

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 12th May, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PETITIONS

APOLOGY AND COMPENSATION FOR UNLAWFUL ARREST AND DETENTION OF MESSRS. SHIKUKU AND SERONEY

Mr. Mututho: Mr. Speaker, Sir, I rise in compliance with Standing Order No.204 seeking a petition on behalf of two petitioners, that is, hon. Seroney and hon. Shikuku.

The Petition is seeking an apology and payment of compensation for the unlawful arrest and detention of Messrs. Joseph Martin Shikuku and Jean Marie Seroney. The essence of this petition is that from where you sit, sat hon. Jean Marie Seroney when he made a landmark ruling that you do not have to substantiate the obvious. What followed was an absolute abuse of power by the Executive to an extent that hon. Jean Marie Seroney was arrested outside this Chambers, harassed and, ultimately converted from an hon. Member of Parliament sitting from where you sit to a pauper. His properties have since then been sold and one of his children has become a mental case.

Mr. Speaker, Sir, this is an epitome of arrogance by the Executive. It is total abuse of power by the Executive and in my view, this Petition should be listened to and considered. This is because the very doctrine of separation of powers was advanced here in the 1970s by hon. Martin Shikuku, among others. Up and until when His Excellency Daniela arap President Moi came to power, this Parliament was under the Office of the President and many bad things happened. It is on top of other things that I do now file this petition on behalf of the petitioners.

Thank you.

(Mr. Mututho laid the document on the Table)

Mr. Speaker: Hon. Members, you are allowed five minutes if you want to utilize them to supplement the Petition. In order to speak to that Petition, it is a maximum of five minutes.

Ms. Karua: Mr. Speaker, Sir, I want to start by congratulating my colleague who has just presented the Petition. I think it was a dark day in our history where Members of Parliament, despite the Powers and Privileges Act, were arrested within the precincts of Parliament and one of them had been presiding on the Chair.

I think we owe it to the family of the late hon. Jean Marie Seroney and to the surviving hon. Martin Shikuku, at least, to register an apology. It would be great if it was done right here in the House and any matter of reparations can be taken up. It is a time for reparations and recommendations on what to do whether through the Truth, Justice, and Reconciliation Commission (TJRC) or any other avenue. However, this is the right time to make a clean break with our dark past.

I beg to support.

Mr. K. Kilonzo: Mr. Speaker, Sir, I also join my colleagues to condemn this action which portrayed Kenya as a country which could not tolerate divergent views which were then contrary to the expectations of the then Executive.

Mr. Speaker, Sir, the new Constitution has now opened doors for people who have suffered from the first, second, third and many other republics to come, to be able to petition Government as and when issues of unconstitutionality occur like this one.

Hon. Martin Shikuku is one of the respected veterans and freedom fighters of this country. Had hon. Jean Seroney been alive today, he would be happy to see hon. Mututho bring this petition to this House. Without much ado, we want that apology to be made in this House. I will be very happy to see His Excellency the President, who was then a Member of Parliament, acknowledge that, indeed, they have to say sorry to the people of Kenya and more so these two gallant soldiers.

I beg to support.

Dr. Machage: Mr. Speaker, Sir, it is a good day that we hear such noble words from the hon. Member who has petitioned on behalf of hon. Seroney and hon. Shikuku. For us who were old enough at that time, it was a period to reckon. There was gagging of the people of this country not to speak anything about the truth and even in areas where immunity was provided, for example, Parliament. It is a shame that this country has lived with. It is a shame that this country needs to wash itself so that this House can be clean again.

It is unfortunate that this House might be tempted to pass, as it has already done, some constitutional laws that if misused, could lead to gagging of Members of this House and give precedence to the Press to quote hon. Members out of context to the extent of even being incarcerated in police cells. I am one of those people who have suffered that fate. It is very unfortunate that this House has to remove the freedom of speech the same way Messrs. Seroney and Shikuku were denied this noble present that is God given.

I strongly support this Petition.

Mr. Speaker: Order, hon. Members! I am afraid that we must stop there because we must comply with Standing Order No.208 which provides as follows:-

“The Speaker may allow comments, observations, or clarifications in relation to a petition presented and such total time shall not exceed five minutes.”

That is mandatory. So, we must stop there. I direct that this petition be committed to the Minister of State for Provincial Administration and Internal Security who shall then be expected to make a Statement to the House on the Petition within 21 days from the date hereof.

Mr. Kaino: Mr. Speaker, Sir, allow me to table two Petitions; one at a time.

REQUEST TO HARVEST EXOTIC TREES FROM
INDIGENOUS FOREST ALONG YEMIT-KAPCHEROP ROAD

Mr. Speaker, Sir, my first Petition is to the Ministry of Forestry and Wildlife. Twenty years ago, the people of Marakwet because of low levels of education, requested that they be given access to three acres of land inside the indigenous forest and be allowed to harvest it. This was so that they could build secondary schools. There were very few secondary schools in the community. Mr. Safari, who was the then Permanent Secretary in the Ministry of Environment and Natural Resources, gave authority that the County Council of Marakwet should plant indigenous trees on the three acres of land.

During that time, the trees were very young. When they matured, we realized that the Permanent Secretary had been changed and so was the Government. We were then denied the opportunity to harvest the trees.

The petitioners are the schools and the leaders of Marakwet. They humbly request that the Ministry of Forestry and Wildlife grants the request to harvest exotic trees from the indigenous forest along Yemit – Kapcherop Road to be used in the construction of dormitories in six schools in Marakwet West Constituency and that the trees harvested be replaced by indigenous trees by the said petitioners.

Mr. Speaker, Sir, I table the Petition.

(Mr. Kaino laid the Petition on the Table)

Mr. Speaker: You may resume your seat, hon. Member for Marakwet West.

We will take the same procedure as we did in respect to the petition by the Member for Naivasha, but for information of hon. Members, please, note that in accordance with Standing Order No.207 when you are presenting a petition, you are supposed to restrict yourself to read such Petition, but confine yourself to the subject of the prayer, the material, allegations therein and the number of signatures attached. So, on the next Petition, hon. Kaino, I will expect you to live within Standing Order No.207(3). Is there any hon. Member interested in making any comments on this petition? There is none!

In that case, I will commit this Petition to the Departmental Committee on Lands and Natural Resources. The Committee will be expected to table its Report on the petition in the House within the next 21 days from the date hereof.

Proceed, to the next one!

RELEASE OF FUNDS BY TREASURY TO CHEBARA COMPENSATION ACCOUNT

Mr. Kaino: Thank you, Mr. Speaker, Sir. I rise again to present a Petition to the Office of the Deputy Prime Minister and Ministry of Finance.

Mr. Speaker, Sir, the petitioners are the people of Marakwet and Chebara Institution. During the construction of the Chebara Dam, which was meant to take water to Eldoret, Marakwet had only one secondary school and that secondary school was destroyed because of water that was required to go to Eldoret by constructing a dam in those areas---

Mr. Speaker: Order, the Member for Marakwet West! I did give you clear directions that you must live within Standing Order No.207(3)! If you are unable to do

better than that, just go to the prayer and indicate how many signatures have been appended to the petition and you stop there.

Mr. Kaino: Mr. Speaker, Sir, I will go directly to the prayer of 80 petitioners who have appended their signatures on the Petition.

Mr. Speaker, Sir, your humble petitioners pray that the Office of the Deputy Prime Minister and Ministry of Finance releases Kshs635,532,000 to the Moiben-Chebara Compensation Account under Chebara Secondary School, where the authorized representatives of the affected institutions of Marakwet shall be joint signatories to the account together with the representatives of the District Inter-Ministerial Team which was formed at the District Development Committee and from where approved allocations of the said funds will be discussed and accordingly disbursed and that any further allocation by the Ministry to be paid directly into the said account. The petitioners will ever pray.

Mr. Speaker, Sir, these are 80 petitioners who have endorsed their signatures here. I beg to table the petition.

(Mr. Kaino laid the petition on the Table)

Mr. Speaker: Very well! Are there any hon. Members who are interested in making comments on this?

In the absence of that interest, I commit this Petition to the Office of the Deputy Prime Minister and Ministry of Finance, who should then deliver a Statement addressed to the petitioners to the House within 21 days from today.

Next Order!

NOTICE OF MOTION

DEVELOPMENT OF ELECTRONIC VOTER REGISTRATION SYSTEM

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

THAT, aware that election management process in Kenya, especially the tallying and transmission of presidential votes in 2007 General Elections was marred by allegations of rigging and fraud leading to disputed results that precipitated Kenya's most serious political crisis to date; aware that the report of the Independent Kriegler Commission on the General Elections held in Kenya in 2007 as adopted by Parliament recommended among other things, review of the electoral commission's administrative procedures with a view to introducing as much certainty as possible in key operational areas so as to ensure uniformity of performance throughout the electoral process from polling station level up to the various teams at the National Tallying Centre; this House urges the Government to facilitate the Independent Electoral and Boundaries Commission (IEBC) to develop a modern electronic system for collection, collation, transmission and tallying of electoral data that will legalize

electronic voter registration nationally in preparation for electronic voting in the year 2012 General Elections.

Thank you, Mr. Speaker, Sir.

QUESTIONS BY PRIVATE NOTICE

OCCUPATION OF MIGINGO/UGINGO ISLANDS BY UGANDAN SECURITY FORCES

Mr. Mbadi: Mr. Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Is the Minister aware that Ugandan security forces still occupy Migingo Island in Lake Victoria despite an agreement between the Government of Kenya and Uganda and that the Uganda Government has continued with expansionist policy on Kenyan soil and waters by illegally taking occupation of Ugingo, another Kenyan island next to Migingo?

(b) Why has the Government failed to reclaim Migingo Island even after Parliament passed a Motion urging the Government to use all means possible to reclaim the island on 27th May, 2009?

(c) Could the Minister explain, giving timelines, the steps the Government will take to reclaim Migingo Island and any other Kenyan island occupied by foreign forces?

Mr. Speaker: Is anyone here from the Ministry of Foreign Affairs? Mr. Deputy Prime Minister and Minister for Local Government, what is happening to your Minister?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, may I seek your indulgence that the Question comes during the second round hoping that the Minister will have arrived. I really---

Mr. Speaker: Order! You may resume your seat, Mr. Deputy Prime Minister and Minister for Local Government! Apparently, you are not posted as to what your Ministers are doing. However, we have received a letter this afternoon which I thought you will be aware of indicating that the Minister for Foreign Affairs is away to attend the installation ceremony for the Ugandan President. His Assistant Minister is away on official business in Turkey. So, under those circumstances, the Member for Gwassi, this Question will have to be deferred because the Ministers are away with due notice to Parliament although this notice has come at the eleventh hour. The notice is dated 12th May, 2011, but perhaps, the nature of the circumstances is such that it could not have come earlier. This is because, may be, we did not know when the Ugandan President will be sworn in.

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

Mr. Speaker: The Member for Gwassi, you have the Floor. You do not even have to stand on a point of order.

Mr. Mbadi: Thank you, Mr. Speaker, Sir. You will recall that this Question had come earlier and the Minister was not present to answer it. Actually, the Chair did invoke some disciplinary action against the Ministry. I am a bit at a loss that this letter has come at this time and yet this Question is by Private Notice. Further, what makes me even more annoyed is that the Minister has gone to dine with the same people who have grabbed my island, which is the subject of this Question.

(Applause)

Mr. Speaker, Sir, I really do not know whether you should accept that piece of letter but it is an insult. Telling me that the Minister has gone to dine in Uganda and yet it is the same Uganda which has grabbed my islands which I want them to answer!

(Applause)

Mr. Speaker: Order, the Member for Gwassi! I think I have elucidated in my earlier directions that the circumstances leading to the Minister's absence are understandable because we could not predict or anticipate when the Ugandan President was going to be sworn in. For the time being, as at where we are, even applying our Standing Orders, there is a presumption that the Ugandan Government is friendly to Kenya, notwithstanding what the answer to your Question will be. However, we will cross that bridge when we get to it. But, perhaps also to remind you – if my memory serves me right - you are one of those who raised an issue yesterday as to Kenya not having treated Dr. Besigye that well. You wondered what that would do to our relations with Uganda. It is just yesterday and it is on the HANSARD! It may not be you, it may be your colleague in the House, but that is so. So, you can see the kind of situation we are in; a catch-22 situation! So, for the time being, this Question is deferred to two weeks away!

(Question deferred)

Let us move on to the next Question by the Member for Gichugu!

WAIVER OF INTEREST/PENALTIES ON LAND RATES

Ms. Karua: Mr. Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Local Government the following Question by Private Notice:-

(a) Could the Minister consider granting a waiver of interest and penalties on land rates to avert the loss of homes and businesses in view of the recent notice to defaulters by the Nairobi City Council?

(b) Could the waiver be applied to all local authorities countrywide?

I would also like to bring the Deputy Prime Minister and Minister for Local Government greetings from his home area which I toured yesterday.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, with your indulgence, let me say that I hope that hon. Karua enjoyed herself in the land of Mirembe.

I beg to reply.

(a) I cannot consider granting a waiver of interest and penalties on land rates by defaulters owning property within the City Council of Nairobi. Waiver of interest and penalties is only granted when the Council, through a council resolution, requests me to approve a waiver for a certain period. The Council has not requested for approval of waiver as stipulated in Section 16 of Cap.267.

(b) Given the above facts, the waiver cannot be applied to all local authorities.

Ms. Karua: Mr. Speaker, Sir, I would like to thank the Deputy Prime Minister and Minister for Local Government for that “technically” correct answer. However, at the operational level, the answer leaves a lot to be desired. The Deputy Prime Minister and Minister for Local Government is in charge of policy. We are aware that most local authorities throughout Kenya, and especially Nairobi, suffer huge arrears of rates. The penalties that have accrued thereon make it impossible for premises owners to pay. Therefore, at the policy level, it is the responsibility of the Deputy Prime Minister and Minister for Local Government to give direction to the local authorities in Kenya, so that they can seek waiver. The waiver will encourage people to pay as well as avoid the event of small people in terms of income and businesses, losing their premises. Could the Deputy Prime and Minister for Local Government consider initiating action at the policy level which will see all the councils apply for waiver, so that we can have a clean break from the past?

Mr. Mudavadi: Mr. Speaker, Sir, let me just point out that the level of compliance for various councils is varied. Indeed, there are a number of municipalities or local authorities that have asked for a waiver. With the relevant resolutions, we have granted that. In fact, for Nairobi City Council, I would like to point out that the last waiver was granted from the month of October to December, 2009. This waiver was made public for all rate payers and, indeed, some residents took advantage of it, paid their rates and got a waiver of the penalties. I would like to suggest that, at this point in time, the City Council of Nairobi has been collecting a lot of rates. To the best of my knowledge, they have collected close to Kshs700 million by putting pressure on ratepayers to pay. Therefore, before the waiver is granted, I think they have a duty to collect the rates.

Mr. Koech: Thank you Mr. Speaker, Sir. This Question is requesting the Deputy Prime Minister and Minister for Local Government to grant a waiver on interest and penalties only. He has confirmed that it is possible, but only with a resolution of the council. That has opened room for corruption in some councils. A few people pay something small and the council sits to resolve to waive for them. We are in a new constitutional dispensation. We are talking about Vision 2030 where we are encouraging Kenyans to invest. We do not want to destroy those small business people. Could you consider, as indicated here, making it a blanket waiver today, so that we talk about Kenya starting from one point and moving forward? Is it possible for you to direct all councils to do that?

Mr. Mudavadi: Mr. Speaker, Sir, as I said, I cannot direct all the councils to do so on a blanket basis. However, councils know very well that within the context of Cap. 267, they have a process which they can follow. That is to make sure that they have a resolution requesting for waiver of penalties and once it is forwarded to the Minister---- I have always given that consent once a council has requested.

Mr. Njuguna: Mr. Speaker, Sir, owing to the drought that is being experienced in this country and that has affected the economic activities in this land, could the Deputy Prime Minister and Minister for Local Government consider extending the period for paying rates so that rate defaulters can realize the required rates?

Mr. Mudavadi: Mr. Speaker, Sir, indeed, if any council had sought a waiver, I would have granted it. If any council feels that it needs more time, I can grant it together with the waiver on interest and penalties.

Mr. Olago: Mr. Speaker, Sir, payment of rates to all local authorities is contractual. It is based on the assumption that the local authority will provide infrastructure and services to the people who pay rates in return thereof. What is the Ministry's policy in cases where the local authority is not able to provide those services?

