

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 9th February, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

MURDER OF MR. JOHN KURIA WAKABA AT LIKIA

Mr. Speaker: Member for Molo! Is the hon. Member not in? The Question is dropped!

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

(a) Under what circumstances did a group of over 100 armed persons attack and kill Mr. John Kuria Wakaba while he was harvesting maize on his farm at Likia in Mau-Narok Division of Njoro District on Tuesday, 1st February, 2011?

(b) What is the Minister doing with respect to Messrs. John Machariah Mugo, Macharia Karuru and Musa Gatonye among others, who are hospitalized at the Nakuru Provincial General Hospital with severe injuries sustained from attacks by the same attackers?

(c) What steps has the Minister taken in order to arrest the heightened state of insecurity in Mau-Narok Division, which is now spilling over to the neighbouring Narok District?

(Question dropped)

LAND OWNERSHIP IN LAMU COUNTY

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

(a) Could the Minister provide the names of landowners and acreage of ownership in Lamu County and those issued with title deeds in the last ten years and indicate the specific dates they were issued?

(b) Could the Minister confirm that the Government plans to settle persons displaced during the 2008 Post-Election Violence (IDPs) in Lamu County and, if so, is the Minister aware that the plan is creating tension in the area?

(c) What measures is the Minister taking to ensure that the concerns of the residents are addressed and could the Minister consider resettling the local IDPs first before resettling IDPs from outside the county?

Mr. Speaker: Is the Minister for Lands present? Minister for Energy, what is happening to your colleague?

The Minister for Energy (Mr. Murungi): He told me that he is coming.

(Mr. Orengo walked into the Chamber)

(Laughter)

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, has the Question been asked yet?

(Laughter)

Mr. Speaker, Sir, first of all let me apologize for that. I had two more minutes for lunch. Mr. Sheikh Dor had accommodated me on this particular issue. I have an answer here which I am not very happy with. He wanted to know the number of titles that have been registered in the last ten years. Indeed, it is quite an exercise. I have got the complete list, but there are a lot of mistakes in it and I am seeking his further indulgence so that I can be in a position to give him a complete answer.

Lamu is a very controversial area and I would want to answer the Question in an appropriate manner. I will need to have a good and proper answer to give to the House.

Mr. Yakub: Mr. Speaker, Sir, it is very true that the answer I received is insufficient. I agree that we give more time to the Minister.

Mr. Speaker: Can we do this on Tuesday afternoon?

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I think Tuesday will be all right.

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

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.639

ORIGINAL ACREAGE OF LR 164/4/R BELONGING TO KARI

Mr. Mwathi asked the Minister for Lands:-

(a) if he could state the original total acreage of LR 164/4/R, belonging to the Kenya Agricultural Research Institute (KARI) Potato Research Centre at Tigoni and indicate the acreage of land currently available for research work;

(b) if he could provide the names of the beneficiaries, if any, of the land that was sub-divided; and

(c) what steps he will take to ensure that all the illegally acquired land belonging to the centre is returned for the benefit of the potato growers and all other stakeholders who benefit from potato research.

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, on this one, I do not know how to say it. We had a division of labour in my Ministry with my Assistant Minister to answer this particular Question. I think he must be on his way here. If I am given a little time, I will be able to answer it myself when I get the answer.

Mr. Speaker: When?

The Minister for Lands (Mr. Orengo): During the second round.

Mr. Speaker: There is no second round!

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, can I then answer it tomorrow at 2.30 p.m.?

Mr. Speaker: It is so directed.

The Minister for Lands (Mr. Orengo): Much obliged.

Mr. Speaker: The Member for Limuru, are you satisfied? Will you comply?

Mr. Mwathi: Mr. Speaker, Sir, I concur.

Mr. Speaker: Thank you for your co-operation. Next Question, Mr. Kombo!

Question No.569

MEASURES TO RECTIFY SKEWED LENDING RATES BY BANKS

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

(a) if he is aware that commercial banks are taking deposits at less than 2 percent and lending at over 12 per cent,

(b) if he is also aware that the practice is discouraging both depositors and borrowers and hence hampering economic development and, if so, what measures the Government will take to ensure that the above situation is rectified; and

(c) if the Minister could also explain why efforts by Central Bank of Kenya (CBK) to persuade commercial banks to reduce their lending rates has not been successful.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, on behalf of the Deputy Prime Minister and Minister for Finance, I beg to reply.

(a) I am aware that as at October, 2010, commercial banks were lending an average weighted rate of interest of 13.85 which is over 12 per cent. The average weighted rate of interest for all saving products over the same period was 3.58 per cent and 1.58 per cent higher than the 2 per cent.

I am aware that the lower interest rates on savings and the higher interest rates on lending are likely to discourage savings and borrowings respectively. However, I wish to point out that the country has realized tremendous growth. Deposits in the past two years and this growth have contributed to the putting down of pressure on deposit rates, particularly as the demand for loans were low due to the sluggish growth of the economy.

With the economic recovery expected this year and in the mid-term, we anticipate that deposit rates will begin to rise as banks compete for resources to lend. Indeed, this development should reduce the spread between the lending and deposit rates.

(b) Regarding the lending rates, as our fiscal consolidation continues to gather pace, we anticipate that the interest on the Treasury Bills will remain subdued. This will encourage banks to compete more vigorously with each other for lending to the increasingly vibrant private sector. The increased competition should lead to lower lending rates, which combined with the envisaged higher deposit rates should further narrow the interest rate spread.

(c) Indeed, some banks lowered the rates in response to easing the monetary policy of the CBK although we would have preferred to see sharper reductions. However, it is important to emphasize that there are structural impediments that prevent banks from reducing rates significantly including, for example, the long time it takes for banks to realize collateral. We are taking steps to address the impediment and we believe this will result in lowering the banks' operating costs and facilitate an extension to the savings to the consumers in the form of lower lending rates. Ultimately, enhanced competition within the broader financial sector accompanied with prudent micro-economic policies is the only sure way to guaranteeing that the lending rates remain low on a sustained basis.

Mr. Kombo: Mr. Speaker, Sir, I thank the Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government for that answer. He did not even tell me why the person in charge of finance is not here to answer the Question. Anyway, I accept that he is part of the Government.

Mr. Speaker, Sir, I have not received the written answer. However, be that as it may, I wanted to find out from the Assistant Minister what he means when he says that persuasion by the CBK has yielded some results though not satisfactory. There was a time when CBK had set ceilings for the commercial banks to lend. Now, if they are not being persuaded, can the CBK or the Government consider re-introducing the ceilings above which the commercial banks cannot impose interest rates on borrowers? If they do not obey, there must be stiff penalties attached to that.

Mr. Speaker: Mr. Nguyai, before you proceed, do you have an extra copy of the answer?

Mr. Nguyai: Mr. Speaker, Sir, unfortunately, I was only able to get this copy electronically. Only one copy was printed. I will, however, make sure that I avail a copy as quickly as possible to the hon. Member. As you can see, the answer is pretty lengthy. I would probably want to know from the hon. Member whether he will be willing to wait so that I give him a copy of the answer afterwards.

Mr. Kombo: Mr. Speaker, Sir, I think it is prudent that we defer the Question so that I look at the lengthy answer and I am then able to interrogate it properly.

Mr. Speaker: Very well. We can have this Question on the Order Paper tomorrow afternoon. Mr. Nguyai, please ensure that you furnish the hon. Member with a copy of your answer.

(Question deferred)

Question No.590

PREPARATION OF TWO REPORTS ON POST-ELECTION
VIOLENCE BY KNCHR

Mr. Speaker: Member for Chepalungu not in? The Question is dropped.

(Question dropped)

Question No.634

RATIFICATION OF OAU/AU TREATIES

Mr. C. Kilonzo asked the Minister for Foreign Affairs:-

(a) if he could provide a list of OAU/AU treaties and state which treaties have been ratified; and,

(b) if he could also explain why the Government has not ratified the African Youth Charter (adopted in 2006) and the African Charter on Democracy, Elections and Governance (adopted by the Eighth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, on 30-1-2007).

Mr. Speaker, Sir, I have not received the written answer yet.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, it is true that I have not provided a written answer to my colleague. I, however, have the answer with me. I could give him a copy and then proceed.

Mr. Speaker: Can you, please, give him a copy of the answer and then we will revisit the Question a little later after the hon. Member has had time to look through your answer?

Next Question, Member for Subukia!

Question No.638

IMPROVEMENT OF SUBUKIA POLICE STATION

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

(a) if he is aware that Subukia Police Station, which was built during the colonial era, has only one cell and that the staff quarters were burnt down in 2009; and

(b) what urgent measures the Minister is taking to improve the police station considering that Subukia has been upgraded to a district and requires the services of a divisional police headquarters.

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

(a) Subukia Police Station has two cells: A permanent cell for male prisoners and another semi-permanent one for female prisoners. All these were built during the colonial era. However, I am further aware that two timber houses burnt down on 12th August,

2009 as a result of an electrical fault. An inquiry file No.1/2009 was opened and investigations carried out. Action is being taken.

(b) According to the current Kenya Police Development Plan, Subukia Police Station is earmarked for 48 units, Type E Flats, to be constructed in phases once funds are available.

However, to address the current situation, officials from the Ministry of Public Works were invited to inspect the station on 8th September 2010 and recommended development of a site plan which will properly cater for economical utilization of the station's five acre piece of land. The plan will include the divisional headquarters, station and staff quarters. This will only be realized depending on the availability of sufficient funds.

Mr. Gaichuhie: Mr. Speaker, Sir, the Assistant Minister has said that the development of the site plan was started on 8th September 2010. Could he inform this House if the plan is ready and if it is, how does he intend to do the construction from the station, the houses and the cells; in what order?

Mr. Ojode: Mr. Speaker, Sir, basically that will depend on the kind of money that we will get. In the next financial year, we have requested Treasury to give us some funds to do the construction of the station and the houses. So, that will entirely depend on how much we are going to get. But whatever money we get, we are going to give the station and the housing priority.

Mr. Njuguna: Mr. Speaker, Sir, aware that the staff houses in Subukia were burnt down, could the Assistant Minister indicate to this House the interim steps he has taken to improve the living conditions of the security personnel in that area?

Mr. Ojode: Mr. Speaker, Sir, we have an elaborate plan to do the housing units for the entire police force. It is true that the police officers have been living in dilapidated housing units some of which are uni-huts which are temporary structures. There is an indication that they will give us the money for police reforms. If you remember, we asked for Kshs81 billion. If we get any amount of that Kshs81 billion, our priority is to make sure that police officers live in habitable housing units because they also have families.

Mr. Shakeel: Mr. Speaker, Sir, police officers in Kisumu are working in very unhygienic circumstances and living in very squalid conditions yet there is a beautiful multi-storey building at the Central Police Station which is locked. At Kondele, there are beautiful flats which are also locked. Could the Assistant Minister take them over and immediately hand them over to the police so that they can work in habitable and hygienic conditions? When does he intend to do that?

Mr. Ojode: Mr. Speaker, Sir, it is true that we have invested quite large sums of money to come up with these stations and the housing units for the police officers in Kisumu. We are waiting for an invitation to take over from the Ministry of Public Works, once they are ready. We need them more than the area Member of Parliament.

Mr. Shakeel: On a point of order, Mr. Speaker, Sir. The buildings have been ready for over six months. Is the Assistant Minister in order to say that he is waiting for another Ministry to invite them to take over? You are the clients! Why can they not just take them over?

Mr. Speaker: Order! That in my assessment does not amount to a point of order. You have only asked another two questions.

Mr. Ochieng: Mr. Speaker, Sir, could the Assistant Minister tell us whether the police officers are on a go slow after two of them were recently interdicted?

Mr. Ojode: Mr. Speaker, Sir, I am not aware.

Mr. Mureithi: Mr. Speaker, Sir, I do appreciate that lack of cells and the rising insecurity in Subukia poses great danger. However, this is not confined to Subukia alone. At the boundary between Ol Kalou Constituency and Subukia Constituency we have a police post called Ngano where the cells are made of mud. So whenever criminals are put inside those cells the relatives dig underground and release them.

Could the Assistant Minister confirm that when he gets the Kshs81 billion, he will consider some of these deplorable conditions where cells are not made of stone?

Mr. Ojode: Mr. Speaker, Sir, if we get Kshs81 billion for the police reforms, we are going to give a facelift to offices, housing units and the cells within the police stations. However, we will do that on a priority basis. Whether women or men cells will be a priority in Ol Kalou, we will get that information from the ground. If a station will be the priority we will do exactly the same.

Mr. Gaichuhie: Mr. Speaker, Sir, the Assistant Minister has been very general when he says “when funds are available”. I am sure going by the trend of what happens in Kenya, there is no way you are going to get the whole Kshs81 billion but just a certain amount. Could you assure me that whatever amount you will get, Subukia Police Station will be considered?

Mr. Ojode: Mr. Speaker, Sir, I said that whatever amount that will be given by Treasury will be factored in such ventures as the Member for Subukia is seeking. Priority will be given depending on the amount of money which we shall get from Treasury. I would not want to confirm that I am going to do “a” “b” “c” “d” because I have not yet received any funds.

Question No.643

NON-COMPLETION OF MAUNGU LORRY PARK

Mr. Mwakulegwa asked the Deputy Prime Minister and Minister for Local Government:-

- (a) why the Maungu Lorry Park project stalled; and,
- (b) what steps the Ministry is taking to complete the park so that the council can start collecting revenue from the project.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the project for the construction of a lorry park at Maungu Township within the County Council of Taveta stalled. The project was conceived by the council to improve its revenue base besides enhancing orderliness in the township.

The Council previously intended to use the Local Authority Transfer Fund (LATF) and local revenues to finance the project which was too little and could only do the work up to the level it is currently.

(b) The Council has made a request to the Ministry for financial and technical assistance towards completing the project. The Ministry has sent engineers to carry out the technical valuation of the project and it was noted that the cost had been

underestimated. Many important components of works had been excluded. After estimation the Ministry has put the project in its 2011/2012 work plan for implementation, subject to the availability of funds.

Mr. Mwakulegwa: Mr. Speaker, Sir, I had asked this Question on 29th January 2009 and during that time I was given an answer that during that financial year the Ministry was going to fund the project to the tune of Kshs6 million. The answer being given today is that they have not done feasibility studies and therefore the amount of money that was allocated that year was not enough to complete the project.

If we come to the House and get commitment from the Government that they are going to complete the project and two years down the line nothing has been done, am I going to take the Assistant seriously that he has sent engineers to the ground and evaluation has been done? I would like to table the last written reply I was given for reference.

(Mr. Mwakulegwa laid the document on the Table)

Mr. Nguyai: Mr. Speaker, Sir, it is true, and we have consulted even with the hon. Member, but there were certain issues. In particular, funds should have been allocated within the last financial year, so that this construction could be done. Unfortunately, when the feasibility study was completed the omitted works were then included. Now, we do have a total estimate of how much the project will cost. We have put it within our plans and hope that we will get the necessary budgetary allocation. Let me assure the hon. Member that we are taking this issue very seriously. We will try and ensure that it is a priority. Phase I has been completed and we are moving on to Phase II. I believe we will be able to proceed well.

Dr. Eseli: Mr. Speaker, Sir, as the Questioner had mentioned, this Question was first asked in early 2009 and several reassurances were given to the House as to the completion of the project, but it appears they were unable to do so. Could the Minister inform this House how many such projects they have in other counties? Now that we have a new Constitution, does the Ministry intend to leave these unfinished projects as burdens of the incoming counties?

Mr. Nguyai: Mr. Speaker, Sir, I would not have on hand the number of such projects that have stalled because the councils did not have sufficient revenues. I think that would be a substantive Question which would need to be answered substantively.

Mr. Mwadeghu: Mr. Speaker, Sir, is the Minister satisfied that the entire Kshs13 million actually went to Maungu Lorry Park?

Mr. Nguyai: Mr. Speaker, Sir, we are satisfied that so far, Kshs13 million has actually been spent on that particular project.

Mr. Njuguna: Mr. Speaker, Sir, while acknowledging the answer given by the Assistant Minister, could he additionally inform the House whether the Ministry has any plans to develop lorry parks in all towns in the country, particularly in Kagwi Township in my constituency?

Mr. Nguyai: Mr. Speaker, Sir, obviously, we do have numerous good intentions but not all can be realized at one time. As you are aware, we have been grappling and struggling to ensure that we fulfill the Economic Stimulus Package. I do hope that we

will, in accordance with Vision 2030, construct even Kagwi Town, but I cannot give the specific time.

Mr. Ochieng: Mr. Speaker, Sir, while serving as a Member of the Committee on Local Authorities, I happened to visit this particular project. We were not satisfied with the amount of Kshs13 million having been sunk into that particular project. There was an element of very serious corruption that was perpetuated in that particular project. Could the Minister tell us what action he intends to take against the people who were involved in this massive corruption?

