream.

This Bill will provide a principle organ of the State that will not only monitor, but also enable the enforcement of the Bill of Rights which has long been overdue. This Bill will also bring to an end what some of us, from northern Kenya, call collective punishment. When some bandits or thugs commit crime, the whole community is punished due to the Government's failure to safeguard the livelihoods of those people. All their livestock is surrounded for a day or two and people are physically tortured when, in fact, most of them are innocent. I hope that the issue of collective punishment, especially by security organs, will cease. I hope that the Commission, once in place, will ensure that the rights of every Kenyan are safeguarded.

This Bill will also usher in a new culture of tolerance where human rights and liberties are respected across the board, both by State organs as well as by all Kenyans. I hope that the Commission, once in place, and with the constitutional mandate it has, will force all the State organs to respect human rights. In some parts of this country where the presence of the State is not well felt, we feel that the civil rights and liberties of some Kenyans are trampled upon especially by security organs. We hope that this Commission will live up to the task of ensuring that the rights of all Kenyans are protected as much as possible.

Mr. Temporary Deputy Speaker, Sir, along the Kenya-Ethiopian border, we have had several massacres. In my own lifetime, I know of Elbeso, Turbi and Kokai massacres. One of them in particular the Elbeso massacre comes to my mind in a very special way. I remember it was in 1984. I was in Class Seven and in the morning, I witnessed a massacre of 50 families, and two of them were my own cousins; a whole family – the parents and the five children - were wiped out. When these massacres occur, even the media reports them as “50 persons or cattle rustlers were killed or 50 Gabbras or Turkanas were killed”. We are not even given the right to be referred to as Kenyans who have been killed. When these massacres occur, there is no commission or authority to really take this Government to task and make it accountable for the lives of those Kenyans who have been massacred, mostly by foreigners largely, in my case, from Ethiopia. I strongly believe that once this Commission is in place and does its job as mandated by the Constitution, and as a constitutional commission, it will be able to take the Government to task and ensure that the lives and livelihoods of Kenyans are protected.

Mr. Temporary Deputy Speaker, Sir, the Bill of Rights provides for right to food and shelter, but who is going to monitor and also ensure that the Government lives up to that duty? If this Commission will be in place and does its job as required by the Constitution, then Kenyans who are suffering today will actually sue the State with the

help of this Commission, and have the rights which are enshrined in this Constitution under the Bill of Rights being protected. For this, I really feel this Commission is very important. I really hope that we can do all we can to strengthen it and make it active and be able to deliver to Kenyans what it is expected to deliver.

Mr. Temporary Deputy Speaker, Sir, pastoralists' lives and livelihoods must be safeguarded. We have times when millions of animals are stolen by foreigners from across the Ethiopian border and nobody talks about it. It is just cattle rustling business, as they call it, but these are assets of Kenyans. When we talk of value, we are talking of billions of shillings. Their lives are lost all the time, but we call it banditry. Do we not have a government which is supposed to safeguard the lives of all Kenyans, whether they live here in Nairobi or in a small village in North Horr, Turkana or Lodwar? We hope this Commission will be able to take stock of what happened in this country and take the Government to task in terms of really ensuring civil liberties for all Kenyans.

Mr. Temporary Deputy Speaker, Sir, I think the commissioners must be people of proven integrity, and I strongly commend the Minister for making that a strong requirement. I think all these commissioners must be champions and crusaders for human rights, with well proven track records. I support the need to have the chairperson of the Commission to have experience of 15 years or even more. There are jobs for youths but there also jobs for people who have track records and experience. I think there is nothing wrong to have directors with maybe five or ten years' experience. For those who are at the top like the chairmen, I think we should get the best Kenyans with the best track record and experience to be at the top. They maybe even volunteers who are going to give service to this nation without even necessarily getting compensation in terms of monetary gain. I think it is very important for us to have an independent Commission.

Mr. Temporary Deputy Speaker, Sir, for gender, I think it is time we addressed gender issues. In some parts of this country, gender issues are not even issues for discussion at the table. Actually, I think we have made so many advances in issues of human rights compared to issues of gender. I think merging these two commissions into one will take away so much value from this Gender Commission; if enabled to exist on its own, it will be able to deliver, especially in the marginal areas of this country.

Mr. Temporary Deputy Speaker, Sir, maybe 100 years from now, we can merge them into one, once we will have dealt with those issues. It is true that some of these democracies may of late have been merging these commissions, but they have reached a stage in their development whereby they can afford to merge their commissions; they have the necessary institutions and laws in place to accommodate all the interests, even under one commission. I do not think we are there yet. That is why we are making provisions for women to be in this Parliament, and in our proposed Senate. We have even made a mandatory provision that one-third of any State appointments should be of either gender. We are doing this deliberately because we know the gender issues are yet to be realized in this country. That is why, I think, it is very important for us to have this independent gender commission, and not a department within the Kenya National Human Rights Commission.

Mr. Temporary Deputy Speaker, Sir, I also support the fact that this Commission will report to Parliament. Parliament is the people's representative and I think it will be our duty to monitor what they will do, the process that they go through and be able to advise them accordingly.