Mr. Mudavadi: Mr. Speaker, Sir, indeed, when the council collects revenues in their areas of jurisdiction, they are supposed to use those resources, both for their operations and also for provision of services to the residents. If a council is not meeting its obligations--- If there is a specific area that we need to attend to, I am willing to listen to the hon. Member, so that I can take some corrective action.

Ms. Karua: Mr. Speaker, Sir, as a matter of fact, all local authorities are providing below par in terms of services. Therefore, strictly speaking, they have no good basis for collecting rates and anything else from the citizens. Secondly, there is rampant corruption everywhere and defaulting rates offers a window of opportunity to the corrupt. With this in mind, could the Minister consider initiating action at the policy level; giving a signal or talking to the councils, so that they make the requisite resolutions and then he accedes and offers to all the waivers throughout Kenya, so that we could begin on a new slate?

Mr. Mudavadi: Mr. Speaker, Sir, as a matter of fact, I have communicated to the local authorities and told them that I am willing to support them if they brought the necessary resolutions. I have already communicated that to them. I have also communicated to the Nairobi City Council, just for the House to note, that it would be prudent, at this stage now, to pass the necessary resolutions for my consideration.

ORAL ANSWERS TO QUESTIONS

Question No.662

NON-REGISTRATION OF TAX COLLECTORS UNION

Mr. Yakub asked the Minister for Labour:-

(a) why the Tax Collectors Union(TCU) has not been registered since 1998; and,

(b) when the registration would be affected.

I wish to inform you that I have not received a written reply.

Mr. Speaker: Without a written answer, would you like to proceed?

Mr. Yakub: Mr. Speaker, Sir, I do not mind if the Minister is around.

Mr. Speaker: Yes, Minister for Labour.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Speaker, Sir, I gave the answer to the Office of the Clerk.

Mr. Speaker: Do you have an extra copy of the answer?

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Speaker, Sir, I gave out sufficient copies. I have only one copy with me here.

Mr. Speaker: Proceed.

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

(a) The Tax Collection Union first applied for registration as a trade union on 18th January, 2003 through its Interim General Secretary, Mr. Munir, under the provisions of the Trade Unions Act, Cap.233, which is now repealed. On 11th March, 2004, the Registrar of Trade Unions wrote to Mr. Munir Abubakar Masud, the Interim Secretary General of Tax Collection Union, informing him that their application had been rejected under Section 16(1)(d)(i) of the Trade Unions Act, Cap.233 – which has since been repealed – on the grounds that there were other trade unions representing the same interest.

(b) The applicants did not appeal within one month as stipulated in law. However, on 10th August, 2009, another application was filed and was, again, rejected on the same grounds. The applicant has now moved to the Industrial Court, under Appeal No.2 of 2010. So, the matter is awaiting determination by the court.

Mr. Yakub: Mr. Speaker, Sir, you have heard the Assistant Minister reply to part of the Question and conclude by saying that the matter is court. I need your guidance. Is it permissible for me to continue asking him questions when he says that the matter is in court?

Mr. Speaker: If you are satisfied that the case is in court, and that it touches the matters which are raised in the Question, then you may not ask any further questions. That is if you are satisfied. For me, from the Speaker's Chair, I am not satisfied because no documents have been tabled to persuade me that the matter is in court. So, it is up to you to make the decision.

Mr. Yakub: Thank you, Mr. Speaker, Sir. Since the Assistant Minister has not satisfied you that the matter is, indeed, in court, I would like to remind him of the provisions of Article 41(2)(c) of the new Constitution as follows:-

“41(2) every worker has a right-

(c) to form, join or participate in the activities and programmes of trade unions”.

Mr. Speaker, Sir, why is the Assistant Minister denying this group of Kenyans their right to form their own trade union?

Mr. Ojaamong: Mr. Speaker, Sir, I have answered that question very well. The reason as to why Mr. Munir was denied registration of the trade union is that there were other trade unions in existence which represented the same interests that Mr. Munir wanted to advance. That is the only reason.

Mr. Yakub: Mr. Speaker, Sir, the Assistant Minister is answering the Question using the old Constitution. We are now under the new Constitution. The answers he is giving to this House refer to the years 2002 and 2004. We are now under a new constitutional dispensation. I have referred him to the article of the Constitution which allows Kenyans to join, form or participate in trade unions. Why is he denying this group of Kenyans that right when it is provided to them by the new Constitution?*

Mr. Ojaamong: Mr. Speaker, Sir, there are some limitations to the formation of trade unions. If we have a trade union advancing the interests of workers in the banking sector, we cannot have every worker forming a union to advance the same interest. There has to be a limit. In this case, we have already had three other registered trade unions, to which Mr. Munir was referred. We have the Banking, Insurance and Finance Union (BIFU), the Kenya Union of Civil Servants (KUCS) and the Commercial, Food and Allied Workers Union, by which Mr. Munir's interests are already taken care of. So, we do not just register trade unions. Unless the membership of the group that is seeking

registration is very large--- If their interests are already advanced through other trade unions, they are advised to join those trade unions.

Mr. Speaker: Last question, Sheikh Dor.

Mr. Yakub: Mr. Speaker, Sir, could the Assistant Minister come up with a proper answer through the National Labour Board, which has the right to decide whether this new organisation has enough members to be registered? It is not for the Assistant Minister alone to decide otherwise, without giving us proper documentation to the effect that the National Labour Board has decided not to allow these people to form a new labour organisation, because their numbers are insufficient. So, could he come to the House with a written explanation showing that it is the National Labour Board which has advised him that way?

Mr. Ojaamong: Mr. Speaker, Sir, it is, indeed, the National Labour Board which approves the registration of trade unions, after they have been accepted by the Registrar of Trade Unions. If Mr. Munir still wants to pursue the matter, which he is pursuing in court, he can still bring it before the Board. We now have in place the National Labour Board; which never used to exist previously; so, his application can be look at again.

Mr. Speaker: Next Question, Member for Nyando.

Question No.879

REHABILITATION OF ROAD IN KOROWE/WEST KANO
IRRIGATION SCHEMES

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

(a) whether she is aware that the road linking irrigation offices at Korowe/West Kano Irrigation Scheme and Nyamware Beach is seriously dilapidated, hindering irrigation work and services;

(b) why the Ministry has neglected the vital road over the years;

and,

(c) when the Ministry plans to rehabilitate the road network.

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

(a) I am aware that some sections of the road linking Korowe and Nduru Beach, through West Kano Irrigation Scheme and Nyamware Beach, are dilapidated, hindering irrigation work and services.

(b) My Ministry has not neglected this vital road that links Korowe and Nduru Beach through the irrigation scheme. The Ministry of Roads is responsible for maintaining this road since it is a public road. However, maintenance of the road network within the irrigation scheme is our responsibility, and it is financed through the operations and maintenance fee paid by the farmers.

(c) My Ministry has set aside Kshs10 million to rehabilitate this scheme's road network starting July, 2011. The Ministry has already gravelled and graded the section of the scheme's roads extending from the junction of Korowe/Nduru public road at Block "A", all the way to Nyarowe Beach.

Mr. Speaker, Sir, I will also engage my colleague in the Ministry of Roads to prioritise rehabilitation of the main public road, from Korowe to Nduru Beach.

Mr. Outa: Mr. Speaker, Sir, I would like to thank the Minister for attempting to answer this Question. West Kano Irrigation Scheme is one of the largest schemes in this country. If it is well maintained and connected to the roads, we will be able to produce enough rice for this country. Since its establishment, the road network in this scheme has been neglected, and the Minister is aware of this. Farmers in this scheme contribute Kshs3,500 each per acre, and we have more than 2,500 acres. If you multiply the Kshs3,500 by that acreage in each cropping period, you will realise that farmers in that scheme give the Ministry over Kshs10 million. Could she clarify the purpose of taxing farmers given that the Ministry is not providing operational maintenance to this scheme?

Mrs. Ngilu: Mr. Speaker, Sir, actually each farmer pays Kshs3,640 per acre. In total, we collect Kshs8 million, of which Kshs6 million goes to Kenya Power and Lighting Company Limited, leaving us with a balance of Kshs2 million. As I have said, we have set aside Kshs10 million – and not Kshs2 million – for the rehabilitation of the road network within the irrigation scheme. Therefore, the hon. Member needs to know that we put in much more money than what we collect from the farmers, and we will continue doing so to ensure that we give proper services to the farmers.

Mr. Olago: Mr. Speaker, Sir, apart from the rice fields in Budalangi, in the whole of western Kenya, the only other irrigation scheme that serves the country is this one. I am concerned about the Minister's last part of the answer where she says that she is going to encourage the Ministry of Roads to prioritize the rehabilitation of the public road. What exactly has she done to ensure that there is proper liaison between her Ministry and the Ministry of Roads, so that they can ensure that the access road to the rice irrigation scheme is properly graded?

Mrs. Ngilu: Mr. Speaker, Sir, I have already said that I must speak to my colleague in the Ministry of Roads to ensure that we can do our part and they can do their part. It is very important that the farmers get access to the markets. It is of no use spending so much money and the farmers cannot access the market. I am committed to this and I will get in touch with the Minister for Roads to ensure that this is done.

Mr. Outa: Mr. Speaker, Sir, it does not really require a Member of Parliament to ask this Question for some action to be taken. As I speak, most of our farmers cannot transport their paddies from the farms even to the stores. Over the years, the Ministry has never done anything. The Minister is saying that she wants to ask her partner; the Minister for Roads, to do something. Since the Minister for Roads is here, could the Minister for Water and Irrigation tell us the time line which she intends to get in touch with the Minister for Roads? Is she starting now or it is something that is going to be a one-time gift? This scheme needs to operate on a daily basis.

Mrs. Ngilu: Mr. Speaker, Sir, first of all, I want to assure the House that this scheme is already operational. It is working. Maybe, these are the challenges that we need to look at. Therefore, I do not have to speak to the Minister for Roads right now, but I am going to do it. It is in our interest, especially at the moment when there is scarcity of food in the country that everything works right. I am going to do it. I am committed to doing it.

Question No.830

ACUTE WATER SHORTAGE IN MUTONGUNI/MATINYANI DISTRICTS

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

(a) whether she is aware of the severe water shortage in Mutonguni and Matinyani districts due to constraints in capacity of the Masinga-Kitui waterline; and,

(b) how much money has been set aside for the expansion of the water line and when the works will start.

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

(a) Yes, I am aware that Mutonguni District and parts of Matinyani District are not served by Masinga-Kitui Pipeline due to capacity constraints.

(b) Masinga-Kitui Water and Sanitation Project will include the rehabilitation and augmentation of the Masinga-Kitui Water Pipeline which will serve Matinyani and Mutonguni districts, among other areas. The project will cost Kshs2 billion which is a loan from one of our development partners. The works are scheduled to start in October, 2011.

Mr. Nyamai: Mr. Speaker, Sir, I want to thank the Minister for the efforts she has made to get some money for this project. However, the biggest challenge that we have had with this pipeline since it was first done is the fact that it travels straight from Masinga to Kitui and ignores the adjacent areas. Could the Minister confirm that after what she is doing now, the pipeline will serve Kakaeni, Katitu, Mutanda, Tulia and Muthale where we have serious water shortages? It should also serve Kwa Mutonga, Kwa Vonza, Kauma and Mutulu.

Mrs. Ngilu: Mr. Speaker, Sir, I can confirm here that all the areas that the Member has mentioned are part of the design of this project. I can also confirm that since the Masinga-Kitui Pipeline was done way back in 1995, it did not take into account these areas. That is why we have these funds at the moment and we are going to ensure that these people get water.

Mr. K. Kilonzo: Mr. Speaker, Sir, I also wish to join my colleague in thanking Madam Minister for having looked for funds to do this water project. However, you will realize that Nzangathi and Thua divisions, which were under the Minister's former constituency, but now are in Mutitu, are not served by the pipeline. They are also challenged in terms of water. Could she confirm that they will be included in the design to ensure that they also benefit from this water project?

Mrs. Ngilu: Mr. Speaker, Sir, Nzangathi, Nzambani and Thua can be served by the Masinga-Kitui Water Project because the water will be adequate to do so. However, it is not part of the design. We have not set aside money to do this at the moment, but it can be done later on. We also have another project, namely, Umaa Dam that can serve those areas. Once the Umaa Dam is completed, all these people will get water.

Mr. Magwanga: Mr. Speaker, Sir, allow me to thank the Minister for the explanation she has given. However, it was envisaged in the 1970s that by 2000, clean piped water would be available to every household in this country. What plans is the Ministry putting in place to ensure that this very important commodity is available to all Kenyans with or without asking for it?

Mrs. Ngilu: Mr. Speaker, Sir, first and foremost, the commitment that every Kenyan was going to have clean piped water by 2000 was of the Government then, which

let Kenyans down very badly. This Government has something called Vision 2030 and I am hoping it is this Vision that is going to provide water to Kenyans without having to ask for it. I believe we are on course as long as we avoid *siasa mbaya* because we know that *siasa mbaya, maisha mbaya*. This afternoon, I am a very unhappy person because of what I saw going on in our neighbouring country. It is like all the people who do not believe in good politics are meeting there. Really, we, as a country must wake up and realize that Africa is demanding good and proper governments and real democracy. What we have seen today as a Parliament, we must stand up and say that it is wrong.

Dr. Nuh: Mr. Speaker, Sir, just on the same line, I know many villages in the northern part of Kenya have still not yet received rain and the money for the Water Tankering Project that we were relying on is over. What plans does the Minister have to ensure that the water tankering that has been going on still exists until water is available to the people?

Mrs. Ngilu: Mr. Speaker, Sir, I have written to the Office of the Deputy Prime Minister and Ministry of Finance requesting for more resources to ensure that we get plastic and collapsible tanks. We have requested that we get a budget where we can involve the communities and the business people who have got lorries to ensure that they take water closer to the people, first and foremost, and maybe even to their livestock. However, I do not have money right now for this. I think I will have to, once again, write to the Office of the Deputy Prime Minister and Ministry of Finance because the drought that we will experience this year will be worse than what we have experienced before. That is according to the Meteorological Department. Therefore, I have no good answer for the Member for now.

Mr. Speaker: Yes, Mr. Nyamai!

Mr. Nyamai: Mr. Speaker, Sir, this line will pass through Yatta B2 Ranching Society, which is a significant source of income for the people of Kitui County. Currently, they do not have water. In fact, there is a serious conflict with the nomads from Garissa who have brought their camels and are fighting for water. Does the Minister have any plans to supply the ranching society with water from this project?

Mrs. Ngilu: Mr. Speaker, Sir, I do not think we use the word “nomads” anymore. They are pastoralists. However, part of the design of this project is to ensure that water goes through all those ranches that he has talked about, to the universities that are in his constituency, that is, SEUKO and Kenyatta University constituent colleges. So, I am sure that they will get water as it goes to those places.

Question No.882

NUMBER OF COUNTIES WITHOUT KBC TV COVERAGE

Eng. Rege asked the Minister for Information and Communications:-

- (a) which counties are not covered by the Kenya Broadcasting Corporation (KBC) Television network; and,
- (b) what measures he is taking to ensure that KBC, which is a public corporation, provides TV coverage in these counties.

The Assistant Minister for Information and Communications (Mr. Khaniri):

Mr. Speaker, Sir, I beg to reply.

- (a) The only county not entirely covered by the current KBC TV network is Mandera. The other 46 counties are partially covered.
- (b) The Ministry has plans to expand KBC TV network to cover all the counties during the implementation of the ongoing analog to digital TV migration programme. The Ministry is seeking for the Government of Kenya (GoK) funding to enable the rollout of digital TV network to fully cover the 47 counties. The rollout is to be done in phases subject to availability of funds.

Eng. Rege: Mr. Speaker, Sir, I want to thank the hon. Assistant Minister for his answer. However, the word “covered” is relative. Some counties or districts in Kenya have not enjoyed the public TV broadcasting for many years. For example, only 20 per cent of Migori District is covered. I have understood what the Assistant Minister has tried to say that the Government will cover most counties that have not been covered before when it digitizes TV networks in this country. Could the Assistant Minister tell us when complete digitization will take place? Also,---

Mr. Speaker: Order, Eng. Rege! One question at a time!

Mr. Khaniri: Mr. Speaker, Sir, if I got the hon. Member right, I think he wants to know when complete digitization will be done in Kenya. I would like to inform the House that the universal deadline for digitization is 2015, but as a country, Kenya, we have set our deadline to 2012. We believe that we will be fully digital by the end of 2012.

Mr. Njuguna: Mr. Speaker, Sir, appreciating the good work that the KBC does these days, what has the Ministry done to motivate the newscasters who move from the KBC to other media houses?