Mr. Nguyai: Mr. Speaker, Sir, I will be very happy to see the specific Committee report in order to see specifically what the issues are, so that we can interrogate them further and make sure that there is transparency and accountability on this issue.

Mr. Speaker: Last question, Member for Voi!

Mr. Mwakulegwa: Mr. Speaker, Sir, could the Minister commit to fund and complete this project in the financial year he has promised that funding will be made available?

Mr. Nguyai: Mr. Speaker, Sir, as I said, we have put this project under the 2011/2012 Work Plan and are committed to ensure that, that happens. But as you remember, last year, when we were meant to have some budget on development, we were left with nil because of the Economic Stimulus Package. I hope that we will be able to correct that this time to ensure that this happens.

Question No.682

RELEASE OF FUNDS TO RECARPET ROAD D511

Mr. Nyamai asked the Minister for Roads:-

(a) whether he is aware that Road D511 which serves Lower Yatta and Katulani districts is currently in a deplorable condition; and,

(b) when the Ministry will release the funds which have been earmarked for the improvement of the road.

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, I have had the opportunity to speak with the hon. Member and interrogated the answer. I feel that I need to consult more and bring a proper answer before the House. Therefore, I would request that we defer this Question to next week, on Tuesday.

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

(Question deferred)

Question No.634

RATIFICATION OF OAU/AU TREATIES

Mr. C. Kilonzo asked the Minister for Foreign Affairs:-

(a) whether he could provide a list of OAU/AU treaties and state which treaties have been ratified; and,

(b) whether he could also explain why the Government has not ratified the African Youth Charter (adopted in 2006) and the African Charter on Democracy, Elections and Governance (adopted by the Eighth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, on 30-1-2007).

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, I beg to reply.

(a) I would like to table two lists. One list has got all the treaties that the Republic of Kenya has ratified as at today. They are 30 of them. The second list is that of treaties that the Kenyan Government has not ratified. They are ten of them.

(Mr. Onyonka laid the lists on the Table)

(b) Mr. Speaker, Sir, the good news is that the African Youth Charter, which was adopted in 2006, has been ratified. On the list of ratified treaties, it falls under No.28. The African Charter on Democracy, Elections and Governance has also been ratified. On the list of the ratified treaties, it falls under No.29. It was ratified in September, 2008.

Mr. Speaker, Sir, the hon. Member also wanted to know the status of all the treaties that we have. I wish to inform the House, for the record, that the African Youth Charter was adopted by the African Union on 2nd July, 2006 in Banjul, Gambia. It was entered into force on 8th August, 2009.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. I just wonder whether the Minister is reading the answer that he has provided. I am following it with the hon. Member who asked the Question and, clearly, the answers the Minister is giving are not the same as those contained in the answers he provided. For example, he is talking about having ratified the African Charter on Democracy, Elections and Governance, but the answer he has given here shows that they have only signed. Could we know which document he is reading from? Could he also supply it to us so that we can interrogate it?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, as I said, I would like to correct myself; we have signed. I will shortly explain the situation as it is, so that you know which instruments have been deposited for ratification.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. The Assistant Minister says that he is happy to announce that they have since been ratified. The answer here is very clear; both what he has tabled and the written answer. They are not ratified. The Government has signed, but they have not ratified them. Is he changing the position from what he has given us?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, if the hon. Member could be patient, I will tell them exactly where the state of this ratification has reached. There are some documents which have been signed. Now, because of the new Constitution, there are certain changes which are legally in place. There are changes in terms of certain Ministries, which will be given different responsibilities to hold the ratification of some of these instruments. So, that is what I am actually going to explain.

Mr. Speaker, Sir, I had reached a stage where I was explaining that after the 15 member states deposited their instruments for ratification with the Commission, the Charter sought to empower the youth by building their capacity, leadership skills, bla-

bla- bla--- As a result of that, Kenya signed the Charter on 28th of June, 2008. Kenya is among the 38 countries, which have signed---

Mr. Kombo: On a point of order, Mr. Speaker, Sir. I heard the Assistant Minister say *bla-bla-bla---* What does that mean?

(Laughter)

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, the reason why I did not intend to go through that is because it is such a long draft and it has already been given to my colleague. So, in the English language, when you go *bla-bla-bla* it means, you shorten your explanations. I shall proceed.

Kenya signed the Charter on 28th June, 2008. It is among the 38 countries which have signed this instrument, while 22 countries have ratified and deposited the ratification. As I said, shortly I will explain why we have actually not ratified.

The African Charter on Democracy, Election and Governance was adopted by the African Union on 30th of January, 2007 in Addis Ababa. It will enter into force upon deposit of 15 instruments of ratification. Kenya is a signatory to the Charter, which is signed on 28th June, 2008. It is among the 28 countries which have signed while three countries have ratified and deposited the instruments of ratification.

Finally, previously, the Ministry responsible for initiating the ratification process of any treaty was the Ministry usually in charge of issues covered by that treaty. The Ministry of Foreign Affairs would only play a role to the extent of handling foreign relations on this treaty, which included the drawing and depositing of the requisite instruments for ratification. However, with the passage of the new Constitution, this has changed the scenario; previously, the Executive used to sign and ratify international treaties without the approval of Parliament.

In this regard, because of the current dispensation, the Executive now will have to sign the treaties before they are ratified. It is only Parliament, which will have the right to actually execute the ratification of these treaties. Section 95(5) of the new Constitution provides this. It says:-

“No person or body other than Parliament has the power to make provisions for having the force of law in Kenya, except under authority conferred by the Constitution or by legislation”.

Mr. Speaker, Sir, the point I want to make and this is the issue I raised with my colleagues, is that the situation we have right now even when many of these treaties have been signed, it is Parliament that must actually have these treaties ratified.

Finally, the Ministries that are in charge of the issues covered by various treaties will henceforth ensure that the necessary implementing legislation to domesticate these treaties, as we all to sensitize the public on these treaties, is brought forth.

Lastly, with specific regard to the ratification of the two AU treaties, the Government is currently in the process of sensitizing the public on the contents of this treaty. I saw my senior colleague, hon. M. Kilonzo coming in, he is aware that the Ministry of Justice, National Cohesion and Constitutional Affairs on its part is finalizing the ratification and domestication of all the international instruments, which we have not ratified but signed.

Mr. Speaker: Very well! Mr. Assistant Minister, as you sit, please, authenticate the two documents that you have signed to be the accurate position as at today, by appending your signature there and indicating the date.

Mr. C. Kilonzo: Mr. Speaker, Sir, part “b” of the Question says:- “Could the Assistant Minister also explain why the Government has not ratified the African Youth Charter on Democracy.” In his answer, he has said that, that is the work of the Ministry responsible for that particular issue. I would have expected him to have brought an answer on behalf of the Government. Is he telling me to follow the respective Ministries?

Mr. Onyonka: Mr. Speaker, Sir, the point that I have just made is that because we have a new Constitution every Ministry will have to come in with the instruments, deposit them in this House, then link them up with the Ministry of Justice, National Cohesion and Constitutional Affairs and make sure that across the board, whatever treaty that will be brought to the House for ratification is ratified; after Parliament has studied the instruments and made sure that what was deposited is actually what Parliament was going to vote, to pass as a Bill.

Mr. Speaker, Sir, we would have gone all around and given the information hon. C. Kilonzo wanted me to provide. However, the only problem is that because of the new dispensation and the changes that have taken place, the Member of Parliament and my senior colleague may have to wait until every Ministry is able to bring its instruments, so that we can investigate them here in Parliament before we can pass them. It is not that I have evaded the Question it is simply that because of the changes which have taken place, every Ministry is trying to look at how they can ratify the Bill before they bring it to the House.

Mr. Imanyara: Mr. Speaker, Sir, it is good to hear the Assistant Minister confirm that they will take steps to have these treaties ratified. Among the treaties that are not ratified and to which Kenya is not a party to is the Protocol on the African Investments Bank, African Union Convention for the Protection and Assistance of the Internally Displaced Persons, Constitution of the African Civil Aviation Commission, Charter for African Cultural Renaissance and the Statute of the African Union Commission on International Law, including the Protocol on the statute of the African Court of Justice and Human Rights.

Mr. Speaker, Sir, a key treaty such as that of the internally displaced persons, where there are Kenyans who are internally displaced in Uganda and Tanzania, demands of us that we follow the practice of the other African countries. Given that all these conventions and treaties have come into force during the tenure of this Government, could he tell us when steps will be taken, in addition to ratifying those that have been signed, to begin the process of signing the other 15, which you have not signed and to which Kenya is not a party to, so that we can come up to date with the rest of the African continent?

Mr. Speaker, Sir, I say this because at the Pan African Parliament, we are always being accused of lagging behind even by the most none democratic African nations. It is not a good thing for this country to be identified with the least democratic countries in Africa.

Mr. Speaker: Mr. Imanyara, do you want that information from the Minister for Justice, National Cohesion and Constitutional Affairs?

Mr. Imanyara: Mr. Speaker. Sir, he can give it to the Assistant Minister.

Mr. Speaker: Order! He cannot give it to the Assistant Minister because he is making a response.

Mr. Imanyara: Mr. Speaker, Sir, I would like him to be informed by the Minister. I would like to be informed!

Mr. Speaker: Very well! Mr. Onyonka, proceed!

Mr. Imanyara: Mr. Speaker, Sir, Mr. M. Kilonzo wanted to inform me something!

Mr. Speaker: Order, Mr. Imanyara! That is not the way we do business here. Proceed, Mr. Onyonka!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: To whom?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, to the Assistant Minister.

Mr. Speaker: Mr. Onyonka, do you want to accept that information?

Mr. Onyonka: Mr. Speaker, Sir, yes, I agree to be informed.

Mr. Speaker: Okay! Proceed, Mr. M. Kilonzo!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I want to inform the Assistant Minister, with his kind permission--- I thank him as well as the House. I want to inform him of the provisions of Chapter 8 of the Constitution, Article 94 so that, as this issue is canvassed, everybody is aware that under Article 94(5), no person or body other than Parliament has the power to make provision of heaving the force of law in Kenya except under the authority conferred by this Constitution or by legislation. Further to this, I want to inform the Assistant Minister that by virtue of Article 2(5) and (6) which I may read as follows:-

“(5) The general rules of international law shall form part of the law of Kenya.

(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution and, therefore, the Government, particularly through my Ministry, is working on modalities to legislate on Article 94(5) and (6) so that those treaties are ratified. They can then be brought to Parliament so that the actual ratification would be through legislation by Parliament itself and no longer through the Executive. That is our advice to the Government and that advice has been accepted. So, we are working on it!

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. In fact, the Assistant Minister had already given that answer. But is it in order for Ministers to come and inform each other on the Floor of the House when there are Cabinet meetings where they meet regularly, and where they are paid and carry a flag which is more than a piece of cloth? Is it in order for them to come and inform each other in front of hon. Members when Questions are being asked?

Mr. Onyonka: Mr. Speaker, Sir, I think the point I would like to state here very clearly is that, if you look at the treaties that have been signed, they are 30. The ones that have not been signed are ten. The reason why I appreciate the fact that the senior Minister was giving me a point of information--- The point that I note is that he has accepted that any further drafting and interrogation of those treaties will be by his Ministry. He will ensure that any Ministry that has not ratified the treaty will then be able to do so hence forth. That is because they are now prepared to handle that in his Ministry. What the

Ministry of Foreign Affairs does is only to receive the instruments and hand them over to the relevant Ministries. I believe that if we accept the principle of collective responsibility, whatever the Minister has said is believable and I believe he is working on that to make sure that the ten remaining treaties can be ratified as soon as possible.

Mr. James Maina Kamau: Mr. Speaker, Sir, in view of the on-going saga between the Government of Kenya and the ICC, how often does the Government of Kenya review all the other treaties signed by the Government on behalf of the people of Kenya?

Mr. Onyonka: Mr. Speaker, Sir, I had mentioned the position earlier on. I am mentioning this to my colleague that it is no longer going to be the Executive which will now be bringing any of those instruments to be deposited in the House or sign them. Parliament is the body that is going to make sure that all treaties are discussed first; interrogated and after that, ratify and pass them into Bills. My position is that since the Constitution has already accepted and adopted the principle that any of the earlier Bills which we had signed--- As far as I am concerned right now, we will have to wait and see what decision the House will come up with regard to whatever instruments that are going to be deposited here. Will they be evaluated by this House? The House can decide what it wants to do. But what has taken place already--- I know my colleague is really trying to raise the issue of what happens with the ICC protocols which we have already signed. As far as I am concerned, those are foregone conclusions unless you go back. That is going to take another two to three years before you can reverse them. That position remains and the Government of Kenya has not declared any position other than that.

Mr. James Kamau: On a point of order, Mr. Speaker, Sir. I was asking about the review. How often does the Government review those treaties? That is my question!

Mr. Onyonka: Mr. Speaker, Sir, I am not sure how often the Government reviews those treaties. But I believe the review would come as per the requirement and the need of the country.

Mr. Bahari: Mr. Speaker, Sir, it is quite clear that in the past, a lot of injustice has been done by the Executive on those treaties because they were never brought to Parliament. In that way, the Executive has committed Kenyans without making them know exactly what they have committed them to. It is good that the new Constitution came into place. It is forcing the Executive to bring those matters here. In view of the fact that the Ministry has been lagging behind in disseminating that information to Kenyans--- I want to say that when you look at the African Charter on Democracy, Elections and Governance, particularly, it demands a democratic culture - not democracy because every country is democratic enough – but a democratic culture to be inculcated in Africa.

(Applause)

What is the Ministry doing to ensure that, that information is disseminated to Parliament and Kenyans without further ado?

Mr. Onyonka: Mr. Speaker, Sir, I agree with my colleague. Again, from the answer that I have given - and my senior Minister for Justice, National Cohesion and Constitutional Affairs is here - the responsibility to ensure that Kenyans are aware and study the treaties when they come to this House is vested in the Ministry of Justice, National Cohesion and Constitutional Affairs. It is the one that will be finalizing the

ratification, domestication, popularization and dissemination of information to the public and Members of this House before they adopt any of those instruments. The reality is that we have previously received some of those instruments and we did not actually understand their reality. It will be critical - and I can assure my colleague on this issue - that the Ministry of Justice, National Cohesion and Constitutional Affairs is actually required by the Constitution to sensitize the public about the treaties before Parliament can ratify them.

Mr. C. Kilonzo: Mr. Speaker, Sir, the African Charter on Democracy, Elections and Governance obviously falls under the Minister for Justice, National Cohesion and Constitutional Affairs. It was signed in January 2007, three years before we got the new Constitution. So, obviously, the Government was holding this document. But one would understand why the Government is not very keen on ratifying that treaty. If you look at the principles of this Charter, some of them say: "Respect for human rights and democratic principles", something which has been a challenge to this Government. Another one is holding of regular, transparent, free and fair elections. Having known that this particular Charter was signed during the year of elections and, maybe, the Government was not comfortable, they never ratified it. Another principle is promotion of gender equality in public and private institutions. You have just seen the last nominations where the issue of gender was ignored.

(Applause)

So, there is no way they would want to ratify this particular one. The last one is transparency and fairness in the management of public affairs. This Government is still using stamps of "top secrets" in its documents. Finally, another principle they do not like is condemnation and rejection of acts of corruption, related offences and impunity. That is why whenever a Minister is told to step aside and he does so, he is reinstated later. That is because they do not believe in the principles in this Charter on governance. So, without going very far, is the Minister for Justice, National Cohesion and Constitutional Affairs willing to inform me why he has never ratified this treaty because he is here?

Mr. Speaker: Order. Mr. Assistant Minister! You need not respond to that. That is moving away from our rules of procedure and practice in this House. You have no question to answer.

Question No.590

PREPARATION OF TWO REPORTS ON POST-ELECTION
VIOLENCE BY KNCHR

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I rise to apologize that I was not able to ask the Question listed and the information did not reach you in advance. It is not because I take my work carelessly, but because I was busy in the Departmental Committee on Justice and Legal Affairs doing another assignment which you gave us. Therefore, I beg your indulgence to reinstate my Question. Maybe I can ask it next week.

Mr. Speaker: Order, Member for Chepalungu! Please, resume your seat. I have heard your explanation! Your apology is acceptable, except that you will have to do

something about your management skills because there is nothing else I can do for you. The Question will remain dropped. We will consider the rest of your plea later on from the right place.

(Mobile phone rang)

Hon. Members, please, note that it is gross disorder for you to speak or attempt to speak on a mobile telephone in the House. So, all hon. Members note. I am very awake to it. I scan the whole House all the time. Those of you that may be tempted to do so, we will actually take sanctions against you. Let it rest there for the moment.

That brings us to the end of Question Time. We move on to Prime Minister's Time. Is there any Question for the Prime Minister? I am not on notice that there are any. In which case, then we go to the next Order.

Are there any Ministerial Statements which are due for delivery? I have no notice for requests for Ministerial Statements.

