

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 11th October, 2011

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

MEMBERS' WORKSHOP ON VISION 2030

Mr. Deputy Speaker: Hon. Members, further to the Speaker's memo of 20th September, 2011, there will be a two-day workshop on Vision 2030 for all Members of Parliament organized by the Ministry of State for Planning, National Development and Vision 2030 from 14th October, 2011 to 15th October, 2011 at Travellers Beach Hotel in Mombasa, and not as earlier communicated, at Serena Beach Hotel, for logistical reasons.

This coming workshop is important as it will seek the views of your membership concerning the status of the implementation of the Kenya Vision 2030 and National Planning Authority. You are requested to register your attendance and preferred time of your flight, latest, by tomorrow, 12th October, 2011, at noon, at the Main Reception, Parliament Building.

PAPERS LAID

The following Papers were laid on the Table:-

Report of the House Broadcasting Committee on the Study Tour to the Irish Parliament between 6th November, 2010 and 13th November, 2010.

(By Eng. Gumbo)

Abstracts of Accounts of the County Council of Nyeri for the years ended 30th June, 2004, 2005 and 2006 and the certificate thereon by the Controller and Auditor-General.

Abstracts of Accounts of the County Council of Mbeere for the year ended 30th June, 2005 and the certificate thereon by the Controller and Auditor-General.

Abstracts of Accounts of the County Council of Kilifi for the years ended 30th June, 2004 and 2005 and the certificate thereon by the Controller and Auditor-General.

Abstracts of Accounts of the Town Council of Litein for the three years ended 30th June, 2007 and the certificate thereon by the Controller and Auditor-General.

Financial Statements of the Town Council of Nandi Hills for the two year period ended 30th June, 2009 and the certificate thereon by the Controller and Auditor-General.

Abstracts of Accounts of the Municipal Council of Kitale for the seven year period ended 30th June, 2003 and the certificate thereon by the Controller and Auditor-General.

Financial Statements of the Town Council of Kilifi for the year ended 30th June, 2009 and the certificate thereon by the Controller and Auditor-General.

Abstracts of Accounts of the County Council of Pokot for the two year period ended 30th June, 2007 and the certificate thereon by the Controller and Auditor-General.

Financial Statements of the Town Council of Kangema for the year ended 30th June, 2009 and the certificate thereon by the Controller and Auditor-General.

Financial Statements of the Town Council of Kakamega for the year ended 30th June, 2010 and the certificate thereon by the Controller and Auditor-General.

(By the Assistant Minister for Gender, Children and Social Development (Mr. Keya) on behalf of the Deputy Prime Minister and Minister for Local Government)

POINT OF ORDER

TWO-WEEK EXTENSION OF DURATION OF COMMITTEE ON COST OF LIVING

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I had seen you earlier on over this issue. I wish to ask for an extension of time on behalf of the Chairman of the Committee on Cost of Living. I am aware, that last time, you had said that the extension sought then would be the last one. However, this time round, most Members of Parliament had to travel on Parliamentary duties. The Report is basically ready. All I need is an opportunity for the Members to adopt it. Two weeks will be sufficient.

Mr. Deputy Speaker: Whereas you had your last extension last time, but because of the fact that most of the Members of the Committee are outside the country on official Parliamentary business, the Chair is satisfied with your own submission and, consequently, it is so directed. You have the absolute last extension of two weeks now!

NOTICE OF MOTION

ADOPTION OF HOUSE BROADCASTING COMMITTEE REPORT ON STUDY TOUR OF IRISH PARLIAMENT

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

THAT, this House adopts the Report of the House Broadcasting Committee on the Study Tour of the Irish Parliament between 6th November, 2010 and 13th November, 2010 laid on the Table on Tuesday, 11th October, 2011.

ORAL ANSWERS TO QUESTIONS

Question No.733

ENFORCEMENT OF COURT ORDER IN CIVIL CASE NO.711

Mr. Deputy Speaker: Hon. Members, Mr. Yakub has communicated to the Office of the Speaker. The Chair is satisfied that this Question will be determined when he will be available to prosecute it. That information will be communicated to the Clerks Department.

(Question deferred)

Question No.763

LEVEL OF GIRL-CHILD ENROLMENT IN MARSABIT/ISIOLO COUNTIES

Mr. Deputy Speaker: Hon. Members, Mr. Abdul Bahari is also outside the country on official Parliamentary business in Midrand, South Africa, at the Pan African Parliament (PAP). The Question is, therefore, deferred to a date when he will be available.

(Question deferred)

Question No.851

LEVEL OF SUCCESS OF TREE PLANTING EXERCISE IN EMUHAYA CONSTITUENCY

Dr. Otichilo asked the Minister for Education:-

(a) how successful the programme to establish tree nurseries in 20 primary schools in each constituency, particularly in Emuhaya Constituency, was considering that Kshs60,000 was allocated to each school through the Economic Stimulus Programme (ESP) in 2009/2010; and

(b) how successful the programme to purchase and plant seedlings in 50 schools in every constituency, particularly in Emuhaya Constituency was, considering that Kshs30,000 was allocated for this purpose.

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I took time off to go to the ground and visit Emuhaya Constituency to address the issues regarding this ESP of tree planting. Unfortunately, the answer I have does not tally with what I saw on the ground. I am, therefore, pleading for more time, until tomorrow afternoon, so that I can have a meeting with my officers.

Dr. Otichilo: Mr. Deputy Speaker, Sir, indeed, what the Assistant Minister has said is correct. I want to thank him for going to the ground to see what transpired there.

However, the answer that I received is the same one I received when we decided that he has to go to the ground. With your indulgence, I agree that he comes back tomorrow, in the afternoon, with the correct answer which reflects what is on the ground and also at the national level in general.

Mr. Deputy Speaker: Mr. Mwatela, are you absolutely certain that by tomorrow afternoon you will have had ample time? Would you rather have it on Thursday afternoon?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, Thursday afternoon will be better.

Mr. Deputy Speaker: Fair enough! The Chair directs that this Question be listed on the Order Paper on Thursday afternoon.

(Question deferred)

The Deputy Speaker: Next Question! Question No.885 by the hon. Member for Yatta!

Question No.885

RECRUITMENT OF PROFESSIONALS FROM OUTSIDE
KENYA PRISONS SERVICE

Mr. Deputy Speaker: Indeed, I have a communication from the Office of the Vice-President and Minister for Home Affairs to have this Question deferred to another date. The Chair is satisfied and, therefore, the Question is deferred to Wednesday, 19th October, 2011. That is next week.

(Question deferred)

Hon. Members, Question No.924 by Mr. Ethuro is also deferred because he is out of the country. He is in Canada on Parliamentary business. Consequently, the Question is deferred to next week on Wednesday afternoon.

Question No.924

UNEMPLOYMENT IN TURKANA COUNTY

(Question deferred)

Mr. Deputy Speaker: Question No.1143 by Dr. Laboso is also deferred because she is also in the same delegation in Canada. The Question is also deferred to next week on Wednesday afternoon.

Question No.1143

CONFISCATION OF JOSHUA MARITIM'S TRADE LICENCE

BY BURETI COUNTY COUNCIL

(Question deferred)

Question No.1117

HARASSMENT OF MOTORISTS BY ISRAEL EMBASSY
SECURITY OFFICERS

Question No.1117 by Mr. Kombo is also deferred because Mr. Kombo is also outside the country. He is in Brussels attending the ACP Conference. Therefore, the Question is deferred to a date when Mr. Kombo will be around.

(Question deferred)

Question No.1026

PAYMENT OF ALLOWANCES TO LAND BOARD COMMITTEE
MEMBERS IN NYAKACH

Mr. Ochieng asked the Minister for Lands:-

(a) how much in allowances the Ministry owes members of the Land Board Committees in Nyakach; and,

(b) when the Ministry will pay all the allowances and whether the Minister could consider paying it with interest.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, I beg to reply.

(a) There are two Land Control Boards in Nyakach; namely, Lower and Upper Nyakach, respectively. The two boards are owed a total of Kshs128,000.

(b)The Ministry will pay all the allowances during this financial year. However, interest on those allowances cannot be paid since the Land Control Act does not provide for the same.

Mr. Ochieng: Mr. Deputy Speaker, Sir, the figure that the Assistant Minister has committed to pay as allowances to the board members of Nyakach Land Control Board is not correct. The figure that has been given by members is Kshs299,000. I would like to table that list. Could the Assistant Minister tell us when exactly he intends to pay the members, taking into account that the amount has been outstanding since 2009?

Mr. Bifwoli: Mr. Deputy Speaker, Sir, the figure I have is Kshs128,000 and, since Treasury has given us money, we are able to pay immediately.

Dr. Otichilo: Mr. Deputy Speaker, Sir, that problem is widespread and is not only in Nyakach. In many other districts, members of land boards have not been paid, particularly in Emuhaya. I wish to know from the Assistant Minister what action he is taking to ensure that all board members throughout the country are paid.

Mr. Bifwoli: Mr. Deputy Speaker, Sir, I want to agree that, that is a national problem. That is why our Ministry had requested for Kshs12,882,199 to pay all the Land Control Board members across the country. But, instead, the Treasury allocated us

Kshs9,661,649, giving us a deficit of Kshs3,320,550. However, we are going to pay up to Kshs9,661,649 immediately.

Mr. Outa: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister talk about “immediately”. Could he tell the House when he is going to pay? What does he mean by the word “immediately” because that is really affecting land transactions in most of the constituencies?

Mr. Bifwoli: Mr. Deputy Speaker, Sir, this morning, when I was discussing with our officers, I actually instructed them to send money to the districts today. So, I expect the money to arrive in a week’s time at the district headquarters.

Mr. Deputy Speaker: Last question, Mr. Ochieng!

Mr. Ochieng: Mr. Deputy Speaker, Sir, could the Assistant Minister assure us that there will be no future delays especially in the disbursement of those sums? Once the board has sat, the members should receive their allowances without any further delay. Could he confirm that?

Mr. Bifwoli: Mr. Deputy Speaker, Sir, I want to agree with the hon. Member that, as soon as the Treasury gives us the money, there will never be arrears at all.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Order, Dr. Otichilo and Mr. Oparanya! I know that you come from the same county and you have issues to discuss! But, for God’s sake, hon. Members need to be heard! This is a dignified House! Could we consult in very low tones?

Next Question by Mr. Olago!

Question No.1027

DELAYED REINSTATEMENT OF SAMUEL DANIEL
WAFULA BY KU

Mr. Olago asked the Minister for Higher Education, Science and Technology:-

(a) why Mr. Samuel Daniel Wafula - a former employee of Kenyatta University who was dismissed from service on grounds that he was involved in the student unrest in 2009 – has not been reinstated to his job, contrary to the recommendations of the Departmental Committee on Education, Science and Technology;

(b) whether he is aware that Mr. Wafula was innocent of all allegations made against him; and,

(c) what steps the Ministry is taking to ensure that the university administration does not victimize staff, in compliance with the recommendations of the Report.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Deputy Speaker, Sir, I beg to reply.

(a) It is unfortunate that no action has been taken on the Parliamentary Committee’s recommendation on Mr. Daniel Wafula. I have, therefore, given instructions

to the Council and Management of Kenyatta University to take action and give me a report in two weeks time. Thereafter, I will give a report to Parliament accordingly.

(b) I am not aware of Mr. Wafula's innocence. All that I am aware of is that he was dismissed by the University Council because of the following reasons:-

- (i) He was not there to manage and coordinate a response to disturbances.
- (ii) He avoided being located by his supervisors when there were disturbances.
- (iii) He did not make any attempts to reach his supervisors.
- (iv) He feared the situation, ran away and hence his absence.

A copy of the dismissal letter is available.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to give an answer that is totally inadequate to the Question that was asked? The first part of this Question asks why Mr. Daniel Wafula has not been reinstated back to his job---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Order, Dr. Machage!

Hon. Members, could you, please, accord the House the dignity it deserves? We cannot turn this august House into some kind of a market.

Proceed, Mr. Olago!

Mr. Olago: Thank you, Mr. Deputy Speaker, Sir. I was asking whether it is in order for the Assistant Minister to give to this House an answer that is totally inadequate in the sense that the first realm of this Question asks why Mr. Daniel Wafula was not reinstated despite the recommendations of the Parliamentary Committee on Education, Science and Technology. In the first realm of the answer, the Assistant Minister has said:- "It is unfortunate that no action has been taken on the Parliamentary Committee's recommendation on Mr. Wafula. Therefore, I will give instruction to the Council and Management of Kenyatta University to take action and I will give a report in two weeks."

What type of answer is that? Is he in order?

Mr. Deputy Speaker: Proceed, Dr. Mwiria!

The Assistant Minister for Education, Science and Technology (Dr. Mwiria): Mr. Deputy Speaker, Sir, I had not finished answering the Question. Could you allow me to go to part (c)?

(c) The University operates under an Act of this Parliament and a Common Bargaining Agreement (CBA) which outlines rules and regulations on how to handle staff matters, including discipline. In addition to the above, there are labour laws, including the Employment Act, which govern labour relations. As an Assistant Minister, it is my duty to see to it that council decisions are made within the provisions of the relevant Acts and CBAs. Despite the fact that the university has taken its time to act on the case, we have asked it management to give us a reason why they have not reinstated the person. If they do not do that in two weeks, then we will deal with the matter.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. That is precisely why I said that this answer is inadequate. What the Assistant Minister is saying is that he does not have information and that he wants to go and ask the Management of Kenyatta University why they have not complied. Instead, what he is saying is this: "I want more time to be able to answer this Question adequately."

Dr. Mwiria: Mr. Deputy Speaker, Sir, we asked for a report about the compliance with the Parliamentary Committee's Report. But, as a matter of fact, we have insisted that the person be reinstated. That is why I said that if we do not get a report in two weeks, we shall take the necessary action. I have already given them two weeks. If that is not responded to, then I will take the necessary action. So, if in two weeks we shall not have acted, then the hon. Member should ask me another Question.

Mr. Olago: Mr. Deputy Speaker, Sir, it will not be possible for me to interrogate this answer fully, if that first part is not answered. In that case, I ask for your ruling on whether this Question can be put on the Order Paper in two weeks time, so that I can have the chance to interrogate the answer fully.

Dr. Mwiria: Mr. Deputy Speaker, Sir, that is okay. If he is not ready to find out whether the person is not reinstated in two weeks, he can ask the Question then. There is no problem.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Order, Mr. Linturi, Mr. Wakoli and Mr. Nguyai! Can you allow hon. Members to be heard and for the Deputy Speaker to hear Members? Mr. Nguyai, you have come from a very far place. I know you have been out of the country. But if I hear the kind of sound you are making here one more time, I will ask all of you to go out of the House.

The hon. Member is right. The Question has not been adequately and comprehensively answered and he still needs some further information. Further, there should be a response from Kenyatta University for you to be able to answer the first part very well. Under the circumstances, the Chair directs that this Question be listed on the Order Paper two weeks from today.

(Question deferred)

Next Question, Mr. Kiilu!

Question No.1028

LIST OF KKV PROJECTS IN MAKUENI CONSTITUENCY

Mr. Kiilu asked the Minister for Youth Affairs and Sports:-

(a) whether he could table a list of all the projects/programmes undertaken by the Ministry under the *Kazi Kwa Vijana (KKV)* Programme in Makueni Constituency since its inception; and,

(b) whether he could inform the House how much money was allocated to each project/activity.

Mr. Kiilu: Mr. Deputy Speaker, Sir, I would like to inform you that the Minister has not supplied me with a list of projects that have been undertaken to enable me to interrogate the Question.

Mr. Deputy Speaker: Is the Minister for Youth Affairs and Sports not here?
Mr. Deputy Leader of Government Business, where is the Minister?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, he was expected to be here. I believe they were working on the assumption that all the other Questions preceding this one would be asked and answered. In any the event, I would ask that this Question be rescheduled to tomorrow, also taking into account that the hon. Member has not received a written answer.