Mr. Khaniri: Mr. Speaker, Sir, this is a free market and professionals are free to move from one company to another. We do have our terms of service which we try to improve every now and then, but we cannot stop people from seeking for greener pastures. Otherwise, I want to assure the House that we are trying to remunerate our staff very well.

Mr. James Maina Kamau: Mr. Speaker, Sir, I would also like to appreciate the answer given by the Assistant Minister. He has admitted that 46 counties in the whole country are partially covered. What has the Ministry done to make sure that all the counties are covered fully? We are talking about this 47 years after Independence.

Mr. Khaniri: Mr. Speaker, Sir, listening to the hon. Member ask that question, you wonder whether he just walked in. This is because he is asking exactly what I answered in my initial reply. I would like to take this opportunity to table a document tabulating all the counties we have and what percentage of---

Mr. Mwangi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to refer to the other hon. Member as a late arrival instead of telling us that the corporation is underfunded?

Mr. Speaker: Order! I am afraid that is not a valid point of order. In fact, the Assistant Minister was right in his answer.

Yes, the Member for Ol Kalou!

Mr. Mureithi: Mr. Speaker, Sir, the Assistant Minister has said that Kenya is fast-tracking the digital installation and set the deadline to 2012 instead of 2015. Considering that the poverty index in Kenya has gone up and many families have the

analog sets, what will the Ministry do in order to make sure that these families that have been enjoying electronic viewing will not be left without electronic viewing just because we are transferring from analog to digital broadcasting?

Mr. Khaniri: Mr. Speaker, Sir, my understanding of a digital broadcasting is that it is supposed to be an improvement to what we currently have. Therefore, what the families enjoy now is supposed to be lower in terms of quality and clarity than the digital broadcasting that we want to offer. Therefore, I want to assure the hon. Member that they will get clearer and higher quality viewing with digital broadcasting.

Mr. Speaker, Sir, before I was interrupted by the point of order, I was going to table a list of all the 47 counties and the percentage of coverage that the KBC has in those counties. I beg to table.

(Mr. Khaniri laid the document on the Table)

Mr. Pesa: Mr. Speaker, Sir, the Assistant Minister has indicated that the KBC has covered 46 counties out of 47 counties. Could he assure the House that when the improvement is done, an area like Migori where the majority of the people who own televisions live within the Central Business District (CBD) will also benefit and get covered, because currently, the central part of Migori is not covered?

Mr. Khaniri: Mr. Speaker, Sir, I confidently give that assurance to the hon. Member and the House.

Mr. Speaker: Yes, Eng. Rege!

Eng Rege: Mr. Speaker, Sir, it would be prudent that all Kenyans view the 2012 elections through KBC next year. So, I request the hon. Assistant Minister to ensure that counties that are not covered today get first priority in digitization.

Mr. Khaniri: Mr. Speaker, Sir, as the national broadcaster, I want to give that assurance that we will endeavour to do so.

Question No.716

DIVERSION OF SAKA RIVER WATERS BY KODIAGA GK PRISON

Mr. Olago asked the Vice-President and Minister for Home Affairs:-

(a) whether he is aware that Kodiaga GK Prison is not able to use its water pumping generator at Pombo on Lake Victoria and is instead diverting the waters of Saka River to supply water to the prison while discharging raw sewage to the same river downstream,

(b) whether he is further aware that the diversion and the discharge of raw sewage was not subjected to an Environmental Impact Assessment and residents of Korando "A" Sub-location have been denied water and are exposed to water-borne diseases, especially cholera; and,

(c) what action the Government is taking to ensure that the natural flow of River Saka is restored and the discharge of raw sewage stopped immediately.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I beg to reply.

(a) GK Prison Kisumu, commonly referred to as Kodiaga, periodically receives water supply from the Saka stream. Saka is a seasonal stream that flows from Riat Hills through the precincts of the prison towards Lake Victoria.

The prison has not diverted the waters of the stream, whatsoever; instead, the prison has tapped some of the water using a four-inch GI pipe. The water is directed to a tank for purification and ultimately used by staff as well as the prisoners. The rest of the volume of water flows naturally downstream through Otonglo Market and drains into Lake Victoria.

In addition, the treated water at the prison is freely shared with the local Korando community. In the same way, the prison health services are as well shared by the community. Previously, GK Prison Kisumu main used to pump water for domestic consumption from Lake Victoria at Pombo.

However, the shoreline subsequently receded due to the water hyacinth menace and the pump was unable to continue to draw adequate water for use at the prison. Consequently, prison authorities resorted to the use of the Saka stream. Unfortunately, the stream has since dried up due to drought and the institution now relies on water brought in by the Kisumu fire brigade while a long-term solution to this problem is sought.

With regard to the suggested discharge of raw sewage into the river, I am happy to clarify that GK Prison Kisumu has a functioning sewage system that serves the entire institution. All the washrooms in the prison are water-borne and are on a well constructed and maintained sewer line that opens into the lagoons far off the stream.

(b) GK Prison Kisumu main co-exists with the surrounding community in remarkable harmony and shares essential services that include treated water, a primary school as well as a health centre.

The hon. colleague, my learned friend, will remember that when I visited Kodiaga last year, I was able to actually suggest that the health centre gets promoted to a full district hospital. All of this will help to serve the community surrounding this essential facility.

The incidents of cholera and other water-borne diseases within the community have drastically reduced due to the use of treated water.

(c) In the light of the foregoing, the Saka stream flows normally during the rains and a safe and proper sewage disposal line is functioning well.

Mr. Olago: Mr. Speaker, Sir, I must say with all honesty and appreciation, that I had a meeting with the hon. Vice-President and Minister for Home Affairs in his office about this facility. Since then, there has been a lot of improvement. However, still a lot needs to be done. I do not want to fault my learned friend's use of the English words, but my Question was specifically whether he was aware that the prison is diverting the waters of the stream. He has said, no, it is not being diverted, but they are using a four-inch GI Pipe. In my view, that is a diversion.

My learned friend must admit there has been a diversion. What will he say about the ability of the prison to fully rehabilitate its pumping station at the lake shore, so that it is revitalized and the river is let to flow the natural way and serve *raia* the way it should?

Mr. Musyoka: Mr. Speaker, Sir, I must admit that the Saka River is a God-sent to Kodiaga. Last year, I visited the prison and was satisfied that there is really no diversion and that we are doing the best we can to look after that huge prison population.

Mr. Olago: On a point of order, Mr. Speaker, Sir. I do not want to be trivial, but the hon. Vice-President must admit that, indeed, there is a diversion. Whether it is through a GI pipe or a furrow, but there is a diversion. The river is not flowing its natural course.

Mr. Musyoka: Mr. Speaker, Sir, I am prepared to accept that. But what I found out with my own eyes was a beautiful stream right in the middle of Kodiaga Prison. Whether it is diverted or not, I think, is besides the point here. Unfortunately, it is now dried up. I want to assure my learned friend, Mr. Olago that we are prepared to work with him. He has actually given us a wonderful suggestion. If it was not for this hyacinth problem which caused the non-functioning of the pump out of the Pombo Station, we would, probably, not even be talking about diversion.

However, in the meantime, as we use the fire brigade in Kisumu, we are also prepared to look at the alternative. I think it might mean a bit more investment by the Prisons Department to be able to go deep into the lake. That might mean that we look at that option for the next financial year. For now, we are doing whatever is necessary to make sure that the hygienic conditions are maintained.

As I said, having visited it, Kodiaga had a very big congestion. We actually monitor this situation almost on a 24 hour basis because this is why it will be wonderful and my learned friend knows this. The moment we do serious devolution and are able to decongest our prisons, we will begin to realize that the human living conditions in Kisumu and other prisons will drastically improve.

Mr. Oyongo Nyamweya: Mr. Speaker, Sir, I thank the Vice-President and the Minister for Home Affairs for that answer. However, when you look at the amount of money required to make sure that those people get clean water, is enormous. They are spending a lot of money to make sure prisoners, staff and the hospital get water. Given the fact that population is very high in Kodiaga Prison, I think the prisoners are exposed to poor hygiene conditions. The money that was used for the fire brigade should be used to make sure that the pump works. They should remove the water hyacinth from the lake, so that prisoners get flowing water instead of what they are using at the moment.

Mr. Musyoka: Mr. Speaker, Sir, I did indicate that the problem is bigger than what my hon. friend has said. I said the shoreline receded. It was not just a problem of the water hyacinth, but the shoreline itself has receded. This means we have to look for more piping in order to be able to go deep into the lake. That is why I was able to thank the hon. Member and my learned friend for a very useful suggestion which I think ultimately, is the most viable solution.

In the meantime, we have to ensure that prisoners or the staffer, including the new hospital, do not suffer. My learned friend should have thanked me for promoting the health centre to a full district hospital within Kodiaga. The intention is to serve the entire community. He also knows that he had approached me with the aim of wanting to donate some place, so that he could put a centre of excellence next to Kodiaga. I think that after consultations, he changed his mind or he really listened to what the constituents were saying. But what I am saying is that this prison facility is there for the entire community

even as we seek to do our core function, which is to rehabilitate those citizens who find themselves on the opposite side of the law.

But in the meantime, we are doing whatever it takes to make sure that there is no outbreak of diseases. We are taking this as an emergency measure. I must thank Kisumu Municipality, particularly the fire department for working with Kodiaga Prison.

Mr. Outa: Mr. Speaker, Sir, I want to let the Vice-President and Minister for Home Affairs know that my aunt lives around the Kodiaga GK Prison. Of late, it has been very difficult because you have really accepted the diversion. Could he inform the House of what plans he has to share with the people living around Kodiaga GK Prison because they cannot get water from Saka River?

Mr. Musyoka: Mr. Speaker, Sir, my first priority was the prisoners. I can see the hon. Minister for Water and Irrigation is right here. I heard the hon. Member for Bura talk about tinkering. I think we can co-operate with the Ministry of Water and Irrigation to make sure that the community around Kodiaga GK Prison is actually helped through this difficult time of drought.

Mr. Olago: Mr. Speaker, Sir, I want to appreciate the fact that co-existence between the prison and the local community has been very good, and the hon. Vice-President and Minister for Home Affairs has been very useful in this regard. But the problem is that River Saka has been the only natural source of water for the locals. Indeed, when the pump was working by the lake, it was supplying the very people who were living in very close proximity to the prison. But the ones living in Lower Korando, Otonglo and up to the lake shore, are not able to share the water. So, the important thing I would suggest is to do what KIWASCO and the other bodies have done. They have extended their pipes to accept the water that has now receded so that River Saka can then supply water naturally to the people of Korando. Under these circumstances, could I have a firm answer from the hon. Vice- President and Minister for Home Affairs, stating when his Ministry will extend the water pipes into the lake so that they can leave River Saka alone?

Mr. Musyoka: Mr. Speaker, Sir, I am very grateful for the information from the Minister for Water and Irrigation that, currently, there is a lot of work going on with regard to provision of sewerage facilities around Kisumu Municipality. The Ministry is going to work with the Prisons Department to make sure that we do not have a problem, including going deep inside the lake to be able to rehabilitate the pipeline out of Lake Victoria. I think this hon. Member, my very good learned friend and a member of the Parliamentary Select Committee, should be thankful to us.

Mr. Speaker: Order, Vice-President and Minister for Home Affairs! You have been asked: When? You have not answered that.

Mr. Musyoka: Mr. Speaker, Sir, this is a very urgent matter. We cannot continue using Kisumu Fire Brigade. Therefore, this is an emergency situation and we are treating it as such. Therefore, we are working on it immediately.

Mr. Speaker: Next Question by Mr. Cheruiyot!

Question No.874

DELAYED PAYMENTS TO OLENGURUONE LAND DISPUTES TRIBUNAL

Mr. Cheruiyot asked the Minister for Lands:-

(a) whether he is aware that members of Olenguruone Land Disputes Tribunal have not received sitting allowances since 2007;

(b) whether he could table a list of the tribunal members, indicating the amount owed to each of them; and,

(c) when the Ministry will pay them and whether he will also pay accrued interest on the amount.

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

(a) I am aware there are unpaid sitting allowances in respect of Olenguruone Land District Tribunal members.

(b) Members of the Olenguruone Land Dispute Tribunal that are owed money in terms of sitting allowance are as follows:-

Elly Langat – Kshs34,200; Susan Sitonik(deceased), Kshs31,800, Timothy Ng'eny, Kshs20,400, Richard Koros, Kshs9,600, Samuel Bett, Kshs38,400, Emily Simutei, Kshs43,800, Paul Kirui, Kshs22,000, Moses Mutai, Kshs62,400, Joshua Chepkwony, Kshs25,800, James Kosgei, Kshs60,000, Paul Kero, Kshs22,200.

A sum of Kshs21,946,456 was factored in the Supplementary Budget Estimates to cater for arrears owed to members of land dispute tribunals across the country.

(c) Members of the Olenguruone Land Dispute Tribunal will be paid before the end of 2010/2011 Financial Year, alongside other members, once the amount requested is received from Treasury. On the payment of the accrued interest on the amount to be paid, the Land Disputes Tribunal Act, Cap.18 of 1990 does not provide for the same. In this regard, the Ministry will not pay interest on arrears owed to the members.

Mr. Cheruiyot: Mr. Speaker, Sir, the issue of payments to land dispute tribunals in most districts is getting into epidemic status. In particular for Kuresoi, the Assistant Minister has said that he will make some payments that have been pending since 2007. But he has ignored to pay between 2003 and 2007 and, subsequently, 2008/2009. Could he sort out this irritating single thing and pay those members?

Mr. Rai: Mr. Speaker, Sir, once those monies are released by Treasury - because they have already been factored in the Supplementary Budget - I will do the needful.

Dr. Nuh: Mr. Speaker, Sir, while the Assistant Minister has promised that the arrears will be paid to the members, what plans does his Ministry have to ensure that such arrears do not occur in future?

Mr. Rai: Mr. Speaker, Sir, my primary duty is to factor in most of the monies owed to those members in the budget. But if I do not get what I have sought from Treasury, it will become a problem. But I believe that in the near future, this problem will be something of the past.

Mr. Njuguna: Mr. Speaker, Sir, as I commend the Assistant Minister for that very positive reply, could he inform this House of the Government policy on allowance payment to members of those tribunals countrywide?

Mr. Rai: Could he come again since I did not hear the question properly?

Mr. Njuguna: Mr. Speaker, Sir, I commend the Assistant Minister for offering a very positive reply. I would request him to inform this House what is the Government policy on the payments of allowances to tribunal members countrywide?

Mr. Rai: Mr. Speaker, Sir, the policy of the Government or of the Ministry is to actually ensure that those monies are released in good time. But because we do not get

money on time--- Normally, we receive our budget with a deficit. Therefore, it becomes difficult to meet our demands.

Mr. Cheruiyot: Mr. Speaker, Sir, I think we have gone through this every week and every month. I hope the Assistant Minister will be serious and pay those members.

Mr. Rai: Mr. Speaker, Sir, I have said that, before the end of the financial year, I will ensure that each constituency receives its share of those allowances which are being requested.

Mr. Speaker: Order, hon. Members. Question No.757 is deferred to Wednesday next week in the morning at 9.00 a.m. because the Member for Yatta is away on official parliamentary business in the Republic of Uganda. He has gone to represent your country to witness the swearing in of President Museveni.

Question No.757

TABLING OF REPORT ON SQUATTERS IN NDALANI LOCATION

(Question deferred)

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

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. Yesterday, I informed the Chair that I would like to raise an issue on a Question that was here on Private Notice regarding the Ministry of Transport. You had ordered that they undertake a 48-hour visit and report to the House. I was just wondering whether I would be order to ask that the Report be given.

Mr. Speaker: Yes, indeed. That was Question number what?

Mr. Kabogo: Mr. Speaker, Sir, I do not have the Question number. It was to the Minister for Roads, and the Question regarded water drainage. I know they did visit the side but I do not know what it is they said.

Mr. Speaker: Member for Juja, the reason I want the Question number is that I want to order that the Question appears on the Order Paper on Tuesday afternoon, so that it can then be answered and the report be tabled.

Mr. Kabogo: Mr. Speaker, Sir, if you allow me time, I will talk to the Clerk's office and give the Question number.

Mr. Speaker: Very well. We will leave it there and I direct that it appears on the Order Paper on Tuesday afternoon at 2.30 p.m.

Next order!

MINISTERIAL STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 17.5.2011

The Vice President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I wish to make the following Statement pursuant to the provisions of Standing Order No.36 (4).

