

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 3rd August, 2011

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### WORKSHOP FOR MEMBERS ON RESTRUCTURING OF KENYA NATIONAL HUMAN RIGHTS AND EQUITY COMMISSION

**Mr. Speaker:** Hon. Members, I have two Communications to make. First, the promulgation of the Constitution on 27<sup>th</sup> August, 2010 saw the merging of the Kenya National Human Rights Commission (KNHRC) with the National Commission on Gender and Development (NCGD) to create a new Commission namely the Kenya National Human Rights and Equity Commission (KNHREC) pursuant to Article 59 of the Constitution. The same Article provides for the restructuring of this Commission into two or more commissions.

Arising from the foregoing, three Bills have been introduced in the House for consideration namely: The Kenya National Human Rights Commission Bill, 2011, The Commission on Administrative Justice Bill, 2011 and the National Gender and Equality Commission Bill, 2011.

The Ministry of Gender, Children and Social Development and the Kenya National Human Rights and Equality Commission in conjunction with the Committee on Equal Opportunity and the Departmental Committee on Labour and Social Welfare have organized a workshop to be held at the Continental Resort Hotel in Mombasa between Thursday 4<sup>th</sup> and 6<sup>th</sup> August, 2011 to deliberate on the three Bills taking into account the provisions of Article 59 of the Constitution, especially in relation to the restructuring of the Kenya National Human Rights and Equality Commission into more commissions. The Minister for Gender, Children and Social Development has invited all hon. Members to attend the workshop and hon. Members wishing to do so are requested to register and indicate their preferred time of departure at the main reception, main Parliament Buildings to facilitate logistical arrangements.

#### ATTORNEY-GENERAL'S RETURN ON SALARIES AND REMUNERATION COMMISSION BILL

Secondly, this is regarding a return on a Bill received from the Attorney-General pursuant to the Standing Orders. Standing Order No.125 requires the Attorney-General to present to the President, within 14 days of receipt from the Clerk, every Bill passed by this House. Thereafter, after the expiry of 14 days, the Attorney-General is required to file a return to the Speaker indicating the time and the date that the Bill was presented to the President. The returns received indicate that the Salaries

and Remuneration Commission Bill of 2011 which was passed by the National Assembly on 20<sup>th</sup> July, 2011 was presented by the Attorney-General to His Excellency, the President for assent and was duly assented to on 27<sup>th</sup> July, 2011 at 10.00 a.m.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir, pursuant to your first Communication, you will recall that, about a week and a half ago, when the three Bills were presented here, Dr. Khalwale, Dr. Eseli and I raised objections on the Constitutionality of the three Bills. I was just wondering if the Minister for Justice, National Cohesion and Constitutional Affairs is part of the team that is going to work on these three Bills.

**Mr. Speaker:** Indeed, hon. Member for Kisumu Town West, I want to believe that you speak for a large section of the membership of the House - I have indication from the Minister for Justice, National Cohesion and Constitutional Affairs that he will be one of the resource persons at the workshop in Mombasa.

### NOTICE OF MOTION

*(Mr. Namwamba moved to the Dispatch Box)*

**Mr. Speaker:** Yes, hon. Member for Budalang'i. Please, indicate which Motion you want to give notice of! If it is the one that I approved only this morning then I am afraid it is not yet mature! The process entails it going to the House Business Committee.

*(Mr. Namwamba consulted the Speaker)*

Yes, this one is okay!

### EXTENSION OF DURATION OF SELECT COMMITTEE ON COST OF LIVING

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

THAT, the period of the Select Committee on Cost of Living be extended by two months in order to enable the Committee to conclude its activities as per the terms of reference of its establishment.

### QUESTION BY PRIVATE NOTICE

#### RE-EVALUATION/RE-TENDERING OF ISIOLO ABATTOIR PROJECT

**Dr. Khalwale:** Mr. Speaker, Sir, I beg to ask the Minister for Livestock the following Question by Private Notice.

(a) Is the Minister aware that the public stands to lose a lot of money if the construction of the recently started Isiolo abattoir project is not immediately stopped, re-evaluated and re-tendered?

(b) What measures will the Minister take to ensure that the project is stopped and re-tendered in compliance with the Public Procurement and Disposal Act?

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that the public stands to lose a lot of money if the construction of the recently started Isiolo abattoir is not immediately stopped, re-evaluated and re-tendered. The reason why I am stating the above is because the procuring entity followed all the laid down rules and regulations as stipulated in the Public Procurement and Disposal Act, 2005.

The procurement unit under my Ministry and those in Isiolo District requested authority for restricting tendering to the District Tender Committee as provided for in Section 73(2)(b) of the Act which states as follows:-

“Procurement entity may use restricted tendering under the following circumstances; where the limitation of time exists and when the works are of specialized nature that requires experts to undertake.”

The procurement entity received the designs and the Bills of Quantities in the month of May, 2011, from the Ministry of Public Works. This was very close to the end of the financial year and, therefore, there was no sufficient time to go for open tendering. In addition, construction of slaughter houses requires installation of specialized meat processing equipment that satisfies the second criteria for that particular tendering.

The Procurement unit relied on Section 32 of the Act which allows the use results of a prequalification procedure used by another public entity. To this effect, the unit used a list of pre-qualified building contractors in the current register maintained by the Ministry of Public Works. The procurement unit sent bids to ten pre-qualified bidders and out of the ten, nine responded. The bids for the respondents were opened in the presence of the bidders or their representatives and they all signed the attendance list. The nine bids were then subjected to technical evaluation based on the Bill of Quantities supplied under the following criteria:-

- (a) The bidder must appear in the Ministry of Public Works current building contractor list and proof of registration, mandatory category D and above.
- (b) Proof of works of similar magnitude undertaken in the last five years.
- (c) Have adequate and key personnel for the specified type of work.
- (d) Have sound financial standing and adequate access to bank credit line.
- (e) Tax compliance certificate.
- (f) Fill the confidential business questionnaires.
- (g) Fill the tender form.

After the analysis based on the technical evaluation, the contract was awarded to the lowest bidder M/s Centre Start Company Limited at a construction sum of Kshs122,068,734.40. This was in accordance with Section 73(2)(a) of the Act which allows a maximum level of expenditure to be determined by the funds allocated in the Budget on the particular requirement.

(b) Mr. Speaker, Sir, my Ministry does not intend to stop the implementation of the project because the tendering project was done in accordance with the provisions of the Public Procurement and Disposal Act and my Ministry signed a contract with the winning firm. Furthermore, the contractor has already done a substantial amount of work on the project and any attempt to cancel the contract will result in the Ministry being sued for breach of the same said contract.

**Dr. Khalwale:** Mr. Speaker, Sir, when the Ministry departs from open tendering to restricted tendering, we start getting worried, and we start smelling a rat. If it is true that the public is going to get value for its money at Kshs122 million, could the Assistant Minister confirm to this House that yes, indeed, the technical

committee in the Ministry evaluated, assessed and was convinced that this was round about the figure that this project would cost?

**Mr. Duale:** Mr. Speaker, Sir, I can assure this House that there is no rat to smell here! I want to table here the request for restrictive tendering as per the law, the Minutes of the District Tender Committee held on Wednesday, 11<sup>th</sup> May, 2011, in Isiolo and also the Ministry of Public Works technical evaluation report.

*(Mr. Duale laid the documents on the Table)*

**Mr. Olago:** Mr. Speaker, Sir, I wish to take issue with the answer by the Assistant Minister. On the second page, second paragraph, he says that the procurement entity received designs and Bills of Quantities in May, 2011 from the Ministry of Public Works. This was close to the end of the financial year and, therefore, there was no sufficient time to go for open tendering.

Is the Assistant Minister aware that the practice in this Ministry is for the technical personnel to sit back and wait until near the end of the financial year, then bombard the client Ministries with details so that there is no time to look at the documents carefully? This was simply meant to short circuit the Act.

**Mr. Duale:** Mr. Speaker, Sir, I want to confirm that it is not the Ministry of Livestock Development that prepares architectural designs and Bills of quantities. It is the Ministry of Public Works. It is outside our domain. Hon. Members are aware - even in our constituencies - what the Ministry of Public Works and the engineers do. So, it is not the technical staff of the Ministry of Livestock. It is the Ministry of Public Works who delivered those Bills of Quantities and designs as late as May.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I am just curious because he says that those were works of a specialized nature while, a few years ago, even when there was no law on procurement, when the Kenya Meat Commission (KMC) was being revived, it was an open tender. So, what would be more specialized? He is using a big term but it is just actually a small slaughterhouse compared to KMC. What would be more specialized than the KMC which floated the tender through open tendering?

**Mr. Duale:** Mr. Speaker, Sir, the Isiolo Abattoir is not small! It is an export slaughterhouse and the bids were delivered in May 2011. It is specialized in the sense of the equipment that will be installed in any slaughterhouse, including the KMC. I am not aware of what happened at that time in---

**Mr. Ochieng:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to continue avoiding the question? The question here is: Why did the Ministry decide to go the route of restricted tender rather than the open tender system?

*(Applause)*

**Mr. Duale:** Mr. Speaker, Sir, unless the hon. Member was not in the House, I did it very well. I want to repeat this answer. The reasons under the law---

**Mr. Speaker:** Order, Mr. Duale! Avoid being repetitive because the Standing Orders do not allow you to be repetitive. There is no need to be! Just answer the Question by Mr. C. Kilonzo! You heard the question. Answer it!

**Mr. Duale:** Mr. Speaker, Sir, the equipment we are going to use in Isiolo, like any other export slaughterhouse, will be specialized in nature. But the moment we received those designs very late - and the export slaughterhouse is co-funded with

donors - time was of the essence. So, the project is of a specialized nature, time is of the essence and the law allows that.

**Mr. Namwamba:** Mr. Speaker, Sir, this country has suffered enough from opaque contracting; Anglo Leasing, Goldenberg, Triton, name them. You can run down an indefinite list of heavy losses to the public because of opaque contracting procedures. The Assistant Minister has said in his answer that he is not aware. In fact, he is almost giving a guarantee that the public stands to lose absolutely nothing because of that short-circuiting of the tendering process. Could the Assistant Minister look 40 million Kenyans in the eye right now and give a guarantee and an assurance that if, at all, the Kenyan taxpayer loses a single cent by reason of this opaque tendering, the Assistant Minister will take responsibility for that loss and honourably step aside? Not just to step aside but, indeed, become the first member of this Government to honourably resign from Government and refund the taxpayer anything that may be lost by reason of this? Could he do that, looking at the Kenyan taxpayer straight in the eye?

**Mr. Duale:** Mr. Speaker, Sir, Mr. Duale, the Assistant Minister for Livestock Development, has his integrity to safeguard. I am ready today, tomorrow or next year to take the political responsibility, if 40 million Kenyans lose in that project!

**Mr. Bahari:** Mr. Speaker, Sir, the Assistant Minister, in his response, has said that the purpose for restricted tendering, among others, is because the job is specialized. But he has failed to explain exactly what is specialized in that job. Could he do that?

**Mr. Duale:** Mr. Speaker, Sir, the technical equipment that we are going to install in terms of chillers, the killing floor and the cold rooms is going to be imported from outside. I want to tell these hon. Members that I am ready to take them on a tour of the KMC. That is the kind of equipment we want to install in Isiolo.

**Mr. Imanyara:** Mr. Speaker, Sir, if there is nothing to hide, why is his answer leaving out the particulars of when the request was made so that, indeed, it arrived late? He said that the procurement unit under his Ministry requested authority, but he does not say when he requested that authority. When was it that he requested the authority that came in late?

**Mr. Duale:** Mr. Speaker, Sir, the documents that I have presented, including the letter where the authority was sought, are what I have already tabled. So, the dates are there!

**Mr. Speaker:** Order, Mr. Duale! You have a very specific question! When? Give the date when the request was made!

**Mr. Duale:** Mr. Speaker, Sir, could I have the letter that I have tabled?

**Mr. Speaker:** Give the date, Mr. Assistant Minister!

**Mr. Duale:** Mr. Speaker, Sir, the date that was requested for the tendering was 10<sup>th</sup> May, 2011.

**Dr. Khalwale:** Mr. Speaker, Sir, in view of the hurriedness of giving out this tender, today, it is three months from the time the tender was given. If we want to be assured that the public will get value for money, could the Assistant Minister tell us at this stage, where the project is and how much money has been paid out to the contractor so far?

**Mr. Duale:** Mr. Speaker, Sir, yes, I need to go back and find out how much was paid to the contractor by then. But that is a different Question which is outside the procurement.

**Mr. Speaker:** Order, Mr. Assistant Minister! Surely, that question just follows like night follows day. You would have expected that question naturally. Where is the

project? How much money has been spent? Simple! There is no way that question can be said to be outside the ambit of the Question as it appears on the Order Paper!

**Mr. Duale:** Mr. Speaker, Sir, I do not want to lie to the House. I undertake to bring that information to the House.

**Mr. Speaker:** Very well! I will defer the Question to Tuesday for you to bring that answer. We will restrict ourselves to just that answer because that was the last question.

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. In answering the question as to when the request was made, he purported to read from the documents he has tabled. I have looked at these documents and none of them has that request. Could he, please, make available that information, even if not now, when he comes to give the answer? It is not among these documents!

**Mr. Speaker:** Order, Mr. Imanyara! I am not inclined to allow that because, in the first place, I have already given directions. I have deferred the Question to Tuesday for the Assistant Minister to come with the answer to the last question. If the Assistant Minister has given a wrong answer to a Question, then there is a better way of holding the Assistant Minister to account for giving false information to the House. That is the way you should go!

*(Question deferred)*

## ORAL ANSWERS TO QUESTIONS

*Question No.976*

### LOSS OF AGRICULTURAL LAND TO ESTATE DEVELOPERS IN TOWNS

**Mr. Mwangi** asked the Minister for Agriculture:-

(a) whether he is aware that the country is losing high agricultural potential land to estate developers, especially in the environs of Nairobi, Thika and other towns and, if so, what plans are in place to reverse the trend; and,

(b) whether he is also aware that families that have been working in the coffee and tea estates have been turned into squatters and, if so, what plans the Government has to resettle them.

**The Assistant Minister for Agriculture** (Mr. Mbiuki): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the country is losing the high agricultural potential land to estate developers due to increased demand for housing occasioned by rising population in urban areas. Whereas my Ministry has powers to make rules on preservation, utilization or development of land, I have no powers of control over sub-division of agricultural land.

(b) Yes, I am aware that some of the families that were working in the coffee and tea estates have been turned into squatters. However, the Ministry of Agriculture does not have a programme under which resettlement of squatters can be undertaken.

**Mr. Mwangi:** Mr. Speaker, Sir, whereas the Assistant Minister has given a very brief answer to the Question, he has admitted that the Ministry has powers on preservation of those high potential agricultural areas. In my Question, I did not ask whether he has powers on sub-division of agricultural land. The concern is the

preservation of high potential land. Other countries from the Middle East are coming here in Kenya to take the land that we should preserve for food production. Could the Assistant Minister explain why, because he understands that agriculture is the key driver of our economy, he would allow high potential land to be converted into housing estates?

**Mr. Mbiuki:** Mr. Speaker, Sir, the agricultural land sub-division is controlled by the land control board established under the Land Control Act. The nomination of board members is guided by Section 5(2) of the Act and participation of the Ministry of Agriculture in the board is not guaranteed. The section only refers to public officers without specifying the department in which they are supposed to come from. It is the responsibility of the Ministry of Agriculture, through the Land Control Board, to protect agricultural land from people who want to make profit out of it.

**Mr. Njuguna:** Mr. Speaker, Sir, thank you!

**Mr. Speaker:** Order, Mr. Njuguna! You have not caught the Speaker's eye! Last question Mr. Mwangi!

**Mr. Mwangi:** Mr. Speaker, Sir, could the Assistant Minister, at least, assure this House that he is in a position to utilize the powers that have been granted to him to preserve that potential land?

**Mr. Mbiuki:** I want to assure this House that through the adoption of the draft National Land Policy, we shall have the powers to make all the preservation of the agricultural land; these powers will be entrenched through the National Land Policy. I can table it for the hon. Member to peruse.