Mr. Deputy Speaker: This is an ordinary Question. That means that it was listed way back. It is only fair that the hon. Member has a written answer in advance to be able to interrogate it adequately. Under the circumstances, the Chair directs that this Question be listed on the Order Paper tomorrow afternoon.

(Question deferred)

Next Question!

Question No.1048

ENCASHMENT OF CHEQUES BY YUGERI
INSURANCE AGENCIES IN KISUMU

Mr. Shakeel asked the Deputy Prime Minister and Minister for Finance:-

(a) whether he is aware that Ms Yugeri Insurance Agencies in Kisumu has been engaged in discounting and encashing cheques drawn in favour of third parties whose names do not appear on the cheques;

(b) whether the entity has been authorized by the Central Bank of Kenya (CBK) to engage in the business, considering it is neither a registered bank nor a financial institution; and,

(c) how many such other organizations the Central Bank of Kenya has approved to discount and encash cheques in Kisumu District.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware of reports made to CBK regarding unlawful activities by Ms. Yugeri Insurance Brokers Limited.

(b) Ms. Yugeri Insurance Brokers Limited has not been authorized by the CBK to engage in the business of encashment of cheques.

(c) Save for duly licenced commercial banks, the CBK has not approved any organization to discount and encash cheques in Kisumu District or anywhere else in the Republic of Kenya.

Mr. Shakeel: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for the answer and, specifically, the way he has said very clearly that Yugeri Insurance Brokers Limited has not been authorized to engage in the business of encashment. Now that we have proof that the organization has been cashing not only bursary cheques, but even City Hall cheques, what does he intend to do about it? The Assistant Minister has not said what action he intends to take.

Dr. Oburu: Mr. Deputy Speaker, Sir, Mr. Shakeel reported this matter to the CBK and it ordered investigations by the Fraud Investigation Department of the bank. As

a result, the culprit who owns the insurance brokerage, Mr. A.D. Okulo Okoth, was arrested and arraigned in court. The police file is No.627/669/10 and the court file number is 581/20/10 which is still pending in court. So, action has been taken!

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead the House? The actual gentleman that he is speaking about - Mr. A.D. Okulo Okoth - was the gentleman who went to illegally encash the cheque. The question I am asking is: What is the CBK going to do about Ms Yugeri Insurance Brokers who has been discounting cheques? I am talking about Ms. Yugeri Insurance Brokers Ltd - the company - and not the particular gentleman who encashed one cheque.

Dr. Oburu: Mr. Deputy Speaker, Sir, as I said, the CBK was investigating both Ms. Yugeri Insurance Brokers Ltd and the people who were encashing the cheques. The investigations found out that it is one Mr. Okoth who was culpable and he has been arraigned in court. Ms. Yugeri Brokerage is also being investigated by the Insurance Regulatory Authority (IRA) and up to now, they have not been given a licence even to operate the brokerage because of involving themselves in activities which are not part of what they are licensed to do.

Mr. Mureithi: Mr. Deputy Speaker, Sir, the gentleman who was arrested and arraigned in court was only going to encash the cheques. However, the culprit in this instance is the owner of the insurance agency. What is the Assistant Minister doing to make sure that the principal culprit is actually arrested? That way, he will ensure that innocent people are not taken to court and yet, it is the Principal who has been encouraging them to do so?

Dr. Oburu: Mr. Deputy Speaker, Sir, the investigations in that case are at a very advanced stage and, as soon as they are concluded, the right people will be taken to court and prosecuted.

Mr. Shakeel: Mr. Deputy Speaker, Sir, the Assistant Minister has told us that the IRA is investigating that particular gentleman. But the question was: Was that gentleman carrying out illegal banking activities which fall under the CBK? So, what is the CBK doing about the owner of Ms. Yugeri Insurance Brokers Ltd? They should not be concentrating on a single individual who had cashed the cheque. Could he tell us what CBK is doing?

Dr. Oburu: Mr. Deputy Speaker, Sir, I just want to repeat. I have said that the investigations are at an advanced stage and, as soon as they are concluded, that man will be arraigned in court.

Mr. Deputy Speaker: Next Question, Mrs. Noor!

Question No.1118

STATUS OF HEALTH FACILITIES IN
IJARA/HULUGHO DISTRICTS

(Mrs. Noor moved to the Dispatch Box)

Mr. Deputy Speaker: Order, Mrs. Noor! My office is in receipt of a communication from the Ministry of Public Health and Sanitation that the Minister will not be available to answer the Question. The Question is deferred to a date which has

been proposed by the Minister and which will be communicated to you by the Clerk's Department. This Question is deferred to a date when the Minister will be available.

(Question deferred)

Next Order!

(Loud consultations)

Order, hon. Members!

POINTS OF ORDER

TERMINATION OF SERVICES OF NEWLY RECRUITED SUPPORT STAFF BY PUBLIC SERVICE COMMISSION

Mr. Olago: Mr. Deputy Speaker, Sir, I rise to ask for a Ministerial Statement from the Minister for Public Service on a matter that is fairly urgent and pertinent. I would like to ask why the Public Service Commission (PSC) has, since 14th September, 2011, insisted on termination of services of 2,660 junior support staff who were recruited by the Ministry of Education following the advertisement of their jobs on 15th May, 2009. This termination has been done in spite of an order of the Industrial Court to maintain the status quo, pending the final determination of the case filed by the Union of Kenya Civil Servants. This Statement should address itself to the following pertinent and urgent issues:

- (i) Why the PSC is perpetuating impunity and disregard of the law by failing to comply with the order of the Industrial Court.
- (ii) Why the PSC has backdated the termination of services of the staff involved, disregarding the period they had worked.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! The Chair can hardly hear what the hon. Member is saying! Order!

Mr. Olago: Mr. Deputy Speaker, Sir, let me repeat.

- (i) Why the PSC is perpetuating impunity and disregard of the law by failing to comply with the order of the Industrial Court.
- (ii) Why the PSC has backdated the termination of the services of the staff involved, disregarding the period that they had worked.
- (iii) Why the PSC has failed to recognize the interest of the union and the Ministry of Education to isolate issues pertaining to those who were irregularly engaged and to stop further irregular engagement of staff to replace the ones who are terminated.

This matter is so urgent and important that this afternoon, the civil servants were having demonstrations outside the Parliament gates.

(Applause)

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow):
Mr. Deputy Speaker, Sir, the Statement will be provided on Thursday next week.

Mr. Pesa: On a point of order, Mr. Deputy Speaker, Sir. Before we went on recess, I had filed, more or less, the same Question which the Speaker consented to. But now that Mr. Olago Aluoch has asked it, I want to draw the attention of the Assistant Minister to an answer given by the Minister here on 23rd February about the same people who are being victimized. The Minister assured this House that they will not terminate the services of the people who qualified. When the answer comes here, I want him to also explain why some of those people who are qualified have had their services terminated.

Mr. Mungatana: Mr. Deputy Speaker, Sir, I want to request the Chair to look again at that timing of Thursday next week. We are talking about an issue that has been in the public domain. The Assistant Minister is aware of it. In fact, Mr. Pesa has said that this matter was even asked in this House. Why Thursday next week when an issue is so clear in the mind of the public? I urge that you ask the Assistant Minister to treat it with more urgency. Could he bring the answer tomorrow?

Mr. Olago: On a point or order. Mr. Deputy Speaker, Sir. I wish to emphasize the point raised by Mr. Mungatana. That is because, among the affected members of staff - those civil servants - are those who have traveled from outside Nairobi and who have not been paid for over six months. They are stranded in Nairobi.

(Applause)

Mr. Deputy Speaker: Maj. Sugow, surely, you should seek a date---

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow):
Mr. Deputy Speaker, Sir, the issue involves both the Ministry of Education and the PSC. So, we request that, if it is not Thursday, then we bring the Statement on Tuesday next week. Please!

Mr. Olago: On a point of order. Mr. Deputy Speaker, Sir. In view of the urgency and the request by the Assistant Minister, then could we strike a balance and have it on Thursday afternoon this week?

Mr. Deputy Speaker: Maj. Sugow, given the urgency, surely---

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow):
Mr. Deputy Speaker, Sir, I understand the urgency of this matter. But for us to get a clear and good answer, I would prefer that we bring this answer on Tuesday afternoon. Thursday will be a little too close for liaison between the respective Ministries and the Commission.

Mr. Pesa: On a point of order. Mr. Deputy Speaker, Sir, we are talking about Kenyans like ourselves; young people who are not employed in this country. The majority of Kenyans are the youth. Here is a case where the youth are being victimized by the same Government. I think next week is too far because people are at the gate here. Are we going to keep those people there up to next week? I would request, very humbly, that this answer--- The two Ministries have been talking about the same case for the last two months and, therefore, the Assistant Minister should have an answer.

Mr. Deputy Speaker: Order! Maj. Sugow, given the urgency of the matter and the fact that there are Kenyans who have come from the four corners of the country and who are in Nairobi---

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Deputy Speaker, Sir, I think we will work over time and give the Statement on Thursday afternoon.

Mr. Deputy Speaker: Fair enough! It is so directed!

(Applause)

ERRORS IN THE PUBLISHED ELECTIONS ACT

Mr. Mungatana: Mr. Deputy Speaker, Sir, I rise on a point of order concerning a grave error that has occurred in the publishing of the Elections Act. You will remember that Mr. Imanyara stood up on a similar point of order with regard to a grave error within the publication of the Political Parties Act. But today, I am rising specifically on Section 34(9) of the Elections Act that has been published, contrary to what we passed in this House. This being the second time that this is happening---

(Loud consultations)

Mr. Deputy Speaker, Sir, I would ask that we listen because this is a matter that affects all of us and the whole country. It has come to my notice that Section 34(9) of the published Elections Act of 2011, Act No.24 Laws of Kenya has added words that were not passed in this House. The words “not” “presidential” “deputy presidential” were added to my amendment which I moved in this House at the Committee Stage; the effect of which is to completely negate the amendments that we passed. I want to table in this House the Kenya Gazette Notice for Bill No.34 which was the Elections Bill; Clause 35(9) which had said the party list shall not contain a name of any candidate nominated for an election under this Act. I table that Section of that Bill.

(Mr. Mungatana laid the document on the Table)

I also want to table the Notice that I filed on Friday, 26th August, 2011; my notice to amend, Notice No.221, in which I proposed to amend Clause 35 of the Bill by amending Sub-Clause 9 to delete the words “shall not” and substituting therefor the word “may”. I table it!

(Mr. Mungatana laid the document on the Table)

I also table a copy of the HANSARD, dated 26th August, 2011 at page 31 showing that the amendment was carried by the House at the Committee stage.

(Mr. Mungatana laid the document on the Table)

Finally, I also want to table a copy of the Act that has now been published, and which shows a completely different wording of Section 34(9) which has added the word “not” and further added the words “presidential or deputy presidential” and therefore completely negating the work of this House.

(Mr. Mungatana laid the document on the Table)

The effect of this is that all the work that we did, despite the fact that even the HANSARD carried everything clearly--- Somebody either within the administration of Parliament or the Government Printer inserted words that were completely not there. They were not in the HANSARD. The effect is to make it impossible for any political party to include in the party list their contenders for presidential and deputy presidential seats. But they can include all the other members who are contesting seats in the Senate or the House. This defeats everything that this House had passed. It is very serious because we spent hours here and we debated this issue at the Second Reading. At the Third Reading, I moved an amendment and then the Government Printer brings out a completely different law from what we have passed.

I want to request the Chair to do two things. First, just like in the case of the Political Parties Act error that was done and the point of order was raised by Mr. Imanyara, the Speaker at that time ruled that it must be returned immediately to the Government Printer and a corrigendum be done so that the proper Political Parties Act is re-published, I would request that, that remedy be visited on this Elections Act, 2011.

The second remedy is this: I would request that as you visit on this point of order, that you must now conduct an investigation, both in Parliament and outside at the Government Printer. That is because, obviously, this is not a small comma mistake. This is not a dash! This is not an exclusion! These are clear words that were done and added with a clear intention to undermine what Parliament has done - in fact, to have the immediate negative effect of what Parliament had passed.

Mr. Deputy Speaker, Sir, it is too serious. I would want as a second remedy for these investigations to be carried out. The officers, if they be in Parliament or at the Government Printers, be found. Appropriate consequences be visited by this House on those officers.

Mr. Deputy Speaker, Sir, I am not now sure that all the amendments that we passed in this House very fast and celebrated that we beat the deadlines of the Constitution were done properly. It appears that officers of the Government - when we pass something different - go and insert other things which have nothing to do with what Parliament has done.

Mr. Deputy Speaker, Sir, I table this documentation and urge that you take appropriate action.

Ms. Karua: Mr. Deputy Speaker, Sir, while supporting the point of order by the Member for Garsen, I also want to state that I went through the Election Act and what struck me--- I must first say that I have not as meticulously as the Member of Garsen compared the various copies. However, having been a Member of the Constitutional Implementation Oversight Committee (CIOC) and having been a Member of the sub-committee that prepared the amendments to this Act, the penalties for offences related to elections are not the same penalties we proposed. Particularly missing is the additional

penalty that after serving a three year jail term, a person will not be eligible to be employed in the Public Service for ten years.

Mr. Deputy Speaker, Sir, I am urging that this particular Act be scrutinized thoroughly against the HANSARD so that it reveals many other errors which appear to be a deliberate scheme to alter the contents of the Act.

I am saying that all the Bills we passed during that period now become suspect because we do not know which Bill has been passed as it was and which is not authentic. I am, therefore, urging that the House does scrutinize all the Bills passed during that season when we were doing things in a hurry, against the contents of the HANSARD. Otherwise, the integrity of the legislative process of this House has greatly been undermined. To restore that confidence, we need to be sure that each of those Bills is the one we passed and not somebody else's' imagination.

Mr. Olago: Mr. Deputy Speaker, Sir, the issue raised by Mr. Mungatana as to the discrepancy in what is published under the Elections Act, Section 34 (9), in my view, is not just an innocent error. What is disclosed is a deliberate and well orchestrated scheme by public officers, either in Parliament or at the Government Printer to falsify what Members of Parliament have deliberated and agreed upon. That is so serious that I urge the Chair to have a very serious look at it.

In addition to what has been asked by Mr. Mungatana regarding corrigenda to revoke the publication, I would also suggest that a proper investigation to establish who altered what Parliament had passed be done, so that appropriate action can be taken against him or her. An effort should be made to ensure that in future, none of this monkey business occurs again.

Mr. Deputy Speaker: Order, hon. Members! Indeed, the matters that have been raised by Mr. Mungatana and supported both by Ms. Martha Karua and Mr. Olago Aluoch are weighty matters. These are matters that are very serious in the opinion of the Chair. The Chair is also going to go through this documentation and go through the HANSARD and give a communication on the same on Thursday afternoon.

INADEQUATE ANSWER TO QUESTION

Mr. Chanzu: Mr. Deputy Speaker, Sir, about a month ago, I raised a Question in Parliament which was answered by the Minister for Transport, regarding an accident where a Master Newton Alenga Otiende died.

One of the issues that came up was that the matter would be referred to the Office of the Attorney-General for some of the aspects to be addressed. I would like to know whether the Attorney-General would be having the Statement now that he is in the Chamber.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, indeed, the agreement in the House was not that the matter was going to be referred to the Attorney-General. We were going to facilitate debate between the Member and the Attorney-General to look at the matter because the matter seemed to have gone through the court process but there may well be remedies outside, that could be facilitated by the Attorney-General.

I am still waiting for the Member to be available to meet the Attorney-General and we will take up the matter.