May I take this opportunity to first of all thank you for your Communication from the Chair yesterday. What you communicated was unanimously agreed on at the level of

the House Business Committee (HBC). We have to unlock any obstacle that comes in the way of full implementation of our Constitution.

Mr. Speaker, Sir, the House will next week continue debate on the following two Bills; the Independent Electoral and Boundaries Commission Bill; I notice that that is the thing we are going into almost immediately. Second will be the Salaries Remuneration Commission Bill, Bill No.8 of 2011. The House will also consider the following Bills now at the Second Reading Stage, namely; the Companies Bill (Bill No.23 of 2010), the Insolvency Bill (Bill No.22 of 2010) and the Public Appointments (Parliamentary Approval) Bill (Bill No.3 of 2011).

Mr. Speaker, Sir, additionally the following three Bills will be considered at the Committee Stage, the Nurses (amendment) Bill (Bill No.25 of 2010), the Limited Liability Partnership Bill (Bill No.21 of 2010) and the Prohibition of Female Genital Mutilation Bill (Bill No.24 of 2010)

The HBC will reconvene on Tuesday, 17th April, in order to consider business for the following week.

Thank you.

Mr. Speaker: Very well.

Minister for Energy, you have a Statement on the fuel crisis, which is due today.

MEASURES TO ADDRESS CRISIS IN OIL INDUSTRY

The Assistant Minister for Energy (Mr. Magerer): Mr. Speaker, Sir, on the 10th May 2011, the Member of Parliament for South Mugirango, Mr. Oyongo Nyamweya sought a Statement from the Ministry of Energy on the rising cost of energy, or on the crisis in the oil industry.

On Wednesday 27th April 2011, the Right hon. Prime Minister, while issuing his Statement during Prime Minister's Time, confirmed in this House that the Government had reduced the profit margin on regulated products such as kerosene, diesel and petrol from Kshs6 to Kshs4 per litre, and consequently the prices of these products were to go down by Kshs2. On Thursday the 5th of May 2011, the Minister for Energy further assured this House that the prices would go down. However, some marketers have recently indicated that the fuel prices could go up.

The Statement that I have is generalized because the problem in the industry, as it is now, has been handled. The question, therefore, becomes: Do we regulate the sector or not? Many argue that Government intervention in a liberalized market economy is not the right thing to do.

The second question would be then, when there is a market failure, what happens? Should the Government sit back and wait for market forces to stabilize? Of course, the answer is no. What we have experienced in recent days is worrying for our economy. Increasing inflation, which is almost at 12.5 per cent, is going to definitely spiral poverty, cause a surge in prices of commodities, increase transport costs and reduce purchasing power. Therefore, this calls for a regulatory mechanism. Failure by the industry to self-regulate, then Government controls become inevitable. However, who will this benefit?

Mr. Speaker, Sir, in the view of the prevailing oil sector performance and contribution to the economy has had a negative impact, given the provisions of the new Constitution on consumer rights as reflected in Article 46 of the Constitution--- It is,

therefore, sad for private sector to take advantage of the consumer and make super-normal profit at the expense of the consumer, courtesy of poor legal and administrative framework in this sector.

The National Oil Corporation of Kenya (NOCK) was established to tame this monopolistic tendency. The Energy Regulatory Commission (ERC) is an administrative body, whose mandate and capacity has cast a little doubt on its role in the sector. Many believe that it is engaging in price fixing and not regulation. Oil price liberalization then becomes a problem in two ways; it fuels inflation and adversely affects commodity prices, making life unattainable. It is immoral that the industry should make super-normal profits at the expense of economic and social needs of the citizenry, in the true capitalist mentality of man-eat-man society. It is, therefore, not good that Government subsidies have not been forthcoming. The Government has been previously accused of having a high taxation regime, and laxity in intervening on prices. For example, progressive legislation should encourage the Government to administratively peg oil prices at, say, five per cent below the international market prices. This may cushion the citizenry.

Likewise, it is unacceptable for the Government not to have enough strategic oil reserves, yet we boast of achieving energy needs of our people. We need to find alternative sources of our crude supplies and a way of supplying oil to our county. It is imperative that we may need to look at the taxation regimes. The idea of increasing taxes always to offset Government deficit and putting it on fuel has happened.

Mr. Speaker, Sir, we have learnt valuable lessons from the past and recent oil prices. Any increment in oil prices has a significant effect, therefore, on our economy. Consumers then suffer. It is the expectation of the public that we, in Government, should intervene and lessen the burden over its people. Regulations would become definitely the optimal option. But in a liberalized economy, industry players can alter their behaviour. The recent speculation that there could be oil increase price is merely speculation.

Mr. Speaker, Sir, according to what we have today, the stocks, for example, for petrol that is the PMS, the super, in Nairobi we have about 12 million litres. In Eldoret, we have 600,000 litres. In Kisumu, we have 700,000 litres. In the Kenya Oil Storage Facility (KOSF), Mombasa, we have about 8.3 million litres. In the pipeline system itself, we have almost 28 million litres. It is estimated that this can last us between 15 and 18 days.

Mr. Speaker, Sir, for diesel, in Nairobi alone, we have 30 million litres, Nakuru, 11.4 million litres, Eldoret 8.3 million litres, Kisumu 8.4 million litres and KOSF in Mombasa, we have 37 million litres. This is also estimated to last us for 20 days.

Mr. Speaker, Sir, for kerosene; in Nairobi, we have 12 million litres, 1.8 million litres in Nakuru, 900,000 litres in Eldoret and 377,000 litres in Kisumu. For the jet fuel, we have 30 million litres in Nairobi, which can last for 15 days; 650,000 litres in Moi International Airport, Mombasa, which is enough to last for eight and nine days, respectively, 1.9 million litres export in Eldoret and 2.6 million litres in Kisumu.

Mr. Speaker, Sir, dual purpose kerosene, which can either be jet or petrol, we have 98 million litres stored at KOSF in Mombasa.

I want, therefore, to assure this House and the Member that we do not envisage a shortage as we move on in the coming months.

On the issue of the price, whether the price reduction has been effected, you will remember that the stock that we were dealing with was the stock as for the month of

April. In the next two days, the Energy Regulatory Commission (ERC) will announce a new price, which will, therefore, incorporate the reductions which were proposed by the Ministry and the Government effective on 15th of this month.

Mr. Speaker Sir, that is all.

Mr. Speaker: Members who want to clarifications? We will allow a maximum of five. Let us begin with the Member for South Mugirango. Mr. Assistant Minister, please keep notes.

Mr. Oyongo Nyamweya: Mr. Speaker, Sir, I thank the Assistant Minister for the Statement. However, I am not sure whether he has given us all the information we wanted from him.

I want him to be categorical on this matter because when the Right Hon. Prime Minister was in his House, he promised prices would come down from Kshs6 to Kshs4. Has that price reduction been implemented? Could he tell us whether the marketers ignored to implement it? Was there any tax waiver? Was that what caused the shortage we had?

Another issue is that you have said that the storage we have will last us for 15 days. Could he give us the scheduled deliveries for these products from overseas, so that we know that this nation will have enough fuel after 15 days? Could he tell us whether there is a ship on the high seas? When will it dock, so that we are assured that we will not run short of petroleum or kerosene? We want to work without worries. Sometimes, when we leave our homes in the morning, we are not sure whether we will get to our places of work.

Dr. Nuh: Mr. Speaker, Sir, the Ministry which is supposed to provide answers, has, indeed, given us more questions than answers. We are at a loss whether we, as a country, are stable when it comes to supply of petrol, kerosene and other basic needs.

Mr. Speaker, Sir, more importantly, the Assistant Minister says the mandate of the National Oil Corporation of Kenya (NOCK) and ERC was to ensure that, at least, we have prices when it comes to consumables of petrol, kerosene and diesel. However, it seems they are failing in their duty as he himself has confirmed. Will it be in order that we even ask for their disbandment because they cannot perform?

Mr. Namwamba: Mr. Speaker, Sir, with due respect, the Assistant Minister's statement sounded more like poetic rhetoric from Thomas Elliot or Odysseus than an attempt to address real issues.

Could he assure this House and the country in very simple and direct terms whether or not the pump price of fuel is going to go up by Kshs6 in the next few days as speculated in the market? Also, whether this House should look forward to receiving tax measures that were indicated on this Floor by both the Minister and hon. Prime Minister, measures that require approval of this House to redress some of the concerns that he has alluded to in his poetry, whether this House can look forward to those measures coming to this Floor? Could he do so in very simple and specific terms?

Eng. Maina: Mr. Speaker, Sir, during the recent crisis in the oil industry, there was a statement to the effect that this was something made by the cartels that are operating in the oil industry as a reaction of the control that the Government has just put in place.

Could the Assistant Minister confirm what they are doing to these cartels, because we cannot afford a country, where we are being blackmailed by some marketers?

Mr. Lessonet: Mr. Speaker, Sir, although it looks like the Assistant Minister could have come with the wrong answer, I wish to interrogate him on what he has just said. That is, what back up measures or contingency measures they have put in place as a Ministry, just in case when a shipment is coming from abroad, the pirates or any disaster decides to take possession of that very valuable commodity?

(Mr. Mbadi stood up in his place)

Mr. Speaker: Finally, we will make exception to my earlier direction, because the Member for Gwasssi has been persistent. We will take that as the last one.

Mr. Mbadi: Mr. Speaker, Sir, when the Assistant Minister was reading his statement, many of us did not see the value of his statement because this is what we have been entertained with always. The Minister has said it! The PS has said it! So, I really do not know the value of this statement. But having said that, we really want to know, Mr. Assistant Minister, the Deputy Prime Minister and Minister for Finance had announced that the pump price on kerosene would go down by Kshs2. Could you confirm to this House that that happened?

The Prime Minister was very clear when he made his statement. That the Deputy Prime Minister and Minister for Finance, was supposed to bring tax measures to this House for us to approve them. You have assured this House that in the next 15 or so days, the prices will go down following those tax measures. Will you exclude the House from it, or you anticipate that by that time, you will have followed all the required legal technicalities to make sure that, that happens?

Mr. Speaker: Very well, you may respond, Mr. Assistant Minister!

The Assistant Minister for Energy (Mr. Magerer): Thank you, Mr. Speaker, Sir. I think the questions by Mr. Oyongo Nyamweya and the one by the Member for Gwasssi seem to inter-relate.

Mr. Speaker: Take them together!

The Assistant Minister for Energy (Mr. Magerer): Mr. Speaker, Sir, they ask whether there was an effect in the reduction measures that were announced by the Rt. Hon. Prime Minister and, of course, confirmed by the Ministry. I said in my Statement that the Energy Regulatory Commission (ERC), which is the body that is charged with determining the prices as per what happens in the world market will make their prices known in another two days and not even 15 days. Every 15th day of the month or thereabouts, they are supposed to release the new prices because the pricing formula is dependent on the oil price that is available in the world market. In this situation, definitely, we expect the announcement by the Rt. Hon. Prime Minister to be factored in and I have no doubt that it will be factored in the price of petroleum products.

Mr. Speaker, Sir, on the schedule of deliveries asked by Mr. Oyongo Nyamweya, I would like to inform the House that---

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. The Assistant Minister has evaded answering my question. I asked if they would take the tax measures into consideration, and yet the Prime Minister was very clear that, that was supposed to come to this House. Within these two days, is the Assistant Minister sure that, that will happen or he will bypass Parliament's approval?

The Assistant Minister for Energy (Mr. Magerer): Mr. Speaker, Sir, I think I have just stated what needs to happen. As to the formula, the hon. Member is aware that it needs to come to this House as it is required. What I have just indicated is that it will definitely be reflected in the new price increases. On the logistics of doing it, I want to believe that the Office of the Deputy Prime Minister and Ministry of Finance, the Ministry of Energy and the bodies that work together should be able to provide the way forward.

Mr. Oyongo Nyamweya: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, the Member for South Mugirango! I really hope it will be a point of order because as far as I am concerned, from the position where I am, I have understood the Assistant Minister to be clear at this point on that matter. So, it must be a point of order; otherwise, you may have to pay a price for it!

Mr. Oyongo Nyamweya: Mr. Speaker, Sir, when the Rt. Hon. Prime Minister addressed this House, he said that the price would be reduced immediately. Is the Assistant Minister in order to tell this House that what the Rt. Hon. Prime Minister said was future price fixing?

Mr. Speaker: You are on the borderline, so I will let it pass!

The Assistant Minister for Energy (Mr. Magerer): Mr. Speaker, Sir, I think I have tried to explain that the determination of the prices is normally done by the ERC every 15th day of the month or thereabouts. When the Government announced subsidies, in my Statement I said that the Government subsidies have still not been factored in. That effectively means that we may not have been in a position, as a Government, to effect the subsidies immediately as announced by the Rt. Hon. Prime Minister. However, I have assured this House that come the next announcement of the prices, definitely, it will be factored in.

Mr. Speaker, Sir, I was talking about the deliveries when the hon. Member asked for the schedule. I want to assure the hon. Member that we cannot do the business of storing more than what is required in our country. On the haulage, when we move oil, whether it is petrol, diesel or kerosene, we replace it and this system is self-regulating. That is why there is what we call “an Open Tender System” (OTS) every month. This is done every day to determine who will import the fuel in the quantities that are required by the country for the next month. I think we are on schedule and there is no reason for the hon. Member to have any doubt because this Ministry has performed its duties before, very well.

Dr. Nuh wanted to know why the National Oil Corporation (NOCK) and ERC – since I alluded in my Statement that they have not achieved the target that they were given in terms of regulating the prices – should not be disbanded. I think there are issues that the Ministry, together with the two agencies, has been addressing which may have resulted in them not being able to fulfill their mandate. For example, the NOCK is a Government parastatal which has very little funding. The Treasury has not funded the Corporation adequately to be able to perform its mandate. However, we must also appreciate the fact that when the NOCK was started, it had about six to seven petrol stations, but as we talk now, it is in excess of 65. I think within the period that it has been around, it has tried. As we move on, the Government and the Ministry will give it more support and the capability of the Corporation to perform its mandate will be done well.

As for the ERC, its formula which was developed to be able to provide a guideline is definitely an issue that we are also re-looking at because the net effect of that formula increased the kerosene prices. I think the Ministry has recognized that fact before and, probably, the ERC is working on a formula that may not affect any of the fuel type adversely. If it is an increase, then all should increase, but others should not go down while others go up. I think that is something that the ERC is working on and we hope that they will live up to their mandate.

Mr. Speaker, Sir, Mr. Namwamba asked again about the issue of tax measures, whether they will see the light of day. I have said before that these taxation measures, as hon. Members may know, have to be approved by this House. I want to believe that the Ministries concerned will work it out and seek the approval of the House. Mine is to request hon. Members that if the tax measures are brought to this House, let us support them, so that we can pass the benefits on to our people.

Mr. Speaker, Sir, Eng. Maina was passionate on the cartels in the oil sector, particularly some oil marketers. I want to believe that if we have cartels, then it is our responsibility as a Ministry, to detect them and reign in on them because we are a regulator. However, as far as I am concerned, we also need to understand the technicalities that have happened before. The Minister for Energy, Mr. Murungi, has already convened a meeting with all the stakeholders in the oil industry; that is the oil marketers, the Ministry, the agencies and the consumers. I believe that that meeting came up with results that will help cushion everybody who is a player in the industry. I do not know that we have cartels in the industry.

Mr. Speaker, Sir, Mr. Lessonet also asked about the backup measures. I toured the oil facilities in Mombasa as well as those in Nairobi and I discovered that there are a number of issues or measures that need to be taken. For example, if you look at the capacity in terms of the pipeline to pump the fuel in time, you will find that there is a capacity constraint. However, I am happy because the Ministry has already moved and, right now, we are constructing a 14-inch parallel pipeline from Nairobi to Eldoret to ease and mitigate on evacuation constraints that we have been having, especially on the western depots.

There are also plans, of course, they have been said here before that we definitely need to improve on the service that is provided by the Kenya Petroleum Refinery Ltd. (KPRL). I visited the facility and I sympathize with the management of the KPRL because of the challenges that they face. However, I was happy because one of them was the provision of electricity, which affected the processing of oil leading to the production of less quality fuel and, therefore, more losses to the marketers. That situation is being rectified because currently, the KPRL is putting up an 8.5 megawatt generation station to supply its own electricity that will ensure that we have a constant supply of electricity and, therefore, reduce the losses in terms of the quality of fuel that is being produced at the moment.

The Assistant Minister for Energy (Mr. Magerer): Mr. Speaker, Sir, as a Ministry, we are closing in on the players who do not want to act within the rules that we have set in the industry. I know that at an opportune time, we will reign on them and ensure that Kenyans are not subjected to what has happened recently.