(Dr. Eseli stood up in his place)

What is it, Dr. Eseli?

POINTS OF ORDER

NOMINATION OF SECRETARY FOR EAST AFRICAN COMMUNITY

Dr. Eseli: Mr. Speaker, Sir, I had asked for a Ministerial Statement from the Minister for East African Community *vis-a-viz* the nomination of the secretary for the East African Community. The Minister was directed to give that Statement sometime last week which she did not. I was hoping that she would be available to give it today.

Mr. Speaker: Is the Minister for East African Community in the House? Maybe, the Minister for Justice, National Cohesion and Constitutional Affairs, you would like to hold brief for your colleague.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I would like to do so. While apologizing to the hon. Member and the House, I request that the matter be addressed on Tuesday, next week. I will alert the Minister.

Mr. Speaker: Very well. Tuesday, next week, is so directed. Dr. Eseli please note.

Next Order!

BILL

Second Reading

THE VETTING OF JUDGES AND MAGISTRATES BILL

(The Minister for Justice, National Cohesion

and Constitutional Affairs on 8.2.2011)

(Resumption of Debate interrupted on 8.2.2011)

Mr. Speaker: Minister for Lands, you were on the Floor.

The Minister for Lands (Mr. Orengo): Thank you, Mr. Speaker, Sir. Looking at this Bill, it is good to highlight some of the very important provisions in it. Looking at them, they portray the fact that the panel that will vet the Judges and the magistrates must be very distinguished persons. In doing their work, they will ensure that the exercise of reforming the Judiciary is done in a manner that will attract public confidence and a sense of ownership on the part of the people of Kenya.

Some of the qualifications for appointment of those who will sit in the Judges and Magistrates Vetting Board are spelt out in Clause 8. It provides that they should hold a degree from a recognized university and that they should have at least 15 years distinguished post qualification experience in their field of study. A university degree alone will not be sufficient. One must be able to show that in their various fields of service or experience, they must have had 15 years of experience and not just distinguished post qualification experience.

Mr. Speaker, Sir, amongst the persons who shall be qualified for appointment as chairperson or deputy chairperson, must have at least 20 years or an aggregate of 20 years experience as a Judge of a superior court. The emphasis is on the level of distinction that is required of a superior court or a distinguished legal academic, judicial officer or other relevant legal practice.

Clause 8(3) says:-

“A person shall not be qualified for appointment as a member if such person-

- (a) is a member of
- (i) Parliament; or
- (ii) a local authority---

Obviously, for good reasons, such members are not entitled for appointment to such a body.

Mr. Speaker, Sir, if we do not have a distinguished board that meets the standards set up in this Bill then even that process of vetting Judges may end up with a basket of Judges who may meet the qualifications of integrity and service, but who cannot be qualified to be appointed to such a body. Mr. M. Kilonzo has created a process of vetting that is carried out by a group that will have the confidence of the public and the right qualifications. The process of that appointment requires, not only the President and the Prime Minister to act in partnership and consultation, but this Parliament must approve those who are appointed to serve on this board.

So, at the end of the day, I hope that we will not have the experience again where those who were appointed to this board will be appointed on the basis of some kind of horse trading because public ownership and confidence is important.

There is a clause here which I am sure my learned friend Mr. M. Kilonzo is not very emphatic about, that the Prime Minister and the President can disregard those persons that are recommended by the group that is established under Clause 9 and go ahead and come up with a list of names which were not part of the list.

I am not very confident that, that should continue to be part of the Bill. I am sure my learned friend, Mr. M. Kilonzo, would not be putting this Bill before the House and insist that it must be passed as it is. What is important, at the end of the day, is that at the level of selection of those candidates there is fairness and a process that is accountable and transparent before they start dealing with the Judges and magistrates who will be vetted.

Just to ensure that their best practices and standards are met, there is provision for non-citizens of Kenya to be appointed in accordance with what is set out in Clause 9. Again, this matter is debatable as to why we should at this age and time, try to get people from all over the world to try and assist in these processes. Since we got it wrong in 1963, I think we must find a way of starting the process of reforming the Judiciary on the right note. The final product does not depend on what we do ultimately. I am a firm believer that the end does not justify the means. The means is just as important as the end. This would be greatly in consonance with the Articles in the Constitution that deal with national values, emancipation of people, transparency and accountability.

If you look at the history of our Judiciary, you will see that there were moments when it would have resolved the political question in Kenya. Many times, Kenyans went before magistrates and judges to resolve conflicts between them and the State. For example, when there was a desire for the establishment of a multi-party State after Kenya became a *de jure* party State, various petitions were filed in court. But despite the very elaborate provisions dealing with the freedom of expression in the former Constitution, our Judiciary found it very difficult to come out with a judgment allowing multi-party politics to take hold in Kenya. At that time, Zambia had a Constitution with similar provisions to the one we had; and which we repealed - Section 2A. That Section more or less provided that the only political party in Kenya would be KANU. There were similar provisions in the Republic of Zambia but invoking the Bill of Rights in the Zambian Constitution, the Judiciary there, when confronted by the petition by MMD to rule that the amendments by Parliament making Zambia a one-party state were unconstitutional within the framework of the Zambian Constitution, legalized the formation of multi-party democracy. Multi-party democracy subsequently produced the entire Presidents of Zambia from then on.

I remember once when a case was filed before the High Court trying to safeguard the freedom of association and the freedom of assembly. One of the lawyers in that case is now a Judge of the High Court. We filed a petition and that file was kept in the drawer of a judge for almost one and half years without the case being heard. Next door in Tanzania, the courts held that despite legislation which was similar with our Public Order Act, holding a public meeting was enshrined in their Constitution under the provisions that relate to the freedom of assembly. I believe, in order to live in the spirit of Constitution, even now, it is very odd that the authorities concerned with licensing public meetings would, at this time of the day, disallow people to hold such meetings, especially after a new Constitution has been promulgated. I was happy when this matter went to court. The court, in a matter of one day or two, gave an order that such public meetings should be allowed to go on.

Madam Temporary Deputy Speaker, we want judges who can stand firm. If our judges were strong, independent and impartial, hon. Matiba would not be in the condition that he is in today. If our judges were strong and independent, people like Masinde

Muliro would not have lived a life of almost impoverishment because that man lost his entire life savings in the Trans Nzoia area basically because the Judiciary took the position that anybody who was perceived to be against the system would be harassed and, if need be, their properties taken away from them. Even the former Vice-President, hon. Wamalwa, did not manage, for a very long time, to assert his right of ownership over his family land in Trans Nzoia. I can give many other examples, including that of my learned friend sitting across, who fought many battles in court. I am glad that he is here, alive, to talk about a new Judiciary. He has survived many temptations.

In conclusion, I just want to remind all of us that, as we debate a new Kenya and talk about a new Chief Justice and so on, that the founders of this nation had a similar position in 1963. Had they began on the right note--- If you listen to many speeches that were made around that time, you will see that, in the first six months, there was a realization that this was a new sovereign Republic and the President would neither be imperial nor like a governor. However, six months down the line, the electorate changed and the President was seen as a village tyrant. Whatever he said was seen to be law and slowly, this very Parliament started passing legislation. The first people who suffered under various legislations that led to the preservation of public security and subsequently detained were Members of this Parliament. I want to plead with Members of Parliament that this is something that is not an issue in this case. However, I want to say that we should start on the right note in the appointment of the Chief Justice. In all these issues, we must give Kenyans a sense of ownership. If we go wrong and we do not start on the right note and see the Chief Justice of Kenya as an appointee of one person or a group of persons or a party person, I can tell you that for ten years, you will live to regret that decision because you will have to live with that Chief Justice for ten years. Let us make it by-partisan. Let us not begin by thinking about it as a way of settling our little scores and seeing who is a victor or who is a hardliner.

I understand that some people have characterized me as one of the hardliners. However, for the truth, I will always be a hardliner. Justice hates convenience. You cannot make decisions on matters of law and Constitution on the basis of convenient. If you must make it difficult for the President or the Prime Minister, think about how you can make it even more difficult because power corrupts and absolute power corrupts absolutely.

The little power you want to give away might cause you to be the first person to face the consequences. We have lived in this House to see it. If you look at those who were the comrades of Jomo Kenyatta, you will see that they were the first to go to detention. The comrades never thought that Kenyatta would be fallible. If you examine the people who worked very closely with the former President, in the Cabinet, you will see that they were the first to go. People like Masinde Muliro and Shikuku, who was the Secretary General when President Moi came to power, were the first victims. If you are close to any center of power, do not be too comfortable. Make it good for everybody. If you are not careful, you will be the first to suffer. I know that in the present system, I can even call names because I have worked with President Kibaki and with the Prime Minister, Raila Odinga. If you go the same direction, you might go the same way. I can give names of those who, in the current dispensation, have suffered because they thought that if Mr. Orendo became the President today, Dr. Khalwale would have a field day. If you make me President without putting caveats and Dr. Khalwale votes for me and gives

me a free blank cheque, he will be the first to go because he will know me too much and you will not allow me to do what I want to. He will think of me as a human being. However, Dr. Eseli, who does not know me, would think of me as a god.

Madam Temporary Deputy Speaker, I beg to second.

(Laughter)

(Question proposed)

Mr. Imanyara: Madam Temporary Deputy Speaker, I rise to express my support for the principle of the Vetting of Judges and Magistrates Bill with very serious reservations. Both the Minister who introduced the Bill and the Minister who has seconded it have spoken at length about the need for this. I need not repeat what they have said.

However, in looking at this Bill, we must, at the same time, also appreciate that we have already established institutions to guide the other institutions and the Government on the process of the implementation of the Constitution. In particular, we established the Commission on the Implementation of the Constitution (CIC), specifically with this role and mandate in mind. Yesterday when the Minister was moving this Motion, he made full disclosure to his credit, and I commend him for that, pointing out that the CIC had taken objection to the manner in which this Bill has retained some of the provisions that they recommended be excluded. Although he tabled that letter, he did not explain to the House the objections that the CIC had. With your permission, I just want to go through part of that document, being the advisory opinion of the CIC that was sent to this House through the Office of the Speaker, copied to the Minister and which the Minister tabled before this House yesterday. Upon examining the Bill which we are now debating, they said the following:-

“Upon reflection on the matter and pursuant to discussions with the Attorney-General, the Minister for Justice, National Cohesion and Constitutional Affairs and the Law Reform Commission, it was agreed that the Bills needed to be withdrawn from the Floor of the House. Such withdrawal was necessary considering that the Bills had been tabled before the House prior to the setting up of the CIC. It was agreed that the consultations between the CIC, the Attorney-General and the Kenya Law Reform Commission contemplated by Section 26(1)(4), which provides as follows:- “For the purposes of Clause 1, the Attorney-General, in consultation with the Commission on the Implementation of this Constitution, shall prepare the relevant Bills for tabling before Parliament as soon as reasonably practicable to enable Parliament to enact the legislation within the period mentioned”.

The Minister indicated, and I have no doubt at all, that the Attorney-General had approved the tabling of this Bill and that it had his concurrence. I have no problem with the fact that the Bill was introduced to the House by the Minister rather than the Attorney-General, but they then go on to say that:-

“The said Bill has now been published. Whereas we note that most of the issues that we raised in relation to this Bill have been incorporated in the published Bill, we however, note that two issues remain outstanding”.

These are two issues that have been pointed out by a Commission, which has the constitutional mandate to advise on the best procedures for implementing this Constitution. Yesterday, the Minister indicated that although the CIC had recommended the withdrawal of the clause, they had retained it because he felt, in his view, that the Executive authority must still remain vested in the President and the Prime Minister. They say that:-

“Firstly, Clause 9(14) says that nothing in this section shall be construed as preventing the President in consultation with the Prime Minister from nominating and forwarding names other than those submitted by the Public Service Commission (PSC) to the National Assembly for consideration and approval. We want to reiterate our recognition of the need to involve the Executive in the process of nominating and appointing members to institutions, including the Vetting Board provided under this Bill. Indeed, our understanding is that the Selection Committee is largely comprised of representatives of the Executive to allow the Executive to play its role in recommending persons to serve in the Board, whilst at the same time facilitating a process that respects the national values in Article 10 and the Principles of Leadership enumerated in Article 73(2)(a) of the Constitution, including participation of the people and selection on the basis of competence and suitability. The CIC’s concern with this section is that it negates the very purpose for which the Selection Committee in Clause 9(5) has been constituted by providing an alternative process by which persons who have not been subjected to the transparent competitive process may join the Vetting Board. This is far reaching watering-down of the Bill contrary to the advice given by the constitutionally-mandated body that oversees the implementation of the Constitution”.

We, in this House, must seriously consider whether we can depart from an opinion expressed by the experts that we, ourselves, have established to guide us in the process of implementation. Upon what basis did the Minister feel that he can disregard the opinion of the CIC, when it is so well set out and the reasons for recommending the removal of that clause? Unfortunately, listening to the Minister yesterday, and with due respect, I never heard him give any concrete or persuasive reason as to why this clause has been retained. I shall be asking that it be removed during the Committee Stage. To the extent that this Bill relates to the sensitive issue of vetting members of the Judiciary, this proposal offends the spirit of the Constitution and compromises some of the national values and leadership principles set out in the Constitution.

The Minister for Lands, while seconding this Motion just a few minutes ago, warned about the dangers of starting on the wrong foot. We have already seen far too many signs. The Minister has been at pains to point out that we are lagging behind because we are not living to the spirit of the Constitution. I am, therefore, surprised that he would append his signature to a section of law that negates the principle that is enshrined in the Constitution that requires the people’s participation in the process of nomination to the Board. It is, therefore, my considered opinion that the Minister reconsiders his decision and introduces this amendment to retain the clauses as we recommended by the CIC. The CIC then says that:-

“Secondly, we wish to bring to your attention Clause 12(5) and (6) of the Bill which omits the requirement for consultation with the Prime Minister during the process of filling a vacancy in the Vetting Board. Considering that the consultative process is provided for in all other appointment processes in the Bill and is in any event required by

the Constitution in Section 29 of the Schedule, we propose that this section be amended by including the requirement for consultation with the Prime Minister”.

Madam Temporary Deputy Speaker, I echo those objections by the CIC. In addition to that, I also have concerns about the actual composition. If you look at Clause 9(5) on the PSC, first of all, I am not certain that the PSC ought to be entrusted with this responsibility given that the PSC in place is the same PSC that has been carried over from the past. The people who constitute the Board are as follows:-

- (i) The Cabinet Office.
- (ii) The Office of the Prime Minister.
- (iii) The Ministry for the time being responsible for matters relating to the Judiciary.
- (iv) The Office of the Attorney-General.
- (v) The Ministry for the time being responsible for matters relating to the Public Service.
- (vi) The Public Service Commission.
- (vii) The Judicial Service Commission.
- (viii) The Law Society of Kenya.

Mr. Temporary Deputy Speaker, you will see that out of all those persons, it is only two who are not part of the Executive. So, although we are asking that the process be independent of the Executive, the membership of the Board comprise of over 80 percent members of the Executive. To what extent can that be said to be serving the purposes of the Constitution? The Minister ought to re-visit that proposal and ensure that representation in this Board comprise of members who are not from Government. I would suggest that we recognise religious groups in this country comprising of Protestants, Catholics and Muslims.

Let us get men and women of integrity who have no personal interest in the process. Members of the Executive have personal interest in this process, and I would urge the Minister to seriously consider re-visiting these clauses. Let the composition of the Board reflect the principles set out in the Constitution. I do not see any requirement for gender balance in this Bill. So, we have left it to the discretion of the people representing it. They can put all men. There is no requirement for specific need to appoint members of the Board in accordance with principles set out in the Constitution.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): On a point of order, Madam Temporary Deputy Speaker. Would I be in order to ask whether the hon. Member, whom I respect as much as a man can respect another man, to mislead the House on this Bill? What is provided for under Clause 9(5) is not a board. Probably, it is just a slight oversight on his part. This is purely a selection committee, whose purpose is merely to collect the applications and shortlist the applicants. Would I be in order to ask the hon. Member to address it not as “board” but as “selection committee”?

Mr. Imanyara: Madam Temporary Deputy Speaker, I stand corrected. I am sorry about that. It is a selection board but the intention is clear. We are asking that this selection board comprise of people who are not drawn largely from the Executive. That is the point I was making. I am sure that when responding to debate, the Minister will address that issue.

Subject to that representation, I am quite happy that we are taking steps to enable us meet the deadlines that are set out in the Constitution, bearing in mind the fact that at the end of this month, the Office of the Chief Justice will fall vacant. Unless we move with speed, we are likely to find ourselves shot of the timelines set out within the Constitution.

So, subject to what I have said, I support the Bill and trust that the Minister will introduce these amendments during the Committee Stage.

With those remarks, I beg to move.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity. I stand to support the Bill.