Mr. Chanzu: Mr. Deputy Speaker, Sir, there were two aspects to it. In fact, there is an aspect that was supposed to be addressed by the Attorney-General. I have already talked to the Attorney-General at length and he was ready to address the matter here.

There is an aspect that was being dealt with by the Minister and I think he did that. However, there is the aspect to be dealt with by the Attorney-General who is also a Member of this House.

Mr. Deputy Speaker Where is the Attorney-General?

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, I would like to get time to address that Question in another week or so.

Mr. Deputy Speaker: Mr. Chanzu, maybe you need to find time to sit down with the Attorney-General. You do not need the Chair's arbitration for you to sit down and discuss the matter with the Attorney-General.

Mr. Chanzu: No, I do not have a problem with that, Mr. Deputy Speaker, Sir. I just wanted to be clear because that is what was recorded in the HANSARD.

Mr. Deputy Speaker: Next order!

BILLS

First Readings

THE ENERGY AND COMMUNICATIONS LAW (AMENDMENT) BILL

THE KENYA SCHOOL OF GOVERNMENT BILL

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

Next Order!

Second Reading

THE PUBLIC SERVICE SUPERANNUATION BILL

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, this House adopts The Public Service Superannuation Bill (Bill No.24 of 2011).

Mr. Deputy Speaker, Sir, the current provisions for payment of pension benefits to teachers under the Teachers Service Commission (TSC), civil servants and disciplined services are under the Pensions Act, The Widows and Children's Pension Act and The National Social Security Fund Act. These Acts provide for pensions, gratuities or withdrawal benefits under various conditions---

Mr. Deputy Speaker: Assistant Minister, you are supposed to read the Bill as it appears on the Order Paper. You say "I beg to move that the Public Service Superannuation Bill (Bill No.24 of 2011) be read a second time" and proceed to contribute.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow):
Mr. Deputy Speaker, I thank you very much for the correction.

I beg to move that the Public Service Superannuation Bill (Bill No.24 of 2011) be read a second time.

There are current provisions for payment of pensions benefits to teachers under the Teachers Service Commission, civil servants and the disciplined forces are under the Pensions Act, the Widows and Children's Pension Act and the National Social Security Fund Act. These Acts provide for pensions, gratuities and or withdrawal benefits under various conditions stipulated in the respective Acts.

Mr. Deputy Speaker, Sir, over the years, the Government has been concerned about the need to provide for reasonable pension benefits to its employees on retirement from the Public Service, so as to ensure reasonable quality of life on retirement. To this end, the Government has made various efforts, including regular increase in basic salaries, on which pension is calculated; increases in actual pensions, et cetera.

The introduction of a contributory pension scheme for teachers, civil servants and disciplined services is a major step towards improvement of employee benefits by the Government. The scheme is compulsory to all employees below the age of 45 years as at 1st July, 2012, when the scheme is scheduled for introduction. It is optional for those over the age of 45 years as at the same date.

Over the years, the cost of maintaining the pension benefits for public servants has been rising rapidly, raising concerns about its affordability and sustainability. To illustrate this concern, I will highlight the trend of expenditure in pension costs from the year 1993 to 2009/2010 financial year. In the 1993/94 financial year, the cost was Kshs1.5 billion; 1996/97 financial year, Kshs4.23 billion; 2008/2009 financial year, Kshs26.1 billion; and 2009/2010 financial year, Kshs30 billion.

Mr. Deputy Speaker, Sir, this cost is projected to rise to Kshs100 billion by the year 2030. The Pension Bill takes approximately 7 per cent of Government revenue and about 1.4 per cent of GDP and is paid fully by the Government. From the above analysis, the Pension Bill places a substantially heavy burden on the Exchequer and is likely to be unsustainable in view of the country's current and projected economic growth.

[Mr. Deputy Speaker left the Chair]

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

Secondly, studies by the Government as well as actuaries show that Kenya is one of the few countries whose public service pension scheme is still non-contributory. A non-contributory pension scheme has other challenges, including the following:-

(i) low pension benefits to individual employees yet it has higher overall costs currently standing at Kshs30 billion with the lowest monthly pension being as low as Kshs3,000;

(ii) too many restrictions governing eligibility for payment of pensions, including loss of pension rights if an employee leaves the Public Service before attainment of the age of 50 years or is dismissed from the Service;

(iii) limitation of movement from the public sector to the private sector; and,

(iv) the non-contributory pension scheme has also held back employees who may wish to exit the service early and try their hand in self employment since such employees have to wait until they attain the age of 50 years to qualify for pension and consequently, the Government has been keeping employees who are better suited for ventures other than provision of public service.

Mr. Temporary Deputy Speaker, Sir, arising from the issues enumerated above, the Government engaged the services of an actuary to examine the Government Pension Scheme and recommend the way forward. The actuary studied pension expenditure and benefits trends since Independence and recommended that as a matter of priority, the Government introduces a contributory pension scheme and also raises the mandatory retirement age to 60 years.

These changes were expected to reduce the pension burden on the Exchequer and also halt further escalation of the Pension Bill in the short-term. The retirement age was raised to 60 years from April, 2009.

Mr. Temporary Deputy Speaker, Sir, the Public Service Superannuation Scheme has been designed in line with the requirements of the Retirement Benefits Authority (RBA). These include fund administration, fund audit, investment of funds and payment of benefits to members. Of particular interest is the fact that in order to ensure that employees and Government interests in the fund are taken care of, membership to the Board of Trustees includes key offices of Government and workers' representatives from various sectors of the Public Service.

As I have indicated in the opening section of this Statement, one of the major concerns that this Bill intends to address is affordability and sustainability of the Public Service pensions. Therefore, in the spirit of cost-sharing, employees must make a contribution to their own social welfare to ensure their livelihood when they leave the Public Service. In this regard, Government employees will be required to contribute only 7.5 per cent of their basic salaries. On the other hand, the Government will contribute 15 per cent of employees' basic salary. This is a fairly generous rate of contribution, which is double that of employees. Further, provision has been made for any employee who wishes to make a bigger contribution to their own pension accounts to do so.

Mr. Temporary Deputy Speaker, Sir, the Bill makes provision for the right to retirement benefits to any member who is already covered by the current pension scheme under Chapter 189. This right will be in the form of a recognition bond redeemable by the employee on exiting the Public Service under circumstances such as attainment of the age of 60 years or 50 years, or other circumstances allowing retirement as provided for in Clause 27 of the Bill. The bond further provides for 5 per cent national interest on the bond value.

The process of introducing this scheme to the Public Service has been long. It has involved consultations at various levels of Government, involvement of pension experts, bench-marking on other public services within this continent and outside, extensive engagement with public servants and the respective workers' unions, including the Kenya National Union of Teachers (KNUT), the Kenya Union of Post Primary Education Teachers (KUPPET) and the Kenya Union of Civil Servants (KUCS). This was to ensure that there is sufficient information, support and acceptance of the scheme.

Mr. Temporary Deputy Speaker, Sir, establishment of the Fund will provide a significant resource pool for investment in income generating ventures for the benefit of members and also contribute to stimulating the economy.

The purpose of this Bill is to establish the Public Service Superannuation Scheme, a contributory pension scheme for teachers under the Teachers Service Commission (TSC), civil servants, including the National Youth Service (NYS) and disciplined services – the National Police Service and the Prisons Service. It also establishes the Public Service Superannuation Fund, through which Government and members' contributions to the scheme and members' benefits out of the scheme will be managed.

With those few remarks, I beg to move and request that the Deputy Leader of Government Business to second the Motion.

The Temporary Deputy Speaker (Mr. Olago): Hon. Sugow, your seconder will have 20 minutes to second the Bill.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I rise to second this very important Bill, which aims at catering for our public servants in terms of their pensions and more importantly, to put within a legal framework what has been agreed upon administratively and what has been tried elsewhere, and which has been seen to work; and to bring our pension schemes in line with modern times.

Mr. Temporary Deputy Speaker, Sir, the Bill is straightforward. One of its highlights as the Mover did mention, is to move our pension scheme from defined benefits scheme to a defined contribution scheme. Workers will not be waiting for a pension officer to calculate for them what is due to them at the end of service. It is very clearly stated at the point of joining service how much a pensioner will earn at any particular time. This is exactly the situation we are in with our defined contribution scheme here in Parliament. We know that after serving one term in Parliament, this is the amount that will be payable to us as pension after two terms or three terms. You make your own contribution and the Government tops up. For example, it is very clear in terms of what an hon. Member will get and what the public liability will be. That can be worked out at any one time.

Mr. Temporary Deputy Speaker, Sir, right now, the situation we are in is obviously one where we are relying on computation, to be told the Government needs to provide so much for pension this year. When you look at the total liability it is quite amorphous. You are not quite sure of what you are liable for in the long term. Actuarial studies have been done basically defining some of those things. Once we pass this law, we will not only have solved the problem of uncertainty and unpredictability by the pensioners themselves, but also by the planners in terms of the Government expenditure in future.

Mr. Temporary Deputy Speaker, Sir, the other advantage of this is obviously that we are now tying the pension payments to the contribution by the hon. Member which is also tightly, earnings. There is rather that added advantage that any hon. Member who wants to earn more in future can sacrifice part of their earnings today by contributing it into the scheme which will then enhance their lifestyles in future.

Mr. Temporary Deputy Speaker, Sir, the other advantage that we see coming from this is obviously the fact that the whole world has moved. All the other schemes have moved, but the public service has been left behind. By passing this Bill we will actually

be harmonizing the pension scheme with other schemes, including the Parliamentary Pension Scheme which is worked on this basis of a defined contribution rather than the defined benefit.

The other obvious advantage is that apart from just relying on the administrative mechanisms of managing our pension, we will now have a legal framework in accordance with the Retirement Benefits Authority. I know there are several questions that have been asked on the Floor of this House with regard to pension payment. However, when you have this kind of scheme it will now be the scheme manager who will sort out the pension of the person as and when they retire rather than waiting for a Pensions Department to calculate. The scheme manager will determine whether this is payable or not and also determine the point at which the person left office. This is now very clearly defined. If this is your contribution and you retire on this day, it is clear how much you take away.

When you tie this to the other provisions that are already within the other laws that allow that people could even access mortgages based on their pension contribution as security, it will now be more clearer to our civil servants knowing that this is the amount of money they have contributed. This is what I expect in terms of my future cash flow coming from my pension in future. I can take part of that and use it as security to secure a mortgage which is available and allowed within the law.

As I said, this is a very straightforward matter. It is something that should have been done a long time ago. We are very happy that now the consultative processes have been completed and we are able to bring it to Parliament. We do hope that after Parliament passes it we should be able to get the implementation of it, so that our civil servants can now be brought in tandem with the rest of the world in terms of the management of their pension.

Mr. Temporary Deputy Speaker, Sir, I do not have enough time to go through all this. However, this is a very straightforward matter. I would want to end there and give as much time to the Members of Parliament to contribute to this so that we can fast track the process of giving civil servants their modern pension scheme that they deserve through the passage of this Public Service Superannuation Bill that is before this House.

With those remarks, I beg to second.

(Question proposed)

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, first of all, I want to take this opportunity to really thank the Minister for bringing this Bill before the House at this time. It is a good thing that finally this Bill has found its way to this place. There are a lot of very distinguished public servants who have sincerely suffered because of their pension arrangements, particularly for those of us who come from areas which are distant from Nairobi. It has been a problem for them. We thank the Minister for trying to put this law in place.

However, there are a few things that need to be clarified. This Bill is supposed to be a contributory public service superannuation scheme for providing retirement benefits to persons in the public service and connected purposes. The definition that “public service” has been given here means employment in the service of the Government. Then they talk about “by the Public Service Commission, by the Teachers Service Commission

as a teacher or by the National Police Service Commission or by other service that the Minister determines to be public service for the purposes of this Act”.

It has also been defined. “Government” means the national Government.” This Act does not mention anything about the county governments. It has completely disregarded the existence of public service within the county governments. In fact, I am surprised that in this Act they were able to capture the National Police Service Commission which we set up under the new Constitution. However, they failed to capture the issues regarding Public Service for the county.

We would want to know why the Minister has done that and what happens to the employees of the Public Service in the county governments because they also need this kind of security for their old age.

Mr. Temporary Deputy Speaker, Sir, the other thing that I would wish to bring to the attention of the Minister is the fact that this Bill is coded in wording that is embarrassing for us even to receive it in Parliament. Why are we talking about “the Minister”? These are the things that the Minister should not do because we are now in a new dispensation and we must shift our mental attitude from where we are to the new place. There is numerous mention of the word “Minister”. They have even said that the Chairman of the Board of Trustees shall be appointed by the Minister. What kind of law is this that we are debating in this House, so many months after the passing of the new Constitution? In every page, the mention of the word “Minister” continues. It is like they are not taking into account the fact that we have moved on. I do not know why the Minister would do such a thing because we are making this law for the future.

The other thing that I wanted clearly to be stated here is what has been referred to by the Deputy Leader of Government Business about mortgages and other connected purposes. I wanted the Minister to consider inserting a clause at the Committee Stage that will be talking clearly as to what a member of this superannuation scheme can do with the security that he will be having and his contributions within the Government. I am saying this because even private life insurance schemes make it clear within the contracts that you can use this after so many years or whatever time period as a security to secure mortgage facilities You can use this for this and the other purposes. Some of the schemes that are in operation allow you to use your savings for loans. But this being a scheme that is regulated by an Act of Parliament, you may find some people who are chosen to manage this scheme being very difficult and putting even rules that will make it difficult for the members of the scheme to use this in a commercial sense. We want that clause inserted at the Committee Stage that will make it clear for all the members who would wish to use this for commercial purposes, so that they can benefit just like a normal savings scheme that exists outside the Government. We know that sometimes the Government can be difficult and they will always fall back to the law establishing the services that they are talking about.

On Clause 10, I wanted to bring to the attention of the Minister the fact that the new Constitution has several commissions. I do not know why he has picked, in terms of the membership of the Board of Trustees, on just a few of them like the Teachers Service Commission, the Public Service Commission and the Inspector-General of the National Police. It seems the police were involved in this or maybe they are from the Ministry. They are everywhere in this Bill, but the Minister has left out others. I do not know what the justification is. We want to know why he has picked on particular commissions and

left out many others that in my opinion could have been part of the Board of Trustees. For example, certain essential services like in the medical sector and many other Government employees who are very important have been left out.

Mr. Temporary Deputy Speaker, Sir, in Clause 6(3), it is proposed that the Government's contribution is a direct charge on the Consolidated Fund. There are so many direct charges on the Consolidated Fund and sometimes I wonder whether you may be having money there because every time, we have pushed that and that there. I am not sure how this is going to be handled, but I thought that this could be part of the budgetary allocation for the Public Service Commission. It is safer that way because sometimes we may not have anything from the way I am seeing things. All the commissions are taking direct charge on the Consolidated Fund. We may not have anything and the Government may end up not having much to contribute, particularly given the debt levels that continue to rise.

I want to thank the Minister so much for Clause 29. I do not know how better else it could be done, but, at least, it addresses the problem of dependants. Once a contributor to the scheme has died, the dependants have so much trouble accessing these benefits. I am happy that there is a system where the Board of Trustees is the final adjudicator. They are the ones who will determine, after listening to the evidence, who is the rightful dependant. I was wondering though how convenient it is to convene a board of this nature to sit on such cases, which may be many. Is it not possible to improve on this? Specifically the Minister can think deeper on this with a view to improving it with a clause that suggests that the Board can donate those powers to a certain committee that will probably be more efficient in terms of handling claims. Cases of different people saying that they are the rightful owners may be too many. If you look at the Board that has been proposed, it has high powered people who may not be very available to sort out some of these problems. I was going to suggest that we improve on that section. The Minister can think about it and we can think about it together to make it easier for those who are going to have those kinds of problems.