Mr. Speaker: We will take requests for Statements before we finish with Mr. Mbau.

POINTS OF ORDER

HARASSMENT OF SMALL SCALE TRADERS BY CITY COUNCIL *ASKARIS*

Mr. Mbuvi: On a point of order, Mr. Speaker, Sir. I would like to request for a Ministerial Statement from the Deputy Prime Minister and Minister for Local Government on the harassment and use of excessive force against small scale traders, *mama mbogas* and hawkers by the City Council *askaris*. The Minister should one, clarify why some councillors and other senior City Council officials are demolishing premises belonging to poor small scale traders and *mama mbogas* who pay licence fees to the City Council of Nairobi on daily basis, to pave way for the construction of modern *kiosks* and selling them at Kshs160,000 to traders who are based outside Makadara Constituency.

Two, the Deputy Prime Minister and Minister for Local Government should explain why the City Council of Nairobi this morning, without any notice, demolished open shops donated for free to the poor small scale traders in my constituency by the Makadara CDF, and whether the Council will reconstruct them.

Three, the Deputy Prime Minister should indicate the mechanism that has been put in place to ensure that, that mistreatment comes to an end and stern action is taken against the city council *askaris* and senior officials for acting with impunity and committing acts of criminality.

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I undertake to convey to the Deputy Prime Minister and Minister for Local Government the need to bring that Statement next week.

Mr. Speaker: Let it be brought next week on Thursday at 2.30 p.m. It is so ordered! So, Member for Makadara, please, note that! We will take the last item under this business. Member for Maragwa!

PERSONAL STATEMENT

PROVOCATION OF HON. MBAU BY HON. KABOGO

Mr. Mbau: Thank you Mr. Speaker, Sir, for giving me this chance to make a Personal Statement under Standing Order No.76. I wish to make a Personal Statement to put the facts correct on matters within the public domain on an incident that happened within the precincts of Parliament yesterday, Wednesday 11th May, 2011.

I wish to bring to the attention of the House, and those who watched and listened to the proceedings that, a colleague Member of Parliament, hon. William Kabogo, MP, has clearly and without any justifiable cause, gone out of his way to malign my name in public.

Last Sunday, I voluntarily drove from church at 1.30 p.m. to attend a prayer cum public meeting at Ruring'u Stadium in Nyeri County. It is during that function that hon. Kabogo uttered unpalatable and provocative words in the distinguished presence of His Excellency the Vice-President and Minister for Home Affairs, Deputy Prime Minister and Minister for Finance, other Ministers, Members of Parliament and other

distinguished leaders. Yesterday, as I was getting out of this Chamber, and while I was in a discussion along the Speaker's Walkway with three other Members of Parliament including, hon. Njoroge Baiya and hon. Muturi Mwangi of Kiharu, hon. Kabogo left the Chamber and came to where we were. Before he passed, he accosted me, leading to a near-scuffle. In the process, I was pulled aside, from the scene by my colleagues, leaving him ranting and raving, spoiling for a fight. He still further followed me and was only restrained and pulled away by Parliamentary Orderlies. As he left, he angrily issued a threat and I quote:-

“You will know me”.

Mr. Speaker, Sir, this state of affairs is obviously unbecoming and does not reflect well on any honourable Member. It has greatly disturbed me. The Constitution, under Article 36, guarantees citizens of Kenya their freedom of association. It also clearly spells out that no person shall be compelled to join an association of any kind without his own volition. In addition, Article 33(3) states as follows:-

“In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.”

Whereas the hon. Member may wish to claim his freedom of expression, allow me to draw his attention to Article 33(2) of the Constitution which stipulates:-

“The right to freedom of expression does not extend to:-

- (a) propaganda for war;
- (b) Incitement to violence;
- (c) hate speech; or,
- (d) advocacy of hatred that-
 - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm---

Mr. Speaker, Sir, I am privileged to represent my constituents in this august House. The people of Maragwa in Murang'a County are free thinkers, clearly outgoing and live by our own sweat. We expect other leaders to respect us. Let it be known that the people of Maragwa are being represented for a second term uninterrupted, by a gentleman of high integrity who values and respects others and their views.

(Applause)

It is on this same accord that I believe hon. Members across the political divide were able to vote me as Chairman of the all important Budget Committee of this House. I have never been mentioned in any scandal of any nature, criminal or otherwise, and would wish to know under what circumstances the Member for Juja would want to drag my name to an episode which is likely to portray me negatively.

Finally, I request you to refer this matter to the Parliamentary Committee on Powers and Privileges, so that hearing and determination can be conducted in order to protect the dignity of Members of Parliament and this House.

I thank you.

(Applause)

Mr. Speaker: Very well! Member for Maragwa, you have said your bit. However, note that under Standing Order No.76, the Speaker does nothing beyond

allowing you to make that Statement, which I did. You will have to have recourse to other procedure other than Standing Order No.76. If you need some help, you can find me in my Chambers.

POINT OF ORDER

APOLOGY FOR FAILURE TO ANSWER QUESTION

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Speaker, Sir. I rise on a point of order to make a brief statement, which is an apology to the House. Yesterday morning, my Assistant Minister and I were late in getting to the House to answer a Question. There are circumstances that led to that. Yesterday was a very important day within the transport industry and within the road sector on a global basis. It is the day of the launch of the UN Decade of Action on Road Safety. We had a function at KICC and both of us proceeded towards that direction. We later realized that one of us had to be here. Unfortunately, by the time we got there, the Question had been asked and we were late in responding. Subsequently, sanctions were applied against the Ministry of Transport and I would like to appeal that those sanctions be lifted, so that we can continue to provide this House with all the information that it requires regarding that important sector.

So, I wish to apologise to the House on behalf of my Assistant Minister and myself and the Ministry of Transport for not being here to transact the business that was required of us by the House.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Thank you, Member for Kipipiri and Minister for Transport. I have heard you. I am satisfied that that is a tenable explanation, and the sanctions imposed on you and your Assistant Minister are lifted.

Next Order!

BILLS

Second Reading

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL

*(The Minister for Justice, National Cohesion
and Constitutional Affairs on 26.4.2011)*

(Resumption of Debate interrupted on 11.5.2011)

Mr. Speaker: Hon. Dalmas Otieno, you had the Floor and you have a balance of eight minutes.

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I rose yesterday evening to support this Bill, and to particularly emphasise the good governance

structure that is recommended under the Constitution and promoted through the drafting of this Bill.

The governance structure recommended under the Constitution is that, first it will be Parliament to supervise each and every independent constitutional commission. Parliament will be supervising these commissions through annual reports that they will have to submit to the National Assembly, Senate, President and through any special request that may be made by Parliament.

Mr. Speaker, Sir, those two forms of reports will be a mechanism for holding the commissions accountable to the people of Kenya; they are really not sufficient because their frequency may be very low, and Parliament will have to look at the written reports. It may be necessary that Parliament passes the necessary national legislation to define the content of any report that it may have to be given by the independent commissions on a more regular basis, and so that the capability of the House to hold the commissions accountable is effectively administered.

The Constitution provides that the commission will appoint a secretary, and that the secretary will be the Chief Executive Officer of the commission. What the Bill has done is that the secretary, as Chief Executive Officer of the Commission, will be the head of the secretariat by way of being the head of a professional management outfit of the Commission. If we allow the Commissioners to engage in the daily activities of the Commission, we run the risk that nobody will be held responsible for the administration of the day to day running of the Commission by the Commissioners.

Mr. Speaker, Sir, the situation envisaged is a Commission which will issue regulations and approve systems, procedures, standards and set targets. It will be able to make the rules by which the professional management will have to run the Commission. Due to these rules, a professional secretariat will know how to account to the commission for what they do. They will, therefore, need to be preparing commission papers, which will be a record of every request to the Commission for approval to undertake every activity under the Commission.

In the absence of such a system, we cannot guarantee the integrity and stability of every commission. We cannot guarantee transparency because if the Commissioners, as the current commission is known to be doing, are themselves executives and run elections, we will end up with nobody to supervise them. We now want a clearly delineated set of activities, so that the Commissioners will hold the secretariat accountable to the commission and then the commission, in turn, will be accountable to Parliament.

Mr. Speaker, Sir, if you look at the challenges that we have in the management of our institutions, you will realise that one of them is the personality cult in our system. The personalities somehow manage to get more powerful than the institutions to which they have been appointed. This situation only arises when we do not have clear accountability guidelines. This Bill envisages that the Commissioners will hold the secretariat and management accountable.

Another challenge is that when emotions run high in this country, logic fails lamentably. So, we need to have very clear guidelines as to who will be running what activities, and who will hold that person accountable. There must be very clear rules and guidelines to be followed. In case of any deviation, there should be documentation to explain exactly what happened and get the approval of the commission. If this is not

done, we will end up with a situation, again, where those who make the mistakes in the management of our institutions will not be known, and they will be getting away with murder.

Mr. Speaker, Sir, the other challenge, which we are surely aware of, is corruption. If you allow somebody to be a commissioner and, at the same time, be the one to manage the day to day operations of an institution, deals will be made and nobody will see through what goes on in such a commission. So, a clear separation of the duties of the Commission from those of the management is very important in our environment. This is a major change in the management of our institutions, particularly in the management of the ten independent constitutional commissions, which will get their budgetary allocations directly from Parliament. The rest will be undertaken by the Controller and Auditor-General, who will come in much later, after the resources have been spent.

[Mr. Speaker left the Chair]

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

Another big challenge, which we are also very well aware of, and which has messed up the management of so many of our institutions, is ethnicity, nepotism, clannism and favouritism. How do we avoid this? In addition to specifying the values and principles of good governance in the Constitution, and in the other laws that we are making, we have gone into greater detail as to specify who qualifies to be appointed to which office, who will undertake what type of activity and what type of reports will be necessary to hold our institutions accountable.

Mr. Temporary Deputy Speaker, Sir, hon. Members have raised the issue of having part-time and full-time Commissioners. The commission is non-executive, but it is an independent commission, and will not be subject to the direction of anybody. The commission will not be subject to the control of anybody, but it controls its own secretariat. We can have a few members of the commission on a full-time basis for quick consultative processes with the management, in case they need clarification of certain policies, rules and regulations affecting their day to day operations in specific situations that may arise.

The Bill provides for the chairperson and one other Commissioner to be available on a full-time basis. Their being available on a full-time basis will not make them executive. They will still be Commissioners who will be available for consultation by the secretariat.

With those remarks, I beg to support.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I know this Bill has received many contributions from the Members and the Minister in charge must have his basket full as regards recommendations and views pertaining to the Bill. Mine is just to give more weight on areas of great concern.

Just to lay the background, we know the cost of elections, not only in this country, but the world over. It has come to pass that we butchered one another, lost lives and livelihoods and the after effects are the ones which up to date raise emotions in this House when issues of the IDPs' resettlement and getting justice are raised. With that, it is

only fair that we have a credible commission that ought to supervise and make verdicts as to who serves Kenyans in the various constituencies and capacities. Once the credibility of a commission or a body that is supposed to oversee elections and declare who won and who lost and by what margin is questioned, then you will never have satisfaction as to any results that will be announced, even for the one who, in broad day light sees that he has lost.

Mr. Temporary Deputy Speaker, Sir, even for the one who has suspicion and misgivings as to whether or not he lost, if he had confidence in the first place in such a commission or a body, then he takes solace in that, although he still has some suspicion, he would be comfortable to eat humble pie and say: "I will come to fight another day". How would such confidence be inspired among Kenyans and aspirants? This commission or body has to have the integrity, not only of members, but even of the regulations that govern that body. Integrity does not just come easily. It comes in terms of scrutiny and when appointments are being done. It comes when supervision is being done even of its work as the Commissioners are called to account for whatever actions the Commission is undertaking. That integrity can only come a long way when independence is granted to that Commission in many aspects. It is not only independence that, that person has been given some roles and he or she ought to perform within those procedures and rules and they are left scot-free. If you have been given an undertaking and you have not been given the capacity to do so, then that independence is lacking.

If we had an independent commission, which will again go and cry for funding from the Treasury; which at times would be starved for funds and would be at odd to operate just because of financial constraints, then what independence has been granted to that Commission? What independence has that office been given just merely by inscribing on a paper note that "this is an independent Commission"? That alone does not serve. These offices have to come with independence on finances. In fact, if Parliament and the Judiciary have been allowed to present their own budgets, why would an electoral body not be allowed to do the same? Why would they not be given the autonomy to present their budget? Realizing that these budgets are budgets that the Commission can live within and not anything less, then they should be granted those funds. But if we have to treat this independent Commission that has to oversee elections like any other Ministry or department in the Government and tell them: "Okay, fine, because we have problems and financial constraints and our revenue bases are losing, you just have to do with these few shillings", then that independence is wanting. Such a body would not be in a position to give us credible results and leaders. Even for those of us who will lose, we will not be content with whatever happens.

Mr. Temporary Deputy Speaker, Sir, like I said, I just want to point out a few issues and this will come with appointments. I know we have talked of staggering appointments because we want that continuity and retention. But even for the first one year where you want to operate with a minimum of four or five Commissioners, the work will be hampered. Having a commission that would work on part time basis is not a commission that we would want to oversee our elections. We want a commission that is full time and whose Commissioners have dedicated their man hours. If they are supposed to work for eight hours, then we know that they are working eight hours round the clock to oversee that Kenyans will never again fight because of who won and who lost the elections. If we are doing it merely because we want to save on resources, democracy

comes with a price. We do not want to say that we want a democratic country where elections are not only free and fair, but are seen to be free and fair and we want to still guard on resources and say that we want to spend a minimum.

If the intent of having a part-time commission or some of the Commissioners serving on part time basis is basically because we want to save on resources, then we are not doing the right thing. We want a commission that is full time. I do not even see the need for staggering appointments because if we wanted continuity, we can still retain some of the Commissioners. We can suit the law in such a way that you can have one or two retained from the previous commission. But even if we have to make the appointments, let us say, six months earlier than the expiry of the previous commission, that will do. I do not think you need to starve the commission to operate with a minimum of four of five Commissioners in the first one year just because you want to stagger the appointments.

Mr. Temporary Deputy Speaker, Sir, the final position that I want to talk about is the mode of these appointments. In the First Schedule, we talk about the procedure of the appointment of a Chairperson and the members of the Commission. That is where everything begins. We say that:-

“For the for the purposes of this Act, the President shall, within fourteen days of the commencement of the Act or within twenty one days of the vacancy arising in the Commission, appoint a Selection Panel comprising of a chairperson and eight members drawn from distinguished professionals and private sector or the public service with relevant expertise”.

I do not see where this is coming from. In some section that follows, we are told that:-

“For the purposes of the appointments of the first selection panel and the Commission, the President shall act in consultation with the Prime Minister in accordance with the Constitution”.

I do not know whether we lack a credible body that can recruit. That is all this is for. Why would we again want single handed appointment of what we are calling a selection panel that will ultimately recruit the Commission? Let us go ahead and tell President Kibaki and the Prime Minister to appoint the Commission because that is what we want to say. Why would we want to go through theatrics and hide behind some funny selection panels? Let us straightly say: “Okay, let them appoint the Commission and we vet as a House and approve”. That is what this part has said. It is just hiding behind a selection panel that is appointed. Even the criteria of such a panel, just blankly says “or professionals from the private sector and the public service”.

So, the selection panel would be appointed by the President and the Prime Minister, which will come and appoint for us, that is how I would put it, a Commission that would be credible to oversee elections. Then we are treated to the theatrics that the President has not consulted and they have not agreed with the Prime Minister. We are creating very many wrangles. There are relevant bodies in this country, starting from the Public Service Commission, which can carry out recruitment exercise of the Commission and this House can subject the Commissioners to the scrutiny that they ought to go through. This House can subject them to the scrutiny that they ought to go through. The relevant Committee and the House can also subject them to the scrutiny that they ought to go through. They can be vetted. So, why should we hide behind a jargon that a selection

panel appointed by the President and Prime Minister is the one that will do the recruitment of the Commission? I think we are losing sight from the word go.

Mr. Temporary Deputy Speaker, there is a saying in my mother tongue that says that an unlawfully acquired camel can never give birth to a lawful calf. If you stole a camel---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Dr. Nuh! Your time is up!

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

The Temporary Deputy Speaker (Mr. Ethuro): Yes, Mr. Nanok! Are you not Mr. Nanok?

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Proceed!

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Thank you, Mr. Temporary Deputy Speaker, Sir. I think you know that I am your neighbour in Turkana South. Let me also join my colleagues to support the approval by the House of The Independent Electoral and Boundaries Commission Bill but with a few amendments.