*(Mr. Mbiuki laid the document on the Table)*

#### *Question No.732*

#### KILLING OF FOUR SUSPECTS BY POLICE IN KISUMU

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

(a) what are the circumstances surrounding the shooting to death of Messrs. Nicholas Odhiambo, Julius Omondi, Paul Ouma and Joseph Owino by police officers near Sabuni Road Police Patrol Base in Kisumu on 12th December, 2010;

(b) what steps the police took to ensure that they were acting on correct information when they accosted them and whether the Minister could also explain why the police officers shot them and yet, they were not armed; and,

(c) what steps he is taking to redress the situation and compensate the families of the deceased.

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

(a) On 12<sup>th</sup> December, 2010, at about 9.00 p.m. Mr. Ochieng Migangu – a resident of Kanyamenda area – was attacked by a gang of about ten men and robbed of the following: One motorcycle registration No.KMCM 194K, electronic goods and other household goods. The complainant also sustained a fracture on his right hand and serious injuries on other parts of his body. After the incident, the complainant reported the robbery at Industrial Area Police Patrol Base at about 9.30 p.m. As the

police officers were moving to the scene, they intercepted a gang of four riding on two motorcycles near the police patrol base within Industrial Area - that is Sabuni Road in Kisumu. The complainant was able to identify his motorcycle to the police officers who ordered the suspects to stop, but they defied the order and sped off. The officers then opened fire fatally injuring the four and recovered the motorcycle make TVS Reg.No.KMCM 194K.

They also recovered a second motorcycle Registration No.KAD 715 Z, an electric extension cable, a panga and a hammer. The complainant identified the first motorcycle Registration No.KMCM 194K and the electric extension cable as belonging to him.

(b) The police officers were acting on correct information in that the complainant positively identified his motorcycle by the registration plate. The police challenged the gang to stop, but they defied the orders and sped off. The suspects were armed with a panga and a hammer.

(c) Investigations commenced immediately and the CID Inquest File No.2/10 was opened and forwarded to the Attorney-General's Chambers, Kisumu, for perusal and advice. The Attorney-General has since directed that the file be placed before a magistrate for public inquest. The hearing will commence on 15<sup>th</sup> September, 2011. The Minister cannot compensate the families of the deceased unless the officers are found guilty and a court order to that effect is also issued.

**Mr. Olago:** Mr. Speaker, Sir, this is a very serious issue because the deceased persons; Nicholas Odhiambo, Julius Omondi, Paul Ouma and Joseph Owino, were young men all in their twenties. This answer is so full of contradictions that I do not even know what to do with it.

First of all, how was it possible for Mr. Migangu to identify his motorcycle at 9.30 p.m. when they were still along the road? That is what the answer says. Then---

**Mr. Speaker:** Order, Mr. Olago! One question at a time!

**Mr. Ojode:** Mr. Speaker, Sir, indeed, I also asked the police the same question. They told me that while they were patrolling after the complainant had gone to the patrol police base--- At the patrol police base we only have ten police officers. There are street lights within Sabuni Road in Industrial Area, Kisumu. So, the motorcycle could easily be identified using the number plate. The motorcycle was there and when the riders were stopped, they defied the order. It is then that the police opened fire because the gang was armed with a panga and a hammer. It is quite unfortunate.

I also said that we wanted the police who fired at the four people to be identified. We asked the eye witnesses to identify him because we were willing to parade the officers within that patrol base, but the witnesses declined to identify the officer who fired at the deceased persons. In a nutshell, we have taken the cartridges to the ballistics to tell us who actually fired at these fellows.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister say that this incident occurred along Sabuni Road and the policemen were able to identify the motorcycles because of the street lights. Is it in order for him to mislead the House that the incident occurred along Sabuni Road when it actually occurred along Kotur Sewage Road where there are no street lights at all?

**Mr. Ojode:** Mr. Speaker, Sir, the information I have is that the incident happened along Sabuni Road in Industrial Area, Kisumu. That is where the actual incident happened.

**Dr. Nuh:** Mr. Speaker, Sir, the Assistant Minister says that the motorcycle belonged to the complainant. What evidence does he have to show that? Does he have



the logbook of the motorcycle in order to identify positively that the motorcycle, indeed, belonged to the complainant? Could he table it?

**Mr. Ojode:** Mr. Speaker, Sir, that is why there is a hearing starting in September. We will have to produce documents showing that the motorcycle belonged to So and So and not the other person.

**Dr. Eseli:** Mr. Speaker, Sir, this is a situation where one motorcycle was reported stolen, but the people who were shot were actually on two motorcycles. Therefore, one motorcycle had not been stolen. Is it right for the police to shoot to kill suspects even when they are not armed with firearms?

**Mr. Ojode:** Mr. Speaker, Sir, it was a very unfortunate situation. I think the police officers were scared that these fellows might be armed. Eventually they found that they were armed with a panga and a hammer. So, it is an unfortunate situation. However, that is why we want a full hearing of this case so that we know who is to be blamed.

**Mr. Mbadi:** Mr. Speaker, Sir, I would have wished that the Assistant Minister came to this House and told us that the investigations are ongoing because from his answer he is not even convinced that he is giving us the correct answer. The motorcycles were two and people who were shot were four. So, I guess that there was a passenger and a rider on each motorcycle. In any case, why did the police have to shoot the two? Even if they were trying to escape, could they not just shoot one and the other one would have fallen naturally? Why did it become necessary for the police officer in each case to shoot the two of them?

**Mr. Ojode:** Mr. Speaker, Sir, I indicated that this quite an unfortunate situation where four people were killed at a go. Now that the matter will be handled by the court, let us wait and hear who was wrong on this matter.

**Mr. Olago:** Mr. Speaker, Sir, you will notice that in this case the Assistant Minister is relying on the inquest. This is clearly a case of extrajudicial killings and the police should not be expected to compile the inquest file, prosecute it themselves and then come out with the truth. I kindly ask the Chair that this matter be referred to the Departmental Committee on Administration and National Security so that more details can come out.

**Mr. Ojode:** Mr. Speaker, Sir, I have no problem with that.

**Mr. Speaker:** Mr. Assistant Minister, if the answers you have given are correct that this matter is now the subject of a court inquest, then, obviously, you cannot be the same person agreeing that it should be referred to the relevant Departmental Committee. If it is already the subject of an inquest, then it is pending before court and you have said that there is a hearing date in September, 2011. Obviously, there is a doctrine of separation of powers. You have got to let the court process run its full course before you can come back to the House Committee.

**Mr. Ojode:** Mr. Speaker, Sir, you are right. You are also aware that if I were to insist that it should not be taken to the Departmental Committee for investigation they would have said that I am trying to compromise---

**Mr. Speaker:** Order, Mr. Ojode! It will have to be so. Let the inquest be completed, Mr. Olago. You are a practitioner of law. After the inquest, if you are not satisfied then it may have to be referred to the relevant Departmental Committee.

**Mr. Ojode:** Correct!

**Mr. Speaker:** Very well!

Yes, the Member for Yatta!

*Question No.873*

NAMES OF YOUTH GROUPS BENEFITTING  
FROM YEDF IN YATTA

**Mr. C. Kilonzo** asked the Minister for Youth Affairs and Sports:-

(a) whether he could provide the names of all the youth groups from Yatta Constituency that have benefited from the Youth Enterprise Fund channeled through the banking institutions; and,

(b) what mechanisms the Government is putting in place to ensure that more young people benefit from the said fund.

**Mr. Speaker:** Is the Minister for Youth Affairs and Sports not here?

Apparently, the Minister is not in the House. Do we have a Minister to hold his brief? Minister for Information and Communications, what is happening to your colleague?

**The Minister for Information and Communications** (Mr. Poghio): Mr. Speaker, Sir, if we can just ask for your indulgence on the matter, so that maybe during the second round he might be here.

**Mr. Speaker:** Order. There is no second round. I have previously given directions on this matter.

**The Minister for Information and Communications** (Mr. Poghio): Mr. Speaker, Sir, I have to find out where the Minister is and if not---

**Mr. Speaker:** Member for Yatta, are you comfortable if I defer this Question to Tuesday, next week?

**Mr. C. Kilonzo:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Minister for Information and Communications, in the meantime, we hope that your colleague will come with some reasonable explanation as to why he is not here to answer the Question.

**The Minister for Information and Communications** (Mr. Poghio): Thank you, Mr. Speaker, Sir. I will communicate to my colleague.

**Mr. Speaker:** Very well.

*(Question deferred)*

*Question No.972*

COST OF UPGRADING ROADS IN  
MANDERA/WAJIR/GARISSA COUNTIES

**Mr. M.H. Ali** asked the Minister for Roads:-

(a) Whether he could provide a list comprising of names and costs of all roads done or repaired during the last three financial years, excluding the constituency fuel levy fund,

(b) What plans he has to improve major roads connecting administrative districts to all-weather roads in the three counties of Mandera, Wajir and Garissa; and,

(c) How much money he has allocated these roads in the 2011/2012 Financial Year.

**The Assistant Minister for Roads** (Mr. Kinyanjui): Mr. Speaker, Sir, I have spoken to the hon. Member because I feel this answer is not sufficient for the

Question asked by hon. Member. We are, therefore, requesting that this Question be deferred to next week.

**Mr. Speaker:** Very well. The Question is deferred to Wednesday, next week in the morning. Is that good for you, Mr. M.H. Ali?

**Mr. M.H. Ali:** Mr. Speaker, Sir, I wish to request that this Question be deferred to two weeks from now. I think 23<sup>rd</sup> of this month will be okay.

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

**The Assistant Minister for Roads** (Mr. Kinyanjui): Much obliged, Mr. Speaker, Sir.

*(Question deferred)*

*Question No.994*

KILLING OF PETER KAMAU MWANGI  
BY FOREST GUARDS

**Mr. Gaichuhie** asked the Minister for Forestry and Wildlife:-

(a) under what circumstances Mr. Peter Kamau Mwangi was shot dead by forest guards at Menengai Crater Forest on 5<sup>th</sup> February, 2011; and,

(b) when his next-of-kin will be compensated.

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Mr. Peter Kamau Mwangi lost his life on 6<sup>th</sup> February, 2011, at the vicinity of Menengai Crater Forest reportedly from a gunshot that may have emanated from a rifle belonging to the Kenya Forest Service. The matter is currently under investigations to establish the full circumstances that led to the reported incident.

(b) The compensation to the next-of-kin will be determined after completion and conclusion of investigations in which the verdict will inform the next course of action.

**Mr. Gaichuhie:** Mr. Speaker, Sir, I want to thank the Assistant Minister for that answer. He says the bullet may have emanated from a rifle from the forest guard. However, the same forest guard was transferred the following morning. How are we sure that he is undertaking investigation? The investigation has taken more than six months from the day of shooting.

**Mr. Nanok:** Mr. Speaker, Sir, this is a matter that was brought to the attention of the police in Nakuru Police Station on the same day when the incident happened and it was booked under OB No.2/7/2011. A police case file No.760/131/2011 was opened. As far as we have been informed by the Kenya Police, this is a matter that has not yet been concluded up to now. We are waiting for them to finalize the investigations and give us their verdict, so that we can know what will be the next course of action.

**Mr. Mbadi:** Mr. Speaker, Sir, this looks like an investigation that can take a very short time. Could the Assistant Minister tell us how long we will have to wait for this investigation to be concluded given that it is now six months since the shooting took place? When will this House be informed that the investigation is complete and the circumstances surrounding the shooting made public?

**Mr. Nanok:** Mr. Speaker, Sir, as I said, this is a matter that was picked up by the police under the Ministry of State for Provincial Administration and Internal Security. However, they have not yet given us an indication on when they will release their findings. We are concerned just as the hon. Member is that there has been quite a long delay in releasing the---

**Mr. Mwangi:** On a point of order, Mr. Speaker, Sir. Now that the Assistant Minister has admitted he cannot give the report immediately, would I be in order to request that this Question be referred to the substantive Minister who will be able to provide the answer immediately?

**Mr. Speaker:** You will not be in order because I am satisfied that the Assistant Minister has properly answered the Question up to the point where we are.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. If you listened to the Assistant Minister, and I am sure you did, he categorically told us that this matter is being handled by the Ministry of State for Provincial Administration and Internal Security. Collective responsibility in the Government dictates that Government departments and Ministries consult. Is it in order for him to evade answering a Question which he could have consulted within the Government to give us a definite answer on?

**Mr. Nanok:** Mr. Speaker, Sir, I have given an answer as far as I understand it. Since the Minister of State for Provincial Administration and Internal Security is in this House with us, he can pick up from there and provide an answer as to why they have not been able to finalize investigations.

**Mr. Gaichuhie:** Mr. Speaker, Sir, indeed, it is a very sad day today because six months since this person was shot dead, not even a single person has ever been called to record a statement. They know very well that their officer was drunk and that is why the Ministry decided to transfer him and hand over the case to the Kenya Police. Police officers are unable to investigate this case because the person who killed Mr. Mwangi was transferred. Why is this particular Ministry transferring responsibilities to the other Ministry without proper information?

**Mr. Nanok:** Mr. Speaker, Sir, this is a criminal case where somebody died. Normally, in case of death, it is a matter for the police to take up the investigations and conclude them and not my Ministry. Since it happened outside the area of where my Ministry is responsible, then it was a matter for the Kenya Police to look into.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister saying that it happened outside the place of work. But it is also obvious that that person used the firearm provided by the Ministry. Is it in order for him to refuse to get sufficient details within the Government and report to this House? Is it in order for him to wash off his hands and this is his employee?

**Mr. Speaker:** Mr. Assistant Minister, do you want to react to that point of order?

**Mr. Nanok:** Mr. Speaker, Sir, what we are aware of, from what we have been informed by our own officers is that the place where this incident happened is a notorious crime area. If he---

**Mr. Gaichuhie:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to keep on saying that the area is a notorious crime area while he knows they have a forest gate on that particular spot with their forest guards guarding it? Do you have the forest guards there because it is a notorious crime area or because his forest guards are there to collect forest cess which is even illegal?

**Mr. Speaker:** Mr. Assistant Minister, please, proceed. Let us wrap up this matter. I think you have so far given very good answers, but you appear to be getting yourself entangled in unnecessary confusion.

**Mr. Nanok:** Mr. Speaker, Sir, if you read me, I am not getting entangled at all. I said this is a matter for the Kenya Police to investigate. So far, they have informed us that they have not finalized the investigations. To the best of my ability, that is what I can to report in this House.

**Mr. Speaker:** Very well, Mr. Assistant Minister. You understand now why I used the words “entangling yourself”? If you are saying this matter was reported to the police and that they are investigating, then you have no business now beginning to bring in adjectives like “this is a notorious criminal area”. How does that help you?

This is why the Speaker says that you are entangling yourself into matters that maybe extraneous. Member for Subukia, perhaps you want to follow up this matter with the police. You have, in this House, said that this officer was drunk. If you have that evidence, please, go and file it with the police and ensure that investigations are completed. That is the way to go.

*Question No.1075*

DELAY IN PRESENTATION OF DRAFT NATIONAL  
ENVIRONMENTAL POLICY

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

(a) whether he is aware that Kenya does not have a National Environmental Policy despite the numerous environmental challenges it is experiencing;

(b) why the Ministry has not presented the Draft National Environmental Policy, which was prepared through a comprehensive consultative process in 2008, to the Cabinet; and,

(c) when the Ministry plans to present the policy to Parliament.

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

(a) Kenya has Sessional Paper No.6 of 1999 titled: Environment and Development as a Key environmental policy document and the basis for the Environmental Management and Co-ordination Act (EMCA) of 1999. The EMCA, 1999, is a framework law that provides for effective co-ordination of regulation of all actions directed at or likely to have influence on the environment. There are also sectoral policies, for example, in agriculture, water and land that support environmental sector governance.

(b) The Draft National Policy of 2008 was an effort by the Ministry to address identified gaps in the Sessional Paper No.6 of 1999, which I have referred to and any new environmental challenges that have emerged since 1999, as correctly articulated in the Question by the Member. We now have a new Constitution with strong messages on the environment and natural resources in terms of quality, access, availability and the overall mandate of the national Government as well as the county governments. I have, therefore, gazetted a taskforce from 1<sup>st</sup> November, 2010 to review existing legislation, make recommendations and draft new Bills that can be presented to the Cabinet.

(c) The taskforce term ends in November, 2011, and I expect to have a document on policy before the Cabinet and subsequently to Parliament.

**Dr. Otichilo:** Mr. Speaker, Sir, while I thank the Assistant Minister for the good answer, however, what are the specific terms of reference for the taskforce? What are the expected deliverables for this taskforce?