Mr. Temporary Deputy Speaker, Sir, in Clause 33, the Minister has made the only mention to a county government. He talked about the transfer of services to a county government or vice versa. I was wondering in terms of improving that, so that there is more involvement and the whole concept of the county government comes in.

Mr. Temporary Deputy Speaker, Sir, I really wanted more thinking in this if the Minister can cover properly people who are going to be in public service in county governments, and, possibly, come out with criteria that will protect the people who will be serving there, so that we will not have problems, or will not leave this to each county government to do its own things. At least, let us also have rules and guidelines that will guide our county governments when they come into effect, hopefully in August next year after the general election.

Mr. Temporary Deputy Speaker, Sir, otherwise, I think this is a Bill that we need to pass and help the Minister to also think through some of the things we have mentioned. We need to support it and pass it as fast as we can, so that we can have a better Bill for our retired public servants.

With all those remarks, I beg to support.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Thank you, Mr. Temporary Deputy Speaker, Sir, for the opportunity. I want to say that I support

this Bill for one reason. For many years I have been very concerned about the manner in which the Government administers pensions for the public service. This House will recall that during the last Parliament I sponsored a Bill in this House to amend Sections 19 and 16 of the Pensions Act, Cap.189. Hon. Members are aware that most of their time has in the past been spent sorting out issues of pensioners, issues of those who do not receive their pensions on time and also dependants' pensions.

Mr. Temporary Deputy Speaker, Sir, even as I speak today, the Government has not fully implemented the provisions of the amendments which we made six years ago in relation to when pensions should be paid. This is about Section 16 of Cap.189. Many delays occurred after public officers retired and it was not possible for them to access their pensions. We effected this amendment to say that those public officers who could not be paid their pensions were entitled to be retained in the public service until such a time that their pensions were available. To date, we still have hundreds, if not thousands, of pensioners who retired, have not accessed their pensions and are not retained in the payroll.

Mr. Temporary Deputy Speaker, Sir, I recall, if I am not mistaken, that you have also been very concerned about this matter, because you similarly sponsored some amendments to the Pensions Act. Also in relation to dependants, we had said that where delays occur and dependants are not paid their dues within 90 days, the monies to be paid to dependants as pensions would be paid with interest accrued. I am sorry to say that to date the Public Trustee is holding billions of shillings belonging to dependants, which have not been paid. I think this Bill, therefore, makes an attempt to improve the administration of pensions. But I dare say that it is only going to improve the pensions for officers from now henceforth because they will be contributing. I would like the Minister, when responding to assure this House that provisions of Sections 16A and 19A of the Pensions Act are going to be implemented to the letter, and that public officers will be given their dues on the date they go home, failing which they will be retained in the payroll.

Mr. Temporary Deputy Speaker, Sir, similarly, the provisions of Section 19A which say that dependants' pensions should be paid within 90 days, failing which payments should be accompanied by interest, should be adhered to. The Minister should assure this House, when responding, that the provisions of these two very important amendments, which were made by this House, are going to be adhered to.

Mr. Temporary Deputy Speaker, Sir, one very important provision which this Bill does not address, and which I would like the Minister to address, is the one on public officers who retire and they continue to earn pensions calculated using very old formulas which make sure that those who retire early with lower salaries continue to get very low pensions. I have very many examples. We have public officers today who retired a long time ago, even up to the level of Permanent Secretaries, and their pensions are no more than Kshs5,000 per month. We have Permanent Secretaries retiring today earning pensions of more than Kshs100,000, yet they did the same job. Therefore, we must go along with what other countries do in the world. As you increase the remuneration of public servants who are serving, you also increase the pensions of those who retired a long time ago, so that their income is at the same level as the current cost of living.

Mr. Temporary Deputy Speaker, Sir, I say this because we have very many public officers who retired a long time ago and today they are living as paupers. They cannot

afford house rent. They cannot even afford electricity bills because their pensions are as low as Kshs5,000, yet they were Permanent Secretaries and Provincial Commissioners. This is an anomaly that must be changed; unless it is changed, we will continue to have public servants who serve and at the end of the day they live very poor lives, yet we expect them to live in the dignity in which they lived when they served.

Mr. Temporary Deputy Speaker, Sir, I think this is very important; even as we now go into the new regime of pension administration, which is going to be contributed by public officers, we must not lose sight of those public officers who served this nation many years ago, retired and today they are living in very difficult conditions because their pensions are very low.

I cannot over-emphasise this matter. I have spoken about this matter on the Floor of this House but the Government appears to do nothing. I have looked through this Bill and I cannot see anywhere, where it addresses the issue of old pensioners – people who served this Republic loyally for many years, yet today they are living poor lives because they earn peanuts as pension, while their counterparts who are retiring today are living quality lives.

Mr. Temporary Deputy Speaker, Sir, I think this is so important to me and many Kenyans. They expect that if a judge of the High Court retired 20 years ago he should be living the same life as the judge of the High Court who retired yesterday. We do not want a situation where a judge, Permanent Secretary, other public officer, or whoever, is earning nothing because he simply retired a long time ago, yet that one who retired today is earning different amount.

Mr. Temporary Deputy Speaker, Sir, so, I am emphasizing this because it is an anomaly. It is something that is not practised internationally. The Government must, therefore, adjust pensions as it adjusts the salaries of serving public officers. This will ensure fairness.

With these few remarks, I support.

Mr. Wamalwa: Mr. Temporary Deputy Speaker, Sir, I also rise to support this Bill. I wish to also say that this Bill is long overdue. Indeed, when you look at the local authorities, we have for a very long time, since 1948, had the Local Authorities Superannuation Fund. This is something that has taken care of those who have been working in our local authorities over the years. I was privileged to have served as one of the members of the Board of Trustees. Indeed, over time, we have improved the terms to ensure that all workers working in our local authorities across the country have a very well developed superannuation fund that ensures that their pension is not only safe and properly invested, but also accessible. For the public service, it is, indeed, the right thing to do to establish a contributory public service superannuation scheme for all those public servants who have worked over the years and have, upon retirement, had serious problems. In retirement, their families have suffered. To look at the provisions of this particular Bill; making it very clear in terms of payment of retirement benefits, is something that has been lacking.

Mr. Temporary Deputy Speaker, Sir, whenever people have retired, their families have suffered for long in terms of accessing what should have been easily accessed and defined in our laws. But with the provision of Section 28 in this proposed Bill, it is very clear that payments will be made almost immediately and the procedure of accessing those payments is very clear. As hon. Musila has said, in the last Parliament, there were

attempts to amend the Pensions Act to ensure that the payments are made within a specified period or immediately. But even after the proposed amendment by Hon. Musila was supported by the whole House and passed, it has taken time to implement and families still continue suffering. When you go to the offices that are concerned, you will find many families and civil servants who have retired travelling for miles to come to the capital city to line up. Over time, they have given up and gone back to the villages. Because of the hardships that they endure over time, many have died and left without accessing those benefits. So, we wish to support this Bill to ensure that all our public servants from now on will have a clear scheme that will be properly managed and a board that will oversee the management of those funds.

Mr. Temporary Deputy Speaker, Sir, as a country, it has taken us time to develop a policy as far as pensions are concerned. I did propose an amendment to the Retirement Benefits Act in this House. It was introduced during the tenure of hon. Mwiraria as the Minister for Finance, where access to benefits had been made very difficult for those Kenyans who retired or lost employment before their retirement age. I do recall when we brought this matter before the House. We did, after sometime, actually reach an agreement with the Government to ensure that, indeed, those Kenyans who have been affected - and there are many who have lost their employment over time - are able to access their benefits. They do not have to wait for ten or 15 years to do so. We do recall that the Minister for Finance did make an undertaking before this House that, that will be implemented and, indeed, regulations will be made to ensure that those Kenyans, particularly the young Kenyans who have lost their jobs, will be able to access their benefits.

Mr. Temporary Deputy Speaker, Sir, we are urging that when we pass this Bill, we do not wish to come to this House to debate and pass amendments the way hon. Musila's amendment was passed in the last Parliament and there is lack of will on the part of the Government to implement it. We do not wish that after raising the hopes of the very many young Kenyans who had been told that now it is possible for them to access 50 per cent of their contributions--- The employer that has contributed towards that particular scheme was not to withhold funds until one reached the magical age of 55. Recently, that retirement age was raised to 60 years. So, in this House, we did agree with the Government that public servants do not have to wait until they are 55 or 60 years. We are still waiting for the regulations that the Minister had promised to bring to the House so that, whatever we pass here is immediately implemented and the fruits of the legislation that comes before this House are actually enjoyed immediately by Kenyans. We do hope that after passing this particular Bill, the civil servants, their families and those who will survive them will be able to enjoy the fruits of this particular Bill that we are passing today.

Mr. Temporary Deputy Speaker, Sir, I do also concur with my friend, hon. Mungatana, about the obvious errors in the Bill. It is referring to Ministers when, in the new constitutional dispensation, we will be having Cabinet Secretaries. I do believe that some of these obvious errors could have been avoided if we had the Committee on Justice and Legal Affairs properly working. It would improve on the quality of legislation and avoid obvious errors that should have been avoided before this Bill was brought before the House. We have, over time, been asking the Chair and the Office of the Speaker to intervene in the matter of the Committee on Justice and Legal Affairs, so that

it is resolved once and for all. With the heavy legislative agenda before this House, the public is beginning to worry about the quality of legislation that we are passing in this House, especially, when we have heard about errors being noted in the various Bills. We are urging that the House should do something immediately to resolve the stalemate in the Committee on Justice and Legal Affairs, so that we can have it working. The Committee can then go through some of these Bills with a toothcomb before they come to this House. It is a matter of vital importance in terms of improving the quality of legislation in this House. The Committee should be facilitated and the stalemate dealt with once and for all, as we resume Parliament today, so that this very Committee can get working again and play its role.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Olago): Hon. Members, I now ask the Mover of the Bill, Maj. Sugow, to respond.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to respond. I would like to take this opportunity as well to thank hon. Members for supporting this very important Bill. This Bill has been long overdue as far as our public servants are concerned.

Mr. Temporary Deputy Speaker, Sir, most of the issues raised, particularly by fellow pensioners such as hon. Musila, are pertinent and this Bill intends to address them. Efficiency and reliability in terms administering the pension scheme in this country is the hallmark of this particular Bill. The technical issues raised by hon. Mungatana shall also be addressed during the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, I would like also to raise the issue which hon. Musila raised regarding the low pension being given to very old pensioners. I would like to tell him that I am his fellow pensioner and I earn Kshs8,000 having retired from the armed forces at the rank of a very senior major. Really, the issue is a very serious one, but it is one that needs to be addressed separately from this particular Bill. This particular Bill is dedicated to administering what is currently there. Pension is pegged on salary. Therefore, increasing it, it means addressing the issue of salary of someone who has already retired. That requires a lot of background work and consultations if we want to come up with such kind of justification.

Mr. Temporary Deputy Speaker, Sir, I would not like to take a lot of time. I would like to thank the hon. Members for the overwhelming support that they have given. I would like to assure them with the co-operation of the Ministry we will address all issues raised by hon. Members.

With those few remarks, I beg to move.

(Question put and agreed to)

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

THE INDEPENDENT POLICING OVERSIGHT AUTHORITY BILL

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Independent Policing Oversight Authority Bill, 2011 be read a Second Time.

Mr. Deputy Speaker, Sir, during our last remarks when we moved the National Police Service Bill, 2011, we did brief the House on the general background to police reforms which the Government has been implementing since 2009. I wish to reiterate that the reforms being undertaken are meant to transform our police services into professional and accountable security agencies that have the operational capacity to provide effective and efficient policing services to Kenyans.

Mr. Temporary Deputy Speaker, Sir, the commission of inquiry into post election violence, in its report, observed that whether justified or not, there is a perception in the community that investigations by the police of complaints against the police are neither independent nor appropriate. Therefore, there is need for police oversight by an independent body outside the police, with legislative power and authority to investigate complaints against the police and police conduct. The commission, therefore, recommended the establishment of a well researched legally based professional and independent police conduct authority for this particular purpose. As Members of this House will recall, my Ministry through a gazette notice No.8144 of 4th September, 2008 established a Police Oversight Board as an administrative intervention to address such concerns. However, the operationalization of the board was undermined by lack of a legislative framework on which to anchor this important oversight organ.

The National Task Force on Police Reforms, during its provincial public hearings and consultations with other stakeholders, received petitions on the need to establish an institution to oversee the police and to independently investigate complaints by members of the public against the police.

The public complained that the police were impartial when investigating their own on matters related to corruption, harassment of members of the public, criminal activities and excessive use of force and abuse of power among others. The task force further noted that the relationship between the police and the members of the public was undermined by lack of confidence and trust and had perpetuated the public perception that many complaints against the police went either unreported or inadequately investigated.

Mr. Temporary Deputy Speaker, Sir, the National Task Force undertook benchmarking visits to UK, Sweden and Botswana, and invited experts from South Africa and Nigeria to share information on best practices on management of public complaints against the police. It is against this background that the Independent Policing Oversight Authority Bill has been developed to establish an independent mechanism for dealing with complaints against police officers. The national values and principles of governance as enshrined in Article 10(1) and (2) as read with Article 244(e) of our Constitution, the establishment of this body is meant to promote public participation in policing and enhance good relationship with broader society as envisaged in the said Article. The Constitution also demands high standards of professionalism, transparency, accountability amongst the police and compliance with constitutional standards of human rights and fundamental freedom.

Mr. Temporary Deputy Speaker, Sir, the establishment of the Independent Policing Oversight Authority is intended to achieve the following objectives:-

1. To provide civilians oversight over the work of the police. Hold police accountable to the public.
2. To give effect to the provisions of Article 244 of the Constitution that police shall strive for professionalism and discipline and shall promote and practise transparency and accountability.
3. To promote the fundamental rights and freedoms contemplated in the Constitution in respect of policing.

The Bill has been subjected to wider and intensive public consultation and validation by a wide spectrum of stakeholders. The Bill also benefited from input from some Members of this House during a workshop for the Parliamentary Committee on Justice and Legal Affairs; Administration and National Security; and Constitutional Implementation Oversight Committee held in Mombasa sometimes on 19th November, 2011.

Mr. Temporary Deputy Speaker, Sir, with this brief background allow me to highlight some salient features of this Bill.

Part I of this Bill relates to the preliminary provisions of the Bill. It names the proposed Act and defines words and expressions used in the Bill.

Part II of the Bill relates to the establishment of the Independent Policing Oversight Authority; the objectives, functions and powers of the Authority, qualifications, disqualifications and procedures for appointment, and procedures for removal of the members of the Board of the Authority and the Director.

Clause 4 protects the independence of the Authority from any person or other authority. Clause 5 of the Bill sets out the objectives of the Authority. Clause 6 sets out the functions of the Authority. Clause 7 sets out the powers of the Authority. Clause 8 sets out the membership of the Board of the Authority. Clause 10 sets out the qualifications and disqualifications for appointment to the membership of the Board. Clause 11 sets out the procedure for appointment to the membership of the Board. Clause 13 limits the term of office of members of the Board to a one term of six years.

Mr. Temporary Deputy Speaker, Sir, Clause 18 sets out provisions on the Committees of the Board, while Clause 19 sets out the qualifications and procedure for appointment of the Director of the Authority. Clause 21 sets out the procedure for removal of a Director of the Authority.

Part III of the Bill sets out the procedure of lodging an investigation into complaints and steps to be taken after investigations. Part III, Clause 24, sets out the procedure for lodging a complaint before the Authority. The same applies to Clause 25 within Part III, which excludes investigations of matters before the court or judicial tribunal. Clause 29 sets out the steps to be taken after completion of investigations.

Mr. Temporary Deputy Speaker, Sir, when you go through Part IV of the Bill, it sets out the offences and their respective penalties; what is it that you are going to pay should you commit a crime? Clause 31 sets out the offences and their respective penalties.