With those few remarks, I support.

Mr. Namwamba: Bw. Naibu Spika wa Muda, nashukuru kwa kunipa fursa hii ili pia niweze kuchangia Mswada huu muhimu sana. Nitaanza kwa kusema kuwa ninaunga mkono kwa dhati sheria hii pendekezi ya kubuni tume ambayo ndiyo itakuwa mlinzi, au bawabu, wa haki za kibinadamu na wananchi wa taifa hili tukufu la Kenya. Ningependa kumshukuru sana Waziri wa Haki, Utangamano wa Kitaifa na Maswala ya Kikatiba, mhe Mutula Kilonzo, kwa harakati zote ambazo amechukua kuhakikisha kuwa shughuli hii ya kutekeleza Katiba hii mpya inaenda kwa kasi inayostahili. Ni vyema Wakenya wafahamu kuwa utekelezaji wa Katiba si swala rahisi kwa sababu tumo kwenye shughuli ya kubadili misingi ya taifa hili.

Kwa hivyo, changamoto zile ambazo tunashuhudia katika safari hii ya kutekeleza Katiba mpya si changamoti ngeni. Ni changamoto ambazo mataifa yote ambayo yamejaribu kubadilisha misingi ya taifa jinsi ambavyo tunjaribu hapa yamekumbana nayo.

Vile vile, nataka kumshukuru dada yangu, Mhe Naomi Shaban, kwa mchango wake, na hasa kwa kuwaahamasisha Wabunge kuhusu sheria hii ya Tume ya Haki, na vile vile sheria ile inayohusu tume ya kusimamia maswala ya jinsia na usawa. Tumekuwa kule Pwani wikendi iliyopita ambapo tulipata fursa ya kushughlika sheria hizi mbili katika kongamano hilo; naamini limechangia sana kuwaahamasisha Wabunge na kutuweka katika hali bora kabisa kuchangia Mswada huu.

Bw. Naibu Spika wa Muda, historia inatufunza kuwa hakuna jamii yoyote inayoendelea ikiwa ni jamii ambayo hailindi na haichungi kwa uangalifu sana maslahi ya wananchi wake. Katika mazingira ya dhuluma na ukandamizaji wa haki za kibinadamu, hakuna maendeleo yanayowezezana. Hata maswala ya umoja, amani na utulivu hayawezeke katika mazingira ya dhuluma. Hatuwezi kuwa jamii iliyo na umoja, usawa na amani ikiwa sisi ni jamii ambayo haitazami kwa makini haki za kila moja wetu. Jamii yetu ya Kenya ni jamii ambayo imekuwa na historia ya dhuluma. Imekuwa na historia ya ukandamizaji wa haki za wananchi wa taifa hili. Kumekuwa na mauji ya kiholela. Ukitazama historia ya taifa hili, kuna Wakenya ambao wamepoteza maisha yao. Ukitazama historia ya taifa hili tangu tupate Uhuru, utapata kwamba kumekuwa na mauji ambayo mpaka leo hatujajua chanzo chake na hatujapata jibu. Akina Tom Mboya, J.M. Kariuki, Robert Ouko na Odhiambo Mbai. Hawa ni Wakenya ambao walipoteza maisha yao kwa njia ya kiholela kutokana na dhuluma na ukandamizaji wa haki za wananchi wa taifa hili. Swala hili limekera taifa hili tangu tupate Uhuru.

Bw. Naibu Spika wa Muda, ukitazama historia yetu utaona kwa miaka mingi wananchi walinyimwa haki za kujieleza, kufikiria na kutoa maoni yao. Huu ulikuwa ni ukandamizaji wa hali ya juu.

Bw. Naibu Spika wa Muda na Waziri wa Ardhi, Bw. Orengo, ni miongoni mwa viongozi walikuwa wahasiriwa wa dhuluma hizo za ukandamizaji wa wakati huo. Yetu ni historia iliyojaa dhuluma. Taifa letu liliwanyima nafasi watu walikuwa na maoni na misimamo tofauti ya kisiasa.

Bw. Naibu Spika wa Muda, jambo ambalo tunalolishughulikia wakati huu tunapobuni sheria hii ni kuvunja minyororo ya ukandamizaji. Minyororo hii imewafunga Wakenya kwa takriban nusu karne tangu tupate Uhuru. Tume hii tunayobuni ni tume ambao ina misingi ya kikatiba. Tume hii inabuniwa kwa misingi ya Kipengee 59 cha Katiba mpya. Ni kipengee ambacho kimetoa fursa kwa Bunge hili kubuni sheria maalum

ya kuweza kuhakikisha kwamba Tume hii imejikita katika misingi ya kikatiba. Kwa hivyo, itakuwa mlinzi wa haki za kila Mkenya.

Tume hii itatupa fursa ya kuzika katika kaburi la sahu historia yetu ya dhuluma na ukandamizaji wa haki za Mkenya yeyote. Swala la mauaji ya kiholela na kikatili ni mambo ambayo tunataka kuyazika katika kaburi la sahu. Hatutaki kushuhudia mambo kama haya tena katika taifa hili la Kenya.