In supporting this Bill, I take cognizance of the guiding principles of setting up the Magistrates and Judges Vetting Board, which are set out under Clause 5, which reads:-

“In the exercise of its powers or the performance of its functions under this Act, the Board shall at all times be guided by the principles and standards of judicial independence, natural justice and international best practice.”

Madam Temporary Deputy Speaker, we are undertaking a very important exercise, and thus we must at all times be guided by the principles as set out under Clause 5. It has been said that the purpose of vetting our judges and magistrates is to restore public confidence in the Judiciary. It is only fair for us, as a House, to state very clearly that we have some very hardworking and dedicated magistrates and judges at the moment. However, we also have other people within the Judiciary who must be held responsible for the degree in which the Judiciary has gone down to be viewed so by the public.

I say this because we have very many examples of cases indicative of a non-performing Judiciary. It is said that justice delayed is justice denied. We have many examples where our Judiciary has failed us by delaying the hearing and determination of cases, for example, election petitions. Three years ago, we went to elections. After those elections, petitions were filed by certain people who were not satisfied with the election results in their respective constituencies. It is disheartening to note that three years down the line, some petitions have not been determined.

Madam Temporary Deputy Speaker, even the last Parliament was dissolved to pave the way for the elections that led to the constitution of the current Parliament before some petitions which had been filed five years ago had been completed. This is only one area but we even know that in criminal cases, we have people who have been in custody for well over ten years, awaiting their cases to be determined. We have civil cases which have lasted six years. So, some people must be held responsible for the low level to which the respectability of the Judiciary has gone.

Therefore, the exercise of vetting judges and magistrates should not be viewed as, in any way, victimising those loyal and dedicated judges and magistrates. It must be viewed as a necessity to weed out of the Judiciary people who have not been able to deliver as it were. These are some of the few reasons as to why our Judiciary has lost respect from members of the public. There are many other reasons as well. Corruption has been cited in the Judiciary but I do not want to dwell on that one.

Madam Temporary Deputy Speaker, even the dedicated judges and magistrates will agree that the exercise of vetting judges and magistrates is actually in their interest – to weed out those who are unable to deliver, so that the respectability of the Judiciary may be restored. It is very necessary in order for any country to move forward; to have a reliable and respectable Judiciary. That is one of the reasons as to why I support this Bill.

I also support the high standards of the membership of the Board, particularly those for the chairperson and the vice-chairperson, as provided for under Part II, Clause 8(2) of the Bill, which reads as follow:-

“A person shall not be qualified for appointment as the chairperson or deputy chairperson unless such person has at least twenty years’ or an aggregate of twenty years’ experience as a judge of a superior court, a distinguished legal academic, a judicial officer or other relevant legal practice in the public or the private sector in Kenya.”

I think that those are very high standards that we are setting for the chair and the vice-chair of this Board. As previous speakers have said, it is very necessary to ensure that people who are going to serve in this board are going to be people of integrity, who are going to practise a lot of fairness in whatever they are going to do, because there should be no victimization at all in this exercise.

Clause 18(2) sets out the procedure of vetting judges. We are all aware of the previous exercise that was undertaken by Justice Ringera, where there was no vetting procedure but simple witch-hunt. The exercise ended up victimising good judges and leaving out judges whose conduct was questionable. Therefore, we went through the experience of the so-called radical surgery. It was unfair, and even today we have judges and magistrates who are suffering at home because they were condemned unfairly by that exercise. Therefore, any procedure of vetting of magistrates and judges must be above board, and must be seen to be fair and no amount of witch-hunt should be seen in it.

Madam Temporary Deputy Speaker, I stand to say that this is a good Bill and it is a good beginning. I want to say that the procedure for selecting the Board is very clearly stated. Currently, we are going through a very shameful episode. For the first time, we are trying to rid the Judiciary of people of questionable character. We want to ensure that those who are appointed are appointed in a transparent manner. Therefore, during the appointment of this board, we do want to see a repeat of what we are witnessing now where the appointment of the Chief Justice, the Attorney-General, the Director of Public Prosecution and Controller of Budget has been done in a manner that is not acceptable to all the people. I say all people because if we want to win the confidence of Kenyans in the Judiciary, we must ensure that appointments that are made from now on, whether of the Chief Justice, the Attorney-General or the board that is going to vet them, is done above board. Kenyans must see fairness in it, so that they will have confidence in the Judiciary.

Madam Temporary Deputy Speaker, all I am saying is that, let us not hear controversies after the appointment of members of this Board. Let us hear that there is agreement. We do not want to go through this circus. I plead with those who are making appointments that we should not think of Kenya today. They must look at Kenya tomorrow. This must not be my interest as a person or my party’s interest. It should be in the interest of Kenya as a nation. It must be in the interest of posterity, and not the interest of today or of an individual.

Madam Temporary Deputy Speaker, I thought I should strongly support this Bill. If we have to achieve the purpose which is to restore respectability of the Judiciary, we must ensure that appointments are done correctly and in accordance with the law, so that every *mwanaanchi* will respect the Judiciary from now henceforth.

Mr. Mbadi: Madam Temporary Deputy Speaker, all of us will agree that the main reasons why Kenyans wanted reforms and a new Constitution was to have the Judiciary reformed. Kenyans felt disappointed from the lowest to the highest of the society. Many of us have heard complaints about cases they have in court, which are determined in a way that does not please the society. This kind of a problem in the Judiciary climaxed when immediately after elections, a section of the society which felt aggrieved could not go to court. That is how bad the Judiciary had become in the eyes of the people of Kenya. Therefore, it became apparent and very necessary that we reform the Judiciary. The cornerstone and heart of the Constitution that we have today are the judicial reforms. Therefore, attempts to reform the Judiciary are a constitutional requirement and are very timely. However, as we move along this path, we have to be very careful. I urge this House to look at this Bill with a lot of interest. We need to take care, so that we do not give Kenyans poison instead what they have been yearning for.

Madam Temporary Deputy Speaker, I find it very difficult to support this Bill in its current form. Those who have spoken before me have cited Clause 9(14). If you look at this clause closely, even though the Bill gives a clear procedure of constituting the Board, which will subsequently vet the judges, this particular clause is erasing all the good provisions in this Bill. It is like giving with your right hand and taking away with the left hand. This particular provision says that nothing under this clause shall be construed as precluding the President, in consultation, with the Prime Minister from nominating and forwarding names other than those submitted by the Public Service Commission (PSC). Therefore, the President has been given a blank cheque by this Bill to appoint anybody from anywhere in consultation with the Prime Minister. That is not what we wanted. That is not why we voted for a new Constitution. That is not the vetting that we wanted. Therefore, I am urging this House that unless this particular clause is removed from this Bill, then it needs to be withdrawn from the House by the Minister, so that thorough work is done. This is not the first time. It is not even the Committee on Implementation of the Constitution (CIC) which has pointed out this provision. When this Bill was brought here the other time, I remember that we discuss this thing; this matter came up and I spoke about it, and the Minister promised to do something. It is surprising that we still find this particular provision here.

Let me tell you what is going to happen. We will pass this Bill and make it an Act of Parliament and tomorrow you will see the President appointing the members of the Board without any due regard to what Kenyans want. This is not the first time that we are making an attempt to reform the Judiciary. Mr. Musila talked about the radical surgery of 2003, which turned out to be ethnic cleansing of the Judiciary. What happened is the removal of senior people from some ethnic communities and leaving of members of other ethnic communities in the Judiciary. That is not what we want to do today. Therefore, with a lot of difficulty, I am saying that in its current form, I do not want to go on record as supporting this Bill.

Madam Temporary Deputy Speaker, I also want to take the hon. Members to Clause 12(6), which states that notwithstanding the provisions of subclause (5), the

President may, for the purposes of filling a vacancy, select a nominee from the list of candidates forwarded by the Public Service Commission (PSC) under Clause 9(6). I want a clarification on this. Below Section 9(6), there is Clause 9(8) which gives Parliament the power to approve the nominations. This particular section is very silent about whether that section will still be applied. We have had in the past cases where the initial appointments get Parliamentary approval, as it happened with Justice Ringera in the Kenya Anti-Corruption Commission (KACC). When a vacancy occurs, does it mean that the President will fill it from the list without passing it through Parliament? That needs to come out very clearly.

Just before that, there is Clause 12(3) which says the Chairperson or member may be removed from office for misbehavior, or misconduct, incompatible with the functions of the Board. To me, this is very ambiguous. What behaviour will be construed as not being compatible with the functions of the Board? Who is this who is given the powers to remove the Chairperson, or other members of the Board? Is it the President, and how do you determine that now that the behavior or conduct, is incompatible with the functions of the Board? I want to urge that there be necessary amendments that need to be done to this Bill.

I also want to make a point about consultations. This becomes very necessary because of what we are witnessing at the moment. "Consultation" is repeated here in Clause 9(11). It says:-

"The President shall within seven days of the receipt of the approved nominees from the National Assembly----"

Just before that it talks about, it talks about selecting, nominating, approving or appointing the chairperson and the members of the Board, the Selection Committee, the President and the Prime Minister shall ensure that the Board reflects---

Madam Temporary Deputy Speaker, there is a place that talks about the President consulting the Prime Minister. I would rather that this time we have a more definite provision about consultation. Please, we need that because we do not want a Prime Minister who will be treated like a consultant of the President. We do not want the Prime Minister to appear as a researcher for the President, as somebody said. He should also not appear as a clerk of the President. If it is consultation, we need it to be clear what this consultation means, so that we avoid these shenanigans and time wasting, because of disagreements that we are witnessing at the moment.

Madam Temporary Deputy Speaker, if it were not for some of these things I consider negative provisions in this Bill, this is a good Bill. At least, the procedure of appointing members of the Board is very elaborate. I wonder why the principals were not advised that in appointing the Chief Justice, we need to follow something like this. Even the names of those who have applied are gazetted and Kenyans know so-and-so have applied. After that interviews are conducted, the names are submitted to the principals, they agree and pass them to Parliament. Parliament approves and then they are returned for final appointment. This is the kind of procedure and process that we need. We need credible and transparent processes that can stand the test of integrity.

I beg to support but urge the Minister that these amendments be made.

The Assistant Minister for Planning, National Development and Vision 2030
(Mr. Kenneth): Madam Temporary Deputy Speaker, thank you for giving me an

opportunity to contribute to a very important Bill whose principles have been very well articulated by the Mover. I think it is important that we support what the intentions are.

As I have often said, good intentions have no place in the balance sheet. It is, therefore, important that we analyse this, so that we do not become party to making mistakes as a House in just passing the Bill whose intentions were good, but whose implementation becomes poor. The reality is that whenever we have attempted, and many times we have stood and said that we have problems in the Judiciary, however, we have not gone down to the root of what causes the problems. We merely assumed it was simply the magistrates and judges. However, there are many other reasons as to why justice is denied. We have not provided for the tools of trade.

Madam Temporary Deputy Speaker, before I move to that, going back to 2003 when we were told there was a radical surgery, which I am not so sure that the then Minister for Justice and Constitutional Affairs was able to evaluate and know whether, although the intentions were good, it achieved anything. What we are passing here as a vetting Bill will amount to another radical surgery. Therefore, we must be very careful to make sure we are not in the same position after passing this Bill as we have been from the time the radical surgery was carried out.

Looking at the Bill, I think I have said very openly that we must have a Bill that will ensure Kenyans do not become part of a circus between the principals. If you look at Clause 7, my colleagues have said the word “consultation” is not clear. We must ensure that the kind of circus that we have seen does not befall Kenyans again. I think it is important that this House eliminates any opportunity that can create that circus. We do not want the House to remain a rubberstamp of something that will cause more confusion as we try to drive the country forward. Therefore, I want to appeal to Mr. Mutula Kilonzo that Clause 7, and everywhere where this word, “consultation” appears, needs clarity. We need to know as we move on who calls the shots. This is because even when both have all discussed something, they have still brought it to the House. Therefore, it is important that there is clarity and we know how to move forward.

Madam Temporary Deputy Speaker, I am also very uncomfortable with Clause 14. I think many of my colleagues have alluded to Clause 14. We want to come up with a process, but you will not be able to achieve that process if Clause 14 remains as it is today. It means names can come and somebody else can infiltrate the names that have been given by the Public Service Commission (PSC) and add more names. In this case, the process will have been abused.

I think the Minister will agree with me that the biggest problem in such clauses is in the level of discretion left to a few individuals and then you start questioning that level of discretion. Therefore, it is very important that even as we support this Bill that, probably, at the Committee Stage, the Minister for Justice, National Cohesion and Constitutional Affairs comes up with amendments that will ensure that discretion is not abused.

Madam Temporary Deputy Speaker, the composition of the Board is the process we are trying to discuss, and will end up voting for here; it must produce men and women of integrity who are acceptable, not just to the institution of Parliament, or the two principals, but also to Kenyans at large. If you look at the powers under Clause 22, and even after reviewing the powers under Clause 31, it means that Board will have the final say. We must not put in place a Board that will justify, cause impunity or do what the

radical surgery did, when people were left feeling that whatever was meant to be right was not done. So, we must be very careful that the Board we are creating will not only ensure that the Judiciary will be credible, but also that it will be made up of members who will be credible, and who will instil confidence in Kenyans by the decisions that they make. Under Clauses 22 and 31, they will have the final say; their determination will be final.

The other point that I want to raise is that even when we discuss and approve this Bill, we must also take into cognizance factors that have failed our Judiciary. It has not just been in appointments. That is why I said that I will refer to tools of trade to the stations to which we expect justice to be dispensed. We must move as a Parliament that extra step to ensure that the Judiciary has the right tools of trade to ensure that they are able to dispense with justice.

Madam Temporary Deputy Speaker, as I have said, if these four sections are looked into- I hope the Minister will look into them – we will be here to support the passage of this vetting Bill.

I beg to support.

Mr. Mungatana: Thank you, Madam Temporary Deputy Speaker.

Without being repetitive, I want to directly ask the Minister that we go through the proposals I have. First of all, I want to comment on Clause 7 that says that we must have three members of the Board as non citizens, to be appointed in accordance with Clause 9(13). I oppose this clause because I think we have competent Kenyans who can do the job of being members of this Board who can carry out the vetting that is required. I will invite the Minister for Justice, National Cohesion and Constitutional Affairs to look at Clause 8 which says that a person will be qualified to be appointed a member of the Board if, amongst other things, he satisfies the requirements of Chapter 6 of the Constitution. That is the chapter on integrity.

Madam Temporary Deputy Speaker, one of the things in Chapter six talks about not having a bank account outside Kenya. Are you saying a man of such high standing who is going to be vetting our judges and is from, say, Zambia or some other country outside Kenya will be denied the opportunity to actually run his accounts outside Kenya? Can you see the absurdity of this? It also says amongst other things that he cannot have gainful employment. Which people are we looking for? These are not paupers! They are people who must have a standing where they come from. Definitely, they will be people who are earning good money wherever they are coming from. For the two reasons, I invite the Minister to consider amendment. In fact, even if he does not, I am putting a proposal to remove the word “six” and say that those people must be Kenyans. I do not see what value these other people will add. It is just the suspicion that has been there and it must be dead by now with the passage of the new Constitution. So, I propose that we remove that requirement.

Madam Temporary Deputy Speaker, Sir, I also want to make a quick point as my second point on Clause 9(5). This clause talks about the people who are to receive those applications. The point has been made about them being too heavy on the Executive and the Minister will need to look at that. At the end of it, it remembers that six shall be lawyers, but it does not remember the gender issue. I think the clause needs an additional sentencing of saying, for example, that a third of these shall be of either gender. I will also be bringing that amendment during the Third Reading of this Bill.

There is Clause 9(12) which is not a proposed amendment but an emphasis that in selection of this Board, the President and the Prime Minister must ensure that this Board reflects regional and ethnic diversity of the people of Kenya. The last appointees that were there clearly showed that there was a political arrangement of some big tribes and those tribes managed to get appointees in the last nominees which are having problems everywhere. We do not want this to be repeated – I am saying this to emphasize – the two principals must know that the Pokomos exist in this country. They must know that even “half- Pokomo and half- Taita” exist in this country. They must know that there is a tribe called Kenyans who were brought up and they have so much mixed heritages. Their grandfathers were Indians and all that, but they belong to this country. Ethnic diversity does not mean that you only pick the big tribes. A practice is emerging that if you want regional and ethnic diversity, you give the four big tribes their chances and there will be peace. We condemn this practice. Let us look at proper ethnic and regional balancing. That was our *obiter dicta*.