Part V of the Bill relates to the funds of the Authority. Clause 32 provides for sources of the funds of the Authority. Part VI of this Bill sets out miscellaneous provisions, including the regulations which are supposed to be made. Clause 39 of Part VI sets out the various regulations to be met by the Authority for better carrying out of its functions.

Mr. Temporary Deputy Speaker, Sir, if you look at the First Schedule, it sets out the oath of office, and the Second Schedule sets out the rules for the conduct of business and affairs of the Authority.

Mr. Temporary Deputy Speaker, Sir, the enactment of this Bill into law will provide the public with an independent redress mechanism for their complaints against the police. The law will also enhance public confidence and trust in the police as it will clear the police from the public perception that they are impartial on matters relating to complaints against their own. The police will also benefit from this law as it will guard them against frivolous complaints.

So, Mr. Temporary Deputy Speaker, Sir, this particular Bill is quite important for both the public and the police fraternity. Those are some of the highlights I wanted to make, which we have put in the Bill. I believe that my colleagues will come out and support this Bill in its entirety.

With those few remarks, Mr. Temporary Deputy Speaker, Sir, I beg to move and ask hon. Kimunya to second.

The Temporary Deputy Speaker (Mr. Olago): Who is going to second your Motion, hon. Ojode?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Hon. Kimunya will second it, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Olago): Hon. Kimunya, you have a maximum of 20 minutes. I hope you will be able to finalize without exhausting that time.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to second this very important Bill. As hon. Members will recall, as part of the Bills that were necessary for the implementation of the Constitution, we did pass some two very critical Bills affecting the police force – one creating the service and one defining the commission and all that. The last leg of this three-anchored platform for the police reforms is this police oversight body. It was not part of the schedule of the law that needed to be passed within the first 18 months, but it is very important. The only reason it was left out when we were passing all the others was for the purpose of saving hon. Members' energy so that they can concentrate on all the other Bills. It fitted very perfectly within what needed to be passed at that point.

Mr. Temporary Deputy Speaker, Sir, it is a very straightforward matter as contained within the Mover's address. You cannot complain to the same people you are complaining about. That has been one of the weaknesses that have made people lose faith in our institution of the police. Whether the complaints they have are warranted or not, the fact is that you see a person in uniform and he is the one you are going to tell that his or her colleague has done something you did not like. People then feel intimidated. Creating this body will give people that confidence to make a complaint, or to pass on some information for action that is required as part of the reforms. There will be a depository where people will take information. All this is basically meant to improve and increase the public faith and confidence in terms of seeing that they have an oversight role themselves over their police service. We have moved from a police force to a police service.

Really, the way I look at it personally, it is the oversight body that will basically represent the entire populace, because we are all supposed to be the overseers of our

police service. But we cannot all sit and arbitrate; some of us will then – the few - be called upon to serve on this Board. They will be the ones doing the job on behalf of everyone else. But the public should never lose sight at any one point of the fact that they are the overseers of the police service, which is supposed to be serving them as a people. Whether through this or through the community policing or through local mechanisms like the county government, it is the responsibility of each and every one of us to ensure that the police service does what it should be doing for all of us.

So, Mr. Temporary Deputy Speaker, Sir, the Bill is rather straightforward; it has created the institutions and the framework. It has created the mechanisms for how people will report incidents. It has also created a situation where if action is required and is not taken by “A”, “B” will know what to do to ensure that reports do not just disappear, and that people will not feel that their work is not being taken seriously.

So, Mr. Temporary Deputy Speaker, Sir, I think with those remarks, I would really like to urge this House that we pass this third Bill; it is the third leg, as it were, of the police reforms platform, so that we can now move with speed to ensure that our police service is responsive to the needs of the *wananchi* of the future, and is in line with the new Constitution, the Vision 2030 and the aspirations of the Kenyan people.

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

(Question proposed)

Mr. Chachu: Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support the Independent Policing Oversight Authority Bill of 2011.

Mr. Temporary Deputy Speaker, Sir, I think this Bill will enable us to have a very professional, accountable and efficient police service in this country in light of our new Constitution. I also do think that it will enable us to have an authority which will have an oversight role over the police service. This will be the first time in this country that we will have an oversight authority really looking into the work of the police. In the past, the only recourse we had was to rush to court. Now, we will have an independent body which will be able to give *wananchi* a say in what the police do in terms of ensuring justice and fairness for all Kenyans.

Mr. Temporary Deputy Speaker, Sir, this Bill basically tries to provide a legislative framework on which we can anchor this institution called the Independent Policing Oversight Authority. It is very good for establishing that institution.

Mr. Temporary Deputy Speaker, Sir, this institution will also help us deal with complaints against the police. Kenyans from all walks of life will have an opportunity, a place or an institution to go to and raise their concerns about the police in this country, and this is welcome opportunity.

Mr. Temporary Deputy Speaker, Sir, I also do think that with such an authority, which will be independent and have an oversight role over the police, our police will be more accountable in how they will deal with *wananchi* on a day-to-day basis. Because of being accountable, I think, they will also be more transparent in their dealings with Kenyans; this is very much welcome under our new dispensation.

Mr. Temporary Deputy Speaker, Sir, the Bill also critically provides for necessary structures and mechanisms to ensure that this will be an independent oversight authority. I think this is very important.

Eventually when these systems are in place and the institutions well anchored and serving their mandate, I think Kenyans will have more faith in the police force. We will have more confidence in the work of our police. That will enable this country have a just system that will work for all Kenyans.

With those few remarks, I beg to support.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, first of all, I want to say that I am very happy with this Bill. Prof. Saitoti and Mr. Ojode have been very consistent and serious about these police reforms. They have been able to bring their Bills before this House.

Everything that is good can be improved. I wanted to start with this moot point about the county governments and the role that they need to play in the new administration of the Constitution. Clause 3 of this Bill talks about the headquarters of the Independent Policing Oversight Authority (IPOA) to be in the capital city of Kenya and the Authority to devolve its services to the counties in accordance with Article 6 of the Constitution. That is all they have talked about as far as the counties are concerned. I want to propose that when Government Minister's bring these kinds of Bills, they should think through some of these things.

Mr. Temporary Deputy Speaker, Sir, who are the people who suffer the most abuse? The people who suffer the most abuse from the police are the people in rural areas. Here in Nairobi you can run to a lawyer or to a senior police officer. In Mombasa you can get a senior police officer and they can help you. You can run to another Government officer who can assist you. However, out there in the rural areas, it is very difficult. That is where this IPOA is required.

It is not enough to say that you shall just devolve this Authority in accordance with the counties. We need to bring more clauses here in terms of appointment of the offices that will be operating in the county. I want the Minister to go and think about it. We can think about this together; the people who will be receiving complaints in the counties. Let us be very practical. In the county you have, for example, the Officer Commanding Police Division (OCPD). The OCPD is in charge of his officers there. Now, we want to have an equivalent person who will be receiving complaints of those misdeeds of his officers. Who will be appointing that officer? Is it, again, Nairobi to do the same thing?

Mr. Temporary Deputy Speaker, Sir, I propose that the governors must have a hand in appointing some members of this Authority at the county level so that these people can be able to truly report. In reality, it will be the same issue; the OCPD will be working with the person who has been appointed from Nairobi to receive complaints against the police. This person will probably be junior to the OCPD and in most cases, they will be able to hide those reports. This behaviour of protecting each other is there in the rural areas. Mr. Ojode, in his many travels across the country, should know that the police would protect their own. It is only normal; I would want to protect lawyers if I can and colleagues in this House if they have a problem. Therefore, we need somebody else who is outside that system, who can appoint someone who can genuinely receive complaints and say: "This and this officer has been harassing us". I need us to think about who will manage the county reporting desks.

Secondly, these complaints that are going to come against the police will be coming mainly from far flung areas, like the Tana County, for example, where I come

from. If we do not put deadlines, then a complaint might be recorded in Tana River County, transmitted to Nairobi and nothing is done. I have read this Bill and I have not seen anything called accountability. They have said: "The objective of the Authority shall be to hold the police accountable to the public in the performance of their function". But how is that going to happen?

Mr. Temporary Deputy Speaker, Sir, if a complaint is filed in Garsen, for example, that this and this officer has done this, after how many days should that complainant expect an answer? If it is filed in Lokichoggio, after how long and what action is supposed to be taken? What is this person supposed to know to show that something is being done? There is nothing in this Bill that gives mandatory requirement for action to be taken as soon as is possible. Therefore, it means that if we do not put it in law now, we have created a body that receives complaints and acts at its own time. It can agree to act after one month, two months or six months when they are supposed to be reporting to the Cabinet Secretary in charge of Internal Security.

The other point I wanted to make is that the functions of this Authority are to investigate, including making recommendations on disciplinary actions that need to be taken, to the Director of Public Prosecutions (DPP). It is also supposed to talk about compensation. After that, no biting power has been given to this Authority. Essentially, all this Authority will be doing is to make recommendations to the DPP.

In Clause 7 it is stated that if a police officer has misconducted himself, they can provide information for civil action to be taken by the person who has been injured. They also say that they can make recommendations to the DPP for the prosecution of the police or the person who has committed that offence.

Mr. Temporary Deputy Speaker, Sir, if you look up there in the Bill, they are proposing that amongst the powers this Authority will have, is to administer oaths or affirmations before taking evidence or statements where necessary. This means the kind of power they have is almost like that of a tribunal or a small court. They can take evidence under oath which is very good. The other power they have is to summon people; retired officers or serving officers, to appear before it and answer to charges.

Mr. Temporary Deputy Speaker, Sir, you understand this because you are a senior lawyer. If you are able to take evidence, have summoning powers, why is it that the only thing you would want to do is just give recommendations after that?

Mr. Temporary Deputy Speaker, Sir, we are saying that this is an oversight authority of the police. We know that some police officers serving in the rural areas have really mistreated people. We know for a fact that one of the punishments meted out to police officers if they mistreat people is to be transferred to far off places like Mandera and Wajir. However, when the bad officers go there, they do their things away from the people who could supervise them when they are nearer. So, we know that this is where the problem is in those far off areas.

Let us give this Authority proper power. If they can summon witnesses, take evidence and go through a mini-judicial process, then let them be given appropriate powers. If the Authority has to police the police officers, the place that it will bite them most is in compensation. There is the option of prosecution but compensation is also a good option. For instance, if an amount of Kshs50,000 for beating up somebody unfairly has been awarded, after evidence has been taken, this authority must have powers to deduct up to one-third salary of the officer, if he is found guilty.

If that one-third salary deduction is not enough punishment for this person and the injured person wants more compensation, they can go away from this tribunal and look for other civil remedies. So, this Authority must be given powers such that when an officer is told: “You have done this to me? You have done this to my daughter? You have done this to my son? I am going to report you to the Independent Policing Oversight Authority” the officer knows that the Authority is going to take the case seriously.

Mr. Temporary Deputy Speaker, Sir, that way, someone in the village will know that there is a place I can report a police officer who has miss-conducted himself and a police officer will know that if he is found guilty, he will not be transferred or just told that the DPP is making recommendations for him to be charged but rather the Authority can actually deduct a third of his salary straightaway because he has beaten up people or because he has arrested people unfairly or because he has mistreated somebody’s daughter or because he has mistreated somebody’s son. That way, police officers will be aware that they should not be joking with this Authority.

Therefore, I urge the Minister to seriously consider including such a clause in this Bill. If he does not do so, I will introduce it myself during the Committee Stage because we need to have this kind of thing, so that police officers can know that it is not a joke because, firstly, the Governor will be appointing someone to receive such reports. Secondly, if one is found guilty, one will lose one-third of one’s salary. Money talk makes everyone to be afraid of doing the wrong things.

Mr. Temporary Deputy Speaker, Sir, the other thing I want to bring to the authority of the Minister is the membership of the Board he seeks to create under Clause 9. He is seeking to create a board of eight people with the chairperson and seven other persons appointed by virtue of their knowledge and, at least, 15 years experience in the field of criminology, psychology, law, human rights, gender, medicine, alternative dispute resolution, security matters or community policing.

What I feel has been omitted here, and which we need to include, is that this Bill must have regional and ethnic balance. It is now a constitutional requirement to do so but we need to re-emphasize it in the law we are making because, in their minds, people are still so Nairobi-centric – that everything is all about people who are qualified and people we know. So, I would urge that such a clause be included in this Bill by the Minister, in a language he would want. If he does not do so, I will introduce it myself during the Committee Stage because we need to make a shift from the way Kenya used to be, where everything was Nairobi-centric to the new Kenya that we voted for in passing the new Constitution.

Mr. Temporary Deputy Speaker, Sir, in exceptional circumstances, regarding matters of national importance, the Authority can submit a report to both the National Assembly and the Cabinet Secretary in charge of security matters. This has been cited under Clause 7, Sub-clause 3. In fact, Clause 30, again, talks about the reporting mechanism to be adopted by the Authority. The Authority is supposed to report to the Cabinet Secretary after every six months. There is also a report which the Authority is supposed to take to Parliament. Technically speaking, there is need to polish up this Clause because which one is this report and which one is the other? If this one excludes those others, then there is going to be re-wording of this clause to take into account the regularity of the reporting provided for under Clause 30, so that this is married. It will look neater that way.

Another technical issue, in terms of the procedure of appointment under Clause 11, of course, in the first appointments that need to be done, there is the Office of the President, the Office of the Prime Minister, the Judicial Service Commission, *et cetera*. However, we are subsequently not going to have the Office of the Prime Minister and in the event of the filling of a vacancy that arises, there is no provision for the removal of that office.

Clause 12 of this Bill, again, says that whenever there is a vacancy in the Board, the procedure set out in Clause 11 shall apply. Now, that procedure, again, involves the Office of the Prime Minister, which will not be in existence. So, can some polishing be done? This is not the first law we have passed that has taken care of the Office of the Prime Minister in the first instance and in the second or third instance, it has been polished up, so that we do not have an irrelevant clause within the law.

Mr. Temporary Deputy Speaker, Sir, having pointed out the issue of the county, which I hope the Minister has taken seriously; and, having pointed out the need for making this Authority real to the people by making sure that there is a time limit within which to act on the complaints that may come from all those areas which are far away from the centre of the Republic, I beg to support.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I thank you for giving me the opportunity to contribute to this very important Bill.

Let me start by thanking the Minister for the very able manner in which he has presented this Bill in this House. I am excited because one of the areas which are to be addressed by this Authority is that of a demoralised police service. This Authority will be inspecting the premises where police officers live. You realise that currently, police officers live in very small houses with very big families. This is an area which needs to be addressed immediately, so that we can give moral support to police officers.

Mr. Temporary Deputy Speaker, Sir, sharing of houses has been an impediment to better performance by police officers. Sometimes police officers do not even have electricity in their houses yet electricity is a very important commodity whose supply should be constant. At times we have seen police officers' wives fetching water within the police stations. Again, this demoralizes the force. I think this will be addressed properly by the force.

Mr. Temporary Deputy Speaker, Sir, when you look at our police stations the compounds are bare and unfenced. To motivate these police officers, all police institutions must be fenced and gate fixed. They should also be painted. The first and very critical responsibility of this Authority is to make sure that the police force is re-energized and motivated to render efficient service to the citizens. Therefore, we must address all these issues to motivate them.

The issue of very low salaries within the force must be addressed. This has been a key element of corruption in the force. At times, the police are forced to man our roads so that they can get bribes to make their ends meet. This is not a good thing to do. I believe with the formation of this Authority these issues will be addressed.

We need also to address transport within the force. The Government has been making tremendous effort to improve transport within the police force, but they are still using very old and unreliable vehicles. Again, this Authority will also address that issue.