Mimi ninaunga mkono kubuniwa kwa Tume hii. Nina imani kwamba ikiwa Tume hii itapewa nafasi na rasilmali za kutosha na itafanya kazi vilivyo. Swala hili la rasilmali ni changamoto kwa Serikali yetu hii ya mseto na serikali zitakazokuja hapo mbeleni. Ni lazima Tume hii ipewe rasilmali za kutosha ili itekeleze majukumu yake. Majukumu ya kuhakikisha ya kwamba haki ya kila Mkenya inalindwa kwa dhati.

Sura ya 4 ya Katiba mpya ni msingi wa haki za kila Mkenya hapa nchini. Sura hii imeeleza haki za kila aina; haki za kisiasa, kiuchumi, kimazingira, kijinsia na kadhalika. Ni furaha yangu kuona ya kwamba haki zote zimelindwa katika sura hii ya Katiba. Itakuwa ni jukumu la Tume hii kuhakikisha ya kwamba haki zote zinaheshimiwa kuambatana na Katiba yetu. Tume hii itashughulikia haki za kila Mkenya awe anaishi Budalangi, Kinango, Wajir, Tondonyang na kwingineko.

Tunajua ya kwamba baada ya miaka 50 ya Uhuru kuna Wakenya ambao hawana usalama. Haya ni maswala ambao tunashuhudia katika Kenya huru. Muda mfupi uliopita, tulijadili katika Bunge hili mauaji ya zaidi Wakenya 50 kule Tondonyang katika Kaunti ya Turkana. Hawa ni Wakenya ambao waliuwawa kiholela. Wiki mbili zilizopita, mauaji mengine kama haya yalitokea kule Tondonyang. Huu ni ukiukaji wa haki za kibinadamu. Tunajua jukumu muhimu zaidi ya serikali yeyote ni kuhakikisha ya kwamba kila mwananchi ana usalama wa kutosha. Ni jukumu la Serikali kulinda mali na uhai wa kila Mkenya kwa dhati.

Tunajadili jambo hili wakati zaidi ya Wakenya milioni nne wamekumbwa na baa la njaa. Hilo ni swala la haki za kibinadamu. Ningependa Serikali yetu ifahamu kwamba hata tunapobuni Tume hii ya haki za kibinadamu, tayari haki za kibinadamu za Wakenya wengi zinakiukwa. Tutakuaje taifa huru; taifa ambalo linapiga hatua za maendeleo na kwamba ifikiapo mwaka wa 2030 tutakuwa tumefikia kiwango kikubwa cha maendeleo, ikiwa hatuwezi kuwalisha wananchi wetu? Sura ya 4 ya Katiba yetu inasema kwamba kila Mkenya ana haki ya kupata chakula na kuishi vizuri. Hii ni changamoto kubwa kwa Serikali kuwa hata wakati huu tunapobuni Tume hizi tuwe na sera ya kuhakikisha ya kwamba Wakenya wanavuna matunda ya haki zote katika sura hii ya Katiba mpya.

Ningependa kuhimiza Serikali hii wakati huu wa kujenga Kenya upya, isingojee kesho wala kesho kutwa kuchukua hatua itakayotupeleka mbele. Ni lazima Serikali hii ichukue kila hatua inayowezekana kuhakikisha ya kwamba Wakenya wanapata chakula cha kutosha, vyombo vya habari vinahudumu katika mazingira ya uwazi, haki, usawa na bila ukandamizaji. Tumeshuhudia hapo mbeleni mashambulizi kwa vyombo vya habari. Miaka mitano iliopita kulikuwa na kisa cha kuaibisha katika taifa hili. Wakati ambao majambazi walishambulia ofisi za gazeti la *The Standard* hapa Nairobi. Hadi kufikia sasa, Serikali haijawaeleza Wakenya ni akina hawa walioshambulia ofisi hizo. Ni akina nani hawa waliokuwa majasusi wa dhuluma ambao walichukua hatua za ukandamiza haki za vyombo vya habari? Uwazi wa vyombo vya habari na haki ya kupata habari ni mojawapo ya haki muhimu zaidi katika Sura ya 4 ya Katiba yetu. Na hili ni swala ambalo

Tume hii itapata fursa ya kulishughulikia na kuhakikisha kwamba haki hii inalindwa kikamilifu.

Bw. Naibu Spika wa Muda, taifa hili halitapata utulivu kamili ikiwa hatutatia dhuluma za kihistoria. Mhe. Chachu alipokuwa anachangia Hoja hii, alizungumuzia mauaji ya kiholela ambayo yameshuhudiwa katika taifa hili katika sehemu mbalimbali. Haya ni mauaji ambayo hatujawahi kuambiwa yalifanywa na akina nani, yalisababishwa na nini na haki kwa wahasiriwa itapatikana lini. Na hata mauaji ya Wakenya mashuhuri kwa vile Tom Mboya, J.M. Kariuki, Robert Ouko, Odhiambo Mbai na wengine, hatujawahi kuelezwa yalisababishwa na akina nani. Taifa hili halitapata utulivu mpaka tutakapoeleza kwa uwazi ni nani waliyotekeleza mauaji hayo na kutatia dhuluma zote za kihistoria.