Madam Temporary Deputy Speaker, Sir, my third point is in relation to Clause 18(2)(e). They set out what the procedures should be and they went out to talk a lot about what is expected of them. They said:-

“In considering the matters set out in subclause 1(a), 1 (b) ---“
That is making the relevant consideration in the vetting. It talked about the professional competence, the written/oral communication and all these good things. But I have a problem with (e) where they are saying that when they are vetting these judges, they need to look at the temperaments of the judges. What is this? The elements of which should include, a demonstrable possession of compassion and humility. So what happens when these people who have murdered and raped? Do you want all the judges to be compassionate, demonstrable humility, courtesy of civility in dealing with others, *et cetera*? What is this when you have mad men coming before you in the criminal courts? I have practiced in those courts. We need mad judges to deal with mad people who come to those courts. I will be proposing that this provision goes. We do not need it. In the first place, what kind of test are you going to put so that you can determine my temperament? Are you going to put me under a psychological test? I have to show ability to maintain composure under stress. What is the Board going to do? Is it going to put these people on heat? I think this is a ridiculous thing that can be used to remove competent judges and we must remove it from the law. So, I will be proposing that this must be deleted in whole. It does not make sense to me and many right thinking Kenyans.

Madam Temporary Deputy Speaker, I also want to make one final proposal on Clause 19(7). This is a vetting procedure and we are saying that the judges who are going to come to the Board for purposes of vetting are entitled to legal representation at their own cost. What are we saying? We are saying that every judge, therefore, will be coming to the Board with a lawyer. With due respect to my profession, I know that they will cause so much trouble. We want to do this thing in one year. So, if someone is good, he can be looked at by that Board and it decides. If you bring lawyers into this, we are inviting this process to stay for another five years. We will never finish this process of vetting. We will never give Kenyans the new judges that we require under the new Constitution. What is going to happen all this time that Kenyans will be waiting? Clause 24 talks about vetting of judges of the Court of Appeal and the High Court to be finalized within three months. How is this possible if each of these judges is going to walk in with

a lawyer? Whenever a question is asked, a judge will say: "Wait I consult." Since he has the right under the law, he can even ask for a timeout to consult and come back the following day. What are we doing? This provision is unnecessary and I want to invite the Minister to consider removing it. Even if he does not do so, I will apply during the Third Reading to have this clause removed. We are vetting you and not in a court of law. You are either good or bad. The judges will need to satisfy the vetting Board instead of coming in with their lawyers. This will cause confusion to the Board. In fact, that must go.

Madam Temporary Deputy Speaker, I also have a problem with Clause 26 which says that the expenses and allowances for these Board Members, after we have chosen them, are going to be determined by the Minister in charge of Finance in consultation with the Committee the National Assembly designated for that purpose. I have been in Committees of the House and feel that this is an unnecessary delay. I think we need to get these bottlenecks that can take time out of the way. We all know that the civil service has a way of grading and graduating commissions. So, let us not say that we are creating a new commission that is going to be paid US\$1 million or something. There are commissions which have been there and scales have been set up. They are coming into Government service. So, if they can accept those terms, they will take them. There is nothing like negotiating. Even when we come into this House, we already know what we are going to be paid. There is nothing like coming here to negotiate with the Speaker how much I shall be paid for being the Member for Garsen. It is already set up. So, these kind of provisions waste time and are completely unnecessary.

Madam Temporary Deputy Speaker, I also want to take issue with Clause 28. I am wondering how you would charge these expenses directly to the Consolidated Fund from an Act of Parliament without further appropriations. We know that it is those constitutional commissions that have that kind of privilege. You cannot say that every commission or board that we set up will be a charge to the Consolidated Fund. How do we organize finances? I think we should be predictable. We know that the Judiciary itself will be charging directly. We also know that Parliament itself will be charging directly. But why should a board charge directly the Consolidated Fund? I think this can be done either through the Vote of the Judiciary itself or the Ministry can find a way. I think this is elevating this Board to a dangerous status. It cannot enjoy a constitutional level kind of thing.

Madam Temporary Deputy Speaker, finally, under Clause 26, the Board and its members will be going against the Constitution if they are allowed to negotiate their salaries, because we have the Salaries and Remuneration Commission that we are going to set up. If the Salaries and Remuneration Commission says that there will be standard salaries for all Commissions, how then does that fit if they have negotiated themselves into being paid Kshs1 million every month? I think this clause should also go, so that they come into Government service. After all, one of the requirements is that they should demonstrate their desire to serve the public. So, they can sacrifice once more. Government service is not lucrative; it is difficult. It is a sacrifice. We are not going to let them come in and spend the first one, two or three weeks negotiating their pay package. I think that will not work. So, I propose also that we do away with the proposed Clause 26.

Madam Temporary Deputy Speaker, I support this Bill with those amendments that I will propose at the Committee Stage.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Thank you very much, Madam Temporary Deputy Speaker. This is a very important Bill. The first question we should ask ourselves is: Why the vetting in the first place? The Commissions that were set up after the troubles we had after the last general elections suggested that the biggest problem that caused the biggest strike in this country was lack of confidence in the Judiciary. If there was public confidence in the Judiciary, the people who felt aggrieved probably would have gone to the court, which is very near the Kenyatta International Conference Centre (KICC) at that time. But they felt that they would not get justice in that court. What were the reasons? The reason and biggest problem was the manner in which our judges were nominated and appointed to their offices. The Judicial Service Commission that was supposed to advise the President in the appointment of judges was itself quite moribund. In fact, I am not so sure that they participated in hunting for, interviewing and appointing those Judges. I know that some judges were at one time robbed and ready to go to the State House for swearing in, but later on, after waiting somewhere in State House, they came back unsworn. The reason is that some people in the Government were very unhappy in the manner in which they had been selected. This means that there was no proper way of selecting those judges. I can tell you that the Judicial Service Commission, even if it worked, had the following people: There was the Chief Justice, who was an appointee of the President; two other judges, who were also appointees of the President; the Attorney-General, who until now is an appointee of the President and the Chairman of the Public Service Commission, who was also an appointee of the President. So, actually, it was a Presidential Commission and consequently, it did what the President wanted them to do. If they did not comply, of course, the President would still continue and appoint, and there is nowhere you would go, because the Constitution did not say that the President had to consult the Judicial Service Commission in the first place.

Madam Temporary Deputy Speaker, I think two weeks to the general elections, the President appointed a judge. The thinking in the minds of those who were very surprised with this kind of appointment was: Why appoint a judge two weeks to an election? Those are some of the reasons which worked in some minds and they said: "We will not go to this court, because how do you go to a court where somebody has just been rewarded by being appointed a judge two weeks before the case goes before him?"

What justice will you get? These are some of the things that made the Commissions recommend that we must deal with the Judiciary in a manner that will bring back public confidence. I think this Bill tries to do so.

Of course, we have talked a number of nine. It seems like the membership of most Commissions is now nine. The Constitution has adopted that figure. I do not know whether we were looking at the original regions that we had in the country. We accept it. I participated to some extent. The Minister for Justice, National Cohesion and Constitutional Affairs has looked at this Bill before it came to this House. We agreed that the number nine would cover largely the face of Kenya. The judicial radical surgery that was headed by one man caused so many injuries to so many people. I remember bringing a matter in Parliament here, on behalf of a judge who was denied his salary. He was threatened with an eviction from the House. He was told to surrender his car even before his case was heard and determined. I remember saying here that the Constitution presumes that a judge is a judge until the President accepts the ruling of a tribunal. I think

reluctantly his house and car were returned back to him. His salary was restored. Later on, even when the matter was heard, I am glad without mentioning names, that the judge is back and doing a good job. So, it cost so much injury. It caused so many expenses that are unnecessary. In fact, those expenses are still continuing, because some the judges are appealing against the ruling of those tribunals.

Madam Temporary Deputy Speaker, there is a feeling in this country that must be corrected. That is why, after this vetting, we are putting together a Judicial Service Commission (JSC) that now has to advise the Executive. In fact, whoever will become President in the next dispensation will not quite enjoy it. This is because in every issue, there will be somebody who will be advising you and Parliament approving. These sweeping powers that we gave to the Presidency destroyed some of our best institutions.

Madam Temporary Speaker, ethnicization of the Judiciary is dangerous to this country. In fact, I agree with hon. Mungatana that the Pokomos also have a right to survive in this country. However, you know the Pokomos are lucky. At least, they have been the Head of the Public Service at one time. The Luos have suffered more. I do not know about the Subas.

Hon. Members: You have the Prime Minister!

(Laughter)

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): I think we got that one by our work.

Hon. Members: Mass action!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Madam Temporary Deputy Speaker, when you look at the Judiciary, sometimes you do not even want to go. You want to check the judge who will hear your case.

When I practised law, I did not care who would be the judge because any judge, I presumed would be a good judge. However, these days, people walk and shop for judges because you are not sure, whether this one will give you a hearing. In fact, hon. Munganta talked about temperament as not an issue. Some judges are so cruel you cannot be heard in these courts. Once you get in, they ask you: What is your name? Can you spell it? Get out! How are you dressed? Until lawyers run away. In fact, I remember, one time, I had to seek for an adjournment. When my adjournment was refused, I said: I am withdrawing this case. When you say you are withdrawing the case, there is nothing else a judge can do. I knew that I had lost before I started. The temperament can be so bad. Lawyers who practise in this country tremble, when they hear they are going before certain judges. That is why it is important that these things are mentioned. It may not be tested, but at least, there will be lawyers there who know them. We will, probably, say something about temperament and civility. Some judges think that they are kings. I am telling you that when you get there, unless you behave, as if you are before a colonial chief, you are in trouble. You can say, “My Lord”, “My Lord” even when you are being abused or insulted because, if you were to raise your voice, of course, your client would lose the case, but you will also go to jail. We have been treated badly. That is why the citizens are very serious about some of these things.

We had, of course, to have final determination. We were tempted to say that if somebody feels that he is aggrieved and he is not satisfied with the decision of the Board, he can go to court. We realised if we say anything like that, then we will be 20 years in this thing. Which court will you go? Will you go to the judge who has not been vetted and who is awaiting his turn to be vetted? They are looking at this Board as a guillotine. We will never get anywhere. So, we realized that we must give this Board certain powers to determine this matter finally, so that it moves quickly and within the time that we have given it, we can say now we have a Judiciary we have confidence in it.

That is why this matter that came before this Parliament last week is so important. If you put these judges through this kind of test, which is so serious--- In fact, at one time after reading them, I said, nobody will offer himself as a judge. If you go through this and pass it, then you must be an angel. I looked at them and shook my head. I wondered how any ordinary Kenyan would pass these tests. If it is this serious, how do you then just appoint a Chief Justice, who has not gone through this test, to be their boss for ten years when the people whom he will now load over went through this rigorous test? So, it cannot be. It cannot be that the leadership of the Judiciary escapes this guillotine and the member goes through it. It would be the most unfair and unconstitutional thing.

Madam Temporary Deputy Speaker, let me say one thing about consultation. I think we will amend this thing to say what consultation means. It has now become a word, which we are not sure about. We cannot use a word so important, and then we do not know what it means. So, it either means approval or agreement or it means nothing and we remove it. In fact, I am reminded by Dr. Otuoma that he has been watching the debates in the House of Commons. They are talking about the meaning of consultation. Hon. Cameron is saying that consultation must mean agreement and some people are disagreeing. It is a problem even in Britain, the people who coined this language, which we are not so sure about.

Lastly, I want to talk about non-citizens. I have already told you that I come from a minority called Suba. If five people came before me and one of them met the basic standard, but he is a Suba and I know that there is no Suba judge, how do you expect me to behave? If it is a matter of giving marks, suppose I might give him more. If it is about asking questions, I suppose I might ask him less dangerous questions. These are natural things that happen everyday. That is why we felt this is such a serious matter and somebody will lose a job and the community will lose a judge. It is not a joke. Of course, Kenyans are qualified. But this thing is not about qualifications. These judges are qualified. They are in office because they are qualified judges. The problem is confidence. That is why we are bringing non-Kenyans who can be deal with this matter without any impartiality and being a relative of anybody. Somebody must have a relative somewhere. This is normal because people feel that it is about their relatives and regions.

With all those many remarks, this is a good Bill and I support it.

Dr. Khalwale: Thank you, Madam Temporary Deputy Speaker. Allow me to recognize the good effort that the Office of the Attorney-General and, especially, my brother, Mr. M. Kilonzo, have put in to ensure that this draft is before us. Having read it, I realize that our work is really not too much; it is mainly to support this. If there are few little things, we just want to point them out and my wish is that towards the end of next week, we should have concluded this thing so that we go to the next phase.

I was reading the Constitution last night and Article 159 caught my eye. It says that the judicial authority is derived from the people and it is vested and exercised by the courts and tribunals. Nowhere in this Constitution does it say that, that authority is either held by the President or the Prime Minister in trust for the people. It forces me to remind all of us that today, as we vet the judges, we must remember that Kenya is at a stage where we must look at ourselves as transitional leaders. We are not the leaders that this new Constitution contemplates. After the judges have gone through their vetting, we, as hon. Members, will be vetted by the public in the year 2012. That is when we shall have the real authority to exercise in accordance with what is contemplated in this Constitution. That, therefore, means that we must be very humble and recognize that the real sovereignty is with Kenyans who have allowed us to vet our judges today, and who are going to vet us next year.

I believe that through this Bill, we have an opportunity to put our country on the fast highway of modernization and civilization. We should take a clean break from the Kenya of 1963. We want to make laws that will be in consonant to the post-referendum Kenya that we want this country to move to. It is my hope that once we pass this Bill, it will give an opportunity to any Kenyan who appears before any judge in this country to feel that he or she is appearing before a patriotic judge who is neutral and impartial. They should not go there fearing that they are appearing before somebody else's judge; whether that somebody else is the one you are competing with for justice, or is the President or the Prime Minister. It is for this reason that I want to support the Commission on the Implementation of the Constitution (CIC) and all hon. Members who believe that any aspect that can give an opportunity for anybody, be it the President or the Prime Minister, to create his or her own judge, must not be part of this law. I, therefore, propose, in support of those who have spoken before me that Clause 9(14) must not be allowed to be part of this law.

(Applause)

Madam Temporary Deputy Speaker, it is really regrettable that the Head of State or the Prime Minister would, at any point, want to have their own judges. If, indeed, they are patriotic Kenyans, why did we go through what we saw last week? For those of us who painfully came from those parts of this country that experienced post-election violence, we became extremely anxious last week before the Speaker's ruling because the tension that had started building in this country reminded me that we are not yet out of the woods. So, if we do not conduct ourselves in an intelligent manner that will navigate our country, that was a clear warning. That tension you saw last week where, when I drove from Kwa Njuguna having taken lunch in Westlands with mwananchi, I found that I could drive to Parliament in three minutes because people had avoided the city. It simply means that if we do not fix it now, after 2012, you will not have the courtesy of even being sworn in at night.

Today, Kenyans are staggering under the weight of violence and corruption. If you want to fix that violence, the crooks and armed thugs must know that when he gets his day in court, if it requires that he goes in for life imprisonment, he is going to get it.

(Applause)

But if those crooks will know that, as soon as he appears in court, he starts ringing his relatives who are connected to politicians or men and women of power; or that he is going to buy justice, you will not stamp out violence. It is a shame that a small little country which fortunately learnt from her mistakes - Rwanda--- If you go Rwanda, there are no carjackers. We do not have armed gangs! In Rwanda, in fact, and many of you have been there, you walk in the country side or on the streets--- People walk there all the time carrying valuables, money and cell phones and they are completely secure. You come to Nairobi where we have got very sophisticated police machinery, even in your own little home, you have to put up a six-inch wall and on top of it, you put an electric fence. We cannot allow that shame simply because we have a Judiciary which succumbs to bribery and arm-twisting from centres of influence.

Madam Temporary Deputy Speaker, in the same Rwanda - and I was there two weeks ago - I was humbled to learn that in the state prisons, there were five former Ministers – not from the genocide regime – but former Ministers in the Government of President Kagame. They are now serving their life sentences there because of corruption. That is where we want Kenya to go so that if my friend and soulmate, Mr. Orengo---If I catch him as the Chairman of the Public Accounts Committee (PAC), then the best I can do for him is to take him bread and coca cola when he is serving life sentence in prison.

(Laughter)

An hon. Member: Water!

The Minister for Lands (Mr. Orengo): On a point of information, Madam Temporary Deputy Speaker. My friend, Dr. Khalwale, knows that if it gets to that, I am used to that kind of life. I have been in the cells and people brought me soda and *nusu mkate*.

(Laughter)

But he is quite right! We have to take this event seriously and make the law work.

Dr. Khalwale: Mr. Orengo, I thank you most profusely for that information. It reminds me of our days of mageuzi! You remember when you ran away and I was arrested and locked at Busia Police Station. You thought you are a fast runner until they caught up with you in Kisii. That time, you were fractured and I was free. So, that is how the game is!

(Laughter)

Madam Temporary Deputy Speaker, for many hon. Members, it has been a long walk! Sometimes, when we speak here, we remember and, if we were not men and women of steel, we could weep in this House. Many have spoken about Mr. Murungi's radical surgery. I want to agree with them because that was a sad thing where in one community – and I happen to come from that community – nine judges were removed. After they were removed, they were replaced by 12 other judges from another community. That was supposed to be radical surgery.