Mr. Temporary Deputy Speaker, Sir, on the appointment of members to the Board, the benchmark is too high. The Act stipulates that 15 years and above, will be the

criteria. You realize that there are so many graduates that have come out of our universities. They are now tarmacking. They are jobless in all towns with all that experience. Therefore, it is extremely important that we should open the doors for our graduates by lowering the requirement from 15 years to ten years of experience. That requirement is too high. It will continue to render our graduates jobless if it is not addressed properly.

On the membership of this Board, there must be fair representation. All regions must be represented fairly. The face of Kenya must be seen in this Board. On the citizen's treatment by the police, this has been a feature that needs to be addressed by the incoming Authority. *Wananchi* have been harassed, insulted and injured. This issue should also be addressed by the incoming administration. Indiscipline by police officers has been almost a permanent feature where the police misuse their firearms. At times, they are accused of hiring out arms to criminals. There is also the perception of criminal element in the force. This will also be addressed completely.

This Authority will make sure that we have a professional body that will direct security matters in this country. The new force, with the direction of the Authority, should be friendly, social and very humane in handling the affairs of the citizens.

During the last couple of years, the citizens of this country have lost confidence in our police force. I hope with the formation of this Authority, that confidence will be restored. Of great concern have been the deaths in prison cells where prisoners have lost their lives mysteriously. We need the Authority to address this issue comprehensively.

Recently, we have seen the disappearance and kidnapping of our people in the country. I hope with this very efficient and professional body some of these problems will be addressed and eradicated completely. I would like the Assistant Minister, Ministry of State for Provincial Administration and Internal Security to note that for the last two weeks Lari Constituency has been affected very badly by the disappearance of people. One of them is a teacher by profession. His name is Mr. Muhia Mwangi and he disappeared in Nakuru while jogging. Up to now, he has not been traced. The family is traumatized. We seem not to know what is happening. I appeal to the Government to do all that it can to trace him. I also wish to address myself to a *mama mboga* who also disappeared in my constituency last week while returning home. Her name is Ms. Agnes Njeri. With a very well co-ordinated and functional authority those traumatizing events will be addressed.

Promotions in the police force have also been a major problem. They have been riddled with nepotism. At times, undeserving persons are promoted. I believe this Authority will comprehensively address these issues and make sure that promotions are on merit only.

With those few remarks, I fully support this Bill.

The Minister for Lands (Mr. Orenge): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I will try to be as brief as possible. I know we have already debated the Police Service Commission Bill. However, I am not sure if it has been assented to by the President. If it has, then the issues on the terms and conditions of service of the police or other matters that affect the police, I will not dwell on that because they are appropriately addressed by that legislation because we did give our views during the presentation for debate of that particular Bill.

I would also wish to say that in supporting this Bill and welcoming the establishment of this Authority, that is the Independent Policing Oversight Authority, this time round I hope that the creation of this body will bring a change in the manner that will make the police accountable for the work they do. I am also conscious of the fact that there must be some balance because if we have an oversight authority like the one we are creating, if there is no sufficient balance on their responsibilities and the general mandate and functions of the police service, you may create a situation whereby the police feel that this authority is going beyond its mandate and making it very difficult for it to discharge its functions. So, from the outset, I hope that we will create that balance.

The creation of these oversight bodies sometimes can interfere or place hurdles against institutions which are very important. I want to note that in all democracies as we understand them today, without a proper police force and an efficient police force all the rights and privileges that every citizen has under the Constitution may be a figment of one's imagination.

Mr. Temporary Deputy Speaker, Sir, I want to tell a story. Once, I went to a police station trying to get somebody released because in my view, the arrest was unjustified. He had been kept in custody for a long time and the circumstances under which he was arrested were wanting and questionable. This was in Nakuru. As a lawyer armed with the Constitution and all manner of tools of trade, I told the police officer in charge of the province that it was against the law to hold that particular individual for more than 48 hours and the offence that was recorded or the allegations contained in the occurrence book (OB) were of such a nature that they would not amount to felony. It was just a simple misdemeanor. I tried to argue my case out and I tried to impress upon the police officer that it was against the Constitution and the law to hold a citizen who had not been charged before a court of competent jurisdiction for a longer period than is necessary and without being taken to court. This police officer told me that "you may know the law, that is your problem, but as far as I am concerned and being a police officer, I only understand power. Now that I hold the power to detain and keep this man in custody, you can go to court if you wish or you can go anywhere and make the report". It was very frustrating because we tried to come to Nairobi and make those complaints to other higher authorities but, of course, those were the days of very authoritarian rule. We were not able to get anywhere. With the creation of this Authority, there should be a difference.

I want to echo what hon. Mungatana was saying that if we have an institution like this which is based in Nairobi and is not well spread out, and we know most of the abuses are taking place in the rural areas, there cannot be any value in the creation of an authority like this one. Indeed, now that I see hon. Affey here, it reminds me of another incident when I went for a case in Mandera. Those days, it was the District Commissioners who used to conduct criminal proceedings. I had been instructed by some very well to do citizens from Mandera and they actually put me on a charter flight to Mandera. These individuals had stayed in custody for nearly six months, they had never been charged, they were still in a police station and other than the District Commissioner, there was no other judicial board to complain to or file an application in the neighborhood. In Garissa, there was not a judge of the High Court and I believe the situation is the same. So, imagine if you are being persecuted, arrested falsely or falsely charged or detained in Mandera and the Board is based in Nairobi. By the time you get

your complaint lodged and they get the relevant information and documentation, it will be a year or two. I can tell you that the injustice that relates to police abuses are injustices that relate to human rights. When human rights are abused, they should be corrected expeditiously if not immediately. I would encourage the Minister - this is something I heard him whispering - that it may be an administrative process, but it needs to be put in place as quickly as possible, so that if I have a problem in Siaya, I do not have to travel all the way to Nairobi to lodge a complaint or if I was in Lodwar, I do not have to come all the way to Nairobi. Otherwise, it may not serve the purpose for which it is being established.

As I speak, there is the Kenya National Commission for Human Rights. I have represented this body in court in instances where they have been denied access to police stations although their enabling legislation gives them power to enter into police stations and to make inquiries and make a determination not only at the status of police stations, but on the basis of those who may be detained or in the course of their duties, when they are dealing with complaints. I can tell you also that I did not have a very good experience in that because neither the court, nor the police authorities would accede to the fact that there was a new dispensation; a new way of thinking and a new way of looking at the law that gave certain powers, especially on monitoring abuses and violation of human rights, that this role now was directly with the Kenya National Commission for Human Rights. But that did not impress the police officers that I dealt with.

I hope that with the sequence that we have seen of how this legislation has come about, namely, we began with the Constitution, a very different Constitution from the one we had, the one we repealed last year, which recognizes the centrality of human rights as opposed to what was described in the previous Constitution as national interest or security considerations which most of the time were interpreted to override considerations of human rights. But we have an entirely new way of looking at things and a new worldview. The Minister did very well that as a consequence of the new Constitution, he brought two very important Bills basically to reform the police service. Without a reformed police service, this kind of legislation may not be very useful. I heard my colleague, the Assistant Minister, Ministry of State for Provincial Administration and Internal Security, earlier when he was presenting this Bill, although I was not in the House and I think he got everything right, but now he is changing the spirit of this law into action.

We all the time must look back into our history to understand why we are making all these changes, why we need a new police force with a very different kind of outlook with different values as enunciated in the Constitution. All this legislation is coming about because of the past; the history. I am very happy that for once, we have now an Inspector-General and a Police Service that will not be answerable or accountable to any Government in place except to the law and the Constitution, and not to any political outfit or formation. It is true, let me not go overboard, I think they will be accountable to some extent to a Government which is properly elected and is doing the appropriate work, but we now have parameters which are well established. We should never go back to the days when the police were used as a vehicle of carrying out oppression, intimidation and harassment. I, for one, had many of these experiences in the past, but that is now history. Let us look to the future and let us have regulations and systems that will make sure that this Board is going to be felt at the grassroots level.

With those remarks, I support.

Mr. Affey: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support this Bill. I feel very passionate when I want to discuss a matter like this, particularly a matter that concerns the police, not because of anything but because of a bad history, bad feelings and in some way deep hatred for the security organs – pathological hatred, in fact - because the security organs which are meant to protect the people torment them. Therefore, there is a reason why this oversight authority is welcome. It is a welcome move.

Mr. Temporary Deputy Speaker, Sir, in the part of the country I come from, at times when parents want their children to sleep early, and perhaps they wanted to take time to play around, the parents have only to mention the name of the police to force them to go to bed. Instead of the police coming to provide comfort, they are a sign of terror and fear. Children are told: “The police are coming and so you must sleep. I will call the police if you do not sleep”. So, children know what the police are supposed to do. The police are an instrument of terror but that was the past. We now have a new Constitution; we are happy that we passed it because it liberated a great section of this country.

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

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

Mr. Temporary Deputy Speaker, Sir, for this oversight authority to actually be a very useful tool, as it is expected to be, we must retrain all the police officers. If we do not retrain them and this Board comes into place, you will have complaints every minute, because people are hungry for a place where they can take their problems. Every other second, they will register a complaint because of how the police behave even at the moment, not in the cities but in the countryside, where the focus of the senior officials might not be very evident. So, there is need to retrain them. We are establishing this oversight authority in order for it to assist the citizens of this country to have a place where they can ventilate their problems. For it not to be too busy an authority, you need, therefore, to start from the police themselves.

I agree that they need also to move this headquarters from Nairobi because every other thing that we have established, we have done so in the capital, and it is important maybe to see--- If you do not move it, decentralize it. If you decentralize it, do not have any board to appoint the people who will be in this Oversight Authority. We should give it to the governor and his cabinet, because now we have a new dispensation. The governor is constitutionally mandated. Give the governor an opportunity to appoint experienced people who live in that county, and who can have the trust of the local community. That way, people will be able to give their complaints to it. We should not have to reinvent the wheel.

Mr. Temporary Deputy Speaker, Sir, on the timeline, I agree with the Members who said that there is no timeline. If I take a complaint to this Oversight Authority, within what period of time will they be expected to act so that my complaint will have been

addressed? We have this problem in the North Eastern Province. You will see today what is happening. The main engagement of the police is to round up youths in North Eastern Province for two reasons. First of all, if you do not have a national identity card, it is a crime in this country. So, if you are in Wajir, the police business is to look for youths who do not have identity cards, and they are very many. Whose business is it to provide these identity cards? The same Government should have provided identity cards to the youths, but you will see the police patrolling Wajir, Mandera and Garissa particularly in search of youths who do not have national identity cards. They ask: “*Wapi kipande? Leta kipande*”. They can take them round and round the whole night and until the following day when a senior citizen, or a parent who is known, intervenes and that kid is released. But he has already suffered for 15 to 20 hours in detention. If he complains, there is no timeline within which that complaint should be addressed. For instance, the youths could be entertaining themselves and having *miraa* engagements in their sessions. Then after that, they go home. But they get arrested and accused of loitering. So, these petty offences, which do not amount to serious crimes, are used by the police, particularly from the part of the country where we come from, as a business enterprise to extort money from the youths. Some of them even go to the extent of taking their wallets and saying: “*Kaa chini*”. What do you have? *Leta*”. When the youth lose their money, they complain and there is no timeline within which to address that complaint. So, it is important that we have a timeline.

Mr. Temporary Deputy Speaker, Sir, I am so concerned, particularly with the article that concerns the appointment of the Board. There is a provision that says for one to be qualified to be appointed, he must be a degree holder. Why do you require a degree? This is discrimination in itself. Why do you discriminate against thousands of Kenyans who could be retired police officers, retired military generals or retired civil servants, who may not necessarily be in possession of a degree? Here, you are saying that for you to be qualified, you must have a degree.

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

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

I intend to move an amendment to remove this if you do not propose an amendment yourself. This is because the nature of the work they will do will need men and women who have the trust of the people, who have wisdom and who are respected in their communities or in the country, so that when I go before them, I know that I am going before a very serious group of honest, sincere Kenyans and not necessarily Kenyans with degrees. You can get people with degrees but they are criminals and they end up in this kind of a committee. So, it is important, therefore, that this is removed in order to give an opportunity to many Kenyans who may not necessarily be in possession of a degree, but who have the capacity to serve. This requirement is in Article 10. It says that you must have a degree. It is very strange.

I do not know whom you have in mind because maybe the people whom you want to appoint are degree holders. Therefore, for them to be qualified, you want to lock out

Kenyans who can serve in this committee. I am concerned myself because it is a practice in this country now where the so-called committee that will be appointed by the President and the Prime Minister to vet these people is a very--- There is a trend emerging in the country that the President and the Prime Minister appoint people who themselves have not been vetted and whose interests we do not know. They go to those committees with instructions. They know it is already predetermined who the appointees are. Today, the President and the Prime Minister, through their proxies, will know who these Kenyans will be. Then you end up appointing people through of lobbying and you leave out other qualified people. This is a very dangerous trend;

It has shown in the way the current Government is negotiating for jobs between the two principals. You might end up discriminating against a huge majority of Kenyans. You have seen in most cases the people who get into these places. These are the older people who are members of a political party, or are friends of the principals. So, I think there is a culture of discrimination that we are trying to entrench through these appointments by using this trend. It worked for us for a time, but we seem to be making it a practice. That is why there is heat generated now by the team that is doing the recruitment of the commissioners who are going to manage our elections. That is because the panel itself is appointed by the President, the Prime Minister and other stakeholders. That is a panel of Kenyans who also have not undergone any vetting and yet, they are the ones who are vetting and determining those who are going to be members of the IEBC. Who has vetted them? In my view, that panel should come to Parliament for vetting. There are certain names that we would reject. If someone serves in one commission and then leaves to serve in another commission, therefore, the loyalty will be to the appointing authority and not the country. The loyalty will be to the principals and not the majority of Kenyans who want honest and sincere service. They take telephone instructions very easily. So, Mr. Assistant Minister, even as we welcome this Oversight Authority, the manner in which it is going to be established must be fool-proof and transparent. There must be an honest way of doing it.

Mr. Temporary Deputy Speaker, Sir, the Minister for Foreign Affairs is a lawyer and I know he has great passion. He has fought quite a number of battles for the people in the North. The Indemnity Bill that came here and which quite a number of people contributed to--- Actually, that Bill indemnified the police from any accusation, trial and complaint. It is a shame that that Act is still in our statutes. I brought a Bill here and we repealed it, but the President rejected it and returned it to Parliament for further discussion. It has been kept somewhere for almost a year and I do not know when it is going to find its way back to the Order Paper. So, that is the kind of history we have; of officers of Government who have been indemnified to do any crime under the sun. They kill, maim, rape and they are indemnified by the law. I am very passionate about this because we have a history of pain.

(Mr. Lessonet stood up in his place)

Mr. Temporary Deputy Speaker, Sir, I support this Bill but, please, educate the officers before this Oversight Authority is established.

I beg to support.

The Temporary Deputy Speaker (Mr. Olago): Mr. Lessonet, you stood before hon. Affey finished. You are out of order! Hon. Wetangula!

The Minister for Foreign Affairs (Mr. Wetangula): He is still learning, Mr. Temporary Deputy Speaker, Sir.

I support the Bill and the sentiments that I have heard from my colleagues who have spoken before me.

Mr. Temporary Deputy Speaker, Sir, I have practiced law in this country for a very long time. For many years, I literally used to be, perhaps, the only lawyer who used to practice law in northern Kenya, before District Officers (DOs) and District Commissioners (DCs). It used to be a very difficult experience. There is one time I went to Mandera to represent a client. The family had chartered a single-engine aircraft. I arrived in Mandera and went to court which, of course, was the DCs office. The magistrate was the DC and the prosecutor was a policeman working under the DC. He was an Administration Police. When they heard that a lawyer had arrived in town to represent the accused person, they sent the police to stop me from leaving the airport for a reasonable time. In the meantime, they rushed through the trial and, by the time I arrived at the DC's office, my client had been sent to jail for ten years on very spurious charges by the DC. That was replicated in many places. That is why, in the new dispensation, we have deliberately changed the description of the police from a force to a service. That is because it is supposed to give people service and not to exert force on them. I also remember one day in my first three years in practice. I went to Central Police Station, Nairobi, because a client had been arrested and locked up there. When I arrived, I walked straight to the office of the Officer Commanding Station (OCS). The first thing he did after learning that I was a lawyer was to stand up, physically assault me and kick me out of his office. Of course, they went on to do mischief against my client.