Tumekuwa na muda ambao hata waheshimiwa Wabunge hapa Bungeni hawakuwa na uhuru wa kujieleza. Kumekuwa na wakati ambao Wabunge wamewahi kutiwa mbaroni katika majengo haya ya Bunge kinyume cha sheria. Ni hizo ni dhuluma za kihistoria ambazo mpaka wakati ambao tutazishughulikia na tuhakikishe ya kwamba hazirudiwi tena, hapo ndipo basi tutakapokuwa tumefika katika hali ya utulivu wa kitaifa.

Mimi nina imani ya kwamba ikiwa Tume hii itapewa nafasi ya kuhudumu kulingana na misingi ya sheria hii tunayojadili wakati huu na vile vile misingi ya Katiba, basi tutaweza kupata majibu kwa baadhi ya maswala haya nyeti yaliyo na uzito mkubwa.

Mimi vile vile ingawa ninajua kwamba kuna Mswada wa kando kuhusu Tume ya Jinsia na Usawa, ningependa kusema ninaunga hatua hiyo ya kutenga tume hizi mbili ili tuweze kuwa na tume hii ya kushughulikia maswala ya haki na vile vile tume tofauti itakayoshughulikia maswala ya jinsia na usawa.

Bw. Naibu Spika wa Muda, ninamshukuru Waziri wa Haki tena.

Kwa hayo mengi, ninaunga mkono.

Mr. Muthama: Bw. Naibu Spika wa Muda, ninasimama kuunga mkono Hoja hii. Mswada huu umewasilishwa wakati unaofaa. Mswada huu unahusu kutekelezwa kwa Katiba yetu. Huu ni mojawapo wa Miswada tunaohitajika kupitisha. wananchi wanataka tupitisha Miswada hii kwa haraka sana ili waweze kufurahia matunda ya Katiba mpya.

Jambo la pili ni kuwa Mswada huu unazingatia haki za maisha ya binadamu katika nchi yetu. Ikiwa tutaupitisha Mswada huu, basi mambo haya yatekelezwe mara moja. Mswada huu hautakuwa na maana kwa wananchi ikiwa tutakuwa na vikundi vitatu vya watu; wale watatii sheria, wengine watakuwa wakitaka kutii sheria kwa mbali na wengine watapenda kuvunja sheria hii wakiwa usukani au mamlakani. Kwa nini ninasema hivyo? Hii ni kwa sababu miaka mingi tulikaliwa na mkoloni aliyevunja haki za binadamu za Mwaafrika. Tuliupigania Uhuru wetu na tulipopata Uhuru, tulishangilia utawala wa Mwafrika na tukasema tutaheshimu haki zetu. Ni dhahiri kuwa mambo yote yalienda kinyume na matarajio yetu.

Tumeshuhudia vifo vya watu vya watu mashuhuri na wa kawaida katika nchi yetu tukufu hapa. Mauaji haya yalitekelezwa na watu fulani. Hata hivyo, wale waliohusika na mauaji haya hawajawahi kufikishwa mahakamani.

Sheria za nchi hii humiza sana watu wanyonge. Ikiwa mtu ataiba kuku, anachukuliwa hatua kali sana. Wakati mwingi, mwizi wa kuku hufungwa zaidi ya miaka 10. Lakini wanaoua wenzao na kupora mali ya wananchi wa Kenya kwa sababu wako madarakani, wanaachiliwa huru. Ikiwa Tume hii haitatekeleza kazi yake inavyotakikana, basi tutakuwa tunapoteza wakati wetu hapa Bungeni.

Watu wengi wametezwe katika nchi hii. Mwaka wa 1992, tulishuhudia mateso makubwa ya baadhi ya Wakenya. Wana haki sawa na watu wengine katika nchi hii. Hata hivyo, walipigwa na kuhamishwa kutoka makao yao. Mpaka leo, hakuna kiongozi hata mmoja aliyefikishwa kortini kujibu mashtaka kuhusiana na mateso na maafa yaliyowakumba watu hawa mwaka wa 1992. Ni aibu iliyoje kuona sisi tunaendelea kupokea mishahara yetu ili watu wetu wanaendelea kuteseka hemani?

Wakati wa uchaguzi wa mwaka 1997, tulikuwa na vita vya wenyewe kwa wenyewe na watu wengi walitimuliwa kutoka makao yao. Watu hawa hakuwa na hatia yoyote ila tu kupiga kura zao. Sasa watu hawa wanaishi maisha ya umaskini sana. Mali yao yaliharibiwa. Ni aibu iliyoje baada ya vita hivi, Serikali huunda tume ya kuchunguza chanzo cha vita hivi? Pesa nyingi hutumika lakini hakuna funzo tunalopata. Ripoti huandikwa lakini hakuna yeyote ambaye yuko tayari kutekeleza mapendekezo ambayo yanatolewa na tume hizo.