We do not want to subject our professionals to that kind of nonsense. Therefore, this is why I support this Bill that will make sure that there is a clear-cut standard that will ensure that no witchhunt, tribalism, arm-twisting or threats will be the reason why an intelligent member of the Judiciary will lose his or her job.

Madam Temporary Deputy Speaker, finally, I just want to say that whereas we will be doing the vetting, we should not forget that it will be important that at the end of the day after we have employed the proper judges, we should also ensure that we employ an adequate number of judges. This is because judges and magistrates are terribly overworked.

Madam Temporary Deputy Speaker, for the last three years, I have been sitting in a petition court. Every time I go there, sometimes you wait for an hour or so before they go to the substantive business; that is the petition. You see the amount of work a judge is supposed to do; he has to deal with 60 cases within two hours so as to create time. I do not believe that one can be sufficiently competent under those circumstances.

It would also be very important that the Government should build enough court rooms. We must have enough magistrate courts and high courts in all the 47 counties across the country.

Madam Temporary Deputy Speaker, finally, but not least, this hiring of a clean slate of judges must be accompanied by reforms in the Directorate of Public Prosecutions. What I have in mind is that I do not understand why a high standing judge would be led through the prosecutions by a police constable.

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

*[The Temporary Deputy Speaker
(Prof. Kaloki) took the Chair]*

The prosecutions must now be moved away from ordinary police officers and be done by highly qualified, competent lawyers who should now be our prosecutors. Currently, we have problems with police officers themselves because they are also amenable to corruption. We want to know that professionals are prosecuting and judges are hearing and causing determination of cases.

With those few remarks, I wish to support.

Mr. Muthama: Nashukuru Bw. Naibu Spika wa Muda kwa kunipa nafasi hii ili niweze kuchangia Mswada huu. Mswada huu ni wa maana sana katika nchi yetu.

Nimewasikia wenzangu wakizungumza kuhusu yaliyomo katika Mswada huu. Jambo la kushangaza ni kuwa wengine wanaamini kwamba sisi Wakenya hatuwezi kujiamuria mambo haya. Ni lazima tutafute mtu kutoka nje ili asimamie maswala haya ya kisheria. Hii ni ndoto mbaya sana.

Nchi hii imetumikiwa na majaji wakuu kwa miaka mingi. Wengi wao wakiwa ni Wazungu, Wahindi na pia ndugu zetu Wakenya. Lakini ukweli wa mambo ni kwamba tumelalamika miaka nenda, miaka rudi kuhusu usimamizi mbaya wa mahakama zetu. Wakati tulikuwa na Jaji Mkuu Mkenya ulalamishi ulikuwepo. Wao wengine walipokuwepo, ulalamishi ulikuwepo. Je, shida yetu ni nini? Shida yetu ni kukosa

kuchunguza tunapowaajiri majaji hao au ni sisi Wakenya ambao hatutaki kutii sheria za nchi hii?

Ukiangalia bodi ambayo tunataka kuunda hapa, kuna mapendekezo tuwe na watu kutoka nje. Kuna mhe. Mbunge mmoja ambaye amesema tunaweza kupata wataalam wa sheria kutoka nchi ya Somalia na kuwateua katika bodi hii. Kama tunavyojua, Somalia haina mahakama wala Serikali. Je, watu wa nchi hiyo wataongoza vipi mahakama zetu?

Bw. Naibu Spika wa Muda, tumesomesha watu wetu sana na tunaendelea kulipa karo kwa watoto wetu. Kwa mfano, katika eneo langu, asilimia 60 za pesa tunazopata hugharamia elimu ya watoto wetu. Jambo ambalo linanifanya nitilie mkazo mambo ya elimu ni kwa sababu taifa hili linahitaji watu ambao wamesoma sana. Ni watu hawa ambao watasimamia nyadhifa mbalimbali katika Serikali yetu na uchumi wetu.

Tunapozungumza hapa Bungeni, sisi kama viongozi, ni lazima tujue ya kwamba tuna wataalam wengi wa maswala ya kisheria katika nchi hii. Kwa hivyo, hatutaki wataalam kutoka nje kuja kusimamia bodi na mahakama zetu. Watu hao watachunguzaje watu wetu? Mtu ambaye hatumjui amezaliwa wapi na hatujui tabia na elimu yake atafanya kazi vipi?. Je, yeye atawezaje kuwachunguza watu wetu? Pengine watu hawa wameiba katika mataifa yao na kuhusika ma maovu mengine. Itakuwa ni aibu kwa watu wetu kuchunguzwa na watu kutoka nje. Kwa kufanya hivyo, tutakuwa tumewanyima watu wetu haki na usawa.

Bw. Naibu Spika wa Muda, ni lazima tuwaamini watu wetu. Wakenya wamehitimu katika nyanja mbalimbali. Huku nje wanatuchekelea tukipendekeza wafanyiwe uchunguzi na watu wa kutoka nje. Kwa nini hatutaki watu wetu kufanya kazi hii?

Mswada huu unampa Rais mamlaka ya kuwateua watu wa kusimamia maswala yetu ya mahakama. Wenzangu waheshimiwa Wabunge watakubaliana nami shida si kwa sababu walioteuliwa walitoka jamii ya Wakikuyu au Wakamba. Shida ni kuwa hakuna mtu mmoja aliyeteuliwa kutoka kwa jamii fulani. Hiyo ndiyo shida kubwa ya uteuzi huu. Shida yetu ni kuzingatia ukabila katika uteuzi tunaoufanya katika nchi hii. Kuna baadhi ya watu wanaongozwa na hisia za kikabila katika maisha yao. Ningependa kuona Wakenya wakifanya kazi bila kuulizwa kwa nini katika idara fulani tuna Wakikuyu, Wakamba, Wajaluo, Waluhya au Waarabu wengi kuliko watu wa kutoka jamii fulani na kadhalika.

Mambo haya yameleta hisia za ukabila. Ni Lazima kila Waziri awatumikie Wakenya bila kujali wanakotoka katika nchi hii. Kilicho muhimu ni kufuata sheria za nchi tunapotoa huduma kwa wananchi wetu.

Kwa hivyo, ikiwa Jaji Mkuu atakuwa ameteuliwa kutoka jamii ya Waluhya, basi sisi sote tumuunge mkono na kufanya kazi naye. Nina hakika kuwa jaji huyo atafanyia Kenya kazi na wala hatawapendelea watu kutoka jamii yake. Ukabila hautajenga nchi hii.

Hii ndio sababu ukabila sasa unazidi na unaenda mbele. Tukimteua mtu kufanya kazi katika Wizara ya Fedha, utaona yeye anataka watu wa jamii yake wafanye kazi naye. Hii ni kwa sababu anajua ya kwamba asipofanya hivyo, watu wake watamuuliza kwa nini hakuwasaidia alipokuwa katika wizara hiyo. Jambo kama hili huchangia ufisadi miongoni wa maofisa wa Serikali.

Mambo haya tunayoyazungumza hapa ni mazuri sana, lakini hayatakuwa na maana kwetu ikiwa tutaongozwa na kasumba ya ukabila. Taifa hili litasaidiwa na watu

wenye hekima wala si watu wa kutoka makabila fulani. Ni lazima ieleweke kuwa viongozi wetu wametoka katika jamii mbalimbali. Kwa mfano, tuna Rais kutoka jamii ya Wakikuyu, Waziri Mkuu kutoka jamii ya Wajalluo na Makama wa Rais kutoka jamii ya Wakamba. Huu ni ukweli wa mambo, lakini wao wana hekima ya kuiongoza nchi hii. Viongozi hawa wanatumikie nchi bila mapendeleo yoyote.

Je, kwa nini orodha ya majina yaliyotajwa hapa haikuwa na mtu mmoja kutoka wale watu? Ndugu zangu, tuache udanganyifu na tuzungumze ili Wakenya wajue tunachosema. Usawa wa Wakenya ni kuwaakilisha Wakenya. Lakini kuleta mtu kutoka Somalia ili aje hapa kutusaidia ni uongo mtupu. Tutapigana na kuumizana. Tuzingatie mambo hayo.

Mheshimiwa Waziri, ningependa kukueleza wazi kwamba ukitaka heshima yako, toa mambo ya wageni katika kitabu hiki. Iwapo wewe ni wakili katika nchi yetu ya Kenya na una heshima, utafanya nini kama Muafrika ikiwa huoni Mkenya anatosha? Mimi sijaona mambo kama hayo.

The Minister for Lands (Mr. Orenge): Jambo la nidhamu, Bwana Naibu Spika wa Muda. Ni haki Mheshimiwa Muthama kuzungumzia Mheshimiwa Mutula Kilonzo moja kwa moja? Ni lazima apitishe hoja zake kupitia kwa Spika. Lazima aseme “Bwana Spika, ningependa hivi” lakini si kuzungumza na Waziri moja kwa moja.

The Temporary Deputy Speaker (Prof. Kaloki): Bwana Muthama, zungumza ukipitisha hoja zako kwa Spika.

Mr. Muthama: Bwana Naibu Spika wa Muda, ningependa kumwambia Waziri--- Kwa kusema hivyo, nimepitia kwa Naibu Spika wa Muda. Nitarudia. Ningependa kumwambia Waziri kwamba mambo aliyoyaweka katika Mswada huu hayazingatii heshima ya Muafrika. Hatutaenda mbali. Nasema hivyo kwa nini? Mwakili wetu ni Waafrika. Kwa nini tuwe na mtu ambaye atazungumza na kukaa katika bodi hiyo ambaye atatolewa Somalia ama Zambia? Katika mataifa yote ya ulimwengu, Kenya iko katika orodha ya ramani ya dunia. Kenya inajulikana katika ramani ya dunia kwa sababu moja. Wafanyikazi nambari moja wako katika nchi hii. Wasomi wazuri katika bara letu la Afrika wako katika nchi hii. Hatuwezi kulinganishwa na watu wengine hata mkifanya nini.

Leo hii, taifa hili lina upungufu wa wafanyikazi wenye ujuzi kwa sababu wanaajiriwa na kupelekwa nje wanapopewa mishahara mikubwa. Unapolinganisha wafanyikazi walio hapa na wale walioajiriwa nje, utaona kwamba wana tofauti kubwa. Sisi tuko mbele ya wengine.

Ningependa kuunga mkono Mswada huu kwa kusema mambo hayo yaangaliwe na tupewe heshima yetu kama Waafrika na tuungane, tuzingatie umoja wetu.

Ahsante, Bwana Naibu Spika wa Muda

Dr. Eseli: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this time to contribute to this Motion. From time immemorial, judges and magistrates have been men and women of respect in a community. That is because the basic instincts of a human being are to be uncontrolled. Therefore, we need law to control them so that they can live within the norms of society. Throughout history, there were times when judges and magistrates were looked at as evil, on and off, over time. We need to be careful that we do not revert back to those dark days. We need to be careful as we lay down this Vetting of Judges and Magistrates Bill; that we do not set in motion a form of inquisition. That would be very tragic.

I believe that the intent of the Bill is noble. However, Clause 9(14), which many speakers have talked about, is what can make this whole process become an inquisition. That is because through Clause 9(14), the two Principals can easily sneak in people who are going to do their bidding when it comes to vetting of judges. We might end up with a radical surgery where they can weed out certain people for their own reasons. I think, with all due respect, I know that the Minister was honest when he wanted to bring this Bill. He had even brought it earlier, although it had not met the standards of the Constitution and he had to withdraw it. I know he is honest in trying to get this thing going. Please, I am begging him to get rid of that. Get rid of that because it is going to expose this country to a lot of danger.

There are many things that we could talk about regarding the whole process. However, what I look at as most critical is the following: As we vet those judges and end up with a clean Judiciary; that, alone, will not restore justice in this country. We have several other arms that we need to look at. I hope that the same seriousness will be shown when we get to that point. The police reforms are very important. We need reforms in our correction institutions. Many times, judges have done their work and sent criminals to jail. But the criminals have found their way back to the streets even without serving their full terms. That demoralizes the Judiciary, especially those who are hard-working. They end up with all the criticism that we keep on throwing at them. They see their hard work going down the drain. That has led to a multiplier effect where the Police Force is also committing many extra-judicial executions because it is frustrated. Many criminals, after being jailed, find their way back to the streets. This is only but a tiny step in starting constitutionalism in this country. We can stamp out impunity and corruption because those are the things that have led to the declining situation in this country. This, according to me, should not raise any hackles. If the Minister is agreeable and we come up with the various amendments that we want, in fact, this is something that we can pass very quickly even before the Speaker rules about issues pertaining to the recent nominations. We want this Bill to go through quickly so that the judges are vetted. That way, if the Chief Justice is picked from among them, he or she will have been vetted.

It will be tragic if we picked a Chief Justice to preside over a Judiciary of vetted colleagues, when he or she has not been vetted. That would be tragic. We need to pass this as fast as possible, so that we can regularize that situation.

I think many people have supported this Motion and I would rather not go into many issues. I will bring them out during the amendment stage. I am glad that, after so many years, finally, the great school, Friends School Kamusinga, has finally been recognized in a Bill of Parliament. Clause 18(f) says that one of the requisite qualifications for a judge is good judgment, including common sense. Common sense is the motto of Friends School Kamusinga; a great school in my constituency.

I beg to support.

Mr. Njuguna: One again, Mr. Temporary Deputy Speaker, Sir, I thank you for giving me this opportunity to join my colleagues in support of this important Bill - the Vetting of Judges and Magistrates Bill. This Bill is very important to us and to our country. Let me also thank the Mover, the Minister for Justice, National Cohesion and Constitutional Affairs for the manner in which he has presented the Bill to Parliament. This Bill will address some of the grave concerns that Kenyans have expressed time and again. On the eve of the Referendum, all Kenyans were yearning for major reforms in our

institutions. Among the major reforms we needed were judicial reforms, the police reforms and the land reforms. Ahead of us are the very important judicial reforms that we are addressing now, through this Bill. The reforms that we are introducing must be accepted by the church in Kenya, Muslims and all other Kenyans.

Judicial reforms are very important in this country. The Mau Mau freedom fighters would not have gone to London to look for justice. They went there because they realized that the justice they were looking for would not be available in this country. Therefore, the Bill is geared towards addressing some of these basic reforms.

Mr. Temporary Deputy Speaker, Sir, when we were campaigning for the referendum, we told the wananchi that police reforms would require police officers to salute the wananchi before arresting them. Are they now saluting the wananchi other than meting unnecessary brutality to the people? Therefore, it is important that we bring in major reforms in the Police Force, so that the extra judicial killings that are in our memories are addressed. Concerning land reforms, people have fought in this country because of landlessness, desperation, displacement and even evictions in this country. The Minister for Lands, just a few days ago, indicated to this House that he is intending to bring the National Land Commission Bill. This will go a long way in addressing some of the problems that we have had in this country.

In this Bill, it is notable that three judges will be appointed from outside this country. It is my view that we need homegrown and educated Kenyans. It is not prudent for us to think that we can recruit judges from outside our country. This is tantamount to abandoning the investments that we have made in terms of educating our people in this country. We should not dream of that importation. I would urge the Minister to reconsider that position. Regarding the qualifications of our judges and magistrates, we have young men and women, who are qualified, competent and with outstanding abilities to give Kenyans what they deserve. There are exemplary and distinguished Kenyans. We need to make sure that our lawyers are taken through the process to give the judicial reforms the image that we require.

I note that our judicial system, at times, has caused a lot of unnecessary agony to Kenyans. People have waited for the determination of their cases in the courts of law which have taken ages. Some victims have already died. Others do not know when their cases will be determined. This translates to denying Kenyans justice as justice delayed is justice denied. This should not happen in modern Kenya. I also note that failure to consult widely between the President and the Prime Minister has caused our current predicament where we are at a stalemate and have failed to give Kenyans an accountable government. Consultations must be there between the Grand Coalition partners as they head the affairs of our Government. Kenyans have already lost faith and trust in our judicial system. Therefore, once this Bill is passed, with the required amendments, it will rekindle that confidence in the minds of Kenyans.

With those few remarks, I support this Bill.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Bw. Naibu Spika wa Muda, kwa kweli, ni furaha yangu kuchangia Mswada huu.