Mr. Temporary Deputy Speaker, Sir, I am saying this because if you look at the role that the new commission will be tasked with, you will find that it is monumental. We are looking at an expanded role for the commission of overseeing the elections of two out of the three arms of the National Government, two arms of the county governments, delineation of the county boundaries and the preparation for elections that are due next year. When we look at this, let us think where we have come from. The problems that this country experienced when we had the Electoral Commission of Kenya (ECK), which gave birth to this House that approved a Bill and an Act of Parliament for the establishment of the Interim Independent Electoral Commission (IIEC) and Interim Independent Boundaries Review Commission (IIBRC), are basically what the new Constitution and particularly this Bill tries to address. This is an opportunity for us to get it right. We should make sure that we do not get it wrong again and go down the path that this country had gone last time.

Mr. Temporary Deputy Speaker, Sir, considering the fact that elections are due in not more than 18 months, we have 80 constituency boundaries to be delineated. We also have boundaries for wards to be delineated. I believe that what the Bill talks about, staggering the recruitment of the nine Commissioners is not the right way to go. I do not think we can entrust only four Commissioners to oversee the critical and essential part of our electoral system. What will the others do when they are appointed 12 months after we have finished with elections and delineating the boundaries of constituencies and wards? Basically, I think that since the Constitution does stipulate very clearly that continuity has to be borne in mind when we are establishing this Constitution, let us see whether we can get, at least, two Commissioners each from the IIBRC and the IIEC so that we can ensure that continuity. If we are to stagger the recruitment, let us do it within a period of six months and not more than 12 months. This is because the amount of workload that will be in front of the nine gentlemen will be monumental.

Mr. Temporary Deputy Speaker, Sir, I also want to draw your attention to the Fifth Schedule, on pages 173 to 175 on the work that the IIBRC presented to this House. This

Bill refers to this work that was done by the famous Ligale Commission as reference material and a report and yet this House discussed and adopted that Report. I believe that it is essential for us to consider that this is no longer the Ligale Commission Report, but a report of this House adopted by this House. Section (2c) refers to any other relevant material. This will open up a Pandora's Box where a lot of information which may not have been considered previously even by the Constitution will now be a subject of discussion. I am afraid that this exercise will not be concluded within the 18 months, if we are not careful.

The First Schedule is on the Procedures for appointment of their chairperson and members of the commission. I also want to draw your attention to the role of the Departmental Committee on Justice and Legal Affairs. This Committee plays a very critical role in terms of appointment of these Commissioners. The wrangles that we have seen in this Commission are real and we cannot wish them away. Although the Speaker made a ruling yesterday by-passing this Committee, I believe that this will still be a thorn in the flesh for this House to perform its constitutional mandate. I would like to suggest that if there is a problem in the Committee, there are many Members of the Back Bench who are qualified enough to serve in this Committee. Why can this House not pass a resolution to disband this Committee once and for all and we appoint other Members, so that we can have a Committee that will play its constitutional role in the implementation of the Constitution?

Mr. Temporary Deputy Speaker, Sir, let me come to the last item, and that is the gazette of the work of the IEBC. The Bill is very silent on the penalties that will be imposed on any individual who does not gazette the work of the commission. Last year, this House experienced a problem and yet the law was very clear. The Government Printer had been instructed to gazette the work of the IEBC, but that was not done. Again, we have done almost the same thing in this Bill by not putting those penalties. I propose that these penalties are put, so that any Government or public officer, whether it is the President, Prime Minister or the Government Printer--- If the law says that the IEBC has to gazette its work, let that gazette be done and let the person who has a problem go to court. If we do not do this, we will experience the same problems that we experienced last year. I am afraid we have to get it right this time round.

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

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Temporary Deputy Speaker, Sir, I also want to add my voice to the contributions that the hon. Members have made in support of the Independent Electoral and Boundaries Commission Bill.

Mr. Temporary Deputy Speaker, Sir, you will find that the issues of elections and boundaries are very emotive. As much as the situation is calm now, towards the end, maybe after this commission completes its work, tempers in Kenya might rise again. This time round, unless we have a very credible commission, I fear this might be the cause of fighting in Kenya again.

Mr. Temporary Deputy Speaker, Sir, when the Ligale Commission presented its report, there were accusations and counter-accusations, especially from areas where constituencies and wards were moved to other constituencies or districts. One of the causes of animosity in Kenya for a long time now is because of the boundary disputes which have remained unsolved for a very long time.

Mr. Temporary Deputy Speaker, Sir, when the IEBC goes round again, it should look at the factors that led to most communities to complain about the boundaries. Where I come from, most of the anomalies that arose regarding the boundaries was because of the high-handedness by the previous Government whereby they breached most of the laws and went ahead to gazette new boundaries without any reference to the people who were affected. This has caused animosity and it has lingered for quite a long time. We expected these boundary issues to be settled with the Ligale Commission, but those who went to court knew what they were doing. We hope that this time round, the court process will not interfere with these boundaries when they are gazetted.

Mr. Temporary Deputy Speaker, Sir, if you look at the Fifth Schedule, Section 2 (a) and (b), where we talk about reference materials, I will draw your attention to the Districts and Provinces Act, 1992. It has quite substantial information that can be used by the commission, at least, when they consider boundaries of various areas. So, I would prefer that other than confining themselves to the Ligale Report and maybe the report by the Parliamentary Committee, the Minister should also include in one of the amendments, the Districts and Provinces Act, 1992 as reference material.

Mr. Temporary Deputy Speaker, Sir, we have a very short time before we go for elections. I am looking forward to the logical conclusion of the delimitation of boundaries. I expect to get an extra constituency in my place. I am really over-burdened with a population of over 255,000 people. My colleagues in Parliament here are representing 18,000 people in their constituencies, yet we earn the same salary and allowances. You will find that, indeed, I am overstretched.

The only success I would have in this Parliament is to ensure that the people of Amagoro get another constituency. We have discussed and agreed on the boundaries. We have no disputes. The gerrymandering that was witnessed previously saw that some areas have very high population while others have very few people to represent. The representation was somehow skewed in favour of those people who were pro-establishment. Once this historical injustice is corrected, we hope that the rest of the Kenyans will also be able to benefit from the national resources.

Mr. Temporary Deputy Speaker, Sir, I also want to comment on the issue of this commission having part-time Commissioners. With a population of over 40 million people, there is no justification as to why we cannot just employ nine Commissioners even at a lower salary, if need be. We want to put two Commissioners on permanent basis and the rest to be part-time. You will find a Commissioner doing his *matatu* business in Mombasa and when he is called for an election, he jumps into his *matatu* and comes to Nairobi. I think we are being unfair because parties will be conducting elections regularly.

If you look at the functions of this commission, it will be assisting parties in conducting their elections. Organizations under trade unions will also be conducting elections regularly. So, it is only this commission that will be coming to assist. Also, we shall be having elections in neighbouring countries and elsewhere. These people should be able to go and observe and learn the best practices so that they can also bring this knowledge here.

So, when we put our Commissioners on part-time basis, I do not see exactly any justification for that. Mr. Minister, I know you are pro-change; if you want to see that Kenya has the best electoral and boundaries commission, ensure these Commissioners are

well remunerated. Create for them a very good election centre. Let them not be in Anniversary Towers where people cannot access them. Give them good offices where we can go and access data and talk to them. We want the public to benefit.

Mr. Temporary Deputy Speaker, Sir, I highly recommend that the nine Commissioners should be appointed at ago. Thereafter, because our population keeps on increasing and election matters keep on becoming complicated, we can add two or three more in future depending on the needs. The issue of starting with two or four Commissioners cannot be justified.

Mr. Temporary Deputy Speaker, Sir, what I like about this Bill is that it tends to regulate. If you look the functions of the Commission as captured in Clause 4(i). It says:-

“the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election.”

Mr. Temporary Deputy Speaker, Sir, we have had very good leaders who have been left out just because they cannot afford to fund their campaign programmes. The introduction of this thing which was the regulation of the amount of money will, at least, put all people at par. You will find that the shortage of fuel being experienced now in this country is just because, as we argued in Parliament last time, some people are scheming to make billions, so that they can go out there and bribe voters and also hire helicopters. Some of them want to buy helicopters, so that they can move round the country. If well applied this, it will bring sanity to our electoral system in Kenya. Some people have taken it upon themselves just to “buy” Kenyans and blindfold them, so that Kenyans do not even follow manifestos of political parties. They would like to see them follow where money is and that person who is giving the highest amount of money.

Right now, even Kenyans’ minds will be opened to manifestos. A good party is one that has good programmes on agriculture, roads, education and many others.

In conclusion, I wish the Minister well when driving the implementation of this Bill. I wish also that the President, once the Bill is complete in Parliament, signs it into law immediately. I also want to wish the Commissioners who will be appointed good luck, so that they can achieve what Kenyans yearn for. This is the only Bill that will test whether the implementation of the new Constitution will work or not.

I want to thank all those hon. Members who have contributed on this Bill and beg to support it.

Mr. Wambugu: Thank you, Mr. Temporary Deputy Speaker, Sir. First and foremost, I would like to declare that I support the enactment of the Independent Electoral and Boundaries Commission Bill and also just to add a few points to what the earlier speakers said.

We all know what happened in 2007 after the Presidential results were announced. There were a lot of uncertainties in this country over the person who won and who did not.

Mr. Temporary Deputy Speaker, Sir, I believe that if the former Commission was credible and was appointed in an open manner, the country could not have gone into that direction. We ended up slaughtering one another for nothing. This House is still trying to discuss issues concerning Internally Displaced Persons (IDPs), just because of elections which happened in 2007. Even up to now, there are very many sides of the story of what happened. For such a thing not to happen again in future or in this country, I think we

need to move forward and get a very independent Commission that will be able to run the elections.

Mr. Temporary Deputy Speaker, Sir, such a Commission, if it is going to be credible, we need to have credible people there. How do we ascertain that? We need to look for people who are above board; people who do not have any political ambitions, people who are not being funded by political parties and people who are not being nominated on tribal lines. If we can go that way, we will have clean people who can lead this country into the future, especially when it comes to elections.

Mr. Temporary Deputy Speaker, Sir, like earlier stated, it is very difficult for any commission of any kind to be independent, unless it has funding of its own. I think you remember a few months ago when the (IIEC) was almost coming to a halt because the Executive either deliberately, or through some mistake, did not fund their programmes. I propose that the commission presents its own budget independently. It should not tie itself to any other department in this country.

Mr. Temporary Deputy Speaker, Sir, I think the work of the commission should not just be on part-time basis. There is the issue of rigging in elections which starts way in advance even before the elections. We have the registration of persons and the updating of the electors register. There is also the monitoring in advance of what is happening on the ground. There is also monitoring on the way the campaigns are conducted. Like now, you are already aware that we have problems with the registration of the youth in this country. Most of them do not have identity cards. Most of them, automatically then, if it continues to 2011 or 2012, will not be able to register themselves for the forthcoming 2012 elections. I believe that if we had as credible commission that would have been able to capture such a thing, it would have advised the Minister in charge of registration of persons to expedite and even give our youth identity cards in advance, so that they can be able to participate in the forthcoming elections.

Mr. Temporary Deputy Speaker, Sir, you know there is the issue of the National Youth Council elections. Most of our youth have been locked out from registration because they do not have cards. If such a thing is even coming up at a time like now, then what will happen in 2012? A scheme such as that is being organized as early as now, and members of certain communities or areas are being blocked even from participating in the forthcoming elections?

Mr. Temporary Deputy Speaker, Sir, why do we go for elections? It is to represent people from particular areas. Thereafter, when we have proper representation, we come up with a formula for fair distribution of resources. There has been a cry in this country on the distribution of wealth just because a few areas have not been properly represented especially with regard to Constituencies Development Fund (CDF). We know there is a report which was produced recently – the Ligale Report - which had a lot of discrepancies. I would propose that members of the commission that is going to be formed should not refer to that report at all because the information that was given in that report is totally misleading. I would propose that this commission becomes totally independent. Wherever it is going to gather its information from, it should not be guided by anything else. The Ligale Report should be like any other book that somebody can read if he or she wants to get any material.

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

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir. I take this opportunity as, perhaps, the last Member, to contribute to this Bill before the Mover responds. The reason I have decided to contribute is because one, I believe this is one of the Bills that has received enormous amount of debate and contribution, thus showing the level of participation and consultations that are required in the law- making process because of the centrality of this Bill towards the future of democracy in this country. I am aware that the consultations started long before I came to the House. I participated in its review in Cabinet. So, I am in total agreement with its content and, hence, I cannot stand here to say that I would prefer it done in any other way except the way it has been done.

Mr. Temporary Deputy Speaker, Sir, given the level of consultations that have taken place on this Bill, and the way it has been crafted and the need to have it passed in a faster time as possible and without having to change it materially - which is the tendency we have seen of late especially on most of the amendments that come on the Floor - I would like to take this opportunity to urge this House and my fellow Members that we look at the work that has been put by all the experts that have looked at this Bill and give it a clean bill of health as it were. Let it pass almost as it is. If there are some commas and typos to be corrected, let us concentrate on those, but we leave the subject as it is because as you know, immediately we start opening up on section by section and putting amendments without looking at the holistic impact of all those amendments, we could end up with what the management experts would say: "A committee was given the task of designing a horse and ended up coming up with a camel because they could not quite agree on who does what, where to put the hook and where to put whatever else." I do not want this Bill to be converted from what it is. We want a horse but we could end up with another animal that we cannot quite associate with.

Mr. Temporary Deputy Speaker, Sir, I am particularly very happy and I know comments have been made and I know the Minister may be replying on that; the issue of the staggering of the appointment of the Commissioners. It is very important. It is standard practice in the entire corporate world. You do not leave a vacuum in a board or commission. It is standard practice even in some of the advanced democracies like the American Congress. You never leave a vacuum by getting everyone to retire on the same day.

It is important that we have some institutional memory and some continuity. We should not give room for any suspicion in terms of potential for manipulation, whether real or imagined.

Mr. Temporary Deputy Speaker, Sir, I just wanted to highlight that one point, otherwise I am very happy with the way the Bill has been crafted. I believe it is going to help us in deepening our democracy and in terms of sorting out our elections; it will be coupled with the Elections Bill that is yet to come. I believe that some of the comments that I have been hearing on the Floor of this House are comments that relate to that Elections Bill. I am sure the Minister will take that on board and bring here relevant Bill, so that we define management of elections and delimitation of boundaries in two separate Bills.

With those remarks, I wish to thank hon. Members for the active participation and the interest that they have shown in this Bill.

I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, there being no other Member showing interest, I will call upon the Mover to reply.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, you have just put yourself in the history books. This is such a fundamental law for this country. People can easily think that merely because in this House we are debating as usual, and exchanging views as usual--- One may easily forget that quite apart from the Constitution that His Excellency the President promulgated last year on the 27th of August there is a law that is yet to come, the Supreme Court law; I am happy to say that it is now on its way to the Cabinet, probably next week. This is one of the most important laws this country will have passed since Independence. It is what is normally called in history, the crossing of a Rubicon.

I want to salute you Sir, for the manner in which this debate has been conducted by yourself, Mr. Temporary Deputy Speaker. No less than 47 hon. Members of Parliament have spoken on it, one after the other without interruption. My Ministry has adopted the approach that the more people we hear, the more we learn, the better we will be able to serve the country in producing this law.

I want to salute you, Mr. Temporary Deputy Speaker, Sir, for ensuring that it was not a matter of somebody moving a Motion, that I be called upon to respond, but rather the House exhausted debate. Again, I believe that is a milestone in our country's history.

Mr. Temporary Deputy Speaker, Sir, allow me to speak at the very outset on the question of the Committee on Justice and Legal Affairs. I want to say this without fear, the Grand Coalition Government, particularly the Principals cannot hide under your cover. Arising from the ruling that the Chair made yesterday, without appearing to be criticizing it or objecting to it, I still believe that the solution was and ought to have come out of political management. The Grand Coalition Government is in charge of 40 million people. This Committee is comprised of only 11 people. If we cannot manage 11 committee members, how then can we manage the 40 million people? I think that the enormous reality is that the importance of this Committee has not yet dawned upon the Coalition Government.

After this law is passed, I will be bringing to this House the Political Parties Bill. I will also be bringing to this House, with the support of the Minister for Lands and the Minister for Environment and Mineral Resources and the Minister for Labour, two statutes. One will deal with a special court under Article 152, which is on environment and a special court to deal with employment. In addition, certainly I am sure that by the end of next week I will have received Cabinet approval to publish the Supreme Court law.