Baada ya Uchaguzi Mkuu wa 2002, hali haikuwa tofauti. Watu walitimuliwa kutoka mashamba yao na mali mengi yakaharibiwa. Kilele cha vita hivi kilikuwa mwaka wa 2007. Watu wengi walipoteza maisha yao na mali yao yaliharibiwa. Leo hii wanaishi ndani ya hema wakiwa na watoto wao. Hii ni aibu kubwa kwa nchi hii. Zaidi ya watu 3,000 na watoto wao waishi hemani. Inahitajika tujiulize ni kwa nini mambo haya hutokea wakati wa uchaguzi. Je, ni viongozi ambao huchochea watu kupigana? Ikiwa viongozi, wananchi wanaweza kuzingatia maneno ya uzalendo yaliyo katika wimbo wetu wa taifa, basi “tutaishi kwa amani”.

Tunataka kuona Tume itakayozingatia haki na umoja wa wananchi wote. Kwa hivyo, tunataka Mswada huu upitishwe mara moja ili tuunde Tume hii itayojishughulisha na haki za binadamu.

Ninakumbuka zaidi ya miaka 48 nilipokuwa kijana mdogo niliona ndege za kutoka Marekani zikiwa zimebeba mahindi na kuleta katika eneo langu la Bunge. Huu ulikuwa ni wakati wa Rais J.F. Kennedy. Hii ilikuwa ni baada ya nchi yetu kupata Uhuru.

Nimeishi kwa heshima na kuendeleza uzalendo wangu bila chuki. Mimi ni mzee wa miaka 58. Miaka hii yote sijawahi kuona nchi hii ikiwa na chakula cha kutosha. Serikali ambayo haiwezi kuwalisha wananchi wake haistahili kuongoza. Wakati huu tunajenga barabara za gorofa lakini tumeshindwa kuwalisha wananchi wetu. Ni fedheha ilioyoje kuona katika runinga zetu watu ambao wamekonda sana hadi mbavu zao zinaonekana? Wengine wamepoteza nywele zao kwa sababu ya njaa. Je, ni haki kwa Mawaziri na Wabunge kuendesha magari makubwa ilhali watu wetu wanaendelea kufa njaa? Taifa huru linaunda tume ya haki za binadamu lakini tayari tunavunja sheria huku tukijuvuna kwamba kijikaratasi kitaweza kubadilisha maisha yetu. Wakenya wanafaa kuamka na kujua kwamba sisi ni viongozi ambao tunataka kuongoza watu kwenye ahadi ya usawa ili waweze kuishi.

Bw. Naibu Spika wa Muda, kila mwaka - na hii ilionyeshwa katika Runinga ya *Citizen- Bura Irrigation Scheme* inatoa chakula tani 7,000. Historia iliyotolewa katika runinga hiyo inasema kwamba, bali na kuwa kwamba chakula hicho kinalimwa hapo tukitumia pesa za umma, NCPB haijaonyesha dalili ya kununua hata tani moja ya chakula hicho. Chakula hiki kimeonyeshwa kikioza kwa barabara huku tukiwa na wasomi na wasimamizi wa maghala hayo. Chakula kinaoza na huku tunaanza kutafuta mahindi

kutoka nchi jirani, mahindi ambayo hatujui yanatoka wapi. Kuna unyanyasaji gani wa haki za kibinadamu kuliko huu?

Juzi, tumeona wakulima wa Bonde la Ufa wakiwa na magunia ya mahindi. Inasemekana kwamba gunia moja linauzwa kwa Kshs2,500. Utawala wa nchi hii kutoka juu unakaa chini ya kinara ambaye in mwenyekiti wa ulinzi wa chakula katika taifa letu na wanaamua kutoa mahindi katika Afrika Kusini kwa Kshs3,600 huku tunanyamazishwa ilhali kuna sheria ya kulinda jambo hilo. Tunaambiwa kwamba hiki kijikaratasi kitaweza kulinda haki ya binadamu.

Bw. Naibu Spika wa Muda, moyo wangu unalia kila siku. Haifai kuwa tunakaa katika nchi na kutumia fedha namna hii huku tukifanya mambo ya kujionyesha tu lakini hatuitii sheria. Tutapitisha Mswada huu. Si kazi ya Waziri kuona kwamba kila mtu anatii sheria, lakini ni sisi viongozi kuona kwamba tunaitumia haki. Kutakuwa na unyanyasaji gani kuliko kuona kwamba unaamka asubuhi na kusoma historia ya wizi na kamba, rasilimali imeibiwa na yule mtu ambaye ni mlinzi wa haki hiyo? Sisi tunaamka na tunakuja hapa Bungeni, tunasalimiana kwa mikono na tunacheka huku waliotuchagua wakijua kwamba tumewadhulumu kwa kuyafanya mambo hayo.