Mr. Temporary Deputy Speaker, Sir, we have come a long way. Now people know their rights. They know where to go when their rights are violated. But as you know, being my senior, we always have this maxim in law; that who will watch the watchers? The police are watching on us and we must have somebody to watch over the police, hence, this Oversight Board. I think in having this Oversight Board, we must be very clear in what we want to do. I think the idea is very good, because when there is police misconduct within themselves, you will find that a constable who has been wronged by a senior has to go to the same senior to complain for redress. It becomes very difficult to get justice. Sometimes, you will even find young and junior police officers who, in being overzealous in doing their jobs, stumble on the interest of their seniors and with the greatest respect to northern Kenya, you will find people are deliberately transferred and told that they are going to work in some place on disciplinary grounds. I do not believe that working in any part of this country would be a disciplinary issue, because we must respect everywhere. But when people are shuttled around because they disagree with their bosses, again, you need an external force to check on this. But hand in hand with this, I think the Minister must note that to get the police to do their work properly, we must also make it possible for them to do their work properly. If you have a police unit in North Horr, which has vast distances, has one Land Rover and is supposed to track down cattle rustlers, border insecurity and many other things, it becomes very difficult for you even to expect them to discharge their duties and responsibilities effectively. I have said, and I want to say it again, that the police commanding a station in

North Horr do not need a Land Rover. They need helicopters to do their job. The police in Turkana need helicopters to do their job. If you give him a Land Rover and he has to travel up to 3,000 kilometres to track down cattle rustlers on bad roads and terrible terrain--- Sometimes, from one station to another, if they are not carrying several drums of fuel, they will run out of fuel on the way and, in the meantime, the criminals will disappear. So, as we want to get the police responsible, we must also make it possible for them to work effectively and properly. Today, criminals are very sophisticated. To fight them successfully, you must have the police a step ahead of them all the time, if we have to get these things done.

Mr. Temporary Deputy Speaker, Sir, when you have such an Oversight Authority, then we must also make it a just body. First, I do not think that this country will move forward if we start digging yesterday's graves. I think we must have a starting point where this Board is going to start and move on. That is because if we say that any police officer who was wronged 20 years ago can now be dragged before this Authority or Board, then it will not work. I know we have legislation in the Constitution against retrospective application. But unless it is clearly stated at the starting point, people will not get to know because they are not lawyers. At least, we must make it clear that those who were wronged ten years ago may not find redress in this Bill when it is passed, so that we can move on. A different mechanism should be found in compensating those who were wronged before this law comes into place other than using this law.

Mr. Temporary Deputy Speaker, Sir, secondly, I agree with hon. Affey that an Authority such as this is *quasi* judicial. Therefore, it should not be given an open-ended operational timeframe. When a complaint is made, the rules that will govern the operations of the Board, which I do not expect to be in the statute, must be very clear in the format of the complaint. The complaint must be dealt with and concluded within no more than 90 days given the fact that they have to gather evidence and so on.

Mr. Temporary Deputy Speaker, Sir, thirdly, I have not seen that, but it may there, because I have just had a casual look at the Bill, I would expect that the redress of judicial review lies to any member who appears before the Board and is not satisfied with the outcome of the complaint. So, they should be able to file applications to the High Court for judicial review of any decision of the Board, if they are dissatisfied on matters of procedure and so on and so forth. We all know, and being a lawyer, what judicial review entails. I think we need a provision for that.

Mr. Temporary Deputy Speaker, Sir, fourthly, I think that if this Board will serve Kenyans effectively, perhaps, saying they open a unit in each county is overstretching, because we must also be conscious of the desire to limit the use of resources, so that they go into developmental issues. However, I think that clustering several counties and giving them a unit to deal with matters, because you know when you talk about police division, they do not necessarily follow administrative boundaries. So, the Police Oversight Authority can follow the cluster of police divisions. For example, we could say, a number of police divisions in this region will be clustered under one unit and they will have one outpost there of the Authority to deal with the day-to-day complaints. Therefore, all over the country, we can end up with about ten or devolved units of the Authority working full time to deal with these issues. Again, we do not want to overload a centre. Nairobi is so overloaded with many things that we should not be overloading it any more with operational issues. I would expect counties in what used to be called Western Province,

which has since disappeared with the new Constitution, can have one unit. The current Nyanza Province can have another unit. The current Central Province can have another unit. The current Coast Province can have two units because of the physical size of the area. The current North Eastern Province can have two or three units. The Rift Valley Province can be broken into four or five units. With these units, we can give proper services to *wananchi*.

Mr. Temporary Deputy Speaker, Sir, the point that hon. Affey raised is also very important. There is this new obsession and mania in this country about degrees. When you are dealing with a body like this, you are looking for just and honest people. It is very good that the Chairman is a person qualified to be a judge of the High Court. I support that because it is a *quasi* judicial. I would urge the Minister that the Secretary of the Board should also be a lawyer. This is because he is going to engage in recording proceedings that maybe challenged at a higher level. Therefore, you need somebody who is qualified in *quasi* judicial proceedings who can keep a proper record. When you go for judicial review, you are not just going to complain that you are not treated fairly. You are going with a record and the record must have been properly kept if you are going to challenge them, because it is not a factual court any more. So, I would suggest that the Secretary to the Board should be a lawyer, not this cluster of criminology, administration and so on. We need somebody properly qualified to sit before the Board, record evidence and observe even the demeanour of witness who appear so that when there is a challenge, the court of record can be able to address these issues properly. I think that will help

On the issue of the composition of the Board, while it is as good as everybody says that people possess degrees, but we have a lot of qualified Kenyans who do not have degrees, but have gone through education properly and can be very just in the discharge of their responsibilities and duties on a matter as important as this. I would want as to leave it open so that while you have university graduates on the Board, there are Kenyans out there, very able men and women who through the school public opinion, through the school of public experience, can be very valuable to a Board like this. They can tell just from unjust. They can tell wicked behaviour from good behaviour. Therefore, let us give them opportunities to serve on this Board. The majority of people in this country are eager to serve although they do not have degrees. We have looked at the teaching fraternity. We have very able teachers who have gone through approved process to become head teachers without degrees and they have done wonderful jobs. We also know we have graduates who do horrible jobs. We have graduates who cannot even explain themselves. We have graduates who do not even appreciate facts. So, let us leave it open to many Kenyans. If the Chairman of the Board is a judge, and that is why as a colleague lawyer, you know very well that when we have been doing murder trials, a judge sits with assessors, who are none lawyers, none degree holders, but they help to come up with very just decisions. Look at the trial by the jury in the United States of America, those members of the jury are not chosen on the basis of their degrees. They are chosen on the basis of their integrity, and the capacity and ability to appreciate and differentiate between guilt from innocence and then pass correct decisions. I want to urge the Minister to consider that point and see that we have a mix of those who are well educated with degrees, and those Kenyans who did not have the opportunities many of us had, but are available to serve this country.

Mr. Temporary Deputy Speaker, Sir, one of the challenges we have in this country of course is inadequate training that we have been giving to our police force. As a new law like this come in that is going to affect their performance, in terms of complaints against them, I think the process of retraining that has been mentioned by previous speakers is very important.

When you look at the composition of the Board, there is a provision in Article 9(c) that the Chairperson of the Kenya National Human Rights and Equality Commission should sit on this Board as *ex-officio*. I think not. I think he or she should not for the simple reason that the Chairman of the Kenya Human Rights and Equality Commission will be heading a Commission that will be looking about violations of human rights, including violations of human rights by such a Board. If that Chairperson sits on this Board, they will find themselves in a position conflict and, perhaps, embarrassment when a complaint about somebody's violation of human right from the conduct of this Board ends up with the Commission. So, I would suggest to the Minister that there is absolutely no need to load the Chairman of the Kenya National Human Rights and Equality Commission, because he or she sits elsewhere that that has authority over human rights of Kenyans in this country, including members of this Board and those who go before it. So, I would suggest to the Minister that he should delete the provision proposing the membership of the Chairman to the Board. If that those were done, in my humble submission, the idea is good, the body is good, and I think it can give this country a way forward as we move from a police force to a police service, service to the people of Kenya.

With those few remarks, I beg to support.

Mr. Lessonet: Thank you, Mr. Temporary Deputy Speaker, Sir, for this opportunity that you have given me to contribute to this Bill.

Mr. Temporary Deputy Speaker, Sir, I am very excited that such a Bill, or such an Authority, is coming into being. My colleagues have been talking about injustices in north eastern, but I want to quote a very recent case in Eldama Ravine Constituency, where in one year alone – in 2010 – we lost three Kenyans in the hands of the police. It was so disturbing since it was so obvious to everybody that these Kenyans had died, one because of being shot by Administration Police officers; the second one died while in custody of officers in Gatarakwa Police Station; the third one died while on a police Land Rover.

Mr. Temporary Deputy Speaker, Sir, just as the previous speaker said, that we want a new beginning, I am one of those who want this beginning; the beginning of this proposed Act and the beginning of investigations going as far back as any complaint can be raised. I will be the first one to take those three victims to this authority, so that justice may be done against those police officers who killed these three Kenyans. The families of those Kenyans today have not forgotten about the deaths of those three Kenyans, while the same Administration Police officers are still enjoying themselves in Koibatek Police Division.

Mr. Temporary Deputy Speaker, Sir, when I go back a bit to January, 2008, in Eldama Ravine Constituency, we lost eleven Kenyans to the so-called post-election violence to just about two or three Administration Police officers based at Eldama Ravine. They killed eleven Kenyans there!

Mr. Temporary Deputy Speaker, Sir, I have always been looking for the time when we are going to get justice for these Kenyans who were killed by police officers. When are we going to get justice for these Kenyans who fell into the murderous hands of those Administration Police officers? This is the right opportunity for us to be able to properly take such complaints to this Authority for their investigation and, of course, the prosecution of the perpetrators of those crimes.

Mr. Temporary Deputy Speaker, Sir, while this Bill looks as if it is going to limit the functions of this Authority only to the police service, I may wish to point out that there are other armed people in this country. You may wish to know that our Kenya Army is equally armed; you may wish to know that our prisons officers are equally armed. I also come from a district where the forest guards and the so-called Kenya Wildlife Service (KWS) officers are properly armed. If the Minister is the originator of this Bill, he should note that this Bill also covers such sectors as the prison officers, forest guards and even the Army. I come from Koibatek District where the forest guards are armed. If I were to tell you the injustices we suffer in the hands of those forest guards--- In fact, to our annoyance, they are not only carrying arms--- You know for a long time we used to hear about some rifles which, may be, can shoot up to 10 or 20 meters. They carry the real arms. They carry G3s, AK-47s. We have really suffered in their hands. When I tell you about some very poor communities in my constituency who depend on charcoal for their kids to go to school, who depend on charcoal for them to warm themselves up in the evening at home, every afternoon, including today, those forest guards will always pass by, collect all the charcoal and go and sell it for their own gain.

So, Mr. Temporary Deputy Speaker, Sir, I wish that the scope of this Bill is widened, so that it may also cover other armed groups, including the forest guards specifically. I may not have heard any complaints against the army or the KWS, but I have several complaints against the forest guards. In fact, Waziri, whenever we report them to your officers; the police, it looks like the police have no powers over them, because they are also armed. They are another armed sector of the Government. So, they are more or less another police service. So, if we can expand the scope of the Bill to include that, it will be good.

Mr. Temporary Deputy Speaker, Sir, as I continue to contribute to this very, very important Bill, I am shocked that your Government has, in the last one month or so, has been complaining of Kenyans dying because of *chang'aa* and traffic accidents. How many police officers have you prosecuted for the presence of *chang'aa* in a certain location? How many police officers have you prosecuted for the presence of *chang'aa*? If it is illegal for Kenyans to drink *chang'aa*, the amount of *chang'aa* drunk in Kenya per month is more than the production by the Kenya Breweries Limited per year! But there is no prosecution of those police officers and those Administration Police officers who allow *chang'aa* dens to exist. You might even be surprised that some *chang'aa* dens can even be in police stations. Why do they allow them to be there? It is because of the absence of an Authority like the one proposed by this Bill. Now that we are going to have this Authority in place, you will have to prosecute police officers in areas where you find rampant cases of *chang'aa*.

Mr. Temporary Deputy Speaker, Sir, when you hear about traffic offences, police officers--- Yes, I am sure you are aware that they run toll stations from Nairobi to

Nakuru. You are going to find about five toll stations. How many police officers has the Minister prosecuted for taking bribes?

Mr. Temporary Deputy Speaker, Sir, this Bill is going to give us an opportunity, so that any time you hand over a bribe of Kshs1,000 to a police officer, you will come to Nairobi and report that today, because you wanted to proceed with your journey, you handed over Kshs1,000 to this police officer in this station. Take action.” That will be the only way we can improve. That will be the only way we can have a first class police service.

Mr. Temporary Deputy Speaker, Sir, on the composition of the Board, I am really shocked that we are creating so many jobs for you, lawyers, including---

The Temporary Deputy Speaker (Mr. Olago): Order, hon. Lessonet! That is out of order. Do not refer to the Chair in those terms! This is law!

Mr. Lessonet: I apologize and withdraw, Mr. Temporary Deputy Speaker, Sir.

Mr. Temporary Deputy Speaker, Sir, I did not say, “For you”. I said, “For you, lawyers”. At every opportunity---

The Temporary Deputy Speaker (Mr. Olago): Mr. Lessonet, when you address the House, you address the Chair!

Mr. Lessonet: Thank you, Mr. Temporary Deputy Speaker, Sir. I have withdrawn.

At every opportunity, every Bill that comes to this House, we are just creating a job for a lawyer. When we talk about the Chairman of the Board, we are insisting that he must be in a position to be a judge. The previous speaker has even gone further and said that the Secretary of that Board must be a lawyer. I want to beg that all of us have done suitable courses. Even accountants like myself can serve in these positions which we seem to be creating for only lawyers and judges.

Mr. Temporary Deputy Speaker, Sir, so that all our taxes do not end up in paying salaries and allowances--- We are creating a very huge Government. This is a monstrous Government. We are going to have a Police Service and this other Authority on the other side and it is going to have its own employees. I want to beg that the Minister recommends that, for example, the chairman to this Board, which is not a full time job, can be one of the sitting judges. He only needs to come and sit twice or thrice in a month. This is because the Authority has its own employees to overlook the day to day functions of the Authority. When you want to have another substantive position and substantive person, I want to tell you we are going to run out of money to pay all these people in all these authorities.

Therefore, if we can go and even say that the Judicial Service Commission (JSC) can send one of their employees as a Board member, so that we do not look like we just want to fight the Police Service, let us allow them to send somebody to this Board so that they are also represented. I am sure most of the time the complaints look like it is from us; the public, but the police should also be given a chance to be heard. They will tell you the horrible things we do to them. Let us allow them to be represented in this Board.

(Mr. Shakeel and Mr. C. Onyancha stood up in their places)

Mr. Temporary Deputy Speaker, Sir, because it looks like there are so many hon. Members who want to contribute, that is my contribution.

Thank you.

The Temporary Deputy Speaker (Mr. Olago): Mr. Shakeel and Mr. C. Onyancha, you are out of order to stand before Mr. Lessonet finished. Sit down!

Mr. Ojode, please, respond to the debate!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Thank you, Mr. Temporary Deputy Speaker, Sir.