Mr. Temporary Deputy Speaker, Sir, in addition, on Monday I will receive recommendations from the Kenya Anti-Corruption Commission (KACC) and stakeholders on the issue of the anti-corruption law, integrity law and the rest.

The Committee on Justice and Legal Affairs is no ordinary committee when it comes to implementation of the Constitution. You will remember, because you know me only too well, that I am not a flatterer; I do not like flattering men because all of us have weaknesses. However, I salute and recognize the passion that Mr. Baiya, Mr. Kabando wa Kabando and others have shown and demanded for the independence of this commission. That independence cannot be assured if the work of my Ministry is yet again going to be interrogated by my fellow Ministers.

Mr. Temporary Deputy Speaker, Sir, with complete respect to your office, and while acknowledging the importance of the ruling made, it is essential to know that the oversight committee has very different functions from those of the Committee on Justice and Legal Affairs. I was expecting that I would enjoy the services of men and women I have come to recognize and respect a great deal in those Committees.

Allow me to say this, when we formed these committees I was personally in support of the leadership of these two committees, because of the overwhelming work and excellence that Mr. Abdikadir and Mr. Namwamba demonstrated to this country during the just ended Parliamentary Select Committee on the Constitution. I was extremely pleased to see Mr. Abdikadir heading the oversight committee and Mr. Namwamba heading the legal committee. This country must recognize quality when it has it. Whilst I do not hold brief for those men, it is fair that, as the Minister responsible for this for the last two years, that the country knows that I have come to recognize and respect the institutional memory that those two extremely able young lawyers have, and commitment that they have shown to the country. Therefore, I want to call upon the Grand Coalition Government and the Principals to allow a meeting of the Grand Coalition Management Committee, so that we can solve this problem, and so that we do not lose the benefit between now and August of the enormous experience and knowledge of why we put certain provisions in the Constitution during the Naivasha negotiations; the work of the Committee of Experts (CoE). We should not lose either one or both of these able young men.

They are hon. Members, but compared to me they are young but very able men. Therefore, this is a plea to the country; please learn to accept quality when you see it. Please, learn to forget. The issues that split this committee were related to the recent nominations by His Excellency the President and the Prime Minister to certain constitutional offices. Notwithstanding that those two leaders had taken some action, they have turned around and accepted the mood of the country, and the interviews of those positions are ongoing. The country has moved forward. For us to continue being stuck in the mud of the origination of that debate is unfair.

Mr. Temporary Deputy Speaker, Sir, allow me, therefore, now to very briefly deal with some of the issues raised by hon. Members.

The first one is that we appear to have forgotten that Article 250 provides that--- Allow me to quote it . Article 250 (6) (a) says:-

“Unless *ex-officio*, shall be appointed for a single term of six years and is not eligible for re-appointment”

All of us seem to have forgotten that we are going to have an election next year. We also appear to have forgotten that in exactly five years thereafter we will have another election in 2017. The effect of it is that once we appoint---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Minister! You are quoting from which Article?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Article 250 (6) (a) at page 161.

It is such an important provision. I am a little disappointed that many hon. Members who raised this issue are not here to hear me, but I am sure they will read the HANSARD. It says that “a member of the committee, or holder of an independent office, unless *ex-officio* shall be appointed for a single term of six years and will not be eligible

for reappointment.” That means if you do not stagger their appointment all of them, because they are going to be appointed this year--- I will show you the reason in a minute. They will all leave office in an election year in 2017.

We have had this problem before. However, I think time has come for us to recognize the need to ensure that an institution is up and running, not only during election years, but during the middle, so that the bodies can help the country in devising a proper structure. Therefore, the issue of staggering the Commissioners has given me a lot of headache. I want to thank hon. Kimunya, because he is the one who brought up this matter during the Cabinet, when we were discussing it. Even at that time, it was not clear that you can do staggering merely by appointing people at different periods. The staggering must also respect the constitution. I recommend that we look at it, because this is a historical moment. Article 250 of the constitution, from the very beginning says: “Each Commission shall consist of, at least, three but no more than nine Members.” Therefore, in agonizing on how best to help my wonderful country, our officers and the consultations that we have held---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Minister! You will appreciate that the Chair was anticipating your contribution. I was looking at that particular Article.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you very much. I am very grateful, Sir. I was not joking when I said you will go into the history books. This is a turning point.

When we consider Article 251 and we read it together with Article 250(6), it is clear that once a Commissioner is appointed, he cannot be reappointed, and he can only serve a continuous term of six years. Once you consider that, the minimum that they must be is three. Then it gave us problems in drafting to determine how best to ensure that in 2017, because nobody in Kenya today knows who will be President, and we do not want to end up with the problems that we have had, whereby, again, we find manipulations. We want to put these issues of electoral fraud into the back banner and forget about them. That is why we have recommended to the country - it is not binding because this House must still determine. However, I want to suggest to those who are contemplating bringing amendments that this is not a simple matter as it looks. It is complex; we must have a Commission that has four members in 2017, so that we are not appointing new Commissioners in an election year. Therefore, we used the figure of three, which is the basic minimum bearing in mind that there is Chairman and a deputy by provision of the Constitution. We added two others so that those can also help the country in this processing. Therefore, staggering must not be misunderstood. It was not staggering in order to arm-twist or trick the country. It is a staggering that, I hope, when we come to the Third Reading or the Committee Stage, the country must understand that the time to move away from the thinking; who represents me, who will speak in my mother tongue in this issue, is long gone. This is because if you accept five then you must understand some regions will wait for 12 months before they are represented. Therefore, it is a matter that must be taken extremely carefully, particularly because of the need for three.

Mr. Temporary Deputy Speaker, Sir, many Members have talked about part time and full time. I want to say, again, without fear, because I am a student of constitutional law and constitutional practice and I have checked the practice in all Commonwealth

countries, the best example of how to manage elections professionally is India. In fact, the Constitution only appoints one Commissioner. The others are appointed *ad hoc*, if and when needed, as time goes on. Some of them are appointed during the actual elections. This matter was discussed at the Cabinet and sub-committee levels. I am not disclosing any secret. In an effort to move responsibility, basically on administration and management, implementation of policy from the Commission and avoid the confusion of the Kivuitu Commission and others, it was felt that we should make at least two Commissioners full time. This is because they would be the ones who would be there daily to make sure that they supervise the Secretariat to ensure that policy as approved by the entire Commission is implemented. But again, my country is not an easy country. If the honourable House feels that we make all these full time, I sincerely would not waste any sleep over it. I have done my best to advise my country. After 2012, by-elections will be on and off. Commissioners do not have to be there full time. Otherwise, the Secretariat would start behaving like it is just a spare wheel. We will lose the benefit of the experience of 2007/2008. Therefore, I strongly still recommend that even if you are changing this to full time from part-time, we split the Commissioners who can by lot determine the number that would be part-time and full-time. By being part-time, it does not mean you do not work everyday. In fact, you can be part-time and work every day. All that we want to do is to make sure is that the Commission knows it is non-executive. Luckily, nobody has challenged that provision.

Mr. Temporary Deputy Speaker, Sir, allow me, because I know the Constitution is in front of you to show you Article 250(12), on page 161. This is very deliberate. I want to remind hon. Members that the country gave itself this provision. It says:-

“There shall be a Secretary to each Commission, who shall be appointed by the Commission and the Chief Executive Officer of the Commission”.

So, the actual day to day management, executive authority by the will of the Kenya people, is vested in the Secretary who will be in charge of the Secretariat. He will be appointed by the Commission. You notice that the Constitution does not require that this man comes here to be approved by the House. It is deliberate. I was in all this debate from Bomas. It is deliberate because you do not want to elevate the Secretary to the level of a Commissioner. We want him to know that he is appointed by the Commission. By so doing, you want to the Commission to know that it is independent to recruit its own Chief Executive Officer. Therefore, yet again, with extreme humility, I recommend to my beautiful country that we consider this Bill the way we have designed it because it has given us a lot of problems.

Mr. Temporary Deputy Speaker, Sir, the question of policy versus implementation is addressed by that Article. If you look at the functions of the Commission, they are very well laid out. We have tried in the Bill to actually itemise them, so that the Secretary will never for one moment think that he is the boss of the Commission. In fact, he is required to report and be answerable to the Commission. Therefore, we have drawn a very fine line, so that this country can turn a new page.

I want to assure hon. Members that I will bring an amendment to include a penalty clause for any Commissioner or member of staff who violates the law or ignores the provisions of this law. It will be a very stiff penalty. For the time being, we had put a penalty on page 173 of the Bill. If you look at the code of conduct, schedule IV, Clause No.11 therein. But again, after listening to hon. Members over the last three weeks, I am

now satisfied that we must bring a very serious penalty clause against the Commissioners themselves, officers and members of staff.

I have been asked, because I cannot address every Member individually, to be careful about the use of the words “appropriate technology”. Member after Member, particularly my good friend hon. Gumbo said that I must be careful. However, I cannot apologise to my country because I do not want to have a problem later when I go to heaven and I am asked by my Lord Jesus Christ: “I had violence in elections, but you did not help me. There was murder and theft of elections, you did not help.” Since I have the knowledge, skills and ability, I want to say to this country, the time to adopt electronic voter registration and electronic voting system has come. It is expensive, but the definition of appropriate technology cannot occur in this law. I intend to bring it for debate in this House in the actual electoral law. We will tie it down sufficiently to the satisfaction of hon. Gumbo and others who are worried about it.

On the selection panel, may I say in this House that the selection and nomination of these officers is actually a function of the Executive and the manner in which I have defined and described the selection panel was advised by that knowledge. Parliament cannot be exercising its function to pass this law and also vet the people we will appoint and, at the same time, dictate the manner of the selection panel. But, again, I stand to be corrected. I will not belabour the point nor will I produce “heavy weather” if there are proposals to fine-tune the definition of selection panel and how it will arise. However, it must be understood that his selection panel is, in fact, for purposes of assisting His Excellency the President and the Rt. Hon. Prime Minister to get quality people and it is not intended to help Parliament because, ultimately, Parliament will have its day in this honorable House. In fact, one of the reasons we have designed it like this is because a wing of the Grand Coalition Government is uncomfortable with the way the Public Service Commission is currently established. Therefore, I looked for a compromise and this is what I could come up with. If you have an alternative, let me know.

Mr. Temporary Deputy Speaker, Sir, I want to assure hon. Members and a wing of the Grand Coalition Government that I will also bring an amendment for the management of opinion polls in this country to ensure that opinion polls during elections are not used in a manner that undermines public security and understanding. So, I will also give them the power - that is this Commission - to be able to deal with, to handle and advise the country on the electoral statistical data.

On Schedule 5, to be honest with you, I am a little concerned because we have spent three weeks debating this law. Schedule 5 actually gives the new Commission five months to settle the issues arising from the Ligale Commission Report. That includes delimitation of the boundaries of the 80 new constituencies.

Mr. Temporary Deputy Speaker, Sir, in your ruling yesterday, you gave the Constitutional Implementation Oversight Committee (CIOC) two weeks. I think that is extravagant but do not punish me for criticism. I firmly believe that if I love you and respect you, I ought to have the right to criticize when criticism is warranted. In fact, that is the only way to prove that I love and respect you because the alternative is for me to become your sycophant, and Mutula will never be anybody’s sycophant.

Therefore, I personally think that unless we are careful; unless we pass these laws quickly, the public expectation of an election in August or December, 2012, will be put in doubt because the Constitution requires that the delimitation of these boundaries be done

at least 12 months before the next elections. You do not have to be a rocket scientist to see that we are on the 12th of May and five months takes us to October. So, automatically you are already putting the question of 14th of August, next year in serious doubt.

Mr. Temporary Deputy Speaker, Sir, on petitions, out of a personal experience with them, we recommended to the Committee of Experts and they agreed that petitions and disputes relating to the Presidency must be completed within 45 days. In fact, a President of Kenya in 2013 will not be sworn into office if there is a pending dispute. That is why I am very happy to say that the Cabinet Sub-Committee today has approved the Supreme Court Law and now it will go to the Cabinet in plenary because it will be the ultimate decision maker on disputes on elections.

Therefore, the five months that I have provided and luckily not many hon. Members have seen that very particular clause--- I want to urge hon. Members to be careful with Schedule 5 which has given us enormous problems. We have designed it to make sure that the work of the Ligale Commission is not lost; that the investment is not lost. However, we have left a window to enable Kenyans who have issues regarding that Report an opportunity for those issues to be addressed. In fact, we have created a window for making sure that the Commission will publish this Report for one month to allow debate countrywide, and they are required to go to each of the counties. This is a carefully crafted law and I am very proud of it. But, again, I will be, of course, subject to whatever hon. Members do during the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, I was amazed to hear my former student, hon. Mrs. Odhiambo-Mabona, making a statement to the effect that Kenyans hate each other. I am sorry but I hold a totally different opinion. All that has happened is that Kenyans are disillusioned with corruption and allegations of stolen elections. Time and time again, Kenyans are disillusioned by the perception that whenever a certain tribe produces a President, it becomes their time to eat. Kenyans are disillusioned with the continued perception that governance in Kenya is a thing that is only in the mouths of politicians, but it is only noticeable by its absence.

The energy that has been shown during the debate on this Bill demonstrates that the country is turning around. Therefore, I would like to plead with the country to accept that we are moving forward and that this law alone--- When I bring the Electoral Law - I will bring a quality law as I have always done and you know that – we will start, slowly to remove fear from Kenyans so that they know that elections do not always resort to murder, rape and displacement of people, among other things.

Allow me, therefore, to say that I am extremely gratefully to hon. Members, particularly you, Mr. Temporary Deputy Speaker. When we spoke, you told me that you wanted new constituencies in Turkana. That is not up to me. It will be up to the new Commission. Start getting organized to convince them. I am grateful to see the comments that have come forth. For example, hon. Eng. Maina and from Prof. Kamar have talked about disputes resolution, code of conduct and independence with regard to funding.

Hon. Prof. Kamar raised an issue regarding representation of women in Parliament. I do not want to comment on it at this point because we will discuss it as we go along.

With those far too many reactions and remarks, I beg to conclude by saying that I will welcome all amendments that add value to this law and, particularly, those that create an independent Commission for turning around Kenya for good.

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)

Second Reading

THE SALARIES AND REMUNERATION COMMISSION BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, the Salaries and Remuneration Commission Bill, Bill No.8 of 2011, be read a Second Time.

First of all, again, this is a momentous occasion for the country. It is momentous in the sense that for decades, we have had problems with the issue of salaries and remunerations.

When Kenyans were giving themselves a new Constitution last year, which was promulgated on 27th August, they gave themselves a present. The present was to ensure that the salaries and remunerations in the country have some modicum of commonsense and uniformity. Therefore, this Bill seeks to make further provision for the functions and powers of the Salaries and Remuneration Commission, qualifications and procedures for the appointment of members of the Commission and for connected purposes.

Mr. Temporary Deputy Speaker, Sir, the high share of the public sector wage bill in total Government expenditure has over the years resulted in fewer resources being available to Government for investment in public infrastructure, and provision of other essential services such as education and health. It has also resulted in wage expenditure taking up higher proportions of Recurrent Budgets, leaving fewer resources for operations and maintenance, thus compromising the effectiveness of public sector institutions in delivery of services.

Managing the public sector wage bill within a sustainable economic framework, while harmonising the remuneration structure, has been a major concern for the Government in recent years. We have, on previous occasions, made unsuccessful attempts to establish a sustainable public sector wage bill. Since Independence in 1963, the Government has constituted, at different times, 14 *ad hoc* commissions and committees to advise it on remunerations in various subsectors of the public service, resulting in recommendations whose implementation was responsible for the current wage disparities. In fact, one of those institutions is Parliament itself, which has led to serious misunderstanding between Parliament and the public regarding remuneration.

Mr. Temporary Deputy Speaker, Sir, we have also struggled with a strategy for improving internal consistency, equity and transparency of our remuneration structure in the public service. In 1997, for instance, the Government appointed the Kipkulei Salaries Harmonisation Commission to collect and analyse data and information, including public views, on wage bill management and public sector remuneration, and recommend measures to be undertaken to harmonise remuneration in the Public Service in a manner

that was sustainable, equitable and consistent with the country's desire to improve efficiency and productivity in the entire public sector.

The Commission observed that remuneration in the Public Service was low and uncompetitive, particularly for policy-level managers, senior managers and middle level and technical professional staff. The Commission further observed that public servants with similar educational and professional qualifications, and performing similar duties, were remunerated differently in the various subsectors of the Public Service, this being largely a result of selective salary reviews, and the delinking of some departments from the Civil Service.