Watoto wa miaka mitatu au minne wanajiswa. Huu ni unajisi wa hali ya juu. Tunasoma kwenye magazeti kwamba mtoto amenajisiwa na aliyefanya kitendo hicho ni mtu mzima anapelekwa kortini na anapewa bondi na anaenda nyumbani. Mtoto huyu amedhulumiwa na hataweza kusahau kilichotokea katika maisha yake. Aliyemfanyia mambo hayo anaenda nyumbani na kuwakemea wazazi wa mtoto huyo. Hii inakuwa ni shida mara mbili. Mwenye kuumizwa na mwenye kumlea, wote wako taabani. Ninaomba tupitisha Mswada huu lakini tuweke akili zetu sawa sawa kwa kutii sheria na kufahamu kwamba yale ambayo ile sheria tunayovunja hapa, wananchi wa Kenya wanaona.

Kwa hayo machache, ninaunga mkono.

Mr. Baiya: Asante Bw. Naibu Spika wa Muda kwa kunipatia muda na mimi pia niungane na Wabunge wenzangu kuchangia Mswada huu. Kwanza, ningetaka kutoa shukrani kwa Waziri anayehusika kwa kuleta huu Mswada muhimu ambao unalenga kulainisha sheria kuambatana na Katiba mpya.

Tuko na Kamati ya Haki za Binadamu na pia juzi, tulipata yale matarajio ambayo tunaweza kutarajia kutokana na utekelezaji wa sheria hii. Ninaunga mkono maoni ambayo yametolewa na waliozungumza mbele yangu kwamba katika nchi hii, tangu zamani, Katiba ya nchi hii imekuwa na sura ya kupeana haki kwa binadamu. Lakini ukweli ni kwamba, katika historia yetu kama taifa, kuanzia wakati wa Ukoloni, tumekuwa na tabia na mazoea mabaya. Wanaotakiwa kuiga sheria na kutoa huduma kwa nchi hii hawaheshimu haki za binadamu. Hii tabia mbaya na mazoea mabaya yalianza wakati wa ukoloni, hasa, katika harakati za kukomboa nchi hii ambapo vikosi vya usalama vilitumika kukandamiza wananchi na kuwapeleka mahakamani bila kujali haki zao. Hata wakawa wanafanyiwa kesi mahakamani bila kujali haki zao.

Bw. Naibu Spika wa Muda, wakati tulipata Uhuru, wengine walipoteza haki na pia ari yao. Wengi waliuwawa kinyama na wakati tulipopata Uhuru, matarajio ya wananchi yalikuwa kwamba uhuru uliwatoa kwenye dhuluma za wakati wa ukoloni. La kushangaza ni kwamba, hata wakati tulipata Uhuru, badala ya kurekebisha na kubadilisha mwelekeo wa Serikali ya Ukoloni, tuliendelea na ile tabia.

Hii Kamati ya Haki za Binadamu iliundwa juzi na tunajua vile ambavyo imekuwa ikifanya kazi. Wakati mwingine, imepata pingamizi kubwa kutoka kwa Serikali ilhali

wao ndio wanafaa kuheshimu na kutekeleza sheria na kuhakikisha kwamba wameheshimu haki za binadamu za wakenya wote. Shida hii inaanzia kwa viongozi wa idara mbalimbali. Tunataka huu Mswada uwe kielelezo ama chanzo cha kuhakikisha kwamba kila mtu anawajibika kuhakikisha kwamba amefanya kazi vilivyo. Inafaa Kamati ya Haki za Binadamu ihakikishie taifa kwamba Serikali inaheshimu haki za binadamu. Ni wazi kwamba hatuwezi kuhakikishia wananchi kwamba tunaheshimu haki zao za kibinadamu kama hatujahakikisha kwamba mazingira ya kuendeleza shughuli hizo inaheshimu haki za kibinadamu. Kama hatujapigana na umaskini, ukosefu wa nafasi za kazi kwa wananchi na kuwepo kwa sera ambazo zitahakikisha kwamba nchi hii inaendeleza shughuli za kutoa hudumu zifaazo kwa wananchi, tutakuwa tunawandanganya wananchi kuwa tutawahakikishia haki zao kama Wakenya.

Bw. Naibu Spika wa Muda, kama taifa, tusipojaribu kupambana na umaskini na ukosefu wa nafasi za kazi, na kuweka sera ambazo zitahakikisha kwamba nchi hii inaendeleza shughuli za kutoa huduma zinazofaa kwa wananchi, tutakuwa tunawadanganya wananchi kwamba tutawahakikishia haki zao kama Wakenya. Kuna shida shida nyingine, kama zilivyoangaziwa, ambazo pia zinachangia kukandamizwa kwa haki za kibinadamu. Shida hizo ni kama ufisadi, wizi wa mali ya umma, na nyinginezo. Tunaposhughulikia haki za kibinadamu, kulingana na Katiba, matarajio yetu ni kwamba Serikali itahakikisha kwamba tunasawazisha mazingira ili tuwezeshe shughuli za Serikali sio tu kwenye Tume ya Kitaifa ya Haki za Kibinadamu bali pia tuweze kuheshimu haki za kibinadamu katika mpangilio wa shughuli za Serikali kwa jumla.