Mswada huu, kwa Wakenya wengi, ni wenye ghadhabu nyingi. Wananchi ambao tunawakilisha wamekuwa wakituuliza ni nini ambacho kinakera nchi yetu wakati huu ambao Rais Kibaki na Waziri Mkuu, Raila Odinga, wamechagua watu ambao wanatakiwa kutufanyia kazi, lakini inaonekana kuwa kuna shida. Kama mhe. Muthama

amesema, shida ya Kenya ni kuwa na mafikira machanga ambayo si makubwa kuliko utu wetu binafsi. Kenya ni kubwa na inafaa sisi viongozi tuangalie shida ambazo zinatukabili ili tujaribu kuzitatua. Ukiangalia, utaona kuwa uteuzi wa mahakimu katika nchi hii ni shida kubwa. Kama viongozi, tupende tusipende, shida yetu ni kama ile iko kati ya wazungu na Afrika. Shida yetu ni ukabila. Shida zetu zimetokana na kuwa kila tukiwa na uongozi mmbaya, tunarudi kwa makabila zetu ili kuendeleza yale maovu ambayo tunafanya. Ninasema hivi kwa sababu mimi kama kiongozi kutoka Kitutu Chache, ningependa wananchi wajue hakimu mkuu ambaye wanamchagua anazungumza namna gani. Fikira zake ni zipi na makadirio yake ni yapi. Ningependa kujua fikira za yule ambaye atakayesimamia afisi ya mkuu wa mashtaka.

Kwa kweli, Wakenya wengi wamejawa na ghadhabu kubwa na wanasikia vibaya kuwa Wakenya. Kesi ya fukara ikipelekwa kortini, hawezi kupata haki kwa sababu mahakimu wengine hawazingatii sheria. Kama wanavyosema, ukiwa na hela hapa Kenya, utainunua sheria na ukiwa maskini, utafungwa. Wakati huu, sheria imefika kiwango ya kuwa ukifanya makosa, unaweza kuzungumza na hakimu na mkakubaliane usikufungwe. Ni lazima tuangalie sheria ya Kenya na tuhakikishe kuwa mahakimu ambao watapewa kazi watachungu maslahi ya mwananchi wa kawaida. Hii itamfanya mwananchi wa kawaida awe na utu na akubali kuwa Kenya ni nchi ambayo anaweza kujivunia. Nitasema kinaga ubaga kuwa katika nchi yetu, hakuna mambo mengi sana ambayo tunajivunia. Ufisadi umejaa. Ni lazima tuwe na mahakama za haki na askari ambao watafuata sheria za nchi. Mwananchi akipelekwa kortini, angependa maslahi yake yalindwe, atendewe haki. Ingawa amevunja sheria, ni lazima apate haki yake, na yule ambaye amekosewa, apate haki yake pia.

Ningependa kutoa shukrani zangu kwa Waziri Mutula Kilonzo. Yale mabadiliko ambayo Wabunge wameuliza kwa vifungu fulani, ningemuomba ayatilie maanani na kufanya marekebisho hayo.

Ninasema hivi kwa sababu hatutaki tena kuwe na shida ama vuguvugu, tukiambiwa: “Rais aliseme hivi na Waziri Mkuu akasema hivi, lakini hao wawili bado hawajaelewana. Kwa hivyo hatujui ni watu gani wanaoteuliwa.”

Tungependa ijulikane wazi ni akina nani wanaopendekezwa kwa vyeo hivyo ili kama ni uteuzi wa Jaji Mkuu, kwa mfano, tujue ili tuzungumzie mambo yake, baada ya Kamati ya Bunge kuujadili uteuzi huo na kukata shauri iwapo yeye ni mtu mzuri ama la.

Tunataka tupewe majina hadharani, wananchi wakisikiza kwenye redio na kuona kwenye runinga zao; kwamba, mtu fulani alizungumza hivi na vile. Tukifanya hivyo, wananchi pia wataweza kuona kwamba sisi Wabunge tumechagua mtu mwenye hekima na heshima, na ambaye atayalinda masuala ya kikatiba yanayohusu sheria za nchi yetu ya Kenya.

Bw. Naibu Spika wa Mda, nikimalizia, ningependa kuwatahadharisha Wabunge wenzangu wasije wakasahau kwamba chombo kinachotuelekeza kuyalinda maslahi ya nchi yetu ni Katiba tuliyoipitisha hivi majuzi; na kwamba iwapo Bunge hili halitakuwa lenye heshima na kuulinda Katiba, pamoja na maslahi ya Wakenya, historia itatuelekezea kidole chenye lawama. Ni lazima tuhakikishe kwamba tumeilinda heshima yetu, tukiwa Wabunge waheshimiwa, kwa kupitisha sheria zenye manufaa kwa Wakenya wa kawaida, na kuacha kuzingatia maslahi ya Wakenya matajiri pekee, walio wachache.

Ahsanteni.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I thank you for giving me the opportunity to also contribute to this important Motion.

The reason as to why it has taken such a long time for this country to have a new Constitution is that there was lack of trust amongst Kenyans. That problem is very deeply rooted. You can see what is going on even now, even though you do not make judgements. It is very irritating to Kenyans. Eventually, we will be branded, as Members of Parliament, as the ones who are anti-reformists. The blame game has started. I think this is a trick which is played all the time.

I saw something like that in the media recently. One of the top leaders of this country has already isolated himself from the issue by saying that some quarters of this country's leadership is anti-reformist. I listened to what was said last week, when the President had attended an African Union Heads of State Summit in Addis Ababa. We were rushing the appointments which are now in contention. We were not rushing this Bill. We have even heard it today, and we know it. Some of the persons we are proposing for appointment ought to have gone through the process prescribed in this Bill.

So, we are rushing some things due to lack of trust amongst ourselves; and also due to lack of advice from some quarters. We must trust each other as Kenyans. If some of the *wazungu* who left this country in 1963 come back and find out what we are doing, they will wonder why we were fighting for independence then, if we are unable to decide on issues that are for our own good.

Mr. Temporary Deputy Speaker, Sir, when we were appointing members of the Judicial Service Commission (JSC) and the other Commissions, we all agreed on those appointments because, probably, somehow somebody thought very wisely that we should have eight persons in each of those Commissions such that every part of the country was represented. Now that we have four or five positions in the current situation, it becomes a big problem.

At one stage, I thought that those appointments were okay, looking at the qualifications of the nominees. However, as we said, it was the process of nominating them which was not right. So, I would say that there are two aspects in this country, which we must seriously address – corruption and ethnicity. I do not know when we shall have a very serious debate, as the leadership of this country, to address those two issues only. We need to address the issue of ethnicity, so that Kenyans can know where we stand.

Mr. Temporary Deputy Speaker, Sir, when hon. Kajwang' was contributing to this debate, he said something which I would like to disassociate myself from. I do not agree with the issue of saying that, because you come from a certain place, if you see the name of a person from that place you go for it. I would not do so myself. I have not done such a thing before. In fact, I have heard that some colleagues here have employed their brothers, sisters, sons and wives to manage the Constituencies Development Fund (CDF). I find that to be a bad thing to do. You have to employ people on merit. So, I do not know what the public would say when somebody employs his brother in CDF. So, we should employ people on merit.

For example, I appreciate hon. Kajwang' as the Minister of State for Immigration and Registration of Persons. I do not even have to think that he comes from Vihiga District or wherever else. I have appreciated him as a Minister. That is what we want. We want a situation where once you are appointed, you are appreciated. However, that cannot

happen if the top leadership of this country is going to be sly. The matter is now being brought to Parliament. We saw this last year and the years before last year. When a matter becomes a problem, it is brought to Parliament, so that it can be seen who has voted for it and who has not voted for it and yet the person who is supposed to take that decision has not played his role.

Mr. Temporary Deputy Speaker, Sir, I appreciate the views that have been expressed here regarding the process of vetting of judges and magistrates. I particularly appreciate the contributions of those hon. Members who have said that they are going to come up with amendments, so that we can rid this Bill of those clauses which have been included erroneously or deliberately so as to confuse the issues as we go along. I would support such initiative.

I saw the Vice-President and Minister for Home Affairs talk about the issue of post-election violence yesterday. We had people who were killed during the post-election violence. In Mbale, about 20 people were killed and another 22 were badly injured by gunshots, but their kin could not go to the police or to court, because they knew that there would be no justice. The matter is still pending. There is nothing which has been done. So, everybody is waiting for the new Constitution, so that they can bring up these issues.

Mr. Temporary Deputy Speaker, Sir, when it comes to reviewing the fees payable to courts, I think they are too prohibitive for people to go and look for justice. You find that a small thing is made so complicated and so expensive that you cannot even file a case there.

Another thing is collusion amongst magistrates and the advocates representing people in court. Yesterday, the Speaker read out a Communication from the Chair regarding serving of court processes within the precincts of Parliament, but I think there is something much bigger to that issue than meets the eye. Somebody may have a case, and then the presiding magistrate and the advocate collude. What they do is what we might have seen. When magistrates pass judgements of that kind, they do not even write their names on the judgement document. They just stamp on it “Magistrate’s Court, Milimani”, and so on.

Therefore, the issue of vetting judges and magistrates is very important. Maybe, the Minister may have more information through the Commission that deals with complaints, which I believe is a Government institution. That Commission must be having a lot of information relating to complaints about some of the offices we are talking about.

With those few remarks, I beg to support.

Mr. Oyongo Nyamweya: Mr. Temporary Deputy Speaker, Sir, thank you for giving me a chance to support this Bill. One thing that I want to say is that as leaders and Members of Parliament we are here because of the transitional clause. Our responsibility is to be truthful and honest to the people of Kenya. The people of Kenya voted for a new Constitution. Therefore, our responsibility is to pass this according to the spirit of the new Constitution.

I have read this Bill on the vetting of judges and magistrates. Let me touch on Section 14, which many people have spoken about. When I look at it, I am left wondering if the Minister for Justice, National Cohesion and Constitutional Affairs is following the new Constitution. Why do I say that? Where we are as a nation, especially the judiciary, is because of the way the appointing authority was appointing judges. The appointing

authority was the President through the Judicial Service Commission (JSC). Now the Minister has brought back this section. I am not sure whether as a nation we are prepared for change. When the Government brings Bills here, there could be errors, but this is deliberate. So, what is the meaning? What is the Government doing? It is very clear that it is not ready for reforms. We are all here for a transitional period. We may not be here in 2012 because we may have gone home, but some will come back.

We have talked about judges and magistrates. I tell you, these people work under a very hostile environment. There is no scheme of service, and no clear procedure of employment. A mediocre lawyer somewhere is made a judge and made your senior. Since you are also a judge, you must work with him because he has been appointed, and you have nothing else to do. So, let us not condemn the judiciary or magistrates as if they are a creation of themselves. The High Court judges and the Court of Appeal judges are appointed by the JSC. If these people are making mistakes, it is not their fault but that of the appointing authority. That is why I am asking the appointing authority to let this nation move forward. What do I mean by that? I want to tell you a story. Yesterday, I was watching television and my daughter asked me what was happening, and why the Prime Minister and the President were not agreeing. Yesterday there was a report from the Departmental Committee on Finance, Planning and Trade; it was aired on television. I was put in a very embarrassing situation when my daughter asked me where Kihara comes from. I said that he is a Kikuyu and Mr. Omolo is a Luo. So, she asked whether they were supporting their tribes. That was a young girl asking questions in my house. What do I tell her and what do we tell this nation? So, she said that if they were quarrelling, let them write yes and no and whoever picks the yes becomes the Chief Justice, because they could not agree. It is shocking for the nation when this is happening and it is all over on television and in newspapers. These are people I have a lot of respect for. I have a lot of respect for the President and for the Prime Minister. When the national interest is not put first, they do not serve this nation; when the national interest is not put first, then this country is burning. We are leaders, and we are here because the Constitution has allowed us to be here for a short time.

Therefore, I would appeal to the two principals to bring sanity to the Government. I also want to tell the Minister for Justice, National Cohesion and Constitutional that, for the sake of this nation--- When he brings these kinds of Bills, what message is he sending out? As far as I am concerned, the problem we have is not a creation of the judiciary itself. It is caused by those who appointed the men and women who are there. Some of them have done a good job, and some of them have done a very bad job. But also look at how they work. Look at how the magistrates work. Look at the remuneration that they get. Let us be truthful to each other as a nation. A magistrate is paid Kshs25,000, yet he or she is supposed to have a car, live in a good house and pay school fees. How do we expect them to afford a car and pay school fees, yet we know they only earn Kshs25,000? This has happened since Independence. Why are we not being honest and saying that these people are underpaid? Let us put in place structures which are clear. If we are going to have judges who are worth working for this nation, let them work. It is an opportunity cost. How can you attract well qualified men and women to be in the judiciary? If they have successful careers as lawyers or advocates, they will not join the judiciary. What is required is that there should be good remuneration. They have security of tenure but what is critical is that I plead for the nation to be sincere. Let us stop engaging in political

games. If a decision is made, my group has won or has lost. We are Kenyans and there are no groups here. We want a judiciary which we can all trust.

Mr. Temporary Deputy Speaker, Sir, the other thing that I want to ask the Minister is why the Kadhi Courts are not here. Kadhi Courts are going to be under the JSC. Is he saying that in the Kadhi Courts we do not have any problem, or is he avoiding to deal with Kadhi Courts? Why have they been left out? I thought that when we are doing a vetting process, we shall include everybody, so that when we form the JSC everybody who will be there will be trustworthy. We have talked about what happened in 2007, and I do not want to go there. So, it is upon us to be honest to ourselves; we must look at the pay packages of these people.

I also request the principals to give this nation a chance to have a Chief Justice that everyone of us can trust. That is what is required, so that we do not have a false start as has happened before. This country needs to address issues of corruption. We know that the judges who are going to work for this nation will dispense justice. We should be able to trust the system. Even the policemen should be able to trust the system. Let us all face it. The policemen know that even if we take people to court they will be released. So, they also make decisions. Let us all be honest as Kenyans. Let us stop the groupings which I am seeing in the House. Let us stop creating regions. We are transitional leaders, and we are not going to be here forever. Let us know that this nation is greater than all of us. We are here for a transitional period, which is a short time. We can serve this country as a transitional group; I am very privileged to be a Member of Parliament at this time. We should do a job that this nation will be proud of.

With those few remarks, I beg to support the Bill.

The Minister of State for Development of Northern Kenya and other Arid Lands (Mr. I.E. Mohammed): Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity. Let me congratulate the Minister for bringing here this Bill, which I wholeheartedly support.

In bringing a new Constitution we have turned a new page in Kenya. But if there is one thing which is going to make the constitution work as Kenyans expected, it is the justice sector of which the Judiciary is a pillar. The Judiciary has to be trusted. For people to put themselves in front of a judge, a magistrate or an arbitrator, they have to trust them. That is what sustains democracy and the rule of law. Therefore, probably this is the most important step we are taking. We are saying that we are going to vet our Judiciary. This is not witch-hunting, and this Bill is very clear about that. It is to ensure that everybody submits themselves to the new order that Kenyans are asking for, so that nobody ever again, after 2008, will say, "I cannot go to the Judiciary". If anybody says that, Kenyans will then tell them: "Go away! We trust this Judiciary because it was vetted".

Mr. Temporary Deputy Speaker, Sir, however, that vetting is just for a short period. There will be the Judicial Service Commission (JSC) which will take over the vetting. That must be known. In future, it will be the job of the JSC to monitor every judge, because today you can be good but something can happen to you and you can be tempted. The JSC will make sure that the Judiciary remains trusted by Kenyans.

There are enormous benefits. First and foremost, the Judiciary will guarantee all those rights that have been mentioned in our Constitution such as the rights of individuals and the protection of our institutions. People break rules left and right every day, but there will be protection of business and increase in investment.

Recently I had an occasion to meet a Minister from another country, who was in business before. He said, this is a very beautiful country, with a lot of investment opportunities. The only problem is that if somebody decides to take me to court I will lose my money. This is the most critical thing we are doing. The Judiciary is not only supposed to be trusted, but it should also pass the test of perception. It is not only good enough that it is good. The public and everybody who comes to this country must trust it. That is very important. As Parliament, we will pass this Bill and vet the judges, but it is for the public to be vigilant for us to safeguard the Judiciary and the justice system.

Finally, I will not be doing justice if I do not say that 70 per cent of this country, from West Pokot to Lamu does not have a High Court. I hope that is going to change with the new JSC, and every county will have a High Court.

I beg to support.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. However, I must register, alongside my colleagues, my lack of support for Section 9(14). I believe the Minister has heard us clearly, loudly and unequivocally.

I want to start my support from Article 2 of the Constitution. The reason why Kenyans wanted a new Constitution is that the old Constitution enabled the President to rule this country as he wished, to distribute positions as he chose and even to use the resources of this country as he wished. This has been a source of war ever since. That is why, Kenyans in their wisdom, chose to change the Constitution. The new Constitution ensures that power in this country is devolved. This Constitution now ensures that positions in this country are given in a transparent manner and on competitive basis. The new Constitution now shares out resources of this country equitably.

Mr. Temporary Deputy Speaker, Sir, I would like to go further and support this Bill on account of its memorandum. It states:- “For the vetting of judges and magistrates who were in office on the date of the promulgation of this Constitution in order to determine their suitability to continue serving in the Judiciary in the new constitutional dispensation”.

I think that was a brilliant piece by the Minister for Justice, National Cohesion and Constitutional Affairs.