Mr. Temporary Deputy Speaker, Sir, the Kipkulei Commission also noted that in desperate attempts to bargain for improvement of remuneration packages, some Government Departments sought to be delinked from the mainstream Civil Service, even when their core functions legitimately belonged to the Civil Service. In an attempt to remedy this state of affairs, the Government implemented part of the Kipkulei Commission recommendations by increasing the remunerations for its policy level managers by between 400 and 500 per cent with effect from 1st January, 2002. However, other cadres of civil servants did not benefit, thus creating a huge remuneration gap between the policy level managers and their subordinates, making it imperative to harmonise remuneration structures as soon as possible. This huge wage disparity still subsists.

It is for that reason that the people of Kenya themselves created the Salaries and Remuneration Commission, under Article 230 of the Constitution of Kenya, 2010. In fact, even during the pre-referendum debate this Article did not receive any adverse comments. I want to salute Kenyans for accepting it the way it was framed. In essence, the people were saying that there was need to ensure that the total public compensation expenditure was fiscally sustainable.

Mr. Temporary Deputy Speaker, Sir, the public was, in essence, further saying that there was need to ensure that the Public Service is able to attract and retain the skills required to execute its functions; but there was also need to recognise productivity and performance; above all, there was need for transparency and fairness in the remuneration structure. The Bill addresses all these principles. It has also incorporated the Public Pay Policy, 2006.

The policy was approved by the Government in January, 2006, and thereafter introduced for debate in the House by the then Minister of State for Public Service, hon. Akaranga. The pay policy for the Public Service sought to ensure that the remuneration structure was rational, equitable and transparent.

Mr. Temporary Deputy Speaker, Sir, with your permission, I wish to table the pay policy for the Public Service of 2006.

(Mr. M. Kilonzo laid the document on the Table)

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

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

Mr. Temporary Deputy Speaker, Sir, arising from the fore-going, it is clear that the enactment of this law is long overdue and above all, it is in the interest of the Kenyan public who gave themselves this provision. The enactment of this law will enable the operations of a Commission wholly dedicated to a sustainable and manageable public sector wage bill while at the same time improving the internal consistency, equity and transparency of the remuneration structure. You will find that in Clause 11(c) of the Bill. With the enactment of this law, remuneration of the benefits of all State officers will be determined by an independent body. No State officer will be permitted to determine their own remuneration.

The Salaries and Remuneration Commission will also make recommendations on the review of pensions payable to holders of public offices. You will find that in Clause 11(g) of the Bill. The Bill also introduces the principle of equal remuneration to persons for work of equal value. You will find that in Clause 12 of the Bill. This will avoid situations in which professionals in different institutions have to be paid different salaries. By way of illustration, there is no justification whatsoever as to why a lawyer from the Kenya Anti-Corruption Commission should be paid differently from a lawyer in the State Law Office, which is a reality. It does not need gainsaying. The Bill further sets out the qualifications of members of the Commission. You will find that under Clause 5. The qualifications stipulated bring on board people with diverse backgrounds as well as very experienced individuals.

Finally, the Bill seeks to tap into the already available skill basket of the Permanent Public Service Remuneration Review Board Staff by giving these officers a chance to serve in the Commission. We have said that it is 15 years in case of a Chairperson and 10 ten years in the case of other members. I hope that Members will enrich this Bill which will introduce a paradigm shift in the management of our remuneration structure in the Public Service. A sound remuneration structure will ensure a competitive remuneration to the managerial and technical cadres considered critical for implementing the country's Vision 2030. Particularly, as the line Minister responsible for the constitutional implementation, I have Commissions which have already been appointed and established by this House and I need, as quickly as possible, guidance from this Commission as to how we structure their remuneration.

With those remarks, I beg to move. Hon. Maj. Sugow, the Assistant Minister, will second this Bill.

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 second this very important Bill. As has been very eloquently and with great detail covered by the Minister, this Bill is very important for the State officers in this country and public servants in general.

If I may give a little background, which the Minister has also indicated, the Constitution of Kenya under Article 230 establishes and provides for membership of the Salaries and Remuneration Commission.

Article 250 of the Constitution further provides for enactment of a national legislation to provide:-

- (a) the manner of identification and recommendation of the chairperson and each member before approval by the National Assembly and appointment by the President; and,
- (b) the specific qualifications of the chairperson and each member.

Mr. Temporary Deputy Speaker, Sir, Section 25(2) of the Sixth Schedule of the Constitution requires that the Salaries and Remuneration Commission shall be constituted within nine months after the effective date of the Constitution, which is this month of May.

The remuneration package for public servants in the various subsectors in the Public Service for persons performing comparable jobs of equal value is disparate and inequitable. This has been occasioned by the setting of salaries and allowances in the Public Service subsectors by different and unco-ordinated institutions including working committees, commissions, collective bargaining agreements, administrative and institutional processes. This has been done in the absence of a requisite job evaluation exercise to give the comparable worth of positions and thus give the determination of remuneration levels. As a result, there are many inequalities in remuneration within the Public Service today.

Mr. Temporary Deputy Speaker, Sir, the Government in 2003, through a Gazette Notice, established the Permanent Public Service Remuneration Review Board, to review and harmonize remuneration in the Public Service. The review and harmonization of remuneration was, however, successful to a limited extent due to the multiple pieces of legislation giving parallel functions to other remuneration review bodies.

Currently, there is no single institution responsible for review of remuneration for public officers. The Government developed the pay policy for the Public Service in 2006, whose main objective was to provide a framework for transparent, harmonized, competitive and sustainable remuneration system that supports productivity and efficiency in the public sector. The policy also defined the principles for determining the remuneration structure for the entire Public Service, which included equal pay for equal work, attraction, retention and motivation of personnel with requisite skills and affordability and sustainability of the wage bill. However, some of the Public Service subsectors continue to determine their remuneration without reference to other comparable public institutions or the provisions of the pay policy.

Mr. Temporary Deputy Speaker, Sir, this Bill, therefore, is key and urgent as it is the piece of legislation that seeks to operationalize and implement the broad Constitutional principles relating to the Salaries and Remuneration Commission, as well as legislation on the policy matters contained in the 2006 Pay Policy for the Public Service. The Bill seeks to provide for the necessary legal framework for a single institution to set and regularly review the salaries and benefits of all State officers and to advise on the remuneration and benefits of all other public officers.

Mr. Temporary Deputy Speaker, Sir, the Salaries and Remuneration Commission Bill (Bill No.8 of 2011) seeks to make provision for:-

- (a) functions of the Commission, including additional functions to those provided for under the Constitution;
- (b) the powers of the Commission as are necessary to enable it discharge its mandate;

- (c) the manner in which to identify and recommend the chairperson and members of the Commission for approval by the National Assembly and appointment by the President;
- (d) the qualification and procedures for appointment of the chairperson and members of the Commission;
- (e) the operation of the Commission, including conduct of business and formation of committees;
- (f) the filling of vacancies in the office of the chairperson or members of the Commission;
- (g) The appointment of the secretary and staff of the Commission and other matters related thereto.”

Mr. Temporary Deputy Speaker, Sir, this Bill is very important to the public sector. When you look at the time frame stated in the Constitution, we urge this House to seriously debate, put in the necessary amendments where applicable and pass it as quickly as possible.

With those few remarks, I second.

(Question proposed)

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir, for the opportunity to support this very important Bill.

I was fortunate to be in Bomas when the debate on this matter did come up. I listened to all the views that were being expressed by the delegates in Bomas in terms of the discrepancies as they saw them, in terms of the various civil servants working for the Government and being paid from the same purse, but all drawing different salaries for the same job.

I could hear the passion by people who were agitated and said for once: “Could we have one body that will harmonize all salaries?” You will find that a driver with certain qualifications in one department does the same work as a driver in another organization and they should earn the same.

Mr. Temporary Deputy Speaker, Sir, I could empathize with them based on my own experience in the accounting field as a consultant who had to sit down with people and design their pay scales and structures. One of the things that we always came up with is that people who do similar work should be paid the same, irrespective of whether one is working for a rich parastatal or for a poor parastatal.

In the course of my work, I have had the occasion to hear petitions and pleas from people who are qualified to be in some professional circles asking me to assist them get jobs as drivers. If you ask them why so, when they are qualified to be professionals? They tell you that it is the bottom-line. For example, if in this organization drivers are paid so much, why would I continue slogging as a professional in this organization, while all I want is the take home pay to go and feed my family.

That is the saddest thing we can get to. That is the saddest thing in terms of frustration of professionals. We will never grow people who are committed to doing their work. People will be looking at how much they will be getting at the end of the month.

Once we harmonize all the salaries and remunerations, then people can move across the various employers and institutions. People can work in counties knowing that

they will be paid the same with their counterparts working in towns not considering the cost of living adjustments such as housing, transport and disturbances. People will know that they are equated with their contemporaries in other organizations by being rewarded in the same way.

So, I just thought that it is an opportune time and I am very happy that this is coming so that, for once, we harmonize salaries within our parastatals. There should be a guiding factor. We will not be looking at parastatals which may be bigger than the other ones, but people who are doing the same work. If an accountant in a State parastatal is doing the same work as an accountant in another parastatal or the central Government, they should be earning the same. However, right now, the discrepancies are telling. I feel it is very unfortunate and I am very happy that, for once, we are now getting this law which will harmonise that. I really want to support it and urge the House to do the same. We should pass it in the fastest time possible so that even all the other bits and pieces that are tied to the passage of this law, like the remuneration of the various commissions and the people being appointed, at least, we have a body that will be looking at all of them and saying:- “Yes. This is what people should earn.” They will say that, after having synchronized everything and looked at facts rather than the emotions of the day.

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

Mr. Lang’at: Thank you very much, Mr. Temporary Deputy Speaker, Sir. From the onset, I want to say that I support the Bill. I want to say that those who are performing the same duties should be paid equally. I think we must look at the structures in the Public Service. Is our Public Service optimal or bloated? Are some areas under-staffed and others over-staffed? I think when the Commission eventually starts working, at some point, we may need to look at the Public Service properly. The employees of the public service will be affected and where there are excesses, they need to be handled appropriately.

Mr. Temporary Deputy Speaker, Sir, I will not say much but I want to say this about this Bill. When I read through the Bill, Mr. Minister, what is the reporting structure of the Commission? After it has done its job, where does it report? The structures are not very clear in the Bill. After saying the salaries of university staff or teachers are high, will they report to Parliament; will they publish the new salaries without resorting to Parliament? I think, Mr. Minister, something must be done regarding the reporting structure of the Commission. We need to clarify whether the report will come to Parliament or whether the Commission will publish it independently. So, that is one issue which needs some clarification.

Mr. Temporary Deputy Speaker, Sir, there are three arms of the Government and, for a very long time, getting proper salaries has been through fighting. Teachers have never got any salary increases except through strikes. It is hoped that this new body will be awake, strategic and listen to the public servants and state officers. We have voted for separation of powers of the three arms of Government. I know it is a constitutional body but my fear is that it could be used, at some later stage, to manage the other arms through the back door. I think we need to look at how to protect the separation of powers, so that we do not use that body to undermine the independence of Parliament and Judiciary. So, I think Members should take care of those issues. We may have a good precedent today but tomorrow, it could be a different story. So, I am only alerting Members that, that is a very good body but, at some point, it might turn into a bad one. So, I will appreciate if

Members could really look at whether its independence could be abused at some process. So, we need to have control on how it will handle different arms. We need to have some controls on how it will handle the three different arms of the Government. There are so many state officers who presently enjoy good terms of service and salaries. I think there should be a provision to say that the present terms of service shall not be negated. I believe there was a reason why different state officers are earning their present salaries. Therefore, we should have a provision to say that present terms of service and salary scales should not be negatively interfered with by the new body. They can only work towards betterment of what we have. Their job is to ensure that the terms of service attract the best of the best within the public service and the other arms of the Government. We need to take care, so that it will truly work towards a remuneration scheme that can attract the best of the best.

Mr. Temporary Deputy Speaker, Sir, I do not wish to say more than that. I support, subject to the issues I have mentioned.

Mr. Njuguna: Thank you Mr. Temporary Deputy Speaker, Sir, for, again, giving me an opportunity to contribute to this very important Motion. Let me start by thanking the Minister for Justice, National Cohesion and Constitutional Affairs for his serious commitment and dedication shown in the implementation of the new Constitution. This new spirit and sacrifice should be continued for the betterment of this country.

I note that this is the first time that we are going to have the Salaries and Remuneration Commission. Very high standards have been set for those who are going to be appointed. One thing that is very clear is that those to be appointed must be people of very long experience, very high qualifications and proven ability to perform. They must be people with character that will display the spirit required of the new Commission. These should also be patriotic Kenyans who will serve for the first time and set the standard that Kenyans expect from such a new Commission.

Mr. Temporary Deputy Speaker, Sir, the major task of the new Commission will be to look into the issue of wages of various categories of civil servants. You recall that civil servants have staged demonstrations crying about low salaries. Doctors have also been seen on the streets and even our lecturers from universities. This Commission will have a major task of making sure that salary harmonization will be effected, and that demonstrations over salary increases will not be seen again in this country. Energies spent in demonstrating will be used in gainful duties to enhance economic development in this country.

Membership of this Commission will not be on tribal considerations. It will be on merit. Therefore, no segment of our society will claim that their community has not been represented. It is also very clear that Members of Parliament will not be appointed to this Commission. That is spelt out clearly in this Bill. Even county representatives will not be given an opportunity to serve on this Commission. It is also important that political parties will not claim any responsibility or share in this Commission. It is important to note that the composition of this Commission will be by clean and dedicated Kenyans.

Mr. Temporary Deputy Speaker, Sir, we note that funds will be voted by this Parliament for this Commission. Therefore, the Commission will be expected to utilize the funds allocated in a very transparent and accountable manner. The whole nation will be expecting very high benchmarks in terms of performance by this Commission. Even in the private sector, salaries will also be monitored by the new Commission to make sure

that all Kenyans will be moving in the same direction, and the issue of discrepancies and very high salaries will be a thing of the past.

We wish this new Commission well in discharging the responsibilities bestowed on it.

With those few remarks, I fully support the spirit of this new Commission.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Temporary Deputy Speaker, Sir, in fact, the issue of salaries and remuneration falls under my Ministry. I want to prepare and come up with a very recent position on how we should go about this because we have been receiving a lot of complaints from civil servants. However, because there was nobody who stood to speak on this very important Bill, I wish to give this time to hon. Koech, so that next time, I will do my research and contribute accordingly to this Bill.

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

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

Mr. Njuguna: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon---

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Member for Lari! Nobody has granted you your wish. Proceed, hon. Ojaamong!

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Temporary Deputy Speaker, Sir, I really wanted to contribute. I want to contribute to this matter objectively. I wish to bring to your attention that we do not have a quorum in the House.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Ojaamong!

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Temporary Deputy Speaker, Sir, I was saying that we do not have a quorum!

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Ojaamong! Once you say something to the Bill, you have made your contribution. Secondly, you cannot, therefore, go ahead and call out for a quorum.

(Laughter)

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Temporary Deputy Speaker, Sir, I was just in the preliminaries. I had not even started.

The Temporary Deputy Speaker (Mr. Ethuro): It does not matter. Those are our Standing Orders and the role of the Chair is to enforce them.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Temporary Deputy Speaker, Sir, I wish to support this Salaries and Remuneration Commission Bill.

As has been indicated by the hon. Minister, indeed, we have been having disparities in terms of the wages we pay various State officers. As he has indicated, why should lawyers who work with the Kenya Anti-Corruption Commission (KACC) earn millions of shillings a month, while another one in the Attorney-General Office is earning

a paltry Kshs20,000 or Kshs30, 000? Why should a driver in a Government parastal earn more than a driver in the Ministry of Labour?

Mr. Temporary Deputy Speaker, Sir, Kenyans through their various submissions across the country during the constitutional review, indeed, uniformly presented their views and said that there has to be a Salaries and Remuneration Commission, at least, to see to it that there is some justice in the remuneration of our people.

Most Kenyans supported the formation of this Commission thinking that it would help them bring down the salaries of Members of Parliament to a level that is acceptable and commensurate to the kind of work they do. This, indeed, has been a concern to Kenyans. Is our salary commensurate to the work we do? I say, “yes.”

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Ojaamong! You will have 15 minutes to proceed with your contribution when this Motion will appear on the Order Paper next time.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 17th May, 2011, at 2.30 p.m.

The House rose at 6.30 p.m.