Let me start by congratulating my colleagues who have positively---

Mr. Temporary Deputy Speaker, Sir, I am being prevailed upon to donate two minutes or three minutes to some of my colleagues.

The Temporary Deputy Speaker (Mr. Olago): Mr. Ojode, as the Mover of this Motion, if you can donate, then you donate two minutes to Mr. Shakeel and two minutes to Mr. C. Onyancha and no more than that.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, it is my discretion to suggest how many minutes I should give. I will give not more than two minutes each.

The Temporary Deputy Speaker (Mr. Olago): Thank you, Mr. Ojode!

Mr. Shakeel, you have the Floor.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I want to thank the Assistant Minister for donating time us to contribute to this debate.

This is a great Bill and it has come after the Police Service Bill and the others. Our Police Service is one of the best that we have in Africa. If you go to see some of the bad ones, then you will realize what we have. However, we have beaten them, called them corrupt and so many things. I think now it is time that with the oversight authority, we will weed out some of the bad apples.

I must say that this Authority must also be able to assist the junior constables *et cetera*, who have been suppressed sometimes and whose complaints are not attended to. Sometimes they are punished for no reason. This is something which will enable us to restrict Administration Police (AP) and regular police officers, and especially APs. These are very qualified police officers but we post them to residential homes as *askaris*. That is one thing I have been urging during every contribution I make that we must stop using APs as *askaris*. They are not *askaris*. They are highly trained and experienced officers.

Mr. Temporary Deputy Speaker, Sir, one of the requirements for appointment to the Board is 15 years experience in various fields of specialisation. What about the youth? Every time we provide for 15 years experience as qualifications for appointment to a public body, we automatically cut out the youth. That is not possible. We are trying to bring the youth on board, and we must have them on board.

When we talk of degrees as qualifications for appointment, the *mwananchi*'s common touch must be there because it is *mwananchi* who will bring the complaints. So, *mwananchi*'s common touch must be covered.

Mr. Temporary Deputy Speaker, Sir, finally, in Kisumu, we lost 87 people during the post-election violence and I would be one of the first people to bring the matter of the killings back to the Independent Policing Oversight Authority. Eighty-seven people were killed by the police in Kisumu, and we have objections.

With those few remarks, and with much thanks to the Assistant Minister, I beg to support.

Mr. C. Onyancha: Mr. Temporary Deputy Speaker, Sir, I would like to thank the Assistant Minister for donating part of his time to us.

As I support this Bill, I wish to agree with my colleagues who have spoken before me about the need for it, especially in view of what happened previously in the Northern Kenya and Central Kenya regions especially – the extra-judicial killings. These are matters which need to be looked into. These are matters which can only be looked into best if we can also break down the representation of the proposed Independent Policing Oversight Authority to counties, as per the Constitution.

Mr. Temporary Deputy Speaker, Sir, due to lack of time, I would like to dwell on a few matters. One of them is that I am very happy about the objectives of this Authority. I have just come back from Brazil, where they have got the Office of the Public Defender, which is under *Ministerio Pablico*, who performs functions like the ones highlighted in this Bill, but to every *mwananchi* and not just for the Police Service. I wish we could have such a Ministry in this country.

I am happy about the transparency and accountability spelt out in this Bill. Indeed, this has been one of the problems with the Police Service and other institutions in this country. There has been lack of transparency and accountability. With this law coming into force, we will be able to have better service.

Mr. Temporary Deputy Speaker, Sir, under Clause 6(b), the Authority is authorised to receive and investigate complaints by members of the Police Service, and not just by the public. That is very good. However, in order for members of the National Police Service to be able to fulfil what is required of them under paragraph (g), which says that police misconduct may include failure to respond to *mwananchi*'s request for service, we must equip the National Police Service properly.

The conditions under which police officers live are pathetic. That is something which must be addressed.

Thank you.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, allow me to start by thanking my colleagues for having contributed to this important Bill. We have realized that a majority of my colleagues were just talking about transparency and accountability. If you go through the Bill, you will find that we have actually stressed on issues of accountability and transparency.

Mr. Temporary Deputy Speaker, Sir, on complaints against the police, hon. Chachu talked about the independent body and giving *wananchi* a chance to have a say. Actually, the whole Bill watches the police – wha it is that the police are doing wrong to *wananchi* at the grassroots level.

Mr. Temporary Deputy Speaker, Sir, you heard Mr. Mungatana saying that we must decentralize the services of this oversight body. Those are administrative issues. We will come back with administrative issues which will now make us decide on whether we go on counties or on the former provincial heads which are only eight; that is Nyanza, Western, Rift Valley, Coast, Central, Eastern, North Eastern and Nairobi. So, that should not be included in the Bill because you can change as time goes by. You can even decide to do offices within the 47 counties. You can even decide to merge some of these areas. So, that should be left as an administrative matter. We should not have any problems with that.

He also talked about the biting powers. The Bill gives a lot of powers to the members. They will be summoning police officers who go against the spirit of the Bill itself. So, I do not think we should have a problem with that.

My colleagues were talking about transferring officers who have made mistakes in their respective areas of work. It is no longer going to be business as usual. If a police officer makes a mistake without regard to the provisions of this Bill, there are clauses which will be used in order to discipline that particular police officer. I am glad also to note that a majority of my police officers are doing a good job. Although some of my colleagues keep on bashing the police officers as taking bribes, but when you challenge them to show proof that, indeed, they are taking bribes, nobody comes out openly to say that, yes, I gave a bribe to such a police officer.

That is why I had to introduce the name tags. The police officers in full uniform must have name tags together with the force number. If you are asked for a bribe, you can just note the number and the name of that particular officer in order for me to discipline him. So, we should not just bash police officers for the sake of it. We should also discard that because it is not true that some of these fellows take bribes. Maybe one or two errant officers take bribes, but I have never seen this happen.

The Chair is also a lawyer. You know that both the giver and the taker of a bribe are making a mistake. All of them must be taken to court. So, the police officers should not just be bashed for the sake of it.

Secondly, these are our brothers and sisters. When we keep on demoralizing them that they are taking bribes, it is not fair to them. We keep on demoralizing them on the road that I gave this particular officer some money, it quite demoralizes the work of the officer. So, I would suggest that once this Bill is passed, I think that if at all there was something like that, it will now reduce drastically because my officers know that there is a new law which must be followed, acted on, enforced and implemented.

James Orengo said that there are reasons why this Act has come. Yes, it is true, we have reasons. That is why this Act has to come in. If you listened to the story which was being narrated by Mr. James Orengo, those are the things of the past. That is actually the reason why we had to bring in the Bill where a policeman comes in and says that you are not supposed to be in this office, you go to court and you are delayed. That is why we had to bring this Bill to deny them that kind of harassment.

Hon. Affey was talking about the requirement of a degree to qualify as a member of the Board and the timeline. Through regulations, we will also create timelines where a report is made, when the case will be heard and what action is going to be taken and from what time. That is pertinent. We will, definitely, come up with timelines in the regulations. My colleagues have also talked about the issue of holding a degree. Hon. Wetangula said that the Secretary for this Board should be a lawyer. Sometimes it helps to fast-track the issues which are being dealt with. We can consider some of these cases. Some Members have said that a first degree should not be a requirement, but for purposes of fast-tracking the issues which are coming in, we were thinking that with regard to holding a first degree, we will definitely come up with issues which will be tackled as and when they come in. That is why we were making such proposals that, at least, we have somebody who has a first degree to steer the Authority. It is not only in this Act, but several Acts have asked for a degree holder for the work to be easier for the rest of the other fellows.

Hon. Wetangula had suggested that the police should be provided with a chopper. Yes, I have asked this House to approve more money to enable us buy choppers. You are aware that it is hon. Kimunya who gave us some money to buy two fixed wings for caravans and a chopper during his tenure. I have asked on several occasions for not only a chopper, but also for money. We need money. The police force needs money to restructure and do reforms. We need that money. Eight litres of fuel is not enough for a police vehicle considering the cost of fuel now. It cannot be enough. The police officer will do not do rounds within Kisumu City alone with eight litres. That is completely nothing! That is why I have been begging my colleagues that when we are passing the Budget, please, double my Budget. If it is Kshs46 billion, double it in order for us to serve you better. You know the cost of a chopper. It is not something small. We are talking of Kshs300 million plus. If you do not give me enough money, it will not be possible to render services which are required by our people.

There were traffic related cases. Lessonet talked about traffic cases and bribes. He wanted to know how many police officers have been arrested. I have asked hon. Lessonet to give me the names of those who are taking bribes. To date, Lessonet has never produced any name of the officer.

The Temporary Deputy Speaker (Mr. Olago): Please, refer to him as “hon. Lessonet”

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, hon. Lessonet has never produced any name. Let us avoid speculation and rumour mongering. Hon. Lessonet knows very well that these days, police officers have name tags on them. If he tries to bribe the police, unfortunately, the Member who tries to bribe the police will definitely be arrested together with the police officer. The taker and the giver will be arrested. That is the position.

Hon. Shakeel has talked about the youth. He was concerned that the 15 years of service requirement locks out the youth. It is true we have quite a number of youths. We will consider this particular area, but I am going to welcome all the other amendments which our people would be interested in coming up with and then we agree on what we should do.

With regard to the composition of the Board, hon. Wetangula suggested that we delete Clause 9(c) where the Chairman of the Kenya National Human Rights Commission becomes the *ex-officio*. That will avoid the conflict which we are going to experience. That is a good suggestion and we will definitely do that.

There is also a suggestion that we should not have included the Office of the Prime Minister. If you look at the Bill itself, the Office of the Prime Minister was included because this Bill can be assented to even next week or next month. The Office of the Prime Minister will be there up to 31st December, 2012. So, we must follow the Memorandum of Understanding (MoU). We had to include the Office of the Prime Minister because it is going to be there until 31st December, 2012.

Mr. Temporary Deputy Speaker, Sir, I also want to say that the Bill itself is very good and we are going to get the report. We are going to give the timelines as it has been said in order for us to have the report worked on. Hon. Mungatana complained about Clause 37(3). We are going to look at when the reports should be filed.

On decentralization, Every Member talked about it. They talked about mixing and checking on ethnicity and all issues in relation to Board members. Yes, we agree that, that is the way to go. I do not have any problem with that.

Mr. Temporary Deputy Speaker, Sir, on the Kenya National Human Rights Commission (KNHRC), I had said that we will consider the inclusion of the Chairman of the KNHRC; but the hon. Member wants us to delete the inclusion of the chairman as an *ex-officio* of the Board.

I want to thank all my colleagues for having given positive contributions on this matter. I want to assure them that when it comes to the Committee Stage, we will consider various suggestions.

With those few remarks, I beg to move and thank you.

(Question put and agreed to)

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

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

MOTION

ADOPTION OF REPORT OF COMMITTEE ON EQUAL OPPORTUNITY ON RECRUITMENT OF KEBS MANAGING DIRECTOR

THAT, this House adopts the Report of the Select Committee on Equal Opportunity on the Recruitment of the Managing Director, Kenya Bureau of Standards, laid on the Table of the House on 16th December, 2010.

(Mr. Chachu on 18.8.2011)

(Resumption of Debate interrupted on 18.8. 2011)

Mr. Chachu: Mr. Temporary Deputy Speaker, Sir, the composition of this Committee was by the following Members:

Hon. Mohammed Affey, MP
Hon. Joseph Lekuton, MP
Hon. Maison Leshoomo, MP
Hon. Chesebe Fred Kapondi, MP
Hon. Lucas Kipkorir Kigen, MP
Hon. Francis Chachu Ganya, MP
Hon. Millie Odhiambo-Mabona, MP
Hon. Raphael Letimalo, MP
Hon. Eng. Ephraim Maina, MP

Mr. Temporary Deputy Speaker, Sir, the mandate of this Committee as set out under Standing Order No.192 is as follows: One, to promote measures designed to

enhance acquisition of opportunities and improvement of the quality of life and status of all parties, including the groups that are marginalised on the basis of gender, age, disability, health status, ethnic, racial, cultural or religious background, affiliation or any other such ground.

Mr. Temporary Deputy Speaker, Sir, secondly, the Committee is mandated to investigate, inquire into and report on all matters relating to discrimination or marginalization of the groups referred to under sub-paragraph "a". Thirdly, it is to make proposals to the House including legislative proposals for the protection and equalization of opportunities and promotion of the welfare of the groups referred to under sub-paragraph "a". The last mandate is to examine the activities and administration of all Ministries, departments and statutory bodies in so far as they relate to the rights and welfare of the groups referred to under paragraph "a".

Mr. Temporary Deputy Speaker, Sir, the Kenya Bureau of Standards (KEBS) was established in July, 1974 and falls within the Ministry of Industrialization. The Committee on Equal Opportunities, in line with its mandate which cuts across all the Ministries, took up this matter arising from an impulse selection process of the Managing Director of KEBS with a view that all Kenyans had not been given equal opportunity.

Mr. Temporary Deputy Speaker, Sir, the Committee held meetings with the following members to get facts on the matter:-

The Minister for Industrialization; the Permanent Secretary, Ministry of Industrialization; the National Standards Council; the Chief Executive; KPMG and the National Cohesion and Integration Commission.

Mr. Temporary Deputy Speaker, Sir, on behalf of the Committee on Equal Opportunities, I have the honour and pleasure, on behalf of my Chairman, to present the Committee's Report and recommendations on the appointment of the Managing Director, KEBS, for consideration and adoption by the House.

Mr. Temporary Deputy Speaker, Sir, KEBS was established in July, 1974, through an Act of Parliament - Chapter 496 of the Standards Act. It is an Act of Parliament to promote the standardization of the specification of commodities and to provide for standardization of commodities and codes of practice to establish the KEBS to define functions and provide for its management and control, and for matters incidental and connected with the foregoing.

Mr. Temporary Deputy Speaker, Sir, Section 50(1) establishes the National Standards Council. Part II of the Act states that the Council shall, subject to the provision of sub-section 3, consist of the following members:-

- (i) A chairman, appointed by the Minister,
- (ii) a Secretary who shall be the Director of KEBS,
- (iii) not more than seven members appointed by the Minister, who shall be public officers; and,
- (iv) finally, not more than eight persons appointed by the Minister, who shall possess knowledge of industrial and commercial standards, or other matter likely to be of assistance to the bureau.

Mr. Temporary Deputy Speaker, Sir, Section 7 provides that the Council shall have the powers to advise and obtain advice from the Minister in regard to any matter within its purview under this Act. Again, it is to formulate matters of policy for the

purpose of providing general or specific guidance to the institute for the better performance of its functions under this Act. Finally, it is to do all things necessary for the better carrying out of the provisions and purpose of this Act except where otherwise provided.

Mr. Temporary Deputy Speaker, Sir, let me now turn to the recruitment process for the Managing Director, KEBS. The position of the Managing Director fell vacant when the Managing Director was removed from office due to inappropriate conduct in accordance with the mandate conferred to the National Standards Council. On 21st December, 2009, the Council initiated a recruitment process and agreed to engage an external human resource firm to help with the exercise. Through a competitive process, KPMG was awarded the contract at a cost of Kshs1.5 million with a downpayment of 40 per cent. KPMG was mandated to carry out the shortlisting of 14 candidates and later provide the Council with 6 names. Instead, the KPMG submitted four names and two for comparative purposes which was questioned by the Board. That raised disagreements, prompting the Board to demand the full list and details of all the applicants. KPMG declined to give the list and, hence, that led to a stalemate, resulting to the non-payment of the 60 per cent which was the balance from the downpayment.

The Temporary Deputy Speaker (Mr. Olago): Order, hon. Chachu! You will have 50 minutes when the matter appears on the Order Paper next time.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Olago): Hon. Members, it is now time for interruption of business. The House is, therefore, adjourned until tomorrow Wednesday, 12th October, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.