Hii inatuelekeza kufikiria juu ya Tume nyingine kama Tume ya Kupambana na Ufisadi Nchini, na ile sheria inayowataka maafisa wa umma kuwajibika vilivyo na kuhakikisha kwamba wametoa huduma vilivyo kwa wananchi, na kwamba wasipofanya hivyo Serikali itawachukulia hatua kabambe, kulingana na sheria iliyopo na Katiba, ili tuweze kuwahakikishia Wakenya kwamba, kama taifa, tuna mwelekeo mpya – mwelekeo unaowaheshimu Wakenya kwa jumla ili waweze kuvuna matunda ya haki zao za kibinadamu. Pia, tunaihimiza Serikali iitengee Tume hii pesa za kutosha ili iweze kutekeleza shughuli zake. Hatungependa Serikali ifanye kama vile tulivyoona ikifanya zamani. Kwa mfano, katika miaka iliyopita, iwapo Serikali haikufurahishwa na shughuli za Tume ya Kitaifa ya Haki za Kibinadamu, ilikuwa ikiinyima pesa Tume hiyo ili kui punguzia uwezo wa kufanya kazi yake.

Bw. Naibu Spika wa Muda, kumekuwa na shida ya Serikali kukosa kukabiliana na matatizo fulani. Kumekuwa na ukiukaji wa haki za kikatiba. Kwa mfano, tumekuwa na tabia ya kuwatenga vijana kwa sababu wao ni vijana, na hata kuwawekelea majina mabaya kama vile *Mungiki* na mengine, kikiwa kielelezo cha kuwakandamiza, na kuwasingizia kwamba eti hawatii sheria. Huu ni ukiukaji wa sheria kwa sababu haki ya kwanza ya mwananchi ni kutodhulumiwa ama kutochukuliwa hatua bila kufuata mpangilio wa sheria. Kwa hivyo, huu ni Mswada muhimu ambao utaisadia nchi hii kuhakikisha kwamba tumeweka msingi unaofaa kuhakikisha kwamba haki za kibinadamu zinalindwa na sheria.

Hata hivyo, inafaa ifahamike kwamba hii sheria, ikiwa peke yake, haiwezi kuwahakikishia Wakenya haki zao za kibinadamu. Hilo linawezekana tu tukihakikisha kwamba tumetekeleza mabadiliko na kuchukua mwelekeo mpya, kama inavyotarajiwa kwenye Katiba mpya. Tunatakiwa kuchukua mwelekeo mpya na kuwahakikishia

wananchi kwamba Serikali imeundwa ili iwalinde na kuwapatia huduma ambazo zitawasaidia kupata haki zao kama Wakenya na wanadamu.

Kwa hayo machache, ninauunga mkono Mswada huu.

Mr. Ruteere: Mr. Temporary Deputy Speaker, Sir, I thank you for allowing me to add my voice to the debate on this very important Bill, which has come at the right time.

When Kenya attained Independence, the founding father of this nation, the late President Kenyatta, declared war on poverty, disease and ignorance. This declaration was as a result of Kenyans having been deprived of their basic human rights. It was the hope of every Kenyan that after attainment of Independence, their basic human rights, which had been suppressed, would be guaranteed. However, after many years of Independence, the situation was not as expected. People became poorer. A lot of diseases came up as a result of poor services. There was a polluted environment and failure by the Government to provide services to the people.

Mr. Temporary Deputy Speaker, Sir, this Bill gives a new hope to Kenyans. Following the promulgation of the new Constitution, every Kenyan has been looking upon the Bill of Rights to address some of the issues that have been affecting them throughout the various regimes that have been there. As we all know, there was suppression of freedom of speech. Violation of this basic right caused a lot of people to speak in whispers or speak while looking over their shoulders to see if somebody was listening to the opinions they were to give otherwise they would say what the authorities wanted to hear.

Once this Bill is enacted, people will be guaranteed of the freedom of speech, which will make them talk freely and give their opinions. It will make every Kenyan to express his or her inner feelings about issues affecting the country. This is a basic right Kenyans have been denied for a long time.

Mr. Temporary Deputy Speaker, Sir, we are facing famine. Many hon. Members have spoken about famine, but not famine as a result of drought but rather famine as a result of poverty. It is the poor who are suffering. It is the poor who cannot access food because they have no money with which to buy food. It is the poor in respect of whom when their plight is made known to the world by the agents of the Government in the field, the same Government punishes those who have spoken the truth.

It is this Bill of Rights which will guarantee workers their rights, be they persons working in the national Government or in the County Governments. Whoever will be executing whatever duties will be guaranteed freedom in his or her place of work. This is because the Constitution gives Kenyans the right to belong to trade unions and associations and the right to demonstrate. These rights will give somebody who is working a new lease of life. Currently, some workers cannot even talk. Civil servants say: "We cannot talk because our bosses speak on our behalf".