**Prof. Kamar:** Mr. Speaker, Sir, I cannot say the exact terms of reference for the taskforce, but the real task that has been given to this taskforce is to review all laws and policies in the Ministry in line with the new Constitution. They should align them first to the national Government and then to the county governments when it is possible. They are handling all our laws both environmental and in the mineral sector.

**Dr. Otichilo:** Mr. Speaker, Sir, while the taskforce is reviewing all the legislation, does this include other sectoral legislations in agriculture, wildlife, forestry, energy and land? We have so many conflicting legislations and that is why it is very difficult to manage the environment in this country.

**Prof. Kamar:** Mr. Speaker, Sir, the review is being done, first independently by the different Ministries. Our taskforce is dealing with our Ministry while the other Ministries are dealing with their issues. But we also have sectoral meetings where we do harmonization and re-alignment of the laws so that the overlaps are recognized and we are able to define the areas.

At the moment, the taskforce, like all other taskforces, is focusing on laws that must be submitted before 26<sup>th</sup> August. We already have our environmental and land drafts submitted to the Attorney-General. That was done as a sectoral law because it was touching on land as well as the environment. So, it is true that some of the laws and the policies are overlapping but each Ministry is generating their own. We recognize the overlaps, work on them and come up with harmonized laws. Where it is necessary to work as two Ministries, we do that.

**Mr. Speaker:** Order! Hon. Members, we will proceed in this manner. Since we have come to the Prime Minister's Time, we will first take a Statement from the Prime Minister. Thereafter, we will take any other Statement which may be ready for delivery this afternoon and then we will close that session.

So, Right Hon. Prime Minister!

### **PRIME MINISTER'S TIME**

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, although on the Order Paper I was supposed to be talking about the issue of IDs, you ruled yesterday that we make a Statement on GMO foods.

**Mr. Speaker:** That is so right, hon. Prime Minister. If you are ready, deliver your Statement on GMO.

### **PRIME MINISTERIAL STATEMENT**

#### **SAFETY OF GENETICALLY MODIFIED FOODSTUFFS**

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, in line with your ruling yesterday that the Government issues a Statement on genetically modified foods, in particular, the importation and consumption of the genetically modified maize, I rise to make the following Statement.

The World Health Organization (WHO) defines GMOs as organisms in which the genetic material, otherwise known as the deoxyribonucleic acid or DNA is

artificially altered in a way that does not occur naturally. This technology, sometimes called biotechnology or gene technology or genetic engineering, allows the selection and transfer of individual genes from one organism to another. With regard to foods, gene technology has been used to improve geneability and the nutritional value of crops, improve crop resistance against plant diseases, increase crop yields, generate seeds that mature faster with little rain and generally reduce the use of herbicides or insecticides in agricultural production.

With regard to the safety of GMO foods, the WHO has opined as follows:-

“The GMO foods currently available on the international market have passed risk assessment and are not likely to present this for human health. In addition, no effects on human health have been shown as a result of the consumption of such foods by the general population in countries where they have been approved. Continuous use of risk assessment based on the Codex Principles and where appropriate, including post-market monitoring should form the basis of evaluating the safety of GMO foods”.

Mr. Speaker, Sir, the World Health Organisation (WHO) lists maize, soya bean, squash, potato, oil seeds and chicory as GMO crops currently on the international market. These crops are traded in Argentina, Canada, Republic of South Africa, United States of America, and in some European Union (EU) countries. I table the WHO answers to 20 questions frequently asked on GMO foods.

*(Mr. Raila laid the document on the Table)*

The Government, informed by the shortage of non-GMO maize on the international market, has authorised the importation of GMO maize during this drought crisis on the following conditions:-

(i) that all importation, marketing, transportation and exportation of any GMO maize be done by registered millers only, and with the written approval of the National Biosafety Authority (NBA), issued under Sections 20, 21, 22 and 23 of The Biosafety Act;

(ii) that all applications for the importation, marketing, transportation and exportation of GMO maize be made by millers to the National Biosafety Authority;

(iii) that all quantities of imported GMO maize be handled by registered millers only, and be milled into flour, with none being distributed as seeds; and,

(iv) that any flour made from GMO maize be labelled as such to give full information to the consumer at the time of purchase.

Mr. Speaker, Sir, while some of the millers have made inquiries from the National Biosafety Authority on the procedure for the importation of GMO maize, no miller has actually made an application for a licence to import GMO maize. This is because the necessary biosafety regulations outlining the procedure for importation of GMO food are with the Government Printer, awaiting publication. All the maize that has been imported by the millers has been certified GMO-free by the Kenya Bureau of Standards (KEBS) and inspection agencies such as Intertex.

I also have a copy of all the certification. I have a set of documents I would like to table in support of this statement. I have a letter from KEBS, which says:-

**“RE: CLEARANCE OF GMO MAIZE INTO THE COUNTRY**

This is to confirm that the Kenya Bureau of Standards has not cleared any GMO maize into the country through any of the entry points.”

Mr. Speaker, Sir, another letter is from the Ministry of State for Special Programmes, which states as follows:-

**“RE: FALSE ALLEGATION ON SUPPLY OF GMO MAIZE**

This is to inform you that there are claims by Hon. John Mututho, Member of Parliament for Naivasha Constituency, that this Ministry is distributing GMO maize to the drought stricken Kenyans. I wish to clarify that the maize we are distributing is from the Strategic Grain Reserve, which has been in storage for the last two years. It is maize from the 2009 crop purchased from the local farmers.

The purpose of writing is, therefore, to request that the Prime Minister clarifies this during the Prime Minister’s Time in Parliament today.”

Mr. Speaker, Sir, I have documents from the Cereal Millers Association, giving details of all the maize that has been imported into the country. Since the Government gave the order for Duty Free importation, six consignments have arrived in the country, and they have been tested by authorities of the countries of origin. I have a document on a consignment from Malawi authored by the Director of Agricultural Research Services, addressed to the Ministry of Agriculture, Kenya. It reads as follows:-

**“GMO-FREE DECLARATION**

This is to declare that Malawi is a GMO-free country. As such, the 1,500 metric tons of white maize from Malawi to Pembe Flour Mills Limited, Nairobi, Kenya, is GMO-free, basing on its origin.”

Mr. Speaker, Sir, another letter from the same authority reads as follows:-

“This is to declare that Malawi is a GMO-free country and as such 1,000 metric tonnes of white maize from Malawi to Capwel Industries Limited of Thika, Kenya, is GMO-free, as to its origin.”

A similar letter for another consignment of 4,000 tonnes to Premium Flour Mills is from Malawi. Another letter is from the Ministry of Agriculture and Co-operatives of Zambia, which also declares that the maize from that country is GMO-free.

Finally, I have a certificate from the KEBS and UFSW, which is another testing authority, confirming that the consignments of maize that have come into the country are GMO-free.

Mr. Speaker, Sir, therefore, I wish to state categorically, without fear of contradiction, that no GMO maize has so far come into our market.

**Mr. Speaker:** Very well. Any Hon. Members wanting clarifications? Let us begin with the Member for Naivasha. The Rt. Hon. Prime Minister, please, take notes.

**Mr. Mututho:** Thank you, Mr. Speaker, Sir. Prime Minister, I thank you for your clarification and assertion that, indeed, GMO maize is being consumed all over the world. Could you indicate anywhere in the world – in small outlets or commercial outlets – where the following varieties of maize are being consumed or are available for human consumption: MON810, MON863, NK603 and a cross-breed of the same?

While responding to that question, also using your system as the co-ordinator of Government Ministries, could you apprehend the following motor vehicles, which are now between Mombasa and Nairobi: KAZ 603C, lorry; KBK 980L, lorry, and



KBG 221D of M/s Sanghani, with 720 bags of maize, clearly marked “GMO” and destined for Isiolo?

Finally, are you aware that both MON810 and NK623 and a cross breed of the same in the trials that were conducted in Vienna, mice fed on a diet of over 30 per cent of that variety, for three generations did not reproduce? In all cases the epithelium of the intestines or the intestines had thickened up to double in all the varieties.

Mr. Speaker, Sir, this is important because there is a possibility that human beings can also be affected and their fertility affected. They will need at least 18 years to 21 years to see whether their physiology and reproduction has been affected. That is why the test on mice is important.

I would also like to state here that you have misled the House specifically and generally on GMO because I am going to table a series of documents one after another, demonstrating that, indeed, in this country people have applied for GMO and it has been received.

Mr. Speaker, Sir, I will start with why GMO is regulated because we are signatories to the Cartagena Protocol. The Protocol demands that you must disclose that this is GMO and all of it must pass through a clearing house. This is not just a place of documents; they are laboratories where results can be compared and various observations approved or tested before it can finally be allowed for human consumption. You have said it in a very candid way and you are right that such information must be well printed on the containers---

**Mr. Speaker:** Order, Member for Naivasha! You are seeking clarification, can you try and be precise and to the point?

**Mr. Mututho:** Mr. Speaker, Sir, I want to table the documents.

**Hon. Members:** Table! Table!

**Mr. Mututho:** Mr. Speaker, Sir, I am getting so many instructions from the Backbenchers.

**Mr. Speaker:** Refer to the gist of the documents that you want to table and what you want the Right Hon. Prime Minister to clarify. Be brief!

**Mr. Mututho:** Mr. Speaker, Sir, I will be very brief. I want to table documents to show that GMO has been imported through authorization from the Government. I want to table a letter from KEPHIS---

*(Mr. Mbuvi consulted the Speaker)*

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. This matter is so serious and I notice that your attention is being distracted by Mr. Mbuvi! Could he give you a minute?

**Mr. Speaker:** Proceed, Member for Naivasha!

**Mr. Mututho:** Mr. Speaker, Sir, I want to table a letter dated 20<sup>th</sup> May 2011, Report of Grain Inspection from KEPHIS which clearly shows a huge consignment tested positive for GMO.

I want to table a second document showing who, indeed, applied and who approved the GMO. Again, this is KEPHIS. I also have the receipts which were issued in South Africa for the same. They were several consignments all totaling to about 280,000 metric tons. Most importantly, I have a certificate from KEPHIS which allowed the exporting authorities to export. Under the Protocol, they cannot export until the recipient country agrees that GMO is safe to be imported.

*(Mr. Mututho laid the documents on the Table)*

I would like to invite you to look at paragraph four particularly, which clearly says the varieties are the ones I am questioning; MON810 and NK603.

**Mr. Speaker:** Member for Naivasha, is the clarification, in a nutshell, that GMO maize has been imported into the country and you have given the varieties?

**Mr. Mututho:** Yes.

**Mr. Speaker:** Have you given the dates when these importations were done?

**Mr. Mututho:** Mr. Speaker, Sir, they are contained in these documents.

**Mr. Speaker:** Next time, try and be brief and to the point!

**Mr. James Maina Kamau:** Mr. Speaker, Sir, I would like to appreciate facts given by the Prime Minister regarding the GMO foods. I would like the Prime Minister to clarify the following.

Why is the Government not willing to buy food from the local market? We know we have food in Central Province and parts of the Rift Valley Province. The Government is not willing to buy from the local market so that they can feed the people who are suffering in the north. It is very expensive and it seems there are people who are interested in making money by buying food from the international market. The Prime Minister should give a clarification on this.

**Mr. Mbuvi:** Mr. Speaker, Sir, is the Prime Minister aware that this plastic yellow GMO maize contributes to infertility among the youth?

**Mr. Mungatana:** Bw. Spika, miaka michache iliyopita, kulikuwa kukiingizwa unga wa manjano hapa nchini wakati kulikuwa na njaa. Lakini kulikuwa na wasi wasi sana miaka hio. Watu walisema eti hiyo ilikuwa chakula ya ng'ombe, mbuzi na mambo kama hayo. Sasa wakati huu, huku tukiwa na baa la njaa, wananchi wanataka kujua: Je, hii chakula ya GMO iko sawa kwa wananchi kutumia ama vipi? We want an authoritative Government statement on this matter.

**Mr. Ngugi:** Mr. Speaker, Sir, I would like the Right hon. Prime Minister to clarify whether there are any plans in the future to authorize importation of GMO.

**Mr. Speaker:** Very well! Right hon. Prime Minister, I would like that you respond to those five then we could get another five.

**The Prime Minister (Mr. Raila):** Mr. Speaker, Sir, the hon. Member for Kandara was concerned about importation of maize when there is maize in the country. I would like to inform the hon. Member that the Government has not ignored the maize that is currently being harvested by farmers in the country. The importation is allowed because of the acute shortage that exists in the country, particularly, with regard to Strategic Grain Reserves (SGR). Because of the drought that has persisted we were running out of stock at the SGR and so, we allowed importation by millers, not by the Government. The Government has not imported any maize. We decided that the money available to the National Cereals and Produce Board (NCPB) be used to purchase maize from farmers locally.

As I speak, the National Cereals and Produce Board (NCPB) is buying maize from farmers to re-stock, because our Strategic Grain Reserves (SGRs) had dwindled to just about two million bags. We intend to increase it to eight million bags. Therefore, our farmers have no reason to worry that their maize will not be bought. This importation does not affect locally produced maize at all.

Mr. Speaker, Sir, hon. Mbuvi, talked about GMO and infertility. That is just speculation. It is a statement without any foundation. I did produce here a report by the World Health Organization (WHO), which is the most authoritative organization

internationally. The WHO has said that it is safe to consume GMO foods. I did not see any allegation or reference to infertility in that report.

Mr. Speaker, Sir, hon. Mungatana has also asked whether we can say categorically that GMO foods are safe. There are certain qualifications and that is why I have tabled this report from the WHO. But I want hon. Mungatana to know that there are countries where GMO foods are sold in the market. Among them are Argentina, Canada, South Africa, United States and some European Union (EU) countries. The only requirement is that you must label it as GMO food, so that the customer knows what he or she is buying. There is an option of GMO and organic food. So, customers are given an option and a number of people who have lived in countries like United States can vouch to this. Hon. Ojode can confirm this.

Mr. Speaker, Sir, hon. Ngugi might not have been in the House when I made the original statement and said that a decision had been taken to allow for importation of GMO maize on certain conditions. The House needs to know that it passed the Biosafety Bill and is now an Act of Parliament, which states clearly conditions under which GMO food can be imported into the country. We have already set up a Biodiversity Council which is charged with the responsibility of carrying out the testing of this food before it is allowed into the market for consumption.

Mr. Speaker, Sir, hon. Mututho, of course, made several allegations. I have not had time to interrogate all the documents that he has produced. This is supposed to be a report which has been prepared. It says:-

“Please, note that these reports are a product of my interrogations of the KEPHIS officers and extraction of relevant information from the files. I was not the KEPHIS Managing Director during the period under investigation.”

Mr. Speaker, Sir, this is not actually a certificate from Kenya Plant Health Inspectorate Services (KEPHIS). This is basically a report by somebody else. It also says:-

“As directed, this is the report of the maize consignment which came into the country in 2009 in two vessels, namely, C.M. Opal, docking on 20<sup>th</sup> May, 2009 and Aquila Companion on 14<sup>th</sup> June, 2009.”

Mr. Speaker, Sir, we are talking about 2011 when the Government formerly allowed for importation. That is when I said that since that time, no GMO maize has come into the country. There has never been any authority. If somebody did import any GMO food into the country, it was illegal because no authority had been given. That might inform this investigation that took place. Hon. Mututho was being very economic with facts. This does not contradict the Statement that I have made here; that since the Cabinet decision, no GMO food has been imported into the country. I challenge hon. Mututho to contradict that Statement.

Mr. Speaker, Sir, hon. Mututho has mentioned certain brand names and what effects they have on human beings. I want to invite him to listen also to other authorities other than his own. The Americans cannot be so negligent as to allow the American people to consume GMO food if it is harmful. Let us not be too conservative because science is moving on. Conservatism is not going to help this country. Alarming statements which are calculated to instill fear into the---

**Mr. Mututho:** On a point of order, Mr. Speaker, Sir. I would like to encourage the Prime Minister to cool down and come to the varieties.

**Mr. Speaker:** Order, Member for Naivasha! You have stood on a point of order!

**Mr. Mututho:** Mr. Speaker, Sir, is the Prime Minister in order to assert that no tests have been done on MON810 and NK603, or to imply the same when he says

that this food is being consumed? Where has it been consumed in the whole world? What I said in my statement – what he is holding there – is that the KEPHIS itself has indicated that certain varieties of GMO have been imported into Kenya. That is obviously what he is holding there. I would like him to look at the document itself before asserting that, indeed, no GMO has been imported.