Mr. Temporary Deputy Speaker, Sir, as a country, it has been said time and again that we can tolerate a rogue Executive, we can live with a rogue Parliament but a rogue Judiciary is a recipe for anarchy. The only present we can give to this nation and the people who elected us is a good implementation of this Constitution. We are here on behalf of Kenyans to exercise the sovereign power of this nation. We must remain sensitive to the people of Kenya, as we do that noble job that we have been given.

This is a House of debate. Motions and Bills should be won on the merits and lost on their demerits. It reduces this House to a house of demagogues if we wait for an opportunity to vote Motions. I want this House to do better than it has done.

Mr. Temporary Deputy Speaker, Sir, we have nominations that have been brought to this House. Yesterday I was reading the *Daily Nation* newspaper. On the cartoon pages I saw the four appointees humbly assembled in front of the President telling him, “Mr. President we accept your nomination, but we have a problem here; how will we ensure our legitimacy?” Of course, other Members must have read the response. We cannot afford a false start because we will never have another opportunity to correct the wrongs

we have lived with all along. This is the time to do it. We are men and women of honour. Let us show honour and give Kenyans what they deserve.

I beg to support.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill whole heartedly in view of what we have seen in Kenya. Those of us who have been lucky, like me, to enjoy the services of one of the senior most counsel in this Republic, who happens to be the Minister here, know that I should not be standing here had it not been a quest to look for justice.

I was listening to a very serious documentary from the Arab world, and they were talking about world peace. They were saying that it is so easy for everyone to see. It is not about armament. It is not about Arabs, Africa or Europeans. It is about justice; to have peace you need justice. Justice can only be done if the arbitrator, or judge, sees things through the due process.

As long as judges, magistrates and everybody else remain controlled, no matter how remotely, by ethnic or commercial values and other parameters well known to most hon. Members, we cannot have peace. There is no need pretending that we will have a system of justice where all animals are equal but some are more equal than others. If we are going to define equality, let it be that way; that a poor peasant or a son of a peasant like me who rises up should not be judged by the qualifications of the grandfather or the grandmother for that matter, but by his own qualifications and acumen. People who commit felonies and other forms of crime should be treated the same.

Mr. Temporary Deputy Speaker, Sir, when I was taking my Masters Degree programme in Australia, I was very impressed with one police constable who arrested his boss, the Minister for Police. The police constable said that as far as he knows – he had read the rules and regulations – there is no provision that allows the Minister for Police to over-speed since he had also read the rules very clearly. So, the Minister remained charged by the police constable. In any event, he knew very well the justice system in Australia at that particular time.

The Assistant Minister for Higher Education (Mr. Kamama): On a point of order, Mr. Temporary Deputy Speaker, Sir. You realize that quite a number of hon. Members have over ventilated on this matter. So, would I be in order to ask you kindly to allow the mover of the Bill to reply.

The Temporary Deputy Speaker (Prof. Kaloki): That is a valid point of order. I will give each of you two minutes. Hon. Mututho you should sum up in two minutes then we shall allow Mr. Affey and Mr. Kamama two minutes each.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, in the quest for justice – I hope the Minister is listening – I would invite him to look at Clause 9 and look at the membership of the Board. Looking at it very closely, you will realize that you have seven civil servants out of eight members. Now, the appointment by the Public Service Commission comes to question if you look at the membership. I am reading from Page seven. I have quickly counted and found that all the seven are civil servants or they have been appointed by the Executive. So, will this Executive then, be trusted to take such a big chunk leaving only the Law Society of Kenya (LSK) as a neutral person representing the wishes of the people? That is a question that needs to be thought over again because people who have been appointed to assist them have loyalty based on that particular system.

Clause 11(1)(c) states:-

“The Chairperson shall supervise and direct the work of the Board”.

The word “direct” is not very good. If the chairperson is going to direct, then it means that you annul the powers of the Committee *per se*, and then on the rules of evidence - I think like I said from the beginning- it is known for pursuing justice. Let us follow the normal rules of evidence so that we do not admit hearsay in the course of this vetting.

Mr. Temporary Deputy Speaker, Sir, we trust that what is coming through this is not something that will contravene the entire rights of those people who happen to be in the legal fraternity; that it will be in line with our own Constitution, Section 48 and 50 and that each person there shall be seen to be represented properly and have a chance to represent themselves; and the evidence produced shall stand the test of time.

I support.

Mr. Affey: Mr. Temporary Deputy Speaker, Sir, I begin by congratulating the Minister for this wonderful job. The Judiciary, of course, is the most critical element and I do not want to emphasize that more than my colleagues have already done.

Mr. Temporary Deputy Speaker, Sir, I have a problem with the non-citizens. There is a possibility here that we shall have three non-Kenyans. I think there is need for the Minister to review this. If there are nine, let us get nine Kenyans. If they are six, let us get six Kenyans. I do not understand where this syndrome of having to carry on with foreign expertise all the time was borrowed from. I think it is a bad thing and it goes against the spirit of the new Constitution in many ways, because we have absolute ownership and Kenyans know how to go about their business. I think the Minister needs to review that.

Mr. Temporary Deputy Speaker, Sir, secondly, the word “consultation” requires more definition here. It is very strange that the President and the Prime Minister cannot agree on anything. Even now that they have said they met, I do not know under what circumstances they had a meeting the other day to agree on something that already we know there are different positions.

Mr. Temporary Deputy Speaker, Sir, who vets the group that nominates these people? Is there a possibility of a trade-off? These are all civil servants and there is a possibility of intimidation because people will be asked to apply and the Public Service Commission will, of course, shortlist. The Minister must find some more participation regarding this number and group.

Mr. Temporary Deputy Speaker, Sir, on the idea of public participation, there are parts of this country where a High Court has never been a possibility. I am glad that now the Minister for Justice, National Cohesion and Constitutional Affairs has started one in Garissa. But how will the people in the north, for instance, participate in this kind of process when they have never seen a High Court or even a Magistrate’s Court in most cases?

Mr. Temporary Deputy Speaker, Sir, finally, the Bill says that there shall be a secretariat of a board which shall be headed by two joint secretaries. I think this is going to be very dangerous in my view. If you have two joint secretaries, who reports to the other? Are you preparing these secretaries to clash? Is there a way that the Minister can separate this, so that we have got one person responsible for the secretariat? Otherwise, if you have got two people leading the same secretariat, then they can bring in their opinions or political affiliations and, maybe, stall the process.

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

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): Mr. Temporary Deputy Speaker, Sir, I will start by congratulating the Minister for Justice, National Cohesion and Constitutional Affairs for bringing this Bill to this House.

Mr. Temporary Deputy Speaker, Sir, I also want to say that most Kenyans are happy with this Bill and the sooner it is passed and taken to the President for assent, the better for everybody. Kenyans believe that justice belongs to the rich and not the poor. Kenyans believe that justice can only be bought; you cannot get it for free. So, the vetting of Judges is good news to all and sundry.

Mr. Temporary Deputy Speaker, Sir, when we went to the Referendum, apart from all the reforms that Kenyans wanted, the Judiciary is the one that has let down this country. A bad Judiciary is a recipe for chaos and anarchy. If this Judiciary is not going to be reformed, we will end up actually being a banana republic. Somebody told me that the difference between Mogadishu and Nairobi is that, at least, we have police in Nairobi and there are no police in Mogadishu. We do not want to go into a situation like the one we are seeing in the neighbouring countries. So, we want justice dispensed to each and every Kenyan. We want every Kenyan to believe that they can access justice. Hon. Elmi mentioned something about High Courts in our places. In my district I get what we call mobile judicial services. A Judge or Magistrate comes once in a month to visit my people and then disappears. So, we want to have integrity in our new dispensation. We want to eradicate tribalism. We want a trusted judiciary.

Mr. Temporary Deputy Speaker, Sir, if you ask Kenyans to tell you the judges who can be trusted, I am telling you they are very few. In fact, for me, I only know of Justice Musinga. Of course, you can talk about the others.

Mr. Temporary Deputy Speaker, Sir, as we pass this Bill, I want us to look at Clause 18(2)(a) to (h). We must stick to professionalism and competence. We must have a judiciary with integrity. In fact, the catch phrase here is “integrity”. This is what is lacking in this judiciary. People are minting illegally because of a corrupt judicial system. So, we want not even a radical surgery, but a new dispensation all together. For me, I will support the names that were mentioned like the ones for the Chief Justice. I would have preferred somebody from outside. Not out of the country, but somebody from private advocates, who is not within the system.

Mr. Temporary Deputy Speaker, Sir, when we expect the same judges who have been there for 30 years to vet themselves or to be in charge of the judiciary, I do not think we are going anywhere. I will support it maybe if it is brought as a Government business. However, in my heart, we need a clean judiciary system. We do not want people who have been there for many years. You live in a house for many ages and think you will change anything. You cannot change anything. We need a new dispensation. We need Kenyans to see this in words and deed.

Thank you.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I want to tell the House that I have been educated. I have been listening very hard and I have learnt.

I want to assure hon. Imanyara and all other Members who have spoken about it that Clause 9(14) was not inserted here for mischief. As we did with the Commission on

the Implementation of the Constitution, was inserted this in order to produce the sort of debate that has occurred. Those who listened to the debate will understand that I have heard your sentiments and we will consider deleting it, in order to bring it in line with the Members' contribution.

On the issue of consultation raised by hon. Members in Clause 12(5), we will look at it. I also suggest to hon. Members to look at Clause 9(7) because His Excellency the President, in filling a vacancy, as the Commission on Implementation said, is still required to follow the procedure in Clause 9. That means he would have to consult with the Prime Minister. I have heard what the hon. Members are saying.

I also have the same concerns as to what actually "consultation" means. We will discuss with the Committee during Third Reading to see whether we can define consultation or even amend it and require agreement. I am also disappointed by the problems that have arisen from the nominations that are engaging the country. I want to assure hon. Members that this law was not intended to serve a section of the country; not even the Executive. This is going to be a national law and I will work with all hon. Members so that we can consider all suitable amendments as proposed on the Floor to make sure that, when we vet judges, we actually vet judges under what is internationally known as Bangalore Principles of Judicial Conduct. During the debate on the forthcoming Bill on Judicial Service, I will elaborate those principles so that they can be appreciated once and for all that we want international best practice.

Mr. Temporary Deputy Speaker, Sir, Mr. Mbadi supported with reservations, just because of Clause 9(14) and Clause 12(6). I want to assure him that we will modify this Bill so that it reflects the thinking of the country; not the thinking of the Minister or even the Commission on the Implementation of the Constitution (CIC). We want to accommodate the thinking of the country as it has emerged in this debate. For Mr. Kenneth, I want to thank him and assure him that I will never participate in the sort of radical surgery that occurred in 2003 and onwards; the Ringera thing. That is because I acted for a number of judges who, although reinstated in the Judiciary, are still suffering because of the processes they went through. We will not allow a circus! Again, we will discuss with the Committee responsible to see whether we can seek an acceptable approach to the use of the words: Consultation, vetting procedures, stable people and qualifications.

Mr. Mungatana should feel confident that I will not, during my watch, allow a process whereby Kenyans are ignored. But I want to remind the country of the reason why we have put this - and the CIC has accepted this idea of three judges coming from outside. Allow me to mention, with respect to the country, that Judge Kriegler was a foreigner from South Africa. His Excellency Kofi Annan was from Ghana. As a matter of fact, Safaricom, the largest corporation now in East and Central Africa has been headed by a non-Kenyan. If you look at the Committee of Experts (CoE), we had three non-Kenyans, wonderful people; one from South Africa, one from Uganda and one from Zambia. The Truth, Justice and Reconciliation Commission (TJRC) also has three non-Kenyans. Huge companies like Breweries and others have the benefit of international practice. Again, as the House waits for the Third Reading of this Bill, I want to draw the attention of the House, so that it can appreciate the following: It is not that I have any problem at all in recognizing the presence of Kenyans, Clause 5 of the Bill at Page 4 says that in the exercise of its powers or the performance of its functions under this Act, the

Board shall, at all times, be guided by the principles and standards of judicial independence – those are the ones I mentioned. I will elaborate on them tomorrow. I mean the Bangalore Principles of Judicial Conduct. It also says natural justice and international best practice.

Allow me to remind the country, without fear, that this country is undergoing a terrible catharsis over the issue of the ICC and the Rome Statute where everybody is watching whether we are going to set a judicial mechanism. That is what I will be recommending as soon as these Bills are through, to reflect the best international standards. Therefore, as you object to the issue of three Kenyans, please bear in mind that the boards are going to be three and each board will have three members. Our idea or the architecture behind this law - and I want to thank Mr. Kajwang for supporting this idea - is that out of the three, one will be a non-Kenyan. The purpose is not because we do not have enough Kenyans. The purpose is in order to impregnate – if I may use that word – these boards with international best practice so that when we conclude the vetting of judges and magistrates, no judge, either in the ICC or the international court, will say that Kenya does not have quality judges who have been vetted. Therefore, I want, as hon. Members wait for the Third Reading, to bear this philosophy in mind; the architecture behind this so that we can, as the Vice-President was saying only this week, win our country back.

I agree that we need to have gender balance and I will adjust the Bill suitably to reflect that. I agree that we must accept ethnic balance. In fact, the Bill calls for regional and other balances. On the issue of “temperament”, and this is for Mr. Mungatana: Please be careful as you seek to delete this. I will try to persuade you that we have had a judge in Kenya taken to court on the pretext that in a traffic jam, he came out with a knife and attempted to injure a Kenyan. Although he was acquitted, I am afraid, you must appreciate that temperament under the international standards that I have just described is very important. We have Judges who insult advocates who are appearing for citizens in the presence of the citizens, thereby undermining the concept of independence of the bar and their ability to represent citizens.

Mr. Temporary Deputy Speaker, Sir, we have judges who insist that you must be robbed. If you walk into his or her chambers, you cannot leave even to go to help yourself until the judge leaves. Therefore, this is the reason this architecture seeks for temperament.

On the issue of legal representation, I am afraid, I want to persuade the country even if you do not include it, the rules of natural justice will require that they be given judges.

On salaries and benefits, I will listen to what you have said and we will look for a method of solving it.

Let me also address Dr. Khalwale. He has spoken extremely well. I heard him talk about Rwanda. I really beg that this country can follow that procedure. But I agree that it is not enough to renew the judiciary, if we do not renew the prosecution and the police who investigate.

Mr. Temporary Deputy Speaker, Sir, I agree completely with Dr. Eseli because he also raised those issues. I agree with Mr. Njuguna completely. We will find a method of polishing this. I agree with my learned friend, Assistant Minister Onyonka. We will produce a national law.

Mr. Chanzu could not have spoken better. I hope that he will give me a chance to come to his constituency and listen to him. He sounds like those people who are born with ability. The same applies to Mr. Oyongo Nyamweya regarding paid judges. For purposes of Kadhi's courts, they qualify as magistrates and they will also be vetted.

Mr. Elmi, and all of you who have spoken, my former client Mr. Mututho, because I cannot act for you now, I hear you loud and clear.

With those far too many responses, acknowledging what Mr. Affey, Mr. Kamama and all the others have said, I beg to move.

Thank you.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Prof. Kaloki): We still have three minutes. Next Order.

Hon. Minister, you have three minutes. I think you can take advantage of that.

BILL

Second Reading

THE JUDICIAL SERVICE BILL

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

THAT, the Judicial Service Bill, (Bill No.2 of 2011) be read a Second Time.

Mr. Temporary Deputy Speaker, Sir, this is a momentous day for the country considering that I am on the Floor seeking to present to this country a law on the Judiciary. It is a law that is very far-reaching and critical.

Before I even begin on it, I want to read to you the second edition of a book called *The Law Lexicon* published in 1997 on justice. In defining it, it says:-

“Justice in its common acceptance is rendering of every man his due; the constant and perpetual desire to render everyone his due; the dictate of right according to the consent of mankind generally or of that portion of mankind who may be associated in one government or who may be governed by the same principles and morals.

Justice is the establishment and enforcement of which is the object of all law. It is a comprehensive term in which are included the three great objects of which according to our declaration of independence, governments among men are instituted. Whatever rule of the unwritten law, therefore, is at variance with this great purpose of justice and that is the security of life, the security of liberty and the pursuit of happiness is one not suited to our condition and circumstances and, therefore, it offends the principle of supporting justice.

There is not in this country, one rule by which the rich are governed and another for the poor. No man has justice meted out to him by a different measure on account of

his rank or fortune from what would be done if he were destitute of both. Every invasion of property is judged of by the same rule. Every injury is compensated in the same way. Every crime is restrained by the same punishment be the condition of the offender what it may, it is in this alone that true equality can exist.”

Mr. Temporary Deputy Speaker, Sir, I was quoting the decision---

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Minister.

Mr. Minister, you will have 57 minutes to continue to move the Bill.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Thursday, 10th February, 2011, at 2.30 p.m.

The House rose at 6.30 p.m.