Recently, we saw what happened in Turkana. We all witnessed the suffering of the children, women and old people. When a chief comes out and speaks the truth, the truth that can be seen even with the blind that they were dying, you hear that the chiefs are supposed to follow a certain bureaucracy so that the plight of those who are dying is said. However, when following that bureaucracy, people are still dying or are about to die. This Bill will guarantee such chiefs the right to talk. It will guarantee civil servants the right to form trade unions. It will also give a chance to the Armed Forces to air their

grievances. Currently, they are so suppressed that even if somebody is hurt, he cannot talk.

There is an issue of services to the citizens of this country which has passed unnoticed. When people die in hospitals, while their relatives are grieving, they are asked huge bills and not allowed to collect bodies of their dead. It is a shame that this country does not give the rights even to the deceased to have decent burials. They leave their families grieving. They sell everything in order to get the dead body. I hope this Bill of Rights will guarantee such rights that are not there right now.

Mr. Temporary Deputy Speaker, Sir, ethnicity and tribalism in this country is as a result of people being suspicious of one another. Those not enjoying their freedoms and basic rights and those who feel they are suppressed think that the other tribes are enjoying those freedoms they are being denied. It is this Bill that will bring about national cohesion. It is this Bill that will kill tribalism. It is this Bill that will guarantee that Kenyans to live as a cohesive society. It is this Bill that will guarantee our youth to get what is rightfully theirs. For example, currently the youth in this country do not get identity cards, which are basically their right. Why is it that those who applied for identity cards four years ago do not have them today? This is a right that is basically theirs. We expect them to vote. When registration of voters comes, we will hear that those who have not been registered have no identity cards. The elections will be rigged before polling starts. These rights are very basic. It is very crucial that we enact this Bill into law now.

Looking at our environment, we pay rates to the city council---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Ruteere, I would like you to wind up within the next two minutes.

Mr. Ruteere: Mr. Temporary Deputy Speaker, Sir, I will do that.

I support the Bill.

The Temporary Deputy Speaker (Mr. Imanyara): Minister, it is your time to reply.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, this is another historic moment for the country. This is an implementation legislation for the Constitution. I want to salute this distinguished House for rising to the occasion and speaking with one voice.

I would like to assure hon. Shakeel - because he is the only one who sounded like he had doubts and this is my opportunity to tell him - that never would I contemplate a non-constitutional legislation. Unknown to hon. Shakeel, this Bill would not have found its way here unless the Commission on the Implementation of the Constitution (CIC), through Mr. Charles Nyachae and the Attorney-General, Mr. Wako, had looked at it backwards, forwards and upside down and confirmed that it does not in any way violate the Constitution. Therefore, I would like to reassure him and all the others who have spoken on that, that we will put every effort during the Third Reading of the Bill and at the Committee Stage, to make adjustments to reflect the concerns they have expressed.

For me, I cannot wait for an opportunity to see the Truth, Justice and Reconciliation Commission (TJRC) continue with its work to address issues raised about the massacres in Wagalla, Garissa and many others. Many people have spoken about the late J.M. Kariuki, the late Dr. Robert Ouko and the late Tom Mboya, among others. This is a new dawn and their deaths, in the hands of yet unidentified people, like that of Robert

Ouko, will not be in vain. I have seen a section of the media today address one of our most staunch supporters of the Bill of Rights, Mr. Kenneth Matiba. I would like to reassure his supporters and those who think that the Government may be neglecting such staunch Kenyans, that the time to look after them has come. You may have seen a statue for the late Tom Mboya in Tom Mboya Street. The momentum of the new Constitution demands that we respect those people.

Recently, the honourable Chief Justice hosted the retired Chief Justice. He took that opportunity to remind us, as we know, Mr. Temporary Deputy Speaker, you were with him fighting for these rights that we are advancing today. We are probably the only country in the world today where the serving Chief Justice is a former detainee on detention without trial. So, therefore, the momentum for the country is here now. I want to ask the supporters of some of these families to make recommendations to my office because soon, after 26th August, once the process of implementation is completed, my Ministry will engage in reviewing old laws and practices that have created the opportunity for the issues that have been raised, including ID cards, tribalism and famine, among others.

Hon. Baiya has talked about oppression and funding. These are very serious matters that we have to look into. Therefore, allow me to thank this House for this wonderful, yet again, yardstick that has occurred in the country. I would like to thank you, Mr. Temporary Deputy Speaker, Sir, because I have noticed that you have a tendency of Chairing this House whenever we are doing historical work. Congratulations. History will judge you correctly for the efforts that you continue to make in this regard.

With those far too many remarks, I beg to move.

(Question put and agreed)

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

The Temporary Deputy Speaker (Mr. Imanyara): Next Order.

Second Reading

THE NATIONAL GENDER AND EQUALITY COMMISSION BILL

The Temporary Deputy Speaker (Mr. Imanyara): Minister, would you like to start now or would you like to defer this Bill?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I am in your hands. There are only four minutes left. I would rather start tomorrow, so that I can give this very important Bill the attention that it deserves, and also we can have more Members in the House.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, Order No. 9 is, therefore, deferred until tomorrow.

(Bill deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, on this note we adjourn the proceedings of the House until tomorrow, Thursday, August 11th, 2011 at 2.30 p.m.

The House rose at 6.26 p.m.