Mr. Speaker, Sir, further, I said that three lorries are now coming to Nairobi from Mombasa.

*(Loud consultations)*

**Mr. Speaker:** Order, Member for Naivasha! I will protect you, indeed. Just resume your seat for a moment.

*(Mr. Mututho resumed his seat)*

Why do you not prosecute your point of order in a manner that is more concise and precise than you have so far done? For example, ask the Prime Minister if he is in order to mislead the House that no GMO has been imported into the country, when you have tabled documents that demonstrate that GMO of species NCK or whatever it is, have been imported. Do it more precisely!

**Mr. Mututho:** Thank you, Mr. Speaker, Sir. Is the Prime Minister in order to mislead this House by saying that no GMO has been imported into this country, whereas, I have given documents to the effect that GMOs of variety MON810 and NK603 have, indeed, been imported as per the documents I have tabled in this House--

*(Laughter)*

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, I wish the hon. Member was more consistent and organized in his questions. He has talked about two things here. He is talking about maize that was imported into the country supposedly in 2009 as non-GMO, but when tested, was found to have been GMO. This is what he is talking about, and this is the report that he has tabled here.

So, he is not in any way contradicting the Statement that I have made. However, since we formally allowed the importation of maize into the country with effect from last month, no importer has gone and applied for permission to bring GMO maize. I said that we had agreed that only millers would be allowed to bring in GMO maize; the reason being that GMO maize will be milled and sold as flour and not as maize or grain because some people would use it as seeds. That is the reason why other importers were not allowed to import it. I have given a list of maize which has come into the country since that time. Most of it has come from Zambia and Malawi, which are GMO free countries.

Secondly, he has talked about lorries which are on the roads. I cannot inspect lorries on the roads right now. I wish he could give us shipping documents, if that consignment has come into the country as shipped cargo. That way, we would verify. He is talking about GMO maize, but he is not telling us about the origin of the maize and whether--- Some maize has been coming from Tanzania and some from Uganda.

*(A mobile phone rang)*

**Mr. Speaker:** Order! Whose phone is that? Could the hon. Member whose phone has just rang twice own up and, perhaps, step out for the next 30 minutes?

*(Mr. Ruto stood up in his place)*

**Mr. Speaker:** Please, do, Member for Chepalungu! You will return!

*(Mr. Ruto withdrew from the Chamber)*

Proceed, Right hon. Prime Minister!

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, I was talking about the World Food Organization (WHO). The question was: What kind of GM foods are in the market internationally? All GM crops available in the international market today have been designed using one of the three basic traits; resistance to intake damage; resistance to viral infections and tolerance towards certain herbicides. All the genes used to modify crops are derived from macro-organisms. With regard to maize, the trait is insect resistance. The areas or countries with approvals include Argentina, Canada, South Africa, United States of America and some other EU countries. The other one is herbicide tolerance which is found in Argentina, Canada and the United States of America. This gives the list of GMO foods which are currently on the international market. It gives clearly, what kind of crops they are, their kind of trait and the country. I would like to invite the hon. Member for Naivasha to embrace science and know that science is moving on. Conservatism will kill innovation.

The countries I have mentioned are fairly civilized and advanced. They would not allow their own population to consume GMO food if it was harmful. The statements emanating from the hon. Member are designed to create fear and despondency among our own population and it is not helpful. I invite the hon. Member to join us in embracing science because that is the only way this country will grow and develop.

**Mr. Speaker:** Order! Member for Naivasha, you have so far co-operated and done very well. The Right hon. Prime Minister, there is something you ought to do for this House and the country to be fair. The hon. Member for Naivasha has cited motor vehicles that he says are carrying GMO maize into the country. He has indicated the destinations they are going to even as we transact business in the House this afternoon. Could you undertake to ensure that those vehicles are checked to see if, indeed, they have GMO maize?

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, yes, I can give an undertaking on that. If the hon. Member gives me the details, I will forward them to the authorities concerned immediately, so that the consignment is impounded and tested to verify the wild allegations that the hon. Member is making.

**Mr. Speaker:** Very well. We will take just three more. We are out of time. I will pick those who will be lucky to be the three. Member for Lari, proceed!

**Mr. Njuguna:** Thank you, Mr. Speaker, Sir. While I thank the Prime Minister for his recent visit to North Eastern Province to console and comfort those affected by hunger, could he inform the House what action or measures he is taking with regard to the contradictory statement on the importation of maize issued by people in the Government? That information has caused anxiety and wrong perception on the maize.

**Dr. Nuh:** Nashukuru, Bw. Spika. Katika Ripoti ya WHO aliyoisoma Bw. Waziri Mkuu, katika sentensi mbili za mwisho, alisema kwamba matumizi ya vyakula

vya GMO kwa muda mrefu na utafiti katika soko utachangia kujua usalama wake katika maswala ya kiafya. Ningependa kujua ikiwa Waziri Mkuu anaweza kukiri kwamba utafiti unaotumika sasa hivi kujua kwamba chakula cha GMO kiko salama kiafya, ni utafiti uliotokana na chakula hicho kulishwa panya kwa muda wa miezi mitatu? Utafiti ambao ungeweza kubaini madhara ya kutumia vyakula vya GMO kutoka kwa matumizi ya mwaka moja, miaka 10 ama miaka 12 – ambayo inaleta hofu ya magonjwa kama saratani na mengine – mpaka wa leo bado haujabuniwa.

**Mr. Kabogo:** Thank you Mr. Speaker, Sir. I was just wondering why the Government is insisting on GMO maize, when we know that the world over has non-GMO maize? Why do we want to go into GMO maize? What is the advantage? Why does the Government think that GMO is what they should import and not non-GMO? Are people benefitting profit wise?

**Mr. Speaker:** Very well. Right hon. Prime Minister, you will respond and we close that matter.

**The Prime Minister (Mr. Raila):** Mr. Speaker, Sir, the hon. Member for Lari talked about contradictory statements by the Government. I do not know what contradictions he is talking about. I said that, that was a collective decision by the Government. What I have stated now is the Government's position on the issue of GMO. So, the hon. Member can ignore any other statements that have been issued by anybody else.

Mr. Speaker, Sir, hon. Nuh talked about research that is being done. I want Dr. Nuh to know that research is not just being done. The report I am reading is for 2002.

**Dr. Nuh:** Jambo la Nidhamu, Bw. Spika. Ningependa kujua kama Waziri Mkuu yuko kwa nidhamu kunijibu kwa Kiingereza ilhali nimeuliza swali langu kwa Kiswahili ili Wakenya wayasikie majibu yake.

*(Laughter)*

**Mr. Speaker:** Order! Dr. Nuh, the Rt. Hon. Prime Minister is in order. If you look at the Standing Orders, they will tell you that the Member contributing or speaking on any matter may do so in one of two languages – English or Kiswahili but that that Member must stick to one language as he goes through his contribution or address. So, you were obligated, since you started addressing the House in Kiswahili, to continue and finish in Kiswahili. The Rt. hon. Prime Minister is not compelled to follow your example.

*(Laughter)*

**The Prime Minister (Mr. Raila):** Mr. Speaker, Sir, as a matter of fact, nothing would have pleased me more than to answer him in Kiswahili, but I am not allowed because I started in English. I made my original statement in English and, therefore, I must stick to English; *hata mimi najua Kiswahili kabisa!*

*(Laughter)*

**Mr. Speaker:** Order! Proceed!

**The Prime Minister (Mr. Raila):** Mr. Speaker, Sir, the hon. Member, Dr. Nuh, needs to know that this is not something that started yesterday. This is a research that has gone on for over 20 years. So, it is not a question of testing on rats for three months or one year. Before a product is allowed into the market for human

consumption, the authorities must be satisfied that there are no side effects, or if they are there, then they are minimal. I want to refer him, for example, to the Food and Drugs Administration Authority in the USA which is very strict in allowing substances for human consumption; they have allowed the genetically modified organism (GMO) food to be marketed officially in the United States of America (USA). So, I want to invite the hon. Member to agree with me that they would not have done so if this food was harmful to their people.

Hon. Kabogo asked why GMO is not just GMO. What we said was that we were allowing importation of maize. The information that we have is that non-GMO maize is now very scarce on the international market. There are few countries, such as Malawi and Zambia--- South Africa, which is the biggest producer of maize on this continent, is GMO. You can no longer get non-GMO maize in South Africa, India, USA and so on. So we asked: Are we going to allow our people to starve to death just because we cannot import GMO food? We said “No”. That was why we gave the option to the people who can import maize to, preferably, bring in non-GMO maize; but if it is the GMO maize that is available, we will not let our people starve to death because of GMO. This is why we allowed this option. We also gave conditions which are contained in the Biosafety Act, which was passed by these very same hon. Members of Parliament. We passed the Act. Why did these hon. Members pass the Biosafety Act, if then thereafter they were to say they do not want us to import GMO food, even if the product we are bringing in satisfies the conditions contained in that Act?

Mr. Speaker, Sir, we are acting within the law, as a Government. We have a responsibility to ensure that Kenyans do not starve to death. Therefore, we will take every action to protect the lives of our people, and to also ensure that they are adequately fed.

**Mr. Speaker:** Very well. Hon. Members, I think we have requests for Statements. We want to take those requests beginning with hon. Affey.

**Mr. Mbuvi:** On a point of order, Mr. Speaker, Sir. As per the Order Paper, the Prime Minister is supposed to deliver a statement on issuance of identity cards.

**Mr. Speaker:** Order, hon. Mbuvi! That matter is now spent. If you look at your Standing Orders, they will tell you that the Prime Minister’s Time runs from 3.00 p.m. to 3.45 p.m. So, we are out of time to take any further statements under the Prime Minister’s Time.

Proceed, hon. Affey!

## **POINTS OF ORDER**

### **TERMINATION OF CONTRACTUAL AGREEMENT FOR AUTHORIZED SAFARICOM DEALERS**

**Mr. Affey:** On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Information and Communications. I seek a Statement on the undue termination of contractual agreements for 27 authorized dealers including Winsop Agencies, Laiser Communication, Ayun Communications and Tara Limited, among others, by Safaricom Limited. In his statement, the Minister should explain the following: One, the circumstances under which Safaricom allegedly lost Kshs364 million in 2010/2011 through underhand dealings by its finance managers. Two, why Safaricom deemed it fit to place blame on the dealers and not on the staff who caused the losses. Three, what action he will take to cushion the dealers from

making further losses arising from the termination of the contracts considering that the local investors are likely to lose over Kshs700 million in capital investments. Four, he should tell us whether he could also table the external audit report on this matter.

**The Minister for Information and Communications (Mr. Poghio):** Mr. Speaker, Sir, I will bring this Ministerial Statement on Thursday next week.

HIGH RATE OF MATERNAL/NEONATAL DEATHS  
AT PUMWANI MATERNITY HOSPITAL

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I rise to request an urgent Ministerial Statement from the Minister for Medical Services in respect of the case of high maternal deaths, high neonatal deaths, poor governance and administration, high incidents of corruption and general rot at the Pumwani Maternity Hospital. I would like him to clarify the following: One, what he is doing to rid Pumwani Maternity Hospital of the rot arising from poor delivery of health services occasioning high maternal deaths and deaths of new borns. Two, could he table a list of all maternal deaths at his hospital since January 2010 to date, indicating for each case the name of the patient, the age of the patient, the parity of the patient when she was dying and the cause of death? I would like the Minister to further table the statistics of the new natal deaths since January 2011.

Mr. Speaker, Sir, I would like the Minister to confirm that due to the perceived contribution to the poor governance and administration at this maternity hospital by the Medical Officer of Health (MOH) of Nairobi City, he was demoted by the Director of Medical Services and transferred to Kitale District Hospital. I would like the Minister to confirm the existence of a cartel of employees at the Nairobi City Council (NCC), who have briefcase companies that have been fleecing the NCC by pretending that they are supplying surgical and medical supplies, which are paid for, when, in fact, they have not been supplied.

Finally, I would also like the Minister to confirm whether he is aware that the Pumwani Maternity Hospital land parcels, namely LR36/7/254, LR36/7/255, LR36/7/256 and LR36/7/257, have been illegally allocated to private individuals and companies.

**Mr. Speaker:** Minister for Medical Services, we can we have that Statement?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Speaker, Sir, I undertake to inform the Minister for Medical Services to issue this Statement on Tuesday next week.

**Mr. Speaker:** Very well. It is so directed, Tuesday next week!

Yes, Member for Webuye!

KILLING OF COUNCILLOR TIMOTHY KALANDINI

**Mr. Sambu:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the brutal killing of Councillor Timothy Kalandini, councillor for Matutho Ward and Deputy Mayor for Webuye Municipal Council at around 9.00 p.m. on 2<sup>nd</sup> August, 2011, outside his gate.

Mr. Speaker, Sir, in the Statement, the Minister should give the circumstances surrounding the fatal shooting of the Deputy Mayor noting that nothing was stolen from him, or his car.



Secondly, he should explain the steps being taken by the Government to address the alarming insecurity in Bungoma and Trans Nzoia County given that less than six months ago, hon. Dr. David Eseli, MP, and hon. Soita Shitanda, MP, were both attacked in a hotel close to the scene of this brutal incident. Thirdly, confirm whether the Deputy Mayor's killing had any relation to heightened political activity in Bungoma County and hate speeches against the party that the late belonged to.

**Mr. Speaker:** Dr. Eseli, you have been mentioned in that request.

**Dr. Eseli:** Mr. Speaker, Sir, perhaps, when the Minister gives that Statement, he should also clarify whether this is a case of political assassination given that the councillor was a member and a staunch advocate for his party, FORD-K, which has of late been a victim of hate speech against the party, and its leadership by various political operatives from within and outside the county and have on several occasions threatened violence on FORD-K party supporters.

**Mr. Speaker:** Very well. Minister in charge of Internal Security!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Mr. Ojode): Mr. Speaker, Sir, I want to give a preliminary background on what happened on that day, if you allow me for two minutes.

**Mr. Speaker:** How long would you last?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Mr. Ojode): About three minutes.

**Mr. Speaker:** Very well. You may do so.

## MINISTERIAL STATEMENT

### PRELIMINARY RESPONSE TO MURDER OF COUNCILLOR TIMOTHY WEKESA KALANDINI

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Mr. Ojode): Mr. Speaker, Sir, on 2<sup>nd</sup> August, 2011, at about 9.40 p.m., at Nangutu Village, Maraka Sub-Location, Timothy Wekesa Kalandini, who until his death was the Deputy Mayor, Webuye, returned home in his motor vehicle, KAV 193V, a Toyota Hilux Pick-up.

Mr. Speaker, Sir, he opened the gate to his compound and drove in. His house help, Imelenda Nasimiyu opened the garage for him and then went back to the house leaving him parking his vehicle within the compound.

After a short while the house help heard two gun shots and when she peeped through the window, she saw two people running away. She rushed out and found the deceased bleeding profusely and groaning in pain. She called for help and neighbours came to her aid and rushed the victim to Lugulu Mission Hospital, where he was pronounced dead on arrival.

Mr. Speaker, Sir, one of the members of the public called the OCPD on phone who mobilized officers who were on night patrol and they went to the scene. At the scene, the officers recovered one spent cartridge and one live bullet. The surrounding area was searched for the gang but all in vain at that particular time.

Mr. Speaker, Sir, today, the police revisited the scene and recovered one more live bullet. The police also noticed tale of blood which they followed and found a dog belonging to the deceased having being shot dead in a banana plantation. They also noticed the doors of the pick-up vehicle which were locked had been forced open and the cabin ransacked, but could not establish whether anything was stolen from therein.

However, the house help alleged that the deceased had two mobile phones and that one was missing. The PCIO, Western, and a team of CID officers have taken over the investigations. So far, no arrest has been made. Further, following the shooting, security in Webuye and its environs has been stepped up and under cover surveillance for collection of intelligence.

Finally, the motive of the killing has not yet been established and investigators are working round the clock to unravel the grisly murder.

I want to also add that we had similar insecurity cases within Eldoret. I ordered for the transfer if it was found laxity was on the part of the police officers. I ordered for the transfer of all police officers who have overstayed within those areas where we had insecurity.

Similarly, I want to say here that although investigations are still being carried out, in the event that there is any laxity on the part of the police, I want to assure this House that I will do exactly the same thing I did in Eldoret. That will include Webuye, Bungoma and Kakamega. So, be sure that if there is any laxity on the part of the police, I will exactly do the same.

**Mr. Speaker:** Clarifications limited to just that preliminary statement because the Assistant Minister will do a more comprehensive Statement later.

**Mr. Sambu:** Mr. Speaker, Sir, I would like to thank the Assistant Minister for this preliminary report. Could he confirm when he will give us the final and comprehensive report?

Secondly, could he also confirm whether in this particular case, any sniffer dogs were used?

**Dr. Eseli:** Mr. Speaker, Sir, you notice that the deceased was moved to Lugulu Mission which is further away than Webuye District Hospital which is nearby. Could the Assistant Minister also clarify why the deceased was taken to a hospital so far away instead of being taken to Webuye District Hospital?

Mr. Speaker, Sir, these issues of insecurity have led to many deaths of grassroots leaders in the sense that the former Mayor of Kitale was shot and killed under unclear circumstances. The former Secretary for KNUT of Trans Nzoia was also killed and his family members injured under very unclear circumstances. We buried him on Saturday. Previously, the Mayor of Bungoma was shot at his house in Mandizini. Up to now, no investigation report has been brought to light and nobody has been arrested for these deaths. Now we have this other death of another grassroots leader from Bungoma County. Could he also clarify when he makes his comprehensive report that he will give more concrete evidence from the previous reports of all those deaths that have not been accounted for?

**Mr. Ruto:** Mr. Speaker, Sir, the Assistant Minister mentioned that if he finds laxity among the police, he will take certain action, yet, in his Statement, he mentioned that the first search revealed one spent cartridge and one live bullet.

I do not know after how long the officers went back there and found even more cartridges. Is that an indication of thorough investigation or laxity?

**Mr. Speaker:** The Member for Vihiga, that must be the last one.

**Mr. Chanzu:** Mr. Speaker, Sir, the Assistant Minister has on several occasions made assurances to this House that he is taking action on what is going on about insecurity. It is now too much. About two months ago, I raised an issue about Vihiga where an assistant chief was killed at Mudete Market. I do not know what action the Assistant Minister has taken now because the cases have come up again. There has been a lot of crime within the last two weeks around Majengo in Central Maragoli Location of Vihiga.

**Mr. Speaker:** Mr. Assistant Minister, make your preliminary responses.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I mentioned that this is just a preliminary investigation report which I wanted to give. I also wanted to assure the residents of Webuye and Bungoma that some action is being taken.

Mr. Sambu wanted me to confirm when the final report will be available and whether the sniffer dogs were taken to the site. First, the sniffer dogs have been taken there. Right now, if you call one of your relatives or voters in that place, you will be told that the team is there combing the area. I want to ask my colleagues not to politicize anything to do with insecurity. We will get those murderers and take them to court where they will be charged with murder. I want to assure you that we will not leave anybody despite who he or she is in the Government if there is anything connecting that person with such an incident.

**Mr. Chanzu:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, the Member for Vihiga! What is it?

**Mr. Chanzu:** Mr. Speaker, Sir, maybe you did not listen. If you look at the HANSARD, you will find that the Assistant Minister keeps on saying that there will be no stone will be left unturned. We wanted a comprehensive statement---

**Mr. Speaker:** Order, the Member for Vihiga! You are supposed to be relevant to the matter which is before the House now. Is there anything out of order arising from your concern or your request for clarification on this particular matter?

**Mr. Chanzu:** Yes, Mr. Speaker, Sir. The Assistant Minister says all the time that no stone will be left unturned. Is he in order to keep on repeating that without bringing a comprehensive information on what action he is taking?

**Mr. Speaker:** The Member for Vihiga, you know that we are just bending backwards to accommodate you, but that is not a valid point of order. However, let us hear what the Assistant Minister wants to say.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I have not even touched on the hon. Member's comments. However, let me deal with Dr. Eseli's. He asked why the deceased was rushed to Lugulu Mission Hospital as opposed to any other hospital. It is the family members who insisted that they had to rush the former Deputy Mayor to Lugulu Mission Hospital. There was no way the police officers could have refused or rejected their suggestion.

Mr. Isaac Ruto asked why the police came back and found a live bullet and one spent cartridge. This incident happened yesterday at about 9.40 p.m. When the deceased was rushed to hospital, the team came back in the morning and found one live bullet and one cartridge. However, we are investigating using the cartridges and the live bullet.

Mr. Chanzu asked about the killings in Vihiga. He must be very thankful to the Government and not even to the Minister in charge of Provincial Administration and Internal Security. This is because some time last year, Kakamega was like a no-go-zone and Dr. Khalwale knows that. I had to do immediate changes in order for us to restore sanity. You should thank me and the Government because we are doing all that we can to restore sanity in the country.

*(Applause)*

I have also asked hon. Members not to politicize anything to do with security for heaven's sake. Let us leave our officers to do their work without intimidation, and they will do it successfully.

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. You remember the Assistant Minister answering a Question related to a similar matter saying that the police are shooting because they are scared. If police officers are shooting because they are scared, how can he possibly have sanity within that police force? Is it in order for the Assistant Minister to say that we should not politicize the matter when those who are being killed are politicians?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Speaker, Sir, I said that maybe the police were scared that the fellows were armed. I did not say that they were scared because my officers cannot be scared. How can they be scared and yet they had the firearms with them?

I plead with my colleagues to support the police so that we can arrest and get the criminals or thugs out of the society. Let us support the initiative of the police. I am sure that the rate of crime even in Vihiga has gone down.

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

**Mr. Speaker:** Order, the Member for Gwassi! This matter must come to an end.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** But there is no problem in Gwassi! So, what is the hon. Member's point of order?

**Mr. Speaker:** Proceed, Mr. Assistant Minister! Will you please conclude?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Speaker, Sir, I want to conclude by saying that this is a very serious issue and should not be taken as a political matter. Let us not gamble with the life of Kenyans. I will protect Kenyans to get security all the time.

**Mr. Speaker:** When will you bring the comprehensive Statement?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Speaker, Sir, I will update the House as and when I get some useful information. I do not want to say that it will be tomorrow, the day after tomorrow or next week. However, once I get something tangible---

**Mr. Speaker:** Can we try in two weeks' time?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Speaker, Sir, in two weeks' time, I will be able to report to this House.

**Mr. Speaker:** Very well. It is so directed. Two weeks from today!

## COMMUNICATION FROM THE CHAIR

### DEFERMENT OF DEBATE ON SESSIONAL PAPERS

**Mr. Speaker:** Hon. Members, before we move on to the next Orders, that is, 8, 9, 10 and 11, it has been drawn to my attention that notwithstanding that Orders No. 9, 10 and 11 were before the House Business Committee (HBC) yesterday evening and were, in fact, allotted time to be deliberated upon this afternoon; that those orders required the input of the House through the relevant Departmental Committees--- However, that has not happened and so, their appearance on the Order Paper to be deliberated upon in the plenary without the input of the relevant

Department Committees is prejudicial to the exhaustive input that is necessary on the part of the House.

For those reasons, I direct that Orders Nos.9, 10 and 11 be deferred to Tuesday next week and in the meantime the business thereat stands committed to the joint Committee of the House between the Departmental Committee on Energy, Communications and Information and the Departmental Committee on Finance, Planning and Trade which will then endeavor to file a joint report. Please, work expeditiously as much as possible through the weekend so that you can table your report on Tuesday.

It is so ordered!

## **MOTIONS**

### **ADOPTION OF SESSIONAL PAPER NO.1 OF 2011**

THAT, this House adopts Sessional Paper No.1 of 2011, on Kenya Government Guarantee of a Loan of Eur39,100,000.00 equivalent to Ksh4,926,600,000.00 from the KFW, Frankfurt Am Main to the Kenya Electricity Generating Company for the rehabilitation and upgrade of the Kindaruma Hydropower Plant laid on the Table of the House on Wednesday July 27, 2011.

*(Motion deferred)*

### **ADOPTION OF SESSIONAL PAPER NO.2 OF 2011**

THAT, this House adopts Sessional Paper No.2 of 2011, on Kenya Government Guarantee of a Loan of Eur 60,000,000.00 equivalent to Kshs7,560,000,000.00 from the KFW, Frankfurt Am Main to the Kenya Electricity Generating Company for financing the 280mw Olkaria 1 and IV Geothermal Power Plant laid on the Table of the House on Wednesday July 27, 2011.

*(Motion deferred)*

### **ADOPTION OF SESSIONAL PAPER NO.3 OF 2011**

THAT, this House adopts Sessional Paper No.3 of 2011, on Kenya Government Guarantee of a Loan of Japanese Yen 29,516,000,000.00 equivalent to Kshs33,353,080,000.00 from the Japan International Cooperation Agency (JICA) to the Kenya Electricity Generating Company for financing the Olkaria 1 Unit Four and Five Geothermal Power Project laid on the Table of the House on Wednesday July 27, 2011.

*(Motion deferred)*

## **BILL**

*Second Reading*

## THE POLITICAL PARTIES BILL

*(The Minister for Justice, National Cohesion and  
Constitutional Affairs on 2.8.2011)*

*(Resumption of Debate interrupted on 2.8.2011)*

**Mr. Speaker:** The Member for Kisumu Town East was on the Floor. Is he in the House?

Mr. Kiunjuri, you may proceed.

**The Assistant Minister for Public Works** (Mr. Kiunjuri): Mr. Speaker, Sir, the Political Parties Bill is very important to us because it is part of making this Constitution that we have in place now. It is one of the issues that have really been debated in the country. For the last 20 years, we have been able to address very many other important issues affecting this country. It is now important that the question of political parties be addressed once and for all.

Mr. Temporary Deputy Speaker, Sir, it will also stabilize the politics of this country. It will be able to guide us on the way forward on whether this political institution will be respected, so that we have parties that are founded on principles, respect the rule of law and also party leaders and members who are disciplined.

It will also allow parties to recruit actual members and not supporters. Today, most political parties have very few members, but very many supporters. There are very few parties in this country that can boast of a following of 100,000 members. However, all of them have millions of supporters who are not really committed as political party members.

Mr. Temporary Deputy Speaker, Sir, we have political parties in this country that are only vehicles to Parliament or to winning political seats. It is because those members recruited during electioneering period are not members, but supporters. In most cases, they are paid to join the parties instead of them paying to join the party. It is very embarrassing. Today, we are debating the Political Parties Bill that will repeal the Political Parties Act. In this country, we have more than 47 registered political parties. Most of them do not have their members, but supporters. For example, we have so many members who have registered as members of ODM. The same members have registered as members of PNU, GNU, among other parties. This is because they are political merchants. They will go to the highest bidder. Political parties recruit them for the purpose of registration.

Clauses 6 deals with conditions for provisional registration, and Clause 7 deals with the conditions for full registration. We are happy that penalties have already been spelt out for those members who will register to belong to more than one political party. Although these penalties are stiff, they are okay. They are good because they will bring sanity into our political parties.

Equally, it should be remembered that there is always collusion between the registrar's office and the political parties. However, the office of registrar either with full knowledge or through act of commission or omission, allow members to double register in more than one political party. So, when it comes to amendments, we shall push to be specific on how to deal with those working in the registrar's office to ensure that they also do adhere to the rule of law. We will make sure that they will not

be conduits of corruption when it comes to registration of members of political parties.

Mr. Temporary Deputy Speaker, Sir, I have also read Clause 10 of this Bill on coalitions. Coalitions must be allowed. We must support this because, at the end of the day, we are still on coalitions. Parties in this country are like clubs. There are those who own them; either individuals or cartels. They are just like football clubs whereby we have owners of the football club, the manager, coach and the players. Worse still, they are also meant to come and make money and for entertainment purposes during the campaign period.

For the first time, we must make sure that we strengthen this Act. If you look at the manifestos of most political parties, they are similar. That is why they are able to fuse so easily. Now it is very clear that political parties that would like to form a coalition must deposit the instrument of a coalition. There must be proper agreement laid before the Registrar and the Electoral Commission of Kenya, so that when these parties win elections, they will be able to operate in a very smooth way. Coalitions should also be allowed coalitions after the elections because, at the end of the day, the fact of the matter is that since 1998, there have been coalitions in this Government.

One, if the Chair will remember very well because he was in this House, in 1998, the National Development Party (NDP) joined KANU in what they called “co-operation”. Subsequently, it emerged to be a merger. Therefore, it was total co-operation because KANU had less Members to form majority in the House. Therefore, they found it prudent to merge with NDP, which joined them.

When it came to the elections of 2002, a faction of KANU, LDP and the then NAK joined together to form NARC. That is how NARC came to power. Therefore, NARC was a coalition which had not deposited any instrument with the Registrar of Parties. That is why we did not respect the so called Memorandum of Understanding (MoU). It was not deposited with anybody and it had no legal basis. That is why it is important to avoid what happened within NARC and the subsequent split. It is important that we encourage these coalitions.

Secondly, even after NARC split, the NAK now formed a coalition with the Nyachae-led FORD(P). That is how that Government survived for the remaining two years. If you look at what happened in the last general election, it was also again a breakaway of LDP, a breakaway of factions of KANU and then PNU coming together with other political parties. Once again, there are no proper instruments or agreements even today within PNU and ODM. Both parties are not respecting the small parties within them.

I know the Chair is a product of a small party in this Parliament and he will bear me witness that most of the heads of the big parties have no respect for small parties because there is no coalition agreement. That is why we should be able to come here, agitate and make sure that proper laws are put in place.

Mr. Temporary Deputy Speaker, Sir, the major parties are very dictatorial. They have no respect for individuals. We must allow small parties to grow. The only way you can do that is to ensure that those small parties are protected and respected.

It is for the first time that those dictators; those owners of the big parties rise to the occasion and respect those small parties for them to survive.

Coalitions will also lead to mergers. Therefore, I support the question of merger because we want limited parties. We want two, three or four strong parties. But how can we do so? We cannot trust each other because today, I want to work with you, but you are not genuine. Therefore, when I join you, you start behaving as if you are untouchable. If I think we can work together and you convince me that it

possible for us to work together, then we will be able to merge. Therefore, we shall reach the ultimate goal of having very few parties operating in the country. This is because we shall have built confidence. There will be trust within the parties and be able to work together. When two parties merge, members should not lose their seats in the House. This should be made very clear. This is the way democracy will grow.

You must agree that we are a young democracy in this country. You also must agree that other nations are running through coalitions. Very few governments in the world are not working through coalitions. Therefore, when you want to criticize an issue just because you do not like the Minister, it is very unfortunate. We should give it a chance because this is the way to go.

Mr. Temporary Deputy Speaker, Sir, Clause 12 addresses the question of public officers. It is important that we separate completely the appointed public officers and the elected public officers. This is the only way we will point out clearly that an elected public officer should not also be allowed to misuse public funds. You can see what is happening today; all the Cabinet Ministers, including the Vice-President, the Prime Minister and those other presidential hopefuls who are in the Government are misusing public funds. We are lucky that through the new Constitution, we only have the Office of the President and the Vice-President, the Governor and Senators as the elected officers.

Mr. Temporary Deputy Speaker, Sir, most of these people will not have an opportunity to campaign using public funds. Kenyans should note that most of the presidential candidates will come through as politicians. Most of them will be governors, senators and the Vice-President himself. Therefore, we are still open to abuse. It is unfortunate for the Minister for Justice, National Cohesion and Constitutional Affairs should note that by saying that Cabinet Secretaries and Principal Secretaries cannot misuse public funds because they are not campaigning to become President, Vice-President or elective positions and that he has sieved that area. At the end of the day, we shall have governors who will be using Government funds, vehicles and the influence to campaign as presidents of this country. So, the law must be very clear on the misuse of public funds. The other day, we were debating the issue of the NSIS and the use of public funds. We must seal the loopholes very tightly.

The other issue is resignation from a political party. Today, we are playing very dirty politics in this country. We have no respect for political parties and institutions. You want to operate in a very defined way the way you want it to happen. When I am happy with you, I support you and when I am not happy with you, I start challenging you without the respect of the party. For the first time, we should learn how to operate, disagree within a political party and live within that political party. If you have parties that are not based on individuals, then we shall have parties that we respect and not individuals within those parties. Clause 14(4) is very clear that as a Member of Parliament--

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very important Bill and majority of the Members would like to contribute on it. I would like to propose that we reduce the time for a Member to contribute to 10 minutes, so that everybody can contribute. I wish to ask for the Chair's direction.

**The Temporary Deputy Speaker** (Mr. Imanyara): I hope the Members will take note of that, so that as you contribute, you can wind up within ten minutes.



**The Assistant Minister for Public Works (Mr. Kiunjuri):** Mr. Temporary Deputy Speaker, Sir, when it comes to resignation, Clause 14(4) is very clear. It states that:-

“A person shall not be a member of more than one political party at the same time”.

Then 5(e) states that it is an offence for a member to promote the ideology, interests or policies of another political party and in (f), or even campaigns for another political party or a candidate of another political party. Today, you hear some of us saying that it is wrong for you to support so-and-so, but I want to go and campaign for so-and-so. It should be very clear that it is criminal to do that. This country has even a law that deals with the issue of creating disturbances and being a nuisance to the public.

Those members who want to challenge their own parties cause havoc, wreck the parties and also cause disturbance within the parties. They are a nuisance. The law is very clear that this should receive instant justice. When these disputes arise and a Member of Parliament has ceased to belong to that party, they should leave. That is honesty. He should do exactly that. When a political party complains, the Registrar must take action immediately. We should even have a time limit within which to do so, so that next time, we do not elect candidates based on individuals. We should have parties that we respect so that tomorrow, those who join my party will not join the party as Mwangi Kiunjuri's party, but as a party that they believe in. That way, we can avoid that clash. It will be criminal to challenge your party from within. It will be a serious offence and, therefore, it will require serious action.

Mr. Temporary Deputy Speaker, Sir, Clause 15 is on rights and privileges of political parties. It is important that we define this rule clearly. Parties must be respected. It is no longer the police who are dictating to the parties as to who should hold public rallies. At the same time, we should avoid instances where one political party decides to book all the grounds in Nairobi from Uhuru Park, *Kamkunji* and everywhere, so that the other parties will not have anywhere to conduct their affairs. This should be criminalized and penalties must be instituted. We should not have a situation whereby the governor will also be consulted or any other municipal board, to issue licences and where it favours me, I will issue a licence to the party that is friendly to me. The law must be very clear on this. We want sanity. Let us develop. If you want to develop, it is not only the Vision 2030. You should develop your mind politically and everything else, so that we can have a proud nation. We cannot do the same things that our grandfathers did. We should grow up in these issues. Therefore, we should have parties that are not restricted by the Government. That is what we fought for 20 years ago.

On the issue of dispute resolution, I am very happy that for the first time, the Bill is very clear that within three months, an issue must be determined. Equally, when we go to the High Court, which is only supposed to look at the points of law and facts, it should also be limited, so that a rogue judge somewhere who is affiliated in a way to a political party will be there forever determining issues in three months.

With those few remarks, it is important that we have discipline. I support this Bill.

**Mr. Olago:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. Although there are weaknesses and strengths in this Bill, we should not throw away the baby with the birth water. I want us to appreciate the effort of the Ministry for Justice, National Cohesion and Constitutional Affairs in bringing this Bill. He gives

us the foundation on which we can strengthen the Bill and in the process, strengthen democracy and political parties in our country.

I am very concerned at the clause that gives stewardship of political parties and excludes public officers. I am very concerned and I want to draw the attention of the Minister to Clause 12 which exempts certain public officers from holding office in political parties. The ones who are authorized and allowed to do so under the Bill are the President, the Deputy President, a Member of Parliament, Governor, Deputy Governor or a member of a county assembly. If this Bill is passed, it is going to come into operation during the life of this Parliament. We shall be having the position of Prime Minister. So, in effect, this Bill is saying that the Prime Minister cannot hold a political post. Is this deliberate? Is it an innocent omission? Is it an oversight?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): It is an oversight!

**Mr. Olago:** The Minister has said that it is an oversight and I hope that when we go to the Committee Stage, we are going to have an amendment that is going to correct that anomaly.

The second issue that I want to talk about is the dispute resolution mechanism that is set out in Clauses 36 to 41 in the Bill. This is how it should be, but this Bill restricts the right of an aggrieved party to go to the Registrar and then to the High Court. It says that the decision of the High Court shall be final. The freedom to associate and participate in political parties is one of the fundamental rights under our Bill of Rights. It is enshrined in our Constitution and an Act of Parliament should not restrict that right. In my view, when we go to the Committee Stage, we should have an amendment, so that any party who is aggrieved by a decision of the High Court should go to the Supreme Court to enforce his or her right. If that is done, then the Bill will be in conformity with the Constitution. As it is now, that particular provision offends the constitutional provision that relates to freedom to associate.

The other issue I want to talk about is party hopping, particularly by Members of Parliament who belong to one party, but who associate with other parties. They have one foot in one party and say that they belong to other parties. These are politicians who behave like spouses who keep on telling the other: "I am going to leave you because I am fed up with you". He or she repeats that all the time but when you tell him or her: "You can now go, I am also fed up with you. Go!" He or she asks: "Where do I go to? I am yours. I am stuck with you."

Mr. Temporary Deputy Speaker, Sir, this Bill now criminalises that kind of act, and I am very happy. So, if you party-hop, you commit an offence for which you can be charged, and for which the fine prescribed is Kshs500,000. In default, one will serve two years' imprisonment, or both. That penalty is very lenient. The persons who are going to be able to party-hop and behave the way we have said they should not are Kenyans who can afford to pay Kshs500,000 fine. There are people who are not afraid of paying a fine of Kshs500,000.

So, I would wish that when we come to the Committee Stage, we have an amendment to introduce more stringent penalties for persons who commit this kind of offence. Again, we should impose even stronger penalties on repeat offenders, so that if anybody is prone to repeating this offence, he or she should face the possibility of going to jail without the option of paying a fine.

Mr. Temporary Deputy Speaker, Sir, lastly, the powers of the Registrar of Political Parties in this Bill are too much and can be abused. If we end up with a rogue Registrar, he or she can ruin the political freedom of Kenyans. The powers of the Registrar, under the Bill, to hear and determine disputes, or even to dissolve political

parties should be reduced. There should be a body to which he or she will be responsible. That way, the officer who will be wielding that power will be even more responsive to Kenyans, and the power will not be abused.

With those remarks, I support the Bill.

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, with your permission, I am going to give the first opportunity to hon. Members of the Muslim community, so that they can leave early. Therefore, I will start with hon. Duale. After that, if you are not of that faith, please, allow me to see a Member of that faith.

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Temporary Deputy Speaker, Sir, you have been known for many years to be tolerant to people of other faiths. I want to thank you for that. You have a long history.

I also want to support this Motion. I think this country has come of age. We have a new Constitution and we want to manage this country. Above all, we have decided, through this Bill, that we must manage political parties. Political parties are very important vehicles for a number of things. Above all, political parties are vehicles for organising political representation. This august House could not have been in place if there were no political parties. Political parties are also vehicles for political competition between many parties. Political parties are also vehicles for democratic accountability. We cannot have political parties which do not breed some accountability within the democratic space.

Mr. Temporary Deputy Speaker, Sir, political parties are also a link between the state, the people and civil society. It is political parties which influence the way governments are run. They have a very strong influence on the Executive. Through their manifestos and constitutions, political parties formulate public policy. They engage in recruitment of their members. Above all, it is political parties which facilitate the formation of coalitions, however bad or good the coalitions may be. Of course, coalitions become bad when a part of them do not respect the other part of the coalition.

We need to build democracy that is based on political parties. I was shocked when I became a Member of Parliament in 2008, and some of us felt that the elections were rigged. I said: "wait a minute". Rigging started at the political parties' nominations. Every Member of this House, and those who are out there, can remember what they went through in their own political parties. Today, there are Kenyans out there who should have been in this House but they are out there because their political parties rigged them out. I know that this Bill is a panacea to those problems.

Mr. Temporary Deputy Speaker, Sir, we must build political party transparency based on parties manifestos and constitutions. The political parties in this country have the best manifestos – manifestos which can turn this country around and make people not see what they are seeing in the people of Northern Kenya. However, party manifestos are created and left in the shelves to gather dust. Constitutions are formulated by political parties, but they are not adhered to. You can see a political party expel a life member of that party before he has died. I am a living example. I am a life member of a political party, but I am now facing a court case. I ask myself: How do you expel a life member from a party when he is still alive?

**Mrs. Shebesh:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Member for Dujis to mislead this House that he does not understand why the party is seeking to expel him when he knows very well that he has disowned the same political party which brought him to this House?

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Temporary Deputy Speaker, Sir, disowning a party is one thing and expelling a member from a party is a different issue. The process through which one should be expelled is well stipulated in the party constitution and in The Political Parties Act; it is through the Tribunal.

Having said that, I have a lot of respect for hon. Shebesh. I played a very big role in her coming to this House. Today, she is exercising some of her rights to expel me. She is paying me back.

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, in my opinion, political parties must respect four fundamental principles. Political parties must respect their own party manifestos.

**The Minister for Lands** (Mr. Orengo): *(Off record)*

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Temporary Deputy Speaker, Sir, I want you to save me from hon. Orengo, who is my lawyer and old friend.

I was saying that political parties must respect their manifestos. Also, under this Bill, political parties must respect their constitutions. They must respect the kind of law we are passing today – The Political Parties Bill. Above all, political parties must respect the Constitution that we have put in place.

Mr. Temporary Deputy Speaker, Sir, I do not believe in political party coalitions. I do not think political party coalitions are in the interests of this country. Coalitions are formed only by opportunists. They are formed by the big tribes to marginalise the small tribes. Coalitions are formed by those people who are hungry for power. Coalitions are formed by those who are hungry for power. Coalitions are formed by those who steal elections. When one group steals elections, they tell the other, “the only way we can cohabit with you is if we join and sleep on the same bed.” My feeling is that we should not talk about coalitions in future.

Mr. Temporary Deputy Speaker, Sir, in Africa and more so in Kenya, political parties are very weak. When they are weak, there is decrease in democratic competition. There is decrease in the political representation that takes place within that particular party. We should have a paradigm shift from a regional political party or an ethnic-based political party; from a political party of the few and form political parties that are based on equal partnership; a political party that respects its own constitution and members. We must improve party transparency. We must allow our members in one way or the other to benefit from internal democracy and create institutions in this country that will help future generations to see the essence of joining a political party.

Time has come and people are debating the issue of public officers; whether it includes elected public officers. I think it is for the Supreme Court to do the interpretation. In my opinion as a Member of Parliament, I think that should include the elected leadership. We should leave the running of political parties to professionals and people who we feel will not negate the essence, objects and manifesto in which political parties were formed. I know this Bill has a lot of shortcomings and amendments will be brought in a number of areas.

Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for spearheading the reform process and the implementation of the Constitution. I also want to thank the Constitutional Implementation Oversight Committee (CIOOC) and

this House. I want to tell my good friend Mr. Nyachae: “We have not heard you for 40 years, unless you want us to hear you now. You are making too much noise!” We want you to work and leave the Cabinet alone. The Cabinet has a role to play in the implementation. The Minister for Justice, National Cohesion and Constitutional Affairs has a role to play and the Committee of the House has a role to play in the implementation. The final implementer is this House which has the final authority on the Bill.

It is very sad for Mr. Nyachae to fault a Bill that has been passed in this House, assented to by the President and gazetted. He cannot do that unless he does not know what he is doing. We are telling every person on the conveyor belt within the implementation axis to play their role effectively. Do not blame others.

With those few remarks, I beg to support.

**Mrs. Noor:** Mr. Temporary Deputy Speaker, Sir, I also want to add my voice in supporting this important Bill. We agree that political parties are very important vehicles. This is the vehicle that puts in place a Government. This needs proper management. It should be done in a manner that can help realize the aspirations and the will of the people of this country.

Reforms in this country should be undertaken in line with the provisions of the Constitution which gives clear guidelines on how powers should be exercised on behalf of and for the benefit of the people of this country.

Mr. Temporary Deputy Speaker, Sir, the Constitution provides for certain basic requirements such as affirmative action and the promotion and participation of marginalized and minority groups in the political processes. Political parties’ legislation must contain some provisions in addressing the participation of the groups I have just mentioned; the women, youth and persons with disability.

Despite important and major improvements noted in this Bill, there are several shortcomings and contradictions that should be dealt with in order to improve it. The Bill lacks clarity on funding and independence of the Registrar of Political Parties. The most controversial issue during the drafting of this Bill was the independence of the office of the Registrar. Unfortunately, this remains unresolved. This Bill does not give this office independence. For one, the office is still with the Independent Electoral and Boundaries Commission (IEBC). The IEBC Chairman is the Chief Executive Officer and the Accounting Officer of the Commission and the Registrar heads a department within the IEBC just the way it is now. That does not give the independence needed. It does not separate the oversight roles. The Chairman is the coach and is going to be the referee. That is a contradiction.

Mr. Temporary Deputy Speaker, Sir, the Minister needs to look into that because of the aspirations and the will of the stakeholders. When Kenyans were discussing this Bill, they talked of an independent body that is going to manage political parties in this country. If you go back and look at the recommendations made by the Committee of Experts (CoE) they said that this very important office should have independence of its own. This is missing from this Bill.

The other important thing in this office is the funding. The funding modality is not clear. The modality proposed by the Bill raises several issues. First, the Bill is silent on how to fund the tribunal that is established under Clause 35. It is very unclear. We do not know who is going to fund it. It is also not clear whether these resources will be funded by provisions in the Constitution under the Judiciary or whether it is going to be funded by the 10 per cent administrative fund. That needs to come out clearly.

The other thing that is not clear is under Clause 25, where there is a detailed breakdown of how to use these funds. It is very confusing. The guideline is not very clear. We need a guideline that will give conditions on how the resources will be distributed in line with gender, people with disabilities and the minority. This very important office that is going to transform political participation of this country in future needs to have a clear outfit from the outset. There are several good clauses in this Bill but there are a few shortcomings and shortfalls that we need to address. We must correct these so that we do not regret in the future.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Mr. Imanyara): As I said, I will allow those of the Muslim faith the first opportunity because they need to go and break the fast.

Yes, hon. Chanzu!

**Mr. Chanzu:** Mr. Temporary Deputy Speaker, Sir, I beg to support this Bill. I also want to join my colleagues in congratulating the Minister for being part of the major reforms that we are undertaking in this country.

Mr. Temporary Deputy Speaker, Sir, we have not achieved much in the democratization process which started a while ago because of some of the aspects that have not been addressed, particularly an issue like this one. But I really like the aspect of the code of conduct in this Bill. What has happened in this country has been the aspect of enforcement and I am happy that we have been able to reform the Judiciary. This is because there have been abuses all over the place, but how to apprehend these abuses has been the problem.

Mr. Temporary Deputy Speaker, Sir, the other thing has been the cost of litigation, which I think we have also addressed. I would like to take this into account because there will be those who will be aggrieved. Not everybody will be able to afford taking certain matters, which are very important, to the levels where they should be. It has been a problem to just file a case. This has caused serious financial problems. I hope you will be able to take that into account as you do this good job that you have initiated.

Mr. Temporary Deputy Speaker, Sir, there will be need for a lot of discipline, tolerance and maturity. This is because I believe in stronger parties. We believe in parties which can be strong and people can join. That is the reason we cannot even fund things like churches through the Constituencies Development Fund (CDF). When people believe there is money, they want to form churches. In fact, it is very disappointing. This time I have told my people in the constituency that I cannot be involved in *harambees* to raise money to buy land for churches or mosques. When you see somebody saying that it is good that we have liberalized because people can have parties, I do not believe in that. Strong and progressive economies do not have parties where people keep on hopping around. For example, in Britain we can talk about the Labour Party and Conservative Party. They have been there for many years. Germany is a strong economy because people like to be identified by their parties. So, I really support this Bill. By strengthening political parties, people can vote in numbers which are also reasonable. In this Parliament, you will find a single person in a party and he says that he wants to turn round and lead many people. I think that is not the democracy we are talking about. I think we should be sensible. For example, if I register a party and go and convince people in Vihiga to vote for me in Vihiga alone and then I come back here and say that because I have a party I can run the whole of this country, that is not proper. I see some of them also masquerading around. They have not even relinquished the membership of their old parties yet they want to join

others. I think this is an offence according to the Bill. That is why I believe that this Bill should have been in place much earlier. I was looking at this transitional area and imagining some of the people we have in this country. With due respect, they have not relinquished membership of the party they belonged to in 1963. I do not know what has happened. So, I think you should also have put in these transitional clauses here--- There are people who have been on different parties since 1963. They have been in almost ten parties.

Mr. Temporary Deputy Speaker, Sir, the last thing I would like to address is what I have seen happening in the previous two elections. By the end of the day, we elect a leader who you all must accept. But without a strong document like the one that we are debating today, with a strong code of conduct and discipline, come the last minute everybody will jump, collude, form small caucuses and now take leadership from the rest of the people.

Mr. Temporary Deputy Speaker, Sir, I support this Bill and wish the Minister well in the reforms that are taking place. He should take into account the comments that have been made by the hon. Members, in as far as improving this document is concerned.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

**The Minister for Lands** (Mr. Orengo): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity also to contribute to this Bill.

Mr. Temporary Deputy Speaker, Sir, I want to support this Bill and congratulate the Minister for a job well done. The pace at which he has been preparing these Bills for debate I think is commendable. I would urge him to continue with the good work. But having said that, I think if we look at the contents and scheme of this Political Parties Bill, it is flowing from the Constitution to Kenya. This Constitution, in Article 91, provides the basic requirements for a political party. This is something very unusual because we do not have a constitution talking about political parties and how they should look like. Take any constitution anywhere in the world; you will never find a constitution going to great length, saying exactly what a political party should be and mentioning the basic ingredients of the political party and the qualifications and constitution that would enable you to become a political party. Then, it requires Parliament to legislate or enact a statute, which is now this Political Parties Bill, under Article 92. Again, what is required of Parliament to do in that particular Bill or that enactment is clearly spelt out in the Constitution. So, the first thing really, in considering this Bill, is to do a Constitutional evaluation and test as to whether or not what the Minister has brought before the House is in coherence and harmony with the Constitution. I think the Minister had a great challenge to come out with a document that responds to the provisions that are spelt out in the Constitution. I think that he has done quite well generally. But I am not saying that this Bill is cast in stone. Parliament can amend and I think the Minister has always been open to discussion and debate on anything that Parliament comes up with, which is constructive and positive.

Mr. Temporary Deputy Speaker, Sir, having said this, I want to address the question as to why this has come out in the Constitution. It is because of the mischief of the past. It is the bad manners and behaviour of the past that have made the authors and framers of this Constitution to have particular provisions to deal with political parties. This is not just during the Independence period, but also during the colonial period. Some of the bad habits that existed during the colonial days were imbued lock, stock and barrel by the Governments that followed after 1963.

Mr. Speaker, Sir, you will remember that before Independence, the last truly national party that did not take part in the 1963 General Election was the Kenya African Union (KAU). After KAU was banned, political leaders who wanted to participate in politics or organizations that were fighting for independence at the earlier stage were required to register regional parties, which were basically ethnic parties. Therefore, Jaramogi, Mboya, Muliro, Ngala and everybody else who came to this Parliament during the colonial parliament came from an ethnic base. That was the spirit of the day.

After Independence - and my argument has always been that we have always killed political parties, whether as a colonial government or even subsequent governments--- When truly national political parties emerged after Independence, it was the Government of the day that killed them. It was either Governments or individual Members of Parliament. There are individual Members of Parliament who changed sides and even when they were enacting laws, they never thought that those laws would affect them. We should be conscious of the fact that there are people who are now talking about a new constitutional dispensation and this Bill.

But before we address the mischief that this Constitution is dealing with--- Every day you read a Kenyan newspaper and you hear politicians talk, the bad manners of the colonial Government still live with us today. However much the Minister for Justice, National Cohesion and Constitutional Affairs tries to bring the proper laws and legislation – to have a tribunal and a court – as long as politicians live by the values of the past, this Constitution is not worth what it is written on and this Bill will not meet the challenges of the day. That is why this Constitution is telling us that we must have national parties with support from everywhere in the country. Every day when we talk in political rallies, we do not talk as if we are being guided by this Constitution. So, I think the great challenge is with us, as political leaders, to make sure that what happened to KADU--- And you remember for us who were in Parliament in 1992, you will recall that FORD(K), FORD(A) and DP were all destroyed in one way or another. KANU itself, was a party in name and truly not a political party. It is one of the greatest legislators in this House who, sitting as a Backbencher, and another one sitting where Mr. Temporary Deputy Speaker is sitting--- I am referring to hon. Shikuku and hon. Seroney, when Shikuku said that KANU was dead. Of course, the sycophants stood up and asked the Member to substantiate that KANU was dead. So, hon. Seroney who was an extremely brilliant lawyer said: “You cannot substantiate the obvious.” Some of the people in the House did not actually understand what he was talking about. They just realized it out there and, instead of appreciating what he had said, they said that he had abused *mama na baba*. At the end of it, he had to go to detention. So, a political party is not truly a political party by its size. It is a political party by what it stands for, and the integrity and leadership within that political party. So, in the next elections, if we do not have political parties that will address people in terms of the problems of the day--- For instance, on the issue of devolution, some of us are not even prepared to say where we stand because that is a great principle of this Constitution. There are centralists who want the status quo to continue. They want the colonial governor to continue to live up the hill although he would be called another name. However, on that great debate, they would not want to address the issue of why devolution, as opposed to centralism, which is a mischief from the past and which has brought the “big man” syndrome and suffocated Kenyans politically---

I am glad that the young people in this country are now alive to what we are doing for them, and what they are doing for the country is important. But being in



leadership, they are watching out and asking: “You leaders, what are you doing for us? What do you stand for?” When we stand up on any issue in political rallies - and I include myself in the sense that self criticism is important - how many times do we talk about jobs, employment, agriculture, culture and education so that, even when stories appear in the newspapers, they do not say that I called Kilonzo names? In Kenya, it is the names that you call the other politician that count. If you have a little fight, that is what counts. However, the ideas that we are fighting for and trying to struggle to bring some harmony into the country, even the media has no space for them because that has not been part of the business of the Kenyan politics. That is what this great Constitution is trying to address; the mischief of the past, how political parties have behaved.

This Act should be seen in the sense that it is also trying to comply with the directions of the Constitution. We may find a lot of discomfort with some of the provisions, but when people hop from one party to another, or somebody stands up and says: “I am in ODM but I am now campaigning for another political party”, this is anarchy and nihilism in politics. It cannot work in a modern democracy. Political parties are the only way to build democracies. Other countries have tried. For example, sometimes back, Libya and Uganda had movement systems where there were no political parties. Political parties are an important part of governance. I dare say that we have three arms of Government but now, according to this Constitution, one can truly say that there is a fourth arm of Government because political parties are funded. They are the ones who produce political leaders. Even in the allocation of revenue, it is political parties which nominate. Therefore, political parties must wake up and live to the new Kenya.

I thank you, Mr. Temporary Deputy Speaker, Sir.

**The Assistant Minister for Higher Education, Science and Technology** (Dr. Mwiria): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to congratulate the Minister and also support this Political Parties Bill. My comments start with Clause 5 on the tribunal, especially on the selection of the panel. I think it would be unfortunate if the business of selecting that important panel was left only to the Chief Justice. I think there should be a committee that he can work with. However, more importantly, it is important to ensure that there is a variety of experiences and disciplines. That is because as it stands, it will require people with legal background.

Article 14 on inclusiveness says that political parties must not be ethnic, gender insensitive and so on. It is extremely important especially for us, given the experiences we have gone through in the last many years. However, I think it should go further and say that when you form coalitions on the basis of ethnic groups, you are still being ethnic. So, you may have a political party and the problem may not just be limited to the membership being Luos, Luhyas or Kisiis but, also, when you behave like ODM(K) and bring together several ethnic groups or PNU that brought together several ethnic groups to form a political party, you are being ethnic. That is because you are not including the whole of Kenya. So, even those ethnic arrangements that put specific ethnic groups together, are also ethnic and tribal, and I think there should be an effort to guard against that.

Similarly, there is the issue of regional groupings. The other day, the KAMATUSAS were saying that they need to unite. The other day, somebody wanted to form a unity between the Kisiis and the Kalenjins. The Luhyas may want to come together. The Mount Kenya people may want to come together and talk about charting the communities’ destiny. Why can we not chart our destiny on the basis of political

parties? Why do we have to sit as ethnic groupings to decide where we should move as a country? I think that is very retrogressive and it is something that we must be on the lookout. I would like this particular Bill to have sanctions against politicians who go round saying: "Now, we think our ethnic communities should go this way. This is good for our community." In essence, they actually mean: "It is good for me because I will be appointed the Minister or get some other benefits from the political party." That is an important matter.

I think that is an important matter. As much as we talk against ethnicity, if we let politicians to just go around forming alliances on the basis of ethnicity and comprising themselves into ethnic groups, then we will not be dealing with that issue.

Mr. Temporary Deputy Speaker, Sir, the other issue in Article 16 is on leadership. We are saying that not everybody can be a leader of a political party, and that has to be criteria. You must be a person of integrity; the problem with our political parties is that a lot of their leaders are actually masters of impunity. They are the lords of impunity – people who have been associated with public theft or with this scandal or that scandal. If you want to look at the officials of our political parties, a lot of them have been associated with one scandal or the other. We cannot say that: "Because I have not been found guilty, I qualify". I think the mere association is an important factor that should be taken into account as we vet those people who want to be leaders of political parties, especially if these leaders are the same ones who want to be presidents of this country. They must lead by example. They must not have any taint or any association with issues related to integrity. Again in this country we keep on saying they have not been found guilty, but we know justice system has been there. The reason we are vetting judges is because we know the judges of the past were more about proving the guilty innocent and not the other way round.

Mr. Temporary Deputy Speaker, Sir, I also want to say that as we check, it is not enough to say that we must pick on people of this kind of integrity to be leaders. There must be vetting of political leaders, and that vetting must go beyond integrity to look at factors related to, for example, your commitment to nationalism in this country. This is because if we want to build a united country, we must ask our political leaders: "Do you have a record of a nationalist?" Or, "were you one of the politicians who were preaching tribal hatred by saying: We do not want this community in our region, or we do not want these people in this region?" There are Ministers of Government in this country who have publically spoken hatred against other communities. Those people should never have a chance to lead a political party, because we know what direction they will lead this country to if they get that opportunity.

Beyond that, we must also ask our political leaders to have higher qualifications than the ordinary members – after all they are the leaders. So, in terms of the criteria, we must not just be limited to who can be a Member of Parliament; we must have a different kind of Member of Parliament – somebody who is little higher than that because they are going to be the leader of the team.

Article 14 prevents one from being a member of several political parties; I think this is important because we have witnessed doublespeak in this country. People join political parties and talk against them. They undermine them as evidenced by the controversy over the House legal committee and others. The problem with that is not just that we undermine political parties, but as leaders we are becoming very bad examples. I mean, the whole country is watching politicians uniting or disagreeing on things like the Constitution or devolution. When it comes to something else, people who were adversaries again unite on the basis of no principle at all; they keep on

shifting positions from time to time, depending on what you are gaining. I think we are known for that opportunism, and it is a very bad example to the rest of Kenyans, especially the youth who look upon us.

Mr. Temporary Deputy Speaker, Sir, about coalitions, I agree with those who say they should be a last resort. I think they have no business. It is about opportunism, dishonesty and people who have no common values coming together. That is what we have seen, that our coalitions are not based on any principles. People do not say: "We are getting together as political parties because my party and yours have similar ideas"; it is just because they want to be in leadership. That is why, for example, you saw the National Democratic Party (NDP) working with the Kenya African National Union (KANU) when they were on different sides of the divide in terms of the fight of the liberation; the National Rainbow Coalition (NARC) in 2002 involved KANU politicians, yet you wanted change. You did not work with those kind of people, yet they comprised a key part of your government. The other example is the Party of National Unity (PNU) and KANU. What is common about PNU and KANU? How can you can bring together political parties, one that was for conservatism and did not want change, and another that wants change, and all of a sudden believe that you have the same ideals and you can continue fighting under the same political party? That is hypocrisy. It should have no place and we should have no room for people like those.

Take the example of the last elections. The Orange Democratic Party of Kenya (ODM(K) leadership was going around abusing the PNU leadership, saying that it was of thieves, corrupt people and so on; then immediately after the elections they took a second seat in Government. Now, what was so common? It was the most hypocritical behaviour we have witnessed; all of a sudden you have common interests! So, it is quite clear that, that is not the kind of political coalitions we want to encourage, unless they are based on some solid principles.

Mr. Temporary Deputy Speaker, Sir, on the issue of funding, we are saying that there will be other sources, but we are not told which these other sources are. Who can donate to political parties? Can the public property be donated? I think for land donations, it should be clear that those who contribute billions of shillings announce their donations; they should also be audited, so that we know the source of that income. We do not want people who have been associated with all sorts of criminal activities, or scandalous behavior, to be the ones donating to political parties, so that once they are in power the leaders of those political parties can protect them.

Mr. Temporary Deputy Speaker, Sir, we also must find a way of supporting candidates who have no money, or who do not have the resources. In this country, it is very difficult for somebody to be a Member of Parliament unless you have millions of shillings. In central Kenya, I am told candidates were using up to Kshs30 or 40 million to campaign to be a Member of Parliament. That obviously makes it impossible for a young man who has not stolen, or made any money, to be a Member of Parliament, a representative of the people. So, we must find a mechanism for identifying young people who have not made money, but who are good politicians and can be good leaders, and supporting them from this kitty that will be available to support political parties.

Mr. Temporary Deputy Speaker, Sir, I think it is also important to ask questions like, "as a political party, when do you begin campaigning?" Are we going to be campaigning almost permanently in this country? What kind of sanctions can be put in place to ensure that political parties do not begin to campaign two years or three years before the elections, because young people also begin to campaign? I think this is important and we need to take note of it. We should begin to address it as an

important issue, because we are wasting too much time and money campaigning instead of concentrating on development.

Mr. Temporary Deputy Speaker, Sir, I would like to conclude by saying that we should have stringent conditions, so that in the end we have two or three political parties in this country. If we can get to that point, even if it means going beyond the quarter of the counties that we are talking about in terms of representation; we should ensure that every political party that is worth its salt has at least five per cent representation in every county. This way we will eventually get to a point where many of the parties will be irrelevant. We will have two or three political parties that will coalesce together on the basis of principle and not on the basis of ethnic numbers.

I support.

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, the Chief Whip tells me, and I tend to agree with him, that in order for us to conclude this debate today and give everybody an opportunity to speak, we should try to conclude our submissions within five minutes from now on.

**Mr. Muthama:** Asante Bw. Naibu Spika wa Muda. Nimekuomba hivyo ndio tuweze kugawa dakika zilizobaki ili Waziri aitwe naye aweze kujibu na sote tupate nafasi ya kuzungumuza.

Namshukuru Waziri kwa Mswada huu alioleta hapa ambao ni kuhusu vyama vya kisiasa. Jambo la kwanza, ninashukuru kwa sababu msajili wa vyama ataweza kufanya kazi yake bila kuingiliwa na mtu, hata akipigiwa simu na kuambiwa kwamba kwa sababu chama fulani kiko karibu kushinda uchaguzi aandikishe chama kingine ili kukipinga hicho, hataweza kufanya hivyo. Ataweza kufanya kazi na usawa kwa Wakenya wote.

Bw. Naibu Spika wa Muda, kuna baadhi ya watu ambao wanaunda vyama vya kisiasa kwa minajili ya kupata pesa kutoka nchi za nje. Madhumuni yao ni kupata utajiri. Watu wengi huunda vyama ili wakati wa uchaguzi waweze kuwauzia wanasisa vyeti ili wachanguliwe. Mambo haya yote yatafika kikomo chake tukipitisha Mswada huu. Watu watakoma kuanzisha vyama vya kisiasa ili wapate utajiri. Kuna baadhi ya watu ambao hutafuta pesa nje ya nchi hii ili kuwachochea wananchi kuanzisha fujo. Jambo hili halitawezekana tena kwa sababu kila mtu atahitajika kuonyesha jinsi alivyopata pesa na vile atatumia pesa hizo.

Bw. Naibu Spika wa Muda, Mswada huu utaweka msingi thabiti wa demokrasia yetu. Sheria hii itapiga vita vyama vya kikabila na kuhakikisha kuwa vyama vya kitaifa vimepata nguvu. Ningewaomba waheshimiwa Wabunge kuupitisha Mswada huu mara moja ili tuwe na umoja wa kisiasa hapa nchini. Muungano wa vya ni muhimu lakini tuungane kama Wakenya na si kama jamii hii na ile. Ni lazima kila chama kiwe na wafuasi katika county zote 47. Ikiwa vyama hivi vitakuwa na wafuasi kutoka kila pembe ya nchi, basi utaifa wetu utaimarika. Sisi tunataka kuona vyama ambavyo vitachangia pakubwa utaifa na uzalendo wa wananchi wetu.

Bw. Naibu Spika wa Muda, usajili wa vyama ni lazime uangaliwe kwa makini sana. Hatutaki kuona wafuasi wetu wakijiandikisha zaidi ya mara moja. Kuna baadhi ya watu ambao hupenda kujiandikisha mara kadha wa kadha katika vyama tofauti. Ni lazima uwanachama utiliwe maanani kwa sababu hatutaki mchezo wa paka na panya hapa. Kuna mtu ambaye asubuhi huwa mwanachama wa chama fulani, aduhuri yuko katika chama kingine na jioni anajiandikisha kuwa mfuasi wa chama kingine. Huu ni mchezo ambao unatilia shaka misingi yetu ya kidemokrasia. Ni lazima tuhifadhi heshima yetu ikiwa tunataka kuheshimiwa na mataifa mengine ulimwenguni.

Bw. Naibu Spika wa Muda, siasa zetu zimejikita katika miungano ya kikabila. Tunataka jamii za kutoka upande huu ziungane ili waweze kuunda Serikali baada ya

uchaguzi ujao. Je, tukifanya hivyo, jamii zingine zitakwenda wapi? Hatutaki muungano unayoundwa katika misingi ya kikabila. Tunataka muungano wa vyama vya kitaifa. Muungano wa makabila ni hatari sana na utaleta utengano katika nchi hii. Kenya ni taifa moja. Lugha ya Kiswahili itiliwe mkazo sana kwa sababu inaweza kutuunganisha sisi sote. Wananchi wetu wanaielewa lugha hii vizuri sana. Ikiwa viongozi wote watumia lugha hii, basi tutakuwa na taifa thabiti ambapo ukabila utapigwa vita.

Kwa hayo machache, ninaunga mkono Mswada huu.

**Mr. Kiuna:** Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity to support this Motion.

As we debate this Bill, it is important to know where we have come from, where we are at the moment and where we are going. I remember very well that during those old days, many of you, especially the Temporary Deputy Speaker and others who are in this House know what they went through during those days of *baba na mama* politics. Anybody who talked ill about KANU was seen as an enemy of the country. We do not want to go to those old days because we have a new era and a new Constitution. Let us all be focused. If we are not careful we shall go back to where we came from.

Mr. Temporary Deputy Speaker, Sir, during the last general election we witnessed a lot of chaos in this country. Many people suffered because of our politics. I hope with the passage of this Bill, there will be no chaos in the forthcoming general election. We do not want anybody to suffer as we did because of politics.

Mr. Temporary Deputy Speaker, Sir, you will agree with me even to get a party ticket you had to bribe. Money changed hands. There was a lot of corruption during nomination period. My appeal is that we have people of high integrity heading these political parties in this country. Let us have professionals manning our political parties. This is the era of accountability and transparency. Therefore, even our political parties must be accountable to us. We do not want to go back to those dark days when you had to know the party leaders so that you get nomination or party ticket. It pains me when I remember what I went through. People did not know me. There were those people who were regarded as more eloquent and financially endowed than me. I had to move from one party to the other. However, at the end of the day, people supported me. That is how I came to this august House.

Mr. Temporary Deputy Speaker, Sir, on funding of political parties, let us be transparent in our dealings. We do not want people to donate to political parties because they will compromise our democracy. Let us have a well structured way of funding these political parties. Let us seal all the loopholes, so that rich people do not influence our politics. Let even private candidates tell us how they will raise their funds. We do not want anybody to be denied a chance to serve his people because he is poor. Majority of democratic and patriotic Kenyans cannot get into this House simply because they do not have money and they are not known.

With those few remarks, I beg to support.

**Mr. Kombo:** Thank you, Mr. Temporary Deputy Speaker, Sir. I will be extremely brief. With regard to the issue of integrity, political parties are the nurseries for leadership in this country. The Constitution has raised the bar in Chapter Six on integrity.

I want to agree with what Dr. Mwiria spoke about that people who do not have that integrity should not be given positions to run political parties. I want the Minister to look into this and state how people can be vetted if they are found wanting so that they are not given positions in political parties. This is because if this is left to

political parties, people with money and so on and so forth will get elected into leadership even though they lack in integrity.

Secondly, we need to make it difficult for briefcase political parties. I think that is important. The question of 1,000 people in 24 counties is too small or little. If we want to remain with the 24 counties then that figure should rise to 2,000 as it were. Otherwise, it should be 1,000 in all the 47 counties. This is because there are many people who will wake up to raise that 1,000 and form briefcase political parties so that they can sell them out at the time of general elections.

Mr. Temporary Deputy Speaker, Sir, I also want to talk about free and fair elections in political parties. Many times, political party leaders in whatever county would sit in a hotel room and actually purport to have held an election for the political party when, in fact, there was none. Who will police this? That is where the Registrar's position should be strengthened. The Registrar should be given deputies who will check and confirm if, indeed, a political party has held elections.

I just wanted to make those brief comments on the issue of integrity; the issue of killing briefcase political parties; and the political parties being strengthened. That is how we will get leaders in this country.

With those remarks, I support the Bill.

**Mr. Njuguna:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. Let me start by thanking the Minister for Justice, National Cohesion and Constitutional Affairs. I also recognize the diligence the Minister has already offered in the preparation of this Bill. It is also important to assure the nation that the Minister for Justice, National Cohesion and Constitutional Affairs is up to the task and he will not let this House and Kenyans down.

In my view, political parties are the lifeline of a nation. If you look at the past history of this country, you will realise that the parties that were there in the beginning gave immense contribution towards the liberation and Independence of this country. We had the Kikuyu Central Association (KCA) of Harry Thuku in the 1920s, KAU and KANU. We note that KANU gave this country the first President and first Vice-President. These were visionary leaders with nationalistic characters.

Mr. Temporary Deputy Speaker, Sir, we cannot also forget the role played by NARC which reclaimed the lost democracy which had been snatched from the Kenyan people. When I look at the coalition philosophy and theory, I find that this is already being accepted and practised in some countries. We have seen some fruits of the coalition governments in Israel, Germany and Italy which have strong economies, political stability and no room for dictatorship. This concept must be buttressed. It is now being buttressed in our Constitution.

Mr. Temporary Deputy Speaker, Sir, on membership, I note that no member will be allowed to register in two different parties. It is important that individual integrity and even the integrity of the party are maintained. On funding of political parties, we have noted that NARC(K) has not been given funding. This will be detrimental to strengthening of this party. Funds must be released in good time to make these parties work properly.

On provisionally registered parties, it is noteworthy that the certificates will be issued for six months. In my view, this time is not adequate for parties to re-organize themselves. The time must be extended to 12 months.

The issue of naming of the political parties must be addressed properly. Currently, my party that is People's Party of Kenya bears a name that is identical to

another one. That is People's Progressive Party of Kenya. This similarity must not be allowed and must be corrected immediately.

With those few remarks, I fully support.

**Mr. Baiya:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to support this Bill.

As is clearly being said by my colleagues, this is a very important Bill as far as the political and social economic evolution of our country's institutions are concerned. As we debate this Bill, we must also bear in mind what we went through in the past, most notably in the last elections of 2007 where we witnessed chaos. I want to submit part of the reason why we had problems during the last general election - it was also brought out by the Kriegler Commission. This was caused by the unpalatable political culture within our political elite and all other political players. The worst aspect has been failure to uphold or respect democracy, on the part of the State playing a manipulative role as far as administration and regulation of political parties is concerned. The other one has also to do with the conduct of political leaders using political parties as personal entities rather than institutionalized institutions.

It is worth noting that the provisions of the Constitution have actually addressed some of these challenges that are of historical origin. Under the provisions made under the Political Parties Bill, fortunately they have really respected that. However, the role of the Registrar of political parties is being integrated with that of the Independent Electoral and Boundaries Commission (IEBC). It is not clear at all why this office should be made an appendage of the IEBC. Why it should not, for instance, be allowed to function independently just as the tribunal is expected to uphold independence in its operations.

The other challenge with regard to party leaders and the issue of ethnicity, it is my strong believe that one of the reasons why ethnicity has played a crucial role is obviously because the political players in this country have failed to elevate politics to the level of issue oriented, which can galvanize the population. In the absence of any ideology or any strong and consistent democratic and other ideological basis, only primordial instincts that are played into through the ethnicity card appeal for support. I believe that a consistent practice of democracy over the years will not only isolate this problem of ethnicity, but will also lead to the disappearing of the kind of leaders who practise ethnicity. It is also proof that Kenyans are not sufficiently informed to make decisions other than based on one's ethnic background. I believe that consistent practice of democracy will elevate Kenyans to issue-based politics as opposed to personality-based politics.

Mr. Temporary Deputy Speaker, Sir, we know that consistent implementation of this law and the Constitution will no doubt resolve some of the problems that have been inherited from the past, if this implementation is done firmly and consistently.

With those remarks, I beg to support.

**The Temporary Deputy Speaker (Mr. Imanyara):** Lee Kinjanyui!

**The Assistant Minister for Industrialization (Mr. Muriithi):** Thank you, Mr. Temporary Deputy Speaker, Sir. It is hon. Nderitu Muriithi, but our constituencies are next to each other.

I have three points to make. Let me begin with the whole question of internal democracy in political parties. Most of us agree that some of the confusion of the last general election, in fact, stemmed from the fact that political parties had very little regard to democratic processes. Therefore, I believe that the Minister should consider, in Part II, to have a clause that regulates the conduct of elections within political

parties and how political parties go about nominating individuals who are running for political office. So, how often, for example, do political parties have elections, how might those be conducted and how might the Independent Electoral and Boundaries Commission assist?

Secondly, I want to speak on the whole question of coalitions. Right now, because, of course, coalitions exist, part of the challenges that we have been facing include party loyalty. So, where members of political parties get appointed to the Government, do they continue to adhere to the policies and the ideals of their political parties? In addition, I want to talk about the whole question of the distribution of funds from the Political Parties Fund. Indeed, major disputes exist today on this specific question of how you distribute the funds. I know the provision made is that you distribute according to votes, but I think Part III could be a bit more specific, so that, for example, Clause 10 is saying that people can go into a pre-election coalition, then we need to make better and more specific criteria as to how we will distribute the political parties funds after that.

In addition, I believe Clause 10 ought to provide for coalitions, not just before elections, but after. Indeed, the practice throughout the world is for coalitions after the elections as opposed to before.

Mr. Temporary Deputy Speaker, Sir, Clause 14 should provide more specifically what happens when you resign. It provides how somebody should resign from a political party. But what are the consequences, for example, if you are holding a parliamentary seat or if you are in the regional assembly? My final point relates to the whole purpose of political parties. We agree that political parties are about getting power, but the question is: power to do what? For what reasons are you seeking political power?

Mr. Temporary Deputy Speaker, Sir, I agree with hon. Jim Orengo and others, who have said the culture of deceit is rampant in the conduct of political party affairs. For example, the Grand Coalition in which I am today is formed by most of the major political parties, which, in the last general election, went round the countryside, suggesting to citizens: “We are going to have 14 years of basic education for every child”. However, nobody seems to be keen to implement that policy.

In an ideal democracy, a Member of Parliament or political party is elected on the basis of political platform. You say: “Please, elect me because I am going to do A, B and D, so that the society can move from point A to point B.” If political parties do not follow through what they say they are going to do, then we are short-changing the citizens. So, I believe that, under Part II, Clause 17(1)(c), the Minister needs to look at how to link not just the policies. The Bill says that political parties must be able to maintain and show by record, what their policies and programmes are, but those need auditing, so that the funding of political parties can be linked not just to the votes they got, but also to whether they actually live up to the things they promise Kenyans. In that way we can stop this game of deceit where political parties are seen as vehicles for individuals to take a stab at power.

Mr. Temporary Deputy Speaker, Sir, if you listen to the political language even today, you will realise that hon. Members are talking about “what is our vehicle?” and so on. I believe that it is by linking the funding to whether political parties live to what they promise Kenyans that we can regulate their conduct.

With those remarks, I beg to support.

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Midiwo, I leave you at the mercy of the Minister for Justice, National Cohesion and Constitutional Affairs. If he allows you, you may speak.



**The Minister for Justice, National Cohesion and Constitutional Affairs**

(Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, he may speak.

**Mr. Midiwo:** Thank you very much. I will be very brief.

Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for the Bill. I think it is largely good. The first thing I would like the Minister to amend in this Bill is to introduce deputies to the Registrar of Political Parties. It would be fair for this country if the Registrar has 47 deputies, one Deputy Registrar in every county. The work of the Registrar is little but we want our people to access this office and get information. Secondly, I want the Chief Justice to make this office independent from everybody else, so that its holders can be free from intimidation from any political quarter.

Mr. Temporary Deputy Speaker, Sir, I want to ask the Minister to take the lead on the issue of coalitions. I have been listening to this debate since yesterday, and in other forums where this Bill is being debated. Kenyans have misunderstood the issues. Leading politicians are misleading Kenyans that coalitions, as they obtain today, will be in the next Government. We are going into a purely presidential system, and we need to explain to Kenyans that the so-called “coalitions”, in the context of this Bill, are basically parliamentary caucuses. There will be no coalitions.

The President will have nothing to do with Parliament. It will be a totally different thing from a Parliamentary system. In fact, the Presidential election should have been de-linked from the general election, so that when people come here, and ODM wishes to join up with PNU, it will be a parliamentary caucus. We will come here with the Leader of the Majority and the Leader of the Minority as determined by popular vote out there.

Mr. Temporary Deputy Speaker, Sir, there is a wrong notion out there that two parties will go into an election and, after we have number one and number two, then number two and number three will drop their running mates and go for a run-off with number one. It will not happen. That is a misnomer which if preached on a daily basis to Kenyans; it will be difficult to do it. If we start doing it, we will have violated the implementation of the new Constitution. We decided to go to a pure Presidential system and we are going to be a pure Presidential State.

Thank you.

**The Minister for Justice, National Cohesion and Constitutional Affairs**

(Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, you can imagine how elated and happy I am to be answering to hon. Members who have spoken with unanimity. All of them have said they support. I feel extremely humbled by the comments that have been made. I have taken note of them but I will also be collecting the HANSARD so that during the Third Reading, I can pay total respect to the comments that have been made, particularly, on coalitions ending with Mr. Midiwo. I think I hear you, please, read Article 108 of the Constitution.

Mr. Temporary Deputy Speaker, Sir, I do not think the country has truly understood what Article 108 is contemplating. The President and his Deputy will be in State House. They will not be Members of Parliament. The Ministers will not be Members of Parliament. However, the Constitution does open a window for the Majority Leader to be the leader of either the largest party or coalition of parties. I think Mr. Midiwo is right; it will be a form of caucus.

However, for the time being, I think the comments that have been made, appeals finding their way to the Supreme Court, I will collect the HANSARD and find how best I can accommodate this worthy demand. The right to participate in politics is now guaranteed by Article 38 of the Constitution. Therefore, one must not

create an impression that once the High Court has ruled and if the complainant feels that his rights are violated, he is shut out.

Mr. Temporary Deputy Speaker, Sir, I am going to increase the penalties because I have heard Members. If the top leaders can afford helicopters the way the media is reporting, for a fine of Kshs500,000 they will commit the offence every day. Those are the key culprits of party hopping and so on. So we will increase the penalties.

The position of the Registrar; I agree we should have deputies in every county. We will find a method of factoring in the best way of this office to operate. For the benefit of hon. Members, Clause 32(3) at page 515 says:-

“The office of the Registrar shall be independent and shall not be subject to direction or control of any person or authority”.

The Constitution allows me to recommend this. The office of the Registrar shall be a State office within the meaning of Article 260 of the Constitution. We have tried to do a good job.

We are also hoping that the code of conduct of political parties, the rules we have inserted here, will eliminate the briefcase political parties because Kenyan’s democracy is no longer for people running around with political parties that you are pulling out of your pocket to collect money or to get some assistance from the political mandarins of this country.

With those few remarks, I want to thank all the hon. Members for the comments you have made. I wish to assure you that during the Third Reading, I will take into account all the recommendations you have made in consultation with the Constitutional Implementation Oversight Committee (CIOC) to whom I have already forwarded the proposals that I have received.

With those too many remarks, I beg to move.

*(Question put and agreed to)*

## **ADJOURNMENT**

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, that then brings us to the end of the business today. The House is, therefore, adjourned until tomorrow, Thursday, 4<sup>th</sup> August, 2011 at 2.30 p.m.

The House rose at 6.25 p.m.